

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5, 14, 75, 91, 92, 93, 135, 266, 570, 576, 578, 905, 964, 983, and 1000

[Docket No. FR-6085-P-01]

RIN 2501-AD87

Enhancing and Streamlining the Implementation of “Section 3” Requirements for Creating Economic Opportunities for Low- and Very Low-Income Persons and Eligible Businesses

AGENCY: Office of the Assistant Deputy Secretary for Field Policy and Management, HUD.

ACTION: Proposed rule.

SUMMARY: Section 3 of the Housing and Urban Development Act of 1968, as amended by the Housing and Community Development Act of 1992 (Section 3), contributes to the establishment of stronger, more sustainable communities by ensuring that employment and other economic opportunities generated by Federal financial assistance for housing and community development programs are, to the greatest extent feasible, directed toward low- and very low-income persons, particularly those who receive government assistance for housing. In accordance with statutory authority, HUD is charged with the responsibility to implement and enforce Section 3. HUD’s regulations implementing the requirements of Section 3 have not been updated since 1994 and are not as effective as HUD believes they could be. This proposed rule would update HUD’s Section 3 regulations to create more effective incentives for employers to retain and invest in their low- and very low-income workers, streamline reporting requirements by aligning them with typical business practices, provide for program-specific oversight, and clarify the obligations of entities that are covered by Section 3. The purpose of these changes is to increase the impact of the Section 3 requirements for low- and very low-income persons, increase compliance with Section 3 requirements, and reduce regulatory burden. HUD is also publishing

elsewhere in this issue of the Federal Register a proposed notification for comment that would set initial benchmarks for measuring Section 3 compliance with the final rule.

DATES: Comment Due Date: [**Insert date 60 days from the date of publication in the Federal Register**].

ADDRESSES: Interested persons are invited to submit comments regarding this rule.

Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW, Room 10276, Washington, DC 20410-0500.

2. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at www.regulations.gov. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the www.regulations.gov website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (fax) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m., weekdays, at the above address. Due to security measures at the HUD Headquarters building, an appointment to review the public comments must be scheduled in advance by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 800-877-8339. Copies of all comments submitted will be available for inspection and downloading at www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: For Public Housing Financial Assistance: Merrie Nichols-Dixon, Director, Office of Policy Program and Legislation, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW, Room 3178, Washington DC 20410; telephone 202-402-4673 (not a toll-free number); for Community Development Block Grant (CDBG)/CDBG Disaster Recovery/Section 108 Loan Guarantee Program: Jessie Handforth Kome, Deputy Director, Office of Block Grant Assistance, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street, SW, Room 7286, Washington DC 20410; telephone 202-402-5539 (voice/TDD) (not a toll-free numbers); for HOME or Housing Trust Fund Section 3 projects: Virginia Sardone, Director, Office of Affordable Housing Program, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street, SW, Room 10168, Washington DC 20410; telephone 202-402-4606 (not a toll-free number), and for Office of Housing programs: Thomas R. Davis, Director, Office of Recapitalization, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW, Room 6230, Washington DC 20410; telephone 202-402-7549 (voice/TDD) (these are not toll-free numbers). Persons with

hearing or speech impairments may access this number through TTY by calling the Federal Relay Service, at toll-free, 800-877-8339. General email inquiries regarding Section 3 may be sent to: section3@hud.gov.

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose of Regulatory Action

This proposed rule would update the regulations implementing Section 3. The purpose of Section 3 is to ensure that employment, training, contracting, and other economic opportunities generated by certain HUD financial assistance are directed to low- and very low-income persons, particularly those who receive government assistance for housing, and for businesses to provide economic opportunities to low- and very low-income persons. As noted in the summary of this preamble, the regulations for Section 3 have not been updated in over 20 years. HUD's experience in administering Section 3 over time has provided insight as to how HUD could improve the effectiveness of its Section 3 regulations. Additionally, HUD has heard from the public that there is a need for regulatory changes to clarify and simplify the existing requirements. HUD has concluded that regulatory changes are needed to streamline Section 3 and more effectively benefit recipients of HUD financial assistance to achieve the purposes of the Section 3 statute.¹

Summary of the Major Provisions of this Regulatory Action

The following provides an overview of the more significant provisions of this proposed rule.

¹ As discussed later in this preamble, this proposed rule would define recipients to mean any entity that receives directly from HUD Section 3 public housing financial assistance or other financial assistance that funds a Section 3 project, including, but not limited to: any State, local government, instrumentality, Public Housing Authority, Indian tribe, tribal organization, or other public agency, public or private nonprofit organizations.

Promote sustained employment and career development

The new rule includes multiple elements designed to increase Section 3's impact in directing employment opportunities for the people served by HUD financial assistance programs and sustaining employment. The new rule proposes the tracking and reporting of labor hours instead of new hires and solicits public comment on whether to retain tracking and reporting of new hires in some contexts. The current new hire framework, while valuable for measuring entry into employment, does not capture the extent to which new hiring opportunities are created relative to the total work performed, nor whether those opportunities are sustained over time. The proposed focus on labor hours would measure total actual employment and the proportion of the total employment performed by low- and very low-income workers. In addition, the proposed focus on labor hours emphasizes continued employment. For example, an exclusive focus on counting new hires regards five new hires for one-month opportunities as a more valued outcome than one 12-month opportunity, and it does not distinguish between full- and part-time employment. A full-time job sustained over a long period allows a low- or very low-income worker to gain skills and is a strong indicator of progress towards self-sufficiency. A focus on labor hours ensures that the 12-month, full time opportunity is appropriately recognized. To further encourage employers to invest in and retain newly-hired low- and very low-income workers, the proposed rule would determine whether someone qualified as a Section 3 worker at the time of hire and the employer would continue to count that Section 3 hire even if in the future the Section 3 worker is no longer a low- and very low-income worker.

HUD held a number of listening sessions with small Public Housing Agencies (PHAs), large PHAs, and other entities involved with Section 3² and heard from some PHAs that they

² Links [to the listening session notes] will be provided at the time the proposed rule is published.

would prefer to keep reporting new hires rather than switch to reporting labor hours. Therefore, while HUD believes tracking labor hours is the best option and would simplify reporting, HUD is proposing alternative regulatory language that would provide for PHAs to report on new hires. After receiving feedback on the labor hours and new hires framework in this proposed rule, HUD will select either Alternative 1, labor hours, or Alternative 2, new hires, for PHAs to use in tracking and reporting on Section 3.

Align Section 3 reporting with standard business practices

As noted above, the new rule proposes the tracking and reporting of labor hours, rather than new hires. This is more consistent with business practices for most construction contractors working on HUD assisted or insured projects, who already track labor hours in their payroll systems because they have been subject to prevailing wage requirements³ HUD believes a consistent labor hour tracking mechanism will make compliance with Section 3 easier not only for recipients of HUD assistance, but also for contractors and subcontractors. The rule also provides for employers who do not track hours in detail through a time-and-attendance system, permitting a good faith assessment of the labor hours of a full-time or part-time employee. The proposed rule does not create an obligation to establish a detailed time-and-attendance system.

Proposed Applicability and Reporting Thresholds

This proposed rule applies to 1) HUD's Public Housing Program, and 2) Other programs that provide housing and community development assistance. For ease in administration, the rule would provide separate definitions for these types of funding and separate subparts relating to: (1) public housing financial assistance, which covers (a) development assistance provided

³ See 42 USC 1437j(a), 24 CFR 905.308(b)(3)(ii), 24 CFR 965.101, 25 USC 4225(b)(1)(A), and 24 CFR 1006.345(b).

pursuant to section 5 of the United States Housing Act of 1937 (the 1937 Act), (b) operations and management assistance provided pursuant to section 9(e) of the 1937 Act (Operating Fund), and (c) development, modernization, and management assistance provided pursuant to section 9(d) of the 1937 Act (Capital Fund); and (2) Section 3 projects, which means HUD program assistance used for housing rehabilitation, housing construction and other public construction projects that generally exceed a \$200,000 project threshold or any Section 3 project funding from HUD's Lead Hazard Control and Healthy Homes programs. This proposed rule would clarify that contracts, subcontracts, grants, or subgrants subject to section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5307(b)) or subject to tribal preference requirements as authorized under 101(k) of the Native American Housing Assistance and Self-Determination Act (25 U.S.C. 4111(k)) must provide preferences in employment, training, and business opportunities to Indians and Indian organizations.

All recipients of public housing financial assistance and recipients that fund a Section 3 project would be required to report on whether they have met benchmarks, as explained below. PHAs with fewer than 250 units would only be required to report on Section 3 qualitative efforts and would not be required to report on whether they have met the reporting benchmarks.

Reporting and Targeted Section 3 Workers

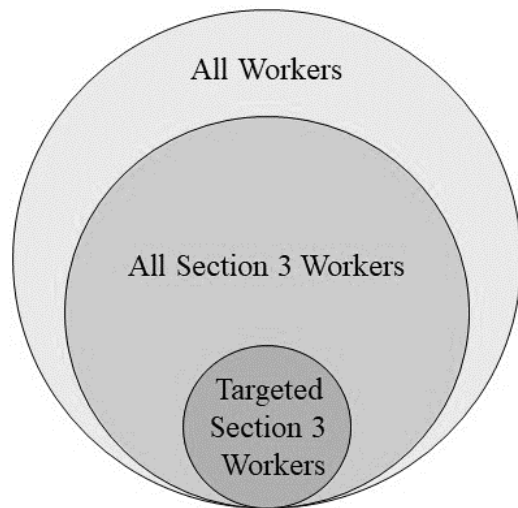
HUD's current regulations provide for a safe harbor where recipients may demonstrate compliance with Section 3 by certifying compliance with the Section 3 priorities and meeting numerical goals for the percentage of their new hires that qualify as Section 3 residents. Under the existing regulations, a Section 3 resident is either a public housing resident, or a low- or very low-income person who lives in the metropolitan area or nonmetropolitan county where assistance is expended. However, the Section 3 statute requires recipients of certain financial

assistance to target their efforts to direct employment and economic opportunities to specific groups of low- and very low-income individuals. HUD interprets the statutory priorities for the public housing program to be: residents of the public housing projects for which the public housing financial assistance is expended, residents of other public housing projects managed by the PHA that is expending the assistance or to residents of Section 8-assisted housing managed by the PHA, YouthBuild participants, and then other low- and very low-income persons within the metropolitan area or nonmetropolitan county. For other HUD assistance programs, the statutory priorities are: residents within the service area or the neighborhood of the project and YouthBuild participants. There is also a statutory contracting priority for businesses that provide economic opportunities for the same priority groups. Previously the contracting metric was based on the cost of the contract awarded to the Section 3 business, and now the hours worked by the Section 3 business employees will be counted consistent with all other reporting.

This proposed rule anticipates that recipients would report the labor hours performed by “Section 3 Workers” as a percentage of the total labor hours on a project, and labor hours performed by “Targeted Section 3 Workers” as a percentage of the total labor hours on a project. The proposed rule would also provide an alternative for public housing financial assistance where reporting would be done by new hires, but with the same three metrics.

Under this proposed rule, “Section 3 Workers” would generally be low- or very low-income individuals, or those employed by a business that generally provides economic opportunities for low- and very low-income individuals. This proposed rule creates the new concept of “Targeted Section 3 Workers” so that HUD can track, and recipients can target, hiring Section 3 workers in selected categories and those who work for Section 3 businesses. A “Targeted Section 3 Worker” is a subset of all Section 3 workers (see graphic), that HUD wishes

to specifically track, reflecting both statutory and policy priorities. The Targeted Section 3 worker category also incorporates the statutory requirements pertaining to contracting opportunities for business concerns employing low- and very low-income persons.



Targeted Section 3 Workers for public housing financial assistance would be:

- Residents of public housing projects or Section 8-assisted housing⁴;
- Residents of other projects of the PHA that is expending assistance;
- Current YouthBuild participants; or
- Employees of a Section 3 business.

Targeted Section 3 Workers for other HUD financial assistance used on a Section 3 project would be:

- Low- or very low-income workers residing within the service area or the neighborhood of the project (for purposes of this proposed rule, this would include low- or very low-income workers residing within a one-mile radius of the project site; or if fewer than

⁴ As further explained in this proposed rule, the term Section 8-assisted housing refers to housing receiving project-based rental assistance or tenant-based assistance under Section 8 of the 1937 Act.

5,000 people live within one mile of a work site, within a circle centered on the work site that encompass a population of 5,000 people);

- Current YouthBuild participants; or
- Employees of a Section 3 business concern.

A long-standing criticism of local economic development policy is that spatially-targeted subsidies transfer jobs away from other areas without creating job opportunities for the neediest individuals in the targeted area. The proposed Section 3 regulation avoids this pitfall by encouraging the engagement of local firms and low-income workers through the definition of a targeted Section 3 worker.

Benchmarks

This proposed rule would establish new benchmark measurements, which will also serve as safe harbors. The primary impact of the Section 3 regulation is not to create new jobs but to redirect the job opportunities that are generated by HUD financial assistance to Section 3 workers and Targeted Section 3 workers, and the proposed benchmark would reflect and monitor grantees' abilities to do so. The new benchmarks will be based on ratios of Section 3 workers and Targeted Section 3 workers in comparison to all workers. These benchmarks would be set by notice and amended periodically to provide for updating of benchmarks where warranted. The benchmarks would align with the reporting data detailed above. As HUD gathers increasing data under the new rule, HUD can increase or decrease benchmark figures over time, or tailor different benchmarks for different geographies and different funding types. If a recipient certifies compliance with the statutory priorities and meets the outcome benchmarks, HUD would presume the recipient is in compliance with Section 3 requirements, absent evidence to the contrary. Otherwise, recipients will be required to submit qualitative reports on their efforts,

as they are required to do under the current rule when they do not meet the safe harbor, and HUD may conduct monitoring to review the recipient's compliance. Elsewhere in this issue of the Federal Register, HUD has published a proposed notification for comment that would set initial benchmarks at the final rule.

Multiple Funding Sources

HUD is seeking to streamline the administrative work for recipients that receive funds through more than one HUD program, and contractors that receive payment from funds under those programs. The rule provides for how to track funding and report benchmarks when there is a project that is funded by public housing financial assistance and also meets the criteria as a Section 3 project. Specifically, that the project must follow the public housing financial assistance requirements for the public housing financial assistance funds and may follow the requirements in subpart B or subpart C for the community development financial assistance funds. It would also provide for how to deal with reporting when a Section 3 project receives housing and community development assistance from two different HUD programs. Specifically, that HUD would designate reporting to one program office.

Integrate Section 3 into program enforcement

HUD program office staff are regularly in touch with HUD's funding recipients. Under the proposed rule's framework, HUD's program offices would incorporate Section 3 compliance and oversight into regular program oversight and make Section 3 a more integral part of the program's work. As a result, this proposed rule would eliminate the separate extensive complaint and compliance review procedures in the current rule. Relatedly, it would remove the delegation of authority in the current regulations, as Section 3 requirements, reporting, and compliance would be aligned with those of the applicable HUD program offices.

Costs and Benefits

HUD has prepared a Regulatory Impact Assessment (RIA) that assesses the anticipated costs and benefits of the proposed rule. The purpose of Section 3 is to provide jobs, including apprenticeship opportunities, to public housing residents and other specific low- and very low-income residents of a local area, and contracting opportunities for businesses that substantially employ these persons. However, the Section 3 requirement itself does not create additional jobs or contracts. Instead, Section 3 gives priority for local jobs and contracts created as a result of the expenditure of HUD financial assistance to Section 3 residents and businesses residing and operating in the area in which the HUD financial assistance is expended. A reasonable estimate of the impact of this proposed rule would be a net transfer to Section 3 workers of 3,000 to 14,000 employment opportunities, 2,000 to 4,000 of which would be to Targeted Section 3 workers. In addition, with respect to incomes for tenants of public housing, the Federal rental subsidies provided to those tenants could be reduced as a result of the creation of job opportunities resulting from the expenditure of Federal financial assistance subject to Section 3 requirements.

If implemented as proposed, this proposed rule would result in a reduction in reporting and recordkeeping burden of 64,270 hours and approximately \$1.2 million annually. This rule will not have any impact on the level of funding for covered HUD programs. Funding is determined independently by congressional appropriations, authorizing statutes and regulatory formulas that set the amounts of the Federal financial assistance provided by HUD grants. This proposed rule is not an economically significant rule as defined in Executive Order 12866 (Regulatory Planning and Review).

I. Background

Section 3 of the Housing and Urban Development Act of 1968 (Public Law 90-448, approved August 1, 1968) (Section 3) was enacted for the purpose of bringing economic opportunities, generated by the expenditure of certain HUD financial assistance, to the greatest extent feasible, to low- and very low-income persons residing in communities where the financial assistance is expended. Section 3 recognizes that HUD funds are often one of the largest sources of Federal funds expended in low- and very low-income communities and, where such funds are spent on activities such as construction and rehabilitation of housing and other public facilities, the expenditure results in economic opportunities. By directing HUD-funded economic opportunities to residents and businesses in the community where the funds are expended, the expenditure can have the double benefit of creating new or rehabilitated housing and other facilities while providing opportunities for employment and training for the residents of these communities. Section 3 was amended by the Housing and Community Development Act of 1992 (Public Law 102-550, approved October 28, 1992), which required the Secretary of HUD to promulgate regulations to implement Section 3, codified at 12 U.S.C. 1701u. HUD's Section 3 regulations were promulgated through an interim rule published on June 30, 1994, at 59 FR 33880, and the regulations are codified in 24 CFR part 135.

In the 24 years since HUD promulgated the current set of Section 3 regulations, significant legislation has been enacted that affects HUD programs that are subject to the requirements of Section 3 and that are not adequately addressed in the current Section 3 regulations. This legislation includes, but is not limited to, the following: reforms made to HUD's Indian housing programs by the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) (Public Law 104-330, approved October 26, 1996); public housing reforms made by the Quality Housing and Work Responsibility Act of 1998

(QHWRA) (Public Law 105-276, approved October 21, 1998); reforms made to HUD's supportive housing programs by the Section 202 Supportive Housing for the Elderly Act of 2010 (Public Law 111-372, approved January 4, 2011); and the Frank Melville Supportive Housing Investment Act of 2010 (Public Law 111-347, approved January 4, 2011).

In 2013, HUD's Office of the Inspector General conducted an audit to assess HUD's oversight of Section 3, in response to concerns about economic opportunities that were provided (or should have been provided) by the expenditure of HUD financial assistance under the American Reinvestment and Recovery Act (Recovery Act) (Public Law 111-5, approved February 17, 2009). The audit found that HUD was not fully enforcing the reporting requirements of Section 3 for recipients of Fiscal Year 2009 Recovery Act Public Housing Capital Funds from HUD.⁵ In response to the audit and the need to update the outdated regulations, HUD issued a proposed rule on March 27, 2015 entitled "Creating Economic Opportunities for Low- and Very Low-Income Persons and Eligible Businesses Through Strengthened 'Section 3' Requirements" which sought to strengthen HUD requirements. See 80 FR 16519. HUD received more than 300 comments on the proposed rule (including duplicate public comments). Comments came from a wide variety of entities, including PHAs, other housing providers, organizations representative of housing providers, governmental jurisdictions and agencies, tenant and other housing advocacy organizations, and individuals. All public comments can be viewed at <http://www.regulations.gov/#!docketDetail;D=HUD-2015-0026>.

⁵ See: <http://www.hudoig.gov/reports-publications/audit-reports/hud-did-not-enforce-reporting-requirements-of-section-3-of>.

While some commenters supported the rule, many commenters were concerned that the proposed rule would raise the bar for compliance and increase administrative requirements without increasing funding. Based on the multitude of comments, HUD sought additional feedback from the public by hosting a number of Section 3 listening sessions⁶ to highlight “best practices” and to discuss barriers to implementation across the country. The sessions provided valuable information on the challenges and barriers for implementation that HUD hopes to address in this new proposed rule.

II. This Proposed Rule

HUD proposes to revise its Section 3 regulations to better achieve the statute’s goals, to make reporting more meaningful and more aligned with statutory requirements, and to simplify compliance for recipients. This proposed rule does this by aligning reporting with desired outcomes and with data already collected by reporting entities; clarifying the applicability and scope of the rule; linking certain statutory prioritization categories to a new notice that sets forth benchmarks; streamlining the rule’s reporting and oversight requirements; addressing complexities arising from the use of multiple funding sources; simplifying the requirements for Section 3 contract language; and aligning Section 3 requirements more closely with specific HUD program requirements.

This rule would remove existing Section 3 regulations in 24 CFR part 135 and create a new part 75, which would be organized into four subparts: Subpart A – General Provisions; Subpart B – Additional Provisions for Public Housing Financial Assistance; Subpart C – Additional Provisions for Section 3 projects; and Subpart D – Provisions for Multiple funding sources, recordkeeping and compliance. Subparts A and D apply to all recipients, subrecipients,

⁶ See Listening Session Notes at https://www.hud.gov/program_offices/fair_housing_equal_opp/section_3_publications_and_regulations.

contractors, and subcontractors subject to Section 3 requirements. Subpart B provides requirements specific to PHAs and other recipients of public housing financial assistance. Subpart C mostly mirrors subpart B, but provides specific requirements for recipients using funds on a Section 3 project. Part 75 would be codified in a section of HUD's CFR that establish requirements that generally apply to HUD's programs.

Throughout this rule, the reader will find amendatory language titled "Alternative 1" and "Alternative 2." As discussed above, HUD is providing the opportunity for PHAs and other recipients of public housing financial assistance to view the new rule and provide feedback on whether HUD should track labor hours, consistent with what HUD is proposing for Section 3 projects, or maintain the tracking of new hires. The language in "Alternative 1" is what HUD would adopt if the final rule tracks labor hours for all public housing financial assistance and the language in "Alternative 2" is what HUD would adopt if the final rule provides separate tracking and reporting of public housing financial assistance by new hires. At the final rule stage, HUD will decide on either "Alternative 1" or "Alternative 2," and maintain only one set of regulatory changes and the definitions that apply.

HUD notes that nothing in this proposed rule would supersede the general requirement of 2 CFR 200.319(a) that all procurement transactions be conducted in a competitive manner. In addition, HUD notes that 2 CFR 200.319(b) permits geographical preferences where applicable Federal statutes expressly mandate or encourage geographic preference, such as Section 3.

Subpart A - General Provisions

Subpart A—General Provisions contains four sections: the general purpose of Section 3 (§ 75.1); the applicability of Section 3 requirements on HUD federal assistance (§ 75.3); new and

updated definitions applicable to this part (§ 75.5); and the Section 3 requirements applicable to HUD's notices of funding availability (NOFAs) (§ 75.7).

Section 75.1 provides the framework for the regulation and sets forth the purpose of Section 3, which is to ensure that economic opportunities, most importantly employment, generated by certain HUD financial assistance for housing and community development programs shall be directed to low- and very low-income persons. Following the Section 3 statute, this section provides an emphasis on providing opportunities for those who are recipients of Federal financial assistance for housing or residents of the community in which the Federal financial assistance is spent.

Section 75.3 defines the application of Section 3 consistent with the Section 3 statute.

There are two categories:

- 1) Public housing financial assistance: this term covers the public housing program assistance which includes: (a) development assistance provided pursuant to section 5 of the United States Housing Act of 1937; (b) operations and management assistance provided pursuant to section 9(e) of the 1937 Act (Operating Fund) and (c) development, modernization, and management assistance provided pursuant to section 9(d) of the 1937 Act (Capital Fund). While the statute also includes a reference to modernization assistance pursuant to section 14 of the Act, which was repealed by the Quality Housing and Work Responsibility Act of 1998 (QHWARA) (Public Law 105-276), the former section 14 modernization program was replaced along with the operating, maintenance, development and modernization programs that became the Operating Fund and Capital Fund programs with assistance provided pursuant to section 9. The Section 8 programs

were never included in the Section 3 statute and will not be covered in this proposed rule despite being included in the current Section 3 rule.

- 2) Section 3 project: this term covers assistance provided by other HUD programs when used for housing rehabilitation, housing construction, and other public construction projects, as described in 12 U.S.C. 1701u(c)(2). A Section 3 project will mean a housing rehabilitation, housing construction, and other public construction projects where the HUD assistance exceeds \$200,000, and all projects that receive funding from HUD's Lead Hazard Control and Healthy Homes programs.

The proposed rule's threshold applies on a project basis. HUD proposes using project funding level to define thresholds because the amount of funding spent on the project is directly related to the economic opportunities generated by the project.

HUD arrived at the \$200,000 threshold after analyzing data from relevant programs, including HUD's Community Development Block Grant (CDBG) and HOME Investment Partnerships (HOME) programs. HUD considered various thresholds in deciding to propose the \$200,000 figure. HUD estimates that of \$100,000 in construction spending, \$64,000 generally goes to labor costs, and the median annual income for a construction job is \$44,730. Thus, a project below \$100,000 would not generate more than one salary. On the other hand, HUD data shows that a higher threshold, such as \$400,000, could exempt a large portion of housing and community development projects from Section 3 funding. Fiscal year 2015 CDBG data shows that a \$400,000 threshold would have exempted 90 percent of construction and rehabilitation activities, and over half of CDBG assistance. A \$200,000 threshold would still cover almost three-quarters of CDBG funding, while exempting the smallest three quarters of projects and eliminating administrative burdens from these small efforts that yield relatively few employment

opportunities. For the HOME program, at least 90% of HOME funding to projects greater than 1 unit would be covered by any threshold at \$400,000 or below. It is HUD's view that \$200,000 is a sufficiently high amount that, when expended on construction-related activities, a significant amount of those funds should be used to generate economic opportunities for low- and very low-income persons. An exception applies for lead hazard control and healthy homes mitigation activities, which on a per unit remediation basis would generally involve much less than \$100,000 in HUD grant funds, and so applying a per project threshold could effectively exempt lead hazard control and healthy homes grants from Section 3. As a result, this rule proposes to apply Section 3 requirements to all projects that receive funds from HUD's Lead Hazard Control and Healthy Homes grant programs consistent with the current application of Section 3 to all grants above \$100,000.

Section 75.3 provides that requirements of this part apply to the entire Section 3 project, regardless of whether the project is fully or partially funded with HUD program assistance.

This section also clarifies that Section 3 does not apply to material supply contracts. As discussed in this preamble, a material supply contract is defined as a contract for the delivery of commercially available materials and products. The proposed rule includes a set of examples to illustrate what is meant by commercially available materials for purchase, such as lumber, drywall, wiring, concrete, pipes, toilets, sinks, carpets, and office supplies. In most cases a material supply contract will include the delivery of the materials and in those cases the delivery is also not subject to Section 3 requirements. However, when a recipient enters into a separate delivery contract for an order of material supplies, that delivery contract would be subject to Section 3 requirements.

The proposed rule also provides that contracts, subcontracts, grants, or subgrants subject to section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5307(b)) or subject to tribal preference as authorized under 101(k) of the Native American Housing Assistance and Self-Determination Act (25 U.S.C. 4111(k)) are not subject to the requirements in this part because they must provide preferences in employment, training, and business opportunities to Indians and Indian organizations. Lastly, § 75.3 indicates that HUD encourages recipients of HUD assistance not covered by Section 3 to support the objectives of Section 3.

Section 75.5 provides the definitions used throughout the new part. The section proposes to use the general HUD definitions at 24 CFR part 5 for HUD, Public Housing, and PHAs and defines Section 3 by reference to section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u). The proposed rule also includes several definitions for clarity including: “1937 Act;” “Public housing project;” “Low-income person;” “Qualified Census Tract;” “Section 8-assisted housing;” “Very low-income person;” and “YouthBuild programs.”

HUD proposes contract terms for determining coverage of the rule:

Material supply contracts would be defined as a contract that is made for the purchase of products and materials. HUD provides this definition to clarify that such contracts are not covered by Section 3.

Professional services would be defined as non-construction services, including, but not limited to, contracts for legal services, financial consulting, accounting services, environmental assessment, architectural services, and civil engineering services. This definition is informed by the current separation of Section 3 business concern ratios by building trade versus non-building

trade. Professional services will be excluded from the benchmarking requirements, but HUD will allow voluntary reporting of these workers, as discussed below.

HUD also provides definitions for purposes of the new Section 3 reporting requirements:

Contractor would be defined as an entity entering into a contract with a recipient to perform work in connection with the expenditure of public housing financial assistance or for work in connection with a Section 3 project, or a subrecipient for work in connection with a Section 3 project.

Labor hours would be defined to mean the number of paid hours worked by persons on Section 3 projects or employed with funds that include public housing financial assistance. This includes the labor hours of any contractor, subcontractor, or employee of the public housing authority that is being paid in part by the public housing financial assistance. For example, the labor hours performed by an elevator maintenance contractor under a contract with the PHA would be included in the total labor hours performed by the PHA using public housing financial assistance.

New hire would be defined as a full- or part-time employee for permanent, temporary, or seasonal employment opportunities that was not on the payroll of the recipient, or of a recipient's contractor or subcontractor or other entity receiving public housing financial assistance at the beginning of the award. The term also includes a new hire that was hired by a contractor or subcontractor on a per-project basis as a result of receiving public housing financial assistance. This definition is part of Alternative 2 for PHAs to consider in determining if reporting should be completed using labor hours or new hires. If Alternative 1, which uses labor hours for reporting, is chosen, this definition will not be included at the final rule.

Public housing project is defined in 24 CFR 905.108.

Recipient would be defined to mean any entity that receives directly from HUD Section 3 public housing financial assistance or other financial assistance that funds a Section 3 project, including, but not limited to: any State, local government, instrumentality, PHA, Indian tribe, tribal organization, or other public agency, public or private nonprofit organization. This term excludes the ultimate beneficiary of Federal financial assistance under the HUD program to which Section 3 applies (for example an individual or family receiving a housing rehabilitation grant financed with HOME assistance) and does not include contractors and subcontractors. This term establishes the scope of entities that would be required to report to HUD under this proposed rule. It also defines the entities subject to the requirement to include contractual language requiring the application of Section 3 (See §§ 75.17 and 75.27.).

Small PHA would be defined to mean a public housing authority with fewer than 250 public housing units. This definition allows for these smaller entities to follow a reduced reporting process under § 75.13. This definition is consistent with references to small PHAs in 24 CFR parts 902, 903, 905, 970, and 985.

Subcontractor would mean any entity that has a contract with a contractor to undertake a portion of the contractor's obligation to perform work in connection with the expenditure of public housing financial assistance or a Section 3 project.

Subrecipient would be defined to have the meaning provided in the applicable program regulations, or in 2 CFR 200.93.

Finally, this regulation would propose definitions for a Section 3 business concern, Section 3 worker, and Targeted Section 3 worker for purpose of benchmarking:

Section 3 business concern would be defined to mean a business that is at least 51 percent owned by low- or very low-income persons; over 75 percent of the labor hours performed for the

business are performed by low- or very low-income persons; or is at least 25 percent owned by current public housing residents or residents who currently live in Section 8-assisted housing.

The Section 3 statute defines a business concern that provides economic opportunities to mean a business concern “that—(A) provides economic opportunities for a class of persons that has a majority controlling interest in the business; (B) employs a substantial number of such persons; or (C) meets such other criteria as the Secretary may establish.” The proposed definition reflects the first two statutory requirements and provides two additional types of business concerns that meet the statutory intent. HUD believes that the 75 percent figure is a reasonable measure for determining whether the business concern provides economic opportunities for a substantial number of low- and very low-income persons. Lastly, to further encourage businesses ownership by public housing residents or residents who live in Section 8-assisted housing, this proposed rule would provide that a Section 3 business concern could be one that is at least 25 percent owned by current public housing residents or residents who currently live in Section 8-assisted housing. HUD also notes that a prior arrest or conviction generally does not impact an individual’s status as an owner of a Section 3 business and that meeting the definition of a Section 3 business does not negate the requirement that the business meet the specifications of the particular contract (e.g., construction, supplies, etc.). However, the requirements for preventing crime in federally assisted housing (denying admission and terminating tenancy for criminal activity or alcohol abuse) in subpart I of 24 CFR part 5 continue to apply to Section 3. Accordingly, subpart I will apply to applicants or tenants who would be under consideration as an owner of a Section 3 business.

Section 3 worker would be defined to mean a worker whose income, before being hired to work on the project, is below the income limit established by HUD; a worker who lives in a

qualified census tract; or a worker who is employed by a Section 3 business concern. The program statutes and regulations provide the basis for the income limit for determining eligibility for assisted housing programs, including the Public Housing, Section 8 project-based, Section 8 Housing Choice Voucher, Section 202 Housing for the Elderly, and Section 811 Housing for Persons with Disabilities programs. HUD annually establishes income limits based on Median Family Income estimates and Fair Market Rent area definitions for each metropolitan area, parts of some metropolitan areas, and each non-metropolitan county. The income limits are available at: <https://www.huduser.gov/portal/datasets/il.html>.

HUD would define qualified census tract as any census tract (or equivalent geographic area defined by the Bureau of the Census) in which at least 50 percent of households have an income of less than 60 percent of Area Median Gross Income (AMGI); or where the poverty rate is at least 25 percent and where the census tract is designated as a qualified census tract by HUD. Qualified census tract data can be found here: <https://www.huduser.gov/portal/datasets/qct.html>. The definition of Section 3 worker would provide that an individual's prior arrest or conviction shall not negatively impact that individual's status as a Section 3 worker and that meeting the definition of a Section 3 worker does not negate the requirement that the individual be qualified for the job. However, the requirements for preventing crime in federally assisted housing (denying admission and terminating tenancy for criminal activity or alcohol abuse) in subpart I of 24 CFR part 5 continue to apply to individuals identified as Section 3 workers or as owners of a Section 3 business.

Targeted Section 3 worker would be defined as provided in § 75.11 for the public housing financial assistance and as provided in § 75.19 for a Section 3 project. For certain projects receiving funding from multiple sources, the definition is provided in § 75.29.

Section 75.7 would establish requirements applicable to HUD's NOFAs for public housing financial assistance and Section 3 projects. HUD would require that all NOFAs that award funds covered by Section 3 will include notice that the assistance is subject to part 75. This section would also provide that HUD may include, where appropriate, points or bonus points for exceeding Section 3 requirements. This proposed rule would remove the requirements in the currently codified part 135 that require NOFA applicants to submit certifications that the applicant will comply with the Section 3 requirements, require a statement of activities intended by recipients of assistance covered by Section 3, and require that the NOFA give preference for Section 3 requirements. HUD's removal of these requirements is consistent with how HUD implements other applicable program requirements. Further, these additional burdens are unnecessary as recipients already agree to comply with all applicable program requirements, including Section 3 requirements, when they submit a NOFA.

Subpart B – Additional Provisions for Public Housing Financial Assistance

Subpart B—Additional Provisions for Public Housing Financial Assistance contains five sections, which set out the requirements for PHAs and other recipients of public housing financial assistance, as defined in § 75.3. The subpart includes the following: Requirements (§ 75.9); Targeted Section 3 worker definition for public housing financial assistance (§ 75.11); Section 3 safe harbor (§ 75.13); Reporting (§ 75.15); and Contract Provisions (§ 75.17).

Section 75.9 would incorporate the statutory Section 3 requirements for prioritizing categories of Section 3 workers and businesses when using public housing financial assistance defined in § 75.3(a)(1). The statutory prioritization requires that a PHA or other recipient of public housing financial assistance must make its best efforts, consistent with existing Federal,

state, and local laws and regulations, to provide employment and training opportunities generated by the public housing financial assistance to Section 3 workers in the following priority order:

- (1) To residents of the public housing projects for which the public housing financial assistance is expended;
- (2) To residents of other public housing projects managed by the PHA that is expending assistance or to residents of other Section 8-assisted housing managed by the PHA;
- (3) To participants in YouthBuild programs; and
- (4) To low- and very low-income persons residing within the metropolitan area (or nonmetropolitan county) in which the assistance is expended.

The Section 3 statute also requires that a PHA or other recipient of public housing financial assistance must make its best efforts to award contracts and subcontracts to business concerns that provide economic opportunities to Section 3 workers in the following priority order:

- (1) To Section 3 business concerns that provide economic opportunities for residents of the public housing projects for which the assistance is provided;
- (2) To Section 3 business concerns that provide economic opportunities for residents of other public housing projects managed by the PHA that is providing the assistance or for residents of Section 8-assisted housing managed by the PHA;
- (3) To YouthBuild programs; and
- (4) To Section 3 business concerns that provide economic opportunities for Section 3 workers residing within the metropolitan area (or nonmetropolitan county) in which the assistance is provided.

Section 75.11 would establish the definition of a “Targeted Section 3 worker” for PHAs and other recipients of public housing financial assistance. This definition is used for reporting

and tracking by HUD and to ensure that PHAs and other recipients use their best efforts to provide employment opportunities to the categories of workers in certain priority categories established by the Section 3 statute, as well as to all residents of public housing projects or Section 8-assisted housing, and to workers employed by Section 3 business concerns. The definition of a “Targeted Section 3 worker” for subpart B has an Alternative 1 definition and Alternative 2 definition to reflect the option of reporting labor hour or new hires.

Alternative 1: Would provide that a Targeted Section 3 worker for subpart B is a worker employed by a Section 3 business concern, or a worker who currently is or who was when hired by the worker’s current employer a resident in a public housing project or Section 8-assisted housing; a resident of other projects managed by the PHA that is expending assistance; or a current YouthBuild participant.

Alternative 2: Would provide that a Targeted Section 3 worker for subpart B is a new hire employed by a Section 3 business concern, or a new hire employed by the worker’s current employer who is also a resident in a public housing project or Section 8-assisted housing; a resident of other projects managed by the PHA that is expending assistance; or a current YouthBuild participant.

In both alternatives, the definition focuses on certain targeted categories for public housing financial assistance. Additionally, the definition includes all employees of a Section 3 business concern to recognize the statutory requirement for recipients to make best efforts to award contracts to Section 3 business concerns. The definition also includes all residents of public housing projects, as well as residents receiving project-based or tenant-based Section 8 assistance, and YouthBuild participants. Combining these categories allows for a single, streamlined outcome metric (labor hours) that reflects both the employment and contracting

components of the Section 3 statute, as well as HUD's desire to incentivize the employment of all residents who live in public housing or receive Section 8 assistance, and also in the YouthBuild program.

The Targeted Section 3 worker concept is consistent with the goals of expanding employment opportunities for particular individuals that receive federal assistance for housing and of expanding subcontracting opportunities for businesses that are owned by or substantially employ such persons.

The first alternative focuses on labor hours and includes current employees and those recently hired by the employer. HUD believes that counting labor hours for employees who are already employed and qualify as a Targeted Section 3 worker ensures that such workers have continued long-term employment. HUD has also heard from stakeholders that some employers may fire and re-hire people, hire people for very short-term jobs, and engage in other maneuvering to meet the Section 3 requirements. HUD believes counting labor hours is consistent with the statute and mitigates contractors' ability to manipulate their Section 3 outcomes.

Section 75.13 would provide PHAs and other recipients a safe harbor provided they certify to following the prioritization in § 75.9 and meet or exceed the Section 3 benchmarks that HUD will prescribe through notice. The safe harbor proposed by this rule, like the safe harbor provided by the currently codified rule, would allow for recipients that meet this standard to be free from additional Section 3 reporting. However, this proposed rule also provides that the safe harbor exists only to the extent that no evidence to the contrary is presented to HUD, and that meeting the safe harbor does not exempt PHAs and other recipients of public housing financial

assistance from maintaining records of compliance for general program review. See §§ 75.31 and 75.33.

This section would also set forth the process of establishing benchmarks. HUD proposes to establish Section 3 benchmarks for Section 3 workers, Targeted Section 3 workers, or both through a document published in the Federal Register. The rule would provide that HUD may establish a single nationwide benchmark or may establish multiple benchmarks based on geography, the type of public housing financial assistance, or other variables. When establishing the Section 3 benchmarks, HUD would consider the industry averages worked by specific categories of workers or in different localities or regions; data reported by PHAs or other recipients of public housing financial assistance pursuant to this section; and any other factors HUD deems important. In establishing the Section 3 benchmarks, HUD would exclude professional service contracts from the benchmark ratios. HUD plans to update the benchmarks through a document published in the Federal Register, subject to public comment, not less frequently than once every three years. Providing the benchmark through Federal Register notice would allow HUD to revise the benchmarks where warranted in response to the data HUD gathers and based on feedback HUD receives from recipients. Over time, the benchmarks can become more tailored and a more reliable indicator for when enforcement efforts should be undertaken, giving the safe harbors more value and creating a greater incentive for recipients, contractors, and subcontractors to exceed the safe harbors. Section 3 benchmarks will consist of the following ratios:

Alternative 1: (1) the number of labor hours worked by Section 3 workers divided by the total number of labor hours worked by all workers employed with public housing financial assistance in the PHA's fiscal year; (2) the number of labor hours worked by Targeted Section 3

workers, as defined in § 75.11(a)⁷ divided by the total number of labor hours worked by all workers employed with public housing financial assistance in the PHA's fiscal year; or (3) ratios for both (1) and (2).

Alternative 2: (1) the number of new hires that are Section 3 workers divided by the total number of new hires employed with public housing financial assistance in the PHA's fiscal year; or (2) the number of new hires that are Targeted Section 3 workers, as defined in § 75.11(a)⁸, divided by the total number of new hires employed with public housing financial assistance in the PHA's fiscal year; or (3) ratios for both (1) and (2).

Section 75.15 proposes the process for PHAs and other recipients of public housing financial assistance to report to HUD on the data for the benchmarks. Specifically, it requires that the following be reported:

Alternative 1: the total number of total labor hours worked with the public housing financial assistance, labor hours worked by Section 3 workers, and labor hours worked by Targeted Section 3 workers. However, the rule would provide a limited exception where PHAs and other recipients of public housing financial assistance could use the reporting of a good faith assessment of the labor hours of a full-time or part-time employee from contractors and subcontractors that have not been subject to requirements specifying time and attendance reporting, and do not have systems already in place to track labor hours. This small carve-out provides a limited exception for recipients to report on the labor hours from contractors and subcontractors that do not already track labor hours without necessitating any change in time and attendance or payroll systems for the reporting contractors and subcontractors. However, it is not a permanent exemption and if in the future the contractor or subcontractor is required to track

⁷ This refers to § 75.11(a) Alternative 1.

⁸ This refers to § 75.11(a) Alternative 2.

labor hours pursuant to some other authority, or begins to voluntarily track labor hours, the exception would no longer apply.

Alternative 2: the total number of new hires with public housing financial assistance, total number of new hires that are Section 3 workers, and total number of new hires that are Targeted Section 3 workers.

Both Alternative 1 and Alternative 2 would provide that reporting may, but is not required to, include professional service jobs. Given the challenges HUD has heard in hiring Section 3 workers and Targeted Section 3 workers in professional service jobs, HUD has decided not to include those jobs in its benchmark ratio and instead proposes to make the reporting of professional services jobs voluntary. Therefore, if a PHA, other recipient of public housing financial assistance, contractor, or subcontractor has professional service employees that are Section 3 workers and Targeted Section 3 workers, the PHA or other recipient of public housing financial assistance may report on those jobs and count them to increase their total numbers. By including labor hours for professional services work in the numerators of these calculations (i.e., labor hours for the Section 3 workers and Targeted Section 3 workers), but not in the denominators (i.e., all labor hours worked), HUD is also recognizing the value of this more challenging effort to create opportunities in the professional services context.

Section 75.15 would provide that small PHAs will not be required to report the number of labor hours or new hires. Small PHAs would instead be required to report their qualitative efforts. PHAs and other recipients of public housing financial assistance that do not meet the Section 3 benchmarks described in § 75.11 would also have to provide reports on their qualitative efforts. HUD is considering some of the following to signify qualitative efforts: outreach efforts to generate job applicants who are Targeted Section 3 workers; direct on-the job

training (including apprenticeships); indirect training such as arranging for, contracting for, or paying tuition for, off-site training technical assistance to help Section 3 workers; and outreach efforts to identify and secure bids from Section 3 business concerns. HUD plans to create a form for tracking and reporting qualitative efforts, to ease burden on recipients.

All reporting either under the general reporting framework or the qualitative reporting requirement would be on an annual basis and reported to HUD in a manner consistent with reporting requirements for the applicable HUD program. HUD believes that requiring reporting annually, but consistent with timeframes that PHAs and other recipients of public housing financial assistance are already using to submit documents to HUD, will relieve existing burden. For example, when an annual plan is completed for a PHA the Section 3 reporting would be done at that time or when a recipient of public housing financial assistance must submit an annual report. HUD is also looking to include reporting into existing systems rather than requiring PHAs and other recipients to log into and report under a separate system, such as HUD's existing Section 3 Performance Evaluation and Registration System (SPEARS).

Section 75.17 would establish requirements for PHAs and other recipients of public housing financial assistance to include language referencing Section 3 in contracts that are subject to Section 3. The proposed rule would provide that PHAs and other recipients of public housing financial assistance include contractual language applying Section 3 to any contractor. PHAs and other recipients of public housing financial assistance would also require that contractors include contractual language applying Section 3 to any subcontract. Lastly, the section would provide that regardless of whether Section 3 language exists in a contract, PHAs and other recipients of public housing financial assistance must ensure the contractors and subcontractors are in compliance with § 75.9. As distinguished from currently codified § 135.38,

this proposed rule would not codify the exact contractual language that PHAs and other recipients of public housing financial assistance must include and would no longer require the use of this contract provision below the initial subcontract level. HUD believes this will reduce regulatory burdens. This change does not, however, limit the requirement that public housing financial assistance is used consistent with the statutory requirements in § 75.9.

Subpart C – Additional Provisions for Section 3 Projects

Subpart C—Additional Provisions for Section 3 Projects sets out the requirements for recipients working on a Section 3 project, as defined in § 75.3. The sections include: Requirements (§ 75.19); Targeted Section 3 worker definition for Section 3 projects (§ 75.21); Section 3 safe harbor (§ 75.23); Reporting (§ 75.25); and Contract Provisions (§ 75.27).

Section 75.19 would incorporate the statutory Section 3 requirements for prioritizing categories of Section 3 workers and businesses under other HUD funds that are used for Section 3 projects, as defined in § 75.3 (a)(2). The statutory prioritization ensures that employment and training opportunities arising in connection with Section 3 projects are provided, consistent with existing Federal, state and local laws and regulations, to Section 3 workers within the metropolitan area (or nonmetropolitan county) in which the project is located to the greatest extent feasible to these following groups:

- (1) Section 3 workers residing within the service area or the neighborhood of the project;
- and
- (2) To participants in YouthBuild programs.

The Section 3 statute also requires that to the greatest extent feasible contracts and subcontracts awarded in connection with Section 3 projects are provided to Section 3 business concerns that provide economic opportunities to Section 3 workers residing within the metropolitan area (or

nonmetropolitan county) in which the project is located. Those efforts should be directed as follows:

(1) Section 3 Business concerns that provide economic opportunities for Section 3 workers residing within the service area or the neighborhood of the project; and

(2) YouthBuild programs.

For the purposes of Section 3 only, HUD would define “Service area or the neighborhood of the project” to mean an area within 1 mile of the Section 3 project or, if fewer than 5,000 people live within one mile of a Section 3 project, within a circle centered on the Section 3 project that is sufficient to encompass a population of 5,000 people according to the most recent U.S. Census. HUD notes above that consistent with existing Federal regulations, Federal procurement requirements at 2 CFR 200.319(a) must continue to be followed, as discussed above.

Section 75.21 would define a “Targeted Section 3 worker” for Section 3 projects. This definition would be used for reporting and tracking by HUD so that recipients will focus on reaching the priority workers in the statute and workers employed by Section 3 business concerns. HUD would define a “Targeted Section 3 worker” for subpart C as a worker employed by a Section 3 business concern, or a worker who is or was when hired by the worker’s current employer: (1) a Section 3 worker living within the service area or the neighborhood of the project, as this term is described in § 75.5; or (2) a current YouthBuild participant. As with the definition of “Targeted Section 3 worker” for PHAs and other recipients of public housing financial assistance, this definition would include current YouthBuild participants. Additionally, all employees of Section 3 business concerns would be considered Targeted Section 3 workers to recognize the statutory requirements to award contracts to Section 3 business concerns, to the greatest extent feasible, while providing for a single, streamlined

outcome metric (labor hours) that reflects both the employment and contracting components of the Section 3 statute.

HUD believes counting individuals who live within one mile of the worksite or within a circle centered around the worksite that encompasses 5,000 people provides a definitive means of determining who counts as a Targeted Section 3 worker within the service area or the neighborhood of the project. HUD proposes to use this 5,000-person figure because HUD examined current CPD projects and determined that most (77%) had a population of 5,000 people within one mile of the project site, and the median project had 4,627 potential Targeted Section 3 workers. Further, an individual could live across the street from a project and be differently affected by development activities, and still not be considered to be living in the same “neighborhood” as a project because of how the jurisdiction’s neighborhood boundaries are drawn. HUD plans to create and provide at the issuance of a final rule a web tool for recipients, subrecipients, contractors, and subcontractors that will help in determining the geographic area that encompasses Targeted Section 3 workers under this definition. The discussion in subpart B of this preamble pertaining to the YouthBuild program and participants applies for subpart C as well.

Section 75.23 would provide a recipient undertaking a Section 3 project a safe harbor provided the recipient certifies to following the prioritization in § 75.19 and meets or exceeds the Section 3 benchmarks that HUD will prescribe through notice. The safe harbor proposed by this rule, like the safe harbor provided by the currently codified rule, would allow for recipients that meet this standard to be free from additional Section 3 reporting. However, this proposed rule provides that the safe harbor exists only to the extent that no evidence to the contrary is

presented to HUD, and that meeting the safe harbor does not exempt recipients from maintaining records of compliance for general program review. See §§ 75.31 and 75.33.

This section would also establish the process of establishing benchmarks, consistent with subpart B. Similar to the process for establishing the benchmarks for public housing financial assistance under subpart B, HUD proposes to establish Section 3 benchmarks for Section 3 workers, Targeted Section 3 workers, or both through a document published in the Federal Register.

Section 75.25 would provide the reporting requirements for Section 3 projects by recipients to HUD for the benchmarks. Specifically, § 75.25 would require that the total number of total labor hours, labor hours worked by Section 3 workers, and labor hours worked by Targeted Section 3 workers on a Section 3 project be reported to HUD. However, the rule would provide a limited exception for recipients, and for subrecipients, contractors, and subcontractors that report up to recipients, that are not subject to requirements specifying time and attendance reporting. The rule does not require any change in the time and attendance, or payroll systems used by recipients, subrecipients, contractors, or subcontractors. Where labor hours of a full-time or part-time employee are not already tracked, this proposed rule would allow the recipient to report labor hours of those employees based on a good faith assessment. This small carve-out would apply in a limited situation and was created not to increase burden on recipients, subrecipients, contractors, and subcontractors that are not tracking labor hours. However, if in the future the recipient, subrecipient, contractor, or subcontractor is required to track labor hours, or does so voluntarily, the exception would no longer apply. This section also, consistent with § 75.15 in subpart B, would provide that Section 3 project recipients may, but are not required to, report professional service jobs. Therefore, if a Section 3 project has labor hours for professional

service employees that are Section 3 workers and Targeted Section 3 workers, the recipient may, but is not required to, report on those jobs and count them to increase their total numbers. By including labor hours for professional services work in the numerators of these calculations (i.e., labor hours for the Section 3 workers and Targeted Section 3 workers), but not in the denominators (i.e., all labor hours worked), HUD is also recognizing the value of this more challenging effort to create opportunities in the professional services context.

Section 75.25 would also provide that a recipient that does not meet the Section 3 benchmarks described in § 75.21 would be required to report on its qualitative efforts. HUD is considering some of the following to signify qualitative efforts: outreach efforts to generate job applicants who are Targeted Section 3 workers; direct on-the-job training (including apprenticeships); indirect training such as arranging for, contracting for, or paying tuition for, off-site training technical assistance to help Section 3 workers; and outreach efforts to identify and secure bids from Section 3 business concerns. HUD plans to provide a form for ease in reporting qualitative reporting. All reporting either under the general reporting framework or the qualitative reporting requirement must be submitted annually to HUD in a manner consistent with reporting requirements for the applicable HUD program. As discussed in this preamble, HUD believes that requiring reporting consistent with existing reports will decrease administrative burden on recipients, and HUD will continue to look for ways to streamline reporting in other ways, such as using existing program-specific reporting systems. The proposed rule further allows projects to be reported on a project-by-project basis, with each annual report reflecting projects completed within the reporting year.

Section 75.27 would establish contract requirements for Section 3 project recipients. Specifically, the proposed rule would require that a recipient of a Section 3 project include

language applying Section 3 to any subrecipient agreement, program regulatory agreement, or contract for a Section 3 project. The proposed rule would also require that recipients of Section 3 projects ensure that subrecipients, contractors, and subcontractors meet the requirements in § 75.19. As noted in this preamble, HUD is not codifying the language that recipients and contractors working on Section 3 projects are required to include in subrecipient agreements and subcontracts and is limiting the requirement to include language only to the contract level. HUD believes these changes will reduce the burden on the regulated entity, but HUD notes that it does not change the requirement that Section 3 project hiring must be consistent with the statutory requirements in § 75.19.

Subpart D—Provisions for multiple funding sources, recordkeeping, and compliance

Subpart D sets out the requirements for recipients of multiple types of HUD financial assistance subject to Section 3. The sections include compliance requirement for recipients when in receipt of multiple funding sources (§ 75.29); recordkeeping requirements (§ 75.31); and compliance requirements (§ 75.33).

Section 75.29 would provide requirements for recipients to follow when in receipt of multiple funding sources. Section 75.29(a) would provide that if a housing rehabilitation, housing construction, or other public construction project is subject to Section 3 requirements pursuant to both § 75.3, paragraphs (a)(1) and (2), the recipient must follow subpart B of this proposed rule for the public housing financial assistance funds and may follow either subpart B or subpart C for the housing and community development financial assistance funds. For example, when a PHA receives public housing financial assistance and a community development block grant for a project to build a playground, the PHA can follow either option in paragraph (a) for the community development block grant funds to comply with Section 3

requirements. For the funding under § 75.3(a)(2), a Targeted Section 3 worker is any worker who meets the definition of a Targeted Section 3 worker in either subpart B or subpart C of this part. As with other sections in the rule, § 75.29 provides two different alternatives depending on whether PHAs will be required in a final rule to report using labor hours or new hires. If the final rule provides for the use of new hires for public housing financial assistance, when multiple funding sources are used PHAs would be required to report both labor hours and new hires.

The section also proposes in paragraph (b) that if a housing rehabilitation, housing construction, or other public construction project is subject to Section 3 pursuant to multiple housing and community development financial assistance programs, the recipient or recipients must follow subpart C of this part and report to one HUD program office, as prescribed by HUD. This section will make the application of Section 3 requirements easier for recipients that work with multiple funding sources and ease reporting burden. For example, when CDBG funds and a Lead Hazard Control grant are combined, the recipients would follow the paragraph (b) requirements to comply with Section 3 requirements. In this case, HUD would designate reporting to only one program office.

Section 75.31 would require that HUD be provided access to records, reports, and other documents or items that are maintained to demonstrate compliance with the requirements of this part, or that are maintained in accordance with the regulations governing the specific HUD program. This section also provides directions on what documentation must be maintained for Section 3 workers and Targeted Section 3 workers. For a Section 3 worker, the recipient would be required to maintain certification, or ensure that a subrecipient, contractor, or subcontractor that employs the worker maintains certification that the worker either meets the income limit established by HUD, the worker participates in a means-tested program such as public housing

or Section-8 assisted housing, that the worker's residency is in a qualified census tract or that the worker is employed by a Section 3 business.

For a Targeted Section 3 worker, the recipient subject to subpart B must maintain certification, or ensure that a contractor or subcontractor that employs the worker maintains certification that the worker resides in public housing or Section-8 assisted housing or the worker is employed by a Section 3 business. A third option under Alternative 1 and 2 is a certification that the employee is a YouthBuild participant.

For a Targeted Section 3 worker, the recipient subject to subpart C would be required to maintain a certification, or ensure that a subrecipient, contractor, or subcontractor that employs the worker maintains certification that the worker's residence is within 1 mile of the work site or, if fewer than 5,000 people live within 1 mile of a work site, within a circle centered on the work site that is sufficient to encompass a population of 5,000 people according to the most recent U.S. Census; that the worker is employed by a Section 3 business; or that the worker is a YouthBuild participant. This section also requires that documentation is maintained for the time period required for record retentions in accordance with applicable program regulations, or in the absence of applicable program regulations, 2 CFR part 200.

Section 75.33 proposes the compliance requirements for recipients. It would require that records demonstrating compliance be maintained and provides that HUD would conduct compliance and enforcement actions in conjunction with normal program oversight. It also notes that complaints alleging failure of compliance with part 75 may be reported to the HUD program office responsible for the public housing financial assistance or Section 3 project. HUD believes that the Section 3 requirements should be handled consistent with other program requirements that a recipient is subject to when accepting HUD funds. As result, this proposed rule provides

that while HUD would monitor compliance with the requirements, the applicable HUD program office would determine appropriate methods by which to oversee Section 3 compliance. HUD would be able to impose appropriate remedies and sanctions in accordance with the laws and regulations for the program under which the violation was found. HUD would continue to compile the information in a report on all expenditures subject to Section 3 for release to the public, and HUD believes providing for a program-specific implementation, while maintaining consistent review processes across programs, will ease burden on the entities subject to the Section 3 requirements.

III. Specific Questions for Comment

While HUD welcomes comments on all aspects of this proposed rule, HUD specifically requests comments on the following:

1. HUD seeks comments on the use of the statutory terms “best efforts” and “greatest extent feasible” in this proposed rule. Specifically, HUD seeks comments on whether this proposed rule should define these terms, whether the two terms should be considered interchangeable, whether only one term should be used, how the proposed rule should apply these terms relative to HUD’s efforts to increase employment and training opportunities for low- and very low-income persons, and how recipients can most effectively/efficiently demonstrate they have satisfied these definitions in reporting to HUD. In accordance with the Section 3 statute, both HUD’s existing Section 3 rule and this proposed rule do not provide an absolute mandate that employers hire Section 3 workers or that HUD funding recipients provide contracting opportunities to Section 3 businesses. Such a mandate would be infeasible, as there could be situations where no Section 3 workers or businesses are available or are qualified. However,

HUD emphasizes its intention that the terms “best efforts” and “greatest extent feasible” should be read as very narrow qualifiers and seeks comment on how to best convey that.

As background, HUD’s existing Section 3 rule provides that employment and other economic opportunities generated by certain HUD financial assistance must be directed to low and very low-income persons to the greatest extent feasible. The term “best efforts” is not used in the existing rule. This proposed rule contains requirements that more closely track the language of the Section 3 statute. Under this proposed rule, PHAs and other recipients receiving public housing financial assistance and their contractors and subcontractors must make their “best efforts” to provide employment and training opportunities generated by the public housing financial assistance to Section 3 workers in the statutorily-mandated order of priority, and must make their “best efforts” to award contracts and subcontracts to business concerns that provide economic opportunities to Section 3 workers in the statutorily-mandated order of priority. Also, following the Section 3 statute, this proposed rule would provide that: to the “greatest extent feasible,” recipients of funds in other HUD programs that provide housing and community development assistance must ensure that employment and training opportunities arising in connection with Section 3 projects are provided to Section 3 workers within the metropolitan area (or nonmetropolitan county) in which the project is located, and where feasible, priority should be given to specific categories of Section 3 workers; and contracts for work awarded in connection with Section 3 projects should be provided to Section 3 business concerns that provide economic opportunities to Section 3 workers residing within the metropolitan area (or nonmetropolitan county) in which the project is located, to the “greatest extent feasible.”

2. HUD specifically requests comments on the proposal to move to labor hours or retain new hires for public housing financial assistance reporting and tracking. As discussed above,

HUD believes that tracking labor hours consistent with existing tracking for prevailing wage requirements would reduce burden on recipients. HUD also believes that tracking labor hours will better allow HUD to determine if long-term employment opportunities are being generated. Unlike a labor hours measure, the new hire measure does not consider the share of actual work done by low- and very low-income workers, and new Section 3 hires may not be given the opportunity to work a substantial number of hours. By using a new hire measure, the Section 3 obligation is fulfilled by hiring Section 3 workers for jobs of any duration, rather than prioritizing opportunities for sustained employment. Additionally, using a new hire measure explicitly values entry rather than retention of workers, and thus provides an incentive for high turnover. While HUD believes that using labor hours for all financial assistance subject to Section 3 requirements will reduce burden, HUD has heard from some PHAs that they may prefer to maintain the use of new hires. HUD requests those PHAs provide feedback on why maintaining the new hire framework is a benefit. HUD seeks comments from PHAs on alternative 2 regulatory language that would retain the new hire framework for tracking public housing financial assistance, but with the same benchmarking requirements that are in this proposed rule. HUD also seeks comments on how retaining new hires for public housing financial assistance while using labor hours for Section 3 projects will work for recipients, contractors, and subcontractors, especially for those who work with multiple funding sources.

3. As discussed in this preamble, this proposed rule would set the threshold for applicability of Section 3 requirements for Section 3 projects to when the amount of the assistance to the project exceeds \$200,000. HUD also provides that all projects that receive funding from HUD's Lead Hazard Control and Healthy Homes programs are covered, and notes that Section 8 programs were not included in the Section 3 statute and are not covered in this rule. HUD seeks

comment on whether an alternate threshold would be more appropriate or equally effective to the proposed \$200,000 per project threshold. HUD also seeks comment on the inclusion of all projects under the HUD's Lead Hazard Control and Healthy Homes programs and exclusion of Section 8 programs.

In addition to seeking comments on an appropriate per project threshold, HUD seeks comments on whether the threshold for Section 3 projects should be established by project, total funding received by the recipient, or whether the threshold should be based on total funds expended by a recipient. Establishing a project threshold has advantages in that it ties Section 3 obligations to the specific projects that are generating economic opportunities. However, HUD understands that there may be disadvantages to using a threshold based on project size. The term "project" is defined differently by different HUD programs, which could make a uniform application of this rule difficult. Also, recipients might be able to change the scope of what would be considered a "project" to avoid compliance with Section 3.

If HUD were to use a threshold based on total funding a recipient receives, rather than a per-project threshold, HUD seeks comment on whether the \$200,000 threshold included in this proposed rule should be maintained, or whether the rule should adopt a different threshold. Using the \$200,000 threshold as proposed in this rule, HUD estimates that less than 4 percent of grantees receiving funds from HUD's Office of Community Planning and Development Program will be exempt from Section 3, and less than 0.1 percent of total awards will be exempt. Applying a larger recipient threshold, such as \$400,000, would increase the number of recipients exempted from Section 3 requirements to 20 percent and only increase the amount of funding exempt from Section 3 coverage to 1.5 percent. This would significantly reduce compliance

burden from the current rule for smaller grantees without significantly reducing the funds subject to Section 3.

4. HUD seeks comment on HUD's proposal to include hours worked by Section 3 business employees in the Targeted Section 3 Worker definitions as a way to report all Section 3 activities in a single metric rather than reporting on Section 3 business concern participation separately through the existing aggregate dollars spent calculation. HUD also seeks comment on whether the changes to the Section 3 business concern definition are appropriate to the proposed new framework, especially the change that to qualify as a Section 3 business over 75 percent of the labor hours performed for the business must be performed by low- or very low-income persons versus the current requirement that 30 percent of permanent, full-time employee, include persons who are currently Section 3 residents, or within 3 years of the date of first employment with the business concern were Section 3 residents.

5. As explained by this preamble, this proposed rule would provide that small PHAs would not be required to report labor hour or new hire figures to HUD. HUD seeks comment on whether small PHAs should be required to report as other PHAs are if they put out a bid for a single procurement that exceeds the project threshold discussed in the above paragraph.

6. HUD seeks comments on whether Section 3 requirements, as it applies to Section 3 projects, should apply to all subcontractors, and whether at a certain level HUD should consider reducing the reporting or compliance burden for subcontractors.

7. HUD requests comment on whether its initial and future benchmarks should include benchmarks for both the number of labor hours worked by Section 3 workers divided by the total number of labor hours for all workers and the number of labor hours worked by Targeted Section

3 workers divided by the total number of labor hours for all workers. Alternatively, HUD seeks comment on limiting the benchmark to include Targeted Section 3 workers only.

8. For Section 3 projects, the statute requires that “where feasible, priority should be given to low- and very low-income persons residing within the service area of the project or the neighborhood in which the project is located.” The statute does not define “neighborhood” or “service area” for purposes of how recipients determine where they should focus their prioritization. The lack of definitions complicates compliance for contractors, subcontractors, and grantees receiving multiple types of HUD financial assistance. HUD proposes to provide a definition for recipients to use when prioritizing and reporting workers for Section 3 projects. The definition differs from existing regulatory definitions and local or state definitions, and HUD specifically requests comment on whether the definition works for recipients or if a different definition for “neighborhood” or “service area” is needed for purposes of Section 3. HUD also asks whether the 1 mile and 5,000 population radius is an appropriate geographic size of a ‘neighborhood’ or ‘service area.’

9. HUD provides that a Targeted Section 3 worker includes current YouthBuild participants and asks whether that definition should be expanded to include previous YouthBuild workers that are under 24 years of age or those who are still eligible to participate in YouthBuild, but may have graduated out of the program.

IV. Findings and Certifications

Regulatory Review – Executive Orders 12866 and 13563

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive

Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are “outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.”

Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public.

This rule was determined to be a “significant regulatory action” as defined in Section 3(f) of the order (although not an economically significant regulatory action under the order).

Consistent with Executive Order 13563, this rule creates new part 75 regulations that would replace the part 135 regulations, with the intention to make compliance with Section 3 more effective and less burdensome, and therefore, help to contribute to job creation for low- and very low-income persons. As noted earlier in this preamble, HUD has prepared an initial Regulatory Impact Analysis (RIA) that addresses the costs and benefits of the proposed rule. HUD’s RIA is part of the docket file for this rule.

The docket file is available for public inspection in the Regulations Division, Office of the General Counsel, Room 10276, 451 7th Street, SW, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at 202-402-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at toll-free 800-877-8339.

Environmental Impact

The proposed rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation,

alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this proposed rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and on the private sector. This proposed rule does not impose a Federal mandate on any state, local, or tribal government, or on the private sector, within the meaning of UMRA.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. As has been discussed in this preamble, this rule proposes to update HUD's Section 3 regulations and replace them with a new 24 CFR part 75, for which the objective is to increase employment opportunities for low- and very low-income persons and businesses that are owned by or employ such persons. These entities generally are small and therefore strengthening the requirements of Section 3 should benefit small businesses that are Section 3 businesses. This rule also considers the burden on small PHAs, defined in this proposed rule as a public housing authority that manages or operates fewer than 250 public housing units, and reduces the burden on them through a new streamlined

reporting process that would not require them to report labor hours or new hires. There are approximately 2,950 PHAs, of which approximately 2,250 are small.

As more fully discussed in the accompanying RIA, the number of economic opportunities generated for Section 3 residents and businesses will not increase to the degree that this rule would have a significant economic impact on a substantial number of small entities. In addition, for those small entities that must comply with this proposed rule, the changes made by this proposed rule are designed to reduce burden on them, as well as all recipients. The current recordkeeping and reporting requirements for Section 3 is 90,180 hours with a cost of \$1,817,000. HUD estimated that this new rule will reduce the number of hours by 68 percent to 25,910 hours. The biggest reduction will be for small PHAs that will no longer need to do quantitative analysis with a total estimated time saving of 12,375 hours with a cost of \$281,036, or approximately \$125 for small PHAs. HUD also anticipates an across the board savings in recordkeeping given the time savings resulting from less time reporting new hires as a separate metric. For these reasons, HUD has determined that this rule would not have a significant economic impact on a substantial number of small entities. Notwithstanding HUD's determination that this rule will not have a significant effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either: (1) imposes substantial direct compliance costs on State and local governments and is not required by statute, or (2) preempts State law, unless the agency meets the consultation and funding requirements of Section 6 of the Executive

Order. This proposed rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments nor preempt state law within the meaning of the Executive Order.

Paperwork Reduction Act

Currently, 24 CFR part 135 requires that all recipients track and report Section 3 information to HUD, includes prescriptive contractual language, requires compliance by contractors of the Section 3 requirements, contains reporting and recordkeeping requirements, and provides for the filing of Section 3 complaints. Section 3 Performance Evaluation and Registration System (SPEARS) is the main site in which HUD captures the number of Section 3 residents hired and the amount of contracts awarded to Section 3 businesses. The existing information collection requirement for these requirements has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB control number 2529-0043.

The proposed rule would change the existing reporting requirement to decrease qualitatively those who need to report, excluding small PHAs and recipients of Section 3 projects under the \$200,000 threshold, and require reporting only once a year by recipients of completed projects. HUD provides in §§ 75.15 and 75.25 that recipients would be required to submit reports to HUD annually either in a qualitative form or quantitative form. HUD includes all the large PHAs in the § 75.15(a) reporting number for reporting on the Section 3 benchmarks and estimates 2 hours to track and report annually given the amount of funds handled by these PHAs. HUD also estimates that a PHA will employ approximately seven contractors or subcontractors each fiscal year that would need to track and report up to the PHA, each at one-half an hour for reporting time. Lastly, HUD estimates that 5 percent of the 700 large PHAs may fail the Section

3 benchmarks and would need to report on their qualitative efforts along with the 2,250 small PHAs and estimates that such reporting would take one-half an hour.

As for § 75.25(a), HUD estimates that 66 percent of most program recipients would complete projects in a fiscal year that need to be reported except that for the HOME program, HUD estimates that 90 percent of HOME recipients would complete projects in a fiscal year, at an estimate of 3,600 recipients. Given these projects are more diverse in size, HUD estimates that the average time to report on the Section 3 benchmarks for recipients would be 1 hour. HUD also estimates that a Section 3 project will engage approximately five contractors or subcontractors each fiscal year that would also need to track and report up to the Section 3 project recipient, each at one-half an hour for reporting time. Lastly, HUD estimates that 5 percent of the 3,600 recipients may fail the Section 3 benchmarks and would need to report on their qualitative efforts and estimates that such reporting would take one-half an hour.

HUD also notes that the rule no longer requires the inclusion of prescriptive contractual language. See §§ 75.17 and 75.27. HUD believes that this change will result in a de minimis upfront burden related to updating contracts, if recipients, subrecipients and contractors chose to do so, but that removing the requirement will actually reduce burden on recipients, subrecipients, and contractors on a sustained basis by giving them flexibility to use alternative or existing contractual language. HUD also provides for recordkeeping requirements at § 75.31 and believes that the maintaining of records by recipients will take a recipient approximately 2 hours. However, HUD notes that some programs, such as HOME, already have recordkeeping requirements that are part of existing approved Information Collection Requests and, thus, excludes those programs from the burden matrix. Lastly, HUD maintains the option for

individuals to file complaints and retains the frequency number that was in the existing Section 3 reporting burden.

In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number. The current recordkeeping requirements for Section 3 is 90,180 hours with a cost of \$1,817,000. HUD estimates that this new rule will reduce the number of hours by 68 percent to 25,910 hours for a total cost savings of approximately \$1.2 million. The overall reporting and recordkeeping burden is estimated as follows:

Information Collection	Number of Respondents	Frequency of Response per Annum	Burden Hour Per Response	Annual Burden Hours	Hourly Cost Per Response	Annual Cost
§ 75.15(a) Labor Hour or New Hire Reporting for PHA	700	1	2	1,400	\$22.71	\$31,794.00
§ 75.15(a) Labor Hour or New Hire Reporting for Contractors or Subcontractors of PHAs	4,900	1	0.5	2,450	\$22.71	\$55,639.50
§ 75.15(b)-(d) Qualitative Reporting for PHAs	2,300	1	0.5	1,150	\$22.71	\$26,116.50
§ 75.25(a) Labor Hour Reporting for Section 3 Projects	3,600	1	1	3,600	\$22.71	\$81,756.00
§ 75.25(a) Labor Hour Reporting for Contractors and Subcontractors on Section 3 Projects	10,800	1	0.5	5,400	\$22.71	\$122,634.00
§ 75.25(b) Qualitative Reporting for Section 3 Projects	180	1	0.5	90	\$22.71	\$2,043.90

§ 75.31 Recordkeeping	5,900	1	2	11,800	\$22.71	\$267,978.00
§ 75.33 Complaints	20	1	1	20	\$10.00	\$200.00
Total				25,910.00		\$588,161.90

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning the information collection requirements in the proposed rule regarding:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Whether the proposed collection of information enhances the quality, utility, and clarity of the information to be collected; and

(4) Whether the proposed information collection minimizes the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology (e.g., permitting electronic submission of responses).

Interested persons are invited to submit comments regarding the information collection requirements in this rule. The proposed information collection requirements in this rule have been submitted to OMB for review under section 3507(d) of the Paperwork Reduction Act. Under the provisions of 5 CFR part 1320, OMB is required to make a decision concerning this collection of information between 30 and 60 days after the publication date. Therefore, a comment on the information collection requirements is best assured of having its full effect if

OMB receives the comment within 30 days of the publication. This time frame does not affect the deadline for comments to the agency on the proposed rule, however. Comments must refer to the proposed rule by name and docket number (FR-6085) and must be sent to:

HUD Desk Officer
Office of Management and Budget
New Executive Office Building
Washington, DC 20503
Fax number: 202- 395-6947

and

Colette Pollard
HUD Reports Liaison Officer
Department of Housing and Urban Development
451 7th Street, SW, Room 2204
Washington, DC 20410

Interested persons may submit comments regarding the information collection requirements electronically through the Federal eRulemaking Portal at <http://www.regulations.gov>. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the <http://www.regulations.gov> website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

List of Subjects

24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Crime, Government contracts, Grant programs-housing and community development, Individuals with disabilities,

Intergovernmental relations, Loan programs-housing and community development, Low- and moderate-income housing, Mortgage insurance, Penalties, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

24 CFR Part 14

Claims, Equal access to justice, Lawyers, Reporting and recordkeeping requirements.

24 CFR Part 75

Administrative practice and procedure, Community development, Government contracts, Grant programs--housing and community development, Housing, Loan programs--housing and community development, Reporting and recordkeeping requirements, Small businesses.

24 CFR Part 91

Aged, Grant programs-housing and community development, Homeless, Individuals with disabilities, Low- and moderate-income housing, Reporting and recordkeeping requirements.

24 CFR Part 92

Administrative practice and procedure, Low- and moderate-income housing, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 93

Administrative practice and procedure, Grant programs-housing and community development, Low- and moderate-income housing, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 135

Administrative practice and procedure, Community development, Equal employment opportunity, Government contracts, Grant programs--housing and community development,

Housing, Loan programs--housing and community development, Reporting and recordkeeping requirements, Small businesses.

24 CFR Part 266

Intergovernmental relations, Low- and moderate-income housing, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 570

Administrative practice and procedure, American Samoa, Community development block grants, Grant programs-education, Grant programs-housing and community development, Guam, Indians, Loan programs-housing and community development, Low- and moderate-income housing, Northern Mariana Islands, Pacific Islands Trust Territory, Puerto Rico, Reporting and recordkeeping requirements, Student aid, Virgin Islands.

24 CFR Part 576

Community facilities, Grant programs-housing and community development, Grant programs-social programs, Homeless, Reporting and recordkeeping requirements.

24 CFR Part 578

Community development, Community facilities, Grant programs-housing and community development, Grant programs-social programs, Homeless, Reporting and recordkeeping requirements.

24 CFR Part 905

Grant programs-housing and community development, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 964

Grant programs-housing and community development, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 983

Grant programs-housing and community development, Low- and moderate-income housing, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 1000

Aged, Community development block grants, Grant programs-housing and community development, Grant programs-Indians, Indians, Individuals with disabilities, Public housing, Reporting and recordkeeping requirements.

Accordingly, for the reasons described in the preamble, HUD proposes to amend 24 CFR parts 5, 14, 75, 91, 92, 93, 135, 266, 570, 576, 578, 905, 964, 983, and 1000 as follows:

PART 5-GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

1. The authority for part 5 is revised to read as follows:

Authority: 12 U.S.C. 1701u and 1701x; 42 U.S.C. 1437a, 1437c, 1437d, 1437f, 1437n, 3535(d); Sec. 327, Pub. L. 109-115, 119 Stat. 2936; Sec. 607, Pub. L. 109-115, 119 Stat. 3051 (42 U.S.C. 14043e et seq.); E.O. 13279, 67 FR 77141, 3 CFR, 2002 Comp., p. 258; and E.O. 13559, 75 FR 71319, 3 CFR 2010 Comp., p. 273.

§ 5.105 [Amended]

2. Amend § 5.105(a) by removing “; section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and implementing regulations at 24 CFR part 135.”

**PART 14-IMPLEMENTATION OF THE EQUAL ACCESS TO JUSTICE ACT IN
ADMINISTRATIVE PROCEEDINGS**

3. The authority for part 14 continues to read as follows:

Authority: 5 U.S.C. 504(c)(1); 42 U.S.C. 3535(d).

§ 14.115 [Amended]

4. Amend § 14.115 by removing and reserving paragraph (a)(5).

5. Add part 75 to read as follows:

**PART 75 – ECONOMIC OPPORTUNITIES FOR
LOW- AND VERY LOW-INCOME PERSONS**

Sec.

Subpart A—General Provisions

- 75.1 Purpose.
- 75.3 Applicability.
- 75.5 Definitions.
- 75.7 Requirements applicable to HUD NOFAs for Section 3 covered programs.

Subpart B—Additional Provisions for Public Housing Financial Assistance

- 75.9 Requirements.
- 75.11 Targeted Section 3 worker for public housing financial assistance.
- 75.13 Section 3 safe harbor.
- 75.15 Reporting.
- 75.17 Contract provisions.

Subpart C—Additional Provisions for Housing and Community Development Financial Assistance

- 75.19 Requirements.
- 75.21 Targeted Section 3 worker for housing and community development financial assistance.
- 75.23 Section 3 safe harbor.
- 75.25 Reporting.
- 75.27 Contract provisions.

Subpart D—Provisions for Multiple Funding Sources, Recordkeeping, and Compliance

- 75.29 Multiple funding sources.
- 75.31 Recordkeeping.
- 75.33 Compliance.

Authority: 12 U.S.C. 1701u; 42 U.S.C. 3535(d).

Subpart A—General Provisions

§ 75.1 Purpose.

This part establishes the requirements to be followed to ensure the objectives of Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Section 3) are met. The purpose of Section 3 is to ensure that economic opportunities, most importantly employment, generated by certain HUD financial assistance shall be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing or residents of the community in which the Federal assistance is spent.

§ 75.3 Applicability of Section 3.

(a) General applicability. Section 3 applies to public housing financial assistance and Section 3 projects, as follows:

(1) Public housing financial assistance. Public housing financial assistance means:

(i) Development assistance provided pursuant to section 5 of the United States Housing Act of 1937 (the 1937 Act);

(ii) Operations and management assistance provided pursuant to section 9(e) of the 1937 Act; and

(iii) Development, modernization, and management assistance provided pursuant to section 9(d) of the 1937 Act.

(2) Section 3 projects. (i) Section 3 projects means housing rehabilitation, housing

construction, and other public construction projects assisted under HUD programs that provide housing and community development financial assistance when the amount of assistance to the project exceeds a threshold of \$200,000. This threshold does not apply where the assistance is from the Lead Hazard Control and Healthy Homes programs, as authorized by section 501 of the Housing and Urban Development Act of 1970 (12 U.S.C. 1701z-1), the Lead-Based Paint Poisoning Prevention Act (42 U.S.C 4801 *et seq.*); and the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851 *et seq.*) The project is the site or sites together with any building(s) and improvements located on the site(s) that are under common ownership, management, and financing.

(ii) HUD may adjust the threshold provided in paragraph (a)(2)(i) of this section not less than every 5 years based on a national construction cost inflation factor, and new thresholds will be published in the Federal Register, subject to public comment.

(iii) The requirements in this part apply to an entire Section 3 project, regardless of whether the project is fully or partially assisted under HUD programs that provide housing and community development financial assistance.

(b) Contracts for materials. Section 3 requirements do not apply to material supply contracts.

(c) Indian and Tribal preferences. Contracts, subcontracts, grants, or subgrants subject to section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5307(b)) or subject to tribal preference requirements as authorized under 101(k) of the Native American Housing Assistance and Self-Determination Act (25 U.S.C. 4111(k)) must provide preferences in employment, training, and business opportunities to Indians and Indian organizations, and are therefore not subject to the requirements of this part.

(d) Other HUD assistance and other Federal assistance. Recipients that are not subject to Section 3 are encouraged to consider ways to support the purpose of Section 3.

§ 75.5 Definitions.

The terms HUD, Public housing, and Public Housing Agency (PHA) are defined in 24 CFR part 5. The following definitions also apply to this part:

1937 Act means the United States Housing Act of 1937, 42 U.S.C. 1437 *et seq.*

Contractor means any entity entering into a contract with:

- (1) A recipient to perform work in connection with the expenditure of public housing financial assistance or for work in connection with a Section 3 project; or
- (2) A subrecipient for work in connection with a Section 3 project.

Labor hours means the number of paid hours worked by persons on a Section 3 project or employed with funds that include public housing financial assistance.

Low-income person means a person as defined in section 3(b)(2) of the 1937 Act.

Material supply contracts means contracts for the purchase of products and materials, including, but not limited to, lumber, drywall, wiring, concrete, pipes, toilets, sinks, carpets, and office supplies.

Alternative 2 - Definition of New hire

New hire means a full- or part-time employee for permanent, temporary, or seasonal employment opportunities who:

(1) Was not on the payroll of the PHA, or the PHA's contractor or subcontractor, or other recipient receiving public housing financial assistance funds at the beginning of the award of public housing financial assistance; or

(2) Was hired by contractors or subcontractors on a per-project basis as a result of receiving public housing financial assistance.

Professional services means non-construction services, including, but not limited to, contracts for legal services, financial consulting, accounting services, environmental assessment, architectural services, and civil engineering services.

Public housing financial assistance means assistance as defined in § 75.3(a)(1).

Public housing project is defined in 24 CFR 905.108.

Qualified census tract means any census tract (or equivalent geographic area defined by the Bureau of the Census) in which at least 50 percent of households have an income of less than 60 percent of Area Median Gross Income (AMGI); or where the poverty rate is at least 25 percent and where the census tract is designated as a qualified census tract by HUD.

Recipient means any entity that receives directly from HUD public housing financial assistance or housing and community development assistance that funds Section 3 projects, including, but not limited to, any State, local government, instrumentality, PHA, Indian tribe, tribal organization, or other public agency, public or private nonprofit organization.

Section 3 means section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u).

Section 3 business concern means:

(1) A business concern that meets one of the following criteria:

(i) It is at least 51 percent owned by low- or very low-income persons;

(ii) Over 75 percent of the labor hours performed for the business are performed by low- or very low-income persons; or

(iii) It is a business at least 25 percent owned by current public housing residents or residents who currently live in Section 8-assisted housing.

(2) The status of a Section 3 business concern shall not be negatively affected by a prior arrest or conviction of its owner(s) or employees.

(3) Nothing in this part shall be construed to require the contracting or subcontracting of a Section 3 business concern. Section 3 business concerns are not exempt from meeting the specifications of the contract.

Section 3 project means a project defined in § 75.3(a)(2).

Section 3 worker means:

(1) Any worker who fits one of the following categories:

(i) The worker's income is below the income limit established by HUD.

(ii) The worker lives in a qualified census tract.

(iii) The worker is employed by a Section 3 business concern.

(2) The status of a Section 3 worker shall not be negatively affected by a prior arrest or conviction.

(3) Nothing in this part shall be construed to require the employment of someone who meets this definition of a Section 3 worker. Section 3 workers are not exempt from meeting the qualifications of the position to be filled.

Section 8-assisted housing refers to housing receiving project-based rental assistance or tenant-based assistance under section 8 of the 1937 Act.

Service area or the neighborhood of the project means an area within one mile of the Section 3 project or, if fewer than 5,000 people live within one mile of a Section 3 project, within a circle centered on the Section 3 project that is sufficient to encompass a population of 5,000 people according to the most recent U.S. Census.

Small PHA means a public housing authority that manages or operates fewer than 250 public housing units.

Subcontractor means any entity that has a contract with a contractor to undertake a portion of the contractor's obligation to perform work in connection with the expenditure of public housing financial assistance or for a Section 3 project.

Subrecipient has the meaning provided in the applicable program regulations, or in 2 CFR 200.93.

Targeted Section 3 worker has the meanings provided in § 75.11, § 75.21, or § 75.29, and does not exclude an individual that has a prior arrest or conviction.

Very low-income person means the definition for this term set forth in Section 3(b)(2) of the 1937 Act.

YouthBuild programs refers to YouthBuild programs receiving assistance under the Workforce Innovation and Opportunity Act (29 U.S.C. 3226).

§ 75.7 Requirements applicable to HUD NOFAs for Section 3 covered programs.

All notices of funding availability (NOFAs) issued by HUD that announce the availability of funding covered by § 75.3 will include notice that this part is applicable to the funding and may include, as appropriate for the specific NOFA, points or bonus points for Section 3 plans.

Subpart B—Additional Provisions for Public Housing Financial Assistance

§ 75.9 Requirements.

(a) Employment and training. (1) Consistent with existing Federal, state, and local laws and regulations, PHAs or other recipients receiving public housing financial assistance, and their contractors and subcontractors, must make their best efforts to provide employment and training opportunities generated by the public housing financial assistance to Section 3 workers.

(2) PHAs or other recipients, and their contractors and subcontractors, must make their best efforts described in paragraph (a)(1) of this section to Section 3 workers in the following order of priority:

(i) To residents of the public housing projects for which the public housing financial assistance is expended;

(ii) To residents of other public housing projects managed by the PHA that is expending the assistance or to residents of Section 8-assisted housing managed by the PHA;

(iii) To participants in YouthBuild programs; and

(iv) To low- and very low-income persons residing within the metropolitan area (or nonmetropolitan county) in which the assistance is expended.

(b) Contracting. (1) Consistent with existing Federal, state, and local laws and regulations, PHAs and other recipients of public housing financial assistance, and their contractors and subcontractors, must make their best efforts to award contracts and subcontracts to business concerns that provide economic opportunities to Section 3 workers.

(2) PHAs and other recipients, and their contractors and subcontractors, must direct the efforts described in paragraph (b)(1) of this section in the following order of priority:

(i) To Section 3 business concerns that provide economic opportunities for residents of the public housing projects for which the assistance is provided;

(ii) To Section 3 business concerns that provide economic opportunities for residents of other public housing projects managed by the PHA that is providing the assistance or for residents of Section 8-assisted housing managed by the PHA;

(iii) To YouthBuild programs; and

(iv) To Section 3 business concerns that provide economic opportunities to Section 3 workers residing within the metropolitan area (or nonmetropolitan county) in which the assistance is provided.

§ 75.11 Targeted Section 3 worker for public housing financial assistance.

Alternative 1 – Paragraph (a)

(a) Targeted Section 3 worker. A Targeted Section 3 worker for public housing financial assistance means:

- (1) A worker employed by a Section 3 business concern; or
- (2) A worker who currently is or who was when hired by the worker's current employer:
 - (i) A resident in a public housing project or Section 8-assisted housing;
 - (ii) A resident of other projects managed by the PHA that is expending assistance; or
 - (iii) A current YouthBuild participant.

Alternative 2 – Paragraph (a)

(a) Targeted Section 3 worker. A Targeted Section 3 worker for public housing financial assistance means:

- (1) A new hire employed by a Section 3 business concern; or

(2) A new hire employed by the worker's current employer, who is also one of the following:

- (i) A resident in a public housing project or Section 8-assisted housing;
 - (ii) A resident of other projects managed by the PHA that is expending assistance; or
 - (iii) A current YouthBuild.
- (b) [Reserved]

§ 75.13 Section 3 safe harbor.

(a) General. PHAs and other recipients will be considered to have complied with requirements in this part, in the absence of evidence to the contrary if they:

- (1) Certify that they have followed the prioritization of effort in § 75.9; and
- (2) Meet or exceed the applicable Section 3 benchmarks as described in paragraph (b) of this section.

(b) Establishing benchmarks. (1) HUD will establish Section 3 benchmarks for Section 3 workers or Targeted Section 3 workers or both through a document published in the Federal Register. HUD may establish a single nationwide benchmark for Section 3 workers and a single nationwide benchmark for Targeted Section 3 workers, or may establish multiple benchmarks based on geography, the type of public housing financial assistance, or other variables. HUD will update the benchmarks through a document published in the Federal Register, subject to public comment, not less frequently than once every 3 years.

(2) In establishing the Section 3 benchmarks, HUD may consider the industry averages worked by specific categories of workers or in different localities or regions; prior reports

pursuant to this section; and any other factors HUD deems important. In establishing the Section 3 benchmarks, HUD will exclude professional services.

Alternative 1 – Paragraph (b)(3)

(3) Section 3 benchmarks will consist of the following two ratios:

(i) The number of labor hours worked by Section 3 workers divided by the total number of labor hours worked by all workers funded by public housing financial assistance in the PHA's or other recipient's fiscal year.

(ii) The number of labor hours worked by Targeted Section 3 workers, as defined in § 75.11(a), divided by the total number of labor hours worked by all workers funded by public housing financial assistance in the PHA's or other recipient's fiscal year.

Alternative 2 – Paragraph (b)(3)

(3) Section 3 benchmarks will consist of the following two ratios:

(i) The number of new hires that are Section 3 workers divided by the total number of new hires funded by public housing financial assistance in the PHA's or other recipient's fiscal year.

(ii) The number of new hires that are Targeted Section 3 workers, as defined in § 75.11(a), divided by the total number of new hires funded by public housing financial assistance in the PHA's or other recipient's fiscal year.

§ 75.15 Reporting.

Alternative 1 – Paragraph (a)

(a) Reporting of labor hours. (1) For public housing financial assistance, PHAs and other recipients must report in a manner prescribed by HUD:

(i) The total number of labor hours worked;

(ii) The total number of labor hours worked by Section 3 workers; and

(iii) The total number of labor hours worked by Targeted Section 3 workers.

(2) The labor hours reported under paragraph (a)(1) of this section must include the total number of labor hours worked with public housing financial assistance for the PHA's or other recipient's fiscal year, including labor hours worked by any contractors and subcontractors that the PHA or other recipient is required, or elects pursuant to paragraph (a)(3) of this section, to report.

(3) PHAs and other recipients reporting under this section, as well as contractors and subcontractors who report to PHAs and recipients, may report labor hours by Section 3 workers, under paragraph (a)(1)(ii) of this section, and labor hours by Targeted Section 3 workers, under paragraph (a)(1)(iii) of this section, from professional services without including labor hours from professional services in the total number of labor hours worked under paragraph (a)(1)(i) of this section. If a contract covers both professional services and other work and the PHA, other recipient, contractor, or subcontractor chooses not to report labor hours from professional services, the labor hours under the contract that are not from professional services must still be reported.

(4) PHAs and other recipients may report on the labor hours of a contractor or subcontractor based on the contractor or subcontractor's good faith assessment of the labor hours of a full-time or part-time employee if the contractor or subcontractor is not subject to other requirements specifying time and attendance reporting, or does not otherwise track labor hours.

Alternative 2 – Paragraph (a)

(a) Reporting of new hires. (1) For public housing financial assistance, PHAs and other recipients must report in a form prescribed by HUD:

(i) The total number of new hires;

(ii) The total number of new hires that are Section 3 workers; and

(iii) The total number of new hires that are Targeted Section 3 workers.

(2) The new hires reported, under paragraph (a)(1)(i) of this section, must include the total number of new hires funded by public housing financial assistance for the PHA's or other recipient's fiscal year, including new hires funded by any contractors and subcontractors that the PHA or other recipient is required, or elects pursuant to paragraph (a)(3) of this section, to report.

(3) PHAs and other recipients reporting under this section, as well as contractors and subcontractors who report to PHAs and recipients, may report new hires of Section 3 workers, under paragraph (a)(1)(ii) of this section, and new hires of Targeted Section 3 workers, under paragraph (a)(1)(iii) of this section, performing professional services without including hires in professional services in the total number of new hires under paragraph (a)(1)(i) of this section. If a contract covers both professional services and other work and the PHA, recipient, contractor, or subcontractor chooses not to report new hires performing professional services, the new hires under the contract that are not performing professional services must still be reported.

(b) Additional reporting if Section 3 benchmarks are not met. If the PHA's or other recipient's reporting under paragraph (a) of this section indicates that the PHA or other recipient has not met the Section 3 benchmarks described in § 75.11, the PHA or other recipient will be

required to report in a form prescribed by HUD on the qualitative nature of its activities or those of its contractors and subcontractors.

(c) Reporting frequency. Unless otherwise provided, PHAs or other recipients will report annually to HUD under paragraph (a) of this section, and where required under paragraph (b) of this section, in a manner consistent with reporting requirements for the applicable HUD program.

(d) Reporting by Small PHAs. Small PHAs will not be required to report under paragraph (a) of this section. Small PHAs are required to report on their qualitative efforts, as described in paragraph (b) of this section, in a manner consistent with reporting requirements for the applicable HUD program.

§ 75.17 Contract provisions.

(a) PHAs or other recipients must include language in any agreement or contract to apply Section 3 to contractors.

(b) PHAs or other recipients must require contractors to include language in any contract or agreement to apply Section 3 to subcontractors.

(c) PHAs or other recipients must require all contractors and subcontractors to meet the requirements of § 75.9, regardless of whether Section 3 language is included in contracts.

Subpart C—Additional Provisions for Housing and Community Development Financial Assistance

§ 75.19 Requirements.

(a) Employment and training. (1) To the greatest extent feasible, and consistent with existing Federal, state, and local laws and regulations, recipients covered by this subpart shall ensure that employment and training opportunities arising in connection with Section 3 projects

are provided to Section 3 workers within the metropolitan area (or nonmetropolitan county) in which the project is located.

(2) Where feasible, recipients should provide opportunities and training described in paragraph (a)(1) of this section to:

(i) Section 3 workers residing within the service area or the neighborhood of the project; and

(ii) Participants in YouthBuild programs.

(b) Contracting. (1) To the greatest extent feasible, and consistent with existing Federal, state, and local laws and regulations recipients covered by this subpart shall ensure contracts for work awarded in connection with Section 3 projects are provided to Section 3 businesses concerns that provide economic opportunities to Section 3 workers residing within the metropolitan area (or nonmetropolitan county) in which the project is located.

(2) Where feasible, recipients should direct the efforts described in paragraph (b)(1) of this section to:

(i) Section 3 business concerns that provide economic opportunities to Section 3 workers residing within the service area or the neighborhood of the project; and

(ii) YouthBuild programs.

§ 75.21 Targeted Section 3 worker for housing and community development financial assistance.

(a) For purposes of this subpart, a Targeted Section 3 worker is:

(1) A worker employed by a Section 3 business concern; or

(2) A worker who is or was when hired by the worker's current employer:

(i) Living within the service area or the neighborhood of the project, as defined in § 75.5;

or

(ii) A current YouthBuild participant.

(b) [Reserved]

§ 75.23 Section 3 safe harbor.

(a) General. Recipients will be considered to have complied with requirements in this part, in the absence of evidence to the contrary if they:

(1) Certify that they have followed the prioritization of effort in § 75.19; and

(2) Meet or exceed the applicable Section 3 benchmark as described in paragraph (b) of this section.

(b) Establishing benchmarks. (1) HUD will establish Section 3 benchmarks for Section 3 workers or Targeted Section 3 workers or both through a document published in the Federal Register. HUD may establish a single nationwide benchmark for Section 3 workers and a single nationwide benchmark for Targeted Section 3 workers, or may establish multiple benchmarks based on geography, the nature of the Section 3 project, or other variables. HUD will update the benchmarks through a document published in the Federal Register, subject to public comment, not less frequently than once every 3 years.

(2) In establishing the Section 3 benchmarks, HUD may consider the industry averages for labor hours worked by specific categories of workers or in different localities or regions; averages for labor hours worked by Section 3 workers and Targeted Section 3 workers as reported by recipients pursuant to this section; and any other factors HUD deems important. In establishing the Section 3 benchmarks, HUD will exclude labor hours associated with

professional services from the total labor hours, the labor hours worked by Section 3 workers, and the labor hours worked by Targeted Section 3 workers.

(3) Section 3 benchmarks will consist of the following two ratios:

(i) The number of labor hours worked by Section 3 workers divided by the total number of labor hours worked by all workers on a Section 3 project.

(ii) The number of labor hours worked by Targeted Section 3 workers divided by the total number of labor hours worked by all workers on a Section 3 project.

§ 75.25 Reporting.

(a) Reporting of labor hours. (1) For Section 3 projects, recipients must report in a manner prescribed by HUD:

(i) The total number of labor hours worked;

(ii) The total number of labor hours worked by Section 3 workers; and

(iii) The total number of labor hours worked by Targeted Section 3 workers.

(2) The labor hours reported under paragraph (a)(1) of this section must include the total number of labor hours worked on a Section 3 project, including labor hours worked under any subrecipients, contractors, and subcontractors that the recipient is required, or elects pursuant to paragraph (a)(3) of this section, to report.

(3) Recipients reporting under this section, as well as contractors and subcontractors who report to PHAs and recipients, may report labor hours by Section 3 workers, under paragraph (a)(1)(ii) of this section, and labor hours by Targeted Section 3 workers, under paragraph (a)(1)(iii) of this section, from professional services without including labor hours from professional services in the total number of labor hours worked under paragraph (a)(1)(i) of this

section. If a contract covers both professional services and other work and the recipient or contractor or subcontractor chooses not to report labor hours from professional services, the labor hours under the contract that are not from professional services must still be reported.

(4) Recipients may report on the labor hours of a contractor or subcontractor based on the contractor or subcontractor's good faith assessment of the labor hours of a full-time or part-time employee if the contractor or subcontractor is not subject to other requirements specifying time and attendance reporting, or does not otherwise track labor hours.

(b) Additional reporting if Section 3 benchmarks are not met. If the recipient's reporting under paragraph (a) of this section indicates that the recipient has not met the Section 3 benchmarks described in § 75.23, the recipient must report in a form prescribed by HUD on the qualitative nature of the activities the recipient or its contractors and subcontractors pursued in order to comply with this part.

(c) Reporting frequency. Unless otherwise provided, recipients must report annually to HUD under paragraph (a) of this section, and, where required, under paragraph (b) of this section, on all projects completed within the reporting year in a manner consistent with reporting requirements for the applicable HUD program.

§ 75.27 Contract provisions.

(a) Recipients must include language applying Section 3 requirements in any subrecipient agreement or contract for a Section 3 project.

(b) Recipients of Section 3 projects must require subrecipients, contractors, and subcontractors to meet the requirements of § 75.19, regardless of whether Section 3 language is included in recipient or subrecipient agreements, program regulatory agreements, or contracts.

Subpart D—Provisions for Multiple Funding Sources, Recordkeeping, and Compliance

§ 75.29 Multiple funding sources.

(a) If a housing rehabilitation, housing construction or other public construction project is subject to Section 3 pursuant to § 75.3(a)(1) and (2), the recipient must follow subpart B of this part for the public housing financial assistance and may follow either subpart B or C of this part for the housing and community development financial assistance. For this project, the following applies:

(1) For housing and community development financial assistance, a Targeted Section 3 worker is any worker who meets the definition of a Targeted Section 3 worker in either subpart B or C of this part; and

Alternative 1 - Paragraph (a)(2)

(2) The recipients of both sources of funding shall report on the housing rehabilitation, housing construction, or other public construction project as a whole and shall identify the multiple associated recipients. PHAs and other recipients must report the following information:

- (i) The total number of labor hours worked on the project;
- (ii) The total number of labor hours worked by Section 3 workers on the project; and
- (iii) The total number of labor hours worked by Targeted Section 3 workers on the project.

Alternative 2 - Paragraph (a)(2)

(2) The recipients of both sources of funding shall report on the housing rehabilitation, housing construction, or other public construction project as a whole and shall identify the multiple associated recipients.

(i) PHAs and other recipients must report the following information:

(A) The total number of labor hours worked on the project;

(B) The total number of labor hours worked by Section 3 workers on the project; and

(C) The total number of labor hours worked by Targeted Section 3 workers, as defined in either subpart B or C of this part, on the project.

(ii) The PHA must also report the following information:

(A) The total number of new hires on the project;

(B) The total number of Section 3 workers that are new hires on the project; and

(C) The total number of Targeted Section 3 workers, as defined in either subpart B or C of this part, that are new hires on the project.

(b) If a housing rehabilitation, housing construction, or other public construction project is subject to Section 3 because the project is assisted with funding from multiple programs that exceed the threshold in § 75.3(a)(2), the recipient or recipients must follow subpart C of this part, and must report to the applicable HUD program office, as prescribed by HUD.

§ 75.31 Recordkeeping.

(a) HUD shall have access to all records, reports, and other documents or items of the recipient that are maintained to demonstrate compliance with the requirements of this part, or that are maintained in accordance with the regulations governing the specific HUD program by which the Section 3 project is governed, or the public housing financial assistance is provided or otherwise made available to the recipient, contractor, or subcontractor.

(b) Recipients must maintain documentation, or ensure that a subrecipient, contractor, or subcontractor that employs the worker maintains certification, to ensure that workers meet the definition of a Section 3 worker or Targeted Section 3 worker, as follows:

(1) For a worker to qualify as a Section 3 worker, one of the following must be maintained:

(i) A worker's self-certification that their income is below the income limit from the prior calendar year;

(ii) A worker's self-certification of participation in a means-tested program such as public housing or Section 8-assisted housing;

(iii) Certification from a PHA, or the owner or property manager of project-based Section 8-assisted housing, or the administrator of tenant-based Section 8-assisted housing that the worker is a participant in one of their programs;

(iv) An employer's certification that the worker's income from that employer is below the income limit when based on an employer's calculation of what the worker's wage rate would translate to if annualized on a full-time basis;

(v) An employer's confirmation that a worker's residency is in a qualified census tract; or

(vi) An employer's certification that the worker is employed by a Section 3 business.

(2) For a worker to qualify as a Targeted Section 3 worker, one of the following must be maintained:

(i) For a worker to qualify as a Targeted Section 3 worker under subpart B of this part:

(A) A worker's self-certification of participation in public housing or Section 8-assisted housing programs;

(B) Certification from a PHA, or the owner or property manager of project-based Section 8-assisted housing, or the administrator of tenant-based Section 8-assisted housing that the worker is a participant in one of their programs;

(C) An employer's certification that the worker is employed by a Section 3 business concern; or

Alternative 1 – Paragraph (b)(2)(i)(D)

(D) A worker's certification that the worker is a YouthBuild participant.

Alternative 2 – Paragraph (b)(2)(i)(D)

(D) An employer's certification that the worker is a YouthBuild participant.

(ii) For a worker to qualify as a Targeted Section 3 worker under subpart C of this part:

(A) An employer's confirmation that a worker's residence is within 1 mile of the work site or, if fewer than 5,000 people live within 1 mile of a work site, within a circle centered on the work site that is sufficient to encompass a population of 5,000 people according to the most recent U.S. Census;

(B) An employer's certification that the worker is employed by a Section 3 business concern; or

(C) A worker's self-certification that the worker is a YouthBuild participant.

(c) The documentation described in paragraph (b) of this section must be maintained for the time period required for record retentions in accordance with applicable program regulations or, in the absence of applicable program regulations, 2 CFR part 200.

§ 75.33 Compliance.

(a) Records of compliance. Each recipient shall maintain adequate records demonstrating compliance with this part.

(b) Complaints. Complaints alleging failure of compliance with this part may be reported to the HUD program office responsible for the public housing financial assistance or the Section 3 project.

(c) Monitoring. HUD will monitor compliance with the requirements of this part. The applicable HUD program office will determine appropriate methods by which to oversee Section 3 compliance. HUD may impose appropriate remedies and sanctions in accordance with the laws and regulations for the program under which the violation was found.

PART 91—CONSOLIDATED SUBMISSIONS FOR COMMUNITY PLANNING AND DEVELOPMENT PROGRAMS

6. The authority citation for part 91 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 3601-3619, 5301-5315, 11331-11388, 12701-12711, 12741-12756, and 12901-12912.

§ 91.215 [Amended]

7. Amend § 91.215(j) by removing “24 CFR part 135” and adding in its place “24 CFR part 75”.

§ 91.225 [Amended]

8. Amend § 91.225(a)(7) by removing “24 CFR part 135” and adding in its place “24 CFR part 75”.

§ 91.325 [Amended]

9. Amend § 91.325(a)(7) by removing “24 CFR part 135” and adding in its place “24 CFR part 75”.

§ 91.425 [Amended]

10. Amend § 91.425(a)(1)(vii) by removing “24 CFR part 135” and adding in its place “24 CFR part 75”.

PART 92—HOME INVESTMENT PARTNERSHIPS PROGRAM

11. The authority citation for part 92 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 12 U.S.C. 1701x and 4568.

12. Amend § 92.508 as follows:

- a. Remove paragraph (a)(7)(i)(B);
- b. Redesignate paragraph (a)(7)(i)(C) as paragraph (a)(7)(i)(B); and
- c. Add paragraph (a)(7)(xi).

The addition reads as follows:

§ 92.508 Recordkeeping.

* * * * *
(a) * * * * *
(7) * * * * *

(xi) Documentation of actions undertaken to meet the requirements of 24 CFR part 75 which implements section 3 of the Housing Development Act of 1968, as amended (12 U.S.C. 1701u).

* * * * *

PART 93—HOUSING TRUST FUND

13. The authority citation for part 93 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 12 U.S.C. 4568.

14. Amend § 93.407 as follows:

a. Redesignate paragraphs (a)(5)(ii) through (ix) as paragraphs (a)(5)(iii) through (x);

b. Remove paragraph (a)(5)(i)(B);

c. Redesignate paragraph (a)(5)(i)(A) as paragraph (a)(5)(ii);

d. In newly redesignated paragraph (a)(5)(iv), remove “24 part 35” and add in its place “24 CFR part 35”; and

e. Add paragraph (a)(5)(xi).

The addition reads as follows:

§ 93.407 Recordkeeping.

* * * * *

(a) * * *

(5) * * *

(xi) Documentation of actions undertaken to meet the requirements of 24 CFR part 75, which implements section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u).

* * * * *

15. Under the authority of 42 U.S.C. 3535(d), in chapter I, remove the headings for subchapters A and B.

PART 135 [REMOVED]

16. Remove part 135.

PART 266—HOUSING FINANCE AGENCY RISK-SHARING PROGRAM FOR INSURED AFFORDABLE MULTIFAMILY PROJECT LOANS

17. The authority citation for part 266 continues to read as follows:

Authority: 12 U.S.C. 1707; 42 U.S.C. 3535(d).

§ 266.220 [Amended]

18. Amend § 266.220(c) by removing “; section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), as implemented by 24 CFR part 135”.

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

19. The authority citation for part 570 continues to read as follows:

Authority: 12 U.S.C. 1701x, 1701 x-1; 42 U.S.C. 3535(d) and 5301-5320.

§ 570.487 [Amended]

20. Amend § 570.487(d) by removing “24 CFR part 135” and adding in its place “24 CFR part 75”.

§ 570.607 [Amended]

21. Amend § 570.607(b) by removing “24 CFR part 135” and adding in its place “24 CFR part 75”.

PART 576—EMERGENCY SOLUTIONS GRANTS PROGRAM

22. The authority citation for part 576 continues to read as follows:

Authority: 12 U.S.C. 1701x, 1701 x-1; 42 U.S.C. 11371 *et seq.*, 42 U.S.C. 3535(d).

§ 576.407 [Amended]

23. Amend § 576.407(a) by removing “24 CFR part 135” and adding in its place “24 CFR part 75”.

PART 578—CONTINUUM OF CARE PROGRAM

24. The authority citation for part 578 continues to read as follows:

Authority: 12 U.S.C. 1701x, 1701 x-1; 42 U.S.C. 11381 *et seq.*, 42 U.S.C. 3535(d).

§ 578.99 [Amended]

25. Amend § 578.99 by removing “federal” in the section heading and adding in its place “Federal” and removing “24 CFR part 135” in paragraph (i) and adding in its place “24 CFR part 75”.

PART 905—THE PUBLIC HOUSING CAPITAL FUND PROGRAM

26. The authority citation for part 905 continues to read as follows:

Authority: 42 U.S.C. 1437g, 42 U.S.C. 1437z-2, 42 U.S.C. 1437z-7, and 3535(d).

§ 905.308 [Amended]

27. Amend § 905.308(b)(10) by removing “24 CFR part 135” and adding in its place “24 CFR part 75”.

PART 964—TENANT PARTICIPATION AND TENANT OPPORTUNITIES IN PUBLIC HOUSING

28. The authority citation for part 964 continues to read as follows:

Authority: 42 U.S.C. 1437d, 1437g, 1437r, 3535(d).

§ 964.320 [Amended]

29. Amend § 964.320 by removing “24 CFR part 135” and adding in its place “24 CFR part 75” and removing “24 CFR 135.7” and adding in its place “24 CFR 75.3”.

PART 983—PROJECT-BASED VOUCHER (PBV) PROGRAM

30. The authority citation for part 983 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

§ 983.4 [Amended]

31. Amend § 983.4 by removing the definition of “Section 3 – Training, employment and contracting opportunities in development”.

§ 983.154 [Amended]

32. Amend § 983.154 by removing and reserving paragraph (c).

PART 1000—NATIVE AMERICAN HOUSING ACTIVITIES

32. The authority citation for part 1000 continues to read as follows:

Authority: 25 U.S.C. 4101 *et seq.*; 42 U.S.C. 3535(d).

33. Revise § 1000.42 to read as follows:

§ 1000.42 Are the requirements of Section 3 of the Housing and Urban Development Act of 1968 applicable?

No. Recipients shall comply with Indian preference requirements of section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5307(b)), or employment and contract preference laws adopted by the recipient's tribe in accordance with section 101(k) of NAHASDA.

Dated: March 29, 2019.

Matthew F. Hunter,
Assistant Deputy Secretary for
Field Policy and Management.

[BILLING CODE: 4210-67]