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| **Guide for Review of Section 3 of the**  **Housing and Urban Development Act of 1968** | | | |
| **Name of Program Participant:** | | | |
| **Staff Consulted:** | | | |
| **Name of Grant Program(s) Reviewed:** | | | |
| **Name(s) of Reviewer(s):** |  | **Date:** |  |

**NOTE:** All questions that address requirements contain the citation for the source of the requirement (statute, regulation, *Federal Register* notice, NOFA, or grant agreement). If the requirement is not met, HUD must make a "**finding of noncompliance**." All other questions (questions that do not contain the citation for the requirement) do not address requirements but are included to assist the reviewer in understanding the participant's program more fully and/or to identify issues that, if not properly addressed, could result in deficient performance. Negative conclusions to these questions may result in a "**concern**" being raised, but not a "finding**.**"

**Instructions:**

This Exhibit is designed to examine the recipient’s records to determine compliance with Section 3 requirements, pursuant to 24 CFR part 75. This Exhibit applies to new grants, commitments, contracts, or projects funded on or after November 30, 2020 (see paragraph 2). In addition to 24 CFR part 75, reviewers should refer to the *Federal Register* Notice “Section 3 Benchmarks for Creating Economic Opportunities for Low- and Very Low-Income Persons and Eligible Businesses,” ([85 FR 60907](https://www.federalregister.gov/documents/2020/09/29/2020-19183/section-3-benchmarks-for-creating-economic-opportunities-for-low--and-very-low-income-persons-and), September 29, 2020) (“Benchmark Notice”) for numeric goals, or benchmarks, to measure grantee compliance with the regulation. In the Benchmark Notice, HUD set benchmarks for Section 3 projects (housing rehabilitation, housing construction, and other public construction projects assisted under HUD programs that provide housing and community development financial assistance when the total amount of assistance to the project exceeds the applicable threshold) at:

1) For Section 3 workers (defined at 24 CFR 75.5): 25 percent or more of the total number of labor hours worked by all workers, and

2) For Targeted Section 3 workers (defined at 24 CFR 75.11, 75.21, or 75.29): 5 percent or more of the total number of labor hours worked by all workers.

HUD may adjust funding thresholds, per 24 CFR 75.3(a)(2)(ii), or establish new benchmarks, per 24 CFR 75.23(b), (either a single nationwide benchmark or multiple benchmarks based on geography, type of assistance, or other variables) periodically as new information becomes available.

For agreements and their subsequent contracts and agreements entered prior to November 30, 2020, the former regulations in 24 CFR part 135 still apply, and HUD reviewers should use Exhibit 22-7 found in Rev. 7 Chg. 4 of the CPD Monitoring Handbook. Refer to the applicable CPD Notice(s) or other program-specific guidance for further guidance on timing implementation and the Section 3 regulation.

The CPD reviewer is to respond to these questions by reviewing covered contracts and conducting interviews of recipients. This Exhibit refers to recipients, which encapsulate both grantees and participating jurisdictions, depending on the applicable CPD program. The CPD reviewer must complete the questions in this Exhibit and the questions may not be forwarded or given to the recipient to complete on its own.

Recipients must keep records and sufficient supporting documentation demonstrating compliance with Section 3 requirements on a project-level basis and such records must be consistent with the Section 3 compliance data entered into HUD’s reporting systems (e.g., IDIS or DRGR). When possible, any supporting materials provided as evidence of compliance (or noncompliance) with Section 3 shall be copied and retained in the official monitoring files. A recipient’s failure to maintain records documenting compliance with Section 3 requirements indicates failure to comply with those requirements.

The Exhibit is divided into four sections of questions: (A) General Applicability; (B) Safe Harbor Qualification; (C) Reporting; and (D) Recordkeeping. Note: The CPD reviewer should not use this Exhibit if the recipient of HUD funds executed the reviewed activity’s legally binding written agreement(s) prior to the November 30, 2020 effective date.  
  
**Questions:**

a. General Applicability

1.

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| Has the recipient established policies and procedures for compliance with Section 3 requirements? Standards may include but are not limited to:   * Identifying Section 3 projects * Ensuring employment, training, and contracting opportunities arising in connection with Section 3 projects, including prioritization efforts * Ensuring contract provisions * Tracking and reporting labor hours * Qualitative reporting if Section 3 benchmarks are not met * Recordkeeping and record retention standards * Standards for any subrecipients, contractor, or subcontractors to maintain adequate documentation and records demonstrating Section 3 compliance | |  |  |  | | --- | --- | --- | |  |  |  | | **Yes** | **No** | **N/A** | |
| **Describe Basis for Conclusion:** | |
|  | |

2.

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| --- | --- | --- | --- | --- | --- | --- | --- |
| Has the recipient properly evaluated applicability of Section 3 requirements for the project(s) reviewed?  **NOTE**: Sampling housing rehabilitation, housing construction, and other public construction projects is recommended. Section 3 applies to such housing rehabilitation, housing construction, and other public construction projects assisted under HUD programs that provide housing and community development financial assistance when the total amount of assistance to the project exceeds a threshold of $200,000\*. The threshold is $100,000\* where the assistance is from the Lead Hazard Control and Healthy Homes programs. \*The Secretary must update the $200,000- and $100,000-thresholds every 5 years for construction cost inflation.  **NOTE**: A 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.  **NOTE**: 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 Section 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 Section 3.  **NOTE**: Reviewers may review non-Section 3 construction projects to determine if the recipient was correct in determining that Section 3 requirements did not apply to the project.  [24 CFR 75.3(a)(2)(i)] | |  |  |  | | --- | --- | --- | |  |  |  | | **Yes** | **No** | **N/A** | |
| **Describe Basis for Conclusion:** | |
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3.

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| For the Section 3 project(s) reviewed, are Section 3 requirements applied to the entire project, not just the HUD-financed portion?  **NOTE:** If a project qualifies as Section 3, recipients must make all subrecipients, contractors, and subcontractors aware of the need to comply with Section 3 requirements.  **NOTE:** Section 3 requirements do not apply to materials-only contracts or contracts that do not require labor.  [24 CFR 75.3(a)(2)(iii)] | |  |  |  | | --- | --- | --- | |  |  |  | | **Yes** | **No** | **N/A** | |
| **Describe Basis for Conclusion:** | |
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4.

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| --- | --- | --- | --- | --- | --- | --- | --- |
| Does the recipient include language applying Section 3 requirements to any subrecipient agreement or contract for the Section 3 project(s)?  **NOTE:** Even if the recipient failed to include Section 3 language in subrecipient agreements, program regulatory agreements, or contracts, pursuant to 24 CFR 75.27(b), the recipient must still require subrecipients, contractors and subcontractors to meet requirements of 24 CFR 75.19 on employment, training, and contracting opportunities.  [24 CFR 75.27(a)] | |  |  |  | | --- | --- | --- | |  |  |  | | **Yes** | **No** | **N/A** | |
| **Describe Basis for Conclusion:** | |
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B. Safe Harbor Qualification

5.

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| --- | --- | --- | --- | --- | --- | --- | --- |
| Where feasible, does the recipient give priority for employment and training opportunities to:   1. Section 3 workers residing within the service area or the neighborhood of the project, and 2. Participants in YouthBuild programs?   **NOTE:** Pursuant to 24 CFR 75.19(a)(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. **NOTE:** To answer this question, the reviewer may look for prioritization language in agreements, contracts, and subcontracts or other documentation notifying Section 3 workers and YouthBuild participants of employment and training opportunities.  [24 CFR 75.19(a)(2)] | |  |  |  | | --- | --- | --- | |  |  |  | | **Yes** | **No** | **N/A** | |
| **Describe Basis for Conclusion:** | |
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6.

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| Where feasible, does the recipient give priority for contracting opportunities to:   1. Section 3 business concerns that provide economic opportunities to Section 3 workers residing within the service area or the neighborhood of the project (defined at 24 CFR 75.5), and 2. YouthBuild programs?   **NOTE:** Pursuant to 24 CFR 75.19(b)(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 business concerns that provide economic opportunities to Section 3 workers residing within the metropolitan area (or nonmetropolitan county) in which the project is located.  [24 CFR 75.19(b)(2)] | |  |  |  | | --- | --- | --- | |  |  |  | | **Yes** | **No** | **N/A** | |
| **Describe Basis for Conclusion:** | |
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7.

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| For the reviewed Section 3 project(s), did the recipient meet or exceed the Section 3 Worker benchmark and the Targeted Section 3 Worker benchmark as published in the applicable Benchmark Notice? The CPD reviewer may review the applicable MicroStrategy report(s) in making this determination.  **NOTE:** The two benchmark ratios are: (i) The total of labor hours worked by Section 3 workers divided by the total number of labor hours worked by all workers on the Section 3 project in a program year; and (ii), the total labor hours worked by Targeted Section 3 workers divided by the total number of labor hours worked by all workers on the Section 3 project in a program year.  **NOTE:** Pursuant to 24 CFR 75.25(b), if the recipient did not meet the Section 3 benchmarks, then the recipient must report on the qualitative nature of its activities and those its contractors and subcontractors pursued, which is addressed in subsequent questions.  [24 CFR 75.23(a)(2)] | |  |  |  | | --- | --- | --- | |  |  |  | | **Yes** | **No** | **N/A** | |
| **Describe Basis for Conclusion:** | |
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C. Reporting

8.

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| --- | --- | --- | --- | --- | --- | --- | --- |
| Does the recipient report annually, in a manner consistent with reporting requirements for the applicable HUD program(s) and within the applicable HUD reporting system(s), the total number of labor hours worked by: (i) all workers, (ii) Section 3 workers, (iii) and Targeted Section 3 workers for the Section 3 project(s) reviewed?  **NOTE:** Professional services, defined in 24 CFR 75.5, are excluded from the reporting requirement for Section 3 and Targeted Section 3. Pursuant to 24 CFR 75.25(a)(4), recipients may include labor hours worked for professional services by a Targeted Section 3 worker or Section 3 worker but should not include the labor hours worked for professional services jobs in the total labor hours worked by all workers on the project.  **NOTE:** Recipients may report their own labor hours or that of a subrecipient, contractor, or subcontractor based on the employer’s good faith assessment of the labor hours of an employee, pursuant to 24 CFR 75.25(a)(5), unless the project is otherwise subject to requirements specifying time and attendance reporting.  **NOTE:** Section 3 workers’ labor hours may be counted for five years from when their status as a Section 3 worker is established pursuant to 24 CFR 75.31.  [24 CFR 75.25(c); 24 CFR 75.25(a)(1)(i) *for all workers,* 75.25(a)(1)(ii) *for Section 3 workers*, and 75.25(a)(1)(iii*) for Targeted Section 3 workers*.] | |  |  |  | | --- | --- | --- | |  |  |  | | **Yes** | **No** | **N/A** | |
| **Describe Basis for Conclusion:** | |
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9.

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| If the recipient did not meet the Section 3 benchmarks for any project(s), did the recipient report in the applicable reporting software (e.g., IDIS or DRGR) that it has made qualitative efforts to provide Section 3 workers, Targeted Section 3 workers, and Section 3 business concerns with opportunities? Examples of qualitative efforts may be found at 24 CFR 75.25(b).  **NOTE:** The recipient must provide supporting documentation/records in their project files to document the qualitative efforts reported in the applicable reporting software.  [24 CFR 75.25(b)] | |  |  |  | | --- | --- | --- | |  |  |  | | **Yes** | **No** | **N/A** | |
| **Describe Basis for Conclusion:** | |
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D. Recordkeeping

10.

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| For the Section 3 project(s) reviewed, does the recipient, subrecipient, contractor or subcontractor have at least one of the following documents to ensure Section 3 workers are properly counted?   * A worker’s self-certification that their income is below HUD’s income limit from the prior calendar year; OR * A worker’s self-certification of participation in a means-tested program, such as public housing or Section 8-assisted housing; OR * Certification from a public housing authority (PHA), or an owner or property manager of project-based Section 8-assisted housing, or an administrator of tenant-based Section 8-assisted housing that the worker is a participant in one of their programs; OR * An employer’s certification that a worker’s income from that employer is below HUD’s 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; OR * An employer’s certification that the worker is employed by a Section 3 business concern.   **NOTE:** Pursuant to 24 CFR 75.31(c), recipients must ensure 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, in accordance with 2 CFR part 200.  [24 CFR 75.31(b)(1)] | |  |  |  | | --- | --- | --- | |  |  |  | | **Yes** | **No** | **N/A** | |
| **Describe Basis for Conclusion:** | |
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11.

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| **For Section 3 project(s) WITHOUT HUD public housing financial assistance. Mark as “N/A” if the project was also assisted with HUD public housing financial assistance, defined at 24 CFR 75.3(a)(1)).**  Does the recipient, subrecipient, contractor or subcontractor have at least one of the following documents to ensure Targeted Section 3 workers are properly counted?   * An employer’s confirmation that, as documented within the past five years, a worker’s residence is within the service area (one mile of the work site or, if fewer than 5,000 people live within one 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); OR * An employer’s certification that the worker is employed by a Section 3 business concern; OR * A worker’s self-certification that the worker is a YouthBuild participant, documented within the past five years.   [24 CFR 75.31(b)(2)(ii)] | |  |  |  | | --- | --- | --- | |  |  |  | | **Yes** | **No** | **N/A** | |
| **Describe Basis for Conclusion:** | |
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12.

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| **For Section 3 project(s) also assisted with HUD public housing financial assistance. Mark as “N/A” if the project was NOT assisted with HUD public housing financial assistance.**  Does the recipient, subrecipient, contractor or subcontractor have at least one of the following documents to ensure Targeted Section 3 workers are properly counted? |  |
| a. If the recipient is following 24 CFR part 75, subpart B:   * A worker's self-certification of participation in public housing or Section 8-assisted housing programs; OR * 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; OR * An employer's certification that the worker is employed by a Section 3 business concern; OR * A worker's certification that the worker is a YouthBuild participant.   [24 CFR 75.29(a)(1), 24 CFR 75.31(b)(2)(i)] | |  |  |  | | --- | --- | --- | |  |  |  | | **Yes** | **No** | **N/A** | |
| b. If the recipient is following 24 CFR part 75, subpart C:   * An employer’s confirmation that within the past five years a worker’s residence is within the service area (one mile of the work site or, if fewer than 5,000 people live within one 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); OR * An employer’s certification that the worker is employed by a Section 3 business concern; OR * A worker’s self-certification that the worker is a YouthBuild participant, documented within the past five years.   [24 CFR 75.29(a)(1), 24 CFR 75.31(b)(2)(ii)] | |  |  |  | | --- | --- | --- | |  |  |  | | **Yes** | **No** | **N/A** | |
| **Describe Basis for Conclusion:** | |
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13.

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| For the reviewed Section 3 project(s), has the recipient, subrecipient, contractor, or subcontractor maintained documentation for the time period required for record retentions in accordance with applicable program regulations or, in the absence of applicable program regulations, in accordance with 2 CFR part 200?  [24 CFR 75.31(c)] | |  |  |  | | --- | --- | --- | |  |  |  | | **Yes** | **No** | **N/A** | |
| **Describe Basis for Conclusion:** | |
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List the project/activities reviewed:

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| --- | --- | --- | --- |
| **Activity Name** | **Activity ID#** | **Responsible Organization (i.e., recipient, subrecipient, contractor, or subcontractor)** | **Funding Total** |
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