



# CDBG Implementation Manual 2025

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## Chapter 5: Section 3 Policy

DFA and all its Grantees, Contractors and Subcontractors must comply with HUD's Section 3 requirements in implementing CDBG projects. DFA and its Grantee entities must ensure that employment and other economic opportunities are directed to low- and very low-income persons (Section 3 Workers and/or Targeted Section 3 Workers) and to Section 3 Business Concerns. This requirement extends to the Contractors and Subcontractors performing construction services on CDBG projects. All forms referenced in this document can be found on the State of New Mexico's website.

### The Purpose of Section 3

Section 3 is a provision of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) that is regulated by the provisions of 24 CFR 75. Section 3 regulations ensure that employment and other economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, and consistent with existing Federal, State and local laws and regulations, be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities to low- and very low-income persons.

#### 5.1 Definitions

**Low- or Very Low-Income Person:** (See HUD's Income Limits at: [www.huduser.gov/portal/datasets/il.html](http://www.huduser.gov/portal/datasets/il.html) )

- Low-Income Person - A person whose annual income is below 80% AMI (Average Median Income) for the county in which they reside.
- Very Low-Income Person - A person whose annual income is below 50% AMI (Average Median Income) for the county in which they reside.

**Section 3 Business Concern:** A business that meets at least one of the following criteria:

- The business is at least 51% or more owned and controlled by low- or very low-income persons;
- Over 75% of the labor hours performed for the business over the previous three-month period being performed were performed by Section 3 Workers;
- The business is at least 51% or more owned and controlled by current public housing residents or Section 8-assisted housing voucher holders.

**Section 3 Worker:** A worker who currently fits or, when hired within the past five (5) years, fits at least one of the following categories:

- Is a low- or very low-income person that met HUD income limits for the previous or annualized calendar year. Low and very-low-income limits may be obtained from: <https://www.huduser.gov/portal/datasets/il.html>
- Is a participant in a means-tested program such as public housing or Section 8-assisted housing,

- Is employed by a Section 3 Business Concern, or
- Is a participant of the US Department of Labor’s YouthBuild program.

**Targeted Section 3 Worker:** A worker who meets the definition of a Section 3 Worker plus one of the following:

- Is employed by a Section 3 Business Concern, or
- When hired, fit at least one of the following categories as documented within the past five years:
  - Living within the Service Area or Neighborhood of the Project, as defined by 24 CFR 75.5 (see below),
  - Is a YouthBuild Participant

**Service Area or Neighborhood of the Project:** An area within **one mile** of the Section 3 project, or, if fewer than 5,000 people live within one mile of the 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 US Census.

**Qualitative Efforts:** Efforts made by Grantee/ Contractor/ Subcontractors in order to comply with Section 3 requirements. A list of Qualitative Efforts can be found in 24 CFR Part 75.25 and below in section 5.2, number 3.

## 5.2 Final Rule Section 3 Regulations

On November 30, 2020, the Section 3 implementing regulations (24 CFR Part 75) became effective (see electronic version at: <https://www.ecfr.gov/current/title-24/subtitle-A/part-75> ). Below are the primary requirements of the final rule:

**Applicability** – A Section 3 project means housing rehabilitation, housing construction, and public construction projects that are funded under HUD programs which provide housing and community development financial assistance exceeding the threshold of \$300,000.

Therefore, DFA and the entities to which it provides CDBG funds in excess of \$300,000 must comply with Section 3, as amended. **Whether the project is fully or partially assisted under CDBG, Section 3 applies to the entire project [24CFR 75.3(a)(2)(iii)].** All Contractors and Subcontractors must be made aware of the need to comply with Section 3 requirements.

Section 3 requirements do not apply to material supply contracts [24 CFR 75.3(b)] or “non-construction” professional service jobs that require an advanced degree or professional licensing, including but not limited to contracts for legal services, financial consulting, accounting services, environmental assessment, architectural services, and civil engineering services. HUD allows optional reporting for professional services providers which may help a project meet benchmarks. (See **Exhibit 4-V-1 HUD 4737** for more information.)

## Reporting

### **Exhibit 4-V-1 and Exhibit 4-V-2 Section 3 Utilization Trackers (HUD 4737 and HUD 4737A)**

For these reports, data from the Contractor's labor hours AND that of all the Subcontractors on the project are necessary. Data needed includes total labor hours worked, labor hours worked by Section 3 Workers, labor hours worked by Targeted Section 3 Workers, and the documentation of the Section 3 status for businesses or employees claiming such. This data must be kept throughout construction, and the Contractor compiles and delivers the following reports with final payroll:

1. **Exhibit 4-V-2 HUD 4737A** – Reports the employee names of all Section 3 and Targeted Section 3 Workers and provides labor hours worked for all employees on the contract (Contractor and Subcontractors combined).
2. **Exhibit 4-V-1 HUD 4737** - Combines Section 3, Targeted Section 3 hours with TOTAL labor hours worked by Contractor and all Subcontractors to determine if benchmarks were met.

**NOTE: If the Exhibits 4-V-1 and 4-V-2 show benchmarks (see below) are not met, Qualitative Efforts must be documented. More information on Qualitative Efforts is outlined below.**

## Documentation of Section 3 Workers and Businesses

**Exhibit 4-W and Exhibits 4-X for eligible businesses and workers** – must be submitted with **Utilization Trackers 4-V-1 HUD 4737 and 4-V-2 HUD4737A**

## Benchmarks

The Section 3 benchmarks established by HUD for all Grantees/Contractors/Subcontractors are:

1. **25%** or more of total labor hours of the construction must be worked by Section 3 Workers, AND
2. **5%** or more of total labor hours of the construction must be worked by Targeted Section 3 Workers

**If the Section 3 benchmarks have not been met**, evidence of the qualitative efforts taken to assist low- and very low-income persons with employment and training opportunities must be provided in **Exhibit 4-Y-2 (Section 3 Qualitative Efforts Report)** with documentation of the efforts by the entity performing the efforts.

Qualitative Efforts include but are not limited to:

- Engaged in outreach efforts to generate job applicants who are Targeted Section 3 Workers.
- Provided training or apprenticeship opportunities.
- Provided technical assistance to help Section 3 Workers compete for jobs (e.g., resume assistance, coaching).
- Provided or connected Section 3 Workers with assistance in seeking employment including: drafting resumes, preparing for interviews, and finding job opportunities connecting residents to job placement services.

- Held one or more job fairs.
- Provided or referred Section 3 Workers to services supporting work readiness and retention (e.g., work readiness activities, interview clothing, test fees, transportation, child care).
- Provided assistance to apply for/or attend community college, a four-year educational institution, or vocational/technical training.
- Assisted Section 3 Workers to obtain financial literacy training and/or coaching.
- Engaged in outreach efforts to identify and secure bids from Section 3 Business Concerns.
- Provided technical assistance to help Section 3 Business Concerns understand and bid on contracts.
- Provided bonding assistance, guaranties, or other efforts to support viable bids from Section 3 Business Concerns.
- Promoted use of business registries designed to create opportunities for disadvantaged and small businesses.
- Outreach, engagement, or referrals with the state one-stop system as defined in Section 121(e)(2) of the Workforce Innovation and Opportunity Act.
- Other (please describe): \_\_\_\_\_

## Section 3 Compliance

Bid docs will contain instructions on Section 3 compliance, including **Exhibit 4-Y-1 (Section 3 Compliance Certification Form)** which shall be completed and signed by the Contractor and all Subcontractors as part of the bidding process. Successful documentation of compliance at the end of construction will be evidenced by **Exhibits 4-V-1 and 4-V-2 (HUD 4737 and HUD 4737A)** documenting the benchmarks were met.

Upon completion of construction if the Contractor or any of the project's Subcontractors did not meet the benchmarks, as evidenced by **Exhibits 4-V-1 and 4-V-2 (HUD 4737 and HUD 4737A)** but can provide evidence that they made qualitative efforts to provide low- and very low-income persons with employment and training opportunities, then they will be considered compliant with Section 3. Documentation of qualitative efforts must be provided along with the **Exhibit 4-Y-2 (Section 3 Qualitative Efforts Report)**.

If the Contractor or any of a project's Subcontractors fail to document meeting Section 3 benchmarks, the Grantee assumes responsibility for documentation of Qualitative Efforts with the submission of **Exhibit 4-Y-2 (Section 3 Qualitative Efforts Report)** (and the Grantee is still responsible for providing the total labor hours which DFA needs to report in IDIS). Therefore, Grantees are encouraged to conduct Qualitative Efforts in the project.

Grantees, Contractors, and Subcontractors must retain all records pertaining to Section 3 for a

period of five (5) years after project completion.

### 5.3 Contract Provisions for Section 3 Projects

Grantees and Contractors must pass down language applying Section 3 requirements in **ALL** contracts and subcontracts awarded for construction services for the Section 3 project. Each Contractor is responsible for ensuring that all Subcontractors comply with Section 3 and provide the necessary documentation.

The clause is as follows:

*The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701 (“Section 3”) as amended (Economic Opportunities for Low- and Moderate-Income Persons, Minority Business Enterprise and Women’s Business Enterprise Policy). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by 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.*

*The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 75, including the Section 3 requirements outlined in 24 CFR Part 75.19. As evidenced by their execution of this contract, the parties to this contract certify they are under no contractual or other impediment that would prevent them from complying with the Part 75 regulations.*

*Contractor will complete, to the satisfaction of the Department of Finance and Administration, all requirements imposed under Section 3, pursuant to 24 CFR Part 75 of the Regulations including submitting the Section 3 Compliance Certification Form attached hereto as Exhibit 4-Y-1, along with all required documentation.*

### 5.4 Section 3 Contracting Policy and Procedure

Grantees are required to incorporate Section 3 in existing procurement policies and adopt a Section 3 Contracting Policy and Procedure section to be included in all procurements generated for use with HUD-funded projects. These policies and procedures should contain requirements for making efforts to award contracts to Section 3 Business Concerns.

### 5.5 Section 3 Eligibility and Certifications

To qualify as a Section 3 Worker or a Section 3 Business Concern, each must self-certify that they meet the applicable criteria (to be documented using **Exhibit 4-W (Section 3 Business Concern Certification)** and **Exhibit 4-X (Section 3 Worker Self-Certification)**).

## Section 3 Business Concern Certification

The Grantee should make their best efforts to award contracts to Section 3 Business Concerns.

1. **Exhibit 4-W (Section 3 Business Concern Certification) must be included** as part of the bid package whether or not the bidder qualifies as or is seeking Section 3 Business Concern status.
2. Businesses may seek Section 3 Business Concern preference by demonstrating that it meets one or more of the criteria listed in the Definitions section of this document.
3. Section 3 status should **be verified before awarding contracts** or subcontracts to a business that self-certified.
4. A Section 3 Business Concern will retain status for as long as it continues to meet the definition.
5. An eligible Section 3 Business Concern is responsible for maintaining records that verify eligibility. A business which misrepresents itself as a Section 3 Business Concern and reports false information to the Grantee may have their contract terminated and be barred from ongoing and future considerations for contracting opportunities.

## Section 3 Worker Self-Certification

Each worker seeking Section 3 Worker status will submit **Exhibit 4-X (Section 3 Worker Self-Certification)** form to the Contractor/Subcontractor.

For the purposes of Section 3 Worker eligibility, individual income rather than family/household income will be used to determine eligibility. The income limits will be determined using the previous year's annual income. These limits are published yearly by HUD at:

<https://www.huduser.gov/portal/datasets/cdbg-income-limits.html>

## 5.6 Section 3 Procedures for Contractors/Subcontractors

Prior to the beginning of the contract, all **Contractors/ Subcontractors** must have all Section 3 Workers who are employed to work on the project complete the **Exhibit 4-X (Section 3 Worker Self-Certification Form)**. Once the **Exhibit 4-X** forms for all Section 3 Workers working on the project are complete, the **Contractor/ Subcontractor** is to scan them as one document and electronically submit the document to the Grantee. If any new Section 3 Workers are hired after the contract has begun, an **Exhibit 4-X** will need to be submitted for each qualified new hire.

1. **Section 3 Utilization Trackers Exhibits 4-V-1 and 4-V-2 (HUD 4737 and HUD 4737A)** must be completed by each Contractor/ Subcontractor working on this project. (These are HUD forms and examples are provided on the forms. Please delete examples to ensure accuracy of reporting.) These reports keep track of the total labor hours and any hours worked by Section 3 or Targeted Section 3 Workers for all contracts/ subcontracts, along with the status of compliance with Section 3 benchmark goals. Section 3/ Targeted Section 3 Worker labor hour totals must be part of the report. These cumulative reports will be submitted to the Grantee **upon completion of the contract**.
2. If the Contractor/ Subcontractors did not meet the benchmarks, **Exhibit 4-Y-2 (Section 3**

**Qualitative Efforts Report**), needs to be completed documenting the qualitative efforts taken to provide low- and very low-income persons with employment and training opportunities. **Exhibit 4-Y-2** needs to be scanned and submitted to the Grantee upon completion of the Contractor's obligations. Grantee must submit this to DFA before final payment.

## 5.7 Records Retention

### Records Grantees, Contractors and Subcontractors are required to maintain for Section 3 Workers

**The applicable following certifications must be maintained for five (5) years after project completion:**

1. A worker's self-certification in the form of **Exhibit 4-X (Section 3 Worker Self-Certification Form HUD 4736C)** certifies that the worker's income is below HUD's income limit from the prior calendar year. This form is also available in Spanish.
2. A worker's self-certification of participating in a means-tested program such as public housing or Section 8- assisted housing.
3. Certification from a PHA (Public Housing Authority), 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.
4. 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.
5. An employer's certification in the form of **Exhibit 4-W (Section 3 Business Concern Certification)** that the worker is employed by a Section 3 Business Concern.

### For Targeted Section 3 Workers

1. An employers' confirmation that a worker's residence is within 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 US Census;
2. A worker's self-certification that the worker is a Youth Build participant.

## 5.8 Complaints of Non-Compliance with Section 3

Complaints alleging failure of compliance with Section 3 may be reported to The State of New Mexico.

## 5.9 Failure to Comply with Section 3

If Contractors and Subcontractors fail to comply with Section 3, this will result in delay in closeout and affect the closeout monitoring for the Grantee. If benchmarks are not met, and there is no

documentation of qualitative efforts, the Grantee will be required to make a qualitative effort and document it by submitting **Exhibit 4-Y-2 (Section 3 Qualitative Efforts Report)** (and report on the total number of labor hours worked) before DFA can close out the project and provide final reimbursement.