

# Lorain Metropolitan Housing Authority



## **SECTION 3 POLICY GUIDE**

## Contents

I.	Introduction.....	3
II.	Definitions .....	3
III.	Applicability.....	4
IV.	Benchmarks and Requirements.....	5
V.	LMHA Reporting Requirements .....	6
VI.	Record Keeping Requirements .....	6
VII.	Section 3 Worker and Section 3 Target Worker Eligibility.....	8
VIII.	Business Concern Eligibility .....	9
IX.	Non-Compliance .....	10
X.	Section 3 Clause.....	10

## I. Introduction

Lorain Metropolitan Housing Authority (“LMHA”) has compiled this Section 3 Policy Guide to assist contractors and subcontractors in complying with the requirements of Section 3 of the Housing and Urban Development (HUD) Act of 1968, as amended by Section 915 of the Housing and Community Development Act of 1992 (hereafter “Section 3”).

The purpose of Section 3 is to 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.

## II. Definitions

1. **Section 3 Worker:** A Section 3 worker is any worker who currently fits, or when hired within the past five years fit, at least one of the following categories, as documented:
  - The worker’s income for the previous or annualized calendar year is below the income limit established by HUD;
  - The worker is employed by a Section 3 business concern; or
  - The worker is a YouthBuild participant.
2. **Targeted Section 3 Worker:** A Section 3 targeted worker for Public Housing Financial Assistance projects is a Section 3 worker who:
  - (1) is employed by a Section 3 business concern; or
  - (2) currently fits or when hired fit at least one of the following categories, as documented within the past five years:
    - (i) A resident of public housing or Section 8-assisted housing;
    - (ii) A resident of other public housing projects or Section 8-assisted housing managed by the PHA that is providing the assistance; or
    - (iii) A YouthBuild participant.
3. **Section 3 Business Concern:** A Section 3 business concern is a business that meets at least one of the following criteria, documented within the last six-month period:
  1. At least 51 percent owned and controlled by low- or very low-income persons;
  2. Over 75 percent of the labor hours performed for the business over the prior three-month period are performed by Section 3 workers; or
  3. A business at least 51 percent owned and controlled by current public housing residents or residents who currently live in Section 8-assisted housing.
4. **Low- and very low-income:** Low- and very low-income limits are defined in Section 3(b)(2) of the Housing Act of 1937 and are determined annually by HUD. These limits are typically established at 80 percent and 50 percent of the area median individual income. HUD income limits may be obtained from:  
<https://www.huduser.gov/portal/datasets/il.html>
5. **YouthBuild:** YouthBuild is a community-based pre-apprenticeship program that provides job training and educational opportunities for at-risk youth ages 16-24 who have previously dropped out of high school. YouthBuild participants learn vocational skills in construction, as well as in other in-demand industries that include health care, information technology, and hospitality. Youth also provide community service through the required construction or rehabilitation of affordable housing for low-income or homeless

families in their own neighborhoods. The Division of Youth Services within the Employment and Training Administration's Office of Workforce Investment at the U.S. Department of Labor administers the YouthBuild program. Each year, more than 6,000 youth participate in approximately 210 YouthBuild programs in more than 40 states. More information can be found here:

<https://www.dol.gov/agencies/eta/youth/youthbuild>

6. **Section 3 project:** Section 3 projects are 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, as authorized by Sections 501 or 502 of the Housing and Urban Development Act of 1970 (12 U.S.C. 1701z-1 or 1701z-2), the Lead-Based Paint Poisoning Prevention Act (42 U.S.C 4801 *et seq.*, and/or the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851 *et seq.*). (See Question 12 of this part I of these FAQs for more detail regarding Lead Hazard Control and Healthy Homes programs.) 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. The requirements of Part 75 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.
7. **Section 3 funding:** A recipient is 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, or other public agency, public or private nonprofit organization. It does not include contractors or any intended beneficiary under the HUD program to which Section 3 applies, such as a homeowner or a Section 3 worker.
8. **Safe Harbor:** Recipients will be considered to have complied with the Section 3 requirements and met the safe harbor, in the absence of evidence to the contrary, if they certify that they have followed the required prioritization of effort and met or exceeded the applicable Section 3 benchmarks. If a recipient agency or contractor does not meet the benchmark requirements but can provide evidence that they have made a number of qualitative efforts to assist low- and very low-income persons with employment and training opportunities, the recipient or contractor is considered to be in compliance with Section 3, absent evidence to the contrary (i.e., evidence or findings obtained from a Section 3 compliance review).

### III. Applicability

Section 3 applies to all public housing financial assistance funds, regardless of the amount of assistance from HUD.

**a) Public Housing Financial Assistance:**

- (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;
- (iii) Development, modernization, and management assistance provided pursuant to Section 9(d) of the 1937 Act; and
- (iv) The entirety of a mixed-finance development project as described in 24 C.F.R. 905.604, regardless of whether the project is fully or partially assisted with public housing financial assistance as defined in subsections (i) through (iii).

**b) Non-HUD Assistance programs:** Section 3 applies to projects that are fully or partially funded with HUD financial assistance. Projects that are financed with state, local or private matching or leveraged

funds used in conjunction with HUD funds are covered by Section 3 if the amount of HUD funding for the project exceeds the regulatory thresholds.

- c) **Professional service contracts:** Professional service contracts for non-construction services that require an advanced degree or professional licensing are not required to be reported as a part of total Section 3 labor hours. However, this exclusion does not cover all non-construction services

## IV. Benchmarks and Requirements

Section 3 Workers must make up 25% of the total number of labor hours worked by all workers and Targeted Section 3 Workers make up 5% of the total number of labor hours worked by all workers. The Section 3 benchmarks are minimum targets that must be reached in order for HUD/LMHA to consider a recipient in compliance. Recipient agencies are required to make best efforts, or to the greatest extent feasible, to achieve the benchmarks required for the number of labor hours performed by both Section 3 workers and Targeted Section 3 workers.

Recipients will be considered to have complied with the Section 3 requirements and met the safe harbor, in the absence of evidence to the contrary, if they certify that they have followed the required prioritization of effort and met or exceeded the applicable Section 3 benchmarks.

If a recipient agency or contractor does not meet the benchmark requirements but can provide evidence that they have made a number of qualitative efforts to assist low- and very low-income persons with employment and training opportunities, the recipient or contractor is considered to be in compliance with Section 3, absent evidence to the contrary (i.e., evidence or findings obtained from a Section 3 compliance review).

### LMHA Policy:

LMHA adheres to HUD's benchmarks requiring:

1. Section 3 Workers make up 25% of the total number of labor hours worked by all workers.
2. Targeted Section 3 Workers make up 5% of the total number of labor hours worked by all workers.
3. Lorain Metropolitan Housing Authority Contracting Policy
  - a) For all advertised and non-advertised contracts LMHA will include the Section 3 Business Self Certification form and the Section 3 Individual Low-Income Self Certification form (with no income limit area) with the solicitation/bid package allowing each respondent to identify themselves and their business accordingly. The completion of the forms will remain voluntary at the respondent's discretion.
  - b) Once all responses have been received and reviewed, the LMHA will determine the contractor/vendor most qualified, responsible, and able to provide to the Agency the required services to complete contracting process. The Section 3 status of the respondent will be considered only after the contractor/vendor most qualified, responsible, and able to provide to the Agency the required services has been determined.
- d) If there are multiple and equally qualified businesses, the Section 3 status and category of the business will be considered. The business with the highest Section 3 priority, based on the 24 CFR Part 75.9 (b)(2) will be awarded the contract. All other applicable procurement laws will be adhered to relative to contracting amounts.

- e) All advertisements for contracts with the authority or its contractors, and sub-contractors will carry this wording: "This opportunity is covered under Section 3 of the HUD Act of 1968."
- f) Recipients shall make additional qualitative efforts to provide training and technical assistance to help Section 3 workers compete for jobs (e.g., resume assistance, career coaching, application assistance).

## V. LMHA Reporting & Compliance Requirements

LMHA requires recipients to report the following benchmark data: (1) the total number of labor hours worked, (2) the total number of labor hours worked by Section 3 workers, and (3) the total number of labor hours worked by Targeted Section 3 workers.

- a) **Legacy Contracts:** Contracts executed or projects for which assistance or funds were committed prior to November 30, 2020, are still required to adhere to the requirements of the old rule. Recipients of such assistance or funds will still be expected to maintain records of Section 3 statutory, regulatory, and contractual compliance but will no longer be required to report Section 3 compliance to HUD in SPEARS.
- b) **New Rule Contracts:** Contracts executed or projects for which assistance or funds were committed after November 30, 2020, must follow the reporting standards of this policy guide.

### LMHA Policy:

LMHA requires all recipients to provide:

- (1) the total number of labor hours worked,
- (2) the total number of labor hours worked by Section 3 workers, and
- (3) the total number of labor hours worked by Targeted Section 3 workers.

LMHA requires all recipients to report data for all projects to the designated Compliance Consultant. Recipients must submit data reports monthly.

LMHA requires all recipients to produce relevant documents related to labor hours reporting metrics and business certification, upon request, within 14 days.

Recipients are required to ensure their own compliance and the compliance of their subcontractors with the Section 3 regulations, as outlined at 24 C.F.R. part 75. These responsibilities include but are not limited to the following:

- Designing and implementing procedures to comply with the requirements of Section 3
- Facilitating the training and employment of Section 3 workers
- Ensuring Compliance and Meeting Numerical Benchmarks
- Meet LMHA Reporting Requirements and respond to documentation production request(s)

## VI. Record Keeping Requirements

Recipients must follow the recordkeeping requirements found at 24 C.F.R. § 75.31. Recipients are required to maintain documentation to demonstrate compliance with the regulations and are responsible for requiring their contractors/subcontractors to maintain or provide any documentation that will assist recipients in demonstrating compliance, including documentation that shows hours worked by Section 3 workers, Targeted Section 3 workers, and any qualitative efforts to comply with Section 3. Examples of documentation can be found in 24 C.F.R. §75.31.

Recipients must follow 2 C.F.R. Part 200 (as referred to in 24 C.F.R. §75.31) that establishes three (3) years, see applicable excerpt below:

**2 C.F.R. § 200.334**

Financial records, supporting documents, statistical records, and all other non-Federal entity records pertinent to a Federal award **must be retained for a period of three years** from the date of submission of the final expenditure report or for Federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the Federal awarding agency or pass-through entity in the case of a subrecipient. Federal awarding agencies and pass-through entities must not impose any other record retention requirements upon non-Federal entities.

The only exceptions are the following:

(a) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.

(b) When the non-Federal entity is notified in writing by the Federal awarding agency, cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or pass-through entity to extend the retention period.

(c) Records for real property and equipment acquired with Federal funds must be retained for 3 years after final disposition.

(d) When records are transferred to or maintained by the Federal awarding agency or pass-through entity, the 3-year retention requirement is not applicable to the non-Federal entity.

(e) Records for program income transactions after the period of performance. In some cases, recipients must report program income after the period of performance. Where there is such a requirement, the retention period for the records pertaining to the earning of the program income starts from the end of the non-Federal entity's fiscal year in which the program income is earned.

(f) Indirect cost rate proposals and cost allocations plans. This paragraph applies to the following types of documents and their supporting records: Indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(1) *If submitted for negotiation.* If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the pass-through entity) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.

(2) *If not submitted for negotiation.* If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the pass-through entity) for negotiation purposes, then the 3-year retention period for the proposal, plan, or computation and its supporting records starts from the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

## LMHA Policy:

LMHA must follow the State of Ohio's Public Records Act, Ohio Revised Code 149.43. ORC 149.43 requires that public records be open and available to the public and that public records be maintained in such a manner that they will be available to the public upon request. The act also requires that each office has a copy of its retention schedule for the public.

## VII. Section 3 Worker and Section 3 Target Worker Eligibility

A recipient may report on Section 3 workers and Targeted Section 3 workers for five years from when their certification as a Section 3 worker or Targeted Section 3 worker is established. A Section 3 worker is any worker who currently fits, or when hired within the past five years fit, at least one of the following categories, as documented:

- The worker's income for the previous or annualized calendar year is below the income limit established by HUD (see Question 6 of this part I of these FAQs, below);
- The worker is employed by a Section 3 business concern (see Question 5 of part I, below); or
- The worker is a YouthBuild participant.

A Section 3 targeted worker for Public Housing Financial Assistance projects is a Section 3 worker who:

- (1) is employed by a Section 3 business concern; or
- (2) currently fits or when hired fit at least one of the following categories, as documented within the past five years:
  - (i) A resident of public housing or Section 8-assisted housing;
  - (ii) A resident of other public housing projects or Section 8-assisted housing managed by the PHA that is providing the assistance; or
  - (iii) A YouthBuild participant.

There are many ways that a worker can be certified as either a Section 3 Worker or Targeted Section 3 Worker under 24 C.F.R. part 75:

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

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

### **For Public Housing Financial Assistance projects:**

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

- (ii) 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;
- (iii) An employer's certification that the worker is employed by a Section 3 business concern; or
- (iv) A worker's certification that the worker is a YouthBuild participant.

### **LMHA Policy:**

LMHA will accept various forms of evidence to establish Section 3 eligibility documentation which includes, but is not limited to the following:

- Proof of residency in a public housing project.
- Evidence of participation in the YouthBuild program.
- Certification from the worker's employee.
- Other income/employment evidence as determined by LMHA on a case-by-case basis.

## **VIII. Business Concern Eligibility**

A Section 3 business concern can be any type of business, such as a sole proprietorship, partnership, limited liability company, or a corporation, properly licensed and meeting all legal requirements to perform the contract under consideration.

### **a) Business Concern Certification:**

Prospective Section 3 workers and business concerns must self-certify that they meet the requirements as defined in the regulations by submitting a business concern application to LMHA. HUD recipients, contractors and subcontractors may also establish their own system to certify Section 3 workers and business concerns. The business seeking the preference must be able to demonstrate that they meet one of the following criteria:

1. At least 51 percent owned and controlled by low- or very low-income persons;
2. Over 75 percent of the labor hours performed for the business over the prior three-month period are performed by Section 3 workers; or
3. A business at least 51 percent owned and controlled by current public housing residents or residents who currently live in Section 8-assisted housing.

**b) Non-profit organizations:** A non-profit organization can be a business concern. Non-profit organizations must meet the criteria of a Section 3 business concern as defined at 24 C.F.R. § 75.5 in order to receive Section 3 preference.

**c) Bid Preferences:** In order to meet the requirements for a bidding preference under Section 3, the business applicant must (1) self-certify that the company is a business concern, as defined by meeting one of the three standards of certification; (2) submit a business application to LMHA stating the self-certification and standards met under Section 3 rules; and (3) receive certification approval from the LMHA Section 3 Coordinator, Compliance Manager, or their designee.

**d) Facilitating the award of contracts to Section 3 business concerns:** LMHA may work to link developers and contractors with capable Section 3 business concerns. Additionally, recipient agencies, when necessary, may direct Section 3 business concerns to organizations that provide capacity-building training.

**e) Entitlements:** Section 3 is not an entitlement program; therefore, employment and contracts are not guaranteed. Low- and very low-income individuals and Section 3 business concerns must be able to demonstrate that they have the ability or capacity to perform the specific job or successfully complete

the contract that they are seeking. Recipients, developers, and contractors are required, to the greatest extent feasible, to direct employment opportunities to low- and very low-income persons, including seasonal and temporary employment opportunities.

## IX. Non-Compliance

- a) **Qualitative Efforts:** If reporting indicates that the agency has not met the Section 3 benchmarks, recipient must report in a method prescribed by LMHA on the qualitative nature of its activities pursued per 24 C.F.R. § 75.15(b) and § 75.25(b).

Such qualitative efforts may, for example, include but are not limited to the following:

- 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, childcare).
  - 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.
  - Divided contracts into smaller jobs to facilitate participation by Section 3 business concerns.
  - 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
- b) **Complaints:** Complaints alleging failure of compliance with 24 C.F.R. § 75 may be reported to the HUD program office responsible for the public housing financial assistance or the Section 3 project, or to the local HUD field office.

## X. Section 3 Clause

All section 3 covered contracts shall include the following clause (referred as the section 3 clause). The successful bidder (contractor), and bidder's subcontractors, are bound by the *Section 3 Clause* and must be included in all subcontractor agreements.

- A. 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. 1701u (Section 3). The purpose of Section 3 is to ensure that the employment and other economic opportunities generated by HUD assistance of HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

- B.** The parties to this contract agree to comply with HUD's regulations in 24 C.F.R. Part 75, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 75 regulations.
- C.** The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or worker's representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- D.** The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 C.F.R. Part 75, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 C.F.R. Part 75. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 C.F.R. Part 75.
- E.** The contractor will certify that any vacant employment positions, including training positions, which are filled (1) after the contractor is selected but before the contract is executed; and (2) with persons other than those to whom the regulations of 24 C.F.R. Part 75 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 C.F.R. Part 75.
- F.** Non-compliance with HUD's regulations in 24 C.F.R. Part 75 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- G.** With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination, and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).