

Vermont Housing & Conservation Board

Section 3 Plan

September 2021

1. Overview of Section 3 Requirements

A. WHAT IS 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.

For definitions, see Appendix A: Definitions on page 11.

B. PURPOSE OF THIS DOCUMENT

This plan outlines how the Vermont Housing & Conservation Board (VHCB) and its subrecipients, contractors and subcontractors will comply with HUD's Section 3 requirements in implementing VHCB's HOME, HTF, HOPWA, Lead Hazard Control and other applicable HUD programs. VHCB will, to the greatest extent feasible, ensure that employment and other economic opportunities are directed to low- and very low-income persons (Section 3 workers and Targeted Section 3 workers) and to eligible businesses (Section 3 Businesses) and requires the same of its subrecipients and contractors. VHCB may amend its Section 3 Policies and Procedures document as necessary to ensure continued compliance with HUD's requirements and/or to reflect updated Section 3 guidance and outreach strategies.

C. APPLICABILITY

This plan applies to housing rehabilitation, housing construction, and other public construction projects that exceed \$200,000 or more of housing and community development financial assistance from one or more HUD programs. Applicability is determined at the project level. For projects funded with Lead and Hazard Control and Healthy Homes Programs, this plan applies to projects that exceed \$100,000.

This plan also applies to projects that include multiple funding sources. Multiple funding source projects include projects that include public housing financial assistance, housing and community development financial assistance for single or multiple recipients, and the Lead Hazard Control and Healthy Homes Program. Section 3 requirements do not apply to: 1) Material Supply Contracts - § 75.3(b), 2) Indian and Tribal Preferences - § 75.3(c), and 3) Other HUD assistance and other Federal assistance not subject to Section 3 §75.3 (d). However, for financial assistance that is not subject to Section 3, recipients are encouraged to consider ways to support the purpose of Section 3.

2. Section 3 Coordinator

VHCB's Section 3 Coordinator serves as the central point of contact for Section 3 compliance for VHCB and its subrecipients, contractors and subcontractors supporting the program. Subrecipients, contractors, subcontractors and others are encouraged to reach out to VHCB's Section 3 Coordinator with questions regarding Section 3 compliance:

Ron Rupp
Director of Federal Housing Programs
(802) 828-2912
rrupp@vhcb.org

3. Employment, Training, and Contracting Goals

A. SAFE HARBOR COMPLIANCE

VHCB, its subrecipients and contractors will be considered to have complied with the Section 3 requirements and met safe harbor, if they certify that they followed the required prioritization of effort and met or exceeded the Section 3 benchmarks, absent evidence of the contrary. All contracts and subcontracts shall include appropriate Section 3 language indicating that contractors and subcontractors will follow the required prioritization of effort for Section 3 workers, Targeted Section 3 workers, and Section 3 business concerns as outlined below in section C. If a contractor or subcontractor does not meet the safe harbor requirements, they must provide evidence that they have made qualitative efforts to assist low and very low-income persons with employment and training opportunities.

B. SAFE HARBOR BENCHMARKS

HUD has established employment and training goals that subrecipients, contractors, and subcontractors should meet in order to comply with Section 3 requirements outlined in 24 CFR Part 75.19 - for housing and community development financial assistance. The safe harbor benchmark goals for housing and community development financial assistance are as follows:

- 1) Twenty-five (25) percent or more of the total number of labor hours worked by all workers on a Section 3 project are Section 3 workers;

$$\text{Section 3 Labor Hours/Total Labor Hours} = 25\%$$

And

- 2) Five (5) percent or more of the total number of labor hours worked by all workers on a Section 3 project are Targeted Section 3 workers, as defined at 24 CFR Part 75.21.

Targeted Section 3 Labor Hours/Total Labor Hours = 5%

HUD establishes and updates Section 3 benchmarks for Section 3 workers and/or Targeted Section 3 workers through a document published in the Federal Register, not less frequently than once every 3 years. Given that the Section 3 benchmarks are subject to change every three years or sooner, VHCB will review and update the Section 3 Plan every 3 years, or as needed.

It is the responsibility of subrecipients and contractors to implement efforts to achieve Section 3 compliance. Any contractor that does not meet the Section 3 benchmarks must demonstrate why meeting the benchmarks was not feasible. All contractors submitting bids or proposals on Section 3 projects are required to certify that they will comply with the requirements of Section 3.

C. CERTIFICATION OF PRIORITIZATION OF EFFORT FOR EMPLOYMENT, TRAINING, AND CONTRACTING

Under the VHCB's Section 3 Program, contractors and subcontractors will complete a Section 3 Contractor Certification pledging to make best efforts to provide employment and training opportunities to Section 3 workers for housing and community development financial assistance in the priority order listed below:

Provide employment and training opportunities to Section 3 workers within the Burlington Metropolitan Statistical Area (or the county if not within the Burlington Metropolitan Statistical Area) in which the project is located in the priority order listed below:

- 1) Section 3 workers residing within the service area or the neighborhood of the project, and,
- 2) Participants in YouthBuild programs.

Contractors and subcontractors will be required to certify that they will and have made best efforts to follow the prioritization of effort requirements prior to the beginning work.

CONTRACTING

Under the VHCB's Section 3 Program, contractors and subcontractors must make their best efforts to award contracts and subcontracts to business concerns that provide economic opportunities to Section 3 workers in the following order or priority:

- 1) Business concerns that provide economic opportunities to Section 3 workers residing within the Burlington Metropolitan Statistical Area (or the county if not within the Burlington Metropolitan Statistical Area) in which assistance is located in the following order of priority (where feasible):

- a) Section 3 business concerns that provide economic opportunities to Section 3 workers residing within the service area or the neighborhood of the project; and,
- b) YouthBuild programs.

Contractors and subcontractors will be required to certify that they will and have made best efforts to follow the prioritization of effort requirements prior to the beginning work.

4. Section 3 Eligibility and Certifications

Individuals and businesses that meet Section 3 criteria may seek Section 3 preference from VHCB or its contractors/subcontractors for training, employment, or contracting opportunities generated by housing and community development financial assistance. To qualify as a Section 3 worker, Targeted Section 3 worker or a Section 3 business concern, each must self-certify that they meet the applicable criteria. Businesses who misrepresent themselves as Section 3 business concerns and report false information to VHCB may have their contracts terminated as default and be barred from ongoing and future considerations for contracting opportunities.

A. SECTION 3 WORKER AND TARGETED SECTION 3 WORKER CERTIFICATION

A Section 3 worker seeking certification shall complete and submit a Section 3 Worker Certification form to the recipient contractor or subcontractor. The employer or potential employer shall then determine if that person is a Section 3 worker or Targeted Section 3 worker as defined in 24 CFR Part 75. For the purposes of Section 3 worker eligibility, VHCB will use individual income rather than family/household income to determine eligibility. The income limits will be determined annually by HUD and can be found here: www.vhcb.org/housing/Sect3.

Persons seeking the Section 3 worker preference shall demonstrate that they meet one or more of the following criteria currently or when hired within the past five years, as documented:

- 1) A low or very low-income resident (the worker's income for the previous or annualized calendar year is below the income limit established by HUD); or
- 2) Employed by a Section 3 business concern; or
- 3) A YouthBuild participant.

Persons seeking the Targeted Section 3 worker preference shall demonstrate that it meets one or more of the following criteria:

- 1) Employed by a Section 3 business concern or
- 2) Currently meets or when hired met at least one of the following categories as documented within the past five years:
 - a) Living within the service area or the neighborhood of the project, as defined in 24 CFR Part 75.5; or
 - b) A YouthBuild participant.

Section 3 workers and Targeted Section 3 workers who are seeking preference in training and employment must submit the Section 3 Worker Certification form to the employer. The certification procedure will consist of the following:

- Newly hired and existing employees shall complete the top portion of the Section 3 Worker Certification form.
- Employer shall determine whether each employee meets the definition of a Section 3 worker or a Targeted Section 3 worker, and shall document such determination on the bottom of the Section 3 Worker Certification form.
- Employer shall maintain completed Section 3 Worker Certification forms in their personnel files; and shall track the status of workers identified as Section 3 workers and Targeted Section 3 workers in order to accurately report the number of hours they work on Section 3 projects.

PROJECTS INVOLVING MULTIPLE SOURCES OF FUNDING

In cases where Section 3 covered projects include multiple housing and development funding sources (financial assistance) from single or multiple recipients, VHCB will follow subpart C of Part 75 to determine the applicability of Section 3.

B. SECTION 3 BUSINESS CONCERN CERTIFICATION

VHCB and developers should encourage contractors and subcontractors to make best efforts to award contracts and subcontracts to Section 3 business concerns. Businesses that believe they meet the Section 3 Business requirements can self-register in the HUD Business registry, here: <http://www.hud.gov/Sec3Biz>. Businesses may seek Section 3 Business Concern preference by demonstrating that it meets one or more of the following criteria:

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

Businesses that seek Section 3 preference shall certify, or demonstrate to VHCB, developers, contractors or subcontractors, that they meet the definitions provided above. Businesses may demonstrate eligibility by submitting the Section 3 Business Concern Certification Form.

Section 3 Business Concern Certification Forms must be submitted at the time of bid/proposal. If VHCB previously approved the business concern to be Section 3 certified, then the certification can be submitted along with the bid.

5. Assisting Contractors with Achieving Section 3 Goals

In an effort to assist contractors with meeting or exceeding the Section 3 goals, VHCB and developers will do the following:

- 1) Share Section 3 Plan with contractors and subcontractors and explain policies and procedures
- 2) Discuss and provide information on Section 3 requirements at pre-bid meetings and in bid documents.
- 3) Review Section 3 benchmarks and prioritization of effort with contractors and subcontractors to ensure that the goals are understood. It is not intended for contractors and subcontractors to terminate existing employees, but to make every effort feasible to meet Section 3 benchmark goals by utilizing existing qualified workforce and by considering qualified eligible Section 3 workers and Targeted Section 3 workers (per the prioritization of effort outlined in Section #3) before any other person, when hiring additional employees is needed to complete proposed work to be performed with HOME, HTF, or other federal funding programs.
- 4) Inform contractors about the HUD Section 3 Opportunity Portal
<https://hudapps.hud.gov/OpportunityPortal/>
- 5) Encourage local businesses to register on the HUD Business Registry and direct contractors to the HUD Section 3 Business Registry
<https://www.hud.gov/section3businessregistry>
- 6) VHCB's web site will make information about Section 3 requirements available to developers, contractors and subcontractors, including this Plan, forms, income limits, and other pertinent information.

6. Section 3 Outreach

A. OUTREACH EFFORTS FOR EMPLOYMENT AND TRAINING

In order to educate and inform workers and contractors, VHCB's Section 3 Coordinator will be prepared to provide training and technical assistance. When training opportunities are available, contractors and subcontractors should, to the greatest extent feasible:

- 1) Provide information/handouts about Section 3 training opportunities to potential Section 3 workers and Targeted Section 3 workers
- 2) Work with the Vermont Department of Labor to identify potential Section 3 workers.

Contractors and subcontractors should employ several active strategies to notify Section 3 workers and Targeted Section 3 workers of Section 3 job opportunities, including:

- 1) Clearly indicating Section 3 eligibility on all job postings with the following statement: “This job is a Section 3 eligible job opportunity. We encourage applications from individuals that are low income and/or live in Public Housing and/or receive a Section 8 voucher”;
- 2) Work with VHCB and developers to connect Section 3 workers and Targeted Section 3 workers with opportunities and/or utilize the Section 3 Opportunity Portal to find qualified candidates.
- 3) Contacting local community organizations and provide them with job postings for Section 3 eligible applicants; and
- 4) Coordinating a programmatic ad campaign, which results in widespread job posting across diverse ad networks including:
 - a) Advertising job opportunities via social media, including LinkedIn and Facebook;
 - b) Contacting resident councils, resident management corporations, and neighborhood community organizations to request their assistance in notifying residents of available training and employment opportunities

B. OUTREACH EFFORTS FOR CONTRACTING

When contracting opportunities arise in connection with the HOME, HTF or other federal programs, developers will employ the following strategies to notify Section 3 Business Concerns of Section 3 contracting opportunities, including but not limited to:

- 1) Adding Section 3 language to all RFPs, procurement documents, bid offerings and contracts.
- 2) Inform Section 3 Business Concerns of upcoming contracting opportunities at pre-bid meetings and other opportunities.
- 3) Advertising contracting opportunities in local community papers and notices that provide general information about the work to be contracted and where to obtain additional information.
- 4) Providing written notice of contracting opportunities to all known Section 3 Business Concerns. The written notice will be provided in sufficient time to enable business concerns the opportunity to respond to bid invitations.
- 5) Coordinating with the prime contractor to publicize contracting opportunities for small businesses.
- 6) Coordinating with the State of Vermont’s Business/Economic Development Department and all other business assistance agencies and contractor associations to inform them of contracting opportunities and request their assistance in identifying Section 3 business concerns.

7) Connecting Section 3 business concerns with resources to support business development to assist in obtaining contracting opportunities (e.g., bonding and insurance assistance, etc.).

7. Section 3 Contracting Policy and Procedure

VHCB has incorporated Section 3 in its existing Procurement Policy to be included in all procurements generated for use with HUD funding. This Policy contains requirements for making efforts to award contracts to Section 3 Business Concerns.

All contractors/businesses seeking Section 3 preference must, before submitting bids/proposals for Section 3 project, complete certifications as appropriate. Such certifications shall be adequately supported with appropriate documentation as referenced in the Section 3 Business Concern Certification Form.

8. Section 3 Provisions/Contract Language

VHCB and developers will include standard Section 3 language in all of their contracts to ensure compliance with regulations in 24 CFR Part 75. VHCB will take appropriate actions upon finding that a contractor is in violation of 24 CFR Part 75 and does not knowingly contract with any contractor that has been found in violation of the Section 3 regulations. On a periodic basis the Section 3 Coordinator will audit contractors on Section 3 projects for compliance with the minimum Section 3 requirements outlined in the Section 3 Plan.

In addition, contractors and subrecipients are required to include language in all Section 3 covered contracts or agreements for subcontractors to meet the requirements of 24 CFR Part 75.19. For businesses, noncompliance with HUD's regulations in 24 CFR part 75 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

9. Reporting Requirements

For Section 3 covered contracts, developers/contractors must submit the completed Section 3 Reporting Form to VHCB within 60 days of the completion of Section 3 projects. VHCB will submit the Section 3 data to HUD using the required reporting system.

REPORTING ON PROJECTS WITH MULTIPLE FUNDING SOURCES

For projects assisted with funding from multiple sources of housing and community development assistance that exceed the thresholds of \$200,000 and \$100,000 for Lead Hazard Control and Healthy Homes Programs (LHCHH), VHCB will follow subpart C of Part 75 and will report to the applicable HUD program office, as prescribed by HUD. Note: LHCHH assistance is not included in calculating whether the assistance exceeds the \$200,000 threshold. HUD public

housing financial assistance and HUD housing and community development financial assistance is not included in calculating whether the assistance exceeds the LHCHH \$100,000 threshold.

10. Internal Section 3 Complaint Procedure

In an effort to resolve complaints generated due to non-compliance through an internal process, VHCB encourages submittal of such complaints to its Section 3 Coordinator as follows:

- 1) Complaints of non-compliance should be filed in writing and must contain the name of the complainant and brief description of the alleged violation of 24 CFR Part 75.
- 2) Complaints must be filed within sixty (60) calendar days after the complainant becomes aware of the alleged violation.
- 3) An investigation will be conducted if complaint is found to be valid. VHCB will conduct an informal, but thorough investigation affording all interested parties, if any, an opportunity to submit testimony and/or evidence pertinent to the complaint.
- 4) VHCB will provide written documentation detailing the findings of the investigation. VHCB will review the findings for accuracy and completeness before it is released to complainants. The findings will be made available no later than sixty (60) days after the filing of complaint. If complainants wish to have their concerns considered outside of VHCB a complaint may be filed with the local HUD field office. These offices can be found through the HUD website, www.hud.gov/.

Complainants may be eligible to bring complaints under other federal laws. The U.S. Equal Employment Opportunity Commission (EEOC) is responsible for enforcing federal laws that make it illegal to discriminate against a job applicant or an employee because of the person's race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information (medical history or predisposition to disease). For more information about complainant rights, please contact EEOC at: www.EEOC.gov.

The Department of Labor Office of Federal Contract Compliance Programs (OFCCP) enforces, for the benefit of job seekers and wage earners, the contractual promise of affirmative action and equal employment opportunity required of those who do business with the Federal government. More information about the services they provide can be obtained at: <http://www.dol.gov/ofccp/>.

APPENDIX A: DEFINITIONS

The terms *HUD*, *Public housing*, and *Public Housing Agency (PHA)* are defined in 24 CFR part 5.

The following definitions also apply to 24 CFR Part 75 HUD's Economic Opportunities for Low-and Very Low-Income Persons:

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

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 by persons 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, at or below 80% AMI. Note that Section 3 worker eligibility uses individual income rather than family/household income.

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.

Professional services means non-construction services 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.

Public housing financial assistance means assistance as defined in 24 CFR Part 75.3(a)(1).

Public housing project is defined in 24 CFR 905.108.

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, 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:

A business concern meeting at least one of the following criteria, documented within the last six-month period:

1. It is 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. It is a business at least 51 percent owned and controlled by current public housing residents or residents who currently live in Section 8-assisted housing.

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. 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 Coordinator is person tasked with overseeing all Section 3 responsibilities for the PHA/CD office.

Section 3 project means a project including rehabilitation, housing construction, and other public construction projects that exceed \$200,000 or more of housing and community development financial assistance from one or more HUD programs, as defined in 24 CFR Part 75.3(a)(2).

Section 3 worker means:

1. Any worker who currently fits or when hired within the past five years fit at least one of the following categories, as documented:
 - a. The worker's income for the previous or annualized calendar year is below the income limit established by HUD.
 - b. The worker is employed by a Section 3 business concern.
 - c. The worker is a YouthBuild participant.

The status of a Section 3 worker shall not be negatively affected by a prior arrest or conviction. 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 means:

- (1) Any worker who currently fits, or when hired within the past five years fit, at least one of the following categories, as documented:
 - (i) The worker's income for the previous or annualized calendar year is below the income limit established by HUD.
 - (ii) The worker is employed by a Section 3 business concern.
 - (iii) The worker is a YouthBuild participant.
- (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.

Also has the meanings provided in 24 CFR Part 75.11, 75.21, or 75.29, and does not exclude an individual that has a prior arrest or conviction.

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