



[Docket No. FR-6429-N-01]

Section 3 Benchmarks for Creating Economic Opportunities for Low- and Very Low-Income Persons and Eligible Businesses

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

ACTION: Notification of benchmarks.

SUMMARY: HUD's regulations require that HUD set Section 3 benchmarks by publishing a notification, subject to public comment, in the *Federal Register* and update the benchmarks no less frequently than once every three years by the same method of notification. This notice updates the 2020 version of the benchmark notice and requests public comment about the Section 3 benchmark goals.

DATES: Effective Date: [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Nathan Roush, Program Analyst, Office of Field Policy and Management, Department of Housing and Urban Development, Five Points Plaza, 40 Marietta St NW, Atlanta, GA 30303, telephone number 678-732-2045 (this is not a toll-free number). General email inquiries regarding Section 3 may be sent to Section3@hud.gov. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>.

SUPPLEMENTARY INFORMATION:

I. Background

Section 3 of the Housing and Urban Development Act of 1968, as amended by the Housing and Community Development Act of 1992 (Section 3), contributes to the establishment of stronger, more sustainable communities by ensuring that employment and other economic

opportunities generated by Federal financial assistance for housing and community development programs are, to the greatest extent feasible, directed toward low- and very low-income persons, particularly those who are recipients of government assistance for housing. HUD is statutorily charged with the authority and responsibility to implement and enforce Section 3 through regulation, which HUD has done through the publication of the Section 3 final rule, titled “Enhancing and Streamlining the Implementation of Section 3 Requirements for Creating Economic Opportunities for Low- and Very Low-Income Persons and Eligible Businesses,” 85 FR 61524 (“HUD’s Section 3 Final Rule”). This final rule is codified in 24 CFR part 75.

HUD’s Section 3 regulations require the establishment of Section 3 benchmarks for Section 3 workers and Targeted Section 3 workers through a document published in the Federal Register, 24 CFR 75.13(b) and 75.23(b). Consistent with these requirements, HUD published a benchmark notice in the Federal Register on September 29, 2020, titled “Section 3 Benchmarks for Creating Economic Opportunities for Low- and Very Low-Income Persons and Eligible Businesses,” 85 FR 60907. HUD’s Section 3 regulations also require HUD to update the benchmarks through a document published in the Federal Register, subject to public comment, not less frequently than once every three years. 24 CFR 75.13(b)(1) and 75.23(b)(1).

II. Section 3 Benchmarks

HUD’s Section 3 regulations require that in altering and updating the established benchmark goals, HUD must consider Section 3 labor hour data collected during the prior three-year period. 24 CFR 75.13(b)(1) and 75.23(b)(1). After evaluation and consideration of the data collected to date, HUD has determined that the available data is not a sufficiently representative sample to support the alteration of the current published benchmark goals or publication of aggregate labor hour data. Therefore, the benchmark goals will continue to be the ratios established in the original Section 3 benchmark notice published September 29, 2020, and HUD will continue to support the labor hour goal methodology contained therein.

HUD considered a number of factors in making this decision. Despite being published on September 29, 2020, HUD's Section 3 final rule did not go into effect until November 30, 2020, and compliance only began to be required for activities and projects funded on or after July 1, 2021. This means that activities and projects funded prior to July 1, 2021, were not required to report labor hours under 24 CFR part 75, which does not give HUD a full three years of data to review. Additionally, the count of labor hours and evaluation of achievement of benchmark goals are not determined until an activity or project is completed. Given the varying duration of construction projects, a number of larger Section 3 projects—those with higher numbers of labor hours—funded after July 1, 2021, have not yet completed construction and therefore have not reported final labor hours for Section 3 workers or Targeted Section 3 workers. These factors, among others, have contributed to initial reports containing limited data on a small subset of projects, which HUD believes does not create a large- or representative-enough sample of data to merit a change to the existing benchmarks or publication of aggregate data on labor hours and the proportion of recipients meeting benchmarks.

While HUD has decided not to change the benchmark goals for Public Housing Financial Assistance and Section 3 Projects, HUD would like to solicit public comment on any matters related to this notice, generally, but specifically on the experience of grantees, contractors, and other stakeholders in achieving the existing benchmark goals along with any challenges faced or recommendations for appropriate benchmarks for future updates. HUD will not be issuing a second notice regarding the current Section 3 benchmarks unless the comments provide HUD with a basis for making revisions to the benchmarks.

HUD will publish another notice to update Section 3 benchmarks no later than three years after the publication of this notice, as required by HUD's Section 3 regulations.

Michele Perez,
Assistant Deputy Secretary for Field Policy and Management.

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