U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

WASHINGTON, DC 20410-3000



POLICY GUIDANCE ISSUANCE

POLICY GUIDANCE NUMBER: 2024-06 DATE ISSUED: February 7, 2024

SUBJECT: Section 3 Final Rule Requirements

APPLICABILITY: All Office of Lead Hazard Control and Healthy Homes Grant

Programs

RELATED GUIDANCE: Supersedes PGI 2012-06

COMMENTS: Updating the Section 3 requirements for OLHCHH grants that work

on buildings to reflect the Section 3 final rule, which replaced the

interim rule previously in effect.

Background:

This Policy Guidance communicates HUD's Section 3 Final Rule requirements for all Office of Lead Hazard Control and Healthy Homes (OLHCHH) grant programs. Previously, the Section 3 Summary Report paper form was uploaded to the Heathy Homes Grants Management System's (HHGMS') Close Outs record.

On September 29, 2020, HUD published a final rule titled "Enhancing and Streamlining the Implementation of Section 3 Requirements for Creating Economic Opportunities for Lowand Very Low-Income Persons and Eligible Businesses" (85 FR 61524), and a companion notice, titled "Section 3 Benchmarks for Creating Economic Opportunities for Low- and Very Low-Income Persons and Eligible Businesses" (85 FR 60907), that outlines the numeric goals for compliance (the "benchmark notice"). Previously, HUD had been operating under the Section 3 interim rule (24 CFR Part 135), which was published in 1994. The final rule at 24 CFR Part 75³ is applicable to Section 3 projects for which assistance or funds were committed on or after July 1, 2021.

Section 3 projects are housing rehabilitation, housing construction, and other public construction projects assisted under HUD programs that provide housing and community

¹ https://www.govinfo.gov/content/pkg/FR-2020-09-29/pdf/2020-19185.pdf.

² https://www.govinfo.gov/content/pkg/FR-2020-09-29/pdf/2020-19183.pdf.

³ https://www.ecfr.gov/current/title-24/subtitle-A/part-75.

development financial assistance when the total amount of assistance to the project exceeds a specified threshold.⁴

- The project is the site or sites where the rehabilitation or construction work above is conducted, together with any building(s) and improvements located on the site(s) that are under common ownership, management, and financing.
- For most HUD programs, the project threshold is \$200,000.
- For assistance is from Lead Hazard Control and Healthy Homes programs,⁵ the project threshold is \$100,000.

Section 3 does not apply to:

- Contracts for materials only⁶
- Contracts subject to Indian and Tribal preferences⁷

Implementation for OLHCHH grants:

Project scoping:

When treating an individually-owned housing unit, such as a single-unit home (whether a stand-alone building or a separately-owned unit in a duplex or triplex building), the work on that unit is its own project.

Similarly, treating a single cooperative or condominium (coop/condo) unit in a multiunit building is its own project. Treating each of a few (a small percentage of) coops/condos in a multi-unit building also has the work on each unit be its own project.

On the other hand, treating all or most units in a multi-unit rental building owned (or otherwise controlled) by a single landlord owner, so that the building has "common ownership, management, and financing" (the property criteria under the final rule for defining a project, as noted above⁴), is a single project. This matches how grantees typically contract for such work – with a single contract.⁸

- For lead hazard control programs: 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.), and
- For healthy homes programs: Sections 501 or 502 of the Housing and Urban Development Act of 1970 (12 U.S.C. 1701z–1 or 12 U.S.C. 1701z–2).

⁴ 24 CFR § 75.3(a)(2)(i) (https://www.ecfr.gov/current/title-24/part-75/section-75.3#p-75.3(a)(2)(i)).

⁵ As cited by the final rule at 24 CFR 75.3(a)(2)(i), these programs are authorized, respectively, by:

⁶ 24 CFR § 75.3(b) (https://www.ecfr.gov/current/title-24/part-75/section-75.3#p-75.3(b)).

⁷ 24 CFR § 75.3(c) (https://www.ecfr.gov/current/title-24/part-75/section-75.3#p-75.3(c)) – "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 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 the requirements of [Section 3]."

⁸ The work on units described here also includes work on common areas and exterior surfaces associated with such units, and the cost of work on common areas and exterior surfaces is added to the cost of work within the units

When treating a whole coop/condo building or most of the building, for which the cooperative or the condominium association is the common owner with whom the grantee is dealing, the work is a single project. This also matches how grantees typically contract for such work – with a single contract.

Project costs:

The cost of a project includes funds from the OLHCHH grant, plus match and leveraging from such sources as HUD's Community Development Block Grant program, state, local, and tribal governments, non-profit and for-profit organizations, hazard evaluation and hazard control contractors, property owners, and others, as allocated to the work in the project's unit or units.

As noted above, when an OLHCHH grant's project cost exceeds \$100,000, it is covered by Section 3. Guidance on implementing Section 3's requirements is at:

- HUD's Section 3 website⁹ and sites linked from there;
- HUD's Frequently Asked Questions for Section 3 website; 10 and
- Additional sites found by searching the HUD.gov website for "Section 3". 11

Grantees need to calculate their anticipated costs when they design a project to determine if its cost is expected to be:

- Below or at the threshold, so that Section 3 will not apply to the project; or
- Above the threshold, in which case Section 3 will apply.

With project costs per housing unit almost always in the four-figure to low five-figure range, we anticipate that the project costs per housing unit will not exceed the \$100,000 threshold (indeed, none has to date). Therefore, projects on a single housing unit or a small number of units are likely not to be covered by Section 3's implementation and reporting requirements.

On the other hand, when a project is of work on larger number of housing units (or includes several units with higher than usual per housing unit costs), the project cost may exceed the \$100,000 threshold. As above, grantees need to calculate their anticipated costs when they design a project and act accordingly in regard to Section 3 applicability.

themselves to determine the overall project cost. Common areas are defined for this Section 3 purpose as they are defined in the OLHCHH's Lead Safe Housing Rule at 24 CFR 35.110 "Common area". Further guidance about common areas is provided in the OLHCHH's Interpretive Guidance on HUD's Lead Safe Housing Rule.

a. https:///www.ecfr.gov/current/title-24/part-35/section-35.110#p-35.110(Common%20area).

b. https://www.hud.gov/sites/documents/doc 25476.pdf.

⁹ https://www.hud.gov/program_offices/comm_planning/home/section3.

¹⁰ https://www.hud.gov/sites/dfiles/FPM/documents/Section-3-FAOs.pdf.

¹¹ https://search.usa.gov/search?affiliate=housingandurbandevelopment&query=%22section+3%22.

Section 3 Reporting:

Since November 30, 2020, OLHCHH grantees have been required to comply with the Section 3 Final Rule through the Heathy Homes Grants Management System (HHGMS). Section 3 activities must be reported in the Unit Work tab. Instructions on reporting are provided through the Help link on HHGMS' homepage; click on the Section 3 Instructions link. HHGMS' Unit Work Page has a "Section 3 report fields" segment that includes HUD's Section 3 form as imported into HHGMS for grantees to fill in.

If you have any questions about Section 3 or this guidance that are not addressed above, including policy elements or project-specific issues, please contact your grant's Governmental Technical Representative.