



**Community Development Division
Housing Division**

**Section 3
Disadvantaged Business Enterprise (DBE)
Minority Business Enterprise (MBE)
Women Business Enterprise (WBE)**

Toolkit

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<https://comdev.mt.gov/Resources>

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Section 3 Definitions (24 CFR Part 75)

Contractor: Contractor means any entity entering into a contract with a recipient or subrecipient to perform work in connection with the expenditure of Section 3 covered assistance or for a Section 3 covered project.

Labor Hours: Labor hours means the number of paid hours worked by persons on a Section 3 covered project.

Low-Income Person: Low-income person means a person as defined in Section 3(b)(2) of the United States Housing Act of 1937. (See [Resources](#) for published income limits.)

Business Concern: A Section 3 business concern means a business entity formed in accordance with State law, and which is licensed under State, county, or municipal law to engage in the type of business activity for which it was formed. Non-profit organizations can be legitimate business concerns.

Recipient: Recipient means any entity that receives directly from the U.S. Department of Housing and Urban Development housing and community development assistance that funds Section 3 covered projects, including, but not limited to, any State, local government, instrumentality, Public Housing Authority, or other public agency, public or private nonprofit organization.

Section 3: Section 3 means Section 3 of the Housing and Urban Development Act of 1968, as amended.

Section 3 Business Concern: Section 3 business concern means a business concern meeting at least one of the following criteria, documented within the last 6-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 3-month period are performed by Section 3 workers; or (3) 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.

Section 3 Project: A Section 3 covered project means housing rehabilitation, housing construction, and other public construction projects assisted under U.S. Department of Housing and Urban Development 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 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. Section 3 requirements apply to an entire Section 3 covered project, regardless of whether the project is fully or partially assisted.

Section 3 Worker: Section 3 worker means any worker who currently fits or when hired within the past 5 years fit at least one of the following categories, as documented: (1) The worker's income for the previous or annualized calendar year is below the income limit established by the U.S. Department of Housing and Urban Development; (2) The worker is employed by a Section 3 business concern; or (3) The worker is a YouthBuild participant. Definition does not exclude an individual that has a prior arrest or conviction.

Section 8-Assisted Housing: Section 8-assisted housing refers to housing receiving project-based rental assistance or tenant-based assistance under Section 8 of the United States Housing Act of 1937.

Service Area: Service area or the neighborhood of the project means an area within 1 mile of the Section 3 covered project or, if fewer than 5,000 people live within 1 mile of the Section 3 covered project, within a circle centered on the Section 3 covered project that is sufficient to encompass a population of 5,000 people according to the most recent U.S. Census.

Subcontractor: 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 Section 3 covered assistance or for a Section 3 covered project.

Subrecipient: Subrecipient means a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program; but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency.

Targeted Section 3 Worker: A targeted Section 3 worker for housing and community development financial assistance means a Section 3 worker who is: (1) A worker employed by a Section 3 business concern; or (2) A worker who currently fits or when hired fit at least one of the following categories, as documented within the past 5 years: (i) Living within the service area or the neighborhood of the project; or (ii) A YouthBuild participant. Definition does not exclude an individual that has a prior arrest or conviction.¹

YouthBuild Programs: YouthBuild programs mean programs that receive assistance under the Workforce Innovation and Opportunity Act.

¹ A targeted Section 3 worker for public housing financial assistance means a Section 3 worker who is: (1) A worker employed by a Section 3 business concern; or (2) A worker who currently fits or when hired fit at least one of the following categories, as documented within the past 5 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 Public Housing Authority that is providing the assistance; or (iii) A YouthBuild participant. For Section 3 covered projects that use both housing and community development funding and public housing funding, housing and community development programs are encouraged to use the public housing definition of a targeted Section 3 worker.

DBE/MBE/WBE Definitions

Disadvantaged: Certain groups of persons are presumed disadvantaged, including women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, and others found to be disadvantaged by the U.S. Small Business Administration (SBA). Persons who are not members of one of the groups presumed disadvantaged may be eligible for preference under DBE/MBE/WBE if they establish their social and economic disadvantage. Additionally, disadvantaged persons must not exceed certain personal net worth limits.

Ownership: A business must be 51 percent owned by a socially and economically disadvantaged individual/s to qualify under DBE/MBE/WBE.

For more information, visit <https://www.mdt.mt.gov/business/contracting/civil/dbe.shtml>.

Section 3 and DBE/MBE/WBE Overview

Section 3 is a provision of the Housing and Urban Development Act of 1968. The purpose of Section 3 is to ensure that employment and training opportunities arising in connection with Section 3 covered projects are, to the greatest extent feasible, and consistent with existing federal, state, and local laws and regulations, provided to Section 3 workers (i.e., workers who are low- or very low-income², employed by a Section 3 business concern, or participants of YouthBuild). Where feasible, priority is given to Section 3 workers living within the service area or the neighborhood of the project or to YouthBuild participants. Section 3 covered activities include housing rehabilitation, housing construction, and other public construction for which the amount of assistance exceeds \$200,000.

Section 281 of the National Affordable Housing Act requires that recipients of U.S. Department of Housing and Urban Development (HUD) financial assistance reach out to disadvantaged, minority, and women-owned business enterprises (hereafter, “DBE/MBE/WBE”) for all contracting activities facilitating the provision of affordable housing authorized under federal law.

Section 3 and DBE/MBE/WBE covered projects may be funded by one or a combination of the following federal sources administered by the Montana Department of Commerce (Commerce): the HOME Investment Partnerships Program (HOME), the Housing Trust Fund (HTF) Program, or the Community Development Block Grant (CDBG) Program. All activities that are part of a Section 3 covered project are subject to applicable requirements, regardless of whether they, individually, are directly funded by the assistance that triggers Section 3.

It should be noted that Section 3 and DBE/MBE/WBE are separate requirements and that a HUD-assisted project subject to DBE/MBE/WBE may not be covered under Section 3. For a side-by-side comparison of the two requirements, see the table below.

Side-by-Side Comparison of Section 3 and DBE/MBE/WBE

	Section 3	DBE/MBE/WBE
Code of Federal Regulations Reference	24 CFR § 75	2 CFR § 200.321
Preferences	Preferences provided under this regulation are based on income level and location	Preferences provided under this regulation are based on social and economic disadvantages such as ethnicity and gender
Requirements	Section 3 requirements apply to job training, employment, and other economic opportunities (Grantees comply with Section 3 through their project advertising, contracting, and reporting; see sections below for more details)	DBE/MBE/WBE requirements apply to contracting and subcontracting (Grantees comply with DBE/MBE/WBE through their project advertising, contracting, and reporting; see sections below for more details)
Level of Assistance	\$200,000 or more of assistance triggers Section 3 requirements	Any amount of assistance triggers DBE/MBE/WBE requirements

² Under Section 3, low- and very low-income status is determined solely on the individual’s income and not on other sources of income received within the individual’s household (if applicable). (See [Resources](#) for published income limits.)

	Section 3	DBE/MBE/WBE
Triggering Activities	HUD-assisted housing and community development projects that involve housing rehabilitation, housing construction, and other public construction. Note: Non-construction services that require an advanced degree or professional licensing are excluded from Section 3 due to challenges hiring low- and very low-income workers in jobs that require such degrees and licensing.	All HUD-assisted projects are subject to DBE/MBE/WBE requirements, regardless of activities undertaken

Note: Federal regulations may change and, as such, this toolkit is subject to revision. Furthermore, Commerce and its grantees, as well as contractors and subcontractors, are obligated to comply with regulations governing Section 3 and DBE/MBE/WBE in effect at the time of or subsequent to the publication of this toolkit.

Advertising

Grantees are encouraged to maintain a plan that outlines specific, affirmative steps they will take to perform required outreach, as well as market to and solicit the services and goods of Section 3 and DBE/MBE/WBE contractors and subcontractors. Additionally, grantees must ensure the maximum participation of Section 3 and DBE/MBE/WBE firms by dividing total requirements, when economically feasible, into smaller tasks or quantities and establishing reasonable delivery schedules.

Section 3

Grantees receiving assistance for covered projects must proactively reach out to Section 3 workers and Section 3 business concerns when providing employment and training opportunities and/or when soliciting goods and services. Grantees should utilize HUD’s Opportunity Portal at <https://hudapps.hud.gov/OpportunityPortal/> and Section 3 Business Registry at <https://portalapps.hud.gov/Sec3BusReg/BRegistry/SearchBusiness> to meet outreach requirements. For more information, see [Resources](#).

Prioritization of Effort

To the greatest extent feasible, grantees are expected to prioritize employment and training opportunities first to benefit Section 3 workers residing within the service area or neighborhood of the project and second to benefit YouthBuild participants. Additionally, and again to the greatest extent feasible, grantees are expected to prioritize contracting activities to first benefit Section 3 business concerns and second to benefit YouthBuild programs.

Additionally, a Section 3 notice must be published at least once at the beginning of a covered project (see sample notice below) and may be incorporated into each advertisement for procurement. **Note: Documentation showing Section 3 outreach efforts (e.g., results of the registry search, emails documenting direct solicitation, affidavit/s of publication for Section 3 notice) must be maintained as part of the project file and provided to Commerce.**

DBE/MBE/WBE

Grantees receiving assistance for a covered project must proactively reach out to DBE/MBE/WBE businesses and contractors when soliciting goods and services. Grantees should utilize the Montana Department of Transportation's (MDT) DBE directory and/or DBE quote request tool online at <https://www.mdt.mt.gov/business/contracting/civil/dbe.shtml> to search for and directly solicit quotes from firms that are MDT certified as DBE. Grantees also have the option of using SAM.gov to identify firms that may be given preference based on their socio-economic status. For more information, see [Resources](#).

Additionally, a DBE/MBE/WBE notice must be published at least once at the beginning of a covered project (see sample notice below) and may be incorporated into each advertisement for procurement.

Note: Documentation showing DBE/MBE/WBE outreach efforts (e.g., results of the directory search, emails documenting direct solicitation, affidavit/s of publication for DBE/MBE/WBE notice) must be maintained as part of the project file and provided to Commerce.

Sample Section 3 and DBE/MBE/WBE Public Notice (Note: Language can be extracted as needed when only one requirement is triggered.)

SAMPLE SECTION 3 AND DBE/MBE/WBE PUBLIC NOTICE

The *(Name of Grantee)* has received notice of the award of *(Program)* funds from the Montana Department of Commerce. *(Name of Grantee)* will soon commence implementation of a *(include brief description)* project.

(Program) regulations governing the grant require that to the greatest extent feasible, opportunities for training, employment, and contracting arising in connection with this *(Program)*-assisted project will be extended to low- and very low-income individuals, especially those employed by Section 3 business concerns, participating in YouthBuild, living within the service area or the neighborhood of the project, or residing in public or Section 8-assisted housing.

Training and employment, as well as contracting opportunities are presented in the U.S. Department of Housing and Urban Development's (HUD) Opportunity Portal at <https://hudapps.hud.gov/OpportunityPortal/>. Prospective trainees, employees, and contractors of HUD-assisted projects are encouraged to utilize this resource to identify opportunities. In addition, contractors are encouraged to register on HUD's Section 3 Business Registry at <https://portalapps.hud.gov/Sec3BusReg/BRegistry/SearchBusiness> if they meet HUD's requirements for a Section 3 Business Concern. Registrants will receive targeted outreach for opportunities pertaining to assisted projects that are covered by Section 3.

(Program) regulations governing the grant also require that opportunities for contracting will be extended to minority, women-owned, and disadvantaged ("DBE/MBE/WBE") businesses.

DBE/MBE/WBE firms are encouraged to register on Montana's DBE Registry at <https://www.mdt.mt.gov/business/contracting/civil/dbe.shtml>. Registrants will receive targeted outreach for opportunities pertaining to assisted projects that are covered by DBE/MBE/WBE.

For more information, please contact *(name)* at *(address)* or call *(phone number)*.

Contracting

All of Commerce’s contracts for covered projects specify that grantees will comply with all applicable local, state, and federal laws as well as all applicable regulations, ordinances, and resolutions. Compliance includes meeting Section 3 and DBE/MBE/WBE requirements, which are extended from Commerce to the grantee (via the contract) and then to subcontractors (via subcontract supplemental conditions or required clauses) if the grantee sublets or subcontracts any portion of the assisted project.

Reporting

Commerce’s Reporting to HUD

Commerce reports its Section 3 and DBE/MBE/WBE compliance to HUD according to HUD’s prescribed processes, reporting periods, and deadlines. Section 3 reporting occurs on the project level at the close of covered projects while DBE/MBE/WBE reporting is aggregated across projects and submitted semiannually on or about April 30 and October 31. See the table below for DBE/MBE/WBE reporting periods.

DBE/MBE/WBE Reporting Periods (Every 6 Months)

Start Date	End Date	Reporting Period
10/1/2020	3/31/2021	10/1/2020-9/30/2021 (2020)
4/1/2021	9/30/2021	
10/1/2021	3/31/2022	10/1/2021-9/30/2022 (2021)
4/1/2022	9/30/2022	
10/1/2022	3/31/2023	10/1/2022-9/30/2023 (2022)
4/1/2023	9/30/2023	
10/1/2023	3/31/2024	10/1/2023-9/30/2024 (2023)
4/1/2024	9/30/2024	
10/1/2024	3/31/2025	10/1/2024-9/30/2025 (2024)
4/1/2025	9/30/2025	
10/1/2025	3/31/2026	10/1/2025-9/30/2026 (2025)
4/1/2026	9/30/2026	
10/1/2026	3/31/2027	10/1/2026-9/30/2027 (2026)
4/1/2027	9/30/2027	
10/1/2027	3/31/2028	10/1/2027-9/30/2028 (2027)
4/1/2028	9/30/2028	

Grantees’ Reporting to Commerce

To meet its reporting obligations, **Commerce requires grantees to provide a summary of employment, training, and contracting activities with each request for reimbursement.** Historically, Commerce has accepted the Section 3 Report Summary (Form HUD-60002) and the Contract Reporting Form from grantees. While these forms provide much of the information needed under Section 3 and DBE/MBE/WBE, they do not allow for complete reporting pursuant to current regulations. Thus, Commerce will no longer accept these forms and asks that grantees use a new, consolidated form, the Contract and Employment Reporting Form.³

³ For projects subject to Section 3 with funds committed on or after November 30, 2020, grantees must use the Contract and Employment Reporting Form appended to this toolkit. For projects subject to Section 3 with funds committed before November 30, 2020, grantees must use the Contract and Employment Reporting Form appended to the October 2019 version of this toolkit.

Section 3

Commerce monitors Section 3 data as it is submitted with each draw to ensure compliance and provide technical assistance as needed.

With the exception of legacy and transitional projects (see table below), Section 3 data are entered into HUD’s data repository, the Integrated Disbursement and Information System, also referred to as “IDIS” at project closeout.⁴ Data are also included in the Consolidated Annual Performance and Evaluation Report (CAPER) that Commerce submits to HUD annually.

Section 3 Project Types by Commitment Date

Commitment Date	Before 11/30/2020	On or After 11/30/2020 but Before 7/1/2021	On or After 7/1/2021
Applicable Regulations	24 CFR Part 135	24 CFR Part 75	24 CFR Part 75
Reporting Requirement	Legacy Projects Reporting requirements apply (SPEARS) ⁵ and grantees must retain documentation demonstrating compliance with the interim rule in project file.	Transitional Projects No reporting requirements but grantees must retain documentation demonstrating compliance with the final rule in project file.	Reporting requirements apply (IDIS) and grantees must retain documentation demonstrating compliance with the final rule in project file.

DBE/MBE/WBE

Commerce aggregates DBE/MBE/WBE data according to the date it is submitted. For example, if a grantee submits a draw request on May 15, 2019, the DBE/MBE/WBE data they provide is included in the 2019 DBE/MBE/WBE report for the period running April 1, 2019, to September 30, 2019.

Once aggregated, DBE/MBE/WBE data are entered into Form HUD-2516, an Excel worksheet sent to HUD via email. Data are also included in the CAPER that Commerce submits to HUD annually.

Section 3 Recordkeeping

Grantees must maintain documentation supporting Section 3 data claims. For example, if the grantee or its contractors or subcontractors reports that it employs a Section 3 worker or a targeted Section 3 worker, it must keep in its records documentation demonstrating Section 3 worker or targeted Section 3 worker eligibility. Examples of acceptable documentation are as follows:

- A worker’s self-certification that their income is below the income limit from the prior calendar year;
- A worker’s self-certification of participation in a means-tested program such as public housing or Section 8-assisted housing;

⁴ Staff will be unable to input Section 3 data into IDIS for Section 3 covered projects with funds committed before July 1, 2021. For these legacy and transitional projects, staff are encouraged to include the following note in accomplishment narratives: “Although this is a Section 3 covered project, it is not subject to the reporting requirements of the Section 3 Final Rule, which became effective July 1, 2021, and are outlined herein.”

⁵ HUD’s data repository for Section 3 covered projects with funds committed before November 30, 2020, the Section 3 – Performance Evaluation and Registry System or “SPEARS” (Form HUD-60002), has been decommissioned. Thus, if not yet reported, legacy projects will not ultimately be held to reporting requirements.

- Certification from a Public Housing Authority, or Section 8 program manager that the worker is a participant in such a program;
- An employer’s certification that the worker’s income from that employer is below the income limit;
- An employer’s certification that the worker is employed by a Section 3 business concern; and
- A worker’s certification that the worker is a YouthBuild participant.

Although Commerce does not require that documentation supporting data claims be submitted with each draw or at project closeout, Commerce may request documentation if questions arise or for monitoring purposes.

Section 3 Benchmarks

The Section 3 benchmarks are minimum targets established by HUD that must be reached for purposes of compliance. Commerce and its grantees are required to make best efforts, to the greatest extent feasible, to achieve benchmarks as follows:

- 25 percent or more of the total number of labor hours worked by all workers on a Section 3 covered project are Section 3 workers;
- 5 percent or more of the total number of labor hours worked by all workers on a Section 3 covered project are targeted Section 3 workers.⁶

As mentioned previously, grantees provide a summary of their employment, training, and contracting activities for specific projects with each request for reimbursement. Commerce monitors data pertaining to Section 3 as it is submitted to ensure compliance and provide technical assistance as needed.

If Section 3 benchmarks are not met for a project by closeout, the grantees are required to report on the qualitative nature of their Section 3 compliance activities and those of its contractors and subcontractors. Activities that demonstrate efforts to comply with Section 3 requirements include but are not limited to:

- Conducting outreach efforts to generate job applicants who are targeted Section 3 workers
- Providing training or apprenticeship opportunities
- Providing technical assistance to help Section 3 workers compete for jobs (e.g., resume assistance, coaching)
- Providing or connecting Section 3 workers with assistance in seeking employment including drafting resumes, preparing for interviews, referring to job placement services, and finding job opportunities
- Holding job fairs
- Providing or referring Section 3 workers to services supporting work readiness and retention (e.g., work readiness activities, interview clothing, test fees, transportation, childcare)
- Providing assistance to apply for or attend a community college or 4-year education institution or to receive vocational or technical training
- Assisting Section 3 workers to obtain financial literacy training and/or coaching
- Engaging in outreach efforts to identify and secure bids from Section 3 business concerns
- Providing technical assistance to help Section 3 business concerns understand and bid on contracts

⁶ Employers who do not track labor hours in detail through a time and attendance system will not be required to acquire such a system. Instead, employers may provide a good faith assessment of labor hours worked.

- Dividing contracts into smaller jobs to facilitate participation by Section 3 business concerns
- Providing bonding assistance, guaranties, or other efforts to support viable bids from Section 3 business concerns
- Promoting use of business registries designed to create opportunities for disadvantaged and small businesses

Because it is difficult to gauge whether a Section 3 covered project will ultimately meet required benchmarks, all grantees are asked to complete outreach activities proactively throughout their project. At a minimum, this means advertising resources available to Section 3 workers, Section 3 business concerns, and DBE/MBE/WBE firms via a Section 3 and DBE/MBE/WBE public notice. For more information, see [Advertising](#). Commerce should be apprised of any additional proactive measures grantees undertake to comply with Section 3.

Resources

HUD's Income Limits for Low- or Very Low-Income Households

<https://www.huduser.gov/portal/datasets/il.html>

SAM.gov – Register Your Business to Be Eligible for Federal Contracts and to Receive Preference for Socio-Economic Status

<https://www.sam.gov/SAM/>

Section 3

Notice CPD-21-07: Section 3 Final Rule Requirements for HOME and HTF Projects

<https://www.hudexchange.info/resource/6416/notice-cpd2107-section-3-of-the-housing-and-urban-development-act-of-1968/>

Notice CPD-21-09: Section 3 Final Rule Requirements for CDBG, CDBG-CV, CDBG-DR, CDBG-MIT, NSP, Section 108, and RHP Projects

<https://www.hudexchange.info/resource/6443/notice-cpd2109-section-3-of-the-housing-and-urban-development-act-of-1968-as-amended-by-the-housing-and-community-development-act-of-1992/>

Sample Section 3 Certification Form – Business Seeking Preference

<https://www.hudexchange.info/resource/750/sample-section-3-certification-form-business-seeking-preference/>

Section 3 Business Registry – Match Section 3 Businesses to Contracting Opportunities

<https://portalapps.hud.gov/Sec3BusReg/BRegistry/SearchBusiness>

Section 3 Business Registry Brochure

https://www.hud.gov/sites/documents/BR_BROCHURE.ENGLISH.PDF

Section 3 – Economic Opportunities Webpage on HUD.GOV

<https://www.hud.gov/Section3>

Section 3 Frequently Asked Questions (FAQs)

<https://www.hud.gov/sites/documents/11SECFAQS.PDF>

Section 3 Opportunity Portal – Match Section 3 Workers to Jobs and Training Opportunities and Section 3 Businesses to Contracting Opportunities

<https://hudapps.hud.gov/OpportunityPortal/>

Section 3 Sample Plan - Template (*Use the new regulation citations and update as needed.)

<https://www.hudexchange.info/resource/766/section-3-sample-plan-template/>

“Understanding Section 3” Training Curriculum

<https://www.hudexchange.info/trainings/section-3/>

DBE/MBE/WBE

Guidance on Minority Business Enterprise and Women's Business Enterprise Outreach

<https://www.hudexchange.info/resource/248/guidance-on-minority-business-enterprise-and-womens-business-enterprise-outreach/>

Minority Business Development Agency Website

<https://www.mbda.gov/>

Montana Department of Transportation Disadvantaged Business Enterprise Program Webpage

<https://www.mdt.mt.gov/business/contracting/civil/dbe.shtml>

Small Business Administration Website

<https://www.sba.gov/>