2021 Section 3 Final Rule Training Series

Day 1, Tuesday, December 7, 2021

Medora Benson: Hello, everyone, and welcome to day one of the 2021 Section 3 Final Rule Training Series. My name is Medora Benson with ICF, and I will be your host throughout this delivery.

Before we begin, I'm going to run through a few logistics. All participants have been muted upon entry. Please submit all content related questions via the Q&A box.

Throughout the webinar, if you have any technical issues, please request assistance through the chat box. When requesting assistance for technical issues, please send your message to me, the host, and I will work with you directly to resolve those issues.

As mentioned before, please submit all content related questions via the Q&A box to all co-hosts. The chat box and the Q&A box can be found on the right-hand side of your screen. If you do not see the Q&A box, look to the bottom right-hand corner, select the button with three dots, and click on the Q&A icon. The Q&A box will then appear in the panel to the right of your screen.

Please note this webinar will be recorded.

Now, I'd like to turn it over to my colleague Les Warner to begin today's webinar. Les.

Les Warner: Welcome everybody. It looks like we've got a pretty good-sized group. Before we dive into the material, I want to introduce Jane Miller, who's the deputy regional administrator, and she's going to make some welcoming remarks. Jane, you want to go ahead?

Jane Miller: Thank you. Good afternoon to everybody. Thank you for joining us this afternoon for these three days of training. You're going to learn a lot today and in the next two days about the new rule, the new Section 3 rule. And I really encourage you to participate in all three days and to engage in all aspects of the training.

You are all to be commended for the work that you have done to date on connecting Section 3 eligible residents and businesses with employment and contract opportunities. And we so appreciate that, but we want you to fully understand the Final Rule and how that affects you.

You will receive during this -- during the next three days several resources and tools that can help you as you implement the Final Rule. So I hope you'll find it beneficial. You have a great team here who will be instructing and engaging with you. I hope you enjoy the next three days. Thank you again for your attention.

Les Warner: Thank you. All right. So we've got really a pretty full three days of training, which hopefully will have you feel pretty comfortable about the regulations themselves, kind of having a plan of action for how to be -- how to get ready to be able to implement that.

It's really important -- once you see the agenda, you'll understand it's really important that you attend all three sessions because of the way this is laid out. You're going to need the information from that. So we will be at this same time tomorrow and Thursday, and I would just encourage you to make sure that -- try to be as engaged as possible on this.

So I want to do just a little bit of an overview of the training itself. And so, our objectives here are to make sure that everyone understands the new Section 3 rule, all the definitions and the requirements, but also to be prepared to be able to implement the rule.

So we have a lot of interactive opportunities that are planned over this three-day course. The goal is to try to support you, to make sure that you understand the rule, you begin to kind of be ready to go back to your communities, to your partners, and be ready to implement those new requirements.

And so, the plan, if I can get my slide to move -- there we go. The ways this course is going to be operated, we're going to have a number of knowledge checks. You might call them quizzes, which will kind of help to check and see if you're grasping some of those key points in the materials as we go along.

We'll also be stopping periodically for questions. And so, I would encourage you -- as we're going through materials and you have a question, I would encourage you to use the question-and-answer box. Plug in your question, and as we pause for the questions, we will then work our way through those. And since there are two trainers here, generally, the trainer who is not speaking will review those questions, try to make sure that we're prepared to be able to answer those when we get to those pauses.

As Jane mentioned, we're also going to be providing a number of tools throughout this, and we hope that those will serve as a starting point on you being able to finalize processes, forms, policies that you're going to need to have in place to be able to implement this rule.

One thing I'll just note, and we'll mention it as we go along, that the tools that are being provided as part of the daily materials that are sent out will be only available to you for a few days. So I would really encourage you to download those tools from the material link so that you have those, if those will be useful for you later.

Today, we will not have breakout sessions, but for the next two days we will be doing exercises. So we'll be working with sort of a case scenario and thinking through real life scenarios on how to implement the rule. So we'll be breaking into smaller groups. You'll be directed into these smaller groups. There will be about 12 people in those groups. We'll encourage folks to unmute, turn your cameras on. It's as close as we can get to being in a room together and being able to interact and share ideas as part of that.

So with that, I want to introduce the team. So Andelyn, do you want to do a quick introduction?

Andelyn Nesbitt Rodriguez: Yes. Hello. My name is Andelyn Nesbitt Rodriguez. I am from Columbia, South Carolina. I've worked with CDBG, HOME, Section 3, environmental reviews, and fair housing primarily.

Les Warner: Great. And I'm Les Warner. I'm with ICF. I've been with them for about 15 years. Prior to that, I headed up the state of Ohio's programs and was there for 20 years.

So we also have two volunteers from HUD who are going to be helping us in facilitating our breakout sessions. So Hidaia, do you want to introduce yourself?

Hidaia Salem: Hi. My name is Hidaia. I am with the FPM or Field Policy and Management Office at HUD based out of the Richmond field office.

Les Warner: Great. And then we also have Benita.

Benita Johnson: Good morning to some. Good afternoon to others. My name is Benita Johnson. I am with the HUD FPM Delaware field office, and we work under the auspices of region four through the Philadelphia Regional Office.

Prior to coming to FPM, I worked for CPD as a CPD rep for about seven years, and I've also worked for the Office of Public Housing and I did that for about four years. So I'm kind of new to FPM, but I look forward to moderating the session. And thank you for giving me the opportunity.

Les Warner: Great. All right. So in an effort to get to know just a little bit about the folks that are in the room with us, our virtual room, we're going to do a knowledge check or a poll to start out. So as we read out the questions, if you'll click on your answer and then hit the submit button, and we can kind of go through these relatively quickly.

So our first question is, what type of assistance do you receive? Public housing financial assistance, housing community development, and that includes things like CDBG, HOME, Housing Trust Fund, ESG, or other? If you'll click on your answer and hit the submit button.

All right. So we've got kind of a nice mix here of folks with public housing assistance and housing community development. As we go through the training, you'll see that we will be pointing out -- in some cases we -- the rule is going to be the same for both streams of funding, but in other cases we have different definitions, different requirements. And so, we'll be making a point of calling those out as we go through this training.

Our next question is, how knowledgeable you are about the old Section 3 rule, so the Part 135, if you'll mark your answer and hit submit.

Okay. And so, we've got a mix here. Some of you are saying we're feeling knowledgeable on this. Others are not knowledgeable at all, and some folks are in between. So we're going to try to make sure that for some of you that are knowledgeable, this is a refresher and thinking about how do I apply what I know. In other cases, we're helping you build that initial knowledge on Section 3.

And then so, our second question then is about the new Section 3 rule, which is Part 75. And again, we're asking about knowledge levels.

All right. So I think more folks here feeling like they're not up to speed on the new rule. That's completely expected, I think, on this and the reason for this training series.

All right. So here's our preview of how this will roll out. And this is why I was explaining that it would be important to participate in all three sessions.

So the bulk of today's session we'll be going through the basics, so understanding the basics of the new Section 3 rule. On the second day we'll then be sort of switching gears and thinking about how to plan for and implement the new requirements. And then our final day will be spent looking not only at program oversight, our Module 3, but then we'll end our session with Module 4, looking at what the reporting requirements are and the evaluation on the program. So that's our plan for the modules.

As I mentioned, the Section 3 rule applies to both public housing financial assistance and also housing and community development programs. And so, in a number of cases, we have a different rule or different definition that will apply. And so, we're going to be using these icons throughout the training and calling these out.

So that will hopefully help you identify, okay. Since I'm doing HCD funds, this is the definition that applies to me versus what the public housing financial assistance requirements would be. So look through -- look for those as we go along. So essentially, public housing financial assistance will be following Subpart B of the Section 3 rule, and the HCD funds will be following Subpart C.

All right. So as I mentioned, each day you will be receiving an email with a linkage for the materials for that day. So hopefully, everyone on this call has already received that information. If not, if you will use the chat box and send a message to the host, Medora, she will then help get that sent back out to you.

And so included in today's packet was the PDF of the slide handouts, which hopefully will be useful in taking notes as we go along and then our first tool, which is a summary kind of a side by side of the old rule versus the new rule and then the exercises that we're going to be using as part of this training series. We won't be doing an exercise today, but we are going to be asking you to try to preview that material in preparation for tomorrow's session.

So a little bit about how to make the most effective use of this training series. As I mentioned, it's not a quick one-hour webinar. We're going to be working on this for multiple days. So anything you can do to minimize distractions, turning off phones, shutting down other programs will help not to have other interactions or interruptions that are happening.

We'd also really encourage you to participate in the knowledge checks, to participate in the exercises. I think the more engaged you are, the more you can kind of work through the process of, okay. How will I apply this? The questions that you may have or others may have, I think, will help fill in some of those blanks and make this as effective as possible.

I will also ask folks to be a little bit patient. I think having worked as a grantee for many years, I tend to think go immediately to implementation questions. And as I mentioned, we're first going to go through the rules and the definitions and then move into planning and implementation. So we may need to ask you to hold some of those questions until we get to that next module where some of that detail would be provided as part of that.

We will be starting on time on the next two days. So if possible, please try to make sure that you are able to join us on time for those future sessions.

So we're going to dive into Module 1 and take a look at the requirements. So in this module, we're going to be kind of walking through the new rule, which is the Part 75 of the Code of Federal Regulations. The old rule, you may recall, is Part 135. So we're going to be talking a little bit about the history of this, identifying the programs that are covered on this, and then talk a bit about what's the purpose and goals of the Section 3 rule.

So Section 3 is a provision of the Housing and Urban Development Act of 1968, and the purpose is to make sure that, where there are opportunities for employment and other economic benefits that are being generated from these HUD financial investments, that -- and you'll hear us use this term to the greatest extent feasible and we'll explain why that's included. We want to make sure that they are directed to low and very low-income persons, when possible.

And so, when I mentioned about to the greatest extent feasible, also keep in mind that you have to still remain consistent with the overlay of federal, state, and local laws and regulations that may apply. So in some communities, you may have some limitations on what you are able to do based on those other requirements that might be in place.

So we're trying to make sure that, when possible, we're directing benefits to low, very low-income persons and in particular to recipients of government assistance for housing and to business concerns that are providing economic opportunities for low and very low-income persons.

And this really comes down to the fact that we have each year billions of federal dollars that are being invested in distressed communities across the country. And those are for building, rehabilitating housing, making infrastructure improvements. And we want, as part of that, to specifically help the families in those areas to achieve some stability and some advancement.

And so, really the goal of Section 3 is to try to make sure that those linkages with these larger projects, we're seeing those benefits, when possible, directed to those recipients. So we're trying to keep the Section 3 dollars local and help foster economic development, neighborhood economic development, and individual self-sufficiency. And we're going to be walking through the ways that that can be done.

So I always think it's kind of helpful to know a little bit about where did this regulation come from? What was the impetus for this? So many of you are probably way too young to remember, but in the summer of 1967, there were 159 race riots across the country.

I remember that as a child, President Johnson, LBJ, was president at the time, and he commissioned the Kerner Commission to look into what were the root causes of the civil unrest, and then they were tasked with coming up with proposals on how they could try to address that.

And so, the Kerner Commission issued a report. And unfortunately, what was in the report sounds really familiar to us today. They found that some of the causative factors were things like inadequate housing, high unemployment, inferior schools, wealth inequality. And so, we are still challenged with these same issues, unfortunately.

So here's a little bit about sort of the evolution from 1968 until now. So as an outgrowth of the actions of the Kerner Commission, the Housing and Urban Development Act was enacted in 1968. The original statute had the objective of providing employment opportunities for low-income persons in connection with projects involving housing construction and rehabilitation, and it was only directed to privately owned housing developments.

So a number of changes have been made then. Since that point in 1969, it was expanded to include other HUD programs. 1974 the CDBG Community Development Block Grant program came along. So that was also added to the requirements. It was amended in 1980 to include some location, preference specifics, and then an interim rule in 1992 or '4 was to establish some standards and procedures as part of that. So that's sort of the background history before we got to the new rule.

So in April of 2019, we had the publication of the proposed rule. Our comment period, of course, was next, and that closed in June of 2019. Then we completed the process of completing the reviews, finalizing the rule, going through internal clearance and OMB review.

And so, the Final Rule was published in September, September 29th of 2020, and it has an effective date. And we'll keep -- you'll keep hearing us use this specific date, the effective date of November 30th, 2020 and then, secondarily, a July 1st, 2021 compliance requirement for those regulations to begin. And we're going to talk through in detail what we mean by that and what the implications are for that.

There we go.

So want to pause for a moment just to get a little bit of sense of the intent of Section 3, starting with the language from 1968. It's -- the goal is, through employment and other economic opportunities, to try to improve the lives of our target recipients, which would be low-income individuals, and trying to improve not only the neighborhoods they live in but also create opportunities for jobs, for training, for business ownership as part of that. And that's really with the idea of trying to lift people out of poverty, allowing for self-sufficiency, and that's through employment, training, and business opportunities.

And you're going to see that's the key as we go along through these requirements of what we're trying to track and measure and create linkages to make some of that possible.

So the opportunities that are being generated by the federal financial assistance have a whole team of folks who are implementing these. And so, our Section 3 requirements are going to impact the role and the requirements for a whole number of folks.

Part of what we'll be talking about, particularly in our planning and implementation phase, is how do we make sure that each of these partners understand what the new rule requires, what their role and responsibility is going to be in that, and making sure that we have systems in place to work with that.

So obviously, HUD recipients are going to be impacted by the Section 3 rule, but we also need to make sure our subrecipients or contractors, subcontractors, builders, non-profits are also brought up to speed on the new Section 3 rule and what our plan is, what our process is going to be on that.

There are thresholds in place. So we're going to be walking through how we determine when Section 3 applies, not only based on the program, but also based on whether the trigger -- the threshold has been triggered for Section 3. So a threshold is essentially a minimum dollar amount that has to be in place to trigger those Section 3 requirements.

So the obligation to meet the Section 3 rule can be challenging for folks, and I think everyone right now has a lot of obligations. And so, we want to make sure that folks are prepared for this.

So the rule states, as I mentioned, to the greatest extent feasible, that employment and other economic opportunities need to be directed to low and very low-moderate -- low-income individuals. And so, as -- pretty much as we do with everything with our HUD regulations, we need to make sure that we are creating documentation so we have a paper trail to be able to show the due diligence we completed on this and so that we are able to document and verify that we are following the provisions of the Section 3 requirements.

So we're going to be talking about and providing examples of actions that grantees and public housing agencies can do to help meet those new benchmarks, and that -- they'll -- we'll be talking about things like providing Section 3 assistance to Section 3 workers to help them not only identify where there are potential job opportunities, but we might be providing -- working directly or with partners on providing resume assistance, job coaching, those sorts of things.

We might be working to ensure that there are job fairs or other ways that we can engage with local residents to make sure that they are aware of the opportunities as they become available on that.

So let's talk a little bit about the goals and why there was an update to the rule. So it had been really quite a while since we've had any substantial changes or updates to the rule. And the feeling really was that it probably was not as effective as HUD believed that it could be.

And so, the new rule published updates in -- and kind of changed the program in some key ways. It creates a more effective incentive for employers to retain and invest in low and very low-income workers.

So for those of you that worked with the old Section 3 rule, you know that our focus was on new hires on jobs that were being created. And you'll see as we go through this that there's a shift in looking at the overall workforce and then being able to track over time workers that qualify as Section 3 or targeted Section 3 workers either currently or looking back to the date they were hired. So there's an incentive to bring into the workforce and keep in the workforce qualifying workers

You'll also see that the metrics that are being created are a little bit more focused and hopefully kind of streamlined in what the collection and the reporting requirements are going to be. And I think you'll see that in some cases it's going to align with some of the information you're already collecting.

For instance, we're going to be talking about a lot of our projects are probably already triggering Davis-Bacon requirements, and so, some of the metrics with the information that we're already tracking can be probably used for both requirements.

The new rule also provides some program specific oversight. And so, it really -- you'll see as we're talking about this, it really incorporates Section 3 into the individual programs and makes oversight of Section 3 more of a programmatic requirement.

And it also helps to clarify what the obligations are for all of the entities that are covered by Section 3 as part of this. And really the changes, the goal of this is to increase compliance with the Section 3 goals and also to reduce the regulatory burden.

So I would think that most all of you are going to be thinking, okay. I've got a whole portfolio of projects and funding. How do I -- what is this going to apply to? And so, for projects that were funded or contracts that were executed prior to the effective date, which we said is November 30th, 2020, those projects, those contracts are going to be what we call legacy projects. So they're going to stay. They're going to follow that old Rule 24 CFR, Part 135.

And so, if I had a project that I funded prior to November 30th, 2020, it's still under way. It's still going to follow the old rule. We're not going to change the rule midstream for that project. And so, it's based on when the funds were committed to that project or when contracts were executed. So for those projects, we're going to continue to follow the old rule, maintain the documents in place to show -- to be able to demonstrate compliance. But you're no longer going to be required to report into the SPEARS system for compliance on those legacy projects.

The other group that we would have would be projects that we committed funds to the project or executed contracts that were on or after the effective date of our new rule, which was November 30th, 2020 through July or up to July 1st of 2021.

So because the commitments were made on or after the effective date of the new rule, they are going to need to apply the new rule, Part 75, and have records in place to be able to demonstrate compliance. But again, we're not going to start the reporting requirements for those transition period projects.

Now, I will mention here and as we go along, we're starting to have notices that are being issued by programs that have a little bit of information -- further information from each of the programs. So the Office of Block Grant Assistance has issued CPD Notice 21-09, which is providing further clarification on reporting into IDIS or DRGR, and that's going to be for open activities. That reporting will start on July 1st, 2021 or has started at that point. That's going to be at the completion of projects.

So let's talk about the first summary or the tool that's being provided. And it's simply, we'll just kind of do a brief overview of this, but you may want to go back and look at this. So this really provides a side-by-side comparison of the new rule versus the old rule.

So the old rule, for those of you that aren't really familiar with it, the focus was on new hires and also contracting to Section 3 businesses. So we had benchmarks were 30 percent for -- of the jobs that were being created would be held by Section 3 residents. There also was a contracting or contracting goals of 10 percent for construction contracts and 3 percent for non-construction that would be awarded to Section 3 businesses.

The other thing that's really different here is that the old rule didn't have any methodology to be able to change those benchmarks over time. So with our new rule -- and we'll be talking about this in great detail -- our new benchmarks are looking at the total overall workforce.

And our goal is that 25 percent of all the labor hours that are being performed for that project or under a contract are going to be performed by a Section 3 worker. We'll go into the definition on that, the time period that that's going to be counted for. And then secondarily, we have a goal of 5 percent of all of our labor hours being performed by targeted Section 3 workers.

The other key difference here is that there is, in this new rule, a methodology for those benchmarks to be updated over time, and we'll be talking a little bit more about that as we go forward.

All right. So with that, I'm going to hand things over to Andelyn.

Andelyn Nesbitt Rodriguez: All right. Thank you, Les.

The next section of the training, we're going to dive into the Final Rule. We're going to cover definitions, program applicability, thresholds, safe harbor provisions and benchmarks, and we're going to review how to handle projects that involve multiple sources of funding. D

During our review of the Final Rule, as Les mentioned earlier, please take note of the different icons that are going to be used for public housing financial assistance and for housing and community development financial assistance. There are a few key differences in definitions, program applicability, thresholds, and reporting which we'll cover in Module 4.

So first, we're going to go through some key definitions in the Final Rule. So which programs are covered under the Section 3 Final Rule? Here's a list. We tried to get as many of the programs as possible on this list.

Section 3 recipients are entities that receive funding for these programs directly from HUD. Public housing, CDBG. This includes special allocations such as DR, MIT, and the Recovery Housing Programs, for those that received that funding. This includes HOPWA and ESG, the RAD program, 202 and 811 grants, and also new programs too, like HOME-ARP and CDBG-CV.

There are two notices, as Les mentioned earlier, that CPD has published, one for the OBGA programs, the Office of Block Grant Assistance programs, and one for the HOME and HTF programs.

So for OBGA, the Notice -- CPD Notice 21-09, and that was published August 30th of 2021. For HOME and HTF, it's CPD Notice 21-07, which was published July 15th of 2021.

Keep in mind that Section 3 isn't always triggered in all cases with all of these programs. There are threshold requirements for housing and community development projects and specific details that determine applicability that we'll go into a bit later.

All right. So defining a Section 3 project. On the housing and community development side, Section 3 applicability is determined on a project basis. In this case, only construction related projects are subject to the requirements. So what's a housing and community development project?

Well, the definition is similar to other HUD programs, such as the HOME program. A housing and community development project is a site or sites combined with any building or buildings and improvements located on the site or sites that are under common ownership, management, and financing. We'll come back to this definition a lot over the next three days. It's really helpful when you're trying to figure out whether Section 3 applies or not.

Section 3 applies to housing and community development projects that are fully or partially funded with HUD financial assistance that exceed the applicable threshold, and we're going to review the thresholds later in this module. The source of other funds in a housing and community development project, state, local, private, doesn't matter. The use of HUD funds doesn't matter as long as the activity undertaken, construction, rehab, or public construction is involved in the project, then Section 3 would be triggered as long as it meets the threshold.

In contrast, Section 3 applies to all public housing financed funds -- financial assistance funds, regardless of the amount. For public housing, once you're $1 in, Section 3 is triggered there.

All right. So a key change in the Final Rule is the introduction of a couple of new terms related to the people benefiting from Section 3 employment and training opportunities.

The first is a Section 3 worker. So there are three criteria that, if documented as currently true or true upon hire within the past five years, qualify someone as a Section 3 worker. So a Section 3 worker is a low or very low-income person, which means that the worker's income for the previous or annualized calendar year is below the income limit established by HUD, which is 80 percent AMI.

Note that the residential address of the worker is used to determine Section 3 worker income limits. Therefore, you would utilize the income limits for the MSA in which the worker resides to identify the income limits and determine eligibility.

A Section 3 worker could also be employed by a Section 3 business concern, which we'll define in a few minutes, or a Section 3 worker could be a YouthBuild participant. One note on the "within the past five years" term. Because the Final Rule was effective November 30th of 2020, for the next four-ish years, applicability -- the applicability is actually hired after November 30th of 2020.

Once we hit December 1st of 2021 -- 2025, then we can look back at the five years -- at the hires that were made in the last five years. If someone was hired before November 30th, 2020, they would need to currently meet one of the listed categories.

All right. The other new worker related definition is for people who receive priority under Section 3, referred to as targeted Section 3 workers. Targeted Section 3 workers are a subset of Section 3 workers. So some Section 3 workers are targeted Section 3 workers.

Remember how we mentioned that some provisions are different for public housing funds versus housing and community development projects? This is one of the definitions that varies between the different programs. So note that icon in the upper right-hand corner of the slide.

For public housing financial assistance, a targeted Section 3 worker is any worker who is employed by a Section 3 business concern, which we'll talk about what a Section 3 business concern is in just a minute, or a targeted Section 3 worker under public housing financial assistance is a worker that currently fits or, when hired, fit at least one of the three listed criteria as documented within the past five years.

A targeted Section 3 worker is a resident of public housing or Section 8 assisted housing. A targeted Section 3 worker is a resident of other public housing projects or Section 8 assisted housing which is managed by the PHA that's providing the assistance, or a targeted Section 3 worker is a YouthBuild participant.

For public housing financial assistance, a targeted Section 3 worker is defined in Subpart B of Part 75 regulations. Subpart B refers to additional provisions for public housing financial assistance.

All right. And note again that icon in the upper right-hand corner has changed again. Now, we're talking about targeted Section 3 workers for housing and community development funded projects.

So for Section 3 projects that include housing and community development financial assistance, a targeted Section 3 worker is any worker who is employed by a Section 3 business concern or any worker who currently fits or, when hired, fit one of these listed categories as documented within the past five years.

They are living within the service area or neighborhood of the project, as defined in 24 CFR 75.5, which we'll talk about on the next slide what a service area or neighbor of the -- neighborhood of the project is. And a targeted section three worker could be a YouthBuild participant.

For housing and community development financial assistance, a targeted Section 3 worker is defined in Subpart C of Part 75 regulations, which refers to additional provisions for housing and community development financial assistance. Remember, targeted Section 3 workers are a subset of Section 3 workers. So some Section 3 workers are also targeted Section 3 workers.

All right. So we just mentioned that for housing and community development projects, targeted Section 3 workers may live within the service area or the neighborhood of the project. So what does that mean?

The service area or neighborhood of the project is defined as an area within one mile of the Section 3 project, or, if fewer than 5,000 people live within one mile of the Section 3 project, then the service area or neighborhood of the project is within a circle centered on the Section 3 project that encompasses a population of 5,000 people, and that would be according to the most recent U.S. Census.

So looking at the image that's on this slide, this graphic illustrates an example of how we would determine the service area in a more rural community or area with low populations. There are three concentric circles with the project location at the center.

In this example, the inner circle, that orange circle, is a one-mile radius around the project work site. And let's say, for example, that it encompasses a population of only 1,000 people. So we need this circle to encompass 5,000 people in order for it to be counted as the service area or neighborhood.

So the second circle, the gray circle, shows a 25-mile radius around the project site, encompassing a population of 2800 people. We still haven't hit 5,000 yet. So we need to look a little farther out.

The third ring, that blue ring, shows a 50-mile radius around the project site, and it encompasses a population of 5,000 people. So this image shows that, if fewer than 5,000 people live within a project neighborhood, for example, in rural areas, then the project service area can be expanded to incorporate more people within the service area. And you're trying to reach 5,000 people within that service area.

If the inner circle encompassed 5,000 or more people, then that would be the service area. If the inner circle encompassed a population of, let's say, 50,000 people in a dense city like San Francisco, that would still be the service area. It would still be that one-mile radius.

All right. So we've just finished talking about the two different definitions of a targeted Section 3 worker. So let's highlight where those definitions are similar and where they're different.

So for public housing assistance, a worker could qualify as a targeted Section 3 worker if they currently or when hired was a resident of public housing or other public housing projects or Section 8 housing -- assisted housing.

For projects funded with housing and community development assistance, a worker could qualify as a targeted Section 3 worker if they currently or when they were hired lived within the service area or the neighborhood of the project.

For both cases, a worker could qualify as a targeted Section 3 worker if they're employed by a Section 3 business concern or if they're a YouthBuild participant. And we're going to talk about what YouthBuild is in just a few slides.

So this graphic shows three circles demonstrating the subset of a Section 3 workers and targeted Section 3 workers within the universe of workers. So the largest external, that dark blue circle, represents all workers, the whole universe of workers. The midsized or gray circle represents all Section 3 workers, and the smallest, that light green circle, represents targeted Section 3 workers.

So this illustration goes to show that targeted Section 3 workers are contained within the Section 3 workers. They are there also Section 3 workers. So a targeted Section 3 worker is a Section 3 worker, but a Section 3 worker is not necessarily a targeted Section 3 worker.

All right. So now, we're going to discuss projects that include multiple funding sources, specifically here, how to define a targeted Section 3 worker when multiple funding sources are involved.

For projects funded with multiple types of assistance, including both -- that include both public housing and housing and community development funds or multiple funds of housing and community development funds -- multiple kinds of sources of housing and community development funds, recipients will need to follow Subpart D, 24 CFR 75.29, which outlines how the targeted Section 3 workers should be defined for projects, including public housing assistance and HCD financial assistance and, again, multiple sources of just HCD financial assistance.

In cases where the Section 3 project is assisted with public housing financial assistance and housing and community development financial assistance, the recipient must follow the targeted Section 3 worker definition in Subpart B of Part 75 for the public housing financial assistance. They have to follow Subpart B of Part 75 for the public housing financial assistance, and they may either follow Subpart B or Subpart C of Part 75 for the housing and community development financial assistance.

So in cases where Section 3 project is assisted with multiple sources of only housing and community development financial assistance, the recipient must follow the targeted Section 3 definition in Subpart C.

So if a project has public housing financial assistance, then you must follow Subpart B of Part 75. If it has only housing and community development financial assistance, you must follow

Subpart B of Part 75. But for projects that have both public housing and HCD financial assistance, you must follow Subpart B for the public housing financial assistance, and you can follow either Subpart B or C for the housing and community development financial assistance.

So a best practice for Section 3 includes that, for projects that have both public housing financial assistance and housing and community development financial assistance, a best practice is to follow Subpart B to maintain consistency for reporting purposes.

All right. So one more definition, and then we're going to get to test what we've learned so far.

So another key change in the definition of a Section 3 -- another key change in the rule is the definition of a Section 3 business concern, and you've heard us use this term a couple of times this morning.

Section 3 Business Concern is a business that meets at least one of the following criteria that's been documented within at least the last six-month period. So a Section 3 business concern, at least 51 percent owned and contributed or controlled by low or very low-income persons. A Section 3 business concern, over 75 percent of the labor hours performed for the business over the prior three-month period were performed by Section 3 workers at the time that it's being documented,

And a Section 3 business concern is a business that at least 51 -- is at least 51 percent owned and controlled by public housing -- current public housing residents or residents who currently live in Section 8 assisted housing. So if any one of those criteria is met, then a Section 3 business concern could qualify.

A key point of the revision -- of the revised definition reflects the change from counting new hires to counting labor hours. This definition change also increases the threshold of work performed by businesses; low and very low-income workers. In the new definition, there's a focus on full-time, long-term sustainable employment versus part-time, short term seasonal work.

All right. And now, it is time for a knowledge check. Les.

Les Warner: All right. Great. So Medora's going to open up our polling questions.

And so, our first question, knowledge check here is, we have a Section 3 worker -- and this is a true or false. A Section 3 worker is any worker who currently fits or when hired within the past five years, fits at least one of the following categories as documented. So our options are the worker's income for the previous or annualized calendar year is below the income limits established by HUD, the worker's employed by a Section 3 business concern, or the worker is a YouthBuild participant. Is this true? Is this our definition for a Section 3 worker?

Excellent. There we go. So this is true. So we have three options here. You only need -- the worker only needs to qualify under one of these options. So it could be based on their income.

Could be based on being a -- they're a YouthBuild participant or being employed by a Section 3 business concern.

And I'll just mention -- reiterate again on the income qualification, if they were hired after November 30th, we could evaluate it based on when they were hired or their current status, and so, as we go along over the years, we will eventually have that full five years to look back to their original hiring date. But for right now, because it's a new rule, we are -- we can only go back to the effective date of the rule, which is November 30th, 2020.

All right. Our second question. States, local governments, and PHAs are entities that could be Section 3 recipients, so entities that could have Section 3 requirements apply to them. True or false?

So this is true. I think our use of the word recipient may be a little different than we tend to think about in some of our program rules, but we're essentially saying that a recipient is any entity that directly receives public housing financial assistance or housing community development assistance. And so, because those funding streams are covered by Section 3, then you could be a Section 3 recipient.

We are going to be talking about thresholds. And so, in some cases, even though you are receiving these funds, it might be that your project is not triggering the Section 3 requirements.

All right. Our next question. A targeted Section 3 worker is defined the same for projects funded with public housing financial assistance and HCD financial assistance. Is that true or false?

So we do have this as false because we do have different definitions. And so, if you looked back at Slide 30 and 31, I believe, for our public housing assistance, we're looking at primarily residents in a public housing project or being assisted with Section 8 housing assistance, whereas for the HCD funding, we're looking at that service area that Andelyn was talking about.

And I think the thing to keep in mind here, so, when Andelyn talked about projects with multiple funding sources and if we had both PHA and HCD funds in the same project, the option to align and use Subpart B for all of our reporting. If we don't align, then we have two different definitions for targeted Section 3 workers. So when we're asking a contractor to report to us, they're going to have to look at the same pool of workers and report using two different sets of definitions, which could be a little confusing, and that's why we have a best practice of choosing to align those.

All right. Next question. This is about Section 3 business concerns, and it's a true or false. A Section 3 business concern is a business that meets at least one of the following criteria documented within the last six months, at least 51 percent owned or controlled by low or very low-income person, over 75 percent of labor hours performed for the business over the past prior three-month period are performed by Section 3 workers, or a business at least 51 percent owned or controlled by a public housing resident or resident served by Section 8 assisted housing. True or false?

This is true. This is our definition for Section 3 business concern. So as we go forward and are trying to think about, well, how do we qualify folks, we'll have to apply that criteria to each of those businesses to determine whether they qualify as a Section 3 business concern.

All right. Andelyn.

Andelyn Nesbitt Rodriguez: All right. Thank you, Les.

Now, the low and very low -income limits. Low and very low-income limits are defined at -- in the Housing Act of 1937. The Section 3 income limits are used to determine eligibility for the purpose of Section 3, and income limits are established by HUD on an annual basis.

Limits are established at 80 and 50 percent of the area median individual income, so not the family income or household income that a lot of us are used to working with. This is the individual income. It's the individual income threshold that is considered for determining low-income eligibility under Section 3 and just absolutely does not take into account household size.

Note that Section 8 income limits are different than the income limits established for CDBG or HOME, and the effective date of the income limits are different. The Section 8 income limits typically have an earlier effective date, around April 1st, than what would be the effective date for HOME and CDBG.

The residential address of the worker is used to determine Section 3 worker limits. Therefore, you would utilize income limits for the MSA in which the worker resides to identify income limits and determine eligibility. I know I mentioned that a little bit earlier, but just want to make sure that's understood.

HUD income limits can be found at the website shown here on the slide, and you can also do a search for your locality's income guidelines.

All right. We've mentioned YouthBuild a number of times. So this slide, it should be noted this is for informational purposes. One of the qualifications of a Section 3 worker and targeted Section 3 workers includes participation in the official YouthBuild program. YouthBuild as an academic or occupational skills training program that serves youth ages 16 to 24 who have dropped out of high school or previously dropped out and re-enrolled.

The criteria for individuals between the ages of 16 and 24 to become a YouthBuild participant are they should be -- they would be a member of a low-income family and/or a youth in foster care, including those who are aging out of foster care. They could be a youth or adult offender, a youth with a disability, a child of an incarcerated parent, and/or a migrant youth.

They must have dropped out of school. Even if they subsequently enrolled, they must have at some point dropped out. In Module 2, we're going to discuss what documentation is necessary to qualify as a YouthBuild participant under Section 3 for both Section 3 workers and targeted Section 3 workers.

All right. And now, it's time for Q&A.

Les Warner: All right. So we only have a few questions in our box. I'm going to assume that's because Andelyn and I have done such a bang-up job that we've made everything really clear. So a couple of these I'm going to defer a little bit because they actually are about information that we're just about to jump into once we get past the Q&A.

So we have a question about, "How do we define public housing assistance?"

And we're going to go into the details on that. So if we don't give you what you need on that, put that question back in, and we will jump back in on that.

There is a question about, "Is a Section 3 plan a requirement?"

So when we get into Module 2 tomorrow, we're going to be talking in greater detail. But the short answer here is that a Section 3 plan is not a requirement as it was under the old rule. But I think as we go through the discussion, you're really going to see that you, as a recipient of funds, need to have a plan in place, how you're going to implement the rule, who's going to be responsible for what?

And then we're going to be talking a lot about, how do we make sure that all these partners, whether that's subrecipients or contractors, subcontractors, that they understand what the requirements are, what their roles and responsibilities are. So I think to some extent, whether you call it a Section 3 plan or you sort of just call it policies and procedures, you are going to need to have something in place to make sure that you're going to be able to implement the new rule and work towards compliance on this.

So I'm going to add in a couple -- we have a couple of questions that are really common that relate to the information that we've gone over, and I thought it might be helpful just to revisit those.

So we oftentimes get questions about -- Andelyn went through our definition of a project, and I want to give some examples on kind of applying that. So a lot of times we'll have people asking questions about their -- they might have a homeowner rehabilitation program. And so, they're wondering, well, do I look at the cumulative amount for that?

So let's look at -- let's say I -- and I'll use a state for example because that's my background. We might have a state that was funding a local community. Let's say $500,000 to run a homeowner rehabilitation program, and maybe they're going to do 40 houses. And I'm pulling these numbers out of my head. So how those actually calculate out to averages, don't test me on that.

So the way we determine whether the Section 3 threshold applies is looking at individual projects rather than the program that we have funded. And so, when we look to our definition on project, which is common ownership, management, and financing, in the case of our homeowner rehabilitation program, we have maybe 40 individual homeowners that have applied. So each of those is independently owned. So each of those is a separate project. So when we are applying that threshold, we're going to be applying it on a project-by-project basis rather than on the overall program.

As a different example, maybe we have -- let's say, under the HOME program, we are providing $500,000 again. We're providing it to a CHDO, and they are going to be -- let's say they're going to purchase and rehab and resale units as part of their homebuyer program.

In that case, we have common ownership. The CHDO owns these units. They're going to manage them during the construction period before they sell them, and the financing, if they came in and we funded them for these 10 units, then that is all one project. So when we apply the threshold test to that, our definition of what we're looking at as a project is all 10 units because we're applying that definition and we have common ownership, management, and financing under that.

The other example I will just throw out there is we sometimes have where we do a couple of phases of a project. So maybe the CHDO is going to be developing new single-family housing. They know under the HOME program that they have a limited time to sell those units. So they've decided that the market can only absorb 10 units right now. So they're doing a 10-unit project on a -- it's a common owner, common management, but they've gotten financing for 10 units. So that's a project.

When they come back in after completing that first project and say, we want to build 10 more units, same owner, same manager, but in this case, it has separate financing from those first 10 units. Those are two separate projects, and so we're going to need to be able to apply that definition as we move forward on that. We'll probably revisit that a couple of times.

I think most of these I'm going to defer.

On this -- one other thing I'll just mention. Andelyn has talked about income and the fact that we can qualify a Section 3 worker based on their current income, or we have this essentially a look-back period to the date of higher.

So for instance, if I, as a worker for a company, my current salary would not -- it would exceed what would be income eligible -- if I was hired on November 30th or more recently, we could look back to the income that I had at the date I was hired.

So maybe, even with a union position, I might have been hired as an apprentice on this job for this company. And so, I was at a lower rate, which I would qualify as a Section 3 worker. I'm then able to continue to count from the point that I was certified for five years, and so, that helps us with this sustainability that that same worker, they don't have to remain income eligible, but at the point that they were hired, if they qualify, we're able to continue to count them.

I will just point out that we are really used to only looking at -- when we look at income qualifications, we look at that worker in the context of family or household, if we're dealing with housing. And so, for Section 3, we are simply looking at the individual. So we are not then saying, okay, but how many other family members are there? What other income is there and needing to count that? We are strictly looking at that. And you'll see as we then talk later about documentation, that then allows the employer to be able to document and certify a Section 3 worker because they have the income information for that particular worker.

All right. I think we're going to go ahead and keep moving and thank you. We had a reminder of there's like a secret language of HUD funding with so many acronyms, and we'll try to make sure that we spell those out. And I actually will ask the same of folks. We oftentimes get questions about different funding sources and they give us acronyms and we sometimes have to ask the same question.

All right. So let's move -- let me close this. Forward. Oh, I may not be -- there we go. I am now the host. It's a matter of being able to move -- control and move slides. There we go.

All right. So we're going to go back in and look more at the applicability of the Section 3 requirements and also the thresholds and benchmarks that we've been referencing.

So here's our more detailed discussion for PHA funding on what's going to count. So this is going to apply when we're using development assistance, operating funds, capital funds, all of your mixed financial developments on that, also programs that are incorporating -- that are incorporated through the NOFA process, and that would include RAD and Jobs Plus, the ROSS Program, Choice Neighborhoods.

So as Andelyn mentioned, this is going to not have a threshold in place. And, Andelyn, I'm actually taking your slides, aren't I?

Andelyn Nesbitt Rodriguez: You are. You are.

Les Warner: Okay. I'm going to let you do that then.

Andelyn Nesbitt Rodriguez: Okay. All right. Thank you.

So yes. For -- this part is about applicability and thresholds, and we're going to go right into public housing financial assistance. If you'll note our icon on the upper right-hand corner, we're talking about public housing financial assistance now.

So public housing financial assistance Section 3 applies to development assistance, operating funds, and capital funds for mixed finance development projects. Section 3 applies to entire projects, regardless of whether the project was fully or partially funded with public housing assistance.

Other applicable housing funding that incorporates Section 3 requirements through the NOFO or NOFA process include, but are not limited to, the RAD program, which I know this was one of our questions in the Q&A today, Jobs Plus, FSS, ROSS, and the Choice Neighborhood programs.

For public housing financial -- and I apologize for all those acronyms. Those are different names of programs, and I don't -- I couldn't spell them all out either. But if you work with those programs, then you likely know what those are.

For public housing financial assistance, there are no thresholds under Section 3. That means that all funding is covered, regardless of the amount of expenditure or the size of the contract. So for public housing, $1 in and section three is triggered.

All right. Now, we're going to discuss housing and community development financial assistance and applicability and thresholds there.

So for housing and community development financial assistance, Section 3 applies to housing rehab, housing construction, or other public construction. Note that demolition projects are covered under the requirements of Section 3.

Other public construction includes infrastructure work, such as extending water lines and sewer lines, sidewalk repairs, site prep -- preparation, and installing conduits for utility services. All of those things are included in the other public construction projects.

So for housing and community development assistance, Section 3 requirements apply if a project exceeds $200,000 of housing and community development financial assistance funds. That can be from one or more sources. So if you have some CDBG and some HOME in a project, if it equals more than $200,000, then Section 3 would be triggered there.

Keep in mind that the applicable projects for housing and community development assistance again include housing rehab, housing construction, and the other public construction that exceed $200,000. And as you can see, for housing and community development financial assistance, applicability is determined on a project level. So that's really important to keep in mind there. It's not yearly or what you're reporting yearly. It is on a project-by-project level.

All right. So for lead, the threshold is met if the Office of Lead Hazard Control and Healthy Homes assistance equals -- exceeds $100,000. So neither HUD public housing financial assistance nor HUD housing and community development financial assistance are included in calculating whether the lead assistance exceeds $100,000. And conversely, the Office of Lead Hazard Control and Healthy Homes assistance is not included in calculating whether the assistance for the housing and community development assistance exceeds the $200,000 threshold.

So you take those dollar amounts that go into a project equally. They're siloed here, and if the funding from the Office of Lead Hazard Control and Healthy Homes exceeds $100,000, then that is triggered. And if the housing community development funds equal more than $200,000, then that is triggered. And if the public housing funds are more than $1, a penny, then that's triggered.

All right. Section 3 does not apply to material supply contracts. So these are contracts that don't require any labor. So for example, for -- a contract for office or janitorial supplies would not be covered by Section 3. Section 3 is encouraged but not required.

However, a contract to replace windows that includes the removal of the existing windows and installation of new windows would be covered due to the involvement of labor.

Also, Section 3 does not apply to Indian and tribal preferences. Contracts, subcontracts, grants, or subgrants subject to Section 7(b) of the Indian Self-determination and Education Assistance Act or subject to tribal preference requirements, as authorized under 101(k) of the Native American Housing Assistance and Self-determination Act, must provide preferences in employment, training, and business opportunities to Indian and Indian organizations, and therefore, are not subject to Section 3 requirements.

For other HUD assistance or other federal assistance not subject to Section 3, recipients are still encouraged to consider opportunities for supporting the purpose of Section 3.

All right. Section 3 project-based voucher. I know we got a question about that earlier as well. Section 3 -- a Section 8 project-based voucher or project based rental assistance housing assistance payment contracts are not covered by the statute, including properties converted through the Rental Assistance Demonstration or the RAD program.

So I hope that that answers both of the questions that we saw in the Q&A earlier in the question box.

All right. For projects that include the public housing financial assistance for the Rental Assistance Demonstration or the RAD Program, the transfer of housing stock from public to private ownership under RAD often incorporates upfront capital improvements, and this one-time activity is covered by Section 3.

There is also a RAD -- well, there's a notice revision that was published on September 5th of 2019. That's H 2019-09 or PIH 2019-23. There's also a RAD Section 3 guidance that's published on the RAD Resource Net to give you hopefully more information on that property's converted through the RAD program are covered by the same rules applicable to Section 8. However, the RAD governing notice does apply Section 3 requirements to those activities occurring after the date of the RAD conversion.

All right. And you're going to see this chart again and again throughout our training. We're going to continue to fill it in here. The third column shows that for projects including public housing financial assistance and housing and community development financial assistance, there is no threshold, as any project wholly or partially funded by public housing financial assistance does trigger Section 3.

In cases where projects include multiple sources of housing and community development assistance, the Section 3 requirements apply to Section 3 projects that exceed that $200,000 threshold.

And the threshold for Lead Hazard Control and Healthy Homes program grant is a project that exceeds $100,000. And again, neither the HUD public housing financial assistance or housing and community development financial assistance is included in calculating whether the lead assistance exceeds $100,000 -- that $100,000 threshold, and the lead assistance is not included in calculating whether the assistance for the housing and community development projects exceed the $200,000 threshold.

All right. And now, it is time for another knowledge check.

Les Warner: All right. So our first question is going to be popping up here. This is a true or false. So just close this.

So our first question is, if CDBG is being used in a project for housing rehabilitation, then the Section 3 rule does apply if the required threshold is met. True or false?

So this is true, and we have to think about CDBG is one of our covered programs. And then we know for HCD funds, those projects have to include housing rehabilitation, housing construction, or other public construction. So that is what this example is. And so, then we are applying that threshold. And so, if it exceeds $200,000, then we would be triggering Section 3.

All right. Next question. PHA has a contract to replace all the residential doors at one of their properties, and the contract includes the removal of all the old doors and the installation of the new doors. So this is a true or false. Section 3 does not apply because the contract is for the supply of doors, and so we're going to consider this to be a materials supply contract. True or false?

So this is false, and so we have to look at what the scope of work is for this, and so, we're told that it includes the removal of the old doors and the installation of the new doors. So it's not just a materials-only contract but also has construction as part of that. So it does not fit that exemption of a materials supply contract.

All right. Our next question. A public construction project includes financing from both ESG and CDBG. What subpart of Part 75 must be followed for defining a targeted Section 3 worker? Is it Subpart B or Subpart C?

So the answer here is Subpart C. And so, we know that both the Emergency Shelter Grant program and the Community Development Block Grant program are HCD funding sources, and HCD is always going to follow Subpart C except for in the exception when it was done in conjunction with public housing assistance and we talked about having the opportunity to be able to align.

All right. So our next question. For the same project, financing for -- from the ESG, Emergency Shelter Grant, totals $75,000, and then we have $100,000 in Community Development Block Grant funding. Is this a Section 3 project? Yes or no?

So this is not a Section 3 project. We have to apply -- we know this is HCD, housing and community development funding, and so we have a threshold where Section 3 is only triggered when it exceeds $200,000. So we have a cumulative total here of o $175,000. And so, Section 3 is not triggered.

All right. Next question. We have a PHA has only contributed $25,000 of capital funds to a project. Has the project met the required threshold under the Section 3 Final Rule? Yes or no?

So this is yes because public housing assistance does not have a threshold. So as Andelyn said earlier, $1 in is going to trigger on this, and so, we do have Section 3 requirements.

And then our last knowledge question here. Low or very low-income limits are determined annually by HUD, and for the purposes of Section 3, are typically established at 80 percent and 50 percent of area median household income. And this is a little bit of a trick question. I will just warn you. True or false?

So this one's false, and a bunch of you figured that one out. So the tricky part here is it refers to area median household income. And so, we said that for Section 3, we're going to be looking at individual income as opposed to household income. So that's probably not a fair thing, but it highlights an important thing that you need to know and remember.

All right. So I'm going to -- now, I'm actually supposed to be taking the slides from Andelyn.

All right. So as I mentioned, we're going to talk a little bit more about the safe harbor provisions and then the benchmarks, which we've been kind of hinting at.

So when we talk about being in safe harbor, what we're saying is that it's a presumption that you have met the Section 3 requirements and that you are in compliance. Now, we're always going to be noting here that that's in the absence of any evidence to the contrary.

So for instance, we might have met our benchmarks that we're going to be talking about. We might have completed our prioritization of effort, but maybe HUD does a monitoring and determines that we've used the wrong definition on what we counted. And so, in that case, we have evidence to the contrary, and so, we would not be in safe harbor.

So let's talk about what we mean by safe harbor. So to be in safe harbor, we need to have met or exceeded our Section 3 benchmarks. So we've got benchmarks we're going to be describing for both Section 3 workers and also for targeted Section 3 workers.

We also need to be able to certify that we have followed the required prioritization of effort, and we're going to be talking in more detail tomorrow and particularly tomorrow we'll go into the details on that prioritization of effort.

So the next question, I guess, really is, so, what if I don't meet those benchmarks? So we didn't hit the percentages that we're going to be talking about, which are quantitative. Are we just out of compliance?

We still have the ability to be considered to be in compliance if we have made qualitative efforts to try to assist low and very low-income persons with employment and training opportunities. So we would need to have evidence of our efforts on that.

And we're going to be talking in our last day about more specific examples of that, but I think we mentioned earlier about we might be assisting Section 8 job applicants to identify where those jobs were, maybe some coaching, resume building, those linkages. So these are all things that would be part of our potential qualitative efforts to assist low and very low-income persons with gaining employment and training opportunities.

So we need some additional definitions here to be able to then calculate compliance. So our key for the metrics that we're going to be collecting is based on labor hours instead of new hires. So we need to talk about what a labor hour is. And so, because of our focus being on full-time jobs sustained over a long -- longer period of time because we're wanting to work towards self-sufficiency, so, we're going to be looking -- counting on labor hours.

So we have two different definitions of a labor hour, depending on whether this is public housing assistance or it's housing and community development assistance.

So for public housing, we're going to be tracking this and reporting on a fiscal year basis. And we'll talk in more detail on our final day when we get to reporting, but the public housing agencies are going to be looking at hours that are worked by all workers that are being funded under the public housing assistance, and they're going to be doing this on a fiscal year basis.

For housing and community development, we're going to be looking at the total number of hours for that project. So not on a fiscal year basis, but the total. We might have a project that took 18 months to be completed. We're going to be tracking the total number of hours, total number of Section 3, and total number of targeted Section 3 worker hours to determine the benchmarks for that project.

So when we talk about benchmarks, we're first going to start with the public housing agency definition. So our benchmarks are that 25 percent or more of all of the labor hours -- so, when we look at this diagram with our concentric circles, our dark -- I don't know if it's purple-ish blue -- those are our total number of labor hours or larger circle for all of the labor hours worked for that project.

Within that then we're looking for our Section 3 qualifying workers and determining how many hours -- labor hours we can attribute to those workers, and we're looking for that to be at least 25 percent or more of our total labor hours would qualify as Section 3 workers. And for PHAs, again, it's going to be based on a fiscal year calculation.

Our second benchmark then is for targeted Section 3 workers, and we're -- our goal here, our benchmark is that 5 percent or more of all the labor hours are going to be completed by workers that are certified as targeted Section 3 workers. And Andelyn went through those definitions earlier on that.

So the math, we're simply dividing our Section 3 or our targeted Section 3 labor hours into the total labor hours for the project. And then our goals here or benchmarks are 25 percent for Section 3 workers and 5 percent for our targeted Section 3 workers.

All right. And then for HCD, similarly, we're going to be looking at the total hours for the project not on a fiscal year basis generally. And again, we have a goal of 25 percent of our labor hours being completed by Section 3 workers and 5 percent for targeted Section 3 workers. And we're going to be dividing those tracked hours into the total labor hours for the project to get those percentages.

Now, here's a little exception that can work as sort of a bonus on this. For our projects, we may have what we are going to consider professional service labor hours. So those would be non-construction services that require some kind of advanced degree professional licensing. So think architect, engineer, maybe accountant for a project, and these are non-construction services.

So we are not including those labor hours in our calculation of total labor hours for the project, but here's the bonus part of it. If we had a worker in that category that qualified as a Section 3 or a targeted Section 3 worker, we would be able to include those in our tracking of qualifying hours to get to our benchmark.

So for instance, if I have an engineering firm that has been contracted for this project, they may have some employees who are not engineers, are not paid at as high of a rate and maybe qualify. And so, in those instances, we would be able to -- if we tracked and certified those workers, we would be able to use their labor hours towards meeting our benchmark goals.

So I mentioned earlier when we did the side-by-side comparison on differences between old and new rule about the fact that the new rule does have a mechanism to be able to update this over time, which would be a real benefit. So for those of you that work with Davis-Bacon, you know that the trigger on Davis-Bacon is $2,000. Hasn't changed, at least in my rather long career.

So what's great about this new regulation Section 3 is that we have a mechanism for this to be updated over time. So the regulation requires that HUD will publish in the Federal Register not less frequently than three years. They will establish benchmarks for Section 3 workers and targeted Section 3 workers. And so, currently, we have a single nationwide benchmark, which we've been talking about as 25 and 5 percent, but they do have the ability to be able to have multiple benchmarks. So they could have breakout benchmarks based on geographic areas, by types of projects, or other variables that they identify.

So essentially, the notice would collect aggregate data that's being reported and analyze that and determine whether there needed to be an adjustment or additional categories within that. So the reference -- regulatory reference on this is 75.25. And so, they would be looking at the three most recent reporting years on this. So we do have a mechanism for change over time.

So let's do some math. What could be more fun? All right. So we're going to go through some scenarios, and then we're going to do poll questions to test your ability to follow the calculations on this.

So our first example here is we have a city using emergency shelter grant funding in the amount of $207,000. They're converting two buildings to emergency shelters. So we're told that they're using a local construction company, Shelly's construction, and we're told that one of the owners, Shelly, lives in Section 8 assisted housing and she owns or controls -- and controls 41 percent of the business. We're also told that only 50 percent of the labor hours performed for the business over the past three-month period were performed by Section 3 workers.

So our first question here then is, can Shelly construction be considered a Section 3 business concern? Yes or no? If you'll indicate your answer and hit the submit button.

All right. So the answer here is no, and let's kind of look at why. So when we're defining -- when we're certifying a Section 3 business concern, we have to look back at the definition. And so, we had three options on this. We could have a business that was 51 percent owned or controlled by low, very low-income person. They could be -- it could be 51 percent owned or controlled -- and controlled by a public housing resident.

And so, we're told that Shelly only has 41 percent ownership. So we don't qualify in that way.

Our other option on their definition is that they would need to have over 75 percent of the labor hours during the past three-month period having been completed by Section 3 workers. In this case, we're told that only 50 percent have been completed by Section 3 workers. So we can't use that sort of automatic of these are employees of a Section 3 business concern and be able to count them towards our benchmarks for Section 3 and targeted Section 3. So in this case, we're going to have to do the actual calculation to calculate those benchmarks.

So we're told that we've got 2,000 total labor hours, and in this case 520 of those were performed by Section 3 certified workers and then 200 of the 520 Section 3 hours, those workers also qualified as living within that one-mile radius of the worksite. So they not only qualified as a Section 3 worker. They also qualified as a targeted Section 3 worker.

So when we look at the math on this, dividing those, we see that they are at 26 percent for Section 3 labor hours and 10 percent for targeted Section 3 labor hours. So our question is has -- have they met the established benchmarks?

And in this case, they have. Our benchmarks at 25 and 5 percent. They're at 26 and 10 percent. So they have met those benchmarks. Keep in mind they also will have to certify that they followed the prioritization of effort, and we're going to be talking about that a little later in this training series.

So here's our second example. And in this case, we have a public housing agency, and so, we're looking at public housing funds from the PIH Capital Fund. They're using $56,000 on this to modernize one of their developments. They're using a local construction company. We're told that the construction team, only 58 percent of the labor hours worked over the last three months were performed by low or very low-income workers. And we're also told that it's not owned or controlled by a low-income or very low-income resident or public housing Section 8 resident.

So our first question is does Carlos Construction qualify as a Section 3 business concern? Yes or no?

And again, we're looking to that definition. So in this case, they do not qualify. We know that we only have 58 percent of the labor hours have been performed. Our test here or our threshold would be 75 percent. And we also know that we don't have a -- our low or very low-income owner or public housing residents. So they do not qualify as a Section 3 business concern. So then we have to do the calculation.

So we're given information. We've got 4,000 total labor hours, 1200 in Section 3 labor hours, and then -- and that's a combination of 80 hours that were self-certified as YouthBuild participants and 360 hours for workers who were certified as part of the Housing Choice Voucher program. And so, we know about our targeted Section 3 worker hours also.

So when we look at the actual calculation on this, we'll see that when we add those together, it's 1200 of the total labor hours qualified at Section 3. So that puts us at 30 percent. And for our targeted Section 3, we have 1,000 labor hours out of the 4,000 that qualified as targeted labor hours.

So our next poll question is then, have we met the safe harbor benchmark requirements on this project?

Yeah. So in this case, we are at 30 and 25 percent. We know that our benchmarks are 25 and 5 percent. So this project has met those safe harbor benchmarks. In addition, they will be certifying to those qualitative efforts.

So one more scenario here. So we have a PHA, again, and they're using $500,000 from their capital fund. They're using the same construction company. So we know that they can't qualify as a Section 3 business concern. So we've got 3500 total labor hours, 800 of those performed by Section 3 workers, and then of those 800 hours of Section 3 workers, we have 200 of those hours would qualify because the workers were participating in the Housing Choice Voucher program.

So we -- since we know that they don't qualify as a Section 3 business concern, we have to make the calculation. And in this case, our numbers are 23 percent and 6 percent.

So our polling question then is, has the met the established benchmarks? Yes or no?

Yeah. So they have not met the benchmarks. They were okay on the targeted Section 3. They were at 6 percent, and we know that that benchmark is 5 percent. But for the Section 3 labor hours, they only hit 23 percent, and our benchmark is 25 percent. So they have failed to meet the benchmarks -- the quantitative benchmarks on this.

So really our next question is, so what does that mean? Are they -- they didn't meet the safe harbor on quantitative. Are they out of compliance?

So we mentioned earlier that we can still be considered to be in safe harbor if we are able to document that we did our qualitative efforts. So if we did outreach to try to make sure that where there were job and training opportunities, we could still be considered to be in safe harbor. So that's one option.

But our other option might be to double check our numbers, and we're using this as a way to illustrate when we talked about those professional labor hours and we said they were sort of a bonus on this. So in this case, we're told that when they went back and looked at this project, that they had two accountants on the team that were actually qualified as certified Section 3 workers, and they worked a total of 150 hours.

So we were told, as you recall, with those professional non-construction service hours that we don't count them in the total labor hours for the project. So that 3500 for labor hours does not change, but we are able to include them when we're calculating our qualifying Section 3 labor hours. And so, we're able to add that 150 in, and so, when we update that calculation, we now are at 27 percent.

All right. So let's move on to a couple of housekeeping things and then to our question-and-answer session.

So I just want to remind you that tomorrow and the final day, we're going to be doing breakout sessions. And so, we would ask that the exercises that were included in your packet for today, we'd ask that you take a little bit of time, maybe 15 or 20 minutes, and just read through the exercises for tomorrow.

So tomorrow we're going to be looking at exercise one and two. If you maybe make a few notes, just come to our breakout sessions familiar with the exercise and prepared to be able to discuss in the group your thoughts on those questions. And I think that'll help make those breakout sessions a little bit more effective for folks.

All right. So let's go ahead to the question-and-answer box here. And I don't know. Andelyn, are there questions that you've been looking at you want to lead on?

Andelyn Nesbitt Rodriguez: There are not. You go ahead, Les, and jump in.

Les Warner: All right. So let's see. We have a question about, "How do you track all hours worked by all contractors?"

So generally, on what we're doing on most of our projects and to kind of use the model on Davis-Bacon, is that we would have the general contractor be responsible for collecting all of the information from the subcontractors that are working for them. And so, you're going to need to have a reporting process in place to collect that information.

We will be talking, I believe, tomorrow about probably starting that process of trying to get estimates of what contractors think the total labor hours will be as we're going through the bidding process and then tracking over time how that is coming along. But we'll be talking about receiving those certified statements from the contractors of, here are our total labor hours. Here are our workers' labor hours that qualified as either Section 3 or targeted Section 3.

We will also talk a little bit about the fact that, for a lot of our projects, particularly our public infrastructure projects, we already are going to be triggering Davis-Bacon wage rate requirements. And so, we're going to have certified payrolls that will be documenting labor hours worked and hours worked by individual workers. So if we have identified which workers qualify as Section 3 and targeted Section 3 workers, we would then be able to keep track and add those up on that.

I'm just going to mark that as answered verbally so it disappears from my screen.

Let's see. Follow up question about project-based vouchers. "If we're giving capital funds to develop a site that will be funded through project-based vouchers, that project wouldn't be subject to Section 3, even though capital funds were being used?"

No. I disagree. So if we're -- if you're putting capital funds into a project, those are public housing assistance funds that do trigger Section 3 requirements. So that project, because of the capital funds that were being used, is going to trigger Section 3 funds. If you were only providing project-based vouchers, then that would not be triggering. But in this example, you've got capital funds that are being used. So you have triggered Section 3 requirements because we don't have a threshold that would be applying on this.

Let's see. Is it required to meet -- go ahead, Andelyn.

Andelyn Nesbitt Rodriguez: I apologize. And I was answering in the chat, but I will read it out loud because others might have this question as well.

"Is it required to meet the 5 percent targeted Section 3 worker benchmark to be in safe harbor, or is the 25 percent of Section 3 workers that would create safe harbor and the targeted 5 percent is extra?"

Both the 25 percent Section 3 worker and the 5 percent targeted Section 3 worker thresholds must be met in order to be in safe harbor. So both of those must be met in order to qualify.

Les Warner: Exactly. And we did mention that in the case where you have a project that you fail to meet both of those, you still could be considered to be in safe harbor if you had done the qualitative efforts. And so, we'll be talking in the next trainings about specifically what those qualitative efforts are going to be.

So when you think about, well, how am I going to plan to operate my project to make sure that at the end of this, that I'm going to be safely in safe harbor, we're going to design our program and put our systems in place to try to make sure that we meet those benchmarks and so that we have the benefits for those local residents that are our goal for Section 3.

But we also are going to, I think, standardly have a process for qualitative efforts to happen so that in the case that we fall short, we have those qualitative efforts that have been completed, have been documented so that we are still going to be in safe harbor on that.

Let's see. We have a question about --

Andelyn Nesbitt Rodriguez: Here's another.

Les Warner: Go ahead.

Andelyn Nesbitt Rodriguez: I apologize, Les. Here's another question. "Will HUD be updating the terms and conditions that are to be included in future contracts?"

HUD has not issued any specific language so far, and I'm not sure if that is to be expected in the future. So far, HUD has not issued any specific language. Anything to add there, Les?

Les Warner: Yeah. So we'll be talking about and we'll give you the regulatory reference about what needs to be in all of your written agreements, and it simply will be showing you within the regulations where it references that. But there is not -- I think a lot of you are hoping that there would be specific clauses that would be provided to you that you could simply insert in all contracts and written agreements. That has not been provided.

So one of the things we'll be talking about tomorrow is needing to update written agreements, contracts. Probably wanting to coordinate with your legal counsel to make sure that you had that language in place and those documents updated to be able to meet those requirements. All right.

Andelyn Nesbitt Rodriguez: I think that's it.

Les Warner: Yeah. So we are just slightly ahead of the end of our session. I will just remind folks that, again, tomorrow we're going to be spending more time working in these breakout sessions. So I think if you can spend a little time taking a look, previewing those exercise, making a few notes, it will probably be good.

Looks like we have another question that has come in.

Andelyn Nesbitt Rodriguez: "Meeting the 5 percent of targeted Section 3 would be difficult in very rural communities. In some cases, Oregon has communities of less than 100 people, and to get to the 5,000 population would be over 100 miles."

I would say -- well, go ahead, Les. I'm going to defer to you on that one.

Les Warner: I think that's just the reality that -- we talked about you're going to have to set that service area based on having enough -- at least 5,000 in population. So in some very rural areas, that may be a very large service area. And so, that does mean that for programs that are being operated in non-urban areas, that you're going to have to be determining on a project-by-project basis, what is my service area, and then comparing that with the overlay of population to determine that.

Now, a couple of things I want to note on this. We -- it is our understanding that there is a tool in beta testing, so kind of close to the final end of that development period, which would provide you a tool to be able to set, based on that overlay of population, what service areas were for projects, and then, I believe, would also allow you to enter in a worker's address to determine whether that worker actually lived within that service area.

And then, Andelyn, do you want to mention the -- I think it's the NEPA tool?

Andelyn Nesbitt Rodriguez: Yeah. Absolutely. For anyone who's -- who has done environmental reviews, you may have heard the NEPA Assist tool, and that's the EPA tool, the Environmental Protection Agency tool. If you Google NEPA, N-E-P-A tool -- Assist tool, it will come up with a nice tool.

You simply enter the address, and you put whatever radius you want in there. So you can put 1 mile, 5 miles, 20 miles. And if you go to at the top, there's additional data. Click additional data, and you want to click the demographic data. It will then give you the population for the people inside of whichever radius you chose of the specific address that you entered. So it is a really helpful tool in this situation.

I also want to mention -- I know that we're running low on time, but keep in mind that for the service area, that only applies to housing and community development funded projects. So if your public housing funded, you don't have to worry about that. And there are other ways to qualify folks as targeted Section 3 workers as well. So they could work for a Section 3 business concern or be a YouthBuild participant, which you may not have YouthBuild if you're in a very rural area, but they could qualify other ways.

Les Warner: Excellent. All right. So we've kind of stretched past our time. So thanks, everybody, for participating. Join us tomorrow, and we will be going into planning and implementation. See you tomorrow. Thanks.

Andelyn Nesbitt Rodriguez: Thank you.

(END)