

The New Section 3 Rule (24 CFR Part 75) and RAD

Section 3, a statutory requirement designed to strengthen communities, reduce poverty, and increase economic self-sufficiency, applies to all RAD public housing conversions. The regulations governing Section 3 were replaced this Autumn. While additional guidance on the transition to the new regulations will be coming in early 2021, PHAs and their partners need to focus on a few things now.

Section 3 ensures that employment and other economic opportunities generated by Federal financial assistance for housing and community development programs are, to the greatest extent feasible, directed toward low- and very low-income persons, particularly those who receive government assistance for housing. On September 29, 2020, the U.S. Department of Housing and Urban Development (HUD) published a final rule entitled “*Enhancing and Streamlining the Implementation of Section 3 Requirements for Creating Economic Opportunities for Low- and Very Low-Income Persons and Eligible Businesses*” (the “Section 3 Final Rule”) in the [Federal Register at 85 FR 61524](#). The Section 3 Final Rule, effective November 30, 2020, replaces the prior Section 3 regulations and is now codified in 24 CFR Part 75. The Final Rule is designed to focus on economic opportunity outcomes while simultaneously reducing regulatory burden, improving Section 3’s effectiveness, streamlining some processes that have not yielded significant benefits, and encouraging HUD grantees to focus on sustained employment for low- and very low-income individuals.

Perhaps the most significant change from the old to the new regulations is the shift away from tracking new hires of low-income persons and instead tracking the labor hours performed by low-income persons. PHAs and their development partners will need to begin planning now for how to conduct outreach, consider employment retention, and track outcomes under the labor hours framework.

In the context of RAD, Section 3 applies to properties converting assistance from public housing (see Section 1.4.A.15 of the RAD Notice) when rehab or construction activity required by the conversion exceeds \$200,000. The work referenced in the RAD Conversion Commitment is subject to the Section 3 requirements applicable to “housing and community development assistance” (see 24 CFR 75 subpart C). Only pre-development work conducted prior to RAD conversion that uses pre-conversion public housing funds is subject to the Section 3 requirements applicable to “public housing assistance” (see 24 CFR 75 subpart B).

RAD participants, regardless of the timing of their conversions, must undertake appropriate efforts to direct employment, training, and contracting opportunities arising as part of RAD conversions to low- and very-low-income persons, as required by the statute. RAD participants should also ensure that they are documenting their efforts in case subsequent questions arise. Program participants are not required to amend contracts executed before November 30, 2020. PHAs and their partners engaged in RAD conversions closing on or after November 30, 2020, should review draft contracts to align with the Section 3 Final Rule (24 CFR Part 75).

In order to give stakeholders time to plan and revise processes, systems and documents to best position themselves to meet their Section 3 outcome targets, and to accommodate the challenges of a transition from one regulation to the other, the effective date for the reporting requirements found in the rule (see 24 CFR 75.25) begins for conversions occurring on or after July 1, 2021. Reporting of outcomes is not required for transactions currently conducting the work specified in the RAD Conversion Commitment and for transactions converting between now and June 30, 2021. Please note that RAD conversions with a deadline for completion of the work before November 30, 2020, must report their Section 3 outcomes as required by the Section 3 regulations codified at 24 CFR Part 135 (the prior rule).

Just as with the prior rule, Section 3 reporting is done through the RAD Resource Desk, with each individual transaction submitting their Completion Certification with Section 3 outcomes data at the completion of the rehabilitation or construction.

Project Timing	Applicable Regulation	Individual Project Outcome Reporting (Through the RAD Resource Desk)
Conversions which closed and completed work prior to November 30, 2020	24 CFR Part 135	Reporting required using measures described in 24 CFR Part 135
Ongoing implementation of conversions which closed prior to November 30, 2020	24 CFR Part 75*	None required
Conversions which closed between November 30, 2020, and June 30, 2021	24 CFR Part 75	None required
Conversions which closed on or after July 1, 2021	24 CFR Part 75	Reporting required using measures described in 24 CFR Part 75

* The prior regulation, 24 CFR Part 135, is no longer applicable after November 30, 2020. Section 3 covered activity after the November 30 date is governed by 24 CFR Part 75. However, the change in regulation does not undermine the validity of binding contracts executed prior to November 30, 2020, which were informed by the prior rule. Therefore, HUD does not require these contracts to be amended, nor does HUD require parties under contract with HUD funding recipients to change their implementation of their contract obligations.

We will soon provide further instructions on the new report format in the RAD Resource Desk that public housing conversions occurring on or after July 1, 2021 will use.