



U.S. Department of Housing and Urban Development
Community Planning and Development

Special Attention of:

CPD Division Directors
All HOME Coordinators
All HOME Participating Jurisdictions
All Housing Trust Fund Coordinators
All Housing Trust Fund Grantees

Notice: CPD-21-07

Issued: July 15, 2021

Expires: **This NOTICE is effective until it is amended, superseded, or rescinded**

Cross Reference: 24 CFR Part 75

Subject: Section 3 of the Housing and Urban Development Act of 1968, as amended by the Housing and Community Development Act of 1992, final rule requirements for HOME and HTF projects

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I. PURPOSE

This notice provides guidance to HOME Investment Partnerships Program (HOME) participating jurisdictions (PJs) and Housing Trust Fund (HTF) grantees, collectively referred to as grantees, on the requirements for Section 3 of the Housing and Urban Development Act of 1968, as amended by the Housing and Community Development Act of 1992 (Section 3) that apply to HOME and HTF-assisted rehabilitation or construction projects. This notice outlines the key changes made by the notice, “Enhancing and Streamlining the Implementation of Section 3 Requirements for Creating Economic Opportunities for Low- and Very Low-Income Persons and Eligible Businesses,” published in the Federal Register on September 29, 2020 (the “final rule”) and provides guidance for tracking and reporting compliance with the new requirements.

II. BACKGROUND

Section 3 contributes to the establishment of stronger, more sustainable communities by ensuring that employment and other economic opportunities generated by Federal financial assistance for housing and community development programs are, to the greatest extent feasible, directed toward low- and very low-income persons, particularly those who receive government assistance for housing. Section 3 applies to training or employment arising in connection with HUD-funded housing rehabilitation, housing construction, or other public construction projects, and any contracting opportunities arising in connection with both public housing and other Section 3 projects. These opportunities are, to the greatest extent feasible, required to be given to low- and very low-income persons and business concerns that provide economic opportunities to low- or very low-income persons.

On September 29, 2020, HUD published the 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,” (85 FR 61524) and a companion notice, titled “Section 3 Benchmarks for Creating Economic Opportunities for Low- and Very Low-Income Persons and Eligible Businesses,” (85 FR 60907) that outlines the numeric goals for compliance (the “benchmark notice”) in the Federal Register. Prior to the publication of the final rule and benchmark notice, HUD had been operating under the Section 3 interim rule (24 CFR Part 135) which was published in 1994.

The final rule which can be found at 24 CFR part 75 became effective on November 30, 2020. The final rule simplifies the Section 3 regulations and establishes that Section 3 requirements apply to housing rehabilitation, housing construction, and other public construction projects assisted under HUD programs that provide housing and community development financial assistance when the total amount of assistance to the project exceeds a project threshold of \$200,000, or \$100,000 when the assistance is from HUD’s Lead Hazard Control and Healthy Homes programs, as authorized under Sections 501 or 502 of the Housing and Urban Development Act of 1970 (12 USC 4801 et. seq). The final rule also improves alignment with current business practices by requiring the reporting of labor hours rather than new hires. Additionally, the final rule streamlines the reporting process and establishes HUD program office oversight to reduce administrative burden and make the rule more effective.

III. APPLICABILITY

The final rule established an applicability threshold of \$200,000 for housing rehabilitation, housing construction, and other public construction projects assisted with certain HUD funds. Therefore, Section 3 requirements apply to a housing construction or rehabilitation project that receives over \$200,000 in total housing and community development financial assistance from HUD programs. Applicable housing and community development programs include but are not limited to Community Development Block Grant (CDBG), Community Development Block Grant – Disaster Recovery (CDBG-DR), HOME, HTF, Emergency Solutions Grants (ESG), Housing Opportunities for Persons with AIDS (HOPWA), Section 202 Direct Loan Program for Housing for the Elderly or Handicapped, Section 811 Supportive Housing for Persons with Disabilities, , and other HUD Notice of Funding Opportunity (NOFO) grants. While Section 3 applies to public construction projects such as CDBG-funded projects, the requirements do not apply to HOME or HTF projects that do not include housing rehabilitation or new construction (e.g. funds used for direct homebuyer assistance or tenant-based rental assistance).

In accordance with 24 CFR 75.3, the Section 3 requirements apply based on the amount of HUD housing and community development funding provided by a single program or from a combination of one or more different applicable HUD programs exceeding the \$200,000 threshold. For example, if a project is funded with \$101,000 of HOME funds and \$100,000 of HTF funds, then it exceeds the applicability threshold of \$200,000 and the grantee must impose the Section 3 requirements.

Section 3 requirements apply to the entire project, not just the HUD-financed portion. If a HOME or HTF project receives more than \$200,000 of HUD funding for housing rehabilitation or construction, then Section 3 requirements are triggered and apply to all hiring efforts made during construction, including efforts that are financed by other, non-HUD sources of funds. All contractors and subcontractors must be made aware of the need to comply with Section 3 requirements.

IV. TIMELINE FOR IMPLEMENTATION

A. EFFECTIVE DATE

The final rule became effective on November 30, 2020. As of November 30, 2020, the requirements of the interim rule, 24 CFR part 135, were no longer in effect. Projects with HOME and HTF commitments made before November 30, 2020, must continue to comply with the requirements of the interim rule.

B. COMPLIANCE DATE

The regulations are applicable to Section 3 projects for which assistance or funds are committed on or after July 1, 2021. Grantees must implement the updated Section 3 requirements by July 1, 2021, including the reporting requirements at 24 CFR 75.25. HOME and HTF grantees must report Section 3 data in HUD's Integrated Disbursement and

Information System (IDIS). While the effective date of the final rule was November 30, 2020, HUD expected grantees to transition to the updated 24 CFR part 75 requirements and revise their policies and procedures and systems to comply with the requirements of the final rule and to make the necessary changes in IDIS by July 1, 2021. Due to this, HUD will not enforce compliance with the final rule’s reporting requirements until July 1, 2021. This means that grantees are not required to report Section 3 data for any project to which HOME and HTF funds were committed or any project that was completed after November 30, 2020 and before July 1, 2021. Grantees must, however, keep all files associated with Section 3 projects with commitments made after November 30, 2020, but before July 1, 2021, or completed between November 30, 2020, and July 1, 2021, to demonstrate that projects comply with the requirements of the final rule.

Grantees will be unable to input Section 3 data into IDIS for projects with commitments prior to July 1, 2021.

Commitment Date	Before 11/30/2020	On or After 11/30/2020 but before 7/1/2021	On or After 7/1/2021
Applicable Regulations	24 CFR Part 135	24 CFR Part 75	24 CFR Part 75
Reporting Requirement	Reporting requirements apply and grantee must retain documentation demonstrating compliance in project file with interim rule	No reporting requirements but grantees must retain documentation demonstrating compliance with final rule in project file	Report compliance data in IDIS at project completion

V. TRACKING LABOR HOURS

The final rule introduces several new concepts and definitions to align the rule more closely with the statutory priorities for hiring and contracting and with grantee current practices. The most significant change is the switch from tracking and reporting new hires and contracts to tracking and reporting labor hours. “Labor hours” means the number of paid hours worked by persons on a Section 3 project or by persons employed with funds that include public housing financial assistance in accordance with 24 CFR 75.5. The final rule’s focus on labor hours seeks to measure total actual employment and the proportion of the total employment performed by low- and very low-income workers. In addition, the change to tracking labor hours emphasizes continued and long-term employment. The focus on labor hours creates an incentive for employers to invest in and retain their workers.

Under the final rule at 24 CFR 75.25, grantees are required to report the total labor hours for three categories of workers on the project: all workers, Section 3 workers, and Targeted Section 3 workers. The definitions established in 24 CFR 75.5 for “Section 3 worker,” “Targeted Section 3 worker,” and “Section 3 business concern” were created to simplify grantee reporting

and better align with statutory priorities. These categories of workers are also used to establish benchmarks which will serve as safe harbors for compliance as discussed in Section VI of this notice.

Grantees must include language applying Section 3 requirements in *any* agreement or contract for a Section 3 project and must require contractors and subcontractors to meet the requirements of the final rule, *regardless* of whether Section 3 language is included in their agreements or contracts.

A. SECTION 3 WORKER

The new definition of Section 3 worker implements the statutory requirement that grantees ensure that job and contracting opportunities arising in connection with a HOME or HTF-assisted construction project are provided to Section 3 workers or Section 3 business concerns, to the greatest extent feasible. In accordance with the final rule, a Section 3 worker is a worker who currently fits or, when hired within the past five years, fits at least one of the following categories:

1. Is a low or very low-income person that met HUD income limits for the previous or annualized calendar year. Low- and very-low-household income limits may be obtained from: <http://www.huduser.org/portal/datasets/il.html>
2. Is employed by a Section 3 business concern (defined in Section C), or
3. Is a YouthBuild participant. YouthBuild is a community-based pre-apprenticeship program administered by the U.S. Department of Labor that provides job training and educational opportunities for at-risk youth ages 16-24 who have previously dropped out of high school.

Grantees may count Section 3 workers' labor hours for five years from when their status as a Section 3 worker is established pursuant to 24 CFR 75.31. For purposes of reporting the labor hours for Section 3 workers, an employer may choose whether the workers are defined as Section 3 workers for a five-year period at the time of the workers' hire, or when the workers are first certified as meeting the Section 3 worker definition. The five-year period for a worker cannot begin before November 30, 2020, the effective date of the final rule.

Pursuant to 24 CFR 75.31, for a worker to qualify as a Section 3 worker, an employer must maintain one of the following records from the time the worker is certified as meeting the Section 3 worker definition for the five-year period or from the time of hire (if hired within the last five years):

1. A worker's self-certification that their income is below HUD's income limit from the prior calendar year.
2. A worker's self-certification of participation in a means-tested program such as public housing or Section 8- assisted housing.
3. Certification from a PHA, or an owner or property manager of project-based Section 8-assisted housing, or an administrator of tenant-based Section 8- assisted housing that the worker is a participant in one of their programs.

4. An employer's certification that a worker's income from that employer is below HUD's income limit when based on an employer's calculation of what the worker's wage rate would translate to if annualized on a full-time basis.
5. An employer's certification that the worker is employed by a Section 3 business concern.

Special Case: Professional Services

Professional service jobs are defined in 24 CFR 75.5 of the final rule as "non-construction services that require an advanced degree or professional licensing, including, but not limited to, contracts for legal services, financial consulting, accounting services, environmental assessment, architectural services, and civil engineering services." These jobs are excluded from the reporting requirement for Section 3 and Targeted Section 3 workers because it is very difficult for grantees and contractors to recruit and hire eligible persons for these roles due to the higher wages/salaries earned for these types of jobs. Therefore, the labor hours worked for professional services jobs are NOT to be included in the total labor hours worked on the project and were not considered in the development of benchmarks. However, if employees in professional services roles meet the definition of a Section 3 worker or Targeted Section 3 worker, their labor hours can be reported in the applicable Section 3 worker or Targeted Section 3 worker labor hour category. By structuring the requirements in this way, the final rule incentivizes grantees and contractors to hire Section 3 or Targeted Section 3 workers for professional services jobs without creating undue burden if qualified Section 3 workers are not available to fill these roles.

B. TARGETED SECTION 3 WORKER

The Section 3 statute requires certain recipients to prioritize their efforts to direct employment and economic opportunities to specific groups of low- and very low-income individuals. The new definition of Targeted Section 3 worker was created to reflect both statutory and policy priorities that HUD wishes to specifically track. A Targeted Section 3 worker for HOME and HTF is a worker who meets the definition of a Section 3 worker plus one of the following:

1. A worker employed by a Section 3 business concern (defined below), or
2. A worker who currently fits or, when hired, fit at least one of the following categories, as documented within the past five years:
 - a. Living within the service area or the neighborhood of the project (defined below)
 - b. A YouthBuild participant.

In 24 CFR 75.5, the final rule defines the service area or the neighborhood of the project as "an area within one mile of the Section 3 project or, if fewer than 5,000 people live within one mile of a Section 3 project, within a circle centered on the Section 3 project that is sufficient to encompass a population of 5,000 people according to the most recent U.S. Census."

For a worker to qualify as a Targeted Section 3 worker, there must be evidence that the worker meets at least one of the categories in the definition. Therefore, in addition to the documentation certifying that the worker meets the definitions of a Section 3 worker, one of the following sources of documentation must be maintained:

1. An employer's confirmation that a worker's residence is within one mile of the work site or, if fewer than 5,000 people live within one mile of a work site, within a circle centered on the work site that is sufficient to encompass a population of 5,000 people according to the most recent U.S. Census;
2. An employer's certification that the worker is employed by a Section 3 business concern; or
3. A worker's self-certification that the worker is a YouthBuild participant.

If a HOME- or HTF-assisted Section 3 project is combined with public housing financial assistance, for purposes of the HOME or HTF reporting, the grantee has the option under 24 CFR 75.29 (Multiple Funding Sources) of following the public housing definition of Targeted Section 3 worker at 24 CFR 75.11 to simplify project reporting.

A Targeted Section 3 worker for public housing financial assistance means a Section 3 worker who is:

1. A worker employed by a Section 3 business concern, or
2. A worker who currently fits or when hired fit at least one of the following categories, as documented within the past five years:
 - a. A resident of public housing or Section 8-assisted housing
 - b. A resident of other public housing projects or Section 8-assisted housing managed by the PHA that is providing the assistance
 - c. A YouthBuild participant

For a worker to qualify as a Targeted Section 3 worker under the public housing financial assistance definition, there must be evidence that the worker meets at least one of the categories in the definition. Therefore, in addition to the documentation certifying that the worker meets the definitions of a Section 3 worker, one of the following sources of documentation must be maintained

1. An employer's certification that the worker is employed by a Section 3 business concern; or
2. A worker's self-certification of participation in public housing or Section 8-assisted housing programs;
3. A certification from a PHA, or the owner or property manager of project-based Section 8-assisted housing, or the administrator of tenant-based Section 8-assisted housing that the worker is a participant in one of their programs;
4. A worker's self-certification that the worker is a YouthBuild participant.

C. SECTION 3 BUSINESS CONCERN

The statute creates a contracting priority for businesses that provide economic opportunities for low- and very low-income workers. To implement this priority, the final rule includes labor hours worked by Section 3 business concern employees to count towards benchmarks for Section 3 workers and Targeted Section 3 workers. HUD also created a new Section 3 business concern definition that incorporates the change to labor hours and increases the threshold of work performed by a business by low- and very low-income workers given the final rule's inclusion of all Section 3 business concern employees' labor hours in the definition of both Section 3 workers and Targeted Section 3 workers. Grantees must certify that they are making efforts to prioritize contracting with Section 3 business concerns and are responsible for verifying that businesses meet the definition of a Section 3 business concern.

A Section 3 business concern is now defined in 24 CFR 75.5 as a business that meets at least one of the following criteria, documented within the last six-month period:

1. At least 51% owned and controlled by low or very low-income persons,
2. Over 75% of the labor hours performed for the business over the previous 3-month period are performed by Section 3 workers, or
3. It is at least 51% owned and controlled by current residents of public housing or Section 8-assisted housing.

VI. DOCUMENTING COMPLIANCE

The final rule at 24 CFR 75.23 requires HUD set Section 3 benchmarks by publishing a notice, subject to public comment, in the Federal Register. These benchmarks provide grantees a safe harbor by defining the percentage of labor hours worked by Section 3 workers and Targeted Section 3 workers on a project to be in compliance. If a grantee certifies to the prioritization of effort in 24 CFR 75.19 and meets or exceeds the Section 3 benchmarks, then the grantee will be considered to have complied with the requirements in the final rule (i.e, met the safe harbor), in the absence of evidence to the contrary. If a grantee does not meet requirements of 24 CFR 75.23's Section 3 safe harbor, HUD will require additional qualitative reporting to demonstrate compliance with the rule.

A. BENCHMARKS

The final rule requires grantees to track and report the labor hours worked on Section 3 projects. HUD published the [benchmark notice](#) in the Federal Register to establish initial numeric goals, or benchmarks, to measure grantee compliance with the final rule. Publishing the numeric benchmarks in a separate notice from the final rule provides HUD with the flexibility to update the goals as needed. HUD plans to review and update the benchmarks at least once every three years through notice in the Federal Register.

The final rule at 24 CFR 75.25(a) requires grantees to report the following hours (including total hours worked by all contractors and subcontractors) for Section 3 projects:

1. The total number of labor hours worked by all workers;

2. The total number of labor hours worked by Section 3 workers; and
3. The total number of labor hours worked by Targeted Section 3 workers.

If time and attendance reporting is not required, grantees may report to HUD using a good faith assessment. Grantees can report their own labor hours or that of a contractor, or subcontractor based on the employer's good faith assessment of the labor hours of an employee informed by the employer's existing salary or time and attendance-based payroll systems.

The benchmark notice establishes the current benchmarks that are applicable for a HOME or HTF Section 3 project where the total amount of HUD assistance to the project exceeds a threshold of \$200,000, which are:

1. Benchmark 1: Twenty-five (25) percent or more of the total number of labor hours worked by all workers on a Section 3 project must be done by Section 3 workers

Section 3 Labor Hours/Total Labor Hours = 25%

AND

2. Benchmark 2: Five (5) percent or more of the total number of labor hours worked by all workers on a Section 3 project must be done by Targeted Section 3 workers

Targeted Section 3 Labor Hours/Total Labor Hours = 5%

Example

Springfield commits \$300,000 of HOME funds to ABC Developers to rehabilitate a multifamily rental building. By committing an amount above the \$200,000 threshold, the Section 3 requirements apply to this project. In accordance with 24 CFR 92.504(c)(3)(vi) and 24 CFR 92.508(a)(7)(xi), Springfield's HOME written agreement with ABC Developers requires that ABC Developers must report to Springfield at project completion (1) the total *Labor hours*, (2) the total *Section 3 Labor hours*, and (3) the total *Targeted Section 3 Labor hours* on the project.

ABC Developers is responsible for collecting labor hour data from all contractors and subcontractors it hires to complete the project. Upon project completion, ABC Developers reports to Springfield that a total of 5,000 labor hours were worked on the project. Of that total, 1,300 were worked by employees who self-certified as Section 3 workers. Additionally, 300 of those 1,300 hours were performed by workers who lived within a one-mile radius of the work site. Springfield has met the project-level Section 3 Benchmarks and reports the following data in IDIS at completion:

Total Labor Hours	5,000	
Section 3 Labor Hours	1,300	26%
Targeted Section 3 Labor Hours	300	6%

B. REPORTING

HUD will no longer require Section 3 compliance data to be reported annually in the Section 3 Performance Evaluation and Reporting System (SPEARS) for HOME and HTF projects. The previous reporting modules in SPEARS will be decommissioned in 2021. While the final rule requires annual reporting on Section 3 compliance, to simplify compliance with the reporting requirements of the final rule, grantees will report project level data in IDIS. The Section 3 reporting data fields will be available on the IDIS activity accomplishment screens and in the Consolidated Annual Performance and Evaluation Report (CAPER) beginning July 1, 2021. Grantees will be required to enter Section 3 applicability and data before a HOME or HTF rehabilitation or new construction project can be marked as complete in IDIS. The data reported at the activity level in IDIS will populate into the CAPER and a Section 3 Microstrategy report (available through IDIS), eliminating the need for a separate annual Section 3 reporting system. When grantees submit their CAPER, they will fulfill the final rule's requirement for annual reporting. The Section 3 Microstrategy report can also be used to track compliance at the project level.

When an activity is set-up in IDIS, grantees must indicate whether it is subject to Section 3. If a grantee indicates that the activity is subject to Section 3 during set-up, IDIS will generate Section 3 reporting fields on the activity completion screens. The Section 3 reporting fields will only populate in IDIS if the grantee indicates that the activity has a Written Agreement

Execution Date (previously called Initial Funding Date) of July 1, 2021, or later. The Section 3 reporting fields include total labor hours worked, Section 3 labor hours worked, and Targeted Section 3 labor hours worked. When grantees enter labor hour data, IDIS will calculate the percentage of Section 3 labor hours worked and the percentage of Targeted Section 3 labor hours worked out of all labor hours worked. IDIS will also indicate whether the established benchmarks (25% Section 3 worker hours, 5% Targeted Section 3 worker hours) were met.

If both benchmarks are met, no further reporting is required on that activity, as HUD will consider the activity to be in full compliance with Section 3. If either of the Section 3 benchmarks *is not met*, IDIS will require further reporting on the qualitative efforts that were made to try and reach the benchmarks (see Section C).

Examples

		Calculated Percentage	Safe Harbor Benchmark Met
Total Labor Hours	100		
Section 3 Worker Hours	25	25%	Yes
Targeted Section 3 Worker Hours	5	5%	Yes

		Calculated Percentage	Safe Harbor Benchmark Met
Total Labor Hours	100		
Section 3 Worker Hours	20	20%	No
Targeted Section 3 Worker Hours	1	1%	No

C. QUALITATIVE EFFORTS

If a grantee does not meet the benchmarks but can provide evidence that it has made qualitative efforts to provide low- and very low-income persons with employment and training opportunities, then the grantee will be considered compliant with Section 3, absent evidence to the contrary (i.e., evidence or findings obtained from a Section 3 compliance review).

The final rule at 24 CFR 75.25 provides a list of qualitative efforts that demonstrate what HUD considers to be efforts to comply with the Section 3 benchmarks. If benchmarks were not met for a project, IDIS will display a checklist of the qualitative efforts from 24 CFR 75.25 on the activity completion screen. A grantee must select at least one option from the list that best describes their efforts or describe their efforts in a box labelled “other” to proceed to the next activity completion screen. Grantees must also maintain records in their project files to document the efforts they report in IDIS.

The checklist displayed in IDIS for qualitative efforts includes the following options:

- Outreach efforts to generate job applicants who are Public Housing Targeted Workers.
- Outreach efforts to generate job applicants who are Other Funding Targeted Workers.
- Direct, on-the job training (including apprenticeships).
- Indirect training such as arranging for, contracting for, or paying tuition for, off-site training.
- Technical training such as arranging for, contracting for, or paying tuition for, off-site training.
- Outreach efforts to identify and secure bids from Section 3 business concerns.
- Technical assistance to help Section 3 business concerns understand and bid on contracts.
- Division of contracts into smaller jobs to facilitate participation by Section 3 business concerns.
- Provided or connected residents with assistance in seeking employment, including drafting resumes, preparing for interviews, finding job opportunities, connecting residents to job placement services.
- Held one or more job fairs.
- Provided or connected residents with supportive services that can provide direct services or referrals.
- Provided or connected residents with supportive services that provide one or more of the following: work readiness health screenings, interview clothing, uniforms, test fees, transportation.
- Assisted residents with finding childcare.
- Assisted residents to apply for/or attend community college or a four-year educational institution.
- Assisted residents to apply for or attend vocational/technical training.
- Assisted residents to obtain financial literacy training and/or coaching.
- Bonding assistance, guaranties, or other efforts to support viable bids from Section 3 business concerns.
- Provided or connected residents with training on computer use or online technologies.
- Other. Specify:

IDIS provides an empty text box next to “Other” to give grantees the option of entering a description about efforts taken that are not included in the list of qualitative efforts provided. Examples of qualitative efforts not included in the checklist displayed in IDIS are:

- Providing technical assistance to help Section 3 workers compete for jobs (e.g., resume assistance, coaching, etc.);
- Promoting the use of a business registry designed to create opportunities for disadvantaged and small businesses; or,
- Outreach, engagement, or referrals with the state one-stop system, as designed in Section 121(e)(2) of the Workforce Innovation and Opportunity Act.

VII. HUD MONITORING

The final rule establishes that the HUD program offices providing the financial assistance will perform Section 3 oversight. As part of this new oversight responsibility, Community Planning and Development (CPD) representatives in HUD field offices will monitor Section 3 compliance as part of the existing CPD onsite or remote monitoring process using exhibits in the CPD Monitoring Handbook. HUD may make findings and impose appropriate remedies and sanctions in accordance with the program's regulations.

To prepare for potential monitoring, grantees must keep records demonstrating compliance with Section 3 requirements on a project-level basis. Grantees are required to establish and maintain documentation to demonstrate that workers on Section 3 projects meet the definition of a Section 3 worker or Targeted Section 3 worker, at the time of hire or the first reporting period. This includes requiring written reports from developers or contractors summarizing the totals for Labor hours and Section 3 worker Labor hours and documentation from employees or employers certifying that they met the Section 3 worker definitions (see Section V). Any information that is entered into IDIS must have written documentation demonstrating accuracy of the data. Additionally, grantees must retain documentation that ensures that workers meet the definition of a Section 3 worker or Targeted Section 3 worker, at the time of hire or the first reporting period. Documentation must be maintained for five years following project completion.