



Texas Department of Agriculture  
Texas Community Development Block Grant Program  
PO Box 12847  
Austin, TX 78711

# POLICY ISSUANCE

## CDBG 20-01

Effective Date: July 1, 2021

### **SUBJECT: Federal Revisions for Section 3 Requirements**

The Texas Department of Agriculture announces an update to the TxCDBG Project Implementation Manual, implementing HUD's recent Section 3 Final Rule.

#### **BACKGROUND:**

HUD published a final rule updating requirements related to Section 3 of the Housing and Urban Development Act of 1968, as amended. HUD's regulations implementing the requirements of Section 3 had not been updated since 1994. On April 4, 2019, HUD proposed a new rule to update the Section 3 regulations. See [84 FR 13177](#). The final rule was published on September 29, 2020 and became effective on November 30, 2020. This final rule updates HUD's Section 3 regulations to create more effective incentives for employers to retain and invest in their low- and very low-income workers, streamline reporting requirements by aligning them with typical business practices, provide for program-specific oversight, and clarify the obligations of entities that are covered by Section 3.

The final rule also includes a requirement that HUD set Section 3 benchmarks. If a CDBG Grant Recipient complies with the statutory priorities regarding effort and meets the outcome benchmarks, HUD will presume the recipient is following Section 3 requirements, absent evidence to the contrary.

Key changes in the new ruling and in HUD's implementation include:

- Focusing on key outcome metrics, such as the sustained employment of individuals in targeted populations.
- Crediting retention of low- and very low-income employees and successful sustained employment in the reporting metrics.
- Aligning Section 3 reporting with standard business practices and payroll tracking methods.
- Allowing for tailored outcome benchmarks for different geographies and/or different projects.
- Reducing reporting requirements for grantees who are meeting outcome benchmarks.
- Integrating Section 3 oversight into the work of the program offices who are in regular contact with the grantees.
- Promoting the newly created portal to connect low- and very low-income people, who need jobs most, with businesses who have Section 3 job opportunities in their area.

**ACTION:** The TxCDBG Project Implementation Manual is modified to read as follows:

- Chapter 10 Section 10.2.2 is replaced with the attached text;
- The following forms are deleted:
  - Form A1001 Equal Opportunity Guidelines for Construction Contractors,
  - Form A1002 Sample Section 3 Plan,
  - Form A1011 Section 3 Annual Report,
  - Form A1012 Prime Contractor Section 3 Report; and

- The following forms are added:
  - Form A1021 Sample Section 3 Service Area,
  - Form A1022 Employer Certification Form,
  - Form A1023 Certification as Section 3 Business, and
  - Form A1024 Section 3 Sample Presentation to Local Community.

**APPLICABILITY/TRANSITION:**

These changes will apply to all TxCDBG contracts that have not submitted a Project Completion Report (PCR) on or before July 1, 2021.

All construction and administrative services contracts awarded by the local governing body on or after July 1, 2021, must comply with the revised Section 3 rule.

Instructions for the transition, including submittal of a final Annual Section 3 Report Form A1011, using the guidance included in the 2020 TxCDBG Project Implementation Manual effective September 2020, are identified below:

<b>Type of Contract</b>	<b>Date Awarded by the local Governing Body:</b>	<b>Date Work Completed</b>	<b>Instructions</b>	<b>Final Annual Report Form A1011</b>
Construction and Administration	On or after July 1, 2021	all	comply with the revised Chapter 10.2.2	n/a
Construction	Prior to July 1, 2021	On or after September 1, 2021	Immediately begin to collect Section 3 data under this revised policy - include all hours on or after December 1, 2020.	n/a
Administration	Prior to July 1, 2021	On or after September 1, 2021	Immediately begin to collect Section 3 data under this revised policy - include all hours on or after July 1, 2021.	Submit by September 30, 2021 for period 10/1/2020-6/30/2021;
Construction	Prior to July 1, 2021	Prior to September 1, 2021	Submit COCC indicating final inspection date is no later than August 31, 2021	Submit by September 30, 2021 for period 10/1/2020-8/31/2021;
Administration	Prior to July 1, 2021	Prior to September 1, 2021	Submit FY21 Annual Section 3 Report for period 10/1/2020-8/31/2021;	Submit by September 30, 2021 for period 10/1/2020-8/31/2021;

			Submit PCR no later than August 31, 2021	
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The Grant Recipient shall take all appropriate action, including execution of a change order or addendum to the services contract as appropriate, to ensure compliance with the revised rule.

Grant Recipients that awarded construction and/or administration services contracts prior to July 1, 2021, and then submit closeout documentation after on or after September 1, 2021, must include the following in the Section 3 narrative portion of the closeout report:

*This report of Section 3 labor hours includes hours worked on or after December 1, 2020, only.  
All Section 3 efforts prior to this date were evaluated under 24 CFR 135.*

Thank you for your efforts to ensure compliance with all federal, state and program requirements. If you have any questions or if we can provide any further assistance, please contact me or Melinda (Reed) Kapelka at 512-936-2086 or [Melinda.Reed@TexasAgriculture.gov](mailto:Melinda.Reed@TexasAgriculture.gov).




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Suzanne Barnard, State Director  
Texas Community Development Block Grant Program  
Texas Department of Agriculture

### **10.2.2 Section 3 Requirements**

Section 3 of the Housing and Urban Development Act of 1968 requires that, to the greatest extent feasible, economic opportunity generated by CDBG funds and other HUD assistance, most importantly employment, is directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing, as well as residents of the community in which the federal funds are spent.

HUD established benchmarks for Section 3 goals and expects the TxCDBG program to cumulatively report 25% of the total labor hours for grant-assisted projects each year as performed by Section 3 Workers; the HUD benchmark for Targeted Section 3 Workers is 5% of total labor hours worked. Failure to achieve these benchmarks requires additional justification by the state, which may necessitate additional information from Grant Recipients.

HUD's regulations for implementing Section 3 mandates can be found at 24 CFR Part 75. These administrative rules establish the requirements to be followed to ensure the objectives of Section 3 are met. Federal rules do not require Grant Recipients to contract or subcontract with a Section 3 business concern, nor do the rules require hiring of Section 3 workers. However, Grant Recipients must be able to demonstrate that, where possible, contracting, employment, and training opportunities were made available to workers and businesses meeting Section 3 designation criteria.

#### **Applicability**

Section 3 requirements apply to all TxCDBG grants unless otherwise identified by this Implementation Manual or the Grant Agreement.

- The requirements apply to the entire project that is funded with Section 3 covered financial assistance, regardless of whether the Section 3 project is fully- or partially-funded with CDBG assistance.
- All construction and administrative services contracts must comply with the programmatic requirements below.
- Section 3 goals and data reporting requirements generally do not apply to contracts for materials, planning, and professional services. Professional services include non-construction services that require an advanced degree or professional licensing (e.g., engineering, architecture, land surveying, accounting).

#### **Section 3 Compliance**

Grant Recipients must complete each of the following steps in order to be considered compliant with Section 3 programmatic requirements – key terms for these steps are described in the following sections:

1. Identify the Section 3 Service Area. A map of this service area must be submitted to TDA, as described in Chapter 2, Group A requirements.
2. Facilitate contracting opportunities for Section 3 Businesses. Prior to procuring or selecting any contract for construction services, report the contracting opportunity to the following resources—retain a screen shot of each resource demonstrating that the data was provided at least ten business days prior to the bid opening date for each opportunity unless otherwise directed by TDA staff:
  - HUD's Section 3 Opportunity Portal:  
<https://hudapps.hud.gov/OpportunityPortal/search.action>—

- At least one organization providing access to and assistance with bid opportunities, particularly those that recognize small and disadvantaged businesses that are likely to include Section 3 Businesses, such as:
    - i. Public/non-profit organizations;
    - ii. Private plan rooms; or
    - iii. Local Workforce Solutions Offices (WIOA One Stop Shop), if applicable – see [https://www.twc.texas.gov/directory-workforce-solutions-offices-;](https://www.twc.texas.gov/directory-workforce-solutions-offices-)
  - TDA-GO! Materials and Services Record Pre-Selection Clearance data including bid opening date. This requirement is effective beginning 30 days after the launch of the TDA-GO Project Management module.
- NOTE:** TDA will ensure that Section 3 Businesses are included in the pre-qualified grant administrator application process, therefore this step is not required for administration services.
3. Facilitate general employment opportunity information for Section 3 Workers. In an open meeting of the local governing body, the Grant Recipient must present the Section 3 goals of the CDBG program. This item must be reflected in the agenda and/or minutes of the meeting. TDA recommends completing this step at the meeting in which the first construction contract is awarded; however, in all cases it must be completed prior to requesting grant funds to reimburse construction costs - see Chapter 2, Group B requirements. The presentation must include:
    - HUD's Section 3 Opportunity Portal - <https://hudapps.hud.gov/OpportunityPortal/search.action>
    - Texas Workforce Solutions - WorkInTexas.com and
    - other Section 3 information as described in the *Section 3 Sample Presentation to Local Community (Form A1024)*.
  4. Facilitate specific employment opportunities for Section 3 Workers. If new employees are needed OR if vacancies exist for work on the TxCDBG-assisted project, the Grant Recipient and/or contractor must access the following resources to identify potential Section 3 employees—a printout of the results of the portal search in the local files is acceptable documentation of this effort. Grant Recipients and contractors are not required to employ Section 3 workers, nor to modify the qualification or requirements of the position, but must demonstrate an effort to identify potential employees as appropriate, including documentation for any applicants that are Section 3 Workers.
    - HUD's Section 3 Opportunity Portal - <https://hudapps.hud.gov/OpportunityPortal/search.action>;
    - Texas Workforce Solutions - WorkInTexas.com; and
    - Local Workforce Solutions Office (WIOA One Stop Shop), if applicable - <https://www.twc.texas.gov/directory-workforce-solutions-offices-services>.
  5. Ensure Contractor compliance.
    - Include the required contract provision in all applicable contracting opportunities. See Appendices D and F.
    - Collect records for all construction and administration service providers, including subcontractors, documenting the labor hours performed by each employee and the Section 3 status of each employee. Generally, this consists of payroll records and certification of status for each employee. A summary of this information must be reported to TDA as part of the Project Completion Report, and support documentation must be maintained in the local files.

6. **Additional Efforts.** Record all additional efforts to ensure Section 3 Businesses have opportunity to compete for contracting opportunities, and that Section 3 Workers and Targeted Section 3 Workers have the opportunity to benefit from the TxCDBG assistance. These efforts support the state's explanation, should the program not meet the established benchmarks, and identify areas where the TxCDBG program could support Section 3 Business and Workers in the future. Examples include:
- Outreach efforts
  - Training or apprenticeship opportunities
  - Technical assistance to Section 3 Workers (multiple types)
  - Technical assistance to Section 3 Business concerns
  - Job fairs
  - Divide contracts into smaller jobs
  - Bonding assistance
  - Other Business registries

### **Key Definitions**

It order to meet the Section 3 reporting requirements, all workers for the project must be classified as one of three worker categories – report the most restrictive category that is appropriate for an individual worker:



#### **Criteria for All Worker Designation**

All individuals performing applicable work (labor hours) for the TxCDBG-funded project that do not meet one of the Section 3 designations are reported only under the All Workers category.

#### **Criteria for Section 3 Worker Designation**

To comply with Section 3 Reporting requirements, the Grant Recipient must determine whether each individual performing construction or administrative work on the project meets the criteria for a Section 3 Worker. A Section 3 Worker is any worker who currently, or when hired by the current employer within the past five years, fits at least one of the following categories:

- The worker's individual income for the previous or annualized calendar year is below the income limit published on TDA's website for use in income surveys. **NOTE:** Income of family members other than the employee are excluded from this determination.
- The worker is employed by a Section 3 business concern.
- The worker is a YouthBuild participant.

Each Section 3 Worker's status must be documented with one of the following:

- A worker's self-certification that their income is below the income limit using the TxCDBG Income Survey Questionnaire, clearly marked in the **place field** as "Section 3 Income Only";
- A worker's self-certification of participation in a means-tested program such as public housing or Section 8-assisted housing;
- Certification from a public housing authority (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;
- Section 3 *Employer Certification Form (Form A1022)*, certifying that each listed worker's income from that employer is below the income limit. This certification is based on a calculation of what the worker's wage rate would translate to if annualized on a full-time basis; or
- Section 3 *Employer Certification Form (Form A1022)*, if the employer is a Section 3 business, identifying all workers for the project.

### **Criteria for Targeted Section 3 Worker Designation**

The Targeted Section 3 Worker reflects both statutory and policy priorities to direct employment and economic opportunities to low- and very low-income individuals.

For CDBG, the definition of a Targeted Section 3 Worker is a Section 3 worker that is

- employed by a Section 3 business (see Section 3 Business definition above); or
- a worker who currently fits or when hired fit at least one of the following categories, as documented within the past five years:
  - Living within the service area of the project; or
  - A YouthBuild participant.

### **Section 3 Service Area**

To correctly identify Targeted Section 3 Workers, the Grant Recipient must first confirm the Section 3 Service Area. A Section 3 Service Area for a TxCDBG project is determined as follows:

- Identify the project site. For infrastructure projects, the project site is the area included in the Environmental Review project description. The center point of this project site is the basis for the Section 3 Service Area.
- Identify a circle with a one-mile radius, with the project site central point as the origin.
- Calculate the population that resides within the one-mile circle. If less than 5,000 people according to the most recent U.S. Census, then aggregate census block group geographies totaling a minimum of 5,000 persons that both
  - surrounds all components of a Project Site, AND
  - most closely approximates a circle shape.

For an example, see *Sample Section 3 Service Area (Form A1021)*. TDA has discretion to determine whether the geographies identified by the subrecipient are the appropriate Service Area, and to require revision if necessary.

### **Criteria for Section 3 Business Designation**

One way to target grant funding to the workers that are described in HUD's Section 3 goals is to identify Section 3 Businesses. Section 3 Businesses must meet at least one of the following regulatory criteria, documented within the last six-month period:

- It is at least 51% owned and controlled by low- or very low-income persons;

- Over 75% of the labor hours performed for the business over the previous three-month period are performed by Section 3 Workers; or
- It is a business at least 51% owned and controlled by current public housing residents or residents who currently live in Section 8-assisted housing.

Documentation of Section 3 Business status can be met in one of two ways:

- *Certification as Section 3 Business (Form A1023)*, or
- Inclusion on any list or database published by HUD reporting Section 3 status.

Section 3 Business status will be reported once for each contract for services. Once a business is determined to be a Section 3 Business, the designation will remain in effect for the life of the contract for services. Records supporting this status must be made available upon request to TDA, HUD, or other state or federal authorized officials. Please redact Personally Identifiable Information (PII) from payroll records prior to releasing any documentation under this requirement. For construction contractor certified payroll reports, HUD requires first payroll on which each employee appears to include the employee's name and an individually identifying number. Afterward, the identifying number does not need to be reported unless it is necessary to distinguish between employees.

**NOTE:** Section 3 Businesses may only be selected in accordance with the procurement standards of Chapter 5—including price, ability, and willingness to comply with program requirements, to be considered lowest responsible bidders on contracting opportunities being sought. However, Grant Recipients should make every effort to ensure that Section 3 Businesses are able to effectively participate in the opportunity. In turn, contractors and others should direct their efforts to award subcontracting opportunities generated from the expenditure of housing and community development financial assistance to Section 3 Businesses.

The Grant Recipient shall take all appropriate action, including execution of a change order or addendum to the services contract as appropriate, to ensure compliance with the revised rule where applicable.

**Appendix D**  
**PART IV**  
**TERMS AND CONDITIONS**

19. Economic Opportunities for Section 3 Residents and Section 3 Business Concerns.

- a. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- b. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 75, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 75 regulations.
- c. The Contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 75, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 75. The Contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 75.
- d. The Contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the Contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 75 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 75. Minimum expectations of effort to direct employment opportunities to such workers are identified in the TxCDBG Project Implementation Manual.

**Appendix F**  
**GENERAL CONDITIONS - PART I**  
**FOR CONSTRUCTION**

45. Economic Opportunities for Section 3 Residents and Section 3 Business Concerns.

- (a) The work to be performed under this Contract is subject to the requirements of section 3 of the Housing and Urban Development (HUD) Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- (b) The parties to this Contract agree to comply with HUD's regulations in 24 CFR part 75, which implement section 3. As evidenced by their execution of this Contract, the parties to this Contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 75 regulations.
- (c) The Contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 75, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 75. The Contractor will not subcontract with any subcontractor where the Contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 75.
- (d) The Contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the Contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 75 require employment opportunities to be directed, were not filled to circumvent the Contractor's obligations under 24 CFR part 75. Minimum expectations of effort to direct employment opportunities to such workers are identified in the TxCDBG Project Implementation Manual.
- (f) Noncompliance with HUD's regulations in 24 CFR part 75 may result in sanctions, termination of this Contract for default, and debarment or suspension from future HUD assisted contracts.

## CONTRACTOR CERTIFICATIONS

U.S. Department of Housing and Urban Development

### CERTIFICATION OF BIDDER REGARDING CIVIL RIGHTS LAWS AND REGULATIONS

#### INSTRUCTIONS

CERTIFICATION OF BIDDER REGARDING Executive Order 11246 and Federal Laws Requiring Federal Contractor to adopt and abide by equal employment opportunity and affirmative action in their hiring, firing, and promotion practices. This includes practices related to race, color, gender, religion, national origin, disability, and veterans' rights.

NAME AND ADDRESS OF BIDDER (include ZIP Code)

#### CERTIFICATION BY BIDDER

Bidder has participated in a previous contract or subcontract subject to Civil Rights Laws and Regulations.

☐ Yes

☐ No

The undersigned hereby certifies that:

☐ The Provision of Local Training, Employment, and Business Opportunities clause (Section 3 provision) is included in the Contract.

☐ The Equal Opportunity clause is included in the Contract (if bid equals or exceeds \$10,000).

Have you ever been or are you being considered for sanction due to violation of Executive Order 11246, as amended?

☐ Yes

☐ No

NAME AND TITLE OF SIGNER (Please type)

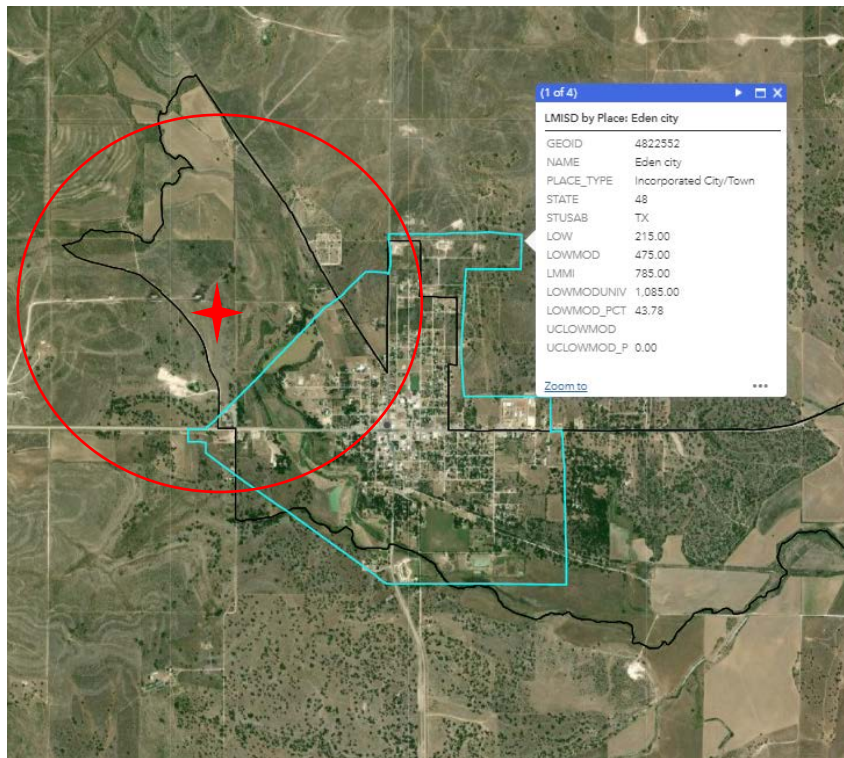
SIGNATURE

DATE

## Sample Section 3 Service Area

Example 1 – Project located in northwest Eden Texas – the Eden City limits are indicated in blue on the map below.

Step 1: identify a circle around the center of the project site with a radius of 1 mile:



In this example, the city limits for the “place” are indicated in blue, and the project is marked with the red cross. The red circle marks the area within one mile of the project site. The Population within the circle is clearly less than 5,000 persons, so continue to Step 2.

Step 2 – aggregate census block group geographies totaling a minimum of 5,000 persons that both

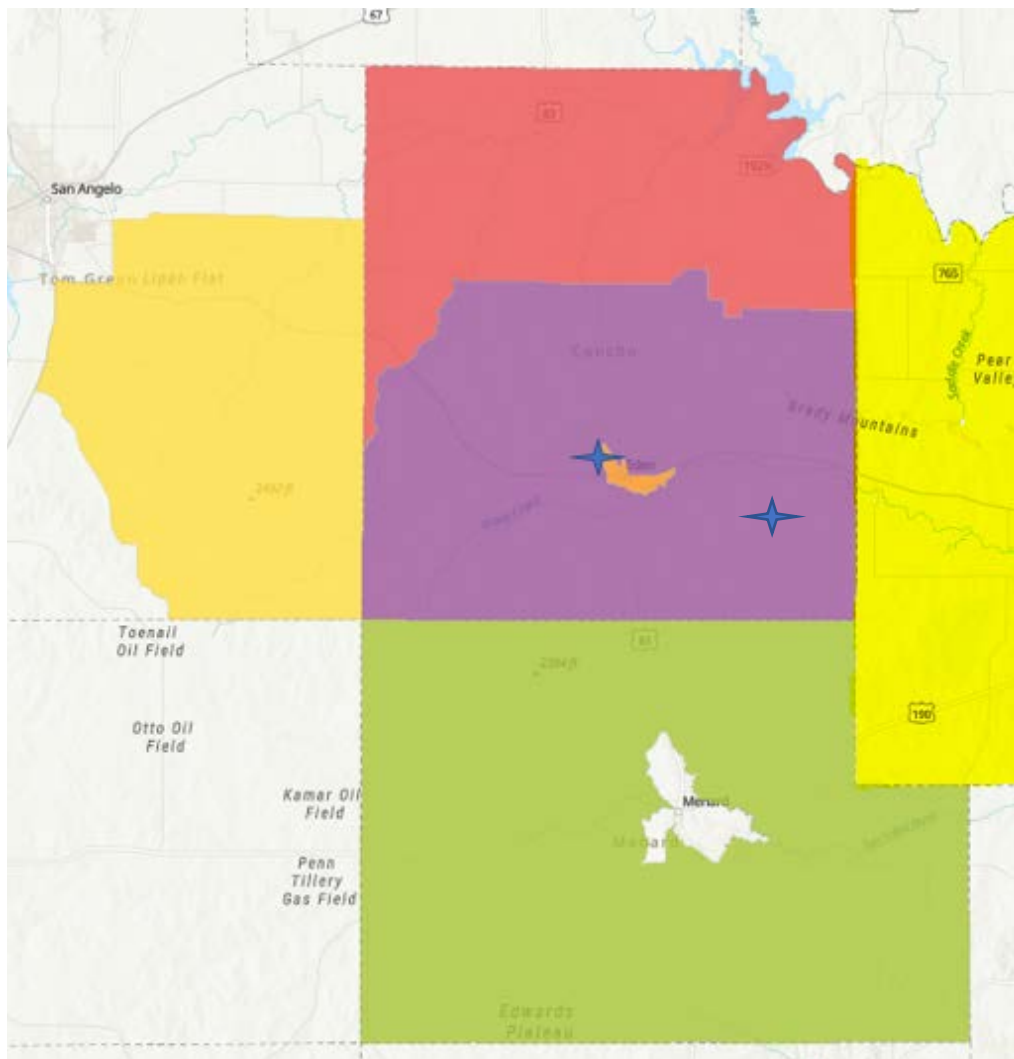
- surrounds all components of a Project Site, AND
- most closely approximates a circle shape.

At this time, no HUD tools have been provided to assist with this process. If the Grant Recipient or its service providers do not have other available tools, TDA recommends using the LMISD Mapping Application, normally used to identify beneficiary populations, to visually identify block groups to be included.

[Low- and Moderate-Income Summary Data, based on 2011-2015 ACS - Overview \(arcgis.com\)](#)

In this example the following Block Groups make up the “circle”:

Census Block Group	LOWMODUNIV
Concho County (all BG)	2685
McCulloch Co Block Group 1	655
Menard Co Block Group 1	465
Tom Green Co Block Group 4	1330
<b>Total Population</b>	<b>5135</b>



## Section 3 Employer Certification Form

Grant Recipient: \_\_\_\_\_

Contract No: \_\_\_\_\_

Employer Name: \_\_\_\_\_

Employee Name	ID# (Not SSN)	Section 3 Status	Basis for Section 3 Status, if applicable*	Documentation of LMI, if applicable	Family Size
		Options: • Targeted Section 3 worker • Section 3 worker • Not a Section 3 Worker	Options: • current LMI status; • LMI status at date of Hire; • Youthbuild Participant	Options: • self-certification, • participation in means-tested program, • PHA certification, • Employer's certification calculating income, or • Employer's certification of its own Section 3 Business Concern status	

\*A map identifying the residential address for each Targeted Section 3 Employee relative to the Service Area must be available in the local contract file.

CERTIFICATION: By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and this reporting measure is for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title XXX).

Grantee Name and Title (Print)	Signature	Date
Employer Name and Title (Print)	Signature	Date

This form is required as of September 1, 2020.  
All previous versions no longer valid.

This form is required as of September 1, 2020.  
All previous versions no longer valid.

## Section 3 Certification as S3 Business Concern

### Business Information

Business Name	
Address of Business Headquarters	
County of Business Headquarters	
County of residence for 51% of employees	
Name of Owners /Operators	
Section 3 status of Owner/Operators	<input type="checkbox"/> Low-to-Moderate income <input type="checkbox"/> Public Housing Resident <input type="checkbox"/> None of the above

### Labor Hours – Previous 3 Months\*

Start Date of Reporting Period	
End Date of Reporting Period	
Total Number of Labor Hours – all work	
Number of S3 Labor Hours (work performed by LMI Persons and/or YouthBuild Participants)	
S3 Hours as percent of Total Labor Hours	

*\*Records supporting these hours must be made available upon request. Please redact Personally Identifiable Information from payroll records prior to releasing any documentation under this requirement. Employee ID numbers other than an employee's Social Security Number should be used to facilitate this expectation.*

CERTIFICATION: By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and this reporting measure is for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title XXX).

Business Owner or Designee Name and Title (Print)	Signature	Date