

Community Development



CDBG Section 3 Policy and Procedures

Draft
Revised 2015



West Virginia Development Office

This Section 3 Policies and Procedures Manual is intended as a guide, not as a substitute for a thorough knowledge of state and federal laws and regulations referenced in this manual. In the event of any discrepancy, federal regulations will prevail. The Grantee is responsible for compliance with the most current and stringent of any applicable local, state or federal law or regulation(s).

The West Virginia Development Office does not discriminate on the basis of age, race, color, religion, sex, national origin, familial status or disability in the admission, access to, treatment of, or employment in, its federally assisted programs or activities.

Since 1994, HUD's Section 3 requirements have been governed by an interim regulation. In March 2015, HUD released a new Section 3 Rule. This policy is used in anticipation the implementation of the new rule and will be updated upon final implementation. For additional information, call the West Virginia Development Office at 304-558-2234.



West Virginia Development Office
Section 3 Policy and Procedures for HUD Funded
Programs and Projects

Purpose

The purpose of Section 3 of the Housing and Urban Development Act of 1968 is to “ensure that employment and other economic opportunities generated by certain U.S. Department of Housing and Urban Development (HUD) financial assistance for housing and community development programs shall, to the greatest extent feasible, be directed to low and very low income individuals, especially recipients of government assistance for housing and to businesses which provide economic opportunities to low and very low income individuals.”

As a recipient of HUD funding, the West Virginia Development Office (WVDO) has developed this Section 3 Policy to ensure compliance with Section 3. The policy will provide direction to WVDO staff, Grantees, project administrators, contractors and subcontractors for the implementation of Section 3.

In compliance with Section 3 of the Housing and Urban Development Act of 1968, as amended, and 24 CFR Part 135, the WVDO requires that Grantees provide opportunities to low- and very low-income persons (Section 3 Residents) and to eligible businesses (Section 3 Businesses). Section 3 applies to projects involving housing construction, rehabilitation, demolition or other public construction.

The WVDO shall amend its Section 3 Policy and Procedures every five years, or as necessary, to ensure compliance. The goals stated in this policy are consistent with those outlined in the State of West Virginia Consolidated Action Plan for the Community Development Block Grant (CDBG) program and other HUD programs, including, but not limited to:

- Community Development Block Grant (CDBG)
- Community Development Block Grant-Disaster Recovery Initiative (CDBG-DRI)
- Neighborhood Stabilization Program (NSP)
- Other HUD funded programs, as designated.

Applicability

This policy applies to Grantees, defined as county commissions, municipalities, and their contractors and subcontractors, including contracted labor, professional and administrative services.

This policy shall apply to contractors and subcontractors who install materials or equipment. It shall not apply to contractors who only furnish materials or supplies through Section 3 covered assistance. See the definition of “Section 3 Covered Contracts” and other definitions contained within this policy.

This policy applies to all contracts and subcontracts for Public or Indian Housing projects regardless of the amount of the contract or subcontract.

Nothing in this policy shall be construed to require the employment or contracting of a Section 3 resident or contractor who does not meet the qualifications of the position to be filled or who cannot fulfill contract requirements.

Background

Congress established Section 3 policy to guarantee the employment and other economic opportunities created by Federal financial assistance for housing and community development programs should, if possible, be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing.

The WVDO will take affirmative steps to ensure that Grantees provide job applicants and existing employees with fair and equal treatment. This will be accomplished through the award of contracts to Grantees, contractors, subcontractors who create employment and business opportunities to low income residents of the public housing community and other qualified low income persons residing in the community in which Federal funds are invested.

Contracting Thresholds (24 CFR 135.3)

In compliance with Section 3, the WVDO will require Grantees to establish training, employment, contracting and other economic opportunities arising from HUD funding.

Section 3 applies to contractors and subcontractors performing work on construction projects when:

1. The amount of the assistance exceeds \$200,000; and
2. The amount of the contract or subcontract exceeds \$100,000.

If these thresholds are met, the Section 3 requirements apply to the **entire** project or activity that is funded with Section 3 covered assistance, regardless of whether the Section 3 activity is fully or partially funded with Section 3 covered funds.

Numerical Goals for Employment and Contracting (24 CFR 135.30)

HUD has established minimum employment and contracting goals for all recipients of HUD Funding. This requirement applies to projects funded in whole or in part with HUD funding.

1. All Grantees and contractors will seek Section 3 Residents, or low- or very low-income persons, residing in the property metropolitan area or county for **30 percent** of all new hires as follows:
 - a. 30 percent of the aggregate number of new hires in a fiscal year.
2. All Grantees and contractors will seek Section 3 Businesses to achieve Section 3 numerical goals as follows:
 - a. **10 percent** of the total dollar amount of all contracts involving public construction;
 - b. **3 percent** of the total dollar amount of all other contracts for professional services, such as engineering, legal and accounting services.

Minimum Numerical Goals for Employment (New Hires)

The minimum numerical goal for employment is 30 percent of the aggregate number of new hires shall be Section 3 residents annually; meaning, 1 out of 3 new employees needed to complete a Section 3 covered project shall be a Section 3 resident.

Minimum Numerical Goals for Contracting

The minimum goals for contracting are:

1. 10 percent of the total dollar amount of all Section 3 covered contracts for building trades work for maintenance, repair, modernization or development of public or Indian housing or building trades work arising in connection with housing rehabilitation, housing construction and other public construction, shall be awarded to Section 3 businesses; and
2. 3 percent of the total dollar amount of all non-construction Section 3 covered contracts, shall be awarded to Section 3 businesses.

Section 3 Coordinator

Each Grantee must designate a Section 3 Coordinator in writing to the WVDO. The function of monitoring and enforcing Section 3, and all related field activities, will be the responsibility of the Grantee. Because Section 3 is closely related to the contracting and labor requirements associated with project administration, it is recommended that Section 3 requirements be coordinated with those of labor compliance.

Monitoring and Oversight

As the Recipient of funds, the State of West Virginia, submits annual certifications to HUD documenting its acknowledgment of obligations to comply with Section 3.

Further, upon the award of any HUD funding, the Grantee certifies that it will comply with the requirements of Section 3 in a written grant agreement. Accordingly, the WVDO has the legal responsibility to monitor Grantees for compliance and can impose penalties upon those that fail to comply.

HUD monitors all Recipients, Grantees, contractors and subcontractors through review of the State's annual reports, and investigates Section 3 complaints. HUD also examines contract records for evidence that training and employment and economic opportunities are being directed to Section 3 residents and businesses.

Complaint Procedure

Section 3 complaints must be filed no later than **180 days** from the date of the action or omission upon which the complaint is based. Section 3 businesses or residents can file a complaint about a violation of Section 3 in writing to the local HUD FHEO Office or to:

The Assistant Secretary for Fair Housing and Equal Opportunity
U.S. Department of Housing and Urban Development
451 Seventh Street, SW, Room 5100
Washington, DC 20410-2000
1-800-669-9777
www.hud.gov

Definitions

A list of definitions is incorporated into this policy. See the full list of definitions contained in § 135.5 of 24 CFR Part 135.

Additional Resources

Additional information is available at: www.hud.gov/section3. The State's Section 3 Policy is posted to the WVDO website.

Project Administration

It is understood that Grantees enter into agreements with the State's Regional Planning and Development Councils for the administration of HUD funded projects. Under Section 3, Grantees must work with their project team to recruit and hire Section 3 residents and direct economic opportunities to Section 3 businesses as outlined in the state-local grant agreement, and all parties have a role in ensuring compliance. Section 3 compliance must be explicitly stated in all bid solicitations, contracts, memorandum of understanding or other enforceable documents pertaining to the administration of a CDBG project.

Responsibilities of the Grantee (24 CFR 135.32)

Upon receipt of CDBG funding, the Grantee, and its contractors and subcontractors, have the responsibility to comply with Section 3 in its own operations and to engage in proactive measures to ensure compliance by providing notification, encouragement and facilitation of Section 3 goals.

Grantee responsibilities include:

1. Appointing a Section 3 Coordinator.
2. Giving notice of any and all opportunities for employment and contracting to residents of the local Public Housing Authority (PHA), and other low and very low income area residents and businesses, by posting the opportunity in community sources generally available to low income residents and the general public. Notices should be effective for persons with hearing, visual or other communications-related disabilities.
3. Notifying the following listed sources prior to offering employment to anyone not covered by Section 3 requirements:
 - a. The local community newspaper
 - b. The most widely distributed newspaper
 - c. Company or agency website
 - d. The management office of the local housing authority/homeless service agency/local low income housing community
 - e. Local Workforce Board (i.e. WorkForce West Virginia)
 - f. Local office of the West Virginia Division of Family and Children Services
 - g. Other locations as approved by WVDO
4. Clearly stating in notices that any potential position is a "Section 3 covered position under the HUD Act of 1968 and that Section 3 Residents and Business Concerns are encouraged to apply."
5. Providing self-certification forms for those interested in potential job opportunities at the Grantees offices and accepting applications;

6. Developing and maintaining a list of Section 3 candidates who have expressed interest in, or submitted an application for, potential job opportunities;
7. Documenting measures, over and above normal practices, to notify Section 3 businesses about potential contract opportunities generated by Section 3 covered assistance so that residents may seek jobs and businesses may submit bids or proposals for available contracts;
8. Notifying potential contractors of the objectives of Section 3 and ways in which each contractor can assist the Grantee in meeting its goal;
9. Facilitating the training and employment of Section 3 residents and the award of contracts to Section 3 business concerns; and
10. Documenting the action taken to comply with Section 3 requirements, and the results of the actions, on every contract and subcontract;
11. Refusing to award contracts to businesses that have previously violated Section 3 requirements;

Responsibilities of the Grantee and Contractor (24 CFR 135.32)

Grantees have a responsibility to **ensure the compliance** of their contractors and subcontractors. All contractors must certify their willingness to comply with Section 3 requirements with any bid or proposal using the Section 3 Certification Forms (Attachment 6-5A and 6-5D), as provided in the WVDO CDBG Policy and Procedures Manual, Chapter 6: Construction Management. Failure to provide these documents will result in a non-responsive, and therefore, ineligible, bid.

Section 3 Certifications and Clauses must be included in the Supplemental General Conditions of all contracts and subcontracts. The project administrator is most often responsible for managing Section 3 compliance for construction projects. Engineers must also ensure that Section 3 clauses and forms are included in bid packages and contract documents to ensure compliance.

At a minimum, Grantees must:

1. Adopt minimum numerical goals.
2. Establish proper income limits.
3. Develop and maintain a list of Section 3 residents that have expressed interest in potential employment opportunities.
4. Define and identify Section 3 businesses through the promotion of the online registry: www.hud.gov/sec3biz.
5. Insert the Section 3 Clause in ALL solicitations.

6. Notify contractors (construction and professional) of their responsibilities under Section 3, including, but not limited to, incorporating the Section 3 Clause into prebid meetings, bid documents, bid openings and preconstruction meetings.
7. State that contracts, as applicable, are covered by Section 3, by inserting the phrase, **“This project is covered under the requirements of Section 3 of the HUD Act of 1968,”** in the advertisements for bids.
8. Ensure that Section 3 Clauses is contained in all advertisements, bids, contracts and subcontracts.
9. Mandate that Section 3 Certifications are a condition of responsive bids.
10. Execute a detailed Section 3 Plan by and between the Grantee and the Contractor.
11. Inform Section 3 residents and businesses about the availability of potential jobs, contracts and training opportunities (24 CFR 135.32).
12. Refrain from entering into contracts with contractors that are in violation of the regulations in 24 CFR Part 135.
13. Establish enforcement and monitoring procedures throughout the project and contract period (24 CFR 135.74).
14. Review and enforce contractor requirements for employing Section 3 residents.
15. Establish a core payroll list and monitor weekly payrolls for hiring activity.
16. Obtain all required documentation from the contractor.
17. Evaluate the project at regular intervals to ensure compliance.
18. Submit required forms and reports to the WVDO.
19. Respond to complaints made to the recipient by Section 3 residents or business concerns that the sub-recipient, a contractor or subcontractor, is not in compliance with 24 CFR Part 135.
20. Cooperate with HUD in obtaining the compliance of contractors and subcontractors when allegations are made that the Grantee’s contractors and subcontractors are not in compliance with the regulation of 24 CFR Part 135.

Greatest Extent Feasible (24 CFR 135.1)

To fulfill Section 3 requirements, the WVDO strongly recommends that Grantees, and their contractors and subcontractors, to:

Facilitate an annual opportunity fair to link contractors and professional services with interested Section 3 residents for possible employment. Develop a list of potential job trades and prequalified Section 3 residents and businesses as a resources.

Promote the use of the Section 3 Business Registry with local chambers of commerce, Workforce Investment Boards, Small Business Development Centers, and economic development authorities.

In determining whether employment and economic opportunities were directed to Section 3 Residents and Businesses to the “greatest extent feasible,” the following questions will be considered:

1. Why was it not feasible to meet the numerical goals?
2. What impediments were encountered despite actions taken?
3. What best efforts were taken to comply?
4. Were notices and flyers posted in the common areas of low income or HUD assisted housing?
5. Were resident managers or resident organizations contacted?
6. Was a job fair in which self-certification, skills surveys or applications were accepted conducted?
7. Were local Workforce West Virginia, Youthbuild or employment agencies contacted?
8. Were community organizations, business assistance organizations or Small Business Development Centers contacted?
9. Was a list of Section 3 Businesses developed and were those businesses advised of the potential contracting opportunities?

Section 3 Residents

1. Residents of HUD-assisted housing (and housing voucher recipients); or
2. Individuals that reside in the metropolitan area or non-metropolitan county in which the Section 3 covered assistance is expended and whose income does not exceed the local HUD Income Limits set forth for low (80 percent of median income) and very low-income households (50 percent of median income).

All contractors and subcontractors undertaking Section 3 covered projects are expected to meet Section 3 requirements. Contractors and subcontractors are required to hire Section 3 residents as 30 percent of the aggregate number of new hires. To demonstrate compliance with the "greatest extent feasible" requirement of Section 3, contractors must meet the goals set forth below for providing training, employment and contracting opportunities to Section 3 residents.

Pursuant to 24 CFR Part 135.34, contractors must grant preference to Section 3 residents, in the following order:

1. Category 1: Section 3 Residents residing in the service area or neighborhood in which the project is located.
2. Category 2: Participants in HUD Youthbuild programs.
3. Category 3: Homeless persons.
4. Category 4: Other Section 3 Residents.

The contractor and all subcontractors must conduct interviews that result in equal and fair competition among applicants. All efforts and processes must be fully documented, including verifiable reasons for the selection of a new employee.

It will be the responsibility of the Section 3 resident to demonstrate qualifications and ability to compete for selection. Nothing in this part shall be construed to require the employment of a Section 3 Resident who does not meet the qualifications of the position to be filled.

Section 3 Hiring Goals

All CDBG projects have a 30 percent Section 3 goal. This goal was established in 1997, and performance is measured through annual reporting to the WVDO.

Employment goals are based on **new hires**, which are defined as full-time employees for permanent, temporary or seasonal employment opportunities, meaning that 30 percent of the permanent, full-time, temporary or seasonal employees hired should be Section 3 residents. Section 3 residents who have been employed for three (3) years can no longer be counted as a Section 3 employee to meet the 30 percent requirement. This requires participants to continue hiring Section 3 residents when employment opportunities are available.

Section 3 Income Limits (24 CFR 135.30)

All residents of the local housing authority, located within the metropolitan statistical area or county of the project, qualify as Section 3 residents.

In addition, individuals residing within the metropolitan statistical area or the county who meet the most recent income limits as established by HUD, can also qualify for Section 3 status, as follows:

1. Low Income Person: A person whose household income (including single persons) does not exceed 80 percent of the Median Income for the project area.
2. Very Low Income Person: A person whose household income (including single persons) does not exceed 50 percent of the Median Income for the project area.

HUD Income Limits are updated on an annual basis. The WVDO provides notification of these updates to project administrators. The Fiscal Year 2015 limits are available at www.huduser.org/portal/datasets/il/il15/index.html. Follow the link, choose West Virginia, and then identify the proper County or Metropolitan Statistical Area (MSA).

It is recommended that a summary sheet be prepared, by county or metropolitan statistical area (MSA), for each CDBG project, that provides updated income limits and incorporates the sample Section 3 Resident Self-Certification Form provided as an attachment to this policy.

*Example: Table of Adjusted Median Income for Lewis County, WV. City of Weston, WV
(effective 10/22/2015)*

Family Size	1 Person	2 Persons	3 Persons	4 Persons	5 Persons	6 Persons	7 Persons	8 Persons
Household Income	\$27,800	\$31,800	\$35,750	\$39,700	\$42,900	\$46,100	\$49,250	\$52,450

Training and Other Economic Opportunities

Any contractor who certifies the need for new hires and demonstrates that all efforts for Section 3 compliance have been unsuccessful, should support other economic opportunities for Section 3 residents such as:

- Training and employment-related opportunities for Section 3 residents, such as upward mobility, bridge and trainee positions to fill vacancies;
- Hiring Section 3 residents in part-time positions;
- Providing job shadowing or internship opportunities for Section 3 residents to learn more about construction trades and professional services.

Section 3 Businesses:

Section 3 Businesses, as defined by HUD, include:

1. Businesses that are 51 percent or more owned by Section 3 Residents;
2. Businesses whose permanent, full-time employees include persons, at least 30 percent of whom are currently Section 3 residents, or within three years of the date of first employment with the firm were Section 3 residents; or
3. Businesses that provide evidence of a commitment to subcontract in excess of 25 percent of the dollar amount of all subcontracts to be awarded to businesses that meet the qualifications described in 1 or 2 above. For example: If a contract is equal to \$1,000,000, the contractor must subcontract in excess of 25 percent, or greater than \$250,000, to a Section 3 Business as defined in 1 or 2 in this part.

The [Section 3 Business Registry](#) is a national HUD initiative to help Grantees meet their regulatory obligations by providing a list of local self-certified Section 3 businesses. The Section 3 Business Registry can identify prospective firms to be notified about the availability of local HUD-funded contracts. The site can be searched by state, city, county, or type of business at www.hud.gov/sec3biz.

Types of Opportunities are Available under Section 3

Section 3 opportunities include many functions, including job training, employment, and contracts, related to the following fields:

Administrative/Management	Services	Construction
Architecture Engineering Legal Accounting Document Services Payroll Research Bookkeeping Purchasing Data Entry	Marketing Janitorial-Custodial Catering Landscaping Printing Computer/Technology Manufacturing Transportation Photography	Bricklaying Carpentry Cement/Drywall Electrical Excavating Engineering Fencing Heating/HVAC Iron Works Machine Operation Painting Plastering Plumbing Road Work Surveying

Weekly Payroll Reporting and Review

According to the State of West Virginia CDBG Policies and Procedures, Grantees are required to submit to the WVDO the first two certified weekly payrolls for each project. Under this requirement and consistent with this Section 3 policy, Grantees will be required to monitor weekly payrolls for hiring activity. This review will be conducted in conjunction with weekly payroll reviews under the provisions of Davis-Bacon.

The general contractor and any subcontractors subject to Section 3 should submit a **core list** of existing employees to the project administrator prior to construction. If additional employees are needed to complete a project, stringent federal regulations apply to hiring activity. Grantees, contractors and subcontractors each have a role in ensuring compliance.

Should any new employees be added to the weekly payroll, the contractor and subcontractor must submit documentation to the Grantee verifying the employee's status as an existing or new employee. Because of the strict hiring requirements, and all associated reporting requirements associated with Section 3, contractors and subcontractors must notify the Grantee of any hiring activity during the contract period.

Labor Union Compliance

Because Section 3 is triggered by the need to hire, the use of labor obtained through labor unions is subject to Section 3 requirements. A sample Section 3 letter to a union office is provided within this policy.

Preference for Section 3 Businesses (24 CFR 135.36)

In accordance with Federal regulations, residents and businesses seeking Section 3 contracting preference shall certify and submit evidence to the Grantee, contractor or subcontractor (if requested) verifying that the business qualifies as a Section 3 business definitions provided above.

Grantees can use their discretion for determining the type of verification that is required by prospective Section 3 residents and businesses, provided that a sample is verified. Examples of verification include: proof of residency in a public housing authority, payroll data, or other relevant business information.

The Section 3 business must also demonstrate its ability to perform successfully under the terms and conditions of the contract and require its contractors and subcontractors to meet the requirements of 24 CFR 85.36 and 24 CFR 85.36(b)(8).

Grantees are encouraged to use the [Section 3 Business Registry](#) to identify prospective firms to be notified about the availability of local HUD-funded contract opportunities. The site can be searched by state, city, county, or type of business at www.hud.gov/sec3biz. However, businesses must recertify at the time of a bid so that the certification is up to date and part of the bid package.

Note: This section will be revised based upon implementation of final rule.

Section 3 Compliance and Reporting

Grantees that fail to meet the minimum numerical goals bear the burden of demonstrating why it was not possible to do so. Such justifications must describe the efforts that were taken, barriers encountered, and other relevant information that will enable the WVDO to make a compliance determination. This justification must document all efforts to notify, encourage and facilitate Section 3 compliance.

Grantees that submit Section 3 reports containing **all zeros**, without sufficient explanation to justify the submission, are in noncompliance with the requirements of Section 3.

The **only** safe harbor for determining compliance with Section 3 are met through achievement of the following minimum numerical goals:

1. 30 percent new hiring of Section 3 Residents;
2. 10 percent of contracts for Section 3 Businesses for construction contracts;
3. 3 percent of contracts for Section 3 Businesses for professional contracts.

Because the WVDO does not directly procure the contracts associated with CDBG-funded projects, compliance is required by the WVDO grant agreement as executed with each unit of local government. The Grantee must ensure that the Section 3 Clause, be provided, in its entirety, in each bid, proposal, contract, subcontract and agreement associated with CDBG funding.

The WVDO must compile an annual report of Section 3 compliance. Final determination of compliance is issued by HUD. Failure to comply with the requirements of Section 3 may result in sanctions, including: debarment, suspension, or limited denial in HUD programs pursuant to 24 CFR Part 24.

Safe Harbor and Compliance Determinations

In the absent of evidence to the contrary, such as evidence that suggests efforts to the “greatest extent feasible” were not expended, the recipient or contractor is considered to have complied with Section 3 requirements if the minimum numerical goals are met. The term, “greatest extent feasible,” means that maximum effort is undertaken.

Data Collection and Annual Reporting

Annual Reports are required each year for each open grant. If a Final Performance Report (FPR) is submitted, reports will include activity through the date of the FPR. The following forms are required on a fiscal year basis, July 1 to June 30, usually at the end of July:

- Section 3 Hiring and Contracting Activity-HUD Report Form 60002
 - Minority and Women Owned Business Contracting-HUD Report Form 2516
1. **Section 3 Reporting (HUD Form 60002):** Section 3 data must be reported annually on the Section 3 Summary Report-HUD Form 60002. The WVDO will submit a combined report to HUD along with the State's Consolidated Annual Performance and Evaluation Report (CAPER).
 2. **MBE/WBE Reporting (HUD Form 2516):** Section 3 is both gender and race neutral. The preferences provided under Section 3 are based upon income level and location. Minority-Owned Business Enterprise/Women-Owned Business Enterprise (MBE/WBE) contracting activity report is reported annually on the HUD Form 2516. Data is collected and reported on a fiscal year basis, from July 1 to June 30. All contracting activity reported on this form are subject to Section 3.
 3. **HUD Labor Compliance Reporting:** Labor compliance is reported on the Semi-Annual Labor Compliance and Enforcement Report. All contracts reported on this form are subject to Section 3.

To facilitate the completion of these reports, WVDO project managers will oversee the implementation of data collection and reporting requirements and will review policies, procedures and progress reports on a regular basis, to monitor the WVDO's progress in meeting these goals. All reporting forms are provided by the WVDO, and are available online: http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/forms/.

Should it become apparent that a Grantee is not in compliance with Section 3, the WVDO will undertake corrective measures as outlined in Federal 24 CFR 135. Action will include, but not be limited to, written notice of non-compliance. The notice will require the noncomplying party to meet with the project manager and other necessary WVDO staff.

The WVDO is required to consider the successful implementation of Section 3 regulations in any future decisions regarding the Grantee, Contractor or Subcontractor and is further required to impose penalties which may include sanctions and/or the recapture of funds.

Failure to comply with the requirements of Section 3 may result in sanctions, including: debarment, suspension, or limited denial of participation in HUD programs pursuant to 24 CFR Part 135.

**HUD FORM 60002
ANNUAL REPORTING**

INSTRUCTIONS AND FORMS

HUD Form 60002 - Section 3 Reporting Requirements

Overview

Reporting requirements apply to any project receiving funds from any U.S. Department of Housing and Urban Development (HUD) source, granted by and through the West Virginia Development Office (WVDO).

This includes, but is not limited to, the following programs:

- Community Development Block Grant (CDBG-Small Cities)
- Neighborhood Stabilization Program (NSP)
- Disaster Recovery Initiative (CDBG-DR)
- All other HUD funding

Section 3 requirements are extended to Grantees (county commission or municipality), and all contractors and subcontractors. The Grantee recipient must submit one report, HUD Form 60002, that contains a combined summary of both their own Section 3 activities and those of contractors they hired (24 CFR 135.90 Reporting). The WVDO will consolidate all reports and submit a combined report to HUD.

General Concepts

The HUD Form 60002 must document the Grantee's accomplishments regarding employment, training and contracting opportunities provided to low and very low-income persons as specified in 24 CFR 135.30 (b). The Section 3 regulations apply to all contracts and subcontracts in excess of \$100,000 procured in connection with housing and community development projects with HUD funds of \$200,000 or more. Section 3 is required for the following project types:

1. Housing rehabilitation;
2. Housing construction; or
3. Public construction projects.

Reporting and Compliance Determinations

Absent evidence to the contrary, the WVDO will consider Grantees to be in compliance with Section 3 if they meet the minimum numerical goals set forth at 24 CFR Part 135.30. Specifically:

1. 30 percent of the aggregate number of new hires shall be Section 3 residents;
2. 10 percent of the total dollar amount of all covered construction contracts shall be awarded to Section 3 business concerns; and
3. 3 percent of the total dollar amount of all covered non-construction contracts shall be awarded to Section 3 business concerns.

Recipients that fail to meet the minimum numerical goals above have the burden of demonstrating why it was not possible to do so. The recipient must describe the efforts

that were taken, barriers encountered, and other relevant information that will enable the WVDO to fully assess compliance efforts and make a compliance determination.

Recipients that submit Section 3 reports containing **all zeros**, without a sufficient explanation to justify their submission, are in **noncompliance** with the requirements of Section 3.

Failure to comply with the requirements of Section 3 may result in sanctions, including: debarment, suspension, or limited denial of participation in HUD programs pursuant to 24 CFR Part 135.

Instructions for Completing form HUD form-60002

The attached form has **three** parts, which are to be completed for all projects triggering Section 3 compliance. **Part 1** relates to employment and training, **Part II** related to contracting, and **Part III** summarizes the efforts by the grantees to comply with Section 3. Grantees or contractors subject to Section 3 requirements must maintain appropriate documentation to establish that HUD financial assistance for housing and community development programs were directed toward low and very low-income persons.

1. Recipient/Project Name and address: Enter the name of the reporting project.
2. Federal Identification Number: Enter WVDO Project Number.
3. Total Amount of Award: Enter the dollar amount received by the recipient or contractor.
4. Contact person: The person with knowledge of the award and the recipient's implementation of Section 3. WVDO staff may contact with questions about this report.
5. Phone: The telephone number and email address of the contact person.
6. Contract Begin and End Date: Enter the project's contract dates – beginning, ending, revised ending.
7. Reporting Period: Enter fiscal year of report.
8. Date Report Submitted: Report data completion date.
9. Program Code: Select CDBG State-Administered, if box is empty.
10. Program Name: Corresponds with item 8.

Part I: Employment and Training

- **Column A:** Job categories: "Professionals" include those with educationally-based expertise other than construction trades (i.e.: architects, engineers, surveyors, planners, and computer programmers). For construction positions, select trade names that most closely resemble the ones involved on your job site and provide data in columns B through F for each trade where individuals were employed.
- **Column B:** Enter the number of all new hires for each job category identified in Column A. "New Hire" refers to a person who is not on the award recipient's or contractor's payroll for employment at the time of selection for Section 3 award or at the time of receipt of Section 3 covered assistance.

- **Column C:** Enter number of Section 3 new hires for each category of workers identified in Column A in connection with this award. “Section 3 new hire” refers to a Section 3 resident (24 CFR 135.5 definitions) not employed by the contractor prior to contract award.
- **Column D:** This field will automatically calculate, dividing column C by B, for % of Aggregate Number of Staff Hours of New Hires that are Sec. 3 Residents.
- **Column E:** Percent of Total Staff Hours for Section 3 Employees and Trainees. For each job category reporting new hires, enter Section 3 employees’ and trainees’ hours worked for this reporting period, under “S3E&TH” [E1]. Under “TSH” [E2] enter total staff hours worked in connection with this award. Section 3 residents hired prior to contract award count toward “all staff hours” but not toward “new hires.” The column under “=” [E3] will calculate automatically, by dividing “S3E&TH” by “TSH.”
- **Column F:** Section 3 trainees. Enter the number of Section 3 trainees for this job category during this reporting period. Only if enrolled in a HUD-approved apprenticeship or DOL training program (HUD.gov), may workers count as “trainees”.

Part II: Contracts

This section refers to contracts issued by the Grantee (county commission or municipality).

Construction

- **Item A:** Enter the total dollar amount of all construction contracts issued by the owner for this project.
- **Item B:** Enter the total dollar amount of construction contracts on this project awarded to Section 3 businesses.
- **Item C:** This field will automatically calculate, by dividing Item B by Item A.
- **Item D:** Number of construction contracts with Section 3 businesses (those 51% or more owned by Section 3 residents or in which 30% of permanent, full-time employees qualify as Section 3 residents, or in which the business commits to subcontract more than 25% of work to Section 3 businesses (24 CFR 135.5)).

Non-construction Contracts

- **Item A:** Enter the total dollar amount of all non-construction contracts issued by the owner for this project.
- **Item B:** Enter the total dollar amount of non-construction contracts on this project awarded to Section 3 businesses.
- **Item C:** This field will automatically calculate, by dividing Item B by Item A.

- **Item D:** Number of non-construction contracts with Section 3 businesses (those 51% or more owned by Section 3 residents or in which 30% of permanent, full-time employees qualify as Section 3 residents, or in which the business commits to subcontract more than 25% of work to Section 3 businesses (24 CFR 135.5)).

Part III: Outreach – Demonstration of Good Faith Efforts

Indicate which Section 3 outreach activities the recipient and its contractors performed prior to new hiring or contracting for the project.

Section 3 compliance – subject to monitoring, audit, and sanctions – depends on either meeting the numerical goals (24 CFR 135.30) or demonstrating why the recipient or contractor could not feasibly meet them. In such cases, the recipient must describe obstacles to achieving program goals, as well as describing efforts intended to overcome them.

A contract recipient may enact and report other economic opportunities, such as those listed in 24 CFR 135.40, which they use to meet Section 3 obligations.

Section 3 Summary Report

Economic Opportunities for
Low – and Very Low-Income Persons

U.S. Department of Housing
and Urban Development
Office of Fair Housing

OMB Approval No: 2529-0043
(exp. 11/30/2010)

And Equal Opportunity

HUD Field Office:

Section back of page for Public Reporting Burden statement

1. Recipient Name & Address: (street, city, state, zip)	2. Federal Identification: (grant no.)	3. Total Amount of Award:
	4. Contact Person	5. Phone: (Include area code)
	6. Length of Grant:	7. Reporting Period:
8. Date Report Submitted:	9. Program Code: (Use separate sheet for each program code)	10. Program Name:

Part I: Employment and Training (** Columns B, C and F are mandatory fields. Include New Hires in E & F)

A Job Category	B Number of New Hires	C Number of New Hires that are Sec. 3 Residents	D % of Aggregate Number of Staff Hours of New Hires that are Sec. 3 Residents	E % of Total Staff Hours for Section 3 Employees and Trainees	F Number of Section 3 Trainees
Professionals					
Technicians					
Office/Clerical					
Construction by Trade (List Trade					
Trade					
Trade					
Trade					
Trade					
Other (List)					
Total					

* Program Codes 3 = Public/Indian Housing 4 = Homeless Assistance 8 = CDBG State Administered
1 = Flexible Subsidy A = Development, 5 = HOME 9 = Other CD Programs
2 = Section 202/811 B = Operation 6 = HOME State Administered 10 = Other Housing Programs
C = Modernization 7 = CDBG Entitlement

Part II: Contracts Awarded

1. Construction Contracts:

A. Total dollar amount of all contracts awarded on the project	\$	
B. Total dollar amount of contracts awarded to Section 3 businesses	\$	
C. Percentage of the total dollar amount that was awarded to Section 3 businesses	%	
D. Total number of Section 3 businesses receiving contracts		

2. Non-Construction Contracts:

A. Total dollar amount all non-construction contracts awarded on the project/activity	\$	
B. Total dollar amount of non-construction contracts awarded to Section 3 businesses	\$	
C. Percentage of the total dollar amount that was awarded to Section 3 businesses	%	
D. Total number of Section 3 businesses receiving non-construction contracts		

Part III: Summary

Indicate the efforts made to direct the employment and other economic opportunities generated by HUD financial assistance for housing and community development programs, to the greatest extent feasible, toward low-and very low-income persons, particularly those who are recipients of government assistance for housing. (Check all that apply.)

Attempted to recruit low-income residents through: local advertising media, signs prominently displayed at the project cite, contracts with the community organizations and public or private agencies operating within the metropolitan area (or nonmetropolitan county) in which the Section 3 covered program or project is located, or similar methods.

Participated in a HUD program or other program which promotes the training or employment of Section 3 residents.

Participated in a HUD program or other program which promotes the award of contracts to business concerns which meet the definition of Section 3 business concerns.

Coordinated with Youthbuild Programs administered in the metropolitan area in which the Section 3 covered project is located.

Other; describe below.

Public reporting for this collection of information is estimated to average 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB number.

Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u, mandates that the Department ensures that employment and other economic opportunities generated by its housing and community development assistance programs are directed toward low- and very-low income persons, particularly those who are recipients of government assistance housing. The regulations are found at 24 CFR Part 135. The information will be used by the Department to monitor program recipients' compliance with Section 3, to assess the results of the Department's efforts to meet the statutory objectives of Section 3, to prepare reports to Congress, and by recipients as self-monitoring tool. The data is entered into a database and will be analyzed and distributed. The collection of information involves recipients receiving Federal financial assistance for housing and community development programs covered by Section 3. The information will be collected annually to assist HUD in meeting its reporting requirements under Section 808(e)(6) of the Fair Housing Act and Section 916 of the HCDA of 1992. An assurance of confidentiality is not applicable to this form. The Privacy Act of 1974 and OMB Circular A-108 are not applicable. The reporting requirements do not contain sensitive questions. Data is cumulative; personal identifying information is not included.

Instructions: This form is to be used to report annual accomplishments regarding employment and other economic opportunities provided to low- and very low-income persons under Section 3 of the Housing and Urban Development Act of 1968. The Section 3 regulations apply to any **public and Indian housing programs** that receive: (1) development assistance pursuant to Section 5 of the U.S. Housing Act of 1937; (2) operating assistance pursuant to Section 9 of the U.S. Housing Act of 1937; or (3) modernization grants pursuant to Section 14 of the U.S. Housing Act of 1937 and to **recipients of housing and community development assistance in excess of \$200,000** expended for: (1) housing rehabilitation (including reduction and abatement of lead-based paint hazards); (2) housing construction; or (3) other public construction projects; and to **contracts and subcontracts in excess of \$100,000** awarded in connection with the Section-3-covered activity. Form HUD-60002 has three parts, which are to be completed for all programs covered by Section 3. Part I relates to **employment and training**. The recipient has the option to determine numerical employment/training goals either on the basis of the number of hours worked by new hires (columns B, D, E and F). Part II of the form relates to **contracting**, and Part III summarizes recipients' **efforts** to comply with Section 3.

Recipients or contractors subject to Section 3 requirements must maintain appropriate documentation to establish that HUD financial assistance for housing and community development programs were directed toward low- and very low-income persons.* A recipient of Section 3 covered assistance shall submit one copy of this report to HUD Headquarters, Office of Fair Housing and Equal Opportunity. Where the program providing assistance requires an annual performance report, this Section 3 report is to be submitted at the same time the program performance report is submitted. Where an annual performance report is not required, this Section 3 report is to be submitted by January 10 and, if the project ends before December 31, within 10 days of project completion. **Only Prime Recipients are required to report to HUD. The report must include accomplishments of all recipients and their Section 3 covered contractors and subcontractors.**

HUD Field Office: Enter the Field Office name .

1. Recipient: Enter the name and address of the recipient submitting this report.
2. Federal Identification: Enter the number that appears on the award form (with dashes). The award may be a grant, cooperative agreement or contract.
3. Dollar Amount of Award: Enter the dollar amount, rounded to the nearest dollar, received by the recipient.
- 4 & 5. Contact Person/Phone: Enter the name and telephone number of the person with knowledge of the award and the recipient's implementation of Section 3.
6. Reporting Period: Indicate the time period (months and year) this report covers.
7. Date Report Submitted: Enter the appropriate date.

8. Program Code: Enter the appropriate program code as listed at the bottom of the page.
9. Program Name: Enter the name of HUD Program corresponding with the "Program Code" in number 8.

Part I: Employment and Training Opportunities

Column A: Contains various job categories. Professionals are defined as people who have special knowledge of an occupation (i.e. supervisors, architects, surveyors, planners, and computer programmers). For construction positions, list each trade and provide data in columns B through F for each trade where persons were employed. The category of "Other" includes occupations such as service workers.

Column B: (Mandatory Field) Enter the number of new hires for each category of workers identified in **Column A** in connection with this award. New hire refers to a person who is not on the contractor's or recipient's payroll for employment at the time of selection for the Section 3 covered award or at the time of receipt of Section 3 covered assistance.

Column C: (Mandatory Field) Enter the number of Section 3 new hires for each category of workers identified in **Column A** in connection with this award. Section 3 new hire refers to a Section 3 resident who is not on the contractor's or recipient's payroll for employment at the time of selection for the Section 3 covered award or at the time of receipt of Section 3 covered assistance.

Column D: Enter the percentage of all the staff hours of new hires (Section 3 residents) in connection with this award.

Column E: Enter the percentage of the total staff hours worked for Section 3 employees and trainees (including new hires) connected with this award. Include staff hours for part-time and full-time positions.

Column F: (Mandatory Field) Enter the number of Section 3 residents that were trained in connection with this award.

Part II: Contract Opportunities

Block 1: Construction Contracts

Item A: Enter the total dollar amount of all contracts awarded on the project/program.

Item B: Enter the total dollar amount of contracts connected with this project/program that were awarded to Section 3 businesses.

Item C: Enter the percentage of the total dollar amount of contracts connected with this project/program awarded to Section 3 businesses. **Item D:** Enter the number of Section 3 businesses receiving awards. **Block 2:** Non-Construction Contracts

Item A: Enter the total dollar amount of all contracts awarded on the project/program.

Item B: Enter the total dollar amount of contracts connected with this project awarded to Section 3 businesses.

Item C: Enter the percentage of the total dollar amount of contracts connected with this project/program awarded to Section 3 businesses.

Item D: Enter the number of Section 3 businesses receiving awards.

Part III: Summary of Efforts – Self-explanatory

Submit one (1) copy of this report to the HUD Headquarters Office of Fair Housing and Equal Opportunity, at the same time the performance report is submitted to the program office. The Section 3 report is submitted by January 10. Include only contracts executed during the period specified in item 8. PHAs/IHAs are to report all contracts/subcontracts.

* The terms "low-income persons" and very low-income persons" have the same meanings given the terms in section 3 (b) (2) of the United States Housing Act of 1937. **Low-income persons** mean families (including single persons) whose incomes do not exceed 80 percent of the median income for the area, as determined by the Secretary, with adjustments for smaller and larger families, except that

The Secretary may establish income ceilings higher or lower than 80 percent of the median for the area on the basis of the Secretary's findings such that variations are necessary because of prevailing levels of construction costs or unusually high- or low-income families. **Very low-income persons** mean low-income families (including single persons) whose incomes do not exceed 50 percent of the median family income area, as determined by the Secretary with adjustments or smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 50 percent of the median for the area on the basis of the Secretary's findings that such variations are necessary because of unusually high or low family incomes.

GENERAL CONTRACTOR / SUBCONTRACTOR TIMESHEET

Name			
Address			
City			
State		Zip	

Period	from		to	
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Job Category	Hours Worked by Existing Staff	Number of Non-Section 3 New Hires	Hours Worked by Non-Section 3 New Hires	Number of New Hires that are Section 3 Residents	Hours Worked by New Hire Section 3 Residents	Number of Section 3 Trainees	Hours Worked by Section 3 Trainees
Office Clerical							
Building Contractor							
Electrical							
Plumbing							
HVAC/Mechanical							
Carpentry							
Drywall							
Roofing							
Siding							
Flooring/Carpet							
Concrete							
Insulation							
Demolition							
General Laborer							
Asbestos							
Lead Paint							
Sewer/Water							
Excavation							
Landscape							
other:							

Submitted by
Signature _____

Print Name _____ Date _____

PROFESSIONAL CONTRACTS TIMESHEET

Name			
Address			
City			
State		Zip	

Period	from		to	
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Job Category	Hours Worked by Existing Staff	Number of Non-Section 3 New Hires	Hours Worked by Non-Section 3 New Hires	Number of New Hires that are Section 3 Residents	Hours Worked by New Hire Section 3 Residents	Number of Section 3 Trainees	Hours Worked by Section 3 Trainees
Professionals							
Technicians							
Office / Clerical							
other:							
other:							

Submitted by
Signature _____

Print Name _____ Date _____

Policy Definitions

The following definitions are incorporated into this policy. See the full list of definitions contained in § 135.5 of 24 CFR Part 135.

Grantee means a unit of local government which is an applicant for Section 3 Covered Assistance or has been awarded Section 3 Covered Assistance in excess of **\$100,000**.

General Contractor means any entity which has been awarded a construction contract of **\$100,000** or more by a Grantee to provide general contractor services, which are generated by the expenditure of Section 3 Covered Assistance or in connection with a Section 3 Covered Projects.

Department or HUD means the Department of Housing and Urban Development, including its field offices to which authority has been delegated to perform functions under this part.

Employment Opportunities means all employment opportunities arising in connection with a Section 3 Covered Project, as described in 135.3(a)(2), including management and administrative jobs connected with the Section 3 Covered Project. Management and administrative jobs include architectural, engineering or related professional services required to prepare plans, drawings, specifications, or work write-ups; and jobs directly related to administrative support of these activities, e.g., construction manager, relocation specialists, payroll clerk, etc.

Housing and community development assistance means any financial assistance provided or otherwise made available through a HUD housing or community development program, through any grant, loan, loan guarantee, cooperative agreement, or contract, and includes community development Funds in the form of community development block grants, and loans guaranteed under Section 108 of the Housing and Community Development Act of 1974, as amended. Housing and community development assistance does not include financial assistance provided through a contract of insurance or guaranty.

HUD: See Department or HUD above

Low-income person is defined in the definition of "Section 3 Resident" herein.

Metropolitan area means a metropolitan statistical area (MSA), as established by the Office of Management and Budget.

Neighborhood Area or Section 3 Area means for HUD housing programs, a geographical location within the jurisdiction of a unit of general local government (but not the entire jurisdiction) designated in ordinances, or other local documents as a neighborhood, village or similar geographical designation.

New hires mean full-time employees for permanent, temporary or seasonal employment opportunities.

Non-metropolitan Area means any area outside of a metropolitan area.

Public Housing Authority list attached.

Public and Indian Housing Assistance includes Funds used for:

1. Development assistance provided pursuant to Section 5 of the U.S. Housing Act of 1937 (the "1937 Act");
2. Operating Assistance provided pursuant to Section 9 of the 1937 Act; and
3. Modernization Assistance provided pursuant to Section 14 of the 1937 Act.

Recipient means any entity which receives Section 3 Covered Assistance directly from HUD or from another Recipient and includes, but is not limited to, any State, unit of local government, PHA, IHA, Indian Tribe, or other public body, public or private nonprofit organization, private agency or institution, mortgagor, Grantee, limited dividend sponsor, builder, property manager, community housing development organization, resident management corporation, resident council, or cooperative association. Recipient also includes any successor, assignee or transferee of any such entity, but does not include any ultimate beneficiary under the HUD program to which Section 3 applies and does not include contractors.

Secretary means the Secretary of Housing Urban Development (HUD).

Section 3 Act means Section 3 of the Housing Urban Development Act of 1968, as amended (12 U.S.C. 1701u).

Section 3 Covered Assistance means: a) Public and Indian Housing Assistance and b) Housing Assistance and c) Community Development Assistance:

Section 3 Business Concern means a company:

1. that is 51 percent or more owned by Section 3 Residents; or
2. whose permanent, full-time employees include persons, at least 30 percent of whom are currently Section 3 Residents, or within three years of the date of first employment with the Business Concern were Section 3 residents; or
3. that provides evidence of a commitment to contract in excess of 25 percent of the dollar award of all subcontracts to be awarded to business concerns that meet the qualifications set forth in paragraphs (1) or (2) in this definition of "Section 3 Business Concern".

Section 3 Clause means the contract provisions set forth in 24 CFR 135.38 and is found in Exhibit "B" attached hereto.

Section 3 Covered Contract means a contract or subcontract (including a professional service contract) awarded by a Recipient, Grantee, General Contractor or Subcontractor for work generated by the expenditure of Section 3 Covered Assistance of \$100,000 or more, or for work in like amount, arising in connection with a Section 3 Project. Section 3 Covered Contract does not include any contracts for the purchase of supplies or materials, unless the contract includes the installation of the supplies or materials.

Section 3 Covered Project means the construction, reconstruction, conversion or rehabilitation of housing (including reduction and abatement of lead-based paint hazards), or other public construction which includes buildings or improvements (regardless of Granteeship) assisted with housing or community development assistance.

Section 3 Regulations means the regulations found at 24 CFR Part 135 which govern the application of the Section 3 Act.

Section 3 Requirements means the employment, training and contracting opportunities imposed by the Section 3 Act upon Recipients and Covered Contractors.

Section 3 Resident means: (1) A public housing resident; or (2) An individual who resides in the metropolitan area or a non-metropolitan county in which the Section 3 Covered Assistance is expended, and who is:

- i. A low-income person, as this term is defined in section 3(b)(2) of the 1937 Act (42 U.S.C. 1437a(b)(2)), which is families (including single persons) whose incomes do not exceed 80 per centum of the median income for the area, as determined by the Secretary, with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 80 per centum of the median for the area on the basis of the Secretary's findings that such variations are necessary because of prevailing levels of construction costs or unusually high or low-income families; or
- ii. A very low-income person, as this term is defined in section 3(b)(2) of the 1937 Act (42 U.S.C. 1437a(b)(2)), which is families (including single persons) whose incomes do not exceed 50 per centum of the median family income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 50 per centum of the median for the area on the basis of the Secretary's findings that such variations are necessary because of unusually high or low family incomes.

Subcontractor means any entity awarded a Section 3 Covered Contract of \$100,000 or more by a General Contractor.

The WVDO means the West Virginia Development Office.

Procedures

Section 3 Purpose

The Section 3 Act was enacted by HUD (12 U.S.C. 1701u), as amended, to ensure that certain employment and economic opportunities generated by certain HUD-Funded Section 3 Covered Assistance are, to the greatest extent feasible, directed to Section 3 Residents and Section 3 Business Concerns. Therefore, upon receipt of funding and awards of contracts, the Grantee, General Contractor and Subcontractor must comply with the Section 3 Requirements.

WVDO Policy Statement

The WVDO shall ensure that Grantees provide opportunities to low- and very low-income persons residing in the State of West Virginia (as defined in § 135.5 of 24 CFR Part 135) and to businesses meeting the definition of "Section 3 Business Concern" (as defined by 24 CFR Part 135).

Accordingly, the WVDO shall implement policies and procedures to ensure that Section 3, when required, is followed and develop programs and procedures necessary to implement this policy covering all procurement contracts where labor and/or professional services are provided.

This policy shall not apply to contractors who only furnish materials or supplies through Section 3 covered assistance. It will apply to contractors who install materials or equipment. (See the definition of Section 3 Covered Contracts). Nothing in this policy should be construed to require the employment or contracting of a Section 3 resident or contractor who does not meet the qualifications of the position to be filled or who cannot fulfill the contract requirements.

Successful compliance with the Section 3 Act and the Section 3 Regulations by the Grantee and General Contractor will be a factor in determining future awards of Section 3 Covered Assistance.

According to the Section 3 Regulations, located at 24 CFR Part 135, Section 3 Covered Assistance Recipients are required to provide employment, training and contracting opportunities to Section 3 Residents or Section 3 Businesses. As the Recipient of HUD funding, the WVDO conveys this responsibility to Grantees and General Contractors and Subcontractors through the execution of a grant agreement.

Section 3 Coordinator

The WVDO Project Manager will serve as the immediate point of contact for the Grantee, General Contractor and Subcontractor, and is available to assist in meeting its Section 3 Requirements. The WVDO may also conduct random onsite reviews of the Section 3 Covered Project to assess compliance with the Section 3 Act.

The Grantee, General Contractor, and Subcontractor will appoint a Section 3 coordinator and provide the name, address, telephone number and email address of this individual to the WVDO as part of their Section 3 plans.

Section 3 Meeting/Prebid Meeting

Following the award of CDBG funding, the WVDO Project Manager will schedule an Implementation Meeting with the Grantee to discuss the program requirements, including Section 3 requirements. Attendees will include the WVDO Project Manager, Grantee, and the Grantee's project team, to include the engineer, administrator and other interested parties.

The purpose of the meeting is to address any questions the attendees may have regarding compliance with Section 3 regulations. All attendees will be provided with a copy of the WVDO Section 3 Policy and Procedures and the Section 3 Federal Regulations, 24 CFR 135. The Grantee will also be required to submit a statement to the WVDO acknowledging its receipt of these documents as well as its understanding that Section 3 regulations apply to the project, and its commitment to fulfill Section 3 requirements.

Section 3 Employment and Training Goals

The Section 3 Act requires the Grantee, general contractor and subcontractor to utilize Section 3 Residents and Section 3 Businesses in relation to the development of Section 3 projects, to the greatest extent feasible. Specifically, the Grantee, general contractor and subcontractor must establish certain Section 3 goals for each Section 3 project.

All Section 3 employment and training goals must be explicitly set forth in all Section 3 plans, as follows:

- a. The numerical goal for **employment** for a Section 3 project is 30 percent of new hires.

Employment and training goals may be met by either directly providing the employment or training or by facilitating the employment or training. Essentially the Grantee, contractor or subcontractor may comply with Section 3 employment and training requirements by arranging for the employment or training of Section 3 Residents in connection with: a) the Grantee's Section 3 Covered Projects; b) the Grantee's non-Section 3 projects; c) other non-Section 3 Projects.

The Grantee, General Contractor and Subcontractor must provide in its Section 3 Plan a breakdown of job categories and positions needed for the Section 3 Covered Project, including a core list of positions occupied by permanent employees.

Section 3 Contracting Goals

Grantees, general contractors and subcontractors with Section 3 Covered Contracts must establish certain contracting opportunity goals for Section 3 Businesses in connection with the Section 3 Covered Project. These numerical goals apply to contracts awarded by the Grantee, the general contractor or subcontractor. These goals can be met by achieving the following minimum numerical **contracting** goals:

- a) 10 percent of the total dollar amount of all construction contracts;
- b) 3 percent of the total dollar amount of professional contracts.

Bid Solicitations

Grantees have a responsibility to **ensure the compliance** of their contractors and subcontractors. This includes building trades, professional and administrative contracts. All bid solicitations must include, along with other prescribed language, the following Section 3 language:

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. 1701 u (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.

The parties of this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement Section 3. Bidders' attention is directed to the Section 3 "Clause" set forth in the contract documents.

All General Contractors and Subcontractors must certify their willingness to comply with Section 3 requirements with any bid or proposal using the Section 3 Certification Forms (Attachment 6-5A and 6-5D), as provided in the WVDO CDBG Policy and Procedures Manual, Chapter 6: Construction Management. **Failure to provide these documents will result in a non-responsive, and therefore, ineligible, bid.**

Section 3 Certifications and Clauses must be included in the Supplemental General Conditions of all contracts and subcontracts. The project administrator is most often responsible for managing Section 3 compliance for construction projects. Engineers must also ensure that Section 3 clauses and forms are included in bid packages and contract documents to ensure compliance.

Formal Section 3 Plan

After the General Contractor has been selected, the Grantee shall submit a comprehensive Section 3 Plan, signed by the Grantee and the General Contractor. The comprehensive Section 3 Plan will include the Section 3 goals of the Grantee and the General Contractor.

This Section 3 Plan will be submitted to the WVDO for review and approval. Upon submission of the comprehensive Section 3 Plan, the WVDO will either approve it, conditionally approve it, with suggested modifications or disapprove the plan.

The WVDO will not issue a Notice to Proceed to the Grantee until a Section 3 Plan has been approved. After the Section 3 Plan has been approved, it will be made a part of the construction documents, and the WVDO review and monitor contract disbursements regularly to assess implementation and the attainment of the Section 3 goals. As subcontracts in excess of \$100,000 are awarded, those Subcontractors will be required to submit its own Section 3 Plan to the WVDO for review and approval.

Other items that must be submitted to the WVDO include copies of all bid documents that are submitted and all contracts that are awarded.

Components of a Section 3 Plan

The Section 3 Plan must include specific information, not limited to the following:

1. Grantee, General Contractor, or Subcontractor's statement certifying it intends to comply with the Section 3 Act and Section 3 Regulations, as well as the WVDO's Section 3 Guidelines;
2. Grantee, General Contractor, or Subcontractor's statement certifying each is aware of the employment, training, and contracting goals, and agree to work together to meet these goals;
3. Name and contact information of the Grantee, General Contractor, or Subcontractor's Section 3 Coordinator;
4. Identification of the Section 3 Project area (see definition of Neighborhood Area);
5. Grantee, General Contractor, or Subcontractor's current workforce, or core list;
6. Grantee, General Contractor, or Subcontractor's Contractor's workforce necessitated by the Section 3 Covered Project;
7. Grantee, General Contractor, or Subcontractor's Section 3 employment, training and contracting opportunity goals;
8. Specific strategies for notifying Section 3 Residents of Section 3 employment and training goals;
9. Specific strategies for notifying Section 3 Business Concerns of Section 3 contracting opportunities;
10. Commitment to inform all Subcontractors of its Section 3 Plan;
11. Grantee's commitment to prepare and submit Section 3 reports to the WVDO;
12. General Contractor's commitment to prepare and submit monthly reports to its Section 3 coordinator;
13. Commitment of Grantee, General Contractor and Subcontractor to include the Section 3 Clause in all construction contracts and subcontracts exceeding \$100,000.00 awarded as a result of the Section 3 Covered Assistance.
14. Commitment by Grantee, General Contractor and Subcontractor to conduct aggressive outreach and notification campaign to Section 3 Residents and Section 3 Business Concerns regarding its Section 3 goals, including the usage of on-site signage, flyers, job fairs, local agency notification, newspaper advertising, etc.
15. Commitment to provide employment agencies and local public housing authorities of possible employment, training and contracting opportunities to established job pools of Section 3 area residents;

16. Inclusion of other strategies which facilitate the achievement of the Section 3 goals established by the Grantee, General Contractor and Subcontractor.

Implementation Strategies

In order to comply with the Section 3 Regulations, the Grantee, General Contractor or Subcontractor, as applicable, must implement an aggressive campaign to encourage participation of Section 3 Residents and Section 3 Business Concerns. Some strategies to implement this campaign include the following:

1. Publish in a local newspaper a notice of the potential employment and training opportunities for Section 3 Residents and potential contracting opportunities for Section 3 Business Concerns. Written notice must be provided in sufficient time to enable business concerns the opportunity to respond to the bid invitation.
2. Post in a prominent location at the Section 3 Covered Project on-site notice of the potential employment and training opportunities for Section 3 Residents, and potential contracting opportunities for Section 3 Business Concerns.
3. Submit letters or flyers to the residents of the Section 3 Covered Project advising them of the employment, training and contracting opportunities for the Section 3 Covered Project;
4. Provide the residents of the Section 3 Covered Project and the surrounding area with certification procedures for Section 3 Residents or Section 3 Businesses;
5. Provide the local public housing authority with flyers, notices and other information related to potential Section 3 employment, training and contracting Opportunities for the Section 3 Covered Project;
6. Provide information to residents of a Section 3 Covered Project and the surrounding area regarding established job training programs located within the Section 3 Covered Project area;
7. Provide minority and women-focused labor and trade organizations with notice of Section 3 employment, training and business opportunity goals;
8. Provide minority and women-focused labor and trade organizations with notice of when and where plans and specifications for bid review will be distributed;
9. Establish public forums regarding Section 3 Covered Projects being developed within the Section 3 area, in which the Grantee, General Contractor and Subcontractor will participate;
10. Utilize other strategies set forth in the Section 3 Regulations;
11. Seek out referral sources in order to ensure job readiness for public housing residents through on-the-job-training and mentoring to obtain necessary skills that will transfer into the external labor market.

Certification of Section 3 Residents

Individuals seeking to participate in Section 3 Covered Projects must first certify that they are eligible Section 3 Residents. Section 3 Residents may self-certify their eligibility. A sample form is provided as an attachment to this policy. The self-certification must be provided to the Grantee, General Contractor or Subcontractor by the individual.

To be income eligible the Section 3 Resident must qualify either as a low-income person or a very low-income person. For further explanation, please refer to the definition of a Section 3 Resident.

A random sample may be conducted to determine eligibility. The verification may consist of any of the following: a) a public housing authority lease agreement; b) evidence of income (most recent W-2 or income tax return); c) evidence of the receipt of public assistance; or d) any other evidence acceptable to WVDO.

Certification of Section 3 Business

Any business seeking to be certified as a Section 3 Business Concern must meet one of the following criteria. The business must a) is 51% or more owned by a Section 3 Resident; b) Whose permanent, full-time employees include persons, at least 30% of whom are current Section 3 residents, or within three years of the date of first employment with the Section 3 business concern were Section 3 residents; or c) That provides evidence of a commitment to subcontract a minimum of 25% of the total contract award amount (including modifications) to Section 3 business concerns that meet the requirements described above.

Additional information is available at: www.hud.gov/section3. The [Section 3 Business Registry](#) is a tool to help Grantees meet their regulatory obligations by providing a list of local self-certified Section 3 businesses. The Section 3 Business Registry can identify prospective firms to be notified about the availability of local HUD-funded contracts. The site can be searched by state, city, county, or type of business at www.hud.gov/sec3biz.

Grantees and contractors should perform their due diligence and request an updated certification form prior to the award of a contract.

Technical Support and Monitoring

The WVDO staff is available to provide technical support to Grantees, General Contractors and Subcontractors participating in the development of Section 3 Covered Projects.

Grantees, General Contractors and Subcontractors are required to submit copies to the WVDO of all outreach attempts, copies of all responses to notices published in the paper and posted other places, copies of all responses to bid invitations, and any other documentation helpful in monitoring compliance with the approved Section 3 Plan.

The WVDO staff may conduct onsite random reviews of the Section 3 Covered Project to determine whether the Grantee, General Contractor or Subcontractor are complying with its approved Section 3 Plan.

In the event the WVDO determines that the Grantee, General Contractor or Subcontractor is not meeting its employment, training or contracting opportunity goals as set out in the approved Section 3 Plan, written notice of non-compliance will be issued and appropriate remedies will be sought. The notice will require the noncomplying party to meet with the project manager and other necessary WVDO staff.

The WVDO is required to consider the successful implementation of Section 3 regulations in any future decisions regarding the Grantee, Contractor or Subcontractor and is further required to impose penalties which may include sanctions and/or the recapture of funds.

Section 3 Clause

All Section 3 covered contracts shall include the following clause, referred to as the Section 3 Clause:

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 135, 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 135 regulations.

C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work cite where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

D. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, 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 135. 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 135.

E. 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 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

G. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

SECTION 3 PLAN
(GRANTEE AND GENERAL CONTRACTOR)

For _____
(Name of Project)

Submitted by:

Name of Grantee:

Address:

Contact Information:

Name of General Contractor: Address:

Contact Information:

General Statement

_____, as the Grantee, and _____, as the general contractor are committed to comply with the Section 3 act, the Section 3 regulations, and the West Virginia Development Office (“WVDO”) Section 3 Guidelines. It is our desire to work together to ensure compliance, to the greatest extent feasible, through the awarding of contracts for work and services to Section 3 companies, and to provide employment and training to Section 3 residents. We commit to include the Section 3 clause in the construction contract and all subcontracts in excess of \$100,000.00. All subcontractors interested in submitting bids for contracts will be informed of the Section 3 requirements and goals. We agree to provide THE WVDO with copies of all bids received in response to the invitation to bid and copies of all contracts awarded in excess of \$100,000.00.

Goals

Contracting:

To demonstrate compliance with Section 3 regulations, it is desirous to award at least 10 percent of the total dollar amount of all Section 3 covered contracts for building trades work, and, at least 3 percent of the total dollar amount of all other Section 3 covered contracts (i.e., professional services) to Section 3 business concerns.

Construction contract: \$
10%: \$
3% \$

These goals are affirmed: Initials: _____

If we do not feel it is feasible to meet the minimum goals set forth above, we will be prepared to demonstrate why it was not possible. We understand failure to follow our Section 3 Plan could result in the Secretary of Housing and Urban Development (“HUD”) finding us non-compliant with the Section 3 regulations.

Employment and Training:

To demonstrate compliance with Section 3 regulations, it is desirous to employ Section 3 residents as 30 percent of the aggregate number of new hires, and to provide training to those new hires. We agree to provide information regarding existing employees and hiring needs as a part of this plan.

Any goal established in this plan must be met. If we fail to do so, we agree to provide an explanation and documentation as to why the goal was not met.

Outreach

We are committed to conduct an aggressive outreach campaign to make Section 3 Businesses and Section 3 Residents aware of contracting and possible hiring opportunities in connection with this

Section 3 Covered Project. Efforts will include, but not be limited to, publication of opportunities in the local newspapers, use of signage at the project site, flyers posted in the neighborhood and surrounding areas, notification of local housing authorities, contractor and trade organizations, local workforce investment boards and employment agencies, career centers and local Youthbuild chapters.

Project Neighborhood Area

The project neighborhood area is: _____

This area will be the primary focus of all outreach attempts.

Section 3 Coordinator

Name:

Contact Information:

This person will serve as the main point of contact for all Section 3 related issues on behalf of the Grantee, general contractor, and the subcontractor.

Reporting

We agree to submit a Master Subcontractor List on the 20th day of each month after construction of the Section 3 Covered Project has commenced. We agree to submit an annual report to the WVDO on HUD Form 60002 regarding construction of the Section 3 Covered Project. The report shall list a) all new hires as defined at §135.5; b) total dollars amount of contracts awarded as a result of the expenditure of Section 3 covered financial assistance during the reporting period; c) written justification consistent with §135.7(b)(4) if the recipient failed to meet the minimum numerical goals during the reporting period. We agree to immediately report any changes in this plan, including but not limited to, changes in the dollar amount of contracts awarded and staffing needs of the subcontractors.

Attachments

The following attachments are incorporated into and made a part of this Section 3 Plan:

- _____ Section 3 Clause that will be included in all contracts
- _____ Contracting Plan
- _____ Outreach to Solicit Bids from Section 3 Businesses
- _____ Permanent Employee Listing for the Grantee/Grantee
- _____ Permanent Employee Listing for the General Contractor
- _____ Workforce Needed for Section 3 Covered Project for the Grantee
- _____ Workforce Needed for Section 3 Covered Project for the General Contractor

We agree to provide to the WVDO the following documentation as soon as the information is available to us:

- Outreach to Solicit Bids from Section 3 Businesses (updated)
- New Hires for the Grantee
- New Hires for the General Contractor
- Section 3 New Hires Trained for the Grantee
- Section 3 New Hires Trained for the General Contractor
- HUD 60002 Annual Report

Submitted to West Virginia Development Office

Date: _____

GRANTEE:

(Print/type name)

By: _____

(Print/type name and title)

Date: _____

GENERAL CONTRACTOR:

(Print/type name)

By: _____

(Print/type name and title)

SECTION 3 PLAN

(SUBCONTRACTOR WITH CONTRACT IN EXCESS OF \$100,000)

For _____
(Name of Development)

Submitted by:

Name of Subcontractor: Address:

Contact Information:

General Statement

_____, as the subcontractor, is committed to comply with the Section 3 act, the Section 3 regulations, and the West Virginia Development Office (“WVDO”) Section 3 Guidelines. It is our desire to work together with the Grantee and the General Contractor to ensure compliance, to the greatest extent feasible, through the awarding of contracts for work and services to Section 3 companies, and to provide employment and training to Section 3 residents. We commit to include the Section 3 clause in all subcontracts. We have been informed of the Section 3 requirements and goals set forth by the Grantee and the General Contractor. Our submission of this document shall also be our agreement to follow the Section 3 Plan submitted to the WVDO by the Grantee and the General Contractor.

Employment and Training

To demonstrate compliance with Section 3 regulations, it is desirable to employ Section 3 residents as 30 percent of the aggregate number of new hires, and to provide training to those new hires. We agree to provide information regarding existing employees and hiring needs as a part of this plan.

Any goal established in this plan must be met, or proof provided as to why the goal was not met.

Attachments

The following attachments are incorporated into and made a part of this Section 3 Plan:

- _____ Section 3 Clause that will be included in all contracts
- _____ Permanent Employee Listing for the Subcontractor
- _____ Workforce Needed for Section 3 Covered Project for the Subcontractor

We agree to provide to the Grantee the following documentation as soon as the information is available to us:

- New Hires for the Subcontractor
- Section 3 New Hires Trained for the Subcontractor
- HUD 60002 Annual Report

We agree to immediately report any changes in this plan, including but not limited to, changes in the dollar amount of contracts awarded and staffing needs.

Submitted to West Virginia Development Office

Date: _____

SUBCONTRACTOR:

(Print/type name)

By: _____

(Print/type name and title)

CONTRACTING PLAN WORKSHEET

Instruction for completing this worksheet

- A. List each contract or trade anticipated** (including those in excess of \$100,000) in connection with this project and describe the type of work they will be performing.
- B. Approximate dollar value of each contract.**
- C. List whether the service is Construction (C) or Professional (P).**
- D. Indicate whether this contract will be awarded to a Section 3 business concern.**

CONTRACT OR TRADE	DOLLAR VALUE	Construction (C) Professional (P)	Section 3 Business

CONTRACT OR TRADE	DOLLAR VALUE	Construction (C) Professional (P)	Section 3 Business

OUTREACH TO SOLICIT BIDS FROM SECTION 3 BUSINESSES

General Contractor	
Project Name	
Period Covered	
Date Submitted	

Indicate the efforts that will be made to notify Section 3 business concerns of contracting opportunities generated by HUD financial assistance for housing and community development programs, to the greatest extent feasible (use additional pages if necessary). All efforts must be documented. After the contracts are awarded, attach copies of all publications, notices, pictures of posted notices, and any other outreach material utilized, along with a list of all Section 3 business concerns that responded to your outreach efforts.

**PERMANENT EMPLOYEE LISTING
(GRANTEE)**

Grantee Name	
Project Name	
Period Covered	
Date Submitted	

NOTE: A computer generated employee registry can be submitted as long as it lists the employee name and job category. Please include employees of the Grantee.

Name of Employee	Job Category

**WORKFORCE NEEDED FOR SECTION 3 COVERED PROJECT
(GRANTEE - ESTIMATED)**

Grantee/Grantee	
Project Name	
Period Covered	
Date Submitted	

Job Category	Total Estimated Positions Needed for Project	Number of Positions Occupied by Permanent Employees	Number of Positions Not Occupied	Number of Positions to be Filled with Section 3 Residents

Reason for no available job opportunities:

**WORKFORCE NEEDED FOR SECTION 3 COVERED PROJECT
(GENERAL CONTRACTOR - ESTIMATED)**

General Contractor	
Project Name	
Period Covered	
Date Submitted	

Job Category	Total Estimated Positions Needed for Project	Number of Positions Occupied by Permanent Employees	Number of Positions Not Occupied	Number of Positions to be Filled with Section 3 Residents

Reason for no available job opportunities:

**WORKFORCE NEEDED FOR SECTION 3 COVERED PROJECT
(SUBCONTRACTOR - ESTIMATED)**

Subcontractor	
Project Name	
Period Covered	
Date Submitted	

Job Category	Total Estimated Positions Needed for Project	Number of Positions Occupied by Permanent Employees	Number of Positions Not Occupied	Number of Positions to be Filled with Section 3 Residents

Reason for no available job opportunities:

**NEW HIRES
(GRANTEE)**

Grantee Name	
Project Name	
Period Covered	
Date Submitted	

Employee Name	Position	Length of Employment by Dates		Length of Employment in Hours		Section 3 New Hire	Non-Section 3 New Hire
		Start	End	Proposed	Actual		

If you have new hires, but none are Section 3 residents, please explain.

**NEW HIRES
(GENERAL CONTRACTOR)**

General Contractor	
Project Name	
Period Covered	
Date Submitted	

Employee Name	Position	Length of Employment by Dates		Length of Employment in Hours		Section 3 New Hire	Non-Section 3 New Hire
		Start	End	Proposed	Actual		

If you have new hires, but none are Section 3 residents, please explain.

NEW HIRES (SUBCONTRACTOR)

Subcontractor Name	
Project Name	
Period Covered	
Date Submitted	

Employee Name	Position	Length of Employment by Dates		Length of Employment in Hours		Section 3 New Hire	Non-Section 3 New Hire
		Start	End	Proposed	Actual		

If you have new hires, but none are Section 3 residents, please explain.

**SECTION 3 NEW HIRES TRAINED
(GRANTEE)**

Name of Grantee
Project Name
Period Covered
Date Submitted

Employee Name	
Last 4 digits of SS#	
Position	
Type of Training Provided	

Employee Name	
Last 4 digits of SS#	
Position	
Type of Training Provided	

Employee Name	
Last 4 digits of SS#	
Position	
Type of Training Provided	

Employee Name	
Last 4 digits of SS#	
Position	
Type of Training Provided	

Employee Name	
Last 4 digits of SS#	
Position	
Type of Training Provided	

**SECTION 3 NEW HIRES TRAINED
(GENERAL CONTRACTOR)**

Name of Company
Project Name
Period Covered
Date Submitted

Employee Name	
Last 4 digits of SS#	
Position	
Type of Training Provided	

Employee Name	
Last 4 digits of SS#	
Position	
Type of Training Provided	

Employee Name	
Last 4 digits of SS#	
Position	
Type of Training Provided	

Employee Name	
Last 4 digits of SS#	
Position	
Type of Training Provided	

Employee Name	
Last 4 digits of SS#	
Position	
Type of Training Provided	

**SECTION 3 NEW HIRES TRAINED
(SUBCONTRACTOR)**

Name of Company
Project Name
Period Covered
Date Submitted

Employee Name	
Last 4 digits of SS#	
Position	
Type of Training Provided	

Employee Name	
Last 4 digits of SS#	
Position	
Type of Training Provided	

Employee Name	
Last 4 digits of SS#	
Position	
Type of Training Provided	

Employee Name	
Last 4 digits of SS#	
Position	
Type of Training Provided	

Employee Name	
Last 4 digits of SS#	
Position	
Type of Training Provided	

CONTRACT DOCUMENT CHECKLIST

(Content of project files after contract has been awarded.)

This checklist is provided to ensure proper documentation is on file for executed contracts.

(*This is an internal source document.)

1. Pre-Construction

Executed Contract _____

Notice of Contract Award and Pre-Construction Conference sent to the WVDO _____

Pre-Construction Conference held _____

List of subcontractors and subcontractor Section 3 plans obtained _____

Pre-Construction Report filed in project Labor Standards Enforcement file
Cross referenced filed in EEO file _____

Workforce Needs _____

Section 3 Project Businesses _____

Contractor's Certification regarding Section 3 and Segregated Facilities (65-A)
Contractor established own Equal Employment Opportunity File _____

Requested and received wage decision and classifications not included on
Wage Decision _____

If apprentices are to be used on contract, received copy of contractor's
Apprentice program from U.S. Department of Labor Bureau of Apprenticeship
and Training _____

Bonding Insurance on file _____

Project Labor Standards Enforcement file established _____

Project Equal Opportunity Enforcement file established _____

Notice to Proceed issued to Contractor (Copies to State and Construction File) _____

2. Construction Contract Enforcement

Payrolls and Statement Compliance

	Received	Reviewed	Discrepancies:	Document attached with resolution
Week 1	_____	_____	_____	_____
Week 2	_____	_____	_____	_____
Week 3	_____	_____	_____	_____
Week 4	_____	_____	_____	_____

Project Inspection

Employee interviews

Month 1	_____	_____
Month 2	_____	_____
Month 3	_____	_____
Month 4	_____	_____

Complaints, if any and action taken: _____

Correspondence concerning Contractor Equal Opportunity compliance _____

3. Project Inspection Checklist

- (1) Wage Decision _____
- (2) Notice to Employees M.N. 1321) _____
- (3) Safety & Health Protection on Job _____
- (4) Equal Employment Opportunity Requirements (E.O. 11246) _____
- Copy of As-Built Plans received _____

Bid Documents and Forms

**SECTION 3 OF THE HOUSING AND URBAN
DEVELOPMENT (HUD) ACT OF 1968,
As Amended**

LANGUAGE AND CERTIFICATIONS

*(THE SECTION 3 CLAUSE MUST BE INCORPORATED IN BID AND CONTRACT DOCUMENTS IN
EITHER THE GENERAL OR SUPPLEMENTAL CONDITIONS)*

PART OF GENERAL CONDITIONS

PROVISIONS AND PROCEDURES PERTAINING TO EMPLOYMENT OPPORTUNITIES FOR BUSINESS AND LOWER-INCOME PERSONS IN CONNECTION WITH FEDERAL ASSISTED PROJECTS IN COMPLIANCE WITH SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968

1. Purpose and Scope

The regulations set forth in this Part contain the procedures established by the Secretary of Housing and Urban Development for carrying out the responsibilities under Section 3 of the Housing and Urban Development Act of 1968, U.S.C. 1701u.

2. Definitions

Section 3 covered project means the construction, reconstruction, conversion or rehabilitation of housing (including reduction and abatement of lead-based paint hazards), other public construction which includes buildings or improvements (regardless of ownership) assisted with housing or community development assistance.

3. Assurance of Compliance

Every contractor and subcontractor shall incorporate, or cause to be incorporated, in all contracts for work in connection with a Section 3 covered project, the following Clause:

- 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 of this contract agree to comply with HUD's regulations in 24 CFR part 135, 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 135 regulations.

- C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 Clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- D. The contractor agrees to include this Section 3 Clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, 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 135. The contractor will not subcontract with any subcontractor where the contractor has a notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.
- E. 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 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.
- F. Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- G. With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U. S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).

4. Work Force Needs

Prior to the signing of the contract, the contractor shall provide a preliminary statement of work force needs (skilled, semi-skilled, unskilled labor and trainees by category where known); where not known, such information shall be supplied prior to the signing of any contract between the contractor and subcontractor (Appendix No. 1).

WORKFORCE NEEDS

Existing Workforce					Employment Needs		
Occupation Category (write list)	By Category Total Workforce	Skilled	Laborer	Apprentices Trainees	No. Project Area Residents opt be Utilized		
					Skilled	Laborers	Apprentice/Trainees

Employment Certification

The Company hereby certifies that the above table represents the approximate number of employee positions required in the

_____ Project and also represents the number of lower-income project area residents that the company proposes to employ.

Company Name

Authorized Signature

Title

Date

SECTION 3 PROJECT BUSINESSES

A. The company shall utilize business concerns located in _____ in contracting for work to be performed in connection with the completion of the contract. To this end, the Company shall require the services of companies in the project area engaged in the business of _____.

Subcontracts (write list)	Total Subcontract Dollar Amount	Proposed Section 3 Businesses Available For Use	Total Subcontract to Section 3 Businesses \$ Amount
Totals			

Company

Authorized Signature

Title

Date

CONTRACTOR/SUBCONTRACTOR

Section 3 Plan

_____ agrees to implement the following specific

affirmative action steps directed at increasing the utilization of the lowest income residents and

businesses within the City/Town/County of _____.

- A. To ascertain from the locality's SCBG program official the exact boundaries of the Section 3 covered project area and where advantageous, seek the assistance of the local officials in preparing and implementing the affirmative action plan.
- B. To attempt to recruit from within the City/Town/County the necessary number of lower income residents through: Local advertising media, signs placed at the proposed site for the project, and community organizations and public or private institutions operating within or serving the project area.
- C. To maintain a list of all lower income residents who have applied either on their own or on referral from any source, and to employ such persons, if otherwise eligible and if a vacancy exists.
- D.*To insert this Section 3 Plan in all bid documents, and to require all bidders and subcontracts to submit a Section 3 Affirmative Action Plan, including utilization goals and the specific steps planned to accomplish these goals.
- E. *To ensure that subcontracts which are typically let on a negotiated rather than a bid basis in areas other than Section 3 covered project areas, are also let on a negotiated basis, whenever feasible, when let in a Section 3 covered project area.
- F. To formally contact unions, subcontractors and trade associations to secure their cooperation for this program.
- G. To ensure that all appropriated project area business concerns are notified of pending sub-contractual opportunities.
- H. To maintain records, including copies of correspondence, memoranda, etc., which document that all the above affirmative action steps have been taken.

- I. To appoint or recruit an executive official of the company or agency as Equal Opportunity Officer to coordinate the implementation of the Section 3 Plan.

Contractor/Subcontractor Signature

Date

***Loans, grants, contracts, and subsidies for less than \$10,000 will be exempt.**

YOUTHBUILD DIRECTORY

SELF-CERTIFICATION FORMS for RESIDENTS AND BUSINESSES

Youthbuild Programs in West Virginia

HRDF-Mon Youthbuild

Sponsored by Human Resource Development Foundation Inc.

Address

HRDF-Mon Youthbuild
305 Washington ST
Fairmont WV 26554

Main Phone

(304) 366-1119

Email

monybuild@frontier.com

Website

<http://www.monoyouthbuild.org/>

Huntington Housing Authority

Address

Huntington Housing Authority
300 W 7th Avenue
Huntington WV 25701

Main Phone

(304) 522-0576

Website

<http://www.huntingtonhousing.com>

SALS YouthBuild

Sponsored by Southern Appalachian Labor School

Address

SALS YouthBuild
P.O. Box 127
Kincaid WV 251190127

Main Phone

(304) 779-2772

Email

j david@citynet.net

Website

<http://www.sals.info>

YouthBuild North Central West Virginia

Sponsored by Randolph County Housing Authority

Address

YouthBuild North Central West Virginia
1404 N. Randolph Ave
Elkins WV 26241

Main Phone

(304)637-9008

Email

youthbuild@rchawv.org

**RESIDENT SECTION 3 SELF-CERTIFICATION
AND SKILLS DATA FORM**

The purpose of this form is to comply with HUD Section 3 administration and certification regulations.

Certification for Section 3 Residents or other Low-Income Persons Seeking Employment, Training or Contracting

I, _____, am a legal resident of the United States and meet the income eligibility and federal guidelines for a Section 3 Resident as defined within this Certification.

My home address is: _____
Must be a **Street** address not a P O Box #
Apt Number

City _____ State _____ Zip _____ Home # _____ Cell # _____

County of Residence _____

Graduated High School or GED (month/year): _____ I Read and Speak English Fluently: Yes or No

Attended College, Trade, or Technical School: Yes or No Graduated? Yes or No Year Graduated: _____

Check the Skills, Trades, and/or Professions in which you have been employed or contracted to do for others:

- | | | | |
|---|--|--|--|
| <input type="checkbox"/> Painting | <input type="checkbox"/> Mason | <input type="checkbox"/> Engineer | <input type="checkbox"/> Flagman |
| <input type="checkbox"/> Carpentry | <input type="checkbox"/> Electrical | <input type="checkbox"/> Architect | <input type="checkbox"/> Exterior Plumbing |
| <input type="checkbox"/> Landscaping | <input type="checkbox"/> Pipefitter | <input type="checkbox"/> Mechanic | <input type="checkbox"/> Payroll/Bookkeeping |
| <input type="checkbox"/> Laborer | <input type="checkbox"/> Welder | <input type="checkbox"/> Construction Cleaning | <input type="checkbox"/> Security Guard |
| <input type="checkbox"/> Receptionist | <input type="checkbox"/> Crane Operator | | <input type="checkbox"/> Heavy Equipment |
| <input type="checkbox"/> Data Entry | | <input type="checkbox"/> Sales | <input type="checkbox"/> Receptionist |
| <input type="checkbox"/> Clerical | | | <input type="checkbox"/> Photographer |
| <input type="checkbox"/> Administrative | <input type="checkbox"/> Teaching/Training | <input type="checkbox"/> Surveying | <input type="checkbox"/> AutoCAD Technician |
| <input type="checkbox"/> CDL License | <input type="checkbox"/> Roofing | <input type="checkbox"/> Concrete/Asphalt Work | |
| <input type="checkbox"/> Fencing | | | |
| <input type="checkbox"/> Other _____ | <input type="checkbox"/> Metal/Steel Work | <input type="checkbox"/> Human Resources | |
| | | <input type="checkbox"/> Other _____ | |

I am certifying as a Section 3 Resident: **Person seeking Training** or **Person seeking employment**

(Check all that apply):

I am a public housing or section 8 leaseholder I live in the service area

My total annual household income is \$_____. There are a total of _____ people living in my household.

I certify that all of the information given on this Certification is true and correct. If found to be inaccurate, I understand that I may be disqualified as an applicant and/or a certified Section 3 individual which may be grounds for termination of training, employment, or contracts that resulted from this certification. I attest under penalty of perjury that my total household income annually, based on my total household size as listed above is at or below the income amount for that specific size at the time of this document is being signed and notarized. I understand that proof of this statement may be requested in the future.

Signature: _____ Date: _____

Printed Name: _____

Purpose:

The purpose of Section 3 of the Housing and Urban Development of 1968 (12 U.S.C. 1701u) (Section 3) is to ensure that employment and other economic and business opportunities generated by HUD Financial Assistance shall be directed to the Authority Residents and other low- and very low-income persons, particularly those who are recipients of government housing assistance and to business concerns which provide economic opportunities to Residents and other low- and very low-income persons.

Section 3 resident means:

- (1) A public housing resident; or
- (2) An individual who resides in the metropolitan area or Non-metropolitan County in which the section 3 covered assistance is expended, and who is:
 - I. A low-income person, as this term is defined in section 3(b)(2) of the 1937 Act (42 U.S.C. 1437a(b)(2)). Section 3(b)(2) of the 1937 Act defines this term to mean families (including single persons) whose incomes do not exceed 80% of the median family income for the area, as determined by the Secretary, with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 80% of the median for the area on the basis of the Secretary’s findings that such variations are necessary because of prevailing levels of construction costs or unusually high or low-income families; or
 - II. A very low-income person, as this term is defined in section 3(b)(2) of the 1937 Act (42 U.S.C. 1437a(b)(2)). Section 3(b)(2) of the 1937 Act (42 U.S.C. 1437a(b)(2) defines this term to mean families (including single persons) whose incomes do not exceed 50% of the median family income for the area, as determined by the Secretary with adjustments made for smaller or larger families, except that the Secretary may establish income ceilings higher or lower than 50% of the median for the area on the basis of the Secretary’s findings that such variations are necessary because of unusually high or low family incomes.
- (3) A person seeking the training and employment preference provided by section 3 bears the responsibility of providing evidence (if requested) that the person is eligible for the preference.

Service area means the geographical area in which the persons benefiting from the Section 3-covered project reside.

The figures below represent very low-income families; bottom figures represent low-income families. The most recent income limits established for each county may be found at:

<http://www.hud.gov/offices/cpd/affordablehousing/programs/home/limits/income/>.

Subrecipient or Contractor to Insert 2015 Income Limits for Project Location

FY 20XX Income Limit Area	<u>Median Income</u>	FY 20XX Income Limit Category	1 Person	2 Person	3 Person	4 Person	5 Person	6 Person	7 Person	8 Person
		Very Low (50%) Income Limits								
		Low (80%) Income Limits								

SECTION 3 BUSINESS CONCERN SELF CERTIFICATION

The West Virginia Development Office (WVDO) is seeking to extend the benefits of and to promote compliance with Section 3 by identifying Section 3 Business Concerns and targeting Section 3 Business Concerns for business opportunities, events and educational programs.

In an effort to comply with Federal Section 3 Regulations which promote contract, employment and training opportunities for State of West Virginia residents, the Grantee has instituted a Section 3 Self Certification process.

Businesses seeking certification must complete and submit the attached Section 3 Business Concern Self Certification forms as follow:

1. If your company is qualified because it is owned (51% or more) by one or more Section 3 residents, then complete **Form A, "Section 3 Business Concern – Resident Business Owner(s) Verification"**;

OR

2. If your company is qualified because 30% or more of its full time permanent workforce are Section 3 Residents*, then complete **Form B, "Section 3 Business Concern – 30% + Workforce"**.

OR

3. If more than 25% of all subcontract work to be awarded shall be performed by Section 3 business concerns as described above, then complete **Form C, "Section 3 Business Concern-Subcontractor"**.

Please answer all questions, sign the completed forms, and notarize the affidavit.

Completed packets must be returned to the subrecipient or contractor as follows:

Name of Grantee/Contractor:

Attention:

Mailing Address:

If you have any questions or require assistance, please contact:

Name: _____ Phone _____

Number: _____ Email _____

Address: _____

Form A
SECTION 3 BUSINESS CONCERN Resident
Business Owner(s) Verification

A business can be certified as a Section 3 Business Concern if the business is owned (51% or more) by West Virginia Section 3 Resident(s).

Name of Owner:

Home Street Address:

Home City, County, & Zip Code:

Name of Business:

Percentage of Ownership: _____%

Low- to – Moderate Income (80% of Median)

Check the appropriate box for your family size and income *if your total household income is equal to or less than the Gross Household Income Maximum amount listed for your appropriate household size:*

Check Box	# of Persons in Household	Gross Household Income Maximum
<input type="checkbox"/>	1 Individual	
<input type="checkbox"/>	2 Individuals	
<input type="checkbox"/>	3 Individuals	
<input type="checkbox"/>	4 Individuals	
<input type="checkbox"/>	5 Individuals	
<input type="checkbox"/>	6 Individuals	
<input type="checkbox"/>	7 Individuals	
<input type="checkbox"/>	8 Individuals	

(Effective _____, 2013)

If the business is owned by more than one Section 3 resident, list each owner below and each should submit a separate Resident Business Owner Verification Form (Form A).

Please list additional Section 3 Resident owners of the business below:

Name	Position	% Percentage of Ownership

I certify that I am a resident of the State of West Virginia and my total household income last year was not more than the amount shown above for my family size. I further certify the information provided is true and accurate and agree to provide upon request, documents verifying the information submitted to qualify as a Section 3 Business Concern.

Print: _____ Signature: _____ Date: _____

Form B
SECTION 3 BUSINESS CONCERN
30% + Workforce

A business can be certified as a Section 3 Business Concern if at least 30% of its permanent, full-time employees are Section 3 residents, or were Section 3 residents within three years of the date of the first employment with the business. You may also certify as a Section 3 Business Concern if, for this award, you will hire Section 3 residents for at least 30% of your permanent, full-time employees for this specific project. For your firm to be eligible UNDER THIS CRITERIA, you must provide the following information for **all permanent, full-time employees**.

You may attach additional copies of this chart, if necessary.

List All Employees	Date Hired	Section 3 Resident	Job Title/Trade	Salary Range
Name: Address: City/Zip:				
Name: Address: City/Zip:				
Name: Address: City/Zip:				
Name: Address: City/Zip:				
Name: Address: City/Zip:				
Name: Address: City/Zip:				
Total Number of Employees:	Full-Time: _____	Part-Time: _____	Contract: _____	
Number of Section 3 Residents:				
Section 3 % of Total Workforce:				

I certify that the information provided is true and accurate and agree to provide upon request, any/all documents verifying the information submitted to qualify as a Section 3 Business Concern.

Print Name:

Title: _____

Company Name: _____

Signature: _____

Date: _____

Form C

SECTION 3 BUSINESS CONCERN Subcontractor Awarded

A business can be certified as a Section 3 Business Concern if the firm makes a commitment to subcontract in excess of twenty-five percent (25%) of the total amount of subcontracts to be awarded to: A) Section 3 Resident Owned Businesses; or B) Businesses for which 30% or more of their permanent full-time workforce is comprised of Section 3 Residents.

List all work performed by Section 3 Business Concerns Identified (This Form is to be updated as Section 3 Business Concerns are awarded through the completion of the project):

Name of Business	Qualifying Conditions	Total Contract Award

All identified Section 3 Business Concerns listed above are required to complete a Section 3 Self Certification Application (Forms A – C as appropriate) or provide proof of Section 3 Certification status. Attach all required documents to this form.

I certify that the information provided is true and accurate and agree to provide upon request, any/all documents verifying the information submitted to qualify as a Section 3 business concern.

Print Name:

Title: _____

Company Name: _____

Signature: _____

Date: _____

SAMPLE SECTION 3 LETTER TO UNION

Union Contractors must send a similar notice to each labor organization with which it has a collective bargaining agreement or other understanding and copy the Grantee on the correspondence.

Date

Union Contact

Address

City, State, Zip

RE: Project Name
City, County

Dear:

(Name of Contractor) is a subcontractor or contractor for the (Name of Project). This construction project is funded by the U.S. Department of Housing and Urban, Community Development Block Grant (CDBG) program.

Under Section 3 of the Housing and Urban Development Act of 1968 and the provisions of 24 CFR Part 135 as amended, the Section 3 regulation compliance requires that contractors to the greatest extent feasible hire low-income residents of the City of Rural, WV and (enter the neighborhood location or zip codes) for the project. We are asking for your cooperation in using your best efforts to dispatch low-income Section 3 resident workers from your union that reside in the City of Rural, WV and (enter the neighborhood location or zip codes).

However, if there are no available workers in the project area please dispatch low-income Section 3 resident workers from your union that reside outside the project area and the City of Rural, WV.

Please keep this correspondence for your records. When we request that workers are dispatched to a job, please make your best effort to assist our company and the City of Rural, WV meet the Section 3 local hiring requirements.

Sincerely,

(Person Name)

cc: RPDC Project Administrator

SECTION 3 STATUTE

HOUSING AND URBAN DEVELOPMENT ACT OF 1968 (PUBLIC LAW 90-448; STAT. 12 U.S.C. 1701u)

EMPLOYMENT OPPORTUNITIES FOR LOWER INCOME PERSONS IN CONNECTION WITH ASSISTED PROJECTS

Sec 3. In the administration of programs directly receiving financial assistance including community development block grants, in the aid of housing, urban planning, development, redevelopment, or renewal of public or community facilities, and new community development, the Secretary of HUD shall

1. *require*, in consultation with the Secretary of Labor, that to the greatest extent feasible, opportunities for training and employment arising in connection with the planning and carrying out of any project assisted under any such program be given to lower income persons residing within the unit of local government or the metropolitan area (or nonmetropolitan county), as determined by the Secretary, in which the project is located; and

2. *require*, in consultation with the administrator of the Small Business Administration, that to the greatest extent feasible, contracts for work to be performed in connection with any such project be awarded to business concerns, including but not limited to individuals or firms doing business in the field of planning, consulting, design, architecture, building construction, rehabilitation, maintenance, or repair, which are located in, or owned in substantial part by persons residing in the same metropolitan area (or nonmetropolitan county) as the project.

1992 Amendments to Section 3 of the Housing and Urban Development Act of 1968

ECONOMIC OPPORTUNITIES THROUGH HUD PROGRAMS *Following is an excerpt from the Housing and Community Development Act of 1992:* SEC. 915 ECONOMIC OPPORTUNITIES FOR LOW AND VERY LOW INCOME PERSONS

Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u.) is amended to read as follows:

SEC. 3 Economic opportunities for low – and very low–income persons

(a) Findings

The Congress finds that—

- (1)** Federal housing and community development programs provide State and local governments and other recipients of Federal financial assistance with substantial Funds for projects and activities that produce significant employment and other economic opportunities;

- (2) low- and very low-income persons, especially recipients of government assistance for housing, often have restricted access to employment and other economic opportunities;
- (3) the employment and other economic opportunities generated by projects and activities that receive Federal housing and community development assistance offer an effective means of empowering low- and very low-income persons, particularly persons who are recipients of government assistance for housing; and
- (4) prior Federal efforts to direct employment and other economic opportunities generated by Federal housing and community development programs to low- and very low-income persons have not been fully effective and should be intensified.

(b) Policy

It is the policy of the Congress and the purpose of this section to ensure that the employment and other economic opportunities generated by Federal financial assistance for housing and community development programs shall, to the greatest extent feasible, be directed toward low- and very low-income persons, particularly those who are recipients of government assistance for housing.

(c) Employment

(1) Public and Indian housing program

(A) In general

The Secretary shall require that public and Indian housing agencies, and their contractors and subcontractors, make their best efforts, consistent with existing Federal, State, and local laws and regulations, to give to low- and very low-income persons the training and employment opportunities generated by development assistance provided pursuant to section 1437c of title 42, operating assistance provided pursuant to section 1437g of title 42, and modernization grants provided pursuant to section 1437i of title 42.^[1]

(B) Priority

The efforts required under subparagraph (A) shall be directed in the following order of priority:

- (i) To residents of the housing developments for which the assistance is expended.
- (ii) To residents of other developments managed by the public or Indian housing agency that is expending the assistance.
- (iii) To participants in YouthBuild programs receiving assistance under section 2918a of title 29.
- (iv) To other low- and very low-income persons residing within the metropolitan area (or nonmetropolitan county) in which the assistance is expended.

(2) Other programs

(A) In general

In other programs that provide housing and community development assistance, the Secretary shall ensure that, to the greatest extent feasible, and consistent with existing Federal, State, and local laws and regulations, opportunities for training and employment arising in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project are given to low- and very low-income persons residing within the metropolitan area (or nonmetropolitan county) in which the project is located.

(B) Priority

Where feasible, priority should be given to low- and very low-income persons residing within the service area of the project or the neighborhood in which the project is located and to participants in YouthBuild programs receiving assistance under section 2918a of title 29.

(d) Contracting

(1) Public and Indian housing program

(A) In general

The Secretary shall require that public and Indian housing agencies, and their contractors and subcontractors, make their best efforts, consistent with existing Federal, State, and local laws and regulations, to award contracts for work to be performed in connection with development assistance provided pursuant to section 1437c of title 42, operating assistance provided pursuant to section

1437g of title 42, and modernization grants provided pursuant to section 1437l of title 42,^[1] to business concerns that provide economic opportunities for low- and very low-income persons.

(B) Priority

The efforts required under subparagraph (A) shall be directed in the following order of priority:

- (i)** To business concerns that provide economic opportunities for residents of the housing development for which the assistance is provided.
- (ii)** To business concerns that provide economic opportunities for residents of other housing developments operated by the public and Indian housing agency that is providing the assistance.
- (iii)** To YouthBuild programs receiving assistance under section 2918a of title 29.
- (iv)** To business concerns that provide economic opportunities for low- and very low-income persons residing within the metropolitan area (or nonmetropolitan county) in which the assistance is provided.

(2) Other programs

(A) In general

In providing housing and community development assistance pursuant to other programs, the Secretary shall ensure that, to the greatest extent feasible, and consistent with existing Federal, State, and local laws and regulations, contracts awarded for work to be performed in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project are given to business concerns that provide economic opportunities for low- and very low-income persons residing within the metropolitan area (or nonmetropolitan county) in which the assistance is expended.

(B) Priority

Where feasible, priority should be given to business concerns which provide economic opportunities for low- and very low-income persons residing within the service area of the project or the neighborhood in which the project is located and to YouthBuild programs receiving assistance under section 2918a of title 29.

(e) Definitions

For the purposes of this section the following definitions shall apply:

(1) Low- and very low-income persons

The terms "low-income persons" and "very low-income persons" have the same meanings given the terms "low-income families" and "very low-income families", respectively, in section 1437a (b)(2) of title 42.

(2) Business concern that provides economic opportunities

The term "a business concern that provides economic opportunities" means a business concern that—

- (A)** provides economic opportunities for a class of persons that has a majority controlling interest in the business;
- (B)** employs a substantial number of such persons; or
- (C)** meets such other criteria as the Secretary may establish.

(f) Coordination with other Federal agencies

The Secretary shall consult with the Secretary of Labor, the Secretary of Health and Human Services, the Secretary of Commerce, the Administrator of the Small Business Administration, and such other Federal agencies as the Secretary determines are necessary to carry out this section.

(g) Regulations

Not later than 180 days after October 28, 1992, the Secretary shall promulgate regulations to implement this section.

Title 24: Housing and Urban Development

PART 135—ECONOMIC OPPORTUNITIES FOR LOW- AND VERY LOW-INCOME PERSONS

Section Contents

Subpart A—General Provisions

- § 135.1 Purpose.
- § 135.2 Effective date of regulation.
- § 135.3 Applicability.
- § 135.5 Definitions.
- § 135.7 Delegation of authority.
- § 135.9 Requirements applicable to HUD NOFAs for section 3 covered programs.
- § 135.11 Other laws governing training, employment, and contracting.

Subpart B—Economic Opportunities for Section 3 Residents and Section 3 Business Concerns

- § 135.30 Numerical goals for meeting the greatest extent feasible requirement.
- § 135.32 Responsibilities of the recipient.
- § 135.34 Preference for section 3 residents in training and employment opportunities.
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- § 135.38 Section 3 clause.
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Subpart D—Complaint and Compliance Review

- § 135.70 General.
- § 135.72 Cooperation in achieving compliance.
- § 135.74 Section 3 compliance review procedures.
- § 135.76 Filing and processing complaints.

Subpart E—Reporting and Recordkeeping

- § 135.90 Reporting.
- § 135.92 Recordkeeping and access to records. Appendix to Part 135

Authority: 12 U.S.C. 1701u; 42 U.S.C. 3535(d).

Source: 59 FR 33880, June 30, 1994, unless otherwise noted.

Effective Date Note: At 59 FR 33880, June 30, 1994, part 135 was revised effective August 1, 1994 through June 30, 1995. At 60 FR 28325, May 31, 1995, the effective period was extended until the final rule

implementing changes made to section 3 of the Housing and Urban Development Act of 1968 by the Housing and Community Development Act of 1992 is published and becomes effective.

Subpart A—General Provisions

§ 135.1 Purpose.

(a) *Section 3.* The purpose of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (section 3) is to ensure that employment and other economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, and consistent with existing Federal, State and local laws and regulations, be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities to low- and very low-income persons.

(b) *Part 135.* The purpose of this part is to establish the standards and procedures to be followed to ensure that the objectives of section 3 are met.

§ 135.2 Effective date of regulation.

The regulations of this part will remain in effect until the date the final rule adopting the regulations of this part with or without changes is published and becomes effective, at which point the final rule will remain in effect.

[60 FR 28326, May 31, 1995]

§ 135.3 Applicability.

(a) *Section 3 covered assistance.* Section 3 applies to the following HUD assistance (section 3 covered assistance):

(1) *Public and Indian housing assistance.* Section 3 applies to training, employment, contracting and other economic opportunities arising from the expenditure of the following public and Indian housing assistance:

- (i) Development assistance provided pursuant to section 5 of the U.S. Housing Act of 1937 (1937 Act); (ii) Operating assistance provided pursuant to section 9 of the 1937 Act; and
- (iii) Modernization assistance provided pursuant to section 14 of the 1937 Act;

(2) *Housing and community development assistance.* Section 3 applies to training, employment, contracting and other economic opportunities arising in connection with the expenditure of housing assistance (including section 8 assistance, and including other housing assistance not administered by the Assistant Secretary of Housing) and community development assistance that is used for the following projects;

(i) Housing rehabilitation (including reduction and abatement of lead-based paint hazards, but excluding routine maintenance, repair and replacement);

(ii) Housing construction; and

(iii) Other public construction.

(3) *Thresholds* —(i) *No thresholds for section 3 covered public and Indian housing assistance.* The requirements of this part apply to section 3 covered assistance provided to recipients, notwithstanding the amount of the assistance provided to the recipient. The requirements of this part apply to all contractors and

subcontractors performing work in connection with projects and activities Funded by public and Indian housing assistance covered by section 3, regardless of the amount of the contract or subcontract.

(ii) *Thresholds for section 3 covered housing and community development assistance* —(A) *Recipient thresholds*. The requirements of this part apply to recipients of other housing and community development program assistance for a section 3 covered project(s) for which the amount of the assistance exceeds \$200,000.

(B) *Contractor and subcontractor thresholds*. The requirements of this part apply to contractors and subcontractors performing work on section 3 covered project(s) for which the amount of the assistance exceeds \$200,000; and the contract or subcontract exceeds \$100,000.

(C) *Threshold met for recipients, but not contractors or subcontractors*. If a recipient receives section 3 covered housing or community development assistance in excess of \$200,000, but no contract exceeds \$100,000, the section 3 preference requirements only apply to the recipient.

(b) *Applicability of section 3 to entire project or activity Funded with section 3 assistance*. The requirements of this part apply to the entire project or activity that is Funded with section 3 covered assistance, regardless of whether the section 3 activity is fully or partially Funded with section 3 covered assistance.

(c) *Applicability to Indian housing authorities and Indian tribes*. Indian housing authorities and tribes that receive HUD assistance described in paragraph (a) of this section shall comply with the procedures and requirements of this part to the maximum extent consistent with, but not in derogation of, compliance with section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)). (See 24 CFR part 905.)

(d) *Other HUD assistance and other Federal assistance*. Recipients, contractors and subcontractors that receive HUD assistance, not listed in paragraph (a) of this section, or other Federal assistance, are encouraged to provide, to the greatest extent feasible, training, employment, and contracting opportunities generated by the expenditure of this assistance to low- and very low-income persons, and business concerns owned by low- and very low-income persons, or which employ low- and very low-income persons.

§ 135.5 Definitions.

The terms *Department*, *HUD*, *Indian housing authority (IHA)*, *Public housing agency (PHA)*, and *Secretary* are defined in 24 CFR part 5.

Annual Contributions Contract (ACC) means the contract under the U.S. Housing Act of 1937 (1937 Act) between HUD and the PHA, or between HUD and the IHA, that contains the terms and conditions under which HUD assists the PHA or the IHA in providing decent, safe, and sanitary housing for low income families. The ACC must be in a form prescribed by HUD under which HUD agrees to provide assistance in the development, modernization and/or operation of a low income housing project under the 1937 Act, and the PHA or IHA agrees to develop, modernize and operate the project in compliance with all provisions of the ACC and the 1937 Act, and all HUD regulations and implementing requirements and procedures. (The ACC is not a form of procurement contract.)

Applicant means any entity which makes an application for section 3 covered assistance, and includes, but is not limited to, any State, unit of local government, public housing agency, Indian housing authority, Indian tribe, or other public body, public or private nonprofit organization, private agency or institution, mortgagor, Grantee, limited dividend sponsor, builder, property manager, community housing development organization (CHDO), resident management corporation, resident council, or cooperative association.

Assistant Secretary means the Assistant Secretary for Fair Housing and Equal Opportunity.

Business concern means a business entity formed in accordance with State law, and which is licensed under State, county or municipal law to engage in the type of business activity for which it was formed.

Business concern that provides economic opportunities for low- and very low-income persons. See definition of “section 3 business concern” in this section.

Contract. See the definition of “section 3 covered contract” in this section.

Contractor means any entity which contracts to perform work generated by the expenditure of section 3 covered assistance, or for work in connection with a section 3 covered project.

Employment opportunities generated by section 3 covered assistance means all employment opportunities generated by the expenditure of section 3 covered public and Indian housing assistance (i.e., operating assistance, development assistance and modernization assistance, as described in §135.3(a)(1)). With respect to section 3 covered housing and community development assistance, this term means all employment opportunities arising in connection with section 3 covered projects (as described in §135.3(a)(2)), including management and administrative jobs connected with the section 3 covered project. Management and administrative jobs include architectural, engineering or related professional services required to prepare plans, drawings, specifications, or work write-ups; and jobs directly related to administrative support of these activities, e.g., construction manager, relocation specialist, payroll clerk, etc.

Housing authority (HA) means, collectively, public housing agency and Indian housing authority.

Housing and community development assistance means any financial assistance provided or otherwise made available through a HUD housing or community development program through any grant, loan, loan guarantee, cooperative agreement, or contract, and includes community development Funds in the form of community development block grants, and loans guaranteed under section 108 of the Housing and Community Development Act of 1974, as amended. Housing and community development assistance does not include financial assistance provided through a contract of insurance or guaranty.

Housing development means low-income housing owned, developed, or operated by public housing agencies or Indian housing authorities in accordance with HUD’s public and Indian housing program regulations codified in 24 CFR Chapter IX.

HUD Youthbuild programs mean programs that receive assistance under subtitle D of Title IV of the National Affordable Housing Act, as amended by the Housing and Community Development Act of 1992 (42 U.S.C. 12899), and provide disadvantaged youth with opportunities for employment, education, leadership development, and training in the construction or rehabilitation of housing for homeless individuals and members of low- and very low-income families.

Indian tribes shall have the meaning given this term in 24 CFR part 571.

JTPA means the Job Training Partnership Act (29 U.S.C. 1579(a)).

Low-income person. See the definition of “section 3 resident” in this section.

Metropolitan area means a metropolitan statistical area (MSA), as established by the Office of Management and Budget.

Neighborhood area means:

(1) For HUD housing programs, a geographical location within the jurisdiction of a unit of general local government (but not the entire jurisdiction) designated in ordinances, or other local documents as a neighborhood, village, or similar geographical designation.

(2) For HUD community development programs, see the definition, if provided, in the regulations for the applicable community development program, or the definition for this term in 24 CFR 570.204(c)(1).

New hires mean full-time employees for permanent, temporary or seasonal employment opportunities.

Nonmetropolitan county means any county outside of a metropolitan area.

Other HUD programs means HUD programs, other than HUD public and Indian housing programs, that provide housing and community development assistance for “section 3 covered projects,” as defined in this section.

Public housing resident has the meaning given this term in 24 CFR part 963.

Recipient means any entity which receives section 3 covered assistance, directly from HUD or from another recipient and includes, but is not limited to, any State, unit of local government, PHA, IHA, Indian tribe, or other public body, public or private nonprofit organization, private agency or institution, mortgagor, Grantee, limited dividend sponsor, builder, property manager, community housing development organization, resident management corporation, resident council, or cooperative association. Recipient also includes any successor, assignee or transferee of any such entity, but does not include any ultimate beneficiary under the HUD program to which section 3 applies and does not include contractors.

Section 3 means section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u).

Section 3 business concern means a business concern, as defined in this section— (1) That is 51 percent or more owned by section 3 residents; or
(2) Whose permanent, full-time employees include persons, at least 30 percent of whom are currently section 3 residents, or within three years of the date of first employment with the business concern were section 3 residents; or

(3) That provides evidence of a commitment to subcontract in excess of 25 percent of the dollar award of all subcontracts to be awarded to business concerns that meet the qualifications set forth in paragraphs (1) or (2) in this definition of “section 3 business concern.”

Section 3 clause means the contract provisions set forth in §135.38.

Section 3 covered activity means any activity which is Funded by section 3 covered assistance public and Indian housing assistance.

Section 3 covered assistance means:

(1) Public and Indian housing development assistance provided pursuant to section 5 of the 1937 Act;

(2) Public and Indian housing operating assistance provided pursuant to section 9 of the 1937 Act;

(3) Public and Indian housing modernization assistance provided pursuant to section 14 of the 1937 Act; (4) Assistance provided under any HUD housing or community development program that is expended for work arising in connection with:

(i) Housing rehabilitation (including reduction and abatement of lead-based paint hazards, but excluding routine maintenance, repair and replacement);

(ii) Housing construction; or

(iii) Other public construction project (which includes other buildings or improvements, regardless of Granteeship).

Section 3 covered contract means a contract or subcontract (including a professional service contract) awarded by a recipient or contractor for work generated by the expenditure of section 3 covered assistance, or for work arising in connection with a section 3 covered project. "Section 3 covered contracts" do not include contracts awarded under HUD's procurement program, which are governed by the Federal Acquisition Regulation System (see 48 CFR, Chapter 1). "Section 3 covered contracts" also do not include contracts for the purchase of supplies and materials. However, whenever a contract for materials includes the installation of the materials, the contract constitutes a section 3 covered contract. For example, a contract for the purchase and installation of a furnace would be a section 3 covered contract because the contract is for work (i.e., the installation of the furnace) and thus is covered by section 3.

Section 3 covered project means the construction, reconstruction, conversion or rehabilitation of housing (including reduction and abatement of lead-based paint hazards), other public construction which includes buildings or improvements (regardless of Granteeship) assisted with housing or community development assistance.

Section 3 joint venture. See §135.40. Section 3 resident means: (1) A public housing resident; or

(2) An individual who resides in the metropolitan area or nonmetropolitan county in which the section 3 covered assistance is expended, and who is:

(i) *A low-income person*, as this term is defined in section 3(b)(2) of the 1937 Act (42 U.S.C. 1437a(b)(2)). Section 3(b)(2) of the 1937 Act defines this term to mean families (including single persons) whose incomes do not exceed 80 per centum of the median income for the area, as determined by the Secretary, with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 80 per centum of the median for the area on the basis of the Secretary's findings that such variations are necessary because of prevailing levels of construction costs or unusually high or low-income families; or

(ii) *A very low-income person*, as this term is defined in section 3(b)(2) of the 1937 Act (42 U.S.C. 1437a(b)(2)). Section 3(b)(2) of the 1937 Act (42 U.S.C. 1437a(b)(2)) defines this term to mean families (including single persons) whose incomes do not exceed 50 per centum of the median family income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 50 per centum of the median for the area on the basis of the Secretary's findings that such variations are necessary because of unusually high or low family incomes.

(3) A person seeking the training and employment preference provided by section 3 bears the responsibility of providing evidence (if requested) that the person is eligible for the preference.

Section 8 assistance means assistance provided under section 8 of the 1937 Act (42 U.S.C. 1437f) pursuant to 24 CFR part 882, subpart G.

Service area means the geographical area in which the persons benefitting from the section 3 covered project reside. The service area shall not extend beyond the unit of general local government in which the section 3 covered assistance is expended. In HUD's Indian housing programs, the service area, for IHAs established by

an Indian tribe as a result of the exercise of the tribe's sovereign power, is limited to the area of tribal jurisdiction.

Subcontractor means any entity (other than a person who is an employee of the contractor) which has a contract with a contractor to undertake a portion of the contractor's obligation for the performance of work generated by the expenditure of section 3 covered assistance, or arising in connection with a section 3 covered project.

Very low-income person. See the definition of "section 3 resident" in this section. *Youthbuild programs.* See the definition of "HUD Youthbuild programs" in this section. [59 FR 33880, June 30, 1994, as amended at 61 FR 5206, Feb. 9, 1996]

§ 135.7 Delegation of authority.

Except as may be otherwise provided in this part, the functions and responsibilities of the Secretary under section 3, and described in this part, are delegated to the Assistant Secretary for Fair Housing and Equal Opportunity. The Assistant Secretary is further authorized to redelegate functions and responsibilities to other employees of HUD; *provided however*, that the authority to issue rules and regulations under this part, which authority is delegated to the Assistant Secretary, may not be redelegated by the Assistant Secretary.

§ 135.9 Requirements applicable to HUD NOFAs for section 3 covered programs.

(a) *Certification of compliance with part 135.* All notices of Funding availability (NOFAs) issued by HUD that announce the availability of Funding covered by section 3 shall include a provision in the NOFA that notifies applicants that section 3 and the regulations in part 135 are applicable to Funding awards made under the NOFA. Additionally the NOFA shall require as an application submission requirement (which may be specified in the NOFA or application kit) a certification by the applicant that the applicant will comply with the regulations in part 135. (For PHAs, this requirement will be met where a PHA Resolution in Support of the Application is submitted.) With respect to application evaluation, HUD will accept an applicant's certification unless there is evidence substantially challenging the certification.

(b) *Statement of purpose in NOFAs.* (1) For competitively awarded assistance in which the grants are for activities administered by an HA, and those activities are anticipated to generate significant training, employment or contracting opportunities, the NOFA must include a statement that one of the purposes of the assistance is to give to the greatest extent feasible, and consistent with existing Federal, State and local laws and regulations, job training, employment, contracting and other economic opportunities to section 3 residents and section 3 business concerns.

(2) For competitively awarded assistance involving housing rehabilitation, construction or other public construction, where the amount awarded to the applicant may exceed \$200,000, the NOFA must include a statement that one of the purposes of the assistance is to give, to the greatest extent feasible, and consistent with existing Federal, State and local laws and regulations, job training, employment, contracting and other economic opportunities to section 3 residents and section 3 business concerns.

(c) *Section 3 as NOFA evaluation criteria.* Where not otherwise precluded by statute, in the evaluation of applications for the award of assistance, consideration shall be given to the extent to which an applicant has demonstrated that it will train and employ section 3 residents and contract with section 3 business concerns for economic opportunities generated in connection with the assisted project or activity. The evaluation criteria to be utilized, and the rating points to be assigned, will be specified in the NOFA.

§ 135.11 Other laws governing training, employment, and contracting.

Other laws and requirements that are applicable or may be applicable to the economic opportunities generated from the expenditure of section 3 covered assistance include, but are not necessarily limited to those listed in this section.

(a) *Procurement standards for States and local governments (24 CFR 85.36)* —(1) *General*. Nothing in this part 135 prescribes specific methods of procurement. However, neither section 3 nor the requirements of this part 135 supersede the general requirement of 24 CFR 85.36(c) that all procurement transactions be conducted in a competitive manner. Consistent with 24 CFR 85.36(c)(2), section 3 is a Federal statute that expressly encourages, to the maximum extent feasible, a geographic preference in the evaluation of bids or proposals.

(2) *Flexible Subsidy Program*. Multifamily project mortgagors in the Flexible Subsidy Program are not required to utilize the methods of procurement in 24 CFR 85.36(d), and are not permitted to utilize methods of procurement that would result in their award of a contract to a business concern that submits a bid higher than the lowest responsive bid. A multifamily project mortgagor, however, must ensure that, to the greatest extent feasible, the procurement practices it selects provide preference to section 3 business concerns.

(b) *Procurement standards for other recipients (OMB Circular No. A-110)*. Nothing in this part prescribes specific methods of procurement for grants and other agreements with institutions of higher education, hospitals, and other nonprofit organizations. Consistent with the requirements set forth in OMB Circular No. A-110, section 3 is a Federal statute that expressly encourages a geographic preference in the evaluation of bids or proposals.

(c) *Federal labor standards provisions*. Certain construction contracts are subject to compliance with the requirement to pay prevailing wages determined under Davis-Bacon Act (40 U.S.C. 276a—276a-7) and implementing U.S. Department of Labor regulations in 29 CFR part 5. Additionally, certain HUD-assisted rehabilitation and maintenance activities on public and Indian housing developments are subject to compliance with the requirement to pay prevailing wage rates, as determined or adopted by HUD, to laborers and mechanics employed in this work. Apprentices and trainees may be utilized on this work only to the extent permitted under either Department of Labor regulations at 29 CFR part 5 or for work subject to HUD-determined prevailing wage rates, HUD policies and guidelines. These requirements include adherence to the wage rates and ratios of apprentices or trainees to journeymen set out in “approved apprenticeship and training programs,” as described in paragraph (d) of this section.

(d) *Approved apprenticeship and trainee programs*. Certain apprenticeship and trainee programs have been approved by various Federal agencies. Approved apprenticeship and trainee programs include: an apprenticeship program approved by the Bureau of Apprenticeship and Training of the Department of Labor, or a State Apprenticeship Agency, or an on-the-job training program approved by the Bureau of Apprenticeship and Training, in accordance with the regulations at 29 CFR part 5; or a training program approved by HUD in accordance with HUD policies and guidelines, as applicable. Participation in an approved apprenticeship program does not, in and of itself, demonstrate compliance with the regulations of this part.

(e) *Compliance with Executive Order 11246*. Certain contractors covered by this part are subject to compliance with Executive Order 11246, as amended by Executive Order 12086, and the Department of Labor regulations issued pursuant thereto (41 CFR chapter 60) which provide that no person shall be discriminated against on the basis of race, color, religion, sex, or national origin in all phases of employment during the performance of Federal or Federally assisted construction contracts.

Subpart B—Economic Opportunities for Section 3 Residents and Section 3 Business Concerns

§ 135.30 Numerical goals for meeting the greatest extent feasible requirement.

(a) *General.* (1) Recipients and covered contractors may demonstrate compliance with the “greatest extent feasible” requirement of section 3 by meeting the numerical goals set forth in this section for providing training, employment, and contracting opportunities to section 3 residents and section 3 business concerns.

(2) The goals established in this section apply to the entire amount of section 3 covered assistance awarded to a recipient in any Federal Fiscal Year (FY), commencing with the first FY following the effective date of this rule.

(3) For recipients that do not engage in training, or hiring, but award contracts to contractors that will engage in training, hiring, and subcontracting, recipients must ensure that, to the greatest extent feasible, contractors will provide training, employment, and contracting opportunities to section 3 residents and section 3 business concerns.

(4) The numerical goals established in this section represent minimum numerical targets.

(b) *Training and employment.* The numerical goals set forth in paragraph (b) of this section apply to new hires. The numerical goals reflect the aggregate hires. Efforts to employ section 3 residents, to the greatest extent feasible, should be made at all job levels.

(1) *Numerical goals for section 3 covered public and Indian housing programs.* Recipients of section 3 covered public and Indian housing assistance (as described in §135.5) and their contractors and subcontractors may demonstrate compliance with this part by committing to employ section 3 residents as:

(i) 10 percent of the aggregate number of new hires for the one year period beginning in FY 1995; (ii) 20 percent of the aggregate number of new hires for the one year period beginning in FY 1996; (iii) 30 percent of the aggregate number of new hires for one year period beginning in FY 1997 and continuing thereafter.

(2) *Numerical goals for other HUD programs covered by section 3.* (i) Recipients of section 3 covered housing assistance provided under other HUD programs, and their contractors and subcontractors (unless the contract or subcontract awards do not meet the threshold specified in §135.3(a)(3)) may demonstrate compliance with this part by committing to employ section 3 residents as 10 percent of the aggregate number of new hires for each year over the duration of the section 3 project;

(ii) Where a managing general partner or management agent is affiliated, in a given metropolitan area, with recipients of section 3 covered housing assistance, for an aggregate of 500 or more units in any fiscal year, the managing partner or management agent may demonstrate compliance with this part by committing to employ section 3 residents as:

(A) 10 percent of the aggregate number of new hires for the one year period beginning in FY 1995; (B) 20 percent of the aggregate number of new hires for the one year period beginning in FY 1996; (C) 30 percent of the aggregate number of new hires for the one year period beginning in FY 1997, and continuing thereafter.

(3) Recipients of section 3 covered community development assistance, and their contractors and subcontractors (unless the contract or subcontract awards do not meet the threshold specified in §135.3(a)(3)) may demonstrate compliance with the requirements of this part by committing to employ section 3 residents as:

(i) 10 percent of the aggregate number of new hires for the one year period beginning in FY 1995;

(ii) 20 percent of the aggregate number of new hires for the one year period beginning in FY 1996; and

(iii) 30 percent of the aggregate number of new hires for the one year period beginning in FY 1997 and continuing thereafter.

(c) *Contracts.* Numerical goals set forth in paragraph (c) of this section apply to contracts awarded in connection with all section 3 covered projects and section 3 covered activities. Each recipient and contractor and subcontractor (unless the contract or subcontract awards do not meet the threshold specified in §135.3(a)(3)) may demonstrate compliance with the requirements of this part by committing to award to section 3 business concerns:

(1) At least 10 percent of the total dollar amount of all section 3 covered contracts for building trades work for maintenance, repair, modernization or development of public or Indian housing, or for building trades work arising in connection with housing rehabilitation, housing construction and other public construction; and

(2) At least three (3) percent of the total dollar amount of all other section 3 covered contracts.

(d) *Safe harbor and compliance determinations.* (1) In the absence of evidence to the contrary, a recipient that meets the minimum numerical goals set forth in this section will be considered to have complied with the section 3 preference requirements.

(2) In evaluating compliance under subpart D of this part, a recipient that has not met the numerical goals set forth in this section has the burden of demonstrating why it was not feasible to meet the numerical goals set forth in this section. Such justification may include impediments encountered despite actions taken. A recipient or contractor also can indicate other economic opportunities, such as those listed in §135.40, which were provided in its efforts to comply with section 3 and the requirements of this part.

§ 135.32 Responsibilities of the recipient.

Each recipient has the responsibility to comply with section 3 in its own operations, and ensure compliance in the operations of its contractors and subcontractors. This responsibility includes but may not be necessarily limited to:

(a) Implementing procedures designed to notify section 3 residents about training and employment opportunities generated by section 3 covered assistance and section 3 business concerns about contracting opportunities generated by section 3 covered assistance;

(b) Notifying potential contractors for section 3 covered projects of the requirements of this part, and incorporating the section 3 clause set forth in §135.38 in all solicitations and contracts.

(c) Facilitating the training and employment of section 3 residents and the award of contracts to section 3 business concerns by undertaking activities such as described in the Appendix to this part, as appropriate, to reach the goals set forth in §135.30. Recipients, at their own discretion, may establish reasonable numerical goals for the training and employment of section 3 residents and contract award to section 3 business concerns that exceed those specified in §135.30;

(d) Assisting and actively cooperating with the Assistant Secretary in obtaining the compliance of contractors and subcontractors with the requirements of this part, and refraining from entering into any contract with any contractor where the recipient has notice or knowledge that the contractor has been found in violation of the regulations in 24 CFR part 135.

(e) Documenting actions taken to comply with the requirements of this part, the results of actions taken and impediments, if any.

(f) A State or county which distributes Funds for section 3 covered assistance to units of local governments, to the greatest extent feasible, must attempt to reach the numerical goals set forth in 135.30 regardless of the number of local governments receiving Funds from the section 3 covered assistance which meet the thresholds for applicability set forth at 135.3. The State or county must inform units of local government to whom Funds are distributed of the requirements of this part; assist local governments and their contractors in meeting the requirements and objectives of this part; and monitor the performance of local governments with respect to the objectives and requirements of this part.

§ 135.34 Preference for section 3 residents in training and employment opportunities.

(a) *Order of providing preference.* Recipients, contractors and subcontractors shall direct their efforts to provide, to the greatest extent feasible, training and employment opportunities generated from the expenditure of section 3 covered assistance to section 3 residents in the order of priority provided in paragraph (a) of this section.

(1) *Public and Indian housing programs.* In public and Indian housing programs, efforts shall be directed to provide training and employment opportunities to section 3 residents in the following order of priority:

(i) Residents of the housing development or developments for which the section 3 covered assistance is expended (category 1 residents);

(ii) Residents of other housing developments managed by the HA that is expending the section 3 covered housing assistance (category 2 residents);

(iii) Participants in HUD Youthbuild programs being carried out in the metropolitan area (or nonmetropolitan county) in which the section 3 covered assistance is expended (category 3 residents);

(iv) Other section 3 residents.

(2) *Housing and community development programs.* In housing and community development programs, priority consideration shall be given, where feasible, to:

(i) Section 3 residents residing in the service area or neighborhood in which the section 3 covered project is located (collectively, referred to as category 1 residents); and

(ii) Participants in HUD Youthbuild programs (category 2 residents).

(iii) Where the section 3 project is assisted under the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11301 *et seq.*), homeless persons residing in the service area or neighborhood in which the section 3 covered project is located shall be given the highest priority;

(iv) Other section 3 residents.

(3) Recipients of housing assistance programs administered by the Assistant Secretary for Housing may, at their own discretion, provide preference to residents of the housing development receiving the section 3 covered assistance within the service area or neighborhood where the section 3 covered project is located.

(4) Recipients of community development programs may, at their own discretion, provide priority to recipients of government assistance for housing, including recipients of certificates or vouchers under the Section 8 housing assistance program, within the service area or neighborhood where the section 3 covered project is located.

(b) *Eligibility for preference.* A section 3 resident seeking the preference in training and employment provided by this part shall certify, or submit evidence to the recipient contractor or subcontractor, if requested, that the person is a section 3 resident, as defined in §135.5. (An example of evidence of eligibility for the preference is evidence of receipt of public assistance, or evidence of participation in a public assistance program.)

(c) *Eligibility for employment.* Nothing in this part shall be construed to require the employment of a section 3 resident who does not meet the qualifications of the position to be filled.

§ 135.36 Preference for section 3 business concerns in contracting opportunities.

(a) *Order of providing preference.* Recipients, contractors and subcontractors shall direct their efforts to award section 3 covered contracts, to the greatest extent feasible, to section 3 business concerns in the order of priority provided in paragraph (a) of this section.

(1) *Public and Indian housing programs.* In public and Indian housing programs, efforts shall be directed to award contracts to section 3 business concerns in the following order of priority:

(i) Business concerns that are 51 percent or more owned by residents of the housing development or developments for which the section 3 covered assistance is expended, or whose full-time, permanent workforce includes 30 percent of these persons as employees (category 1 businesses);

(ii) Business concerns that are 51 percent or more owned by residents of other housing developments or developments managed by the HA that is expending the section 3 covered assistance, or whose full-time, permanent workforce includes 30 percent of these persons as employees (category 2 businesses); or

(iii) HUD Youthbuild programs being carried out in the metropolitan area (or nonmetropolitan county) in which the section 3 covered assistance is expended (category 3 businesses).

(iv) Business concerns that are 51 percent or more owned by section 3 residents, or whose permanent, full-time workforce includes no less than 30 percent section 3 residents (category 4 businesses), or that subcontract in excess of 25 percent of the total amount of subcontracts to business concerns identified in paragraphs (a)(1)(i) and (a)(1)(ii) of this section.

(2) *Housing and community development programs.* In housing and community development programs, priority consideration shall be given, where feasible, to:

(i) Section 3 business concerns that provide economic opportunities for section 3 residents in the service area or neighborhood in which the section 3 covered project is located (category 1 businesses); and

(ii) Applicants (as this term is defined in 42 U.S.C. 12899) selected to carry out HUD Youthbuild programs (category 2 businesses);

(iii) Other section 3 business concerns.

(b) *Eligibility for preference.* A business concern seeking to qualify for a section 3 contracting preference shall certify or submit evidence, if requested, that the business concern is a section 3 business concern as defined in §135.5.

(c) *Ability to complete contract.* A section 3 business concern seeking a contract or a subcontract shall submit evidence to the recipient, contractor, or subcontractor (as applicable), if requested, sufficient to demonstrate to the satisfaction of the party awarding the contract that the business concern is responsible and has the ability

to perform successfully under the terms and conditions of the proposed contract. (The ability to perform successfully under the terms and conditions of the proposed contract is required of all contractors and subcontractors subject to the procurement standards of 24 CFR 85.36 (see 24 CFR 85.36(b)(8)).) This regulation requires consideration of, among other factors, the potential contractor's record in complying with public policy requirements. Section 3 compliance is a matter properly considered as part of this determination.

§ 135.38 Section 3 clause.

All section 3 covered contracts shall include the following clause (referred to as the section 3 clause):

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 135, 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 135 regulations.

C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work cite where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

D. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, 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 135. 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 135.

E. 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 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

G. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

§ 135.40 Providing other economic opportunities.

(a) *General.* In accordance with the findings of the Congress, as stated in section 3, that other economic opportunities offer an effective means of empowering low-income persons, a recipient is encouraged to undertake efforts to provide to low-income persons economic opportunities other than training, employment, and contract awards, in connection with section 3 covered assistance.

(b) *Other training and employment related opportunities.* Other economic opportunities to train and employ section 3 residents include, but need not be limited to, use of "upward mobility", "bridge" and trainee positions to fill vacancies; hiring section 3 residents in management and maintenance positions within other housing developments; and hiring section 3 residents in part-time positions.

(c) *Other business related economic opportunities.* (l) A recipient or contractor may provide economic opportunities to establish, stabilize or expand section 3 business concerns, including micro-enterprises. Such opportunities include, but are not limited to the formation of section 3 joint ventures, financial support for affiliating with franchise development, use of labor only contracts for building trades, purchase of supplies and materials from housing authority resident-owned businesses, purchase of materials and supplies from PHA resident-owned businesses and use of procedures under 24 CFR part 963 regarding HA contracts to HA resident-owned businesses. A recipient or contractor may employ these methods directly or may provide incentives to non-section 3 businesses to utilize such methods to provide other economic opportunities to low-income persons.

(2) A *section 3 joint venture* means an association of business concerns, one of which qualifies as a section 3 business concern, formed by written joint venture agreement to engage in and carry out a specific business venture for which purpose the business concerns combine their efforts, resources, and skills for joint profit, but not necessarily on a continuing or permanent basis for conducting business generally, and for which the section 3 business concern:

(i) Is responsible for a clearly defined portion of the work to be performed and holds management responsibilities in the joint venture; and

(ii) Performs at least 25 percent of the work and is contractually entitled to compensation proportionate to its work.

Subpart C [Reserved]

Subpart D—Complaint and Compliance Review

§ 135.70 General.

(a) *Purpose.* The purpose of this subpart is to establish the procedures for handling complaints alleging noncompliance with the regulations of this part, and the procedures governing the Assistant Secretary's review of a recipient's or contractor's compliance with the regulations in this part.

(b) *Definitions.* For purposes of this subpart:

(1) *Complaint* means an allegation of noncompliance with regulations of this part made in the form described in §135.76(d).

(2) *Complainant* means the party which files a complaint with the Assistant Secretary alleging that a recipient or contractor has failed or refused to comply with the regulations in this part.

(3) *Noncompliance with section 3* means failure by a recipient or contractor to comply with the requirements of this part.

(4) *Respondent* means the recipient or contractor against which a complaint of noncompliance has been filed. The term "recipient" shall have the meaning set forth in §135.7, which includes PHA and IHA.

§ 135.72 Cooperation in achieving compliance.

(a) The Assistant Secretary recognizes that the success of ensuring that section 3 residents and section 3 business concerns have the opportunity to apply for jobs and to bid for contracts generated by covered HUD financial assistance depends upon the cooperation and assistance of HUD recipients and their contractors and subcontractors. All recipients shall cooperate fully and promptly with the Assistant Secretary in section 3 compliance reviews, in investigations of allegations of noncompliance made under §135.76, and with the distribution and collection of data and information that the Assistant Secretary may require in connection with achieving the economic objectives of section 3.

(b) The recipient shall refrain from entering into a contract with any contractor after notification to the recipient by HUD that the contractor has been found in violation of the regulations in this part. The provisions of 24 CFR part 24 apply to the employment, engagement of services, awarding of contracts or Funding of any contractors or subcontractors during any period of debarment, suspension or otherwise ineligible status.

§ 135.74 Section 3 compliance review procedures.

(a) *Compliance reviews by Assistant Secretary.* The Assistant Secretary shall periodically conduct section 3 compliance reviews of selected recipients and contractors to determine whether these recipients are in compliance with the regulations in this part.

(b) *Form of compliance review.* A section 3 compliance review shall consist of a comprehensive analysis and evaluation of the recipient's or contractor's compliance with the requirements and obligations imposed by the regulations of this part, including an analysis of the extent to which section 3 residents have been hired and section 3 business concerns have been awarded contracts as a result of the methods undertaken by the recipient to achieve the employment, contracting and other economic objectives of section 3.

(c) *Where compliance review reveals noncompliance with section 3 by recipient or contractor.* Where the section 3 compliance review reveals that a recipient or contractor has not complied with section 3, the Assistant Secretary shall notify the recipient or contractor of its specific deficiencies in compliance with the regulations of this part, and shall advise the recipient or contractor of the means by which these deficiencies may be corrected. HUD shall conduct a follow-up review with the recipient or contractor to ensure that action is being taken to correct the deficiencies.

(d) *Continuing noncompliance by recipient or contractor.* A continuing failure or refusal by the recipient or contractor to comply with the regulations in this part may result in the application of sanctions specified in the contract through which HUD assistance is provided, or the application of sanctions specified in the regulations governing the HUD program under which HUD financial assistance is provided. HUD will notify the recipient of any continuing failure or refusal by the contractor to comply with the regulations in this part for possible action under any procurement contract between the recipient and the contractor. Debarment, suspension and limited denial of participation pursuant to HUD's regulations in 24 CFR part 24, where appropriate, may be applied to the recipient or the contractor.

(e) *Conducting compliance review before the award of assistance.* Section 3 compliance reviews may be conducted before the award of contracts, and especially where the Assistant Secretary has reasonable grounds to believe that the recipient or contractor will be unable or unwilling to comply with the regulations in this part.

(f) *Consideration of complaints during compliance review.* Complaints alleging noncompliance with section

3, as provided in §135.76, may also be considered during any compliance review conducted to determine the recipient's conformance with regulations in this part.

§ 135.76 Filing and processing complaints.

(a) *Who may file a complaint.* The following individuals and business concerns may, personally or through an authorized representative, file with the Assistant Secretary a complaint alleging noncompliance with section 3:

(1) Any section 3 resident on behalf of himself or herself, or as a representative of persons similarly situated, seeking employment, training or other economic opportunities generated from the expenditure of section 3 covered assistance with a recipient or contractor, or by a representative who is not a section 3 resident but who represents one or more section 3 residents;

(2) Any section 3 business concern on behalf of itself, or as a representative of other section 3 business concerns similarly situated, seeking contract opportunities generated from the expenditure of section 3 covered assistance from a recipient or contractor, or by an individual representative of section 3 business concerns.

(b) *Where to file a complaint.* A complaint must be filed with the Assistant Secretary for Fair Housing and Equal Opportunity, Department of Housing and Urban Development, Washington, DC, 20410.

(c) *Time of filing.* (1) A complaint must be received not later than 180 days from the date of the action or omission upon which the complaint is based, unless the time for filing is extended by the Assistant Secretary for good cause shown.

(2) Where a complaint alleges noncompliance with section 3 and the regulations of this part that is continuing, as manifested in a number of incidents of noncompliance, the complaint will be timely if filed within 180 days of the last alleged occurrence of noncompliance.

(3) Where a complaint contains incomplete information, the Assistant Secretary shall request the needed information from the complainant. In the event this information is not furnished to the Assistant Secretary within sixty (60) days of the date of the request, the complaint may be closed.

(d) *Contents of complaint*—(1) *Written complaints.* Each complaint must be in writing, signed by the complainant, and include:

(i) The complainant's name and address;

(ii) The name and address of the respondent;

(iii) A description of the acts or omissions by the respondent that is sufficient to inform the Assistant Secretary of the nature and date of the alleged noncompliance.

(iv) A complainant may provide information to be contained in a complaint by telephone to HUD or any HUD Field Office, and HUD will reduce the information provided by telephone to writing on the prescribed complaint form and send the form to the complainant for signature.

(2) *Amendment of complaint.* Complaints may be reasonably and fairly amended at any time. Such amendments may include, but are not limited to, amendments to cure, technical defects or omissions, including failure to sign or affirm a complaint, to clarify or amplify the allegations in a complaint, or to join additional or substitute respondents. Except for the purposes of notifying respondents, amended complaints will be considered as having been made as of the original filing date.

(e) *Resolution of complaint by recipient.* (1) Within ten (10) days of timely filing of a complaint that contains complete information (in accordance with paragraphs (c) and (d) of this section), the Assistant Secretary shall determine whether the complainant alleges an action or omission by a recipient or the recipient's contractor that if proven qualifies as noncompliance with section 3. If a determination is made that there is an allegation of noncompliance with section 3, the complaint shall be sent to the recipient for resolution.

(2) If the recipient believes that the complaint lacks merit, the recipient must notify the Assistant Secretary in writing of this recommendation with supporting reasons, within 30 days of the date of receipt of the complaint. The determination that a complaint lacks merit is reserved to the Assistant Secretary.

(3) If the recipient determines that there is merit to the complaint, the recipient will have sixty (60) days from the date of receipt of the complaint to resolve the matter with the complainant. At the expiration of the 60-day period, the recipient must notify the Assistant Secretary in writing whether a resolution of the complaint has been reached. If resolution has been reached, the notification must be signed by both the recipient and the complainant, and must summarize the terms of the resolution reached between the two parties.

(4) Any request for an extension of the 60-day period by the recipient must be submitted in writing to the Assistant Secretary, and must include a statement explaining the need for the extension.

(5) If the recipient is unable to resolve the complaint within the 60-day period (or more if extended by the Assistant Secretary), the complaint shall be referred to the Assistant Secretary for handling.

(f) *Informal resolution of complaint by Assistant Secretary*—(1) *Dismissal of complaint.* Upon receipt of the recipient's written recommendation that there is no merit to the complaint, or upon failure of the recipient and complainant to reach resolution, the Assistant Secretary shall review the complaint to determine whether it presents a valid allegation of noncompliance with section 3. The Assistant Secretary may conduct further investigation if deemed necessary. Where the complaint fails to present a valid allegation of noncompliance with section 3, the Assistant Secretary will dismiss the complaint without further action. The Assistant Secretary shall notify the complainant of the dismissal of the complaint and the reasons for the dismissal.

(2) *Informal resolution.* Where the allegations in a complaint on their face, or as amplified by the statements of the complainant, present a valid allegation of noncompliance with section 3, the Assistant Secretary will attempt, through informal methods, to obtain a voluntary and just resolution of the complaint. Where attempts to resolve the complaint informally fail, the Assistant Secretary will impose a resolution on the recipient and complainant. Any resolution imposed by the Assistant Secretary will be in accordance with requirements and procedures concerning the imposition of sanctions or resolutions as set forth in the regulations governing the HUD program under which the section 3 covered assistance was provided.

(3) *Effective date of informal resolution.* The imposed resolution will become effective and binding at the expiration of 15 days following notification to recipient and complainant by certified mail of the imposed resolution, unless either party appeals the resolution before the expiration of the 15 days. Any appeal shall be in writing to the Secretary and shall include the basis for the appeal.

(g) *Sanctions.* Sanctions that may be imposed on recipients that fail to comply with the regulations of this part include debarment, suspension and limited denial of participation in HUD programs.

(h) *Investigation of complaint.* The Assistant Secretary reserves the right to investigate a complaint directly when, in the Assistant Secretary's discretion, the investigation would further the purposes of section 3 and this part.

(i) *Intimidatory or retaliatory acts prohibited.* No recipient or other person shall intimidate, threaten, coerce, or discriminate against any person or business because the person or business has made a complaint, testified, assisted or participated in any manner in an investigation, proceeding, or hearing under this part. The identity

of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing or judicial proceeding arising thereunder.

(j) *Judicial relief.* Nothing in this subpart D precludes a section 3 resident or section 3 business concerning from exercising the right, which may otherwise be available, to seek redress directly through judicial procedures.

(Approved by the Office of Management and Budget under control number 2529–0043)

Subpart E—Reporting and Recordkeeping

§ 135.90 Reporting.

Each recipient which receives directly from HUD financial assistance that is subject to the requirements of this part shall submit to the Assistant Secretary an annual report in such form and with such information as the Assistant Secretary may request, for the purpose of determining the effectiveness of section 3. Where the program providing the section 3 covered assistance requires submission of an annual performance report, the section 3 report will be submitted with that annual performance report. If the program providing the section 3 covered assistance does not require an annual performance report, the section 3 report is to be submitted by January 10 of each year or within 10 days of project completion, whichever is earlier. All reports submitted to HUD in accordance with the requirements of this part will be made available to the public.

(Approved by the Office of Management and Budget under control number 2529–0043)

§ 135.92 Recordkeeping and access to records.

HUD shall have access to all records, reports, and other documents or items of the recipient that are maintained to demonstrate compliance with the requirements of this part, or that are maintained in accordance with the regulations governing the specific HUD program under which section 3 covered assistance is provided or otherwise made available to the recipient or contractor.

Appendix to Part 135

I. Examples of Efforts To Offer Training and Employment Opportunities to Section 3 Residents

(1) Entering into “first source” hiring agreements with organizations representing Section 3 residents. (2) Sponsoring a HUD-certified “Step-Up” employment and training program for section 3 residents. (3) Establishing training programs, which are consistent with the requirements of the Department of Labor, for public and Indian housing residents and other section 3 residents in the building trades.

(4) Advertising the training and employment positions by distributing flyers (which identify the positions to be filled, the qualifications required, and where to obtain additional information about the application process) to every occupied dwelling unit in the housing development or developments where category 1 or category 2 persons (as these terms are defined in §135.34) reside.

(5) Advertising the training and employment positions by posting flyers (which identify the positions to be filled, the qualifications required, and where to obtain additional information about the application process) in the common areas or other prominent areas of the housing development or developments. For HAs, post such advertising in the housing development or developments where category 1 or category 2 persons reside; for all other recipients, post such advertising in the housing development or developments and transitional housing in the neighborhood or service area of the section 3 covered project.

(6) Contacting resident councils, resident management corporations, or other resident organizations, where they exist, in the housing development or developments where category 1 or category 2 persons reside, and community organizations in HUD-assisted neighborhoods, to request the assistance of these organizations in notifying residents of the training and employment positions to be filled.

(7) Sponsoring (scheduling, advertising, financing or providing in-kind services) a job informational meeting to be conducted by an HA or contractor representative or representatives at a location in the housing development or developments where category 1 or category 2 persons reside or in the neighborhood or service area of the section 3 covered project.

(8) Arranging assistance in conducting job interviews and completing job applications for residents of the housing development or developments where category 1 or category 2 persons reside and in the neighborhood or service area in which a section 3 project is located.

(9) Arranging for a location in the housing development or developments where category 1 persons reside, or the neighborhood or service area of the project, where job applications may be delivered to and collected by a recipient or contractor representative or representatives.

(10) Conducting job interviews at the housing development or developments where category 1 or category 2 persons reside, or at a location within the neighborhood or service area of the section 3 covered project.

(11) Contacting agencies administering HUD Youthbuild programs, and requesting their assistance in recruiting HUD Youthbuild program participants for the HA's or contractor's training and employment positions.

(12) Consulting with State and local agencies administering training programs Funded through JTPA or JOBS, probation and parole agencies, unemployment compensation programs, community organizations and other officials or organizations to assist with recruiting Section 3 residents for the HA's or contractor's training and employment positions.

(13) Advertising the jobs to be filled through the local media, such as community television networks, newspapers of general circulation, and radio advertising.

(14) Employing a job coordinator, or contracting with a business concern that is licensed in the field of job placement (preferably one of the section 3 business concerns identified in part 135), that will undertake, on behalf of the HA, other recipient or contractor, the efforts to match eligible and qualified section 3 residents with the training and employment positions that the HA or contractor intends to fill.

(15) For an HA, employing section 3 residents directly on either a permanent or a temporary basis to perform work generated by section 3 assistance. (This type of employment is referred to as "force account labor" in HUD's Indian housing regulations. See 24 CFR 905.102, and §905.201(a)(6).)

(16) Where there are more qualified section 3 residents than there are positions to be filled, maintaining a file of eligible qualified section 3 residents for future employment positions.

(17) Undertaking job counseling, education and related programs in association with local educational institutions.

(18) Undertaking such continued job training efforts as may be necessary to ensure the continued employment of section 3 residents previously hired for employment opportunities.

(19) After selection of bidders but prior to execution of contracts, incorporating into the contract a negotiated provision for a specific number of public housing or other section 3 residents to be trained or employed on the section 3 covered assistance.

(20) Coordinating plans and implementation of economic development (e.g., job training and preparation, business development assistance for residents) with the planning for housing and community development.

II. Examples of Efforts To Award Contracts to Section 3 Business Concerns

(1) Utilizing procurement procedures for section 3 business concerns similar to those provided in 24 CFR part 905 for business concerns owned by Native Americans (see section III of this Appendix).

(2) In determining the responsibility of potential contractors, consider their record of section 3 compliance as evidenced by past actions and their current plans for the pending contract.

(3) Contacting business assistance agencies, minority contractors associations and community organizations to inform them of contracting opportunities and requesting their assistance in identifying section 3 businesses which may solicit bids or proposals for contracts for work in connection with section 3 covered assistance.

(4) Advertising contracting opportunities by posting notices, which provide general information about the work to be contracted and where to obtain additional information, in the common areas or other prominent areas of the housing development or developments owned and managed by the HA.

(5) For HAs, contacting resident councils, resident management corporations, or other resident organizations, where they exist, and requesting their assistance in identifying category 1 and category 2 business concerns.

(6) Providing written notice to all known section 3 business concerns of the contracting opportunities. This notice should be in sufficient time to allow the section 3 business concerns to respond to the bid invitations or request for proposals.

(7) Following up with section 3 business concerns that have expressed interest in the contracting opportunities by contacting them to provide additional information on the contracting opportunities.

(8) Coordinating pre-bid meetings at which section 3 business concerns could be informed of upcoming contracting and subcontracting opportunities.

(9) Carrying out workshops on contracting procedures and specific contract opportunities in a timely manner so that section 3 business concerns can take advantage of upcoming contracting opportunities, with such information being made available in languages other than English where appropriate.

(10) Advising section 3 business concerns as to where they may seek assistance to overcome limitations such as inability to obtain bonding, lines of credit, financing, or insurance.

(11) Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways to facilitate the participation of section 3 business concerns.

(12) Where appropriate, breaking out contract work items into economically feasible units to facilitate participation by section 3 business concerns.

(13) Contacting agencies administering HUD Youthbuild programs, and notifying these agencies of the contracting opportunities.

(14) Advertising the contracting opportunities through trade association papers and newsletters, and through the local media, such as community television networks, newspapers of general circulation, and radio advertising.

(15) Developing a list of eligible section 3 business concerns.

(16) For HAs, participating in the "Contracting with Resident-Owned Businesses" program provided under 24 CFR part 963.

(17) Establishing or sponsoring programs designed to assist residents of public or Indian housing in the creation and development of resident-owned businesses.

(18) Establishing numerical goals (number of awards and dollar amount of contracts) for award of contracts to section 3 business concerns.

(19) Supporting businesses which provide economic opportunities to low income persons by linking them to the support services available through the Small Business Administration (SBA), the Department of Commerce and comparable agencies at the State and local levels.

(20) Encouraging financial institutions, in carrying out their responsibilities under the Community Reinvestment Act, to provide no or low interest loans for providing working capital and other financial business needs.

(21) Actively supporting joint ventures with section 3 business concerns.

(22) Actively supporting the development or maintenance of business incubators which assist Section 3 business concerns.

III. Examples of Procurement Procedures That Provide for Preference for Section 3 Business Concerns

This Section III provides specific procedures that may be followed by recipients and contractors (collectively, referred to as the "contracting party") for implementing the section 3 contracting preference for each of the competitive procurement methods authorized in 24 CFR 85.36(d).

(1) *Small Purchase Procedures.* For section 3 covered contracts aggregating no more than \$25,000, the methods set forth in this paragraph (1) or the more formal procedures set forth in paragraphs (2) and (3) of this Section III may be utilized.

(i) *Solicitation.* (A) Quotations may be solicited by telephone, letter or other informal procedure provided that the manner of solicitation provides for participation by a reasonable number of competitive sources. At the time of solicitation, the parties must be informed of:

—the section 3 covered contract to be awarded with sufficient specificity;

—the time within which quotations must be submitted; and

—the information that must be submitted with each quotation.

(B) If the method described in paragraph (i)(A) is utilized, there must be an attempt to obtain quotations from a minimum of three qualified sources in order to promote competition. Fewer than three quotations are acceptable

when the contracting party has attempted, but has been unable, to obtain a sufficient number of competitive quotations. In unusual circumstances, the contracting party may accept the sole quotation received in response to a solicitation provided the price is reasonable. In all cases, the contracting party shall document the circumstances when it has been unable to obtain at least three quotations.

(ii) *Award.* (A) Where the section 3 covered contract is to be awarded based upon the lowest price, the contract shall be awarded to the qualified section 3 business concern with the lowest responsive quotation, if it is reasonable and no more than 10 percent higher than the quotation of the lowest responsive quotation from any qualified source. If no responsive quotation by a qualified section 3 business concern is within 10 percent of the lowest responsive quotation from any qualified source, the award shall be made to the source with the lowest quotation.

(B) Where the section 3 covered contract is to be awarded based on factors other than price, a request for quotations shall be issued by developing the particulars of the solicitation, including a rating system for the assignment of points to evaluate the merits of each quotation. The solicitation shall identify all factors to be considered, including price or cost. The rating system shall provide for a range of 15 to 25 percent of the total number of available rating points to be set aside for the provision of preference for section 3 business concerns. The purchase order shall be awarded to the responsible firm whose quotation is the most advantageous, considering price and all other factors specified in the rating system.

(2) *Procurement by sealed bids (Invitations for Bids).* Preference in the award of section 3 covered contracts that are awarded under a sealed bid (IFB) process may be provided as follows:

(i) Bids shall be solicited from all businesses (section 3 business concerns, and non-section 3 business concerns). An award shall be made to the qualified section 3 business concern with the highest priority ranking and with the lowest responsive bid if that bid—

(A) is within the maximum total contract price established in the contracting party's budget for the specific project for which bids are being taken, and

(B) is not more than "X" higher than the total bid price of the lowest responsive bid from any responsible bidder. "X" is determined as follows:

	x=lesser of:
When the lowest responsive bid is less than \$100,000	10% of that bid or \$9,000.
When the lowest responsive bid is:	
At least \$100,000, but less than \$200,000	9% of that bid, or \$16,000.
At least \$200,000, but less than \$300,000	8% of that bid, or \$21,000.
At least \$300,000, but less than \$400,000	7% of that bid, or \$24,000.
At least \$400,000, but less than \$500,000	6% of that bid, or \$25,000.
At least \$500,000, but less than \$1 million	5% of that bid, or \$40,000.
At least \$1 million, but less than \$2 million	4% of that bid, or \$60,000.
At least \$2 million, but less than \$4 million	3% of that bid, or \$80,000.

At least \$4 million, but less than \$7 million	2% of that bid, or \$105,000.
\$7 million or more	1 1/2% of the lowest responsive bid, with no dollar limit.

(ii) If no responsive bid by a section 3 business concern meets the requirements of paragraph (2)(i) of this section, the contract shall be awarded to a responsible bidder with the lowest responsive bid.

(3) *Procurement under the competitive proposals method of procurement (Request for Proposals (RFP)).* (i) For contracts and subcontracts awarded under the competitive proposals method of procurement (24 CFR 85.36(d)(3)), a Request for Proposals (RFP) shall identify all evaluation factors (and their relative importance) to be used to rate proposals.

(ii) One of the evaluation factors shall address both the preference for section 3 business concerns and the acceptability of the strategy for meeting the greatest extent feasible requirement (section 3 strategy), as disclosed in proposals submitted by all business concerns (section 3 and non-section 3 business concerns). This factor shall provide for a range of 15 to 25 percent of the total number of available points to be set aside for the evaluation of these two components.

(iii) The component of this evaluation factor designed to address the preference for section 3 business concerns must establish a preference for these business concerns in the order of priority ranking as described in 24 CFR 135.36.

(iv) With respect to the second component (the acceptability of the section 3 strategy), the RFP shall require the disclosure of the contractor's section 3 strategy to comply with the section 3 training and employment preference, or contracting preference, or both, if applicable. A determination of the contractor's responsibility will include the submission of an acceptable section 3 strategy. The contract award shall be made to the responsible firm (either section 3 or non-section 3 business concern) whose proposal is determined most advantageous, considering price and all other factors specified in the RFP.