

# Sample Section 3 Plan

## **Introduction**

This sample Section 3 Plan is to serve as a template for those submitting a CDBG – Small Cities Block Grant application. This sample Plan details the elements needed to make a comprehensive Section 3 submission for the application. Please note the headings and accompanying text to serve as a guide for your Section 3 Plan.

**Note:** Section 3 Plans must be signed by Chief Elected Official of the entity applying for grant funds. In the event of any discrepancy between this document and applicable Federal regulations referenced herein, Federal regulations will apply.

## **Purpose and Scope**

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.”

In compliance with Section 3 of the Housing and Urban Development Act of 1968, as amended, and 24 CFR Part 135, the West Virginia Development Office (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.

As a recipient of HUD funding, the WVDO has developed a Section 3 Policies and Procedures guide to ensure compliance with Section 3. This policy is available at [www.wvdo.org/downloads](http://www.wvdo.org/downloads).

Section 3 compliance is required by the WVDO grant agreement as executed with each unit of local government upon the award of funds. The Section 3 Plan is submitted by the Applicant/Grantee to ensure compliance with Section 3. In the event of any discrepancy between the Plan and the Federal requirements, the requirements set forth in 24 CFR Part 135, as amended, shall prevail.

## **Responsibilities**

### **Federal Responsibilities**

HUD monitors the performance of recipients and contractors. HUD examines employment and contracting records for evidence of actions taken to train and employ Section 3 Residents and to award contracts to Section 3 Businesses. HUD provides technical assistance to recipients and contractors in order to obtain compliance with Section 3 requirements.

### **State Responsibilities**

As the recipient of HUD funding, the State of West Virginia is responsible for ensuring the compliance of Grantees and contractors. The State operates as a pass-through to the local

government, and does not directly procure contracts; however the State is ultimately responsible for compliance with Section 3 and must ensure compliance from Grantees.

The WVDO will monitor compliance with Section 3 requirements. The local government will provide information to appropriate contractors, professional consultants, and businesses that are responsible for hiring or contracting for Section 3 eligible services.

### **Grantee Responsibilities**

The Grantee is required to ensure its compliance and the compliance of its contractors/subcontractors with the Section 3 regulations.

Through its responsibility for the award of contracts, the Grantee will take an **active role** in ensuring Section 3 compliance. Therefore, the Grantee will design and implement procedures to ensure that all parties, including residents, businesses, contractors, and subcontractors, comply with Section 3, though:

**1. Facilitating the training and employment of Section 3 Residents:**

The Grantee shall act as a facilitator, connecting Section 3 Residents to training and employment opportunities. Implementing a procedure to certify local residents as a qualified Section 3 Residents. Self-certification forms are provided in the WVDO Policy and Procedures guide.

**2. Facilitating the award of contracts to Section 3 Businesses:**

The Grantee shall also work to link developers and contractors with capable Section 3 Businesses. Additionally, Grantees, when necessary, may direct Section 3 Businesses to organizations that provide capacity building training.

**3. Ensuring Contractor and Subcontractor Certification of Section 3 Goals and Responsibilities:**

The Grantee shall notify contractors of requirements and include Section 3 clauses in solicitations and contracts which exceed \$100,000. The Grantee is responsible for ensuring that contractors and subcontractors are aware of, and in compliance with, Section 3 requirements.

**4. Ensuring Compliance and Meeting Numerical Goals:**

The Grantee shall ensure compliance with Section 3 by assessing the hiring and subcontracting needs of contractors; regularly monitoring contractor compliance, penalizing non-compliance; providing incentives for good performance; and refraining from entering into contracts with any contractor that previously failed to comply with the requirements of Section 3.

**5. Documenting Actions Taken:**

The Grantee will document all actions taken to comply with Section 3. If numerical goals are not attained, the Grantee will document the reasons why the goals were not achieved. This documentation must verify the action 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.

**(Insert Name of City/County)**

**Plan For Compliance With Section 3**

**Statement of Goals**

At the beginning of a CDBG project, the Grantee will execute a plan for meeting the requirements of Section 3, and will estimate the amount of work that will be available for residents and businesses eligible under Section 3 of the Housing and Development Act of 1968.

**Contracting Thresholds**

As stated in the Assurances Section of its application for funding, and in compliance with the WVDO Section 3 Policy and Procedures, and 24 CFR Part 135, the Grantee will seek and establish training, employment, contracting and other economic opportunities arising from covered housing and community development program 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, it is understood that 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.

**Minimum Numerical Goals**

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

1. All Grantees and contractors will seek Section 3 Residents, 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.

### **Section 3 Coordinator**

The Grantee will 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.

### **Bidding Procedures**

The Section 3 Clause set forth in 24 CFR 135.20 (b) will be inserted in bidding documents. **Each bidder will be required to submit:** 1.) Certification of Compliance with Section 3 and Segregated Facilities; 2.) Section 3 Plan; and 3.) Utilization Goals for Employment and Small Business.

### **Contract Requirements**

Grantees are responsible for **ensuring the compliance** of 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 Employment and Training Opportunities**

The Grantee will require its prospective bidders to provide an estimate of work force needs on "Estimated Project Work Force Table" which will include the approximate number of employee and trainee positions that will be required in the execution of the contract. The bidder must also certify that good faith efforts will be made to employ lower-income residents as employees and trainees to the greatest extent feasible.

### **Section 3 Businesses**

The Grantee shall execute a Section 3 Plan for business utilization with each contractor. The Plan will indicate the dollar value of all proposed contracts and set forth a goal or target number and estimated dollar amount of contracts to be awarded to eligible business concerns.

The [Section 3 Business Registry](http://www.hud.gov/sec3biz) 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](http://www.hud.gov/sec3biz).

### **Registry of Eligible Section 3 Businesses**

The Grantee will maintain and provide to contractors a registry of local small and disadvantaged business concerns, compiled from various sources, including community organizations, Workforce Investment Boards, and public or private institutions serving the project area.

**Public Notification of Section 3 Business Opportunities**

The Grantee will highlight by placing in **bold print** in its advertisements for bids that proposed contractors must utilize to the greatest extent feasible, businesses which are located in or owned in substantial part by persons residing in the project area.

The Grantee will advertise in a newspaper of general circulation to further attract eligible and interested Section 3 Businesses. The advertisements for bids will have the following language inserted in **bold print** so as to have the bid opportunity noticed by prospective Section 3 Businesses:

*“The selected firm will be required to comply with Title VI of the Civil Rights Act of 1964, Executive Order 11246, Section 109 of the Housing and Urban Development Act of 1974, Section 3 of the Housing and Urban Development Act of 1968, Conflict of Interest Statement and Access to Records provisions and all other requirements as related to HUD-funded projects.”*

Potential contracts will include those related to:

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

**Section 3 Employees and Trainees**

Section 3 is race and gender neutral. All residents of the local housing authority, located within the city, county or Metropolitan Statistical Area (MSA) of the project, qualify as Section 3 Residents. In addition, individuals residing within the MSA or the county who meet the most recent income limits as established by HUD, can 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](http://www.huduser.org/portal/datasets/il/il15/index.html). Follow the link, choose West Virginia, and then identify the proper county or MSA.

The current income limits for the county or MSA) for this proposed CDBG project are provided below, and will be updated upon the release of new HUD data.

*Example: Table of Adjusted Median Income for \_\_\_\_\_, WV.  
City of \_\_\_\_\_, WV (effective 4/1/2020)*

Family Size	1 Person	2 Persons	3 Persons	4 Persons	5 Persons	6 Persons	7 Persons	8 Persons
Household Income: 80 Percent Median Income	\$34,000	\$38,950	\$43,800	\$48,650	\$52,550	\$56,450	\$60,350	\$64,250

### **Priority of Section 3 Residents**

When considering the employment of a Section 3 resident, the following priority will be followed as outlined in 24 CFR 135.32:

- 1. Category 1 – Section 3 Resident**  
Residents of a housing development in which the contract shall be expended.
- 2. Category 2 – Section 3 Resident**  
Residents of housing developments managed by the City/County of (Insert Name of City or County).
- 3. Category 3 – Section 3 Resident**  
Participants in HUD Youthbuild program.
- 4. Category 4 – Section 3 Resident**  
All other residents of the City/County or MSA of the (Insert Name of City or County) who meet the income guidelines for Section 3 preference (refer to Section 3 Income Limits).

### **Duties Imposed On Contractor And Subcontractor**

Grantees have a responsibility to **ensure the compliance** of their contractors and subcontractors, as follows:

- 1. Contract Language for all Section 3 Covered Projects**

The Grantee must ensure that the Section 3 Clause (attached to this Plan), be provided, in its entirety, in each bid, proposal, contract, subcontract and agreement associated with CDBG funding. 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

Section 3 clause set forth in 24 CFR 135.20(b). 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.

## **2. Certifications of Compliance (HUD Certifications)**

Every contractor shall execute all necessary Certifications of Compliance (HUD Certifications) and cause all subcontractors undertaking work in connection with this contract to furnish the same.

## **3. Section 3 Plan**

The Grantee will execute a Section 3 Owner-Contractor Plan by and between the Grantee and the contractor or subcontractor, based upon the applicable Section 3 thresholds for contracting.

## **4. Section 3 Employees and Trainees**

The contractor and subcontractor shall fulfill obligations to utilize Section 3 Residents as trainees and employees to the greatest extent feasible by:

- Identifying on the “Estimated Project Work Force Needs Table” the number of positions in the various occupational categories required to perform each phase of the Section 3 project;
- Identifying the number of positions currently occupied by regular, permanent employees and those that are not currently filled;
- Determining maximum number of positions to be filled by lower income project area residents;
- Utilizing the maximum number of persons in the various occupational categories in all phases of the work to be performed under Section 3 covered projects; and
- Filling all vacant positions with lower income project area residents except for those positions which remain unfilled after a good faith effort has been made.

## **5. Required Notification**

Each contractor and subcontractor seeking to establish that a good faith effort has been made to fill trainee and skilled positions with lower income area residents, shall:

- Attempt to recruit from the appropriate areas the necessary number of lower income residents through local advertising;
- Media, signs placed at the proposed site and community organizations and public and private institutions operating within or serving the project area, such as the local Workforce West Virginia Office;

- Maintain a list of all lower income residents who have applied either on their own or on referral from any source, and employ such person if otherwise eligible and/or qualified and if a vacancy exists. If no vacancies exist, the eligibility and/or qualifications of the applicant shall be considered and listed for the first available opening;
- Any contractor or subcontractor which fills vacant apprentice and trainee positions and/or employment positions immediately prior to undertaking work pursuant to a Section 3 covered contract shall set forth evidence acceptable to the Grantee that its actions were not an attempt to circumvent these regulations.
- Obtain Self-Certification forms for Section 3 hires. These forms must be included in all project records and shared with the Grantee.

## **6. Section 3 Businesses**

Each contractor shall set forth the approximate dollar value, as indicated in this Plan, of subcontractors to be awarded to eligible businesses and entrepreneurs within each category over the duration of this project.

Each contractor and subcontractor must establish that a good faith effort has been made to recruit eligible business concerns. Evidence of good faith shall consist of calling the project to the attention of eligible Section 3 Businesses whenever advertisement in the local media is used, through signs placed at the site, and use of minority and disadvantaged business listings made available by HUD, SBA, and the State of West Virginia.

Section 3 Businesses, as defined by HUD, include:

- Businesses that are 51 percent or more owned by Section 3 Residents;
- 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
- 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. 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.

## **7. Reporting**

The Grantee will require the contractor to report, on a monthly or quarterly basis, the results of the efforts undertaken. A written report on the utilization of project residents as trainees and skilled employees must also be submitted.



The contractor must keep documentation in project files supporting each report so that if the Grantee requires more detailed information it will be readily available. Records must be available for inspection upon request by the Grantee, WVDO or HUD.

Self-Certification forms for Section 3 Residents and Section 3 Businesses are available at [www.wvdo.org/downloads](http://www.wvdo.org/downloads).

## **Annual Section 3 Reporting**

The Grantee will submit the HUD Form 60002 to the WVDO on an annual basis. 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.***

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; and
3. 3 percent of contracts for Section 3 Businesses for professional contracts.

It is understood that 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.

**Submitted by (Chief Elected Official of Grantee):** \_\_\_\_\_

**Date:** \_\_\_\_\_

## **Additional Section 3 Resources**

The following Section 3 resources are available for reference:

HUD Resources: [www.hud.gov/section\\_3](http://www.hud.gov/section_3)

- Section 3 Regulation – 24 CFR Part 135
- Frequently Asked Questions
- HUD Reporting Form 60002

WVDO Resources: [www.wvdo.org/downloads](http://www.wvdo.org/downloads)

- Section 3 Policy and Procedures Manual
- Sample Certification Forms for Businesses and Residents
- Sample Grantee (Owner-Contractor) Section 3 Contract
- HUD Income Limits for West Virginia Counties and MSAs
- List of Public Housing Authorities in West Virginia

***This Section 3 Plan template is intended as a guide, not as a substitute for a thorough knowledge of state and federal laws and regulations. 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.***



## SECTION 3 CLAUSE

**The following Section 3 clauses must be incorporated into every contract/agreement that is entered into as a result of this award.**

Pursuant to Part 135 – Economic Opportunities for Low- and Very Low-Income Persons, §135.38  
Section 3:

- 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 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; 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 4 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.