

City of Pueblo
Policies & Procedures
Implementing
Section 3 of the 1968 Housing & Urban
Development Act



An Orientation Guide
for Contractors, Developers,
and Sub-Grantees
doing business with the City of Pueblo

April, 2017

Introduction

This guidebook has been prepared to provide information and guidance to firms and entities receiving housing or community development assistance covered under Section 3 of the Housing and Urban Development Act of 1968. This guidance should outline for recipients how the City of Pueblo through the Department of Housing and Citizen Services shall administer the Section 3 Regulations. This guide should not be treated as a comprehensive recitation of the Section 3 Act and Section 3 Regulations. It is a summary of the pertinent provisions of the Act and Regulations, and focuses on the requirements imposed on the Sub-Recipient, Developer, General Contractor, and Subcontractor receiving the requisite amount of Section 3 Funds.

The City of Pueblo reminds each Sub-Recipient, Developer, General Contractor and Subcontractor that it bears the responsibility to familiarize itself with the Section 3 Act and Section 3 Regulations prior to accepting Section 3 Covered Assistance from the City of Pueblo.

City of Pueblo

Policies and Procedures for Section 3 Compliance

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City of Pueblo's Policy Statement

The City of Pueblo, through the Department of Housing & Citizen Services (DHCS) will provide opportunities to low- and very low-income persons residing in the City of Pueblo (as defined in § 135.5 of 24 CFR Part 135) and to area businesses meeting the definition of a "Section 3 Business Concern" (as defined by 24 CFR Part 135) on all Section 3 Covered Projects. Accordingly, DHCS has implemented policies and procedures to ensure that Section 3 regulations, when required, are followed and shall develop programs and procedures as necessary to implement this policy covering all procurement contracts where labor and/or professional services are provided, in order to achieve the goals outlined within the City of Pueblo's Consolidated Plan for Housing and Community Development. 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. There is nothing in the policy that should be construed to require the employment or contracting of a Section 3 resident or business 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 Developer 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 Business Concerns. However, the Section 3 Requirements are not imposed upon a recipient that does not engage in the hiring or training of persons, but instead awards contracts to Developers and General Contractors that hire and train in connection with Section 3 Covered Projects. According to the Section 3 Regulations, these recipients may comply with Section 3 by ensuring that the Developers, General Contractors and Subcontractors receiving Section 3 Covered Assistance comply with the Section 3 Act.

What is Section 3?

Section 3 refers to Section 3 of the Housing and Urban Development Act of 1968 as amended (12 U.S.C. 1701u) and its implementing federal regulations in 24 C.F.R. 135. The purpose of Section 3 is to ensure that employment and economic opportunities generated by certain financing provided by the U.S. Department of Housing and Urban Development (HUD) are, to greatest extent feasible, directed to low-and very low-income persons, particularly those who are recipients of government assistance for housing, and to business concerns that provide economic opportunities to low- and very low income persons.

The City of Pueblo has set forth policies and procedures to ensure that employment and economic opportunities generated by Section 3 covered projects, to the greatest extent feasible, are directed to low- and very low-income persons and business concerns.

What Projects are Section 3 Covered Projects?

Section 3 policies are applicable to all HUD sourced construction projects or HUD sourced construction financing related to:

- Housing Rehabilitation, Construction, and/or Demolition;
- Public Infrastructure;
- Public Facilities;
- Parks Improvements; and,
- Economic Development Projects (Brick and mortar projects to for-profit/non-profit enterprises that are funded based not on the project, but on the creation or retention of jobs from the completed project).



Full and complete Section 3 obligations apply to all situations as listed below:

1. All construction projects funded with HUD-sourced assistance to the project or program above \$200,000.
2. All Contractors or Subcontractors with an individual construction contract or subcontract above \$100,000 on a HUD assisted project.

Note, HUD funds provided from two or more separate jurisdictions or entities are cumulative. It is the developer's or sub-recipient's responsibility to divulge all funding sources. Failure to notify the City of Pueblo of all funding sources could result in forfeiture of obligated funds, debarment, and/or legal action.

It is important to emphasize that the infusion of any HUD-sourced funds through the City of Pueblo into a project at any point in the project's duration, exceeding the federal thresholds, triggers the full applicability of the City's Section 3 policies onto the entire project retroactively.

Who are Section 3 Residents?

Section 3 residents are:

- Public housing residents;
- Participants in YouthBuild Programs; and,
- Persons who live in the Pueblo, CO metro statistical area and whose household income is below 80% of the Area Median Income (AMI). The 80% AMI Limits for Pueblo County per household size are (current as of April 2017):

No. of Household Occupants	1	2	3	4	5	6	7	8
Total Household Income	\$35,750	\$40,850	\$45,950	\$51,050	\$55,150	\$59,250	\$63,350	\$67,400

What is a Section 3 Business Concern?

A business that:

- Is 51 percent or more owned by Section 3 residents;
- Employs Section 3 residents for at least 30 percent of its full-time, permanent staff; or
- Provides evidence of a commitment to subcontract to Section 3 business concerns, 25 percent or more of the dollar amount of the awarded contract.

Section 3 Employment and Contracting Goals

The City of Pueblo sets overall Section 3 employment and contracting goals annually through the Consolidated Annual Action Plan, which is submitted to HUD for approval. The current Section 3 Goals are as follows:

Employment: Thirty percent (30%) of the aggregate number of new hires during a one-year period of the project shall benefit Section 3 Residents. (Example: A construction contractor hires 10 new workers. Three of the new workers should be Section 3 eligible persons.)

Contracting:

- A. At least ten percent (10%) of the total dollar amount of all Section 3 covered contracts for building trades work arising in connection with housing rehabilitation, construction, and other public construction with federal funds shall be directed to Section 3 Business Concerns; and
- B. At least three percent (3%) of the total dollar amount of all other Section 3 covered professional services contracts shall be directed to Section 3 Business Concerns.

Section 3 Bid Procedures

As part of the application or bidding process, a Section 3 Utilization Plan is to be developed and submitted to the City of Pueblo to demonstrate commitment to Section 3 utilization. This plan will be used to evaluate the quality of bids submitted during the selection process. The plan that is approved by City of Pueblo will become a part of the contract between the City of Pueblo and the Developer, Contractor, or Sub-Recipient.

Contractors that do not fulfill the requirements or their proposed Section 3 Utilization Plan will be in breach of contract. Contractors, who fail to provide evidence of a good faith effort to achieve the goals stated in their Section 3 Utilization Plan will be subject to the penalties as stated in the contract, and will be barred from bidding City projects for two years.

The lowest responsible bidder is determined by:

Submitting with your bid, all documentation listed in the Mandatory Submittals section (Bid Bond, Affirmative Action Plan, PERA Questionnaire, Certification of Non-Segregated Facilities, Acknowledgment of Addenda, and other project specific documentation).

The actual bid price, plus or minus bid alternates.

Unit pricing will be used to determine the lowest responsible bidder only when a defined quantity is given or as a tie breaker between apparently equal bids.

Finally, the Section 3 Utilization Plan will be used to determine the lowest responsible bidder. Bidders submitting a bid on a Section 3 project must submit a Section 3 Utilization Plan that meets or exceeds the minimum employment, training, or contracting goals as set forth in the City's Section 3 Policies and Procedures. Bid's not containing a Section 3 Utilization Plan on a Section 3 Project will be rejected. A utilization plan that does not meet the City's Section 3 requirements will be considered non-responsive and next lowest responsible bidder will be awarded the project.

Nothing in the regulation requires the contractor to hire additional staff. If the firm's current work force is sufficient to complete the project including both office and field staff, then the contractor is still in compliance with Section 3. Likewise if the project is a labor only contract and procurement is not required then the contractor is not required to meet the "contracting with Section 3 business concern" requirement.

Section 3 Procedures for Sub-Recipients & Developers Seeking Funds

HUD-sourced funds from the City of Pueblo into a project at *any point in the project* and at any level in excess of the \$200,000 Section 3 program threshold triggers the full applicability of the City's Section 3 Policies on to the entire project.

Recipient Responsibilities: City Departments, Sub-Recipients, and Developer

Any Recipient receiving in excess of \$200,000 for a Section 3 covered project must comply with Section 3 requirements within its own operation, including the following:

- A. Prior to bidding a Section 3 covered project, submit the Section 3 Utilization Plan for review to the DHCS Section 3 Coordinator, two-weeks prior to the walk-thru date.
- B. Provide notification to Section 3 residents and business concerns about jobs and contracts generated by Section 3 covered projects.
- C. Notify potential contractors of Section 3 requirements.
- D. Provide timely reports, due on the 10th of each month to document actions taken to comply with the Section 3 program, the outcomes of those actions, and impediments encountered, including collecting applicable forms and reports from sub-recipients, contractors, and subcontractors.
- E. Provide DHCS with the firm's monthly employee roster and assist in the collection of rosters from your Section 3 covered contractors.
- F. Provide DHCS with copies of all bids received and contracts awarded with Federal funds utilized under this Plan that are in excess of \$100,000.

Section 3 Required Contractual Language

All contracts and subcontracts issued to the Developer, Contractor, Subcontractor, and/or Sub-Recipient on a Section 3 Covered Project must contain the Section 3 Clause.

What's the Section 3 Clause?

The following clause is 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 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 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 Program

The purpose of Section 3 program is to ensure that new employment opportunities are extended to low- and very low-income residents of the area where the project is being implemented. In essence, Section 3 eligible residents are to be extended preference in new hiring situations, which result from the infusion of HUD sourced funds. These regulations also require that designated Section 3 business concerns are to be extended preference in contracting, sub-contracting, procurement, and servicing activities. The program requires approval of the contractor's Section 3 Utilization Plan before the intent to award is executed.

The Department of Housing & Citizen Services has the responsibility for implementation and monitoring of the City's Section 3 policies. The department's contact information follows:

Department of Housing & Citizen Services, City of Pueblo
2631 East 4th Street
Pueblo, Colorado 81001
Phone: (719) 553-2850
Fax: (719) 553-2855

Section 3 Compliance

A. Section 3 Administration

Within DHCS, staff is designated to serve the Section 3 program. Staff will lead the City's review of Section 3 Utilization Plans. Staff will provide review findings within 7 to 10 working days after submission. All approved Section 3 Utilization Plans will become an essential component of any commitment of funds by the City and any contractual relationship. Within the parameters of the program, technical assistance is provided to developers and others during the process of development of Section 3 Utilization Plans. Staff will provide contractors with current lists of Section 3 certified businesses and certified Section 3 residents seeking employment opportunities.

The primary objective of Section 3 is to connect low- and very low-income persons with economic opportunities associated with the City's HUD-sourced projects.

B. Section 3 Certification

Section 3 residents shall self-certify their status as a low- and very low-income person. Applicants will be required to sign an authorization to obtain verification documents. Staff will verify at a minimum of 15% of all Section 3 requests for preference received, as well as the certification of Section 3 businesses. The City may coordinate the certification duties of individuals and businesses with outside agencies, such as the Housing Authority of Pueblo and the Pueblo Workforce Center, who may serve as a liaison between the Section 3 staff and individuals seeking work. The purpose of such coordination is to give Section 3 certified residents and business concerns greater access to the full range of training and contracting programs offered.

The DHCS staff will certify Section 3 residents as “eligible” for job and training opportunities, maintain Section 3 “eligible” referrals, and refer to contractors on an as needed basis.

C. Section 3 Contract Compliance

All approved Section 3 Utilization Plans are a part of the projects contractual documents and they will be monitored by Department staff. Failure to comply with Section 3 Utilization Plans can be construed as a breach of contractual terms.

D. Agreement to use Federal Funds

DHCS will initiate appropriate sub-recipient, developer, or contractor agreements (depending on the project type or activity). All agreements involving a Section 3 covered activity will include the following:

1. An Agreement section briefly stating the requirements of Section 3 as it pertains to that Agreement. The parties to the agreement will generally be between DHCS and a sub-recipient, DHCS and another City department as sub-recipient, DHCS and a Developer, or DHCS and a Contractor.
2. The Section 3 Utilization Plan, which includes the required Section 3 Clause.

Developers and Sub-recipients with a Section 3 covered contract of \$200,000 or more in federal assistance, under the terms of the Agreement with DHCS will be **required** to comply with the City’s Section 3 Program.

Contractors and subcontractors with a Section 3 covered contract of \$100,000 or more in federal assistance, under the terms of the Agreement between DHCS and the contractor/subcontractor, will be **required** to comply with the City’s Section 3 Program.

The sub-recipient, contractor, and/or subcontractor will be provided with all forms necessary to meet the City’s reporting and compliance requirements. Such forms will be on the City’s website at: www.pueblo.us, and are also attached to the end of this document.

E. Monthly Reporting

Monthly reporting is required. Reports are due on the tenth (10) day of each month. These reports shall be submitted to the DHCS Section 3 Coordinator, 2631 E. 4th Street, Pueblo, Colorado 81001, and shall include a current employee roster and a comprehensive listing of new hires, training achievements, contracting & procurement activity, and outreach that was accomplished in the past thirty-days. Additionally, new sub-contractors procured during the month with contracts at or above \$100,000 must submit a Section 3 Utilization Plans for review.

The March report shall also include a comprehensive listing of all new hires, training, and procurement that took place over the last twelve months on the project.

At project close out, and before retainage is released, the sub-recipient, the developer, and the general contractor along with its subcontractors shall complete the HUD Section 3 Summary Report (Form 60002) for the total project.

F. Annual Report

The City will submit the annual Section 3 report to HUD as part of the Consolidated Annual Performance Report (CAPER). All reports shall be submitted on HUD Form 60002. An additional copy of the annual HUD Form 60002 for Section 3 covered projects will be submitted to HUD's national Fair Housing and Equal Opportunity (FHEO) office at the time of the CAPER submission.

The City will receive and maintain records to document compliance with the Section 3 Program objectives. At a minimum, records will include specific information and documentation to demonstrate whether the numerical goals were met.

G. Record Maintenance and Documentation

All developers, general contractors, subcontractors, and/or sub-recipients on a Section 3 covered project are required to maintain comprehensive documentation of their Section 3 outreach efforts and implementation activities. The contractor should be able to produce a, separate and well organized, file documenting the contractors Section 3 compliance efforts, and upon request it must be made available to City staff and/or HUD officials for review.

H. Compliance Monitoring and Reviews

The City through DHCS staff will conduct regular compliance reviews, which consist of comprehensive analysis and evaluation of the recipient's or contractor's compliance with Section 3. Additionally, HUD officials maintain the right to conduct Section 3 compliance reviews, which may involve any and all Section 3 projects in the City's Consolidated Plan. Where noncompliance is found, the City will notify the recipient or contractor of the deficiency and recommendations for corrective actions. A finding of noncompliance by the City or HUD may result in sanctions based on the program from which the Section 3 covered assistance was funded.

I. Outreach Requirements

All bid announcements and complete project specifications for Section 3 covered projects, and activities from City departments, developers, contractors, and sub-recipients must be sent for review two weeks prior to the bid walk-thru date to:

Bryan Gallagher
Section 3 Coordinator
Department of Housing and Citizen Services
2631 E. 4th Street
Pueblo, CO 81001

Recipients must document that outreach notices have been placed in print media outlets, including the Pueblo Chieftain and any other appropriate media outlets.

Submit Complete Section 3 Utilization Plans on all sub-contracts of \$100,000 or more. Sub-contractors, with contracts of \$100,000 or more, are required to submit complete Section 3 Utilization Plans to the Contractor, who in turn will submit the entire package to DHCS, Attn: Section 3 Coordinator.

J. Signage

Public, commercial, and multi-family construction projects require signage visible from the street. The sign must:

1. Identify the name of the housing development or project;
2. State "This is a HUD Section 3 Project," and,
3. Provide contractor contact information, including name and a telephone number.

K. Other laws governing training, employment, and contracting

1. Procurement

24 CFR Part 135 does not prescribe methods of procurement, nor does it supersede the general requirements for local governments to competitively bid projects [24 CFR 85.36(c)]. Section 3 is a Federal statute whereby geographical preference in bid or proposal evaluations is expressly encouraged to the maximum extent feasible. Procurement policies and procedures must include methods for preference to Section 3 business concerns that would allow for an award for a slightly higher bid from a Section 3 business to help meet Section 3 goals.

2. Federal Labor Standards Provisions

Apprentices and trainees may be used of Section 3 covered projects only to the extent allowed under U.S. Department of Labor regulations (29 CFR Part 5) or for work subject to HUD-determined prevailing wage rates, HUD policies, and guidelines. Further guidance on the use of apprentices and trainees is found in 24 CFR Part 135.11(d) & (e).

3. Non-Discrimination

No one shall be discriminated against on the basis of race, color, religion, sex, or national origin in all phases of employment for which there is Federal assistance provided to a construction contract.

Section 3 Coordination

Within five days of the “Intent of Award”, the Developer, General Contractor, and/or Subcontractor will appoint a Section 3 coordinator and provide the name, address, telephone number and email address of this individual to DHCS. This person will be the direct point of contact with the DHCS Section 3 Coordinator on all Section 3 matters, and shall advise the Developer, General Contractor, and Subcontractor personnel on Section 3 compliance. In addition, the coordinator will be responsible for the submission of all required Section 3 reports to DHCS. Further this individual will serve as the point of contact for Section 3 complaints and as the on-site monitor for the implementation of the Developer, General Contractor, and Subcontractor’s of its respective Section 3 Plans.

Section 3 Meeting

Once DHCS has awarded the Section 3 Covered Assistance, it will schedule a meeting with the Developers to discuss the Section 3 Requirements. Attendees will include the DHCS Section 3 Coordinator, various DHCS personnel, the Developer or its representative, the Developer’s Section 3 Coordinator, the General Contractor, and the General Contractor’s Section 3 Coordinator. 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 DHCS Section 3 Guidelines, the Section 3 Act and the Section 3 Regulations. Each Developer and General Contractor will also be required to submit a statement to the DHCS Section 3 Coordinator acknowledging its receipt of the foregoing documents as well as its understanding that Section 3 Regulations apply to the specific Section 3 Covered Project.

Formal Section 3 Utilization Plan

The Sub-recipient and/or the Developer along with the General Contractor shall submit a comprehensive Section 3 Utilization Plan, signed by the Sub-recipient and/or the Developer and the General Contractor. The Section 3 Utilization Plan will include the Section 3 goals of the Developer/Sub-recipient and the Contractors. This comprehensive Section 3 Plan will be submitted to the DHCS Section 3 Coordinator for review and approval, in accordance with the deadlines set forth in the policy compliance section (page 5), as may be revised by written extension.

Upon submission of the comprehensive Section 3 Plan, the DHCS Section 3 Coordinator will review it and either approve it, conditionally approve it with suggested modifications, or disapprove the plan. DHCS will not issue an award to the Sub-recipient/Developer/Contractor 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 DHCS Section 3 Coordinator will review and monitor it regularly to assess its implementation and attainment of the Section 3 goals. The General Contractor will forward, for review and approval, the Section 3 Utilization Plans from its subcontractors who were awarded subcontracts of \$100,000 or more.

Other items that must be submitted to DHCS include copies of all bid documents, copies of all bids received, and all contracts that are awarded.

Components of a Section 3 Utilization Plan

The document must include specific information, not limited to the following:

- A. Developer, General Contractor, or Subcontractor's statement certifying it intends to comply with the Section 3 Act and Section 3 Regulations, as well as the DHCS Section 3 Guidelines;
- B. Developer, 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;
- C. Name and contact information of the Developer, General Contractor, or Subcontractor's Section 3 coordinator;
- D. Identification of the Section 3 Project area (see definition of Neighborhood Area);
- E. Developer, General Contractor, or Subcontractor's current workforce;
- F. Developer, General Contractor, or Subcontractor's Contractor's workforce necessitated by the Section Covered Project;
- G. Developer, General Contractor, or Subcontractor's Section 3 employment, training and contracting opportunity goals;
- H. Specific strategies for notifying Section 3 Residents of Section 3 employment and training goals;
- I. Specific strategies for notifying Section 3 Business Concerns of Section 3 contracting opportunities;
- J. Commitment to inform all Subcontractors of its Section 3 Plan
- K. Developer's commitment to prepare and submit monthly Section 3 reports to the Section 3 Coordinator;
- L. General Contractor's commitment to prepare and submit monthly reports to its Section 3 coordinator;
- M. Commitment of Developer, 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.
- N. Commitment by Developer, 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 site signage, flyers, etc.
- O. 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;
- P. Inclusion of other strategies which facilitate the achievement of the Section 3 goals established by the Developer, General Contractor and Subcontractor.

Section 3 Vicinity Hiring Policy for Individuals

The Section 3 Hiring Policy is an essential component of any Section 3 Utilization Plan submitted to the City for approval. DHCS recognizes the importance of making sure that low- and very low-income residents benefit from all City projects sourced from HUD and built in their communities. Developers and contractors are likewise expected by to demonstrate in their Section 3 utilization plans and through their subsequent implementation actions that Section 3 eligible residents are indeed beneficiaries of the contractor's hiring policies and practices. The following hiring goals apply to all projects for which Section 3 guidelines are applicable:

Highest Priority: Low- and very low-income residents residing in "Neighborhood Areas" adjacent to or near the project location. Neighborhood Areas are defined as "Target Areas" as delineated in the City's approved Consolidated Housing and Community Development Plan.

Second Priority: Other low- and very low-income residents residing within the City. Under DHCS Section 3 Hiring Policy, sub-grantees, private entities, developers, and contractors will be contractually obligated to:

1. Conduct aggressive employment outreach to a number of community-based agencies (Pueblo Workforce Center, Housing Authority of Pueblo, Coalition for the Homeless, etc.) for all new hires.
2. Accept and give preferential employment consideration to referred Section 3 eligible residents.
3. Provide appropriate employment outreach signage at the project site and throughout the project area to inform low and very low income residents of employment opportunities.
4. Distribute employment outreach flyers throughout the project community and with community based organizations for all new employment opportunities.

Certification Procedures for Section 3 Residents

A. Orientation

Walk-ins or individuals seeking preference may obtain a Section 3 Resident application in the DHCS office located on the second floor of the Pueblo County Housing and Human Services Building located at 2631 East 4th Street, Pueblo, Colorado 81001.

Individuals may also obtain a copy of the Section 3 Resident application from the General Contractor at the work site. All Contractors must have the residents complete the application and the contractor shall submit the application to DHCS, either along with their monthly reporting or on an as need basis. Additionally, electronic copies will be available at the department's website www.pueblo.us.

Individual interested in Section 3 employment preference will be provided a Section 3 application form and orientation on eligibility requirements.

B. Eligibility

Individual shall complete the Section 3 Resident Application and shall supply all required documentation:

1. Driver's license or valid Colorado ID and social security card;
2. Household income documentation. Applicant must be at or below 80% AMI Section 8 Income Guidelines for Pueblo County. (See current income limits on application);
3. Proof of address;
4. Qualifications;
5. Previous Work Experience; and,
6. Listed Trade Skills.

C. As a Section 3 Certified Resident

Once an individual is deemed job ready, and has completed all eligibility Requirements:

- They will be issued a letter stating that they are Section 3 certified resident.
- A list of all the Section 3 certified residents will be forwarded to Developers and subcontractors on active Section 3 projects.
- Residents will also be provided with a list of Developers and active projects along with their contact information.
- Residents will also be given information on upcoming job fairs, information sessions, job training sessions, and job postings.
- Re-certification is required after 3 years.

D. Incomplete Application

If the application is missing documentation or is incomplete, a staff member shall provide follow-up assistance. DHCS staff will be responsible for contacting the applicant to inform them of all missing documentation that is needed to complete the certification process. Once contact has been made, the application will be held in pending status until all appropriate documentation has been secured. If DHCS does not receive the required documentation within 60-days of notification, the applicant will be deemed unresponsive and the application will be denied.

E. Grievance Procedures

Any applicant seeking status as Section 3 Eligible Resident aggrieved by a decision of the DHCS staff with respect to eligibility may request the decision be reconsidered by another DHCS staff member. Such request for reconsideration shall be filed in writing in the office of DHCS within thirty (30) days after the date of the initial decision. The Director of DHCS shall appoint a staff member to conduct the review. The reconsideration shall be concluded within twenty (20) calendar days after receipt of the written request for reconsideration and the decision based on such reconsideration shall be given to the applicant in writing.

If at any time during the certification process, the applicant feels a grievous error has been made, the applicant may file a complaint directly with the Office of Fair Housing and Equal Opportunity. Further information about filing a complaint can be found in the "Enforcement: Complaints & Compliance Reviews" section on page 18 of this document.

Section 3 Business Opportunity Policy

DHCS is committed to making sure that designated Section 3 Eligible business concerns derive economic benefit from any and all City projects built and sourced from HUD. The Business Opportunity Policy is an essential component of any Section 3 Utilization Plan. Developers and contractors are likewise expected to demonstrate in their Section 3 Utilization Plans, and through their subsequent actions, that Section 3 certified business concerns are indeed economic beneficiaries of the contractor's business and procurement practices. Under the City's Section 3 policy, *Section 3 Eligible Business Concerns* will be given priority in contracting for appropriate work.



A. Certification of Section 3 Business Concerns

Business concerns can become Section 3 certified if they meet one (1) of the following HUD guidelines:

- 51% owned by certified Section 3 eligible residents;
- 30% or more of the business' permanent full time employees are certified Section 3 residents; or
- 25% or more of all monies spent on the project is awarded to Section 3 Certified Businesses.

DHCS will certify business concerns as Section 3 eligible. DHCS will provide a current listing of certified Section 3 Business Concerns and will make available listings of such businesses to any contractor, or subcontractor interested in work pertaining to Section 3 covered projects (HUD sourced).

DHCS will maintain the Section 3 Certified Business Concern Listing in order to facilitate the assessment and review of Section 3 plans, which are submitted to the City for review.

B. Contractors Contractual Obligations

Under DHCS Section 3 Business Opportunity Policy, sub-grantees and private entities will be contractually obligated to:

1. Conduct aggressive outreach to Section 3 certified business concerns for subcontracting and business opportunities.
2. Accept and give preferential business engagement consideration to Section 3 business concerns.
3. Provide appropriate employment outreach signage at the project site and throughout the project area to inform Section 3 certified business concerns of business opportunities.
4. Document aggressive outreach efforts related to Section 3 eligible business concerns.
5. Maintain proper records of utilization of Section 3 certified business concerns.

It is the Department's policy that sub-recipients adhere to approved procurement and bidding procedures, and therefore no "sole sourcing" of contracts shall be allowed directly to any Section 3 certified business concern. All Section 3 certified business concerns shall be

certified with the City and have experience in the service to be provided to the City or its sub-recipients.

Certification Procedures for a Section 3 Business Concerns

- A. Businesses applying for Section 3 business concerns certification can obtain an application from the DHCS office or via the Department's section on the City's website <http://www.pueblo.us>. Each applicant must attach the following documentation to their application:
 - 1) A completed *"Statement of Qualifications"*.
 - 2) A documented satisfactory record of past work.
 - 3) The applicant must have the necessary City Occupational License and submit a copy to the Section 3 Staff.
 - 4) A copy of the previous year's Federal Income Tax Filings. (This should only be provided by businesses determined eligible by the owner's income and residency. The filings are not required for businesses determined eligible based on the firm's percentage of Section 3 employment.)
 - 5) Income Eligibility Documentation of Ownership/Employees (if a business is qualifying via Section 3 residents).
 - 6) A copy of the following insurance certificates. (All applicants must have at least the following insurance coverage):
 - (a) General Liability Insurance with minimum limits of \$600,000.
 - (b) Automobile Liability Insurance in an amount not less than \$100,000.
 - (c) Worker's Compensation Insurance as required by State law.
- B. Once the preliminary intake process is complete, the Section 3 staff will review the documents for compliance.
- C. Upon completion of the review, if the applicant has turned in all supporting documentation and has met the required criteria they will be recommended for certification by the Section 3 Coordinator. Once approved a formal letter is mailed out to announce their acceptance as a Section 3 Certified Business Concern.
- D. If the application is incomplete, a staff member shall provide follow-up assistance. DHCS staff will be responsible for contacting the applicant to inform them of all missing documentation that is needed to complete the certification process. Once contact has been made, the application will be held in pending status until all appropriate documentation has been secured. If DHCS does not receive the required documentation within 60-days of notification, the applicant will be deemed unresponsive and the application will be denied.
- E. Once an entity is certified as a Section 3 Business Concern, they are added to the official City of Pueblo Section 3 registry. All Section 3 certified businesses must apply for recertification every three (3) years.

Compliance with Section 3 Policies

Assuring success involves affirmative measures of many individual parties working together.

Developers, Contractors & Sub-Contractors shall:

- Submit a Section 3 Utilization Plan reflective of the DHCS stated goals.
- Implement an approved Section 3 Utilization Plan meeting the stated Section 3 hiring and contracting goals.
- Document all aspects of implementation of their approved Section 3 Utilization Plan.
- Records shall be maintained and available for monitoring /compliance reviews.
- Submit required reports in a timely manner. (Proper documentation supporting the reports should be maintained for compliance/ monitoring reviews.)

DHCS, however, recognizes that the ultimate responsibility rests with the City of Pueblo. DHCS will:

- Assure that Section 3 implementation procedures are in compliance.
- Issue Section 3 Compliance Procedures for Developers, and Contractors.
- Incorporate the Section 3 Program guidelines in solicitations of all covered projects.
- Insure that Section 3 requirements exist in all solicitations and bidding documents of Section 3 covered projects.
- Require the submission of Section 3 Utilization Plans for review and approval by DHCS prior to the commitment of any HUD-sourced funding to projects.
- Conduct meetings with Contractors / Sub-Contractors to discuss the review of Section 3 Utilization Plans.
- Require approved Section 3 Utilization Plans to become a part of the set of contractual documents which officially commit funding (HUD sourced) to projects.
- Review the Contractor's submission of a Section 3 Utilization Plan after the letter of intent to award has been executed.
- Regularly conduct compliance monitoring of all contracts, which embody approved Section 3 Utilization plans.
- Hold periodic workshops describing Section 3 and the City's commitment to the Section 3 Program.
- Prepare and submit annual reports to HUD on the Section 3 Program results.

Section 3 Implementation Strategy

In order to comply with the Section 3 Act and the Section 3 Regulations, the Developer, 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:

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.

Post in a prominent location at the Section 3 Covered Project site notice of the potential

employment and training opportunities for Section 3 Residents, and potential contracting opportunities for Section 3 Business Concerns.

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 (applies to rehabilitation when there are existing residents);

Provide the residents of the Section 3 Covered Project and the surrounding area with information on how to get certified as a Section 3 Resident or a Section 3 Business Concern;

Provide the local public housing authority with flyers, notices and other information related to the Section 3 employment, training and contracting Opportunities for the Section 3 Covered Project;

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;

Provide minority and women-focused labor and trade organizations with notice of Section 3 employment, training and business opportunity goals;

Provide minority and women-focused labor and trade organizations with notice of when and where plans and specifications for bid review will be distributed;

Establish public forums regarding Section 3 Covered Projects being developed within the Section 3 area, in which the Developer, General Contractor and Subcontractor will participate;

Utilize other strategies set forth in Appendix "B" of the Federal Regulations;

Seek out referral sources in order to ensure job readiness for public housing residents through on-the-job-training (OJT) and mentoring to obtain necessary skills that will transfer into the external labor market.

Enforcement - Complaints and Compliance Reviews

A. HUD's Complaint Process (Pursuant to Section 135.76): Any Section 3 resident or business may file a complaint alleging noncompliance with Section 3 by a recipient, contractor, or subcontractor. Complaints will be investigated; if appropriate, voluntary resolutions will be sought. There are appeal rights to the HUD Secretary. Section 3 residents and businesses may also seek judicial relief. Complaints must be submitted to HUD within 180 days of the action or omission upon which the complaint is based. Complaints are to be filed in writing to the DHCS, Section 3 Coordinator, and the regional FHEO office:

Denver Regional Office of Fair Housing and Equal Opportunity
U.S. Department of Housing and Urban Development
P.O. Box 2905
Denver, CO 80202-4801
Phone: (303) 672-5437 or (800) 877-7353
TTY: (303) 672-5248

Or

HUD Assistant Secretary for Fair Housing and Equal Opportunity
Seventh Street, SW, Room 5100
Washington, DC 20410-2000

A written complaint **must** contain:

- 1) Name and address of the person filing the complaint;
- 2) Name and address of the subject of complaint (HUD Recipient or Contractor)
- 3) Description of acts or omissions in alleged violation of Section 3 regulations
- 4) Statement of corrective actions sought.

B. City's Complaint Process. Any Section 3 resident or business concerns may file a complaint alleging non-compliance with Section 3 by a recipient, contractor, or subcontractor. Complaints will be investigated by the Department of Housing & Citizen Services.

A written complaint **must** contain:

- 1) Name and address of the person filing the complaint;
- 2) Name and address of the subject of complaint (HUD Recipient or Contractor)
- 3) Description of acts or omissions in alleged violation of Section 3

Written complaints should be filed with:

Section 3 Coordinator
Department of Housing and Citizen Services
2631 East 4th Street
Pueblo, CO 81001

Upon receipt of a written complaint the DHCS Director will designate a person or persons to investigate the specific allegations of the complaint and render a finding. If it is determined that the Contractor/Sub-Contractor has functioned in such a manner as to breach the contractual obligations of the approved Section 3 Plan, the Section 3 Coordinator will notify the appropriate administrator of such findings and of the corrective measures that will be required.

Both Section 3 residents and businesses may also file a complaint with HUD utilizing the process described or may seek judicial relief.

C. Compliance – Staff will conduct regular compliance reviews, which consist of comprehensive analysis and evaluation of the recipient's or contractor's compliance with Section 3. Where noncompliance is found, the HCDD will notify the recipient or contractor of the deficiency and recommendations for corrective actions. On complaints sent to HUD, the Section 3 staff will conduct an evaluation and make recommendations for corrective actions.

D. Findings – A finding of noncompliance by the City or HUD may result in sanctions based on the program under which the Section 3 covered assistance was funded.

Appendix A: The Section 3 Act

12 U.S.C. § 1701u

US Code - Section 1701U: 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.

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 Youth Build programs receiving assistance under section 2918a of Title 29.
- iv) To other low- and very low-income persons residing within the metropolitan area (or non-metropolitan 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 non-metropolitan 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 Youth Build 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, 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 Youth Build 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 non-metropolitan 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 non-metropolitan 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 Youth Build 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
- B) that has a majority controlling interest in the business;
- C) employs a substantial number of such persons; or
- D) 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.

APENDIX B: FEDERAL REGULATION

§ 135.1 24 CFR Subtitle B, Ch. I (4–I–03 Edition)

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, developer, 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 projects.

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, developer, 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 ownership).

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 ownership) 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 re-delegate 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 re-delegated 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 mortgages 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 mortgage, 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 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, fulltime 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 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 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.*

(i) 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 (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

1. 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

Bid Amount	Percent Preference		Preference Amount
> \$100,000	10%	or	\$9,000
At least \$100,000 > \$200,000	9%	or	\$16,000
At least \$200,000 > \$300,000	8%	or	\$21,000
At least \$300,000 > \$400,000	7%	or	\$24,000
At least \$400,000 > \$500,000	6%	or	\$25,000
At least \$500,000 > \$1M	5%	or	\$40,000
At least \$1M > \$2M	4%	or	\$60,000
At least \$2M > \$4M	3%	or	\$80,000
At least \$4M > \$7M	2%	or	\$105,000
≥ \$7M	1 1/2%	or	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.

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SECTION 3 UTILIZATION PLAN
FOR SUBRECIPIENTS, OWNERS, DEVELOPERS, CONTRACTORS, AND
SUBCONTRACTORS ON ALL APPLICABLE CITY OF PUEBLO PROGRAMS, PROJECTS,
AND ACTIVITIES USING HUD SOURCED FUNDS
(EXHIBIT A)

I. PURPOSE: The intent Section 3, a section contained within the Housing and Urban Development Act of 1968 is to provide job training and employment opportunities from programs that receive U. S. Department of Housing & Urban Development (HUD) funding to local low income residents and the businesses they own or that employ them. The purpose of this Plan is to set forth procedures to be implemented by sub-recipients, developers, contractors and subcontractors to ensure compliance with the City of Pueblo's (City) Section 3 Program as administered by the Department of Housing and Citizen Services (DHCS) and the following Federal implementing Act and Regulations:

- Housing and Urban Development Act of 1968 as ammended 12 U.S.C. 1701u;
- 24 CFR 135 - Section 3 Regulations

The City's Section 3 Program is available for review from the Department of Housing & Citizen Services (DHCS), 2631 E. 4th Street, Pueblo, CO 88001.

II. DEFINITIONS: For the purpose of Section 3, the following definitions apply:

A. Low-income resident provides evidence that he/she meets one of the following:

- Is a public housing resident
- Is a resident of the City of Pueblo whose gross income does not exceed 80% of the Area Median Income (AMI) as defined by HUD annually. The most current income maximums by household size are noted in the table below:

Pueblo, CO MSA – FY 2017 Income Limits – Median Income \$50,500								
No. of Household Occupants	1	2	3	4	5	6	7	8
Gross Household Income	\$35,750	\$40,850	\$45,950	\$51,050	\$55,150	\$59,250	\$63,350	\$67,400

- Preference is to be given to those residing in the service area or neighborhood in which this project/activity is located, but preference must be solely income based and race and gender-neutral.

B. Section 3 business concerns are those who can provide evidence of meeting one of the following:

- That the business concern is 51 percent or more owned by section 3 residents;
- The business concern's 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,
- 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 qualification of a

Section 3 business concern, set forth on pages 17-19 in the City’s policy guide “Section 3 of the Housing and Urban Development Act of 1968, An Orientation Guide for Contractors, Developers, and Sub-Recipients doing business with the City of Pueblo”.

C. Service area

For the purposes of this bid, the service area is considered to be:

D. Numerical goals:

<p align="center"><u>New Hiring of Section 3 Residents</u> (See Section 3 resident definition at 24 CFR 135.5)</p>	<p align="center"><u>Contracting Section 3 Businesses</u> (See Section 3 Businesses definition at 24 CFR 135.5)</p>
<ul style="list-style-type: none"> ▪ 30% of new hires <ul style="list-style-type: none"> ○ Public housing residents ○ Neighborhood residents below 80% AMI ○ City residents below 80% AMI 	<ul style="list-style-type: none"> • 10% of construction contracts (by dollar value) • 3% of non-construction contracts (by dollar value)

III. RESPONSIBILITIES OF SUBRECIPIENTS MEETING THE \$200,000 THRESHOLD

(All forms referenced are available on the DHCS website www.pueblo.us or from our office upon request.)

- A. Review the City’s Section 3 Program and contract DHCS with questions. This is the basis of Section 3 for the City of Pueblo, and expectations are that all parties will work toward implementing and accomplishing the requirements of the Act and Regulations.
- B. Follow procurement procedures that provide preference for Section 3 Business Concerns (See the Part 135 Appendix).
- C. Include in all invitations to bid, notification that the project is a “Section 3 covered project subject to Section 3 of the Housing & Urban and Development Act, as amended 12 U.S.C. 1701u”.
- D. Include this form and Exhibits B-J of City’s policy guide with all bid specifications on all projects funded with HUD assistance.
- E. Ensure that the Section 3 Clause is a part of all bid documents and contracts.
- F. To the greatest extent feasible, award contracts to certified Section 3 business concerns.
- G. Submit to DHCS all bids received and copies of contracts awarded.
- H. Perform outreach to Section 3 residents and business concerns and document efforts, results, and impediments to reaching the numerical goals stated above.
 - I. Assist Section 3 residents seeking employment preference. The Section 3 Resident Application is attached as Exhibit B.

2. Submit with bid documents the following:
 1. Contracting Plan (Exhibit D).
 2. Outreach to solicit bids from Section 3 businesses (Exhibit E)
- I. Comply with monthly reporting requirements as outlined in the Section 3 Compliance Section of the City's Section 3 policies.
- J. At project completion: Submit form HUD 60002 Final Report following project completion (Exhibit K).
- K. If the recipient does not feel it is feasible to meet the minimum goals set forth above, it must be prepared to demonstrate and/or provide documentation as to why it was not possible.

IV. RESPONSIBILITIES OF OWNERS, DEVELOPERS, CONTRACTORS FOR CONTRACTS MORE THAN \$100,000

- A. Review the City's Section 3 Program and contract DHCS with questions. This is the basis of Section 3 compliance for the City of Pueblo, and expectations are that all parties will work toward implementing and accomplishing the requirements of the Act and Regulations.
- B. Follow procurement procedures that provide preference for Section 3 Business Concerns (See the Part 135 Appendix).
- C. Include in all invitations to bid, notification that the project is a "Section 3 Covered Project" subject to Section 3 of the Housing & Urban Development Act of 1968, as amended 12 U.S.C. 1701u.
- D. Include this form and all exhibits with all project specifications for subcontractors on projects with funded with HUD assistance.
- E. Ensure that the Section 3 Clause is a part of all bid documents and contracts.
- F. To the greatest extent feasible, train and hire Section 3 residents for this project.
 1. Assist Section 3 residents seeking employment preference. The Section 3 Resident Application is attached as Exhibit B.
- G. To the greatest extent feasible, award contracts to Section 3 business concerns for this project.
 1. Section 3 business concerns certification form attached as Exhibit C.
- H. Perform outreach to Section 3 residents and business concerns and document efforts, results, and impediments to reaching the numerical goals stated above.
 1. Maintain & forward to DHCS a list of all applicants who applied for project employment, the Section 3 Resident Application (Exhibit B) for all applicants seeking employment preference, and employ certified Section 3 eligible persons if appropriate vacancies exist.
 2. Maintain & provide monthly employment, training, and contracting reports for the project.
- I. Submit with bid documents the following:
 1. Contracting Plan (Exhibit D);
 2. Outreach to solicit bids from Section 3 businesses (Exhibit E);
 3. Permanent Employee List (Exhibit F) with all employees at project start; and
 4. Workforce Needed for Section 3 Covered Project (Exhibit G).
- J. During construction, provide DHCS with list of new hire(s) as soon as they occur (Exhibit H)
- K. At project completion:
 1. Complete and return to DHCS form HUD 60002 Final Report. (Exhibit K)

2. Resubmit Attachment F (Permanent Employee List) with all employees at project completion
- L. If the recipient does not feel it is feasible to meet the minimum goals set forth above, it must be prepared to demonstrate and/or provide documentation as to why it is not possible.

V. RESPONSIBILITIES OF SUBCONTRACTORS FOR CONTRACTS IN EXCESS OF \$100,000

- A. Review the City's Section 3 Program and contract DHCS with questions. This is the basis of Section 3 compliance for the City of Pueblo, and expectations are that all parties will work toward implementing and accomplishing the requirements of the Act and Regulations.
- B. Follow procurement procedures that provide preference for Section 3 Business Concerns (See the Part 135 Appendix).
- C. To the greatest extent feasible, train and hire Section 3 residents for this project.
 1. Section 3 resident certification form attached as Exhibit B.
- D. Perform outreach to Section 3 residents, and document efforts, results, and impediments to reaching the numerical goals stated above.
 1. Maintain and forward to the General Contractor, a list of all applicants who applied for project employment, the Section 3 Resident Application for all applicants seeking employment preference, and employ certified Section 3 eligible persons if appropriate vacancies exist.
 2. Maintain & provide all requested monthly employment, training, and employment reports.
- E. Submit with bid documents the following:
 1. Outreach to solicit bids from Section 3 businesses (Exhibit E);
 2. Permanent Employee List (Exhibit F) with all employees at time of bid/project start; and
 3. Workforce Needed for Section 3 Covered Project (Exhibit G).
- F. During construction, provide DHCS with list of new hire(s) as soon as they occur (Exhibit H)
- G. At project completion:
 1. Complete & return to the General Contractor form HUD G0002 Final Report. (Exhibit K)
 2. Resubmit Exhibit F (Permanent Employee List) with all employees at project completion.
- H. If the subcontractor does not feel it is feasible to meet the minimum goals set forth above, it must be prepared to demonstrate and/or provide documentation as to why it is not possible.

VI. GENERAL STATEMENT

Signature(s) at the end of this plan indicates the commitment of the Sub-recipient, Owner, Developer, Contractor, and Subcontractors (as applicable) to comply with the Section 3 Act, regulations, and the City of Pueblo's Section 3 Program. To work together to ensure compliance, to the greatest extent feasible, through the awarding of contracts for work and services to Section 3 business concerns and to provide training and employment opportunities to Section 3 residents. Minimum numerical goals for the City of Pueblo and those entities required to meet Section 3 requirements were noted above.

VII. SECTION 3 IMPLEMENTATION

All competitive bidders for this Section 3 covered project/activity must complete this Section. Evaluation of each bid will include a determination whether the bidder has met the Section 3 goals and to what extent the bidder has proposed to exceed the numerical goals and other provisions of Section 3. Questions with regard to implementing Section 3 should be directed to DHCS.

Project Name: _____ Date: _____
Company Name: _____
Contact Name: _____ Phone No.: _____
Email: _____ Fax No.: _____

- A. The Section 3 Clause (§ 135.38), as follows, will be included in all bid documents for contractors and subcontractors.

SECTION 3 CONTRACT 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 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. (Note: DHCS understands that posting on a job site may not always be practicable. The expectation for the City of Pueblo is that job site posting be done whenever feasible, and if not feasible, the posting shall be at the contractor's or subcontractor's local office.)
- D. The contractor agrees to include this Section 3 clause in every sub-contract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontractor 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 sub-contract 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. Non-compliance 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. (This section pertains 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) and is not applicable in the City of Pueblo.)

VIII. Contractor Acceptance

As the signatory named below, I certify to the following:

- I have the authority to sign on behalf of the company contracting for this project
- I have read this Section 3 Compliance Plan and intend to comply with the Section 3 Act and Regulations, as well as the guidelines of this Plan
- I am aware of the employment, training, and contracting goals stated herein and agree to work with the City of Pueblo to reach those goals

OR (Check the appropriate box)

- The contract for this firm is less than \$100,000;
- The contract for this City Department is less than \$100,000;
- The contract for this Sub-recipient or Developer is less than \$200,000;

I understand that while a contract at this threshold of assistance does not hold responsibilities by this company to implement the City's Policies and Procedures in equal measure to the City, we will work together with the City to ensure compliance, to the greatest extent feasible, through the awarding of contracts for work and services to Section 3 business concerns and to provide training and employment opportunities to Section 3 residents as noted below.

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

- I acknowledge that project cost increases or cost overruns that bring the total contract above the federal threshold limits (\$200,000/\$100,000 for developers & contractors, respectively) will engage the Section 3 Act and Regulations on the project. In the event the project total exceeds the federal threshold, my entity or firm and applicable subcontractors will, to the greatest extent feasible, comply with the City's Section 3 Policies.

Signature: _____

Title: _____

Company: _____

Date: _____

Acceptance for the City of Pueblo

Signature: _____

Date: _____

Ada Clark, Director

Department of Housing & Citizen Services, City of Pueblo

**SECTION 3 RESIDENT APPLICATION
ELIGIBILITY FOR EMPLOYMENT PREFERENCE
CITY OF PUEBLO, COLORADO
(EXHIBIT B)**

A Section 3 resident seeking the preference in training and employment provided by this part shall certify, or submit evidence to the recipient (DHCS), contractor, or subcontractor, if requested, that the person is a Section 3 resident, as defined in Section 135.5. Please note below how you believe you're eligible for Section 3 preference and provide a photo ID and proof of current residency:

- I am a resident of public housing
- Based on the chart below, I am a low-income resident whose full-time address is in the City of Pueblo

Pueblo, CO MSA – FY 2017 Income Limits – Median Income \$50,500								
No. of Household Occupants	1	2	3	4	5	6	7	8
Gross Household Income	\$35,750	\$40,850	\$45,950	\$51,050	\$55,150	\$59,250	\$63,350	\$67,400

- Further preference is requested as a resident of the project neighborhood

Certification for Resident Seeking Section 3 Preference in Training and Employment

I, _____, am a legal resident of the City of Pueblo, Colorado and the United States of America (as evidenced by the attached Affidavit of Lawful Presence) and meet the income eligibility guidelines for a low- or very-low-income person as published above.

My permanent address is: _____

I have attached the following documentation as evidence of my status:

- Copy of Pueblo Housing Authority lease
- Copy of receipt of public assistance
- Copy of Evidence of participation in a public assistance program
- Other evidence (name on line below) _____

Signature

Printed Name

Date

Acceptance for the City of Pueblo

Signature and Title

Title

Printed Name

Date

**EXHIBIT C: CERTIFICATION FOR BUSINESS CONCERNS SEEKING
SECTION 3 PREFERENCE**

The undersigned makes this affidavit with full knowledge that its contents will be used in the expenditure of funds provided by the United States Government. Under penalty of perjury he/she hereby states:

1. I am the of _____ of _____
(owner, partner, officer, representative, agent) (Company Name)

and whose business concerns is: (check only one)

- 51% or more is owned by Section 3 residents; or
- Whose permanent, full-time employees include persons, at least 30 percent of whom are currently Section 3 residents, or within three (3) years of the date of first employment with the business concern were Section 3 residents; or
- Provides subcontracts 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 paragraph I.B.(1) or (2) of the definition of Section 3 business concerns.
- None of the above

2. And for the Project _____ I/We claim preference in the category indicated below: (check only one)

- (Category 1 business):** Business concerns that are 51 percent or more owned by residents of the housing development(s) for which the Section 3 covered assistance is expended, or whose fulltime, permanent work force includes 30 percent of these person as employees;
- (Category 2 business):** Business concerns that are 51 percent or more owned by residents of other housing development(s) managed by the Housing Authority, or whose full-time, permanent work force includes 30 percent of these persons as employees;
- (Category 3 business):** HUD Youthbuild programs being carried out in the City of Pueblo, Colorado where the Section 3 covered assistance is expended;
- (Category 4 business):** Business concerns that are 51 percent or more owned by Section 3 residents; or, whose permanent, full-time work force includes no less than 30 percent Section 3 residents, or that subcontract in excess of 25 percent of the dollar awarded of the total amount of the subcontracts identified above as a **Category 1** or a **Category 2 business**.
- No preference claimed.**

Affiant's Signature: _____ Address: _____

Affiant's Title: _____ Phone No.: _____

Affiant's Company Name: _____

Subscribed and sworn to under oath before me this _____ day of _____, 20____.

My commission expires: _____

NOTARY: _____

EXHIBIT D: CONTRACTING PLAN WORKSHEET

Instructions for completing this worksheet:

- a. List each contract or trade anticipated in connection with this project, regardless of the dollar amount, 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	[C /P]	Section 3 Business

EXHIBIT E: OUTREACH TO SOLICIT BIDS FROM SECTION 3 BUSINESSES

Sub-recipient / Developer / General Contractor / Subcontractor: _____

Project Name: _____

Period Covered: _____

Dated 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.

EXHIBIT F: EMPLOYEE ROSTER

(Owner/Developer/Sub-recipient) (General Contractor) (Subcontractor)

Name of Company	
Project Name	
Period Covered	
Date Submitted	

Name of Employee	Job Category

EXHIBIT G: ESTIMATED WORKFORCE NEEDED FOR THE PROJECT

(Owner/Sub-recipient/Developer) (General Contractor) (Subcontractor)

Name of Company	
Project Name	
Period Covered	
Date Submitted	

Job Category	Total Estimated Positions Required to Complete the 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 (if applicable):

EXHIBIT H: NEW HIRES DURING PROJECT

(Owner/Sub-recipient/Developer)
 (General Contractor)
 (Subcontractor)

Name of Company	
Project Name	
Period Covered	
Date Submitted	

Employee Name	Last 4 Digits SS#	Position	Length of Employment by Dates		Length of Employment in Hours		Section 3 New Hires	Non-Section 3 New Hires
			Start	End	Proposed	Actual		

EXHIBIT I: SECTION 3 NEW HIRES TRAINED DURING THE PROJECT

(Owner/Sub-recipient/ Developer) (General Contractor) (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:	

EXHIBIT J: AFFIDAVIT FOR COMPLIANCE WITH C.R.S §24-76.5-103

It is the responsibility of the Sub-recipient to ensure all contractors and subcontractors working on this project are either

U. S. Citizens or Legal Resident Aliens. Legal Resident Aliens must provide information to be run through the SAVE program.

The Affidavit to be used for compliance with C.R.S. § 24-76.5-103 follows and must be completed by every beneficiary of public funds (contractors and subcontractors) over the age of 18.

AFFIDAVIT OF LAWFUL PRESENCE

I, _____, swear or affirm under penalty of perjury under the laws of the State of Colorado that (check one):

___ I am a United States citizen, or

___ * I am a Permanent Resident of the United States, or

___ * I am lawfully present in the United States pursuant to Federal law.

I understand that this sworn statement is required by law because I have applied for a public benefit. I understand that state law requires me to provide proof that I am lawfully present in the United States prior to receipt of this public benefit. I further acknowledge that making a false, fictitious, or fraudulent statement or representation in this sworn affidavit is punishable under the criminal laws of Colorado as perjury in the second degree under Colorado Revised Statute 18-8-503 and it shall constitute a separate criminal offense each time a public benefit is fraudulently received.

Signature

Date

***If Affiant affirms that he/she is either a Permanent Resident or otherwise lawfully present in the United States, please have Affiant complete the S.A.V.E. verification form and forward both forms to H.R. for verification of lawful presence in the S.A.V.E. program.**

For internal use only:

IDENTIFICATION PROVIDED

___ Colorado Driver’s License
___ Colorado Identification Card Issued by Department of Motor Vehicles
___ United States Military Card
___ United States Military Dependent Identification Card
___ United States Coast Guard Merchant Mariner Card
___ Native American Tribal Document

(This form is only used when a beneficiary of funds is a legal resident alien.)

S.A.V.E. VERIFICATION FORM

Pursuant to Section 24-76.5-103 of the Colorado Revised Statutes, the City of Pueblo must verify that individuals who apply for public services from the City are lawfully present in the United States. If an Applicant executes the Affidavit stating that he or she is an Alien lawfully present in the United States, the City of Pueblo must verify such lawful presence through the federal Systematic Alien Verification of Entitlement program ("SAVE program"). This verification program is operated by the United States Department of Homeland Security.

The following information is required in order for the City to perform the SAVE program verification. In addition, please affix to this form a legible copy of your identification or other documentation which demonstrates lawful presence in the United States.

Name _____

Telephone Number _____

Social Security Number _____

Date of Birth _____

For internal use only:

Requesting
Department _____

Staff contact
_____ Forward the

Affidavit, SAVE Verification form, and copy of appropriate identification documents to H.R.

H.R. use only:

___ S.A.V.E. verification performed

___ Affiant is lawfully present in the United States

___ Affiant is not lawfully present in the United States

___ Documents returned to originating Department.

ADVISEMENT REGARDING USE OF COLORADO DEPARTMENT OF REVENUE EMERGENCY RULES FOR TEMPORARY ADDITIONAL IDENTIFICATION DOCUMENTS OR PROCEDURES

The Colorado Department of Revenue requires the following advisement if the Applicant chooses to use one of the additional forms of identification authorized by its Executive Director pursuant to § 24-76.5-103(5)(a), C.R.S.:

1. Under current Colorado law, in order to receive benefits beyond July 1, 2007, Applicant must produce one of the following forms of identification: a valid Colorado driver's license or a Colorado Identification card issued pursuant to Article 2 of Title 42, C.R.S.; a United States military card or a military dependent's identification card; a United States Coast Guard merchant mariner card; or a Native American tribal document.
2. As soon as possible, Applicant should begin working diligently to secure the appropriate identification document; and
3. A determination of eligibility for benefits based on an Alternative Identification or the Electronic Identification Indicator in no way constitutes a representation that Applicant has provided sufficient information or documentation to support the issuance of one of the forms of identification set forth in § 24-7605-103(4)(a) C.R.S.

Exhibit K: Section 3 Summary
 Economic Opportunities for
 Low – and Very Low-Income Persons

U.S. Department of Housing
 and Urban Development
 Office of Fair Housing
 And Equal Opportunity

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

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
 1 = Flexible Subsidy
 2 = Section 202/811

3 = Public/Indian Housing
 A = Development,
 B = Operation
 C = Modernization

4 = Homeless Assistance
 5 = HOME
 6 = HOME State Administered
 7 = CDBG Entitlement

8 = CDBG State Administered
 9 = Other CD Programs
 10 = Other Housing Programs

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 site, 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.

Form HUD-60002, Section 3 Summary Report, Economic Opportunities for Low- and Very Low-Income Persons.

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 income.

