

XIII.

HUD CPD Notice 12-001
"Process for Tribal
Consultation"



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

Special Attention of:

All Regional Directors
All Field Office Directors
All CPD Division Directors
All Regional Environmental Officers
All Responsible Entities
All Housing Directors
All PIH Division Directors
All Program Environmental Clearance Officers

Notice: CPD-12-006

Issued: June 15, 2012

Expires: This Notice is effective until amended, superseded, or rescinded.

Cross References:

SUBJECT: Process for Tribal Consultation in Projects That Are Reviewed Under 24 CFR Part 58

I. Purpose

The "Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities," 24 CFR Part 58, outlines the review process for many projects assisted with HUD programs, including those funded through CDBG, HOME, HOPE VI, HOPWA, Emergency Shelter Grants, certain Indian Housing programs, Public Housing Capital Fund, and Economic Development Initiative grants, and certain loans guaranteed by HUD. Part 58 covers many environmental areas, including historic resources. It references the "Section 106" review process for historic resources, which requires federal agencies to consult with federally-recognized Indian tribes on projects that may affect historic properties of religious and cultural significance to tribes. Under Part 58, local, state, or tribal governments become Responsible Entities (REs) and assume the federal agency's environmental review authority and responsibility for projects within their jurisdiction, including those for which they are grantees. The RE must consult with tribes to determine whether a proposed project may adversely affect historic properties of religious and cultural significance, and if so, how the adverse effect could be avoided, minimized or mitigated. This applies to projects on and off tribal lands. This Notice clarifies the steps that REs should follow in the tribal consultation process. Following this protocol ensures compliance with the requirement for certification of tribal consultation on the Request for Release of Funds and Certification (form HUD 7015.15).

II. Background

Section 106 of the National Historic Preservation Act (16 U.S.C. 470f) and its implementing regulations (36 CFR Part 800) direct federal agencies to undertake an open, consultative process to consider the impact of their projects on historic and archeological resources. The review must

be completed before an agency approves and/or commits funds to a project. In projects that are reviewed under 24 CFR Part 58, the Responsible Entity (RE), acting as HUD, consults with the State Historic Preservation Officer (SHPO), local government, individuals and organizations with demonstrated interest, the public, and representatives of federally-recognized Indian tribes and Native Hawaiian Organizations, including Tribal Historic Preservation Officers (THPOs). This Notice focuses on tribal consultation and project impacts to historic properties of religious and cultural significance to tribes. If a project includes activities that may affect such properties, the RE must consult with tribes to identify the property(ies) and consider ways to avoid, minimize or mitigate possible adverse effects to them. For guidance on consulting with Native Hawaiian Organizations, see "[Consultation with Native Hawaiian Organizations in the Section 106 Review Process: A Handbook](#)" published by the Advisory Council on Historic Preservation in June 2011.

Effective tribal consultation begins at the earliest possible stages of a project and is carried out to meet project timeframes. It fosters meaningful dialogue that strives to protect historic properties of religious and cultural significance to tribes. As noted in 36 CFR 800.2(c)(2)(ii)(B): "Consultation with Indian tribes should be conducted in a sensitive manner respectful of tribal sovereignty. Nothing in this part alters, amends, repeals, interprets, or modifies tribal sovereignty, any treaty rights, or other rights of an Indian tribe, or preempts, modifies, or limits the exercise of any such rights." [Additional guidance](#) on working with tribal representatives is available. REs may engage cultural resource specialists to assist in the process as needed, but REs remain ultimately responsible for initiating consultation with tribes.

Further details on the Statutory and Regulatory Requirements for tribal consultation are included in Section VI. Definitions are included in Section VII.

III. Required Actions by Responsible Entities

A. Determine if Section 106 Review is Required

Not all projects require Section 106 review. Some are exempted through regulation or Programmatic Agreements between the RE and the SHPO. If Section 106 review is not required, tribal consultation is not required.

1. Exempt Activities

If project activities are limited to those listed in [24 CFR 58.34 \(a\) \(1-11\)](#) as Exempt Activities and those listed in [24 CFR 58.35 \(b\)](#), as Categorical Exclusions not subject to §58.5, no further review and no consultation are required. The listed Activities and Exclusions have "No Potential to Cause Effects." Examples include: maintenance activities, tenant-based rental assistance, operating costs, affordable housing pre-development costs, studies and plans.

2. Programmatic Agreement

If the funded activity is covered by an existing Programmatic Agreement (PA), the PA may contain more Exempt activities in addition to the ones above. [[Link to PA database](#)] Follow the review process in the PA, including appropriate tribal consultation. If the PA does not

contain a section on tribal consultation, and the activity is not Exempt, follow the process in III. C., below.

3. Projects Involving Multiple Federal Agencies

If the project involves multiple federal agencies, the RE may defer to another federal agency as the lead agency to undertake the Section 106 review. Generally, the agency with the largest stake in the project acts as the lead agency. Document the lead agency agreement in writing and retain it in the Environmental Review Record (ERR). The agreement must contain provisions for appropriate tribal consultation. If adverse effects are involved, the RE must sign the Memorandum of Agreement that resolves the adverse effect(s). Contact the HUD Federal Preservation Officer to discuss questions about a specific case.

B. Determine if Tribal Consultation is Required

Not all projects that require Section 106 review require consultation with Indian tribes. Consultation with federally-recognized tribes is required when a project includes activities that have the potential to affect historic properties of religious and cultural significance to tribes. These types of activities include: ground disturbance (digging), new construction in undeveloped natural areas, introduction of incongruent visual, audible, or atmospheric changes, work on a building or structure with significant tribal association, or transfer, lease or sale of historic properties of religious and cultural significance.

1. Checklist on When to Consult With Tribes

Use the When to Consult With Tribes Under Section 106 checklist (Appendix A) to determine if the project includes types of activities that have the potential to affect historic properties of religious and cultural significance. [[Link to checklist](#)] If not, tribal consultation is not required. Keep a copy of the checklist in the Environmental Review Record (ERR). If needed, you may seek technical assistance from the HUD Field Environmental Officer (FEO). If consultation is required, follow the steps below.

Through written agreement with a tribe, an RE may modify the process outlined below. [[See 36 CFR 800.2\(c\)\(2\)\(ii\)\(E\)](#)] An RE may also choose to incorporate into their consultation effort any relevant provisions in existing agreements between SHPOs and tribes and in other SHPO and THPO written guidance regarding tribal consultation.

C. Consult With Tribes

If a project includes the types of activities that may affect historic properties of religious and cultural significance, the RE must consult with the relevant tribe(s) to identify any such properties in the project's Area of Potential Effect (APE). If they are present, consultation continues with evaluation of the eligibility of the properties for the National Register of Historic Places and assessment of the possible effects of the project on Register-eligible properties. The goal is to avoid adverse effects if possible.

Steps 1-4 below correspond to the steps commonly used to describe the Section 106 process in other guidance: Initiate Consultation (Step 1); Identify and Evaluate Historic Properties (Step 2); Assess Effects (Step 3); and Resolve Adverse Effects (Step 4). For the sake of efficiency, Steps

2, 3 and 4 may be treated together in consultation discussions and comments. [See 36 CFR 800.3(g) Expediting consultation]

Step1. Identify federally-recognized tribes with an interest in the project area and initiate consultation

The RE can use the Tribal Directory Assessment Tool (TDAT) to identify tribes with a current or ancestral interest in the county where the project is located. TDAT is a web-based directory of federally-recognized tribes and their geographic areas of interest. Tribes may have an interest in counties far from their current location, counties where the tribe lived centuries or millennia ago.

a. Tribal Directory Assessment Tool (TDAT)

Type the project address into the locator box in TDAT and it will return a list of tribes with interest in the area, with contact names, addresses, e-mail addresses, fax numbers and phone numbers. You can export the list as an Excel spreadsheet for mail merge in g. below. If TDAT shows no federally-recognized tribes with an interest in the area, document the result in the ERR; consultation is complete unless a previously unidentified, federally-recognized tribe expresses a desire to consult.

b. Tribe as Grant Recipient

If a tribe is a grant recipient in a HUD project and assumes the role of RE and conducts the Section 106 review, that tribe is responsible for inviting other tribes to consult if other tribes also have a religious or cultural interest in the project area. Additional guidance is available.

c. Non-federally Recognized Tribes

Although REs are only required to consult with federally-recognized tribes, the RE may invite non-federally recognized tribes with a demonstrated interest in the project to consult as additional consulting parties. They may also participate as members of the public. [See pages 9-11 of Consultation with Indian Tribes in the Section 106 Review Process: A Handbook]

d. Contact federally-recognized tribe(s) and invite consultation

Once the RE has identified tribes with a potential interest in the project area, the RE mails a letter to each tribe to invite consultation. The letter(s), on RE letterhead, may be transmitted by email. Keep a copy of the letter(s) in the Environmental Review Record (ERR) for monitoring purposes.

e. Historic Properties of Religious and Cultural Significance

The letter that invites consultation should contain a request for assistance in identifying historic properties of religious and cultural significance in the project area - archeological sites, burial grounds, sacred landscapes or features, ceremonial areas, traditional cultural places, traditional cultural landscapes, plant and animal communities, and buildings and structures with significant tribal association - and any initial concerns with impacts of the project on those resources.

f. Tribal Historic Preservation Officer (THPO)

Some tribes have both a tribal leader and a Tribal Historic Preservation Officer (THPO) listed in TDAT. Send letters to both and ask that the tribe's response indicate a single point of contact if possible. On tribal lands, a THPO may have assumed authority for Section 106 review in lieu of the State Historic Preservation Officer (SHPO). On non-tribal lands, the THPO may have been delegated by the tribe to represent them in Section 106 reviews, but their participation does not take the place of consultation with the SHPO. [See page 6 of *Consultation with Indian Tribes in the Section 106 Review Process: A Handbook*]

g. Template Letter

Send a letter to the tribe(s) using TDAT contact info mail merged with the template letter. The RE may customize the template letter if desired. [[Link to template letter](#)]

You must add a description of the project into the letter by editing the template. The description should include, as applicable: the location and size of the property; type of project; type and scale of new building(s) or structures; construction materials; number of housing units; depth and area of ground disturbance; introduction of visual, audible or atmospheric changes; or transfer, lease or sale of property. [[Link to sample project descriptions](#)]

The RE -- not a contractor, lender, sponsor, sub-recipient or other grantee -- must sign the letter to the tribe(s). The RE is required to conduct government-to-government consultation.

h. Map

Enclose a map showing the location of the project and the Area of Potential Effect (APE), which may be larger than the project property. For urban sites, a map generated from a site like Google Earth is preferred. [[Link to Google Earth](#)] For rural sites, a USGS topographic map is preferred. [[Link to topo map site](#)]

i. Timeframes

HUD's policy is to request a response to the invitation to consult within 30 days from the date the tribe receives the letter. For gauging the beginning and end of the 30 day period, an RE may assume that an emailed letter is received on the date it is sent. For a hard copy letter, an RE may send the letter certified mail, or, if mail delivery is predictable and reliable, the RE may assume a 5-day delivery period, and assume that the period ends 35 days after the letter is mailed.

If a tribe wishes to be a consulting party, the tribe must provide within 30 days an indication of their desire to consult. The tribe does not need to actually provide information about historic properties of religious and cultural significance within 30 days; that may take longer. If a tribe responds that they do not want to consult, document the response in the ERR. If a tribe does not respond to the invitation to consult within 30 days, the RE should document the invitation and lack of response in the ERR; further consultation is not required.

j. Tiered Review

If a project is utilizing a Tiered review, consultation should usually begin in the Tier 1 broad level review. If a tribe expresses interest in further consultation on specific sites, the Tier 1 review should include a written strategy for continuing consultation on site specific reviews in Tier 2. [See [24 CFR 58.15](#)]

Step 2. Consult with the tribe(s) to identify and evaluate historic properties of religious and cultural significance

Theoretically, the consultation process first identifies potential historic properties, then evaluates which ones are eligible for the National Register of Historic Places, and then assesses the impact(s) of the project on those resources. In practice, those efforts often occur simultaneously. It is important to remember though, that only historic properties of religious and cultural significance that are eligible for or listed on the National Register are protected under Section 106. If no such properties are present, refer to the “No Historic Properties Affected” finding in Step 3 below.

a. Consultation Meeting(s)

After receiving a response that a tribe wants to consult, contact the tribe(s) to arrange further consultation which may take place by phone, web meeting, or face-to-face meeting. Try to accommodate a tribe’s preferences as to meeting location and method of communication. If needed, a site visit is an eligible project expense. If more than one tribe wants to consult, consult jointly if possible. Integrate tribal consultation with consultation with other non-tribal parties, including the SHPO, as possible and appropriate. Recognize that some tribes may not want to consult jointly, particularly where there are concerns for confidentiality of information.

b. Evaluation of Historic Properties for the National Register of Historic Places

Gather information on known historic properties from the tribe, SHPO, consultants, and other repositories. Discuss with the tribe whether known properties appear eligible for the National Register of Historic Places. HUD acknowledges that tribes possess special expertise in evaluating the eligibility of religious and cultural properties for the National Register. Generally, if the RE disagrees with a tribe’s opinion, the RE or the tribe may ask the Advisory Council on Historic Preservation to enter the consultation. The tribe may also ask the Council to request the RE to obtain a formal determination of eligibility from the Keeper of the National Register.

c. Surveys to Identify Additional Historic Properties

If a convincing case is made by the tribe(s) and/or SHPO that National Register eligible historic properties potentially exist on the site, and that they may be affected by the project, the grantee may approve funding for an archeological survey as part of the project. Consult HUD’s HP Fact Sheet #6, [Guidance on Archeological Investigations in HUD Projects](#). [[Link to HP Fact Sheet #6](#)]

Sometimes, consultation results in modification of project plans to avoid potential effects on historic properties of religious and cultural significance. If effects are avoided, e.g. by designating a sensitive area as undisturbed green space, it is generally not necessary to fully identify and document resources with an archeological survey.

An RE is not required to pay for consultation. However, an RE may choose to negotiate payment to a tribe for detailed survey documentation on historic properties of religious and cultural significance to the tribe, similar to payment to a consultant. If agreed upon ahead of time, this payment may be an eligible project expense.

d. Confidentiality of Information

Tribes may be hesitant to share information on the location, character, and use of historic properties of special religious and cultural significance. Discuss with the tribe(s) ways to protect confidentiality of such information. The RE should strive to ensure confidentiality when requested. 36 CFR 800.11(c) outlines a formal process for obtaining federal authority to withhold sensitive information, in the event that practical means or state authority are not available.

Step 3. Consult with the tribe(s) to evaluate the effects of the project on identified and potential historic resources

After discussing the possible effects of the project on historic properties of religious and cultural significance to tribes, the RE determines the appropriate finding: “No Historic Properties Affected”; “No Adverse Effect”; or “Adverse Effect”. The RE will also be consulting with other parties, like the SHPO, to determine effects of the project on these and other types of resources, like historic buildings with no tribal association. It is desirable to consolidate findings of effect for all types of historic properties in one letter. Ultimately, a project has one overall finding of effect. Tribes have 30 days to object to a finding of effect.

a. Criteria of Adverse Effect

Consult with the tribe(s) and other consulting parties to apply the Criteria of Adverse Effect, and determine if the project may have an adverse effect.

b. “No Historic Properties Affected” Finding

If there are no known or potential historic properties in the project area that are listed on or eligible for the National Register of Historic Places, or if such properties exist but there will be no effect on them, notify the tribe(s) and other consulting parties of your determination of “No Historic Properties Affected.” Describe which of the above circumstances applies. It is not necessary to fully identify and document resources if they will not be affected by the project.

c. “No Adverse Effect” Finding

If the project will have an effect, but it will not be adverse, notify the tribe(s) and other consulting parties of your determination of “No Adverse Effect.” They have 30 days to object. If a tribe objects, the RE should consult to resolve the objection. The tribe or the RE may also ask the Advisory Council on Historic

Preservation to review the determination. The request must be made within the 30-day period and must include the documentation listed in 36 CFR 800.11 (e).

d. “Adverse Effect” Finding

If the project will affect National Register listed or eligible historic properties in any of the ways outlined in the Criteria of Adverse Effect, notify the tribe(s) and other consulting parties of your determination of “Adverse Effect” and consult to resolve the adverse effects. Typical activities that could adversely affect historic properties of religious and cultural significance include: ground disturbance (digging), new construction in undeveloped natural areas, introduction of incongruent visual, audible, or atmospheric changes, work on a building or structure with significant tribal association, or transfer, lease or sale of historic properties of religious and cultural significance.

Step 4. Consult to resolve adverse effects

If there are possible “Adverse Effects”, consult with the tribe(s) and other consulting parties to consider alternatives that would avoid or minimize adverse effects, including possible mitigation measures.

a. Notification of Advisory Council

The RE must notify the Advisory Council on Historic Preservation (ACHP) about the adverse effect and give them an opportunity to enter the consultation. The Council will decide whether to enter the consultation based on established criteria that include whether a project “Presents issues of concern to Indian tribes or Native Hawaiian organizations.” The Advisory Council must respond within 15 days of receipt of the request. [See link to on-line ACHP notification system – pending]

b. Consideration of Alternatives

Consult with the tribe(s) and other consulting parties about possible ways to modify a project to avoid adverse effects. If initial discussion does not resolve the issue(s), a site visit with consulting parties and project developers is often helpful. An agreed upon alternative may be stipulated with “conditions” in a revised “No Adverse Effect” finding for the project.

c. Consideration of Mitigation Measures

If adverse effects cannot be fully resolved, and there is a compelling need for the project to proceed despite the adverse effect(s), consider ways to mitigate or compensate for the harm to the historic property(ies). Mitigation measures may include data recovery, documentation, research, publication, education, interpretation, curation, off-site preservation, and/or monitoring and may relate to the specific resource that is being affected, or other historic properties in a similar location or of a similar type.

d. If needed, prepare and execute a Memorandum of Agreement (MOA)

An MOA stipulates the agreed upon measures to minimize and/or mitigate adverse effects. It is a legally binding document that obligates all named parties

to the agreement. The RE is responsible for ensuring that the measures required by the MOA are satisfactorily carried out. Model language is available. At the discretion of the RE, where deemed necessary, an MOA may also be used to codify agreed upon measures to avoid an adverse effect, in conjunction with a conditional “No Adverse Effect” finding.

e. Execution of the MOA

The MOA must be executed prior to the decision point for the project -- as applicable, prior to the dissemination or publication of public notices required by 24 CFR Part 58 (e.g., notice of finding of no significant impact (§58.43), and notice of intent to request the release of funds (§58.70)). The RE should send a digital copy of the MOA to the HUD Field Environmental Officer (FEO) who will file it in the MOA file in the central HUD shared drive. A copy must also be provided to the Advisory Council on Historic Preservation and the consulting tribe(s).

f. Signatories to the MOA

The Responsible Entity may invite the tribe(s) to sign the MOA as a consulting party. The tribal leader and the THPO may sign the MOA. For projects on tribal lands, if the tribe has a THPO who has assumed Section 106 responsibilities for the tribe, the THPO must be a signatory.

HUD does not sign Section 106 agreement documents covered by 24 CFR Part 58. HUD does sign agreements covered by 24 CFR Part 50. If a project is subject to both, HUD may sign as long as the agreement states the appropriate program reference. [See CPD Memo on HUD Environmental Regulations and Section 106 Agreement Documents]

g. Completion of MOA requirements

The RE must ensure that the stipulations and mitigation measures in the MOA are carried out and inform the tribe(s) of completion. Document completion in the Environmental Review Record (ERR).

h. Termination of Consultation

If consulting about properties on tribal lands, a THPO may determine that further consultation will not be productive and terminate consultation. Likewise, an RE, SHPO, or, if participating, the Advisory Council on Historic Preservation, may terminate consultation. Termination of consultation is detailed at 36 CFR 800.7. A tribe that is consulting about properties off tribal lands may decline an invitation to sign an MOA, but does not have a right to terminate consultation under 36 CFR 800.7.

IV. Record of Compliance

Include evidence of compliance with this protocol in the Environmental Review Record (ERR), including notes, letters, e-mails, reports, etc.

Failure to consult with tribes per this protocol may lead to HUD issuing a finding of non-compliance with 36 CFR Part 800, the regulations that implement Section 106. If HUD makes a finding, HUD may initiate sanctions, corrective actions, or other remedies specified in program regulations or agreements or contracts with the RE which may include terminating grants where appropriate and repayment of funds expended with non-federal funds. (See 24 CFR 58.77)

A. Request for Release of Funds (RROF) (Form 7015.15)

REs and grantees must certify on the Request for Release of Funds and Certification (form HUD 7015.15) that they have consulted with federally-recognized tribes per this protocol. [See Part 2, #3 of form]

V. Discoveries During Construction

Whenever previously unknown below ground historic properties of religious and cultural significance are discovered during construction, excavation in the area of the resources must immediately stop until tribal consultation can occur. The RE must notify tribes (including the THPOs), the Advisory Council on Historic Preservation, and the SHPO within 48 hours of the discovery. [See 36 CFR 800.13(b)] Contact the tribes identified in Step 1 and reenter consultation which should take place under an accelerated timeframe. A site visit with the RE, tribe(s), and SHPO (as appropriate) is recommended to resolve any potential adverse effect(s) to the historic property(ies) of religious and cultural significance.

A. Human Remains

If the discovery includes human remains, they should be respectfully covered over and secured, and the RE should contact law enforcement authorities as well as tribes and other consulting parties. If the human remains are determined to be Indian burials, the RE should follow the guidance in the “Advisory Council on Historic Preservation Policy Statement Regarding Treatment of Burial Sites, Human Remains and Funerary Objects.”

B. Native American Graves Protection and Repatriation Act (NAGPRA)

In undertakings on federal or tribal lands, the Native American Graves Protection and Repatriation Act (NAGPRA) (*25 U.S.C. 3001 et seq*) requires that cultural items excavated or inadvertently discovered be returned to their respective peoples. Cultural items include human remains, funerary objects, sacred objects, and objects of cultural patrimony. More information is available.

VI. Statutory and Regulatory Requirements

Federal law directs federal agencies to consult with tribes when there is a potential for a federally-funded project to affect a historic property of religious and cultural significance to tribes.

Section 106 of the National Historic Preservation Act (*16 U.S.C. 470f*) requires that prior to approving the expenditure of funds for a project, a federal agency must take into account the effect of the undertaking on historic resources.

Section 101 (d)(6)(A) and (B) of the National Historic Preservation Act identifies the types of properties to be considered and the obligation to consult. The Act provides that properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization may be determined to be eligible for inclusion in the National Register of Historic Places. In carrying out its responsibilities under Section 106 of the Act, a Federal agency is required to consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to such properties. In projects that are reviewed under 24 CFR Part 58, the Responsible Entity (RE) assumes the role of the Federal agency, including tribal consultation. [See 24 CFR 58.4]

The regulations that implement Section 106 of the Act, 36 CFR Part 800 – “Protection of Historic Properties,” define “Indian tribe” as federally-recognized tribes, and limit the need to consult to projects that have the potential to affect historic properties of religious and cultural significance to tribes.

36 CFR 800.2 (c)(2)(ii)

Consultation on historic properties of significance to Indian tribes and Native Hawaiian organizations.

Section 101(d)(6)(B) of the act requires the agency official to consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to historic properties that may be affected by an undertaking...

36 CFR 800.3

(a) *Establish undertaking.* The agency official shall determine whether the proposed Federal action is an undertaking as defined in § 800.16(y) and, if so, whether it is a type of activity that has the potential to cause effects on historic properties.

(1) *No potential to cause effects.* If the undertaking is a type of activity that does not have the potential to cause effects on historic properties, assuming such historic properties were present, the agency official has no further obligations under section 106 or this part.

Therefore, the consultation process outlined in this Notice starts by first establishing whether the project includes a type of activity that has the potential to affect historic properties of religious and cultural significance to tribes. If it does, it outlines the steps to consult with tribes to identify and evaluate resources, and to assess the effects of the project on the resources.

VII. Definitions

Definitions of some of the terms used in this Notice may be found in 24 CFR Part 58 and 36 CFR Part 800, “Protection of Historic Properties”, and are repeated here for convenience.

The definition of *Responsible Entity* is found in 24 CFR 58.2(a)(7).

Responsible Entity. Responsible Entity means:

- (i) With respect to environmental responsibilities under programs listed in §58.1(b)(1), (2), (3)(i), (4), and (5), a recipient under the program.
- (ii) With respect to environmental responsibilities under the programs listed in §58.1(b)(3)(ii) and (6) through (12), a state, unit of general local government, Indian tribe or Alaska Native Village, or the Department of Hawaiian Home Lands, when it is the recipient under the program. Under the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*) listed in §58.1(b)(10)(i), the Indian tribe is the responsible entity whether or not a Tribally Designated Housing Entity is authorized to receive grant amounts on behalf of the tribe. The Indian tribe is also the responsible entity under the Section 184 Indian Housing Loan Guarantee program listed in §58.1(b)(11). Regional Corporations in Alaska are considered Indian tribes in this part. Non-recipient responsible entities are designated as follows:
 - (A) For qualified housing finance agencies, the State or a unit of general local government, Indian tribe or Alaska native village whose jurisdiction contains the project site;
 - (B) For public housing agencies, the unit of general local government within which the project is located that exercises land use responsibility, or if HUD determines this infeasible, the county, or if HUD determines this infeasible, the State;
 - (C) For non-profit organizations and other entities, the unit of general local government, Indian tribe or Alaska native village within which the project is located that exercises land use responsibility, or if HUD determines this infeasible, the county, or if HUD determines this infeasible, the State;

Definitions of some other parties in the Section 106 process are found in 36 CFR 800.16.

Council means the Advisory Council on Historic Preservation or a Council member or employee designated to act for the Council.

Indian tribe means an Indian tribe, band, nation, or other organized group or community, including a native village, regional corporation, or village corporation, as those terms are defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Native Hawaiian organization means any organization which serves and represents the interests of Native Hawaiians; has as a primary and stated purpose the provision of services to Native Hawaiians; and has demonstrated expertise in aspects of historic preservation that are significant to Native Hawaiians.

Native Hawaiian means any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii.

State Historic Preservation Officer (SHPO) means the official appointed or designated pursuant to section 101(b)(1) of the act to administer the State historic preservation program or a representative designated to act for the State historic preservation officer.

Tribal Historic Preservation Officer (THPO) means the tribal official appointed by the tribe's chief governing authority or designated by a tribal ordinance or preservation program who has assumed the responsibilities of the SHPO for purposes of section 106 compliance on tribal lands in accordance with section 101(d)(2) of the act.

Other relevant definitions found in 36 CFR 800.16 include:

Area of potential effects means the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The area of potential effects is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking.

Consultation means the process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the section 106 process. The Secretary's "Standards and Guidelines for Federal Agency Preservation Programs pursuant to the National Historic Preservation Act" provide further guidance on consultation.

Effect means alteration to the characteristics of a historic property qualifying it for inclusion in or eligibility for the National Register.

Eligible for inclusion in the National Register includes both properties formally determined as such in accordance with regulations of the Secretary of the Interior and all other properties that meet the National Register criteria.

Historic property means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria.

Memorandum of agreement means the document that records the terms and conditions agreed upon to resolve the adverse effects of an undertaking upon historic properties.

National Register means the National Register of Historic Places maintained by the Secretary of the Interior.

Programmatic agreement means a document that records the terms and conditions agreed upon to resolve the potential adverse effects of a Federal agency program, complex undertaking or other situations in accordance with §800.14(b).

Tribal lands means all lands within the exterior boundaries of any Indian reservation and all dependent Indian communities.

Undertaking means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; and those requiring a Federal permit, license or approval.

Acronyms Used in This Notice

ACHP	Advisory Council on Historic Preservation (federal)
APE	Area of Potential Effect
CPD	Community Planning and Development Office
ERR	Environmental Review Record
FEO	Field Environmental Officer
HUD	U.S. Department of Housing and Urban Development
MOA	Memorandum of Agreement
NAGPRA	Native American Graves Protection and Repatriation Act
PA	Programmatic Agreement
RE	Responsible Entity
REO	Regional Environmental Officer
RROF	Request for Release of Funds and Certification
SHPO	State Historic Preservation Officer
TDAT	Tribal Directory Assessment Tool
THPO	Tribal Historic Preservation Officer

Appendix A

When To Consult With Tribes Under Section 106 Checklist

Yolanda Chávez
Deputy Assistant Secretary for Grant
Programs

Appendix A

When To Consult With Tribes Under Section 106

Section 106 requires consultation with federally-recognized Indian tribes when a project may affect a historic property of religious and cultural significance to the tribe. Historic properties of religious and cultural significance include: archeological sites, burial grounds, sacred landscapes or features, ceremonial areas, traditional cultural places, traditional cultural landscapes, plant and animal communities, and buildings and structures with significant tribal association. The types of activities that may affect historic properties of religious and cultural significance include: ground disturbance (digging), new construction in undeveloped natural areas, introduction of incongruent visual, audible, or atmospheric changes, work on a building with significant tribal association, and transfer, lease or sale of properties of the types listed above.

If a project includes any of the types of activities below, invite tribes to consult:

- significant ground disturbance (digging)**
Examples: new sewer lines, utility lines (above and below ground), foundations, footings, grading, access roads
- new construction in undeveloped natural areas**
Examples: industrial-scale energy facilities, transmission lines, pipelines, or new recreational facilities, in undeveloped natural areas like mountaintops, canyons, islands, forests, native grasslands, etc., and housing, commercial, and industrial facilities in such areas
- incongruent visual changes**
Examples: construction of a focal point that is out of character with the surrounding natural area, impairment of the vista or viewshed from an observation point in the natural landscape, or impairment of the recognized historic scenic qualities of an area
- incongruent audible changes**
Examples: increase in noise levels above an acceptable standard in areas known for their quiet, contemplative experience
- incongruent atmospheric changes**
Examples: introduction of lights that create skyglow in an area with a dark night sky
- work on a building with significant tribal association**
Examples: rehabilitation, demolition or removal of a surviving ancient tribal structure or village, or a building or structure that there is reason to believe was the location of a significant tribal event, home of an important person, or that served as a tribal school or community hall
- transfer, lease or sale of a historic property of religious and cultural significance**
Example: transfer, lease or sale of properties that contain archeological sites, burial grounds, sacred landscapes or features, ceremonial areas, plant and animal communities, or buildings and structures with significant tribal association
- None of the above apply**

Project

Reviewed By

Date

XIV.

DCA Section 3 Policy

Section 3 Policy for Covered HUD Funded Activities

This Section 3 policy pertains to training, employment contracting, and other economic opportunities arising in connection with the expenditure of Federal housing assistance and community development assistance that is used in conjunction with the following activities:

- Housing rehabilitation,
- Housing construction, and
- Other public construction.

All Recipients and Sub-recipients of Section 3 Covered Assistance (including but not limited to contractors, sub-contractors, developers, grantees, CHDOs, non-profits, and local government entities) must be in compliance with the provisions of this policy in order to be eligible for DCA awards.

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○ Section 3 Self Certification & Action Plan Form	TBD
○ Previous Certification Form	TBD
○ Assurance of Compliance Certification Form	TBD
○ Resident Self Certification & Skills Data Form	TBD

BACKGROUND ON THE SECTION 3 REGULATION:

The purpose of Section 3 of the Housing and Urban Development Act of 1968, as amended by Section 915 of the Housing and Community Development Act of 1992 (Section 3), is to “ensure that employment and other economic opportunities generated by certain HUD financial funding shall, to the greatest extent feasible, and consistent with existing Federal, State, and local laws and regulations, be directed toward low and very low-income persons, particularly those who are recipients of government funding for housing and to Business Concerns which provide economic opportunities to low- and very low-income persons.”

Consistent with 24 CFR Part 135, as a recipient of HUD Housing and Community Development Funding, the State of Georgia Department of Community Affairs (DCA) requires fulfillment of Section 3 obligations on all contracts subject to 24 CFR Part 135 that make use of that assistance. These policies are implemented for contract amounts as specified in 24 CFR Part 135 whether it is designated as housing construction, housing rehabilitation, lead based paint abatement, or other public construction project. DCA works to ensure the provision of employment, training, contracting, and other economic opportunities to low-income persons. In doing so, DCA utilizes Section 3 as a means of promoting stability and self-sufficiency of Section 3 Residents. Implementation procedures may be amended periodically by DCA to insure that the policy requirements are being met and/or to enhance the efficiencies of compliance.

PART I. APPLICABILITY:

Section 3 of the Housing and Urban Development Act of 1968 by the Housing and Community Development Act of 1992. Section 3, as amended, requires that economic opportunities generated by Federal Housing and Community Development programs shall, to the greatest extent feasible, be given to low- and very low-income persons, particularly those who are recipients of government assistance for housing, and to businesses that provide economic opportunities for these persons.

Section 3 requirements apply to **all** projects and activities funded in whole or in part with covered funds and the **entire** project budget is then subject to Section 3.

PART II. DEFINITIONS:

Please refer to the 24 CFR 135.5 for a full list of prevailing definitions found in the regulation.

Employment Opportunities Generated by Section 3 Covered Assistance: All employment opportunities generated by the expenditure of applicable Federal Section 3 covered funding (i.e., Housing and Community Development Funding) and with respect to Section 3 covered

Housing and Community Development Funding, all employment opportunities arising in connection with Section 3 Covered Projects.

Full-Time: For sub-recipients and contractors, this term refers to an employee assigned to a position who regularly works a minimum of forty (40) hours per week on a continuous basis. For DCA, this term refers to an employee who is assigned to an unclassified position who regularly works a minimum of forty (40) hours per week on a continuous basis. Regular full-time employees will be eligible to receive full State-sponsored benefits and accrue any form of service credit.

Housing and Community Development Funding: Resources from the U.S. Department of Housing and Urban Development (HUD) covered by Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u) include Community Development Block Grant (CDBG), HOME Investment Partnership (HOME), Emergency Solutions Grant (ESG), Housing Opportunities for Persons with AIDS (HOPWA), and Neighborhood Stabilization (NSP) programs, as well as certain grants awarded under HUD Notices of Funding Availability (NOFAs). The requirements for Section 3 only apply to the portion(s) of covered funding used for project/activities involving housing construction, rehabilitation, demolition, and/or other public construction.

Low Income Person: A person whose household (including single persons) has a total income that does not exceed 80% of the median income for the project area.

New Hires: Full-time employees for at-will, permanent, temporary or seasonal employment opportunities for any Section 3 covered contract.

Recipient: An entity which receives Section 3 covered assistance directly from HUD (i.e., DCA) or from any another recipient (e.g., local government, PHA or other public body, public or private non-profit 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). For the purpose of this policy, the phrase, "any other recipient" will carry the same definition as "Sub-recipient".

Resident Owned Business (ROB): A Business Concern owned or controlled by low or very low-income residents who reside within the legal boundaries where the funds are expended. A ROB must meet these requirements: (a) at least 51% owned and operated by Section 3 residents, and (b) whose management and daily business operations are controlled by one or more such individuals. For purposes of Section 3 compliance, a ROB must also meet Subpart A to the definition of a Section 3 Business Concern.

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

Section 3 Business Concern: As defined by HUD, an entity:

- A. That is Fifty-one (51%) percent or more owned by Section 3 Residents; or
- B. Whose permanent, full-time employees includes persons, at least 30 percent of whom are current Section 3 Residents, or were Section 3 Residents within three (3) years of the date of first employment with the Business; or
- C. That provides evidence of a commitment to subcontract in excess of 25 percent of the total contract award amount (including any modifications) to Section 3 Business Concerns as defined in A or B. Example: If the Contract Amount is = \$1,000,000, the contractor must subcontract in excess of 25%, or greater than \$250,000, to a Section 3 Business Concern (s) as defined in A or B in this part.

Section 3 Clause: The contract provisions and sanctions set forth in 24 CFR 135.38

Section 3 Covered Activity: Any activity that involves housing construction, rehabilitation, or other public construction funded by Section 3 covered assistance.

Section 3 Covered Assistance: The requirements of part 135 apply to Recipients of covered Section 3 Housing and Community Development Funding for which the amount of the assistance exceeds \$200,000. These requirements also apply to contractors and subcontractors performing work on projects using Federal Housing and Community Development Funding from DCA for which the Recipient's award exceeds \$200,000 and the contract or subcontract exceeds \$100,000. If the Recipient's award of assistance exceeds \$200,000, but the contracts and subcontracts do not exceed \$100,000, then only the Recipient is subject to the Section 3 preference requirements. The Recipient's responsibility includes awarding contracts, to the greatest extent feasible, to Section 3 business concerns.

Section 3 Covered Contract: 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 for the purchase of supplies and materials except whenever a contract for materials includes the installation of the materials.

Section 3 Covered Project: 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 applicable Federal Housing and Community Development Funding.

Section 3 Joint Venture: 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:

- Is responsible for a clearly defined portion of the work to be performed and holds management responsibilities in the joint venture; and
- Performs at least 25% of the work and is contractually entitled to compensation proportional to its work.

Very Low Income Person: A person whose household (including single persons) has a total income that does not exceed 50% of the median family income for the project area.

PART III. GOALS OF THE SECTION 3 REGULATION:

DCA's Section 3 protocol seeks to aid Section 3 residents to the greatest extent feasible in three ways, listed in order of preference:

A. Hiring low- and very low-income workers

DCA requires that a sub-recipient and its contractors make every effort within their disposal to attempt to hire at least 30% Section 3 residents of the aggregate number of full-time new hires with a preference for Section 3 residents in this order:

- 1: Residents of HUD-assisted housing.
- 2: Residents at the site where the work is being performed.
- 3: Residents of the city where the work is being performed.
- 4: Residents of the county where the work is being performed.

B. Awarding contracts to Section 3 business concerns

DCA requires that the sub-recipient and its contractors make every effort within their disposal to award at least 10% of the total dollar amount of all Section 3 covered contracts for building trades work arising in connection with housing rehabilitation, housing construction, and other public construction, to Section 3 business concerns. DCA also requires that the sub-recipient and its contractors make every effort within their disposal to award at least 3% of the total dollar amount of all "Other" Section 3 covered contracts.

C. Providing other economic opportunities

If a sub-recipient or contractor identifies a greater need, other training and employment opportunities may be provided to substitute for goals A and B. In such cases, a sub-recipient or contractor must provide training and other employment opportunities as

described in Part VII equal to or exceeding 3% of the total contract award in order to meet this goal.

PART IV. SUB-RECIPIENT RESPONSIBILITIES:

The sub-recipient of DCA Housing and Community Development Funding accepts the responsibility of not only enforcing the Section 3 requirements, but also for pro-actively providing notice, encouraging, and facilitating compliance with Section 3 subject to the definition of a Section 3 Covered Project. The sub-recipient will have fulfilled this responsibility when they can provide evidence that the following have occurred in the case of every contract and sub-contract solicitation that exceeds the threshold requirements of 24 CFR Part 135:

The following actions are required for all contract and sub-contract solicitations:

- A) Notifying Section 3 residents of opportunities through posting of job openings in community sources that are generally available to low income residents and the general public, including but not limited to: the local community newspaper; the most widely distributed newspaper; the management office of the local housing authority, or homeless agency, or/local low-income housing community; the local workforce board; the local office of the Georgia Division of Family and Children Services; and the local office of the Georgia Department of Public Health serving the county in which the project is located.
- B) Conveying that the contract work is a Section 3 Covered Contract in any advertisement for bids and proposals by placing the following language in each advertisement/public notice and website: **"This project is covered under the requirements of Section 3 of the HUD Act of 1968."**
- C) Notifying contractors of Section 3 requirements in any pre-bid meeting held.
- D) Incorporating the HUD mandated Section 3 clauses in all contracts where the work to be performed is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section3).
- E) Providing Resident Certification and Affidavit forms for employment at the sub-recipient's business offices and allowing applications to be submitted at appropriate local locations.
- F) Encouraging the training of Section 3 residents by the contractors.
- G) Reporting quarterly on its efforts regarding Section 3 implementation on the DCA prescribed mechanism or form.

- H) Refusing to award contracts to businesses or persons that have previously violated Section 3 requirements.
- I) Using the attached Solicitation Package for each procurement associated with a covered project indicating that the work to be performed 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).
- J) Documenting actions taken to comply with Section 3 requirements including all results and impediments using the DCA prescribed mechanism or form.

Sub-recipients also must implement at least one (1) of the following actions:

- K) Facilitating an opportunity fair annually for contractors to meet interested Section 3 residents for possible employment. A list can be developed as a resource for the sub-recipient and contractors when seeking to hire Section 3 workers in the future.
- L) When employment opportunities arise or are anticipated, posting all job sites funded by DCA with a location or phone number of whom and how to apply for any opportunities for employment, training or contracting. The sign should be no smaller than 24" x 24" in Black ink and specifically read:

"This project is covered under Section 3 of the HUD Act of 1968 which requires that any new hiring opportunities first be directed to low- and very low income persons in this community. Please contact (list the contact person name and number) for information on any employment, contracting and sub-contracting opportunities."

PART V. SUB-RECIPIENT AND CONTRACTOR RESPONSIBILITIES:

All sub-recipients and contractors must submit with any bid or proposal the prescribed forms in the attached solicitation package describing their proposal to implement Section 3. Omission of these documents with a bid or proposal makes that contractor non-responsive and, therefore, ineligible to be awarded a contract.

The only safe harbors for determining whether Section 3 requirements have been met are the following:

- A. The 30% new hiring of Section 3 Residents goal;
- B. The 10% Section 3 Business Concern Contracting for Building Trades Work goal; and,
- C. The 3% Section 3 Business Concern Contracting for "Other" Covered Contracts goal.

As DCA does not execute final funding contracts, it is reliant upon the compliance of its sub-recipient and/or contractor(s) to execute DCA's Section 3 initiatives. If the goals above cannot be met by the sub-recipient and/or contractor, the sub-recipient and/or contractor must provide documentation explaining why those numerical goals could not be met, including a description of any actions taken, any impediments encountered, and any other economic opportunities provided (See Part VII – Other Economic Opportunities). This documentation must be submitted to DCA for review and approval. DCA will take each sub-recipient's explanation into consideration when making the determination of compliance.

In addition to the notice requirements for both hiring and contracting, other examples of activities to demonstrate effort to comply with the Safe Harbor Limits are listed in the appendix to part 135 of the Code of Federal Regulations—24 CFR Part 135 and include:

1. Distributing or posting flyers advertising positions to be filled;
2. Contacting the local government or housing authority for a list of residents who have expressed interest in Section 3 employment;
3. Holding job informational meetings for residents, contractors, etc...;
4. Contacting agencies administering HUD YouthBuild programs and requesting their assistance in recruiting HUD YouthBuild program participants for training and employment positions.

PART VI. PREFERENCES AND ELIGIBILITY:

Note: All persons who are recipients of housing assistance from the government are Section 3 residents. Residents of HUD assisted housing are top priority Section 3 residents (Tier One). HUD assisted housing includes: (A) public Housing, (B) Housing Choice Voucher holders, (C) substance abuse rehabilitation housing, (D) domestic violence shelters, (E) transitional housing facilities, (F) homeless shelters, and (G) veterans housing. The businesses owned by Section 3 residents (ROBs) are top priority business concerns (Tier One). When employment or contracting opportunities are offered and all requirements are met and remain equal, HUD assisted housing residents and ROBs within the area of the project shall be provided preference over other Section 3 residents/business concerns and non-Section 3 residents/business concerns.

- A) Regarding the hiring of Section 3 residents, preference, in the following order, shall be given to those residents who live:
1. In HUD assisted housing.
 2. At the site where the work is being performed.
 3. In the city where the work is being performed.
 4. In the county where the work is being performed.

- B) Regarding the contracting opportunities for Section 3 business concerns, preference shall be given to business concerns, in the order of preference described in Section A of Part VI, Preference and Eligibility, meeting these definitions and in this order:
1. Resident Owned Businesses (ROBs) owned and operated at 51% by Section 3 Residents.
 2. Businesses that employ Section 3 residents at no less than 30% of the contractors aggregate full time staff.
 3. Contractors that at the time of bid show evidence (meaning the specific name and preference met) of their intent to award no less than 25% of their total award to Section 3 business concerns.
- C) A Section 3 resident seeking employment must fulfill the requirements of the sought position and, if asked, must provide evidence of their Section 3 status (e.g., proof of residency in public housing development; evidence of participation in a HUD YouthBuild program operated in the metropolitan area (or non-metropolitan county) where the Section 3 covered assistance is spent; evidence that the individual resides in the Section 3 area and is a low or very low-income person as defined in Section 3(b) (2) of the U.S. Housing Act of 1937). Recipient agencies may choose to allow prospective Section 3 residents to self-certify their eligibility. Any self-certification should include a statement of penalty for falsifying information. A Section 3 Business Concern seeking to win a contract must fulfill the requirements of the contract and, if asked, provide evidence of their Section 3 status.

PART VII. OTHER ECONOMIC OPPORTUNITIES:

The Other Economic Opportunities provision may only be used when a contractor or sub-recipient desires to claim a preference under Part VI and cannot comply with the hiring or subcontracting goals set forth in the Preference Tier structure, or, based on observed special needs, has concluded that providing Other Economic Opportunities will be a greater benefit to Section 3 Residents or Businesses. Whenever the Other Economic Opportunities provision is employed, the actions must equal or exceed 3% of the total contract value including all labor and material costs as well as any change orders to these costs.

Firms that will provide other economic opportunities will be responsible for soliciting and contracting a qualified firm/individual experienced in providing a Georgia Department of Labor Approved training curriculum consistent with Section 3 requirements of 135.11 in the area of Section 3 resident training in the following areas:

- Employment Readiness and Professional Development
- Section 3 Small Business Concern Development Training
- Computer Literacy and Data Entry Skills Training
- Employment Skills Training (Any Viable Employment Field)

- Other training curriculum approved by DCA

The acceptability of these efforts will be determined by DCA in the case of a sub-recipient, and by the sub-recipient in the case of a contractor, or in cases of a complaint, by HUD.

PART VIII. DCA SECTION 3 RESPONSIBILITIES:

To Be Added.

PART IX. COMPLAINTS AND COMPLIANCE:

Any Section 3 resident or business concern that feels that the Section 3 regulations were not complied with may file a complaint directly to the Assistant Secretary for Fair Housing and Equal Opportunity at the following address (or as otherwise directed by HUD):

Assistant Secretary for Fair Housing and Equal Opportunity
U.S. Department of Housing and Urban Development
Regional Field Office
40 Marietta Street, NW
Atlanta, Georgia 30303

The complaint must be in writing and be received within 180 days from the date of the action upon which the complaint is based. It should include the complainant's name and address, the sub-recipient's or contractor's name and address, and a description of the acts in question. The complainant will receive a response from HUD within 10 days in which further investigation will be explained.

PART X. DCA STANDARD SECTION 3 OPERATING PROCEDURES

Policy Effective Date: _____, 20__ Procedural Change Date: _____, 20__

Procedure Title: Section 3

This operating procedure is tied to the Operating Policy on Section 3 designed to achieve and maintain compliance with the HUD Act of 1968 revised in 1992 and in 1994.

The procedures contained within are relative to the Section 3 daily operations in:

- Hiring
- Procurement
- Contracting
- Compliance Management
- Solicitation Package and Certification Documents

Section 1 – Sub-Recipients and Contractors: Hiring

This procedure encompasses all full time employment types including, long term, short term, temporary and special assignments. In the process of seeking new employees for the sub-recipient, contractor, or subcontractor, the following procedures should be followed in an effort to create as many employment opportunities for Tier 1 HUD direct beneficiaries:

Step 1: Post the position in community sources that are generally available to low income residents and the general public. It is required that a minimum of three (3) of the following listed sources will be exercised at least once prior to extending an offer of employment to anyone not covered by Section 3 requirements:

- A) The local community newspaper
- B) The most widely distributed newspaper
- C) Company or agency website
- D) The management office of the local housing authority, or homeless service agency, or local low income housing community
- E) Local Workforce Board (i.e., Department of Labor)
- F) Local office of the Georgia Division of Family and Children Services
- G) Local office of the Georgia Department of Public Health
- H) Dodge Room <http://www.construction.com/dodge/dodge.asp>
- I) Other locations as approved by DCA.

Step 2: Be certain to list in the notice that the position is a **“Section 3 Covered Position under the HUD Act of 1968 and that Section 3 Residents and Business Concerns are encouraged to apply.”**

Step 3: In reviewing all applicants, be certain to first select candidates that best fit the position requirements. If a Tier I resident is identified as a qualified candidate, all things being equal with others in consideration, a preference for employment should be given to the Section 3 Resident based on the Policy order established in Part VI – Preferences and Eligibility.

Step 4: In cases where a sub-recipient or contractor establishes a relationship and requirement with any temporary employment agency contractor, the temporary employment agency contractor or temporary employment agency must require placements to its sub-recipient or contractors to complete the Self Certification form clarifying their qualifications as a qualified Section 3 Resident. Any person certifying as a qualified Section 3 Resident must be given Preference for any Section 3 covered assignment with the sub-recipient or contractor providing they meet all other position requirements.

Section 2 –Sub-Recipients and Contractors: Procurement

Whenever a contract opportunity is solicited, these steps must be followed in order to comply with DCA’s Section 3 Policy.

ROB Verification: Whenever ROB status is sought, the sub-recipient or contractor staff shall request address and ownership verification of the 51% Owner/Operator rule as stated in the HUD Act of 1968. Use of the **“Section 3 Self-Certification Form”** attached to this policy is an acceptable statement of address and business data, when presented along with all other required incorporation documents, including any Letter of Issuance of a Federal Employer Identification Number (FEIN) and state Articles of Incorporation.

Step 1: *This step is only applicable when a public housing authority is involved in the transaction.* During the development process of any solicitation or work project, there should be a determination as to whether or not the work can be and/or should be isolated to Resident Owned Businesses (ROB’s) under the **24 CFR Part 963.12 Alternative Procurement Method**. If so, then Steps 2-8 should be followed with respect for **ROB’s ONLY**. Keep in mind, a qualified ROB can be one that is a Joint Venture Partnership where a non-ROB can participate at no more than 49% ownership, operations and profit. A statement where both parties have committed to these terms is required as validation of ROB status.

Step 2: As a direct method of encouraging greater participation and election of Section 3 Preference by contractors, DCA requires that all sub-recipient and contractors conduct at least one pre-bid meeting or workshop to facilitate the meeting of contractors (large and small) in hopes that more opportunities will be afforded all parties in covered DCA funded contracts. These steps must be in compliance with State of Georgia procurement laws. Where a conflict

occurs, the sub-recipient or contractor should not conduct such acts that would constitute a violation.

Step 3: Post the contract opportunity in community sources that are generally available to Section 3 Businesses, low income residents and the general public. It is required that a minimum of three (3) of the listed sources will be exercised at least once prior to entering into a contract with anyone not covered by Section 3 requirements:

- A) The local community newspaper
- B) The most widely distributed newspaper
- C) Company or agency website
- D) The management office of the local housing authority, or homeless service agency, or local low income housing community
- E) Local Workforce Board (i.e. Georgia Department of Labor)
- F) Local Office of the Georgia Division of Family and Children Services
- G) Local Offices of the Georgia Department of Public Health
- H) Dodge Room <http://www.construction.com/dodge/dodge.asp>
- I) Other locations as approved by DCA.

DCA recommends that all such posting periods shall last at least one calendar week.

Step 4: The sub-recipient or contractor must place a notice of the contracting opportunity(ies) in any public housing resident newsletters, notices or bulletins as may be available.

Step 5: All ads must include a notice that the contract opportunity is a **“Section 3 Covered Contract and that Section 3 Business Concerns are encouraged to apply.”**

Step 6: All procurements must include the attached **“Solicitation Package”** for sub-recipients and contractors to complete and return with their applications/responses. Any application/response that is received without the completed forms both signed and notarized should be considered non-responsive and the response rejected.

Step 7: In reviewing the solicitation responses, any contractors that are identified as qualified Section 3 Concerns should be reviewed and if legitimate, granted a Preference in contracting, all other things being equal.

Step 8: When procurements require point scores as part of the award process, the sub-recipient or contractor shall ensure that a method of providing Preference exists based on the solicitation criteria to secure the most qualified firm or individual for the contract. Under no circumstances shall a contract be awarded to a firm (Section 3 or Non-Section 3) if they fail to meet minimum standards or do not score high enough to surpass “competitive range” scoring. **Section 3 Preference only is to be considered after all other relative quantitative and qualitative factors have been scored and weighted.**

Step 9: All solicitations shall require that applicants/respondents convey prior compliance with Section 3 on any HUD funded contract. **If a contractor has not complied on any HUD funded contract effective on or after January 1, 2014, they should be considered non-responsive.**

Step 10: All solicitations must include a certification of prior compliance with HUD Section 3 for all HUD funded contracts effective on or after January 1, 2014 as a requirement for participation in the current solicitation. See the attached form titled: "Previous Compliance Certification."

Section 3 - Sub-Recipients and Contractors: Contracting

Step 1: In addition to the required Section 3 contract language provided in 24 CFR §135.38, the following language is to be added to all new contracts effective immediately:

"All contractors claiming a Preference in contracting by meeting any of the three qualifications including: a Resident Owned Business, Hiring/Employing 30% of New Hires, and/or sub-contracting at least 25% of their total award to a Section 3 Concern, shall maintain that status throughout the life of the contract. Failure to meet this requirement will result in penalties up to and including contract termination."

Step 2: Any sub-recipient or contractor claiming a Preference **must be in compliance prior to the issuance of a notice to proceed** by DCA, sub-recipient, or contractor based on the policies established for the applicable DCA funding program.

Step 3: The sub-recipient or contractor must maintain compliance. If at any time a sub-recipient or contractor fails to bring the contract into compliance, DCA, the sub-recipient, or contractor must withhold all future payments until the contract is in compliance or until other penalties have been levied as stated below.

DCA, the sub-recipient, or the contractor shall execute these remedies to achieve compliance in this order:

- A. Based on the first observation or report of non-compliance with Section 3, the sub-recipient or contractor will be sent an e-mail by the compliance manager notifying them of their non-compliance issue. The sub-recipient or contractor will have until the next payroll or 10 business days, whichever is less, to bring the contract into compliance and/or justify in writing why they cannot meet compliance requirements.
- B. DCA, the sub-recipient or contractor must render a response to the violating party within 10 business days of receipt of the violating party's letter of reason for non-compliance. If DCA, the sub-recipient, or the contractor deems the reason to be unacceptable, at its option, DCA, the sub-recipient, or the contractor can extend the

response period one time for up to 5 business days to allow the violating party to identify and secure other compliance options.

- C. If the violating party fails to take any corrective action to bring the contract into compliance within the allotted time, or DCA, the sub-recipient, or the contractor rejects any of the corrective plans and justifications for non-compliance, DCA, the sub-recipient, or the contractor will either terminate the contract immediately or impose liquidated damages equal to the number of days out of compliance divided by the total contract period multiplied by the contract amount. For example, if a violating party is out of compliance for 30 days of a total contract period of 120 days and as part of total contract of \$600,000, then the liquidated damages will equal 25% (30/120) of the total contract amount (\$600,000), or \$150,000. At DCA's determination, any liquidated damages received must be paid to the sub-recipient or DCA, at DCA's determination, and be used to promote economic opportunities for Section 3 Residents and Business Concerns.

DCA, the sub-recipient, or the contractor will hold all funds due to the violating party until such time that a financial workout is completed.

Additionally the violating party may be banned by DCA, the sub-recipient, and the contractor on future HUD funded projects.

DO YOU USE THIS PACKAGE?

(ANSWER ALL 3 QUESTIONS)

YES NO



1. Did you contract for \$200,000 or more directly from DCA? If so, you are a Sub-recipient and this package is applicable to you.



2. Did you contract for \$100,000 or more directly from the Sub-recipient (see above)? If so, you are a Contractor and this package is applicable to you.



3. Did you contract for \$100,000 or more directly from the Contractor (see above)? If so, you are a Sub-Contractor and this package is applicable to you.



If you answered "YES" to any question, this package IS applicable to you

IMPORTANT NOTE!!!

Even if you answered "NO" to ALL questions, this package BECOMES APPLICABLE to you when, during the life of your contract, you trigger "YES" to any of the above questions.

This form must be returned to the soliciting entity with your bid package. Failure to return this documentation will render your bid package as non-responsive.

Signature

Print Name

Position Title

Entity Name

Date

Georgia Department of Community Affairs
60 Executive Park South, NE, Atlanta, GA 30329

Mandatory Section 3 Solicitation Package

This mandatory solicitation package has been developed in accordance with DCA's Section 3 Policy for Covered HUD Funded Activities. DCA encourages all sub-recipients, contractors, and sub-contractors to review this policy prior to completion of the solicitation package. For those solicitations that meet the applicable Section 3 thresholds, this package must be returned in its entirety to the contracting entity. The Section 3 Clause, required forms, and instructions are included in this package.

The following Section 3 forms must be completed and returned as instructed:

- Section 3 Self Certification and Action Plan
- Previous Section 3 Compliance Certification
- Assurance of Compliance Certification

Additionally, if the contractor is claiming certification as a 51% Resident Owned Business (ROB) or is certifying as a 30% employer, the Resident Self-Certification and Skills Data Form must be returned for all employees who meet the low- or very low-income requirement as well as the appropriate Section 3 Business Certification.

Section 3 Solicitation Overview and Instructions for Contractors

The DCA Section 3 Policy requires that, when the **Section 3 regulation is triggered**, every effort within the contractor's disposal must be made, to the greatest extent feasible, to offer all available employment and contracting opportunities to Section 3 residents and Section 3 businesses based on the compliance methods below.

All Contracts and All Contractors must meet Section 3 compliance by:

- A. Giving notice of any and all opportunities for employment and contracting to residents of the local Public Housing Authority (PHA), and other low and very low income area residents and businesses, by posting the opportunity in community sources generally available to low income residents and the general public. Exercising a **minimum of three (3)** of the following listed sources must be completed prior to offering employment to anyone not covered by Section 3 requirements:
1. The local community newspaper
 2. The most widely distributed newspaper
 3. Company or agency website
 4. The management office of the local housing authority/homeless service agency/local low income housing community
 5. Local Workforce Board (i.e. Department of Labor)
 6. Local office of the Georgia Division of Family and Children Services
 7. Dodge Room <http://www.construction.com/dodge/dodge.asp>
 8. Other locations as approved by DCA
- B. Clearly stating in notices that the position is a "Section 3 covered position under the HUD Act of 1968 and that Section 3 Residents and Business Concerns are encouraged to apply."
- C. Placing the Section 3 Clause provided in Appendix A in ALL solicitations.
- D. When possible, other activities may be done to demonstrate effort to comply with the Safe Harbor Limits. These other efforts are listed in the appendix to part 135 of the Code of Federal Regulations—24 CFR Part 135 and include:
1. Distributing or posting flyers advertising positions to be filled;
 2. Contacting the local government or housing authority for a list of residents who have expressed interest in Section 3 employment;
 3. Holding job informational meetings for residents, contractors, etc...;
 4. Contacting agencies administering HUD YouthBuild programs and requesting their assistance in recruiting HUD YouthBuild program participants for training and employment positions.

- E. Linking residents or businesses to local resources that may be available to help prepare them for applying for and achieving the opportunity.
- F. Working with DCA, the subrecipient or contractor as applicable in developing a communication and follow up process to track and report all Section 3 applications and hiring activities to ensure the reporting of compliance efforts, and that contracting and sub-contracting are accurate. Provide preference in hiring and contracting to Section 3 applicants and contractors when employment or contracting opportunities are offered and all requirements are met and remain equal. Contractors must:
 - 1. Provide this package to all sub-contractors when soliciting bids for all contracts or sub-contracts;
 - 2. Meet all the same processes in A-E; and
 - 3. Provide Preference to all sub-contractors meeting the definitions as stated in Section VI of DCA's Section 3 Policy for Covered HUD Funded Activities.
- G. In order for Preference as a Section 3 Contractor to be factored into the award decision, all elements of the solicitation criteria must be equal between contracts. This means price and all other factors must be equal. Then the contractors that elect Preference on the Certification and Action Plan form that meet that Preference criterion will be provided Preference in the award of the contract as provided in Part VI., Preferences and Eligibility of DCA's Section 3 Policy for Covered HUD Funded Activities.

Example:

Bill's electrical and Sue's Electrical bid a job where the housing authority has a budget of \$500,000. Bill bids \$480,000 and elects a Preference as a Section 3 business concern because he qualifies as a 51% Resident Owned Business. Sue bids \$450,000 but does not elect any Preference. Both companies met all the other requirements. Sue will be awarded the contract because Bill's bid was higher.

Important items to remember about receiving Preferences in contract award:

All contractors and/or subcontractors that elect a Preference and are awarded a contract must be in compliance prior to the issuance of a Notice to Proceed by DCA, the subrecipient, or the contractor based on the policies established for the applicable DCA funding program. The contractor and/or subcontractor must maintain the elected Preference standard during the entire contract or risk having the contract terminated for failure to comply. **See Appendix B for further details.**

When a contractor and/or subcontractor that elected a Preference is unable to identify a Section 3 resident or a Section 3 business for employment or contracting opportunities, the contractor then **must** offer employment related training to the Section 3 residents in the county. The training must be provided according to Part VII – Other Economic Opportunities in DCA's Section 3 Policy.

Appendix A Section 3 Clause

Training and Employment Opportunities for Residents in the Project Area (Section 3, HUD Act of 1968; 24 CFR 135)

(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 Section 3 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.

Appendix B

Section 3 Contract Non-Compliance Cure /Termination Processes

This language is a component of contract compliance with the work to which you are responding in this solicitation. The full requirements are provided in the Section 3 Clause found elsewhere in this package and in DCA's Section 3 Policy for Covered HUD Funded Activities.

Any subrecipient or contractor claiming Preference **must be in compliance prior to issuance of a notice to proceed by DCA, subrecipient, or contractor based on the policies established for the applicable DCA funding program. This preference can be met by any of the three qualifications:**

1. Resident Owned Businesses (ROBs) owned and operated at 51% by Section 3 Residents.
2. Businesses that employ Section 3 residents at no less than 30% of the contractors aggregate full time staff.
3. Contractors that at the time of bid show evidence (meaning the specific name and preference met) of their intent to award no less than 25% of their total award to Section 3 business concerns.

The subrecipient or contractor must maintain compliance throughout the life of the contract. The contractor understands and agrees that a compliance management firm may be used to conduct routine and certified payroll reviews to ensure compliance. The Contractor agrees to provide the payroll data in an Excel or Word format each time the payroll is processed throughout the contract.

Failure to meet the Section 3 requirements will result in penalties up to and including contract termination. Any contractor triggering the regulation by doing any hiring or contracting once they are awarded the contract through execution must comply with the Section 3 requirements by executing the efforts on their Certification and Action Plan in accordance with DCA's Section 3 Policy.

DCA, the subrecipient or contractor shall execute these remedies to achieve compliance in this order:

NON-COMPLIANCE CURE PROCESS

- A. Based on the first observation or report of non-compliance with Section 3, the subrecipient or contractor will be sent an e-mail by the compliance manager notifying them of their non-compliance issue. The subrecipient or contractor will have until the next payroll or 10 business days, whichever is less, to bring the contract into compliance and/or justify in writing why they cannot meet compliance requirements.
- B. DCA, the subrecipient or contractor must render a response to the violating party within 10 business days of receipt of the violating party's letter of reason for non-compliance. If DCA, the subrecipient, or the contractor deems the reason to be unacceptable, at its

option, DCA, the subrecipient, or the contractor can extend the response period one time for up to 5 business days to allow the violating party to identify and secure other compliance options.

NON-COMPLIANCE TERMINATION PROCESS

If the violating party fails to take any corrective action to bring the contract into compliance within the allotted time, or DCA, the subrecipient, or the contractor rejects any of the corrective plans and justifications for non-compliance, DCA, the subrecipient, or the contractor will either terminate the contract immediately or impose liquidated damages equal to the number of days out of compliance divided by the total contract period multiplied by the contract amount. For example, if a violating party is out of compliance for 30 days of a total contract period of 120 days and as part of total contract of \$600,000, then the liquidated damages will equal 25% (30/120) of the total contract amount (\$600,000), or \$150,000. At DCA's determination, any liquidated damages received must be paid to the subrecipient or DCA, at DCA's determination, and be used to promote economic opportunities for Section 3 Residents and Business Concerns.

DCA, the sub-recipient, or the contractor will hold **all funds due to the violating party until such time that a financial workout is completed.**

Additionally the violating party may be banned by DCA, the sub-recipient, and the contractor on future HUD funded projects.

Appendix C
Section 3 Forms

I am Certifying as a Section 3 Business Concern and requesting Preference accordingly (Select only One Option):

Option 1

- A business claiming status as a Section 3 Resident-Owned Business Concern (ROB) entity:

_____ Initial here to confirm selection of this option

Option 2

- A business claiming Section 3 status, because at least 30% of the existing or newly hired workforce for this specific contract will be Section 3 residents throughout the entire contract period. If a Prime or General Contractor is electing this option, the 30% employment requirement will be for the entire project including all the sub-contractors' employees:

Check all methods you will employ to secure Section 3 Residents/Persons

Posting the position in community sources that are generally available to low income residents and the general public is a standard requirement. **Check at least three (3) methods you will employ:**

- The local community newspaper
- The most widely distributed newspaper
- Company or agency website
- The management office of the local housing authority, or homeless service agency, or local low income housing community
- Local Workforce Board (i.e., Department of Labor)
- Local office of the Georgia Division of Family and Children Services
- Local office of the Georgia Department of Public Health
- Dodge Room <http://www.construction.com/dodge/dodge.asp>
- Other locations identified below and subject to DCA approval:

_____ Initial here to confirm selection of this option

I anticipate my total number of employees for this contract to be _____ and _____ will be qualified Section 3 Residents/persons.

Option 3

- A business claiming Section 3 status by subcontracting 25% of the dollar award to qualified Section 3 Business:

Attach a list of intended subcontract Section 3 business(es) with subcontract amount.

Attach certification & all supporting documentation for each planned subcontract Section 3 Business.

_____ Initial here to confirm selection of this option

I am NOT Requesting Preference under Section 3:

- I am NOT certifying as a qualified Section 3 Business Concern and I am not requesting a preference. However if I do trigger the regulation by doing any sub-contracting or hiring, I will comply by meeting all requirements of DCA's Section 3 policy and am committing to do the outreach as specified below.

Check all methods you will employ to secure Section 3 Residents/Businesses

Posting the position/contract opportunity in community sources that are generally available to low income residents and Section 3 Businesses and the general public is a standard requirement. **Check at least three (3) methods you will employ:**

- The local community newspaper
- The most widely distributed newspaper
- Company or agency website
- The management office of the local housing authority, or homeless service agency, or local low income housing community
- Local Workforce Board (i.e., Department of Labor)
- Local office of the Georgia Division of Family and Children Services
- Local office of the Georgia Department of Public Health
- Dodge Room <http://www.construction.com/dodge/dodge.asp>
- Other locations identified below and subject to DCA approval:

_____ Initial here to confirm selection of this option

Signature: _____

Printed/Typed Name: _____

Title: _____

Date: _____

Notarial Affidavit

Sworn to and subscribed before me this _____ day of _____, 20____.

Signature of Notary Public

Printed Name of Notary Public

Commission Expiration Date: _____

(Notarial Seal)

**Required Submittal - Assurance of Compliance Certification
Section 3 Action Plan
Housing and Urban Development Act of 1968
(12 U.S.C. 1701 U)**

Contract/Solicitation Name or Number: _____

DCA Funding Program: _____

Entity Receiving DCA Funding Award: _____

Purpose: To ensure that regulations promulgated under 24 CFR Part 135 Employment Opportunities for Businesses and Lower Income Persons in Connection with Assisted Projects and the Section 3 Policy of DCA, its subrecipients and contractors to the greatest extent feasible is adhered to, and to serve as the "assurance of compliance" certification and action plan as required in the bid documents, supplemental general conditions, and required forms for the contract for any HUD work funded by DCA.

Description of the project's work detail: The project work will be as listed in the final scope of work in the contract with DCA, its subrecipients and contractors including any change orders. List all known subcontractors below:

Subcontractor(s): _____

Use an additional sheet if required.

Note: If subcontractors are unknown at this time, print UNKNOWN on the line above. Also, the contractor must notify DCA or subrecipient if subcontractors are added or changed during the contract.

Any changes to this certification requires a resubmission of this form to DCA or subrecipient.

Preliminary Statement for Work Force Needs:

DCA intends to meet Section 3 compliance at the highest level and it is our intent to identify any short-term and long-term employment or contracting opportunities for qualified Section 3 persons and Business Concerns during the course of the contract funded by DCA via its subrecipients and contractors. Please list the status of all planned employment positions and opportunities for this contract. **Preference for all opportunities must be given to low and very low-income residents if they qualify. If awarded a contract, regardless of whether your firm has elected a preference, you are required to provide a list of your aggregate workforce on this project. Any changes to that workforce during the project will constitute NEW hires. You must notify DCA, its subrecipient or contractor (respectively) overseeing your contract of any new hire opportunities that arise during the life of your contract. The anticipated workforce list may be provided on a separate sheet or in a different format.**

<u>List All Employees</u>	<u>Date Hired</u>	<u>Section 3 Resident (Yes/No)</u>	<u>Job Title/Trade</u>	<u>Salary Range</u>
Name: Address: City, ZIP:				
Name: Address: City, Zip Code:				
Name: Address: City, Zip Code:				
Name: Address: City, Zip Code:				

Use additional pages as needed.

“To the Greatest Extent Feasible”:

The Contractor has identified ___ # of **OPEN** positions with respect to this contract. The positions are filled by the _____ (Position title) of the Contractor.

Should the scope of work or duties of the contractor change to a degree requiring a modification of the work force needs, the contractor shall put forth a reasonable effort to fill vacant positions with eligible Section 3 residents.

Documentation of “To the Greatest Extent Feasible”:

The contractor will work with DCA, its subrecipients, and contractors staff to notify residents of any opportunities afforded under the contract. The contractor will partner with DCA, its subrecipients, and contractors by giving preference of any employment opportunities to the Section 3 persons or businesses.

The contractor shall recruit or attempt to recruit from the Section 3 area the necessary number of low-income and very low-income residents and Section 3 businesses, as applicable. The contractor must also document their recruiting efforts and any impediments to compliance with DCA’s Section 3 policy and the requirements of this solicitation package. This documentation must be submitted to the recipient or sub-recipient.

1. DCA, its subrecipients and contractors shall: Maintain a list of all low-income area residents who have applied, either on their own or from referral from any source, and employ such person if otherwise eligible and if a trainee vacancy exists.
2. Conduct solicitation in accordance with DCA’s Section 3 policy and the requirements outlined in the solicitation package.

The contractor shall review all employment applications and determine if low-income and very low-income residents or Section 3 businesses meet minimum hiring or contracting qualifications. If these applicants meet such minimum qualifications, but are not hired due to lack of employment opportunities or for other reasons, they will be placed on a priority list and offered positions/contracts upon the occurrence of the first available appropriate opening.

Utilization of Section 3 Businesses Located Within the County:

The subrecipient or contractor does ___ does not ___ intend to subcontract any of the work identified in the scope of work cited in the bid specifications, scope of work or General Conditions. Should the scope of work or needs of the contractor change, the contractor shall, to the greatest extent feasible, assure that subcontracts be awarded to business concerns within the Section 3 covered area, or to business concerns owned in the substantial part (at least 51%) by persons residing in the Section 3 covered area.

Record Keeping:

The subrecipient, contractor or subcontractor, as applicable, shall maintain on file all records related to employment and job training of low-income and very low-income residents or other such records, advertisements, legal notices, brochures, flyers, publications, assurances of compliance from sub-contractors, etc, in connection with this contract. If a report is needed in the future, the subrecipient,

contractor or subcontractor, as applicable, agrees to provide all records upon request. The contractor shall, upon request, provide such records or copies of records to HUD, DCA, their subrecipients, contractors, staff, or agents. Records shall be maintained for at least three (3) years after the close of the contract.

Reports:

The subrecipient or contractor shall provide reports as required in connection with the contractor specifications. All certified and regular payrolls shall clearly detail which employees qualify under Section 3.

Certification:

The subrecipient or contractor will certify that any vacant employment positions, including training positions that filled:

- 1) After the subrecipient or contractor is selected but before the contract is executed, and
- 2) With persons other than those to who the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the subcontractor's obligations under 24 CFR Part 135.

Grievance and Compliance:

The subrecipient, contractor or subcontractor hereby acknowledges that they understand that any low-income and very low-income resident of the project area, for him/her or as representatives of persons similarly situated, seeking employment or job training opportunities in the project area, or any eligible business concerns seeking contract opportunities may file a grievance if efforts to the greatest extent feasible were not executed. The grievance must be filed with HUD not later than one hundred eighty (180) calendar days from the date of the action (or omission) upon which the grievance is based.

I attest that the information on the preceding pages is true and correct.

Signature

Date

Print Name

Title

Purpose:

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

Section 3 resident means:

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

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

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

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

Subrecipient or Contractor to Insert 2013 Income Limits for Project Location

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

RESIDENT SECTION 3 SELF-CERTIFICATION
AND SKILLS DATA FORM
AFFADAVIT

STATE OF _____

County of _____

I, _____, a Notary Public of the City/County of _____,
State of _____, do hereby certify that, _____, whose
name is signed to the writing above bearing date on the _____ Day of _____,
20____, has acknowledged the same before me in my State aforesaid.

Given under my hand and official seal, this the _____ day of _____, 20____.

Signature of Notary Public

Printed Name of Notary Public

Commission Expiration Date: _____

(Notarial Seal)

SECTION 3 BUSINESS CONCERN SELF CERTIFICATION

The Georgia Department of Community Affairs (DCA) is seeking to extend the benefits of and to promote compliance with Section 3 by identifying Section 3 Business Concerns and targeting Section 3 Business Concerns for business opportunities, events and educational programs.

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

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

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

OR

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

OR

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

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

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

Name of subrecipient/contractor: _____

Attn: _____

Mailing Address: _____

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

Name: _____

Phone Number: _____

Email Address: _____

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

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

Name of Owner: _____

Home Street Address: _____

Home City, County, & Zip Code: _____

Name of Business: _____

Percentage of Ownership: _____%

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

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

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

(Effective _____, 2013)

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

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

Name	Position	% Percentage of Ownership

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

Print: _____ Signature: _____ Date: _____

Form B
SECTION 3 BUSINESS CONCERN
30% + Workforce

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

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

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

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

Print Name: _____

Title: _____

Company Name: _____

Signature: _____

Date: _____

Form C
SECTION 3 BUSINESS CONCERN
Subcontractor Awarded

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

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

Name of Business	Qualifying Conditions	Total Contract Award

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

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

Print Name: _____

Title: _____

Company Name: _____

Signature: _____

Date: _____

