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Regulations Division
Office of General Counsel
Department of Housing and Urban Development
451 7th Street, SW, Room 10276
Washington, DC 20410-0500

Via regulations.gov

Re: Proposed Rule: Economic Opportunities for Low- and Very Low-Income Persons [Docket No. FR-4893-P-01]

These comments are submitted by the undersigned advocates whose work involves Section 3 of the U.S. Housing and Urban Development Act of 1968, most of whom are members of the Housing Justice Network. The Housing Justice Network is comprised of over 700 attorneys and advocates throughout the country who work with low income tenants of and applicants for HUD-assisted housing. Some of the undersigned advocates represent Section 3 residents, some of us represent Section 3 businesses and some of us represent community-based development organizations. What we have in common is the desire to increase meaningful employment, training and contracting opportunities for low-income people. The following comments are in response to the Department of Housing and Urban Development's (HUD's) proposed new regulations implementing Section 3.

We commend HUD for drafting proposed final Section 3 rules. Updating and strengthening the 1994 interim rules is a complicated task, and we thank HUD for taking this on. The undersigned housing, workforce development and employment advocates share HUD's commitment to maximizing economic opportunities for low-and very low-income people. We believe that the proposed rules are a good start toward achieving that goal, and we write to expressly support several of the improvements as well as recommend changes that we think will help HUD achieve Section 3's full potential.

Our comments are presented in three sections: Summary of Comments, Detailed Comments (page 5), and Responses to Specific Questions for Comment (page 15).

Summary of Comments

Our comments on the proposed rules have four over arching themes: effectiveness, clarity, transparency and better targeting of intended statutory beneficiaries.

A. Section 3 requirements should be as effective as practical. The rules should be designed to maximize economic opportunities for Section 3 residents.

The following proposed rules are likely to make it even more difficult to achieve Section 3 goals or have proven to be ineffective under the current regulatory scheme and should be revised:

- *Retention of the "New Hire" Loophole (Sec. 135.35 and 135.55).* With respect to construction, demolition and rehabilitation, the "new hire" standard that is currently used to evaluate compliance with Section 3 employment and training obligations is vulnerable to manipulation and allows employers to avoid having to comply with Section 3. A more effective and administratively simpler approach would be to use a percentage of total hours worked within each trade. This approach is widely used throughout the country by municipalities with local hire policies. Inexpensive software is available that enables contractors to submit electronic payroll reports so that municipalities and PHAs can easily determine the hours worked in each trade by any category of workers, including Section 3. Adopting an "hours worked" measure of compliance would be far more effective and easier to administer than the "new hire" standard and would resolve tensions around implementation. The "new hire" standard should only be used to with respect to ongoing PHA operations.
- *Determination of Greatest Extent Feasible Efforts (Sec. 135.7 and supplementary information).* The supplementary information states that holding a job fair may be sufficient to demonstrate compliance with the greatest extent feasible requirement. Job fairs by themselves are ineffective. HUD should look to practical alternatives and arrive at a basic set of minimum steps that all recipients must document to demonstrate greatest extent feasible efforts.
- *Recipient Responsibilities (Sec. 135.11(b)(3)).* The recipient responsibilities listed in the proposed rules are not likely to achieve the desired purpose of connecting low- and very low-income people with economic opportunities. HUD should prescribe minimum efforts to link Section 3 residents and businesses with economic opportunities that are effective and implementable.
- *Minimum Qualifications for Section 3 Residents and Procurement Requirements Applicable to Section 3 Businesses (Sec. 135.37(a) and 135.57(a))* The proposed new minimum qualifications for Section 3 residents and procurement requirements applicable to Section 3 businesses are unnecessarily restrictive and will result in fewer economic opportunities for Section 3 residents and businesses.
- *Incentives for Training and Retention (Sec. 135.57(c)).* The proposed incentives for training and retention of Section 3 residents are not likely to achieve the desired purpose. Instead, HUD should look to practical alternatives and develop an effective set of incentives and requirements.
- *Self-Certification and Presumed Eligibility (Sec. 135.15).* Some form of self-certification may be appropriate for residents, but self-certification of businesses poses a substantial

risk of error and abuse. If HUD decides to permit self-certification of businesses, it should prescribe minimum sample size and frequency requirements for quality control to protect the integrity of the system. Allowing recipients to presume eligibility based on residency would ignore the statutory purpose of Section 3 and would direct economic opportunities away from the intended beneficiaries (low- and very low-income people).

- *Elimination of the Requirement that the Complaining Party Sign Off on any Informal Resolution of their Complaint (Sec. 135.93(n)).* HUD should retain the existing requirement that complainants sign off on any informal resolution of their complaint. This process promotes efficiency, helps HUD achieve a just resolution of the complaint and avoids the potential for unnecessary litigation. HUD should also preserve the administrative appeal process in the event that a resolution is approved without the consent of the complainant.

The following proposed rules are likely to be more effective at achieving Section 3 goals than the existing rules and should be retained:

- *Elimination of the So-Called "Wal-Mart Loophole" for Category 2 Businesses (Sec. 135.5).* The proposed rules would eliminate a loophole that allows businesses to qualify for a Section 3 contracting preference by paying their employees poverty wages. This is a welcome change and we encourage HUD to keep it in the final rules.
- *Requirement that Recipients Evaluate Bidders for Section 3 Compliance during Subrecipient and Contractor Selection (Sec. 135.11(b)(9)).* The proposed rules would require recipients to ensure that their subrecipient and contractor selection procedures assess bidders' previous compliance and ability to retain Section 3 hires, comply with Section 3 requirements, and provide training opportunities. This requirement makes it more likely that Section 3 will be taken seriously. We urge HUD to facilitate the evaluation of developers and contractors by creating a national database of outcomes on completed Section 3 projects, and to facilitate the inclusion of training and retention programs in bid materials by collecting and sharing best procurement practices.
- *Focus on apprenticeship utilization (Sec. 135.11(b)(10)).* The proposed rules require that agreements between recipients and labor unions provide employment, apprenticeship, training, contracting and other opportunities for Section 3 residents. There are numerous examples of successful collaboration between municipalities/PHAs and labor unions that have produced impressive results, but this practice is underutilized. We thank HUD for proposing to make such collaboration a mandatory requirement.
- *Elimination of the per-contract threshold (Sec. 135.53).* We support the elimination of the $100,000 threshold for contractors and subcontractors. The existing per-contract threshold makes it possible for contractors to receive a cumulative amount of Section 3 financial assistance in excess of the threshold, yet not have to comply with Section 3. The agency-wide coverage threshold proposed by HUD would be simpler and more transparent.

B. Section 3 requirements should be as clear as possible. Requirements should be easy for recipients to understand and implement, and for advocates to understand and monitor.

Examples of requirements in the proposed regulations that need additional clarity include:

- *Safe Harbor Thresholds (Sec. 135.13, 135.35 and 135.55).* The proposed rules continue to refer to the safe harbor thresholds as "minimum numerical goals". HUD should clarify that the safe harbor thresholds are "minimum numerical thresholds" not goals.
- *Coverage Thresholds (Sec. 135.53(a)(1)).* The "plan to obligate or commit" standard which HUD proposes to use to determine the coverage threshold is vague and undefined. HUD should clarify the coverage threshold so that recipients and advocates understand when the Section 3 obligation applies and when it does not.

Definition of Section 3 business (Sec. 135.5). The proposed definition of Section 3 business seems to make "category 1" businesses (those that are 51% or more owned by Section 3 residents) perpetually eligible. HUD should clarify how long such businesses remain eligible. We would recommend 3-5 years. The following proposed rule adds clarity and should be retained:

- *Elimination of the $200,000 per-project threshold (Sec. 135.53).* The existing $200,000 per project threshold is confusing and leads some recipients to incorrectly exempt some projects and contracts from Section 3 requirements. The proposed rule would avoid this confusion by abandoning the per project language. We support that change.

C. Section 3 policies and performance should be transparent. Section 3 plans and compliance reporting should be publicly available in a timely fashion. We recommend the following:

- *On-line access*. Official Section 3 policies and procedures required under Section 135.9(a)(4) and Section 3 annual reports required under Section 135.23 should be posted on-line by the recipients.
- *Timely access to compliance information*. HUD should facilitate the monitoring of Section 3 compliance by the public as an effective compliance strategy. Recipients should be required to post summary compliance reports more frequently than once a year, and project-specific compliance reports for larger projects on a regular basis while the project is under way.

D. Economic opportunities should be targeted to all residents of HUD-assisted housing. The regulations should be designed to ensure that the economic opportunities are directed toward low- and very low-income persons, *particularly those who are recipients of government assistance for housing*. We recommend the following:

- *Priority consideration for recipients of HUD rental assistance (Sec. 135.37(b) and 135.57(b).* HUD should revise the proposed rules on priority consideration for employment and contracting opportunities to give higher priority to recipients of HUD rental assistance than to other "section 3 residents." HUD's proposal modifies these rules

to clarify that voucher recipients are section 3 residents, but doesn't actually change the prioritization

- *Applicability to RAD conversions*. HUD should revise the proposed rules to enable tenants of public housing properties converted under Rental Assistance Demonstration to benefit from the economic opportunities generated by RAD conversion.

Detailed Comments

A.1. Effectiveness - Proposed rules that will make it more difficult to achieve Section 3 goals or that have proven to be ineffective under the current regulatory scheme and should be revised:

Retention of the New Hire Loophole (Sec. 135.35 and 135.55). The proposed rules continue to make evaluation of an employer's compliance with Section 3 hiring requirements dependent on a recipient's ability to ascertain whether the employer has any new hires. In our experience, with respect to Section 3 covered construction, demolition and rehabilitation, the "new hire" trigger is vulnerable to manipulation and allows employers to avoid having to comply with Section 3. Any employer that performs work on more than one project at a time can avoid hiring responsibilities by placing new hires on non-Section 3 covered projects. Moreover, ascertaining whether an employer has any new hires is not a simple task. It involves (1) reviewing pre-award payroll records to determine who was on the employee's payroll at the time of contract award and (2) reviewing ongoing payroll records for the duration of the contract to determine whether any new employees have been hired. This onerous loophole is one of the greatest barriers to achieving the employment potential of Section 3.

A more effective and administratively simpler approach would be to use a safe harbor threshold based on a percentage of total hours worked. Most cities that have adopted local hiring and targeted hiring requirements measure compliance based on a percentage of hours worked rather than a percentage of new hires.[1] That is because hours worked is easier to measure and less susceptible to manipulation than new hires. There is inexpensive software on the market that

[1] Examples include Hartford, Connecticut (40% of all hours worked and 50% of all apprentice hours); Oakland, California (50% of all hours worked by non-core employees); East Palo Alto, California (30% of all hours worked across all trades); and Washington, D.C. (20% of all journey worker hours; 60% of all apprentice hours; 51% of all skilled laborer hours; and 70% of all common laborer hours, on large projects). San Francisco, California, requires that at least 50% of all hours worked in each trade be worked by city residents, with at least 25% of all hours in each trade worked by disadvantaged residents (low-income; homeless; single parent; receives public assistance; no GED/diploma; non-English speaking; criminal record or justice involved; or resident of a high-unemployment census tract) (phased in over 3 years), and that at least 50%/25% of all apprentice hours across all trades be worked by city residents/disadvantaged residents (no phase-in).

enables contractors to submit electronic payroll reports and allows municipalities and PHAs to easily determine the hours worked in each trade by all workers and by Section 3 residents.[2]

HUD has proposed a requirement that Section 3 residents work a minimum of 50% of the average staff hours worked by all employees within the applicable job category in order to be counted as a new hire. In order to implement the proposed 50% standard, Section 3 recipients would have to document the hours worked within each trade and the hours worked by Section 3 residents within each trade. This is exactly the documentation that would be required if HUD were to base the safe harbor threshold on a percentage of hours worked. If HUD is going to require the collection of this information anyway, why not opt for the more effective and administratively simpler measure of compliance?

With respect to construction, demolition and rehabilitation projects, HUD should abandon the use of new hire documentation as a measure of safe harbor compliance and adopt an "hours worked" standard instead. Such an approach would be far more effective, easier to administer and would resolve tensions around implementation of Section 3 hiring requirements. The "new hire" measure should only be retained for PHA ongoing operations.

Determination of Greatest Extent Feasible Efforts (Sec. 135.7 and supplementary information). The supplementary information to the proposed rules states that holding a job fair may be sufficient to demonstrate compliance with the greatest extent feasible requirement for Section 3 hiring. In our experience, job fairs are one of the *least* effective means of connecting Section 3 residents with employment opportunities. Job fairs are designed to link qualified applicants with presently available jobs – they do nothing to bridge skills gaps or help low-income residents overcome barriers to employment. HUD should look to practical alternatives and arrive at a basic set of effective minimum steps that all recipients must document to demonstrate greatest extent feasible efforts. At a minimum, the written justification required under Section 135.5(b)(4) should include the following:

For positions that are not covered by a collective bargaining agreement:

(A) A Section 3 implementation plan that includes concrete hiring targets as well as the steps that will be taken for outreach and recruitment, skills assessment and skills development as necessary to meet or exceed those targets.

(B) Evidence that the recipient and the contractors worked with labor unions, WIOA training programs, and/or community-based organizations with a track record of success in placing workers in related jobs and apprenticeship programs, including the names and contact information for each organization so that the information can be verified;

(C) Evidence that the general contractor provided the recipient and all recruitment and training partners with an accurate work force projection as far in advance of the start of construction

[2] Such software also enables recipients to easily monitor compliance with prevailing wage requirements, minority- and women-hiring, local hiring, and Section 3.

as possible;

(D) Evidence that the general contractor incorporated into each subcontract a negotiated provision for the hiring of a minimum number of qualified Section 3 residents so as to meet or exceed Section 3 hiring targets; and

(E) A first source hiring agreement between the covered employers and the recipient or a recruitment and referral center designated by the recipient, requiring covered employers to make an offer of employment to all qualified Section 3 residents referred by the recipient or the first source referral center for which a position is available.

For positions that are covered by a collective bargaining agreement:

(A) A Section 3 implementation plan that includes concrete hiring and apprenticeship targets as well as the steps that will be taken for outreach and recruitment, skills assessment and pre-apprenticeship training as necessary to meet or exceed those targets.

(B) Evidence that the maximum allowable number of apprentices was employed on the Project;

(C) Evidence of the steps that the recipient took to prepare Section 3 residents for entry into union apprenticeship (e.g., partnering with an available pre-apprenticeship program or working with labor unions and WIOA training programs to create a pre-apprenticeship program); and

(D) Evidence that the general contractor incorporated into each subcontract a negotiated provision for the hiring of a minimum number of qualified Section 3 residents so as to meet or exceed Section 3 hiring and apprenticeship targets.

Recipient Responsibilities (Sec. 135.11(b)(3)). The recipient responsibilities listed in the proposed rules are not likely to achieve the desired purpose of connecting low- and very low-income people with economic opportunities. The proposed rules would require only that recipients *notify* Section 3 residents and businesses that *have asked* to receive priority consideration. This places the onus on Section 3 residents and businesses to request Section 3 priority and assumes that there is a ready pool of qualified Section 3 applicants to fill available positions. That is unrealistic and destined to fail.

We suggest the following *minimum* efforts to link Section 3 residents and businesses with economic opportunities that are generated by the expenditure of Section 3 funds:

(A) Outreach and recruitment to identify potential Section 3 residents and businesses who are interested in training, employment and contracting opportunities on Section 3 covered projects;

(B) A skills/capacity assessment to ascertain whether the available pool of Section 3 residents and businesses has the necessary qualifications to take advantage of training, employment and contracting opportunities on Section 3 covered projects;

(C) The provision of skills training and capacity building or referral to available training and capacity building resources;

(D) The creation of an Economic Opportunities Plan to continually evaluate and build the skills

and capacity of Section 3 residents and businesses. The Economic Opportunities Plan should outline the recipient's goals, actions and benchmarks to maximize employment of Section 3 residents and contracting by Section 3 businesses;

(E) With respect to Section 3 hiring, the minimum compliance efforts listed in the previous comment (Determination of Greatest Extent Feasible Efforts); and

(F) With respect to Section 3 contracting, breaking out contract work items into economically feasible units; helping Section 3 businesses overcome limitations such as the inability to obtain bonding, lines of credit, financing and insurance; and providing Section 3 businesses with flexible and more frequent invoicing and progress payments to minimize their need for lines of credit or cash reserves.

Minimum Qualifications for Section 3 Residents and Procurement Requirements Applicable to Section 3 Businesses (Sec. 135.37 and 135.57). The proposed rules state that "Section 3 residents must possess the same job qualifications, skills, eligibility criteria, and capacity as other applicants for employment and training opportunities being sought." Assessing qualifications, skills and capacity of Section 3 applicants by reference to the qualifications, skills and capacity of non-Section 3 applicants is unnecessarily restrictive, inherently subjective, and will result in fewer Section 3 residents being hired. A more effective and easily enforceable standard would be "Section 3 residents must possess the *minimum* job qualifications and eligibility criteria for the employment and training opportunities being sought."

Similarly, the proposed rules state that "Section 3 businesses must be selected in accordance with the procurement standards of 24 CFR 85.36…" This too is unnecessarily restrictive and will result in few Section 3 businesses receiving contracts. Not all contract awards are subject to Part 85 procurement requirements. For instance, while a general contractor must usually be selected through a sealed bid process with contract award to the lowest responsive and responsible bidder, subcontractors are generally selected by the general contractor based on any number of factors, which can include the achievement of social objectives such as participation by minority business enterprises, women business enterprises, disadvantaged business enterprises, veteran-owned businesses and Section 3 businesses. A more effective and easily enforceable standard would be "Section 3 businesses must be selected in accordance with any applicable procurement requirements and must possess the minimum qualifications to perform the contract being sought.

Incentives for Training and Retention (Sec. 135.57(c)). The proposed incentives for training and retention of Section 3 residents are not likely to achieve the desired purpose. The proposed rules seek to incentivize training by (1) defining "Section 3 business" to include businesses that provide substantial employment and training opportunities to Section 3 residents or substantial employment opportunities to YouthBuild participants (Sec. 135.5) and (2) giving priority consideration to Section 3 businesses that provide a minimum of 50% of all apprenticeship opportunities to Section 3 residents (Sec. 135.57(c)). The proposed rules seek to incentivize the retention of Section 3 employees by giving priority consideration to Section 3 businesses that

commit to retain at least 75% of previously hired Section 3 residents from the service area of the project or neighborhood (Sec. 135.57(c)).

Giving priority consideration to Section 3 businesses that provide apprenticeship opportunities to Section 3 residents or that commit to retain previously hired Section 3 residents from the same project area is unlikely to result in increased training and retention. Situations in which two equally qualified Section 3 businesses compete for the same contract are extremely rare, and there will be few if any opportunities to apply the preference. Because the reward is so unlikely to be realized, it should not be expected to operate as an incentive.

See the *Responses to Specific Questions for Comment #3* below for suggested alternatives that we believe would be far more effective at increasing training and retention opportunities for Section 3 residents.

Self-Certification and Presumed Eligibility (Sec. 135.15). Some form of self-certification may be appropriate for residents, but it should not be used for businesses. For residents, we would oppose a blanket certification of eligibility and would instead recommend a certification of the elements (residence and/or household income) that could be used to determine eligibility. For instance, a resident of public housing could certify that his or her residence and the PHA could then verify that the applicant does in fact reside in a public housing unit. Likewise, a low- or very low-income person could certify his or her residence, household size and household income, and the recipient could then review that information to determine whether the resident meets Section 3 eligibility requirements. In either case, the resident would not be required to produce supporting documentation unless the recipient or HUD requested it for quality control purposes.

Self-certification should not be used for businesses. Because of the significant financial benefit that a Section 3 contracting preference can confer, self-certification of businesses poses a substantial risk of abuse. Also, in the experience of one of the undersigned advocates who certifies Section 3 business eligibility, many business applicants simply do not understand eligibility criteria well enough to make a proper determination. This is particularly true under the second definition of Section 3 business (substantial employment of Section 3 residents). HUD's proposed new category of Section 3 business – those that can demonstrate that at least 20% of their permanent full-time employees are Section 3 residents and that either sponsor a minimum of 10% of their current full-time employees to attend an approved training program or that 10% of their employees are participants in or graduates of a YouthBuild program – is even more complicated. Section 3 business eligibility can be a highly technical determination that should not be left to businesses to make, at least not without rigorous safeguards to prevent errors and abuse.

Whether quality control measures to verify a sample of self-certified businesses will effectively deter abuse and catch erroneous self-certifications depends on the size and frequency of the sampling, but the proposed rules leave both of these standards up to the recipient. Because recipients have an incentive to boost the number of Section 3 businesses and thereby boost the

dollar amount of reported contract awards to those businesses, recipients should not be expected to adopt effective random sampling procedures. If HUD decides to allow businesses to self-certify, it should prescribe minimum sample size and frequency requirements designed to protect against fraud, errors and abuse.

Finally, presuming that all residents and businesses located in HUD-designated areas are eligible for a Section 3 preference regardless of income dilutes the effectiveness of Section 3 hiring and contracting requirements and frustrates the statutory purpose. The purpose of Section 3 of the Housing and Urban Development Act of 1968 is to ensure that employment and other economic opportunities generated by HUD assistance shall, to the greatest extent feasible, be directed to *low- and very low-income persons*, particularly those who are recipients of government-assisted housing. Allowing recipients to presume eligibility based on residency would ignore this statutory purpose and direct economic opportunities away from the intended beneficiaries of the statute.

Elimination of the Requirement that the Complaining Party Sign Off on any Informal Resolution of their Complaint(Sec. 135.93(n)).

HUD should retain the existing requirement that complainants sign off on any informal resolution of their complaint. Under the existing regulations, recipients of a complaint are provided a 60 day period to reach a resolution. Once that resolution is reached, the recipient is required to notify the Assistant Secretary, and both the recipient and the complainant are required to sign off on the notice of resolution. 24 C.F.R Sec 135.75(e)(3). Under the proposed rule Sec. 135.93(n) such informal resolution, the "voluntary compliance agreement," must only be signed by the Assistant Secretary and the recipient.

This change unfairly removes the complainant from the informal resolution process. Ensuring the complainant's involvement in the voluntary compliance agreement proposed by Section 135.93(n) promotes efficiency, helps HUD achieve a just resolution of the complaint and avoids the potential for unnecessary judicial litigation. The complainant is uniquely situated to support the Assistant Secretary in fully airing the issues and determining what may be an appropriate resolution. Requiring the complainant's signature to the voluntary compliance agreement will confirm that all sides of the issue are considered. We do not understand why the complainant's sign off on this informal resolution would not be required.

If a resolution is imposed without the agreement of the complaining party, HUD should preserve the administrative appeal process contained in 24 C.F.R. Sec 135.75(f)(3). Like the sign off provision, the opportunity for administrative appeal helps HUD achieve a just resolution of the complaint and avoids the potential for unnecessary litigation.

A.2. Effectiveness - Proposed changes that are likely to be more effective at achieving Section 3 goals than existing regulations and should be retained:

Elimination of the So-Called "Wal-Mart Loophole" for Category 2 Businesses (Sec. 135.5). The proposed new definition of Section 3 business would require that the eligibility of Section 3

employees under category 2 (businesses that employ substantial numbers of Section 3 residents) be determined as of the date of hire. If this change is made, businesses would no longer be able to qualify for a Section 3 contracting preference by paying their employees poverty wages. This is a welcome change and we encourage HUD to keep it in the final rules.

Requirement that Recipients Evaluate Bidders for Section 3 Compliance during Subrecipient and Contractor Selection (Sec. 135.11(b)(9)). The proposed rules would require recipients to ensure that their subrecipient and contractor selection procedures assess bidders' previous compliance and ability to retain Section 3 hires, comply with Section 3 requirements, and provide training opportunities. As more fully explained in our *Responses to Specific Questions for Comment #13* below, this requirement makes it more likely that Section 3 will be taken seriously, and we support the change. We urge HUD to facilitate the evaluation of developers and contractors by creating a national database of outcomes on completed Section 3 projects, and to facilitate the inclusion of training and retention programs in bid materials by collecting and sharing best procurement practices.

Focus on apprenticeship utilization (Sec. 135.11(b)(10)). The proposed rules require that agreements between recipients and labor unions provide employment, apprenticeship, training, contracting and other opportunities for Section 3 residents. As described more fully in our comments under *Specific Questions for Comment* #3 below (Incentives for Training and Retention) and #10 (Applicability of Section 3 to Projects Covered by a Union Hiring Agreement), there are many examples of successful collaboration between municipalities/PHAs and labor unions that have produced impressive results, but this practice is underutilized. We thank HUD for proposing to make such collaboration a mandatory requirement.

Elimination of the per-contract threshold (Sec. 135.53). We support the elimination of the $100,000 threshold for contractors and subcontractors in favor of an approach that applies to all covered activities financed or undertaken by a covered recipient of HUD funds. The existing per-contract threshold makes it possible for contractors to receive a cumulative amount of Section 3 financial assistance in excess of the threshold, yet not have to comply with Section 3. For example, a contractor could receive $500,000 in a program year to rehabilitate owner occupied homes, but if the funding is awarded in several contracts of less than $100,000 each the contractor would not be obligated to comply with Section 3. This system is subject to manipulation and can make it difficult for local advocates to determine whether a particular contract is covered. An agency-wide coverage threshold would be simpler and more transparent.

B.1. Clarity - Proposed changes that are difficult to understand, implement and monitor and should be simplified:

Safe Harbor Thresholds (Sec. 135.13, 135.35 and 135.55). The proposed rules continue to refer to the safe harbor thresholds as "minimum numerical goals". In our experience, this causes many recipients to mischaracterize the thresholds as aspirational goals in their contracts with subrecipients and in the compliance materials they provide to contractors. Characterizing the safe harbor thresholds as goals rather than minimum thresholds creates lower expectations and

dilutes the effectiveness of Section 3. HUD should clarify that the safe harbor thresholds are "minimum numerical thresholds" not goals.

Coverage Thresholds (Sec. 135.53(a)(1)). The "plan to obligate or commit" standard which HUD proposes to use to determine the coverage threshold is vague and undefined. Please see our comments under *Specific Questions for Comment* #6 below.

Definition of Section 3 business (Sec. 135.5). The proposed definition of Section 3 business seems to make "category 1" businesses (those that are 51% or more owned by Section 3 residents) permanently eligible. Paragraph 4 of the definition says, in relevant part: "For the purposes of determining Section 3 business eligibility only, Section 3 residents include persons who: (i) Met the definition of Section 3 resident, provided in this section, at the time the resident was hired or became an owner, or met such definition within 3 years before the business sought certification…. and (iii) Eligibility as a Section 3 business only applies as long as the businesses' employees continue to meet the definition of a Section 3 resident set forth in this part."

HUD should clarify how long such businesses remain eligible. We would recommend 3-5 years.

B.2. Clarity - Proposed changes that add clarity and should be retained:

Elimination of the per-contract threshold (Sec. 135.53). The existing $200,000 per project threshold is confusing and leads some recipients to incorrectly exempt some projects and contracts from Section 3 requirements. Although HUD has stated that the per-project threshold is intended to apply to the aggregate amount of Section 3 covered financial assistance received by grantees, some recipients incorrectly exempt individual projects and contracts below $200,000 from having to comply with Section 3. The proposed rule would avoid this confusion by abandoning the per project language. We support that change.

C. Transparency – Recommendations to make Section 3 plans and compliance reporting publicly available in a timely fashion:

On-line access. Section 3 plans and compliance reporting should be publicly available. Official Section 3 policies and procedures required under Section 135.9(a)(4) and Section 3 annual reports required under Section 135.23 should be posted on-line by the recipients. We also encourage HUD to post all annual reports on the HUD website.

Timely access to compliance information. HUD should facilitate the monitoring of Section 3 compliance by the public as an effective compliance strategy. Reporting must be made public in a timely manner so that immediate and effective corrective action can take place.

Recipients should be required to post summary compliance reports prominently on their website more frequently than once a year. We would recommend at least quarterly. For larger projects, recipients should be required to post project-specific compliance reports on a monthly or

quarterly basis while the project is under way.[3] At a minimum, these reports should include the percentage and number of hours worked by Section 3 residents and the percentage and total of all contract commitments/payments to Section 3 businesses. Individual Section 3 residents must experience the positive results of ongoing monitoring, such as being hired or rehired within days, not months or years. Without that, then it's all just paperwork.

D. Targeting – Recommendations to target economic opportunities to all residents of HUD-assisted housing:

Priority consideration for recipients of HUD rental assistance (Sec. 135.37(b) and 135.57(b). HUD should revise the proposed rules on priority consideration for employment and contracting opportunities to give higher priority to recipients of HUD rental assistance than to other "section 3 residents." HUD's proposal modifies these rules to clarify that voucher recipients are section 3 residents, but doesn't actually change the prioritization

There are three reasons HUD should make this change: to be consistent with the purpose of Section 3, to advance the fiscal interest of the federal government, and to fulfill the purpose of RAD to benefit the residents of converted properties.

Purpose of Section 3. In enacting Section 3 of the Housing and Community Development Act of 1968, Congress stated:

> It is the policy of the Congress and the purpose of this section [Section 3] to ensure that employment and other economic opportunities generated by Federal financial assistance for housing and community development programs shall, to the greatest extent feasible, be directed toward low- and very low-income persons, *particularly those who are recipients of government assistance for housing.* (12 U.S.C. § 1701u(b), emphasis added.)

HUD restates this statutory goal in the preamble to the proposed rule, 80 FR 16520 and in the Purpose section of the proposed rule at §135.1(a)(1). Unless the final rule gives higher priority to HUD-assisted tenants than other low-income people in the neighborhood where HUD assistance is spent or in the local Section 3 area, the rule would not fulfill this purpose.

Federal fiscal interest. It is in the federal government's fiscal interest to increase the incomes of HUD-assisted tenants, as higher incomes will reduce subsidy costs. Given the close nexus between the purpose of Section 3 and the government's interest in reducing subsidy costs due to increased tenant incomes, HUD should revise both §135.37(b) and §135.57(b) to give higher

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[3] HUD has a history of requiring publicly accessible performance reporting during the pendency of a HUD-funded project. See the Notice of Allocations and Procedures for NSP 1, subpart O (requiring subgrantees to post quarterly performance reports prominently on the grantee's website no later than 30 days after the end of each quarter), Federal Register Vol. 73, No. 194, Monday, October 6, 2008 Page 58341.

priority to recipients of HUD rental assistance (whose subsidy is based on income) than to other "section 3 residents."

Consistency with the purpose of RAD. Without prioritizing recipients of section 8 tenant-based and project-based assistance for hiring and contracting opportunities subject to §135.57(b), residents of properties converted under RAD would not have priority for rehabilitation or other construction-related jobs and contracting opportunities that result from the RAD conversion.

Recommendation:

a. *Revise §135.37(b) by—*
    - *inserting a new (4) "Individuals and families receiving assistance under any other HUD rental assistance program that reside in the Section 3 local area."; and*
    - *renumbering (4) as (5) and revising it to read "Other Section 3 residents in the Section 3 local area."*

b. *Revise §135.57(b)(1) by---*
    - *renumbering clause (i) as (ii), clause (ii) as (iii), clause (iii) as (v), and clause (iv) as (vii); and*
    - *inserting the following:*
        - *new clause (i) "Residents of public housing or recipients of other HUD rental assistance, including individuals or families receiving Section 8 tenant-based or project-based assistance, residing in the neighborhood or service area where the housing and community development financial assistance is spent;"*
        - *new clause (iv) "Residents of public housing or recipients of other HUD rental assistance, including individuals or families receiving Section 8 tenant-based or project-based assistance, residing in* the jurisdiction *that is the recipient of housing and community development assistance, or where the housing and community development financial assistance is spent."*
        - *new clause (vi) "Residents of public housing or recipients of other HUD rental assistance, including individuals or families receiving Section 8 tenant-based or project-based assistance, residing in the local service area or where the housing and community development financial assistance is spent"; and*
    - *Revising newly numbered (v) to read "Other Section 3 residents residing in the jurisdiction that is the recipient of housing and community development assistance or where the housing and community development financial assistance is spent.*

c. *Revise §135.57(b)(2) to state (new text underlined): "Recipients of housing and community development financial assistance may, at their own discretion, provide priority consideration specifically to any other residents of public housing or individuals and families receiving assistance under any other local state or Federal rental assistance program, or other local, state, or federal means-tested program that has income eligibility limits that do not exceed the equivalent of 80% of the median household income within the metropolitan area or nonmetropolitan county where the Section 3 covered project or activity is located.*

Note that we propose eliminating the preference for "a neighborhood or service area within the Section 3 area that has been officially identified by HUD" because there are relatively few such "officially identified" areas, and it is possible that many Section 3 residents and businesses would not be aware of such designation. In addition, we think that preference should be given to residents of the recipient agency before residents of a geographically extensive primary metropolitan statistical area.

Applicability to RAD conversions. HUD should revise the proposed rules to enable tenants of public housing properties converted under Rental Assistance Demonstration to benefit from the economic opportunities generated by RAD conversion. These changes are consistent with HUD policy under RAD (see PIH-2012-32 REV-1) and the particular priority accorded to public housing tenants under the Section 3 statute.

1. Include in the Section 3 rule the requirement in HUD's RAD notice that section 3 applies to "all initial repairs that are identified in the [Rental Assistance Demonstration] Financing Plan…."

   Add to the definition of "Section 3 covered project or activity" before the period "including all initial repairs of, or construction to replace, public housing properties identified in the Rental Assistance Demonstration Financing Plan to convert the properties to Section 8 assistance under the project-based voucher (PBV) or Project-based Rental Assistance (PBRA) programs".

2. Include project-based voucher contracts under Section 8(o)(13) in the definition of *Rehabilitation.*

   Modify the definition of Rehabilitation on p. 16534 to include after "project-based Section 8" the words "under the project-based voucher program, section 8(o)(13) or other Project-based rental housing assistance,".

Responses to Specific Questions for Comment

1. Local Area

We are opposed to an absolute prohibition against providing a Section 3 preference to non-residents of the metropolitan area or non-metropolitan county where the covered project is located, particularly with respect to Section 3 businesses, women and minorities. Imposing an absolute residency requirement would unnecessarily limit the contracting opportunities available to Section 3 businesses as well as the pool of eligible Section 3 businesses available to recipients. An absolute restriction would also undercut the usefulness of HUD's nation-wide Section 3 business registry.

Similarly, imposing an absolute residency requirement could limit the employment opportunities available to minorities and to women in nontraditional occupations. Nationwide, local hire laws that do not include strong equal opportunities policies tend to have lower rates of participation by women and minorities. There is a strong correlation between race, gender and poverty in this country, and the overwhelming majority of residents of HUD assisted housing are minorities

and/or women and their children. If HUD imposes or allows a strong local preference, it must also prioritize the hiring and retention of women and minorities, regardless of whether they live within the target area.

For these reasons, we recommend the following:

1. If a residency requirement is put in place, the requirement should be suspended to the extent necessary to meet Section 3 contracting requirements if there is a lack of qualified Section 3 businesses within the metropolitan area or non-metropolitan county where the project is located.
2. If a residency requirement is put in place, the requirement should be suspended to the extent necessary to meet equal employment goals. Women and minorities who do not live in the targeted area should be considered Section 3 residents if equal employment goals cannot be met by women and minorities who reside within the targeted area.

2. <u>Elimination of the Third Category of Section 3 Business</u>

HUD should retain this category but tighten it up. We are aware of instances where giving a contracting preference for businesses that commit to provide substantial subcontracting with other categories of Section 3 businesses has expanded contracting opportunities for Section 3 businesses. The definition could benefit from one change though – instead of committing to subcontract 25% of the dollar value *of all subcontracts*, the commitment should be 25% of the dollar value of *the business' entire contract*. Otherwise, a business competing for a $1 million contract could qualify for a contracting preference by committing to award a single $100 subcontract to another category of Section 3 business.

HUD's concern, that the definition is subject to abuse by businesses that commit to subcontract with other categories of Section 3 businesses but do not follow through, can be resolved by making the commitment enforceable. Recipients can require that the intended Section 3 subcontractors be identified and that evidence of a commitment that is legally enforceable by those subcontractors be provided. Recipients could also make subcontracting with Section 3 businesses a material requirement of any contract awarded to a category 3 business, with penalties in the event of non-compliance.

3. <u>Incentives for Training and Retention</u>

For meaningful and long-term success on both a programmatic and individual level, incentives for training and retention of Section 3 residents must be fully integrated into every aspect of Section 3 implementation and not treated as just an afterthought or just for Section 3 businesses. This requires a combination of mandatory requirements, HUD support and incentives.

To encourage the provision of meaningful training opportunities, we recommend the following:

a. Require recipients to undertake periodic skills assessments to ascertain whether there is a sufficient pool of Section 3 residents with the necessary qualifications to take advantage of employment opportunities on upcoming Section 3 covered projects, and to work with labor

unions, WIOA training programs, and/or community-based organizations with a track record of success in placing workers in related jobs and apprenticeship programs in order to design and provide for the necessary skills training. The importance of recipients and contractors collaborating with trainers and advocates cannot be overemphasized. For example, Chicago has the highest number of women in the construction apprenticeship programs in the country. That is due to Chicago Women In Trades (CWIT) training and advocacy on behalf of women. CWIT not only recruits women interested in entering the trades and trains them to be eligible to enter union apprenticeship programs, but also prepares them for long-term success and works with unions and employers to ensure retention so that there is long-term success. In 2006, the New York City Housing Authority (NYCHA) established a pre-apprenticeship training program with funding from the Workforce Investment Board. Between January 1, 2007, and December 31, 2009, over 350 public housing residents completed pre-apprenticeship training and 259 were hired as union apprentices on NYCHA modernization projects.

b. Require recipients to include training opportunities as part of the scope of work in invitations for bid and as a material term of the signed construction contract. Bidders should be required to submit a Section 3 plan for hiring and training Section 3 residents as part of their bid and that plan should be incorporated into the final contract. Recipients should continually monitor progress on the plan for results and require immediate corrective action when opportunities are not extended and goals are not met. The scale of the training plan should be commensurate with the size of the project and the extent to which a sufficient pool of Section 3 residents with the necessary qualifications to take advantage of employment opportunities already exists.

c. Maintain a list of experienced training providers with a track record for placement in related jobs or apprenticeship programs for recipients to use. To deploy the most effective training opportunities and retention of Section 3 residents, recipients and contractors must work with experienced trainers and advocates for the industry and occupation. For construction and other industries, in addition to WIOA programs and DOL-certified apprenticeship programs, there are community-based organizations around the country that assist low-income people with career guidance and provide training to put them on a career path out of poverty. If no organization is available locally, there are regional and national groups that can provide assistance. For example, the National Task Force on Tradeswomen's Issues can assist recipients and contractors with putting them in touch with programs in their area and educating them on practical alternatives for hiring, training and retention.

d. Retention – Allow employers to use the same look-back option as in the definition of Section 3 businesses (proposed Sec. 135.5) - For recipients and contractors that can demonstrate that they have retained Section 3 residents on other projects on a full-time,

year round (at least nine months per year) basis, those workers should be allowed to be counted as a Section 3 residents for least three years after the initial date of hire.

e. Prioritize competitive grant awards to applicants who provide evidence of the successful implementation of training programs and the retention of Section 3 residents both on Section 3 covered projects and on non-Section 3 covered projects.

f. Impose real and timely sanctions for failure to comply with Section 3 hiring requirements, including debarment from future assistance and contracting opportunities. These sanctions do not have to be all or nothing, but they should be proportional to the lack of compliance with Section 3 opportunities and goals. If there are no consequences for failing to meet hiring requirements, there is no incentive to develop a pool of qualified Section 3 residents to work on Section 3 covered projects.

Finally, HUD should facilitate collaboration between residents, employers, PHAs, HUD grantees, the education and training community, social service agencies, and community redevelopment officials by asking Congress to extend and enhance the Jobs Plus Pilot Program.

4. <u>Alternative Minimum Numerical Goals for Employment and Contracting</u>

As explained in greater detail above, the "new hire" standard is vulnerable to manipulation and allows employers to avoid having to comply with Section 3 hiring requirements. Using a percentage of hours worked is far more effective and easier to monitor. HUD should adopt this approach and abandon the use of new hire documentation as a measure of safe harbor compliance.

5. <u>Replacing the 3% contracting threshold for non-construction with 10% of all contracting in the aggregate</u>

Abandoning the 3% safe harbor compliance threshold for non-construction contracts in favor of a uniform 10% safe harbor threshold applied to all contracts will simplify administration and effectively expand contracting opportunities for Section 3 businesses. We support this change. Traditionally, there are more women-owned businesses in the non-construction field than in construction. In light of the fact that the majority of residents in HUD-assisted housing are women and their children, expanding opportunities in non-construction fields will benefit the people who Section 3 is intended to serve.

6. <u>Coverage threshold for housing and community development agencies</u>

We support the elimination of the $100,000 threshold for contractors and subcontractors in favor of an approach that applies to all covered activities financed or undertaken by a covered recipient of HUD funds. The existing per-contract threshold makes it possible for contractors to receive a cumulative amount of Section 3 financial assistance in excess of the threshold, yet not have to comply with Section 3. As previously mentioned, this system is subject to manipulation and can make it difficult for local advocates to determine whether a particular contract is covered. An agency-wide coverage threshold would be simpler and more transparent.

The “plan to obligate or commit” standard in Section 135.53(a)(1) of the proposed rule is vague and should be clarified. None of these terms are defined, and the proposed rules do not specify when Section 3 requirements are triggered. Does a recipient “plan to obligate or commit” funds when it designates proposed projects in the annual allocation plan, approves funding awards, or enters into loan or grant agreements? Does the construction of these terms depend on how they are defined in the applicable funding programs? Are Section 3 requirements triggered when the recipient “plan[s] to obligate or commit” the funds (however that is defined), receives notice that funds will be awarded, actually receives the funds, or begins expending the funds? What about a project that receives a funding allocation in a year in which the recipient met the coverage threshold, but is implemented in a year in which the recipient falls below that threshold, or vice verse? To further complicate matters, Section 135.53(a)(2) refers to the “expenditure” of funds, not their obligation or commitment. HUD should clarify the coverage threshold and how and when that threshold applies to individual projects so that recipients and advocates understand when the Section 3 obligation applies and when it does not.

Additionally, a recipient may plan to obligate or commit less than the threshold amount during the annual reporting period but end up spending an increased sum. HUD must make clear that compliance cannot be avoided by planning to commit less than the threshold amount, but expending above it.

Finally, we oppose any increase in the coverage threshold above $400,000. The proposed threshold is already double the existing coverage threshold of $200,000 - HUD should not dilute Section 3 even further by raising the threshold even higher. A $1 million threshold would completely deny low-income residents and businesses access to economic opportunities created by the expenditure of HUD funds in 816 local jurisdictions (these residents and businesses would not even have the option of traveling elsewhere to access Section 3 opportunities if HUD adopts an absolute local preference.) HUD should extend the benefits of Section 3 to as many low- and very low-income residents and businesses as possible.

7. <u>Definition of New Hire</u>

As previously stated, we are strongly opposed to retaining the “new hire” loophole. However, if HUD decides to retain it, the definition should not include part-time employment and should be based on 100% of the average hours worked within each trade, not 50%.

Tying the new hire definition to 50% of average hours worked within each trade would actually facilitate short-term employment by giving employers 100% credit for 50% employment. Short of abandoning the “new hire” standard altogether, the best way to prevent contractors from circumventing hiring requirements by employing Section 3 residents for shorter time frames is to keep the standard announced by HUD in *Carmelitos Tenant Association v. City of Long Bea*ch (HUD Case #09-98-07-002-720), which used 30% of all hours worked by new hires as the safe harbor compliance measure.

Section 3 regulations should be designed to create career paths out of poverty. Sanctioning short-term employment and adding "part-time" to the definition of new hire encourage employment practices that frustrate this goal.

Moreover, the 50% standard will cause Section 3 residents to be "less than" workers, not "real" workers. They will not have the same skill building opportunities, develop relationships with co-workers, supervisors and foreman to ensure they will be hired for the next job, and will have less time on the job to take advantage of any training opportunities. Section 3 residents will not be seen as workers to invest in and develop as a worker.

8. State CDBG Grantees

The undersigned advocates have not considered this issue and do not have any comments to offer.

9. Indian Tribes

The undersigned advocates have not considered this issue and do not have any comments to offer.

10. Applicability of Section 3 to Projects Covered by a Union Hiring Agreement

A number of municipalities and PHAs have developed successful partnerships with trade unions to provide a career pathway for low-income and public housing residents. Union participation on Section 3 covered projects can be a significant opportunity. Recipients should stop using union hiring requirements as an excuse for anemic Section 3 hiring and should instead embrace the career path possibilities that union participation can afford.

The City of Los Angeles has pioneered the use of community workforce agreements (CWAs) in conjunction with project labor agreements (PLAs) on city-funded construction projects. CWAs typically provide minimum hiring requirements for neighborhood residents and disadvantaged workers. For example, the L.A. Department of Public Works PLA requires that 30% of all work hours be performed by residents of high-poverty or high-unemployment zip codes, that 20% of all work hours be performed by apprentices (of which 50% must be residents of the targeted zip codes), and that at least 10% of all work hours be performed by disadvantaged workers.[4] Residents do not have to be in a trade union in order to be hired, but they do have to pay union dues for as long as they are on the job. Hiring of community residents and disadvantaged workers is done through one or more community-based job referral centers. For the first 10 hires, the contractor must hire one community resident or disadvantaged worker for every core employee on the contractor's payroll. After that, all hires must be from the community.

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[4] A disadvantaged worker is defined as a resident who is very low-income, homeless, receives public assistance, has a history of involvement with the criminal justice system, is unemployed, is a custodial single parent, or is suffering from chronic unemployment or underemployment.

PLAs/CWAs are frequently combined with pre-apprenticeship training to prepare low-income and public housing residents for entry into union apprenticeship programs. In 2011, the Boston Housing Authority (BHA) entered into a PLA with Ameresco and the AFL-CIO Building and Constructions Trades Department for water and energy efficiency improvements to BHA properties. The PLA included an agreement to establish a pre-apprenticeship program for BHA residents called Building Pathways. A subsequent agreement guaranteed graduates of Building Pathways cost-free admission into one of 23 Boston-based apprenticeship programs and a first year apprenticeship job placement. According to the Massachusetts Law Reform Institute, the program has graduated over 150 residents into union apprenticeship programs over 3 and a half years. Graduates start earning $16-$20/hour and most have full benefits. Step increases in earnings each year vary by trade and ultimately provide participants with a family-sustaining career in construction of $35-$50/hour. Similarly, NYCHA currently operates a Painter Apprentice Program in partnership with the Building and Construction Trades Council and the Union of Painters and Allied Trades, which has resulted in 100 full-time painter apprentice jobs at NYCHA properties.

Union apprenticeship offers residents a pathway into a career in the building trades with a family-sustaining wage. Recipients with projects covered by union hiring agreements can and should be negotiating CWAs and pre-apprenticeship training opportunities for their Section 3 residents. They should also require the maximum allowable number of apprentices on union projects to maximize entry level opportunities for their residents.

11. Contractors with No Need for New Hires

As previously mentioned, whether work on a Section 3 covered project will enable a contractor to take on new hires is subject to contractor manipulation and is extremely difficult for recipients to ascertain. Contractors can easily avoid Section 3 compliance by placing their new hires on non-Section 3 covered jobs. In order to accurately determine whether a contractor has new hires, a recipient would have to review payroll documentation covering the period immediately prior to the date of contract award as well as payroll documentation covering all of the contractor's projects during work on the Section 3 project. We are aware of no recipients that require such documentation, and few recipients have the staff capacity to undertake such a review. Claims that contractors do not have any new hires should not be taken at face value, and contractors who make such claims should have the burden of demonstrating that fact.

General contractors on larger projects should be presumed to have the ability to take on new hires themselves and/or to select subcontractors who have that ability. This should be no different than Section 3 contracting, where it is presumed that general contractors are able to satisfy the 10% safe harbor threshold.

For subcontractors and for prime contractors on smaller projects, recipients could presume that all employees over a certain threshold number are new hires. This is a common approach used in project labor agreements. Also, since the selection of subcontractors is rarely if ever subject to

low-bid requirements, general contractors are free to consider ability and willingness to hire Section 3 residents in addition to price when making subcontractor selections.

12. Goals and Strategies for Training Opportunities

See our comments under #3 (Incentives for Training and Retention) and #10 (Applicability of Section 3 to Projects Covered by a Union Hiring Agreement) above.

13. Incorporation of Section 3 Compliance into Procurement Procedures

The proposed rules would require recipients to ensure that their subrecipient and contractor selection procedures assess bidders' previous compliance and ability to retain Section 3 hires, comply with Section 3 requirements, and provide training opportunities. This requirement makes it more likely that Section 3 will be taken seriously, and we support the change.

The requirement that recipients assess bidders' previous compliance and ability to successfully comply with Section 3 is merely a restatement of current law. 24 CFR 85.36(b)(8) requires that grantees and subgrantees "make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as … compliance with public policy [and] record of past performance…." In our experience, recipients rarely evaluate a bidder's past compliance and prospective ability to comply with Section 3 in their procurements. Making this requirement explicit will make it more likely that Section 3 compliance will be treated as a material term of development and construction contracts.

The requirement that recipients assess bidders' ability to retain and provide training opportunities for Section 3 residents is a new one. If implemented properly, this could have a profound effect. Recipients can implement this requirement by making training and retention part of the selection criteria and contractual obligations. For qualifications-based procurements (e.g., selection of developers), recipients can evaluate the quality of a bidder's past performance and proposal to train and retain Section 3 residents. HUD can facilitate this evaluation by developing an on-line database of completed Section 3 covered projects that includes the names of the developer and general contractor, the nature and size of the project, and the Section 3 employment, contracting, training and retention achieved.

For sealed bid procurements (e.g., selection of contractors), recipients will have to add training and retention to the scope of work so that all bidders will base their price on the same criteria. If recipients are concerned that adding training requirements to the scope of work might cause a project to be financially infeasible, they could include a training program as a bid alternate that could be added or deleted from the final scope depending on the budget. HUD can facilitate this by collecting and sharing best procurement practices.

14. HUD Business Registry

The nation-wide HUD Business Registry is an excellent idea, but its potential is undermined by the fact that all of the businesses are self-certified. HUD's proposed local area restriction will

also severely restrict the usefulness of the Business registry if it is implemented.

Thank you for the opportunity to submit comments. If you have any questions, please contact Robert Damewood at (412) 201-4301 or bob@rhls.org.

Sincerely,

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