**SAMPLE SECTION 3 COMMENT LETTER**

Month Day, 2019

Regulations Division

Office of the General Counsel

Department of Housing and Urban Development

451 Seventh Street SW, Room 10276

Washington, DC 20410-0500

Via regulations.gov

RE: Docket No. FR-6085-P-01

Enhancing and Streamlining the Implementation of “Section 3” Requirements for Creating Economic Opportunities for Low- and Very Low-Income Persons and Eligible Businesses

[*Brief description of your organization and why Section 3 is important to your organization and/or the people you represent or serve*.]

Labor Hours Worked

[*Name of your organization*] supports the proposal to use “labor hours worked” in place of “new hires.” It has been too easy for contractors and subcontractors to avoid their Section 3 obligations using “new hires.”

HUD asks whether public housing agencies (PHAs) should be allowed to continue using “new hires.” PHAs can manipulate how they hire their regular staff, and contractors and subcontractors have been known to use various means to evade Section 3 compliance using “new hires.” Therefore, we suggest that PHAs be required to use labor hours worked. Inexpensive software is readily available to help a PHA transition to labor hours worked.

HUD also asks whether PHAs that have 250 or fewer public housing units should be exempt from reporting labor hours worked or new hires. We think that such “small PHAs” should not be exempt. Inexpensive software is available for a PHA to use labor hours worked.

HUD Monitoring and Enforcement of Section 3

[*Name of your organization*] does not agree with the proposal to move Section 3 monitoring and enforcement from HUD’s Office of Fair Housing and Equal Opportunity (FHEO) to the program offices, such as the Office of Public and Indian Housing (PIH), the Office of Community Planning and Development (CPD), and the Office of Recapitalization (for RAD demolition, rehab, or new construction).

Section 3 monitoring and enforcement should be carried out by HUD staff who are independent of the HUD program offices. We think that independent office should be [*FHEO, Office of Davis-Bacon and Labor Relations (DBLR), or Office of Field Policy and Management (FPM) – you choose. See NLIHC’s comment letter about each. It is really difficult to pick one.*] HUD should request increased congressional appropriations for [*the office you choose*] to hire more staff to provide Section 3 technical assistance, monitoring, and enforcement.

HUD also proposes to eliminate any Section 3-specific complaint process. Instead, HUD relies on existing provisions in other HUD program regulations for addressing resident complaints. However, the other HUD program areas do not have detailed provisions for residents to register complaints.

The current regulations have a good complaint process, and Form 958 works well. [*Name of your organization*] recommends that the final rule require each federal program to have a detailed complaint process identical to or similar to that of the current rule, and that [*your choice of FHEO, DBLR, or FMP*] be ultimately responsible for independent overall HUD enforcement.

Low-Income People Will Not Necessarily Benefit

The law that created the Section 3 obligation emphasizes – three times – that the people who should benefit most from Section 3 are low- and very-low income people “who are recipients of government assistance for housing.” However, the proposed definition of a “Section 3 worker” does not live up to that emphasis.

[*The proposed definition of a “Section 3 worker” is someone who meets one of the following:*

1. *The worker’s income is less than the income limit set by HUD for the program triggering Section 3; or,*
2. *The worker lives in a “qualified census tract;” or,*
3. *The worker is employed by a Section 3 business*.]

To better meet the law’s emphasis we propose that the first option be “A worker who currently is or was before being hired, a public housing, Section 8, Section 811, or Section 202 resident, or other low-income resident, especially women.”

[*Section 8 covers both tenant-based vouchers and project-based rental assistance.* *Section 811 is housing for people with disabilities, and Section 202 is housing for people over the age of 62. Because only 3.4% of people in the construction trades are women, NLIHC tags on the “especially women” to the recommended definition*.]

Someone who lives in a qualified census tract will not necessarily be a low-income person.

Depending on how the qualified census tract is drawn, a large number of residents could have higher incomes. The rule should not use a geographic area to define a Section 3 worker. Therefore, the final rule should not include the qualified census tract option.

Someone hired by a Section 3 business will not necessarily be a public housing, Section 8, or other type of low-income person. Therefore, the final rule should not include this option.

[*The proposed rule would define a “Section 3 business” as one that meets one of the following:*

1. *At least 51% of the business is owned by low-income people; or,*
2. *Low-income people work more than 75% of the labor hours worked at the business; or,*
3. *At least 25% of the business is owned by public housing residents or Section 8 residents*.]

The third option for defining a “Section 3 business” should be modified to require that the business have 51% ownership by public housing or Section 8 residents. Unless residents have majority control there is a danger of the business being a front for owners who might not represent residents’ interests.

Section 3 Employment and Contracting Priorities for Jurisdictions

[*The proposed employment and contracting priorities for PHAs are OK*.]

Because the Section 3 law emphasizes three times that employment and training should go “particularly to those who are recipients of government assistance for housing,” we suggest an alternate list of employment and contracting priorities for cities, counties, and states:

1. First priority should be for public housing, Section 8, Section 811, and Section 202 residents.
2. Second priority should be for low-income people, especially women, living in the service area or neighborhood of the project.
3. Third priority should be for homeless people living in the jurisdiction.
4. Fourth priority should be for other low-income people, especially women, living in the jurisdiction.
5. Fifth priority should be for other low-income people, especially women and homeless people, living in the metro area.
6. Sixth priority should be for any low-income person, especially women and homeless people, anywhere.

[*Geographic limits can lead to few or no women being hired, and can also limit access to certain types of jobs to men as well as women depending on the labor pool in a given geographic area. Therefore, jurisdictions, contractors, and subcontractors should be allowed to go beyond a service area, neighborhood, jurisdiction, or metropolitan area or non-metropolitan county if they are able to demonstrate that there are not enough Section 3 residents with the necessary job skills within a project’s geographic area.*]

Targeted Section 3 Worker

[*A Targeted Section 3 worker for PHAs would be:*

1. *A worker employed by a Section 3 business; or,*
2. *A worker who currently is or who was when hired:*

*a. A resident of any of the PHA’s public housing or any resident assisted by Section 8; or,*

1. *A resident of other projects managed by the PHA that is using public housing assistance; or,*
2. *A current YouthBuild participant.*

*Targeted Section 3 workers are important for defining “Benchmarks”, which are described below*.]

Option 1 should not be used for two reasons. First, the definition of “Section 3 worker” already includes as an option, “The worker is employed by a Section 3 business concern.” Repeating this reduces the intent of having Targeted Section 3 workers be special in the benchmark. Second, someone working at a “Section 3 business” will not necessarily be a public housing, Section 8, or other low-income resident. Only a variation of Option 2 should be used, which boils down to the definition of Section 3 worker that we propose: “A Targeted Section 3 worker is a public housing, Section 8, Section 811, or Section 202 resident.”

[*A Targeted Section 3 worker for cities, counties, and states would be:*

1. *A worker employed by a Section 3 business; or,*
2. *A worker who currently is or who was when hired:*
   1. *Living in the service area or neighborhood of the project; or,*
   2. *A current YouthBuild participant.*

*The definition of a Targeted Section 3 worker for jurisdictions includes the problematic first option, “A worker employed by a Section 3 business concern.”* *The second option’s geographic limits can reduce employment opportunities.*]

[*Name of your organization*] also has problems with the definition of a Targeted Section 3 worker for cities, counties, and states. Our suggestions regarding benchmarks provides a solution.

Benchmarks

[*The proposed rule establishes a “benchmark” instead of “goals.” PHAs and jurisdictions would use the same benchmark:*

1. *Section 3 workers make up 25% of the total number of labor hours worked by all workers; and,*
2. *Targeted Section 3 workers make up 5% of the total number of labor hours worked by all workers.*]

[*Name of your organization*] thinks a benchmark should reflect the law’s emphasis on providing employment opportunities, “particularly to those who are recipients of government assistance for housing.” Instead of one benchmark for PHAs and for jurisdictions, we suggest that there be two separate benchmarks.

For public housing, we propose the benchmark be:

1. Public housing, Section 8, Section 811, or Section 202 residents make up 30% of the total number of labor hours worked by all workers for each job category, and women make up one half of the 30%; and,
2. Three percent of all contracts are for Section 3 businesses.

For Section 3 projects [*these are for non-public housing projects*], we propose the benchmark be:

1. Low-income people who are not public housing, Section 8, Section 811, or Section 202 residents make up 20% of the total number of labor hours worked by all workers for each job category, and women make up one half of the 20%; and,
2. Public housing, Section 8, Section 811, or Section 202 residents make up 10% of the total number of labor hours worked by all workers in each job category, and women make up one half of the 10%; and,
3. Three percent of all contracts are for Section 3 businesses.

Reporting

Instead of only reporting at the end of each year, PHAs and jurisdictions should report every three months so that the public can suggest actions to take if Section 3 activities are lagging.

Adequate Funding

HUD should request that the president’s budget include adequate funding to enable HUD to hire the necessary headquarters and field office staff to provide Section 3 technical assistance and to robustly monitor and enforce Section 3. Also, the president’s budget should seek adequate funding so that all jurisdictions and PHAs can hire and retain staff to serve as Section 3 coordinators and to monitor and enforce Section 3 obligations.

Sincerely,