To Whom It May Concern:

On behalf of the National Association of Housing and Redevelopment Officials’ 20,000 agency and individual members, I am writing in response to Notice of Proposed Rulemaking published in the Federal Register on March 27, 2015 entitled “Creating Economic Opportunities for Low- and Very Low-Income Persons and Eligible Businesses through Strengthened ‘Section 3’ Requirements.” This proposed rule would create substantially increased burdens for recipients of covered HUD funds, making compliance with the regulations even more difficult than it already is and diverting resources from the programs’ core objectives. While funding for many of these programs is at record lows, the proposed rule would raise the bar for compliance and increases administrative requirements. NAHRO is deeply concerned about the proposed regulations, which would continue to add burden without properly considering the feasibility of the requirements or the balance between the anticipated benefits and the costs of compliance.

NAHRO is deeply concerned by the Department’s decision to circumvent its internal clearance process when developing the Affirmatively Furthering Fair Housing Final Rule, the other major initiative under the auspices of the Office of Fair Housing and Equal Opportunity (FHEO). That rule, as well as the Section 3 proposed rule, clearly demonstrate the limitations of FHEO staff’s understanding of the implementation of HUD’s programs. NAHRO strongly urges the Department to utilize all of its internal resources, including the expertise of the staff of the Offices of Public and Indian Housing and Community Planning and Development, to inform the revisions to this rule.

NAHRO feels strongly that economic opportunities and incentives for self-sufficiency for low-income persons are extremely important for persons receiving housing assistance and, just as urgently, for those who are not. That said, the success of Section 3 in permanently raising the economic status of intended beneficiaries has not been demonstrated. To that end, we are particularly
concerned about the efforts of the proposed rule to expand the reach of Section 3 requirements and to increase the program requirements, without having any basis in evidence that such a strategy is actually beneficial. Before undertaking reflexively an effort to amp-up Section 3, we suggest that the Department take a step back and reconsider in a fundamental way what we all seek to accomplish in the way of affording economic opportunities, the premises on which any program addressing these opportunities should be based, and more particularly whether replacing Section 3 with a program that is broader and hopefully more effective than Section 3 might be beneficial. Although outside of the scope of this rulemaking, we have attached as an appendix to these comments a draft of a legislative proposal entitled the Employment Opportunities and Work Readiness Program (“EMPOWR”) which was developed and adopted by NAHRO in 2010. The EMPOWR program offers a blueprint for an alternative that could replace Section 3 in service of a viable federal response to the need for economic opportunities for low-income people.

Section 3 has several major shortcomings, the majority of which are nowhere addressed within the proposed rule. First, and most critically, Section 3 fails to employ an inter-agency, cooperative approach that reaches beyond HUD to involve participation by the Departments of Labor and Education and possibly other federal Departments and Agencies, such as the Department of Health and Human Services, the Department of Commerce and the Small Business Administration. The ultimate objective should include not only affording employment and economic opportunities but also providing the education, training and counseling necessary for program beneficiaries to meaningfully take advantage of those opportunities and other opportunities subsequently encountered.

Second, Section 3 diverts HUD funding appropriated for specific purposes other than creating employment opportunities. To our knowledge, HUD is the only federal agency whose funding is subject to economic opportunity requirements of the type presently imposed under Section 3. If grantees are expected to use their federal funding efficiently and effectively, they must be allowed to do so. This means, at a minimum, that employment and business opportunities created by program funding must be offered only to fully qualified and suitably trained individuals, subject to the same workplace standards as other employees. On the job training should be encouraged through independent financial incentives rather than funded with amounts appropriated for other programmatic purposes. It is impossible to accomplish so important a goal “on the cheap” by the simple expedient of dual-purposing program funding.

In addition to shortcomings with respect to program design, Section 3 also suffers from weaknesses in its implementation, many of which are exacerbated by the proposed rule. First, HUD fails to recognize the administrative burdens of implementation and compliance; by virtue of failing to consider these burdens in the first place, the Department misses out entirely on the opportunity to consider means of mitigating these costs. Second, the Department has chosen to implement Section 3 using overly narrow and prescriptive requirements that limit the possible avenues for compliance with the spirit of the statute. By narrowing the definitions of what satisfies Section 3 requirements, the Department is actually discouraging its grantees from undertaking additional activities that meet the goals of Section 3. Finally, the proposed rule fails to recognize the limitations and challenges that communities, particularly in small and rural contexts, face. This is another example of a situation where, by failing to acknowledge their existence, the Department has missed an opportunity to
examine the challenges that these communities face and to structure a program that will allow them to maximize their outcomes given the real-world constraints they face.

**Compliance:** The clarification of compliance measures offered in the proposed rule does not meet the spirit of the “greatest extent feasible” standard. By specifying that standard, the Congress clearly contemplated that there would be situations in which grantees were not able to reach the numerical goals. The requirement that grantees not only explain why they were unsuccessful but also explain what actions they will take to overcome the obstacles that prevented them from reaching their goals presupposes that it is actually possible to reach these goals. Such a requirement puts grantees in the uncomfortable position of having to supply a solution even when no realistic solution exists. The proposed rule would be greatly improved by adding clarity to this section and removing requirements that cannot be realistically achieved.

NAHRO reiterates its recommendation that the Department provide a safe-harbor in order to allow grantees increased operational certainty. The proposed rule is overly vague, simply stating that grantees efforts will be “taken into consideration” for purposes of compliance determinations. This standard falls far short of providing grantees with a reasonable level of certainty that their efforts towards meeting their numerical goals will be considered compliant. As the statute acknowledges, it will not always be possible for grantees to demonstrate compliance through achieving numerical goals; as a result, it is incumbent upon the Department to develop regulations that clearly articulate alternative measures for demonstrating compliance.

**Revised Definition of New Hire:** NAHRO is disappointed that the Department is proposing such an ill-conceived and ill-considered definition. Numerical targets for new hires are one of the main metrics for measuring compliance with Section 3, so the definition of who can or cannot be counted as a new hire significantly impacts agencies’ ability to meet these targets and should be given very careful, thoughtful consideration.

The new definition is unworkable for several reasons. First, the actual definition is unclear, and the examples provided throughout the proposed rule are more narrowly construed than the actual proposed requirement. The proposed definition would require that a new hire “must work, during its employment with the contractor or subcontractor, a minimum of 50 percent of the average staff hours worked for the category of work for which they were hired throughout the duration of time that the category of work is performed on the covered project.” NAHRO believes that a correct application of this standard would require only that each new hire work a total of no fewer than 50 percent of the average hours worked by other individuals on the project in the same trade. A correct example might read: “If a Section 3 resident is hired as a painter and painters will each work an average of 300 hours over the course of the project, then the Section 3 resident must work a total of at least 150 hours during his/her employment on the project in order to be counted.”

In contrast, the proposed rule offers the following example: “If a Section 3 resident is hired as a painter and painters typically work 40 hours each week, the Section 3 resident must work a minimum of 20 hours each week during their employment on the project in order to be counted.” In contrast to the definition, this example bases the analysis not on the actual number of hours worked by individuals in that role on the particular project, but on a typical work week for the profession or the
actual average number. Additionally, the example appears to further narrow the definition by basing the analysis on the average number of hours worked per week, not the average hours worked over the term of the project.

Notwithstanding NAHRO’s objections to the proposed definition, we would certainly urge the Department to apply any standard in the aggregate, not on a weekly basis. It would be nonsensical to exclude workers from counting under this definition of “new hire” if they elected to take a vacation and therefore worked fewer hours in a single week. Additionally, the actual definition, as proposed, does not specify that the universe of professionals against which the new hire is measured is the universe of people in the same profession actually employed on the same project. It would also be unreasonable to compare workers on a particular job with “typical” workers who share their profession rather than other workers on the same project.

Second, the definition fails to speak to the realities on the ground. The average number of hours worked by individuals in a given job category will only be known at the conclusion of the project; as a result, a grantee will only know if they have reached their numerical goals for new hires after the project is completed, at which point they will not have the opportunity to take steps to bring themselves into compliance. Grantees must be able to determine whether or not an individual will be counted as a new hire at the time of employment, not after the fact. The proposed definition also fails to account for the realities of contractors, who often have several projects in progress at any given time. To staff these projects, contractors may shift individuals from one project to another throughout their employment. While this employment satisfies the actual purpose of Section 3, it would likely fail to satisfy the overly narrow definition of a “new hire.” In addition, the rule also penalizes contractors for the choices of individuals, who may voluntarily leave the job prior to working half of the average number of hours for their trade.

Finally, the proposed definition would impose a substantial administrative burden by requiring HUD grantees and their contractors to track the number of hours worked by each job category. This would be a substantial new burden, a cost which contractors would likely pass on by submitting higher bids, and would only serve to further reduce the interest of contractors in competing for contracts covered by Section 3 requirements.

While NAHRO understands the desire to “close a loophole,” the proposed definition goes far beyond that intention. That the Department failed to recognize the obvious shortcomings of this proposed definition is troubling in and of itself. A definition which diverges so dramatically from the considerations of those charged with implementation suggests that those responsible for drafting this rule are simply out of touch with the programmatic implications.

New Definition of “Section 3 Business”: HUD’s proposed definition would unnecessarily narrow the universe of businesses that could receive a Section 3 designation by removing eligibility for businesses that commit to awarding 25 percent of sub-contracts to Section 3 businesses. HUD grantees already face substantial burdens in reaching their contracting goals because Section 3 businesses are not available or not qualified, or do not have meet required licensure or insurance standards. The stated justification for narrowing of the definition is non-compliance by businesses that receive Section 3 designations; NAHRO believes that this is, at best, an inelegant solution.
Rather than excluding an entire category from eligibility, an approach which “throws the baby out with the bathwater,” HUD should focus on sanctions for businesses that certify they will comply but fail to follow through on these commitments. Legitimate businesses providing opportunities to low-income people should not be excluded from a policy built only around the potential for bad actors.

It is already very difficult for HUD grantees to identify qualified Section 3 businesses. HUD fails to recognize the operational limitations of its existing definition. For example, businesses owned by low-income people are, by definition, not generating significant profits, the standard by which a business’s performance is generally measured. Were they to be more successful, their owners would not be considered Section 3 residents, and therefore they would not meet that aspect of the definition of a Section 3 business. HUD grantees are being subjected to increasing scrutiny, including with respect to their contracting. To effectively require HUD grantees to contract with unsuccessful businesses runs counter to the Department’s fundamental interest in ensuring the effective stewardship of its resources. The limited ability of HUD grantees to use this prong of the definition, coupled with the elimination of the entire third category of eligibility, would leave HUD grantees with a significantly narrowed universe of potential Section 3 businesses with whom to contract.

The proposed definition of Section 3 businesses is a clear illustration of the Department’s single-minded desire to increase economic opportunities for low-income people without consideration of the potential consequences of such requirement. This definition would decrease the rate at which HUD grantees meet their numerical goals. Alternatively, HUD grantees may take on higher contract costs or face increased pressure to use questionable contractors without established track records, increasing the risk of misuse or mismanagement of federal funds.

**Maintain Numerical Goals**: NAHRO strongly objects to the existing minimum goals, which are simply unworkable for many HUD grantees. These goals require grantees to undertake substantial burden, serious risk, and questionable prioritization as discussed elsewhere in this letter. These numerical goals are not based in statute, and HUD should seriously consider revising them to balance the interests of providing economic opportunities to low-income people and the potential unintended consequences created by the numerical goals. In fact, the statute does not require HUD to adopt any minimum numerical goal, and NAHRO believes that these one-size-fits-all types of requirements do more harm than good. NAHRO strongly urges the Department to eliminate the minimum numerical goals, which reach well beyond the statutory requirement that these opportunities be created “to the greatest extent feasible.”

The preamble to the proposed rule suggests that HUD elected to maintain the existing hiring goals because many grantees report achieving these goals. However, HUD has been unable to accept a report for the past two years and it is widely acknowledged that data submitted in prior years were not of high quality. Even if the data were of high quality and could be taken as conclusive evidence, it would only serve to further the argument that numerical goals are not needed because agencies are already creating substantial economic opportunities.

**Removal of Minimum Numerical Goals for Non-Construction**: NAHRO is deeply concerned about the proposed elimination of the minimum numerical goals for non-construction. The Department justifies this proposal by noting that there is no specific statutory basis for a separate goal for non-
construction, though it fails to apply the same logic to many of the other provisions within the proposed rule that equally lack such a statutory basis, including the minimum numerical goals themselves. By setting a different goal for non-construction contracting, the existing regulations recognize the scarcity of qualified Section 3 businesses for the categories of work (e.g., architecture and engineering services, legal services, etc.) that fall into this category. If HUD is concerned about that grantees are misinterpreting what constitutes “non-construction,” a much more appropriate solution would be to offer additional guidance. The justifications offered are not based on operational concerns but rather are thinly-veiled attempts to expand the reach of Section 3 requirements, without regard to how burdensome or impractical they may be. HUD’s claim that applying a 10 percent requirement to all contracts is “easier to administer” considers only the interests of the Department while completely ignoring the interests of its grantees.

*Introduction of New Term “Section 3 Local Area”:* NAHRO is deeply concerned that this proposed definition would create yet another unnecessary impediment to HUD grantees’ ability to comply with Section 3. Particularly in small and rural communities, but also in communities near geopolitical boundaries, the proposed definition would substantially limit the universe of individuals and businesses who could be counted for purposes of meeting numeric goals. It also fails to align with the realities of HUD grantees, which often serve large geographic areas spanning many counties or even an entire state. The goal of Section 3 is to expand opportunities for low-income people; NAHRO fails to understand the nexus between this limitation, which has no statutory basis, and the fundamental purpose of the statute. The Department shows an inexplicable bias by referring to the lack of a geographical limitation as a “loophole,” a statement which presupposes that such a limitation is necessary or desirable. Narrowing the eligible universe of Section 3 residents and businesses who can be counted would decrease the chances that HUD grantees will be able to find sufficient applicants to meet their hiring and contracting needs. At the same time, Section 3 residents or businesses who may be qualified for available openings will be needlessly excluded from these opportunities.

*Section 3 Resident and Business Verification Process:* NAHRO is disappointed by the Department’s half-hearted attempt to allow grantees to accept self-certification of residents and businesses. The purpose of self-certification is to shift the burden of proof from the HUD grantee to the individual or organization claiming Section 3 eligibility. By continuing to hold HUD grantees accountable for the veracity of the certifications made by other parties, HUD effectively undermines the purpose of such self-certification. The Department simply fails to recognize the extent of the administrative burden presented by Section 3 eligibility confirmation, and the ancillary nature of this burden to all other activities and responsibilities of these entities. The proposed rule includes vague language authorizing HUD grantees to use sampling to verify the accuracy of self-certifications, but provides no clarity regarding what methodologies will be deemed adequate. The proposed rule fails to provide HUD grantees with even a modicum of certainty regarding the minimum sample size, frequency, or other elements of the methodology that will be deemed acceptable.

Given the lack of consideration given to implementation obstacles in the proposed rule, NAHRO is concerned that the promised guidance on verification of self-certifications will continue to diverge from operational realities. NAHRO requests a commitment from the Department that any such guidance will be offered for public comment before being formally issued.
Amending Agreements with Labor Unions: NAHRO is concerned that the proposed rule would require HUD grantees to unilaterally amend contracts with labor unions, a requirement with which they cannot legally comply. By its very nature, a contract requires the concurrence of all parties, a fact which they proposed rule conveniently overlooks. It is disappointing that the Department hints at its recognition of this fundamental problem by specifically asking about the constraints of labor agreements in Question 10 but did not go so far as to incorporate this information into the development of its proposed rule.

Sanctions for Delinquent Section 3 Annual Reports: The proposed rule notes, without irony, that “achieving full compliance with Section 3 reporting requirements has been a challenge for several years.” The preamble does not acknowledge, however, that the Department does not have, and has not had for two years, the ability to receive the required reports. NAHRO notes with regret the double standard which HUD applies to its own operational challenges and those of its grantees. The Department appears to simply accept its own failures while admonishing its grantees, who have seen their resources decline year after year, for failing to fully comply with the myriad requirements placed upon them.

Funding Threshold for Recipients of Section 3-Covered Housing and Community Development Financial Assistance: NAHRO supports the shift from a threshold based on annual funding received to one based on annual expenditure. However, we believe that the $400,000 threshold for triggering the requirements is much too low on a per-grantee basis. NAHRO believes that a per-project threshold, particularly for community development programs, is much more meaningful than a per-recipient threshold. The number of dollars invested in a project are a much more useful measurement of the size of the project and the capacity to absorb such added burdens. NAHRO disagrees with the Department’s approach to determining the appropriate threshold. A sound policy would examine the impacts of a given threshold on program operations and outcomes, not simply based on what percentage of funds it would cover. Again, this is an example of a single-minded focus on expanding the coverage of Section 3 without regard to any other consequences of such expansion. Given the limiting framing of the proposed rule and preamble, NAHRO suggests that the most appropriate option given is a threshold set at $1 million. However, NAHRO feels strongly that by insisting that the threshold be set at the grantee rather than at the project level, the Department has prematurely ruled out more appropriate alternatives. On a technical note, the proposed rule and the associated preamble also muddle the definitions of “obligation” and “expenditure,” and additional clarity is needed to create a consistent standard.

NAHRO believes that the Department’s continued singling out of PHAs for more onerous requirements is fundamentally unfair and lacks any reasonable public policy justification. The preamble offers a specious interpretation of Congressional intent as it relates to the application of Section 3 to the Public Housing Program. Time and again, the Congress has recognized the disparate impact of program requirements on small entities, including small PHAs, and has offered them additional relief and flexibility to address their specific needs and circumstances. Although the statute does specify the applicability of Section 3 to the Public Housing Operating Fund, it does not go any further in suggesting that PHAs should be treated differently than other HUD grantee for purposes of applying Section 3. There is no statutory prohibition on applying a threshold for application of
Section 3 to Public Housing, just as the Department does for grantees of other programs, and NAHRO believes that such an interpretation would be far more consistent with Congressional intent than the one offered by the proposed rule.

NAHRO is deeply concerned by the Department’s application of Section 3 requirements to all funds associated with a covered project, regardless of their origin. NAHRO believes that placing additional restrictions on non-HUD funds is a substantial overreach of governmental authority and that such provisions should be stricken from the Section 3 regulations.

**Priority Consideration:** The proposed regulations would require HUD grantees to give priority consideration to Section 3 residents and businesses that are equally qualified for the work. Such a provision is entirely unnecessary given that grantees are already required to target opportunities toward these populations. Furthermore, NAHRO is concerned that such a provision will result in substantial litigation. Given that “equally qualified” is far from an objective standard, grantees will face significant uncertainty as a result of having to prove that residents or businesses who are not selected for work were not equally qualified. Furthermore, the proposed revision permitting grantees to prioritize Section 3 applicants who are only minimally qualified runs entirely counter to the industry’s efforts to uphold the highest standards of efficiency and professionalism. NAHRO is concerned that Section 3 residents and businesses who are only minimally qualified may use this provision to challenge a grantee’s decision to hire a better qualified applicant. Grantees would then have to devote additional time and resources to addressing such arguments.

**Order of Priority Consideration for Recipients of Section 3 Covered Housing and Community Development Assistance:** These additional levels of analysis further add to the already substantial administrative burdens placed on grantees. The monitoring and record-keeping required to prove that 75 percent of previously hired Section 3 residents were retained and that 50 percent of training opportunities were directed to Section 3 residents are extremely burdensome, potentially even to the point of being entirely impossible to accurately accomplish.

**Additional Prioritization of Businesses that Retain Section 3 Workers:** Rather than layering on yet another requirement that is not related to the business’s ability to perform the work in question at the highest standard and/or lowest price is simply unworkable. Instead, the Department should add businesses that retain previously-hired Section 3 residents to the definition of eligible Section 3 businesses.

**Enforcement:** At its core, Section 3 is an unfunded mandate. NAHRO is disappointed that the Department would proposed regulations that would use the revocation of funding for failure to comply with Section 3 requirements. These funds are appropriated to support the housing and community development needs of communities—to take them away because a grantee is unable to comply with additional administrative burdens for which no funds were provided is a draconian response that is likely to penalize the very people who Section 3 is intended to benefit.

**Cost Benefit Analysis:** HUD’s analysis of the costs and benefits of the proposed rule is at best disingenuous with respect to the costs. HUD entirely ignores the massive compliance costs with which HUD grantees would be saddled, fundamentally skewing the analysis. The proposed rule
would require HUD grantees to undertake very resource-intensive activities in the areas of advertising, recruiting, coaching, training, monitoring, verification, etc., but offers not resources with which to undertake these efforts. Put simply, the Department’s characterization of the administrative burden of Section 3 as only that burden associated with the actual reporting is inaccurate at best and willfully deceitful at worst.

HUD characterizes the work of fulfilling Section 3 requirements as simply redirecting existing opportunities to Section 3 residents and businesses. In order to meet their goals, HUD grantees must actively seek Section 3 residents, not simply wait for such residents and businesses to approach them. HUD’s characterization fails to recognize the marketing, recruiting, evaluation, and training activities that are inherent to the success of channeling these opportunities.

The Department also fails to acknowledge the potential of the more demanding regulations to increase project costs. If Section 3 requirements are made more stringent, it is likely that fewer contractors will bid on Section 3-covered contracts, reducing the potential for competition to drive down market prices. Those contractors that do elect to compete for these contracts are also likely to pass along the increased costs of compliance in the form of more expensive bids. Because no additional funding is offered, Section 3 will actually reduce the ability of HUD funds to achieve their intended outcomes. NAHRO believes that public policy should seek to decrease project costs in a time of dwindling federal resources for housing and community development projects, not increase them.

NAHRO is highly skeptical of the Administration’s claim that creating additional, prescriptive requirements will reduce burden hours by 10,000 annually. HUD provides absolutely no explanation of this logic-defying assertion.

NAHRO appreciates the opportunity to comment on this rulemaking. As always, we remain committed to working in partnership with the Department to ensure that regulations are crafted in such a manner as to create an operating context which allows NAHRO members to efficiently and effectively serve their communities. If we can provide any additional information or clarification regarding our suggestions, please do not hesitate to contact us.

Sincerely,

Tamar Greenspan
Director, Policy and Program Development
Appendix A: Employment Opportunities and Work Readiness (EMPOWR) Program

A BILL

To provide for the development of a program to offer employment opportunities generated by federally funded programs to qualified low-income persons and to provide educational and training opportunities and other support to such persons necessary for achieving workplace success.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SEC. 1 SHORT TITLE. – This Act may be cited as the “Employment Opportunities and Work Readiness Act of 2010”

SEC. 2 FINDINGS AND PURPOSES:

(a) FINDINGS. – The Congress finds that –

(1) Chronic unemployment of low-income persons contributes to a cycle of intergenerational poverty and serious attendant social ills;

(2) Meaningful employment leading to self-sufficiency can break the cycle of poverty;

(3) The best interests of low income persons and the nation as a whole are served by ensuring that low income persons are provided meaningful access to gainful employment and to educational and training programs that will fully qualify them to perform satisfactorily in the workplace; and

(4) Federally funded programs can provide significant direct and indirect employment opportunities for qualified low income persons.

(b) PURPOSES. – The purposes of this Act are to:

(1) To make available to qualified persons of low-income employment opportunities generated by federal programs;

(2) To provide for the coordination of federal and state employment and training programs and other support necessary to ensure that persons receiving such employment opportunities are suitably trained, qualified and prepared to perform at a satisfactory level in employment offered to them;
(3) To provide incentives for governmental units administering federally funded programs and their grantees and contractors to offer employment opportunities to low income persons; and

(4) To foster permanent self-sufficiency of low income persons receiving employment opportunities generated by federal programs and to encourage low income persons who receive federal assistance to become qualified for, accept, and maintain permanent gainful employment.

SEC. 3 DEVELOPMENT OF EMPLOYMENT OPPORTUNITIES AND WORK READINESS PROGRAM.

(a) IN GENERAL. - The Secretary of Labor shall convene a working group to develop a program for offering to low-income persons employment opportunities generated by federally funded programs and providing the education and training and other support reasonably necessary to prepare persons afforded such opportunities to achieve workplace success. The program shall be known as the Employment Opportunities and Work Readiness (EMPOWR) program.

(b) FEDERAL EMPLOYMENT OPPORTUNITIES COUNCIL. – The working group convened under subsection (a) shall be known as the Federal Employment Opportunities Council (“Council”) and shall be composed of representatives from the Departments of Labor, Education, Housing and Urban Development, Health and Human Services, Agriculture, Commerce, Transportation, Interior, Energy, Veterans Affairs, and Homeland Security. The Secretary of Labor may authorize participation by additional Departments, agencies and other components of the federal government, as he or she shall determine.

(1) COMPOSITION. - Each representative to the Council shall be a Schedule C Employee as defined in United States Policy and Supporting Positions, published by the United States Senate and House of Representatives, or an employee at Level V or higher of the Executive Schedule (5 U.S.C. §§5311-5318), and shall be appointed by the Secretary of the Department or other government component in which the representative serves. The representative shall be supported by such staff as the appointing Secretary determines appropriate.

(2) STAFF. - The Secretary of labor shall engage the services of such support staff, which may include a project director, and arrange for such facilities, as shall be necessary to carry out the work of the Council in a thorough and timely manner.

(3) MEETINGS/TERM. - The Council shall meet at such times as the convener determines and shall be dissolved on a date selected by the convener not later than one year after the delivery of the final report to Congress required under section 4 of this act.

(4) RESPONSIBILITIES. - The responsibilities of the Council shall include the following:

(A) Developing a system for identifying employment opportunities created by federal programs throughout the federal government that may appropriately be made available to low-income persons;
(B) Identifying public and private resources for education and training that are available to prepare low income persons for permanent workplace success, including English language proficiency, general educational development, and job skills development.

(C) Identifying supportive services available for addressing substance abuse and mental and physical health issues that may impede the potential of participating low income persons for workplace success.

(D) Designing the EMPOWR program under which resources identified by the Council may be coordinated and effectively utilized to prepare participating low-income persons for workplace success and to match employment opportunities created by federal programs with such persons;

(E) Estimating the incremental cost of administering the EMPOWR program.

(F) Developing recommendations for reform of federal benefit programs that would, among other things, term-limit federal assistance to unemployed non-elderly, non-disabled persons who fail or refuse to participate in the work-readiness activities and seek employment under EMPOWR program.

(c) PROGRAM CONTENT. – The EMPOWR program developed by the Council pursuant to this Act shall have the following goals, elements and limitations:

(1) GOALS. -

(A) To ensure that to, the extent feasible, federally funded programs afford employment opportunities for qualified and responsible low-income persons;

(B) To utilize effectively existing resources for education and job skills training, to improve the work readiness of low-income persons, particularly those who are receiving public assistance;

(C) To provide incentives for the permanent employment of low-income persons;

(D) To encourage the self-sufficiency of low income persons who are afforded employment opportunities under this Act, particularly persons who are receiving public assistance; and

(E) To enable mobility for low income households whose relocation is necessary for accessing specific employment opportunities.

(2) PROGRAM ELEMENTS, --

(A) At a minimum, the EMPOWR program shall contain elements that address each of the following:

(i) Work readiness preparation for veterans, youth, homeless persons and families, persons receiving assistance under federal benefits programs, recently incarcerated returning offenders, and other low income persons;

(ii) A permanent system for identifying and disseminating information concerning employment opportunities created by federal funding that may feasibly and appropriately be made available to low-income persons;
(iii) A system of incentives, including stipends, to encourage employer participation in the EMPOWR program and to ensure that employer participation does not entail financial loss or decline in operating efficiency;

(iv) A system for matching employment opportunities created by federal programs with suitably qualified low-income participants in the EMPOWR program;

(v) Counseling of each individual participant concerning educational and training opportunities, health-related matters (including matters involving substance abuse and mental health as appropriate) that bear on work-readiness, and employment opportunities available under the EMPOWR program;

(vi) A requirement that EMPOWR program participants take reasonable, effective steps to develop English language proficiency;

(vii) A system of program preferences that takes into account the diligence of program participants in availing themselves of the opportunities for education, training and employment offered to them under the EMPOWR program;

(viii) A system for following up, monitoring and evaluating workplace performance of program participants and their progress toward self-sufficiency;

(ix) A program component offering relocation and term-limited housing assistance where it is necessary to match well-qualified program participants with permanent employment opportunities;

(x) Establishment of a permanent body composed of representatives federal departments, agencies, and other federal governmental components identified as administering programs that are significant potential sources of employment opportunity for low income persons; and

(xi) Such additional program elements as the Council shall deem appropriate

(B) OTHER PROGRAM REQUIREMENTS AND LIMITATIONS. – The EMPOWR program shall be subject to the following additional requirements and limitations:

(i) The Secretary of Labor shall have the principal responsibility for administering the EMPOWR program, utilizing one-stop career centers operated pursuant to the Workforce Investment Act of 1998 and such other resources as are identified by the Secretary.

(ii) To the extent of amounts appropriated for such purposes, the Secretary of Housing and Urban Development shall, as requested by the Secretary of Labor, be responsible for providing relocation and housing assistance to designated program participants for a period not to exceed five years where relocation is necessary to accept a permanent employment opportunity.
(iii) Low-income persons participating in the EMPOWR program shall be required, as a condition to receiving access to employment opportunities, to have satisfactorily completed a work-readiness curriculum approved by the Secretary. The curriculum shall include, among other things, as necessary in the case of each participant, elements to assure minimum necessary English language proficiency, basic reading, writing and arithmetical skills, and knowledge of common workplace requirements and etiquette.

(iv) In addition to the work-readiness curriculum, program participants shall be afforded, where feasible, the opportunity for specific vocational skills training designed to qualify the participant for identified employment opportunities.

(v) Diligence of program participants in completing work-readiness curriculum and other available vocational skills training shall be taken into account in providing employment opportunities.

(vi) Employment opportunities shall be graduated so that participants who best demonstrate workplace success shall be afforded permanent rather than temporary employment at relatively higher wages and benefits.

(vii) Each component of the federal government that administers federal assistance for low income persons shall conduct an outreach program that informs beneficiaries of such assistance concerning the EMPOWR program.

(viii) Low-income persons who agree to participate in activities leading to self-sufficiency shall be accorded preferences in employment opportunities for which they are qualified.

(ix) Federal grantees and contractors shall not be required to employ an unqualified person.

(x) EMPOWR program participants afforded employment opportunities shall be subject to the same workplace conduct and performance standards as other employees who are not program participants.

(xi) No federal grantee, contractor or other employer shall be subject to a quota or other mandatory hiring requirement with respect to participation in the EMPOWR program.

(xii) The Council may establish such additional requirements not inconsistent with the provisions of this Act as it may determine appropriate.

SEC. 4 REPORT OF COUNCIL. – The Council shall prepare and deliver to the appropriate committees of Congress a detailed report of the work of the Council, which shall include proposed legislation to authorize the EMPOWR program designed by the Council under this Act and the appropriation of amounts estimated to be necessary for administering it. The proposed legislation shall include such conforming and superseding provisions as are necessary to establish the EMPOWR program as the single consolidated program for providing employment opportunities generated by federal programs to low income persons. The report shall be delivered no later than 1 year after the date of enactment.
SEC. 5. DEFINITION. – Low income person shall mean a person whose income, taking into account other members of such person’s household, is at or below 150 percent of the most recent Federal Poverty Guidelines published in the Federal Register by the U.S. Department of health and Human Services.

SEC. 6 NO ENTITLEMENT. – Nothing contained in this Act or the program to be developed pursuant to this act shall create a right or an entitlement to education, training or employment. This act does not create any right of action to compel an offer of employment or to enforce any aspect of the program created under this Act.

SEC. 7 AUTHORIZATION OF APPROPRIATIONS. -- There is authorized to be appropriated for use by the Secretary of Labor in establishing the Council and completing its work under this Act the amount of $______________________ for each of federal fiscal years 2011, 2012, 2113, and thereafter such sums as may be necessary.

SEC. 8 EFFECTIVE DATE. – This Act shall be effective on the date of enactment, without implementing regulations.