June 3, 2019

SUBMITTED ELECTRONICALLY

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

Re: Section 3 Benchmarks for Creating Economic Opportunities for Low- and Very Low-Income Persons and Eligible Businesses [FR-6085-N-02]

To Whom It May Concern:

On behalf of the National Association of Housing and Redevelopment Officials (NAHRO), I would like to offer the following comments to the United States Department of Housing and Urban Development (HUD or the Department) in response to the proposed rule titled “Section 3 Benchmarks for Creating Economic Opportunities for Low- and Very Low-Income Persons and Eligible Businesses” published in the Federal Register on April 4, 2019.

Formed in 1933, NAHRO represents over 20,000 housing and community development individuals and agencies. Collectively, our members manage over 970,000 public housing units, 1.7 million Housing Choice Vouchers (HCVs), and receive over $1.5 billion in Community Development Block Grant (CDBG) and HOME Investment Partnerships (HOME) Program funding to use in their communities. NAHRO has the unique ability to represent public housing agencies, local redevelopment agencies, and other HUD grantees of all sizes and geography.

The Department is requesting feedback on a new proposed rule that would make changes to how PHAs receiving public housing funding and other entities that receive housing and

Carl S. Richie, Jr., NCC, NAHRO Fellow, President; Sunny Shaw, PHM, CME, Senior Vice President; Saeed Hajarizadeh, Vice President-International Research and Global Exchange; John T. Mahon, PHM, Vice President-Housing; Marsha J. Parham-Green, CME, Vice President-Professional Development; Andy Rodriguez, Vice President-Member Services; Henrietta Snipes, NCC, Vice President-Commissioners; Mark Thiele, CS-PHM, CME, CMVO, NCC, Vice President-Community Revitalization and Development; Adrianne Todman, Chief Executive Officer

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Community development funding through HUD would implement, report, and comply with Section 3 requirements. NAHRO’s comments are in two sections. The first provides a background on the proposed rule for context, and the second features NAHRO’s comments.

**Background**

HUD is proposing to shift agency reporting on Section 3 from new hires to labor hours. HUD will select either labor hours or new hires for PHAs to use in tracking and reporting on public housing Section 3 projects after receiving feedback on the proposed rule. The proposed rule would also require Section 3 projects to report on “Section 3 Workers” and “Targeted Section 3 Workers.”

To meet outcome benchmarks for Section 3 compliance under the labor hours proposal, PHAs must demonstrate that 25 percent or more of the total number of labor hours worked by all workers employed with public housing financial assistance in the PHA’s fiscal year are Section 3 workers and that 5 percent or more of the total number of labor hours worked are by Targeted Section 3 workers. If the employer of the Section 3 Worker or Targeted Section 3 worker employs a time and attendance system to report labor hours, then HUD will accept that. If the employer does not employ a time and attendance system, then HUD will accept the labor hours from the employer and agency in good faith.

If HUD opts to continue using the new hire metric as opposed to labor hours, then the PHA must demonstrate that 30 percent or more of new hires employed with public housing financial assistance must be Section 3 workers, and 5 percent or more of new hires must be Targeted Section 3 workers. Again, HUD will determine which metric to use after receiving feedback from the proposed rule.

HUD will provide a safe harbor to any PHA that meets or exceeds the Section 3 benchmarks. This would allow those agencies that met Section 3 benchmarks to be free from additional Section 3 reporting.

**Specific Recommendations**

NAHRO appreciates HUD’s efforts to better implement Section 3 requirements, as Section 3 is an important mechanism to strengthen communities, reduce poverty, and increase resident’s economic self-sufficiency. NAHRO’s suggestions to improve the proposed rule are as follows. Appendix A is NAHRO’s comment letter on the “Enhancing and Streamlining the Implementation of ‘Section 3’ Requirements for Creating Economic Opportunities for Low- and Very-Income Persons and Eligible Businesses” proposed rule, and provides additional background and context.

*Labor Hours vs. New Hires*

HUD specifically requested comments on whether HUD should use labor hours or new hires as benchmarks to track Section 3 compliance. NAHRO recommends that HUD continue to use new hires as the benchmark to see if agencies and entities using housing and community
development assistance meet Section 3 requirements. NAHRO believes that new hires represent a better indication of whether or not PHAs are in compliance with the intent of the Section 3 statute, that reporting new hires is less burdensome than reporting labor hours, and that tracking labor hours would unfairly decrease the ability of many PHAs to meet their Section 3 requirements.

Please see Appendix A for more detail on NAHRO’s concerns about using labor hours.

Section 3 and Targeted Section 3 Workers Benchmark

NAHRO recommends that HUD limit the benchmark so that PHAs and entities using housing and community development assistance are allowed to choose to use either targeted Section 3 workers or Section 3 workers as their benchmark. PHAs using public housing funding may find it easier to find targeted Section 3 workers to hire, as many of those individuals would be residents or a Section 3 business closely aligned with the PHA. A Section 3 project that is not completed by a PHA may struggle to find targeted Section 3 workers. As such, NAHRO recommends allowing a PHA or Section 3 project to select which benchmark they choose to meet, either Section 3 workers, or targeted Section 3 workers.

Accounting for Regional Variances between PHAs

NAHRO recommends that HUD establish benchmarks for meeting Section 3 requirements that consider geography, the type of public housing financial assistance, or other variables including local economic conditions, as noted in the proposed rule. PHAs and other entities that use housing and community development funds across the country face very different economic and geographic circumstances that impact whether or not they can meet Section 3 benchmarks. NAHRO further recommends that HUD maintain a ceiling for these benchmarks at either 30 percent and five percent new hires of Section 3 and targeted Section 3 workers respectively, or 25 percent and 5 percent labor hours for Section 3 and targeted Section 3 workers respectively.

In setting benchmarks each year, HUD should aim to have at least 80 percent of all PHAs and entities that use housing and community development assistance be able to successfully meet the Section 3 benchmarks. The data that HUD relies on to determine regional benchmarks should allow the Department to forecast how many PHAs and Section 3 projects could meet the benchmarks assuming agencies are using their “best efforts” to hire Section 3 workers and Section 3 projects are hiring and contracting with Section 3 workers and businesses to the “greatest extent feasible.”

Conclusion

As always, NAHRO appreciates the opportunity to comment on such an important matter. NAHRO thanks HUD for their efforts in trying to streamline and improve Section 3 implementation, an important statutory requirement that helps strengthen communities and increase self-sufficiency. NAHRO strongly recommends that HUD continue to keep the perspective of those reporting on and complying with Section 3 requirements while determining appropriate benchmarks. Throughout HUD’s 2018 Section 3 listening sessions,
PHAs and other entities that use housing and community development assistance strongly recommended that HUD continue using new hires to measure Section 3 compliance benchmarks. NAHRO echoes these groups in recommending the same.

Thank you,

[Signature]

Eric Oberdorfer
Policy Advisor
National Association of Housing and Urban Development Officials
APPENDIX A

June 3, 2019

SUBMITTED ELECTRONICALLY

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Office of the General Counsel
Department of Housing and Urban Development
451 7th St SW
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Washington, DC 20410-0500

Re: Enhancing and Streamlining the Implementation of “Section 3” Requirements for Creating Economic Opportunities for Low- and Very-Income Persons and Eligible Businesses [FR-6085-P-01]

To Whom It May Concern:

On behalf of the National Association of Housing and Redevelopment Officials (NAHRO), I would like to offer the following comments to the United States Department of Housing and Urban Development (HUD or the Department) in response to the proposed rule titled “Enhancing and Streamlining the Implementation of ‘Section 3’ Requirements for Creating Economic Opportunities for Low- and Very-Income Persons and Eligible Businesses” published in the Federal Register on April 4, 2019.

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The Department is requesting feedback on a new proposed rule that would make changes to how PHAs receiving public housing funding and other entities that receive housing and community development funding through HUD would implement, report, and comply with Section 3 requirements. NAHRO’s comments are in two sections. The first provides a background on the proposed rule for context, and the second features NAHRO’s comments.

1. **Background**

In April 2019 HUD released a new Section 3 proposed rule that included separate requirements for Public Housing Section 3 projects and Section 3 projects that use other HUD program assistance for housing rehabilitation, housing construction, and other public construction projects. All PHAs that receive funding for public housing would be required to report on
Section 3, however, agencies with fewer than 250 units would only be required to report on qualitative efforts to meet Section 3 requirements and would not be required to report on whether they have met specific Section 3 outcome benchmarks or not. Generally, any housing rehabilitation, housing construction, or other public construction projects that uses other HUD program assistance that exceeds a $200,000 threshold or any project that receives funding from HUD’s Lead Hazard Control and Healthy Homes programs, would be required to report Section 3 activities to HUD. Section 8 is excluded from the rule.

HUD is proposing to shift agency reporting on Section 3 from new hires to labor hours. HUD will select either labor hours or new hires for PHAs to use in tracking and reporting on public housing Section 3 projects after receiving feedback on the proposed rule.

The proposed rule would also require Section 3 projects to report on “Section 3 Workers” and “Targeted Section 3 Workers.” A Section 3 Worker would generally be low- or very low-income individuals in the service area or neighborhood of the project. A Targeted Section 3 Worker is a Section 3 worker that is a resident of public housing or Section 8-assisted housing; a resident of another housing development that receives federal subsidies and is operated by the PHA; a current YouthBuild participant; or an employee of a Section 3 business.

To meet outcome benchmarks for Section 3 compliance under the labor hours proposal, PHAs must demonstrate that 25 percent or more of the total number of labor hours worked by all workers employed with public housing financial assistance in the PHA’s fiscal year are Section 3 workers and that five percent or more of the total number of labor hours worked are by Targeted Section 3 workers. If the employer of the Section 3 Worker or Targeted Section 3 worker employs a time and attendance system to report labor hours, then HUD will accept that. If the employer does not employ a time and attendance system, then HUD will accept the labor hours from the employer and agency in good faith.

If HUD opts to continue using the new hire metric as opposed to labor hours, then the PHA must demonstrate that 30 percent or more of new hires employed with public housing financial assistance must be Section 3 workers, and five percent or more of new hires must be Targeted Section 3 workers. Again, HUD will determine which metric to use after receiving feedback from the proposed rule.

HUD will provide a safe harbor to any PHA that meets or exceeds the Section 3 benchmarks. This would allow those agencies that met Section 3 benchmarks to be free from additional Section 3 reporting. However, if a PHA does not meet the Section 3 outcome benchmarks, the PHA must also report on its qualitative efforts to meet Section 3 benchmarks. HUD plans to create a form for tracking and reporting qualitative efforts. These qualitative efforts can include: outreach efforts to generate job applicants who are Targeted Section 3 workers; direct on-the-job training (including apprenticeships); indirect training such as arranging for, contracting for, or paying tuition for off-site training or technical assistance to help Section 3 workers; and outreach efforts to identify and secure bids from Section 3 businesses. Small agencies, those with 250 public housing units or less, are only required to report their qualitative efforts.

2. Specific Recommendations
NAHRO appreciates HUD’s efforts to better implement Section 3 requirements, as Section 3 is an important mechanism to strengthen communities, lessen poverty, and increase resident’s economic self-sufficiency. NAHRO’s suggestions to improve the proposed rule are as follows.

Defining “Best Efforts” and “Greatest Extent Feasible”

The proposed rule requires that contractors and subcontractors hired using public housing funds make their “best efforts” to provide employment to Section 3 and targeted Section 3 workers and award contracts and subcontracts to business concerns that provide opportunities to targeted Section 3 and Section 3 workers. The rule also provides that recipients of funds in other HUD programs that provide housing and community development assistance must ensure that employment and training opportunities arising in connection with Section 3 projects are provided to Section 3 workers to the “greatest extent feasible.” HUD has specifically requested comments on whether HUD should define “best efforts” and to the “greatest extent feasible” or leave them undefined. The proposed rule notes HUD’s intention is to have these terms read as very narrow qualifiers and is looking for ways to convey that intention.

As HUD is intending to have these terms read as narrow qualifiers, NAHRO recommends that the rule define these terms through examples. The rule should inform PHAs and other entities required to meet Section 3 compliance what the Department would accept as “best efforts” or to the “greatest extent feasible” so that PHAs have a better understanding of what is expected of them. HUD is planning to create a form that would be used for tracking and reporting qualitative efforts to meet Section 3 requirements. NAHRO recommends that the agency look to language on that form to help them define these terms. This definition should act as a baseline to the actions PHAs could attempt to meet Section 3 requirements, however, PHAs should be able to specify additional actions they took, if any, that would count toward “best efforts” and to the “greatest extent possible”.

Labor Hours vs. New Hires

HUD specifically requested comments on whether HUD should use labor hours or new hires as benchmarks to track Section 3 compliance. NAHRO recommends that HUD continue to use new hires as the benchmark to see if agencies and entities using housing and community development assistance meet Section 3 requirements.

In the proposed rule, HUD notes that tracking labor hours would “better allow HUD to determine if long-term employment opportunities are being generated,” and that the use of “labor hours emphasizes continued employment.” Although this is not inaccurate, nothing in Section 3 of the U.S. Housing and Urban Development Act of 1968 states that long-term employment through public housing funding or other housing and community development funding is the goal of Section 3. Rather, the statute states that entities that receive public housing dollars and entities that receive other housing and community development assistance should provide “opportunities for training and employment” and that “contracts to be performed pursuant to [public housing funded programs and other Section 3 projects] shall, where appropriate, be awarded to business concerns . . . located in or owned in substantial part
by persons residing in the area of such housing.” The statutory intent of Section 3 is to provide employment and training opportunities to residents of low-income communities where federal housing and community development dollars are being spent; how these employment opportunities manifest themselves should be irrelevant. As such, NAHRO believes tracking Section 3 requirements by new hires as opposed to labor hours better indicates if PHAs meet the intent of the statute or not.

Although HUD believes measuring labor hours would simplify reporting, NAHRO disagrees and believes reporting new hires is less burdensome for PHAs. PHAs would report new hires just once, whereas labor hours must be tracked in perpetuity. Although the proposed rule would allow PHAs to submit labor hours via the time and attendance system used by the PHA, contractor, or subcontractor, there is concern that a lack of standardized reporting may lead to future complications. NAHRO is concerned that a non-standardized system of reporting could obfuscate whether PHAs have met their Section 3 benchmarks or not to HUD and other third-party groups. A standardized reporting system for labor hours would limit this, however, this would be administratively burdensome for the PHAs, contractors and subcontractors, and HUD, and would be contrary to the intent of the regulation to streamline Section 3 reporting. A standardized system to report new hires that is integrated into other HUD systems would be much easier to attain and manage.

NAHRO believes that new hires is a better indicator of meeting Section requirements as Section 3 employment is often temporary, although it can lead to more permanent work in the future. Section 3 workers hired through construction and other construction trades are becoming increasingly more temporary in nature and often do not result in permanent, full-time employment. There are many reasons as to why Section 3 work, including construction work, is often temporary, including Davis-Bacon labor wage costs for small family owned contractors and subcontractors and the decline in trade unions across the country, but Section 3 workers typically fill either short-term positions or positions with high turnover. Using new hires as a compliance benchmark fits better with this economic reality.

Tracking labor hours would unfairly decrease many PHAs’ ability to meet Section 3 requirements and benchmarks. Larger PHAs have noted the challenges that would arise from using labor hours to determine Section 3 compliance due to staffing structures. Larger PHAs require considerable highly skilled staff that perform duties necessary to carry out complex day-to-day management and operations of the PHA. These are not entry-level positions and are not easily attainable for most Section 3 workers. Section 3 workers are more likely to assist in temporary work for the PHA, which then helps to build their resume, and gain the experience and skills necessary to attain higher-paying jobs. The proposed rule does note that professional services, defined as non-construction services, including, but not limited to, contracts for legal services, financial consulting, accounting services, environmental assessment, architectural services, and civil engineering services, would be excluded from benchmarking requirements (i.e. not counted toward the overall labor hours of the PHA). However, the reporting and monitoring required to remove these labor hours from overall labor hours would add additional administrative burden to PHAs and could prove challenging in the overall reporting process. As large PHAs have significant non-Section 3 staff and labor hours, most would not be able to
reach benchmarks for Section 3 requirements based on Section 3 labor hours worked compared to non-Section 3 labor hours worked.

Smaller PHAs have also noted the challenges that would arise from using labor hours for the opposite reasons. Most small PHAs have very small staffs and are not able to hire additional support staff outside of short-term, temporary work. It would be near impossible for a smaller PHA to provide enough work for Section 3 workers to provide 25 percent of all labor hours. However, smaller PHAs would be able to hire Section 3 workers for temporary projects, and as smaller PHAs do not perform much hiring throughout the year, these temporary hires would increase smaller PHAs’ ability to meet Section 3 benchmarks.

Lastly, NAHRO recommends HUD uses new hires as the Section 3 benchmark as PHAs have articulated to HUD that they believe it a better measurement than labor hours. NAHRO attended HUD Section 3 listening sessions for small PHAs on March 28, 2018 and large PHAs on April 24, 2018. PHAs noted their preference to use new hires for benchmarks over labor hours in both sessions. NAHRO is very appreciative of HUD’s increased outreach to hear directly from PHAs and other members of the industry regarding this matter, and as PHAs will be responsible for reporting and meeting the requirements of Section 3, NAHRO strongly recommends that HUD use the feedback received from PHAs at those listening sessions and continue using new hires as the benchmark for meeting Section 3 requirements.

**Section 3 Project Threshold**

The proposed rule sets the threshold for applicability of Section 3 requirements when the amount of housing or community development assistance to the project exceeds $200,000 or if the project received funding from HUD’s Office of Lead Hazard Control and Healthy Homes (OLHCHH). The proposed rule notes that Section 8 programs are not included.

HUD is requesting comment on whether $200,000 is a fair threshold, and whether that cost threshold should exclude funding from HUD’s OLHCHH. For simplicity, NAHRO recommends using the threshold for the simplified acquisition threshold under Office of Management and Budget (OMB) guidelines (M-18-18) of $250,000 to determine whether a project that uses housing and community development assistance is required to meet Section 3 benchmarks. Aligning these cost thresholds would increase consistency for PHAs and other organizations that use housing and community development assistance.

HUD should use this same $250,000 threshold for all projects, including projects that receive assistance from the OLHCHH. As many projects completed with OLHCHH funding are smaller cost projects, it would add too significant a burden on contractors and subcontractors that provide lead abatement and remediation to low-income households. This would slow the process in which homes with lead concerns are remediated, negatively impacting residents. Requiring every OLHCHH funded project to meet Section 3 requirements may leave cities, counties, and other grantees less inclined to apply for these funds due to increased reporting requirements. Moreover, the inconsistency of maintaining different thresholds for different programs is confusing and adds additional administrative burden.
HUD is also seeking comments on whether the cost threshold should be established by project, total funding received by the recipient, or total funds expended by a recipient. NAHRO recommends that the threshold be established by the total funding received by the project. NAHRO is concerned that using the funding received or expended by the recipient lacks clarity and would ultimately increase administrative burden. For example, consider a recipient who completes two projects within a year. The first project does not meet the cost threshold, and as such the PHA would not be required to report or monitor Section 3 requirements for that project. However, if the recipient opts to expend additional funds on a second project within the same year, the agency would then be required to retroactively comply with Section 3 requirements for the first project. This would be incredibly burdensome as agencies would have to be prepared to report on Section 3 for the first project even though the project did not hit the cost threshold. This negates HUD’s goal for this regulation to streamline Section 3 reporting requirements.

HUD is also requesting comment on whether Section 8 should be excluded from meeting Section 3 requirements. NAHRO agrees with HUD that Section 8 should be excluded from the Section 3 proposed rule. As the proposed rule notes, “Section 8 programs were never included in the Section 3 statute.” As the Section 8 program is not included in the statute, NAHRO recommends not including it in the proposed rule as only the statute should determine the scope of who is required to meet Section 3 compliance.

Small Agency Definition and Reporting

In the proposed rule, PHAs with 250 or fewer units would only be required to qualitatively report on their efforts to meet Section 3 requirements and would not be required to report on benchmarks. HUD is seeking comment on whether PHAs should be required to report on benchmarks if they put out a single procurement that exceeds the proposed $200,000 threshold. As it is extremely rare that a PHA with 250 or fewer units put out a single procurement that exceeds $200,000, NAHRO believes it would be irrelevant to include this provision in the proposed rule. For consistency and clarity, NAHRO recommends that the final rule exclude all PHAs with 250 units from reporting on benchmarks, regardless of procurement cost.

NAHRO also requests additional clarity from HUD regarding the definition of a small agency that is included within the proposed rule. As written, the proposed rule does not qualify what units are included in the 250-unit threshold. Since the proposed rule exempts Section 8 funding from having to meet Section 3 requirements, NAHRO believes HUD should define a small agency for the purposes of Section 3 reporting as an agency with 250 or fewer public housing units. As Section 8 units are not beholden to Section 3 requirements, they should not be included in the total unit count.

Section 3 Businesses

HUD is proposing a change to how Section 3 businesses are defined. The rule would define a Section 3 business as at least 51 percent owned by low- or very low-income persons, a business wherein over 75 percent of the labor hours performed for the business are performed by low-
or very low-income persons, or a business that is at least 25 percent owned by public housing or Section 8 residents. The proposed rule would also consider Section 3 businesses as Targeted Section 3 workers to report all Section 3 activities in a single metric rather than reporting on Section 3 business concern participation separately.

NAHRO appreciates HUD’s efforts to simplify reporting by using a single metric and agrees it will reduce reporting if HUD considers Section 3 businesses and Targeted Section 3 workers within a single metric. However, it is unclear how this may work if HUD opts to use new hires instead of labor hours as the Section 3 benchmark, as NAHRO recommends. If HUD decides to continue using new hires, NAHRO recommends that HUD consider each employee of a Section 3 business that is explicitly working on a project funded by public housing or other housing and community development assistance as a new Targeted Section 3 worker hire.

HUD is also seeking comment on the proposed rule’s change to the definition of a Section 3 business. NAHRO has concerns about switching from qualifying a Section 3 business as having 30 percent of full-time employment performed by Section 3 or former Section 3 workers to a business where 75 percent of labor hours performed are performed by Section 3 or former Section 3 workers. Tracking and reporting on labor hours that are performed by Section 3 workers or former Section 3 workers would be more challenging for Section 3 businesses than tracking and reporting full-time employees. There is much less variation in tracking full-time employees than labor hours, especially if the business requires temporary or part-time work by Section 3 workers or former Section 3 workers. It may also be easier for Section 3 businesses to inaccurately report total labor hours as opposed to reporting full-time employees to HUD.

There is also a greater chance that a Section 3 business will not meet the definition of a Section 3 business if labor hours is used, or that a business that typically meets the requirements of a Section 3 business does not meet the 75 percent labor hours threshold within a year unanticipatedly. It can be challenging, especially for small businesses, to predict the amount of labor hours they will require throughout the year. Usually this is dependent upon the number of contracts they bid and the number of contracts they actually receive. This means that there is always a risk that a business that considers itself to be a Section 3 business may not meet the required 75 percent threshold if a bid does not go through as planned. In this instance, the business would then no longer be considered a Section 3 business. This not only impacts the Section 3 business that loses its Section 3 status, but also the agency using the business to meet its Section 3 benchmarks.

NAHRO also has concerns that using labor hours may keep wages down at Section 3 businesses, as employers would not be required to offer full-time positions to Section 3 workers or former Section 3 workers, potentially limiting their access to higher wages and benefits.

NAHRO recommends that HUD consider businesses funded through Opportunity Fund investments be considered as Section 3 business. Established by the Tax Cuts and Jobs Act of 2017, the Opportunity Zone program encourages long-term investments in low-income urban and rural communities. The Opportunity Zone program provides tax incentives for investors to re-invest unrealized capital gains into Opportunity Funds. Opportunity Funds are private sector investment vehicles that invest substantially all their capital into Opportunity Zones, low-income
census tracts selected by state, territory, or federal district governments. Opportunity Funds can be invested in businesses located in Opportunity Zones, which in turn will help residents in low-income communities.

*Reporting and Compliance Requirements for Subcontractors*

HUD is seeking comments specifically on whether Section 3 requirements, as they apply to Section 3 projects, should apply to all subcontractors or whether at a certain level HUD should consider reducing the reporting or compliance burden for subcontractors. NAHRO does not believe subcontractors should be required to report on or comply with Section 3 requirements. Often, especially in rural areas, contractors struggle to find qualified subcontractors in general. Additional reporting and government compliance has the potential to exacerbate this challenge. Additional requirements may prevent subcontractors, often small family businesses in rural areas, from bidding on projects. This makes it even harder for PHAs to find qualified subcontractors to complete necessary rehabilitation and modernization for their public housing units, negatively impacting residents and small businesses.

If HUD opts to require Section 3 reporting and compliance for subcontractors, then NAHRO believes HUD should only apply Section 3 requirements if the subcontractor charges $250,000 or more to match the simplified acquisition threshold as stipulated by OMB procurement rules.

*Section 3 and Targeted Section 3 Workers Benchmark*

HUD also specifically requests comment on whether its initial and future benchmarks should include benchmarks for both the number of labor hours (or new hires) worked by Section 3 workers and targeted Section 3 workers or just targeted Section 3 workers. As noted above, NAHRO recommends that HUD use new hires as the benchmark for reporting on and complying with Section 3 Requirements. NAHRO also recommends that HUD limit the benchmark so that PHAs and entities using housing and community development assistance can choose to use either targeted Section 3 workers or Section 3 workers as their benchmark. PHAs using public housing funding may find it easier to find targeted Section 3 workers to hire, as many of those individuals would be residents or a Section 3 business closely aligned with the PHA. A Section 3 project that is not completed by a PHA may struggle to find targeted Section 3 workers. As such, NAHRO recommends allowing a PHA or Section 3 project to select which benchmark they choose to meet, either Section 3 workers, or targeted Section 3 workers.

*Neighborhood and Service Areas*

The Section 3 statute requires that “where feasible, priority should be given to low- and very low-income persons residing within the service area of the project or the neighborhood in which the project is located.” However, the statute does not define “neighborhood” or “service area” for purposes of how recipients determine where they should focus their prioritization. HUD is proposing to provide a definition that differs from existing regulatory definitions and local or state definitions by relying on “qualified census tracts.” HUD is requesting comment on whether this definition is acceptable or if a different definition is needed.
NAHRO is concerned that the addition of “qualified census tract” to determine what is considered a “neighborhood” or “service area” within the proposed rule definition will limit PHAs’ abilities to hire low-income and very-low income individuals within their communities who would otherwise qualify as a Section 3 worker. NAHRO recommends that HUD continue to use the definitions of “neighborhood” and “service area” that are contained within current Section 3 regulations (24 C.F.R. § 135.5). NAHRO is concerned about the administrative burden that would result from verifying low-income persons based on qualified census tracts that may change year-to-year. Communities and PHAs have a better sense of their local neighborhoods. PHAs and other entities receiving community development and housing assistance are better equipped than defined census tracts at determining individuals that would benefit most from Section 3 employment.

YouthBuild Participants

The proposed rule provides that a Targeted Section 3 worker includes current YouthBuild participants but asks whether the definition should be expanded to include previous YouthBuild workers that are under 24 years of age or those who are still eligible to participate in YouthBuild but may have graduated out of the program. NAHRO recommends that HUD expand the definition of Targeted Section 3 workers to include previous YouthBuild workers that are under 24 years of age or those who are still eligible to participate in YouthBuild but may have graduated out of the program. These individuals may still be looking for additional employment opportunities after they graduate out of the program. Including them in the definition of Targeted Section 3 worker would provide additional assistance in resume and skill building.

Additional Comments

NAHRO and its members remain committed to meeting the requirements of goals of Section 3. It is important to remember, however, that Section 3 is but one mechanism that PHAs should be able to utilize to strengthen communities and increase employment and economic self-sufficiency for their residents. PHAs have noted that they are most successful in helping their residents find employment when they are able to offer services to help their residents gain the skills necessary to access jobs. However, due to the significant funding cuts PHAs have faced over the past decade, many PHAs are unable to offer these employment services and trainings. NAHRO would like to this opportunity to strongly urge HUD to continue advocating to Congress for additional funding for programs like the Family Self-Sufficiency (FSS) Program, Resident Opportunities and Self-Sufficiency (ROSS) program, the Jobs-Plus Initiative, and the Operating Fund that have proven successful and allow PHAs to provide these necessary services.

3. Conclusion

As always, NAHRO appreciates the opportunity to comment on such an important matter. NAHRO thanks HUD for their efforts in trying to streamline and improve Section 3 implementation, an important statutory requirement that helps strengthen communities and increase self-sufficiency. NAHRO strongly recommends that HUD continue to keep the perspective of those reporting on and complying with Section 3 requirements while drafting a final rule. Throughout HUD’s 2018 Section 3 listening sessions, PHAs and other entities that use
housing and community development assistance strongly recommended that HUD continue using new hires to measure Section 3 compliance benchmarks. NAHRO echoes these groups in recommending the same.

Thank you,

Eric Oberdorfer
Policy Advisor
National Association of Housing and Redevelopment Officials