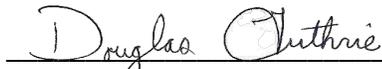


Report of the President &amp; CEO

June 24, 2021

**RESOLUTION OF THE BOARD OF COMMISSIONERS APPROVING REPLACEMENT OF THE HOUSING  
AUTHORITY'S SECTION 3 GUIDE AND COMPLIANCE PLAN WITH A SECTION 3 POLICY AND  
COMPLIANCE PLAN THAT CONFORMS WITH NEW SECTION 3 RULES**



Douglas Guthrie  
President & Chief Executive Officer



Howard Baum  
Deputy General Counsel

**Purpose:** Replacement of the Housing Authority's existing Section 3 Guide and Compliance Plan (the "Existing S3 Plan" or "Plan") is necessary to conform with new Section 3 Rules effective November 30, 2020, and which must be implemented on or before July 1, 2021.

**Regarding:** HACLA's Existing S3 Plan was adopted by the Board of Commissioners on Oct. 30, 2014, and subsequently amended on Nov. 28, 2017, under Board Resolutions 9167 and 9693, respectively. The primary purposes of the Plan are to authorize the imposition of Section 3 on contracting activities that would not otherwise be subject to Section 3, assist vendors in understanding their Section 3 obligations, and further authorize the negotiation of heightened Section 3 commitments for redevelopment projects.

**Issues:** In September 2020, HUD published the Final Section 3 Rule codified at 24 CFR Part 75 (the "Final Rule" or "New Section 3 Rule"), which replaced previous Section 3 regulations found at 24 CFR Part 135 in their entirety. The Final Rule went into effect November 30, 2020. Recipients of federal funding, including housing authorities, have until July 1, 2021 to implement the new requirements. During this transition period HACLA is required to revise processes, systems, and documents to ensure compliance. This request and the tandem request to amend HACLA's Procurement Policy (presented as a separate Board item) are necessary to effectuate compliance. Staff have begun revising contracting forms and provisions, templates, and processes to comply with the New Section 3 Rule. Contracts and grants executed before November 30, 2020 remain subject to old Section 3 rules, unless otherwise provided. Contracts executed during the transition period must comply with the New Sections 3 Rules but HUD will not require reporting on such compliance. HACLA's first full year of reporting on compliance is based upon our fiscal year and will cover the period beginning January 1, 2022 through December 31, 2022.

**Key Changes:** HUD has stated that the Final Rule is intended to focus on sustained economic opportunity outcomes for low- and very-low income individuals, reduce regulatory burdens, and improve Section 3 effectiveness. The following are the key changes:

- Imposes new labor hour benchmarks for meeting compliance, shifting away from new hires to tracking labor hours performed
- Adopts new definitions for “Section 3 Residents” and “Section 3 Businesses”
- Changes Section 3 Resident (now, “Section 3 Worker” and “Targeted Section 3 Worker”) income qualifying criteria from household to individual income limits
- Eliminates Section 3 Business Concern contracting goals which were formerly the award of 10% of all construction contracts and 3% of other professional services contracts to Section 3 Businesses
- Exempts professional services contracts (i.e., professions requiring advanced degrees such as legal, financial, consulting, accounting, environmental, architectural, and engineering), from the application of Section 3, thereby evidencing a construction-employment targeted approach
- Excludes Section 8 programs from Section 3 requirements with the exception of Rental Assistance Demonstration (“RAD”) projects
- Shifts HUD’s compliance oversight from its Fair Housing and Employment Opportunities Office to local Field Offices

***Examination of a Few Changes:***

The New Section 3 Rules are somewhat complicated and best understood by examining a few key changes, particularly those found in new definitions and labor hour benchmarks for compliance. They are essential to understanding the new rules with further explanation and staff observations below.

New Definitions

The term “Section 3 Resident” has been replaced and bifurcated into two new definitions; that of a “Section 3 Worker” and a “Targeted Section 3 Worker.” The definition of a Targeted Section 3 Worker has been further bifurcated depending upon whether the covered activity is funded with Public Housing Financial Assistance (e.g. Capital Funds and Operating Subsidies) or Housing and Community Development Assistance (includes RAD, CDBG and HOME funds) as follows.

A **Section 3 Worker** is any worker who currently fits or when hired within the past five years fit at least one of the following categories, as documented:

- The worker’s income for the previous or annualized calendar year is below the income limit established by HUD; or
- The worker is employed by a Section 3 Business Concern; or
- The worker is a YouthBuild participant

It's notable that eligibility considers qualifying income as far back as five years and that any worker employed by a Section 3 Business Concern meets eligibility regardless of income.

A **Targeted Section 3 Worker** for Public Housing Financial Assistance means a Section 3 Worker who is:

- A worker employed by a Section 3 Business Concern; or
- A worker who currently fits or when hired fit at least one of the following categories, as documented within the past five years:
  - i. A resident of public housing or Section 8-assisted housing; or
  - ii. A resident of other public housing projects or Section 8-assisted housing managed by the PHA that is providing the assistance; or
  - iii. A YouthBuild participant

Like a Section 3 Worker, a Targeted Section 3 Worker includes any worker employed by a Section 3 Business Concern, regardless of income. This definition also includes Section 8 program participants who are specifically recognized under Section 3 definitions for the first time.

A **Targeted Section 3 Worker** for Housing and Community Development Financial Assistance means a Section 3 Worker who is:

- A worker employed by a Section 3 Business Concern; or
- A worker who currently fits or when hired fit at least one of the following categories document within the past five years:
  - i. Living within the service area or the neighborhood of the project; or
  - ii. A Youthbuild participant

Unlike the old rule, the new rule does not differentiate and provide priority to the residents of the project, it instead focuses on the service area or the neighborhood of the project.

A **Section 3 Business Concern** is now defined as a business meeting at least one of the following criteria, as documented within the last six-month period:

- At least 51% owned and controlled by low or very low-income persons; or
- Over 75% of labor hours performed for the business over the prior three-month period are performed by Section 3 workers; or
- At least 51% owned and controlled by current public housing residents or residents who currently live in Section 8-assisted housing

This revised definition is noteworthy because it reflects new labor hours-based qualification, adds Section 8 participants for the first time, and perhaps most importantly, affects who meets the definition of a Section 3 Worker and Targeted Section 3 Worker as discussed above.

## New Benchmarks for Compliance

Under the former Section 3 rules, HUD had established a Section 3 Resident “new hire” goal of thirty percent (30%) of all new employment opportunities created through the expenditure of federal funds on the contract award. The New Section 3 Rules replaces the new hire goal with labor hour benchmarks. Specifically, HUD has established the following initial new labor hour benchmarks which are subject to periodic adjustment but at least every three years:

- **25%** or more of the total number of labor hours worked by all workers on a project/contract are **Section 3 Workers**; and
- 5% or more of those total labor hours are **Targeted Section 3 Workers**.

These benchmarks are depicted as follows:



When a public housing authority meets or exceeds the benchmarks, it will be considered to have complied with the Section 3 Rule.

These new benchmarks, together with the definitions of Section 3 Workers and Targeted Section 3 Workers, suggest that a contractor could meet its Section 3 obligations with their existing workforce and without any new hiring. This is because the definitions of Section 3 Worker and Targeted Section 3 Worker include persons who satisfied eligibility within the previous five years (e.g. existing workforce). Consequently, new Section 3 employment opportunities could be reduced. In response to this concern, staff have proposed heightened Section 3 requirements which require that contractors meet the labor hour benchmarks and that 30% of their new hires be Section 3 Workers. Those requirements are included in the proposed Section 3 Policy and Compliance Plan.

## New Section 3 Policy and Compliance Plan

HACLA's existing Section 3 Guide and Compliance Plan requires significant revision to comply with the New Section 3 Rules with very few portions left untouched. It's for this reason staff recommend superseding and replacing the Plan with a new Section 3 Policy and Compliance Plan that retains those elements but also captures the wholesale revisions needed to comply with the New Section 3 Rules. It is also slightly retitled as a "Policy" instead of a "Plan" to better align with its true purpose and HACLA's practice of codifying Board policies in documents titled as such.

The new Section 3 Policy is attached to this Board Report. Its essential elements are highlighted below and include all the enabling provisions of the Existing Plan that have made our Section 3 program so successful as follows:

- Its purpose is to help create sustained employment and other opportunities for Section 3 beneficiaries and to assist contractors in understanding their Section 3 obligations.
- It provides our contractors with instructions and guidance on how to comply with Section 3, including resources such as our WorkSource Center, Section 3 Resident Registry, Section 3 Business Registry, and assistance available from our Section 3 Compliance Administrator.
- It makes clear HACLA's expectations of equal pay for equal work in hiring to help eradicate the gender pay gap.
- Like the Existing Plan, it continues to authorize the imposition of Section 3 on non federally-funded and materials-only contracts (otherwise inapplicable), where feasible and in the best interest of Section 3 beneficiaries.
- Like the Existing Plan, it continues to authorize the imposition and expectation of heightened Section 3 commitments on Redevelopment Projects in recognition of the unique opportunity such projects provide for training, hiring and Section 3 Business contracting.
- It also now identifies our specific expectations regarding those redevelopment project commitments such as developer sponsorship of enrollments in pre-apprenticeship and apprenticeship programs, Section 3 Business Contracting goals, and paying for the cost of monitoring Section 3 compliance.
- It requires compliance with both HUD's new benchmarks for Section 3 compliance and HACLA's additional requirement that 30% of all new hires be Section 3 Workers (and other commitments or agreements as negotiated).

- Like the Existing Plan, it continues to make contributions to HACLA's Section 3 Fund available when all other alternatives for compliance are not viable or have failed.
- It captures all New Section 3 Rules and requirements essential to its administration, including updated definitions, benchmarks, hiring priorities and reserves the right to negotiate additional requirements as feasible.

**Vision Plan: PEOPLE Strategy No. 7: Enhance Resident Access to Education Opportunities, Workforce Readiness Training, and Skills Development**

HACLA's Section 3 Policy and Compliance Policy will facilitate the creation of training, education, employment and other economic opportunities for those we serve under our Public Housing and Section 8 Programs as well as neighboring communities by enabling such opportunities through our contracting and project redevelopment activities.

**Funding:** The Chief Administrative Officer confirms the following:

No specific administrative fees are provided to housing authorities to administer their Section 3 responsibilities, thereby requiring HACLA to identify and utilize available funds such as Central Office Cost Center (COCC) administrative fee revenue. HACLA has begun negotiating and collecting Section 3 compliance fees in connection with redevelopment projects as a mechanism to pay for some of these costs. HACLA has also established a Section 3 Fund for vendor contributions, but those funds are specifically earmarked for programs that lead to the development of employment skills and the creation of employment opportunities for Section 3 Workers. They may not be used for Section 3 program administrative expenses. The growth of our Section 3 activities may require HACLA to consider additional funding sources in the future.

**Environmental Review:** Neither CEQA nor NEPA are triggered by this request.

**Section 3:** The application of Section 3 to a contract award is not triggered by this request.

**Attachments:**

1. Resolution
2. Proposed Section 3 Policy and Compliance Plan

RESOLUTION NO. \_\_\_\_\_

**RESOLUTION OF THE BOARD OF COMMISSIONERS APPROVING REPLACEMENT OF THE HOUSING AUTHORITY'S SECTION 3 GUIDE AND COMPLIANCE PLAN WITH A SECTION 3 POLICY AND COMPLIANCE PLAN THAT CONFORMS WITH THE NEW SECTION 3 RULES**

**WHEREAS**, the Board of Commissioners ("Board") approved HACLA's Section 3 Guide and Compliance Plan on Oct. 30, 2014, as subsequently amended on Nov. 28, 2017, under Board Resolutions 9167 and 9693, respectively (the "Section 3 Plan");

**WHEREAS**, in September 2020, HUD published the Final Section 3 Rule codified at 24 CFR 75 ("Final Section 3 Rule"), which replaced previous Section 3 regulations codified at 24 CFR 135 in their entirety;

**WHEREAS**, the Final Section 3 Rule went into effect November 30, 2020, and the Housing Authority has until July 1, 2021 to implement the new requirements;

**WHEREAS**, the Section 3 Plan requires significant amendment to conform with the Final Section 3 Rule; and

**WHEREAS**, for the reasons set forth in the Report of the President & CEO of the same date herewith, the Board desires to replace the Section 3 Plan with the new Section 3 Policy and Compliance Plan attached to the Report.

**NOW, THEREFORE, BE IT RESOLVED** that the Board of Commissioners hereby approves replacement of HACLA's Section 3 Guide and Compliance Plan with the Section 3 Policy and Compliance Plan ("New Policy"), and further authorizes the President & CEO, or designee, to make any non-substantive editorial revisions to the New Policy necessary for its finalization.

**BE IT FURTHER RESOLVED** that this Resolution shall take effect immediately.

APPROVED AS TO FORM

HOUSING AUTHORITY OF THE  
CITY OF LOS ANGELES

By: \_\_\_\_\_  
James Johnson, General Counsel

By: \_\_\_\_\_  
Cielo Castro, Chairperson

DATE ADOPTED: \_\_\_\_\_

Attachment No. 2

**Proposed Section 3 Policy and Compliance Plan**

# Section 3 Policy and Compliance Plan (v3)

*Let's Get to Work!*



Adopted: \_\_\_\_\_

# SECTION 3 POLICY AND COMPLIANCE PLAN

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## **SECTION 3 POLICY AND COMPLIANCE PLAN**

### **I. INTRODUCTION**

#### **A. Section 3 Regulation.**

Section 3 of the Housing and Urban Development Act of 1968 (codified at 12 U.S.C. 1701u and implemented at 24 CFR Part 75, hereinafter, "Section 3"), as amended, requires that economic opportunities, most importantly employment, generated by certain U.S. Department of Housing and Urban Development ("HUD") financial assistance shall be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing, or residents of the community in which the Federal assistance is spent.

#### **B. HACLA Policy.**

It is the intent and policy of the Housing Authority of the City of Los Angeles ("HACLA") to fully comply with Section 3 and to require its Contractors undertaking contracts to which Section 3 applies to demonstrate good faith effort to comply, to the greatest extent feasible, with Section 3 and the responsibilities described under this Section 3 Policy and Compliance Plan (this "Policy") by providing economic opportunities to Section 3 Beneficiaries. While Section 3 is race and gender neutral, when employment opportunities are realized through Section 3 or other means, it is HACLA's expectation that there will be equal pay for equal work in all such opportunities so that the historical and persistent pay gap between men and women can be eradicated.

#### **C. Applicability.**

This Policy shall apply whenever federal assistance triggering Section 3 compliance is triggered and when HACLA, in its sole discretion, elects to impose this Policy upon its Contractors in connection with contracting awards. HACLA's decision to impose this Policy upon Contractors shall consider whether the nature of the underlying contract is one where the imposition of this Policy is reasonably possible and in the best interest of Section 3 Beneficiaries.

#### **D. Purposes of this Policy and Compliance Plan.**

The purposes of this Policy are to create sustained employment and other opportunities for Section 3 Beneficiaries and to assist Contractors in understanding their Section 3 obligations so that they can be successful in meeting these responsibilities. These purposes are accomplished through the guidance and instruction provided in the Policy, in other Section 3 materials and publications provided by HACLA, and assistance provided by HACLA's Section 3 Compliance Administrator. HACLA has developed and continues to develop programs and procedures, all as necessary to implement this Policy, in order to realize the goals of Section 3. This Policy shall remain in effect for so long as it remains consistent with federal regulations or until amended by HACLA's Board of Commissioners.

## **E. Part 75 Amendments and Conflicts.**

Amendments to 24 CFR Part 75 shall apply to this Policy as of the effective date of the updated regulation. Where provisions of this Policy conflict with 24 CFR Part 75, the latter shall prevail.

## **II. DEFINITIONS**

The following terms used throughout this Policy have the following assigned meanings.

“Contractor” means any person or entity that enters into a Section 3 Contract with HACLA, or performs work on a Section 3 Contract as a Prime Contractor or Subcontractor, or is a recipient or subrecipient of Section 3 covered funds.

“HACLA” means the Housing Authority of the City of Los Angeles and its instrumentalities subject to Section 3.

“Housing and Community Development Financial Assistance” shall have the meaning ascribed by HUD or other federal agencies or departments and includes, without limitation, the following sources of funding;

- a. Community Development Block Grants (CDBG);
- b. Home Investment Partnership Interest (HOME);
- c. Housing Opportunities for Persons With AIDS (HOPWA);
- d. Neighborhood Stabilization Program (NSP);
- e. Lead Hazard Control and Healthy Homes Program;
- f. Rental Assistance Demonstration Program (RAD);
- g. Choice Neighborhoods Program;
- h. Emergency Solutions Grants (ESG);
- i. Section 202 Supportive Housing for the Elderly;
- j. Section 811 Supportive Housing for the Disabled; and
- k. Disaster Recovery Grants.
- l. Economic Stimulus Funds

“HUD” means the United States Department of Housing and Urban Development.

“Metropolitan Area” means a metropolitan statistical area established by the Office of Management and Budget, and includes its plural form “Metropolitan Areas.”

“New Hire” means an employee hired on a permanent, temporary or seasonal basis as a direct result of a Contractor’s contractual obligation in connection with a Section 3 Contract, and includes its plural form “New Hires.” An employee who was on a Contractor’s/Subcontractor’s payroll on or prior to award of the Section 3 Contract shall not be counted towards the Contractor’s/Subcontractor’s New Hire benchmark goals.

“Neighborhood of the Project” also referred to as “Service Area,” means an area within one mile of the Section 3 Project or, if fewer than 5,000 people live within one mile of a Section 3 Project, within a circle centered on the Section 3 Project that is sufficient to encompass a population of 5,000 people according to the most recent U.S. Census.

“Public Housing Financial Assistance” shall have the meaning set forth in 24 CFR Part 75.3, as may be amended from time to time, as follows:

- a. Development assistance provided pursuant to section 5 of the United States Housing Act of 1937 (the 1937 Act);
- b. Operations and management assistance provided pursuant to section 9(e) of the 1937 Act;
- c. Development, modernization, and management assistance provide pursuant to section 9(d) of the 1937 Act; and
- d. The entirety of a mixed-finance development project as described in 24 CFR Part 905.604, regardless of whether the project is fully or partially assisted with public housing financial assistance as defined above in (a) through (c).

“Section 3” means Section 3 of the Housing and Urban Development Act of 1968, as amended, (12 U.S.C. 1701u) and implemented at 24 C.F.R. Part 75, as may be amended from time to time.

“Section 3 Benchmark(s)” shall mean those benchmarks for Section 3 compliance imposed upon a Contractor under a Section 3 Contract as provided in this Policy and includes both HUD and HACLA imposed goals.

“Section 3 Beneficiaries” refers, collectively, to Section 3 Workers, Targeted Section 3 Workers and Section 3 Business Concerns.

“Section 3 Business Concern” means a business concern as defined in 24 CFR 75.5, as may be amended from time to time, and means a business concern meeting at least one of the following criteria, as documented within the last six-month period through self-certification or other means acceptable HUD:

- a. It is at least 51 percent owned and controlled by low- or very low-income persons;
- b. Over 75 percent of the labor hours performed for the business over the prior three-month period are performed by Section 3 Workers; or
- c. It is a business at least 51 percent owned and controlled by current public housing residents or residents who currently live in Section 8-assisted housing.

“Section 3 Business Registry” means a registry of business concerns maintained by HACLA that at time of business registry self-certified as to meeting the definition of a Section 3 Business Concern.

“Section 3 Contract” means a contract subject to this Policy whether by virtue of Section 3 or HACLA’s imposition of Section 3 upon the contract, including without limitation, master developments agreements and disposition and development agreements pursuant to which development and redevelopment activities and projects are effectuated.

“Section 3 Economic Opportunity Plan” (EOP) means that Section 3 plan submitted by a Contractor in connection with a Section 3 Contract that commits to a plan to meet the Section 3 Benchmarks and other requirements applicable to the Section 3 Contract.

“Section 3 Project” means a Section 3 Project as defined in 24 CFR Part 75.3, as may be amended from time to time, and means housing rehabilitation, housing construction, and other

public construction projects assisted under HUD programs that provide Housing and Community Development Financial Assistance when the total amount of assistance to the project exceeds a threshold of \$200,000 or \$100,000 for other programs as identified in the CFR. The Project is the site or sites together with any building(s) and improvements located on the site(s) that are under common ownership, management, and financing.

“Service Area” see definition of Neighborhood of the Project.

“Section 3 Worker” means any worker as defined in 24 CFR 75.5, as may be amended from time to time, and means a worker who currently fits or when hired within the past five years, fit at least one of the following categories, as documented through self-certification or other means acceptable to HUD:

- a. The worker’s income for the previous or annualized calendar year is below the income limit established by HUD
- b. The worker is employed by a Section 3 Business Concerns
- c. The worker is a YouthBuild participant
- d. The status of a Section 3 Worker shall not be negatively affected by a prior arrest or conviction

“Subcontractor” means any person or entity that has a contract with a Contractor to undertake a portion of the Contractor’s obligation to perform work under a Section 3 Contract.

“Section 3 Worker Registry” means a registry of Section 3 Workers and Targeted Section 3 Workers maintained by HACLA, who, at the time of registry, met the definition of a Section 3 Worker or Targeted Section 3 Worker, through self-certification or other means acceptable to HUD.

“Targeted Section 3 Worker” for Public Housing Financial Assistance means a Section 3 Worker as defined in 24 CFR Part 75.11, as may be amended from time to time, and means a worker documented through self-certification or other means acceptable to HUD, who is:

- a. A worker employed by a Section 3 Business Concern; or
- b. A worker who currently fits or when hired fit at least one of the following categories, as documented within the past five years:
  - i. A resident of public housing or Section 8-assisted housing;
  - ii. A resident of other public housing projects or Section 8-assisted housing managed by the PHA that is providing the assistance; or
  - iii. A YouthBuild participant.

“Targeted Section 3 Worker” for Housing and Community Development Financial Assistance means a Section 3 Worker as defined in 24 CFR Part 75.21, as may be amended from time to time, and means a worker documented through self-certification or other means acceptable to HUD, who is:

- a. A worker employed by a Section 3 Business Concern; or
- b. A worker who currently fits or when hired fit at least one of the following categories, as documented within the past five years:
  - i. Living within the service area or the neighborhood of the project, as defined in § 75.5; or
  - ii. A YouthBuild participant.

### **III. PROVISIONS FOR PUBLIC HOUSING FINANCIAL ASSISTANCE AND BENCHMARKS**

For purposes of this Article III, the definition of a Targeted Section 3 Worker is that applicable to a Targeted Section 3 Worker for Public Housing Financial Assistance.

#### **A. Employment and Training.**

Contractors must make their best efforts to provide employment and training opportunities generated by the assistance to Section 3 Workers and Targeted Section 3 Workers in the following order of priority:

1. To residents of the public housing projects for which the public housing financial assistance is expended;
2. To residents of other public housing projects managed by HACLA or for residents of Section 8-assisted housing managed by HACLA;
3. To participants in YouthBuild programs; and
4. To low- and very low-income persons residing within the metropolitan area in which the assistance is expended.

Section 3 Workers and Targeted Section 3 Workers are not exempt from meeting the qualifications of the position to be filled.

#### **B. Contracting.**

Contractors must make their best efforts to award contracts and subcontracts to business concerns that provide economic opportunities to Section 3 Workers as set forth in their Section 3 Economic Opportunity Plan and in the following order of priority:

1. To Section 3 Business Concerns that provide economic opportunities for residents of the public housing projects for which the assistance is provided;
2. To Section 3 Business Concerns that provide economic opportunities for residents of other public housing projects or Section-8 assisted housing managed by HACLA;
3. To YouthBuild programs; then
4. To Section 3 Business Concerns that provide economic opportunities to Section 3 Workers residing within the metropolitan area in which the assistance is provided.

#### **C. Benchmarks.**

Contractors will be considered to have complied with the requirements in this part, in the absence of evidence to the contrary, if they:

1. Certify that they have followed the prioritization efforts above (consistent with 24 CFR Part 75.9); and
2. Meet or exceed the Section 3 Benchmarks as described below, unless other specific benchmarks for compliance have been negotiated with HACLA.
  - i. Twenty-five percent (25%) or more of the total number of labor hours worked by all workers employed with Public Housing Financial Assistance in the fiscal year are Section 3 Workers;
  - ii. Five percent (5%) or more of the total number of labor hours worked by all workers employed with public housing financial assistance in the fiscal year are Targeted Section 3 Workers;

- iii. Thirty percent (30%) of all New Hires are Section 3 Workers;
- iv. Meet Section 3 Business subcontracting goals, as may be imposed, from time to time; and
- v. Satisfy other Section 3 commitments as may be set forth their Economic Opportunity Plan or other agreements with HACLA.

#### **IV. PROVISIONS FOR HOUSING AND COMMUNITY DEVELOPMENT FINANCIAL ASSISTANCE AND BENCHMARKS (SECTION 3 PROJECTS)**

For purposes of this Article IV, the definition of a Targeted Section 3 Worker is that applicable to a Targeted Section 3 Worker for Housing and Community Development Financial Assistance.

##### **A. Employment and Training.**

Contractors covered by this subpart shall ensure that employment and training opportunities arising in connection with Section 3 Projects are provided to Section 3 Workers and Targeted Section 3 Workers within the metropolitan area in which the project is located in the following order of priority:

1. Section 3 Workers residing within the service area or the neighborhood of the project; and
2. Participants in YouthBuild programs.

Section 3 Workers and Targeted Section 3 Workers are not exempt from meeting the qualifications of the position to be filled.

##### **B. Contracting.**

Contractors covered by this subpart shall ensure contracts for work awarded in connection with Section 3 Projects are provided to business concerns that provide economic opportunities to Section 3 Workers residing within the metropolitan area in which the project is located, as set forth in their Section 3 Economic Opportunity Plan, and in the following order of priority:

1. Section 3 Business Concerns that provide economic opportunities to Section 3 Workers residing within the service area or the neighborhood of the projects; then
2. YouthBuild Programs

##### **C. Benchmarks.**

Contractors will be considered to have complied with the requirements in this part, in the absence of evidence to the contrary, if they:

1. Certify that they have followed the prioritization efforts above (consistent with 24 CFR Part 75.19); and
2. Meet or exceed the Section 3 benchmarks as described below.
  - i. Twenty-five (25) percent or more of the total number of labor hours worked by all workers on a Section 3 Project are Section 3 Workers;
  - ii. Five (5) percent or more of the total number of labor hours worked by all workers on a Section 3 Project are Targeted Section 3 Workers;
  - iii. Thirty percent (30%) of all New Hires are Section 3 Workers;
  - iv. Meet Section 3 Business subcontracting goals, as may be imposed, from time to

time; and

- v. Satisfy other Section 3 commitments as may be set forth their Economic Opportunity Plan or other agreements with HACLA.

## **V. PROVISIONS FOR MULTIPLE FUNDING SOURCES, HACLA SECTION 3 PROJECTS**

If a housing rehabilitation, housing construction or other public or private construction project is subject to Section 3 because the project is assisted with funding from multiple sources, Section 3 applicability and related provisions and requirements will be specified in the contract or other related agreement(s) with the Contractor in accordance with 24 CFR Part 75.29.

## **VI. CONTRACTOR GOOD FAITH EFFORTS**

In accordance with subpart 75.15, 75.25 and HACLA's requirements, HACLA will require the vendor to engage in qualitative efforts to satisfy its benchmark goals, which may include, but are not limited to the following:

1. Engaging in outreach efforts to generate job applicants who are Targeted Section 3 Workers, including notifying HACLA's Section 3 team, posting job openings at the job site, HUD Opportunity Portal, social media pages, contacting Resident Advisory Councils, and other platforms;
2. Contacting agencies administering Los Angeles County YouthBuild Programs, and requesting their assistance in recruiting LA County YouthBuild Program participants for training opportunities and employment positions;
3. Consulting with state and local agencies administering training programs, such as those funded through Workforce Investment Act, unemployment compensation programs, community organizations and other officials or organizations to assist with training and recruiting Section 3 Workers and Targeted Section 3 Workers;
4. Holding job fairs;
5. Providing or connecting Section 3 Workers and Targeted Section 3 Workers with assistance in seeking employment, including: drafting resumes, preparing for interviews, and finding job opportunities connecting residents to job placement services;
6. Providing or referring Section 3 Workers to services supporting work readiness and retention (e.g., work readiness activities, interview clothing, test fees, transportation, child care);
7. Assisting Section 3 Workers to obtain financial literacy training and/or coaching;
8. Engaging in outreach efforts to identify and secure bids from Section 3 Business Concerns.
9. Providing technical assistance to help Section 3 Business Concerns understand and bid on contracts;
10. Dividing contracts into smaller jobs to facilitate participation by Section 3 Business Concerns;
11. Providing bonding assistance, guaranties, or other efforts to support viable bids from Section 3 Business Concerns;
12. Promoting use of Section 3 Business Registries designed to create opportunities for Section 3, disadvantaged and small businesses.

## **VII. PROVIDING OTHER ECONOMIC OPPORTUNITIES**

Contractors who are unable to satisfy applicable Section 3 Worker and Targeted Section 3 Worker employment and hiring benchmarks may offer other economic opportunities to Section 3 Workers and Targeted Section 3 Workers designed to assist with upward mobility, sustained employment and self-sufficiency via participation in HACLA's Section 3 Fund. These opportunities may include, without limitation:

1. Providing assistance to apply for/or attend community college, a four year educational institution or vocational school; or
2. Sponsoring enrollments into apprenticeship and pre-apprenticeship programs.

## **VIII. SECTION 3 FUND CONTRIBUTIONS**

### **A. Purpose of Fund.**

In accordance with 24 CFR Part 75.15 and 75.25, HACLA has established a Section 3 Fund to permit Contractors to contribute funding for programs that lead to the development of employment skills and generate employment opportunities for Section 3 Workers. Contributions to the Section 3 Fund will be permitted in those instances where the Contractor has demonstrated to HACLA's satisfaction, that compliance with Section 3 requirements and providing other economic opportunities or qualitative efforts is not feasible or likely to lead to sustained employment. Contractor contributions to the Section 3 Fund are considered an option of last resort, as HACLA's preferred method for Contractors to meet their Section 3 benchmark goals and obligations are through the direct creation of sustained employment opportunities. HACLA does not accept Contractor contributions to the Section 3 Fund in lieu of compliance with Section 3 or this Policy.

### **B. Participation in Fund.**

Contractors who meet the eligibility requirements set forth in Article VIII.A above, or who are unable to satisfy their Section 3 commitments as set forth in their Economic Opportunity Plan may, at HACLA's election, be permitted to contribute to the Section 3 Fund and avoid the penalties for default described in Article XIII herein, provided the Section 3 Compliance Administrator finds the Contractor's lack of compliance is due to extraordinary circumstances and not due to the Contractor's lack of good faith compliance efforts or Contractor's failure to exhaust all feasible alternatives for compliance.

### **C. Contribution Requirements.**

1. Contractor, subcontractor or other recipient contributions to the Section 3 Fund shall be equal to the lesser of three percent (3%) of the actual dollar amount spent by HACLA under the contract, unless otherwise agreed by HACLA.
2. Section 3 Fund contributions are based solely on net amount paid to the Contractor excluding shipping fees, returns, credits and taxes. All expenses authorized under the contract, including license fees, labor, materials costs, and subcontracting expenses,

are subject to Section 3 Fund contribution calculations.

#### **D. Payment Options.**

1. For construction-related Section 3 contracts of up to one (1) year, Contractors have the option of making contributions (i) in a single up-front payment or (ii) making payments on a periodic basis following the receipt of contract payments from HACLA, provided such periodic payments must be in amounts of no less than three percent (3%) of the amount HACLA paid the Contractor for a particular installment, unless otherwise agreed by HACLA. In no event shall such contributions be deducted from the amounts due Contractor.
2. For all contracts exceeding one (1) year, Contractors have the option of making contributions (i) in a single up-front payment at contract commencement based upon the subject year's contract award value, (ii) in periodic payments of three percent (3%) or greater of each payment received from HACLA, or (iii) at the end of each contract year based upon the actual dollar amount spent by HACLA under the contract for that particular year, unless otherwise agreed by HACLA.
3. Contractors making their Section 3 Fund contribution at the end of contract year shall submit payment in full within thirty (30) days after the receipt of HACLA's invoice for payment.
4. Section 3 Fund contributions for contracts terminated before the contract year end term shall be paid in full at the time of termination.

#### **E. Voluntary Contributions.**

Contractors may contribute to the Section 3 Fund in discretionary amounts in addition to satisfying their Section 3 benchmark goals and obligations.

#### **F. Use of Section 3 Fund Proceeds.**

1. Section 3 Funds shall only be used by HACLA to further the purposes of Section 3, which are to lead to the creation of sustained employment opportunities for Section 3 Workers and Targeted Section 3 Workers.
2. Section 3 Funds shall only be used for job and vocational training, education and tuition, and employment services programs that lead to meaningful and sustained employment. Such programs include, but are not limited to:
  - i. Occupational/trade training programs that provide Section 3 Worker and Targeted Section 3 Worker trainees with individualized support to enhance social, vocational and developmental skills;
  - ii. HACLA-approved apprenticeship training programs and HACLA-approved pre-apprenticeship training programs designed to prepare Section 3 Worker and Targeted Section 3 Worker Trainees to enter into and succeed in an approved apprenticeship program;
  - iii. Trade school, college and university degree and certification programs.

## **IX. SECTION 3 BUSINESS CONCERNS**

- A.** Business owners seeking HACLA's designation as a Section 3 Business Concern must submit a Section 3 Business Certification Form (to be provided by HACLA) to be added to the Section 3 Business Registry.
- B.** HACLA reserves the right, but is not obligated, to accept a Contractor's certification as a Section 3 Business Concern approved by another governmental entity including such certifications provided by HUD.
- C.** Certification as a Section 3 Business Concern does not relieve Contractors from their Section 3 obligations, including the achievement of their Section 3 Benchmarks. All Section 3 Business Concerns are required to demonstrate compliance with Section 3 and this Policy. Businesses which desire to be identified as a Section 3 Business Concern at the time of bid or proposal submission will be required to provide HACLA with an updated Section 3 Business Certification Form, regardless of whether such businesses previously completed a Section 3 Business Certification Form or were determined eligible by HACLA.

## **X. SECTION 3 RECRUITMENT AND NEW HIRES**

Contractors are expected to make best efforts to achieve the benchmarks and Section 3 Worker priorities outlined in this Policy and at 24 CFR Part 75. This section provides guidance for the recruitment of New Hires who are Section 3 Workers and Targeted Section 3 Workers to assist Contractors in meeting their benchmarks and obligations.

### **A. Recruitment Efforts.**

1. HACLA maintains a database of employment-ready Section 3 Workers/Targeted Section 3 Workers who meet certain minimum qualifications for various categories of employment. Upon receipt of a completed Section 3 Job Order Form from Contractor/Subcontractor, HACLA will provide referrals of qualified candidates from the database. Contractors are expected to provide HACLA with the Section 3 Job Order Form in sufficient time to identify prospective candidates, prepare and refer them for interviews, and secure employment in advance of project commencement.
2. Upon receipt of a Section 3 Job Order Form, HACLA will refer qualified candidates for interviews for each available position. Contractors are expected to give each referred candidate full consideration for available positions.
3. Independent of HACLA's efforts and referrals, Contractors shall engage in independent employment recruitment efforts and follow the Section 3 Worker and Targeted Section 3 Worker order of hiring priority as identified in this Policy.
4. Contractors shall submit to HACLA their interview notes, including reasons for denial of employment or training opportunity and any follow up actions to be taken to assist the Section 3 Worker in the future, as applicable.

5. Section 3 Workers and Targeted Section 3 Workers are not exempt from meeting the qualifications of the position to be filled.

#### **B. Section 3 Worker and Targeted Section 3 Worker New Hires.**

1. All Section 3 Worker and Targeted Section 3 Worker New Hires shall be employees of the Contractor and shall have all the protections afforded to employees under state, federal and local laws. Contractors are expected to impose the same hiring requirements and personnel rules and policies upon Section 3 Worker New Hires as are imposed upon their other employment candidates and employees. As stated in Article I.B, HACLA expects and requires Contractors to abide by equal pay for equal work principles.
2. Contractors are required to report to HACLA within three (3) business days of hiring Section 3 Workers and Targeted Section 3 Workers and shall provide to HACLA a completed Section 3 Worker Certification Form (to be provided by HACLA) for each Section 3 Worker and Targeted Section 3 Worker.

#### **C. Apprenticeship Programs.**

1. Contractors who employ apprentices are required to utilize apprenticeship programs approved by the federal Department of Labor (“DOL”).
2. Contractors who employ apprentices on construction projects that are subject to the Davis-Bacon Wage Act are required to adhere to all legal requirements for wage rates and ratios of apprentices to journeymen set forth therein.

#### **D. Limitations.**

Contractors retain the sole discretion and control over any hiring and personnel decisions. HACLA cannot and will not exercise any control over any of the Contractor’s employees, including New Hires, regardless of whether they were referred by HACLA or are Section 3 Workers/Targeted Section 3 Workers recruited through other means.

#### **E. Documented Efforts.**

Contractors shall document efforts taken to recruit and interview Section 3 Workers/Targeted Section 3 Workers for hire and shall, upon reasonable request, provide HACLA with documentation that demonstrates such efforts, including interview notes, which shall include reasons for denial of employment or other actions as applicable.

#### **F. Lack of Compliance.**

A Contractor’s failure to satisfy the requirements of this section may result in HACLA’s determination that the Contractor has failed to demonstrate good faith efforts to comply with the requirements of Section 3 and this Policy, and may subject Contractor to the penalties for default described in Article XIII.

## **XI. REQUIRED SUBMISSION DOCUMENTS**

### **A. Section 3 Economic Opportunity Plan.**

1. All Contractors awarded a Section 3 Contract and their Subcontractors shall prepare an Economic Opportunity Plan (“EOP”) in accordance with this Policy. The EOP shall include a plan for meeting the Section 3 Benchmarks and other requirements as specified in the solicitation.
2. Unless the solicitation specifies otherwise, a Contractor’s EOP shall be submitted to HACLA with Contractor’s bid/offer package. Bids/Offer submitted by Contractors without an EOP, when required, may be rejected as non-responsive and determined ineligible for contract award.
3. Unless the solicitation specifies otherwise, a Subcontractor’s EOP shall be submitted to HACLA prior to commencement of the contract.
4. EOP commitments will be incorporated into the contract. Contractors are responsible for incorporating their EOP commitments in any subcontracts it awards for the contract work.
5. Failure on the part of Contractor/Subcontractors to meet the commitments set forth in Contractor’s EOP may subject Contractor to the penalties for default described in Article XIII, including a determination that the Contractor is in material default of the contract.

### **B. Section 3 Compliance Summary Report.**

1. Contractors shall provide periodic and project end reports using the Section 3 Compliance Summary Report form (to be provided by HACLA). Contractors shall submit with the Section 3 Compliance Summary Report form supporting documentation of efforts to demonstrate their good faith efforts and achievements. These documents include, but are not limited to the following:
  - i. Section 3 Worker and Targeted Section 3 Worker Certification Forms
  - ii. Section 3 Business Concern Certification Forms
  - iii. Payroll or time-and-attendance based records
  - iv. Outreach effort documentation
2. HACLA reserves the right to request from Contractor additional compliance documents to support data reported in the Section 3 Compliance Summary Report, and to request such other documents as HACLA deems necessary for verification and documentation of efforts.

## **XII. DEVELOPMENT AND REDEVELOPMENT PROJECTS**

In recognition that large-scale development and redevelopment projects present a unique opportunity to: (i) provide job training and generate sustained employment opportunities for Section 3 Workers and Targeted Section 3 Workers, and (ii) provide numerous contracting opportunities for Section 3 Business Concerns, HACLA’s Board of Commissioners has adopted

heightened expectations for Section 3 compliance and commitments on the part of HACLA's development partners and their Contractors and Subcontractors. Regardless of whether the source of funding for such projects triggers the requirements of Section 3, all such projects shall be subject to Section 3 commitments that fully-align with all Housing and Community Development Financial Assistance, Public Housing Financial Assistance and other funding sources requirements, as applicable, and shall include the following:

**A. Priorities and Commitments.**

1. The project's master development agreement, disposition and development agreement, or similar agreement between HACLA and the developer, will, consistent with 24 CFR Part 75, reflect priorities for training and employment opportunities, benchmarks goals and additional negotiated commitments pertaining to New Hires, Section 3 Business Contracting, and other economic opportunities and commitments beyond HUD requirements. In all instances these commitments shall include, at a minimum, the following:
  - i. Twenty-five (25) percent or more of the total number of labor hours worked by all workers on a Section 3 Project will be Section 3 Workers;
  - ii. Five (5) percent or more of the total number of labor hours worked by all workers on a Section 3 Project will be Targeted Section 3 Workers;
  - iii. Thirty percent (30%) of all New Hires on the Section 3 project will be Section 3 Workers with the highest hiring priority being residents of the subject redevelopment;
  - iv. The imposition of Section 3 Business Concern subcontracting goals of no less than ten percent (10%) for all construction-related subcontracts and no less than three percent (3%) for all professional services agreements;
  - v. Section 3 Worker and Targeted Section 3 Worker New Hire goals for post-construction employment opportunities under contracts that support the redevelopment such as property management, social services/youth programming, and retail lease agreements, with the highest hiring priority being residents of the subject redevelopment;
  - vi. The commitment to engage in qualitative efforts to encourage, enable and assist Section 3 Workers and Targeted Section 3 Workers to obtain training and secure employment on the project as set forth in Article VI. Financial commitments for pre-apprenticeship and apprenticeship programs should be expected and included when feasible; and
  - vii. Section 3 compliance fees should be included in all such commitments that are reasonably-related to the cost of monitoring Section 3 compliance over the life of those commitments.
2. The developer is responsible for submitting to HACLA a detailed Section 3 Economic Opportunity Plan (may also be referred to as Construction Local Hiring and Contracting

Plan or Post-Construction Local Hiring and Contracting Plan, as appropriate) that details its approach, methods and resources to be used to meet and/or exceed HUD and HACLA benchmark goals, prioritization efforts and additional negotiated commitments.

3. The developer's specific, negotiated Section 3 commitments shall be made applicable to developer's Contractors, Subcontractors and all other businesses employed on the project.
4. The developer will be held responsible for enforcing Section 3 requirements and project commitments, and for monitoring its Subcontractors' performance for compliance.

#### **B. Penalties.**

In the event the developer fails to meet its commitments and cannot demonstrate to HACLA's satisfaction that good faith efforts have been made to fulfil their commitments, it shall be subject to penalties for non-compliance as negotiated in its master development agreement, disposition and development agreement or similar agreement between HACLA and the developer. Shall no such penalty agreement exist, the penalties for non-compliance set forth at Article XIII.B shall apply to the project.

#### **C. Conflicts.**

Except as expressly set forth herein, Section 3 requirements and this Policy shall apply to the project. In the event of any perceived or actual conflicts between developer's specific, negotiated Section 3 commitments and the requirements of 24 CFR Part 75 and/or this Policy, HACLA's determination shall be final and binding.

### **XIII. COMPLIANCE**

#### **A. Reviews for Compliance.**

1. HACLA may periodically audit Contractors'/Subcontractors' performance for compliance with the requirements of Section 3 and this Policy, and may conduct periodic project site visits and employee interviews to support such efforts.
2. In connection with an audit for compliance, HACLA reserves the right to request from Contractors/Subcontractors reports and information concerning its efforts to comply with the requirements of Section 3, this Policy, and the Section 3 Contract's related contract terms and conditions.

#### **B. Penalties for Non-Compliance.**

1. Contractors who fail to comply with their EOPs or otherwise fail to meet their Section 3 commitments and obligations as set forth in their Section 3 Contract and/or EOP, shall, following notice and a reasonable opportunity to cure (as determined by HACLA in its sole discretion based upon the circumstances), be deemed in material default of their contracts, and may be subject to administrative penalties and/or debarment as follows:
  - i. 1<sup>st</sup> Violation: Administrative penalty of ten percent (10%) of the contract award

amount including all amendments.

- ii. 2<sup>nd</sup> Violation: Administrative penalty of additional ten percent (10%) of the contract award amount including all amendments.
  - iii. 3<sup>rd</sup> Violation: Debarment, suspension, denial of participation in HACLA contracting or HUD programs in accordance with 2 CFR Part 2424, and elsewhere.
2. Contractors and Subcontractors who engage in intentional acts of fraud such as providing false information, materially inaccurate information, or material omissions in the completion of Section 3 forms, including without limitation, certifications, payroll records, or project labor hour records, may be subject to debarment, suspension from, or denial of participation in HACLA, HUD and federal contracting, and may also be subject to criminal and/or civil liabilities and penalties.

#### **XIV. RECORDS RETENTION**

HACLA and any of its duly authorized representatives shall, until five years after final payment under the Section 3 Contract, have access to and the right to examine any Contractor or Subcontractor books, payroll records, documents, papers, or other records concerning Section 3 benchmarks, good faith efforts and reported achievements for the purpose of making audit, examination, or in response to HUD request.

#### **XV. RESOURCES**

##### **A. General Information.**

HUD publishes general information concerning Section 3, including the federal regulations implementing Section 3 (24 CFR Part 75), at [www.hud.gov/section3](http://www.hud.gov/section3).

##### **B. HACLA Forms.**

All HACLA forms referenced in this Policy are available online at [www.hacla.org/forms](http://www.hacla.org/forms) or by contacting HACLA's Section 3 Compliance Administrator at: [section3@hacla.org](mailto:section3@hacla.org). Additional Section 3 information and links are available at [www.hacla.org/section3](http://www.hacla.org/section3).

##### **C. Questions and Complaints.**

1. Questions or complaints concerning this Policy should be directed to HACLA's Section 3 Compliance Administrator:

Housing Authority of the City of Los Angeles  
Section 3 Compliance Administrator  
2600 Wilshire Blvd., 4th Floor  
Los Angeles, CA 90057  
Email: [section3@hacla.org](mailto:section3@hacla.org)

2. Consistent with 24 CFR Part 75.33, complaints alleging failure of compliance with this part may be reported to the HUD program office responsible for the public housing financial assistance or the Section 3 project, or to the local HUD field office.

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History:

02/27/14: Section 3 Compliance Plan adopted by Board Resolution No. 9167

11/28/17: Plan revisions approved by Board Resolution No. 9693

06/24/21: Plan replaced with this new Policy approved by Board Resolution No.