



January 31, 2020

Regulations Division
Office of the General Counsel
U.S. Department of Housing and Urban Development
451 Seventh Street SW, Room 10276
Washington, DC 20410-0500

RE: Docket Number FR-6187-N-01, White House Council on Eliminating Regulatory Barriers to Affordable Housing: Request for Information

Dear Assistant General Counsel Aaron Santa Anna:

Enterprise Community Partners, Housing Partnership Network, Local Initiatives Support Corporation (LISC), Low Income Investment Fund (LIIF), National Housing Trust, and Stewards of Affordable Housing for the Future (SAHF) appreciate the opportunity to provide comments on federal, state, local, and tribal laws, regulations, land use requirements, and administrative practices that artificially raise the costs of affordable housing development and contribute to shortages in housing supply.

Our organizations' continuous commitment to supporting affordable housing in communities across the country provides us with a deep understanding of the regulatory and administrative barriers which have been contributing to the nation's housing affordability challenges. We strongly support efforts to address these barriers; however, we also want to emphasize that decreasing regulatory barriers will not solve the nation's persisting housing affordability crisis. It is important to understand the numerous other factors impacting the ability of families to afford decent and safe housing.

The rising cost of housing development can be partially explained by the recent rises in building material costs and construction and trade labor wages – due to an inadequate supply of workers – which contribute to the cost of housing construction. In addition, the construction industry hasn't

experienced gains in productivity similar to other economic sectors. Productivity in construction has increased at one percent annually over the past 20 years, only one-quarter of the rate in manufacturing.¹

Further, real household income growth has been flat relative to the cost of renting or owning a home. The Great Recession caused many Americans at all income levels to enter the rental housing market, driving up demand for rental homes without a corresponding increase in supply, in turn contributing to increased prices. The lack of sufficient federal, state and local subsidies to bridge the gaps between incomes and rents prevents broader progress on affordable housing. Nationally, 47.5 percent of renter households spend more than 30 percent of their income on rent, and 25 percent spend more than half of their income on rent.²

The complexity of our nation's housing affordability challenges necessitates a range of solutions at all levels of government. It will require strong and consistent federal support for proven housing and community development programs, as well as innovative pilots and demonstrations. Meeting the rising demand for housing will also require the easing of unnecessary impediments to expanding the nation's supply of affordable housing for lower income households. This goal requires a careful and thorough examination of housing regulations to avoid eliminating or weakening regulations that protect our nation's natural environment and mitigate potential health and safety issues. We strongly discourage the U.S. Department of Housing and Urban Development (HUD), U.S. Department of Agriculture (USDA), other federal agencies, and state and local government entities from implementing policy changes that would increase risk to the environment or the health and safety of families. We also oppose the notion that effective water- and energy-efficiency regulations that help households accomplish long-term cost and energy savings are burdensome.

Since the majority of the rules and regulations governing housing development exist at the local level, where the federal government has relatively little ability to directly influence practices, we recommend that the federal government focus on easing federal regulatory and administrative practices that impede housing development and contribute to shortages in housing supply, as well as broadly incentivize smarter regulatory practices. With the caveats above as context, we offer the following comments with respect to what the federal government can do to help contain the cost of housing development and expand the nation's affordable housing supply:

1. Align and simplify federal affordable housing programs' administrative requirements and ensure staffing levels are sufficient to process work and oversee agency portfolios
2. Increase access to improved and innovative financing products for affordable housing development
3. Leverage existing federal programs to launch pilots and support innovations
4. Incentivize state and local jurisdictions to explore their regulatory practices

¹ Jonathan Woetzel, Mukund Sridhar, and Jan Mischke, "The Construction Industry Has a Productivity Problem — and Here's How to Solve It," March 6, 2017, <https://www.marketwatch.com/story/the-construction-industry-has-a-productivity-problem-and-heres-how-to-solve-it-2017-03-04>.

² Enterprise Community Partners calculation of 2017 1-year American Community Survey data

1. Align and simplify federal affordable housing programs' administrative requirements and ensure staffing levels are sufficient to process work and oversee agency portfolios

Federal Affordable Rental Housing Programmatic Alignment

Most regulatory barriers to affordable housing exist at the local level, so we encourage the Administration to focus on administrative alignment of existing federal housing assistance programs, since this is where the federal government has the most ability to lessen burden and costs. Our organizations have an informed perspective on this issue since we work as affordable housing lenders, developers and owners and utilize the full array of federal housing programs to support our work.

A significant proportion of the nation's subsidized affordable properties is assisted by multiple federal and state programs – including combinations of Low-Income Housing Tax Credit (Housing Credit) capital, Federal Housing Administration (FHA)-insured debt, HUD rental assistance, USDA Rural Development Assistance and other state capital programs (some derived from HUD grant programs). In 2011, the Rental Policy Working Group (RPWG), a federal interagency effort, published a Federal Rental Alignment report, citing more than 9,000 Housing Credit properties that were assisted by at least one other federal program, comprising 645,000 housing units. These properties are subject to redundant and inefficient double oversight during the development phase and ongoing operations.

For properties that have received Housing Credits or other state-administered capital programs, HUD should devolve responsibility to the appropriate state agency for (1) underwriting and subsidy layering review; (2) design/scope review; (3) environmental review; and (4) ongoing physical inspections. In many cases, state agencies are best positioned to play these roles. HUD should take on a higher level of oversight responsibility only when the Department determines an owner or property represents a higher risk or if a state agency fails to properly oversee elements of this oversight.

Beginning in 2010, the RPWG identified a number of duplicative or sometimes inconsistent guidance for federal housing programs from HUD, USDA, and the Treasury Department and highlighted several opportunities to reduce compliance requirements related to property inspections, audits, income eligibility and documentation, lease requirements, appraisals and market studies, and related issues. While some progress was achieved, we urge HUD to resume these efforts to eliminate inconsistent or duplicative requirements among various HUD programs, including but not limited to multifamily programs, public housing, vouchers and HOME, and between HUD programs and the Housing Credit.

In addition, for properties with project-based rental assistance as well as FHA or Risk-Sharing loans, HUD should direct its lending partners to rely on the results of the Real Estate Assessment Center (REAC) inspections rather than conducting their own. State Housing Finance Agencies (HFAs) that participate in the HFA-FHA Risk-Sharing program should be enabled to modify their Risk-Sharing agreements to utilize REAC inspections as well.

Recommendation to the White House Council: We recommend that the Administration reconvene the RPWG and use the existing report as a roadmap for continuing to align federal rental affordable housing programs.

Federal Cross-cutting Regulatory Requirements

We encourage the Administration to consider how cross-cutting federal requirements might be simplified and made more flexible while still meeting their policy objectives. Requirements under the National Environmental Policy Act (NEPA), the Uniform Relocation Act, the Davis-Bacon Act, and other statutes all have important goals, but can present excessive burdens when they are applied with outdated thresholds and standards, which ultimately slow construction and increase cost.

This is particularly relevant for HUD's Community Development Block Grant – Disaster Recovery (CDBG-DR) Program, where streamlining environmental and historic preservation reviews, required by NEPA, would reduce significant recovery time. By simplifying regulation, HUD can reduce redundancies and provide grantees and applicants with greater clarity on environmental review and historic preservation requirements. For example, the current environmental review process requires its grantees and their sub-recipients to complete multiple environmental reviews in order to comply with NEPA as well as state and local environmental laws, even when there is significant overlap among their mandates. HUD could further modernize the disaster recovery process by allowing CDBG-DR grantees to comply with state or local environmental review laws in lieu of the NEPA if they can show those laws are substantially equivalent to NEPA.

Recommendation to White House Council: We encourage the Council to review the thresholds triggering NEPA requirements so that resources can be used in smaller scale projects without driving up costs. Specifically, for the CDBG-DR program, HUD should exempt actions that are in-kind repairs from environmental review. However, HUD should not include improvements to facilities beyond their pre-disaster condition. The Department also should allow for expedited processing and shortened comment periods for emergency actions that are not exempt from environmental review.

Agency Processing Times and Staffing

Staffing levels at HUD and USDA have declined over time while federal information technology resources have aged and become obsolete. This has generally led to inconsistent transactional processing timelines and reduced these agencies' ability to oversee their rental housing portfolios.

For example, USDA's Rural Housing Service (RHS) struggles to consistently process affordable multifamily housing preservation actions in cases of ownership transfer involving the Housing Credit. These delays hold up development and add to cost. The lack of timely processing is due to insufficient staffing and an outdated organizational structure.

When Congress passed the Housing and Economic Recovery Act of 2008, it mandated that both FHA Multifamily and USDA RHS improve their processing time for Housing Credit transactions. FHA was able to meet this requirement by creating specialized personnel that only work on Housing Credit transactions with FHA Multifamily insured debt and establishing expedited processing timelines.

However, USDA has not been able to achieve similar success and would benefit from adopting a staffing structure and expedited timelines similar to those at HUD.

USDA RHS also frequently experiences delays in processing related to its single-family housing programs. For example, appraisals for USDA mortgages supporting Mutual Self-Help housing program participants often are not completed in a timely manner.

Recommendation to White House Council: The Administration should ensure staffing levels and information technology resources at HUD and USDA are sufficient to administer their programs and oversee their housing portfolios. The Administration should specifically request additional staffing resources for USDA from Congress and create specialized positions that focus on transactions involving Housing Credits, similar to the model HUD has employed.

Project-Based Vouchers

Outside of the RAD program, HUD no longer issues new project-based Section 8 contracts. The Project-Based Voucher (PBV) program (24 CFR 983) is the primary vehicle for new project-based rental assistance. PBV contracts are between the property owner and public housing authority (PHA). The PHA uses a portion of its allocation of tenant-based vouchers to support a PBV contract. HUD regulations determine how a PHA may solicit and enter into a PBV contract. In some cases, the regulations provide for an appropriate competitive process, but in others they impede preservation of affordable housing and impose unnecessary and duplicative requirements.

In many existing affordable housing properties, residents are eligible for tenant-based vouchers upon prepayment or maturity of the existing mortgage or subsidy. While the owner may be interested in preserving the property as affordable housing, without a project-based subsidy to help support the underwriting of new financing, this is often infeasible. Even where residents, PHAs, and owners are interested in project-based assistance, the regulations often create unnecessary hurdles. The Housing Opportunity Through Modernization Act of 2016 (HOTMA) addressed several of these hurdles by providing exceptions to the portfolio cap and project unit cap for previously assisted properties, but some key issues remain.

a. Competitive Process (24 CFR 983.51)

The regulations require that a PBV proposal be selected: (1) through a competitive selection/request for proposal (RFP) process; or (2) by selecting properties that were subject to another competitive selection process that was independent of the PBV award. This regulation does allow PHAs to rely on another public agency's competitive selection process to award PBV assistance, but it explicitly prohibits coordination between the PHA and its partner agencies (notably Housing Credits allocators) by specifying that the other agency's competitive selection must "not involve any consideration that the project³ would receive PBV assistance." While in some circumstances the second test provides relief, in many cases the preservation transaction would require a separate RFP

³"Definition: Project. from 24 CFR § 983.3 | LII / Legal Information Institute," accessed January 30, 2020, https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=b3fad119a2138e265dd72a5f8efe2954&term_occur=2&term_src=Title:24:Subtitle:B:Chapter:IX:Part:983:Subpart:B:983.5 1.

process. This is incredibly burdensome to PHAs, which have very limited resources, and is particularly unnecessary where newly or to-be issued tenant protection vouchers would be exchanged for PBVs, so that there would be no net use of the PHAs voucher authority.

This provision is not explicitly required under the statute. In practice, this prevents many desirable project proposals from securing competitive resources such as 9% Housing Credits because they do not have a PBV commitment to support deep income targeting and increased mortgage proceeds, and cannot secure a PBV commitment because they have not yet secured competitive funding for the project.

Recommendation to White House Council: We propose that HUD permit PHAs to issue conditional commitments for PBV proposals that satisfy criteria or priorities specified in their administrative plans, indicating that PBV assistance would be available contingent on the project's having secured some other (perhaps specified) competitively awarded public resource. Such a conditional commitment would allow PHAs to better coordinate with other public funders, both in terms of their project priorities and their selection process and timelines.

b. Site Selection (24 CFR 983.57)

The regulations provide site selection standards applicable to existing and new construction properties to be assisted by a PBV contract. These standards are intended to ensure that properties selected for assistance are consistent with HUD and PHA goals. While the criteria are important considerations, they can be a hurdle to the preservation of existing affordable housing. Where an owner and a PHA propose to preserve an existing affordable property through the exchange of tenant protection vouchers for PBV, there should be an exemption to site selection standards. In these instances, issuance of the contract and preservation or even redevelopment of the property should not preclude the award of a contract to another property or mean that PHA funds are not otherwise being used to further goals; the preservation option exists only for the subject property. PBV regulations should not inadvertently inhibit a PHA's ability to maximize the preservation of affordable units.

Recommendation to White House Council: The PBV Site Selection regulation should include an exemption for a previously assisted property.

The Low-Income Housing Tax Credit (Housing Credit)

The National Council of State Housing Finance Agencies (NCSHA) provided HUD the following recommendations on improving the Low-Income Housing Tax Credit program, which our organizations support, and which are included in the *Affordable Housing Credit Improvement Act* (AHCIA) legislation (S. 1703/H.R. 3077).

Student Rule

When Congress created the Housing Credit, it sought to ensure that Credits were not used to develop dormitory housing for full-time students. However, the Housing Credit "student rule" prohibiting such developments is overly complex, prevents nontraditional-aged individuals living in

Housing Credit properties from going back to school to further their education, and differs substantially from the rule impacting students in HUD-financed housing. This means that properties that have both Housing Credit and HUD funding must comply with two different student rules.

Legal experts believe that a statutory change is needed to fix many of the problems with the student rule. While Section 42 of the Internal Revenue Code (IRC) only lists exceptions to the student rule and does not specifically say that housing students is prohibited under the Credit, the Statement of Managers that accompanied the Tax Reform Act of 1986 states, "In no case is a unit considered to be occupied by low-income individuals if all the occupants of such unit are students (as determined under sec. 151(c)(4)), no one of whom is entitled to file a joint income tax return."

For this reason, our organizations have pursued a broad statutory change to the Housing Credit student rule, included in the Affordable Housing Credit Improvement Act (AHCIA), S. 1703/H.R. 3077. This change would simplify the Housing Credit student rule and better achieve the intended targeting. It also aligns the Housing Credit student rule with the HUD student rule for ease of administration in developments that receive financing from both the Credit and HUD programs.

However, there is one area in which an amendment to the existing Housing Credit student rule could provide much needed simplification, even before the enactment of a more sweeping statutory change. Specifically, both the IRS Audit Technique Guide IRC Section 42 and IRS Guide for Completing Form 8823 state the "A unit is not a low-income unit if it is occupied entirely by full-time students at qualifying educational organizations *for five or more months during a calendar year in which the taxable year of the taxpayer begins...*" This means that an individual who is no longer a student but had been a student for five or more months during the calendar year in which taxpayer's taxable year began, still counts as a student for purposes of the Housing Credit until the start of the next calendar year. It is difficult for applicants and management alike to understand why someone who is no longer enrolled at an educational institution would still qualify as a student for the purpose of this program.

Recommendation to White House Council: Take immediate steps to simplify the student rule by modifying the Audit Technique Guide for Section 42 and the Guide to Completing Form 8823 so that individuals are only considered students if they are enrolled in an educational institution at the time of application and/or at the time of the owner's annual recertification of continuing program compliance.

Planned Foreclosure of Housing Credit Properties

By law, Housing Credit properties must remain affordable for at least 30 years. The first 15-year period is regulated through the Internal Revenue Code under the threat of recapture of Housing Credits. The second 15-year period is regulated through an extended use agreement administered by the state Housing Credit allocating agency. Under current law, if a property is acquired by foreclosure during the second 15-year period, the affordability restrictions terminate unless the Secretary of the Treasury determines that the acquisition was part of an arrangement to terminate those restrictions and not a legitimate foreclosure.

In practice, it is very difficult for the Treasury Secretary to make such determinations about individual properties. To our knowledge, the Treasury Secretary has never done so, despite state Housing Credit agencies providing the Secretary with extensive documentation of these

occurrences. Due to this practice, we are seeing early terminations of the statutory affordability period at the expense of the American taxpayer. The premature loss of these units reduces our affordable housing supply, requiring the construction or rehabilitation of other units just to keep pace. A simple way to prevent new costs would be to maintain the affordability restrictions on this housing.

Recommendation to White House Council: Encourage the Secretary of the Treasury to delegate to state Housing Credit agencies the responsibility of determining when a foreclosure is undertaken for the express purpose of terminating affordability restrictions. While we believe this may be accomplished through regulation, a statutory fix to this issue is included in AHCIA.

The Housing Credit Ten-Year Rule

Housing Credits are not available for the acquisition of properties placed in service during the ten years prior to that acquisition. This rule dates to 1986, when Congress was concerned about “churning” real estate to take advantage of property appreciation due to the accelerated depreciation rules enacted in 1981. Decades later, with longer depreciation rules in effect, the ten-year rule is no longer relevant. Instead, the rule unnecessarily prevents the acquisition of properties that would otherwise be eligible for preservation.

Congress partially addressed this in 2008, by providing an exception to the ten-year rule for certain federally or state-assisted buildings. However, the IRS has not issued regulations implementing this change, thus few transactions have tried to utilize this exception. In this case, it is the lack of regulatory guidance that is adding burden to the program.

Recommendation to White House Council: Promulgate regulations implementing the statutory change. A more substantive statutory fix to the ten-year rule is included in AHCIA.

Relocation Expenses in Rehabilitation Expenditure

When an occupied building is rehabilitated, it may be safer, more expedient, and more efficient if tenants are relocated while the work is being done. IRS has taken the position that the cost of relocating tenants is deductible, and therefore cannot be capitalized. In the case of the Housing Credit, the result of this position is that relocation costs cannot be considered direct costs of the rehabilitation, and thus cannot be covered by Housing Credit equity. This makes rehabilitation far more difficult and time consuming, which adds unnecessary costs, while sacrificing resident safety. In some instances, this makes the rehabilitation untenable.

Recommendation to White House Council: Change the IRS position on relocation costs for purposes of the Housing Credit program. While we believe this may be accomplished through regulation, a statutory fix to this issue is included in AHCIA.

Casualty Losses

Current IRS policy provides relief from recapture and credit loss to owners of buildings that suffered a reduction in qualified basis due to a casualty, if the casualty resulted from a disaster that is part of a presidentially declared disaster area, allowing up to 24 months from the time of the casualty for the property to be back in service. However, if a property suffers a casualty loss unrelated to a

presidentially declared disaster, the property must be restored and back in service by the end of the calendar year to avoid credit recapture, regardless of when the casualty loss event occurred.

For example, if a property suffers a fire in December that causes units to be unavailable for occupancy as of the end of the calendar year, the owner will face a loss of Credits, even though the property was in service for the majority of the year. Conversely, if a property suffers a fire in January and units are unavailable for most of the year, but back in service by December 31, the owner would not suffer a loss of Credits under current IRS policy.

Moreover, IRS does not make any exceptions to the 24-month time limit for properties suffering a casualty loss due to a presidentially declared disaster. In some instances, such disasters are so devastating that 24 months is not sufficient time to rebuild; or, a successive event that is not a presidentially declared disaster occurs, significantly hampering recovery efforts from the initial disaster. For example, properties that burned down in wildfires that devastated all infrastructure in the surrounding area, or areas hit by hurricanes in successive years. In these instances, greater flexibility is warranted.

Recommendation to White House Council: Amend IRS policy to provide owners of buildings that suffer a casualty towards the end of the calendar year with more time to restore their property and ensure that it is rented to qualified tenants without suffering a penalty. While we believe this could be accomplished through regulation, a statutory fix to this issue is included in AHClA. Guidance should also provide a process for allocating agencies to request from IRS an extension of the 24-month relief period for extreme events.

Preservation of the USDA RHS Multifamily Portfolio

USDA has a current portfolio of over 415,000 units of Section 515 financed multifamily housing and around 14,000 units of Section 514/516 farmworker rental housing. The Department has inadequate resources and authorities to preserve its legacy financed affordable multifamily housing stock and provides limited information to the public on property type and characteristics. While USDA officials have indicated that they are in the process of risk rating their portfolio and creating a typology to allow them to better target their preservation resources, there is little available public information about the USDA portfolio and its characteristics to allow stakeholders to identify priorities for preservation and engage owners who have maturing mortgages or may be prepaying.

Recommendation to White House Council: Work with USDA to provide publicly available data related to the property type and characteristics of the RHS portfolio so that stakeholders can better strategize about how to best preserve these properties. Moreover, we suggest that USDA develop and release a draft multifamily preservation plan and allow the public to comment on it.

2. Increase access to improved and innovative financing products and market liquidity for affordable housing development

FHA Multifamily Insured Loans

FHA insured loans play an important role in providing liquidity for affordable multifamily housing. Construction to permanent debt products like the 221(d)(4) loan and long-term refinancing loans under Section 223(f) help income-restricted properties access long-term capital at the rates needed to maintain affordability. While these insured loan products are valuable tools for attracting private lenders to the affordable housing transactions, HUD's own outdated policies can preclude the use of FHA insured loans for the kind of housing that is consistent with HUD's goals. This, in turn, inhibits the creation of construction jobs and is inconsistent with HUD's mission. We encourage HUD to make updates to the Multifamily Accelerated Processing (MAP) guide that would expedite the production of quality affordable housing that connects residents to opportunity.

a. Noise levels (24 CFR Part 51, Subpart B)

We are committed to providing a safe and healthy environment for residents to allow them to connect to opportunity. While we appreciate the goals of the HUD's noise analysis requirements, the analysis is often costly and time consuming and can preclude the construction of transit-oriented housing that connects residents to jobs and education opportunities. There is significant demand for transit-oriented development in most communities, both market rate and affordable. Policies that delay or preclude such development are not only outdated, but also hinder the creation of construction jobs and serve as an additional impediment to employment for the larger community by limiting the stock of transit accessible housing. In addition, application of noise levels on existing HUD assisted properties can postpone or restrict preservation efforts.

Recommendation to White House Council: We urge HUD to modify noise analysis regulations to expedite the development process, particularly for transit-oriented and mixed used developments and existing HUD assisted properties.

b. Commercial Percentage - Multifamily Accelerated Processing (MAP) Guide

Housing in walkable communities not only connects residents to the services and employment opportunities they need for success, it is commercially desirable. Evidence suggests that housing in less auto-dependent areas is less likely to be subject to a mortgage default.⁴ While demand for housing in mixed-use walkable communities has increased and is likely to continue to do so as millennials form households and Baby Boomers seek sustainable housing options for retirement, FHA policies are inconsistent with this demand. Percentage limitations on commercial square footage limit the use of FHA insured loans in walkable and mixed communities. Better matching these requirements to demand and requirements for mixed-use communities would allow FHA insured loans to better stabilize recovering housing markets and serve as a catalyst for economic

⁴ Gary Pivo, "The Effect of Sustainability Features on Mortgage Default Prediction and Risk in Multifamily Rental Housing," *The Journal of Sustainable Real Estate* Volume 5, no. 1 (2013): 149–170.

growth where demand is increasing. HUD made changes to commercial requirements for condominium building by mortgagee letter in 2012, but policies for the Section 221(d)(4) program remain limited.

Recommendation to White House Council: We encourage HUD to review the proposals of the Congress for New Urbanism and its coalition of stakeholders to better support walkable communities.⁵

c. Parking requirements

Providing parking spaces in a multifamily property is a significant cost factor, particularly in high cost markets where affordable housing is direly needed. Where frequent and reliable public transportation is available, less parking is needed. The current MAP Guide acknowledges the mitigating impact of public transportation. Similarly, as the population ages, some elderly properties will require fewer parking spaces. Excessive parking requirements increase the cost of providing and maintaining affordable housing. Separate HUD requirements and analysis of parking also duplicate local requirements.

Recommendation to White House Council: We encourage HUD to streamline its own parking requirements in a manner that recognizes the costs of providing parking, the needs of the individual property, and the availability of public transportation.

d. Closing process

We encourage HUD to streamline and expedite the closing process on multifamily FHA loans insured under Section 221d4 and 223f. While FHA offers favorable terms, closing on these FHA loan can be a lengthy and complex process – mainly due to understaffing challenges at HUD’s legal offices. This process can take up to 12 months, varying from one HUD regional office to another. These delays not only delay the production of housing, they also increase holding costs, interest rate, legal fees and ultimately the per-unit cost of any deal.

Streamlining the closing process would also reduce the need to rework deals and lessen interest rate risks. Borrowers and lenders compile an application to the FHA that reflects the current interest rate environment, but rates fluctuate. Once a rate is locked, there is generally a short time period to close and deliver a loan to the investor that determines the rate. Given long HUD processing times and firm delivery deadlines that carry significant financial consequences, borrowers typically hold locking the deal’s interest rate after they submit their applications till they receive the FHA’s firm commitment to insure the loan, which can take several months. When the borrower and lender underwrite a deal at a certain interest rate based on the environment at the time of the application submission and there is significant fluctuation in rates in the time the application is processed, the transaction may have to be restructured and reprocessed, adding cost and time. The risk of interest rate fluctuations and the need for reprocessing increases with longer processing times.

⁵“Live/Work/Walk: Removing Obstacles to Investment | Congress for the New Urbanism,” September 13, 2013, <http://archive.cnu.org/liveworkwalk>.

Recommendation to White House Council: We encourage HUD to explore strategies to streamline and expedite the closing process on multifamily FHA insured loans. These strategies should include increasing HUD’s staff capacity and using the next update to the MAP Guide to provide more flexibility in the approval process, such as delegating the underwriting process for straightforward real estate deals to the MAP lender to expedite closings.

3. Leverage existing federal programs to launch pilots and support innovations

HUD Block Grants

Our organizations do not support utilizing HUD’s annual Community Development Block Grant (CDBG) and Home Investment Partnerships (HOME) programs to require changes in state and local practices since these programs are insufficiently funded, not well designed for these efforts, and there are potential unintended consequences which could hinder local affordable housing efforts. For instance, both of HUD’s block grants have experienced sharp declines in funding as more jurisdictions qualify for these programs and as appropriations have declined. Reforming local building, zoning, and regulatory practices is a politically contentious process and it’s possible that many localities would refuse such federal block grant dollars if there weren’t sufficient local political will. This would result in a loss of local affordable housing resources and exacerbate affordability issues. In addition, the majority of HUD block grant funding goes to larger cities and counties, although states also receive a percentage of funds, which are competitively administered for smaller communities. We believe it would be difficult for rural communities to change their local practices for the receipt of infrequent, small federal grants, so we based this recommendation solely on caution against this approach.

HUD’s CDBG program is not well designed to change local zoning and building codes since the formula allocation targets larger and higher needs communities. The communities with the highest housing values and most restrictions on rental housing tend to be higher income communities which do not receive CDBG.⁶

Recommendation to White House Council: Avoid using HUD’s block grants to incentivize changes in local land use and regulatory barriers in the absence of robust increases in funding.

U.S. Department of Transportation Programs

Our organizations do support reviewing how U.S. Department of Transportation (DOT) programs can be utilized to improve local land use and regulatory practices. There have been legislative proposals to amend Federal Transit Administration public transit program grant review processes to ensure federal transit investments will support additional market rate and affordable housing. We support such efforts to direct the limited funding for new transit to localities that have reformed zoning around transit to support housing growth, including affordable housing. This is especially important for low-income families since transportation is often their second largest expense.

⁶ Jenny Schuetz, “HUD Can’t Fix Exclusionary Zoning by Withholding CDBG Funds,” *Brookings.Edu* (blog), October 15, 2018, <https://www.brookings.edu/research/hud-cant-fix-exclusionary-zoning-by-withholding-cdbg-funds/>.

We also favor utilizing existing programmatic authorities to spur additional affordable housing, such as the ability for the Build America Bureau to finance transit-oriented development (TOD) under the Transportation Infrastructure Financing and Innovation Act (TIFIA) and Railroad Rehabilitation and Improvement Financing (RRIF) programs.⁷ Both of these programs were provided TOD financing authority in the last transportation reauthorization, although DOT has not approved a TOD loan under either program to date. DOT should make efforts to better utilize these existing authorities and request modifications from Congress where there are statutory issues with implementation.

Many of our organizations are also involved in efforts to modify the TIFIA program so that community development financial institutions (CDFIs) can utilize the TIFIA TOD authority to support equitable TOD projects, including affordable housing. We have developed a legislative proposal which would allow creditworthy CDFIs to apply for TIFIA long-term debt under a revolving loan fund model to support affordable housing near transit and we welcome the support of the DOT and the Administration.

Recommendation to White House Council: Review the feasibility of using DOT programs to incentivize local regulatory and land use reforms which support additional affordable housing. In addition, utilize existing TOD authorities to support affordable housing and support legislative efforts which allow CDFIs to finance affordable housing near transit.

Innovations in Construction Techniques

The housing industry has been eager to utilize innovative construction strategies, including off-site construction, cross-laminated timber, resilience and green building codes, and 3-D home printing, to substantially improve the cost-effectiveness and efficiency of the housing delivery system. However, housing stakeholders have not been able to implement these construction innovations at scale due to a range of regulatory and financial barriers. The federal government has played a role in supporting efforts to utilize construction innovations and technology in home building. HUD's Office of Policy Development and Research (PD&R) has been committed to conducting and assisting research on building technology, including building codes, energy efficiency and land use. Furthermore, HUD's most recent building technology program, the Partnership for Advancing Technology in Housing (Path), which operated between 1988 and 2008, aimed to establish public-private partnerships that would improve the safety, efficiency and durability of American homes. Acknowledging the importance of using construction innovations and technology to improve the quality, cost-effectiveness and efficiency of residential construction, we recommend that HUD offer technical, financial and administrative support to help bring those innovations to scale.

Boost access to financing products that could support construction innovations and technology

Generally, lenders which are not familiar with innovative construction strategies and technologies see them as higher risk, which leads to more restrictive or expensive lending. One example is the barriers to financing off-site construction development. Unlike traditional construction, the majority

⁷ Ahmad Abu-Khalaf, "Promoting Opportunity through Equitable Transit-Oriented Development (ETOD): Navigating Federal Transportation Policy," Enterprise Community Partners, March 2018, <https://www.enterprisecommunity.org/resources/promoting-opportunity-through-etod-navigating-federal-transportation-policy>.

of these construction activities occur off-site, at a factory or a construction facility, where fabricated modules or construction components get delivered to the site for assembly toward the end of the construction timeline. In addition, fabricators typically require a large deposit upfront to purchase needed raw material and cover labor and overhead costs. These differences can create uncertainty among lenders, making securing financing more challenging and/or requiring a substantial equity contribution from developers.

The federal government can explore solutions to boost lending for innovative construction strategies and technologies. This action could be pursued through identifying existing federal financing products that can be utilized to boost lending for innovative construction strategies and technologies or launching new financing products tailored to support financing innovations that can help expand the supply of affordable homes. We encourage HUD to publicize data on FHA-insured, multifamily properties that have used off-site construction to help the industry capture any cost savings that were achieved through expediting the development timeline and improving the effectiveness of the construction process. HUD also could consider publishing guidance on leveraging off-site construction to boost housing affordability, encouraging the use of these approaches (when it is suitable and can help accomplish cost savings) and providing for needed flexibility in the construction draw process for these types of developments.

Recommendation to White House Council: Identify existing or new federal financing products that can help address financial barriers and boost access to financing for using innovative construction strategies and technologies.

Incentivize state and local jurisdictions to address regulatory barriers to and incentivize using construction innovations

While local building codes and standards governing residential construction are important to ensure safe and quality construction, some local building codes and standards unintentionally or intentionally inhibit the use of innovative construction strategies and technologies. For instance, when local jurisdictions impose cumbersome permitting and approval processes on construction projects that use nontraditional construction techniques, they discourage developers from utilizing construction innovations, create financial burdens, and add to project development timelines. We recommend that the federal government create new incentives that would encourage local jurisdictions to address regulatory barriers to as well incentivize the use of innovative construction strategies and technologies that can create safe, resilient and humane housing. These pilots or programs would create financial incentives to local jurisdictions to encourage them to streamline permitting and approval processes for residential projects using innovative construction techniques and/or amend their building codes and standards that inhibit the use of these innovations and technologies. One promising idea is supporting the greater adoption, use, and application of current building codes by providing additional funds for HUD's CDBG-DR and CDBG-MIT programs to implement pilots that would incentivize recipients of such grants to pursue the adoption and application of modern building codes and resilience standards.

Recommendation to White House Council: Explore creating new programs and pilots that would incentivize local jurisdictions to address regulatory barriers to and incentivize using construction innovations and technologies.

4. Incentivize state and local jurisdictions to explore their regulatory practices

There has been increasing discussion on ways in which the federal government can incentivize state and local governments to review and improve their regulatory practices. These proposals can generally be described as a “carrot” approach, in which the federal government provides additional resources or makes an applicant more competitive for existing resources if it makes a commitment to improve local regulatory practice. In addition, there have been proposals around incorporating this goal as a compliance practice into existing federal programs.

HUD could pursue pilots and new programs to incentivize state and local jurisdictions to improve their regulatory practices for two complementary yet distinct policy goals: (1) increasing the supply of affordable housing⁸; and (2) affirmatively furthering fair housing. It is important to distinguish the second goal of furthering fair housing as it cannot be achieved alone by the pursuit of the first goal, but it requires an explicit attention to policies and practices that perpetuate segregated housing patterns, including disparate impact.

HUD already has a well-designed process for requiring jurisdictions to evaluate their regulatory practices that obstruct the production of fair and accessible affordable housing. As part of the 2015 Affirmatively Furthering Fair Housing (AFFH) rule, HUD recipients were required to identify regulatory barriers to fair housing such as exclusionary zoning and other regulatory policies that perpetuate segregated housing patterns. Through the Assessment of Fair Housing (AFH), the 2015 AFFH rule was designed to help ensure that localities reform exclusionary housing practices that obstruct the production of more affordable housing *and* perpetuate residential segregation.

We strongly urge the Administration to rescind its new AFFH proposed rule that would weaken how HUD furthers fair housing, as required by the Fair Housing Act. HUD should instead utilize the previous rule which was developed after years of stakeholder engagement. Our organizations provided feedback to HUD on the challenges which will result from a new AFFH proposed rule and strongly encourage HUD to utilize the current AFFH rule to require local jurisdictions that receive HUD funding to examine their local housing landscape and accordingly set housing priorities and goals.⁹

Recommendation to the White House Council: Rescind the newly released AFFH proposed rule and utilize the previous rule to make progress on eliminating barriers to fair housing for all people.

⁸ “Enterprise Community Partners - Policy Development & Research,” Enterprise Community Partners, accessed January 5, 2020, <https://www.enterprisecommunity.org/policy-and-advocacy/policy-development-and-research>.

⁹ The Local Initiatives Support Corporation (LISC) et al., “Comments to HUD on Streamlining and Enhancing Its Affirmatively Furthering Fair Housing Rule,” October 12, 2018, https://www.lisc.org/media/filer_public/63/9f/639fea62-6e2d-4ed9-afc1-a0b6cee939fe/101518_policy_comments_affirmatively_furthering_fair_housing_final.pdf.

We appreciate this opportunity to comment on regulatory administrative barriers to housing development. We look forward to working with HUD to address barriers to expanding the nation's supply of affordable homes and containing the cost of residential development in a manner that facilitates the efficient delivery of quality affordable housing that connects residents to opportunity and allows them to live in dignity.

If you have any additional questions regarding these recommendations, please contact Marion McFadden (mmcfadden@enterprisecommunity.org), Shannon Ross (ross@housingpartnership.net), Matt Josephs (mjosephs@lisc.org), Jonathan Harwitz (jharwitz@liif.org), Ellen Lurie Hoffman (eluriehoffman@nhtinc.org), or Andrea Ponsor (aponsor@sahfnet.org).

Sincerely,



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About Our Organizations

Enterprise Community Partners is a proven and powerful nonprofit that improves communities and people's lives by making well-designed homes affordable. Our donors allow us to advance our mission, while our social enterprise activities leverage their generous support. We bring together the nationwide knowhow, partners, policy leadership and investments to multiply the impact of local affordable housing development. Over more than 35 years, Enterprise has created 585,000 homes, invested more than \$43 billion and touched millions of lives. Join us at

Housing Partnership Network (HPN) is a collective of nearly 100 top-performing, high-capacity nonprofit housing developers, owners and financial institutions with operations in all 50 states. Collectively, our members have developed and preserved 417,000 homes, and served 11.1 million low-income people through housing, community facilities and services. HPN's mission is to help millions of people gain access to affordable homes and thriving communities that offer economic opportunity and an enhanced quality of life.

Local Initiatives Support Corporation (LISC) is a national nonprofit housing and community development organization that is dedicated to helping community residents transform distressed neighborhoods into healthy and sustainable communities of choice and opportunity. LISC mobilizes corporate, government and philanthropic support to provide local community development organizations with loans, grants and equity investments; as well as technical and management assistance. Our organization has a nationwide footprint, with local offices in 36 cities. LISC invests approximately \$1.4 billion each year in these communities and our work covers a wide range of activities, including affordable housing, economic development, building family wealth and incomes, education, and creating healthy communities.

The Low Income Investment Fund (LIIF) is a certified Community Development Financial Institution (CDFI) that invests capital to support healthy families and communities. Since 1984, LIIF has provided \$2.5 billion in financing and technical assistance in 31 states, leveraging over \$12.5 billion in additional private capital and serving more than 2.1 million people. Our investments have created and preserved 78,000 units of affordable housing; 271,000 child care spaces; 98,000 spaces in schools; and 36 million square feet of community facilities and commercial space. LIIF estimates that our work has created or maintained 159,000 jobs, and generated \$65.1 billion in family income and societal benefits.

The National Housing Trust (NHT) is a national, nonprofit organization dedicated to preserving, producing and protecting affordable housing. Our mission broadly is to ensure that all Americans have access to safe and secure homes by preserving and expanding our nation's affordable housing stock. Using the tools of policy advocacy and innovation, real estate development, lending, and energy solutions, NHT has helped preserve and create more than 36,000 affordable homes in 50 states, leveraging more than \$1.2 billion in financing.

Stewards of Affordable Housing for the Future (SAHF) Launched in 2003, Stewards of Affordable Housing for the Future (SAHF) represents thirteen exemplary, multi-state non-profit providers of stable, service-enriched housing--Mercy Housing, Volunteers of America, National Church Residences, National Housing Trust, The Evangelical Lutheran Good Samaritan Society, Retirement Housing Foundation, Preservation of Affordable Housing, The NHP Foundation, BRIDGE Housing, CommonBond Communities, Community Housing Partners, Homes for America, and The Community Builders. SAHF members preserve and develop multifamily properties for low-income persons with disabilities, the elderly, families, and the homeless. SAHF members collectively own and operate more than 140,000 affordable apartments across the country.