

January 31, 2020

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

Re: Request for Information on Eliminating Regulatory Barriers to Affordable Housing, FR-6187-N-01, HUD-2019-0092

Dear Ms. Blumenthal:

Thank you for the opportunity to provide comments on HUD's Request for Information on eliminating regulatory barriers to affordable housing. The Center for Responsible Lending (CRL) is a nonprofit, non-partisan research and policy organization dedicated to protecting homeownership and family wealth by working to eliminate abusive financial practices. CRL is an affiliate of Self-Help, one of the nation's largest nonprofit community development financial institutions. Over 37 years, Self-Help has provided over \$7 billion in financing through 146,000 loans to homebuyers, small businesses, and nonprofits. It serves more than 145,000 mostly low-income members through 45 retail credit union locations in North Carolina, California, Florida, Greater Chicago, and Milwaukee.

Deregulatory measures are not the antidote to the affordable housing crisis in our nation. The government must provide the necessary investments to combat the crisis and ensure that potential regulatory changes enhance equity, not detract from it. HUD and the White House Council must not use the RFI process to undermine important public interest protections, such as civil rights, labor, environmental, and public health.

**I. The federal government must provide robust investment to address the affordable housing crisis.**

The affordable housing crisis is vast and multifaceted. It is driven by a shortage of affordable inventory, wages not keeping up with rising housing costs, exclusionary zoning, displacement, the racial wealth gap, lack of fair access to credit, and more. The crisis spans urban, rural, and

suburban communities.<sup>1</sup> The crisis cannot be remedied through deregulation.<sup>2</sup> Rather, the federal government – including HUD – must devote significant public investment to the affordability crisis on both the homeownership and rental side of the equation.

A renter working 40 hours a week and earning minimum wage can afford a two-bedroom apartment (and not be cost-burdened) in exactly zero counties nationwide.<sup>3</sup> The private market needs federal investments to successfully develop, manage, and maintain rental housing affordable to the lowest income households.<sup>4</sup> The National Association of Homebuilders testified before the House Financial Services Committee that builders and developers would gladly serve families at all incomes if they “could simply make the numbers work,” but that “it is impossible to build new apartments affordable to low-income families without some type of government assistance....”<sup>5</sup> The cost of developing and operating housing for lower income families often exceeds the amount of revenue a landlord could generate by setting affordable rents.<sup>6</sup>

The federal government also must devote resources to fostering safe and affordable homeownership for creditworthy borrowers. In lower-income communities and communities of color across the nation, homeownership has not recovered from the far-reaching damage of the Great Recession. Data show that families of color, Americans born after 1970, and households earning less than \$60,000 are the least likely to have recovered the wealth they lost

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<sup>1</sup> America’s Rental Housing 2020, Joint Center for Housing Studies of Harvard University, January 31, 2020, <https://www.jchs.harvard.edu/americas-rental-housing-2020>; Tim Henderson, Rural America Faces a Housing Cost Crunch, Pew, March 25, 2019, <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2019/03/25/rural-america-faces-a-housing-cost-crunch>; Alexander Hermann, Price-to-Income Ratios are Nearing Historic Highs, Joint Center for Housing Studies of Harvard University, September 13, 2018, <https://www.jchs.harvard.edu/blog/price-to-income-ratios-are-nearing-historic-highs/>; <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2019/03/25/rural-america-faces-a-housing-cost-crunch>; Margaret Hennessy, Suburban Housing Costs Are Stretching Families to the Brink, Slate, March 21, 2018, <https://slate.com/human-interest/2018/03/suburban-housing-costs-are-stretching-families-to-the-brink.html>.

<sup>2</sup> Solomon Greene, Can We Deregulate Ourselves Out of the Affordable Housing Crisis?, Urban Institute, July 1, 2019, <https://www.urban.org/urban-wire/can-we-deregulate-ourselves-out-affordable-housing-crisis>.

<sup>3</sup> National Low Income Housing Coalition, Out of Reach: The High Cost of Housing, June 18, 2018, <https://nlihc.org/resource/nlihc-releases-out-reach-2018>.

<sup>4</sup> Housing in America: Assessing the Infrastructure Needs of America’s Housing Stock, Hearing Before the H. Committee on Financial Services, 116th Cong, (2019) (statement of Diane Yentel, President and CEO, National Low Income Housing Coalition).

<sup>5</sup> Housing in America: Assessing the Infrastructure Needs of America’s Housing Stock, Hearing Before the H. Committee on Financial Services, 116th Cong, (2019) (statement of Steve Lawson, Representative, National Association of Home Builders).

<sup>6</sup> See, e.g., The Cost of Affordable Housing: Does it Pencil Out?, Urban Institute, <https://apps.urban.org/features/cost-of-affordable-housing/>.

in the financial crisis.<sup>7</sup> In fact, the Great Recession wiped out 30 years of homeownership gains for African-Americans. It exacerbated the already large racial homeownership gap, with Black homeownership rates falling to levels that predate the passage of the Fair Housing Act more than 50 years ago.<sup>8</sup> The current homeownership rate for Black families is only 42.7 percent, as compared to 73.4 percent for white families.<sup>9</sup>

According to CRL calculations, nationwide it would take 14 years for a prospective homebuyer earning the national median income to save for a 10 percent down payment for a median-priced home.<sup>10</sup> It would take 21 and 17 years respectively for Black and Latino households earning the median income to acquire enough funds and afford a 10 percent down payment for a median-priced home.<sup>11</sup> According to a report by Demos, if homeownership rates were the same for whites and people of color, we would see a decrease in the racial wealth gap by 31 percent for African-Americans and 28 percent for Latinos.<sup>12</sup> Down payment assistance and other measures are essential to help more families achieve affordable homeownership and address the long-standing racial wealth gap.

## **II. Analysis of the affordability crisis must recognize that racial and economic segregation are inextricably linked.**

Discrimination in our nation's lending and housing markets has a long and sordid history, driven by the federal government, state and local governments, private industry, and individual actors.<sup>13</sup> HUD's analysis of the affordability crisis must be informed by the legacy of discrimination and segregation in the United States and its continuing manifestations today.

### **A. Restrictive Zoning**

Many of today's single-family zoning requirements are rooted in racially restrictive zoning requirements that combine economic bias with racial bigotry and continue to bolster this

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<sup>7</sup> Heather Long, This Doesn't Look Like the Best Economy Ever: 40% of Americans Say They Still Struggle to Pay Bills, Washington Post, July 4, 2019, [https://www.washingtonpost.com/business/economy/this-doesntlook-like-the-best-economy-ever-40percent-of-americans-say-they-still-struggle-to-paybills/2019/07/04/855c382e-99b5-11e9-916d-9c61607d8190\\_story.html](https://www.washingtonpost.com/business/economy/this-doesntlook-like-the-best-economy-ever-40percent-of-americans-say-they-still-struggle-to-paybills/2019/07/04/855c382e-99b5-11e9-916d-9c61607d8190_story.html).

<sup>8</sup> Laurie Goodman, Alanna McCargo, and Jun Zhu, A Closer Look at the Fifteen-Year Drop in Black Homeownership, Urban Institute, Feb, 13, 2018, <https://www.urban.org/urban-wire/closer-look-fifteen-year-drop-black-homeownership>.

<sup>9</sup> U.S. Census Bureau, Quarterly Residential Vacancies and Homeownership, Third Quarter 2019 (Oct. 29, 2019), <https://www.census.gov/housing/hvs/files/currenthvspress.pdf>.

<sup>10</sup> CRL calculations (2019).

<sup>11</sup> *Id.*

<sup>12</sup> Tanvi Misra, Why America's Racial Wealth Gap is Really a Homeownership Gap, Demos, March 12, 2015, <http://www.demos.org/news/why-americas-racial-wealth-gap-really-homeownership-gap>.

<sup>13</sup> Richard Rothstein, The Color of Law: A Forgotten History of How Our Government Segregated America, Liveright Publishing Corporation (2107).

discrimination. In 1910, Baltimore pioneered racial zoning by prohibiting African-Americans from buying in majority-white areas, or whites in majority-black areas.<sup>14</sup> Similar racial zoning policies spread throughout the country. After race-based zoning was struck down by the U.S. Supreme Court in 1917, communities switched to economic-based zoning to circumvent the ruling.<sup>15</sup> This included policies such as exclusively requiring single-family homes in neighborhoods, minimum lot sizes, or minimum square footage requirements. Because African-Americans are disproportionately low-income, economically exclusionary zoning often has the same impact as explicit racial zoning.<sup>16</sup>

Exclusionary requirements relegated families of color to industry areas in local jurisdictions, including those that contained liquor stores, bars, nightclubs, and prostitution.<sup>17</sup> Consequently, families of color are overwhelmingly concentrated near environmental hazardous materials including toxic waste, despite calls from communities for protection. A 1991 report by the Environmental Protection Agency found that African-American communities have an inordinate amount of toxic waste facilities, and an executive order was issued to stop the practice without providing any rectifying actions.<sup>18</sup> In March 2018, EPA scientist again issued a report in the American Journal of Public Health that showed that people of color are likely to live near polluters and more likely to breathe dangerous air pollution like soot.<sup>19</sup>

## **B. Homeownership Rate Disparities**

Moreover, the homeownership rate gap and wealth gap between whites and people of color is in large part due to historic federal housing policy choices. These policy choices deliberately excluded people of color from being able to build wealth through homeownership. Indeed, today's homeownership disparities can be traced back to New Deal housing programs that amounted to a "state-sponsored system of segregation."<sup>20</sup> From its inception in 1934, the Federal Housing Administration (FHA) explicitly practiced a policy of redlining by refusing to insure mortgages in or near African-American neighborhoods.<sup>21</sup> FHA relied upon color-coded metropolitan maps to indicate where it was considered "safe" to insure mortgages. These maps

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<sup>14</sup> *Id.* at 43-46.

<sup>15</sup> *Id.* at 50.

<sup>16</sup> *Id.* at 53.

<sup>17</sup> *Id.* at 50.

<sup>18</sup> *Id.* at 56.

<sup>19</sup> Ihab Mikati, Adam F. Benson, Thomas J. Luben, Jason D. Sacks, and Jennifer Richmond-Bryant, *Disparities in Distribution of Particulate Matter Emission Sources by Race and Poverty Status*, American Journal of Public Health 108, no. 4 (April 1, 2018), pp. 480-485.

<sup>20</sup> Terry Gross, A 'Forgotten History' of How the U.S. Government Segregated America, NPR Fresh Air, May 3, 2017, <https://www.npr.org/2017/05/03/526655831/a-forgotten-history-of-how-the-u-s-government-segregated-america>.

<sup>21</sup> Emily Badger, How Redlining's Racist Effects Lasted for Decades, N.Y. Times, Aug. 24, 2017, <https://www.nytimes.com/2017/08/24/upshot/how-redlinings-racist-effects-lasting-for-decades.html>.

denoted “risky” areas in red—areas that included African-Americans or where African-Americans lived nearby.<sup>22</sup> In FHA’s 1936 Underwriting Manual, a multitude of provisions indicated that “inharmonious” racial groups should not live in the same communities.<sup>23</sup> The manual also recommended that “natural and artificially-established barriers will prove effective in protecting a neighborhood and the locations within it from adverse influences.”<sup>24</sup> FHA’s redlining policies granted whites the ability to build wealth through homeownership while denying equal opportunities for families of color to build similar home equity over the same period.

As a result, whites amassed an economic advantage in the form of home equity that has been passed on to future generations through intergenerational wealth transfers. In 2016, the median white family had more than ten times the wealth of the median Black family.<sup>25</sup> In fact, the racial wealth gap between Black and white families grew from about \$100,000 in 1992 to \$154,000 in 2016.<sup>26</sup> The median white family gained significantly more wealth, with the median increasing by \$54,000, while median wealth for Black families did not grow in real terms over the same time period.<sup>27</sup> The racial wealth gap contributes to the fact that in the 46 largest housing markets in the country, a median income Black household can only afford 25 percent of homes on the market last year in comparison to the 57 percent that a median income white household could afford.<sup>28</sup> Today, disparities in homeownership are a key contributor to the ongoing racial wealth gap and home equity still plays a central role in shaping family wealth for the middle class.

### **III. HUD and the White House Council must prioritize civil rights enforcement along with increasing the supply of affordable housing.**

Given our nation’s history and the ramifications of decades of disinvestment and discrimination, it is not enough to increase the supply of affordable housing. Equity is an

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<sup>22</sup> Three out of four neighborhoods marked “hazardous” by FHA 80 years ago are still struggling financially. See Bruce Mitchell and Juan Franco, HOLC “Redlining” Maps: The Persistent Structure of Segregation and Economic Inequality, National Community Reinvestment Coalition (March 2018), available at <https://ncrc.org/how-1930s-discrimination-shaped-inequality-in-todays-cities/>.

<sup>23</sup> Federal Housing Administration, Underwriting Manual (1936), Excerpts, available at <https://epress.trincoll.edu/ontheline2015/wp-content/uploads/sites/16/2015/03/1936FHA-Underwriting.pdf>.

<sup>24</sup> *Id.*

<sup>25</sup> Nick Noel, Duwain Pinder, Shelley Stewart III, and Jason Wright, The Economic Impact of Closing the Racial Wealth Gap, McKinsey & Company (Aug. 2019), Exhibit 1 at p. 5, <https://www.mckinsey.com/~media/McKinsey/Industries/Public%20Sector/Our%20Insights/The%20economic%20impact%20of%20closing%20the%20racial%20wealth%20gap/The-economic-impact-of-closing-the-racial-wealthgap-final.ashx>.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> Paul Davidson, Black Households Can Afford Just 25% of Homes For Sale, USA Today, October 15, 2019, <https://www.usatoday.com/story/money/2019/10/15/homes-sale-black-households-can-afford-just-25-percent-houses-market/3976383002/>.

essential component of the analysis. Government action created today's segregated housing patterns. Now the federal government must work to undo the legacy of segregation in the United States and vigorously enforce fair housing laws. Yet, rather than bolstering fair housing enforcement and compliance tools to address the inequities in the system, HUD has backtracked by gutting the disparate impact rule and the Affirmatively Furthering Fair Housing (AFFH) rule. These efforts are pursued in the name of deregulation and reducing burdens, but in fact have enormous costs that will harm economically vulnerable people and communities of color.

HUD's proposed revision of the AFFH rule is a complete renunciation of efforts to undo historic, government-sponsored patterns of housing discrimination and segregation. The revision would permit jurisdictions to ignore the racial desegregation obligations under fair housing law. Moreover, the 2019 proposed rule would have no meaningful impact on the supply of affordable housing in a community.

Additionally, HUD has retreated from disparate impact theory as tool to fight housing discrimination. HUD's 2019 proposed rule will further cement the inequities in our nation rather than reverse exclusionary barriers. The proposal decimates the existing burden-shifting framework – a framework supported by over 40 years of case law – and places all the burdens on the victims of housing discrimination. The proposed rule makes it virtually impossible for a potential complainant to make it past the pleading stage when bringing a claim under disparate impact theory. At the same time, in contradiction of the Fair Housing Act's broad remedial purpose, the proposed rule provides new safe harbors for industry. The proposed rule is opposite to HUD's mission, decades of legal precedent, and the U.S. Supreme Court's decision in *Texas Department of Housing and Community Affairs v. Inclusive Communities Project*.<sup>29</sup>

The federal government has the power to play a critical role in helping to challenge exclusionary policies – both by private actors and state and local governments. But the power lies in enforcing existing fair housing laws, not weakening them.

#### **IV. Conclusion**

As the White House Council considers strategies to promote affordable housing, equity must be of highest priority. Thank you for considering our comments.

Sincerely,

Center for Responsible Lending

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<sup>29</sup> 135 S. Ct. 2507 (2015).