NATIONAL HOUSING CONFERENCE

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

To Whom It May Concern,

I am writing on behalf of the National Housing Conference (NHC) to offer comments concerning the Request for Information (RFI) issued by the Department of Housing and Urban Development (HUD) on November 22, 2019 regarding 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.

America faces a severe affordable housing crisis. This crisis affects every part of this country, although it may manifest itself differently in different areas. According to NHC's Paycheck to Paycheck database, people who work in many occupations from dishwashers to registered nurses and accountants cannot afford to buy an average-priced home or rent a suitable apartment. This is particularly true in high-cost markets like San Francisco, New York, and Washington, DC, but it's also true in places like Atlanta, Georgia; Santa Fe, New Mexico; and Worcester, Massachusetts.[1]

While regulatory barriers have clear impact on the nationwide affordable housing shortage, it is important to emphasize that we cannot deregulate our way out of this crisis. Estimates of the extent of the affordable housing shortage vary, but according to the National Multifamily Housing Council, we need a total of 18.2 million additional housing units by 2030 to close the gap in housing production.[2] This massive shortage will not be overcome simply by getting rid of onerous regulations, although regulatory reform is a critical component of any effective strategy. Our national affordable housing crisis requires a large-scale, sustained investment by the federal government in subsidizing new affordable housing construction, building new public housing, and incenting private development. The impact of this shortfall is felt by all Americans, not just those with extremely low incomes. According to the Joint Center for Housing Studies of Harvard University, "the number of cost-burdened renters earning between $30,000 and $75,000 rose by 320,700 in 2017–2018, or nearly double the average annual increase in 2014–2017. The number of cost-burdened renters making more than $75,000 also rose by 51,300 in 2017–2018."[3]

[1] National Housing Conference. *Paycheck to Paycheck*. April 2019.
[2] National Multifamily Housing Council & National Apartment Association. *U.S. Apartment Demand – A Forward Look.* May 2017.
[3] America's Rental Housing 2020, Joint Center for Housing Studies of Harvard University, January 31, 2020.

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Several bipartisan legislative proposals seek to address these issues. The Yes In My Backyard (YIMBY) Act, introduced by Sen. Todd Young (R-IN), Sen. Brian Schatz (D-HI), Rep. Denny Heck (D-WA) and Rep. Trey Hollingsworth (R-IN), would require Community Development Block Grant (CDBG) recipients to be more transparent as to their efforts, or lack of efforts, to adopt specific pro-affordability housing policies.

The Build More Housing Near Transit Act introduced by Rep. Scott Peters (D-CA) and Rep. Cathy McMorris Rodgers (R-WA), leverages federal dollars to support housing development by minimally adjusting the evaluation criteria for the Federal Transit Administration Fixed Guideway Capital Investment Grants program to include a housing feasibility assessment. This analysis would help to identify and acknowledge local land use policies serving to deter new development.

The Housing is Infrastructure Bill introduced by Rep. Maxine Waters (D-CA) would provide significant financial resources to address the national housing affordability challenge. Many of the programs supported by this increase in funding are controlled by HUD. This bill is aimed at removing barriers to the development of multifamily rental housing. There is an undeniable link between housing and infrastructure, and stronger coordination will support greater housing production, help is an important meet the growing housing demand, and close the housing affordability gap nationwide.

Tax incentives have proven to be powerful tools in advancing Federal policy goals and generating real world results. For example, the Low-Income Housing Tax Credit (LIHTC) has greatly enabled affordable housing production. The National Housing Conference is a strong supporter of expanding and strengthening LIHTC, including those measures in H.R. 3077 and S. 1703, the Affordable Housing Credit Improvement Act, to increase the annual allocation of LIHTCs by 50 percent, establish a permanent minimum 4 percent credit rate rather than a variable rate that usually falls below the intended 4 percent, provide flexibility for existing tenants' income eligibility and certification, modify student occupancy rules, repeal the Qualified Census Tract (QCT) population cap, and allow states to grant a 30 percent basis boost if it is necessary to make a project financially feasible.

We also support the Neighborhood Homes Investment Act (NHIA), H.R. 3316, a bipartisan bill that would revitalize distressed urban, suburban and rural neighborhoods with federal income tax credits, mobilizing private investment to build and substantially rehabilitate 500,000 homes for moderate- and middle-income homeowners over the next decade. The NHIA helps close the gap between the cost of building or renovating homes and the price at which they can be sold, thus making renovation and new home construction possible. The NHIA would also help existing homeowners in these neighborhoods to rehabilitate their homes.

There also are several specific areas where HUD has the authority to reform its procedures and practices through regulation to make building subsidized affordable housing more efficient and effective. HUD's Section 8 program is the federal government's main program to assist very low-income families, the elderly, and the disabled to afford decent, safe and sanitary housing in the private market. Section 8 vouchers enable qualifying participants to find their own housing in apartments, townhouses, or single-family units; they are not limited to subsidized housing projects. Demand for Section 8 vouchers far exceeds supply in most areas of the country.

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Congress provided $20.3 billion to renew all housing vouchers that low-income families are now using, despite deep cuts proposed by the Trump administration, which we have strongly opposed. The Section 8 voucher program needs more funding, not less.

Unfortunately, well-intentioned regulations can make using vouchers expensive and burdensome for many landlords, some of whom refuse to take them, limiting their impact. These include duplicative inspection processes, initial lease-up requirements, and delays in payment and other factors. In contrast, when an unassisted potential resident applies for unit in the private market, the transaction can be completed virtually instantaneously.

Zoning requirements are gaining increasing scrutiny as a major impediment to affordable housing production. Were states and cities to eliminate or "upzone" single-family only zoning laws, they could open up these vast swaths to additional, higher-density housing. A large body of research demonstrates that upzoning would result in millions of additional housing units and would in turn lower housing costs.[4]

Many state and local governments are considering or have already passed upzoning measures to allow for increased housing density. Minneapolis, Minnesota outlawed single-family zoning in December 2018,[5] and the state of Oregon followed suit in August 2019.[6] Many other local and state governments—including Seattle, Durham, Austin, Virginia, California, and Washington state—are considering similar measures to allow for more density.[7] This suggests it will not take much prodding from the federal government to get state and local governments to take action on zoning reform.

Single-family zoning is not the only regulation that increases the cost of building housing and suppresses supply. Other zoning regulations like minimum lot sizes and parking requirements add to the development cost.[8] Many cities also charge development fees of up to $100,000 per multifamily unit or up to $150,000 per single-family home[9] and require environmental impact reports, which further increase development costs. Some jurisdictions also provide multiple opportunities for community stakeholders to provide feedback on proposed developments, which

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[4] Stegman, Michael. *Eliminating Exclusionary Land Use Regulations Should Be the Civil Rights Issue of Our Time*. Harvard Joint Center for Housing Studies, August 2019; Rothwell, Jonathan. *Land Use Politics, Housing Costs, and Segregation in California Cities*. UC Berkeley Terner Center for Housing Innovation, September 2019; Schuetz, Jenny. *Restrictive zoning is impeding DC's goal to build more housing*. Brookings Institution, October 2019; Pinto, Edward J. and Peter, Tobias. *To solve the problem of unaffordable entry-level housing, abolish single-family zoning*. MarketWatch, December 2020; Zillow. *Relaxed Zoning Could Create Millions of New Homes in America's Single-Family Neighborhoods*. December 2019.

[5] Mervosh, Sarah. *Minneapolis, Tackling Housing Crisis and Inequity, Votes to End Single-Family Zoning*. New York Times, December 2018.

[6] Lehman, Chris. *Governor Signs Package of Housing Bills*. KLCC, August 2019.

[7] Hurtado, Ludwig. *Housing crisis has Seattle weighing end of single-family zoning*. NBC News, May 2019; McDonald, Thomasi. *Durham City Council Votes to Add Density in Single-Family Neighborhoods Near Downtown*. INDY Week, September 2019; Betts, Kris. *Austin's new land development code to address 'housing crisis'*. KVUE, November 2019; Sisson, Patrick. *Virginia latest place to make single family zoning ban a political fight*. Curbed, December 2019; Dillon, Liam. *California lawmaker again taking aim at single-family zoning*. Los Angeles Times, January 2020; Kingsella, Mike. *Washington Becomes Latest State to Consider Statewide Zoning Reform.* Up for Growth, January 2020.

[8] Shoup, Donald. *Parking Reform Will Save the City*. CityLab, September 2019.

[9] Mawhorter, Sarah and Garcia, David. *It All Adds Up: The Cost of Housing Development Fees in Seven California Cities*. UC Berkeley Terner Center for Housing Innovation, March 2018; Einstein, Katherine Levine, Glick, David M., and Palmer, Maxwell. *Neighborhood Defenders: Participatory Politics and America's Housing Crisis*. Cambridge University Press, November 2019.

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can draw out the development timeline and thereby increase costs.[10] While the intended effects of many of these regulations—mitigating environmental harm, incorporating community feedback, etc.—are well-intentioned, the result is less affordable housing. The National Association of Home Builders and the National Multifamily Housing Council estimate that regulations like these contribute to over 30 percent of the cost of a multifamily development.[11] These additional costs reduce the number of subsidized units that can be built, and create a powerful financial disincentive to building more affordable units given the high fixed costs.

The federal government can encourage states and municipalities to adopt more by-right development, without directly dictating local regulations. Allowing more by-right development can be done by relaxing restrictions like parking minimums and providing clarity around development fees and the public engagement process, making the development process more predictable and freeing developers from having to seek waivers and variances.[12]

Environment protections are an important component of the development of quality affordable housing in healthy communities. However, environmental review processes can also be used to delay and prevent affordable housing development, forcing low-income residents to live in conditions that are environmentally damaging. HUD funding applicants are prohibited from taking any action that "would have an adverse environmental impact or limit the choice of reasonable alternatives".[13] The concept of choice limiting activity makes sense when the federal government is building new housing, but it can create a significant disincentive to the acquisition and rehabilitation of existing federally assisted properties, or private parties securing limited time site control in order to apply for and HUD funding. There is incredible competition for land sites and other project resources. Affordable housing production is put at an incredible disadvantage when private actors seeking federal funds cannot acquire properties or take other actions that their counterparts using private funding can take speedily. We should not have to chose between responsible environmental protections and the production of affordable housing. And HUD's rules and procedures should never be allowed to be a surrogate for excluding affordable housing development.

One way for the federal government to incentivize local and state governments to adopt regulatory reforms is through the disbursement of federal transportation funds. The Department of Transportation (DOT) was authorized to disburse roughly $70 billion through grant programs to state and local governments in 2019.[14] DOT should attach requirements for local and state governments to receive this funding, including passing upzoning measures and allowing more by-right development. Furthermore, it makes sense to tie transportation funding to local housing

[10] Jakabovics, Andrew, Ross, Lynn M., Simpson, Molly, and Spotts, Michael. *Bending the Cost Curve: Solutions to Expand the Supply of Affordable Rentals*. Urban Land Institute Terwilliger Center for Housing and Enterprise Community Partners, January 2014.
[11] Emrath, Paul and Walter, Caitlin. *Regulation: Over 30 Percent of the Cost of a Multifamily Development*. National Association of Home Builders and the National Multifamily Housing Council, June 2018.
[12] Jakabovics, Andrew, Ross, Lynn M., Simpson, Molly, and Spotts, Michael. *Bending the Cost Curve: Solutions to Expand the Supply of Affordable Rentals*. Urban Land Institute Terwilliger Center for Housing and Enterprise Community Partners, January 2014; National Multifamily Housing Council. *The Housing Affordability Toolkit*. May 2019.
[13] 24 CFR 58.22
[14] Peterman, David Randall. *Department of Transportation (DOT) Appropriations: FY2019*. Congressional Research Service, September 2018.

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policy because the affordable housing shortage in many cities has pushed people farther away from jobs in search of housing they can afford, thereby lengthening commutes and increasing local governments' reliance on federal transportation funding for roads and public transportation. Instead of underwriting the costs of unaffordable housing in many cities, the federal government should encourage those cities to address their lack of affordable housing by restricting transportation grants to municipalities that have undertaken meaningful housing reforms.

Thank you for taking our comments into consideration. Please contact me at davidmdworkin@nhc.org or (202)466-2121 x234 with any questions.

Sincerely,

David M. Dworkin
President & CEO

NHC has been defending the American Home since 1931. Our core belief is that everyone in America should have equal opportunity to live in a quality, affordable home in a thriving community. NHC convenes and collaborates with our diverse membership within broader housing and community development sectors to advance policy, research and communications initiatives to effect positive change at the federal, state and local levels. Politically diverse and nonpartisan, NHC is a 501(c)3 nonprofit organization.