January 31, 2020

Via regulations.gov

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

Re: Request for Information on Eliminating Regulatory Barriers to Affordable Housing, Docket No. FR–6187–N–01

Dear Ms. Blumenthal:

The 55 undersigned community, housing, civil rights, consumer and other advocacy organizations submit these comments in response to the Department of Housing and Urban Development's (HUD) request for information (RFI) on eliminating regulatory barriers to affordable housing. The most fundamental problem with housing today is that rising housing costs are rapidly outpacing stagnant household incomes for most families, making it difficult or impossible for them to find affordable housing options. The majority of new residential housing projects are higher-cost, often luxury, residential properties, and corporate owners are raising rents and sale prices on existing housing units. At the same time, the federal government, along with many state and local governments, have withdrawn from providing or developing affordable housing units. Compounding the problem, there is a set of deregulatory efforts now under way that are withdrawing crucial commonsense oversight from the housing and financial markets, enabling discrimination, and thereby increasing barriers to affordable housing.

The lack of affordable housing opportunities poses substantial economic burdens to households across the United States. In many markets, housing unaffordability has become a crisis. As the RFI notes in its introduction, the number of households spending more than half of their income on housing payments has skyrocketed in the past decade. Almost 50% of renters are struggling with unaffordable rents, and the homeless population is rapidly growing in high cost areas. According to a 2018 report by the National Low Income Housing Coalition, a minimum wage worker would have to work on average nearly 100 hours per week to afford a one-bedroom apartment at fair market rent. Families of color are disproportionately overburdened with housing costs, with 58.9% of Black households and 56.9% of Latinx households spending over 30% of their income on housing, compared to 46.8% of white households. Even as overall homeownership rates have begun to improve, people of color continue to face barriers to homeownership. Black homeownership in particular fell to a record low in 2019.

Low and moderate income (LMI) households and families of color are most in need of affordable housing options, but current deregulatory proposals will reduce opportunities and impede families seeking affordable housing options. Instead of eliminating barriers, the following deregulatory changes will create barriers to affordable housing to those who need it most and should be reconsidered.

Destroying the Affirmatively Furthering Fair Housing (AFFH) rule undermines local governments' ability to combat discrimination and remedy housing unaffordability: Contrary to the express purpose of the Fair Housing Act to correct discriminatory housing practices and address the lasting impacts of segregation, HUD's January 2020 proposed rule does not even mention segregation, and entirely eliminates the consideration of race, national origin, families with children, or other protected classes in the evaluation of whether a locality is meeting its AFFH obligations. HUD's proposal would leave people of color, women, people with disabilities, and other families already harmed by unfair and unequal housing policies or practices at a further disadvantage in the housing market while providing no meaningful impact on the supply of affordable housing in a community. HUD should reinstate the 2015 AFFH rule, which provides jurisdictions with the tools, guidance, and flexibility they need to identify and eliminate barriers to fair housing and expand affordable housing opportunities for people of color and other protected groups in their communities.

Undermining disparate impact destroys the capacity to redress policies and practices that create discriminatory housing barriers: The use of disparate impact analysis to identify practices that have a disproportionately discriminatory impact has proven to be an effective tool in fighting housing discrimination and protecting equal access to housing. HUD's August 2019 proposed rule undermines this valuable tool and creates a nearly insurmountable bar to challenge policies and practices that prevent equal housing opportunity. HUD's proposal protects unfair practices that cause a discriminatory impact if changing the practice would reduce company profits and immunizes companies that use algorithms that have a discriminatory impact by carving out special defenses that allow companies to evade responsibility for relying on computer-modeled decision-making. HUD's proposed rule effectively dismantles this important protection against systemic discrimination, leaving people of color who already bear a higher housing burden with no way to challenge company policies that are excluding them from more affordable housing. Disparate impact is a necessary tool to challenge persistent structural inequalities in housing and lending. The existing disparate impact rule should be preserved as a means to eliminate restrictive policies that keep protected classes excluded from housing.

HUD loan sales without borrower protections unnecessarily push families out of their homes: Since 2010, HUD has sold around 110,000 loans insured by the Federal Housing Administration (FHA) without regulations in place to protect borrowers and their families. FHA-insured loans play a vital role in providing access to affordable, sustainable homeownership for low- and moderate-income households and families of color, but HUD loan sales have instead weakened the very communities FHA serves. Loan sales have stripped borrowers of important FHA foreclosure protections that provide homeowners the best opportunity to stay in their homes. HUD sold the vast majority of the loans in the loan sale program in large portfolios to private equity firms who further destabilized neighborhoods by only offering unsustainable options to resident borrowers that pushed them further into debt. For the properties these companies acquired through loan sales, private equity purchasers have often engaged in predatory practices, including land installment contracts and rental practices that include either conversion to unaffordable high cost levels, or management that leaves tenants health and safety at risk, which has left neighborhoods with fewer affordable housing options. HUD initiated a rulemaking process to set guidelines and improve the loan sale program with an Advance Notice of Proposed Rulemaking, and the comment period closed in July 2018. HUD should not allow any additional loan sales until rulemaking is complete. HUD's final rule should develop and enforce robust protections for FHA borrowers and prevent any loan sales to purchasers that would decrease the availability of affordable and sustainable housing.

Opportunity Zone tax break exacerbates housing affordability crisis and displaces households of color and lower-income households: The 2017 Tax Cuts and Jobs Act (TCJA) created the Opportunity Zone tax break that encourages wealthy investors to invest in specifically designated "low-income" communities. The design and implementation of the tax break encourages investors to buy, redevelop, or build residential properties in already booming cities and gentrifying neighborhoods. The program incentivizes investments that aim to maximize returns in lower-income areas where residents are vulnerable to economic displacement pressures. HUD's programs play a crucial role in providing and maintaining access to affordable housing for LMI families and communities of color, and HUD's programs serve many communities and residents in qualified Opportunity Zones. Earlier tax incentives to promote economic development in disadvantaged areas ended up raising housing costs and displacing residents. Opportunity Zone investments are likely to exacerbate the housing affordability crisis in areas with rapidly rising housing costs. HUD must take steps to protect affordable housing in these areas by strengthening and enforcing existing protections to prevent displacement and mandate comprehensive data collection so that the impact of Opportunity Zones can be properly evaluated.

Failure to prevent investment firms from reducing affordability and safety in manufactured housing communities: Manufactured home communities are an important source of affordable housing for many LMI families. Over the past several years, private equity and other sizable corporate owners have been taking over ownership of these communities, often backed by Fannie Mae and Freddie Mac subsidized loans. Too often, the new investor owners have increased lot rent and other fees and decreased maintenance, making manufactured housing less affordable and less safe. Cost cutting by corporate owners has led to decreasing investment in community maintenance, causing problems with improperly maintained roads, water and sewage problems, and other infrastructure problems that increase the economic, health and safety risks for manufactured housing residents and negatively impacts the quality of life for the entire community. To preserve manufactured housing as a safe and affordable housing option for LMI families, HUD should not relax existing safety and environmental requirements but rather strengthen and improve upon the current rules to promote the safe construction, installation, and maintenance of manufactured housing as a viable affordable housing option.

Eviscerating the Community Reinvestment Act facilitates lending discrimination and undermines housing affordability: The Community Reinvestment Act (CRA) plays an important role in facilitating the development of affordable housing by requiring banks to invest in all the communities where they do business. Instead of encouraging more investment in affordable housing, the current CRA proposal from the Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC) undermines the effectiveness of this important civil rights statute. If it is finalized in its current form, the proposal threatens to decrease the production and maintenance of affordable housing by, among other things, unduly broadening what counts for CRA credit and dangerously diluting the focus of CRA on benefits for LMI families, the people who are most in need of affordable housing. By distilling CRA exams into a single numerical benchmark, the proposed rule will also enable banks to ignore local community needs, including the need for more affordable housing, and enter into a handful of big deals to reach the passing number. HUD should oppose this proposal because it will reduce investment in affordable housing.

While there may be modest areas where regulations pose minor challenges to developing affordable housing, in general, regulations are not the major barriers to affordable housing. The biggest problem is that wages and incomes are not keeping up with rapidly rising housing costs. On the other hand, a host of deregulatory efforts DO pose substantial risks to affordable housing availability. The greatest regulatory barriers to affordable housing are current deregulatory efforts to reduce or eliminate protections put in place to prohibit exclusionary policies and implement an affirmative duty to serve entire communities, including LMI households and families of color. HUD should restore, preserve, and strengthen these existing regulatory protections so that the families and groups who need it most are able to access affordable housing.

Sincerely,

Americans for Financial Reform Education Fund
Affordable Homeownership Foundation, Inc.
Arizona Housing Coalition
Center for Community Progress
Center for Fair Housing, Inc.
CFORM-Covenant Community Development Corporation
Chicago Area Fair Housing Alliance
Coalition for Fair Housing Mobile, AL
Community Concepts, Inc.
Consumer Action
Consumer Credit and Budget Counseling, Inc d/b/a National Foundation for Debt Management
Consumer Federation of America
Eastside Community Development Corporation, Inc.
Empire Justice Center

Equal Rights Center
Fair Housing Advocates of Northern California
Fair Housing Center of Central Indiana
Fair Housing Council of Northern NJ
Fifth Avenue Committee
GBM3, Inc.
Greater Houston Fair Housing Center
Grounded Solutions Network
H O N D, Inc.
High Plains Fair Housing Center
HOPE Fair Housing Center
Housing Equality Center of Pennsylvania
Housing Opportunities Made Equal, Inc.
Housing Partnership
Illinois People's Action
La Casa De Don Pedro
Lawrence CommunityWorks
Louisiana Fair Housing Action Center
Merrimack Valley Housing Partnership
Metro Fair Housing Services, Inc.
Miami Valley Fair Housing Center, Inc.
Mobile Chapter of NAREB
NAACP
NAMI Mobile
National Consumer Law Center (on behalf of its low-income clients)
National Fair Housing Alliance
National Housing Law Project
National Housing Resource Center
NCCCED
Neighbors Helping Neighbors
NeighborWorks Southern New Hampshire
New Jersey Citizen Action
Project Sentinel
Prosperity Now
Proud Ground
Savannah-Chatham County Fair Housing Council, Inc.
The Fair Housing Center
United Tenants of Albany (UTA)
Universal Housing Development Corporation
Ventura County Community Development Corporation
Woodstock Institute