



June 14, 2017

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

RE: Reducing Regulatory Burden; Enforcing the Regulatory Reform Agenda Under Executive Order 13777

Docket No: HUD 2017-0029 (82 Fed. Reg. 22344)

Dear Secretary Carson,

On behalf of the National Community Reinvestment Coalition (NCRC) and our more than 600 member organizations, I am submitting this comment as the agency reviews its existing regulations. NCRC members include community reinvestment organizations, community development corporations, local and state government agencies, faith-based institutions, fair housing and civil rights groups, minority and women-owned business associations, housing counselors and social service providers from across the nation. Many of our members work closely with the U.S. Department of Housing and Urban Development (HUD), its regulations and its programs. We are particularly concerned about repealing or modifying existing regulations and programs in ways that will detrimentally impact the low- and moderate-income families, minorities and underserved communities that rely on them.

HUD's mission is to "create strong, sustainable, inclusive communities and quality affordable housing for all"¹. E.O. 13777 could pose a direct threat to HUD's ability to advance its mission and to carry out its statutory responsibilities. As the agency undertakes this review, we urge you to focus on ways to *improve* HUD's performance, update its outdated technology and processes, and better advance its civil rights mission.

Although not exhaustive, the following are some existing regulations and programs that NCRC feels are imperative to ensuring HUD continues to work towards its mission. These regulations have been implemented through extensive notice and comment processes, as required by the Administrative Procedures Act, and are necessary to carrying out HUD's mission, ensuring that communities have access to housing free from illegal discrimination, and that residents of all neighborhoods are connected to the kinds of opportunities they need to flourish.

¹ 82 U.S. Department of Housing and Urban Development, Mission, retrieved from: <https://portal.hud.gov/hudportal/HUD?src=/about/mission>



PRIORITIZE ENFORCEMENT OF FAIR HOUSING & FAIR LENDING

Our nation has a shared interest in ensuring that housing opportunities are available to every individual, regardless of their personal characteristics. This shared interest is not only ingrained in the values that our nation strives to achieve, but it is also embedded in the mission of HUD. The federal Fair Housing Act prohibits discrimination in housing and housing related services on the basis of race, color, national origin, sex, familial status, religion, or disability, and in 2017 alone HUD has had eighteen enforcement activities brought under the Fair Housing Act for discriminatory acts.² The Fair Housing Act makes it the policy of the United States to support the development and maintenance of diverse, inclusive, neighborhoods where every person has the community assets necessary to lead a fruitful, fulfilling life of opportunity. It is HUD's central mission to fulfill the promises of the Fair Housing Act for every person in the United States.

Improve HUD's Commitment to the Fair Housing Initiative Program (FHIP)

The Fair Housing Initiative Program (FHIP) provides a mechanism for HUD to increase compliance with and education about the Fair Housing Act by supporting a network of non-governmental fair housing organizations across the country. FHIP grants are used by private, non-profit fair housing organizations to increase their educational, outreach, and investigatory capabilities to identify and combat abusive housing practices. This is accomplished through the interplay of three major components: the Private Enforcement Initiative (PEI), the Fair Housing Organizations Initiatives (FHOI), and the Education and Outreach Initiatives (EOI). Fair housing and fair lending are being attacked on many different fronts through the federal appropriations process as well as other legislative efforts, thus it is imperative that HUD bolster initiatives like FHIP.

FHIP is the only grant program in the federal government whose primary purpose is to support private efforts to prevent and address housing discrimination, especially for cases involving systemic patterns of discrimination affecting underserved areas.³ These private organizations have advantages over government agencies since they are able to provide on-the-spot assistance. In 2013 qualified organizations that received FHIP grants investigated over 69 percent of all complaints, which was more than twice as many as investigated by local, state, or federal government fair housing enforcement agencies combined.⁴ PEI grantees conduct almost all of the fair housing testing in the country; these grants are critical for pursuing cases involving

² U.S. Department of Housing and Urban Development, Fair Housing Act Enforcement Activity, retrieved from: https://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/enforcement

³ HUD Budget, Fair Housing and Equal Opportunity Fair Housing Programs, 2018 Summary Statement and Initiatives, p. 31-5.

⁴ Jorge Soto, *2015 Advocates Guide: Fair Housing Programs*, National Low-Income Housing Center; retrieved from: http://nlihc.org/sites/default/files/Sec5.01_Fair-Housing-Programs_2015.pdf



systemic discrimination.⁵ The FHIP program is essential to HUD’s mission, it serves as a key tool in enforcing fair housing and fair lending laws and to reaching underserved markets and providing them with the necessary tools for stable homeownership in accordance with HUD’s organizational purpose.

Remain Committed to the Affirmatively Furthering Fair Housing (AFFH) Rule

Achieving truly fair and equitable housing in all neighborhoods is one of the biggest challenges that our nation faces. HUD has a statutory mandate under Sec. 808(d) of the federal Fair Housing Act to administer its programs in a manner that affirmatively furthers fair housing. For many years, local officials sought greater clarity and guidance from HUD about what they should be doing to affirmatively further fair housing. In 2015, HUD released its final Affirmatively Furthering Fair Housing (AFFH) rule to assist in ending housing discrimination, to promote diverse, inclusive communities, and to actively dismantle segregation and foster integration in its place. The new rule provides HUD grantees with more structure, clearer guidance, and needed resources for identifying and addressing fair housing problems in their communities.

The AFFH rule is a locally driven evaluation and goal-setting process, requiring cities and towns across America to analyze and publicly report racial bias in their housing patterns and to actively set goals to reduce segregation. The AFFH rule addresses the lasting effects of long held discriminatory practices as well as new concerns as gentrification displaces many low-income and minority individuals from their communities. Housing discrimination and segregation are by no means outdated, thus this rule is crucial to promoting equality and must be maintained.

Enforce the Disparate Effects Rule

The Fair Housing Act prohibits both intentional and facially neutral but unjustified policies or practices that have a disparate impact on access to housing choice. In 2013, HUD issued its Disparate Effects rule; a uniform standard for analyzing evidence of discrimination in cases brought under the Fair Housing Act. This tool is essential for combating practices such as redlining, where an intention to discriminate can be nearly impossible to prove. Over the past several years, HUD, along with other agencies, have used this doctrine in bringing important enforcement actions to combat modern-day redlining and reverse redlining practices. The rule provides clarity and consistency under a single standard of liability for housing industry professionals when faced with disparate impact claims and gives the public a greater understanding of their rights. As recently as 2015, the Supreme Court affirmed the continued

⁵ HUD Budget, Fair Housing and Equal Opportunity Fair Housing Programs, 2018 Summary Statement and Initiatives, p. 31-6.



viability and importance of disparate impact claims under the Fair Housing Act⁶ and reinforced the existing jurisprudence that HUD considered when drafting its regulation.⁷

HUD’S CRITICAL ROLE IN FACILITATING HOMEOWNERSHIP

The FHA’s mortgage insurance has served as an important pathway to homeownership for first-time homebuyers, as well as for low-income, rural, and minority homebuyers. Since the financial crisis the decline in homeownership has been the steepest among minorities and low-income households. Homeownership for households headed by a black individual is only 41.3 percent, homeownership for Hispanic led households is at 47 percent, while homeownership in white non-Hispanic households is 71.9 percent.⁸ Additionally, homeownership rates for the lower-income tier is only 47.1 percent, while for middle tier and upper tier incomes the rate is 68.3 percent and 80.3 percent respectively. The FHA insurance program facilitates the funding for approximately half of all home purchases made by African American and Latino households. Homeownership remains the best vehicle for low- and moderate-income families and people of color to build wealth and enter the middle class.

Clarify FHA’s Quality Assurance Framework & False Claims Act Liability

There is broad agreement that greater clarity is needed for lenders around FHA’s Quality Assurance Framework and False Claims Act liability. Several large banks around the country have been decreasing their participation in the FHA program and raising their credit score requirements and pricing above the level required to obtain FHA insurance. Lenders have cited several reasons for pulling back, including the risk that they will be required to indemnify or pay back the FHA if a loan defaults, the high-costs of serving delinquent loans, and the risk of lawsuits due to recent enforcement actions that have resulted in large settlements and damages awards. This program has the potential to help many low-income borrowers and should be preserved. Further, more clarity should be provided so lenders know exactly what defects can trigger enforcement actions to encourage further participation.

Expand the HUD Housing Counseling Assistance (HCA) Program

Housing counseling supports safe and sound homeownership and sustainable communities. HUD should sustain its approved Housing Counseling Assistance (HCA) Program and expand access

⁶ *Texas Dept. of Hous. and Cmty. Affairs v. Inclusive Communities Project, Inc.*, 135 S. Ct. 2507 (2015).

⁷ *Implementation of the Fair Housing Act’s Discriminatory Effects Standard*, 78 Fed. Reg. 11460, 11461-63 (Feb. 15, 2013).

⁸ Pew Research Center, “*In a Recovery Market, Homeownership Rates are Down Sharply for Blacks, Young Adults*”, (December 15, 2016) retrieved from: <http://www.pewsocialtrends.org/2016/12/15/in-a-recovering-market-homeownership-rates-are-down-sharply-for-blacks-young-adults/>



to housing counseling in its homeownership programs. The HCA Program provides essential services such as helping prepare first-time homebuyers for homeownership, helping homeowners resolve mortgage delinquencies and avoid foreclosure, and helping renters find affordable rental options. Housing counseling agencies remain crucial to helping meet the demand for default and delinquency counseling.

Reduce FHA’s Mortgage Insurance Premium (MIP)

The Federal Housing Administration (FHA) has been a key stabilizing force in the mortgage market following the financial crisis. As the economy improved, foreclosures declined and the health of the MMI Fund rebuilt capital reserves, FHA started reducing their historically high premiums that limited affordability for borrowers and almost certainly discouraged some first-time homebuyers from entering the market. In early 2015, FHA reduced the premium that borrowers pay for mortgage insurance, providing an annual savings of \$900 for nearly two million FHA homeowners. The National Association of Realtors (NAR) estimated that in 2014, between 234,000 and 255,000 creditworthy borrowers were priced out of the market because of high premiums. Given that the MMI Fund has now exceeded its Congressionally mandated capital reserved level, we believe the agency should lower the premium that borrowers pay for mortgage insurance closer to historical norms

RESTORE THE FEDERAL COMMITMENT TO AFFORDABLE HOUSING INVESTMENTS

As Senator Collins recently stated, “access to affordable housing is a cost-effective strategy for reducing childhood poverty, provides housing stability, which is critical for educational and economic achievement, and improves health outcomes across all ages.”⁹ Programs, like the Community Development Block Grants program, have helped expand economic opportunities, specifically among low- and moderate-income individuals.¹⁰ HUD must restore its commitment to investing in affordable housing and community development in order to encourage safe and sustainable homeownership for low- and moderate-income individuals.

⁹ Chairman Susan M. Collins Opening Statement Committee on Appropriations Subcommittee on Transportation, Housing and Urban Development, and Related Agencies- Review of the FY2018 Budget Request for the U.S. Department of Housing and Urban Development. (June 7, 2017). Retrieved from: <https://www.appropriations.senate.gov/imo/media/doc/060717-Chairman-Collins-Opening-Statement.pdf>

¹⁰ *Ibid.*



Restore HUD's Commitment to the Community Development Block Grants (CDBG) Program

The Community Development Block Grants (CDBG) program assists urban areas with low economic opportunity in developing sustainable housing and economic prospects. Additionally, every dollar of CDBGs leverages an additional \$3.84 in non-CDBG funding.¹¹ If Congress were to enact the proposed elimination of CDBG in FY 2018, then it would deprive states and local communities of \$11.5 billion worth of critical investments in infrastructure, housing, job creation, and public services.¹² Local organizations have jurisdiction to employ these funds to revitalize their own communities, spurring transformative impact by way of development. Between 2005 and 2016, these grants provided housing assistance to over 1.3 million households, created/retained over 380,000 jobs, and provided public services –senior and youth services, tenant/landlord counseling, homeless aid, etc.—to roughly 520,000 households.¹³ These outcomes undeniably indicate the continued success of these investments and must be continued.

Thank you for your thoughtful consideration of these proposals. We welcome an opportunity to speak further about them. If you have any questions about these recommendations, please contact Gerron Levi, Director of Policy & Government Affairs at 202-464-2708.

Sincerely,

John Taylor
President and CEO

¹¹ *Ibid.*

¹² *Ibid.*

¹³ U.S. Department of Housing and Urban Development, CDBG Accomplishment Reports. (2016). Retrieved from <https://www.hudexchange.info/programs/cdbg/cdbg-accomplishment-reports/>