The Real Estate Roundtable

January 21, 2020

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

Re: **Response to Request for Information, 84 Fed. Reg. 64,549 (Nov. 22, 2019)**
Eliminating Barriers to Affordable Housing

The Real Estate Roundtable (www.rer.org)[1] submits these comments responding to the Department's request for information (RFI) regarding laws, regulations, land use requirements, and administrative practices that artificially raise the costs of affordable housing development and contribute to shortages in housing supply.

The Roundtable has long recognized that safe, decent and affordable housing is essential to the well-being of America's families, communities, and businesses. Our advocacy has traditionally endorsed federal policies aimed at increasing affordable housing supplies, such as enhancing the Low-Income Housing Tax Credit; preserving the mortgage interest deduction; stabilizing the GSEs to ensure appropriate liquidity in mortgage markets; and enabling support for indigent families through programs like HUD section 8 housing choice vouchers.

Despite the implementation and success of such pro-housing policies over the decades, the nation is now confronting an increasing housing crisis – where supplies are low and costs are beyond reach of low-income and middle class families. Sharp increases in home prices and the dearth of affordable units result from a brew of externalities outside the real estate industry's control, such as: shortages of developable land; needlessly restrictive zoning and land-use regulations by local governments; an elongated and inefficient land-use approval process; lack of comprehensive and long-term planning; increased costs of labor and materials; stricter building codes; general wage stagnation; and the effectiveness of local "not in my backyard" (NIMBY) activists in stopping meritorious high-density housing projects.

[1] The Roundtable brings together leaders of the nation's top publicly-held and privately-owned real estate ownership, development, lending and management firms with leaders of the major national real estate trade associations to jointly address key national policy issues relating to real estate and the overall economy. By identifying, analyzing and coordinating policy positions, The Roundtable's leaders seek to ensure that a cohesive industry voice is heard by government officials and the public about real estate and its important role in the global economy. Collectively, Roundtable members' portfolios contain over 12 billion square feet of office, retail and industrial properties valued at more than $3 trillion; over 2 million apartment units; and in excess of 3 million hotel rooms.

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The Roundtable agrees with the Department that there is no single, best solution to promote housing affordability and increase housing supplies. We anticipate that the Department will receive numerous comments focused on critical objectives to bring safe, decent, and affordable housing within reach of indigent and low-income households – and The Roundtable offers such recommendations here.

We further urge HUD's attentiveness to the scarcity of affordable housing accessible to middle class families living in America's suburbs and urban downtown neighborhoods.[2] As The Roundtable's membership encompasses all asset classes of commercial real estate – including multifamily, but also reaching office, retail, health care, industrial, and hotel properties – our organization prioritizes policies to provide a range of housing options that enhance the livability of our communities. The employees in our buildings, and the teachers and first responders in our workforce, want short commutes from home to work. The Roundtable thus advises HUD to improve the productivity and quality of life for America's middle class with policies designed to produce more "workforce housing."

Consistent with the RFI's spirit that no idea is "off the table," we offer strategies that would entail additional authorization from Congress, as well as policies the Department may pursue within its existing authorities (that may be easier to accomplish). We also propose policies that likely require more taxpayer resources (that may be difficult to obtain), as well as ideas to reform HUD's spending and grant protocols while operating within current budgetary limits. We look forward to working with HUD to provide deeper analysis on the entire menu of items summarized in this letter's attachment.

The Roundtable's recommendations regarding incentive programs, subsidies, and likely to present budget impacts are:

- Support pending legislation to boost the Low-Income Housing Tax Credit (LIHTC) program, and provide a similar tax incentive more narrowly tailored to support housing development for America's middle class;

- Shore-up the Section 8 housing choice voucher program, reduce its bureaucratic procedures, and complement any increase in program resources with reference to census-driven data that identifies neighborhoods with a track record of success in mobilizing indigent families out of poverty;

- Use GSE reform as a significant opportunity to re-focus the mission of Fannie Mae and Freddie Mac on liquidity in the mortgage markets for low- and middle-income home buyers, while also encouraging creation of more units of middle income *rental* housing;

- Assess whether HUD's Section 108 loan guarantee program is maximally leveraging public resources to attract private sector co-investment and encourage public-private partnership (P3) procurements for the design, construction, rehabilitation, finance and operation of public and low-income housing; and

- Evaluate whether statutory and other limitations under HUD's Section 221(d)(4) program, to insure loans for construction or rehabilitation of multifamily properties, are unnecessarily constraining its application to assist development of middle-income units.

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[2] E.g., Samuel Stebbins "Priced out of the market? Cities where the middle class can no longer afford a home," *USA Today* (Aug. 15, 2018) (citing Harvard University Joint Center for Housing Studies' 2018 report that middle-class families are priced-out of housing markets in metro areas of Stockton, CA; Austin, TX; Baltimore, MD; Portland, OR; Sacramento, CA; New Haven, CT; Denver, CO; Miami, FL; Seattle, WA; Riverside, CA; Boston, MA; Washington, DC; New York-Newark-Jersey City, NY, NJ, and PA; Los Angeles, CA; Bridgeport, CT; Honolulu, HI; San Diego, CA; Oxnard, CA; San Jose, CA; San Francisco, CA).

The Roundtable also offers policy recommendations with no or minimal impact on taxpayer resources:

- Clarify existing regulations under the Community Reinvestment Act (CRA) so banks can receive "credit" in serving the mortgage and other lending needs of middle-class households and geographies (in the range of 80% to 120% of an area's median income);

- Similar to the bullet above, assess whether current bank regulatory definitions imposing tighter capital requirements for Acquisition, Development and Construction (AD&C) loans may be limiting bank lending for housing developments geared to middle class buyers and renters;

- Foster a "Yes in My Backyard" – or "YIMBY" – environment whenever federal agencies confer grants and incentives, to induce states and localities receiving federal dollars to demonstrate enforcement of high density zoning and other land-use rules essential to entitle affordable housing projects;

- Promote greater production of manufactured housing as a high quality, less costly alternative to site-built homes;

- Direct the General Services Administration to prioritize increasing affordable housing supplies when it disposes of surplus and under-utilized federal properties for re-development by states, localities, and the private sector;

- Consider whether underwriting criteria for first time home buyers, saddled with student loan debt, are unduly restricting access to mortgages from lenders approved and insured by the Federal Housing Administration (FHA); and

- Regulate and tax short-term housing rentals – which have an impact to decrease long-term housing supplies – to the same extent as hotels and other traditional accommodations in the hospitality sector.

Finally, our comments conclude with an assessment of the revived trend of well-intended but misguided rent control laws emerging across the nation. The Roundtable submits that these laws will *worsen* the housing crisis. Numerous studies show that rent control laws decrease housing supplies and moreover, that tenants who benefit from rent control are frequently high-income earners. Other items in our policy menu will have a more enduring effect to increase housing supplies, and help ensure that any appropriate subsidies are targeted to those populations that most deserve and merit housing support.

The Roundtable offers this multi-faceted suite of policy suggestions so that all levels of government – in partnership with the private sector – can better collaborate to provide safe, decent and affordable housing for the American people. We look forward to working with the Department and other policymakers to achieve this critical objective. For more information regarding these comments, please contact Duane J. Desiderio, Senior Vice President and Counsel (202-639-8400/ddesiderio@rer.org).

Sincerely,

Jeffrey D. DeBoer
President and Chief Executive Officer

Housing Policy Recommendations With a Budgetary Impact

- ***Improve and expand housing tax credit programs**:* The Low-Income Housing Tax Credit (LIHTC), established as part of 1986 tax reform, has been the most successful federal resource in producing affordable housing in the United States. HUD reports that the LIHTC program creates about 107,000 affordable housing units per year – around 3 million units since 1986.

  The pending *Affordable Housing Credit Improvement Act* (S. 1703/H.R. 3077) has garnered significant bipartisan support. Among other changes, the legislation would increase the amount of tax credits allocated to each state by 50% over current levels. The bill would incentivize the construction or preservation of more than 550,000 affordable homes over the next decade while generating $48.5 billion in wages and business income, $19.1 billion in additional tax revenue, and 510,000 jobs.[3]

  We further recommend a refinement to the LIHTC program to provide an incentive for landlords to convert existing market rate units into affordable units, thus creating additional affordable housing supply in communities that would otherwise remain market rate. Tax credits should be available to landlords who voluntarily opt into a program to preserve a percentage (*e.g.*, 20% to 30%) of units in existing buildings at LIHTC income levels (that is, 60% of AMI, and up to 80% AMI under "income averaging" rules) – as long as "in-place rents" contracted on remaining units are more than 10% higher than the "restricted" rents. The objective here is to create more affordable housing in higher-income areas that might not be associated with LIHTC developments.

  Another pending bill would supplement the LIHTC program with the aim to produce more units of middle class workforce housing. The *Middle-Income Housing Tax Credit (MIHTC) Act* (S. 3365), sponsored by Sen. Ron Wyden (D-OR), picks up where the LIHTC leaves off. The MIHTC is geared to benefit households with incomes at or below 100% of AMI.

  The Roundtable strongly supports LIHTC improvements and creation of an MIHTC analog.

- ***Shore-up the Section 8 housing choice voucher program, consult data sets that may channel the subsidy to neighborhoods that optimize opportunities for upward mobility, and ease administrative obligations on PHAs and landlords:*** HUD's Section 8 program is the federal government's main tool to assist very low-income families, the elderly, and the disabled to afford decent, safe and sanitary housing in the private market. Local public housing agencies (PHAs) receive federal HUD funds to administer the program, with the PHA paying the housing subsidy directly to the landlord.

  Demand for Section 8 vouchers typically exceeds supply in most areas of the country, and most urban areas have hundreds (if not thousands) of tenants on waiting lists. Policy makers should responsibly increase the amount of federal dollars appropriated for the Section 8 program, by some justifiable amount backed-up by a cost-benefit study. Additional Section 8 resources might be channeled in light of data identifying what low-income neighborhoods might receive the most benefit from the program. For example, the "Opportunity Atlas"[4] – an initiative unveiled in 2018 by the U.S. Census Bureau and researchers from

[3] The Affordable Housing Tax Credit Coalition, The Affordable Housing Credit Improvement Act of 2019 (Nov. 2019).

[4] https://www.census.gov/programs-surveys/ces/data/analysis-visualization-tools/opportunity-atlas.html.

Harvard and Brown Universities – is the most comprehensive data set available to identify those low-income neighborhoods that have the best success rates in lifting children and families out of poverty. Opportunity Atlas data can help policy makers determine the geographies where increased resources for Section 8 vouchers can best deconcentrate poverty.

Additionally, certain administrative rules in the Section 8 market should be minimized so that units can be more cost effectively leased to voucher holders. For example:

- A common dilemma is that a landlord is not paid by the housing authority until after the tenant moves into the unit – thereby leaving payments in arrears and effectively requiring the landlord to float the rent. The PHA's administrative processes should be streamlined to ensure that tenant occupancy and Section 8 rental payments are concurrent, so payment does not lag behind occupancy.

- Properties rented to a tenant with a voucher must undergo a separate Section 8 inspection by the PHA in addition to inspections done by the city, town, or county. Duplications in inspections for the same health, safety and security factors should be reduced.

- Once a unit passes inspection, tenants have up until 30 days to enter into a lease agreement. That lengthy occupancy window should be reduced to minimize vacancy losses sustained by the landlord.

Accordingly, aside from increasing resources for a bigger pool of Section 8 vouchers, HUD should assess how paperwork and regulatory burdens can be streamlined so landlords and PHAs can better deliver units to qualifying families.

- ***Deploy GSE reform efforts with a focus to improve liquidity for mortgages serving low- and middle-income homebuyers, and prioritize middle-income rental housing creation:*** The Department will likely receive voluminous comments on the role of GSE reform as an opportunity to re-focus Fannie Mae's and Freddie Mac's missions to emphasize affordable housing objectives. The Roundtable looks forward to continue our participation in the GSE reform dialogue. Certainly, HUD's conclusions from the comment process here must account for the Trump Administration's recent steps to remove the GSEs from conservatorship, and allow Fannie to retain $25 billion and Freddie $20 billion annually.[5] The Federal Housing Finance Agency (FHFA) announced it will be working with Treasury to consider how a more limited federal role in the housing finance system should focus on affordable housing and sustainable homeownership. These administrative reforms might finally spur long-overdue action by Congress on GSE reform. Policy makers should re-shape and modernize Fannie's and Freddie's mission to focus on liquidity in the mortgage market geared toward low-income and middle-class home ownership.

  Furthermore, GSE reform can help mobilize creation of more *rental* units geared to families in America's middle class who are not in a position to purchase a home. Policy initiatives to re-shape the role of Fannie and Freddie should prioritize the GSEs as a force to leverage creation of more middle-income rental apartments – an underserved component of the U.S. housing stock – affordable to teachers, first responders, and the majority of our country's workforce.

- ***Assess whether HUD's CDBG loan guarantee program has sufficient resources to optimally attract public-private partnerships (P3s) to develop and rehabilitate subsidized housing:*** Federal credit support programs offering loans and loan guarantees – not outrights grants or direct subsidies – are proven, effective

[5] https://home.treasury.gov/news/press-releases/sm786.

tools to leverage limited taxpayer resources and attract multiple amounts more in private sector capital to co-invest in infrastructure projects. For example, DOT's Transportation Infrastructure Finance and Innovation Act (TIFIA) program "has been one of the main ways in which the federal government has encouraged the development of public-private partnerships (P3s) and private financing in surface transportation."[6]

HUD should assess whether its current loan platform achieves the same impressive leveraging ratios as TIFIA,[7] to maximize the Department's potential to attract as much private sector capital as possible to develop and rehabilitate public housing infrastructure. HUD's Section 108 loan guarantees under the Community Development Block Grant (CDBG) program[8] may be constrained by structural and policy limitations that do not similarly restrict TIFIA loan underwriting standards. For example, the amount of private capital that Section 108 may leverage is limited by annual CDBG grant allocations otherwise awarded to low-income communities. Considering reports that "Congress has not adequately funded public housing for decades, [and] public housing units nationwide need a combined $45 billion (and rising) in repairs,"[9] The Roundtable recommends that HUD take a detailed, critical review of its extant loan program – especially in light of DOT's successful TIFIA platform. We urge the Department to assess what changes to its Section 108 authorities and rules might optimize P3 procurements in partnership with Public Housing Agencies to design, construct, rehabilitate and finance more housing units.

- ***Consider whether HUD's loan program to support private sector investments in multifamily construction and rehab is optimized to develop more middle-income units:*** While the Section 108 loan guarantee program's scope is confined to economically distressed CDBG-eligible communities and CDBG financial award limits, HUD insured loans under the Section 221(d)(4) program are subject to other constraints that could unduly restrict housing construction for the middle class.

  Section 221(d)(4) is designed to assist private industry in providing affordable housing through HUD-insured, fixed-rate, non-recourse loans for ground-up construction or significant rehabilitation of multifamily properties with five or more units.[10] Significantly, there are no income limits for eligible tenants to reside in 221(d)(4) properties – but it does *not* appear to be a HUD priority to gear the platform to workforce rental housing construction, as Department policies support layering 221(d)(4) loans with Low-Income Housing Tax Credits.[11] In addition, Section 221(d)(4) loan criteria may counter trends to encourage more mixed-use housing projects that middle class families desire, because commercial space in properties financed with HUD 221(d)(4) loans are limited to 25% of the property's net rentable area. Also, statutory

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[6] Congressional Research Service Report, "The Transportation Infrastructure Finance and Innovation Act (TIFIA) Program," (updated Feb. 15, 2019), at p. 2, available at https://fas.org/sgp/crs/misc/R45516.pdf.

[7] TIFIA "successfully stretches the financing power" of state transportation grants: $1 of program funds support a loan of approximately $14, and result in total infrastructure investments of up to $40 when accounting for other state, local and private sector investments. See TIFIA 2018 Report to Congress (submitted June 4, 2019), at p. 3, available at https://www.transportation.gov/sites/dot.gov/files/docs/policy-initiatives/buildamerica/356061/2018-tifia-reportfinalsignedpackage.pdf.

[8] https://www.hudexchange.info/programs/section-108/

[9] https://www.nhlp.org/resource-center/public-housing/

[10] https://www.hud.gov/program_offices/housing/mfh/progdesc/rentcoophsg221d3n4.

[11] "After two-and-half years of planning, U.S. Department of Housing and Urban Development (HUD) Secretary Ben Carson announced the expansion of … the LIHTC pilot program to include new construction and substantial rehabilitation under the Section 221(d)(4) [loan program]." See … https://www.novoco.com/periodicals/articles/hud-announces-rollout-sections-221d4-220-lihtc-pilot-program (April 4, 2019).

limits on the size of loans to private sector FHA-approved lenders should be re-visited and re-evaluated.[12] The Roundtable accordingly recommends HUD's review of Section 221(d)(4) with a focus on support for workforce housing construction.

Housing Policy Recommendations With No or Low Budgetary Impact

- ***Ensure that lending for middle class "workforce" housing provides a compliance pathway for banks to meet their Community Reinvestment Act (CRA) obligations:*** The CRA's purpose is to encourage depositary institutions to meet the credit needs of the communities in which they operate.[13] The Act directs federal financial regulatory agencies (*e.g.,* Federal Reserve, FDIC, OCC) to examine a bank's record to confirm whether the lender is serving "*low- and moderate-income* neighborhoods" within its market.[14] However, based on the text of applicable CRA regulations, lending to "*middle-income"* communities and households – earning between 80% - 120% of an area's median income – do *not* receive the same level of favor under the CRA.[15]

  Moreover, rules allow banks to receive CRA credit for loans that enable "community development" for "affordable housing" in *low- and moderate-income* neighborhoods – but the "community development" regulatory definition does *not* cover urban and suburban *middle class* geographies.[16] Likewise, the CRA's regulations for banks to satisfy the "service test" or the "lending test" incorporate the same tight "community development" definition – which fails to reach middle class neighborhoods in the nation's urban and suburban business districts and job centers.[17]

  Certainly, servicing the lending needs of indigent and low-income households is a critical, paramount CRA objective. Policy makers must not overlook that the housing availability and affordability crisis has also reached middle class families in metropolitan areas across the nation.[18] The Roundtable accordingly urges re-assessment of CRA criteria to ensure that banks receive credit when servicing the lending needs of teachers, first responders, and others in America's middle class who seek housing in reasonable proximity to where they work.

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[12] 12 U.S.C. § 1715l(d)(4)(ii)(I); https://www.govinfo.gov/content/pkg/FR-2017-11-07/pdf/2017-24171.pdf

[13] 12 U.S.C. § 2901, *et seq.*

[14] *Id.* § 2903(a).

[15] 12 C.F.R. § 25.12(m) (Office if the Comptroller of the Currency regulations setting separate definitions for "low-income" (less than 50% area median income [AMI]); "moderate income" (50% - 80% of AMI); "middle income" (80%-120% of AMI); and "upper income" (120% or more of AMI).

[16] See *id.* § 25.12(g): "Community development" defined as "affordable housing … for *low- and moderate-income* individuals," and activities that "revitalize or stabilize *low- or moderate-income geographies*" (emphasis added). In contrast lending in *"middle-income"* urban and suburban geographies are ***not*** *per se* favored under the CRA. Lending geared toward middle-income locations merit favorable CRA review *only* where a regulatory agency designates such communities in "nonmetropolitan" (*i.e.*, rural) locations – that must meet additional "distressed or underserved" criteria by evidencing high rates of poverty, unemployment, and population loss. See *id.* § 25.12(g)(4)(iii).

[17] See *id.* §§ 25.24(a), (e) (OCC regulation for "service test" performance criteria consider the extent to which the bank "provides" and "innovates" regarding "community development" services); *id.* § 25.22 (a), (b)(4) (OCC regulation for "lending test" performance criteria considers a "bank's *community development* lending, including the number and amount of *community development* loans, and their complexity and innovativeness").

[18] E.g., Samuel Stebbins "Priced out of the market? Cities where the middle class can no longer afford a home," *USA Today* (Aug. 15, 2018), supra note 2.

- ***Assess whether AD&C lending is readily available for workforce multifamily housing:*** Real Estate Roundtable members generally report that capital and debt are accessible (particularly in urban gateway markets) to finance construction and purchase of commercial real estate. However, policy makers should confirm that capital is readily available for land acquisition, development and construction (AD&C) loans to build *workforce rental* housing.

  Financial regulatory reform passed by Congress in 2018 clarifies that banks should characterize AD&C loans as high volatility commercial real estate (HVCRE) exposures under Basel III capital rules.[19] The same regulatory definitions discussed above in the Community Reinvestment Act context – regarding "low-income, "moderate-income," and "middle-income" households and geographies[20] – also apply to recent HVCRE reform rules. That is: AD&C financing for one-to-four family residential properties, and "community development" for low- and moderate-income housing, are exempt from HCVRE rules. However, AD&C lending to finance construction of *multifamily "middle-income housing"* apparently remains subject to more stringent Basel III risk weighting.[21]

  On the face of current regulatory definitions, loans to construct multifamily workforce rental housing projects can trigger burdensome capital retention requirements that banks must carry against HVCRE exposures. Policy makers should address whether financing is indeed readily available for projects to increase rental unit supplies for households in middle class communities.

- ***Support "Yes in My Backyard" ("YIMBY") land-use policies:*** Just as rent control is having a moment in states and localities across the country, so is "zoning reform." A number of municipalities are calling for YIMBY land-use policies to enable the construction of high-density and multifamily housing in areas that have been historically zoned only to accommodate large lots and single-family homes.

  The YIMBY policy trend has reached Capitol Hill. Bipartisan legislation, the *Yes in My Backyard Act,* is pending in both the House and Senate (S. 1919/H.R. 4351). The bill requires that local governments receiving HUD Community Development Block Grants (CDBG) must report on land-use policies they have adopted (like density bonuses, reducing minimum lot sizes, reducing permit and impact fees, etc.) to encourage affordable housing development. Furthermore, The Roundtable recommends a broadening of the YIMBY perspective beyond CDBGs – to other federal grants, like highway and transportation grants – upon which states/localities heavily rely to enhance the well-being and livability of their communities.

  The Roundtable encourages federal policy makers to establish an overriding obligation on states and localities – when seeking the "carrot" of federal financial incentives – to report on how they enforce their land-use laws to generate the development densities necessary to accommodate affordable housing projects.

- ***Promote strategies to increase production of manufactured housing:*** Increased production of manufactured housing is a key means to breakdown barriers to affordable housing and increase residential

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[19] Section 214 of the *Economic Growth, Regulatory Relief, and Consumer Protection Act* (S. 2155), Pub. L. 115-174 available at https://www.congress.gov/bill/115th-congress/senate-bill/2155. Loans for a project's AD&C phases do not cover permanent financing, written to a lending institution's typical risk underwriting standards, for the ultimate purchase of completed buildings and land improvements.

[20] Supra, notes 15-16.

[21] See, *e.g.*, Board of Federal Reserve regulations, 12 C.F.R. § 217.2 (AD&C financing triggers HVCRE exposures unless the loan addresses "investment in community development"). In turn, 12 C.F.R. § 228.12(g) defines "community development" as "affordable housing (including multifamily rental housing) for low- or moderate income individuals" or activities that "revitalize or stabilize low- or moderate-income geographies." These definitions expressly fail to reach *"middle-income"* levels – defined at 12 C.F.R. 228.12(m) to address workforce family incomes "at least 80 percent and less than 120 percent of the median family income, or a median family income that is at least 80 and less than 120 percent, in the case of a geography."

supply. According to the Manufactured Housing Institute (MHI), nearly 22 million Americans live in manufactured housing that opens the door to homeownership for families who, in many markets, cannot afford to buy a site-built home.[22]

Measures such as the *HUD Manufactured Housing Modernization Act* (S. 1804) warrant support. This bipartisan bill would specify that federal HUD grants to localities (through the Community Development Block Grant program) must include residential manufactured housing in their localities' comprehensive plans for development. This bill correctly adopts a YIMBY-approach that conditions allocations of federal grants on local land use practices that drop bans or other exclusionary practices impeding manufactured housing development.

In addition, Freddie Mac's "CHOICEHome" program offers conventional site-built financing for factory-built units constructed to meet HUD code requirements.[23] CHOICEHome is a two-year pilot program that is part of Freddie's "duty to serve" obligations to facilitate a secondary housing mortgage market in underserved areas. HUD should monitor the progress of CHOICEHome financing for manufactured housing and support its adoption as a permanent GSE offering.

- ***Authorize disposal of surplus federal properties expressly for affordable housing development:*** The General Services Administration (GSA) maintains and updates an ongoing list of underutilized and "surplus" federal properties that may be made available for state and local governments, or private sector development. Currently, one public "use" allowed under the law is to make excess federal properties available for "homeless assistance" (as well as for parks, historic monuments, wildlife conservation, ports, and correctional facilities).[24]

  This list of allowable and favored uses should be expanded to support state/local/private acquisition of surplus federal properties for the express purpose of "affordable and workforce housing." GSA should also prioritize and establish "targets" for the amount of underutilized federal properties that should be made available for the particular objective to increase affordable housing supplies.

- ***Consider the impact of student loan debt on FHA mortgage qualification:*** A recent Federal Reserve study shows that high student loan debt is a main culprit for lower homeownership rates over the past decade. The Fed finds that every increase of $1,000 in student debt contributes to a 1%-2% drop in homeownership.[25] Similarly, 50% of respondents in a survey conducted by the National Association of REALTORS® said that student loan debt was the chief roadblock to assembling the down payment for a home.[26]

  Criteria for federally-backed FHA mortgages may be raising unduly high qualification barriers for first-time home buyers who are paying down their student loans. When considering overall borrower debt, and insofar as student loans are concerned, the FHA uses a "1 percent rule" whereby monthly student loan repayments are automatically calculated at 1 percent of overall educational debt.[27] The problem with this method is that the 1 percent figure could exceed the actual monthly obligation on the student loan – such as where

[22] https://www.manufacturedhousing.org/research-and-data/.

[23] http://www.freddiemac.com/singlefamily/community_lenders/news/20190509_choicehome_factory_built_housing.html

[24] https://disposal.gsa.gov/s/PBC; Title V of the McKinney-Vento Act, 42 U.S.C. § 11411.

[25] https://www.federalreserve.gov/econres/feds/files/2016010r1pap.pdf.

[26] https://homeownershipmatters.realtor/issues/student-loan-debt-roadblock-to-homeownership/.

[27] https://www.housingwire.com/articles/46088-ask-the-underwriter-how-are-student-loan-payments-calculated-when-qualifying-for-an-fha-loan/.

payments are deferred, or where they adjust over time under an income-based repayment plan where the monthly repayment amount starts low but increases as income grows.[28]

Accordingly, housing policy makers should address whether qualification standards for FHA mortgages pose undue restrictions on borrowers who are also repaying their student loans.

- ***Short-term housing rentals must be regulated to help combat long-term housing shortages:*** Online platforms like Airbnb and HomeAway are frequently depicted as a boon for travelers looking for alternative accommodations, and for homeowners looking to expand their income streams. However, in many local markets, the arrival and expansion of commercialized short-term rental businesses raise questions about their potential negative impacts on local housing costs.[29]

  A growing body of research shows that commercially operated short-term rentals are reducing supplies for more permanent residential options.[30] State and local policy makers should not give such platforms a pass on traditional tax and regulatory obligations that generally apply to hotels.[31] For purposes of a comprehensive housing policy strategy, a YIMBY-type approach might also consider whether municipalities have laws in place to regulate short-term rental businesses to the same extent as hotels, as a pre-condition to awards of federal grants or other financial incentives.

Rent Control is Not a Long-Term Solution to Address the Housing Crisis

Some policymakers, in their zeal to address the affordability crisis, have proposed and enacted strict rent control and anti-eviction laws. A number of studies confirm that the long-term effect of such well-intended but misguided mandates will be to distort further the housing supply-and-demand curve without addressing the underlying causes that create market shortages in the first place.

The resurgent wave of rent control laws concerns The Roundtable because such laws are not designed to address chronic shortfalls for low- and middle-priced housing. At best, rent control is "a short-term financial salve for struggling renters. At worst it may exacerbate the problem, by limiting the returns to builders and their incentive to construct more dwellings."[32] Numerous studies explain that rent control is counter-productive to its purported objectives to increase, preserve and improve the affordable housing stock:

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[28] For example, assume a potential FHA borrower has an overall student loan balance of $50,000 but is on an income-based repayment plan of $250 per month. FHA-approved lenders must consider the borrower's monthly repayment at $500 – not the *actual* $250 monthly payment at the time of the mortgage application. Such a 50% inflation of student loan repayment obligations could skew debt-to-income ratios and cause the potential borrower's failure to become FHA qualified. (The general rule for FHA loans is that combined debts use no more than 43% of gross monthly income after taking on the mortgage. See http://www.fhahandbook.com/blog/how-much-can-i-borrow/.

[29] E.g., Report of the New York City Comptroller, "The Impact of Airbnb on NYC Rents" (May 3, 2018), available at https://comptroller.nyc.gov/reports/the-impact-of-airbnb-on-nyc-rents/.

[30] See Dayne Lee, "How Airbnb Short-Term Rentals Exacerbate Los Angeles's Affordable Housing Crisis: Analysis and Policy Recommendations," 10 Harvard Law & Policy Rev. 229 (2016), available at https://harvardlpr.com/wp-content/uploads/sites/20/2016/02/10.1_10_Lee.pdf.

[31] Dan R. Bucks, "Airbnb Agreements with State and Local Tax Agencies. A Formula for Undermining Tax Fairness, Transparency and the Rule of Law" (March 2017), available at https://www.ahla.com/sites/default/files/Airbnb_Tax_Agreement_Report_0.pdf

[32] Jared Bernstein, Jim Parrott, and Mark Zandi, "The Conundrum Affordable Housing Poses for the Nation," *Washington Post* (Jan. 2, 2020) available at https://www.washingtonpost.com/realestate/the-conundrum-affordable-housing-poses-for-the-nation/2020/01/01/a5b360da-1b5f-11ea-8d58-5ac3600967a1_story.html.

- Generally, rent control laws contain no income restrictions. They are not typically tethered to any requirement to assist "cost burdened" families or low-income populations. High wage earners in rent-regulated units stay in them long after leases expire because they have no incentive to re-locate – thus locking-up supply that should be available to indigent and middle class households.

- There is a direct relationship between rental income to a multifamily building owner and housing quality. Artificially depressing rents by government price-fixing leads to a "shabbification" of housing, where necessary capital improvements to enhance tenants' safety and comfort – like new HVAC equipment, roofs, and security systems – are delayed or avoided.[33]

- Rent control laws often lack time limits or "sunset" provisions, and impose misdirected price controls indefinitely. Such laws are not usually tailored to market conditions, and lack phase-outs triggered when certain percentages of affordable units are brought to market or fall within regulatory control. Nor are rent controls removed when occupying tenants may exceed certain earnings levels to free-up regulated units for truly cost-burdened households.

Illustrative to the point that rent control is disconnected to systemic and lasting improvements to affordable housing conditions is an oft-cited report by Stanford University economists:

> [L]andlords of properties affected by [rent control laws] respond over the long term by substituting to other types of real estate, in particular by converting to condos and redeveloping buildings so as to exempt them from rent control. In the long run, landlords' substitution toward owner-occupied and newly constructed rental housing not only lowered the supply of rental housing in the city, but also shifted the city's housing supply towards less affordable types of housing that likely cater to the tastes of higher income individuals. ***Ultimately, these endogenous shifts in the housing supply likely drove up citywide rents, damaging housing affordability for future renters, and counteracting the stated claims of the law.***[34]

In short: Rent control decreases affordability, fuels gentrification, and creates negative impacts on surrounding neighborhoods. In lieu of rent regulations, The Roundtable encourages policy makers to adopt the less distortionary housing policies discussed earlier.

* * *

The suite of ideas we recommend are aimed to focus housing subsidies on the targeted populations that need them most, while also enhancing market opportunities to construct more housing supply for low-income families as well as middle class households. The Roundtable looks forward to working with the Department, other policy makers, allied industry groups, and non-profit stakeholders to develop enduring solutions that address the nation's housing challenges and opportunities.

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[33] Howard Husock, "Legislating Shabbiness," City Journal (May 20, 2019), available at https://www.city-journal.org/rent-regulation-new-york

[34] Rebecca Diamond, Tim McQuade, and Franklin Qian, "The Effects of Rent Control Expansion on Tenants, Landlords, and Inequality: Evidence from San Francisco," American Economic Review (Sept. 2019), Vol. 109, Issue 9, available at https://www.gsb.stanford.edu/faculty-research/publications/effects-rent-control-expansion-tenants-landlords-inequality-evidence.