

**July 15, 2020**

As we work together to build a future vision for America – one that celebrates its diversity, where government helps us all to thrive, and where we are willing to examine and learn from the mistakes of our history – our housing policy must be a core pillar of systems change. For millions of Americans, housing cost pressure and insecurity are crucial problems with long overdue policy responses. These responses include the expansion of housing resources for low-income households, a path to homeownership for moderate-income families, and the strengthening of tenant protections. But just as crucial as increasing our housing supply is the need to confront the ways that our housing systems contribute to and reinforce residential segregation – a problem with deep historical roots that continues in the present day, and that has stark impacts on racial equality and intergenerational life outcomes. A re-envisioning of our national housing policy must include intentional measures to expand geographic choice and foster diverse communities, while at the same time making community investments where they are needed most.

Our recommendations call for concrete and impactful reforms to existing housing programs, needed to break the ongoing cycle of residential segregation and to transform the federal government's role in perpetuating segregation into one of strong, active promotion of structural change and racial justice. These recommendations are indebted to the ongoing work of fair housing practitioners, researchers, and advocates (including local organizations often at the forefront of change). They build on the following principles: empower subsidized households with broader residential choices, through the reform of programmatic barriers, improved services, and legal protections; correct for decades of subsidized housing siting practices that have confined low-income people of color into high-poverty areas; expand housing supply specifically targeted to low-income households in ways that do not exacerbate poverty concentration and racial segregation; and give muscle to fair housing oversight and enforcement to ensure the law results in real change, including in the U.S. Department of Housing and Urban Development's own housing programs.

Although beyond the scope of this document's specific housing policy recommendations, we also strongly support the important complementary goals of increased economic development and infrastructure investment for low-income communities (in particular communities of color, which have been historically disinvested), expanded tenant protections, energy justice, and environmental remediation and protection for environmental justice communities.

## **RECOMMENDATIONS**

### **1) Provide for universal housing assistance through Housing Choice Vouchers**

Millions of households qualify for rental assistance, but cannot receive it because of underfunding. These families face lengthy waitlists for assistance as they face housing insecurity, cost pressures, and homelessness. An immediate intervention is needed. Expansion of the Housing Choice Voucher (HCV) program with full funding to all qualifying households is an important step to ensure that this basic human need for a home is met. The HCV program is an ideal social safety net program, as illustrated by the recent COVID crisis – participating families pay 30-40% of their monthly income for rent, regardless of how their income may fluctuate. With the reforms noted below, expansion of HCV assistance can also provide a means to address the segregation of subsidized households into low-resourced neighborhoods, since program participants will finally be able to have a real choice about where to live, and to choose specific housing that meets their diverse needs and preferences. As elaborated on below, HCV expansion should be accompanied by policies and funding to support the expanded construction and preservation of affordable units of public housing and other forms of social housing (in ways that do not replicate the legacy of segregation), so that our subsidized housing policy is not overly reliant on the private market.

### **2) Enact key reforms to the Housing Choice Voucher program<sup>1</sup>**

The design of the Housing Choice Voucher (HCV) program has effectively steered many families into lower-opportunity, higher-poverty communities. Some progress was made to reform the program during the Obama Administration, but more needs to be done to put the “choice” back into the Housing Choice Voucher program. Among the most important reforms are expanding the Small Area Fair Market Rent (SAFMR) program to give families a real shot at getting into all the communities in their housing market; redesigning the administrative fee system to incentivize moves to higher-opportunity areas; eliminating barriers to moves by permitting use of voucher funds for security deposits and moving expenses; improving HUD annual assessments of public housing authorities to prioritize progress toward desegregation; and providing routine funding support for housing mobility counseling programs to give families access to new housing possibilities throughout their regions.<sup>2</sup>

### **3) Protect against discrimination on the basis of source of income (government assistance including housing vouchers)**

Source of income (SOI) discrimination laws that protect voucher families from discrimination have been enacted in 14 states and dozens of local jurisdictions. These laws now protect over half the HCV families in the U.S.<sup>3</sup> However, enforcement is inconsistent, and SOI laws face challenges at the state level. At least two states have taken steps to “preempt” local SOI

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<sup>1</sup> See resources available at <https://prrac.org/all-articles-under-the-housing-mobility-initiative/>.

<sup>2</sup> Institutionalization of Housing Choice Voucher reform in our most segregated metropolitan areas would be greatly enhanced by the establishment of a Congressionally chartered intermediary similar to NeighborWorks, to guide and fund housing mobility efforts across the country. See Julian, “Mobility Works America,” *Poverty & Race*, July/August 2015, <https://prrac.org/newsletters/sepoct2015.pdf>.

<sup>3</sup> See <https://prrac.org/pdf/AppendixB.pdf>.

ordinances, and lawsuits seeking to strike down local laws are pending in at least two states. Now is the time for the federal government to step up to pass a national source of income discrimination law, and to provide funding to state and local legal services organizations (including fair housing organizations with the capacity to litigate) to engage in active enforcement.

#### **4) Expand housing supply for low-income households through the Housing Trust Fund – with civil rights guardrails that ensure housing reaches high-resourced areas and does not further concentrate poverty**

The Housing Trust Fund (HTF), a relatively new program that was established in the Housing and Economic Recovery Act of 2008 and began allocating funds in 2016, provides block-grant funding to states to create, preserve, and operate affordable housing for very- and extremely-low income households. It is often layered with other subsidy programs, such as the Low-Income Housing Tax Credit Program, but has a range of flexible uses. This program should be expanded to ensure an increased supply of housing for those most in need. While the HTF currently requires states to use “geographic diversity” as a funding criterion and to certify that they are affirmatively furthering fair housing (that is, promoting integration), civil rights guardrails, including siting criteria, should be stronger and more explicit. Such protections should be embedded in the statutory language of any program expansion. On the agency level, much can be achieved as well: HUD should issue expanded regulations and guidance instructing states on how to better further fair housing in their HTF administration.<sup>4</sup> In addition, both Congress and HUD can foster models through which HTF funding is used to create social housing (as described in the following section).

#### **5) Give public housing a restart by creating new social housing in highly-resourced areas; and make our existing public housing safe and healthy**

Public housing has historically been sited and administered in ways that reinforce segregation and that confine low-income people, who lack other choices, to high-poverty neighborhoods that suffer from health burdens, poorly funded schools, and other hallmarks of discrimination, disinvestment and exclusion. Yet this pattern of public housing development is not inevitable, and public (social) housing is a core source of affordable units, as well as an important complement to other programs that are enmeshed with the private market. Legislation should enable the creation of additional public housing units, with explicit requirements that this new housing expand access to low-poverty areas and (like the original vision of public housing) support families with a range of low- to moderate-income levels – not just families in extreme poverty – in order to support mixed-income communities. The federal law that bars public housing in communities that refuse it should be repealed. The federal prohibition on expansion of public housing should also be repealed.

In addition, capital funds should be appropriated to provide for repairs and updates to existing public housing stock, much of which poses threats to the health and safety of residents due to disrepair. Households in existing public housing should also be provided with the opportunity to transfer to the housing choice voucher program, should they wish to move to new neighborhoods (for example, to avoid adverse health factors or to seek better-resourced schools).

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<sup>4</sup> See [www.prrac.org/pdf/Promoting\\_Fair\\_Housing\\_in\\_HTF\\_State\\_Allocation\\_Plans.pdf](http://www.prrac.org/pdf/Promoting_Fair_Housing_in_HTF_State_Allocation_Plans.pdf)

## **6) Bring civil rights to the Low-Income Housing Tax Credit Program, through key reforms**

The Low-Income Housing Tax Credit (LIHTC) program is currently our nation's most significant source of affordable housing production for low-income households (supporting the preservation of such housing as well). Administered by the Department of the Treasury, LIHTC currently lacks fair housing regulations, and the LIHTC statute fails to protect against (and in fact contributes to) the program's role in deepening housing segregation. There is much room for improvement at both the regulatory and the legislative levels. This includes improved siting requirements and incentives, improved standards for community revitalization plans that include LIHTC support, demographic data reporting, and strong affirmative marketing requirements.

## **7) Update HUD's site selection criteria to effectively avoid poverty concentration and health risks**

Historically, most subsidized housing was deliberately confined to high-poverty, segregated areas, a tradition that continued due to market forces (infused with racism) and neighborhood opposition. Lawsuits brought under the Fair Housing Act helped propel HUD to issue its Site and Neighborhood Standards for HUD-subsidized housing units, such as Project Based Vouchers, Public Housing, and Project Based Rental Assistance. These standards were codified in regulations and set a basic floor for where such housing may be sited. However, they were issued decades ago, and time has shown them to be insufficiently directive and specific to ensure that subsidized housing is actually located with access to well-resourced, healthy communities – effectively disrupting the cycle of segregation. These standards should be strengthened and clarified for all future federally subsidized housing development. Stronger standards should also be accompanied by technical assistance to aid compliance, and strong fair housing reviews by HUD.

## **8) Counterbalance the ways the housing finance system undergirds segregation**

The creation and acquisition of housing (whether single- or multi-family) relies on our housing finance system, where private market forces intertwine with and benefit from government support and regulation. The government's role in structuring this system and incentivizing particular outcomes is an important one. It should be harnessed to reshape a legacy system (in which profit and value have had strong ties to racism and segregation) into one that works better to advance equality. For example, the Community Reinvestment Act, which awards credit to banks for serving low-income communities of color, should be strengthened and should also incentivize the production of affordable housing outside of segregated areas. The government-sponsored enterprises (GSEs) or successor entities should support lending and loan liquidity for affordable rental units in highly-resourced areas. The Capital Magnet Fund and other government-sponsored housing investment funds should be restructured to support opportunity.<sup>6</sup>

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<sup>5</sup> See resources available at <https://prrac.org/fair-housing/the-low-income-housing-tax-credit/>.

<sup>6</sup> An example of such a proposal is the call for a national network of "Inclusive Communities Financial Institutions," modeled on CDFIs and the CDFI Fund. See Julian, "Inclusive Communities Financial Institutions," *Poverty & Race* (Sept/Oct 2015), <https://prrac.org/newsletters/sepoct2015.pdf>.

In addition, a new loan fund program should be established to aid with financing the construction or acquisition of affordable housing in high-cost areas. Such funds can provide flexible capital that can be used by mission-driven organizations, community land trusts, local government agencies, and other entities to acquire and preserve existing affordable properties<sup>7</sup>, especially in high-opportunity areas or areas where families face the threat of displacement.

### **9) Restore the Affirmatively Furthering Fair Housing (AFFH) Rule, and sharpen its implementations**

The AFFH regulation, issued by HUD in 2015 and suspended by the current administration, was heralded by civil rights and affordable housing groups as a long-awaited step in holding HUD grantees (states, a significant portion of localities, and public housing authorities) accountable for furthering fair housing, as they are required to do under the Fair Housing Act. The AFFH rule also benefited those HUD recipients, as well as local advocates, by providing a structured process for assessing fair housing problems and identifying appropriate steps to redress them. The rule's operation should be restored.<sup>9</sup> Importantly, the early implementation of the rule provided valuable lessons that can be used to improve and strengthen the process going forward. For example, lessons learned should be applied to revise the Assessment Tool used by program participants.

In addition, a growing recognition of the harms of discriminatory land use restrictions (such as exclusionary zoning) provides the opportunity to build on the rule's requirements and to condition HUD and other federal funding on specified state and local reforms. This should include but not be limited to the removal of zoning restrictions, as a fuller set of fair housing policies – that intentionally promote integration as well as redress disinvestment – are needed.

### **10) Invigorate fair housing oversight, one of HUD's central missions**

HUD's fair housing staff play a number of crucial roles in protecting against discrimination and advancing fair housing, including ensuring that HUD's recipients further fair housing and that HUD's own programs do so. Within HUD, the Office of Fair Housing and Equal Opportunity (FHEO) processes fair housing complaints against public and private actors, and also reviews program participant fair housing performance and compliance with civil rights requirements. This office is already under-resourced, and additional staff and expertise will be needed as HUD and other housing programs expand. Further, review protocols and criteria should be strengthened, and technical assistance provided as necessary, to guide grantees and housing authorities toward better fair housing outcomes in activities such as public housing development planning, follow-through on AFFH plans, and others.

HUD's Discriminatory Effects regulation (issued in 2013) should also be fully restored to ensure that the legal system is available to correct for systemic discrimination and the perpetuation of segregation, as provided for in the Fair Housing Act.

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<sup>7</sup> California's Golden State Acquisition Fund is an example of a successful fund leveraging public dollars to provide capital for acquiring affordable housing. See <http://www.goldenstate-fund.com/>

<sup>8</sup> See resources available at <https://prprac.org/affirmatively-furthering-fair-housing/>.

<sup>9</sup> The Trump Administration suspended the rule in 2018 for local governments, and never completed the development of implementation materials for public housing agencies or state governments.

## **11) Strengthen the legal services sector to better protect and advance rights from the ground up**

Legal services organizations, located in communities throughout the country, directly serve residents of affordable housing and other low-income households. The services they provide ensure that the rights tenants hold on paper are in reality vindicated and protected. In addition, legal services groups bear witness to many of the systemic problems that result in day-to-day difficulties for their clients, including barriers to fair housing. These organizations would benefit from increased funding, to enable them to hire additional staff and provide fuller and more broadly accessible services. In addition, the current statutory constraint preventing these federally funded groups from engaging in class action litigation and other law reform initiatives should be removed.

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