

May 17, 2021

Ms. Adrienne Todman
Deputy Secretary
Housing and Urban Development
451 7th St SW,
Washington, DC 20410

Dear Ms. Adrienne Todman:

Thank you for testifying before the United States Senate Committee on Banking, Housing, and Urban Affairs on May 11, 2021, at our hearing to consider nominations.

In order to complete the hearing record, please respond to the enclosed questions by Monday, May 17, 2021, at 12:00PM. When formatting your response, please repeat the question, then your answer, single spacing both question and answer. Please do not use all capitals.

Send your reply to Mr. Cameron Ricker, the Committee's Chief Clerk. He will transmit copies to the appropriate offices, including the Committee's publications office. Due to current procedures regarding Senate mail, it is recommended that you send replies via e-mail in a Microsoft Word or PDF attachment to Cameron_Ricker@banking.senate.gov.

If you have any questions about this letter, please contact Mr. Ricker at (202) 224-5587.

Sincerely,

Sherrod Brown
Chairman

SB/cr

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**Questions for Ms. Adrienne Todman, of the Virgin Islands, to be Deputy Secretary of
Housing and Urban Development, from Chairman Sherrod Brown:**

1) America's communities are aging rapidly. Nationally, birthrates are at historical lows, and over the next decade it is expected that 77 million people will be 65 years or older. In my state of Ohio by 2025, more than 1 in 4 Ohioans will be 60 years of age and older.

What types of housing and transit challenges do we face if we fail to account for an aging population in the design of our communities? And what types of housing and transit infrastructure investments do we need to make in rural and urban areas to help communities become more accessible and livable for our increasingly aging population?

Response:

Among the many housing challenges and shortages that America is facing today, we also have a significant lack of housing to meet our nation's demographic shifts as a growing portion of our population will be 65 and older. Today's medical advances also mean that people will be living longer. Our nation's housing inventory is not prepared to meet the needs of this growing aging population, and it is not prepared in three ways.

As people retire, their incomes drop. Many homeowners become renters. Those currently renting may no longer be able to afford the same rents. There are not enough rental housing units, let alone affordable rental units to meet the needs of our aging population. First, we need a significant expansion of affordable rental housing for seniors through HUD's Section 202 program as well as through additional low-income housing and rental vouchers. These investments need to be paired with access to reliable transportation options, so that older adults have access to healthcare, shopping, and the transportation mobility required to age with dignity.

Second, as older adults live longer, we want them to be able to live with dignity and independence in a safe environment of their own within their communities. But our nation's housing stock is not physically designed with the types of modifications that seniors need to age in place. Few existing units are accessible and have the features that prevent injuries. Ventilation systems in our public and HUD-assisted housing are in need of upgrade to improve air quality. We need to invest in more housing that is affordable and accessible to seniors, such as through HUD's Section 202 program, as well as make funding available to upgrade our public housing inventory to allow low-income seniors to age in place.

And finally, in order to help older adults age in place as long as possible, we need to be more intentional about how to coordinate the kind of homecare services and wrap-around supports that provide the care to stay in their homes. If confirmed, I would be interested in strengthening the coordination between HUD and HHS to integrate Medicaid and Medicare-financed Home and Community Based Services in HUD-assisted housing for older adults.

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2) Nationwide, the Black homeownership rate is nearly 30 percentage points lower than the white homeownership rate. The gap is almost as large for Latino households, and there is a 14% gap in the homeownership rates for Asian and white households.

How can HUD help to narrow these gaps and expand equitable access to affordable homeownership?

Response:

If confirmed, reducing the homeownership and wealth gaps that have persisted for decades would be a priority of mine. Facts will be our guide, and I would collect and review the evidence and work to identify agency actions we can take to address harmful legacy policies that have contributed to the gaps. Short term, I would work with Secretary Fudge to ensure that the FHA continues to be a consistent source of credit supporting homeownership for Black, Indigenous, and People of Color (BIPOC) households, and work across the housing system to promote and advocate for policy changes that help break down barriers to help more families purchase their first home.

I would also want to see a healthier flow of financing to low-cost housing markets that have affordable housing for sale, like those in and around Cleveland, where access to smaller mortgage loans could help people get started on the path to homeownership. One way to do that would be to expand the footprint of lending institutions that do FHA lending, especially large national and regional banks that have pulled back in recent years. It would also be important to strengthen HUD's housing counseling network and programs to help renters who are ready to become homeowners prepare, as would making sure HUD's counseling services are reaching the communities that need it most.

If confirmed, I would encourage HUD to take a comprehensive approach to improving down payment assistance programs to help those families who need federal support in order to buy their first home because they do not have access to savings or parents whose wealth can transfer to help. I would also work to broaden and improve our nation's affordable housing stock, including finding ways to expand factory built and manufactured housing as an affordable housing solution for suburban and rural areas.

3) In August 2011, President Obama issued an Executive Order establishing a coordinated, government wide initiative to promote diversity and inclusion in the federal workforce. The executive order reads, in part, that "Attaining a diverse, qualified workforce is one of the cornerstones of the merit-based civil service To realize more fully the goal of using the talents of all segments of society, the Federal Government must continue to challenge itself to enhance its ability to recruit, hire, promote, and retain a more diverse workforce. Further, the Federal Government must create a culture that encourages collaboration, flexibility, and fairness to enable individuals to participate to their full potential." The order required each agency to establish an agency-specific diversity, equity, and inclusion strategic plan with specific objectives.

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Will you commit to work on establishing a system for reporting regularly on HUD's progress in implementing an agency-specific diversity, equity, and inclusion strategic plan and in meeting the objectives under the plan?

Response:

If confirmed, I would review HUD's current Diversity, Equity and Inclusion (DEI) Strategic plan and work with the Secretary and HUD's Office of Diversity and Inclusion to revise it as necessary to align with the vision laid out by President Biden. I would also ensure HUD employment practices are monitored and evaluated on the basis of diversity, equity, and inclusion, and I would ask HUD's Director of the Office of Departmental Equal Employment Opportunity and HUD's head of Administration to meet regularly with my office to report on our progress.

4) Will you commit to working with senior officials on transparency on workplace policies, salaries, and benefits?

Response:

If confirmed, I would work with Senior HUD officials on transparency on workplace policies, salaries, and benefits.

5) What are some short- and long-term strategies for addressing disparities in participation in the Housing sector?

The COVID-19 crisis, coupled with the economic downturn, has further intensified an already dire affordability crisis. If confirmed, reducing the homeownership and wealth gaps that have persisted for decades would be a priority of mine. Facts will be our guide, and I would collect and review the evidence and work to address harmful legacy policies that have contributed to the gaps.

As I shared in my response to Question #2 above, I would work with the Secretary to ensure that the FHA continues to be a consistent source of credit supporting homeownership for BIPOC households, and work across the housing system to promote and advocate for policy changes that help break down barriers to help more families purchase their first home.

I would also want to work with HUD staff to ensure that HUD programs are proactively targeting disparities in the rental market. This includes advancing policies aimed at addressing disparities in populations more likely to experience homelessness, more likely to face source of income discrimination, less likely to secure housing assistance, and more likely to experience housing insecurity. In addition, I would work to broaden and improve our nation's affordable housing stock, including finding ways to expand factory built and manufactured housing as an affordable housing solution for suburban and rural areas.

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6) Will you commit to implementing and requiring diversity, equity, and inclusion training for all employees within your purview? What is your plan for implementing these trainings?

Response:

If confirmed, I commit to working with the Office of Departmental Equal Employment Opportunity, the Office of Administration, and the Office of General Counsel to work with HUD's Office of Diversity & Inclusion to deliver diversity, equity and inclusion related events and activities, specifically, DEI trainings, for the entire workforce.

7) Will you commit to implementing and requiring implicit bias training for managers within your purview? What is your plan for implementing these trainings?

Response:

Yes. It is my understanding that HUD has provided these trainings in the past for all HUD employees, and I will ask the relevant offices to analyze the content of these trainings and continue to strengthen them as appropriate during my tenure at HUD.

8) Please describe how you view the role of the Deputy Secretary in appropriately serving Black, Indigenous and people of color (BIPOC)? How do you view the HUD's role in furthering racial equity?

Response:

As I stated in my testimony, my career in government and the nonprofit sector has been dedicated to improving people's lives and strengthening communities through housing. I have spoken with people across the country – in urban, suburban and rural communities alike – and they all want the same thing: a fair shot. A fair shot to provide for their families, to secure a safe and stable home, and to get ahead. Sadly, this is out of reach for far too many Americans, particularly people of color.

If confirmed, I would work with Secretary Fudge to advance HUD's mission, and to implement President Biden's Executive Action on advancing equity, through the delivery of HUD's programs, which are central to furthering equity, particularly for people with low and moderate incomes.

Renters should also have the opportunity to grow their incomes and build savings. I, like the President, am committed to expanding access to federal rental assistance and improving program implementation so that people have true choice in where they live. Too often BIPOC who receive assistance live in communities that have experienced under or disinvestment. I am committed to investing in local communities so that all people have access to strong schools, healthy housing, and strong community support services.

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9) Please list at least 3 specific areas of focus/priorities for advancing racial equity, diversity, and inclusion at HUD. What specific measures will you use to evaluate success in these areas, and over what period of time?

Response:

Advancing equity, diversity, and inclusion is a top priority of mine, and if confirmed, would be a focus of my work as Deputy Secretary. First, as the Deputy Secretary I would focus on improving staff morale and HUD's internal dedication to diversity, equity, and inclusion (DEI) efforts. Second, I would work with the Secretary and other officials [on](#) HUD's enforcement of the Fair Housing Act to combat discriminatory practices that prevent too many people from having equal access to housing. Finally, we know that there are a disproportionate number of BIPOC, people with disabilities, and LGBTQ people among those experiencing homelessness. I am committed to advancing policies and practices that reduce homelessness among these populations.

10) HUD has outside advisory councils and task forces comprised of industry leaders, academics, non-profits, and other stakeholders. They serve as volunteers but have significant influence being appointed by and working closely with you. Should your agency be judged by its success in populating these groups with more diverse advisors on these councils and task forces, and if so, over what period of time?

Response:

If confirmed, I would work diligently to seek out participants and stakeholders in line with the law and with the President's executive orders.

11) What specific measures will you use to evaluate the HUD's success in understanding and addressing the needs of BIPOC? Will you work with senior officials to regularly report to Congress on the progress being made on these measures?

Response:

If confirmed, I look forward to working with Congress on this particular issue and would welcome an ongoing conversation on HUD's progress. As Secretary Fudge has said, first and foremost we must prevent evictions, foreclosures, and homelessness due to the pandemic and economic crisis which has disproportionately impacted BIPOC. We also need to improve homeownership for BIPOC. I would work with the Secretary to look for ways to implement down payment assistance for families and apply an equity lens to loan qualification criteria and appraisals, among other strategies

12) An agency's budget reflects its values and goals. How do you plan to identify and recommend resources for internal and external efforts to advance diversity, equity and inclusion as part of the agency's annual budget process? How will you work to ensure sufficient financial support for the agency-specific diversity, equity, and inclusion strategic

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plan to ensure you are able to meet the objectives established under that plan in a reasonable time period?

Response:

If confirmed, I would work with the Secretary to ensure we request sufficient staff resources to allow the Department to fully execute its mission and partner with our grantees to enhance their capacity. I would ensure that the Department's DEI Strategic Plan is all encompassing and would hold leaders across the agency accountable for meeting the goals set forth. Within the resources that Congress provides, I look forward to working with you and other partners, if confirmed, to identify how HUD can further prioritize and expand diversity, equity, and inclusion.

Questions for Ms. Adrienne Todman, of the Virgin Islands, to be Deputy Secretary of Housing and Urban Development, from Ranking Member Patrick Toomey:

Congressional oversight

1) Please provide your philosophy on how HUD will approach and respond to Congressional information requests (both for documentary information and oral testimony), if you are confirmed.

Response:

I recognize and respect Congress' role in conducting oversight. If confirmed, I would ensure HUD responds to Congressional requests for information, consistent with appropriate law and regulations.

2) If confirmed, do you intend to respond to information requests differently depending on who is making the Congressional information request (whether it's the chair of the Congressional committee, the ranking member, or another member of Congress)? Please answer "yes" or "no." If your answer is "yes," please explain.

Response:

I recognize and respect Congress' role in conducting oversight. If confirmed, I would ensure HUD responds to Congressional requests for information, consistent with appropriate law and regulations.

3) Will you commit that, if confirmed, you will respond in a timely manner and fully comply with all information requests from me? Please answer "yes" or "no." If your answer is "no," please explain.

Response:

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If confirmed, I would ensure HUD responds to Congressional requests for information, consistent with appropriate law and regulations.

4) Will you commit that, if confirmed, you will make yourself and any other HUD employee expeditiously available to provide oral testimony (including but not limited to briefings, hearings, and transcribed interviews) to the Committee on any matter within its jurisdiction, upon the request of either the Chairman or Ranking Member? Please answer “yes” or “no.” If your answer is “no,” please explain why.

Response:

If confirmed, I would ensure HUD responds to Congressional requests for oral testimony, consistent with appropriate law and regulations.

5) Do you believe that HUD may assert any privileges or other legal justifications to withhold information (whether records or oral testimony) from Congress? Please answer “yes” or “no.”

If you answered “yes” to question #5, please list every such privilege or other legal justification and provide the legal basis for why you believe HUD may use such privilege or legal justification to withhold information from Congress.

Response:

If confirmed, I will consult with the agency’s legal counsel to ensure HUD responds to Congressional requests for records and oral testimony, in a matter that is consistent with appropriate law and regulations.

6) In an effort to be open and transparent with Congress and the public, will you commit not to assert any such privilege or legal justification against Congress that you listed above? If not, why not? If so, please identify all such privileges or legal justifications that you will commit to not assert against Congress.

Response:

If confirmed, I will consult with the agency’s legal counsel to ensure HUD responds to Congressional requests for records and oral testimony, in a matter that is consistent with appropriate law and regulations.

Policy review

7) The HUD Deputy Secretary is responsible for resolving policy disagreements that cannot be resolved among HUD’s Assistant Secretaries and other HUD Principals. Will you commit to providing any HUD Principals whose disagreements cannot be resolved an opportunity to be heard?

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Response:

If confirmed, I plan to fulfill the duties of this position to the best of my abilities including resolving policy disagreements.

8) Do you intend to hear arguments between disputing HUD Principals and agree to accept any evidence offered by those HUD Principals that may support their positions?

Response:

If confirmed, I will fulfill the duties of this position to the best of my abilities.

9) Will you transmit a written decision to disputing parties within HUD and commit to addressing all arguments raised by them in your written decisions?

Response:

If confirmed, I will fulfill the duties of this position to the best of my abilities.

Collaboration with HUD's Office of Inspector General (OIG)

10) Please provide your philosophy on how HUD will support and address OIG audits and investigations, if you are confirmed.

Response:

HUD's Office of the Inspector General serves a valuable role that includes recommending policies for activities designed to promote economy, efficiency, and effectiveness and the prevention and detection of fraud and abuse in HUD's programs and operations. If confirmed, I would fulfill the duties of my position, including my duty to communicate with the Office of the Inspector General, to the best of my ability and in conformity with all applicable laws.

11) The HUD Deputy Secretary is charged with providing a written decision that becomes the management decision responding to OIG recommendations when OIG does not concur with the decision of lower levels of authority in HUD and an impasse occurs.¹ If confirmed, will you commit to providing OIG and relevant HUD program offices an opportunity to be heard when you are asked to provide a management decision?

Response:

¹ HUD, Audit Management Systems Handbook 2000.06 Rev-4 § 5-5, available at <https://www.hud.gov/sites/documents/20006CFOH.PDF>

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HUD's Office of the Inspector General serves a valuable role that includes making recommendations to the agency with regards to suggested improvements of HUD's operations and for ensuring compliance with laws and regulations. If confirmed, I would fulfill the duties of my position, including my duty to make and issue decisions in order to resolve disputes about OIG recommendations, to the best of my abilities and in conformity with all applicable laws, regulations and guidance.

12) Do you intend to hear arguments between OIG and the HUD program office whose management decision OIG cannot concur with and will you agree to accept any evidence offered by OIG and HUD program offices that may support their positions?

Response:

If confirmed, I would fulfill the duties of my position, including my duty to make and issue decisions in order to resolve disputes about OIG recommendations, to the best of my abilities and in conformity with all applicable laws, regulations and guidance.

13) Do you commit to addressing all arguments raised by the disputing parties within HUD in your management decisions?

Response:

If confirmed, I would fulfill the duties of my position, including my duty to make and issue decisions in order to resolve disputes about OIG recommendations, to the best of my abilities and in conformity with all applicable laws, regulations and guidance.

Opportunity for comment on regulations and sub-regulatory guidance

14) In 2018, when you were NAHRO's CEO, you testified before the House Financial Services Committee and appended a comment letter from NAHRO to your testimony that said "HUD stakeholders [should] have the opportunity to comment on the rules that affect them."² The comment letter goes on to say that "[b]y publishing guidance, HUD lowers transparency by issuing rules created by unelected officials without input from the public." As HUD Deputy Secretary, will you require your staff to seek comment from the public—including industry stakeholders, housing advocates, and families affected by HUD's policies—before publishing those rules?

Response:

If confirmed, I would direct HUD to seek comments from the public in a manner consistent with the Administrative Procedures Act.

² HUD's Role in Rental Assistance: An Overview and Review of Legislative Proposals: Hearing Before the Subcomm. on Hous. and Insurance of the H. Comm. on Fin. Serv., 115th Cong. (Apr. 25, 2018).

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15) Under what circumstances will you accept “issuing rules created by unelected officials without input from the public?”

Response:

If confirmed, I would direct HUD to seek community and stakeholder input in the development of policies in a way that is consistent with the Administrative Procedures Act.

16) How will you ensure public feedback or comments are thoughtfully considered for policies that will be implemented prior to solicitation of that feedback or comment?

Response:

If confirmed, I would direct HUD to seek community and stakeholder input in the development of policies in a way that is consistent with the Administrative Procedures Act.

Affirmatively Furthering Fair Housing (AFFH)

17) When you were NAHRO’s CEO, NAHRO argued in a 2018 comment letter about AFFH that entities should not have to analyze “non-housing related topics (e.g. transportation, education, infrastructure, etc.)” Do you agree with this statement? If not, under what circumstances would it be appropriate for HUD to require such analysis?

Response:

The comment you referenced was made by NAHRO on behalf of its members. If confirmed as Deputy Secretary, I would work with Secretary Fudge to implement the Fair Housing Act. As Secretary Fudge has said, HUD will commit to giving very careful consideration to all options relating to the AFFH process.

18) NAHRO argued in the same 2018 comment letter that entities should not have to “complete analyses of areas outside of their own jurisdiction” Do you agree with this statement? If not, under what circumstances would it be appropriate for HUD to require such analysis?

Response:

The comment you referenced was made by NAHRO on behalf of its members. If confirmed as Deputy Secretary, I would work with Secretary Fudge to implement the Fair Housing Act. As Secretary Fudge has said, HUD will commit to giving very careful consideration to all options relating to the AFFH process.

19) NAHRO’s 2018 AFFH comment letter also argued that housing agencies should not have to hire a consultant to complete the AFFH process. Do you agree with this position? If not, why?

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Response:

The comment you referenced was made by NAHRO on behalf of its members. If confirmed as Deputy Secretary, I would work with Secretary Fudge to implement the Fair Housing Act. As Secretary Fudge has said, HUD will commit to giving very careful consideration to all options relating to the AFFH process.

20) In addition, NAHRO’s 2018 AFFH comment letter argued that HUD should approve an AFFH plan if the entity at issue, like a public housing agency, made a “good faith effort to comply with the AFFH process and submits a fair housing assessment.” As HUD Deputy Secretary, will you evaluate the possibility of including such a safe harbor in any revisions to HUD’s disparate impact rule?

Response:

The comment you reference was made with respect to an AFFH rulemaking, not a disparate impact rulemaking. If confirmed as Deputy Secretary, I will work with Secretary Fudge to implement the Fair Housing Act, including the disparate impact doctrine, consistent with the law.

21) Is it ever appropriate for HUD to tell localities precisely where to place new housing? If so, under what circumstances?

Response:

Determining the location of new housing is primarily a local function. HUD’s involvement in such decision-making is limited to certain circumstances. For example, it is well established that, under the Fair Housing Act, a locality may not refuse to permit housing to be built in a particular location for a discriminatory reason. If HUD receives an allegation that such discrimination has occurred, it is obligated to investigate and determine whether evidence supports such an allegation.

22) Can you promise that any potential revisions to AFFH will reduce the burden on localities when compared to the 2015 AFFH rule?

Response:

If confirmed as Deputy Secretary, I would work with Secretary Fudge to implement the Fair Housing Act. As Secretary Fudge has said, HUD will commit to giving very careful consideration to all options relating to the AFFH process and will carefully consider the burdens that an AFFH process may place on localities.

23) We may disagree about what the content of a final AFFH rulemaking should look like, but I hope we agree that the outcome should come from a process that maximizes

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stakeholder input. Will you commit that before making any revisions to HUD’s AFFH regulations, you will receive extensive community and stakeholder input on any potential revisions, including how HUD’s AFFH rule can respect local autonomy and avoid overly burdening localities?

Response:

If confirmed as Deputy Secretary, I would work with Secretary Fudge to implement the Fair Housing Act. I understand that Secretary Fudge has committed that HUD will seek community and stakeholder input in the development of new AFFH regulations.

Disparate Impact

24) In 2019, while you were CEO of NAHRO, your organization filed a comment letter arguing that HUD should provide a housing authority an affirmative defense to disparate impact claims under the Fair Housing Act if its policy is “a reasonable approach and in the housing authority’s sound discretion.” The comment letter quoted the U.S. Supreme Court’s decision in *Texas Department of Housing and Community Affairs v. Inclusive Communities (Inclusive Communities)* that disparate impact liability should not “second-guess . . . approaches a housing authority should follow” and that the Fair Housing Act “does not decree a particular vision of urban development.” As HUD Deputy Secretary, will you provide such an affirmative defense in any revisions to HUD’s disparate impact rule?

Response:

The comment you referenced was made by NAHRO on behalf of its members. If confirmed as Deputy Secretary, I would work with the Secretary, who has said she will adhere to the Supreme Court’s ruling in *Inclusive Communities*.

25) Do you agree that HUD’s disparate impact rule should allow for an affirmative defense to disparate impact claims under the Fair Housing Act?

Response:

If confirmed as Deputy Secretary, I would work with the Secretary, who has said she will adhere to the Supreme Court’s ruling in *Inclusive Communities*.

26) Will you commit that any revisions to HUD’s disparate impact rule will follow the U.S. Supreme Court’s dictate in *Inclusive Communities* that “disparate-impact liability [should not] be so expansive as to inject racial considerations into every housing decision?”

Response:

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If confirmed as Deputy Secretary, I will work with the Office of the General Counsel and the Secretary to ensure that any actions HUD takes related to disparate impact are consistent with the Supreme Court’s caselaw, including the ruling in *Texas Department of Housing and Community Affairs v. Inclusive Communities*.

27) Will you commit that any revisions to HUD’s disparate impact rule will follow the U.S. Supreme Court’s dictate in Inclusive Communities that “disparate impact liability must be limited so employers [can] make . . . practical business choices and profit-related decisions [to] sustain a vibrant and dynamic free-enterprise system?”

Response:

I am committed to ensuring that any revisions to HUD’s disparate impact rule will be consistent with the Supreme Court’s caselaw, including the ruling in *Texas Department of Housing and Community Affairs v. Inclusive Communities*.

28) Will you commit that any revisions to HUD’s disparate impact rule will follow the U.S. Supreme Court’s dictate in Inclusive Communities to have “adequate safeguards” for defendants at the prima facie (pleading) stage so “race [is not] used and considered in a pervasive way [that] would almost inexorably lead governmental or private entities to use numerical quotas...?”

Response:

I am committed to ensuring that any revisions to HUD’s disparate impact rule will be consistent with the Supreme Court’s caselaw, including the ruling in *Texas Department of Housing and Community Affairs v. Inclusive Communities*.

29) Will you commit that any revisions to HUD’s disparate impact rule will follow the U.S. Supreme Court’s dictate in Inclusive Communities to have “robust causality” between the defendant’s actions and the harm to a protected class so that defendants will not be held liable for racial disparities they did not create?

Response:

I am committed to ensuring that any revisions to HUD’s disparate impact rule will be consistent with the Supreme Court’s caselaw, including the ruling in *Texas Department of Housing and Community Affairs v. Inclusive Communities*.

30) Will you commit that any revisions to HUD’s disparate impact rule will follow the U.S. Supreme Court’s dictate in Inclusive Communities to focus on removing “artificial, arbitrary, and unnecessary barrier[s]” to housing?

Response:

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I am committed to ensuring that any revisions to HUD's disparate impact rule will be consistent with the Supreme Court's caselaw, including the ruling in *Texas Department of Housing and Community Affairs v. Inclusive Communities*.

Public housing

31) In 2019, as NAHRO's CEO, you testified before the House Financial Services Committee that there is an estimated backlog of \$70 billion in unmet capital needs for public housing but admitted this estimate is extrapolated from HUD's 2010 Capital Needs Assessment. Do you believe HUD should conduct another Capital Needs Assessment to accurately measure the current backlog?

Response:

While HUD does not have a recent estimate, few would dispute the urgent need for considerable investment to recapitalize our Nation's public housing stock. To my knowledge, the last official estimate of capital needs that HUD references is based on a study conducted in 2010. It would be valuable to have accurate and current data on the capital needs of the nation's public housing, but we do not need that estimate to know that we must take action now.

32) Do you believe it would be useful for HUD to identify developments where the cost of capital repairs exceeds the cost of conversion to tenant-based or project-based assistance?

Response:

We should always be looking for the most cost-effective way to deliver housing assistance. That is the premise undergirding Section 22 of the United States Housing Act of 1937. Under Section 22, a public housing authority may apply to HUD to convert a public housing development to voucher-based assistance when a cost analysis demonstrates that providing assistance under Section 8 is less expensive than continuing assistance for the remaining useful life of the public housing project. If confirmed, I would explore the feasibility of identifying properties where the cost of capital repairs exceeds the cost of conversion to tenant-based or project-based assistance, keeping in mind local housing market conditions and local decision making.

33) Would it also be useful for HUD to know the estimated capital needs backlog for developments administered by public housing agencies (PHAs) that HUD, the HUD OIG, or the U.S. Department of Justice (DOJ) have alleged are grossly mismanaged, or those that have been identified by HUD as "substandard" or "troubled?"

Response:

It would be helpful to identify how much funding is needed to address these agencies' outstanding capital needs. Based on my experience, in most cases, annual Capital Fund appropriations are insufficient to address the physical conditions at these agencies, which makes

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it challenging for them to provide safe and decent housing. Adequate funding to make needed capital improvements could transform the performance of these PHAs. This analysis could then inform HUD's budget request for capital needs of troubled, substandard, and high-risk PHAs as well as those under HUD receivership.

34) In 2020, HUD OIG determined that for the last 11 years, HUD has failed to submit an annual report to Congress required by law on troubled PHAs.⁴ Will you commit to transmitting this report this year as required by law?

Response:

If confirmed, I would look into this matter to ascertain the reasons for any delay and improve the process.

35) HUD measures the performance of PHAs across a number of indicators to ensure that units are decent, safe, sanitary, and in good repair. After compiling scores for each indicator into an overall score, the PHA receives a performance designation. HUD OIG determined that a number of PHAs that received a "troubled performer" designation remained troubled for longer than two years, after which time they should have been referred to the HUD Assistant Secretary for takeover. HUD OIG determined that when "[the HUD Office of Public and Indian Housing] does not refer a troubled PHA to the Assistant Secretary after the maximum 2-year recovery period, a PHA could remain troubled for a period beyond that maximum 2-year period while conditions stagnate or deteriorate."³ Will you ensure that HUD's process for referring troubled PHAs to the HUD Assistant Secretary for takeover by HUD would be consistent with the law and regulations as identified by HUD OIG?

Response:

If confirmed, I would look into this matter and ensure that HUD is following applicable law and regulations.

Barriers to Affordable Housing

36) In January 2021, HUD released a report entitled "Eliminating Regulatory Barriers to Affordable Housing: Federal, State, Local, and Tribal Opportunities," which "identifies many federal regulations and practices that could be revised to eliminate unnecessary burdens to providing Americans with affordable, safe, quality places to live, including opportunities to make sustainable homeownership more achievable." Which of the report's recommendations do you agree with?

Response:

³ *Id.* at 5.

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Thank you for bringing the report to my attention. If confirmed, I plan to review the report and its recommendations.

37) The January 2021 HUD report on barriers to affordable housing described regulatory and sub-regulatory changes to modernize Davis-Bacon.⁴ Do you support and will you work to implement any administrative reforms to update Davis-Bacon?

Response:

If confirmed as Deputy Secretary, I would work with HUD's Office of Davis-Bacon and the Related Acts (DBRA) to better understand the barriers to affordable housing described in the January 2021 report. It is critical to note, however, that HUD looks to the U.S. Department of Labor (DOL), specifically the Wage and Hour Division, for guidance on the administration of Davis-Bacon Act, as all regulatory and sub-regulatory changes to the Act must be made by DOL.

HUD pilot Projects

38) In recent years, HUD has started some important pilot programs to study the effectiveness of Housing Choice Vouchers and to try to improve them for beneficiaries. Would you be open to additional pilots? If so, what kinds of pilots?

Response:

As Secretary Fudge has said, she is open to conducting pilots on the HCV program, especially as we also work to increase access to vouchers for low-income families. The HCV program is the nation's largest rental assistance program serving over two million families. However, it only reaches 1 in 5 eligible households due to funding limitations. It is critical that HUD continues to study the effectiveness of the program to make improvements for our families, landlords and public housing agencies. Some of the pilots may include activities such as improving safety inspections and housing modifications; promoting interventions that reduce segregation of families receiving assistance in disinvested communities and improve housing choice; developing innovative practices that assist disabled families, homeless families, youth aging out of foster care, and other people who face additional barriers to accessing housing; and implementing strategies that increase landlords' willingness to accept voucher recipients.

Ensuring that HUD assistance is not for a "lifetime"

39) In December 2020, HUD Secretary Marcia Fudge said that "public housing or low income housing should not be a lifetime, it should be a just a stopping point."⁵ What do you intend to do during your time as HUD Deputy Secretary to advance that goal?

Response:

⁴ *Id.* at 48–49.

⁵ Errin Haines, 'I want to be part of making this work:' Marcia Fudge talks about how she plans to lead HUD, The 19th (Dec. 10, 2020), available at <https://19thnews.org/2020/12/marcia-fudge-interview-nomination-department-of-housing-and-urban-development/>.

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As Secretary Fudge said, shortening tenancy requires a two-part strategy: increasing the supply of affordable housing and helping people increase their incomes. We need to produce more housing in every community that is affordable for people with low incomes. Housing affordability studies show that no state in the country has an adequate supply of affordable housing. HUD plays a key role in affordable housing supply along with the Treasury Department and USDA. If confirmed, I would work with the Secretary, and the teams at Treasury and USDA, to increase the number of affordable housing units.

Second, we need to increase tenant incomes by raising wages and helping people connect to education, training, and other services that can help improve their economic circumstances. While these issues are outside of HUD's direct responsibilities, I would partner with my colleagues across the government to examine all the ways we can increase people's incomes to help them afford a safe place to call home.

Moving to Work (MTW)

40) You were Executive Director of the DC Housing Authority which was an early participant in the Moving to Work (MTW) Demonstration Program. The MTW designation provided you with exemptions from many existing public housing and voucher rules and funding flexibility with how to use federal funds. Do you support expanding the number of MTW jurisdictions to allow more communities to experiment on how to make that a reality?

Response:

As you know, the Fiscal Year 2016 Appropriations Act authorized HUD to expand the MTW demonstration program from the 39 PHAs in the program to an additional 100 PHAs over a period of seven years. In 2020, HUD finalized the Operations Notice for the MTW demonstration program expansion, which established requirements for the implementation and operations of the MTW expansion pursuant to the 2016 statute. HUD added 40 new PHAs to the MTW Program this year, with plans to increase to the full 100 expansion MTW agencies. If confirmed, I am committed to working with the Congress as HUD follows through on its requirements under the 2016 Act.

41) Would you consider expanding MTW to allow defined-stay tenancy for new tenants (i.e., time limits) in exchange for a set rent that will not increase with income?

Response:

One of the key aspects of the MTW Expansion is HUD's commitment to engage in structured research and analysis on specific flexibilities offered to PHAs under the original authorizing statute, including but not limited to tenancy issues such as those your question suggests, in order to provide HUD sound basis for future policy decisions. If confirmed, I commit to working with

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Congress as HUD studies MTW flexibilities going forward, and I would work with HUD staff to determine policy and practices that best serve residents of federally assisted housing with the resources available to HUD.

Community Development Block Grant (CDBG) program

42) Will you commit to evaluating whether the CDBG program formula allocates too much money to wealthier areas, at the expense of funding poorer and more rural areas? If so, will you consider CDBG reforms that could address this issue?

Response:

If confirmed, I would review past efforts to make changes to the CDBG funding formula. I look forward to discussing with members of Congress what further evaluation efforts are needed to inform improvements to the formula targeting.

43) Will you commit to evaluating whether the CDBG program insufficiently prioritizes the building of affordable housing because of other allowable uses for CDBG dollars? If so, will you consider CDBG reforms that could address this issue?

Response:

If confirmed, I look forward to working with the HUD staff and CDBG grantees to better understand how and why grantees prioritize different community development activities to meet their local program objectives. The CDBG program has a community development approach, with a broad, statutory goal of providing decent housing, a suitable living environment, and economic opportunity, principally for low- and moderate-income persons. Other HUD programs, such as the HOME program, are specifically targeted to housing. If confirmed, I commit to reviewing how HUD programs work together to produce affordable housing.

44) What are appropriate guardrails to enact in any potential permanent authorization to HUD's CDBG-DR program to ensure that disaster relief reaches a community swiftly but in a manner that minimizes fraud?

Response:

If confirmed, I would work with Congress and HUD staff to ensure that HUD is a good steward of federal funds by expediting recovery activities while ensuring appropriate oversight.

HUD Multifamily application process

45) In recent months, the wait times for HUD Multifamily applications to be processed has tripled, and in some cases, quadrupled. If this continues, it could shrink the supply of affordable and workforce rental units. How will you addressing the wait times for HUD

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Multifamily applications? What steps will you be taking to ensure that HUD Multifamily can adequately respond to expansion and contraction in the future?

If confirmed, I commit to studying this issue and improving the efficiency of the FHA Multifamily process. I would look forward to working with Congress to ensure HUD Multifamily had the appropriate resources to efficiently operate the FHA Multifamily process.

Environmental regulations

46) Regarding HUD’s environmental regulations that govern HUD’s programs, how will you balance the need to protect the environment with the need to limit the cost of building new affordable housing?

Response:

Many studies have shown the harmful impact that our country’s contaminated sites have had on low-income housing. Having a roof over your head and being safe from harm should not be competing choices. That is why it is critical that HUD’s mission is to create safe, decent, and affordable homes for all.

Manufactured housing

47) The Manufactured Housing Consensus Committee (MHCC) is a Federal Advisory Committee statutorily authorized to develop and submit to the HUD Secretary manufactured home construction and safety standards. The law requires the MHCC to “submit proposed revised standards . . . to the [HUD] Secretary in the form of a proposed rule, including an economic analysis.”⁶ Accordingly, the MHCC must have resources devoted to developing these required economic analyses. Will you provide the resources that are necessary for the MHCC to develop economic analyses to accompany the construction and safety standards being considered by the MHCC so that the standards are revised to keep up with innovations in the market?

Response:

Manufactured Housing is a critical source of unsubsidized affordable housing. If confirmed, I would work with Secretary Fudge, who said that she will explore more ways to further its use as an affordable housing option. As mandated by statute, the Manufactured Housing Consensus Committee (MHCC) assists HUD in formulating and evaluating its oversight functions of the Manufactured Home Construction and Safety Standards. I agree the MHCC should have adequate resources necessary to achieve its purpose. HUD program office and research staffing resources provide economic analysis assistance and HUD’s Office of Manufactured Housing Programs maintains sufficient contracted resources that conduct economic analyses for MHCC recommendations.

⁶ 42 U.S.C. § 5403(a)(4)(A)(ii).

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Mutual Mortgage Insurance (MMI) Fund

48) The FY20 Report on the MMI Fund shows that subjecting the FY20 portfolio to the same macroeconomic conditions faced during the housing crisis would create losses in excess of MMI Fund capital, resulting in a MMI Fund capital ratio of -0.63%, below the statutory 2% minimum, and requiring a bailout. Would you consider it a failure if the Federal Housing Administration (FHA) draws funds from the Treasury to cover losses, or put more simply, requires a bailout?

Response:

If confirmed, I would work with HUD leadership to prudently manage the financial soundness of the Mutual Mortgage Insurance Fund. We face an unprecedented economic disaster as a result of COVID-19, and I applaud the Administration for taking extraordinary steps to mitigate losses and the impact of this delinquency crisis to ensure FHA homeowners experience a full recovery. The American Rescue Plan was passed with nearly \$10 billion in allocated for homeowners, and if confirmed, I would work to ensure that these resources help the most vulnerable borrowers. I commit to working closely with the FHA team and OMB as policy actions are taken to use the fund for its intended purpose, and to ensure that we continue to maintain statutory capital and a healthy insurance fund.

49) Do you think the MMI Fund as of FY20 has sufficient capital reserves?

Response:

The MMIF is currently above the statutory minimum required reserve ratio.

50) Do you think it is inappropriate to build a capital buffer able to withstand a shock of the kind experienced during the 2008 housing crisis?

Response:

The circumstances of this crisis are very different than 2008 thus far, with home prices continuing to rise and loans having more equity, as well as loan products being safer, lower fixed rate products. Given these factors, it is appropriate to manage the fund and the capital closely and using various stress scenarios to ensure it can withstand different types of economic shocks including natural disasters and potential housing price declines.

51) Is the statutory 2% MMI Fund capital ratio a sufficient buffer to protect against taxpayer losses? If not, what do you believe is appropriate? If not the 2008 housing crisis, what stress level scenario should FHA consider when deciding what capital buffer is sufficient?

Response:

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The capital ratio is something that should be continuously evaluated and as circumstances change over time. The fund has been well over the statutory limit for many years and the fund has been resilient through the COVID-19 pandemic. Each crisis and disaster are different, and we need to remain nimble in how we manage the risks. If I am confirmed, I commit to being focused on ensuring we have a process for continuous evaluation that meets the current circumstances of the market and protects homeowners.

52) Do you have plans to impose the same climate stress tests and climate change regulatory standards on FHA's lending portfolio as several Biden administration officials have discussed doing for private sector market participants?

Response:

I do believe it is important that FHA's Mutual Mortgage Insurance Fund is managed using appropriate modeling and "stress testing" to have an appropriate capital buffer to withstand significant economic shock events. As the environment changes, I will work with the Secretary to adapt and proactively manage all risks.

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Questions for Ms. Adrienne Todman, of the Virgin Islands, to be Deputy Secretary of Housing and Urban Development, from Senator Mike Crapo:

1) In my role as Chairman of the Senate Banking Committee, one of my priorities was regulatory relief for smaller public housing authorities (PHAs), which may not have the same personnel or resources as large PHAs yet are often held to the same standards.

Are you open to working with Congress on opportunities to reduce the regulatory burden on smaller PHAs?

Response:

Yes, I am open to working with Congress to help small PHAs address regulatory burdens and identify opportunities for more flexibility. If confirmed, I look forward to working with you on this important issue.

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**Questions for Ms. Adrienne Todman, of the Virgin Islands, to be Deputy Secretary of
Housing and Urban Development, from Senator Steve Daines:**

1) Explosive demand in the housing market far outpaces supply. What role do you envision the private sector playing in responding to the housing shortage? Please elaborate on strategies where federal programs will only distort the market further.

Response:

The private sector will play a significant role in responding to the housing supply shortage, but not alone. It is and will continue to be a challenge to develop affordable housing without federal support as well as philanthropic strategies that provides capital sources and incentives to do so. It is HUDs mission to ensure that affordable housing is available and accessible for renters and homeowners and serve low- and moderate-income households who do not have the resources. As costs of construction continue to rise, it will be challenging for the private sector to produce or preserve affordable housing without capital from federal programs like HOME investment partnership and LIHTC to support and maintain affordability.

2) We have witnessed record prices surges for wood products this spring which has played a role in significant increases in the cost of housing. What can HUD do to mitigate the impacts of the increased cost of timber, plywood, and other critical building materials?

Response:

The implications of high building materials cost like lumber have a significant chilling effect on the ability for the home builders to accelerate production of affordable housing. This is a serious concern for HUD as it raises the cost of housing across the board and adds stress on renters and homeowners with rising cost of housing. While HUD can't solve the supply chain problem or rising cost of materials, we can work cooperatively with home builders and developers to ensure that our subsidy programs that support the construction of affordable housing are put to work to help close capital gaps or construction financing challenges.

This is a critically important issue for HUD in order to achieve our mission and if confirmed, I would be focused on working across agencies to address and focus on these challenges to housing production.

3) You have consistently advocated for increased funding for public housing projects, given HUD's troubled history with waste and abuse, dumping more cash into the agency is not a solution to our housing challenges. What programs administered by HUD do you believe need significant attention, or termination?

Response:

If confirmed as Deputy Secretary, responsible oversight would be a top priority of mine. I believe HUD can and should be central to addressing our Nation's housing challenges. At the

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same time, HUD has a responsibility to ensure that funds appropriated by Congress are spent efficiently and on the intended purposes. As you know, Congress, not HUD, has the authority to authorize programs and appropriate funds for those programs. I would review HUD's programs and look forward to working with you to address our country's housing challenges.