

August 13, 2021

Mr. David Uejio  
Assistant Secretary Designate  
Department of Housing and Urban Development  
451 7th St SW  
Washington, DC 20410

Dear Mr. Uejio:

Thank you for testifying before the United States Senate Committee on Banking, Housing, and Urban Affairs on August 5, 2021, at the nominations hearing.

To complete the hearing record, we would appreciate your answers to the enclosed questions by August 13, 2021. 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](mailto: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 Mr. David Uejio, Assistant Secretary Designate, Housing and Urban Development, from Chairman Sherrod Brown:**

- 1) Where have you excelled in past positions in attracting, hiring, and promoting people of color in positions in your organization/s? Where might there be room for improvement?

**I believe that for the Office of Fair Housing and Equal Opportunity (FHEO) to succeed in its mission, we need to attract and retain talent from every background and walk of life. I have spent the past decade in significant positions at the Consumer Financial Protection Bureau (CFPB), including as the Bureau's first lead in Talent Acquisition. In that role I created a unique, government leading talent acquisition program from the ground up to support the start-up and hiring of over 700 diverse employees from all across the country. At the National Institutes of Health, I built the agency's executive recruitment function to allow NIH to compete directly with the world's leading hospitals, universities, and scientific research firms to attract diverse scientific leadership. And I was recruited by the Undersecretary for Personnel and Readiness to help develop the Pentagon's talent acquisition and management strategy. Throughout my time at CFPB and in three other federal agencies, I excelled at attracting, hiring, and promoting qualified people of color.**

**There is always room for improvement, and FHEO is no exception. If confirmed, I would work with the Secretary, the Deputy Secretary, and the Office of the Chief Human Capital Officer to ensure that FHEO headquarters and regional offices build strong relationships with university affinity networks and professional networks that can help with recruiting people of color. I would also work closely with our managerial staff to ensure that FHEO staff have the opportunity to work on meaningful projects in their areas of expertise that can advance their careers.**

- 2) What specific measures will you use to evaluate the success of the U.S. Department of Housing and Urban Development in understanding and addressing the needs of Black, Indigenous and people of color (BIPOC)? And, will you work with the Secretary and senior officials to keep Congress apprised, as appropriate, on the progress being made on these measures?

**If confirmed, I look forward to working with Congress on this particular issue and would welcome an ongoing conversation on HUD and FHEO's progress. Having previously served as Performance Improvement Officer and Evaluation Officer at CFPB, I know well the importance of relying on data to evaluate organizational success and inform organizational priorities such as this. 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 use fair housing tools that can help in each of these areas.**

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- 3) What is your plan for creating an inclusive working environment for employees within your office?

**Throughout the course of my career I have led initiatives to strengthen organizational culture and performance; I know well the incredible value of building and cultivating strong, interdisciplinary teams to accomplish public service missions. If confirmed, I would make it a priority to leverage this approach to build and maintain an inclusive working environment in FHEO. FHEO is a diverse workplace with leadership from many different backgrounds. I would work to ensure those diverse voices are a part of the decision-making process when it comes to office initiatives, policy determinations, and our efforts at recruitment and retention of talent. Through training sessions and meetings, I would make sure everyone understands that we value the contributions that our employees bring to meeting FHEO's mission, and that, together, we are responsible for maintaining a workplace that is fair, inclusive, and free from all forms of harassment and discrimination. I will maintain and enhance training that reinforces the values of civil treatment and building teams based on mutual respect and collegial relations.**

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**Questions for Mr. David Uejio, Assistant Secretary Designate, Housing and Urban Development, from Ranking Member Pat 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.

**I recognize that Congress plays an important oversight role regarding executive branch activities, and I pledge to thoughtfully consider all Congressional information requests, recognizing the importance of transparency in government. If confirmed, I pledge to work through the accommodations process to comply with Congressional requests for information to the fullest extent consistent with the constitutional and statutory obligations of the executive branch.**

- 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.

**I recognize that Congress plays an important oversight role regarding executive branch activities, and I pledge to thoughtfully consider all Congressional information requests, recognizing the importance of transparency in government. If confirmed, I pledge to work through the accommodations process to comply with Congressional requests for information to the fullest extent consistent with the constitutional and statutory obligations of the executive branch.**

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

**I recognize that Congress plays an important oversight role regarding executive branch activities, and I pledge to thoughtfully consider all Congressional information requests including from any member, recognizing the importance of transparency in government. If confirmed, I pledge to work through the accommodations process to comply with Congressional requests for information to the fullest extent consistent with the constitutional and statutory obligations of the executive branch.**

- 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

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jurisdiction, upon the request of either the Chairman or Ranking Member? Please answer “yes” or “no.” If your answer is “no,” please explain why.

**I recognize that oral testimony plays an important role in Congress’ important oversight responsibilities regarding executive branch activities. If confirmed, I commit to brief or testify regarding Congressional requests consistent with this important oversight function.**

- 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.”

**My understanding is that any determination as to whether HUD has an applicable privilege or other justification to withhold information from Congress would be made by the Office of General Counsel. Should I be confirmed, and should such a question arise during my tenure, I would consult closely with that office.**

- 6) If you answered “yes” to the preceding question, 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.

**If confirmed, I would work with the Office of General Counsel to ensure that I am complying with any and all legal requirements.**

- 7) 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.

**If confirmed, I would work with the Office of General Counsel to ensure that I am complying with any and all legal requirements.**

*Housing Experience*

- 8) For each question below please provide a clear “yes” or “no” answer, then list any responsive experience, the date or dates, a description of the work you personally performed, and names of individuals who supervised this work.

- a. Do you have any professional experience specifically in fair housing?

**In my government career I have been proud to work on issues in the housing finance marketplace. In my current role I lead the nation’s consumer financial protection regulator, with authority over large segments of the housing finance marketplace. Among the statutes I enforce are the Equal Credit Opportunity Act (ECOA) prohibiting discrimination in the provision of financial services, to include housing, as well as the Fair**

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**Credit Reporting Act (FCRA) which helps ensure fair treatment of homeowners and tenants. As Chair of the Federal Financial Institutions Examination Council's (FFIEC), I led members to focus on discrimination in the home appraisal marketplace, and convened key governmental partners, consumer advocates, civil rights leaders, and local leaders to better understand their experience with these biases on a day to day basis. Under my leadership the Bureau has also joined the Interagency Task Force on Property Assessment Valuation Equity (PAVE). I am fortunate to have strong relationships with the Director of the FHFA and other banking regulators, and if confirmed look forward to working with these stakeholders and the Department of Justice to enforce the Fair Housing Act.**

b. Do you have any experience interpreting or applying the Fair Housing Act?

**I do not have experience directly applying the Fair Housing Act as that is not one of the statutes the CFPB is charged with administering. However, I have extensive experience applying the ECOA, which has given me a strong foundation to interpret the Fair Housing Act as they are analogous in many respects.**

c. Have you ever counselled any persons on fair housing issues?

**I have spent my entire career in public service; accordingly, I have not had any occasion to have any private clients whom I might counsel on such matters.**

d. Have you ever counselled any housing providers on fair housing issues?

**I have spent my entire career in public service; accordingly, I have not had any occasion to have any private clients whom I might counsel on such matters.**

e. Have you ever worked directly with HUD's Office of Fair Housing and Equal Opportunity?

**In my current role, we have collaborated closely with HUD on a range of topics to ensure Americans are protected in the housing finance marketplace. I have prioritized that collaboration with various Offices at HUD, including the Office of Fair Housing and Equal Opportunity. I have strongly supported the work of the Bureau under the last administration to clarify the use of Special Purpose Credit programs, and engaged FHEO around options to provide greater clarity to regulated entities around their use.**

**Barriers to Affordable Housing**

- 9) 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

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opportunities to make sustainable homeownership more achievable.”<sup>1</sup> Which of the report’s recommendations do you agree with?

**If confirmed, I would be concerned with housing discrimination and violations of the Fair Housing Act. I would defer to the Office of Policy Development and Research, Office of Housing, and other HUD colleagues to address regulatory barriers to sustainable homeownership.**

Olmstead Regulations

10) If confirmed, will you examine the possibility of streamlining HUD’s regulations that govern compliance with the U.S. Supreme Court’s 1999 decision in *Olmstead v. L.C.*?

**My understanding is that HUD has issued guidance documents explaining how its Section 504 and other regulations should be applied to ensure that individuals with disabilities, including those transitioning from institutional to community settings, have the housing opportunities they need to live in the most integrated setting appropriate to their needs consistent with the Supreme Court’s *Olmstead* decision. If I am confirmed, in conjunction with the Office of General Counsel, I will examine these documents and take any steps necessary to ensure that they are effective.**

Affirmatively Furthering Fair Housing (AFFH)

11) When now-Deputy Secretary Todman was CEO of NAHRO, NAHRO advocated for a less burdensome version of the AFFH process than the Obama-era rule. NAHRO said that housing agencies should not need a consultant to comply with the rule. NAHRO also said that entities should not have to analyze non-housing related topics like transportation, education, or infrastructure, or analyze locations outside of their jurisdiction.

- a. Do you agree that a jurisdiction should not have to hire a consultant to complete the process?

**The comment you referenced was made by NAHRO on behalf of its members. If confirmed as Assistant Secretary of FHEO, I would work with Secretary Fudge and Deputy Secretary Todman 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. HUD has stated that it will be conducting a rulemaking regarding AFFH, and if confirmed, I will closely examine any comments regarding this issue or any other issue.**

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<sup>1</sup> HUD, *Eliminating Regulatory Barriers to Affordable Housing: Federal, State, Local, and Tribal Opportunities*, (January 19, 2021), available at <https://www.huduser.gov/portal//portal/sites/default/files/pdf/eliminating-regulatory-barriers-to-affordable-housing.pdf>.

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- b. Do you agree that to comply with AFFH requirements, a jurisdiction should not have to complete analyses outside of the housing arena or outside of its geographic locality?

**If confirmed as Assistant Secretary of FHEO, I would work with Secretary Fudge, Deputy Secretary Todman, and the Office of General Counsel 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. HUD has stated that it will be conducting a rulemaking regarding AFFH, and if confirmed, I will closely examine any comments regarding this issue or any other issue.**

- 12) Are there any circumstances under which HUD should use the AFFH process to tell a city to make a particular change to their zoning laws, to advance affordable housing?

**If confirmed as Assistant Secretary of FHEO, I would work with Secretary Fudge, Deputy Secretary Todman, and the Office of General Counsel 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. HUD has stated that it will be conducting a rulemaking regarding AFFH, and if confirmed, I will closely examine any comments regarding this issue or any other issue.**

*Disparate impact*

- 13) HUD recently proposed reinstating its 2013 disparate impact rule. I'm concerned that this proposal willfully disregards the U.S. Supreme Court's decisions in *Texas Dept. of Housing and Community Affairs v. Inclusive Communities Project, Inc.*, 576 U.S. 519 (2015), which identified constitutional guardrails for disparate impact liability. Under HUD's 2013 disparate impact rule, it seemed that defendants were often guilty until proven innocent. Defendants lacked the protections announced by the Supreme Court in *Inclusive Communities*, like the need for a plaintiff to prove a robust causality between the plaintiff's action and the alleged harm. Reinstating this rule without taking *Inclusive Communities* into account will invite a wave of frivolous lawsuits against housing providers and made it costlier to access affordable housing.

- a. Do you acknowledge that *Inclusive Communities* defines limitations for the scope of disparate impact liability?

**HUD's Office of General Counsel has the primary responsibility for interpreting the Fair Housing Act, while FHEO has the primary responsibility for enforcing it. I understand that HUD has issued a notice of proposed rulemaking regarding this subject matter and has begun taking comments. If confirmed, I would ensure that we work with the Office of General Counsel to carefully review and respond to all comments on *Inclusive Communities* and other matters before promulgating a final regulation.**



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- b. Will you ensure that any revised rule complies with the Supreme Court’s limitations in *Inclusive Communities*?

**If confirmed, I would ensure that we work with the Office of General Counsel to carefully review and address comments on *Inclusive Communities* and other matters before promulgating a final regulation.**

- c. In 2019, when now-HUD Deputy Secretary Adrienne Todman was CEO of NAHRO, that organization filed a comment letter arguing that HUD should exempt housing authorities from disparate impact if a policy is “a reasonable approach and in the housing authority’s sound discretion.” The comment letter quoted the Supreme Court in *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.” Will you evaluate the possibility of including such a safe harbor in any revisions to HUD’s disparate impact rule?

**The comment period in the rulemaking you reference is currently open, and I do not want to prejudice that process by stating what will be included in any revisions. In accordance with the Department’s legal responsibilities under the Administrative Procedures Act, if confirmed, I would work with the Office of General Counsel to ensure that the Department carefully considers any revisions to the proposed rule that commenters may propose, including those described in this question.**

- d. Will you commit that any revisions to HUD’s disparate impact rule will follow the Supreme Court’s 2015 dictate in *Inclusive Communities* that “disparate-impact liability [should not] be so expansive as to inject racial considerations into every housing decision?”

**If confirmed, I would ensure that we work with the Office of General Counsel to carefully review and address comments on *Inclusive Communities* and other matters before promulgating a final regulation.**

- e. Will you commit that any revisions to HUD’s disparate impact rule will follow the 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?”

**If confirmed, I would ensure that we work with the Office of General Counsel to carefully review and address comments on *Inclusive Communities* and other matters before promulgating a final regulation.**

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- f. Will you commit that any revisions to HUD’s disparate impact rule will follow the 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 . . . ?”

**If confirmed, I would ensure that we work with the Office of General Counsel to carefully review and address comments on *Inclusive Communities* and other matters before promulgating a final regulation.**

- g. Will you commit that any revisions to HUD’s disparate impact rule will follow the 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?

**If confirmed, I would ensure that we work with the Office of General Counsel to carefully review and address comments on *Inclusive Communities* and other matters before promulgating a final regulation.**

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

**If confirmed, I would ensure that we work with the Office of General Counsel to carefully review and address comments on *Inclusive Communities* and other matters before promulgating a final regulation.**

*Fair Housing Act*

- 14) Will you consult with and seek written opinions from HUD’s Office of General Counsel on the limits of protections under the Fair Housing Act?

**If confirmed, I would work in close partnership with HUD’s Office of General Counsel in enforcing the Fair Housing Act.**

*HUD Secretary-initiated complaints under the Fair Housing Act*

- 15) HUD Secretary-initiated complaints are appropriate in matters involving significant issues that are national in scope or when HUD is made aware of potential violations of the Fair Housing Act and broad public interest relief is warranted. Under what other circumstances will HUD file a Secretary-initiated complaint?

**The Fair Housing Act grants HUD the authority to file Secretary-initiated complaints to investigate housing practices. If confirmed, I would work with Secretary Fudge and the**

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**Office of General Counsel to determine appropriate cases where a Secretary-initiated complaint should be brought to remedy housing discrimination.**

*CFPB's Use of Data*

16) The CFPB has a controversial history of disparate impact enforcement without statutory authorization for this contentious theory of enforcement, and without reliable data. Because lenders are prohibited by law from collecting information on the race of those who seek or obtain credit, the CFPB has not had reliable data about borrowers' race. Instead, the CFPB has guessed at borrowers' race based on their last name and geographic area, and on that basis accused auto finance companies of disparate impact. This notably led Congress to overturn the CFPB's auto lending guidance in 2018.

This year, on February 10, 2021, you announced the CFPB was preparing to publish a report to name-and-shame companies you concluded gave racially disparate responses to consumer complaints in the CFPB's database.

The CFPB database does not verify the accuracy of complaints, or collect data on consumers' race. Under law, lenders cannot themselves collect information about the race of applicants and borrowers, meaning in most instances companies do not know the race of borrowers when they respond to consumer complaints. The vast majority of financial institutions (all those under \$10 billion) are not required to provide any response to consumer complaints.

I wrote to you asking the basis for your conclusions, and how you would verify them. Your only substantive response was to note that third parties used CFPB complaints to research racial disparity. The research you cited assumed individuals' race based only on the census tracts where they resided. This is not sufficient, or sufficiently reliable, information to justify the Federal government publicly accusing a private entity of racism or of disparate impact.

- a. Will you abandon your plan to conduct public shaming based on unverified complaints?

**I am answering these questions in my capacity as nominee for HUD's Office of Fair Housing and Equal Opportunity, not as a representative of CFPB. Accordingly, I cannot answer this question on behalf of CFPB.**

- b. Will you commit that, if confirmed to lead HUD's Office of Fair Housing and Equal Opportunity, you will not inflict punishments based on poor evidence, including assuming a person's race based on his geographic location or his geographic location and last name?

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**If confirmed, I will endeavor to have FHEO open and conduct investigations and make other decisions based on evidence that meets the applicable standards.**

*Respect for Jurisdiction*

- 17) The leader of an important government office like HUD’s Office of Fair Housing and Equal Opportunity must consider and respect the jurisdictional boundaries Congress has set. This is why I am troubled by instances of CFPB overreach under your leadership, and concerned for what this would mean for your leadership of HUD’s Office of Fair Housing and Equal Opportunity, if you were confirmed to that role.

For example, the CFPB and the Federal Trade Commission (FTC) jointly sent letters to large multi-state landlords. As your staff previously confirmed to my staff on May 20, 2021, rental landlords are not within the CFPB’s jurisdiction. The sample letter CFPB and FTC published closed with: “Neither the FTC nor the CFPB has determined whether you or your company is violating the law” and “the FTC or CFPB may still take action.”

This raises concerns that under your leadership the CFPB is taking part in threatening landlords outside of its jurisdiction, and may be using joint action with the FTC to obscure its jurisdictional bounds. Yet, when you spoke with my staff, you refused even to confirm or deny whether the CFPB and FTC are engaging in joint investigations of rental landlords. This has serious implications for your suitability to be confirmed to an important government office.

- a. If this was an honest mistake, you have a responsibility to make it right. Will you contact any landlords who received this letter to clarify the CFPB has no jurisdiction over their actions?

**I am answering these questions in my capacity as nominee for HUD’s Office of Fair Housing and Equal Opportunity, not as a representative of CFPB. Accordingly, I cannot answer this question on behalf of CFPB.**

- b. Is the CFPB currently engaged in any investigations or joint investigations of rental landlords? Please provide a description of the nature of the investigations and the law suspected to have been violated. In responding, please bear in mind that confidential investigative information is not a limitless category, and you have significant discretion under the law to provide information to Congress.

**I am answering these questions in my capacity as nominee for HUD’s Office of Fair Housing and Equal Opportunity, not as a representative of CFPB. Accordingly, I cannot answer this question on behalf of CFPB.**

*Answering Questions for the Record*

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18) Please describe with particularity the process by which you answered these questions for the record, including listing every person that assisted you in answering these questions along with a brief description of his or her assistance.

**The Department of Housing and Urban Development received these questions on August 9, 2021. I worked with Department attorneys and through the interagency process to answer the questions. I finalized and approved all answers to the questions and authorized their transmission to the Committee on August 13, 2021.**