January 31, 2020

The Honorable Ben Carson
U.S. Department of Housing and Urban Development
451 7th Street, SW
Washington, DC 20410-8000

Re: FR-6187-N-01 White House Council on Eliminating Regulatory Barriers to Affordable Housing; Request for Information

Dear Secretary Carson:

Thank you so much for the opportunity to provide input on the question of regulatory barriers to affordable housing. The National Community Stabilization Trust (NCST) is a non-profit, non-partisan organization that works to restore vacant and abandoned properties, with a special focus on affordable homeownership. Established in 2008, NCST has worked with hundreds of local partners across the nation to put approximately 27,000 foreclosed properties back to productive use.

NCST operates a technology platform that provides an exclusive "first look" at REO properties from participating lenders to community development organizations hoping to acquire and rehabilitate homes for resale to neighborhood residents. HUD was a seller through our platform during the Neighborhood Stabilization Program. NCST also manages a portfolio of distressed mortgages, sponsors loan funds that provide capital to single family developers, and engages in research and policy work related to homeownership and community development.

This letter responds to the Request for Information to "identify specific HUD regulations, statutes, programs and practices that directly or indirectly restrict the supply of housing or increase the cost of housing." We are limiting our response to those programs that relate specifically to NCST's core mission: selling foreclosed homes in a manner that support homeownership, strong neighborhoods, and healthy housing markets.

There are currently two HUD programs with features that we believe unnecessarily restrict the supply of housing available for affordable homeownership and increase the cost of this housing. These programs are the Single-Family Loan Sales (SFLS) program and the Claim Without Conveyance of Title (CWCOT) program. While these programs are both well-intentioned efforts to overcome some of HUD's statutory limitations in the areas of loss mitigation and REO conveyance, they facilitate the disposition of foreclosed properties in a way that is accessible only by cash investors rather than by potential homeowners who need mortgages.

Below, we describe why sales to cash investors negatively affect housing affordability and neighborhood stability, why these HUD programs facilitate sales to cash investors, and how HUD can change these programs to better serve the goal of affordable homeownership and healthy housing markets.

1. **Sales to cash investors compete with homebuyers, speed the transition of neighborhoods from homeownership to rental neighborhoods, and put upward pressure on home prices.**

After 8 million or more homeowners lost their homes to foreclosure during the Great Recession, the total homeownership rate in America dropped from close to 70 percent to 63 percent, and has only recently rebounded to 65 percent. The rate of homeownership for people of color – who were disproportionately targeted by predatory lenders --- has dropped even more, with black families now at homeownership levels comparable to those when housing discrimination was first prohibited.

Many of these formerly owner-occupied homes are now owned and rented out by investors. Zillow estimates that 5.4 million single- family homes have transitioned from owner-occupied to rental between 2006 and 2017. Unlike in previous downturns, investors who purchased at the bottom of the market did not resell once prices had recovered. Instead, investors in the market have stayed, creating a new asset class of scattered-site, single-family rental portfolios. With rents in most parts of the country at all-time highs and new financial structures to support rental, such as the securitization of single-family rental cash flows, the economics of single-family rental are now more favorable to most investors than flipping homes.

By competing with potential homeowners and reducing available supply of affordable homes, this ramped-up investor activity in the single-family market has helped lock in the crisis-driven reduction in homeownership even as family incomes and employment have recovered. While single-family rental has always been very large part of the rental market, today *more than half* of all renters now live in single-family properties, and almost one fifth of all single-family properties are occupied by tenants rather than homeowners.

The growth of this asset class raises serious concerns for the future of homeownership. Investors have many avenues to purchase properties that are not available to aspiring owner-occupants, as we discuss below, especially when they buy in cash. As more homes become rentals, this further reduces the supply of homes available for purchase, which drives up prices for homeownership.

Additionally, the transition of property ownership from homeowners to investors affects neighborhoods as well as individual families. Studies of single-family rental landlord behavior across multiple metropolitan areas have documented tenant dissatisfaction, deferred property maintenance, and corporate focus on pushing rents as high as possible. While most renters are responsible stewards of their homes, the transition of a neighborhood from homeownership to rental often parallels a larger pattern of disinvestment in that neighborhood. Landlords who are not local do not spend their money locally, invest in other neighborhood amenities, support the local schools and sports teams, or participate in civic affairs. Further, multiple studies support the relationship between homeownership and positive outcomes for health, education, and personal safety. Because HUD's FHA portfolio tends to be geographically concentrated, downward neighborhood trajectories have negative implications for the long-term health of the Mutual Mortgage Insurance Fund.

2. **Disposition of formerly FHA-insured properties through SFLC and CWCOT favors cash investors over potential homeowners and circumvents the homeowner and nonprofit "first look" programs available through HUD's own REO program.**

While SFLS is a program for nonperforming loans and CWCOT is an alternate REO path, the result in both programs is that properties flow through them never enter HUD's REO portfolio after foreclosure. In the case of SFLS, non-performing mortgages are purchased by a third-party and leave the FHA portfolio prior to foreclosure, meaning that private buyers oversee the post-foreclosure. CWCOT is an alternative REO disposition path available for certain properties in which lenders sell foreclosures directly to third parties without first conveying them to HUD.

For properties that flow through HUD's REO process, there are several opportunities for homeowners and nonprofits to acquire properties before they are forced to compete with cash buyers:

- When properties in the HUD REO portfolio are listed for sale, there is a 15-day period of priority for homeowners, nonprofits, and government agencies on insured homes (eligible for FHA loan) and a 5-day period for uninsured homes (ineligible for FHA).
- HUD also runs the "Good Neighbor Next Door" program, which gives teachers, firefighters, police officers, and nonprofits access to properties at a significant discount in revitalization areas.
- For homes needing less than $10,000 in repairs, properties are listed as "Insured with Escrow," meaning that the buyer is eligible to receive funds to repair the property upon acquisition through an FHA renovation loan.

Properties that are sold by note buyers under the SFLS program or through the CWCOT program cannot be accessed through any of these valuable programs.

In addition to not offering the programs described above, the vast majority of properties sold in both of those programs are sold through private auction websites rather than on the Multiple Listing Service and other public listing sites (which is how most families shop for homes). While theoretically those private auction websites are open to all members of the public as well as real estate agents, a quick review of any of the commonly used websites such as Auction.com or Hubzu will reveal two significant obstacles to participation by prospective homeowning families: (1) listings that specify cash-only or otherwise preclude conventional financing; and (2) the need for a deposit in an account to be an active buyer.

3. **There is a simple way for HUD to ensure that the SFLS and CWCOT programs prioritize owner-occupants and nonprofits over cash investors without shutting down these programs.**

We urge FHA to ensure that the SFLS and CWCOT programs do not have the unintended consequence of transitioning owner-occupied homes into rentals. Instead, HUD should prioritize getting foreclosed properties rehabbed and back into the hands of owner occupants whenever possible.

For the SFLS program, it would be simple for HUD to require that all note buyers make it as easy as possible for homebuyers to access their REO. These buyers should be required to list all their properties on the MLS with an exclusive "first look" period for homebuyers and nonprofits. For example, the Federal Housing Finance Agency has the following requirement for Fannie Mae and Freddie Mac note sales:

> *"Servicers are encouraged to sell properties that have gone through foreclosure and entered Real Estate Owned (REO) status to individuals who will occupy the property as their primary residence or to non-profits. As a result, for the first 20 days after any NPL that becomes an REO property is marketed, the property may be sold only to buyers who intend to occupy the property as their primary residence or to non-profits"*

In addition to a first look for homeowners, given that FHA properties have generally been delinquent and/or vacant for long periods of time, HUD should require note buyers to participate in a program such as NCST's program that provides a first look for *nonprofits* that rehab and resell properties so that homeowners – many of whom are likely to be low- and moderate-income and/or first-time homeowners – can purchase turn-key properties with no surprises.

Finally, to reduce the chance that low-value properties become sources of neighborhood blight, FHA should require note buyers to include in their bid packages a "disposition reserve" for lower value properties, so if they ultimately need to demolish the property or rehab it before it can be sold – or want to donate it to a land bank or nonprofit to do the same – they have the cash to cover the costs.

While the situation for CWCOT is more complicated, HUD should require that all foreclosure sales to third party buyers be conducted on platforms that are fully accessible by typical homebuyers and that conventional financing be accepted. This will require some creativity and analysis, but we believe it is possible. As a start, HUD could create a "second look" so that properties offered for sale through the CWCOT program that do not transact would then be offered through a non-profit focused platform such as NCST's REOMatch. HUD could also explore expanding the CWCOT footprint to properties with more distress if they transacted through REOMatch, where rehab prior to sale would be guaranteed and monitored.

NCST stands ready to work with HUD and partner as needed to ensure that special programs such as SFLS and CWCOT do not unintentionally reduce the supply of affordable housing or increase its price. As noted above, HUD has previously participated as a seller in NCST's REOMatch program, so we understand how to interface with the HUD systems and could easily incorporate HUD properties into our platform. Regardless of whether the NCST platform is used, we are happy to brainstorm with HUD on how best to achieve these important goals.

Thank you again for the opportunity to submit these comments. Please contact me if you have any questions.

Sincerely,

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