

August 20, 2018

Office of the General Counsel  
Rules Docket Clerk  
Department of Housing and Urban Development  
451 Seventh Street SW, Room 10276  
Washington, DC 20410-0001

RE: FR-6111-A-01 Reconsideration of HUD's Implementation of the Fair Housing Act's Disparate Impact Standard

Dear Secretary Carson:

The undersigned trade associations are writing in response to the FR-6111-A-01, "Reconsideration of HUD's Implementation of the Fair Housing Act's Disparate Impact Standard." We appreciate the opportunity to participate in this process and applaud HUD's willingness to reconsider its 2013 Final Rule on disparate impact in light of the Supreme Court's decision in *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.* ("*Inclusive Communities*"). While some of the undersigned are filing detailed individual comments, we believe it is important to collectively urge HUD to align the 2013 Final Rule with the standards established by the Supreme Court in *Inclusive Communities*.

Our members are committed to providing fair and equitable access to credit across multiple and very diverse communities. The mortgage industry expends substantial resources to meet the credit needs of all populations, developing new products and strategies to reach all markets, including underserved markets. Our members also take very seriously the responsibility of understanding the law and conforming services and product offerings accordingly.

HUD's 2013 analysis of disparate impact under the Fair Housing Act differs materially from the principles articulated by the Supreme Court. Most significantly, the HUD 2013 Final Rule is not—as *Inclusive Communities* requires—appropriately calibrated to prevent disparate impact liability from unfairly penalizing practical business choices. Under *Inclusive Communities*, claims for disparate impact must establish robust causality between an impermissible disparity and a specific policy that is artificial, arbitrary, and unnecessary.<sup>1</sup> Disparate impact liability must focus on removing "artificial barriers to housing" and not be used to second-guess valid business decisions.

The inconsistencies between the 2013 Final Rule and the *Inclusive Communities* decision cast needless uncertainty on business decision-making. It is important that HUD amend its Fair Housing regulations to reflect the subsequent standards articulated by the Supreme Court. Doing so will provide businesses with the clarity needed to "sustain a vibrant and dynamic free-enterprise system."<sup>2</sup>

Sincerely,

**American Bankers Association**  
**American Financial Services Association**  
**Consumer Bankers Association**  
**Consumer Mortgage Coalition**  
**Credit Union National Association**

**Housing Policy Council**  
**Independent Community Bankers of America**  
**Mortgage Bankers Association**  
**Real Estate Services Providers Council (RESPRO)**

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<sup>1</sup> *Texas Department of Community Affairs v. Inclusive Communities Project, Inc.*, 135 S. Ct. 2507, 2521-22 (2015).

<sup>2</sup> *Inclusive Cmty.*, 132 S. Ct. at 2518 (internal quotations and alterations omitted).