

April 24, 2023

Regulations Division
Office of General Counsel
Department of Housing and Urban Development
451 7th Street SW, Room 10276
Washington, DC 20410-0500

RE: Affirmatively Furthering Fair Housing, Docket Number FR-6250-P-1, RIN 2529-AB05

Submitted electronically via: www.regulations.gov

On behalf of the 1.5 million members of the National Association of REALTORS® (NAR), we welcome the opportunity to comment on the U.S. Department of Housing and Urban Development's (HUD's) Proposed Rule titled, "Affirmatively Furthering Fair Housing." The Proposed Rule would implement the Fair Housing Act's directive that HUD and its funding recipients take meaningful actions to overcome patterns of segregation, promote fair housing choice, eliminate disparities in housing-related opportunities, and foster inclusive communities that are free from discrimination.

NAR recognizes and supports the Fair Housing Act's broad remedial purpose, including its mandate that the federal government and recipients of federal funds do more than refrain from discriminating—that they must affirmatively further fair housing ("AFFH"). The 1968 Act's co-sponsor, Senator Walter Mondale, made this purpose clear when he articulated a goal of replacing segregated neighborhoods with "truly integrated and balanced living patterns." The broad reach of the Act has been repeatedly affirmed by the courts, including the Supreme Court in *Texas Dept. of Housing and Community Affairs v. Inclusive Communities Project, Inc.*, when it opined that the Act must have a "continued role in moving the Nation toward a more integrated society."

NAR's Positions on HUD's Previous Affirmatively Furthering Fair Housing Regulations

In 2013, NAR wrote in support of the underlying objectives and substance of the proposed rule that would become the 2015 Affirmatively Furthering Fair Housing rule, writing, "for too long, we have relied on communities simply asserting that they have affirmatively furthered fair housing." We welcomed HUD's efforts to provide clear guidance to communities in how to fulfill this mandate, but also emphasized the importance of maximizing community participation and local decision-making processes in identifying and prescribing solutions to local fair housing issues.

In our comment on the Preserving Community and Neighborhood Choice (PCNC) rule in 2020, we wrote that "the proposed rule departs fundamentally from how HUD's 2015 rule articulated the objectives of the Fair Housing Act's affirmatively furthering provisions." Noting that the proposed rule omitted any requirement to examine demographic data or

maps, we stated that “we cannot imagine that HUD and its recipients can meet the affirmatively furthering obligations under the Fair Housing Act without any consideration of how past, current, and future practices exacerbate or ameliorate residential housing patterns.”

We agreed with HUD’s restored definitions in its 2021 interim final AFFH rule, commenting that they provided a reasonable construction of long-settled legal interpretations of the statutory obligation to affirmatively further fair housing.

Closing Homeownership Gaps

NAR welcomes HUD’s more direct focus on homeownership in this Proposed Rule. As HUD notes, homeownership is generally the most traditional and stable way for families to build wealth; yet unequal access over the decades has led to homeownership and wealth gaps that stubbornly persist. Ending discrimination in real estate transactions is merely the starting point for closing these gaps; we must confront the legacy of past discrimination and resulting lack of generational wealth that leaves buyers of color with less access to funds for down payment, higher debt-to-income ratios, and strained credit profiles. NAR research shows, for example, that while 39% of White buyers can rely on the sale of an existing home as a source of down payment, only 27% of Asian buyers, 24% of Hispanic buyers, and 20% of Black buyers are able to do so.¹

Access to Affordable Housing

To support the new rule’s focus on homeownership, HUD should include owner-occupied units in its definition of *affordable housing opportunities*. Homeownership affordability reached historic lows in 2022, with a 50-year shortage of affordable homes severely limiting access to the residential real estate market, particularly for buyers of color. Black buyers are twice as likely as White buyers to be first-time buyers, who are contending with historically high rents and more sensitive to rising interest rates. Meanwhile, White buyers are twice as likely to have housing equity to rely on as they make a housing trade. NAR research finds that fewer than 10% of Black renters can afford to buy the typical home.

Homeownership Data

HUD requested comment specifically on data relating to homeownership opportunities. HUD should provide guidance to program participants on using Home Mortgage Disclosure Act (HMDA) data to assess local disparities in access to mortgage credit. HUD program participants should also consider partnering with state and local REALTOR® Associations to access NAR research and data on housing supply, affordability, and accessibility. In addition to our annual [Snapshot of Race and Homebuying](#), we provide local [Congressional District Reports](#), [Local Market reports](#), a [housing shortage tracker](#), an annual [Profile of Homebuyers and Sellers](#) by MSA, reports on [county home prices and monthly mortgage payment](#), and a [REALTORS® affordability distribution and curve](#).

¹ NAR Research Group, [Snapshot of Race and Homebuying in America](#), March 2, 2023.

Community Engagement

NAR is encouraged that robust community engagement is at the core of the equity plan process. REALTORS® and members of our multicultural partner organizations, the National Association of Real Estate Brokers, the National Association of Hispanic Real Estate Professionals, the Asian American Real Estate Association, and the LGBTQ+ Real Estate Alliance, work with consumers every day to overcome homeownership barriers. Program participants should conduct outreach with REALTORS® and our partners to gain insights into homeownership challenges and opportunities. Real estate professionals are the “boots on the ground” making homeownership available to people of all backgrounds.

Compliance

NAR supports robust fair housing enforcement and sufficient funding for HUD’s fair housing programs. If HUD plans to create a new administrative complaint program for AFFH-related complaints as the rule proposes, there should be clear standards for complaint acceptance, an expeditious process for their efficient resolution, and adequate funding to support this work. HUD has long cited resource constraints as the reason for delays in case processing and its limited use of Secretary-initiated and systemic investigations.

Working Together

NAR has for a decade supported an AFFH rule that provides clear guidance and tools for communities to find local solutions to reverse segregated housing patterns. We applaud HUD for its efforts to reduce burdens on program participants and to create meaningful, efficient processes for communities to engage in this vital work. We look forward to continuing to partner with HUD to advance equitable housing opportunities in all communities.

Sincerely,



Kenny Parcell
2023 President, National Association of REALTORS®