October 17, 2019

Paul Compton
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: **Reconsideration of HUD's Implementation of the Fair Housing Act's Disparate Impact Standard, Docket No. FR-6111-P-02**

Dear Mr. Paul Compton

This letter is to offer comments on behalf of the National Association of Hispanic Real Estate Professionals (NAHREP) on The U.S. Department of Housing and Urban Development's (HUD) proposed rule for the "Implementation of the Fair Housing Act's Disparate Impact Standard." NAHREP writes urge HUD to maintain the standard the agency adopted in its 2013 final rule, "Implementation of the Fair Housing Act's Discriminatory Effects Standard."

As one of the largest Latino business organizations in the country, NAHREP not only stands to represent the 30,000 housing professionals that comprise the trade association, but also stands as the voice of the Hispanic prospective homebuyer.[1] The passion behind our growing membership revolves around one primary mission: advancing sustainable Hispanic homeownership. As an organization, we believe homeownership is the best vehicle for economic mobility, creating strong communities, and ultimately stimulating an overall prosperous national economy. Therefore, we believe the proposed amendments to the Disparate Impact Rule have the potential to revert the homeownership gains Hispanics have made in recent years and impede future growth.

Latino homeowners are the driving force behind the U.S. housing market. At a Homeownership rate of 47.1, Hispanics have increased their rate of homeownership for the past four consecutive years, and have accounted for 62.7 percent of the net U.S. homeownership growth in total over the last decade.[2] In 2015, Hispanics became the first demographic segment to show an increase in its post-recession homeownership rate, effectively pulling the nation out of a devastating recession marked by twelve consecutive years of decline.

In order to maintain the forward momentum, it is critical that the systems and incentives exist to keep markets devoid of discrimination in order to stimulate an open and healthy housing market. Markets tainted by discrimination operate inefficiently, create and restrict business opportunities, and stifle

[1] The terms "Hispanic and Latino" are used interchangeably by the U.S. Census Bureau and throughout this document to refer to people of Mexican, Puerto Rican, Cuban, Central American, South American, Dominican, Spanish and decent from other Spanish-Speaking countries.
[2] U.S. Census Bureau. (2019, February 28). Current Population Survey/Housing Vacancy Survey. Available from https://www.census.gov/housing/hvs/data/index.html

economic progress. As Latinos play an increasingly pivotal role in the future of the housing market, strong disparate impact regulatory tools to combat inherent bias are pivotal.

Today, the nation's housing market is at a crossroads. On the one hand, Hispanics are projected to account for more than half of all new potential homeowners over the next several years and for 56 percent of all new homeowners by 2030.[3] Hispanics are also the fastest growing native-born U.S. population, accounting for more than half of the nation's population growth since the year 2000. And, at a median age of 29, Hispanics are just entering their prime home buying years, further increasing homeownership potential for decades to come.[4] Conversely, despite this remarkable growth, homeownership rates among Latinos remain far below that of their non-Hispanic White counterparts. At the end of 2018, the Hispanic homeownership rate was 47.1 percent, compared to 73 percent for the non-Hispanic White population and 64.4 percent for the general population.

These trends underscore an important reality: Hispanics are driving homeownership growth in America; however, if the mortgage market fails to effectively serve these potential new homeowners, the nation will bear the economic consequences.

To put things into perspective, if population projections come to bear and homeownership rates across ethnic groups remain consistent with current rates, the national homeownership rate would decline by nearly 10 percentage points over the next forty years to 55 percent.[5] The last time the U.S. homeownership rate was that low was in the years immediately following World War II. It is imperative that as a nation we create a catalytic environment in favor of sustainable Hispanic homeownership growth for the future of U.S. economy as a failure to do so will have lasting detrimental effects.

Communities of color were disproportionately impacted by the financial and foreclosure crises in large part because of a lack of effective enforcement of fair housing and fair lending laws. The city of Miami, among several others, are engaging in lawsuits with lending institutions for allegedly steering Latino borrowers toward more costly loans compared to White borrowers of similar financial background and credit worthiness.[6] As a result, foreclosures and the ensuing blight were more impactful in communities of color leading to more diverse communities to bear the brunt of the adverse economic impacts of the housing crisis.

Key Concerns with the Proposed Rule:

Algorithmic based underwriting and pricing models are not yet devoid of discrimination: The proposed

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[3] Goodman, L. Pendall, R. and Zhu, J. (2015, June). Headship and Homeownership: What does the Future Hold? Retrieved from https://www.urban.org/sites/default/files/2000257-headshipand-homeownership-what-does-the-future-hold.pdf

[4] U.S. Census Bureau. (2001 - 2018). DP-1: Profile of General Demographic Characteristics: 2000 and PEPASR6H: Annual Estimates of the Resident Population by Sex, Age, Race, and Hispanic Origin for the United States and States: April 1, 2010 to July 1, 2017. Available from https://www.census.gov/data/datasets/2017/demo/popest/nation-detail.html

[5] Zandi, M. (2019, May 2). Moody's Analytics economist calculations using U.S. Census projections of population shares and Current Population Survey/Housing Vacancy Survey.

[6] City of Miami v. Well Fargo, No. 1:13-cv-24508-WPD. United States Court of Appeals for the 11th Cir., 2019. Retrieved from http://media.ca11.uscourts.gov/opinions/pub/files/201414544.rem.pdf.

rule outlines that any policy or practice that generates profits would be immune from challenge for any discriminatory impact. In addition, business practices relying on statistical analysis and algorithms will generally be exempt from liability, and businesses will no longer be required to collect data on discriminatory effects. This is problematic because research shows that algorithmic-based loan pricing models can manifest discriminatory outcomes. For example, in one study, researchers found that lenders charged Latino and African American borrowers higher interest rates than their similarly situated White counterparts. Borrowers of color paid up to $500 billion annually in discriminatory surcharges as a result of algorithmic bias.[7] Facial recognition systems, powered by Artificial Intelligence, systematically manifest racial and gender bias. One study found that 3 commercial classification algorithmic-based systems had an error rate of 34.7% for women with darker skin while having only an 0.8% error rate for males with light skin. [8] Algorithmic-based systems regularly manifest discriminatory outcomes.

The proposed rule is an unnecessary reversal of the current rule. The "Implementation of the Fair Housing Act's Discriminatory Effects Standard" rule, adopted only six years ago, was a consensus agreement between HUD and Courts of Appeals.[9] Congress implicitly ratified this approach in the 1988 amendments to the FHA. The U.S. Supreme Court recited and affirmed the current rule in *Inclusive Communities*, and several courts have relied on it since.

While some may argue that Disparate Impact can stifle innovation, we believe that the existing 2013 rule has the ability to encourage innovation. For example, if a credit model produces disparate outcomes, the Disparate Impact Rule requires that companies find the least discriminatory credit model design that is similarly effective. This can also lead to greater value creation for the business, as the effort to reduce disparate impact leads the business to find ways of accessing profitable underserved markets it otherwise may not have reached. The gains and contributions of Hispanic homeowners highlight the benefits of this innovation and show that lenders are now finding ways to profitably serve new customers while applying the Disparate Impact Rule. In short, we see no legal, economic, or practical reason for amending this rule. Good business sense dictates that current precedent continue.

A revision could increase the level of uncertainty for fair lending compliance by disrupting the processes that have been in place for many years. Successful businesses have found mechanisms by which to comply and thrive within the existing 2013 "Implementation of the Fair Housing Act's Discriminatory Effects Standard" rule. Financial Institutions that have long served underserved markets broadly and equitably will now be at a disadvantage as they compete with institutions that serve these market segments in a less equitable way.

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[7] Bartlett, R., Morse, A., Stanton, R. and Wallace N. (2019, May). Consumer-Lending Discrimination in the FinTech Era. Retrieved from https://faculty.haas.berkeley.edu/morse/research/papers/discrim.pdf

[8] Buolamwini, J. and Gebru, T. (2018). Gender Shades: Intersectional Accuracy Disparities in Commercial Gender Classification. Retrieved from http://proceedings.mlr.press/v81/buolamwini18a/buolamwini18a.pdf.

[9] Implementation of the Fair Housing Act's Discriminatory Effects Standard; Final Rule, 78 FR 11459 (2013).

Conclusion

NAHREP looks at all policy through two lenses: the perspective of the housing professionals within our network and those of perspective of Hispanic consumers. Our recommendations would impact these two constituencies in the following ways:

> **Industry Impact:** Hollowing out the 2013 Disparate Impact rule "Implementation of the Fair Housing Act's Discriminatory Effects Standard" puts companies that have prioritized serving diverse communities fairly and effectively at a competitive disadvantage in favor of companies who are less responsible. In addition, it sends a market signal that we are reverting back to pre-financial crisis fair lending boundaries, which is not healthy for the market. Markets function well when there are bright line boundaries. It allows good actors to thrive and bad actors to get weeded out. As Latinos play an increasingly pivotal role in the future of the housing market, strong Disparate Impact regulatory tools to combat inherent bias are pivotal to maintain the current trends exhibited by Hispanic homeowners and to promote the expansion of the overall housing market.
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> **Consumer Impact:** Hispanics are at the cusp of reaching an important milestone: a homeownership rate of 50%. This is critical as it will mean that at least half of all Hispanic households will be owner households. Considering that median net worth of homeowner in 2016 was forty-four times that of a renter, the burgeoning Hispanic community will have the ability to continue to drive gains in the housing market and overall economic landscape. In order to reach this important milestone, protective tools must be in place to protect Hispanic consumers from housing discrimination, intentional or otherwise.

Thank you for the opportunity to comment. Please contact Noerena Limón at Nlimon@NAHREP.org regarding these comments.

Sincerely,

The National Association of Hispanic Real Estate Professionals