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June 14, 2017

Dr. Benjamin Carson  
Secretary  
US Department of Housing and Urban Development  
Washington, DC 20410

Dear Secretary Carson:

On behalf of the over 1.2 million members of the National Association of REALTORS® (NAR), I thank you for the opportunity to comment on the Department of Housing and Urban Development's (HUD) effort to evaluate and identify regulations that merit repeal, replacement or medication in accordance with the directives under Executive Order 13777, "Reducing Regulation and Controlling Regulatory Costs." NAR recognizes that there is a need to review HUD's rules and regulations and make sure they are well crafted and tailored to achieve their intended goals in an efficient and considerate manner.

The National Association of REALTORS® is America's largest trade association, representing over 1.2 million members, including NAR's institutes, societies, and councils, involved in all aspects of the residential and commercial real estate industries. NAR's membership is composed of residential and commercial REALTORS® who are brokers, salespeople, property managers, appraisers, counselors, and others engaged in the real estate industry. Members belong to one or more of approximately 1,200 local associations/boards and 54 state and territory associations of REALTORS®.

HUD and its programs deliver much needed support and stability to the U.S. housing system. Through a multitude of initiatives, HUD develops strong, safe communities and provides access to affordable housing for millions of Americans. For many groups traditionally underserved by the private housing market, including low to moderate-income, minority, and first-time homebuyers, HUD, through the Federal Housing Administration (FHA), offers the only path to homeownership. NAR welcomes this opportunity to comment on the following HUD guidance and rules that affect the home purchase market.

**Mortgage Insurance Premiums**

FHA borrowers with a less than 10 percent down payment must pay annual mortgage insurance premiums for the life of the loan. Under the 1999 Homeowners' Protection Act, private mortgage insurance cancels once a borrower reaches 78 percent loan to value (LTV), as there is sufficient equity in that home that even if the homeowner eventually defaults, the value of the home in combination with the premiums paid in advance will cover any losses. FHA and its borrowers would greatly benefit from eliminating the life of loan requirement. Cancellation of the premium would reduce the borrower's monthly payments, providing them with more cash on hand so they may better withstand economic shocks and thereby reduce defaults, which harm the strength of the Mutual Mortgage Insurance Fund (MMIF). In the interest of strengthening FHA's finances, NAR urges FHA to remove the life of loan annual mortgage insurance premium for all borrowers that reach 78 percent LTV, assuming the borrower has paid the annual mortgage insurance premiums for at least five years.

In addition, FHA should lower the historically high annual insurance premiums, reducing cost for borrowers and improving their chances to withstand life events that could otherwise lead to default. The last FHA premium cut helped to shore up the FHA's financial standing and restore the MMIF capital ratio above the statutory 2.0 percent level. Lower fees helped FHA to retain better borrowers from refinancing to private mortgage insurers



who had re-entered the market, but more importantly, it helped to improve affordability allowing many previously sidelined borrowers to qualify for a home purchase.

### **Condominiums**

Condominiums are often the most affordable homeownership option for first time buyers, small families, single people, urban residents, and older Americans. They are safe investments, having the lowest serious delinquency rates compared to the rest of the FHA loan portfolio for FY 2016. Unfortunately, current FHA regulations prevent buyers from purchasing condominiums, harm homeowners who need to sell their condominiums, and limit the ability of condominium projects to attract resident buyers. Recognizing these difficulties, FHA proposed changes to the treatment of condominium projects in September 2016. NAR urges FHA to prioritize the release of condominium regulations that ease the restrictions on condominium project approval and purchase.

Specifically, NAR supports the re-introduction of spot loans for non-FHA approved condominium projects. This will help buyers interested in older buildings, as well as in newer construction, which often do not have FHA approval, greatly benefiting many communities across the country. NAR also supports easing the condominium project re-certification process. Allowing for updates to a project's current FHA application information rather than a complete re-submission of the application will create a more streamlined, less costly process. NAR feels that a five-year approval period, rather than the proposed three, would reduce the burden to condominium associations and entice many more buildings to apply for FHA approval, while still maintaining safety and soundness concerns.

NAR urges increasing the allowable commercial space in a project to allow up to 45 percent commercial space without documentation. Greater levels of commercial space should be evaluated holistically along with the strength of the project, but should not be capped at a specific percentage. Furthermore, the 2016 Housing Opportunities Through Modernization Act (HOTMA) required HUD to allow lenders to approve commercial space waivers and to consider "factors relating to the economy of the locality in which the subject project is located." The law required HUD to implement this provision no later than October 28, 2016 but that deadline was not met. NAR urges HUD to immediately implement this provision of the law.

NAR strongly recommends FHA remove the current owner-occupancy requirement and align with Fannie Mae and Freddie Mac policy by allowing lenders to review a condominium project in conjunction with the project's reserves, delinquency rates, et., to determine a condominium project's viability. At a minimum, NAR urges FHA to decrease allowable owner-occupancy limits from 50 percent to 35 percent without need for additional documentation as directed by Congress under HOTMA. NAR recommends expanding the concentration of FHA-insured mortgages within a condominium project to 100 percent, especially for new construction. Generally, FHA condominium buyers have higher credit scores and monthly incomes than the non-condominium buyers, yet FHA does not limit the amount financing available within a neighborhood of single-family structures. Condominiums should be treated in a similar fashion.

### **Property Assessed Clean Energy Loans**

On July 19, 2016, FHA issued Mortgagee Letter 2016-11 on the use of Property Assessed Clean Energy (PACE) loans. The guidance allowed for the approval of mortgages for the purchase or refinance of properties with PACE obligations, provided they meet certain requirements. Among the requirements in the guidance is that the outstanding PACE loan obligation does not take first lien position ahead of the FHA insured mortgage. However, the guidance does provide that delinquent PACE loan amounts will take a first lien position in instances of default or foreclosure. Allowing any loan amount to hold a senior priority over FHA undermines the government's collateral position and disrupts the secured lending process.

PACE loans are not typically accompanied by federal Consumer Financial Protection Bureau disclosures and protections associated with home mortgages, as PACE financing has been classified as a tax assessment rather than a loan. Borrowers may not fully understand the consequences of assuming an increased financial obligation on their tax bill. Thus, the lack of adequate disclosures increases the risk of borrower delinquency, which could lead FHA to incur higher mortgage defaults and increased systemic risk. As such, FHA should rescind Mortgagee Letter 2016-11.

### **Affirmatively Furthering Fair Housing**

As we approach the 50<sup>th</sup> Anniversary of the Fair Housing Act and the 100<sup>th</sup> Anniversary of the US Supreme Court Decision that outlawed zoning based on race, there is still face palpable and measurable segregation in our housing markets. Although the types of

incidents of housing discrimination may be changing, the continued existence of segregated communities and concentration of poverty in non-white communities is an indictment of our failures to adequately address the promise the Fair Housing Act includes.

NAR fully supports the Fair Housing Act's requirement that the Department implement its programs in a manner that affirmatively furthers fair housing. The method HUD has identified for government entities receiving HUD funds, including Community Development Block Grants, is an effective tool to assure that HUD's funds are used in a manner as prescribed by the Fair Housing Act. However, NAR has concerns with how HUD advises localities on the types of activities that would address continued fair housing issues as well as the lack of sufficient time to fully engage the participation of interested parties.

HUD in its guidance to local governments on how to complete the assessment, includes numerous prescriptive suggested strategies such as enacting inclusive zoning or prohibiting discrimination based on source of income. While those may well be appropriate strategies in some communities, NAR believes HUD should not be identifying specific approaches to addressing housing disparities. That solution should be "home grown". HUD's role should be simply to require the assessment, inclusion of community input, and the creation of actions that can be measured relative to those fair housing issues. HUD should not be stating a preference or recommendation for one type of action over another.

The time HUD allows a local community to complete its assessment process is woefully inadequate. This type of analysis and public input must be extended to allow for a more complete review of the fair housing issues, opinions and recommendations of the public and to provide the public adequate time to review the report of the local government. NAR recommends that HUD, working with local government representatives and interested parties, do an analysis of the time necessary to complete this assessment.

#### **Service and Assistance Animals under the Fair Housing Act**

The National Association of REALTORS® fully supports fair housing protections for persons with disabilities, and the requirement that property owners make reasonable accommodations in rules and procedures to enable persons with disabilities to use and enjoy housing.

Difficulties have arisen regarding how a person requests a reasonable accommodation, especially in the area of service and assistance animals, and the information that may be required to determine if such a request is reasonable. Several firms offer online notices that purport to state that an assistance animal is needed by an individual. There is no uniformity in who may make the diagnosis and prescription of the need for an assistance animal. The current practice and advice from HUD is that an individual with a disability makes a request and the property manager or owner may seek a medical provider's note stating that the person has a disability and requires a service or assistance animal. Clearer guidance is needed for all involved, especially concerning the qualifications for the medical provider whose note and advice is part of the accommodation request. In addition, some medical providers are providing this advice and notice over the internet without having examined the person seeking the accommodation.

Improving HUD's ability to fulfill the mission of providing safe, affordable housing to all Americans in strong, sustainable communities requires recognizing which current regulations simply impede the ability of HUD to create more homeowners, but also to determine where HUD needs to improve their current programs through revised or new rules. REALTORS® will continue to work with HUD to determine which rules and regulations enable a robust housing market and which hinder the purchase of a home. NAR strongly supports HUD in its mission to increase homeownership and provide shelter and support for millions of families.

NAR appreciates the opportunity to comment on this matter. If you have any questions regarding this letter, please contact me or NAR's Regulatory Policy Representative, Sehar Siddiqi, at 202-383-1176 or [SSiddiqi@REALTORS.org](mailto:SSiddiqi@REALTORS.org)

Sincerely,



William E. Brown

2017 President, National Association of REALTORS®