

July 12, 2021

Charlie Oppler
2021 President

Bob Goldberg
Chief Executive Officer

ADVOCACY GROUP

Shannon McGahn
Chief Advocacy Officer

Jeanine Worden
Acting Assistant Secretary
Office of Fair Housing and Equal Opportunity
Department of Housing and Urban Development
451 7th Street SW, Room 10276
Washington, DC 20410-0500.

RE: FR-6249-C-02 Restoring Affirmatively Furthering Fair Housing Definitions and Certifications Notice of Interim Rule, Docket Number HUD-2021-0031, RIN 2529-AB01

Submitted electronically via: www.regulations.gov

Dear Acting Assistant Secretary Worden:

On behalf of the 1.4 million members of the National Association of REALTORS® (NAR), I welcome the opportunity to comment on HUD's interim final rule restoring definitions and certifications, and providing technical assistance to funding recipients, related to the "affirmatively furthering fair housing" (AFFH) provisions of the Fair Housing Act.

NAR is committed to ensuring REALTORS® work to actively fight discrimination in their communities and provide every potential homeowner access to the home of their choice in the neighborhood of their choice. Over the last 100 years, NAR has evolved from an organization that wrongly promulgated an ethical code prohibiting racial integration to one that is a leading advocate for strong fair housing rights. In 2020, NAR launched its ACT! fair housing initiative, which reinforces the commitment of our 1.4 million members to ongoing accountability, culture change, and training in support of this work.

NAR recognizes and supports the Fair Housing Act's broad remedial purpose, including its mandate that the federal government and its funding recipients do more than refrain from discriminating—that they must affirmatively further fair housing. The 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."

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 fair housing issues.

In our comment on the Preserving Community and Neighborhood Choice (PCNC) rule in March of 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.”

In opposing the 2020 PCNC rule, NAR wrote, “In essence, the new rule has changed the meaning of affirmatively further fair housing from Congress’ original intent—that communities take positive steps to address segregation and promote inclusive communities— to one where communities must simply make a bare showing that a court has not found they have engaged in discriminatory acts, and only in cases brought by the federal government. This turns the meaning of affirmatively furthering fair housing on its head.”

NAR has long supported an AFFH rule that provides clear guidance and tools for communities to find local solutions to reverse segregated housing patterns. We agree with the restored definitions of this 2021 interim final rule, which provide a reasonable construction of long-settled legal interpretations of the statutory obligation to AFFH, and return to the fundamental goals of the Fair Housing Act. We applaud HUD for making technical assistance immediately available to communities engaging in fair housing planning, even as HUD engages in further rulemaking amending the processes promulgated in the 2015 rule. We look forward to participating in continued rulemaking around AFFH to create meaningful, efficient processes for communities to engage in this vital work.

Sincerely,

A handwritten signature in black ink, appearing to read "Charlie Oppler", with a long horizontal flourish extending to the right.

Charlie Oppler
2021 President, National Association of REALTORS®