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Regulations Division
Office of General Counsel
U.S. Department of Housing & Urban Development
451 Seventh Street SW, Room 10276
Washington, DC 20401-0001

RE: FR-5173-P-01 Affirmatively Furthering Fair Housing
Docket: HUD-2013-0066-0001 RIN 2501-AD33

Dear Sir or Madam:

On behalf of the more than one million members of the National Association of REALTORS®, I write to provide comments on the Proposed Rule entitled Affirmatively Furthering Fair Housing. The National Association of REALTORS® (NAR) is America's largest trade association, including NAR's eight affiliated institutes, Societies and Councils, five of which focus on commercial transactions. REALTORS® are involved in all aspects of the residential and commercial real estate industries and belong to one or more of some 1,400 local associations or boards, and 54 state and territory associations of REALTORS®. NAR represents a wide variety of housing industry professionals, including approximately 30,000 licensed and certified appraisers, committed to the development and preservation of the nation's housing stock and making it available to the widest range of potential homebuyers.

The National Association of REALTORS® welcomes the opportunity to address the critical need of our nation to affirmatively further fair housing. Although HUD itself is required to affirmatively further fair housing, past history has shown that this requirement has been met sporadically at best. Section 808 (d) of the Fair Housing Act states:

- All executive departments and agencies shall administer their programs and activities relating to housing and urban development (including any Federal agency having regulatory or supervisory authority over financial institutions) in a manner affirmatively to further the purposes of this subchapter and shall cooperate with the Secretary to further such purposes.

During hearings of the Fair Housing Commission, many witnesses provided examples demonstrating lost opportunities to affirmatively further fair housing and explained how our nation could be closer to achieving a housing market free from discrimination but for the lack of consistent application of HUD's statutory requirements. A process that allows communities to identify fair housing issues



and develop their own approaches to addressing those issues is critical to an effective and appropriate outcome. To the extent HUD needs to review and require changes to a community's fair housing planning and response, a constructive process designed to encourage locally developed approaches without first resorting to punitive measures or public pronouncements about a community's response is ideal.

The National Association of REALTORS® has for over 25 years staunchly supported fair housing – including our support for the 1988 Amendments to the Fair Housing Act. REALTORS®, through the Code of Ethics, are obligated to provide equal professional service without discrimination based on race, color, religion, sex, familial status, handicap, sexual orientation or national origin. Moreover, REALTORS® are often the first to identify discriminatory acts and advise parties to the transaction to conduct their business in accordance with the Fair Housing Act.

Today's real estate market clearly demonstrates the importance of fair housing for all. Over half the first time homebuyers this year are Hispanic, African American or Asian American. Over 2/3 of households being formed are of these same three racial and ethnic groups. Growing numbers of members of the National Association of REALTORS® reflect the diversity of our population and housing markets. Discrimination has no place in our nation and in our real estate markets.

Discrimination studies and actions have generally focused on the real estate transaction. It is clear that eliminating discrimination must include a commitment to keeping discrimination out of each real estate transaction. However, the communities in which we live, work and buy property often do affect the choices that homebuyers, home sellers, tenants and landlords make with respect to their transactions. The quality of schools, public safety, proximity to transportation, jobs, shopping and countless other aspects of community life figure prominently in most people's search for housing.

It should be noted, however, that many issues that ultimately impact fair housing are national or global in scope. Jobs, for example, have a direct impact on local opportunities and, in turn, housing market, but the solution to addressing employment issues is rarely controlled at the local government level. We are concerned that local communities not be tasked with "band aid" approaches to larger issues beyond the purview of local government control.

The National Association of REALTORS® acknowledges this Proposed Rule's attempt to outline a process for communities to engage in fair housing planning. For too long we have relied on communities simply asserting they have affirmatively furthered fair housing. Those assertions were made without clear guidance on how their efforts would be evaluated, without a clear process to evaluate the needs of each community, and without consensus on who needed to be engaged in the process.

While the National Association of REALTORS® welcomes HUD's efforts to provide clear guidance and expectations, we are concerned with several aspects of these proposed regulations. These concerns involve three general areas: 1 - flexibility in the selection and use of data and each communities ability to plan local approaches to achieving fair housing; 2 - inclusion of the providers of real estate and housing services, particularly those serving multi-ethnic and diverse communities, in the planning process; and 3 - assurances that these requirements will not increase the cost of housing or availability of federal housing programs because of residual requirements imposed on housing providers by covered communities and public housing authorities.

Flexibility and Data

The National Association of REALTORS® is pleased that HUD has agreed to help identify and provide the data that communities will need to complete their fair housing plans. All too often communities are challenged when

determining what data is relevant and finding affordable means to collect and analyze that data. However, we are concerned that this set of data not become the only accepted measure of success and lessen the ability of local governments to use their own research and data into the specific issues facing their communities. In addition, we are concerned that in the process of reviewing Fair Housing Plans, the Department not prescribe specific actions a community needs to take to address its fair housing needs.

Participation

The proposed regulations provide that the Assessment of Fair Housing (AFH) planning process include a community participation plan, assuring opportunities for residents to provide in-put into the fair housing planning process. The real estate profession is a diverse profession today and has first hand experience in addressing housing issues in a community. The inter-related issues of housing, education, transportation and economic development are front and center issues for real estate. Each individual REALTOR[®] and other real estate professionals are intimately familiar with their community and the issues impacting housing choices. This invaluable resource, particularly the real estate professional serving, and part of, today's multi-ethnic and diverse communities, needs to be invited to participate in the planning process.

Similarly, property owners, landlords and business owners all have a personal stake in the decisions flowing from the AFH process. While not directly impacted by the Proposed Rule, the interactions of these individuals with covered Program Participants, be they local Public Housing Agencies or municipal governments, can be seriously affected by decisions flowing from the AFH process. These important providers of jobs, housing opportunities and local economic activity—strongly committed to fair housing principles--must be assured a maximum voice in the community participation process.

Avoiding adverse impacts of needed programs

The Proposed Rule recognizes the regional interdependence of our communities. Federal policies, business decisions, and economic issues often deeply impact housing choices in a community. Holding communities responsible for addressing fair housing issues they have no control over is not an effective means to affirmatively further fair housing. There should be safeguards to assure that affirmatively furthering fair housing does not substantially increase the cost or availability of housing, in general, and federal housing programs because of residual requirements imposed on housing providers by covered communities and public housing authorities.

We appreciate HUD's efforts to better define the 45 year old requirement that its programs be administered in a manner that affirmatively furthers fair housing. We look forward to the opportunity to continue working with HUD to achieve our shared fair housing goals.

Sincerely,



Gary Thomas
2013 President, National Association of REALTORS[®]