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October 8, 2019

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

Via Federal eRulemaking Portal: <https://www.regulations.gov/>

Re: HUD's Implementation of the Fair Housing Act's Disparate Impact Standard – RIN 2529-AA98

Dear Sir or Madam:

The Independent Bankers Association of Texas (IBAT) is a trade association representing community banks domiciled in Texas. This rule proposes to make necessary amendments to HUD's interpretation of the Fair Housing Act's disparate impact standard to better reflect the Supreme Court's 2015 ruling in *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.* and to provide clarification regarding the application of the disparate impact doctrine.

This proposal would revise the current non-specific, three-step threshold for Fair Housing violations and impose a specific, five-step approach that would require regulators to prove intentional discrimination on the lender's behalf.

- The first proposed element would require a plaintiff to plead that the challenged policy or practice is arbitrary, artificial and unnecessary to achieve a valid interest or legitimate objective.
- The second proposed element would require a plaintiff to allege a robust causal link between the challenged policy or practice and a disparate impact on members of a protected class.
- The third proposed element would require a plaintiff to allege that the challenged policy or practice has an adverse effect on members of a protected class.
- The fourth proposed element would require a plaintiff to allege that the disparity caused by the policy or practice is significant.
- The fifth proposed element would require a plaintiff to assert that the complaining party's purported injury is directly caused by the challenged policy or practice.

The proposed new framework appropriately shifts the burden of proof to the party asserting the claim. In paragraph (b), it provides that a plaintiff's allegations that a specific, identifiable policy or practice has a discriminatory effect must plead facts (causation and correlation) supporting the five elements.

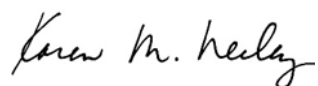
IBAT supports this five-step approach which follows the Supreme Court decision faithfully and adjusts the burden of proof to the party asserting the claim that the lender's actions had an "arbitrary, artificial and unnecessary impact" on a protected class.

Finally, this proposal would reduce arbitrary and capricious claims against lenders that a program itself causes the disparate impact as opposed to an element of the program. Plaintiffs must identify the policy or practice that causes the disparate impact. IBAT strongly supports the notion that conclusory statements should not be acceptable for a plaintiff's primary case.

Thank you for this opportunity to comment on behalf of Texas community bankers.

Thank you for this opportunity to comment.

Sincerely,

A handwritten signature in cursive script that reads "Karen M. Neeley".

Karen M. Neeley
IBAT General Counsel