



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

WASHINGTON, D.C. 20410-0001

THE DEPUTY SECRETARY

July 14, 2020

Ms. Anne Finucane  
Vice Chairman  
Bank of America  
100 North Tryon Street  
Charlotte, NC 28255

Dear Ms. Finucane,

Thank you for your letter of June 29<sup>th</sup> regarding the U.S. Department of Housing and Urban Development's proposed disparate impact rule. I appreciate the spirit in which I believe it was written, during what is, as you expressed, an important time for reflection and examination of the inequities in our country.

As you know, HUD has been deeply engaged on these issues for decades, and the core mission of HUD is to both enforce the Fair Housing Act and to assist our markets in the provision of fair, decent, safe, and affordable housing.

We have never ceased working to achieve more equitable results and to correct for past errors, regardless of who is setting policy, and well before both the coronavirus and the current unrest in our country. Contrary to your assertion, the leadership and professional staff at HUD is working on a daily basis to live up to the spirit of the Fair Housing Act.

In accordance with the Supreme Court's *Texas Department of Housing and Community Affairs v. The Inclusive Communities Project, Inc.* decision, HUD will continue to enforce the law and disparate impact as the Court instructed, with the burden placed on defendants to demonstrate that "no less discriminatory alternatives" exist in their business decisions. We will *also* work to ensure, again as the Court made clear, that liability does not undermine the law's intent and the free market system that is critical to providing affordable housing.

Although the Supreme Court decision did not address HUD's rules directly, the Court went out of its way to urge caution in applying disparate impact theory in a manner that might undermine the very mission of both fair housing and helping to develop communities that suffer from lack of investment.

In proposing its disparate impact rule, HUD provided a comment period, which closed on October 18, 2019. While you call for additional deliberation, I would note that we did not receive a comment letter from Bank of America, though we did receive one from a coalition of trade groups, some of which Bank of America is a member. That letter generally supported our efforts to update the 2013 disparate impact rule. HUD will carefully examine all of the 45,758 comments it received before issuing a final rule later this year.

As we address the affordability crisis afflicting a number of markets across the country, HUD and the Federal Housing Administration (FHA) have been working relentlessly to facilitate investment in underserved communities. Reducing the gap in minority homeownership will help address some of the inequalities that have persisted for decades in our country and are likely contributing to the tensions manifesting themselves today.

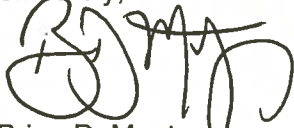
Our effort must be done with help from the private sector, which raises another important point. HUD has taken significant steps to encourage large depositories institutions, such as Bank of America, to participate in FHA programs that expand affordable housing and access to credit for minority homeownership. Until the last decade, institutions such as yours provided broad availability for FHA loans across your vast branch network.

In that vein, I would take this opportunity to encourage Bank of America to once again participate in the nation's premier loan origination program serving low and moderate income Americans, including the largest percentage of minority homeowners (more than 33 percent) of any major lending program in the nation. We've had very productive discussions with all of the major banks, with one notable exception: Bank of America.

I applaud Bank of America's recent \$1 billion commitment to aid communities dealing with economic and racial inequities exacerbated by the coronavirus outbreak. However, Bank of America's participation in the FHA program — which reaches double the percentage of minorities compared with the programs offered by your bank — would likely eclipse this amount.

That will be tangible action to make progress on equity and inclusion, and we stand ready to help bring Bank of America back into the FHA family of lenders.

Sincerely,

A handwritten signature in black ink, appearing to read 'BDM', with a stylized flourish at the end.

Brian D. Montgomery  
U.S. Department of Housing and Urban Development  
Deputy Secretary,  
FHA Commissioner 2005-2009, 2018-2020