RENTAL HOUSING ASSOCIATION
A division of the Greater Boston Real Estate Board

The Honorable Ben Carson, Secretary
United States Department of Housing and Urban Development
451 7th Street S.W.,
Washington, DC 20410

RE: Statement of the Rental Housing Association Regarding *FR-6111-A-01, "Reconsideration of HUD's Implementation of the Fair Housing Act's Disparate Impact Standard*."

Dear Secretary Carson,

On behalf of the over 600 members of the Rental Housing Association (RHA) we wish to submit our concerns regarding *FR-6111-A-01, "Reconsideration of HUD's Implementation of the Fair Housing Act's Disparate Impact Standard*." The Rental Housing Association (RHA) founded in 1953, is one of five divisions of the Greater Boston Real Estate Board. RHA is the local affiliate of the National Apartment Association (NAA). RHA's membership is comprised of over 600 individuals engaged in development, ownership, management or as a vendor partner to the multi-family industry in Massachusetts. RHA members own or control over 160,000 apartment homes locally. Membership ranges from the owners of a two-family up to representatives of Wall Street Real Estate Investment Trusts, and encompasses market rate as well as governmentally assisted rental housing.

Your review of HUD's disparate impact rule is critically important in light of the 2015 Supreme Court decision in *Texas Department of Housing and Community Affairs v. The Inclusive Communities Project, Inc.* (*Inclusive Communities*). We urge HUD to revise the Final Rule to reflect the analysis in the *Inclusive Communities* decision.

As currently written, the HUD disparate impact rule contradicts the Supreme Court's analysis in *Inclusive Communities*. The inconsistencies between the rule and *Inclusive Communities* create uncertainty for apartment housing providers, and leave unaddressed specific concerns cited by the Court. The decision was quite explicit in its reasoning that disparate impact liability should be both "properly limited" and focused on rooting out "artificial barriers to housing."

Specifically, the *Inclusive Communities* decision says that a *specific* policy must be identified which is demonstrably *illegitimate, unnecessary* and *arbitrary* and has an *actual* (not potential), *substantial, negative* impact on a protected class. Further, plaintiffs must produce *statistical evidence* that establishes a causal connection between the policy and the discrimination. Finally, facts are required to illustrate how the impact on the protected class is quantitatively and qualitatively different than any other population.

Conforming the HUD disparate impact rule with the *Inclusive Communities* decision and resolving the issues identified above would remove legal uncertainty in the marketplace and mitigate needless litigation. Moreover, it would address concerns raised by the Supreme Court regarding overly expansive interpretation of disparate impact liability and the negative effects on affordable housing development and practical business processes.
Thank you for soliciting these comments on the disparate impact rule and for considering our views.

Regards,

Kathleen Franco

Kathleen Franco, CEO
Trinity Management, 2018 RHA President