



**U.S. Department of
Housing and Urban
Development**

Office of General Counsel



U.S. Department of Justice
Civil Rights Division

Washington, DC 20410-0500

Assistant Attorney General
950 Pennsylvania Ave, NW – RFK
Washington, DC 20530

August 27, 2015.

Frank Keating
President & CEO
American Bankers Association
1120 Connecticut Avenue, NW
Washington, DC 20036

Dear Mr. Keating,

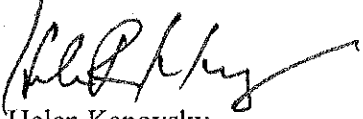
Thank you for your correspondence regarding the application of disparate impact liability following the Supreme Court's ruling in *Texas Department of Housing and Community Affairs v. The Inclusive Communities Project, Inc.*, 135 S. Ct. 2507 (2015). The Department of Housing and Urban Development ("HUD") and the Department of Justice ("DOJ") have reviewed the Supreme Court's opinion in *Inclusive Communities*.

The Supreme Court's holding in *Inclusive Communities* is entirely consistently with the Discriminatory Effects Rule issued by HUD in 2013, which reaffirmed HUD's longstanding interpretation that the Fair Housing Act authorizes disparate-impact claims. *See* 78 Fed. Reg. 11,460 (Feb. 15, 2013) ("Final Rule"). The remainder of the Court's opinion – which consists of a discussion regarding limitations on the application of disparate-impact liability that have long been part of the legal standard – does not conflict with HUD's Final Rule. As the Court noted, "disparate-impact has always been properly limited in key respects." Indeed, nothing in the Court's opinion casts any doubt on the validity of HUD's Final Rule. To the contrary, the Court cited the Final Rule twice in support of its analysis.


The Court's opinion does not discuss the Equal Credit Opportunity Act ("ECOA"). Section 706(g) of the ECOA requires banking regulatory agencies to refer potential violations of the ECOA to DOJ. In 1996, DOJ provided the banking regulatory agencies with guidance on what constitutes a pattern or practice of discrimination violating ECOA. The guidance also specifies the factors that DOJ considers, upon receiving a banking agency referral, to determine whether to open an investigation or return the matter to the referring agency. The 1996 guidance, which continues to apply after *Inclusive Communities*, is available at <http://www.justice.gov/crt/about/hce/documents/regguide.pdf>.

We hope this information is helpful to you.

Sincerely,



Helen Kanovsky
General Counsel
U.S. Department of Housing and Urban
Development



Vanita Gupta
Principal Deputy Assistant Attorney General
Civil Rights Division

cc: The Honorable Richard Cordray, Director
Consumer Financial Protection Bureau

The Honorable Martin J. Gruenberg, Chairman
Federal Deposit Insurance Corporation

The Honorable Dr. Janet L. Yellen, Chairman
Board of Governors of the Federal Reserve

The Honorable Thomas J. Curry, Comptroller
Office of the Comptroller of the Currency