

Department of Housing & Community Affairs v. Inclusive Communities Project, Inc., 135 S. Ct. 2507 (2015). 83 Fed. Reg. 28,560 (June 20, 2018) (emphasis added). Two days before this status report was due, defense counsel informed Plaintiffs that HUD intended to transmit a notice of proposed rulemaking to the Office of Information and Regulatory Affairs within 60 days. In this status report, HUD took still another step backward, representing that it will “endeavor to send a draft NPRM to the Office of Management and Budget and begin the inter-agency review process within the next 60-90 days.” HUD’s counsel did not represent what the contours of the proposed rule would be.

Summary judgment in this case, which has been pending since June 2013, has been fully briefed for almost exactly two years. Oral argument originally was scheduled more than twenty months ago. The Court postponed oral argument to give the Administration an opportunity to install key HUD and Department of Justice officials. When those officials took office, Plaintiffs engaged with them in a good-faith effort to resolve this case. To this date, however, HUD has not yet proposed a new or amended rule and has refused to commit to refrain from taking enforcement action against Plaintiffs’ members under the existing rule while any continued stay is in place.

Plaintiffs appreciate HUD’s commitment to issue a notice of proposed rulemaking. But given HUD’s history of slow-walking this case, the uncertainty surrounding the contents of any proposed rule it might issue, and HUD’s ongoing refusal to commit that it will not take enforcement action against Plaintiffs’ members, further delay is unwarranted. Plaintiffs therefore renew their request that the Court set a date for oral argument on the parties’ cross-motions for summary judgment at its earliest convenience. If HUD proposed a rule that would moot Plaintiffs’ claims, the Court could adjourn the argument. If not, the Court would be in a position to resolve the parties’

motions for summary judgment expeditiously.

Defendants' position: In this case, AIA continues to challenge HUD's Final Rule, entitled *Implementation of the Fair Housing Act's Discriminatory Effects Standard*, 78 Fed. Reg. 11460 (Feb. 15, 2013) (A.R. 611) ("the Rule"). On June 20, 2018, HUD published an Advance Notice of Proposed Rulemaking ("ANPRM"), inviting public comment on possible amendments to the Rule, as well as on the 2016 supplement to HUD's responses to certain insurance industry comments made during the initial rulemaking. *See Reconsideration of HUD's Implementation of the Fair Housing Act's Disparate Impact Standard*, 83 Fed. Reg. 28560 (June 20, 2018). The public comment period closed on August 20, 2018. *See id.*

In response to the ANPRM, HUD received approximately 1,900 public comments—nearly twenty times more than HUD received during the initial rulemaking. Based on its initial review of those comments, HUD plans to issue a Notice of Proposed Rulemaking ("NPRM"). HUD is moving expeditiously given the significant number of comments and HUD's responsibility to engage in a careful and thoughtful process in considering a revision to the rule. HUD will endeavor to send a draft NPRM to the Office of Management and Budget and begin the inter-agency review process within the next 60-90 days.

In light of HUD's plans to issue an NPRM, which could affect this litigation, Defendants do not believe oral argument would be appropriate at this time and instead urge the Court to continue the stay in this case for 60 days, or until December 18, 2018. Defendants propose to file a joint status report on December 18, 2018, updating the Court on the expected timing of any further action by HUD and proposing any next steps in this case. Defendants would plan to apprise the Court of any substantive updates in the meantime as appropriate. Defendants have attached a proposed order

consistent with their motion.

Date: October 19, 2018

Respectfully submitted,

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

AMERICAN INSURANCE ASSOCIATION,)
et al.,)
Plaintiffs,)
v.)
UNITED STATES DEPARTMENT OF)
HOUSING AND URBAN DEVELOPMENT,)
et al.,)
Defendants.)
_____)

No. 1:13-cv-00966 (RJL)

Upon review of Defendants’ motion to continue the stay this case, ECF No. ___, it is hereby ORDERED that the stay in this case is continued until December 18, 2018 to allow the U.S. Department of Housing and Urban Development (“HUD”) to consider public comment in response to the Advance Notice of Proposed Rulemaking issued June 20, 2018 and take appropriate next steps. The parties shall file a joint status report on December 18, 2018, updating the Court on the status of HUD’s efforts and proposing any next steps in this litigation.

SO ORDERED.

RICHARD J. LEON
United States District Judge