

October 18, 2019

SUBMITTED VIA REGULATIONS.GOV

Office of the General Counsel, Rules Docket Clerk
Department of Housing and Urban Development
451 Seventh Street SW, Room 10276
Washington, DC 20410-0001

Re: Reconsideration of HUD's Implementation of the Fair Housing Act's Disparate Impact Standard, Docket No. FR-6111-P-02

To Whom It May Concern:

On behalf of the Coalition on Human Needs, I appreciate the opportunity to comment on the U.S. Department of Housing and Urban Development's ("HUD") notice concerning the proposed changes to the Fair Housing Act's ("FHA") 2013 Disparate Impact rule. The proposed changes would make it exponentially harder for victims of housing discrimination to challenge and overcome policies or practices that disproportionately harm low-income people, people with disabilities, women, families with children, communities of color, and other vulnerable populations – the populations the Coalition on Human Needs serves. We strongly oppose the proposed rule and urge HUD to withdraw it.

The Coalition on Human Needs (CHN) is an independent non-profit alliance of roughly 100 national-scope organizations, representing human service providers, people of faith, civil rights, labor, and community-based groups, policy experts, and other advocates concerned with meeting the needs of low-income and vulnerable people through effective and adequately-funded federal programs and policies. CHN members have a long history of supporting and expanding access to safe, affordable, and stable housing for low-income and vulnerable households, including through programs at the U.S. Department of Housing and Urban Development. Additionally, CHN's [Public Policy Priorities](#) states, "CHN supports efforts to affirmatively further fair housing and expand fair housing protections on the basis of sexual orientation, gender identity, marital status and source of income."

The proposed rule would place a drastically higher burden on victims of discrimination wishing to bring a disparate impact case, unfairly asking victims to guess which justifications the defendant might invoke and argue against them. It provides landlords and businesses with several avenues to protect their discriminatory policies; for example, practices that rely on statistics or algorithms will almost always be immune from liability, even if it is clear that they result in the discriminatory denial of housing access. And data that can reveal unintentional discrimination resulting from "neutral" policies may no longer be available because businesses will no longer have an incentive to collect it.

Systemic barriers and discrimination based on race, ethnicity, immigration status, disability, gender, gender identity, sexual orientation, presence of children, or poverty subjects many in our nation to disparate outcomes. The existing Disparate Impact rule is critical for protecting low-income people and other vulnerable populations from housing discrimination, including discrimination that is covert or unintentional.

Advocates and victims of discrimination have relied on the existing Disparate Impact standard for more than 45 years to combat residential segregation and to challenge housing policies that disproportionately harm low-income and other vulnerable people. The U.S. Supreme Court implicitly endorsed the current rule. However, the proposed changes would make it much more difficult, if not impossible, for people in protected classes to challenge and overcome discriminatory effects in housing policies or practices.

Such policies and practices could include those that prohibit renting to families with children and those that limit the number of people per room or unit, thereby excluding families with children; policies that lead to the eviction of, or denial of housing to, women who are survivors of domestic violence when they seek police assistance; policies that deny housing to people with disabilities, people without full-time jobs, and parents using paid parental leave; exclusionary zoning policies that effectively limit affordable housing opportunities for people of color; unfair policies regarding mortgage lending rates and fees; unjust tenant screening policies that categorically deny housing based on certain factors, including arrest records or prior evictions; and policies that require legal status documentation for all residents.

Advocates have also employed the existing Disparate Impact rule to challenge unjustified discrimination by landlords who are unwilling to rent to voucher holders—which disproportionately limits housing opportunities for low-income women and communities of color, people with disabilities, and low-income families. Statistics released in October 2019 in the U.S. Census Bureau’s Supplemental Poverty Measure report show that housing subsidies lifted more than 3 million Americans out of poverty in 2018. But if landlords are allowed to unjustly discriminate against voucher holders, those who need this help the most will not be able to receive it.

The lack of affordable housing for Americans with the lowest incomes is a problem that has become overwhelming. Rents are rising and wages at the bottom of the labor market are flat, but the supply of affordable housing has not kept pace. Three-fourths of Americans with incomes low enough to be eligible get no government help paying for housing. A large and growing number of Americans do not have housing they can afford. Nationwide, the shortage of affordable and available rental homes for extremely low-income households runs in the millions. Discriminatory policies and practices that make it more difficult to access safe, affordable housing will only exacerbate the already-dire situation.

Certain groups are disproportionately likely to experience poverty, making the shortage of affordable housing an even more acute problem for them. According to the U.S. Census Bureau’s Supplemental

Poverty Measure data released in October 2019, 12.2 percent of people ages 18-64 lived in poverty in 2018. For people with disabilities in this age category, the poverty rate is nearly double at 24.3 percent.

Communities of color are also disproportionately poor. The poverty rate for non-Hispanic Whites in 2018 was 8.7 percent. For Asians, it was 13.9 percent; for Hispanics and Blacks, it was more than double at 20.3 and 20.4 percent respectively. Women with children also experience poverty at disproportionately higher rates. The Census Bureau's Current Population Survey data released in September 2019 show that 33.8 percent of families with children headed by women are poor. LGTBQ+ people are also more likely to face poverty than the general population.

Rising rents take a huge portion of the monthly income of low-income families. Statistics from the U.S. Census Bureau's American Community Survey released in September 2019 show that 60 percent of renter households across the U.S. making less than \$20,000 a year spend more than half of their income on rent. And it is not just the poorest who are impacted by the high cost of rent. Forty-eight percent of renter households making less than \$35,000 annually are spending more than half of their income on rent. The same is true for 38 percent of households making less than \$50,000 a year, and for 30 percent of households making less than \$75,000 a year. Eroding the Disparate Impact rule protections currently in place will harm millions of Americans already struggling to secure housing for themselves and their families.

Families with children are disproportionately likely to struggle to afford housing. They make up the largest share of households with worst case housing needs, defined as families with income below 50 percent of Area Median Income and with either severe rent burdens or severely inadequate housing and did not receive housing assistance. Nearly 3 million families with children in 2015 experienced worst case housing needs. With substantial evidence that children growing up in such difficult circumstances are more likely to have problems with cognitive development and academic achievement, and that children in low-income families who receive housing subsidies do better in school and earn more as adults, we should be doing all in our power to help families secure stable, affordable housing. Instead, the proposed rule would undermine the limited progress we have made.

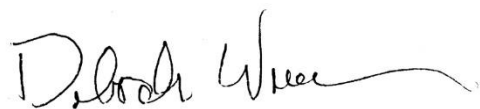
Access to affordable, safe, and stable housing impacts every aspect of an individual's life. Research demonstrates that when people have a safe and affordable place to live, many other problems (such as unemployment, ill health, and lack of food) are lessened. Affordable housing allows families to make fewer difficult choices between paying rent and buying groceries or visiting their doctors. Affordable housing means families have more money to save or spend on other necessities. Stable housing has positive impacts on children's ability to learn. Further, long-term studies show that neighborhoods matter; when low-income families are able to move to neighborhoods with better schools and other advantages, children are more likely to go further in education and earn more as adults, and are less likely to get in trouble with the law. Discriminatory practices that limit affordable, accessible housing options prevent low-income people from moving up the economic ladder, and the proposed rule would allow more of these discriminatory practices to exist.

In 2017, familial status was the third most common type of discrimination cited in fair housing complaints after disability status and race, according to a report by the National Fair Housing Alliance. In total, there were 2,675 familial status discrimination complaints filed that year, the vast majority of which pertained to rental market discrimination. While the overt housing discrimination against families with children that was common before the Fair Housing Act was amended in 1988 to prohibit discrimination based on family status has been substantially decreased, landlords have found other ways to exclude families with children. A 2016 HUD report, “Discrimination Against Families with Children in Rental Housing Markets: Findings of the Pilot Study” found that landlords used tactics such as steering families with children towards larger units they would not be able to afford in order to exclude them. Without the Disparate Impact legal remedies, we are in danger of returning to the pre-1988 conditions in which one-quarter of rental housing was restricted against families with children.

CHN believes that all Americans have a right to safe, affordable, and stable housing. Low-income households, communities of color, women and children, people with disabilities, LGBTQ+ individuals, and other vulnerable populations should be protected under the Fair Housing Act. But the changes included in the proposed rule directly contradict HUD’s mission to “create strong, sustainable, inclusive communities and quality affordable homes for all” and to “build inclusive and sustainable communities free from discrimination.” In addition, the standard outlined in the proposed rule up-ends decades of fair housing case law and HUD’s enforcement. CHN opposes any proposals that would negatively impact housing stability, as this proposed rule would certainly do.

The members of the Coalition on Human Needs believe that HUD should act to further the Fair Housing Act and housing policies that strengthen the Disparate Impact rule, which helps to ensure safe and affordable housing for the benefit of millions of Americans. Instead, HUD is pushing forward a proposed rule that would allow housing providers, banks and businesses, governments, and others to avoid liability for discriminatory policies, including by allowing them to hide behind an algorithm. We strongly urge the U.S. Department of Housing and Urban Development to withdraw this proposed rule and instead uphold HUD’s current interpretation of the Disparate Impact Standard.

Sincerely,

A handwritten signature in black ink, appearing to read "Deborah Weinstein", with a long, sweeping horizontal line extending to the right.

Deborah Weinstein
Executive Director