

NEW YORK HOUSING CONFERENCE



October 17, 2019

Office of General Counsel
Rules Docket Clerk
U.S. Department of Housing and Urban Development
451 7th Street SW, Room 10276
Washington, DC 20410-0500

Submitted Electronically

Re: Docket Number: FR-6111-P-02, RIN 2529-AA98, HUD's Implementation of the Fair Housing Act's Disparate Impact Standard

I am writing on behalf of the New York Housing Conference (NYHC) in response to HUD's proposed changes to the 2013 Disparate Impact rule. NYHC is a nonprofit affordable housing policy and advocacy organization. We represent a statewide coalition of affordable housing practitioners, advocates and experts in real estate, finance and community development. Our mission is to advance City, State and Federal policies to support the development and preservation of decent and affordable housing for all New Yorkers.

NYHC urges HUD not to revise the existing disparate impact rule, which is consistent with the standard set forth in the 2015 Supreme Court decision.¹ We believe this interpretation of the disparate impact rule is critical to ensuring that the goals and objectives of the Fair Housing Act are upheld and achieved. The Fair Housing Act's intent was to extend legal protections against discriminatory policies and practices that seek to limit the housing opportunities based on a person's race, color, national origin, religion, sex, disability or familial status. Importantly, the law not only prohibits intentionally discriminatory policies and practices, but also prohibits seemingly neutral policies and practices that still have a discriminatory result or limit housing opportunities for a particular group of people.

The existing disparate impact rule strengthens our communities and nation by allowing victims of all types of systemic discrimination to seek recourse and challenge policies and practices that limit their housing opportunities and put them in danger. HUD's proposed changes would fundamentally weaken this longstanding enforcement tool and prevent many victims of discrimination from being able to meet the new liability standard for a claim and achieving rightful recourse. As a result, we believe HUD's proposed changes would allow discriminatory

¹ *Texas Dept. of Housing and Community Affairs v. Inclusive Communities Project, Inc.* (2015) 135 S.Ct. 2507, 2521.

practices and policies to then go unchecked as long as a business, housing provider, or government actor does not state an intent to discriminate.

Having access to fair housing opportunities means more than just being able to find a place to live. Access to housing, particularly affordable housing, impacts all aspects of an individual's life. Numerous studies have shown that affordable, decent and stable housing is the foundation for good health, educational attainment, economic opportunities, and overall a person's self-sufficiency, especially for children.^{2,3,4,5} As a result, the proposed rule would likely perpetuate existing disparities in health, education, opportunity and economic wealth throughout the nation.

Given that government and business practices and policies, whether intentional or not, created racial housing opportunity disparities that still are pervasive across the country, which the Fair Housing Act was created to stop, it is HUD's obligation to help redress and reverse the result of these policies. In New York City, where NYHC is located, racial inequities continue to persist and impact housing opportunity. While Hispanic and black households make up forty-five percent of NYC's population, they comprise an overwhelming ninety-five percent of the city's families with children in shelter and only a paltry thirty percent of the city's homeowners.^{6,7} Also, black and Hispanic New Yorkers are almost seven times more likely to live in high poverty neighborhoods than white New Yorkers.⁸ Having unstable housing and living in high poverty neighborhoods create extra barriers for families to achieve success. Considering this, we need to intentionally make access to affordable and stable housing opportunities for protected classes easier, not harder. The proposed changes will do the opposite.

Additionally, partly due to a legacy of government and housing industry policies and practices such as redlining, that prevented communities of color from owning homes, there is vast racial wealth gap plaguing our country. White households hold ten times the net wealth of black

² Megan Sandel et al., Unstable Housing and Caregiver and Child Health in Renter Families, 141 Pediatrics 1 (2018), <http://pediatrics.aappublications.org/content/141/2/e20172199>.

³ Will Fischer, Research Shows Housing Vouchers Reduce Hardship and Provide Platform for Long-Term Gains Among Children, Center of Budget and Policy Priorities (October 7, 2015), <https://www.cbpp.org/research/research-shows-housing-vouchers-reduce-hardship-and-provide-platform-for-longterm-gains>

⁴ Linda Giannarelli et al., Reducing Child Poverty in the US: Costs and Impacts of Policies Proposed by the Children's Defense Fund (Jan. 2015),

<http://www.childrensdefense.org/library/PovertyReport/assets/ReducingChildPovertyintheUSCostsandImpactsofPoliciesProposedbytheChildrensDefenseFund.pdf>

⁵ Heather Sandstrom & Sandra Huerta, The Negative Effects of Instability on Child Development: A research Synthesis (2013), <https://www.urban.org/sites/default/files/publication/32706/412899-The-Negative-Effects-of-Instability-on-Child-Development-A-Research-Synthesis.PDF>

⁶ John Baker et al., Aftermath: Affordable Homeownership In New York City, Center for NYC Neighborhoods (2018), https://s28299.pcdn.co/wp-content/uploads/2018/10/CNY002-AH-Summit-Report_v7_FINAL_online.pdf

⁷ City of New York, Where We Live NYC: Fair Housing Together (2019), <https://wherewelive.cityofnewyork.us/explore-data/housing-conditions/>

⁸ National Equity Atlas. Percent Living in High-Poverty Neighborhoods by Race/Ethnicity: New York (2015), https://nationalequityatlas.org/indicators/Neighborhood_poverty

households and eight times that of Hispanic households.⁹ Home equity constitutes a large percentage of that wealth. A recent university study reported that reducing the racial homeownership gap would narrow the racial wealth gap by thirty-one percent.¹⁰ Knowing this, HUD should be trying to alleviate further barriers for communities of color to access affordable homeownership, but instead HUD is choosing to propose changes that will potentially largely undermine protected groups' shield from mortgage discrimination.

Fundamentally, HUD's proposed changes would effectively eliminate disparate impact as a useful legal tool to defend people in the protected classes from housing discrimination. This not only undermines what we stand for as a nation that pledges "liberty and justice for all," but it also directly conflicts with HUD's mission to "build inclusive and sustainable communities free from discrimination."¹¹ If HUD is to seriously work towards this goal, we believe HUD must not only maintain the disparate impact rule as it exists, but also vigorously enforce it. NYHC urges HUD to withdraw the proposed rule.

Thank you for the opportunity to comment. For more information, please do not hesitate to contact me at Rachel.lee@thenyhc.org or 646-923-8542.

Sincerely,



Rachel Fee
Executive Director, New York Housing Conference

⁹ Urban Institute, Nine Charts about Wealth Inequality in America (Updated), (October 5, 2017). <http://apps.urban.org/features/wealth-inequality-charts/>

¹⁰ William Darity Jr. et al., What We Get Wrong About Closing the Racial Wealth Gap, Samuel DuBois Cook Center on Social Equity (April 2018), <https://socialequity.duke.edu/sites/socialequity.duke.edu/files/site-images/FINAL%20COMPLETE%20REPORT.pdf>

¹¹ HUD. Mission, (2019), <https://www.hud.gov/about/mission>