



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

Dear Sir or Madam:

I write to you on behalf of Georgia Watch to offer comments in response to the above-docketed notice (“Notice”) concerning proposed changes to the disparate impact standard as interpreted by the U.S. Department of Housing and Urban Development (“HUD”). The existing Disparate Impact Rule serves the American public by providing an incentive for municipalities, large corporations, and others to modify policies that wrongly and unnecessarily keep people from the opportunities they need to be successful in life. We strongly oppose any changes to HUD’s current Disparate Impact Rule.

Founded in 2002, Georgia Watch is an advocate for Georgians and a trusted resource for the public, the media, legislators and regulators. Our mission is to protect and inform Georgia consumers, so all Georgians prosper, and communities thrive. We serve as a champion for Georgians through education and advocacy on matters that impact their quality of life. While our work impacts all Georgia residents, we focus our attention on communities that need a champion, particularly those most affected by predatory business practices, the high cost of utilities and healthcare and restricted access to the civil justice system. Often, these communities are comprised of individuals of low or moderate income, and underserved populations such as seniors, recent immigrants or communities of color. We work to inform consumers through workshops, online resources and a toll-free hotline to provide direct assistance.

As a nation, we have a shared interest in ensuring that housing opportunities are available to every individual, regardless of their personal characteristics. The Fair Housing Act prohibits intentional



discriminatory acts *and* facially “neutral” policies that limit housing opportunities based on race, color, national origin, religion, sex, the presence of families with children, and people with disabilities. Fully realizing the promises of the Fair Housing Act for every person in the United States is central to HUD’s mission.

Georgia Watch shares this central mission and we write to urge you not to revise HUD’s existing Disparate Impact Rule. HUD’s new proposed rule would risk the department’s failing to meet its critical obligation to achieve the Fair Housing Act’s “central purpose . . . to eradicate discriminatory practices within a sector of our Nation’s economy.”¹ HUD’s current Disparate Impact Rule is a necessary tool in the ongoing effort to achieve open housing markets, free of discrimination, and to eliminate all forms of housing discrimination and illegal segregation. It has provided protection for home mortgage applicants when a bank charges unfair and excessive fees or rates to certain groups who seek loans, meaning people of color, women, or people with disabilities are forced to take on risky or costly loans or not have access to financing.

In its current form, the Disparate Impact Rule has proven practical and effective. It also comports with decades of established judicial precedent, including the 2015 Supreme Court decision, *Texas Department of Housing and Community Affairs v. Inclusive Communities Project*, 135 S. Ct. 2507 (2015). In fact, *Inclusive Communities* quoted HUD’s existing rule at length without any suggestion that its opinion was in tension with that rule. The central premise of *Inclusive Communities* is that disparate impact claims are necessary to prohibit policies that may not be readily challenged under disparate treatment theories even though, particularly when overlaid on preexisting, long-standing disparities, they unnecessarily exclude minorities from housing. HUD’s proposal, however, would prevent disparate impact from performing this function by effectively limiting its application to classic disparate treatment cases.

Accordingly, HUD’s existing rule should not be revised. Instead, HUD must focus on vigorous enforcement of the Rule to remove unnecessary barriers to housing choice throughout our housing markets.

HUD’s Proposed Rule Would Destroy Disparate Impact Liability in the Housing Markets

HUD’s Proposed Rule would make drastic changes to fundamentally weaken this longstanding enforcement tool and would allow insurance companies, financial institutions, and other major

¹ *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.*, 135 S. Ct. 2507, 2511 (2015), available at: <https://casetext.com/case/texas-dept-of-housing-and-community-affairs-v-inclusive-communities-project-inc>.



corporations to engage in covert discriminatory practices with impunity. The Proposed Rule would destroy disparate impact liability and eliminate the incentives for major corporations to continue doing their part to eliminate discrimination. As such, the Proposed Rule is directly contradictory to the Fair Housing Act and its basic purposes.

The Proposed Rule includes flaws that shift the burden of proof and inserts high barriers that would make it virtually impossible to bring the bedrock and heartland housing discrimination cases that Justice Kennedy expressly stated should be brought using disparate impact.² Ultimately, the Proposed Rule contains a host of changes that, in practice, amount to insurmountable obstacles to proving what should be clear claims of housing discrimination. These proposed changes would result in an inoperable disparate impact standard of liability. Moreover, the proposed changes dangerously move companies and housing providers away from the practice of seeking out less discriminatory alternatives to harmful policies and practices.

The Disparate Impact Rule is Critical to Ensuring Housing Is Free of Systemic Discrimination

The existing Disparate Impact Rule is critical to ensuring optimum compliance with the federal Fair Housing Act and providing victims of widespread discrimination with rightful recourse. Georgia is home to more than 10 million residents, 14.9% of whom live in poverty while another 14.6% are on the edge, living at 125 to 200% of the federal poverty level.¹ The Great Recession – which officially lasted from December 2007 to June 2009 – caused financial hardship and agony both for people already living in poverty and those who found themselves there for the first time as companies made dramatic reductions to their workforce and halted future hiring indefinitely. Georgia’s recovery from the recession was painfully slow. However, nearly a decade later, economic conditions and job growth in Georgia have improved and the unemployment rate is low.

Despite the state’s economic recovery, Georgia’s poor find themselves left behind. Long-standing barriers and residual effects of the recession continue to impede Georgians from breaking out of poverty. Home ownership is one key to escaping poverty and building generational wealth. However, the collapse of the housing market resulted in a shortage of affordable housing due to rising rents in urban areas and increased use of federal housing assistance in suburban areas. Cost-burdened households – those spending 30% or more of their income on housing – experience further financial stress as a result of having very little income left for basic necessities, including healthcare, after they cover the cost of the roof over their heads. Lack of health insurance and/or access to affordable routine and preventative healthcare results in more low-income Georgians being hospitalized unnecessarily and poor health outcomes. Poor health has repercussions on low-income Georgians’

² *Inclusive Communities*, 135 S. Ct. at 2522.



ability to work, further limiting opportunities to obtain and maintain a job that sustains their family and puts them on a path out of poverty.

In Georgia, systemic discriminatory policies and practices limit housing opportunities and choices that the current Disparate Impact Rule can be useful in addressing. The focus on less discriminatory alternatives encourages housing providers to adopt less restrictive practices while meeting their business needs, but the Proposed Rule would ultimately preserve discriminatory barriers to open housing markets by not allowing victims to get past the burden of establishing that a policy has a discriminatory impact.

Conclusion

The Proposed Rule operates to destroy disparate impact liability. It is in direct contradiction to HUD's mission, decades of legal precedent and the Supreme Court's recent decision in *Inclusive Communities*. Before finalizing the current Disparate Impact Rule in 2013, HUD engaged in a thoughtful and thorough process, considering decades of federal court jurisprudence. In 2016, HUD considered additional federal court jurisprudence when it issued its well-reasoned supplement to insurance industry comments. HUD should not change the current Disparate Impact Rule.

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in blue ink that reads "Liz Coyle". The signature is written in a cursive style.

Liz Coyle
Executive Director

ⁱ U.S. Census Bureau 2017 American Community Survey 1-Year Estimates
(https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_17_1YR_S1701&prodType=table)