

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

Via regulations.gov

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

I am writing on behalf of the National Alliance to End Homelessness (NAEH) to express our opposition to the Department of Housing and Urban Development's (HUD) proposed changes to the 2013 Disparate Impact rule. We are deeply concerned that changes to the rule, if finalized, would worsen housing insecurity and drive more people into an already over-burdened homelessness system. We urge HUD to withdraw this rule and keep the long-standing regulation, supported by the U.S. Supreme Court, in place.

NAEH is nonpartisan, nonprofit organization whose sole purpose is to prevent and end homelessness. According to the 2018 Annual Homeless Assessment Report (AHAR), thirty-five percent of people experiencing homelessness are unsheltered and sleeping on the streets or in other places not meant for human habitation. Ten percent of families experiencing homelessness are unsheltered. As evidenced by the AHAR, the homelessness system is severely challenged and by making it nearly impossible to dispute covert discriminatory practices by housing providers, only exacerbates the problem. For example, the rule in place now refers to policies and practices that have an adverse impact on classes of people without discriminating against them in explicit terms, such as a landlord that only accepts tenants with full-time employment, which bars disabled Veterans, groups like the chronically homeless and other people with disabilities who can pay rent through assistance, but are unable to work full-time. The homelessness system cannot afford to lose any tools that advance housing for vulnerable populations at this critical juncture.

Women and children are also likely to be impacted by HUD's proposed rule changes. Without current protections, a landlord could evict victims of domestic violence based on common leases that hold all tenants, even victims, responsible for crimes in their homes. This would place women, the primary victims of domestic abuse, and their children at risk of homelessness and further violence. Under the proposed rule, landlords could prohibit renting to families with children all together or only allow occupancy in more expensive units.

The proposed rule would tip the scale in favor of defendants, such as housing providers, who are accused of discrimination. It would shift the burden of proof entirely to the plaintiffs; victims of discrimination would be asked to try to guess what justifications a defendant might pose and then have to counter those justifications in advance. HUD further proposes making a profitable policy or practice immune from challenge of disparate impact unless the victims of discrimination can prove that a company could make at least as much money without discriminating.

Disparate impact cases are already difficult to prove under the current rule. The practical effect of the proposed rule would be to require people experiencing housing discrimination to show that a housing provider, government, or business intended to discriminate.

The proposed rule would make it virtually impossible for people in protected classes to challenge a range of policies or practices that can harm them, including:

- Housing provider policies that allow only one person per room, which excludes families with children from housing that they can afford because they have to rent more expensive units.
- Housing provider policies that prohibit renting to families with children.
- Housing provider policies that prevent disabled people from renting an apartment because they do not have full-time jobs, even though they have adequate income to pay rent.
- Nuisance abatement ordinances that lead to women who are survivors of domestic violence to be evicted because they have sought police assistance.
- Exclusionary zoning policies that have the effect of limiting affordable housing opportunities for people of color.
- Jurisdictions' residency preferences that have the effect of limiting affordable housing opportunities for people of color.
- Manufactured home park policies that require all occupants to provide documentary evidence of their legal status to renew a lease, resulting in Latinx families being evicted and denied one of the only affordable housing options available to them.
- Mortgage lending institution practices of charging unfair or excessive fees or setting higher interest rates to people of color, women, or people with disabilities even though they have adequate income, resulting in them having to obtain a risky or costly loan – or even in denying them access to any financing.
- Insurance company policies that do not insure older, well-maintained homes in neighborhoods predominantly occupied by people of color.

Access to housing, particularly affordable, accessible housing, impacts all aspects of an individual's life. The proposed rule would allow more discriminatory practices to exist, potentially limiting opportunity and heightening existing disparities in health, education, and economic wealth.

Practically speaking, the proposed rule would effectively eliminate disparate impact as a useful legal tool to protect people in the protected classes from housing discrimination. That is why we oppose the proposed rule and urge HUD to withdraw it.

Sincerely,

The National Alliance to End Homelessness

As we stated above, we are extremely concerned about the impact this proposed rule will have on the number of people experiencing homelessness and the homelessness system. We urge HUD to immediately withdraw its current proposal and to dedicate its efforts to advancing policies that promote stable housing. We urge HUD to support sound policy that is evidence-based to prevent and end homelessness – not policy that could potentially lead to homelessness.

Thank you for the opportunity to submit comments on the proposed rulemaking. Please do not hesitate to contact me to provide further information.