

SAMPLE COMMENT LETTER
HUD'S PROPOSED CHANGES TO THE DISPARATE IMPACT RULE

[Please tailor your comment letter to reflect your locality and the people you work with or advocate for. The more original content the better (some urge 20% or 30% unique content). When letters all look the same or almost the same, HUD dismisses them.]

[AND PLEASE DELETE ALL OF THE TEXT HIGHLIGHTED IN YELLOW.]

DATE

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 [YOUR ORGANIZATION'S NAME HERE] in response to HUD's proposed changes to the 2013 Disparate Impact rule. We strongly oppose the proposed changes and urge HUD to withdraw the proposed rule. The current rule, implicitly endorsed by the U.S. Supreme Court, standardized the burden shifting approach to disparate impact utilized by the courts for more than 45 years. It does not need revision.

[BRIEFLY DESCRIBE YOUR ORGANIZATION AND THE PEOPLE YOU SERVE OR ADVOCATE FOR.]

We oppose HUD's proposed changes because they would make it far more difficult for people experiencing various forms of discrimination to challenge the policies or practices of housing providers, governments, and businesses that seem neutral but have "hidden" types of discrimination, whether purposeful or unintended.

HUD proposes placing virtually all of the burden on people who are in the "protected classes" as defined by the Fair Housing Act – people negatively affected by policies or practices due to their race, color, national origin, sex, disability, family status, or religion. [YOU MIGHT DELETE THE EXPLANATION OF "PROTECTED CLASSES" BECAUSE THE HUD LAWYERS KNOW WHAT THEY ARE.] 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.

The proposed rule would tip the scale in favor of defendants (housing providers, governments, and businesses) [YOU CAN DELETE THE TEXT IN PARENTHESES BECAUSE THE HUD

LAWYERS KNOW WHAT IS MEANT BY “DEFENDANTS”.] that 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 U.S. Supreme Court upheld the use of disparate impact theory to establish liability under the Fair Housing Act on June 25, 2015 in *Texas Department of Housing and Community Affairs v. Inclusive Communities* and implicitly adopted the current Disparate Impact rule by not questioning it or challenging it. Nothing in the *Inclusive Communities* decision warrants any reconsideration of the current Disparate Impact rule. Since *Inclusive Communities*, courts have found that the rule is consistent with the Supreme Court’s decision. Any claims that *Inclusive Communities* requires HUD to reconsider the Disparate Impact rule are unfounded.

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: **[FOCUS ON SOME OF THE FOLLOWING THAT ARE MOST MEANINGFUL TO YOUR ORGANIZATION, AND PROVIDE SPECIFIC EXAMPLES IF POSSIBLE]:**

- Housing provider policies that allow only one person per room, which excludes families with children **[FAMILIAL STATUS]** 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. **[FOCUS ON SOME OF THE FOLLOWING OR OTHER TOPICS RELEVANT TO YOUR ORGANIZATION, AND PROVIDE ADDITIONAL DETAILS WITH THE RESOURCES PROVIDED]:**

- Decent, affordable and accessible housing can prevent long-term health problems by allowing families to spend more on preventative care, reducing stress for adults and children, and decreasing exposure to lead and other contaminants. [Health and Housing Factsheet](#)
- Neighborhood often determines educational opportunities, so discriminatory housing policies lead to educational inequities. In addition, discrimination can lead to housing instability, which has negative impacts on children's ability to learn. [Education and Housing Factsheet](#)
- Affordable and accessible housing allows families to save more or spend on other critical needs, such as food, healthcare, and education. Discriminatory practices that limit affordable, accessible housing opportunities prevent low-income renters from moving up the economic ladder. [Report: A Place to Call Home](#)

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,