



President

Amy
Schectman

October 18, 2019

SUBMISSION VIA REGULATIONS.GOV

Vice President

Felicia Jacques

Office of General Counsel
Rules Docket Clerk
451 Seventh Street SW, Room 10276
Washington, DC 10410-0001

Vice President

Charleen Regan

Re: HUD's Implementation of the Fair Housing Act's Disparate Impact Standard, Docket no. FR-6111-P-02, RIN 2529-AA98

Treasurer

Ken Willis

To Whom It May Concern:

Clerk

Naomi Sweitzer

Citizens' Housing and Planning Association (CHAPA) writes to express strong opposition to the changes proposed to the current disparate impact rule. CHAPA urges the U.S. Department of Housing and Urban Development (HUD) to withdraw its proposed rule.

Chief Executive
Officer

Rachel Heller

CHAPA is a non-profit umbrella organization for affordable housing and community development throughout Massachusetts. Our mission is to encourage the production and preservation of housing that is affordable to low- and moderate-income households and to foster diverse and sustainable communities through planning and community development. The Fair Housing Act and the Disparate Impact Rule are essential tools for the execution of this mission.

HUD's proposed changes to the Disparate Impact Rule will severely limit the enforcement of fair housing protections for those experiencing housing discrimination. Congress sought to eradicate discriminatory housing practices in passing the Fair Housing Act, which intended to provide "a clear national policy against discrimination in housing."¹ The current Disparate Impact Rule helps ensure the protections of the Fair Housing Act are enforced. The rule is not only strong and effective but it is also consistent with the standard set out in the United States Supreme Court decision, *Inclusive Communities*.²

The current rule serves to formalize by regulation a standard that has been applied by HUD and the courts for decades, while providing nationwide uniformity of application. The Supreme Court's decision in

¹ H.R. Rep. No. 100-711, at 15 (1988).

² *Texas Dept. of Housing and Community Affairs v. Inclusive Communities Project, Inc.*, 135 S. Ct., 2507 (2015).

Inclusive Communities affirmed the long-standing burden-shifting framework established by lower courts and the HUD rule.

The proposed rule would establish a new and complex burden-shifting framework, making it nearly impossible for a plaintiff to prove disparate impact. It would impede enforcement of the Fair Housing Act by requiring plaintiffs to prove facts and intentions that are impossible to discern without discovery and by establishing an unrealistic causation standard.

The current rule strikes a fair balance in encouraging legal action and avoiding unmeritorious claims. Limiting or discouraging legal action would be contrary to the purpose of the Fair Housing Act and could result in unchallenged policies that not only have a discriminatory effect, but also, when analyzed more closely, reveal a housing policy that is intentionally exclusionary.

The Fair Housing Act's broad prohibitions on discrimination in housing are also intended to eliminate segregated living patterns while moving the nation toward a more integrated society.³ However, the proposed rule attempts to erase liability under the perpetuation of segregation theory. HUD's proposal will take away a critical tool for eliminating segregated communities. In Massachusetts, racial and ethnic segregation continues to be a serious problem due to the relationship between place, quality of life, and opportunity.⁴ HUD's omission of the perpetuation of segregation theory from the proposed rule disregards the purpose of the Fair Housing Act and will make it more difficult to achieve its goals of creating integrated communities.

HUD engaged in a thoughtful and thorough process before finalizing the Disparate Impact Rule in 2013. HUD sought comments and considered concerns from stakeholders across the country, including from both housing industry and consumer interests. HUD also considered decades of federal court jurisprudence applying the Fair Housing Act. This process allowed HUD to fashion a final rule that provides a uniform standard. Moreover, in 2016, when the insurance industry raised concerns, HUD responded with thoughtful consideration of additional federal court jurisprudence and again issued a well-reasoned supplement to the industry's concerns.

To disregard the extensive record, the thorough rulemaking process, the history of the Fair Housing Act and its judicial interpretation and retreat from the current rule now would not only be arbitrary and capricious but also contrary to the Fair Housing Act and its purpose.

Access to a safe, healthy, and affordable home impacts every aspect of a person's life. The current disparate impact rule is a critical tool for enforcing the fair housing rights of people experiencing housing discrimination. The proposed rule would allow more

³ Application of the Fair Housing Act's Discriminatory Effects Standard to Insurance; Supplement to Implementation of the Fair Housing Act's Discriminatory Effects Standard, 81 Fed. Reg. 69012, 69013 (Oct. 5, 2016).

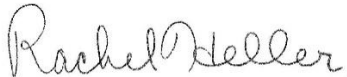
⁴ Mass. Department of Housing & Community Development, *Draft 2019 Analysis of Impediments to Fair Housing Choice*, 8 (2019).

discriminatory housing practices to exist. This would limit opportunities for families to live in the communities of their choice and heighten existing disparities in health, education, and economic mobility.

Therefore, CHAPA urges HUD to withdraw the proposed rule.

Thank you for your consideration. If there are any questions about these comments, please contact Eric Shupin, CHAPA's Director of Public Policy at eshupin@chapa.org or 617-742-0820.

Sincerely,

A handwritten signature in cursive script that reads "Rachel Heller".

Rachel Heller
Chief Executive Officer