

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

To Whom It May Concern:

I write to you on behalf of the National Asian Pacific American Women's Forum (NAPAWF) in response to the Department of Housing and Urban Development's (HUD) Implementation of the Fair Housing Act's Disparate Impact Standard, which was published in the Federal Register on August 19, 2019 (RIN 2529-AA98; HUD Docket No. FR-6111-P-02) (Proposed Rule). The existing Disparate Impact Rule is a critical tool in combating discriminatory housing policies that appear neutral on their face but often have a devastating impact on members of a protected class. The Proposed Rule would impose a drastically higher burden of proof that would fundamentally weaken this longstanding enforcement tool to the detriment of women of all identities—particularly women of color, domestic violence survivors, women with children, women with disabilities, and LGBTQ women. We strongly oppose any changes to HUD's existing Disparate Impact Rule and urge HUD to withdraw the Proposed Rule in its entirety.

NAPAWF is a national, multi-issue organization whose mission is to build a movement to advance the social justice and human rights of Asian American and Pacific Islander (AAPI) women and girls living in the U.S. To that end, we use policy advocacy and community organizing to advance reproductive health and rights, immigrant rights, and economic justice. As a national organization, we work in several different cities with full-time community organizers including, in Chicago, Atlanta, and New York. In addition, our membership comprises of local chapters based in over fourteen cities across the U.S.

At NAPAWF, we advocate through a reproductive justice lens. Reproductive justice is a framework rooted in the human right to control our bodies, our sexuality, our gender, and our reproduction. Reproductive justice will be achieved when all people, of all immigration statuses, have the economic, social, and political power and resources to define and make decisions about our bodies, health, sexuality, families, and communities in all areas of our lives with dignity and self-determination.

Housing is critical to ensuring AAPI women, girls, trans, gender nonbinary, and gender-nonconforming individuals have agency and autonomy over their lives. Indeed, access to safe and stable housing has a major impact on one's health, nutrition, economic, employment, and education outcomes. Housing access is particularly critical for women with intersecting identities—including women of color, interpersonal violence (IPV) and sexual violence

survivors, women with children, women with disabilities, low-income women, and trans, gender nonbinary, and gender-nonconforming individuals.

The Proposed Rule will negatively impact health outcomes for women and their families by limiting access to safe and affordable housing. Safe, affordable housing is key to one's health and well-being. If finalized, the Proposed Rule will reduce access to affordable housing, increase housing instability, encourage housing segregation, and threaten the health and well-being of women and girls.

This is particularly important for AAPI people with low incomes, whose homes are disproportionately concentrated in metro areas with the highest costs. Almost 50 percent of all AAPIs with low incomes live in the 20 most expensive real estate markets in the country, in comparison to 17 percent of the general population of people living in poverty. When AAPI women and their families spend too much on housing, they have insufficient resources for other essential needs, including food, health insurance, and health care. Having to choose between housing and your health is a devastating proposition. Those with unaffordable housing costs are more likely to skip health care treatments and not fill a prescription because of cost. These tradeoffs are particularly harmful to AAPI women who are already more likely to delay needed medical care and prescriptions because they cannot afford it.

Moreover, housing instability increases stress and related adverse health outcomes. Women with housing instability are more likely to report loss of employment and loss of employer-provided health insurance benefits and have significant disruptions to critical health services, leading to more frequent hospital visits and increased acute episodes of behavioral health conditions.

For over 45 years, advocates have relied on the existing Disparate Impact Standard to combat residential segregation and to challenge housing policies that disproportionately harm or otherwise affect women and girls, including several of the following policies:

- **Discrimination against Gender-Based Violence Survivors.** The existing Disparate Impact Rule has served to protect survivors from being evicted or otherwise denied housing due to the abuse they've experienced. This is particularly important for AAPI women, as 18 percent of AAPI women report experiencing rape, physical violence, and/or stalking by an intimate partner in their lifetimes.
- **Source-of-Income Discrimination.** Advocates have employed the existing Disparate Impact Standard to challenge unjustified discrimination by landlords who are unwilling to rent to voucher holders—which disproportionately limits housing opportunities for women of color, people with disabilities, and low-income families. Discriminating against voucher holders will harm AAPI communities, who rely on vouchers to secure safe, stable housing. Safe, stable housing is integral to ensuring that people and their families are able to lead healthy lives and freely make the decisions that are right for them.
- **Unjust Tenant-Screening Policies.** The existing Disparate Impact Standard protects against unjust and overbroad tenant-screening policies that categorically deny housing

based on certain factors—such as arrest records or prior eviction filings—and disproportionately harm women of color and other marginalized communities.

- **Lending Discrimination against Parents on Parental Leave.** Courts have relied on the existing Disparate Impact Standard in rejecting lending policies that deny applications by homeowners on paid parental leave.

We believe in and are committed to eliminating housing discrimination, and we urge you to uphold HUD’s current interpretation of the Disparate Impact Rule.

HUD’s Proposed Rule would impose a drastically higher burden on victims of housing discrimination, rendering it much more difficult to challenge policies and practices that disproportionately harm women and girls. The Proposed Rule would also provide several defenses and opportunities to shield housing providers, banking institutions, municipalities, and other actors from liability for otherwise discriminatory policies or practices.

Women of all backgrounds should feel protected under the Fair Housing Act. HUD’s Proposed Rule directly contradicts HUD’s mission to affirmatively further fair housing and prevent discrimination against women and other protected groups. Furthermore, the standard outlined in the Proposed Rule upends decades of fair housing case law and HUD’s enforcement. We urge HUD to immediately withdraw the Proposed Rule and instead advance housing policies that strengthen—not undermine—the disparate impact theory that allows for stable, safe, and affordable housing for all.

Access to housing affects AAPI women’s ability to live with dignity and autonomy over their health, and well-being. Without housing, people are unable to freely and safely make decisions about their reproductive lives and families. Protection against housing discrimination and the preservation of disparate impact theory are vital to this goal.

Thank you for the opportunity to share my perspective. Please contact Kimya Forouzan, Legal Fellow, at kforouzan@napawf.org regarding these comments.

Sincerely,

Kimya Forouzan
Legal Fellow
National Asian Pacific American Women’s Forum