



October 16, 2019

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

The Colorado Health Foundation appreciates the opportunity to submit comments to the Department of Housing and Urban Development (HUD) on its proposed rule: *Implementation of the Fair Housing Act's Disparate Impact Standard*. We strongly oppose the proposed changes and urge HUD to withdraw the proposed rule.

The Colorado Health Foundation is the state's largest private foundation and the third largest foundation focused on health in the nation. We work closely with partners in the private, public and nonprofit sectors to bring health in reach for all Coloradans. Our work is grounded in serving Coloradans who are low-income and historically have had less power and privilege; putting the creation of health equity at the center of everything we do, as well as ensuring that our work is informed by the community and those we exist to serve.

Housing is a key determinant of health and plays a critical role in bringing health in reach for all Coloradans. Currently, Colorado, like most of the nation, is experiencing a significant affordable housing crisis. In a 2018 poll the Colorado Health Foundation conducted with the Kaiser Family Foundation, three in ten Coloradans indicated that they were worried they might lose their home because they were unable to afford their rent or mortgage in the coming year. We know that if a household is spending too much of its income on rent or mortgage payments, there is much less money available for other key essentials such as food and medical care, which can contribute to poorer health for low-income individuals and families. A stable and affordable home is the foundation of good health.

We oppose HUD's proposed rule because it 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 have negatively impacted them. The Colorado Health Foundation believes that a safe, accessible and affordable place to call home is a basic human right and that our communities have a vested interest in ensuring that housing opportunities are available to every individual. In fact, we believe this proposed rule change directly contradicts HUD's own goal of providing affordable housing



opportunities to those in need. Further, the disparate impact rule is critical to ensuring that the goals and objectives of the Fair Housing Act are achieved.

The proposed changes would place virtually all of the burden of remedying the impacts of discrimination on people who are in the “protected classes” defined in the Fair Housing Act – people that are negatively affected by policies or practices due to their race, color, national origin, sex, disability, family status, or religion. 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 going forward.

If finalized, the proposed rule would tip the scale in favor of defendants that are accused of discrimination by shifting the burden of proof entirely to the plaintiffs. Victims of discrimination would be asked to try to speculate 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.

Currently, disparate impact cases are already difficult to prove and challenge. 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.
- Exclusionary zoning policies 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 immigrant 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 riskier or costlier loan – or even in denying them access to any financing.



Access to housing, particularly affordable and safe housing, impacts all aspects of an individual's life. If finalized, the proposed rule would allow more discriminatory practices to exist, potentially limiting opportunity and heightening existing disparities in health, education, and wealth. We firmly believe that HUD should focus on ensuring that actors in the housing market comply with the Fair Housing Act and meet the standards set forth by the *existing* disparate impact rule. The existing disparate impact rule strengthens our communities and nation by allowing people experiencing all types of systemic discrimination to seek recourse and change policies and practices that limit their housing opportunities and put them in danger. We cannot allow discrimination to be used to keep safe housing out of reach for anyone.

We thank you for your consideration of our comments. If you have any questions, please contact Sara Monge, public policy officer, at [smonge@coloradohealth.org](mailto:smonge@coloradohealth.org) or 303-953-3664.

Sincerely,



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The Colorado Health Foundation