

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**

Dear Sir or Madam,

First Focus on Children submits these comments in response to the Department of Housing and Urban Development's (HUD) proposed rule revising the Disparate Impact Standard. Disparate Impact is crucial in all communities to ensuring access to stable housing for families with children. We strongly oppose HUD's proposed changes and urge you to uphold HUD's current interpretation of the Disparate Impact Rule.

First Focus on Children is a national bipartisan children's advocacy organization dedicated to making children and families a priority in federal budget and policy decisions. As an organization committed to improving the well-being of our nation's children, we are opposed to this rule because it will limit access to stable housing for children.

The Fair Housing Act protects people from discrimination when they are getting a mortgage, buying a home, or renting an apartment. It makes it illegal to refuse or limit housing opportunities based on a person's race, color, national origin, familial status, religion, sex, or disability. The Disparate Impact Standard is essential to enforce protections guaranteed by the Fair Housing Act because it provides a way to prohibit seemingly neutral policies that unnecessarily exclude people of color, families and other groups from housing. It has been widely effective in addressing discriminatory practices in mortgage lending, rental housing, and property insurance, thereby making housing more available to all.

*Effects of this Rule Will be Particularly Harmful for Families with Children*

The effects of weakening this standard will be particularly harmful for families with children. The existing Disparate Impact Rule affords vital housing protections for families with children and allows advocates to challenge unjust policies that harm families,<sup>1</sup> such as overly restrictive occupancy requirements that disproportionately harm families with children.<sup>2</sup> For example, if an apartment complex restricts occupancy to one person per bedroom, families with children could be barred from renting and forced to rent a more expensive multi-bedroom apartment or be homeless if they can't afford a multi-bedroom apartment.

Similarly, the Fair Housing Act's Disparate Impact Rule has been used to challenge housing policies that restrict families from accessing certain amenities. In particular, advocates have fought against policies that overly restrict the use of facilities that are overwhelmingly enjoyed by children, such as pools or courtyards, using the Disparate Impact Rule.<sup>3</sup> Another example is that a landlord's policy against congregating in common areas may have a discriminatory impact on families with children when evidence shows that children are more likely than adults to play, or congregate, in such places.<sup>4</sup>

### *Importance of the Fair Housing Act to Families with Children*

The Fair Housing Act provides a critical tool for families with children who are facing housing discrimination. Even when affordable housing might be available in a community, families with children face barriers to accessing it based on their family status.

More than a fourth of the nation's rental housing was off-limits to families with children before 1988, when the Fair Housing Act was amended to prohibit discrimination based on family status.<sup>5</sup> Until that point, in addition to outright bans of families with children, landlords also often imposed onerous occupancy restrictions on families with children and charged them higher rents.<sup>6</sup>

Since the 1988 amendment to the Fair Housing Act, this type of overt discrimination has been curbed, but some landlords have resorted to facially-neutral policies to turn

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<sup>1</sup> See 42 U.S.C. §§ 3601-19; see also *Hous. Opps. Project for Excellence, Inc. v. Key Colony No. 4 Condo. Assoc.*, 510 F. Supp. 2d 1003 (S.D. Fla. 2007) (holding that residents had successfully stated a disparate impact claim because the restrictive occupancy rules had discouraging effects on families with more than two children).

<sup>2</sup> See *id.*; see also *Rhode Island Comm'n for Human Rights v. Gaul*, 120 F. Supp. 3d 110, 125–27 (D.R.I. 2015); *United States v. Badgett*, 976 F.2d 1176, 1178–79 (8th Cir. 1992).

<sup>3</sup> *Id.*

<sup>4</sup> *Khalil v. Farash Corp.*, 260 F. Supp. 2d 582, 589 (W.D.N.Y. 2003).

<sup>5</sup> U.S. Department of Housing and Urban Development. 2016. "Discrimination Against Families with Children in Rental Housing Markets: Findings of the Pilot Study." <https://www.huduser.gov/portal/sites/default/files/pdf/HDSFamiliesFinalReport.pdf>

<sup>6</sup> *Id.*

away families with children. A 2016 study from HUD found no signs of overt discrimination against families with children in the rental market, but did find evidence that landlords were taking more subtle steps to discourage renters with children, including steering families with children toward larger, more expensive units and, on average, showing families with children fewer units.<sup>7</sup> Those factors, the study noted, “may constrain the choices for some families seeking rental housing.”<sup>8</sup>

Despite these victories, the fight against housing discrimination against families with children is far from finished. In 2017, familial status was the third most common type of discrimination cited in fair housing complaints after disability status and race.<sup>9</sup> In total, there were 2,675 familial status discrimination complaints filed that year, the vast majority of which pertained to rental market discrimination.<sup>10</sup>

### *Stable Housing is Important To Child Well-Being*

A lack of access to affordable housing remains one of the main barriers to economic stability for many families. Housing costs continue to increase in the United States, yet family incomes have not kept pace. A third of children live in households with a high housing cost burden, meaning that more than 30 percent of monthly household income was spent on housing expenses, leaving limited resources for food, utilities, transportation, and other needs.<sup>11</sup> Yet access to housing assistance remains limited for families – only one in four families who are eligible receive it. Families with children are decreasing as a share of federal housing assistance beneficiaries and are not given priority status for assistance,<sup>12</sup> even though the majority of households on the waiting list for housing assistance (60 percent) are families with children.<sup>13</sup>

The fact that housing assistance remains limited for children is especially problematic because access to stable housing is critical for healthy child development. Housing instability, which includes situations such as being behind on rent and making multiple moves, is associated with an increased risk of poor child health, including hospitalizations, and maternal depression.<sup>14</sup> Sustained housing instability can lead to

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<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at vii.

<sup>9</sup> National Fair Housing Alliance. 2018. “Making Every Neighborhood a Place of Opportunity: 2018 Fair Housing Trends Report.” [https://nationalfairhousing.org/wp-content/uploads/2018/04/NFHA-2018-Fair-Housing-Trends-Report\\_4-30-18.pdf](https://nationalfairhousing.org/wp-content/uploads/2018/04/NFHA-2018-Fair-Housing-Trends-Report_4-30-18.pdf)

<sup>10</sup> *Id.*

<sup>11</sup> “Children living in households with a high housing cost burden in the United States,” Kids Count Data Center, last visited May 9, 2019, <https://datacenter.kidscount.org/data/tables/7244-children-living-in-households-with-a-high-housing-cost-burden#detailed/1/any/false/871,870,573,869,36,868,867,133,38,35/any/14287,14288>.

<sup>12</sup> G. Thomas Kingsley, “Trends in Housing Problems and Federal Housing Assistance,” Urban Institute, October 2017, <https://www.urban.org/sites/default/files/publication/94146/trends-in-housing-problems-and-federal-housing-assistance.pdf>.

<sup>13</sup> “The Long Wait for a Home,” National Low Income Housing Coalition, Housing Spotlight 6. no. 1, (Fall 2016), [https://nlihc.org/sites/default/files/HousingSpotlight\\_6-1.pdf](https://nlihc.org/sites/default/files/HousingSpotlight_6-1.pdf).

<sup>14</sup> Sandel and Megan, Sheward, Richard, et al. “Unstable Housing and Caregiver and Child Health in Renter Families,” *Pediatrics*, 141(2), February 2018, <https://pediatrics.aappublications.org/content/141/2/e20172199>.

homelessness, further destabilizing families and causing trauma that has severe negative implications for children's healthy physical and mental development and educational attainment.

Research shows that rental assistance for households with children results in significant positive effects for future child outcomes and family economic security. Housing assistance lifts about a million children out of poverty each year,<sup>15</sup> and can improve a child's chances for long-term economic mobility—one study finds that children in households receiving Housing Choice vouchers go on to have higher adult earnings and a lower chance of incarceration.<sup>16</sup>

Housing assistance also improves child health - children of families receiving housing assistance had a 35 percent higher chance of being labeled a “well child,” a 28 percent lower risk of being seriously underweight and a 19 percent lower risk of food insecurity.<sup>17</sup> Access to affordable housing provides stability for families and frees up income for other necessities. Low-income households with children that pay more than half of their monthly income on rent spend considerably less on other basic necessities - they spend \$200 less per month on food, nearly \$100 less on transportation, and about \$80 less on healthcare.<sup>18</sup>

By removing protections from housing discrimination to affordable housing for families with children, this rule will serve to further contribute to our skyrocketing rate of child and family homelessness in the United States. The U.S. Department of Education identified over 1.3 million homeless children in the 2016-2017 school year, which is a 70 percent increase since the 2007-2008 school year.<sup>19</sup> This rule will further increase child homelessness, with detrimental effects to child well-being and our economy.

Homelessness, even for a brief time, is extremely detrimental to a child's healthy development. The younger and longer a child experiences homelessness, the greater

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<sup>15</sup> Liana Fox, “The Supplemental Poverty Measure: 2017,” September 2018, <https://www.census.gov/library/publications/2018/demo/p60-265.html>.

<sup>16</sup> Andersson, Fredrik and Haltiwanger, John C, et. al. “Childhood Housing and Adult Earnings: A Between-Siblings Analysis of Housing Vouchers and Public Housing.” National Bureau of Economic Research, Working Paper No. 22721, September 2018, <http://www.nber.org/papers/w22721>.

<sup>17</sup> Elizabeth March, “Rx for Hunger: Affordable Housing,” *Children's Health-Watch; Medical-Legal Partnership*, December 2009, [http://www.vtaffordablehousing.org/documents/resources/435\\_RxforhungerNEW12\\_09.pdf](http://www.vtaffordablehousing.org/documents/resources/435_RxforhungerNEW12_09.pdf).

<sup>18</sup> “The State of the Nation's Housing 2018”, Joint Center for Housing Studies of Harvard University, tabulations of US Bureau of Labor Statistics, 2016 Consumer Expenditure Survey, 2018, [http://www.jchs.harvard.edu/sites/default/files/Harvard\\_JCHS\\_State\\_of\\_the\\_Nations\\_Housing\\_2018.pdf](http://www.jchs.harvard.edu/sites/default/files/Harvard_JCHS_State_of_the_Nations_Housing_2018.pdf)

<sup>19</sup> “Federal Data Summary School Years 2014-2015 to 2016-2017, National Center for Homeless Education, February 2019, <https://nche.ed.gov/wp-content/uploads/2019/02/Federal-Data-Summary-SY-14.15-to-16.17-Final-Published-2.12.19.pdf>.

the cumulative toll of negative health outcomes.<sup>20</sup> Homelessness is also associated with an 87 percent greater likelihood of a child or youth dropping out of school.<sup>21</sup>

A recent landmark study from the National Academy of Sciences finds that child poverty and homelessness costs our society over \$1 trillion each year.<sup>22</sup> This same study finds that making housing vouchers available for 70 percent of the families who are currently eligible would reduce child poverty by 3 percentage points.

### *Conclusion*

This proposed rule would cause us to lose ground on the progress we have made against housing discrimination for families with children. The proposed five-element prima facie case and options for rebuttal would create substantial additional hurdles for these families and make it significantly harder to challenge these unjust policies and practices. HUD's Proposed Rule, therefore, will undermine the vital role that the Fair Housing Act has served in protecting fair housing for historically marginalized and vulnerable communities—and particularly for families with children.

Denying children access to safe and stable housing is not only immoral, but economically foolish. The long-term viability of our economy is dependent on our children and youth. We urge HUD to immediately withdraw its current proposal, and dedicate its efforts to advancing policies that strengthen—rather than undermine—the ability of families with children to access safe, stable and affordable housing.

Thank you for the opportunity to submit comments on the proposed rulemaking. Please do not hesitate to contact Cara Baldari, VP of Family Economics at First Focus on Children, at [carab@firstfocus.org](mailto:carab@firstfocus.org) to provide further information.

Sincerely,



President, First Focus

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<sup>20</sup> Megan Sandel, Richard Sheward, and Lisa Sturtevant, *Compounding Stress: The Timing and Duration Effects of Homelessness on Children's Health*, Insights from Housing Policy Research (Washington, DC: Center for Housing Policy; Boston: Children's HealthWatch, 2015), <https://www.issuelab.org/resources/21731/21731.pdf>.

<sup>21</sup> Erin S. Ingram, John M. Bridgeland, Bruce Reed, and Matthew Atwell, *Hidden in Plain Sight: Homeless Students in America's Public Schools* (Washington, DC: Civic Enterprises and Hart Research Associates, 2016), <http://www.americaspromise.org/report/hidden-plainsight>.

<sup>22</sup> National Academies of Sciences, Engineering, and Medicine 2019. *A Roadmap to Reducing Child Poverty*, The National Academies Press, 2019, <https://doi.org/10.17226/25246>.