

October 18, 2019

Office of the General Counsel  
Rules Docket Clerk  
Department of Housing and Urban Development  
451 Seventh Street SW, Room 1027  
Washington, DC 20410-0500

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*Submitted electronically*

RE: Proposed Rule: HUD's Implementation of the Fair Housing Act's Disparate Impact Standard; HUD Docket No. HUD-2019-0067; RIN 2529-AA98

To Whom It May Concern:

YWCA USA submits these comments on the proposed rule published at 84 FR 42854 (8/19/2019), RIN 2529-AA98, with the title, "HUD's Implementation of the Fair Housing Act's Disparate Impact Standard." (Proposed Rule). The existing Disparate Impact Rule is a critical tool in combatting 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 and domestic violence survivors. **We strongly oppose any changes to HUD's existing Disparate Impact Rule and urge HUD to withdraw the Proposed Rule in its entirety.**

Founded 160 years ago, YWCA is one of the oldest and largest women's organizations in the United States and is dedicated to eliminating racism, empowering women, and promoting peace, justice, freedom and dignity for all. Today, we serve over 2 million women, girls, and their families through a network of more than 200 local YWCA associations in over 1,300 communities across 45 states and the District of Columbia.

YWCA's comments on HUD's Proposed Rule are informed by our significant expertise in working with women, families, and survivors of domestic and sexual violence. Each year, across our vibrant network, we are proud to provide:

- 145,000 women, children and families with housing, food assistance, and immigrant assistance programs;



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- 535,000 women, children, and families with gender-based violence support services that are trauma-informed, and which include domestic violence and sexual assault programs and services (e.g., emergency shelter, transitional housing, crisis hotlines, counseling and court assistance, and other community safety programs);
- 170,000+ children and parents with child care, teen and parenting programs, which include child care programs that specifically integrate trauma-informed practices to meet the needs of homeless children, and children who have witnessed and experienced domestic violence and other trauma; and
- 300,000 women, girls, and families with wellness, recovery, counseling, exercise, athletics, and aquatics programs to help them get and stay healthy.

In addition, the vast majority of the individuals served by YWCAs are women and girls (77%), and 62% - 72% live at or below the federal poverty level. Of the clients we serve, 37% are white; 21% are Black; 14% are Latinx; 3% are Asian; 2% are Native American / Alaska Native; 1% are Arab/Middle Eastern; and 4% are multi-racial.

Housing is key to an individual’s wellbeing. Since 1858, YWCA housing programs have provided women with a firm foundation to further their educations and to more fully participate in the workforce. YWCA currently provides housing services for more than 35,000 women and family members facing an array of life challenges, and an additional 26,000 who experience domestic violence or other forms of gender-based violence. Across YWCA’s national network, more than 60% of YWCAs provide housing and related services, including emergency shelter and transitional housing for domestic violence and sexual assault survivors and their children; shelter and support for women who are homeless or at risk of homelessness, and for teens who are pregnant, parenting, or experiencing other challenges; independent and supervised living accommodations; and tenant education, eviction prevention, and landlord mediation programs.

**Protecting access to housing for women is necessary and central to HUD’s mission. Therefore, YWCA USA urges HUD to rescind its Proposed Rule and preserve existing protections against unjust housing discrimination for the following reasons.**

- I. **Housing is vital to the well-being of women and girls.**

Access to safe and affordable housing is crucial to good health,<sup>1</sup> education,<sup>2</sup> and stable employment.<sup>3</sup> YWCA housing programs increase all of these factors for clients and residents. For instance:

Among YWCAs providing transitional housing programs:

- An average of 85% of residents moved to safe, stable permanent housing upon completing their YWCA's program
- An average of 82% of residents maintained or increased their income upon completing the YWCA's program

Among all YWCAs with housing programs:

- 85% of residents in one YWCA housing program improved their physical and/or mental health
- After 3 months in one YWCA supportive housing program, 93% of clients were compliant with their daily medication dosage and were able to name each medication in their daily medication regimen. After six months in the program, 95% of clients acquired at least three new coping skills to address the symptoms of their mental health diagnosis. And after 12 months in the program, 92% attained and reported increased personal well-being as evidenced by avoiding psychiatric hospitalization and decreased suicidal ideation.
- 41% of clients in one transitional housing program increased their educational attainment
- 90% of residents in another program completed high school
- 84% of formerly homeless women participating in a "Women in Transition" program opened and/or maintained a checking/savings account at exit
- 84% of supportive housing clients at one YWCA maintained sobriety, while 45% of those clients maintained full-time employment while maintaining sobriety

Where we live is at the very core of our daily lives. The Administration's attempt to dismantle the protections afforded by disparate impact legal

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<sup>1</sup> Opportunity Starts At Home, *Health Care Advocates are Housing Advocates* (Dec. 2018), <https://www.opportunityhome.org/wp-content/uploads/2018/02/Health-Fact-Sheet.pdf>; Ctr. for Outcomes Research & Educ., *Health in Housing: Exploring the Intersection between Housing and Health Care* (Feb. 2016), <https://www.enterprisecommunity.org/download?fid=5703&nid=4247>; Children's HealthWatch, *Overcrowding and Frequent Moves Undermine Children's Health* (2011), [www.issuelab.org/resources/13900/13900.pdf](http://www.issuelab.org/resources/13900/13900.pdf).

<sup>2</sup> Opportunity Starts at Home, *Education Advocates are Housing Advocates* (Dec. 2018), <https://www.opportunityhome.org/wp-content/uploads/2018/02/Education-Fact-Sheet.pdf>.

<sup>3</sup> Opportunity Starts at Home, *Economic Mobility Advocates are Housing Advocates* (Nov. 2018), <https://www.opportunityhome.org/wp-content/uploads/2018/02/Economic-Mobility-Fact-Sheet.pdf>.

theory is unlawful, contrary to the very purpose of the Fair Housing Act, and will have devastating impacts on the lives of women, children, and families.

A. The Proposed Rule will negatively impact health outcomes for women and their families by limiting access to safe and affordable housing and weakening a critical tool to fighting segregation.

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.<sup>4</sup>

When women and 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 as a result of cost.<sup>5</sup> These tradeoffs are particularly harmful for women who are already more likely to delay needed medical care<sup>6</sup> and prescriptions<sup>7</sup> because they can't afford it.<sup>8</sup>

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.<sup>9</sup> For those who need prescription medication, lack of stable housing can also make proper storage of medications difficult or impossible.<sup>10</sup>

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<sup>4</sup> HOUSING AND HEALTH: AN OVERVIEW OF THE LITERATURE, HEALTH AFFAIRS HEALTH POLICY BRIEF (June 7, 2018), <https://www.healthaffairs.org/doi/10.1377/hpb20180313.396577/full/>.

<sup>5</sup> NABILAH MAQBOOL ET AL., THE IMPACTS OF AFFORDABLE HOUSING ON HEALTH: A RESEARCH SUMMARY, CENTER FOR HOUSING POLICY (April 2015), <https://www.nhc.org/wp-content/uploads/2017/03/The-Impacts-of-Affordable-Housing-on-Health-A-Research-Summary.pdf>.

<sup>6</sup> See also MUNIRA Z. GUNJA ET AL., HOW THE AFFORDABLE CARE ACT HAS HELPED WOMEN GAIN INSURANCE AND IMPROVED THEIR ABILITY TO GET HEALTH CARE, COMMONWEALTH FUND (2017), <https://www.commonwealthfund.org/publications/issue-briefs/2017/aug/how-affordable-care-act-has-helped-women-gain-insurance-and> (noting that even though health insurance coverage gains through the Affordable Care Act have reduced the share of women skipping or delaying care because of costs, in 2016, 38% of women age 19 through 64 still reported not getting the health care they needed because of costs).

<sup>7</sup> PRESCRIPTION DRUGS, HEALTH POLICY INSTITUTE (last visited Sept. 18, 2019, 1:45 PM), <https://hpi.georgetown.edu/rxdrugs/>.

<sup>8</sup> RENTERS REPORT HOUSING COSTS SIGNIFICANTLY IMPACT THEIR HEALTH CARE, ENTERPRISE (Apr. 3, 2019), <https://www.enterprisecommunity.org/news-and-events/news-releases/2019-04-renters-report-housing-costs-significantly-impact-their-health-care>.

<sup>9</sup> See WILL FISCHER, RESEARCH SHOWS HOUSING VOUCHERS REDUCE HARDSHIP AND PROVIDE PLATFORM FOR LONG-TERM GAINS AMONG CHILDREN, CTR. ON BUDGET AND POL'Y PRIORITIES (October 7, 2015), <https://www.cbpp.org/research/research-shows-housing-vouchers-reduce-hardship-and-provide-platform-for-longterm-gains>; see also LINDA GIANNARELLI ET AL., REDUCING CHILD POVERTY IN THE US: COSTS AND IMPACTS OF POLICIES PROPOSED BY THE CHILDREN'S DEFENSE FUND URBAN INST. (Jan. 2015), <https://www.urban.org/sites/default/files/publication/39141/2000086-Reducing-Child-Poverty-in-the-US.pdf>; NABILAH MAQBOOL ET AL., THE IMPACTS OF AFFORDABLE HOUSING ON HEALTH: A RESEARCH SUMMARY, CENTER FOR HOUSING POLICY (April 2015), <https://www.nhc.org/wp-content/uploads/2017/03/The-Impacts-of-Affordable-Housing-on-Health-A-Research-Summary.pdf>.

<sup>10</sup> LINDA GIANNARELLI ET AL., REDUCING CHILD POVERTY IN THE US: COSTS AND IMPACTS OF POLICIES PROPOSED BY THE CHILDREN'S DEFENSE FUND URBAN INST. (Jan. 2015), <https://www.urban.org/sites/default/files/publication/39141/2000086-Reducing-Child-Poverty-in-the-US.pdf>.



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Different forms of housing instability, including eviction, also elevate stress levels, depression, and hopelessness.<sup>11</sup> Poor women of color, domestic violence survivors, and women with children face a higher risk of eviction. Women evicted or threatened with eviction from their homes are more likely to experience health problems, like depression, anxiety, and high blood pressure, than people with stable housing.<sup>12</sup> This exacerbates the heightened risk that women, particularly women of color, have of experiencing depression,<sup>13</sup> anxiety,<sup>14</sup> and high blood pressure.<sup>15</sup>

Further, unstable housing is particularly harmful to children's health. Children experiencing housing instability have higher occurrences of mental health problems, developmental delays, poor cognitive outcomes, and depression in their youth and poorer life outcomes as adults.<sup>16</sup> The younger a child is and the longer a child experiences homelessness, the greater the cumulative toll of negative health outcomes.<sup>17</sup> Even children born to women who experienced homelessness while pregnant are more likely to be hospitalized or suffer worse health, compared to their peers.<sup>18</sup>

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<sup>11</sup> LINDA GIANNARELLI ET AL., REDUCING CHILD POVERTY IN THE US: COSTS AND IMPACTS OF POLICIES PROPOSED BY THE CHILDREN'S DEFENSE FUND URBAN INST. (Jan. 2015), <https://www.urban.org/sites/default/files/publication/39141/2000086-Reducing-Child-Poverty-in-the-US.pdf>.

<sup>12</sup> ALISON BOVELL & MEGAN SANDEL, THE HIDDEN HEALTH CRISIS OF EVICTION, CHILDREN'S HEALTH WATCH (Oct. 5, 2018), <http://childrenshealthwatch.org/the-hidden-health-crisis-of-eviction/>.

<sup>13</sup> PAUL R. ALBERT, WHY IS DEPRESSION MORE PREVALENT IN WOMEN?, 40 J. PSYCHIATRY NEUROSCI. 219-221 (Jul. 2015), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4478054/> (noting the higher prevalence of major depression in women than in men). More women seek treatment for depression than men, though white, non-Hispanic women are more likely to receive treatment for depression than Latinx and Black women. NAT'L INSTS. OF HEALTH, OFFICE OF RES. ON WOMEN'S HEALTH, WOMEN OF COLOR HEALTH DATA BOOK 147 (Oct. 2014), <https://orwh.od.nih.gov/sites/orwh/files/docs/WoC-Databook-FINAL.pdf>.

<sup>14</sup> CARMEN P. MCLEAN ET AL., GENDER DIFFERENCES IN ANXIETY DISORDERS: PREVALENCE, COURSE OF ILLNESS, COMORBIDITY AND BURDEN OF ILLNESS, 45 J. PSYCHIATRIC RES. 1027-1035 (2011); NAT'L INST. OF MENTAL HEALTH, ANY ANXIETY DISORDER, <https://www.nimh.nih.gov/health/statistics/any-anxiety-disorder.shtml> (last updated Nov. 2017); U.S. DEP'T OF HEALTH & HUMAN SERVS., OFFICE ON WOMEN'S HEALTH, ANXIETY DISORDER, <https://www.womenshealth.gov/mental-health/mental-health-conditions/anxiety-disorders> (last updated Jan. 30, 2019) (noting that more American Indian/Alaskan Native women have generalized anxiety disorder than women of other races and ethnicities).

<sup>15</sup> NAT'L INSTS. OF HEALTH, OFFICE OF RES. ON WOMEN'S HEALTH, WOMEN OF COLOR HEALTH DATA BOOK 121 (Oct. 2014), <https://orwh.od.nih.gov/sites/orwh/files/docs/WoC-Databook-FINAL.pdf> (noting that Black women experience high blood pressure at a higher rate than Latinx or white, non-Hispanic women).

<sup>16</sup> HEATHER SANDSTROM & SANDRA HUERTA, THE NEGATIVE EFFECTS OF INSTABILITY ON CHILD DEVELOPMENT: A RESEARCH SYNTHESIS, URBAN INST. (Sept. 2013), <https://www.urban.org/sites/default/files/publication/32706/412899-The-Negative-Effects-of-Instability-on-Child-Development-A-Research-Synthesis.PDF>; *see also* LINDA GIANNARELLI ET AL., REDUCING CHILD POVERTY IN THE US: COSTS AND IMPACTS OF POLICIES PROPOSED BY THE CHILDREN'S DEFENSE FUND URBAN INST. (Jan. 2015), <https://www.urban.org/sites/default/files/publication/39141/2000086-Reducing-Child-Poverty-in-the-US.pdf>.

<sup>17</sup> MEGAN SANDEL ET AL., COMPOUNDING STRESS: THE TIMING AND DURATION EFFECTS OF HOMELESSNESS ON CHILDREN'S HEALTH, NAT'L HOUSING CONFERENCE & CTR. FOR HOUSING POL'Y, (June 2015), <https://www.issuelab.org/resources/21731/21731.pdf>.

<sup>18</sup> HOUSING AND HEALTH: AN OVERVIEW OF THE LITERATURE, HEALTH AFFAIRS HEALTH POLICY BRIEF (June 7, 2018), <https://www.healthaffairs.org/doi/10.1377/hpb20180313.396577/full/>.



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When access to stable and affordable housing is limited, more women are forced to live in highly segregated and/or substandard housing. Housing segregation widens health disparities by determining access to schools, jobs, and health care.<sup>19</sup> Researchers have found that the availability of resources—such as public transportation to one’s job,<sup>20</sup> grocery stores with nutritious foods,<sup>21</sup> and safe spaces to exercise<sup>22</sup>—are all correlated with improved health outcomes. In contrast, living in an economically disadvantaged, racially isolated neighborhood correlates with a shorter life, higher levels of overall mortality, premature mortality, infant mortality preterm birth, and low birth weight.<sup>23</sup>

Substandard housing conditions also pose a variety of health risks to women and girls. Water leaks, poor ventilation, dirty carpets, and pest infestation are associated with poor health outcomes, most notably those related to asthma.<sup>24</sup> In-home exposure to lead can irreversibly damage the brains and nervous systems of children.<sup>25</sup> Additionally, exposure to high or low temperatures can lead to adverse health events, including cardiovascular events.<sup>26</sup> Women and families with few financial resources are most likely to experience unhealthy housing and are typically least able to remedy them, contributing to disparities in health across socioeconomic groups.<sup>27</sup>

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<sup>19</sup> CHIQUITA COLLINS & DAVID R. WILLIAMS, RACIAL RESIDENTIAL SEGREGATION: A FUNDAMENTAL CAUSE OF RACIAL DISPARITIES IN HEALTH, PUBLIC HEALTH REPORTS 116 (Sept. - Oct. 2001), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1497358/pdf/12042604.pdf>.

<sup>20</sup> METTE AADAHLE ET AL., THE ASSOCIATION BETWEEN ACCESS TO PUBLIC TRANSPORTATION AND SELF-REPORTED ACTIVE COMMUTING, INT. J. ENVIRON. RES. PUBLIC HEALTH (Dec. 2014), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4276637/>.

<sup>21</sup> JUDITH BELL ET AL., ACCESS TO HEALTHY FOOD AND WHY IT MATTERS: A REVIEW OF THE RESEARCH, POLICYLINK (2013), [http://thefoodtrust.org/uploads/media\\_items/access-to-healthy-food.original.pdf](http://thefoodtrust.org/uploads/media_items/access-to-healthy-food.original.pdf).

<sup>22</sup> ROSEANN BONGIOVANNI ET AL., A WALK IN THE PARK: THE INFLUENCE OF URBAN PARKS AND COMMUNITY VIOLENCE ON PHYSICAL ACTIVITY IN CHELSEA, MA, INT. J. ENVIRON. RES. PUBLIC HEALTH (Jan. 2016), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4730488/>.

<sup>23</sup> Living in an economically disadvantaged, racially isolated neighborhood is predictive of a shorter life, particularly for Black residents. Researchers have found racial isolation to be associated with host of health risks for Black residents, including higher levels of overall mortality, premature mortality, infant mortality, along with a range of other poor health outcomes such as preterm birth, and low birth weight. MARIANA C. ARCAJA & ALINA SCHNAKE-MAH, HEALTH IN THE SEGREGATED CITY, NYU FURMAN CENTER, (Oct. 2017), <https://furmancenter.org/research/iri/essay/health-in-the-segregated-city>.

<sup>24</sup> HOUSING AND HEALTH, EXPLORING THE SOCIAL DETERMINANTS OF HEALTH, 2 (May 2011), [https://www.rwjf.org/content/dam/farm/reports/issue\\_briefs/2011/rwjf70451](https://www.rwjf.org/content/dam/farm/reports/issue_briefs/2011/rwjf70451).

<sup>25</sup> LEAD POISONING AND HEALTH, WORLD HEALTH ORGANIZATION (Aug. 23, 2018), <http://www.who.int/mediacentre/factsheets/fs379/en/>.

<sup>26</sup> K. OBAYASHI ET AL., SHORT-TERM EFFECTS OF INSTRUCTION IN HOME HEATING ON INDOOR TEMPERATURE AND BLOOD PRESSURE IN ELDERLY PEOPLE: A RANDOMIZED CONTROLLED TRIAL, J. HYPERTENS. (Nov. 2013),

<https://www.ncbi.nlm.nih.gov/pubmed/26372318>; S. OETELT-PRIGIONE ET AL., GENDER IN CARDIOVASCULAR DISEASES: IMPACT ON CLINICAL MANIFESTATIONS, MANAGEMENT, AND OUTCOMES. EUR. HEART J. (Nov. 3, 2015), <https://www.acc.org/latest-in-cardiology/ten-points-to-remember/2015/11/19/23/53/gender-in-cardiovascular-diseases> (Although rates of hypertension are lower among young women compared to young men, rates are higher in women and the elderly).

<sup>27</sup> P. BRAVEMAN ET AL., HOW DOES HOUSING AFFECT HEALTH?, ROBERT WOOD JOHNSON FOUNDATION (May 1, 2011), <https://www.rwjf.org/en/library/research/2011/05/housing-and-health.html>.

Gutting protections afforded by disparate impact takes away a necessary mechanism to address racial segregation and barriers to safe and stable housing, which will exacerbate already staggering health disparities of women and harm the health of women and girls.

B. The Proposed Rule will negatively impact educational opportunities for women and girls by limiting access to safe and affordable housing and weakening a critical tool to fighting segregation.

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Children who experience housing instability are more likely to have behavioral problems and struggle in school.<sup>28</sup> Being homeless is a traumatic experience that manifests in many ways in the classroom—including ways that are coded as disruptive in the classroom and can trigger a punitive response from educators. As such, housing instability contributes to high suspension rates, school turnover, truancy, and expulsions.<sup>29</sup> Homelessness is associated with an 87% greater likelihood of a child being pushed out of school.<sup>30</sup> In addition, housing instability directly correlates to decreases in academic achievement and retention.<sup>31</sup> Conversely, educational attainment is linked to positive health outcomes and longer lives.<sup>32</sup> Access to housing, therefore, is critical to ensuring the future success and wellbeing of women and girls throughout the country.

We are especially concerned about the impact of the Proposed Rule on educational equity. Housing policy has a significant effect on the opportunity students have to obtain a quality education. Disparate impact liability provides a remedy to address the long-standing discrimination in housing policies and practices that have created segregated neighborhoods and, by extension, segregated schools. Residential segregation persists through factors including the denial of mortgage loans on fair and equal terms to applicants of color, unfair zoning restrictions, and other policies that have a disparate impact on communities of color. The neighborhoods in which children live typically determine the schools they attend, and the more racially

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<sup>28</sup> Housing Instability is Linked to Adverse Childhood Behavior, How Housing Matters (May 9, 2019), <https://howhousingmatters.org/articles/housing-instability-linked-adverse-childhood-behavior/>.

<sup>29</sup> See Mai Abdul Rahman, The Demographic Profile of Black Homeless High School Students Residing in the District of Columbia Shelters and the Factors that Influence their Education, at 55 (Mar. 2014) (Ph.D. dissertation, Howard University), <http://gradworks.umi.com/3639463.pdf> (citations omitted).

<sup>30</sup> Erin S. Ingram et al., Civic Enterprises & Hart Res. Assocs., Hidden in Plain Sight: Homeless Students in America's Public Schools (2016), <http://www.americaspromise.org/report/hidden-plain-sight>.

<sup>31</sup> See Rahman, *supra* note 82.

<sup>32</sup> S. Egarter, P. Braveman et al., Robert Wood Johnson Found., An Examination of the Many Ways in Which Education can Influence Health, Including How Educational Attainment Affects Health Across Generations and the Social and Economic Advantages it Represents (Apr. 1, 2011), <https://www.rwjf.org/en/library/research/2011/05/education-matters-for-health.html>.

segregated our neighborhoods, the more racially segregated our schools. Segregated neighborhoods isolate communities of color in environments that are often poorly resourced and economically disadvantaged. These disparities are mirrored in our schools, resulting in disparate educational opportunity and outcomes for students of color.

We are also deeply concerned about the effort to undermine disparate impact more broadly. Achieving educational equity rests upon the ability to dismantle systems that create and maintain race-based barriers to achievement and wealth. Discrimination in education is powerful and leads to unequal access to fair school discipline, strong teaching, advanced courses, and other critical preparation for success in college, career, and life. Often this discrimination is advanced through facially neutral policies with disparate and unjustified effects. Without the tool of disparate impact liability, ostensibly neutral policies cannot effectively be challenged and barriers to opportunity, both in housing and education, will remain.



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C. The Proposed Rule may affect employment outcomes for women by jeopardizing access to safe and stable housing.

Stable housing is critical to women's workforce participation and economic stability, but the limited supply of safe, quality, affordable housing negatively impacts their ability to find and retain employment.

Housing stability has been linked to an array of positive outcomes for workers and families, including increased earnings,<sup>33</sup> greater ability to obtain and maintain employment,<sup>34</sup> and decreased reliance on public assistance,<sup>35</sup>. Conversely, a lack of stable housing can impede women's ability to obtain employment. Studies have shown that applicants who are unable to provide a permanent address, or who provide a shelter address on employment application forms, are less likely to be hired.<sup>36</sup> Poor credit and inconsistent

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<sup>33</sup> Sard, B. and Waller, M. (April 2002). Housing Strategies to Strengthen Welfare Policy and Support Working Families. Retrieved 31 August 2017, from <https://www.brookings.edu/wp-content/uploads/2016/06/sardwallerhousingwelfare.pdf>; YWCA Seattle | King | Snohomish (2017). Employment and Housing Stability Program. Retrieved 31 August 2017, from <https://www.ywcaworks.org/page.aspx?pid=480>.

<sup>34</sup> YWCA Seattle | King | Snohomish, supra note ii; Montgomery County Ohio. Income and Stability: Homelessness. Retrieved 31 August 2017, from [http://www.mcoho.org/departments/human\\_services\\_planning\\_and\\_development/Homelessness\\_Issue\\_for\\_Income\\_and\\_Stability\\_Work\\_Group.pdf](http://www.mcoho.org/departments/human_services_planning_and_development/Homelessness_Issue_for_Income_and_Stability_Work_Group.pdf).

<sup>35</sup> Sard, B. and Waller, M., supra note 33.

<sup>36</sup> Golabek-Goldma, S. (April 2017). Ban the Address: Combating Employment Discrimination Against the Homeless. The Yale Law Journal 126(6), 1600-1971. Retrieved 22 August 2017 from <http://www.yalelawjournal.org/note/ban-the-address-combating-employment-discrimination-against-the-homeless>.



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employment history are particularly likely to act as an impediment: predatory lending and practices may result in tarnished credit histories, which can later serve as a barrier for individuals seeking employment. Credit and background checks are increasingly common in employment and can effectively bar individuals from job opportunities. According to one report, 25% of unemployed respondents said that a potential employer requested a credit check on the job application.<sup>37</sup> Consequently, 10% of unemployed respondents were notified they would not be hired due to information in their credit report.<sup>38</sup> Housing instability, compounded by barriers to securing stable employment, often serves to aggravate and reproduce conditions of poverty for low-income families and individuals. Thus, access to safe, affordable housing is critical to advancing employment and economic security for women.

In their search for safe and affordable housing, working families often locate far from their place of work, dramatically increasing their transportation costs and commute times. As is the case for other workers, being forced to move or struggling to find safe, quality housing in close proximity to one's employer can consume women's time and cause them to miss work; exhaust their thought processes and cause them to make mistakes on the job; overwhelm them with stress and cause them to act unprofessionally in the office; or result in moving farther away from a worksite, increasing the likelihood of tardiness and absenteeism, all of which increase the likelihood of job loss.<sup>39</sup> Further, eviction and involuntary displacement due to unjust housing policies also often inhibit one's ability to be present during scheduled work hours and may lead to job loss and prolonged unemployment.<sup>40</sup> This is especially true for low-wage workers, who are more likely to be women and less likely to have access to important support systems, like paid leave or predictable or flexible work schedules.<sup>41</sup> Finally, for some households, the only available affordable housing may be of poor quality, inadequate for a family's needs, or located in neighborhoods with high levels of crime, violence, and unemployment.<sup>42</sup>

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<sup>37</sup> Amy Traub, *Discredited: How Employment Credit Checks Keep Qualified Workers Out of a Job* (Feb. 3, 2014) <https://www.demos.org/research/discredited-how-employment-credit-checks-keep-qualified-workers-out-job#Conclusion:-Employment-credit-checks-illegitimately-obstruct-access-to-jobs>

<sup>38</sup> *Id.*

<sup>39</sup> Desmond, M. and Gershenson, C. (2016). Housing and Employment Insecurity Among the Working Poor. *Social Problems*, 0, 1-22. Retrieved 22 August 2017, from <http://scholar.harvard.edu/files/mdesmond/files/desmondgershenson.sp2016.pdf?m=1452638824>.

<sup>40</sup> Matthew Desmond & Carl Gershenson, *Housing and Employment Insecurity among the Working Poor*, 2016 *Social Problems* Advance Access 0, 1-22, <https://scholar.harvard.edu/files/mdesmond/files/desmondgershenson.sp2016.pdf?m=1452638824>.

<sup>41</sup> *Id.*

<sup>42</sup> Quets, G, Duggan, A., and Cooper, G. (January 2016). A Gender Lens on Affordable Housing, Retrieved 22 August 2017, from [https://www.icrw.org/wp-content/uploads/2016/11/gender\\_lens\\_on\\_affordable\\_housing\\_by\\_regender\\_final-1.pdf](https://www.icrw.org/wp-content/uploads/2016/11/gender_lens_on_affordable_housing_by_regender_final-1.pdf).

Women’s economic advancement can thus be further hindered by their fear of crime and violence and reluctance to attend job-training programs, education classes, or other activities that are held at night in unsafe neighborhoods.<sup>43</sup>

## II. The Proposed Rule will jeopardize housing access for women and girls of color and undermine HUD’s mission to affirmatively further fair housing.

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Weakening protections against discrimination in housing will disproportionately harm women of color. Women of color—especially Black and Latinx women—face greater risks of eviction,<sup>44</sup> homelessness,<sup>45</sup> and housing discrimination.<sup>46</sup> A 2012 study by the U.S. Department of Housing and Urban Development found that landlords and real estate agents recommend and show fewer available apartments and homes to Black, Latinx, and Asian American and Pacific Islander (AAPI) individuals and families, compared to equally qualified white applicants and families.<sup>47</sup> That same study found that individuals at the lower end of the economic scale were often steered toward neighborhoods with higher rates of poverty and crime and lower-quality schools, even if options were available in other neighborhoods, regardless of their ability to pay.<sup>48</sup>

Additionally, landlord discrimination against Section 8 voucher holders often has an overwhelming impact on people of color. Section 8 private landlords often discriminate against women, women of color, and single mothers based on harmful and inaccurate stereotypes (e.g., that they are “lazy” or are poor housekeepers; have unsupervised, destructive children; will not pay their utilities on time; will break their leases; and have male friends or relatives who are involved in physical altercations or illegal activities).<sup>49, 50</sup> Some property

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<sup>43</sup> Id.

<sup>44</sup> Catherine Lizette Gonzalez, *Study: Women of Color Living in Poverty Face Highest Risk of Eviction*, Colorlines (Apr. 9, 2018), <https://www.colorlines.com/articles/study-women-color-living-poverty-face-highest-risk-eviction>; see also Matthew Desmond, *Poor Black Women Are Evicted at Alarming Rates, Setting Off a Chain of Hardship*, MacArthur Foundation: How Housing Matters (Mar. 2014), [https://www.macfound.org/media/files/HHM\\_-\\_Poor\\_Black\\_Women\\_Are\\_Evicted\\_at\\_Alarming\\_Rates.pdf](https://www.macfound.org/media/files/HHM_-_Poor_Black_Women_Are_Evicted_at_Alarming_Rates.pdf).

<sup>45</sup> National Alliance to End Homelessness, *Racial Disparities in Homelessness in the United States* (June 6, 2018), <https://endhomelessness.org/resource/racial-disparities-homelessness-united-states/>.

<sup>46</sup> Laura Harvey, *Why equal housing for women will continue to be a ‘tough road’*, NBC News: Know Your Value (Aug. 1, 2019), <https://www.nbcnews.com/know-your-value/feature/why-equal-housing-women-will-continue-be-tough-road-ncna1038266>; see also National Fair Housing Alliance, *The Case For Fair Housing: 2017 Fair Housing Trends Report*, <https://nationalfairhousing.org/wp-content/uploads/2017/07/TRENDS-REPORT-2017-FINAL.pdf>.

<sup>47</sup> U.S. Department of Housing and Urban Development. (June 2013). *Housing Discrimination Against Racial and Ethnic Minorities 2012 Executive Summary*. Retrieved 24 August 2017, from [http://www.huduser.gov/portal/Publications/pdf/HUD-514\\_HDS2012\\_execsumm.pdf](http://www.huduser.gov/portal/Publications/pdf/HUD-514_HDS2012_execsumm.pdf).

<sup>48</sup> Id.

<sup>49</sup> A Gender Lens on Affordable Housing, *supra* note 42.

<sup>50</sup> International Women’s Human Rights Clinic, City University of New York School of Law. (March 2013). *A Gendered Perspective on the Right to Housing in the United States*. Retrieved 24 August 2017, from



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owners turn away any applicant who presents a Section 8 Housing Choice Voucher.<sup>51</sup> According to Washington D.C.'s Equal Rights Center, 36 cases of housing discrimination that were reported were source of income cases.<sup>52</sup> When landlords do not accept housing vouchers, it often can foster and preserve racial segregation and divide housing across racial lines.

Moreover, people of color households are more likely to bear a severe housing cost burden than White households. For instance, in 2012, only 18 percent of White households suffered a severe housing cost burden compared to 25 percent of Black and Latinx households and 28 percent of Asian and Pacific Islander households.<sup>53</sup> Lower wages mean that many women of color are more likely to face housing cost burdens. On average, Black women are paid just 62 cents, Native Hawaiian and other Pacific Islander women just 60 cents, Native American / Alaska Native women just 58 cents, Latinas just 54 cents, and Asian women 90 cents per every dollar earned by a White male for the same work.<sup>54</sup> Based on median incomes, collectively, that is \$398 less per week for Black women, \$424 less per week for Native Hawaiian and other Pacific Islander women, \$448 less per week for Native American / Alaska Native women, \$484 less per week for Latinas, and \$107 less per week for Asian women compared to White men.<sup>55</sup>

Housing costs burdens are acutely felt by many families of color who fall at the intersection between these racial and gender dynamics. More than four million Black families with children have a female head of household – most often a mother, grandmother, or other relative who is her family's only source of financial support.<sup>56</sup> The same is true for nearly three million Latinx families.<sup>57</sup> As a result, Black and Latinx residents are less likely to live in safe and adequate housing than white, non-Hispanic people, are four times more likely to live in high-poverty areas than white public housing residents,<sup>58</sup> and

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<http://www1.cuny.edu/mu/law/files/2013/03/IWHR-Gendered-Housing-Perspective.pdf>.

<sup>51</sup> Id.

<sup>52</sup> <https://wamu.org/story/18/04/11/housing-discrimination-rife-d-c-region-50-years-fair-housing-became-law/>

<sup>53</sup> National Low Income Housing Coalition. (February 2013). America's Affordable Housing Shortage, and How to End It. Retrieved 22 August 2017, from [http://nlihc.org/sites/default/files/HS\\_3-1.pdf](http://nlihc.org/sites/default/files/HS_3-1.pdf).

<sup>54</sup> National Partnership for Women and Families. (September 2015). Women of Color Need a Paid Sick Day Standard. Retrieved 20 July 2017, from <http://www.nationalpartnership.org/research-library/work-family/psd/women-of-color-need-a-paid-sick-days-standard.pdf>.

<sup>55</sup> National Association of University Women. The Truth About the Gender Wage Gap. (Fall 2016). Retrieved 16 March 2017 from <http://www.aauw.org/research/the-simple-truth-about-the-gender-pay-gap/>.

<sup>56</sup> National Partnership for Women and Families. (September 2015). Women of Color Need A Paid Sick Days Standard. Retrieved 10 January 2017, from <http://www.nationalpartnership.org/research-library/work-family/psd/women-of-color-need-a-paid-sick-days-standard.pdf>.

<sup>57</sup> Id.

<sup>58</sup> *See id.*

more women of color end up homeless in comparison to their white, non-Hispanic counterparts.<sup>59</sup>

### III. The Proposed Rule will weaken protections for survivors of gender-based violence – the vast majority of whom are women.

Domestic violence is a primary cause of homelessness for women and children in the United States.<sup>60</sup> Over 90% of homeless women report having experienced domestic abuse or sexual violence in their lives, while over 50% of homeless women report that domestic violence was the immediate cause of their homelessness.<sup>61</sup> Access to housing is absolutely critical for survivors, as lack of safe and affordable housing options is regularly reported as a primary barrier to escaping abuse.<sup>62</sup> Homelessness can also be a precursor to additional violence, because a survivor is at the greatest risk of violence when separating from an abusive partner.<sup>63</sup>

It is not uncommon for survivors to be forced to relocate for safety reasons, to be unable to pay bills after paying rent, or to face eviction because of their abuse or the attendant lack of resources. Thirty-eight percent of domestic violence survivors will become homeless at some point in their lives.<sup>64</sup> For instance, a study of survivors found that 88% had experienced employment sabotage.<sup>65</sup> When abusive partners sabotage survivors' employment – for example, by manipulating access to child care and transportation, interfering with their work, or increasing abuse in response to their employment – survivors face even greater challenges in securing and maintaining safe housing.<sup>66</sup> In addition, the rate at which women return to

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<sup>59</sup> <https://www.nbcnews.com/news/asian-america/advocates-worry-housing-issues-may-lead-asian-american-census-undercount-n900381>

<sup>60</sup> See ACLU Women's Rights Project, *Domestic Violence and Homelessness* (2006), <http://www.aclu.org/pdfs/dvhomelessness032106.pdf>; see also U.S. Conference of Mayors, *A Status Report on Hunger and Homelessness in America's Cities: A 25-City Survey* (Dec. 2014), <https://www2.cortland.edu/dotAsset/655b9350-995e-4aae-acd3-298325093c34.pdf>.

<sup>61</sup> Monica McLaughlin & Debbie Fox, National Network to End Domestic Violence, *Housing Needs of Victims of Domestic Violence, Sexual Assault, Dating Violence, and Stalking* (2019), [https://nlihc.org/sites/default/files/AG-2019/06-02\\_Housing-Needs-Domestic-Violence.pdf](https://nlihc.org/sites/default/files/AG-2019/06-02_Housing-Needs-Domestic-Violence.pdf).

<sup>62</sup> See Charlene K. Baker et al., *Domestic violence, housing instability, and homelessness: A review of housing policies and program practices for meeting the needs of survivors*, 15 *Aggression & Violent Behavior* 430, 430–39 (2010), [https://b3cdn.net/naeh/416990124d53c2f67d\\_72m6b5uib.pdf](https://b3cdn.net/naeh/416990124d53c2f67d_72m6b5uib.pdf).

<sup>63</sup> See *id.* at 431.

<sup>64</sup> Baker, C., Cook, S., & Norris, F. (2003). *Domestic Violence and Housing Problems: A Contextual Analysis of Women's Help-Seeking, Received Informal Support, and Formal System Response*. *Violence Against Women* 9(7), 754-783.

<sup>65</sup> Postmus, Judy L., Sara-Beth Plummer, and Amanda M. Stylianou. 2015. "Measuring Economic Abuse in the Lives of Survivors: Revisiting the Scale of Economic Abuse."

<sup>66</sup> DuMonthier, A. and Dusenbery, M. (October 2016). *Intersections of Domestic Violence and Economic Security*. Retrieved 24 August 2017, from <https://iwpr.org/wp-content/uploads/2017/01/B362-Domestic-Violence-and-Economic-Security-1.pdf>.

abusive partners increases during times of reduced housing affordability,<sup>67</sup> thereby jeopardizing their safety.

Around the country, 90 YWCAs (44%) provide more than 25,000 survivors of gender-based violence with access to emergency shelter, transitional housing and complementary services each year. For instance, YWCA St. Paul in Minnesota provided J’Nae with housing to help her get back her feet:

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Facing mounting violence and threats, J’Nae didn’t see many options. “I had to leave,” she explains, “And that’s how I became homeless.” For the safety of herself and her children, J’Nae took refuge at a local shelter where she began the work of building a new life for her family. While living in shelter, she found work as a pharmacy technician. Soon after, she enrolled in the YWCA’s Rapid Re-Housing program. Working with her case manager, she found affordable housing and received rental assistance. The infusion of short-term help and resources was exactly what she needed to get back on her feet. Today J’Nae and her children are happy and healthy. With support from the YWCA and her family, she’s built a good foundation and is determined to keep striving. Already the first in her family to earn a college degree, J’Nae plans to continue her education by attending pharmacy school. To keep herself focused on achieving her goal she has already changed her email signature to read, “future Doctor of Pharmacy”.

And YWCA Utah provided wrap-around housing services to Candace:

After ten years of escalating abuse, Candace found her way to the safety of YWCA Utah’s Women in Jeopardy shelter. She had just suffered an especially violent incident of physical abuse, perpetrated in front of their children. She was able to bring only one of her two children with her as her husband was keeping the other from her. With the welfare of her children and her pregnancy foremost in her mind, she summoned the strength to actively take advantage of all the resources YWCA could offer. With the guidance and assistance of her YWCA case manager and advocates, she:

- Pursued free legal advocacy, was reunited with the child her husband had been withholding, and began the process of obtaining a divorce and full custody of all the children.

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<sup>67</sup> Clough, Amber, Jessica Draughon, Veronica Njie-Carr, Chiquita Rollins, and Nancy Glass. 2013. “Having Housing Made Everything Else Possible: Affordable, Safe and Stable Housing for Women Survivors of Violence.” *Qualitative Social Work* 13 (5): 671–688.



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- Applied for DWS assistance to obtain critical medical care for her high-risk pregnancy.
- Enrolled herself and her children in therapy to help them recover from the trauma and emotional harm of the abuse they had suffered.
- Ensured that her oldest child received academic support and enriching experiences through the YWCA's After School Program.
- Maintained her full-time employment with the support of a safe and stable living environment and the YWCA's free drop-in child care.
- Applied and was approved for Section 8 housing and Rapid Re-Housing program assistance and moved her family to an affordable new apartment.

HUD has repeatedly recognized housing discrimination against domestic violence survivors as a significant fair housing issue,<sup>68</sup> as women account for over 80% of domestic violence survivors.<sup>69</sup> The harmful effects of housing instability are compounded for women of color, who face both increased barriers to housing and disproportionate rates of violence.<sup>70</sup> Housing discrimination against domestic violence survivors also implicates other protected classes. The rate of violence against women with disabilities, for example, is three times higher than the rate of violence against women without disabilities.<sup>71</sup> Additionally, LGBTQ+ individuals experience high rates of domestic violence, while 71% of survivors reported that they were denied shelter because of barriers related to gender identity.<sup>72</sup>

Advocates have relied on HUD's existing Disparate Impact Rule to protect survivors against unjust policies and practices that penalize survivors due to the abuse they've experienced, such as:

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<sup>68</sup> See, e.g., U.S. Dep't of Hous. & Urban Dev., *Assessing Claims of Housing Discrimination against Victims of Domestic Violence under the Fair Housing Act (FHA) and the Violence Against Women Act (VAWA)* (Feb. 9, 2011), <https://www.hud.gov/sites/documents/FHEODOMESTICVIOLGUIDENG.PDF>.

<sup>69</sup> U.S. Dep't of Justice, Office of Justice Programs, *Bureau of Justice Statistics Crime Data Brief: Intimate Partner Violence, 1993-2001* (Feb. 2003).

<sup>70</sup> See McLaughlin & Fox, *supra* note 2, at 1; see also Carolyn M. West & Kalimah Johnson, National Online Resource Ctr. on Violence Against Women, *Sexual Violence in the Lives of African American Women* (Mar. 2013), [https://yawnet.org/sites/default/files/materials/files/2016-09/AR\\_SVAAWomenRevised.pdf](https://yawnet.org/sites/default/files/materials/files/2016-09/AR_SVAAWomenRevised.pdf); Smith, S.G., et al., *National Intimate Partner and Sexual Violence Survey (NISVS): 2010-2012 state report* (Apr. 2017), <https://www.cdc.gov/violenceprevention/pdf/NISVS-StateReportBook.pdf>.

<sup>71</sup> American Civil Liberties Union et al., *Domestic Violence & Sexual Assault in the United States: A Human Rights Based Approach & Practice Guide* (Aug. 2014), [https://www.law.columbia.edu/sites/default/files/microsites/human-rights-institute/files/dv\\_sa\\_hr\\_guide\\_reduce.pdf](https://www.law.columbia.edu/sites/default/files/microsites/human-rights-institute/files/dv_sa_hr_guide_reduce.pdf).

<sup>72</sup> National Coalition of Anti-Violence Programs, *Lesbian, Gay, Bisexual, Transgender, Queer, and HIV-Affected Intimate Partner Violence in 2015* (2016), [http://avp.org/wp-content/uploads/2017/04/2015\\_ncavp\\_lgbtqipvreport.pdf](http://avp.org/wp-content/uploads/2017/04/2015_ncavp_lgbtqipvreport.pdf).



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- **Emergency Transfers.** Domestic violence survivors sometimes face obstacles from property owners and housing providers when they request emergency transfers within housing units to escape their abusers. Advocates have relied on the existing Disparate Impact Rule to challenge the failure to grant emergency transfer requests under the Fair Housing Act, often resulting in the adoption of new policies that ensure that survivors who are in danger may request emergency transfers.[10] HUD’s Proposed Rule will weaken this enforcement tool, thereby jeopardizing housing for survivors that need it the most.
- **Crime-Free Policies.** Some landlords and housing providers evict or threaten to evict domestic violence survivors based on “one-strike” or “crime-free” policies that punish survivors when they experienced abuse in their home.[11] The existing Disparate Impact Rule is critical for protecting survivors from further victimization due to the loss of their home.[12]
- **Nuisance Ordinances.** In many jurisdictions, nuisance ordinances coerce landlords to evict or threaten to evict households based on calls for police assistance or emergency services, disproportionately harming domestic violence victims. Research has demonstrated that nuisance and crime-free ordinances also disproportionately impact communities of color, low-income households, and people with disabilities.[13] In 2016, HUD issued guidance on challenging the devastating consequences of nuisance ordinances on domestic violence survivors and other vulnerable and marginalized communities; using disparate impact to challenge such harmful ordinances was an important part of that guidance.[14]

Already, inconsistent enforcement of protections afforded to survivors through the Violence Against Women Act (VAWA) by public housing authorities and Section 8 PBRAs—including protection from eviction, from denial of housing, and from being required to show proof of survivor status—exacerbates housing instability for survivors.<sup>73</sup> If HUD finalizes its Proposed Rule, advocates will no longer be able to rely on the Disparate Impact Rule to protect survivors and their housing. The proposed five-element prima facie case and options for rebuttal would create substantial additional hurdles for

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<sup>73</sup> National Law Center on Homelessness and Poverty. (April 2009). Insult to Injury: Violations of the Violence Against Women Act. Retrived 24 August 2017, from <https://www.nlchp.org/documents/Insult-to-Injury-VAWA>.

survivors and make it significantly harder to challenge these unjust policies and practices. HUD's Proposed Rule, therefore, will undermine the vital role that the FHA has served in protecting fair housing for historically marginalized communities—and particularly for survivors of domestic violence. Consequently, YWCA USA urges HUD to withdraw this proposed rule and instead focus on its statutory duty to affirmatively further fair housing, including for survivors of gender-based violence.

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#### IV. Conclusion

HUD's Proposed Rule would significantly undermine the protections against housing discrimination for women, children, or families offered by the Disparate Impact Rule. This Proposed Rule directly contradicts HUD's mission to affirmatively further fair housing and prevent discrimination against women. Furthermore, the standard outlined in the Proposed Rule upends decades of fair housing case law and HUD's enforcement.

Women of all backgrounds—particularly those facing additional barriers due to race, disability, gender identity, sexual orientation, and immigration status—should feel protected under the Fair Housing Act. Property owners, housing providers, and local governments are increasingly adopting discriminatory policies that not only bar women from accessing housing, but also evict them from their homes. **YWCA USA urges HUD to immediately withdraw the Proposed Rule and instead advance housing policies that strengthen – not undermine – the Disparate Impact Rule that allows for stable, safe, and affordable housing for all.**

YWCA appreciates the opportunity to share our views with you. If you have any questions, please contact YWCA USA Vice President of Public Policy and Advocacy, Catherine Beane, at [cbeane@ywca.org](mailto:cbeane@ywca.org) or 202-835-2354.

Sincerely,



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