



**CONSORTIUM FOR CITIZENS
WITH DISABILITIES**

January 17, 2012

Via Electronic Submission & Mail

Regulations Division
Office of General Counsel, Room 10276
Department of Housing and Urban Development (HUD)
451 Seventh Street, SW
Washington, DC 20410-0500
www.regulations.gov

**Re: Docket No. FR-5508-P-01; *Implementation of the Fair Housing Act's
Discriminatory Effects Standard***

Dear Rules Docket Clerk:

On behalf of the undersigned members of the Consortium for Citizens with Disabilities (CCD) Housing Task Force, we write in strong support of the HUD's proposed regulation implementing the Fair Housing Act's discriminatory effects standard. The CCD Housing Task Force is a coalition of national organizations which advocates on behalf of the housing needs of people with a variety of disabilities, including mental illness, sensory disabilities, physical disabilities, developmental disabilities, cognitive disabilities, and intellectual disabilities. HUD's proposed regulation is an important and necessary step in ensuring that the nation's housing is available to all, regardless of protected class status.

The breadth of complaints filed with HUD's Office of Fair Housing and Equal Opportunity and litigation relying on disparate impact claims brought by private enforcers of the Act illustrates the importance of such claims to achieving the "policy of the United States to provide within constitutional limitations, for fair housing throughout the United States." 42 U.S.C. 3601. Examples are numerous and far-reaching and include the following rules, policies, and actions that contribute to discrimination on the basis of disability:

- Apparently neutral rules that unintentionally result in less favorable treatment of one individual or a group because of disability, or because of a particular type of disability, or because of severity of disability. Examples include "capable of independent living" admission criteria that are so subjective that they are applied inconsistently by different staff in the same organization and result in both illegal denials of housing and charges of discrimination against housing providers.

- Apparently neutral rules that are not based on disability but that nonetheless result in disparate, adverse outcomes for individuals with disabilities. For example, a housing provider who refuses to process rental applications without drivers' licenses is making housing unavailable to individuals with visual disabilities and others whose disabilities prevent them from acquiring drivers' licenses. Similar policies requiring that rental applicants earn three times the rent, refuse to process applications from applicants with co-signors, or from applicants who are not employed all result in disparate, adverse outcomes for individuals with disabilities. Another example are policies against assigning parking spaces to tenants, which place a particular hardship on tenants with disabilities who need to be able to count on an available accessible spot close to their unit;
- Zoning ordinances that permit only households whose members are related by blood or marriage to occupy homes in single family neighborhoods but not individuals with mental and physical disabilities who choose to share a home and create a household;
- Zoning and land-use policies and decisions which restrict construction of multifamily housing to a largely minority area or block or limit development of affordable housing in communities of opportunity, resulting in both discriminatory denial of housing to minorities, the continued institutionalization of individuals with disabilities who are ready to move back to their communities, and the perpetuation and/or exacerbation of residential segregation;
- Residency requirements and other admissions procedures imposed by public housing agencies or housing management firms in predominantly white and high opportunity communities which discriminate against minority persons, with and without disabilities who are not living in such communities including, individuals with disabilities living unnecessarily and at great cost to the State, in institutions, nursing homes, and other congregate; and
- Policies requiring that tenants walk unassisted or hear or speak or speak English or be United States citizens.

In each of these contexts, the discriminatory effects standard has proven to be a valuable tool in assessing when policies have an adverse impact on members of a protected class, and whether these policies are necessary to achieve a legitimate goal that cannot be achieved through less discriminatory means. This type of assessment is an essential part of our fair housing enforcement system, and the proposed rule will ensure that the standard continues to be applied consistently across the country.

An often overlooked benefit of the disparate effects test is its ability to give HUD and private Fair Housing advocates the tools to reveal the effects of racism, poverty, disability discrimination, and adverse environmental conditions on the health and well-being of individuals protected by the law. The disparate impact analysis is critical to environmental justice investigations and it has led to corrective action through education as well as litigation.

As the Surgeon General reported,

Ethnic and racial minorities in the United States face a social and economic environment of inequality that includes greater exposure to racism, discrimination, violence, and poverty. Living in poverty has the most measurable effect on the rates of mental illness. People in the lowest strata of income, education, and occupation (known as socioeconomic status) are about two to three times more likely than those in the highest strata to have a mental disorder.

Mental Health: Culture, Race, and Ethnicity: A Supplement to Mental Health: A Report of the Surgeon General

<http://www.surgeongeneral.gov/library/mentalhealth/cre/execsummary-6.html>.

While no government agency would purposely place any residents in danger, competing interests sometimes lead to harmful and discriminatory results that both result in injuries, disabilities and the exacerbation of the symptoms of illnesses and disabilities. The disparate impact rule will continue to be an important tool for both avoiding and correcting such outcomes.

We applaud HUD's proposal to provide a long needed regulation on the propriety of disparate impact claims under the Fair Housing Act and to clarify the burden of proof under this standard. This regulation will foster the goals of the Fair Housing Act and benefit people with disabilities. It provides a national standard for courts, housing providers, municipalities and the financial and insurance industries. These issues are now being considered by the Supreme Court and we urge HUD to issue the final rule as soon as possible to provide the Court definitive agency interpretation concerning these issues.

Very truly yours,

The Arc of the United States
Bazelon Center for Mental Health Law
National Alliance on Mental Illness
National Association of Councils on Developmental Disabilities
National Disability Rights Network
Paralyzed Veterans of America
VetsFirst, a program of United Spinal Association

The CCD Housing Task Force is joined in these comments by:

National Low Income Housing Coalition