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September 16, 2019

The Honorable Benjamin S. Carson
Secretary
U.S. Department of Housing and Urban Development
451 7th Street S.W.
Washington, D.C. 20410

Dear Secretary Carson,

I am deeply concerned by the United States Department of Housing and Urban Development's proposed rule change on the Fair Housing Act's (FHA) disparate impact standard, which would severely impact countless hardworking families in my district (NY-19) and around the nation.¹ If implemented, the rule would make it significantly harder for victims of housing discrimination to successfully bring complaints under the FHA, which is intended to protect those who cannot protect themselves against discriminatory housing practices.

Last week, as part of my Affordable Housing themed in-district work week, I met with several community leaders and stakeholders, and toured numerous communities to hear directly from residents about their experiences living in low-income housing and its impact on their families. Every day that week, I heard gut-wrenching stories of how struggling families are discriminated against, and treated unjustly, simply because they cannot afford rent and make ends meet. Even with two or more jobs, families are drastically disadvantaged as rent and home prices have risen at twice the rate of wage growth over the past five years and need further support and assistance from their government.²

From housing policies favoring homeowners over renters, a lack of federal dollars being utilized for housing programs, and an increasing number of Americans experiencing homelessness, much reform within housing is needed. However, the Department's proposed rule is not a solution, but rather adds to the problem by placing barriers on those looking to secure good, affordable housing. In fact, in 2015, the Supreme Court recognized these barriers and found that the FHA "must play an important part in avoiding the... grim prophecy that '[o]ur Nation is moving toward two societies, one black, one white-separate and unequal.'"³ In that same decision, the Court held

¹ Docket No. FR-6111-P-02; RIN 2529-AA98.

² <https://www.curbed.com/2019/5/15/18617763/affordable-housing-policy-rent-real-estate-apartment>

³ *Texas Department of Housing and Community Affairs v. The Inclusive Communities Project, Inc.*, 135 S. Ct. 2507 (2015).

disparate impact claims legally cognizable under the FHA, protecting victims' ability to make discrimination complaints.⁴

As you know, the Department's proposed rule amends the standard for disparate impact claims, requiring a five-step *prima facie* showing by the plaintiff and removes the burden shift to the defendant. By shifting the entire burden onto plaintiffs, the proposed rule would essentially force them to prove that a policy is discriminatory and unnecessary before having the opportunity to gather evidence.

The proposed rule would also create special defenses for lenders and landlords who rely on algorithmic models based on industry-standard practice or from third-party vendors to make their lending and renting decisions. This would open a loophole for lenders and landlords to escape liability for discrimination, create a backdoor to bias against protected groups, and disincentivize banks and vendors from studying the discriminatory effects of their models.

Each year it is estimated that four million acts of housing discrimination occur in the American rental market alone.⁵ However, only about 28,000 discrimination complaints are filed annually.⁶ At a time when acts of housing discrimination are drastically underreported, the Department should not implement a rule that would deter wronged Americans from filing complaints.

Over the current sixty-day comment period, as you hear concerns over the Department's proposed rule, I hope that you consider its impact on the everyday, hardworking American who seeks to own their first home and achieve the American Dream. Because of the dangers outlined above, I strongly urge the Department to reconsider the proposed rule so that victims of housing discrimination are not denied the civil rights protections entitled to them under the FHA.

Sincerely,



Antonio Delgado
Member of Congress

⁴ *Id.*

⁵ <https://nationalfairhousing.org/wp-content/uploads/2017/04/TRENDS-REPORT-4-19-17-FINAL-2.pdf>; *see also* <https://www.defendcivilrights.org/faqs>.

⁶ <https://nationalfairhousing.org/wp-content/uploads/2017/04/TRENDS-REPORT-4-19-17-FINAL-2.pdf>.