

Congress of the United States
Washington, DC 20515

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,

We, the undersigned Members of Congress, write to you in response to the U.S. Department of Housing and Urban Development's ("HUD") notice ("Notice") concerning its interpretation of the disparate impact standard. We strongly oppose the proposed changes to HUD's application of the disparate impact rule.

In 1968, Congress passed the Fair Housing Act, which sought to ensure fair housing and end discriminatory lending. One of the most effective methods for enforcing the Fair Housing Act is the existing disparate impact rule—which was instituted in 2013 and enshrined decades of jurisprudence—and has served as an effective tool in tackling the structural inequalities that persist in housing and financial markets.

Throughout the state of Illinois, a well-documented pattern of discriminatory practices has been demonstrated, whether through multi-family housing providers who prevent families with children from renting due to restrictive occupancy policies allowing less than two persons per bedroom; landlords that refuse to rent to African American or Latinx families with Housing Choice Voucher subsidies (where over 90% of the certificate holders in the Chicago area are Black or Latinx); housing providers refusing to allow African American males to apply for a rental unit due to their criminal arrest record; or mortgage lending practices that result in African American and Latinx applicants paying higher fees and interest rates than White applicants to obtain loans. Further, local housing advocates across our state have witnessed instances in which major lending institutions have failed to market and maintain properties in communities of color in the same manner that they do in predominantly White communities.

The disparate impact rule has also been integral in protecting women who are victims of domestic violence from being discriminated against. Some landlords and municipalities in Illinois have "zero-tolerance" policies that mandate eviction for entire households when a violent act within the unit is reported to law enforcement authorities. These policies tend to have a disproportionate

impact on women who call local authorities in response to episodes of domestic violence against them and their children.

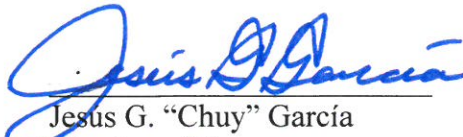
The current disparate impact rule has also been shown to give families with children greater opportunity to find accommodative units; allowed for proper enforcement of protections meant to guard against the racially unjust denial of Housing Choice Voucher subsidies; and allowed families in the south and greater Chicago metropolitan housing and mortgage lending markets the chance to correct significant racial disparities in mortgage lending and foreclosures that occurred following the 2008 financial crisis.

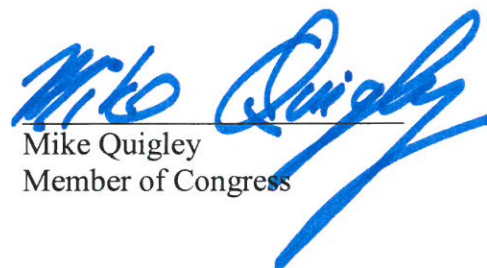
HUD's proposed rule would weaken the disparate impact standard and undermine all of this vital progress. By proposing safe harbor defenses for housing market actors that use algorithms in housing and credit application decisions or the failure to collect demographic data about their business and product lines, HUD is positioning the housing market to be rife with discrimination on an order of magnitude not unlike the government-sponsored policies that baked residential segregation into the American landscape prior to the passage of the Fair Housing Act. By eliminating the burden-shifting framework expressly supported by decades of legal precedent and replacing it with a five-prong standard that makes it impossible for plaintiffs to establish a *prima facie* case, HUD is flagrantly abandoning a long-held standard for combatting illegal discrimination. And by proposing immunity for practices or policies that are more profitable than reasonable non-discriminatory alternatives and defenses regarding practices that involve the use of statistics or algorithms, HUD has shown that it is more concerned with the interests of market actors than with those of everyday Americans.

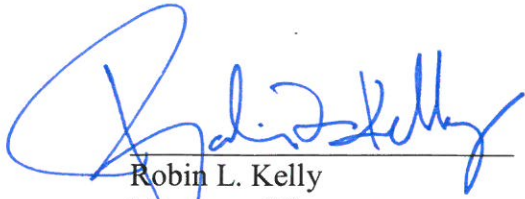
Disparate Impact Liability is used to challenge policies and practices that put up discriminatory barriers that needlessly prevent *all* Americans from accessing safe, affordable, and sustainable housing options. HUD should focus on vigorously ensuring that housing market actors comply with the Fair Housing Act and meet the standards set forth by the existing disparate impact rule. The existing disparate impact rule allows victims of all types of systemic discrimination to seek recourse and change policies and practices that limit their housing opportunities or put them in danger.

We urge HUD to reconsider this rulemaking and act to protect the clear intent of Congress and the courts in interpreting the Fair Housing Act. Thank you for the opportunity to comment.

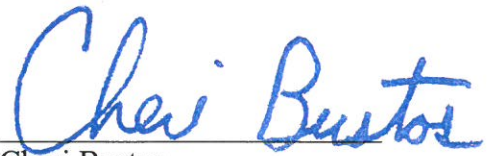
Sincerely,


Jesus G. "Chuy" García
Member of Congress

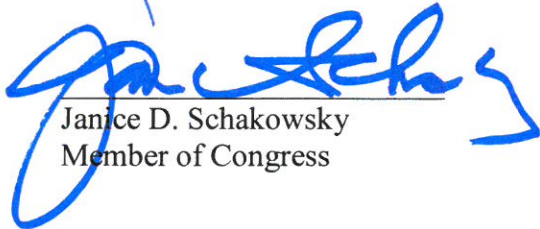

Mike Quigley
Member of Congress



Robin L. Kelly
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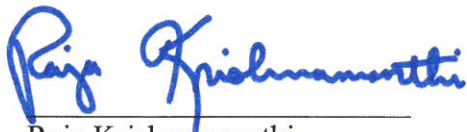
Cheri Bustos
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Janice D. Schakowsky
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Bill Foster
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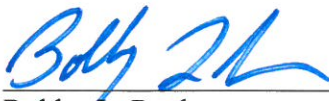
Sean Casten
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