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**SUBMITTED VIA WWW.REGULATIONS.GOV**

Sasha Samberg-Champion  
Deputy General Counsel for Enforcement and Fair Housing  
Department of Housing and Urban Development  
451 7th Street SW, Room 10110  
Washington, DC 20410

**Re: Comments in Response to HUD’s Reinstatement of Discriminatory Effects Standard Proposed Rule, HUD Docket No. FR-6251-P-01**

Dear Mr. Samberg-Champion:

The below 46 organizations committed to gender justice submit this comment in support of the Department of Housing and Urban Development’s (HUD) Reinstatement of Discriminatory Effects Standard Proposed Rule, which was published in the Federal Register on June 25, 2021 (HUD Docket No. FR-6251-P-01) (Proposed Rule).

Housing impacts every aspect of people’s lives. Yet systemic racial and gender discrimination persist in housing.<sup>1</sup> Long before the pandemic, redlining, residential segregation, subprime mortgage lending targeting women of color, and decades of divestment in public housing and other forms of rental assistance threatened housing stability and equity for women, children, LGBTQI people, people of color, and other communities across the country. The COVID-19 pandemic and resulting “she-cession” have exacerbated longstanding gender and racial inequities in housing. Throughout this recession, just as pre-COVID, Black women, Latinas, and women with disabilities continue to face especially high unemployment,<sup>2</sup> jeopardizing their and their families’ ability to meet basic needs like housing. Asian, Black, and Latina women also are more likely to be behind on their rent or mortgage payments,<sup>3</sup> increasing housing instability and heightening the threat of eviction and foreclosure. Recent data also shows that LGBTQI adults are more likely than non-LGBTQI adults to have difficulty paying for typical household expenses and have less confidence that they can make their next rent or mortgage payment on time.<sup>4</sup>

Protecting access to housing for women and LGBTQI people is necessary and central to HUD’s mission. But in 2020, HUD published a rule titled HUD’s Implementation of the Fair Housing

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<sup>1</sup> NAT’L WOMEN’S LAW CTR. & NAT’L LOW INCOME HOUS. COAL., GENDER AND RACIAL JUSTICE IN HOUSING (May 2021), <https://nwlc.org/resources/gender-and-racial-justice-in-housing/> [hereinafter JUSTICE IN HOUSING].

<sup>2</sup> *Id.*

<sup>3</sup> NAT’L WOMEN’S LAW CTR., NWLC ANALYSIS OF U.S. CENSUS BUREAU COVID-19 HOUSEHOLD PULSE SURVEYS, <https://nwlc.org/resources/nwlc-analysis-of-u-s-census-bureau-covid-19-household-pulse-surveys/> [hereinafter NWLC PULSE SURVEYS ANALYSIS] (last accessed August 12, 2021) (providing gender and racial analysis of behind on rent statistics across several U.S. Census Bureau Household Pulse Surveys).

<sup>4</sup> THOM FILE & JOEY MARSHALL, LGBT COMMUNITY HARDER HIT BY ECONOMIC IMPACT OF RECESSION, U.S. CENSUS BUREAU (Aug. 11, 2021), <https://www.census.gov/library/stories/2021/08/lgbt-community-harder-hit-by-economic-impact-of-pandemic.html>.

Act's Disparate Impact Standard (2020 Rule) that eliminated the definition of discriminatory effect and amended the disparate impact standard to impose a drastically high burden of proof on claimants under the Fair Housing Act (FHA).<sup>5</sup> This burden-shifting threatened to fundamentally weaken the FHA's protections against discrimination based on sex, race, disability, and other protected characteristics. It also would fail to fulfill HUD's statutory duty to affirmatively further fair housing. Because of its deficiencies, the 2020 Rule is subject to a preliminary injunction.

The 2013 "Implementation of the Fair Housing Act's Discriminatory Effects Standard" (2013 Rule), currently in effect because of the injunction of the 2020 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 2013 Rule is also consistent with the U.S. Supreme Court's decision in *Texas Dep't. of Housing and Community Affairs v. Inclusive Communities Project, Inc.*<sup>6</sup> HUD's Proposed Rule to formally recodify the 2013 Rule is a critical part of fulfilling its statutory mandate to affirmatively further fair housing.

The undersigned gender justice organizations applaud HUD's Proposed Rule that will reinstate protections against unjust housing discrimination for the following reasons.

## **I. Lack of fair access to safe and affordable housing is a key gender justice issue.**

Where we live is at the very core of our daily lives. Access to safe and affordable housing is crucial to good health,<sup>7</sup> nutrition,<sup>8</sup> education,<sup>9</sup> and stable employment.<sup>10</sup> Conversely, unsafe and unstable housing undermines the well-being of women and LGBTQI people and their families, especially at the intersections of race and disability, as described below.

### **A. Lack of fair access to safe and affordable housing worsens health outcomes.**

When people are housing cost-burdened, they have insufficient resources for other essential needs that impact their health, including food, health insurance, and health care. Those with unaffordable housing costs are more likely to skip health care treatments and not fill a

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<sup>5</sup> HUD's Implementation of the Fair Housing Act's Disparate Impact Standard, 85 Fed. Reg. 60288 (Sept. 24, 2020) (codified at 24 C.F.R. § 100).

<sup>6</sup> *Tex. Dep't of Hous. & Cmty. Affairs v. Inclusive Cmty. Project, Inc.*, 576 U.S. 519 (2015).

<sup>7</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 RES. & 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>8</sup> OPPORTUNITY STARTS AT HOME, ANTI-HUNGER ADVOCATES ARE HOUSING ADVOCATES (Dec. 2018), <https://www.opportunityhome.org/wp-content/uploads/2018/04/Hunger-Fact-Sheet.pdf>.

<sup>9</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>10</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>.

prescription as a result of cost,<sup>11</sup> which is particularly harmful for women and LGBTQI people, who are already more likely to delay needed medical care and prescriptions because they can't afford it.<sup>12</sup>

When access to stable and affordable housing is limited, more women, LGBTQI people, and families are forced to live in highly segregated and/or substandard housing. Housing segregation widens health disparities by limiting access to well-funded schools, jobs, health care, and nutritious food.<sup>13</sup> By contrast, the availability of resources that are more likely to be associated with integrated or quality housing—such as public transportation to work,<sup>14</sup> grocery stores with nutritious foods,<sup>15</sup> and safe spaces to exercise<sup>16</sup>—are all correlated with improved health outcomes.

Substandard housing conditions—such as lead paint, poor ventilation or heat/cooling, and pest infestation—also pose a variety of health risks.<sup>17</sup> People with low incomes are most likely to

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<sup>11</sup> NABILAH MAQBOOL, JANET VIVEIROS & MINDY AULT, CTR. FOR HOUS. POL'Y, THE IMPACTS OF AFFORDABLE HOUSING ON HEALTH: A RESEARCH SUMMARY (April 2015), <https://www.nhc.org/wp-content/uploads/2017/03/The-Impacts-of-Affordable-Housing-on-Health-A-Research-Summary.pdf>.

<sup>12</sup> MUNIRA Z. GUNJA, SARA R. COLLINS, MICHELLE M. DOTY & SOPHIE BEUTEL, COMMONWEALTH FUND, HOW THE AFFORDABLE CARE ACT HAS HELPED WOMEN GAIN INSURANCE AND IMPROVED THEIR ABILITY TO GET HEALTH CARE (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 percent of women age 19 through 64 still reported not getting the health care they needed because of costs); GEO. U. HEALTH POL'Y INST., PRESCRIPTION DRUGS (last visited Aug. 12, 2021), <https://hpi.georgetown.edu/rxdrugs/>; SPENCER WATSON, OLIVER MCNEIL & BRUCE BROISMAN, CTR. FOR LGBTQ ECON. ADVANCEMENT & RES., THE ECONOMIC WELL-BEING OF LGBT ADULTS IN THE U.S. IN 2019 (2021), <https://lgbtq-economics.org/wp-content/uploads/2021/06/The-Economic-Well-Being-of-LGBT-Adults-in-2019-Final-1.pdf>; ENTERPRISE, RENTERS REPORT HOUSING COSTS SIGNIFICANTLY IMPACT THEIR HEALTH CARE (Apr. 3, 2019), [https://www.enterprisecommunity.org/news-and-events/news-releases/2019-04\\_renters-report-housing-costs-significantly-impact-their-health-care](https://www.enterprisecommunity.org/news-and-events/news-releases/2019-04_renters-report-housing-costs-significantly-impact-their-health-care).

<sup>13</sup> CHIQUITA COLLINS & DAVID R. WILLIAMS, RACIAL RESIDENTIAL SEGREGATION: A FUNDAMENTAL CAUSE OF RACIAL DISPARITIES IN HEALTH, 116 PUB. HEALTH REPORTS 404 (Sept.-Oct. 2001), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1497358/pdf/12042604.pdf>.

<sup>14</sup> SUNE DJURHUUS, HENNING S. HANSEN, METTE AADAHN & CHARLOTTE GLÜMER, THE ASSOCIATION BETWEEN ACCESS TO PUBLIC TRANSPORTATION AND SELF-REPORTED ACTIVE COMMUTING, 11 INT. J. ENVIRON. RES. PUBLIC HEALTH 12,632 (Dec. 2014), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4276637/>.

<sup>15</sup> JUDITH BELL, GABRIELLA MORA, ERIN HAGAN, VICTOR RUBIN & ALLISON KARPYN, POLICYLINK, ACCESS TO HEALTHY FOOD AND WHY IT MATTERS: A REVIEW OF THE RESEARCH (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>16</sup> JUDY Y. OU, JONATHAN I. LEVY, JUNENETTE L. PETERS, ROSEANN BONGIOVANNI, JOVANNA GARCIA-SOTO, RAFAEL MEDINA & MADELEINE K. SCAMMELL, A WALK IN THE PARK: THE INFLUENCE OF URBAN PARKS AND COMMUNITY VIOLENCE ON PHYSICAL ACTIVITY IN CHELSEA, MA, 13 INT. J. ENVIRON. RES. PUBLIC HEALTH 97 (Jan. 2016), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4730488/>.

<sup>17</sup> ROBERT WOOD JOHNSON FOUND., EXPLORING THE SOCIAL DETERMINANTS OF HEALTH 2 (May 2011), <https://www.rwjf.org/en/our-focus-areas/topics/social-determinants-of-health.html>; WORLD HEALTH ORG., LEAD POISONING AND HEALTH (Aug. 23, 2019), <https://www.who.int/news-room/fact-sheets/detail/lead-poisoning-and-health>.

experience unhealthy housing and are typically least able to remedy them, contributing to disparities in health across socioeconomic groups.<sup>18</sup>

Different forms of housing instability, including eviction, aggravate mental health conditions.<sup>19</sup> The threat of eviction and instability exacerbates the heightened risk that women, particularly women of color, have of experiencing depression,<sup>20</sup> anxiety,<sup>21</sup> and high blood pressure.<sup>22</sup> Prior to the COVID-19 pandemic, low-income Black women who rent were nine times more likely than low-income white women who rent to be evicted.<sup>23</sup> Women of color have been more likely to be behind on their rent or mortgage payments during this pandemic,<sup>24</sup> threatening a massive wave of evictions with a disparate impact based on sex and race.

Children experiencing housing instability have higher occurrences of mental health problems, developmental delays, poor cognitive outcomes, and depression in their youth.<sup>25</sup> The younger a child is and the longer a child experiences homelessness, the greater the cumulative toll of negative health outcomes.<sup>26</sup>

Thus, access to safe and affordable housing is critical to ensuring the health of all women, LGBTQI people, and their families.

#### B. Lack of fair access to safe and affordable housing negatively impacts nutrition.

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<sup>18</sup> PAULA BRAVEMAN, MERCEDES DEKKER, SUSAN EGERTER, TABASHIR SADEGH-NOBARI & CRAIG POLLACK, ROBERT WOOD JOHNSON FOUND., HOW DOES HOUSING AFFECT HEALTH? 3–7 (May 2011), <https://www.rwjf.org/en/library/research/2011/05/housing-and-health.html>.

<sup>19</sup> LINDA GIANNARELLI, KYE LIPPOLD, SARAH MINTON & LAURA WHEATON, URBAN INST., REDUCING CHILD POVERTY IN THE US: COSTS AND IMPACTS OF POLICIES PROPOSED BY THE CHILDREN’S DEFENSE FUND (Jan. 2015), <https://www.urban.org/sites/default/files/publication/39141/2000086-Reducing-Child-Poverty-in-the-US.pdf>.

<sup>20</sup> PAUL R. ALBERT, WHY IS DEPRESSION MORE PREVALENT IN WOMEN?, 40 J. PSYCHIATRY NEUROSCI. 219 (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 Latina and Black women. NAT’L INSTS. OF HEALTH, OFF. OF RSCH. 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>21</sup> CARMEN P. MCLEAN, ANU ASNAANI, BRETT T. LITZ & STEFAN G. HOFMANN, GENDER DIFFERENCES IN ANXIETY DISORDERS: PREVALENCE, COURSE OF ILLNESS, COMORBIDITY AND BURDEN OF ILLNESS, 45 J. PSYCHIATRIC RES. 1027 (2011); NAT’L INST. OF MENTAL HEALTH, ANY ANXIETY DISORDER, <https://www.nimh.nih.gov/health/statistics/any-anxiety-disorder> (last updated Nov. 2017); U.S. DEP’T OF HEALTH & HUMAN SERVS., OFF. 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>22</sup> NAT’L INSTS. OF HEALTH, *supra* note 20, at 147 (noting that Black women experience high blood pressure at a higher rate than Latina or white, non-Hispanic women).

<sup>23</sup> JUSTICE IN HOUSING, *supra* note 1.

<sup>24</sup> NWLC PULSE SURVEYS ANALYSIS, *supra* note 3.

<sup>25</sup> HEATHER SANDSTROM & SANDRA HUERTA, URBAN INST., THE NEGATIVE EFFECTS OF INSTABILITY ON CHILD DEVELOPMENT: A RESEARCH SYNTHESIS (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* GIANNARELLI, *supra* note 19.

<sup>26</sup> MEGAN SANDEL, RICHARD SHEWARD & LISA STURTEVANT, NAT’L HOUS. CONF. & CTR. FOR HOUS. POL’Y, COMPOUNDING STRESS: THE TIMING AND DURATION EFFECTS OF HOMELESSNESS ON CHILDREN’S HEALTH (June 2015), <https://www.issuelab.org/resources/21731/21731.pdf>.

When low-income families spend high portions of their income on their rent, they struggle to pay for nutritious food and face higher food insecurity rates.<sup>27</sup>

Historical residential segregation has restricted neighborhood access to healthy foods and inhibits a family's ability to engage in healthy eating behaviors.<sup>28</sup> Lack of access to healthy food negatively impacts nutrition for families in neighborhoods of color and is correlated with an increased chance of obesity.<sup>29</sup>

Access to safe and affordable housing is therefore key to ensuring good nutrition for all women, LGBTQI people, and their families.

C. Lack of fair access to safe and affordable housing undermines educational outcomes.

Gender justice, access to fair housing opportunities, and educational equity are deeply intertwined.

Children who experience housing instability are more likely to have behavioral problems and struggle in school.<sup>30</sup> Housing instability contributes to high suspension rates, school turnover, truancy, and expulsions,<sup>31</sup> and homelessness is associated with an 87 percent greater likelihood of a child being pushed out of school.<sup>32</sup> Conversely, educational attainment is linked to positive health outcomes and longer lives.<sup>33</sup>

Further, housing policies and practices have created segregated neighborhoods and, by extension, segregated schools. The neighborhoods in which children live typically determine the schools they attend, and the more racially 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

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<sup>27</sup> JASON M. FLETCHER, TATIANA ANDREYEVA & SUSAN H. BUSCH, ASSESSING THE EFFECT OF INCREASING HOUSING COSTS ON FOOD INSECURITY, 15 J. CHILDREN POVERTY 79 (Sept. 9, 2009), <https://www.tandfonline.com/doi/abs/10.1080/10796120903310541>.

<sup>28</sup> Nat'l Women's Law Ctr., Comment Letter on Proposed Rule on Affirmatively Furthering Fair Housing 7 (Mar. 2020), <https://nwlc.org/wp-content/uploads/2020/03/NWLC-Comment-on-HUD-AFFH-Proposed-Rule-FR-6123-P-02.pdf>.

<sup>29</sup> *Id.* at 8.

<sup>30</sup> ABIGAIL L. GAYLORD, WHITNEY J. COWELL, LORI A. HOEPNER, FREDERICA P. PERERA, VIRGINIA A. RAUH, & JULIE B. HERBSTMAN, HOUSING INSTABILITY IS LINKED TO ADVERSE CHILDHOOD BEHAVIOR, INT. PUBLIC HEALTH J. (2018), <https://howhousingmatters.org/articles/housing-instability-linked-adverse-childhood-behavior/>.

<sup>31</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 55 (Mar. 2014) (Ph.D. dissertation, Howard University), <https://www.proquest.com/openview/56127deef7305f761d645aac34b9eac/1?pq-origsite=gscholar&cbl=18750>.

<sup>32</sup> ERIN S. INGRAM, JOHN M. BRIDGELAND, BRUCE REED & MATTHEW ATWELL, CIVIC ENTERPRISES & HART RES. ASSOCS., HIDDEN IN PLAIN SIGHT: HOMELESS STUDENTS IN AMERICA'S PUBLIC SCHOOLS (2016), [https://www.americaspromise.org/sites/default/files/d8/2016-12/HiddeninPlainSightFullReportFINAL\\_0.pdf](https://www.americaspromise.org/sites/default/files/d8/2016-12/HiddeninPlainSightFullReportFINAL_0.pdf)

<sup>33</sup> SUSAN EGERTER, PAULA BRAVEMAN, TABASHIR SADEGH-NOBARI, REBECCA GROSSMAN-KAHN & MERCEDES DEKKER, ROBERT WOOD JOHNSON FOUND., EDUCATION AND HEALTH (Apr. 2011), <https://www.rwjf.org/en/library/research/2011/05/education-matters-for-health.html>.

schools, resulting in disparate educational opportunity and outcomes for students of color.<sup>34</sup> In addition to school segregation, allowing for the continued concentration of poverty in communities limits the resources available to schools. Because of the decentralized nature of education funding, and the reliance on local property taxes, low-wealth communities are less able to provide sufficient funding for their schools, even when tax rates are high.

Access to housing is critical to ensuring positive educational outcomes for all women, girls, and LGBTQI people throughout the country.

D. Lack of fair access to safe and affordable housing jeopardizes employment outcomes.

Eviction and involuntary displacement due to unjust housing policies can impede a worker's ability to be present during scheduled work hours and may lead to job loss and prolonged unemployment.<sup>35</sup> Furthermore, housing instability more broadly and related economic insecurity can make it harder for individuals to obtain or maintain a job due to prior eviction records, poor credit, and inconsistent employment history. 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 and stable housing is critical to advancing employment and economic security for women and LGBTQI people.

**II. Discrimination limits access to safe, affordable, and accessible housing for many women, LGBTQI people, and their families, particularly those facing multiple forms of discrimination.**

Every year, more than 4 million instances of discrimination impact people's ability to access affordable and accessible housing, whether through renting or owning a home.<sup>36</sup> Not all of this discrimination is intentional—policies and practices that have discriminatory effects make it harder for women and LGBTQI people in general, and particularly at the intersection of race, disability, survivor, and familial status, to obtain or maintain housing.

Women already face a higher risk of economic insecurity throughout their lives, which makes it difficult for them to afford safe housing. The 2021 National Housing Wage, which represents the amount that a worker should be paid to afford rent without being cost-burdened, is \$24.90 per

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<sup>34</sup> See, e.g. U.S. COMM'N ON CIVIL RIGHTS, PUBLIC EDUCATION FUNDING INEQUITY IN AN ERA OF INCREASING CONCENTRATION OF POVERTY AND RESEGREGATION 85-90, 106 (2018), <https://www.usccr.gov/pubs/2018/2018-01-10-Education-Inequity.pdf>.

<sup>35</sup> MATTHEW DESMOND & CARL GERSHENSON, HOUSING AND EMPLOYMENT INSECURITY AMONG THE WORKING POOR, 0 SOC. PROBLEMS 1 (2016), <https://scholar.harvard.edu/files/mdesmond/files/desmondgershenson.sp2016.pdf?m=1452638824>.

<sup>36</sup> LINDSAY AUGUSTINE, CATHY CLOUD, SHERRILL FROST-BROWN, MADELINE MCBRIDE, SAMUEL TOPE-OJO, MORGAN WILLIAMS & MAUREEN YAP, NAT'L FAIR HOUS. ALLIANCE, FAIR HOUSING TRENDS REPORT 6 (2021), [https://drive.google.com/file/d/1-qkD1FQj8GjOT2UdF4buBaJ74or56\\_qn/view](https://drive.google.com/file/d/1-qkD1FQj8GjOT2UdF4buBaJ74or56_qn/view). For a discussion about why the number of complaints filed is drastically lower than the number of individuals who believe they experienced discrimination, see U.S. DEP'T OF HOUS. & URBAN DEV., THE STATE OF FAIR HOUSING: FY 2006 ANNUAL REPORT ON FAIR HOUSING 7-8 (Mar. 29, 2007), [https://www.hud.gov/sites/documents/DOC\\_14775.pdf](https://www.hud.gov/sites/documents/DOC_14775.pdf).

hour for a modest two-bedroom rental home.<sup>37</sup> Yet, women are overrepresented in the 40 lowest paying jobs, typically paying only \$12 per hour or less.<sup>38</sup> Consequently, low-paid women often need rental assistance to afford a home. In fact, women head 75 percent of households served by HUD rental assistance programs.<sup>39</sup>

In addition, women of color—especially Black and Latina women—face greater risks of eviction,<sup>40</sup> homelessness,<sup>41</sup> and housing discrimination.<sup>42</sup> 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 individuals and families.<sup>43</sup> Black and Latinx residents are less likely to live in safe and adequate housing than white, non-Hispanic people, and are four times more likely to live in high-poverty areas than white public housing residents.<sup>44</sup> As a result, more women of color end up experiencing homelessness in comparison to their white, non-Hispanic counterparts.<sup>45</sup>

LGBTQI individuals face significant challenges in accessing safe and stable housing. In 2019, LGBTQI households were more than twice as likely to receive housing assistance than non-LGBTQI households (6.0 percent to 2.6 percent).<sup>46</sup> In addition, LGBTQI individuals—including LGBTQI youth—disproportionately experience homelessness and housing insecurity, facing discrimination in both homeless shelters and rental markets.<sup>47</sup> Transgender and

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<sup>37</sup> ANDREW AURAND, DAN EMMANUEL, IKRA RAFI, DAN THREET & DIANE YENTEL, NAT'L LOW INCOME HOUS. COAL., *OUT OF REACH: THE HIGH COST OF HOUSING 2* (2021), [https://nlihc.org/sites/default/files/oor/2021/Out-of-Reach\\_2021.pdf](https://nlihc.org/sites/default/files/oor/2021/Out-of-Reach_2021.pdf).

<sup>38</sup> JASMINE TUCKER & JULIE VOGTMAN, NAT'L WOMEN'S LAW CTR., *WHEN HARD WORK IS NOT ENOUGH: WOMEN IN LOW-PAID JOBS* (Apr. 2020), <https://nwlc.org/resources/when-hard-work-is-not-enough-women-in-low-paid-jobs/>

<sup>39</sup> JUSTICE IN HOUSING, *supra* note 1, at 4.

<sup>40</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, MACARTHUR FOUND.: *HOW HOUSING MATTERS, POOR BLACK WOMEN ARE EVICTED AT ALARMING RATES, SETTING OFF A CHAIN OF HARDSHIP* (Mar. 2014), <https://www.macfound.org/media/files/HHM - Poor Black Women Are Evicted at Alarming Rates.pdf>.

<sup>41</sup> NAT'L 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>42</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* AUGUSTINE, CLOUD, FROST-BROWN, MCBRIDE, TOPE-OJO, WILLIAMS & YAP, *supra* note 36.

<sup>43</sup> U.S. DEPT OF HOUS. & URBAN DEV., OFFICE OF POL'Y DEV. AND RES., *HOUSING AND DISCRIMINATION AGAINST RACIAL AND ETHNIC MINORITIES* (2012), [https://www.huduser.gov/portal/Publications/pdf/HUD-514\\_HDS2012.pdf](https://www.huduser.gov/portal/Publications/pdf/HUD-514_HDS2012.pdf).

<sup>44</sup> *See id.*

<sup>45</sup> AGNES CONSTANTE, *ADVOCATES WORRY HOUSING ISSUES MAY LEAD TO AN ASIAN-AMERICAN CENSUS UNDERCOUNT*, NBC NEWS (Aug. 12, 2018), <https://www.nbcnews.com/news/asian-america/advocates-worry-housing-issues-may-lead-asian-american-census-undercount-n900381>.

<sup>46</sup> CAITLIN ROONEY, CHARLIE WHITTINGTON & LAURA E. DURSO, CTR. FOR AM. PROGRESS, *PROTECTING BASIC LIVING STANDARDS FOR LGBTQ PEOPLE 12* (Aug. 2018), <https://www.americanprogress.org/issues/lgbt/reports/2018/08/13/454592/protecting-basic-living-standards-lgbtq-people/>; WATSON, MCNEIL & BROISMAN, *supra* note 12.

<sup>47</sup> LINDSAY MAHOWALD, MATHEW BRADY & CAROLINE MEDINA, CTR. FOR AM. PROGRESS, *DISCRIMINATION AND EXPERIENCES AMONG LGBTQ PEOPLE IN THE US: 2020 SURVEY RESULTS* (Apr. 2021), <https://www.americanprogress.org/issues/lgbtq-rights/news/2021/04/21/498521/discrimination-experiences-among->

nonbinary/genderqueer individuals are particularly likely to face barriers finding another shelter if they are denied service at a homeless shelter.<sup>48</sup> Housing insecurity and homelessness, in turn, subject LGBTQI individuals experiencing homelessness to future violence.<sup>49</sup>

Many people with disabilities face obstacles to affordable, accessible housing. A staggering 55 percent of reported complaints of housing discrimination to HUD in 2020 involved discrimination on the basis of disability.<sup>50</sup> In addition, the average monthly payment for women receiving Supplemental Security Income (SSI) is only \$549.61,<sup>51</sup> which is insufficient to cover rent and other basic necessities in any market.<sup>52</sup> Further, many people with disabilities face employment discrimination that makes disabled people more likely to work part-time and need housing assistance, such as vouchers, to afford their rent.

Domestic violence is a primary cause of homelessness for women and children in the United States,<sup>53</sup> and HUD has repeatedly recognized housing discrimination against domestic violence survivors as a significant fair housing issue.<sup>54</sup> Women account for over 80 percent of domestic violence survivors.<sup>55</sup> Over 90 percent of unhoused women share that they experienced domestic abuse or sexual violence in their lives, and over 50 percent say that domestic violence caused

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[lgbtq-people-us-2020-survey-results/](#); U.S. DEPT. OF HOUS. AND URBAN DEV., AN ESTIMATE OF HOUSING DISCRIMINATION AGAINST SAME-SEX COUPLES (2013), [http://www.huduser.org/portal/publications/pdf/Hsg\\_Disc\\_against\\_SameSexCpls\\_v3.pdf](http://www.huduser.org/portal/publications/pdf/Hsg_Disc_against_SameSexCpls_v3.pdf); CAITLIN ROONEY, LAURA E. DURSO & SHARITA GRUBERG, CTR. FOR AM. PROGRESS, DISCRIMINATION AGAINST TRANSGENDER WOMEN SEEKING ACCESS TO HOMELESS SHELTERS (January 7, 2016), <https://www.americanprogress.org/issues/lgbt/reports/2016/01/07/128323/discrimination-against-transgender-women-seeking-access-to-homeless-shelters/>; SANDY E. JAMES, JODY L. HERMAN, SUSAN RANKIN, MARA KEISLING, LISA MOTTET & MA'AYAN ANAFI, THE NAT'L CTR. FOR TRANSGENDER EQUALITY, THE REPORT OF THE 2015 U.S. TRANSGENDER SURVEY (2016), <https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf>; JOHN ECKER, TIM AUBRY & JOHN SYLVESTRE, A REVIEW OF THE LITERATURE ON LGBTQ ADULTS WHO EXPERIENCE HOMELESSNESS, 66 J. HOMOSEXUALITY 297 (2018), <https://doi.org/10.1080/00918369.2017.1413277>; MAYA BRENNAN, ALLY LIVINGSTON & VERONICA GAITÁN, FIVE FACTS ABOUT HOUSING ACCESS FOR LGBT PEOPLE, HOUSING MATTERS (June 13, 2018), <https://howhousingmatters.org/articles/five-facts-housing-access-lgbt-people/>; SOON KYU CHOI, BIANCA D.M. WILSON, JAMA SHELTON, GARY J. GATES, UCLA S.L. WILLIAMS INST., SERVING OUR YOUTH (JUNE 2015), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Durso-Gates-LGBT-Homeless-Youth-Survey-July-2012.pdf>.

<sup>48</sup> MAHOWALD, BRADY & MEDINA, *supra* note 47.

<sup>49</sup> LES B. WHITBECK, XIAOJIN CHEN, DAN R. HOYT, KIMBERLY A. TYLER & KURT D. JOHNSON, MENTAL DISORDER, SUBSISTENCE STRATEGIES, AND VICTIMIZATION AMONG GAY, LESBIAN, AND BISEXUAL HOMELESS AND RUNAWAY ADOLESCENTS, 41 J. SEX RES. 329 (2004) <https://www.ncbi.nlm.nih.gov/pubmed/15765273>.

<sup>50</sup> AUGUSTINE, CLOUD, FROST-BROWN, MCBRIDE, TOPE-OJO, WILLIAMS & YAP, *supra* note 36, at 3.

<sup>51</sup> U.S. SOC. SEC. ADMIN., FEDERALLY ADMINISTERED PAYMENTS 26, Table 5 (2019),

[https://www.ssa.gov/policy/docs/statcomps/ssi\\_asr/2019/sect02.pdf](https://www.ssa.gov/policy/docs/statcomps/ssi_asr/2019/sect02.pdf).

<sup>52</sup> AURAND, EMMANUEL, RAFI, THREET & YENTEL, *supra* note 37 at 2.

<sup>53</sup> See ACLU WOMEN'S RIGHTS PROJECT, DOMESTIC VIOLENCE AND HOMELESSNESS (2006),

<http://www.aclu.org/pdfs/dvhomelessness032106.pdf>; see also U.S. CONF. 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>54</sup> See, e.g., Memorandum from Sara K. Pratt, Deputy Assistant Secretary for Enforcement and Programs, U.S. Dep't of Hous. & Urban Dev. To FHEO Office Directors & FHEO Regional Directors (Feb. 9, 2011), <https://www.hud.gov/sites/documents/FHEODOMESTICVIOLGUIDENG.PDF> (hereinafter HUD Memo to FHEO Office & Regional Directors).

<sup>55</sup> U.S. DEP'T OF JUSTICE, OFF. OF JUSTICE PROGRAMS, BUREAU OF JUSTICE STATISTICS CRIME DATA BRIEF: INTIMATE PARTNER VIOLENCE, 1993-2001 (Feb. 2003), <https://bjs.ojp.gov/content/pub/pdf/ipv01.pdf>.



their homelessness.<sup>56</sup> Housing access is critical for survivors, as lack of safe and affordable housing options is regularly reported as a primary barrier to escaping abuse.<sup>57</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>58</sup>

Housing discrimination against survivors also implicates other protected classes. Women of color and disabled women face both increased barriers to housing and disproportionate rates of violence.<sup>59</sup> Additionally, LGBTQI individuals experience high rates of domestic violence, while 71 percent of survivors reported that they were denied shelter because of barriers related to gender identity.<sup>60</sup>

In sum, discrimination in housing remains a significant barrier to safe, affordable, and accessible housing for many women, LGBTQI people, and their families.

### **III. The 2013 Rule protects women and LGBTQI people from housing discrimination.**

Disparate impact under the FHA has been used to combat housing discrimination for over 40 years. Recognition of disparate impact liability under the FHA plays a role in uncovering discrimination—it permits plaintiffs to counteract unconscious prejudices and disguised animus that escape easy classification as disparate treatment. In this way, disparate-impact liability may prevent segregated housing patterns that might otherwise result from covert and illicit stereotyping.<sup>61</sup> As noted above, not all discrimination is intentional and obvious. While discrimination resulting from implicit bias is discrimination nonetheless, it can be difficult to detect and combat without a disparate impact theory.

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<sup>56</sup> MONICA McLAUGHLIN & DEBBIE FOX, NAT'L 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>57</sup> See CHARLENE K. BAKER, KRIS A. BILLHARDT, JOSEPH WARREN, CHIQUITA ROLLINS, NANCY E. GLASS, 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 (2010), [https://b.3cdn.net/naeh/416990124d53c2f67d\\_72m6b5uib.pdf](https://b.3cdn.net/naeh/416990124d53c2f67d_72m6b5uib.pdf).

<sup>58</sup> See *id.* at 431.

<sup>59</sup> See McLAUGHLIN & FOX, *supra* note 56, at 1; see also CAROLYN M. WEST & KALIMAH JOHNSON, NAT'L ONLINE RESOURCE CTR. ON VIOLENCE AGAINST WOMEN, SEXUAL VIOLENCE IN THE LIVES OF AFRICAN AMERICAN WOMEN (Mar. 2013), [https://vawnet.org/sites/default/files/materials/files/2016-09/AR\\_SVAAWomenRevised.pdf](https://vawnet.org/sites/default/files/materials/files/2016-09/AR_SVAAWomenRevised.pdf); SHARON G. SMITH, JIERU CHEN, KATHLEEN C. BASILE, LEAH K. GILBERT, MELISSA T. MERRICK, NIMESH PATEL, MARGIE WALLING & ANURAG JAIN, NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY (NISVS): 2010-2012 STATE REPORT, CTRS. FOR DISEASE CONTROL & PREVENTION, NAT'L CTR. FOR INJURY PREVENTION & CONTROL (Apr. 2017), <https://www.cdc.gov/violenceprevention/pdf/NISVS-StateReportBook.pdf>; AM. CIVIL LIBERTIES UNION WOMEN'S RIGHTS PROJECT, HUM. RTS. INST. AT COLUM. L. SCH. & HUM. RTS. CLINIC AT U. OF MIAMI SCH. OF L., 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>60</sup> NAT'L COAL. 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).

<sup>61</sup> Tex. Dep't of Hous. & Cmty. Affairs v. Inclusive Cmty. Project, Inc., 576 U.S. 519, 540 (2015).

Ratifying disparate impact in housing liability, Justice Anthony Kennedy wrote, “Much progress remains to be made in our Nation’s continuing struggle against racial isolation. ...The Court acknowledges the Fair Housing Act’s continuing role in moving the Nation toward a more integrated society.”<sup>62</sup>

Here are just some examples of discriminatory practices that disproportionately affect women and other protected classes under the FHA:

- **Voucher discrimination:** Landlords may refuse to accept housing vouchers,<sup>63</sup> and insurance companies may deny commercial insurance coverage to landlords who rent apartments to people who use housing vouchers.<sup>64</sup> These and other types of voucher discrimination often have an overwhelming impact on households headed by women. In 2020, households headed by women made up 78 percent of housing choice voucher participants nationwide.<sup>65</sup> While these participation rates differ regionally in the United States, households headed by women are likely to comprise the majority of housing choice voucher participants in numerous rental markets across the country. In addition, voucher discrimination may have a disparate impact on LGBTQI people in some regions of the country, as nationwide, LGBTQI people are more likely than non-LGBTQI people to receive housing assistance.<sup>66</sup> Voucher discrimination also often prevents many women of color and disabled women from accessing affordable housing given its frequent disparate impact on people of color and disabled people.
- **Occupancy Restrictions:** Policies that impose overly restrictive occupancy requirements disproportionately harm families with children,<sup>67</sup> significantly limit access to affordable housing for these families, and often have the harshest consequences for low-income women of color. In a case involving an occupancy restriction in a mobile home community, the HUD Secretary even noted that the policy would exclude families with minor children at more than four times the rate of households without minor children.<sup>68</sup> Landlords with these policies have also issued vacate notices to pregnant women expecting a new baby or new parents who do not have a separate bedroom for their infant,<sup>69</sup> which imposes particular challenges for the one in five (20.9 percent) pregnant workers (and 30 percent of Black women and 31.3

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<sup>62</sup> *Id.* at 545–47.

<sup>63</sup> *See, e.g.*, Complaint at 9, Nat’l Fair Housing Alliance v. Evolve, LLC, No. 1:2019cv01147 (D.D.C. Apr. 22, 2019).

<sup>64</sup> *See, e.g.*, Press Release, Nat’l Fair Housing Alliance, National Fair Housing Alliance Settles Disparate Impact Lawsuit with Travelers Indemnity Company (Feb. 23, 2018), <https://nationalfairhousing.org/2018/02/23/travelers/>.

<sup>65</sup> U.S. DEP’T OF HOUS. & URBAN DEV., OFF. OF POL’Y DEVELOPMENT AND RSCH, ASSISTED HOUSING: NATIONAL AND LOCAL, <https://www.huduser.gov/portal/datasets/assthsq.html>.

<sup>66</sup> WATSON, MCNEIL & BROISMAN, *supra* note 12.

<sup>67</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). *See also* Rhode Island Comm’n for Human Rights v. Graul, 120 F. Supp. 3d 110, 125–27 (D.R.I. 2015); United States v. Badgett, 976 F.2d 1176, 1178–79 (8th Cir. 1992); Gashi v. Grubb & Ellis, 801 F. Supp. 2d 12 (D. Conn. 2011).

<sup>68</sup> HUD v. Mountain Side Mobile Estates Partnership, No. 08-92-0010, 1993 WL 307069, at \*3-7 (HUD Sec’y July 19, 1993), *aff’d in relevant part*, 56 F.3d 1243 (10th Cir. 1995).

<sup>69</sup> *See, e.g.*, Gashi v. Grubb & Ellis, 801 F. Supp. 2d 12 (D. Conn. 2011).

percent of Latinas) who work in low-wage jobs and may not be able to afford to rent an apartment with an additional bedroom for their infant.<sup>70</sup>

- **Amenity Restrictions:** Policies that overly restrict the use of facilities that are overwhelmingly enjoyed by children, such as pools or courtyards, can be considered discriminatory under the FHA.<sup>71</sup> For example, 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.
- **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 2013 Rule to challenge the failure to grant emergency transfer requests under the FHA, often resulting in the adoption of new policies that ensure that survivors who are in danger may request emergency transfers.<sup>72</sup>
- **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 contact law enforcement about abuse they experienced in their home.<sup>73</sup>
- **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.<sup>74</sup> In 2016, HUD issued guidance on challenging the devastating consequences of nuisance ordinances on domestic violence survivors, and other marginalized communities; using disparate impact to challenge such harmful ordinances was an important part of that guidance.<sup>75</sup>
- **Exclusionary Zoning:** Cities passing zoning laws limiting the construction of affordable housing, such as multi-family dwellings, often has a disparate impact on people of color and

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<sup>70</sup> MORGAN HARWOOD & SARAH DAVID HEYDEMANN, NAT’L WOMEN’S LAW CTR., BY THE NUMBERS: WHERE DO PREGNANT WOMEN WORK? 1, 4-5 (Aug. 2019), <https://nwlc.org/wp-content/uploads/2019/08/Pregnant-Workers-by-the-Numbers-v3-1.pdf>.

<sup>71</sup> See *Hous. Opps. Project for Excellence, Inc. v. Key Colony No. 4 Condo. Assoc.*, 510 F. Supp. 2d 1003 (S.D. Fla. 2007); *Rhode Island Comm’n for Human Rights v. Graul*, 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>72</sup> See *Blackwell v. H.A. Hous. LP*, Civil Action No. 05-cv-01225-LTB-CBS (D. Colo. 2005). In a settlement agreement, the landlord agreed to prohibit discrimination against survivors of domestic violence and permit them to request an emergency transfer when in imminent danger. HUD Memo to FHEO Office & Regional Directors, *supra* note 54, at 8.

<sup>73</sup> See, generally, *Warren v. Ypsilanti Hous. Auth.*, Case No. 4:02-cv-40034 (E.D. Mich. 2003) (defendant agreed to cease evicting survivors of domestic violence under its “one-strike policy”).

<sup>74</sup> AM. CIVIL LIBERTIES UNION & N.Y. CIVIL LIBERTIES UNION, MORE THAN A NUISANCE: THE OUTSIZED CONSEQUENCES OF NEW YORK’S NUISANCE ORDINANCES (2018), [https://www.nyclu.org/sites/default/files/field\\_documents/nyclu\\_nuisancereport\\_20180809.pdf](https://www.nyclu.org/sites/default/files/field_documents/nyclu_nuisancereport_20180809.pdf).

<sup>75</sup> U.S. DEP’T OF HOUS. & URBAN DEV., OFF. OF GENERAL COUNSEL, GUIDANCE ON APPLICATION OF FAIR HOUSING ACT STANDARDS TO THE ENFORCEMENT OF LOCAL NUISANCE AND CRIME-FREE HOUSING ORDINANCES AGAINST VICTIMS OF DOMESTIC VIOLENCE, OTHER CRIME VICTIMS, AND OTHERS WHO REQUIRE POLICE OR EMERGENCY SERVICES (Sept. 13, 2016), <https://www.hud.gov/sites/documents/FINALNUISANCEORDGDNCE.PDF>.

consequently, women of color. Because of systemic issues that make people of color more likely to be economically insecure, this exclusionary zoning can also perpetuate segregated neighborhoods.

- **Segregation of Publicly-Supported Housing:** Some cities refuse to construct affordable housing units in predominantly white areas, which has a disproportionate impact on people of color who need access to affordable housing close to quality jobs and/or good schools and also perpetuates racial segregation in the city.<sup>76</sup> This may happen in the context of the need to add affordable housing supply to an area, but it can also arise when there is a need to provide replacement housing after construction dislocates communities of color.<sup>77</sup>
- **Displacement:** Some landlords engage in practices such as dramatically raising rents, creating new rental criteria, and discontinuing participation in the Section 8 program that, unless prevented through the use of disparate impact, would disproportionately displace renters of color. Redevelopment plans can also displace low-income renters, who, depending on the proposed area for redevelopment, may be disproportionately women of color and women raising children on their own.<sup>78</sup>
- **Reverse Redlining:** Some mortgage lenders and brokers engage in lending policies that use a mixture of objective and subjective factors that lead to disproportionately negative impacts on people of color, such as raising interest rates and brokering fees on people of color who pose the same credit risk as white, non-Hispanic borrowers.<sup>79</sup> Algorithmic models used in mortgage lending may also have disproportionate impacts on Black and Latinx people. Costlier loans make it harder for women of color to become homeowners and perpetuate the racial and gender wealth gaps.
- **Insurance Redlining:** Insurance companies using policies such as “minimum house value,” “market value-to-replacement cost,” and “minimum age of house” policies have created a new system of redlining neighborhoods of color. Rather than outright denying loans for homes in neighborhoods of color, these policies preclude millions of Black people from accessing quality homeowners’ insurance to protect one of their most significant assets. Lawsuits challenging the disparate impact of these practices<sup>80</sup> have helped expand access to quality insurance coverage for many people of color, so that they can protect one of the biggest sources of wealth for people of color.
- **Higher Insurance Premiums:** Instead of denying homeowner insurance coverage to households of color, some insurance companies use credit scoring algorithms that result in

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<sup>76</sup> See, e.g., *Inclusive Cmty. Project, Inc. v. City of McKinney*, 2009 WL 2590121 (E.D. Texas. Aug. 20, 2009).

<sup>77</sup> See, e.g., *Keith v. Volpe*, 858 F.2d 467 (9th Cir. 1988) (holding that the City of Hawthorne violated the FHA by refusing to construct low-income housing for Black people displaced by the construction of a Los Angeles freeway).

<sup>78</sup> JUSTICE IN HOUSING, *supra* note 1, at 2.

<sup>79</sup> See, e.g., *United States v. Wells Fargo*, No. 1:12-cv-01150 (D.D.C. 2012); *Ramirez v. Greenpoint Mortg. Funding, Inc.*, 268 F.R.D. 627 (N.D. Cal. 2010).

<sup>80</sup> See, e.g., *Nat’l Fair Hous. Alliance, et al. v. Prudential Insurance Co.*, 208 F.Supp.2d 46, 57 (D.D.C. 2002); *Nat’l Fair Hous. Alliance, et al. v. Liberty Mutual Insurance Co.*, C.A. No. 1:98CV00928 TPJ (D.D.C.); *Nat’l Fair Hous. Alliance, et al. v. Travelers Property & Casualty Corp.*, No. 00-1506 (JR), at 1-2 (D.D.C. Jan. 9, 2001); *Toledo Fair Hous. Ctr. v. Farmers Ins. Group*, Nos. C199-1339 & C100-2981, at 13-19 (Ohio C.P. Mar. 29, 2001).

higher insurance premiums for homeowners of color compared to similarly situated white, non-Hispanic customers.<sup>81</sup> Paying higher insurance premiums eats up more of families' budgets. For low-income women of color, that means they have less money to pay their mortgages, save, or pay down other debt. Consequently, making it harder to hold insurance companies accountable for this type of discrimination can exacerbate the racial and gender wealth gaps.

- **Disaster Relief:** Some disaster relief programs that provide storm victims with funding to rebuild their homes base their compensation rates on the pre-storm value of the home or the cost to rebuild. Because homes in neighborhoods of color typically have lower values than homes in white neighborhoods, these policies have a disparate impact on neighborhoods of color.<sup>82</sup>
- **“Independent Living” Requirement:** Some landlords and public housing authorities require applicants to “live independently,” which excludes people with disabilities who use supportive services and want to live in integrated communities.<sup>83</sup>

HUD’s 2013 Rule works to protect against discriminatory impacts based on sex, other protected classes, and intersecting classes by combatting implicit bias through a balancing test. To perform the test, a court must weigh the rights and needs of communities disproportionately affected by housing discrimination with businesses, developers, and governments. An entity must stop using a policy or practice that has a discriminatory effect when there are less harmful alternative policies or practices that achieve their legitimate nondiscriminatory interest. This is true even when an entity has a legitimate basis for the practice or policy.

The 2013 Rule’s three-part framework provided a standard that was workable and balanced plaintiff and defendant interests. The Supreme Court in *Inclusive Communities* ratified the 2013 Rule’s burden-shifting framework and situated it in a well-established legal framework comparable to other federal civil rights laws, including Title VII.<sup>84</sup>

The 2013 rule has also fostered more inclusive lending markets and housing markets by providing entities subject to the FHA with the incentive to search out less discriminatory alternatives to practices that have a discriminatory impact based on race or other protected characteristics and are not necessary to achieve any legitimate purpose. At the same time, it does not force any entity to modify practices that are necessary to accomplish legitimate purposes. This clear standard has been easy to apply and has struck the proper balance between competing interests.

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<sup>81</sup> See, e.g., *DeHoyos v. Allstate Corp.*, 240 F.R.D. 269 (W.D. Tex. 2007).

<sup>82</sup> See, e.g., *Greater New Orleans Fair Housing Center v. HUD*, No. 1:08-cv-01938 (D.D.C. 2008).

<sup>83</sup> N.C. DEP’T OF HEALTH & HUMAN SERVS., N.C. HOUS. FINANCE AGENCY & S. OF GOV’T U. N.C. CHAPEL HILL, *FAIR HOUSING FOR TENANTS WITH DISABILITIES: UNDERSTANDING REASONABLE ACCOMMODATIONS AND REASONABLE MODIFICATIONS* 26 (2018), [https://www.nchfa.com/sites/default/files/page\\_attachments/RAGuide.pdf](https://www.nchfa.com/sites/default/files/page_attachments/RAGuide.pdf).

<sup>84</sup> *Tex. Dep’t of Hous. & Cmty. Affairs v. Inclusive Cmty. Project, Inc.*, 576 U.S. 519, 539 (2015).

In short, the 2013 Rule serves as a valuable tool for people who experience housing discrimination, communities, fair housing practitioners, and the housing industry in the ongoing struggle to achieve open housing markets for all renters and owners, free from discrimination.

#### **IV. The 2020 Rule eliminated core protections from policies and practices that have a discriminatory impact based on sex, race, and other protected characteristics under the FHA.**

While the 2013 Rule codified a fair and equitable balancing test that aligns with the purpose of the FHA<sup>85</sup> and affirmatively furthers fair housing, the 2020 Rule tipped the scales in favor of businesses and landlords. The 2020 Rule eliminated the Perpetuation of Segregation Theory, created a carveout for zoning decisions, created additional barriers to presenting a disparate impact case, and placed overwhelming burdens on plaintiffs seeking to prove discriminatory effect.<sup>86</sup> All these changes, if the 2020 Rule were implemented, would have increased obstacles to fair access to safe, affordable, and accessible housing based on sex (including sexual orientation and gender identity), race, disability, familial status, and other protected characteristics.

#### **V. The Proposed Rule will restore necessary protections for all women, LGBTQI people, and their families because it re-codifies the 2013 Rule.**

The 2013 Rule properly codified the FHA disparate impact standard that has prevailed in the courts and has been used by regulators—including but not limited to HUD—for decades.<sup>87</sup> This standard is consistent with decades of case law.<sup>88</sup> Its standard balances interests and has worked.<sup>89</sup>

The Proposed Rule would re-codify the 2013 Rule, which will restore the three-part burden-shifting framework upon which courts and litigants had come to rely.<sup>90</sup> The 2013 Rule provides greater clarity in pleading requirements,<sup>91</sup> which will help to reduce the barrier for complainants at the courthouse doors. The Proposed Rule will affirmatively further fair housing by ensuring access to the courts to challenge discriminatory policies and by reestablishing the incentive for housing providers to proactively reduce discrimination in their policies and practices.

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<sup>85</sup> 42 U.S.C. § 3601 (quoted by *Tex. Dep't of Hous. & Cmty. Affairs v. Inclusive Cmty. Project, Inc.*, 576 U.S. 519, 540 (2015)).

<sup>86</sup> NAT'L LOW INCOME HOUS. COAL., PRELIMINARY ANALYSIS OF HUD'S FINAL DISPARATE IMPACT RULE (Sept. 14, 2020), <https://nlihc.org/resource/preliminary-analysis-huds-final-disparate-impact-rule>.

<sup>87</sup> Implementation of the Fair Housing Act's Discriminatory Effects Standard, 78 Fed. Reg. 11460 (Feb. 15, 2013) (codified at 24 C.F.R. § 100.500) [hereinafter 2013 Rule].

<sup>88</sup> Nat'l Fair Hous. Alliance, Comment Letter on Notice of Proposed Rulemaking, HUD's Implementation of the Fair Housing Act's Disparate Impact Standard (2019), <https://www.regulations.gov/comment/HUD-2019-0067-3079>.

<sup>89</sup> *Id.* .The National Fair Housing Alliance states that it has used the disparate impact tool to assist over 750,000 individuals who were discriminated against, among other things.

<sup>90</sup> Reinstatement of HUD's Discriminatory Effects Standard, 86 Fed. Reg. 33590, 33591 (Jun. 25, 2021).

<sup>91</sup> *Id.* at 33594.

## **VI. Conclusion**

HUD's Proposed Rule will reinstate the protections against housing discrimination for all women, LGBTQI people, and their families offered by the 2013 Rule and will affirmatively further fair housing and prevent discrimination against protected classes under the FHA. Moreover, the Proposed Rule restores decades of fair housing case law and HUD's enforcement.

The FHA's protections from discrimination are more important than ever as we seek to keep people housed and have an equitable recovery from the COVID pandemic. The below gender justice organizations applaud HUD's decision to promulgate the Proposed Rule and urge swift finalization to formally reinstate the 2013 Rule into the Code of Regulations.

Sincerely,

9to5

African American Health Alliance

AIDS Alabama

American Atheists

Athlete Ally

Autistic Self Advocacy Network

Campus Pride

Center for LGBTQ Economic Advancement & Research (CLEAR)

CenterLink: The Community of LGBT Centers

Cupit's Angel Wings (Philadelphia)

Equal Rights Advocates

Equality California

First Focus on Children

FORGE, Inc.

Gender Spectrum

GLMA: Health Professionals Advancing LGBTQ Equality

Hispanic Federation

Howard Brown Health (Illinois)

interACT: Advocates for Intersex Youth

Japanese American Citizens League

Justice in Aging

Mazzoni Center (Pennsylvania)

MomsRising

National Action Network

National Association of Social Workers

National Black Justice Coalition

National Center for Law and Economic Justice

National Center for Transgender Equality

National Coalition for Asian Pacific American Community Development (National CAPACD)

National Council of Asian Pacific Americans (NCAPA)

National Consumer Law Center (on behalf of its low-income clients)

National Equality Action Team (NEAT)

National Fair Housing Alliance  
National Low Income Housing Coalition  
National Partnership for Women and Families  
National Women's Law Center  
Oasis Legal Services (California)  
PFLAG National  
Physicians for Reproductive Health  
Pride Community Services Organization (Kentucky)  
Regional Org with National Casework  
Southern Poverty Law Center  
SPLC Action Fund  
The Trevor Project  
True Colors United  
Women's Law Project (Pennsylvania)