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Contact: Elaine Gross, 516-921-4863
elaine@eraseracismny.org

ERASE Racism Opposes Proposed HUD Rule That Would Make It More Difficult to Fight Housing Discrimination in Court

Cites Cases on Long Island in Which “Disparate Impact,” Which HUD Would Now Undercut Dramatically, Was Essential to Combating Housing Discrimination

Syosset, NY – August 21, 2019 – Elaine Gross, President of ERASE Racism, announced today that the civil rights organization opposes the new rule [Docket No. FR-6111-P-02] proposed on Monday by the U.S. Department of Housing and Urban Development (HUD) that would make enforcing the Fair Housing Act much more difficult. The Discriminatory Effects Standard (commonly known as Disparate Impact) of the Fair Housing Act of 1968 prohibits unjustified policies or practices that have a disproportionate adverse effect (Disparate Impact) on protected class members.

The proposed rule, which ERASE Racism and other civil rights advocates oppose, will now undergo a 60-day comment period. Subsequently, if the rule is approved, it will eviscerate housing discrimination lawsuits that challenge policies that result in discrimination or perpetuate racial segregation even if discrimination is not the policy’s stated intent.

The Fair Housing Act, the courts, and HUD have long recognized the existence and credibility of discriminatory Disparate Impact. The current policy, implemented in 2013, created uniform standards for the application of Disparate Impact. The proposed rule would dramatically shift the burden of proof to the plaintiff in housing discrimination cases and make it much harder to bring cases to court.

Elaine Gross, President of ERASE Racism, which has been combating housing discrimination for two decades, issued the following statement about the proposed rule:

“HUD’s proposed rule on Disparate Impact is a major step backward in fighting housing discrimination. On Long Island, housing discrimination has been so overt that in recent years ERASE Racism has obtained successful settlements in lawsuits where white people were shown apartments and encouraged to apply and black people were not and, thereby, denied housing.

Other legal cases on Long Island have depended on the Disparate Impact standard to combat housing discrimination. A recent federal District Court ruling in Garden City showed that the use of exclusionary zoning ordinances reinforced residential segregation. In a famous housing discrimination case in Huntington, the Second Circuit Court of Appeals upheld use of the Disparate Impact standard. In 1988, the Court ruled that Huntington violated the federal Fair Housing Act, because its zoning confined the construction of apartments only to a predominantly black neighborhood, thus creating a discriminatory result. In 2019 – 31 years later – the affordable apartment project in a predominantly white neighborhood at issue in that case is finally scheduled to break ground! In 2014 – 26 years after that decision – the federal government sued the Town of Oyster Bay for violating the Fair Housing Act. In its complaint, the United States alleged that two housing programs to develop below-market rate housing for first-time homeowners and senior citizens discriminated against African Americans, because the programs give a preference to residents of the predominantly white Town. This produces a discriminatory result, because very few African Americans (3% of residents) live in the Town and fewer than one percent of the black families living there were eligible for the program. Income-eligible black residents nearby were blocked from participating.

Housing discrimination based on Disparate Impact is evident in these cases, and the courts are a crucial venue for addressing discrimination. This is no time for HUD to slam the court door shut.”

Additional information on ERASE Racism is available at www.eraseracismny.org.

ERASE Racism is a regional civil rights organization based on Long Island that exposes and addresses the devastating impact of historical and ongoing structural racism, particularly in public school education and housing. It does so through research, policy advocacy, legal action, and educating and mobilizing the public – driving policy change at local, regional and statewide levels and through national coalitions. It has been recognized locally and nationally for its cutting-edge work.