Minneapolis
City of Lakes

Department of Civil Rights
350 S. Fifth St., Room 239
Minneapolis, MN 55415
TEL 612.673.3012

www.minneapolismn.gov

October 18, 2019

VIA ELECTRONIC SUBMISSION

Office of the General Counsel
Rules Docket Clerk
Department of Housing and Urban Development
451 7th Street SW, Room 10276
Washington, DC 20410

RE: HUD's Implementation of the Fair Housing Act's Disparate Impact Standard Docket No. FR-6111-P-02

Dear Secretary Carson,

Please accept the following as my comment regarding HUD proposed rule: FR-6111-P-02, HUD's Implementation of the Fair Housing Act's Disparate Impact Standard. I appreciate your consideration in this very important matter.

It is well established that HUD has been empowered by an act of Congress to oversee the administration of the Fair Housing Act. That piece of legislation was part and parcel to Title VII of the Civil Rights Act of 1968, as progressive a statement about inclusiveness as there has ever been. Much has changed since that time, yet one thing remains: discrimination is as real now as it was then. Thus, it is hard to imagine why HUD should consider such a rule change. Because the proposed rule violates the spirit of the Civil Rights Act of 1968 (in multiple ways), the proposed rule must be withdrawn. Please accept the following as my point-by-point analysis of why withdrawal is appropriate.

First, the proposed rule confuses plaintiff's burden. In the grand scheme, discrimination is not a complicated issue. It exists where an individual has been treated differently because of some immutable characteristic. The proposed rule, on the other hand, requires proof far afield of that definition. Here, the aggrieved party must show the policy or practice was "arbitrary, artificial, and unnecessary." This is irrelevant to plaintiff's discrimination case, and therefore presents clear evidence that creating a heavier initial burden for the plaintiff, rather than redressing discrimination, is now the focus. I would submit that this is inappropriate and harmful to the design of the Fair Housing Act.

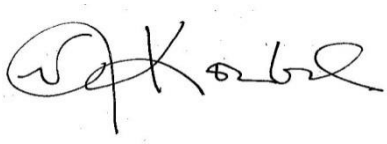
Second, this rule does not promote greater participation in the legal process. As such it will have a chilling effect on self-advocacy. Since the Civil Rights era, the law has been first and foremost a means of recourse. Through legal action individuals who have suffered discrimination have had a proper forum to be heard. This is as it should be. Those who have been harmed should have a voice. The danger, however, is that most will view this rule change with profound skepticism. Because it is harder to make out a successful case, it is likely aggrieved parties will choose to remain silent in the face of discrimination rather than be victimized by a rule which weighs overmuch in favor of the discriminator. There is a fine line between fostering greater participation and stifling the voices of those who have been wronged. It is clear: the proposed rule change fits firmly in the category of stifling the voices of aggrieved parties.

Finally, the proposed rule places the aggrieved party at a serious disadvantage. As noted above, plaintiffs are required to shoulder a heavy burden on the way toward making out a valid claim. The effects here are far ranging. Wrongdoers will be less likely to settle. This will cause litigation costs to escalate, which may also result in a decrease in complaint filings generally. Where self-advocacy is discouraged, landlords, builders, lenders, and others so

disposed to discriminate, will be empowered to mistreat those entering the market. This will result in a decrease in housing opportunities for those who are the most vulnerable.

In summary, the proposed rule makes disparate impact cases harder to win. This is a fundamental change that will make it more difficult to hold accountable those wrongdoers whose discriminatory policies are so harmful to so many. Thus, a decrease of housing discrimination claims along with a rise in unchecked housing discrimination policies is foreseeable. For these reasons, the proposed rule must be withdrawn.

Yours truly,



Velma J. Korbel
Director, Minneapolis Department of Civil Rights