

February 13, 2026

Regulations Division
Office of General Counsel
U.S. Department of Housing and Urban Development
451 7th Street SW, Washington, DC 20410

**Re: HUD's Implementation of the Fair Housing Act's Disparate Impact Standard
(Docket No. FR-6540-P-01)**

To Whom it May Concern:

Thank you for the opportunity to provide comment on the U.S. Department of Housing and Urban Development (HUD)'s proposed rule¹ to eliminate its disparate impact regulations under the Fair Housing Act. On behalf of the undersigned organizations, we write to oppose the proposed rule and express our concern over the agency's de-prioritization of enforcement of discrimination claims based on disparate impact. The principle that policies or actions producing an unnecessary disparate impact based on protected class constitute prohibited discrimination under the Fair Housing Act is firmly established in longstanding agency interpretation, and judicial precedent.

Established during the civil rights era, disparate impact remains a vital tool for challenging both intentional and unintentional discrimination. Despite meaningful progress, housing discrimination and segregation continue to pose serious and pervasive problems in communities across the country. It is therefore imperative that HUD preserve and vigorously deploy all available enforcement tools, including the disparate impact standard, to combat discrimination in all its forms.

In 2015, the Supreme Court found that disparate impact claims were cognizable under the Fair Housing Act in its *Texas Department of Housing and Community Affairs v. Inclusive Communities Project* ("*Inclusive Communities*") ruling. The court found that disparate impact is often the only way to identify discrimination, including discriminatory intent which is challenging to prove. In his opinion on behalf of the court, Justice Anthony Kennedy wrote: "Recognition of disparate-impact liability under the FHA also plays a role in uncovering discriminatory intent: 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." The Congressional intent, statutory authority, and legal precedent are extremely clear.

We believe that HUD's existing disparate impact rule (2013, 2023) is aligned with *Inclusive Communities*. Through its definition of discriminatory effects, legal justifications, burden-shifting framework, and disparate impact claims filing process, the rule also provides uniform,

¹ HUD's *Implementation of the Fair Housing Act's Disparate Impact Standard*, 91 Fed. Reg. 1475 (proposed Jan. 14, 2026) (to be codified at 24 C.F.R. pt. 100), <https://www.federalregister.gov/documents/2026/01/14/2026-00590/huds-implementation-of-the-fair-housing-acts-disparate-impact-standard>

clear regulatory guidance that helps mitigate litigation risks and the potential for conflicting court cases. This is especially true for entities that operate across multiple jurisdictions. While it is true that following the *Raimondo v. Loper Bright* decision, courts are not required to defer to agencies on matters of statutory construction, Congressional intent and precedent are crystal-clear under the Fair Housing Act. Courts may also reference regulations or guidance in making their decisions which can help prevent the potential for conflicting court decisions. In addition, HUD's regulations are helpful to its own staff as they carry out enforcement activities.

HUD is statutorily required to investigate Fair Housing Act complaints submitted to the Office of Fair Housing and Equal Opportunity (FHEO) that satisfy the Act's jurisdictional and procedural requirements.² In a memo issued September 16, 2025,³ HUD revoked existing Fair Housing enforcement guidance and deprioritized discrimination claims based on discriminatory effects. This follows significant staffing cuts at FHEO that have crippled its ability to carry out its mission. In this rule, HUD states that not only interpretation but also enforcement of discriminatory effects liability is "best left to the courts." We are concerned that this rule, and HUD's lack of enforcement of disparate impact cases, will expose millions of Americans, especially in vulnerable communities, to increased risk of discrimination, including lower quality, less affordable, and less accessible housing.

We recognize that this proposed rule was promulgated in response to Executive Order (EO) 14281,⁴ but the EO does not supersede the law. Practices that have a discriminatory effect without sufficient justification remain illegal under the Fair Housing Act, and HUD has a duty to enforce the law and uphold its fair housing mission. In addition to providing a critical protection for American communities, we believe it is in the mutual interest of landlords, lenders, developers, and other industry participants, as well as tenants, that HUD uphold and enforce the Fair Housing Act as intended by Congress and codified by the Supreme Court.

Thank you for the opportunity to provide feedback on this important matter. We look forward to working with you on this and other issues to help communities thrive and ensure all Americans are able to access quality, affordable housing.

Sincerely,

National Housing Conference
Atlanta Neighborhood Development
Partnership, Inc.
California Housing Partnership
Center for Responsible Lending
Homeownership Council of America
Housing Assistance Council
Local Initiatives Support Corporation
National Low Income Housing Coalition

UnidosUS
Up for Growth Action
Virginia Housing Alliance

² See 42 U.S.C. § 3610(a)(1)(B)(iv); 24 C.F.R. § 103.200(a).

³ U.S. Dep't of Hous. & Urb. Dev., *Fair Housing Act Enforcement and Prioritization of Resources* (Sept. 16, 2025), <https://www.hud.gov/sites/dfiles/Main/documents/Fair-Housing-Act-Enforcement-Prioritization-Resources.pdf>

⁴ Exec. Order No. 14,281, *Restoring Equality of Opportunity and Meritocracy*, 90 Fed. Reg. 17,537 (Apr. 28, 2025), <https://www.whitehouse.gov/presidential-actions/2025/04/restoring-equality-of-opportunity-and-meritocracy/>