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February 13, 2026

The Honorable Scott Turner
Secretary
Department of Housing and Urban Development
451 7th Street SW
Washington, DC 20410-0500

Re: Comments on HUD's Implementation of the Fair Housing Act's Disparate Impact Standard Proposed Rule, Docket No. FR-6540-P-01, RIN 2529-AB09

Dear Secretary Turner:

The National Fair Housing Alliance ("NFHA")[1] and the undersigned civil rights, consumer advocacy, housing, and community development organizations write to urge you not to finalize the Department of Housing and Urban Development's (HUD) proposed rule (Proposed Rule) eliminating HUD's regulations regarding disparate impact under the Fair Housing Act[2] (FHA), to leave in place the current disparate-impact rules, and to stop unlawfully refusing to comply with the Supreme Court's recognition that disparate impact is part of the Fair Housing Act. As explained below, it is critically important that HUD maintain its disparate-impact regulatory standards and vigorously enforce the Fair Housing Act, which Congress designed to ensure equal housing opportunity throughout the country, especially as the people of America are experiencing a severe fair and affordable housing crisis.

Disparate impact under the FHA is a critical aspect of the framework Congress created to eliminate all policies that unnecessarily preclude people from obtaining safe, affordable, and accessible housing of their choice. On average, over four million incidents of discrimination each year impede individuals' and families' ability to secure a home, mortgages, insurance, utilities, and other elements necessary for equal housing opportunity. Such discrimination, which includes facially neutral policies that have a disproportionate effect based on protected classes, undermine our shared interest in ensuring that housing opportunities are available to every individual and family regardless of their personal characteristics.

Our shared interest in equal housing opportunity is embedded in HUD's mission and the FHA itself which established "the policy of the United States to provide, within constitutional limits, for fair housing throughout the United States."[3] Passed in 1968, exactly seven days after

[1] NFHA is the country's only national civil rights organization dedicated solely to eliminating all forms of housing and lending discrimination and its membership includes over 200 fair housing and justice-centered organizations and individuals across the United States and its territories.
[2] *HUD's Implementation of the Fair Housing Act's Disparate Impact Standard*, 91 Fed. Reg. 1475 (Jan. 14, 2026).
[3] 42 U.S.C. § 3601.

the horrific assassination of Dr. Martin Luther King, Jr., the FHA prohibits discrimination in housing and housing-related services on the basis of race, color, national origin, religion, sex, familial status, and disability. The FHA supports the development and maintenance of neighborhoods where every person has the opportunity to access life-affirming amenities and thrive. Fulfilling the promises of the FHA is a central component of HUD's mission and national policy.

The undersigned organizations support this central mission, and we urge you to ensure that HUD maintains and enforces its current disparate-impact regulations that help advance the goals of the Fair Housing Act. The current regulations properly codify the disparate-impact standard as articulated by the courts, including the Supreme Court in its decision in *Texas Department of Housing and Community Affairs v. Communities Project, Inc.*[4] As explained below, that standard has successfully increased housing opportunity for underserved communities for decades.

I. HUD's Rule Repeal Is One Part of An Illegal Attempt to Eliminate Disparate Impact Under the Fair Housing Act

At its root, the Proposed Rule is actually a barely veiled attempt to limit the availability of disparate impact-based claims under the FHA. That attempt runs directly contrary to Supreme Court precedent on the question.[5]

Despite the Supreme Court's interpretation of the FHA, HUD seeks to eliminate the availability of disparate impact. You, Secretary Scott Turner, have revealed the intent behind HUD's proposed rule by stating: "It's Time to Ditch 'Disparate Impact Theory."[6] As you explain the Proposed Rule's purpose:

> The U.S. Department of Housing and Urban Development (HUD) is defanging the pernicious legal doctrine that fueled Biden's government weaponization: disparate-impact theory. HUD has proposed a rule to end the agency's use of disparate-impact theory in fair housing and related civil rights enforcement.

You conclude that "[w]ith the disparate impact rule headed for the ash heap of history, HUD is restoring fairness to civil rights enforcement."[7] Similarly, when HUD recently announced that it was closing an investigation into prior disparate-impact discrimination

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[4] *Texas Dep't of Hous. & Cmty. Affairs v. Inclusive Communities Project, Inc.*, 576 U.S. 519 (2015) (*Inclusive Communities*).

[5] *Id.* at 545–46 (holding disparate-impact claims are cognizable under the FHA based on the statute's "results-oriented language, the Court's interpretation of similar language in [other civil rights statutes], Congress' ratification of disparate-impact claims in 1988 against the backdrop of the unanimous view of nine Courts of Appeals, and the [FHA's] statutory purpose").

[6] Scott Turner, *It's Time to Ditch 'Disparate Impact Theory'—and Biden's Weaponization of Civil Rights Law*, Nat'l Rev. (Jan. 19, 2026), https://www.nationalreview.com/2026/01/its-time-to-ditch-disparate-impact-theory-and-bidens-weaponization-of-civil-rights-law/.

[7] *Id.*

allegations against the Texas General Land Office, HUD linked its action to your prior statement, noting HUD recently "proposed a rule to *end the agency's use of disparate-impact theory* in fair housing and related civil rights enforcement."[8]

Moreover, even before proposing this rule, HUD already had announced it would not enforce the Fair Housing Act with respect to any claims stemming from disparate impact.[9] Additionally, as described further below, HUD independently is attempting to force its grantees to stop fully enforcing the Fair Housing Act. Accordingly, it is simply not true, as the Proposed Rule asserts, that HUD is merely deferring to federal courts with respect to disparate impact.

HUD presents no defensible basis for "end[ing] the agency's use of disparate-impact theory" under the FHA, and no such basis exists. When a rule is not seeking to achieve the goal it articulates in the Federal Register ("to leav[e] to courts questions related to interpretations of disparate-impact liability under the Fair Housing Act"),[10] presents no basis for its actual goal, and cannot be squared with the position the agency and its leadership has consistently articulated in every other setting, it is improper and should be withdrawn.

II. HUD's Justifications for the Rule Repeal Are Baseless

A. *EO 14281 Does Not Authorize HUD's Repeal of FHA Disparate-Impact Regulations*

HUD's first attempts to justify its proposed repeal of the agency's disparate-impact regulations with reference to Executive Order 1421, Restoring Equality of Opportunity and Meritocracy, which articulate a mandate "to eliminate the use of disparate-impact liability in all contexts to the maximum degree possible to avoid violating the Constitution, Federal civil rights law, and basic American ideals."[11]

The President cannot, however, "eliminate the use of disparate-impact liability" under the Fair Housing Act simply by means of an Executive Order, nor can HUD do so simply because an Executive Order instructed it to do so. As the Supreme Court has succinctly stated, "the President's power to see that the laws are faithfully executed refutes the idea that he is to be a

[8] Press Release, *HUD Rescinds Biden-Era Politically Motivated Investigation into the Texas General Land Office* (Jan. 28, 2026) (emphasis added), https://www.hud.gov/news/hud-no-26-009.
[9] Memorandum from John Gibbs, Principal Deputy Assistant Secretary for Fair Housing and Equal Opportunity to HUD staff (Sept. 16, 2025) (Gibbs Memo), https://www.hud.gov/sites/dfiles/Main/documents/Fair-Housing-Act-Enforcement-Prioritization-Resources.pdf.
[10] 91 Fed. Reg. at 1475.
[11] *Id.* at 1476 (quoting Exec. Order No. 1491, 90 Fed. Reg. 17537).

lawmaker."[12] "Thus, the Framers made clear that, far from *creating* laws that bind the people of the United States, the President 'shall take care that the laws be faithfully *executed.*'"[13]

As the Proposed Rule acknowledges, "the Supreme Court [has] held that disparate-impact claims are cognizable under the Fair Housing Act."[14] That being so, the President and the HUD Secretary must ensure that the FHA, including its provision of disparate-impact liability, are faithfully enforced.

The Executive Branch must discharge this duty regardless of its own views such as Executive Order's baseless assertion that disparate impact creates a "near insurmountable presumption of discrimination."[15] Of course, the rule HUD seeks to repeal contains no such presumption. It sets forth the familiar, three-part burden-shifting framework applied for decades by both the courts and HUD. It begins with the party bringing the claim needing to show "that a challenged practice caused or predictably will cause a discriminatory effect."[16]

If this initial burden is met, the claim may still fail if the housing provider shows "the challenged practice is necessary to achieve one or more substantial, legitimate, nondiscriminatory interests."[17] As the Supreme Court has described, this second step allows the housing provider "leeway to state and explain the valid interest served by [its] policies" and is "[a]n important and appropriate means of ensuring that disparate-impact liability is properly limited."[18] Under the burden shifting framework, the Court recognized that "housing authorities and private developers [are] allowed to maintain a policy if they can prove it is necessary to achieve a valid interest."[19] In the final step, the complainant or plaintiff has the burden of identifying another practice that would have less discriminatory effect while still serving the valid interests of the housing provider.[20]

Thus, it simply is not true that disparate impact under the Fair Housing Act creates a "near insurmountable presumption of discrimination." Tellingly, the proposed rule makes no attempt to ground this assertion in HUD's actual experience administering the Fair Housing Act and instead cites only the Executive Order.

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[12] *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 587 (1952) (invalidating an Executive Ordering directing seizure of steel plants); *see also id.* ("The Constitution limits [the President's] functions in the lawmaking process to the recommending of laws he thinks wise and the vetoing of laws he thinks bad. And the Constitution is neither silent nor equivocal about who shall make laws which the President is to execute.").
[13] *Ctr. for Biological Diversity v. McAleenan,* 404 F. Supp. 3d 218, 245 (D.D.C. 2019) (quoting U.S. Const. art. II, § 3 (emphasis added)).
[14] 91 Fed. Reg. at 1475 (citing *Inclusive Communities*, 576 U.S. 519, at 532–35 (2015)).
[15] *Id.* at 1476 (quoting Exec. Order No. 1491, 90 Fed. Reg. 17537).
[16] 24 C.F.R. § 100.500(c)(1).
[17] 24 C.F.R. § 100.500(c)(2).
[18] *Inclusive Communities*, 576 U.S. at 541.
[19] *Id.*
[20] 24 C.F.R. § 100.500(c)(3).

HUD's Proposed Rule also quotes the Executive Order as asserting that disparate impact creates liability "even if everyone has an equal opportunity to succeed."[21] This is exactly backwards. In reality, disparate impact functions to remove unnecessary and arbitrary barriers to equal opportunity. As one example, the Supreme Court highlighted "zoning laws and other housing restrictions that function unfairly to exclude people of color from certain neighborhoods without any sufficient justification."[22]

Thus, not only is the Executive Order an inadequate basis for agency rulemaking that conflicts with Supreme Court interpretation of the relevant statute, but claims made by the Executive Order cannot be squared with how disparate impact actually works. Tellingly, HUD makes no attempt to ground its quotes from the Executive Order's claims in the application of disparate impact since the passage of the FHA.

B. *Contrary to HUD's Claim, Instead of Leaving Disparate Impact to the Courts, the Proposal Functions to Eliminate Disparate Impact at HUD*

HUD asserts that removing its discriminatory effects regulations will "leav[e] to courts questions related to interpretations of disparate-impact liability under the Fair Housing Act."[23] In fact, HUD's recent actions—as well as statements by HUD itself—reveal that elimination of the regulation would have HUD's intended and actual result of making it easier for the agency to refuse to investigate disparate impact-based claims filed with the agency, without regard to what courts say.

HUD regulations provide the standards by which HUD operates its FHA complaint system. That system, which is prescribed by Congress in the FHA, received 1,710 complaints in 2024.[24] In general, HUD charges of discrimination that are heard by Administrative Law Judges operate under the same rules as would apply to claims proceeding in U.S. District Court.[25]

Part 100 of HUD's regulations, titled "Discriminatory Conduct Under the Fair Housing Act," from which HUD proposes removing its disparate-impact regulations, provides HUD's "interpretation of the coverage of the Fair Housing Act regarding discrimination related to the sale or rental of dwellings, the provision of services in connection therewith, and the availability of residential real estate-related transactions."[26] HUD's FHA regulations were promulgated to

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[21] 91 Fed. Reg. at 1476 (quoting Exec. Order No. 1491, 90 Fed. Reg. 17537).
[22] *Inclusive Communities*, 576 U.S. at 539; *see also id.* at 546 (Supreme Court finding that "[t]he existence of disparate-impact liability in the substantial majority of the Courts of Appeals for the last several decades has not given rise to dire consequences" and noting that "many of our Nation's largest cities—entities that are potential defendants in disparate-impact suits—have submitted an amicus brief . . . supporting disparate-impact liability under the FHA").
[23] 91 Fed. Reg. at 1475.
[24] National Fair Housing Alliance, *2025 Fair Housing Trends Report* at 11. An additional 6,758 complaints were processed under HUD's Fair Housing Assistance Program using state laws HUD certified are "substantially equivalent" to the Fair Housing Act. *See id.*
[25] *See* 24 C.F.R. part 180.
[26] 24 C.F.R. § 100.5(b).

provide a comprehensive guide to the acts and practices prohibited by the FHA and offer extensive interpretation and examples across *all* relevant subject matter to help ensure full FHA compliance.[27]

Removing the disparate-impact regulations from Part 100 would have the effect of eliminating the standards by which HUD would investigate and charge disparate-impact violations and adjudicate those claims before HUD's Administrative Law Judges. To further emphasize this intent, HUD proposes also to eliminate from the "Scope" of its FHA regulations the statement "[t]he illustrations of unlawful housing discrimination in [Part 100] may be established by a practice's discriminatory effect, even if not motivated by discriminatory intent, consistent with the standards outlined in § 100.500."

Elimination of the existing Rule is not necessary to clear a path for courts to interpret disparate impact in judicial proceedings—a path that a HUD rule on disparate impact does not obstruct. Instead, it functions purely to deprive HUD of meaningful standards and procedures by which to handle disparate-impact complaints before the agency. It makes sense only in the context of HUD's *actual*, and illegitimate, purpose—to ensure that HUD does *not* investigate disparate-impact complaints, in defiance of the Supreme Court.

C. *HUD Refuses to Investigate Complaints Alleging Disparate Impact Despite Its Statutory Duty to Do So*

The FHA provides that HUD "shall make an investigation" of every complaint filed with the agency alleging discriminatory housing practices under the FHA.[28] The purpose of the required investigation is:

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[27] *See* 24 C.F.R. Part 100 Discriminatory Conduct Under the Fair Housing Act (including sections interpreting Real Estate Practices Prohibited (section 100.50); Unlawful Refusal to Sell or Rent or to Negotiate for the Sale or Rental (section 100.60); Discrimination in Terms, Conditions and Privileges and In Services and Facilities (section 100.65); Other Prohibited Sale and Rental Conduct (section 100.70); Discriminatory Advertisements, Statements and Notices (section 100.75); Discrimination Representations on the Availability of Dwellings (section 100.80); Blockbusting (section 100.85); Discrimination in the Provision of Brokerage Services (section 100.90); Discriminatory Practices in Residential Real Estate-Related Transactions (section 100.110); Discrimination in the Making of Loans and in the Provision of Other Financial Assistance (section 100.120); Discrimination in the Purchasing of Loans (section 100.125); Discrimination in the Terms and Conditions for making Available Loans or Other Financial Assistance (section 100.120); Discrimination in the Purchasing of Loans (section 100.125); Discrimination in the Terms and Conditions for Making Available Loans or Other Financial Assistance (section 100.130); Unlawful Practices in the Selling, Brokering, or Appraising of Residential Real Property (section 100.135); General Prohibitions Against Discrimination Because of Handicap (section 100.202); Reasonable Modifications of Existing Premises (section 100.203); Reasonable Accommodations (section 100.204); Design and Construction Requirements (section 100.205); 62 and Over Housing (section 100.303); Housing for Persons Who Are 55 Years of Age or Older (section 100.304); 80 Percent Occupancy (section 100.305); Intent to Operate as Housing Designed for Persons Who Are 55 Years of Age or Older (section 100.306); Verification of Occupancy (section 100.307); Good Faith Defense Against Civil Money Damages (section 100.308); Prohibited Interference, Coercion or Intimidation (section 100.400); Quid Pro Quo and Hostile Environment Harassment (section 100.600)).

[28] 42 U.S.C. § 3610(a)(1)(B)(iv).

(1) To obtain information concerning the events or transactions that relate to the alleged discriminatory housing practice identified in the complaint.

(2) To document policies or practices of the respondent involved in the alleged discriminatory housing practice raised in the complaint.

(3) To develop factual data necessary for the General Counsel to make a determination . . . whether reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur . . . ."[29]

The FHA requires HUD, at the conclusion of the investigation, to prepare a final investigative report containing: "(i) the names and dates of contacts with witnesses; (ii) a summary and the dates of correspondence and other contacts with the aggrieved person and the respondent; (iii) a summary description of other pertinent records; (iv) a summary of witness statements; and (v) answers to interrogatories."[30] HUD's implementing regulations regarding complaints—which are not at issue in the Proposed Rule—spell out in greater detail steps that HUD "will" take upon receiving a complaint.[31] By contrast, the statute and HUD's regulations provide that HUD "may" initiate an investigation on its own, without a complaint,[32] separately to respond to any specific priorities that a particular, and fleeting, set of HUD leadership may have.

Neither the FHA nor its implementing regulations allow HUD to investigate some complaints and not others, or to reject claims that are cognizable under the statute simply because HUD believes they should not be. HUD already has inappropriately instructed staff to "prioritize cases involving facially discriminatory conduct" and deprioritize what it terms "tenuous theories of discrimination."[33] As you confirmed, this rulemaking furthers that unlawful policy of excluding cases involving a theory of discrimination that the Supreme Court has confirmed is available under the FHA.

As designed by Congress, the administrative enforcement of the FHA is responsive to *all* complaints filed by the public. Congress established HUD's robust fair housing complaint investigation and processing function in 1988 "in response to evidence of continuing housing

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[29] 24 C.F.R. § 103.200(a).
[30] 42 U.S.C. § 3610(b)(5)(A). *See also* 24 C.F.R. § 103.230 (final investigation report).
[31] *See, e.g.*, 24 C.F.R. 103.201 (upon the filing of a complaint, HUD "will notify" each aggrieved person); 24 C.F.R. 103.202(a) (HUD "will serve a notice on each respondent").
[32] 42 U.S.C. 3610(a)(1)(A)(iii); 24 C.F.R. 103.204(a).
[33] Gibbs Memo; *see also id.* at 3 ("FHEO must prioritize cases with the strongest evidence of disparate treatment toward a bona fide purchaser or renter because of his or her protected traits."); *see also* Debra Kamin, Trump Appointees Roll Back Enforcement of Fair Housing Laws, N.Y. Times (Sept. 22, 2025) (reporting a recent 65% staff reduction of staff at HUD's fair housing office, a reduction from 22 to 6 fair housing office lawyers, and four Charges of Discrimination issued in 2025 compared with an average of 35 in prior years), https://www.nytimes.com/2025/09/22/realestate/trump-fair-housing-laws.html; Spotlight Forum: Fair Housing Under Fire (Jan. 13, 2026) (statement of HUD attorney Palmer Heenan) ("[t]hrough firings, coerced resignations, and reassignments, the current administration has prevented prosecution of cases under a law Congress has required it to enforce"), https://www.youtube.com/watch?v=XhewYASTTzY.

discrimination"[34] after finding that the FHA had been "ineffective because it lack[ed] an effective enforcement mechanism."[35] Congress noted the "bipartisan agreement that a change needs to be made to the Fair Housing Act," and quoted President Reagan as concluding, "since its passage, . . . a consensus has developed that the Fair Housing Act has delivered short of its promise because of a gap in its enforcement mechanism."[36]

HUD continues to be subject to its statutory requirement to enforce the FHA as set forth by Congress and construed by the Supreme Court. It may not use rulemaking as a mechanism to avoid investigating and prosecuting a whole set of potentially valid claims because they are based on a recognized legal theory HUD currently disfavors.

D. *HUD Policy Barring Disparate-Impact Complaint Processing by FHAPs and FHIPs*

The Proposed Rule is not just an attempt to disavow HUD's own obligation to process, investigate, and potentially prosecute disparate-impact claims. It also is in furtherance of HUD's unlawful policy of blocking state and local Fair Housing Assistance Program (FHAP) agencies and private non-profit organizations participating in the Fair Housing Initiatives Program (FHIP) program from carrying out their own obligations with respect to disparate impact.[37]

HUD has begun carrying out this policy in defiance of its still-current regulations that confirm that disparate impact is part of the FHA. In HUD's FY2025 guidance to FHAP agency directors, a new Mandatory Provision declared that FHAPs granted HUD funds "[s]hall not issue findings utilizing disparate-impact liability as defined by Executive Order 14281 (Restoring Equality of Opportunity and Meritocracy)."[38] The guidance further warns that "FHAPs governed by local fair housing laws that grant substantive rights not found in the federal Fair Housing Act risk having their substantial equivalency certification revoked,"[39] raising the possibility that FHAPs located in states where state fair housing law clearly provides for disparate-impact liability could have *all* FHAP funding cut based on HUD's policy that disparate-impact claims should not be brought under the FHA.

FHIP funding is the nation's largest source of funding for community-based groups assisting people who believe they have been a victim of housing discrimination.[40] FHIP Grantees

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[34] 42 U.S.C. § 3616a note.
[35] H.R. Rep. 100-711, 16, 1988 U.S.C.C.A.N. 2173, 2177 (finding "[p]rivate persons and fair housing organizations [were] burdened with primary enforcement responsibility").
[36] H.R. Rep. 100-711, 33, 1988 U.S.C.C.A.N. 2173, 2194 (internal quotation marks omitted).
[37] In 2024, for example, FHAPs processed 6,758 complaints while HUD processed 1,566 complaints. National Fair Housing Alliance, 2025 Fair Housing Trends Report at 11, https://nationalfairhousing.org/wp-content/uploads/2025/11/2025-NFHA-Fair-Housing-Trends-Report.pdf.
[38] Nathan S. Roth, *Transmittal Memo: FY2025 Guidance Package for the Fair Housing Assistance Program*, Attachment F.
[39] *Id.* at 2.
[40] *See* Fair Housing Assistance Program (FHIP), https://www.hud.gov/stat/fheo/initiatives-program.

are now similarly bound by new HUD agreements that mandate they "shall not use grant funds to bring claims asserting disparate-impact liability as defined by Executive Order 14281 (Restoring Equality of Opportunity and Meritocracy)." [41]

The Proposed Rule is intended to justify HUD's new legally flawed mandates to FHAP agencies and FHIP organizations, which right now conflict with HUD's own regulations. Both the Proposed Rule and these new mandates run contrary to the Supreme Court's determination that claims asserting disparate-impact liability are cognizable under the FHA. Given that the stated (by you) and obvious purpose of the Proposed Rule is to facilitate HUD's flouting of that Supreme Court precedent, the existing rule should be retained in order to help ensure that all levels of the administrative enforcement structure created by Congress fully enforce the FHA rather than being forced by HUD to unlawfully abandon enforcement of disparate-impact claims.

Maintaining proper assessment and resolution of disparate impact-based claims requires not only withdrawal of the Proposed Rule, but also reversal of other actions that are premised on HUD's current objection to disparate impact. For example, on November 25, 2025, HUD rescinded guidance applying the disparate-impact doctrine to tenant screening practices.[42] In their place, HUD provided "broad discretion to screen for suitability of tenancy or program participation for all relevant circumstances, including a history of criminal activity which would adversely affect the health, safety, and peaceful enjoyment of the property."[43] The rescinded guidance had properly addressed how disparate-impact methods of proof apply in FHA claims in which a housing provider refuses to rent to people because of their criminal history.[44] The guidance assisted the assessment of claims in the administrative process that a housing provider's criminal history policy or procedure had an unjustified disparate impact on a protected class in violation of the FHA. Similarly, guidance on the use of arrest records in housing decisions helped clarify for public housing agencies and owners of federally assisted housing "their obligation to ensure that any admissions and occupancy requirements they impose comply with applicable civil rights requirements contained in the Fair Housing Act" and other federal law.[45]

The administrative process benefits from the existing rule on disparate impact, as well as the concrete guidance HUD has provided over the years as to how to apply it. By eliminating any

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[41] 2025 Mandatory Provisions FY 2024 PHIP Grant (updated Dec. 2025).
[42] Memorandum from Secretary E. Scott Turner (Nov. 25, 2025), https://content.govdelivery.com/attachments/USHUDFHA/2025/11/26/file_attachments/3474936/SOHUD%20Letter%20on%20Criminal%20Screening%20Responsibilities%20of%20PHAs%20and%20Owners_final.pdf.
[43] *Id.* at 2.
[44] Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions (Apr. 4, 2016) (discussing the "significant barriers to securing housing, including public and other federally-subsidized housing"), https://www.novoco.com/public-media/documents/hud_ogc_guide_fha_040416.pdf.
[45] Notice 2015-19, Guidance for Public Housing Agencies (PHAs) and Owners of Federally-Assisted Housing on Excluding the Use of Arrest Records in Housing Decisions 2, 5 (Nov. 2, 2015).

acknowledgment of disparate impact, the Proposed Rule and these other related actions leave a vacuum for analyzing legitimately alleged and legally supported disparate impact-based claims under the FHA.

E. *Courts Continue to Rely on Agency Statutory Interpretations Post*-Loper Bright

HUD also justifies the elimination of its disparate-impact regulations by erroneously asserting that under the Supreme Court's decision in *Loper Bright Enterprises v. Raimondo*, "federal agency interpretations of statutes . . . do not receive any judicial deference," and thus HUD's "codification of [disparate impact] in regulations, do[es] not carry deferential weight."[46]

While overruling the prior presumptions accorded agency action under *Chevron U.S.A. v. Natural Resources Defense Council*, the Court in *Loper Bright* repeatedly emphasized that courts benefit from an agency's statutory interpretation and may, depending on the circumstances, continue to rely upon it under the *Skidmore* framework.[47] Thus, "[c]ourts exercising independent judgment in determining the meaning of statutory provisions, consistent with the [Administrative Procedure Act], may—as they have from the start—seek aid from the interpretations of those responsible for implementing particular statutes."[48] The Court recognized the exercise of "independent judgment" by courts has "often included according due respect to Executive Branch interpretations of federal statutes."[49] Thus, agency interpretations codified in regulation continue to have practical value for courts and litigants.

Indeed, HUD's claim that *Loper Bright* requires elimination of regulations construing statutory obligations proves too much, since HUD is not eliminating such regulations across the board, or even the bulk of its other regulations construing the Fair Housing Act. HUD's purported reliance on the change in deference afforded regulations to justify removing *only* HUD's disparate-impact regulations—as opposed to all of the vast network of agency regulations that its logic would implicate—establishes that the explanation is merely a pretext for an effort to eliminate disparate-impact liability under the FHA. If HUD were to actually conclude that under *Loper Bright* it can no longer promulgate or maintain regulations interpreting the FHA, it would need to delete nearly all of Part 100 from the Code of Federal Regulations.[50] Further demonstrating that this rationale is a pretext, the Trump Administration's Consumer Financial Protection Bureau explicitly rejected the option of leaving to the courts the availability of

[46] 91 Fed. Reg. at 1476 (citing *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 395, 412–13 (2024).
[47] *See Skidmore v. Swift & Co.*, 323 U.S. 134 (1944).
[48] *Loper Bright Enters.*, 603 U.S. at 371 (citing *Skidmore*, 323 U.S. at 140).
[49] *Id.* at 370.
[50] *See supra* note 27 (listing HUD's numerous other FHA interpretative regulations that the agency has left in place, despite its claim that *Loper Bright* justifies elimination of agency rules interpreting the FHA).

disparate impact under the Equal Credit Opportunity Act and instead used its rulemaking authority to propose a rule interpreting the statute (incorrectly) to bar such claims.[51]

HUD's conclusory statement that "case law continues to develop and HUD's [disparate impact] regulation does not provide an up-to-date picture of legal landscape"[52] fails to provide any evidence that HUD's current regulation is not up-to-date. In 2023, HUD completed a notice and comment rulemaking to ensure, among other things, that HUD's FHA regulations accurately reflect the Supreme Court's application of the disparate-impact doctrine.[53] Leading fair housing scholars echo the consensus that the language of the current rule is consistent with *Inclusive Communities*. Tulane University Law School Professor Stacy Seicshnaydre, whose scholarship on the subject was cited in the *Inclusive Communities* decision,[54] writes that the Court's reasoning is consistent with HUD's disparate impact rule that was reinstated in 2023.[55] Additionally, University of Kentucky School of Law Professor Robert Schwemm, author of the authoritative treatise on the Fair Housing Act, summarized "the fact that HUD described [the Disparate Impact Rule] as analogous to the Title VII-*Griggs* standard suggests that it is consistent with the Court's views in *Inclusive Communities*."[56]

More fundamentally, the potential for future judicial conflicts with agency interpretations generally cannot justify eliminating the rule entirely, otherwise all HUD regulations or, indeed, the entire Code of Federal Regulations, might be imperiled. HUD's selective application of this rationale only to disparate-impact regulations shows that HUD is improperly attempting to subvert the Supreme Court's determination that disparate-impact liability exists under the FHA.

The agency's selective reliance on *Loper Bright* to eliminate this regulation, and this regulation only, is telling. The problem HUD has is that it wants to eliminate disparate impact under the FHA, in keeping with the Executive Order it acknowledges it is following, but doing so overtly flies in the face of clear Supreme Court precedent. It is precisely because well-established law stands in the way of HUD's campaign to eliminate disparate impact (an initiative trumpeted by you and reflected by all the agency actions described here) that HUD must pretend

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[51] Equal Credit Opportunity Act (Regulation B), 90 Fed. Reg. 50901, 50906 (Nov. 13, 2025) (noting the agency has considered "alternatively . . . remov[ing] the [regulation's] provisions relating to disparate impact" but instead proposed promulgating a regulation interpreting the statute to foreclose disparate-impact claims).
[52] 91 Fed. Reg. at 1476.
[53] Reinstatement of HUD's Discriminatory Effects Standard, 88 Fed. Reg. 19450, 19454 (March 31, 2023) (concluding the finalized rule language "is consistent with and was implicitly endorsed by *Inclusive Communities*").
[54] *See Inclusive Communities*, 576 U.S. at 541 (citing Stacy Seicshnaydre, *Is Disparate Impact Having Any Impact? An Appellate Analysis of Forty Years of Disparate Impact Claims Under the Fair Housing Act*, 63 Am. U.L. Rev. 357, 360–363 (2013)).
[55] Stacy Seicshnaydre, *Disparate Impact and the Limits of Local Discretion after Inclusive Communities*, 24 Geo. Mason L. Rev. 663, 673–74 (2017) (noting the parallels between HUD's regulation and *Inclusive Communities'* analysis).
[56] Robert Schwemm, *Fair Housing Litigation After* Inclusive Communities: *What's New and What's Not*, 115 Colum. L. Rev. Sidebar 106, 121 (2015).

it is actually just deferring to the courts, in reliance on a rationale that appears to be good for one rule only.

III. Disparate Impact Remains a Vital Part of the FHA's Comprehensive Approach to Ensuring Fair Housing

The FHA was enacted in 1968 with the purpose of, to the greatest extent possible, establishing fair housing in the United States.[57] Congress passed the landmark legislation as a memorial to Dr. King's efforts to achieve fair housing for all people through the U.S. Accomplishing that purpose required more than prohibiting explicitly discriminatory acts. It also required prohibiting facially neutral policies and practices that have an unnecessary disparate and negative impact based on race or other protected class. From the beginning, courts held that the FHA bars such policies and practices and recognized disparate-impact claims.

For decades, disparate impact has proven effective in furthering Congress' purpose of "eradicat[ing] discriminatory practices" in housing[58] in at least three fundamental ways: (1) uncovering hidden intentional discrimination; (2) requiring scrutiny of unfounded policies or practices that, as applied, operate to cause or perpetuate discrimination; and (3) requiring everyone involved with providing housing and housing-related services to continually improve and refine policies and practices to minimize unnecessarily unequal outcomes. Today, assessing the disparate impact of practices is particularly important in the context of the next generation of artificial-intelligence-based, machine-learning tools and platforms, tenant screening, and risk-based pricing systems that often recycle discrimination.

Disparate-impact claims can address intentional discrimination that is not overtly expressed. In *Inclusive Communities*, the Supreme Court recognized disparate impact's important role: "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."[59] With discriminatory intent often being easy to shield, it is critical that further scrutiny is triggered where the evidence of a policy's discriminatory effect is stark and the justification for the policy is thin.

One of the earliest disparate impact cases under the FHA addressed this type of situation. In 1970, the nearly all-white city of Black Jack, Missouri adopted an ordinance prohibiting the construction of multi-family dwellings. This policy, although race-neutral on its face, had the effect of excluding Black Americans, who disproportionately could not afford single-family homes in the area. As the Eighth Circuit found, "[t]he ultimate effect of the ordinance was to foreclose 85 percent of the [B]lacks living in the metropolitan area from obtaining housing in

[57] 42 U.S.C. § 3601.
[58] *Inclusive Communities*, 576 U.S. at 539.
[59] *Id*. at 540.

Black Jack, and to foreclose them at a time when 40 percent of them were living in substandard or overcrowded units."[60] The evidence developed in the case showed that the policy was unnecessary to further any of the City's stated concerns related to, for example, traffic, school overcrowding, and property values.[61]

More recently, a nearly all white parish bordering New Orleans adopted an ordinance in the aftermath of Hurricane Katrina when many families from the predominantly Black city lost homes. The ordinance limited the rental of housing to blood relatives of the owners—thus excluding any renter without family already living in the parish—and placed a moratorium on the construction of all multi-family housing.[62] That moratorium had a disparate impact based on race because it prevented the construction of the housing most likely to be used by Black families from the neighboring lower ninth ward of New Orleans, and thus prevented them from moving to the parish.[63] As in Black Jack, the disparate-impact analysis in the St. Bernard litigation revealed that the Parish's stated justifications for its policies were unsupported and likely motivated by intentional discrimination.[64]

As the Supreme Court recognized, cases challenging such exclusionary practices "reside at the heartland of disparate-impact liability,"[65] and have been situated at the core of the Fair Housing Act's protections since soon after the Act was enacted. Yet HUD recently, and in conclusory fashion, declared that such challenges to local zoning practices were based on "novel and tenuous theories of discrimination" and so would not be considered by the agency.[66] HUD should explain how this conclusion can be squared with decades of caselaw explicitly endorsed by the Supreme Court.

Disparate impact has lessened structural inequalities in industries with long histories of prior overt discrimination including in home lending, property insurance, and rental housing, because it forces careful examination of assumptions used to justify policies. Some policies with stark discriminatory effects result from deeply entrenched but unexamined assumptions that can be rooted in subconscious bias and influenced by the country's long history of housing segregation.[67] Present-day actors can perpetuate past discrimination through requirements and

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[60] *United States v. City of Black Jack*, 508 F.2d 1179, 1186 (8th Cir. 1974).
[61] *Id.* at 1187.
[62] *See, e.g., Greater New Orleans Fair Hous. Action Center v. St. Bernard Par.*, 641 F. Supp. 2d 563, 565–66 (E.D. La. 2009).
[63] *Id.* at 568.
[64] *Id.* at 577–78; *see also Inclusive Communities*, 576 U.S. at 540 (favorably citing to the case as an example of the effectiveness of the disparate-impact theory noting the ordinance restricted rental of units to only "blood relatives" in an area that was 88.3% white and 7.6% Black).
[65] *Inclusive Communities*, 576 U.S. at 539.
[66] Gibbs Memo at 3.
[67] *See, e.g.,* The Nat'l Comm'n on Fair Hous. & Equal Opportunity, The Future of Fair Housing: Report of the National Commission on Fair Housing and Equal Opportunity 6–9 (2008), https://nationalfairhousing.org/wp-content/uploads/2017/04/Future_of_Fair_Housing.pdf.

processes that have unnecessary adverse impact on communities of color. They may believe their policies are neutral and their results non-discriminatory until they see the actual impact.[68]

For example, many lenders refused for years to offer home loans for row houses. This policy had a stark discriminatory effect based on race because row houses are found largely in urban areas with significant populations of people of color. Lenders adopted this policy because, in a limited number of areas, row houses had been the subject of fraudulent appraisals that facilitated "flipping" at inflated prices. Inexperienced homebuyers were targeted by predatory sellers and found themselves stuck with purportedly renovated dwellings that proved uninhabitable.[69] That a few row houses happened to have been the subject of such fraud (which could have been perpetrated with other homes) could not justify the categorical exclusion of all row houses from eligibility for home loans. Yet many lenders simply assumed the policy was justifiable, and they adopted corresponding blanket bans, thus excluding many qualified customers who were disproportionately Black from obtaining home loans. Even after the fraudulent appraisal issue was resolved in the few areas where it was a problem, lenders failed to reexamine their policy. Only when faced with administrative litigation before HUD alleging a disparate-impact FHA violation did they agree to drop their no-row-houses policies—to the benefit of all row house occupants, regardless of race.[70]

Disparate impact has forced housing providers, too, to refine overbroad exclusions that have had unnecessary discriminatory effects on tenants and would-be tenants. For example, disparate impact has barred overly restrictive apartment occupancy limits, which have the effect of unnecessarily barring families with children.[71] It has led landlords to reconsider requirements that applicants have full-time employment, which have the effect of unnecessarily barring many people with disabilities. And disparate impact has led many landlords to reconsider overly broad criminal history restrictions, which have the effect of disproportionately excluding would-be tenants of color, who are more likely to have arrests or convictions on their records that have nothing to do with fitness for tenancy. Eliminating these unnecessary restrictions has allowed many people of all races to gain housing and avoid homelessness.

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[68] *See, e.g.,* Kenneth Temkin, et al., *Inside A Lender: A Case Study Of The Mortgage Application Process,* in *Mortgage Lending Discrimination: A Review of Existing Evidence* 145–149 (Margery Austin Turner and Felicity Skidmore eds., 1999) (describing lender whose staff genuinely believed in commitment to fair lending and non-discrimination, but that nonetheless rejected non-white loan applicants disproportionately), https://faculty.haas.berkeley.edu/levine/papers/A%20Case%20Study%20of%20the%20Mortgage%20Application%20Process.pdf.

[69] *See, e.g., Predatory Lending: Joint Hearing Before a Subcommittee of the Committee on Appropriations*, 107th Cong. (2001), https://www.govinfo.gov/content/pkg/CHRG-107shrg85218/pdf/CHRG-107shrg85218.pdf.

[70] *See, e.g.*, U.S. Dep't of Hous. & Urban Dev., *HUD Announces $100,000 Settlement Of Fair Lending Complaint Against First Indiana Bank, N.A.* (June 4, 2007), http://archives.hud.gov/news/2007/pr07-080.cfm.

[71] *See, e.g.,* Department of Housing and Urban Development's Fair Housing Enforcement—Occupancy Standards; Notice of Statement of Policy, 63 Fed. Reg. 70982–70987 (Dec. 22, 1998).

Today, statistical models are ubiquitous in housing markets and are often being applied in new ways, including by real-estate companies using sophisticated algorithms to situate developments[72] and rental properties.[73] One of the important ways disparate impact has reduced systemic inequalities caused by statistical models can be seen in the improvements made to automated underwriting models that the Federal National Mortgage Association ("Fannie Mae") and the Federal Home Loan Mortgage Corporation ("Freddie Mac") use to evaluate home loan applications. Fannie Mae's and Freddie Mac's introduction of automated underwriting systems was a great innovation in lending because it permitted lenders to originate loans based on objective rather than subjective criteria, but they initially used criteria under which comparatively few Black borrowers were approved. Under pressure to ensure more equal application of the models or face scrutiny from federal regulators, Fannie Mae and Freddie Mac worked with experts to make their methodologies both fairer and more accurate. Between 1995 and 2000, the percentage of Black borrowers approved by Loan Prospector—Freddie Mac's automated underwriting system—increased from 23 percent to 54 percent, while people of color-owned home loans increased from 8.5 percent of those Freddie Mac purchased in 1995 to 14.9 percent in 2000.[74] In the process, Loan Prospector became more accurate at predicting risk.[75] It turned out that, upon closer review, it was possible to both make underwriting far more inclusive and make it more effective in achieving its primary purpose.

As an example of how Fannie Mae's original rules were unnecessarily restrictive, its initial matrix favored those who consistently made mortgage payments, giving no credit to those who consistently make other monthly payments, such as rent. This policy favored people who had previously purchased a home, reinforcing existing home-ownership disparities. Incentivized by disparate-impact requirements to look for less discriminatory variables to use in its automated underwriting models, Fannie Mae now employs a more inclusive model that permits lenders to look at a prospective borrower's history of rental payments in combination with many indicia of creditworthiness. This allows those without mortgage payment history—who are disproportionately Black and Latino—a fairer opportunity to demonstrate their creditworthiness, to the benefit of all.[76]

Thus, disparate-impact law has been critical in reducing inequities affecting access to housing. Disparate impact has caused many in the housing industry to search for and implement

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[72] *See* Matthew Stewart, *The Real Estate Sector is Using Algorithms to Work Out the Best Places to Gentrify*, Failed Architecture (Feb. 11, 2019), https://failedarchitecture.com/the-extractive-growth-of-artificially-intelligent-real-estate/.

[73] Shawn Tully, *Meet the A.I. Landlord That's Building a Single-Family-Home Empire*, Fortune (June 21, 2019), https://fortune.com/longform/single-family-home-ai-algorithms/.

[74] *See* Susan Wharton Gates et al., *Automated Underwriting in Mortgage Lending: Good News For The Underserved?*, 13 Hous. Policy Debate 369, 380–82 (2002).

[75] *Id.*

[76] See Fannie Mae, *Selling Guide: B3-5.4-03*, *Documentation and Assessment of a Nontraditional Credit History* (last revised Feb.. 27, 2024), https://selling-guide.fanniemae.com/sel/b3-5.4-03/documentation-and-assessment-nontraditional-credit-history.

more precise variable combinations, in order to predict more accurately *and* minimize disparate outcomes. In doing so, responsible businesses have come to recognize that incorporating disparate-impact analysis into their operations is good for business, because it helps them to find more qualified customers in all communities without regard to borrowers' protected characteristics.

HUD's proposed removal of its disparate-impact regulations, and ongoing refusal to fully enforce the FHA with respect to disparate impact, is especially harmful in the context of the rapidly expanding use of algorithmic and automated decision-making systems in housing, lending, tenant screening, and risk-based pricing. Increasingly, housing providers, lenders, and insurers rely on proprietary algorithms, artificial intelligence tools, and third-party screening software to make determinations about eligibility, pricing, risk, and access to housing. Left unchecked, unnecessary discriminatory outcomes are liable to arise from the data modelers' use of information in predicting outcomes, including some data points that are ostensibly neutral but can "bake-in" prior discrimination. These systems often rely on data inputs and proxies that correlate strongly with race, national origin, disability, familial status, and other protected characteristics, yet operate in ways that are opaque, unexplainable, and effectively insulated from meaningful scrutiny. In this context, disparate impact is frequently the only viable mechanism for identifying and remedying discrimination, because discriminatory intent is difficult or impossible to prove when decisions are automated and cloaked in trade secrecy.

For example, in the employment context, Amazon developed an automated model to screen job applicants using resumes submitted over the past ten years. Reflecting and then replicating gender disparities in tech jobs, the model penalized resumes with information suggesting applicants were women because it "learned" that women previously occupied few such positions and thus were, according to the model, inferior candidates.[77] In the health context, a UnitedHealth Group company developed an algorithm to recommend patient care. Because less money is spent on Black patients than White patients with the same level of need, the algorithm concluded that Black patients were less sick and thus required less care. The algorithm had not considered that the race of patients, rather the amount of care, was affecting the spending outcomes; ongoing discrimination became the rationale for new discrimination.[78]

The same danger exists in housing that algorithms will freeze and recreate status quo disparities in underwriting and pricing. There is ample evidence that these systems make decisions that are rooted in and reflect the dual and discriminatory credit market that developed in our country's long history of discrimination and ongoing practices. Without review for

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[77] Jeffrey Dastin, *Insight – Amazon Scraps Secret AI Recruiting Tool That Showed Bias Against Women* (Oct. 20, 2018), https://www.reuters.com/article/world/insight-amazon-scraps-secret-ai-recruiting-tool-that-showed-bias-against-women-idUSKCN1MK0AG/.

[78] Ziad Obermeyer, et al., *Dissecting Racial Bias in an Algorithm Used to Manage the Health of Populations*, 366 Science 447 (Oct. 25, 2019) (noting Black patients incurred about $1,800 less in medical costs each year than White patients for the same level of illness).

unnecessary disparate impact, these systems may also learn to include factors "that do not just assess the risk characteristics of the borrower; they also reflect the riskiness of the environment in which a consumer is utilizing credit, as well as the riskiness of the types of products a consumer uses."[79] These models raise serious risks of discrimination, including for decisions made by algorithms inside a "black box."[80] But, like any model, they can reflect and perpetuate the bias and historical and current discrimination that are baked into the historical data from which they learn.[81]

For example, some borrowers of color with high credit scores that should have qualified them for prime credit historically have been steered into subprime mortgages.[82] Not only have communities of color thus been presented with unnecessarily limited choice in lending products, but many of the products made available to these communities have been designed to fail, resulting in devastating defaults including, more recently, the impacts of the financial and housing crisis of 2008.[83] Black and Latino families lost $1 trillion in wealth from being steered unnecessarily into dangerous and risky subprime loans.[84] Indeed, much evidence indicates that many subprime borrowers, including higher income families of color, qualified for safer loans that were lower cost.[85] Indeed, much evidence indicates that many subprime borrowers, including higher income families of color, qualified for safer loans that were lower cost. Models trained on this tainted data can learn lessons that make them recreate the discriminatory steering that resulted in defaults for some borrowers.[86] They may "learn" that borrowers that have had payday or other nontraditional loans can or "should" be charged higher-interest rates for mortgage loans, because borrowers that have had payday loans as a group are more likely to have defaulted. They may apply this rule even to borrowers who have performed well on subprime products despite the odds. In effect, the models will punish people, disproportionately people of color, for having previously been the victims of intentional discrimination. In fact, technology can often perpetuate discrimination instead of preventing it, for example, by using tenant screening or lending algorithms with built-in biases. Researchers found that algorithmic

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[79] *See, e.g.,* Lisa Rice & Deidre Swesnik, *Discriminatory Effects of Credit Scoring on Communities of Color*, 46 Suffolk U. L. Rev. 935, 936, 938 (2013).
[80] *See, e.g.,* Cary Coglianese & David Lehr, *Transparency and Algorithmic Governance*, 71 Admin. L. Rev. 1, 4 (2019); Cary Coglianese & David Lehr, *Regulating by Robot: Administrative Decision Making in the Machine-Learning Era*, 105 Geo. L.J. 1147, 1159 (2017).
[81] *See, e.g.,* Solon Barocas & Andrew D. Selbst, *Big Data's Disparate Impact*, 104 Calif. L. Rev. 671, 677–87 (2016) (discussing how data mining for models may reflect societal discrimination).
[82] *Id*. at 944–45.
[83] *Id.* at 944.
[84] Debbie Gruenstein Bocian, Peter Smith, and Wei Li, *Collateral Damage: The Spillover Costs of Foreclosures*, Center for Responsible Lending, at 2 (Oct. 24, 2012), https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/collateral-damage.pdf.
[85] Rick Brooks and Ruth Simon, *Subprime Debacle Traps Even Very Credit-Worthy*, Wall Street Journal (Dec. 3, 2007), https://www.wsj.com/articles/SB119662974358911035.
[86] *Id.* at 949.

systems overcharge Black and Latino mortgage borrowers by $765 million yearly,[87] and Automated Valuation Models perpetuate discrimination against homeowners of color.[88]

As these models have proliferated, disparate impact and its potential enforcement by the federal government has motivated housing providers and lenders to continually improve and refine dynamic decision models and policies to minimize unequal outcomes while maintaining or even increasing accuracy. Disparate impact has reduced disparities in ways more profound than the modification of individual policies; it has changed the ongoing processes by which many entities in the housing industry create and maintain the models they use to make decisions that affect who can participate in the housing market. Once required to adopt less discriminatory alternatives, companies frequently have found that such alternatives cost them little and at times increase profits by helping them find new customers and exclude fewer people.

Eliminating HUD's discriminatory effects rule, on top of refusing to enforce the Fair Housing Act with respect to these discriminatory practices, would invite precisely this kind of unseen, technology-enabled discrimination, allowing algorithmic systems to replicate and amplify the very patterns of segregation and exclusion that the FHA was passed to eliminate. HUD's Disparate-Impact Rule provides meaningful standards that can be used to evaluate technological developments in the market, including those that involve AI and machine learning.

As the Supreme Court concluded, "[m]uch progress remains to be made in our Nation's continuing struggle against racial isolation. . . . . The FHA must play an important part in avoiding the Kerner Commission's grim prophecy that '[o]ur Nation is moving toward two societies, one black, one white—separate and unequal.' The Court acknowledges the Fair Housing Act's continuing role in moving the Nation toward a more integrated society."[89] Disparate impact, including HUD's and other agencies' enforcement and guidance regarding its application, is critical to ensuring the FHA helps keep the nation on a path toward equal opportunities in housing and lending, a goal that has yet to be achieved.

Discrimination is by no means a relic of the past. For example, the racial homeownership gap remains wide and persistent. Currently, the homeownership rate is about 72.4 percent for White households, 51.0 percent for Latino households, and 44.7 percent for Black households. In 1960 (before the passage of the Fair Housing Act in 1968), there was a 27-percentage point gap between Black homeownership (38 percent) and White homeownership (65 percent).[90] Thus, the

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[87] Robert Bartlett, Adair Morse, Richard Stanton, and Nancy Wallace, Consumer-Lending Discrimination in the FinTech Era, University of California, Berkeley (Nov. 2019), https://faculty.haas.berkeley.edu/morse/research/papers/discrim.pdf

[88] Linna Zhu, Michael Neal, and Caitlin Young, Revisiting Automated Valuation Model Disparities in Majority-Black Neighborhoods, Urban Institute (May 19, 2022), https://www.urban.org/research/publication/revisiting-automated-valuation-model-disparities-majority-black-neighborhoods.

[89] *Inclusive Communities*, 576 U.S. at 546–47 (quoting Report of the National Advisory Commission on Civil Disorders 1 (1968)).

[90] National Association of Realtors® Research Group, 2025 Snapshot of Race and Homebuying in America (2024),

current Black-White homeownership gap of 28 percentage points is ***higher*** than it was before the passage of the Fair Housing Act in 1968. Moreover, as of 2023, Black and Latino renters are more likely than White renters to be cost-burdened. While more than half of Black renters (57 percent) and Latino renters (53 percent) were cost-burdened, only about 45 percent of White renters were cost-burdened. These disparities make it more difficult for Black and Latino renters to build wealth and save for down payments for homeownership. Finally, Home Mortgage Disclosure Act data reveal each year that Black and Latino borrowers are denied home mortgages at rates higher than the market as a whole.[91]

IV. HUD's Disparate Impact Rule Provides Needed Compliance Guidance

HUD's proposed elimination of its Disparate Impact Rule ignores HUD's statutory duty to interpret the FHA. Congress has mandated that HUD issue rules and guidance regarding the agency's interpretation of the FHA, and HUD's implementing regulations provide needed guidance on disparate impact to housing market participants. In addition, HUD's guidance remains an important source of authority for judicial interpretation of the FHA.

A. *HUD has a Congressionally Mandated Duty to Issue Rules and Guidance Clarifying the Proper Interpretation of the FHA*

The Fair Housing Amendments Act of 1988 ("FHAA") explicitly authorizes HUD to make rules to carry out the FHA.[92] The FHAA thus affirms HUD's central role not just in enforcement of the FHA, but also in defining its scope and application.

Since the FHAA's enactment, HUD has continually exercised its authority to issue rules and guidance interpreting the FHA, including several times affirming the availability of disparate impact:

- A 1993 memorandum from the HUD Assistant Secretary for Fair Housing & Equal Opportunity directing HUD investigators to analyze complaints under the disparate-impact theory of liability.[93]

- The 1995 Title VIII Complaint Intake, Investigation and Conciliation Handbook ("Enforcement Handbook"), which emphasized to HUD's enforcement staff that disparate

https://www.nar.realtor/research-and-statistics/research-reports/snapshot-of-race-and-home-buying-in-america.

[91] Jacob Channel, Dan Shepard, Xiomara Martinez-White, *Black Homebuyers in 50 Largest US Metros 1.6 Times More Likely to Be Denied for Mortgage Than Overall Population*, LendingTree (July 24, 2023), https://www.lendingtree.com/home/mortgage/lendingtree-study-black-homebuyers-more-likely-to-be-denied-mortgages-than-other-homebuyers/.

[92] 42 U.S. Code § 3614a ("The Secretary may make rules . . . to carry out this subchapter."); 42 U.S.C. § 3608(a) (vesting "authority and responsibility for administering this Act" in the Secretary of HUD); *see also* 42 U.S.C. § 3535(d) (providing general rulemaking authority); 42 U.S.C. § 3612(g)-(h) (establishing adjudicative authority and procedures).

[93] *See, e.g.*, Memorandum from the HUD Assistant Secretary for Fair Housing & Equal Opportunity, *The Applicability of Disparate Impact Analysis to Fair Housing Cases* (Dec. 17, 1993).

impact is one of "the principal theories of discrimination" under the Fair Housing Act and required HUD investigators to apply it when appropriate.[94]

- The 1998 version of the Enforcement Handbook, which recognized the discriminatory effects theory of liability and required HUD investigators to apply it in appropriate cases nationwide.[95]

- 2011 guidance discussing how facially neutral housing policies addressing domestic violence can have a disparate impact on women in violation of the FHA.

- The 2013 HUD Rule,[96] which formalized HUD's long-held recognition of discriminatory effects liability under the FHA and explained its burden-shifting test for determining whether a given practice has an unjustified discriminatory effect.

- 2016 guidance documents explaining how the FHA's disparate-impact protections apply to people with limited English proficiency,[97] local nuisance and crime-free housing ordinances,[98] the use of criminal records in tenant screening,[99] and state and local land-use laws.[100]
- 2023 guidance documents explaining how the FHA's disparate-impact protections apply to tenant screening companies[101] and advertising through digital platforms.[102]

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[94] U.S. Dep't of Housing & Urban Dev., No. 8024.1, *Title VIII Complaint Intake, Investigation & Conciliation Handbook* at 7-12 (1995).
[95] U.S. Dep't of Housing & Urban Dev., No. 8024.1, *Title VIII Complaint Intake, Investigation & Conciliation Handbook* at 2-27 (1998).
[96] Implementation of the Fair Housing Act's Discriminatory Effects Standard, 78 Fed. Reg. 11460 (Feb. 15, 2013) (2013 HUD Rule); *see also* Reinstatement of HUD's Discriminatory Effects Standard, 88 Fed. Reg. 19450 (Mar. 31, 2023) (2023 HUD Rule) (reinstating in HUD regulations disparate-impact standards provided in the 2013 HUD Rule after notice and comment rulemaking).
[97] U.S. Dep't of Housing & Urban Dev., Office of Gen. Couns*., Office of General Counsel Guidance on Fair Housing Act Protections for Persons with Limited English Proficiency* (Sept. 15, 2016).
[98] U.S. Dep't of Housing & Urban Dev., Office of Gen. Couns., *Office 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).
[99] U.S. Dep't of Housing & Urban Dev., Office of Gen. Couns., *Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions* (Apr. 4, 2016).
[100] U.S. Dep't of Housing & Urban Dev. & U.S. Dep't of Justice, *Joint Statement on State and Local Land Use Laws and Practices and the Application of the Fair Housing Act* (Nov. 10, 2016).
[101] U.S. Dep't of Housing & Urban Dev., Office of Fair Hous. & Equal Opportunity, *Guidance on Application of the Fair Housing Act to the Screening of Applicants for Rental Housing* (Apr. 29, 2024).
[102] U.S. Dep't of Housing & Urban Dev., Office of Fair Hous. & Equal Opportunity, *Guidance on Application of the Fair Housing Act to the Advertising of Housing, Credit, and Other Real Estate-Related Transactions through Digital Platforms* (Apr. 29, 2024).

Beyond the FHAA, Congress has emphasized the importance of HUD in clearly and publicly issuing interpretive guidance. For example, in 1991, HUD's General Counsel issued internal guidance to HUD Regional Counsel regarding the interaction between occupancy standards and the FHA's prohibition on familial status discrimination. Seven years later, Congress enacted the Quality Housing and Work Responsibility Act, which required HUD to publish that memorandum in the Federal Register.[103] In so doing, Congress expressed its clear view that HUD's interpretive guidance should be made publicly available in the Federal Register to guide interpretation of the FHA.

In seeking to strike the Disparate Impact Rule—and by refusing to acknowledge disparate impact at all, let alone maintain guidance regarding its application—the Proposed Rule defies Congress's directives and departs from HUD's responsibility to guide the interpretation of and compliance with the FHA.

B. *HUD's Implementing Regulations Provide Needed Guidance on Disparate Impact to Housing Market Participants*

HUD's implementing regulations are an important source of information for housing providers, homeseekers, financial institutions, municipalities, and other participants in the housing market. These individuals and entities rely on HUD regulations—including those defining the scope of disparate impact under the FHA—to guide their actions, to weigh legal risk, and to assert and defend against lawsuits and administrative claims. Absent clear, affirmative guidance from HUD, the public has fewer resources to determine their rights and responsibilities under the FHA.

The rule is particularly needed in light of recent statements from the White House and the Department of Justice regarding disparate impact that run the risk of misleading housing market participants about their rights and responsibilities under the FHA. Regardless of potential application of Executive Orders to modify other agency conduct, such orders have no effect on the availability of disparate impact under the FHA, which the Supreme Court has confirmed.

HUD has long recognized the important role it plays in providing guidance to housing market participants. For example, in a 1994 Policy Statement on Discrimination in Lending, HUD (along with several federal enforcement agencies) noted its intent to "provide guidance about what the agencies consider in determining if lending discrimination exists" to lenders, including guidance on disparate impact.[104] Similarly, across several 2016 guidance documents, HUD provided clear directions to housing providers and municipalities regarding the application of disparate-impact protections to people with limited English proficiency, local nuisance and

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[103] *See* 63 FR 70256 (Dec. 18, 1998) (publishing "Keating Memo" regarding reasonable occupancy standards); Quality Housing and Work Responsibility Act of 1998, Public Law 105–276, 112 Stat. 2461, § 589 (Oct. 21, 1998) (requiring publication of Keating Memo).

[104] U.S. Dep't of Housing & Urban Dev. et al., *Policy Statement on Discrimination in Lending*, 59 FR 18266, 18267–69 (Apr. 15, 1994).

crime-free housing ordinances, the use of criminal records in tenant screening, and state and local land use laws.[105] These documents, among many others, reduced legal uncertainty, guided the conduct of market participants, and promoted compliance with the FHA.

By refusing to acknowledge the existence—much less define the proper scope and application—of disparate impact under the FHA, the Proposed Rule abandons HUD's decades-long commitment to and Congressionally-mandated role in enforcing and defining a central part of the FHA. The Proposed Rule thus misleads housing market participants as to their rights and responsibilities under the Act.

C. *HUD's Implementing Regulations Remain an Important Source of Authority for Judicial Interpretation of the FHA*

Since the issuance of the 2013 HUD Rule, courts have relied on HUD's well-reasoned FHA interpretation in construing and applying the disparate-impact standard.[106] Even after recent Supreme Court decisions altered the administrative law landscape, HUD's implementing regulations continue to inform how courts interpret the FHA and apply the disparate-impact framework.

In particular, the Supreme Court's decision in *Loper Bright* recognized the continuing vitality of *Skidmore v. Swift & Co.*,[107] in which the Court previously held that:

> "[I]nterpretations and opinions of [enforcing agencies], while not controlling upon the courts by reason of their authority, do constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance. The weight of such a judgment in a particular case will depend upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control."[108]

Under this standard, the 2013 HUD Rule (bolstered by the 2023 HUD Rule reinstating it with updated analyses) is entitled to considerable weight:

- The 2013 HUD Rule is based on a thorough analysis of the statutory text,[109] case law,[110] and legislative history;[111]

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[105] *See supra* notes 44–45, 97–100.
[106] *See, e.g., Mhany Mgmt., Inc. v. Cnty. of Nassau*, 819 F.3d 581, 618 (2d Cir. 2016) (relying on the 2013 HUD Rule's "reasonable interpretation" of the FHA).
[107] 323 U.S. 134 (1944).
[108] *Id.* at 140 (1944).
[109] *See, e.g.*, 2013 HUD Rule at 11464–67, 11471, 11474.
[110] *See, e.g.*, *id.* at 11460, 11462–63, 11464–67, 11468, 11469–70.
[111] *See, e.g.*, *id.* at 11461, 11467, 11474.

- The 2013 HUD Rule accounts for and responds to public comments submitted by a wide variety of interested entities, including individuals, fair housing and legal aid organizations, state and local fair housing agencies, Attorneys General from several States, state housing finance agencies, public housing agencies, public housing trade associations, insurance companies, mortgage lenders, credit unions, banking trade associations, real estate agents, and law firms;[112]

- The 2013 HUD Rule is consistent with (1) the consensus approach adopted by U.S. circuit courts prior to and following 2013, (2) the Supreme Court's *Inclusive Communities* decision,[113] and (3) decades of HUD pronouncements regarding disparate impact; and

- The validity of the 2013 HUD Rule's reasoning has been affirmed by courts across the country.[114]

Indeed, prior to *Loper Bright*, myriad courts gave *Skidmore* deference to HUD guidance interpreting the FHA.[115] For example, a U.S. district court in 2022 found HUD's 2016 Guidance on Fair Housing Act Protections for Persons with Limited English Proficiency to be "persuasive and entitled to deference" because it "is well reasoned, thoroughly reviews the relevant case law, and is consistent with the statute and earlier HUD pronouncements."[116] Moreover, following *Loper Bright*¸ at least one U.S. circuit court has reversed a lower court decision because it "failed to consider [HUD's] interpretation of the Fair Housing Act."[117] These decisions illustrate the continuing significance of HUD's rules and guidance interpreting the FHA in the wake of *Loper Bright*.

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[112] *Id.* at 11464.
[113] *See Mhany Mgmt.*, 819 F.3d at 618 (noting that "[t]he Supreme Court implicitly adopted HUD's approach" in *Inclusive Communities*).
[114] *See, e.g., id*; *Crossroads Residents Organized for Stable & Secure ResiDencieS v. MSP Crossroads Apartments LLC*, No. 16-233 ADM/KMM, 2016 WL 3661146, at *6 (D. Minn. July 5, 2016); *cf. Massachusetts Fair Hous. Ctr. v. United States Dep't of Hous. & Urb. Dev.*, 496 F. Supp. 3d 600, 610 (D. Mass. 2020) (ruling that the 2020 Rule, which replaced the 2013 HUD Rule, likely was arbitrary and capricious because it was inconsistent with *Inclusive Communities*).
[115] *See, e.g., Johnson v. Jennings*, 772 Fed. App'x. 822, 825–26 (11th Cir. 2019); *Austin v. Town of Farmington*, 826 F.3d 622, 628 n.7 (2d Cir. 2016); *Overlook Mut. Homes, Inc. v. Spencer*, 415 Fed. App'x. 617, 621 n.3 (6th Cir. 2011); *CNY Fair Hous., Inc. v. Swiss Vill., LLC*, 2022 WL 2643573, at *4–7 (N.D.N.Y. July 8, 2022); *Conn. Fair Hous. Center v. CoreLogic Rental Prop. Sols., LLC*, 478 F. Supp. 3d 259, 298–99 (D. Conn. 2020); *Simmons v. T.M. Assocs. Mgmt., Inc.*, 287 F. Supp. 3d 600, 605 (W.D. Va. 2018*); Forest City Residential Mgmt., Inc. ex rel. Plymouth Square Ltd. Dividend Hous. Ass'n v. Beasley*, 71 F. Supp. 3d 715, 729–730 (E.D. Mich. 2014); *see also* Robert G. Schwemm, *Housing Discrimination Law and Litigation* § 7:5 n.18 (July 2025 Update) (citing additional cases using language of *Skidmore* deference without explicitly citing to that decision).
[116] *CNY Fair Housing*, 2022 WL 2643573, at *7.
[117] *Chappel v. Adams Cnty. Children's Servs.*, No. 23-3526, 2024 WL 4601467, at *5 (6th Cir. Oct. 22, 2024).

D. *HUD's Implementing Regulations Guide Administrative Enforcement and Adjudication of FHA Claims*

The Proposed Rule ignores entirely its effect on administrative enforcement and adjudication of FHA claims. Government agencies like HUD are bound to follow their own implementing regulations.[118] Setting aside the Proposed Rule's effect on judicial interpretation, the Proposed Rule unsettles how HUD itself interprets and enforces the FHA. This is its intended effect, as your statements make clear, yet the Proposed Rule's preamble fails to acknowledge let alone justify it.

HUD investigators play an important, congressionally-mandated role in FHA enforcement.[119] As set forth above, HUD consistently has provided clear instructions to investigators, directing them to analyze FHA complaints under the disparate-impact theory of liability.

The Proposed Rule casts doubt on whether and how HUD investigators should consider complaints that allege disparate-impact claims. Particularly amidst a backdrop of eviscerated fair housing enforcement,[120] retaliation against fair housing personnel,[121] and the Administration's declared hostility to disparate impact, HUD investigators require agency guidance on how to investigate allegations of disparate impact presented in a complaint. The Proposed Rule would leave only guidance that misstates and refuses to follow the law as the remaining instructions.

The effect of the Proposed Rule extends also to administrative adjudication of FHA complaints. The FHA provides that, where an aggrieved person does not elect to proceed in court, his or her claims will be heard by an administrative law judge ("ALJ").[122] ALJs generally are bound to follow their own agencies' interpretive rules.[123] Whatever the effect of HUD's Disparate Impact Rule on judicial interpretation, it remains binding on its own adjudicators. The Proposed Rule thus eliminates an important source of binding authority relied upon by ALJs, destabilizing administrative adjudication of FHA claims.

HUD's abandonment of its obligation to interpret the FHA in accordance with judicial precedent is wrong on the law and fails to provide needed guidance for a vital element in the FHA's comprehensive approach to ensuring equality of opportunity within the nation's housing markets.

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[118] *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954).
[119] *See* 42 U.S. Code §§ 3610-3612.
[120] Debra Kamin, *Trump Appointees Roll Back Enforcement of Fair Housing Laws*, N.Y. Times (Sept. 22, 2025), https://www.nytimes.com/2025/09/22/realestate/trump-fair-housing-laws.html.
[121] Debra Kamin, *Two HUD Civil Rights Lawyers Dismissed After Raising Concerns About Fair Housing Act Enforcement*, N.Y. Times (Sept. 29, 2025), https://www.nytimes.com/2025/09/29/us/politics/hud-lawyers-whistleblowers.html.
[122] 42 U.S.C. § 3612(g).
[123] *Bureau of Alcohol, Tobacco & Firearms v. Fed. Lab. Rels. Auth.*, 464 U.S. 89, 96 (1983) (ALJ was "[b]ound to follow" agency's interpretive guidance).

Other housing market participants also rely on HUD's regulations to guide their compliance with the FHA. For example, the Treasury Department—which administers the Low-Income Housing Tax Credit ("LIHTC") program—requires that units financed through the program must be "rented in a manner consistent with housing policy governing non-discrimination, as evidenced by rules or regulations of [HUD]."[124] The Treasury regulations thus recognize the important role that HUD's rules play in guiding the conduct of developers and landlords and the deference accorded to them by other federal regulatory regimes.

V. HUD Failed to Provide Sufficient Time to Comment

Without adequate explanation, HUD provided just 30 days to comment on the Proposed Rule and then refused to act on requests to extend that time to the normal sixty days.[125] Just this month, Congress enacted the 2026 Consolidated Appropriations Act, which requires that "[t]he [HUD] Secretary shall conduct all rulemaking in accordance with the policies of part 10 of title 24 of the Code of Federal Regulations and Executive Order 12866, as amended, including providing for public participation and not less than 60 days for the submission of written comments."[126] HUD's unexplained and unjustified determination to shorten the comment period violates this Congressional mandate. It also violates the APA requirement that HUD must offer a reasonable comment period that provides an opportunity for interested parties to participate in the rulemaking process.[127]

VI. If HUD Were to Amend Rather than Remove Its Disparate-Impact Regulations, It Should Not Change Its Coverage of Discriminatory Insurance Practices

We understand that some commenters may use the opportunity to comment on the Proposed Rule to request that HUD exempt insurance carriers from FHA coverage. HUD has long correctly interpreted the FHA to prohibit discriminatory practices in connection with homeowner's insurance,[128] and courts have agreed with HUD's interpretation of the FHA.[129] In

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[124] 26 C.F.R. § 1.42-9(a).

[125] Letter from The Leadership Conference on Civil and Human Rights and undersigned organizations to Secretary Scott Turner (Jan. 20, 2026) (requesting an extension of the 30-day comment period), https://www.regulations.gov/comment/HUD-2026-0034-0008. The letter's arguments supporting an extension of the comment period are incorporated herein.

[126] Consolidated Appropriations Act, 2026, Div. D, Title II, Sec. 242, 718, https://appropriations.house.gov/sites/evo-subsites/republicans-appropriations.house.gov/files/evo-media-document/approps-def-lhhs-hs-thud-bill-text.pdf.

[127] *See, e.g., Pangea Legal Servs. v. U.S. Dep't of Homeland Sec.*, 501 F. Supp. 3d 792, 819 (N.D. Cal. 2020) (concluding that 30-day comment period was insufficient); *Centro Legal de la Raza v. Exec. Off. for Immigr. Rev.*, 524 F. Supp. 3d 919, 955 (N.D. Cal. 2021) (same).

[128] *See, e.g.,* 24 CFR §100.70(d)(4) (defining "other prohibited sale and rental conduct" to include "refusing to provide . . . property or hazard insurance for dwellings or providing such . . . insurance differently" because of a protected class); 53 FR 44,992, 44,997 (Nov. 7, 1988) (preamble to proposed regulations stating that "discriminatory refusals to provide . . . adequate property or hazard insurance . . . has been interpreted by the Department and by courts to render dwellings unavailable").

[129] *See, e.g., Ojo* v. *Farmers Group, Inc.*, 600 F.3d at 1208 (9th Cir. 2010); *NAACP* v. *American Family Mut. Ins. Co.*, 978 F.2d 287, 297–301 (7th Cir. 1992); *Nationwide Mut. Ins. Co.* v. *Cisneros*, 52 F.3d 1351, 1355–1360 (6th Cir. 1995).

no way does the current rule undermine the states' regulation of insurance. The McCarran-Ferguson Act provides that "[n]o Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance . . . unless such Act specifically relates to the business of insurance."[130] Thus, McCarran-Ferguson does not preclude HUD from issuing regulations that may apply to insurance policies. Rather, McCarran-Ferguson instructs courts on *how* to construe federal statutes, including the FHA. How the FHA should be construed in light of McCarran-Ferguson depends on the facts at issue and the language of the relevant State law "relat[ing] to the business of insurance."[131] Because the current rule does not alter the instruction of McCarran-Ferguson or its application as described in *Ojo* v. *Farmers Group,* it does not interfere with any State regulation of the insurance industry.[132]

Moreover, the current Disparate Impact Rule's burden-shifting framework does not disturb legitimately risk-based judgments insurers may make. The rule's framework distinguishes "unnecessary barriers proscribed by the [FHA] from valid policies and practices crafted to advance legitimate interests."[133] Thus, even if a policy has a discriminatory effect, it may still be legal if supported by a legally sufficient justification.[134]

Thank you for considering our views.

Sincerely,

National Organizations

National Fair Housing Alliance

Access Ready, Inc.

Americans for Financial Reform Education Fund

Asian Americans Advancing Justice (AAJC)

The Arc of the United States

Autistic Self Advocacy Network

Bazelon Center for Mental Health Law

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[130] 15 U.S.C. § 1012(b).
[131] *Id.*
[132] *See also* 2023 HUD Rule, 88 Fed. Reg. at 19468–19480 (providing detailed responses to questions from rulemaking commentors related to FHA coverage of insurance).
[133] *See Graoch Assocs. #33, L.P. v. Louisville/Jefferson Cnty. Metro Hum. Rels. Comm'n*, 508 F.3d 366, 375 (6th Cir. 2007) ("we cannot create categorical exemptions from [the FHA] without a statutory basis" and "[n]othing in the text of the FHA instructs us to create practice-specific exceptions").
[134] Given that HUD did not propose any changes to FHA coverage in the Proposed Rule, no such change can be finalized without offering a new opportunity for comment. *See* 5 U.S.C. § 553(b) (APA requirement of publication of the "terms or substance of the proposed rule or a description of the subjects and issues involved")*; Long Island Care at Home, Ltd. v. Coke*, 551 U.S. 158, 174 (2007) (discussing the logical outgrowth doctrine).

Center for Law and Social Policy (CLASP)

Center for Responsible Lending

Children's HealthWatch

Coalition on Human Needs

Common Cause

CommunicationFIRST

Congregation of Our Lady of Charity of the Good Shepherd, U.S. Region

Consumer Action

Consumer Federation of America

Disability Rights Education and Defense Fund

Dream.org

Drug Policy Alliance

Earthjustice

Grounded Solutions Network

Hispanic National Bar Association

Justice in Aging

The Kelsey

Latino Justice PRLDEF

The Leadership Conference on Civil and Human Rights

Legal Action Center

MANA, A National Latina Organization

National Action Network

National Advocacy Center of the Sisters of the Good Shepherd

National Alliance to End Homelessness

National Association of Hispanic Real Estate Professionals (NAHREP)

National Association of Real Estate Brokers (NAREB)

National Association of Social Workers

National Community Reinvestment Coalition

National Coalition for the Homeless

The National Coalition for Asian Pacific American Community Development

National Disability Rights Network (NDRN)

National Housing Law Project

National LGBTQ Task Force Action Fund

National Low Income Housing Coalition

National Urban League

Paralyzed Veterans of America

People For the American Way

PolicyLink

Race Forward

The Redress Movement

Sara Pratt, Fair Housing Consultant

SAGE

SPAN Parent Advocacy Network

TDIforAccess

UnidosUS

Unitarian Universalits for Social Justice

United Spinal Association

World Institute on Disability

Local Organizations

AccessAbility

All of Us or None Texas

The Arc of South Carolina

Asian Pacific Islanders Civic Action Network

Avalon Housing

California Community Living Network

Center for Civil Justice

Center for Housing Justice and Policy

Chicago Lawyers' Committee for Civil Rights

CNY Fair Housing

Connecticut Fair Housing Center

CSA San Diego County

Disability Law Center of Utah

Disability Rights Arizona

Disability Rights Center – NH

Disability Rights Connecticut

Disability Rights Florida

Disability Rights North Carolina

Disability Rights South Carolina

East Bay Community Law Center

Equality California

Equal Rights Center

Fair Housing Advocates Association

The Fair Housing Center

Fair Housing Center for Rights & Research

Fair Housing Center of Central Indiana

Fair Housing Center of Northern Alabama

Fair Housing Center of Southeast & Mid Michigan

Fair Housing Center of Washington

Fair Housing Center of West Michigan

Fair Housing Contact Service Inc.

Fair Housing Council of Central California

Fair Housing Council of Metropolitan Memphis

Fair Housing Council of Northen NJ

Fair Housing Council of Orange County

Fair Housing Council of Riverside County, Inc.

Fair Housing Justice Center (FHJC)

Fair Housing Partnership of Greater Pittsburgh

Fair Housing Rights Center in Southeastern Pennsylvania

Florida Justice Center

F.S.O.T.

Georgia Advancing Communities Together, Inc.

Greater Boston Legal Services, Inc.

High Plains Fair Housing Center

Hinda Institute

HomeFound Real Estate Group

Homes For All Massachusetts

HOPE Fair Housing Center

Housing and Community Development Network of New Jersey

Housing and Economic Rights Advocates

Housing & Homelessness Alliance of Vermont

Housing California

Housing Choices

Housing For All Tennessee

Housing Equality Center of Pennsylvania

Housing Network of Rhode Island

Housing Opportunities and Maintenance for the Elderly (H.O.M.E.)

Housing Opportunities Made Equal, Inc.

Housing Opportunities Made Equal of Greater Cincinnati

Housing Opportunities Project for Excellence, Inc.

Housing Rights Center

Housing Oregon

Impact for Equity

Intermountain Fair Housing Council

Jacksonville Area Legal Aid, Inc.

Lanterman Housing Alliance

Law Office of Daniel Lauber

Legal Aid Justice Center

The Legal Aid Society of Cleveland-Housing Practice Group

Legal Services NYC

Long Island Housing Services, Inc.

Louisiana Fair Housing Action Center

Main Equal Justice

Metro Fair Housing Services, Inc.

Metropolitan Milwaukee Fair Housing Council

Miami Valley Fair Housing Center, Inc.

Michigan Coalition Against Homelessness

Minnesota Housing Partnership (MHP)

Mississippi Center for Justice

Montana Fair Housing

More Than Our Crimes

NC Coalition to End Homelessness

Nebraska Appleseed

Northwest Fair Housing Alliance

Ohio Families Unite Against Police Brutality

On-Point Re-Entry Consortium, Inc.

Open Communities

Open Communities Alliance

Operation Restoration

Partnership for Strong Communities

Pine Tree Legal Assistance

Project Sentinel

The REACH Initiative

Rendexes

Rise Economy

Savannah-Chatham County Fair Housing Council

Silver State Equality

Slagowitz Law, P.C.

The SOAR Initiative

South Suburban Housing Center

Southwest Fair Housing Council

Tennessee Fair Housing Council

Texas Harm Reduction Alliance

Washington Low Income Housing Alliance

Washtenaw Housing Alliance

Westchester Residential Opportunities, Inc.

Who Speaks For Me

William E. Morris Institute for Justice

Urban Scholars Union

Vermont Citizens United for the Rehabilitation of Errants

Victory House for Women

Voice of the Experienced (VOTE)