

**Re: Docket No. HUD-2026-0034 – HUD’s
Implementation of the Fair Housing Act’s
Disparate Impact Standard
Comment in Opposition to Proposed
Deregulatory Action**

I submit this comment in opposition to HUD’s proposed rule to remove its existing regulations implementing the Fair Housing Act’s disparate impact standard. This proposal constitutes a deregulatory rollback that weakens civil-rights enforcement, undermines congressional intent, and predictably increases discriminatory outcomes in housing markets.

I. Statutory Authority and Congressional Intent

The Fair Housing Act (“FHA”), 42 U.S.C. §§ 3601–3619, was enacted to provide broad, proactive protections against housing

discrimination. Congress intentionally used expansive language—prohibiting practices that “otherwise make unavailable or deny” housing—precisely to reach discriminatory effects, not merely overt intent.

HUD’s longstanding disparate-impact regulations operationalize that statutory mandate by providing a clear, uniform framework for identifying and remedying practices that perpetuate segregation or exclusion. Removing those regulations does not “clarify” the law; it abandons HUD’s affirmative duty to enforce the FHA.

II. Supreme Court Precedent Requires an Administrative Framework, Not Its Removal

The Supreme Court has explicitly recognized disparate-impact liability under the FHA.

Texas Dep’t of Hous. & Cmty. Affairs v.

Inclusive Communities Project, Inc., 576 U.S. 519 (2015)

The Court held that disparate-impact claims are cognizable under the FHA and emphasized the importance of administrative safeguards to ensure consistent application and to prevent arbitrary enforcement.

HUD's existing regulations are precisely the type of safeguards the Court contemplated. Eliminating them increases –not decreases–the risk of inconsistent, unpredictable, and discriminatory outcomes.

III. Arbitrary and Capricious Agency Action (APA Violations)

Under the Administrative Procedure Act, agency action is unlawful if it is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A).

HUD's proposal fails this standard

because it:

Disregards settled reliance interests

States, municipalities, housing providers, lenders, and courts have relied on HUD's disparate-impact framework for over a decade.

Fails to meaningfully address foreseeable harms

HUD does not adequately analyze how removal of the regulations will increase discrimination, segregation, or exclusion—outcomes the FHA was enacted to prevent.

Contradicts prior factual findings without justification

HUD has repeatedly acknowledged that disparate-impact enforcement is essential to identifying systemic discrimination that intent-based standards cannot capture.

See *FCC v. Fox Television Stations, Inc.*,

556 U.S. 502, 515–16 (2009) (agency must provide a reasoned explanation when changing policy, particularly where reliance interests exist).

IV. Civil–Rights and Equal–Protection Implications

Disparate–impact enforcement is not optional or ancillary—it is a core civil–rights tool. Practices that appear neutral on their face routinely produce discriminatory outcomes affecting protected classes, including race, national origin, disability, familial status, and sex.

Without a regulatory framework:

Victims face higher barriers to relief

Enforcement becomes uneven and

jurisdiction–dependent

Discrimination becomes harder to detect and remedy

Protected classes bear increased housing instability and exclusion

HUD's proposal would shift the burden onto individual litigants and courts, undermining uniform civil-rights protection nationwide.

V. Federalism and Administrative Chaos

HUD's withdrawal from regulatory enforcement does not eliminate disparate-impact liability—it merely outsources interpretation to courts, resulting in:

Fragmented standards across jurisdictions

Increased litigation costs

Reduced predictability for housing providers and consumers

Weakened federal oversight of a national civil-rights statute

This outcome is contrary to sound administrative governance and HUD's statutory role.

VI. Public Policy and Foreseeable Harm

The foreseeable consequences of this deregulation include:

Increased residential segregation

Reduced access to housing for protected classes

Chilling of fair-housing complaints

Erosion of public confidence in civil-rights enforcement

These outcomes are neither speculative nor hypothetical; they are historically documented when disparate-impact protections are weakened.

VII. Conclusion and Request

HUD's proposed removal of its disparate-impact regulations is legally unsupported, contrary to Supreme Court precedent, inconsistent with congressional intent, and harmful to fair-housing enforcement.

HUD should withdraw this proposed rule in its entirety and retain a clear, enforceable regulatory framework implementing disparate-impact liability under the Fair Housing Act.

Respectfully submitted,

[Your Name]

[City / State]

Concerned Member of the Public

Appendix A – Empirical Evidence and HUD Findings Supporting Disparate-Impact Enforcement

A. Empirical Evidence Demonstrating the Necessity of Disparate-Impact Standards

A substantial body of social-science and economic research confirms that housing discrimination frequently operates through facially neutral policies that produce discriminatory effects, making intent-based enforcement alone insufficient.

Turner, Margery Austin et al.,

Discrimination in Metropolitan Housing Markets (HUD, 2012)

HUD-commissioned paired-testing studies found persistent discrimination against Black and Hispanic home seekers in rental and sales markets, often through differential treatment not accompanied by explicit discriminatory statements. These findings underscore why disparate-impact frameworks are necessary to capture systemic exclusion not provable through intent alone.

Quillian, Lincoln et al., Meta-Analysis of Field Experiments Shows No Change in Racial Discrimination in Hiring Over Time, 114 Proc. Nat'l Acad. Sci. 10870 (2017)

Although focused on employment, this meta-analysis is directly relevant to housing policy: it demonstrates that discrimination persists through subtle mechanisms that evade intent-based

proof, reinforcing the need for effects-based civil-rights enforcement across domains.

Rugh, Jacob S. & Douglas S. Massey, Racial Segregation and the American Foreclosure Crisis, 75 Am. Soc. Rev. 629 (2010)

The authors document how ostensibly neutral lending and housing practices produced racially disparate foreclosure outcomes, contributing to segregation and wealth loss. Disparate-impact analysis is critical to identifying and preventing such systemic harms.

B. HUD's Own Historical Findings and Policy Determinations

HUD has repeatedly acknowledged—across administrations—that disparate-impact liability is essential to fulfilling its statutory obligations under the Fair Housing Act.

HUD, Implementation of the Fair Housing Act's Discriminatory Effects Standard, 78 Fed. Reg. 11460 (Feb. 15, 2013)

HUD formally adopted a disparate-impact standard after concluding that “discriminatory effects liability is consistent with the Fair Housing Act's text, legislative history, and purpose” and necessary to address “covert and systemic discrimination.”

HUD v. Inclusive Communities Project, Inc., HUD ALJ Decisions (pre-Supreme Court litigation)

HUD enforcement actions prior to Inclusive Communities relied on disparate-impact analysis to remedy segregation caused by neutral-appearing housing allocation and financing practices.

HUD Fair Housing Planning and Assessment (AFFH) Findings (2015–2020)
HUD's own AFFH data repeatedly showed

that zoning, siting, and lending policies—while facially neutral—produced racially and ethnically disparate outcomes that would not have been remediable without an effects-based standard.

C. Legal Significance of the Empirical Record

The Supreme Court in *Inclusive Communities* expressly relied on the existence of robust administrative and evidentiary frameworks to justify recognizing disparate-impact liability. 576 U.S. at 540–42. HUD’s proposal to remove its regulatory framework ignores both: The empirical record HUD itself developed, and

The Court’s expectation that agencies would provide structured safeguards to guide disparate-impact analysis.

An agency may not disregard its own factual findings without reasoned

explanation. See Motor Vehicle Mfrs. Ass'n v. State Farm, 463 U.S. 29, 43 (1983).

D. Conclusion of Appendix

The empirical evidence and HUD's historical findings conclusively demonstrate that disparate-impact enforcement is indispensable to fair-housing compliance. Eliminating HUD's regulatory framework contradicts the agency's own data, undermines decades of enforcement experience, and predictably increases discriminatory outcomes.