



Action. Access. Progress.

February 13, 2026

SUBMITTED VIA REGULATIONS.GOV

Regulations Division
Office of the General Counsel
Department of Housing and Urban Development
451 Seventh Street SW, Room 10276
Washington, DC 20410-0500

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

Dear Sir or Madam,

The Public Interest Law Center submits this comment in opposition to the U.S. Department of Housing and Urban Development's ("HUD") Notice of Proposed Rulemaking regarding the removal of HUD's Fair Housing Act ("FHA") discriminatory effects regulations from the Code of Federal Regulations. For nearly 60 years the Fair Housing Act has been used to fight discrimination on the basis of race, color, religion, national origin, sex, disability and familial status, including discrimination in policies or practices that appear neutral on their face but disproportionately harm particular groups. If implemented, HUD's proposed rule would significantly weaken the ability to enforce the FHA's prohibitions against this impact discrimination.

The Public Interest Law Center, part of the national consortium of affiliates of the Lawyers' Committee for Civil Rights Under Law, uses high-impact legal strategies to advance the civil, social, and economic rights of communities in the Philadelphia region facing discrimination, inequality, and poverty. The Law Center works to secure access to fundamental resources and services including employment, environmental justice, healthcare, voting, education, and housing. For more than 55 years, the Law Center has been using litigation, community education, advocacy, and organizing to stop housing discrimination against low-income people and to promote healthy, affordable housing for people in the neighborhoods of their choice.

Maintaining HUD's clear articulation of the disparate impact standard in the current regulations, fully investigating all HUD-filed complaints that allege disparate impact discrimination, and adhering to Supreme Court and other judicial precedent are vitally important to our efforts to address housing discrimination in our community. Since 2013 (the "2013 Rule"), HUD's enforcement of its disparate impact rule¹ has been critical for challenging a wide range of discriminatory housing policies that prevent fair access to housing. The 2013 Rule promoted

¹ 24 C.F.R. § 100.500.

consistent and predictable application of the burden-shifting test by offering a straightforward framework: a policy that has a discriminatory effect on a protected class or that perpetuated segregation was unlawful if it did not serve a substantial, legitimate, nondiscriminatory interest or if a less discriminatory alternative could also serve that interest.² HUD's proposed rule will make it more difficult to challenge policies and practices that appear neutral on their face but are unjustified and have a disparate impact on the basis of protected class because it removes important clarity that can be applied uniformly amongst the circuits, by HUD's Administrative Law Judges, and during HUD investigations. Furthermore, the 2013 Rule played an important role in educating consumers about their rights and what actions justify a legal remedy.

Of course, in 2015 the Supreme Court also explicitly recognized that "disparate impact claims are cognizable under the Fair Housing Act" in the seminal *Inclusive Communities* decision.³ This was hardly the first case recognizing disparate impact, with decisions dating back five decades that invalidated neutral-sounding policies relating to voting⁴ and employment⁵ that had discriminatory impacts. Nevertheless this proposed rule follows a long list of other actions taken in the last year that demonstrate the Administration's refusal to fully enforce the Fair Housing Act, including but not limited to reversing settled redlining and discrimination cases in order to benefit financial entities (*see infra.*), terminating HUD's 2021 Affirmatively Furthering Fair Housing Rule that included remedies for America's affordable housing crisis, firing hundreds of employees in the Office of Fair Housing and Equal Opportunity, and more. The proposed withdrawal of HUD's disparate impact regulations would further erode important civil rights protections for fair housing.

The Law Center believes firmly that all people deserve to have access to the housing they need without facing discrimination. This is equally true whether that discrimination takes the form of disparate treatment based on race, national origin or other protected class characteristics, or disparate impact where a neutrally stated policy has a discriminatory effect on the basis of a protected class. In fact, one of the very first cases litigated by the Law Center was *Shannon v. United States Dep't of Hous. and Urban Dev.*, 436 F.2d 809 (3d Cir. 1970), a lawsuit challenging a plan that would increase segregation in Philadelphia. There, a group of residents and civic organizations in the East Poplar Urban Renewal Area of Philadelphia challenged HUD's decision to green light a large, low-income rental development. The plaintiffs alleged that the location for the project chosen would "have the effect of increasing the already high concentration of low income black residents in...East Poplar...."⁶ The court cited HUD's own policies in finding that "any proposal to locate housing only in areas of racial concentration will be prima facie unacceptable" and held that the Fair Housing Act provided redress for plaintiffs challenging

² See 78 Fed. Reg. 11460 ("Under this test, the charging party or plaintiff first bears the burden of proving its prima facie case that a practice results in, or would predictably result in, a discriminatory effect on the basis of a protected characteristic. If the charging party or plaintiff proves a prima facie case, the burden of proof shifts to the respondent or defendant to prove that the challenged practice is necessary to achieve one or more of its substantial, legitimate, nondiscriminatory interests. If the respondent or defendant satisfies this burden, then the charging party or plaintiff may still establish liability by proving that the substantial, legitimate, nondiscriminatory interest could be served by a practice that has a less discriminatory effect.").

³ *Texas Dep't of Hous. & Cmty. Affs. v. Inclusive Cmty. Project, Inc.* ("Inclusive Communities"), 576 U.S. 519, 544 (2015).

⁴ See *Gaston County v. United States*, 395 U.S. 285 (1969).

⁵ See *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971).

⁶ *Shannon v. United States Dep't of Hous. and Urban Dev.*, 436 F.2d 809, 812 (3d Cir. 1970).

segregationist development plans.⁷ The court enjoined HUD from continuing with the project “until . . . HUD makes a determination in substantive and procedural conformance . . . as to whether the location of [the housing] project . . . will enhance or impede a workable program for community in conformity with the Civil Rights Acts of 1964 and 1968.”⁸

Fast forward to today, and covert forms of discrimination continue to impede access to safe, affordable, and integrated housing for low-income Philadelphia tenants. For example, about 84% of Housing Choice Voucher recipients in Philadelphia are Black, but many landlords, often in majority white neighborhoods, refuse to participate in the program.⁹ A study from the Urban Institute found that City-wide 67% of landlords refused to rent to Housing Choice Voucher recipients and this number jumped to 83% in low-poverty neighborhoods¹⁰—and this is despite a local ordinance forbidding discrimination on the basis of source of income.¹¹ To combat this discrimination, in 2022 the Law Center brought a case against a large landlord for disparate treatment and impact of Voucher holders for refusing to accept the subsidy in majority-white neighborhoods but encouraging them in majority-Black neighborhoods. The FHA violation was remedied in a settlement wherein the landlord agreed to accept Vouchers in all their rental properties regardless of racial and economic makeup of the neighborhood.¹²

By way of another example, in 2023 the Department of Justice sued several banks in Philadelphia and New Jersey for illegal redlining in violation of the FHA. DOJ alleged among other things that the banks’ policies and practices had the effect of denying equal access to home loans to residents of majority-Black and Hispanic communities and those seeking credit for properties located in those communities, arguing that the banks’ conduct was not justified by a business necessity or legitimate business considerations. Shortly thereafter the banks settled these cases through consent orders agreeing to invest millions of dollars in loan subsidies and perform outreach and education in the communities they had excluded. These types of disparate impact cases under the FHA are critical to remedying the harm and protecting the interests of the people in and around Philadelphia and Newark, New Jersey to a housing market free from discrimination. *Cf. Inclusive Cmty’s*, U.S. 519 at 546–47 (“The [FHA] must play an important part in avoiding the Kerner Commission’s grim prophecy that our 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.” (citation omitted)). Accordingly, when the Department of Justice recently moved to terminate these consent orders — offering no legal reasoning, precedent, or public interest argument — the Law Center successfully opposed terminating the order in Philadelphia.¹³

Finally, abandoning the use of disparate impact liability is also short-sighted considering the nation’s longstanding shortage of affordable housing. In Pennsylvania alone, there are over

⁷ *Id.* at 820-22 (internal citations and quotations omitted).

⁸ *Id.* at 822.

⁹ See HUD OFFICE OF POLICY DEVELOPMENT AND RESEARCH DATABASE, DATASET: PICTURE OF SUBSIDIZED HOUSING, https://www.huduser.gov/portal/datasets/asshsg.html#2009-2020_query (last accessed Feb. 4, 2026).

¹⁰ Mary Cunningham, et al., *A Pilot Study of Landlord Acceptance of Housing Choice Vouchers* (Sept. 2018), available at <https://www.huduser.gov/portal/pilot-study-landlord-acceptance-hcv.html>.

¹¹ See Philadelphia Fair Practices Ordinance, Phila. Code § 9-1100 *et seq.*

¹² See *Housing Equality Center of Pennsylvania v. ProManaged Inc., et al.*, No. CV 22-4894 (E.D. Pa. 2022).

¹³ See *United States v. ESSA Bank & Tr.*, No. CV 23-2065, 2025 WL 2087776 (E.D. Pa. July 23, 2025).

425,000 extremely low income renter households, resulting in only 40 affordable and available homes for every 100 extremely low-income renter households.¹⁴ People of color, including Black, Latino, and American Indian or Alaska Native households, are “disproportionately extremely low-income renters and are disproportionately impacted by the housing shortage.”¹⁵ Our nation’s affordable housing shortage cannot be disentangled from decades of housing policies that had a discriminatory impact. For example, for years exclusionary zoning policies restricted the construction of affordable, multi-family housing disproportionately harming Black residents by artificially reducing the supply of affordable housing and limiting their access to more affluent neighborhoods with better opportunities. Today inclusionary zoning policies that allow more dense multifamily housing buildings to be built in diverse neighborhoods are a crucial step to lessening disparate impact on the basis of race. To that end, this year the Law Center filed an amicus brief in support of Pittsburgh’s inclusionary zoning ordinance in order to secure affordable housing for low- and moderate- income residents who are disproportionately Black in the neighborhoods of their choice, remedying years of segregation.¹⁶

Accordingly, HUD’s existing rule should not be eliminated. Instead, HUD must return to full enforcement of the Fair Housing Act as required by law, including disparate-impact claims, to remove unnecessary and discriminatory barriers to housing choice that communities around the country continue to experience.

Thank you for the opportunity to comment.

Respectfully submitted,



Sara A. Bernstein

Mary M. McKenzie

The Public Interest Law Center

1617 JFK Blvd., Suite 1650

Philadelphia, PA 19103

(267) 546-1307

sbernstein@pubintl.org

¹⁴ NLIHC, *No State Has an Adequate Supply of Affordable Rental Housing for the Lowest-Income Renters*, available at <https://nlihc.org/gap> (last visited Feb. 5, 2026).

¹⁵ NLIHC, *The Gap: A Shortage of Affordable Homes*, at 4 (2025), available at: <https://nlihc.org/gap>.

¹⁶ See *Builders Assoc. of Metropolitan Pittsburgh et al. v. City of Pittsburgh*, No. CV 22-706 (W.D. Pa. 2022).