

Congress of the United States

Washington, DC 20515

February 12, 2026

SUBMITTED VIA REGULATIONS.GOV

Regulations Division
Office of General Counsel
U.S. Department of Housing and Urban Development
451 7th 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

Dear Sir or Madam,

We write in strong opposition to the U.S. Department of Housing and Urban Development's (HUD) proposed rule to rescind the existing disparate impact regulation under the Fair Housing Act without replacing it—a significant departure from established civil rights enforcement that would strip communities of a critical tool for challenging discrimination. This proposal would significantly weaken fair housing enforcement, undermine longstanding civil rights protections, and create uncertainty for housing providers, tenants, and the communities HUD is charged with protecting. The absence of a clear national standard would further leave regulated entities without a consistent understanding of how to comply with the Fair Housing Act, resulting in fragmented and unpredictable enforcement.

HUD asserts that defining the standard for proving disparate impact violations should be left entirely to the courts.¹ While courts play an important role in interpreting the Fair Housing Act, HUD has an independent and ongoing statutory obligation to administer, interpret, and enforce the law.² In carrying out its compliance reviews, investigations, and enforcement responsibilities, HUD must routinely interpret the Fair Housing Act in areas where courts have not spoken definitively. The Department's disparate impact regulation exists precisely to provide clarity, consistency, and predictability in those administrative functions. Eliminating it would not defer to the courts—it would create a regulatory vacuum.

The disparate impact framework HUD now proposes to eliminate is neither new nor novel. Disparate impact liability has been recognized in federal civil rights law for more than half a century, beginning with the Supreme Court's 1971 decision in *Griggs v. Duke Power Co.*, which held that facially neutral employment practices that disproportionately harm protected groups and lack sufficient justification violate federal anti-discrimination law—even absent discriminatory intent.³ That principle has since been repeatedly reaffirmed across federal civil rights statutes.

In the fair housing context, HUD formally codified a disparate impact standard in 2013 to reflect decades of civil rights enforcement protecting vulnerable communities.⁴ In 2015, the Supreme Court confirmed that disparate impact claims are cognizable under the Fair Housing Act in *Texas Department of Housing and*

U.S. Department of Housing and Urban Development, *HUD's Implementation of the Fair Housing Act's Disparate Impact Standard*, 91 Fed. Reg. 1475 (Jan. 14, 2026), <https://www.federalregister.gov/documents/2026/01/14/2026-00590/huds-implementation-of-the-fair-housing-acts-disparate-impact-standard>.

U.S. Department of Housing and Urban Development, *Fair Housing – Rights and Obligations*, <https://www.hud.gov/stat/fheo/rights-obligations>.

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

Community Affairs v. Inclusive Communities Project, Inc., holding that such claims are essential to identifying and remedying systemic discrimination that would otherwise evade detection.⁵

While the Trump Administration later altered HUD’s disparate impact regulation, those changes did not eliminate disparate impact liability itself and were widely criticized for undermining fair housing enforcement. In 2023, the Biden Administration restored the original 2013 framework, recognizing that it best aligned with the Fair Housing Act’s text, purpose, and governing Supreme Court precedent.⁶ The current proposal goes much further than any prior rulemaking by seeking to rescind HUD’s disparate impact regulation entirely—severing the Department’s enforcement practices from more than fifty years of civil rights law and established Supreme Court doctrine.

In Illinois, we see firsthand how housing discrimination and segregation—both historical and ongoing—continue to shape access to opportunity, even as the State works to counteract these forces through strong statutory protections. Communities across the state, including in urban, suburban, and rural communities alike, still bear the legacy of redlining, exclusionary zoning, and discriminatory infrastructure and siting decisions.⁷ Today, these patterns often persist without explicit discriminatory intent, yet they produce lasting and measurable disparities in health outcomes, environmental exposure, economic opportunity, and housing stability.

Illinois has taken proactive steps to preserve and strengthen disparate impact protections at the state level. In 2024, Illinois enacted comprehensive amendments to the Illinois Human Rights Act clarifying and codifying disparate impact liability in housing, reinforcing fair housing enforcement regardless of changes in federal regulatory posture.⁸

However, state-level action cannot fully substitute robust federal enforcement. HUD’s disparate impact regulation plays a critical role in setting national standards, guiding federal investigations and funding decisions, and ensuring consistent protections across jurisdictions. Weakening the federal framework will still have significant consequences for enforcement capacity, intergovernmental coordination, and fair housing outcomes nationwide.

Public statements by HUD leadership characterizing disparate impact as a “discredited theory” and minimizing the relevance of environmental impacts reflect an unduly narrow understanding of the Fair Housing Act.⁹ The Act makes clear that housing discrimination is not limited to the four walls of a home, recognizing that access to safe housing is inseparable from the surrounding conditions that affect a person’s health, safety, and livelihood.¹⁰ Rejecting decades of evidence documenting how facially neutral policies disproportionately harm

Consumer Financial Monitor, *HUD Proposes to Remove Its Fair Housing Act Disparate Impact Rule* (Jan. 14, 2026), <https://www.consumerfinancemonitor.com/2026/01/14/hud-proposes-to-remove-its-fair-housing-act-disparate-impact-rule/>.

Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc., 576 U.S. 519 (2015).

Consumer Financial Monitor, *HUD Proposes to Remove Its Fair Housing Act Disparate Impact Rule* (Jan. 14, 2026), <https://www.consumerfinancemonitor.com/2026/01/14/hud-proposes-to-remove-its-fair-housing-act-disparate-impact-rule/>.

Chicago Federal Reserve Bank, *Redlining in Chicago: How a Racist Housing Policy Shaped Today’s Inequalities* (Policy Brief), <https://www.chicagofed.org/research/content-areas/mobility/policy-brief-redlining>.

Illinois Attorney General Kwame Raoul & Illinois Department of Human Rights, *Legislation to Enhance Civil Rights Protections Signed Into Law* (Aug. 27, 2021), <https://illinoisattorneygeneral.gov/news/story/legislation-initiated-by-attorney-general-raoul-and-illinois-department-of-human-rights-to-enhance-civil-rights-protections-signed-into-law>.

Scott Turner, *It’s Time to Ditch Disparate Impact Theory—and Biden’s Weaponization of Civil Rights Law*, National Review (Jan. 19, 2026), <https://www.nationalreview.com/2026/01/its-time-to-ditch-disparate-impact-theory-and-bidens-weaponization-of-civil-rights-law/>.

Fair Housing Act, 42 U.S.C. § 3604(b).

people in poverty and communities of color does not make that harm imaginary or unlawful to acknowledge. It only ensures that systemic discrimination remains unaddressed under the guise of neutrality.

Research conducted by the University of Illinois' College of Agricultural, Consumer & Environmental Sciences underscores this reality. Their work demonstrates how housing discrimination contributes directly to environmental inequality, with marginalized communities more likely to be exposed to pollution, environmental hazards, and chronic underinvestment.¹¹ Recognizing these connections is not an expansion of the Fair Housing Act; it is a faithful application of its text and purpose.

HUD's proposal would also have serious and disproportionate consequences for women, particularly survivors of domestic violence. Across the country, including in Illinois, local nuisance and so-called "crime-free" housing ordinances often penalize tenants for repeated calls to emergency services, even when those calls result from domestic violence, assault, or stalking. Because these ordinances frequently lack exemptions for emergency calls related to abuse, women experiencing domestic violence are often forced to choose between seeking safety and remaining housed.¹² Eliminating HUD's disparate impact framework would make it significantly harder to challenge these practices and would weaken protections for women seeking safe, stable housing.

We are also deeply concerned by the inadequate 30-day comment period provided for this sweeping proposal. HUD's assertion that prior rulemakings on disparate impact justify an abbreviated comment period is unpersuasive and a blatant attempt to limit meaningful public input.¹³ In none of those instances did the Department propose to eliminate its disparate impact regulations entirely. Stakeholders have never had the opportunity to comment on a proposal of this magnitude, and meaningful public participation requires adequate time for review and analysis.

For more than a decade, state and local governments, housing providers, and advocates have structured compliance, enforcement, and programmatic decisions around HUD's disparate impact framework. Abruptly rescinding the regulation without replacement injects significant regulatory uncertainty for public and private actors seeking to comply with the Fair Housing Act.

Recent federal pullbacks from disparate impact enforcement have already begun to affect state and local partners, including reduced federal engagement and reimbursement for investigations applying the disparate impact standard. Eliminating HUD's regulation entirely would accelerate this erosion and further weaken cooperative enforcement models that Congress intended.

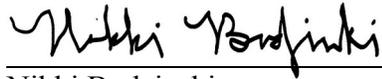
For these reasons, we urge HUD to withdraw this proposed rule in its entirety. At a minimum, the Department must extend the comment period to allow for meaningful public participation and fully consider the consequences this proposal would have for fair housing enforcement—particularly for communities across Illinois that continue to experience the compounded effects of housing discrimination.

Sincerely,

University of Illinois College of Agricultural, Consumer & Environmental Sciences, *How Housing Discrimination Affects Environmental Inequality*, <https://aces.illinois.edu/news/how-housing-discrimination-affects-environmental-inequality>.

National Women's Law Center, *Housing Discrimination Against Women and Survivors of Gender-Based Violence* (Nov. 2021), documenting how nuisance ordinances, lending thresholds, and refusal to accept housing vouchers disproportionately harm women and domestic violence survivors, https://nwlc.org/wp-content/uploads/2021/11/GenderRacialJusticeFSNLIHC_updated11-10-1.pdf.

U.S. Department of Housing and Urban Development, *HUD's Implementation of the Fair Housing Act's Disparate Impact Standard*, 91 Fed. Reg. 1475 (Jan. 14, 2026), <https://www.federalregister.gov/documents/2026/01/14/2026-00590/huds-implementation-of-the-fair-housing-acts-disparate-impact-standard>.



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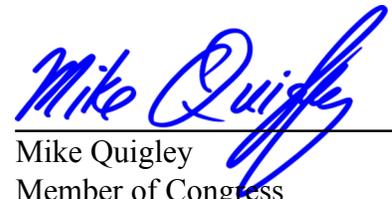
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