



ADVOCACY GROUP
Shannon McGahn
Chief Advocacy Officer

February 13, 2026

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

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

To Whom it May Concern:

On behalf of its nearly 1.5 million members, the National Association of REALTORS® (NAR) submits these comments on the proposed rule of the U.S. Department of Housing and Urban Development (HUD), "HUD's Implementation of the Fair Housing Act's Disparate Impact Standard." The proposed rule would eliminate HUD's current disparate impact rule, which recognizes that the Fair Housing Act (FHA) prohibits disparate impact discrimination and provides guidance for HUD's implementation of the Supreme Court's decision in *Texas Dept. of Housing & Community Affairs. v. Inclusive Communities Project, Inc.*, 576 U.S. 519 (2015). NAR believes that the current rule should remain in place, as it provides guidance, consistent with settled law, assuring the American public that HUD will continue to bring cases using a legal doctrine that is vital to the Fair Housing Act.

Disparate Impact is an Essential Part of the Fair Housing Act

As the Supreme Court stated in *Inclusive Communities*, "[r]ecognition of disparate-impact claims is consistent with the FHA's central purpose . . . to eradicate discriminatory practices within a sector of our Nation's economy." 576 U.S. at 539. While the discriminatory effects of challenged policies are sometimes unintentional, in other cases the discriminatory effect is intentional, but masked by the veneer of a neutral practice. The Court observed that disparate impact claims uncover discrimination that may "escape easy classification as disparate treatment" because such "disguised animus" can be "covert and illicit." 576 U.S. at 540. As such, HUD cannot meaningfully enforce the Fair Housing Act without disparate impact as part of its toolkit.

Disparate Impact is Necessary to Protect Property Rights and Increase Housing Supply and Affordability

Disparate impact liability under the Fair Housing Act is especially important when local governments adopt laws that infringe on private property rights or block housing development for discriminatory purposes. In *Inclusive Communities*, the Court noted that suits targeting unlawful practices like "zoning laws and other housing restrictions that function unfairly to exclude minorities from certain neighborhoods without any sufficient justification . . . reside at the heartland of disparate-impact liability." 576 U.S. at 539.

The federal government has long used disparate impact to challenge such policies. For example, after Hurricane Katrina decimated the majority-Black ninth ward of New Orleans, neighboring St. Bernard Parish, a community that was more than 85% white, passed a series of ordinances that, while neutral on their face, had the effect of keeping Black people from moving into the Parish.

These ordinances included a prohibition on homeowners' renting their unit unless the city granted a permit affirming that they were renting to a "blood relative." The Parish also established a moratorium on any renovation or new construction of multifamily housing. Eight St. Bernard Parish homeowners filed complaints with HUD in 2011, which HUD accepted and referred to the Department of Justice. Provident Realty, a local developer, also brought suit. The homeowners and developer ultimately saw their rights vindicated by a settlement, and more housing was made available in the Parish.

Disparate Impact is Essential to Ensure the Availability of Credit to Qualified Buyers

As NAR [commented](#) on the proposed Equal Credit Opportunity Act (Regulation B) rule, Docket No. CFPB-2025-0039, discrimination in the mortgage market persists, preventing otherwise qualified households from attaining the American Dream of homeownership. For decades, the disparate impact framework has provided clear rules of the road for mortgage lenders, who developed systems to ensure they were serving entire communities. Moreover, disparate-impact's burden-shifting framework affords lenders the opportunity to defend and maintain practices necessary to achieve their business objectives.

The Current Rule is Faithful to Settled Law and Should Remain in Place

NAR [wrote](#) in 2021 that the current rule "strikes the proper balance between combatting discrimination and ensuring that real estate professionals and housing providers have appropriate latitude to make legitimate business decisions in the pursuit of nondiscriminatory objectives." Our position has not changed.

While private litigants will continue to rely on *Inclusive Communities* to file disparate impact claims in court, we think it is equally, if not more important, that the federal government also use every tool available to address discriminatory policies that interfere with private property rights. It's critical that homebuyers, renters, borrowers, housing providers, developers, real estate professionals, and community members be able to avail themselves of HUD's administrative process to vindicate their rights in these cases.

Finally, although the Supreme Court in *Loper Bright Enterprises v. Raimondo* held that judicial deference to agency guidance is not mandatory, having the existing rule in place provides guidance to market participants to help ensure compliance with a foundational component of the Fair Housing Act.

NAR urges HUD to continue to bring disparate impact cases on behalf of the American public under its existing disparate impact rule.

Sincerely,



Kevin Brown

2026 President, National Association of REALTORS®



(800) 874-6500

500 New Jersey Ave., NW
Washington, DC 20001