LDF Legal Defense Fund

Advancing racial justice since1940

February 13, 2026

Scott Knittle
Principal Deputy General Counsel
Regulations Division
Office of General Counsel
Department of Housing and Urban Development
451 7th Street SW, Room 10276
Washington, DC 20410-0500

Via regulations.gov

RE: HUD's Implementation of the Fair Housing Act's Disparate Impact Standard, RIN 2529-AB09

Dear Mr. Knittle;

On behalf of the Legal Defense Fund (LDF), we write to oppose the U.S. Department of Housing and Urban Development's (HUD) proposed rule rescinding its disparate impact regulations under the Fair Housing Act (FHA). Congress passed the FHA to guarantee the right of every person to rent an apartment, buy a home, or secure a mortgage without discrimination. To do so, Congress prohibited not only policies that explicitly exclude people based on race, color, religion, sex, and national origin—and, later, familial status and disability—but also practices that cause unjustified discriminatory harms, or disparate impact discrimination. In the decades since, HUD has challenged discriminatory zoning ordinances;[1] predatory lending practices;[2] biased algorithms that disproportionately steered housing advertisements toward white people and away from Black people;[3] and policies that concentrated environmental harms in overburdened Black and Latino communities.[4] HUD's analysis of disparate impact discrimination under the FHA was formalized in HUD regulations in 2013[5] and the Supreme Court agreed the FHA prohibited this form of discrimination in 2015.[6] Despite these clear precedents and the ongoing housing discrimination faced by Black communities and other

[1] *United States v. City of Black Jack*, 508 F.2d 1179 (8th Cir. 1975).
[2] *E.g., Saint-Jean v. Emigrant Mortgage Company,* 129 F.4th 124 (2d Cir. 2025); *Nat'l Fair Housing Alliance v. Prudential Ins. Co. of America,* 208 F.Supp.2d 46 (D.D.C. 2002).
[3] U.S. Dep't of Justice, Justice Department and Meta Platforms Inc. Reach Key Agreement as They Implement Groundbreaking Resolution to Address Discriminatory Delivery of Housing Advertisements (Jan. 9, 2023), https://www.justice.gov/archives/opa/pr/justice-department-and-meta-platforms-inc-reach-key-agreement-they-implement-groundbreaking.
[4] U.S. Dep't of Housing & Urban Development, Letter of Findings of Noncompliance with Title VI and Section 109, Southeast Environmental Task Force, et al. v. City of Chicago Case No. 05-20-0419-6/8/9 (Jul. 19, 2022), https://www.fairhousingnc.org/wp-content/uploads/2022/12/Letter-of-Finding-05-20-0419-City-of-Chicago.pdf.
[5] Implementation of the Fair Housing Act's Discriminatory Effects Standard, 78 Fed. Reg. 11460 (2013), https://www.federalregister.gov/documents/2013/02/15/2013-03375/implementation-of-the-fair-housing-acts-discriminatory-effects-standard.
[6] *Texas Dep't of Housing and Community Affairs v. Inclusive Communities Project, Inc.*, 576 U.S. 519, 545 (2015).

groups, HUD now proposes to eliminate its disparate impact regulations under the FHA,[7] disturbing the interests of housing providers, state and local governments, and impacted individuals who rely on these regulations to clarify their rights and obligations. Yet HUD does not provide a reasoned basis for this substantial change or its abbreviated timeframe for public comment. The Trump administration's opposition to disparate impact protections does not alter the FHA or eliminate HUD's duty to enforce the statute. HUD should abandon this ill-conceived rule and vigorously enforce its existing disparate impact regulations.

I. The Fair Housing Act's Protections Against Unjustified Discriminatory Effects Have Protected Tenants for Decades.

Disparate impact has been an essential tool for combating housing discrimination since the earliest days of the FHA. As the authors of the FHA, the late Senator Edward Brooke and former Vice President Walter Mondale, highlighted in their amicus brief to the Supreme Court in the *Texas Dep't of Housing & Community Affairs v. Inclusive Communities Project,* not only did Congress fully intend for the 1968 Act to address disparate impact discrimination, but having this protection is critically important to achieving the law's full potential.[8] Congress confirmed the FHA prohibits disparate impact discrimination when it amended the Act in 1988 to clarify and strengthen its enforcement mechanisms.[9] In 2015, the Supreme Court agreed, ruling disparate impact claims are cognizable under the FHA. In so holding, Justice Kennedy stated, "[t]he Fair Housing Act must play an important part in avoiding the . . . grim prophecy that '[o]ur Nation is moving toward two societies, one black, one white–separate and un-equal.' The Court acknowledges the Fair Housing Act's continuing role in moving the Nation toward a more integrated society."[10]

In light of this Congressional intent and the Supreme Court's holding, HUD has enforced the FHA's prohibition against disparate impact discrimination for decades, across administrations of both parties. Soon after the FHA took effect, the Nixon administration challenged a zoning ordinance that had a unjustified discriminatory effect on Black people, leading an appellate court to affirm in 1975 that this suit was a proper use of the FHA.[11] HUD has acknowledged the FHA's prohibition on disparate impact discrimination in its policy documents since at least the early 1990s. In 1994, HUD, along with nine other agencies and the Department of Justice, issued a joint policy statement recognizing disparate impact liability under the FHA.[12] In 2013, HUD formalized how it would enforce disparate protections in its

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[7] HUD's Implementation of the Fair Housing Act's Disparate Impact Standard, 91 Fed. Reg. 1475 (2026), https://www.federalregister.gov/documents/2026/01/14/2026-00590/huds-implementation-of-the-fair-housing-acts-disparate-impact-standard (hereinafter "Proposed Rule").

[8] Br. of Current & Former Members of Congress as Amici Curiae in Supp. of Petitioners, *Texas Dept. of Housing and Community Affairs v. Inclusive Communities Project, Inc.*, 576 U.S. 519, (2015). https://www.uschamber.com/assets/documents/Current20and20Former20Members20of20Congress20Amici20Brief2020Texas20Department20of20Housing20v.20Inclusive20Communities20Project2C20Inc.2028U.S.20Supreme20Court29.pdf.

[9] *Inclusive Communities Project, Inc.*, 576 U.S. at 541.

[10] *Id.* at 546-47.

[11] *See City of Black Jack*, 508 F.2d 1179.

[12] *See, e.g., HUD* v. *Pfaff,* 1994 WL 592199, at *8 (HUD ALJ Oct. 27, 1994); *HUD* v. *Mountain Side Mobile Estates P'ship,* 1993 WL 367102, at *6 (HUD ALJ Sept. 20, 1993); *HUD* v. *Carter,* 1992 WL 406520, at *6 (HUD ALJ May 1, 1992); *Twinbrook Vill. Apts.,* HUD ALJ Nos. 02-00-0256-8, 02-00-0257-8, 02-00-0258-8, 2001 WL 1632533, at *17 (HUD ALJ Nov. 9, 2001); *see also* 1994 Joint Policy Statement on Discrimination in Lending, 59 Fed. Reg. 18266, 18269 (Apr. 15, 1994) (applying three-step test without specifying where the burden lies at each step).

regulations, stating disparate impact liability was "imperative to the success of civil rights law enforcement."[13]

Both everyday people and HUD have used the FHA to challenge policies that have a discriminatory effect, including biased algorithms that harm people and communities; and discriminatory zoning and land-use policies. Below are a few cases addressing disparate impact discrimination:

- *Town of Huntington v. NAACP:* In the 1960s, the town of Huntington created a zoning classification permitting the construction of multifamily housing projects only in census tracts where Black people were concentrated and allowing single family projects only in areas where white people were concentrated.[14] The zoning ordinance created an invisible barrier leading to extreme racial segregation in Huntington. As a result, almost 75% of the Black population was clustered in six census tracts. Of the town's remaining 42 census tracts, 30 were at least 99% white.[15] Decades after the zoning ordinance took effect, a developer interested in fostering residential integration and building a multifamily housing unit acquired land in a 98% white section of town zoned for single family residences. The town denied the developer's request to amend the zoning code to permit multifamily rental construction in that area. In 1981, the Huntington branch of the NAACP and two low-income Black Huntington residents filed suit against the town of Huntington for its discriminatory zoning scheme.[16] The U.S. Court of Appeal for the Second Circuit found the zoning policy had a discriminatory effect against Black Huntington residents and preserved the town's pattern of segregated housing.[17] The Court found that the town's justification of the zoning ordinance did not have a substantial legitimate basis because the ordinance "impeded integration" while there remained less discriminatory alternatives to the towns stated goals. The town's stated goals of limiting multifamily housing to the urban renewal area furthered the design of the zoning ordinance by encouraging development in that area.[18] Instead, the Second Circuit suggested that the less discriminatory alternative of tax incentives could satisfy this objective.[19]

- *Louis v. SafeRent Solutions:* In 2022, two Black women who utilized Housing Choice Vouchers sued SafeRent, a company that provides tenant screening services, claiming it violated the FHA by deploying an algorithm that had a disparate impact based on race.[20] The algorithm relied heavily on credit history and eviction data but failed to consider housing voucher subsidies—even though vouchers guarantee the majority of rent is paid directly by the government.[21] Communities of color are more likely to have lower credit scores because historically, they've been denied affordable financial services and wealth-

[13] U.S. Dep't of Housing & Urban Development, Reinstatement of HUD's Discriminatory Effects Standard, 88 Fed. Reg. 19450 (Mar. 31, 2023), https://www.federalregister.gov/documents/2023/03/31/2023-05836/reinstatement-of-huds-discriminatory-effects-standard#citation-60-p19455.
[14]
[15] *Id.*
[16] *Id.*
[17] *Id.*
[18] *Id.* at 940.
[19] *Id.* at 939.
[20] *Louis v. SafeRent Solutions,* 685 F.Supp.3d 19 (D. Mass 2023).
[21] *Id.*

building opportunities.[22] Because of these disparities, voucher holders, particularly Black applicants, tended to receive lower scores from SafeRent's tenant screening algorithm and faced disproportionately higher rejection rates.[23] The U.S. District Court for Massachusetts found the plaintiffs alleged sufficient facts to proceed on their disparate impact claims because the algorithm likely had a disparate impact against Black applicants.[24]

While these cases present distinctly different facts, they share a common thread of aiming to ensure all people achieve safe, stable, affordable housing free from discrimination. Although the harms of the discriminatory policies disproportionately burdened Black households, addressing those policies benefited every household that was previously excluded, regardless of race. Contrary to Executive Order 14281, which HUD relies on in the proposed rule, disparate impact liability does not mandate discrimination but rather protects people from unjustified practices that cause disproportionate harm.[25] This standard has been used for decades to root out harmful housing discrimination that keeps Black people and other marginalized groups from being able to equally share in the American dream.

II. HUD's Discriminatory Effects Regulations Provide Clarity to Housing Providers and Impacted Individuals, Creating Substantial Reliance Interests.

HUD's disparate impact regulations provide both housing providers and individuals with a standard framework and predictability that is essential to compliance with the FHA. For decades, HUD regulations have informed landlords and other housing providers, states and localities, and the general public about disparate impact discrimination and HUD's standards when investigating disparate impact claims. The regulations are non-burdensome and benefit all parties by ensuring the disparate impact standard under the FHA is clear.

As noted above, HUD's 2013 "Implementation of the FHA's Discriminatory Effects Standard" rule formally established how the agency would evaluate housing practices with a discriminatory effect.[26] The 2013 rule, which was formally reinstated in 2023,[27] set a balanced standard for pleading, proving, and defending a fair housing case alleging a policy or practice has a discriminatory effect by codifying a three-step burden-shifting framework for evaluating disparate impact claims used by many, though not all, courts.[28] In doing so, HUD explained, the 2013 Rule provided greater clarity about what each party must show when trying to advance or

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[22] Abby Boshart, *How Tenant Screening Services Disproportionately Exclude Renters of Color from Housing*, URBAN INST., (De. 21, 2022), https://housingmatters.urban.org/articles/how-tenant-screening-services-disproportionately-exclude-renters-color-housing#:~:text=Credit%20scores%20were%20another%20important,payments%2C%20or%20rental%20payment%20history.

[23] *Louis,* 685 F.Supp.3d at 27.

[24] *Id.*

[25] Exec. Order 14281, Restoring Equality of Opportunity and Meritocracy, 19 Fed. Reg. 17537 (Apr. 23, 2025), https://www.federalregister.gov/documents/2025/04/28/2025-07378/restoring-equality-of-opportunity-and-meritocracy.

[26] Implementation of the Fair Housing Act's Discriminatory Effects Standard, 78 Fed. Reg. 11460, *supra* note 5.

[27] U.S. Dep't of Housing and Urban Development, Reinstatement of HUD's Discriminatory Effects Standard, 88 Fed. Reg. 19450 (Mar. 31, 2023), https://www.federalregister.gov/documents/2023/03/31/2023-05836/reinstatement-of-huds-discriminatory-effects-standard#citation-60-p19455. The 2013 Rule remained in place until the Trump administration issued a new rule in 2020, which was enjoined before it went into effect. *Id.* at 19452. In 2023, HUD reinstated the 2013 rule and that regulation stayed in place until this prosed rule change in 2026. *Id.*

[28] *Id.*

defend a disparate impact claim under the FHA and encouraged uniform interpretations across circuits.[29] Numerous cases have since *Inclusive Communities* utilized the 2013 Rule's burden shifting framework to evaluate discriminatory policies.[30]

HUD's disparate impact regulations are instrumental in ensuring compliance with the FHA. By codifying its practices into regulation and clarifying how HUD will resolve circuit splits, the current disparate impact rule provides clear guidance to housing providers and the public. The public should not be forced to understand complicated caselaw to know what their rights are under the FHA. HUD's regulations provide the public with a clear understanding of what the definition of discriminatory effect is and what the standard is to prove a race-neutral policy has a discriminatory effect.

HUD's disparate impact regulations created substantial reliance interests for entities covered under and protected by the FHA. When businesses or municipalities make substantial investments or structural changes based on existing federal rules, agencies must consider these interests before making consequential policy changes and provide a well-reasoned explanation for reversing policy[31] Organizations and jurisdictions rely on established disparate impact regulatory framework to structure housing and lending practices. It will be extremely harmful for these entities to go from relying on a rule which has been in effect for years to having no rule and no unified standard. Neither housing providers, political jurisdictions, nor harmed individuals will know how HUD will interpret complaints filed or assess compliance. Furthermore, different courts could apply different standards to evaluate a claim of discriminatory effect, which could create confusion—particularly for entities that operate across jurisdictions This confusion could lead to compliance issues which could lead to increased housing discrimination. However, the agency has not considered these interests in the proposed rule.

III. HUD Does Not Offer a Reasoned Basis for Rescinding Its Discriminatory Effects Regulations.

HUD fails to offer a reasoned basis for rescinding its disparate impact rule. When an agency substantially alters an existing regulation, it must provide a reasoned explanation for the change.[32] In particular, when rescinding a rule, an agency must explain its departure from the prior policy and show the new policy is supported by "good reasons" and better, in the agency's belief, than the previous policy, particularly in light of any substantial reliance interests at stake.[33] However, HUD offers little explanation for the changes, leaving the public "guessing" as to the reason for the change.[34] The proposed rule also includes clear misstatements of fact and law. Because HUD's reasoning is insufficient to justify the change in light of the substantial reliance interests described above,[35] it should withdraw the proposed rule.

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[29] *Id.*
[30] *E.g. Mhany Mgmt., Inc. v. Cnty. of Nassau*, 819 F.3d 581, 618-20 (2d Cir. 2016).
[31] *Dep't of Homeland Sec. v. Regents of the University of California,* 591 U.S. 1 (2020).
[32] *Food & Drug Administration v. Wages & White Lion Investments*, 604 U.S. 542, 566 (2025); *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 57 (1983).
[33] *FCC. v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009).
[34] *Thakur v. Trump*, 148 F.4th 1096, 1106-07 (9th Cir. 2025), *rev'd on other grounds by Thakur v. Trump*, No. 25-4249, 2025 WL 3760650 (9th Cir. Dec. 23, 2025).
[35] *Regents of Univ. of Cal.*, 591 U.S. 1.

A. HUD Intends to End Disparate Impact—But the Law Has Not Changed, and the Proposed Rule Does Not Change the Law.

HUD has made clear the intent of the proposed rule is to end disparate impact enforcement under the FHA. Beginning last year, HUD dismissed investigations and conciliation agreements that relied on both disparate impact and disparate treatment discrimination claims.[36] HUD also rescinded guidance documents explaining how particular policies and practices can cause disparate impact discrimination and issued directives not to pursue cases of disparate impact discrimination.[37] Both HUD Secretary Scott Turner[38] and HUD itself have stated the proposed rule would "end the agency's use of disparate-impact theory in fair housing and related civil rights enforcement."[39]

However, HUD concedes in the proposed rule, as it must, it is bound by the Supreme Court's holding that the FHA prohibits policies with unjustified discriminatory effects.[40] While HUD claims its current disparate impact rule "does not provide an up-to-date picture of the legal landscape," it points to no specific case or change in law since HUD finalized its most recent disparate impact rule in 2023.[41] HUD also does not explain why any change in law requires a full rescission of the current rules, rather than a modification or rescission of specific portions of the rules.

Instead, HUD inaccurately claims it must rescind its disparate impact regulations in order to comply with President Trump's executive order directing the elimination "of disparate-impact liability in all contexts to the maximum degree possible to avoid violating the Constitution, Federal civil rights laws, and basic American ideals,"[42] as well as other executive orders mandating deregulation.[43] However, executive orders cannot rewrite federal statutes or override Supreme Court decisions—and HUD admits the proposed rule "does not change any requirements or affect any rights or obligations."[44] Disparate impact protections are integral to, not in violation of, the FHA. Housing providers have an ongoing obligation to assess their practices to see if they cause disproportionate harms; to evaluate whether they have a

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[36] Jesse Coburn, *Trump Administration Prepares to Drop Seven Major Housing Discrimination Cases,* PROPUBLICA (Jul. 18, 2025 1:08 p.m.), https://www.propublica.org/article/trump-hud-drop-housing-discrimination-cases-housing-pollution; Brett Chase, *Trump dismisses civil rights, fair housing cases in Chicago to focus on 'real concerns',* WBEZ CHICAGO (Aug. 6, 2025 6:55 p.m.), https://www.wbez.org/environment/2025/08/06/trump-general-iron-housing-environmental-racism; Press Release, U.S. Dep't of Housing & Urban Development, HUD Rescinds Biden-Era Politically Motivated Investigation into the Texas General Land Office (Jan. 2026), https://www.hud.gov/news/hud-no-26-009.

[37] Colette Massengale & Alexia Smokler, *HUD Withdraws Fair Housing Guidance Documents,* NAT'L ASSOC. OF REALTORS (Oct. 7, 2025), https://www.nar.realtor/washington-report/hud-withdraws-fair-housing-guidance-documents.

[38] Scott Turner, *It's Time to Ditch 'Disparate Impact Theory' — and Biden's Weaponization of Civil Rights Law*, NAT'L REV. (Jan. 19, 2026 6:30 a.m.), https://www.nationalreview.com/2026/01/its-time-to-ditch-disparate-impact-theory-and-bidens-weaponization-of-civil-rights-law/.

[39] Press Release, U.S. Dep't of Housing & Urban Development, HUD Rescinds Biden-Era Politically Motivated Investigation into the Texas General Land Office, *supra* note 36.

[40] Proposed Rule at 1475 (citing *Inclusive Communities,* 576 U.S. 519).

[41] *Id.* at 1476.

[42] Exec. Order 14281, *supra* note 25.

[43] Proposed Rule at 1476.

[44] *Id.*

substantial, legitimate reason for such practices; and to seek out less discriminatory alternatives.[45] HUD's proposed rescission of its rules cannot change that.

B. HUD Inaccurately Describes Disparate Impact Under the Fair Housing Act and Its Own Role in Enforcing that Act.

HUD's reasoning is also flawed because it misstates the standards for disparate impact discrimination under the FHA. Contrary to HUD's claims, disparate impact liability is not triggered by "any variance in outcomes . . . among protected classes,"[46] but requires harmed individuals to show that there is a significant disparity in outcomes[47] caused by a specific policy or policies.[48] Nor do HUD's rules codify a "burden-shifting framework" that falls solely "onto the defendant."[49] It is only after the complainant has shown the challenged practice will cause a discriminatory effect that the burden of proof shifts to the respondent to show the practice "is necessary to achieve one or more substantial, legitimate, nondiscriminatory interests."[50] Once the respondent makes that showing, the burden then shifts back to the complainant to show a different policy would serve the same interest with a less discriminatory effect.[51] This balanced framework ensures housing providers have "leeway to state and explain the valid interest served by their policies" while removing "artificial, arbitrary, and unnecessary barriers."[52]

HUD also misstates its own role in enforcing disparate impact standards. HUD claims its disparate impact rule is unnecessary because is "appropriate for courts, not a Federal agency, to make determinations related to the interpretation of disparate impact liability under the Fair Housing Act."[53] This claim is misleading. As the federal agency with the duty to enforce the FHA—all of the FHA, not just those provisions the Trump administration prefers—HUD regularly interprets how disparate impact liability applies to particular factual circumstances in its own investigations. Rescinding its disparate impact rules does not change HUD's duty; it instead deprives the agency of needed guidance on how to perform that duty. These legal and factual misstatements undermine HUD's claims and call into question its reasoning for rescinding the rule.

C. *Loper Bright* Does Not Counsel in Favor of Rescinding HUD's Disparate Impact Rules.

Finally, HUD inaccurately claims its disparate impact rules are not needed because, "according to the Supreme Court's decision in *Loper Bright Enterprises* v. *Raimondo* ('*Loper Bright*'), federal agency interpretations of statutes and agency actions that rely on them do not receive any judicial deference."[54] HUD overstates the holding in *Loper Bright* and its significance for federal agencies. As Justice Roberts explained in that case, while courts must exercise independent judgment when interpreting statutes, since the Founding, the Supreme

[45] *See, e.g., Oti Kaga, Inc.* v. *S. Dakota Hous. Dev. Auth.,* 342 F.3d 871, 883 (8th Cir. 2003); *Lapid-Laurel* v. *Zoning Bd. of Adjustment,* 284 F.3d 442, 466-67 (3d Cir. 2002); *Huntington Branch NAACP,* 844 F.2d at 939.
[46] *Id.* at 1475.
[47] *See Langlois v. Abington Hous. Auth.*, 234 F. Supp. 2d 33, 62 (D. Mass. 2002) ("The standard is not just disparate impact, but substantial disparate impact.").
[48] *Inclusive Communities,*576 U.S. at 521; *see also* 24 C.F.R. § 100.500(c)(1).
[49] Proposed Rule at 1475.
[50] 24 C.F.R. § 100.500(c)(2).
[51] *Id.* at (c)(3).
[52] *Inclusive Communities,* 576 U.S. at 541 (citing *Griggs v. Duke Power Co.,* 401 U.S. 424, 431 (1971)).
[53] Proposed Rule at 1476.
[54] *Id.* (citing *Loper Bright Enterprises* v. *Raimondo,* 603 U.S. 369 (2024)).

Court has recognized "that exercising independent judgment often included according due respect to Executive Branch interpretations of federal statutes."[55] Regulations remain an important reference point for courts: because agency interpretations "constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance,"[56] the "views of the Executive Branch could inform the judgment of the Judiciary."[57] Moreover, *Loper Bright* repeatedly cited and affirmed the reasoning in *Skidmore v. Swift & Co.*,[58] indicating agency interpretations may still be accorded *Skidmore* deference. Importantly, this reasoning, if adopted, would apply equally to all HUD regulations, permitting the agency to roll back rules regardless of how significant or longstanding. HUD's claim that its disparate impact rules "do not receive any judicial deference" is untrue, unpersuasive, and cannot justify the rescission of the rule.

IV. HUD's Notice and Comment Process is Unduly Abbreviated

HUD is seeking comments for the proposed rule on an abbreviated schedule, claiming the 60-day comment period required by HUD's rules is unnecessary because HUD received large numbers of comments in prior disparate impact rulemakings.[59] HUD's claims are unfounded. The fact that HUD received comments on prior disparate impact rules does not obviate the need for comments on this proposed rule, as no prior rulemaking has proposed rescinding HUD's regulations entirely. While HUD is correct that its proposal will not change the availability of disparate impact claims under the FHA, it will change how HUD itself approaches these claims, as discussed above. The large volume of comments HUD received in its prior rulemakings speaks to the significant public interest in these rules and the need for robust opportunities for public engagement. Yet HUD provides no explanation for why it is "in the public interest to remove HUD's disparate impact regulations as expeditiously as possible."[60]

V. Conclusion

HUD's proposed rule would disturb the substantial reliance interests its disparate impact rule created for Black communities, other communities who experience a disproportionate amount of illegal discrimination, and housing providers, who depend on the regulations to understand their rights and obligations. Yet HUD fails to provide a sufficient, reasoned explanation for its change in policy. As the Supreme Court explained in *Inclusive Communities,* "Much progress remains to be made in our Nation's continuing struggle against racial isolation."[61] Protections against disparate impact discrimination remain a critical tool for

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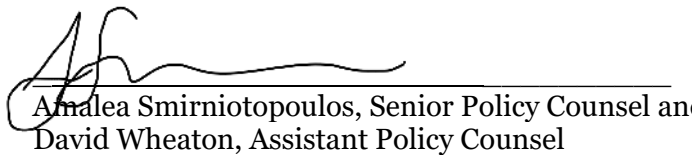
[55] *Loper Bright Enterprises,* 603 U.S. at 385-86 (citing cases).
[56] *Id.* at 394.
[57] *Id.* at 386; *id.* at 412-13 ("Courts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority, as the APA requires. Careful attention to the judgment of the Executive Branch may help inform that inquiry.").
[58] *E.g. id.* at 386 (citing *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944)). In *Skidmore*, the Supreme Court explained that the "interpretations and opinions" of the relevant agency, "made in pursuance of official duty" and "based upon … specialized experience," "constitute[d] a body of experience and informed judgment to which courts and litigants [could] properly resort for guidance," even on legal questions. 323 U.S. at 139–140. "The weight of such a judgment in a particular case," the Court observed, would "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." *Id.* at 140.
[59] Proposed Rule at 1476-77.
[60] *Id.* at 1477.
[61] *Inclusive Communities,* 576 U.S. at 546.

remedying residential segregation and ensuring the FHA lives up to its purpose.[62] We strongly urge HUD to withdraw the proposed rule.

Thank you for the opportunity to comment. If you have any questions, please contact Amalea Smirniotopoulos, Senior Policy Counsel and Equal Protection Initiative Co-Manager (asmirniotopoulos@naacpldf.org), and David Wheaton, Assistant Policy Counsel (dwheaton@naacpldf.org).

Sincerely,



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[62] *Id.*