

February 13, 2026

SUBMITTED VIA REGULATIONS.GOV

The Honorable Scott Turner
Secretary
Department of Housing and Urban Development
451 7th Street SW
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 Secretary Turner:

The Southern Poverty Law Center (“SPLC”)¹, and the undersigned organizations across the Deep South, submit the following comment in opposition to the Department of Housing and Urban Development’s (“HUD”) proposed rule to eliminate its Fair Housing Act’s (FHA) discriminatory-effects regulations from the Code of Federal Regulations.² The proposed rule represents a retreat from HUD’s obligation to fully enforce the FHA, particularly with respect to facially neutral housing practices that continue to exclude and harm Black, Brown, and other protected communities across the Deep South and beyond. SPLC urges HUD to withdraw the proposed rule and retain its existing regulations.

Equal access to safe and affordable housing is central to the nation’s promise of equal opportunity and protection under the law. Yet, for much of U.S. history, federal, state, and local governments—along with private entities—implemented and enforced housing policies rooted in anti-Black racism that systematically disadvantaged Black Americans.³ Such policies included redlining communities; imposing exclusionary land-use rules; siting Black neighborhoods near industrial hazards; denying public resources and access to credit; and sanctioning, enabling, or actively engaging in violence against Black people who moved or attempted to move into White neighborhoods.⁴ Together, these

¹ The SPLC is a nonprofit civil rights organization that has worked for more than five decades to advance racial justice across the Deep South and beyond through litigation, policy advocacy, and public engagement.

² 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>.

³ See, e.g., Richard Rothstein, *The Color of Law: A Forgotten History of How Our Government Segregated America* (2017) (explaining that, until the late twentieth century, “racially explicit policies of federal, state, and local governments defined where white and African Americans should live,” and that today’s residential segregation is “not the unintended consequence of individual choices” but of “unhidden public policy”).

⁴ *Id.*; Tia Sherèe Gaynor et al., *Segregated Spaces and Separated Races: The Relationship Between State-Sanctioned Violence, Place, and Black Identity*, 7, Russell Sage Foundation Journal of the Social Sciences 50 (2021), <https://doi.org/10.7758/RSF.2021.7.1.04>.

policies entrenched segregation and inflicted lasting harm by confining Black families to segregated communities and restricting their access to economic opportunity and wealth-building.⁵

Against this backdrop, and in response to sustained advocacy by civil rights organizations, Congress enacted—and later strengthened—the Fair Housing Act to dismantle the entrenched system of racial exclusion.⁶ The Act was designed to ensure that access to housing is not denied, whether by intent or by effect, on the basis of race, color, national origin, religion, sex, familial status, or disability.

That work remains unfinished. Housing discrimination persists today in subtler, yet no less harmful, forms. Facially neutral policies governing zoning, lending, development, and public resource allocation continue to reproduce exclusion—particularly in the South, where Black families face some of the nation’s widest disparities in homeownership, mortgage lending, and access to credit.⁷ In this reality, disparate impact liability remains essential.

HUD’s proposed rule would severely weaken this critical enforcement tool. Eliminating HUD’s disparate impact standard would depart from Congress’s intent, HUD’s longstanding interpretation of the FHA, and settled legal precedent. At a time when housing costs continue to rise and affordable options shrink, the proposed rule would push safe, stable housing further out of reach for communities across the Deep South.

I. Persistent Housing Barriers in the Deep South Continue to Deny Black Communities Equal Access

HUD’s proposed rule cannot—and must not—be assessed in isolation. Nearly sixty years after Congress enacted the Fair Housing Act, Black families continue to face profound and persistent inequality in access to housing. They remain disproportionately confined to segregated neighborhoods, are less likely to attain homeownership, and encounter enduring barriers to mortgage credit, fair lending, and housing stability across the nation.⁸

These trends are especially pronounced in the South, where the legacy of de jure segregation—reinforced by contemporary forms of de facto exclusion—continues to limit Black families’ access to fair housing, and by extension, their ability to build and transmit wealth. And the consequences of

⁵ See Leah Brooks & Julian L. Morris, *The Racial Wealth Gap and the Legacy of Racially Restrictive Housing Covenants*, in *Reducing Retirement Inequality* ch. 6 (Oxford Univ. Press 2023), [doi:10.1093/oso/9780198939030.003.0006](https://doi.org/10.1093/oso/9780198939030.003.0006); Danyelle Solomon, et al, *Systematic Inequality: How America’s Structural Racism Helped Create the Black-White Wealth Gap* (Ctr. for Am. Progress Feb. 21, 2018), <https://www.americanprogress.org/article/systematic-inequality/> (finding that, absent major policy change, “it would take more than 20 years just to return to the racial wealth gap that existed in 1998” and “more than 200 years for median Black wealth to equal median white wealth”)

⁶ 42 U.S.C. § 3601; David H. Carpenter, *The Fair Housing Act (FHA): A Legal Overview*, Cong. Rsch. Serv. (Jun. 27, 2024), <https://www.congress.gov/crs-product/R48113>.

⁷ See Elizabeth Laderman & Carolina Reid, *Homeownership, Racial Segregation, and Policies for Racial Wealth Equity*, Brookings (Sept. 29, 2021), <https://www.brookings.edu/articles/homeownership-racial-segregation-and-policies-for-racial-wealth-equity/>; Sara Miller, *Black Households Still Face Higher Mortgage Denials Than White Applicants*, *Research Finds*, Hope Policy Inst. (June 30, 2022), <http://hopepolicy.org/blog/black-households-still-face-higher-mortgage-denials-than-white-applicants-research-finds>.

⁸ *Id.*

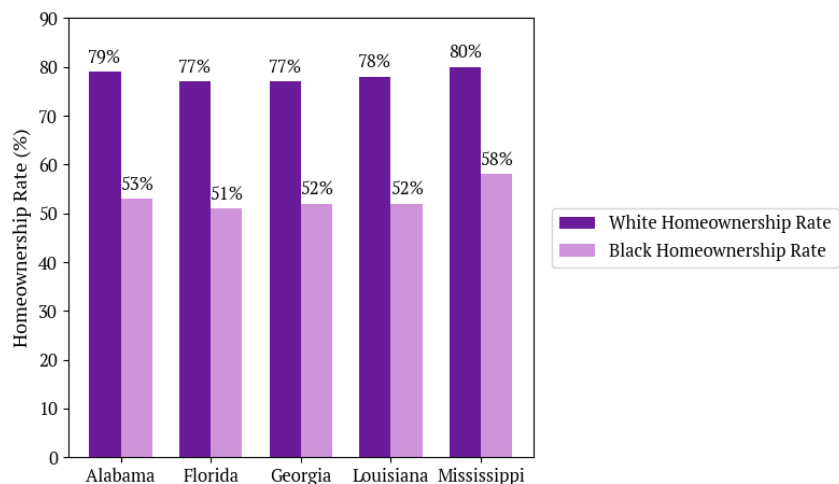
this extend beyond housing. Where families live shape their access to quality schools and medical care, their exposure to environmental hazards, and their proximity to stable employment.

Enduring Homeownership Gap

Homeownership has long been a cornerstone of economic security in the United States. For most families, a home is their largest asset and primary source of financial stability. For Black families in particular, access to homeownership remains one of the most reliable pathways to building and sustaining wealth.⁹ Homeowners accumulate far greater wealth than renters, and the disparity is especially stark for Black households: the median wealth of Black homeowners exceeds that of Black renters by more than sixtyfold.¹⁰ Yet for many Black families, homeownership remains out of reach—not for lack of effort or aspiration, but because of barriers embedded in housing and lending systems.

These barriers are evident in the Deep South. As Figure 1 demonstrates, the gap between Black and white homeownership exceeds twenty percentage points in Alabama, Mississippi, Georgia, Louisiana, and Florida, and approaches thirty percentage points in Louisiana.¹¹ Nationally, the Black–white homeownership gap is wider today than when housing discrimination was lawful.¹² That reality makes plain that dismantling explicit discrimination, while essential, has not undone the structural inequities it produced. Addressing this gap requires policies that confront those inequities directly, rather than consigning discrimination to the past.

Figure 1: Black and White Homeownership Rate Gap



Source: *U.S. Census Bureau (2024)*

⁹ Caitlin Young, *A Landscape Scan of Homeownership for Households of Color* (Nov. 2022), *Urban Institute* <https://www.urban.org/sites/default/files/2022-11/A%20Landscape%20Scan%20of%20Homeownership%20for%20Households%20of%20Color.pdf>.

¹⁰ *Id.*

¹¹ U.S. Census Bureau, *American Community Survey 2024 1-Year Estimates (Table S2502)*, <https://data.census.gov/table?q=S2502&g=040XX00US01.12.13.22.2>.

¹² Danyelle Solomon, *Breaking Down the Black-White Homeownership Gap*, *Urban Institute* (May 9, 2022), <https://www.urban.org/urban-wire/breaking-down-black-white-homeownership-gap>.

Persistent Mortgage Loan Denial Disparities

A significant obstacle to homeownership is unequal access to mortgage credit. Without fair access to mortgage lending, households are effectively excluded from homeownership regardless of income, employment, or housing need. Recent evidence confirms that this barrier continues to operate along racial lines. A 2025 Financial Times analysis of nearly 40 million mortgage applications found that Black applicants were more than twice as likely to be denied a mortgage loan as white applicants with comparable borrower profiles, while Latino applicants experienced denial rates approximately 1.5 times higher.¹³ These disparities were not limited to smaller or regional lenders; they were observed across some of the largest financial institutions in the country.¹⁴

These racial patterns persist in the Deep South. In New Orleans, for example, Black households face the highest mortgage denial rates of any racial or ethnic group.¹⁵ In Alabama, similar disparities were documented. According to the state’s 2020 Analysis of Impediments to Fair Housing Choice, Black applicants in non-entitlement areas were nearly twice as likely as white applicants to be denied a home purchase loan.¹⁶ Alabama is not an outlier. Research by the Consumer Financial Protection Bureau (CFPB) identifies comparable patterns across Southern states, demonstrating that Black applicants face the highest mortgage denial rates even among borrowers with similar credit scores, as reflected in Figure 2.¹⁷ These disparities persist across income levels, showing that income differences alone do not explain unequal access to mortgage credit.¹⁸

Figure 2: Home Purchase Loan Application Denial Rates in Southern Region, 2018-2021

Credit Score	Race/Ethnicity	Rural	Non-Rural
Below 680	White	25%	22%
	Black	36%	31%
	Asian	32%	29%
	Hispanic	25%	23%
	Missing	36%	32%
	Total	29%	27%
680 or Above	White	9%	7%
	Black	17%	14%
	Asian	14%	10%
	Hispanic	12%	10%
	Missing	15%	12%
	Total	10%	9%

Source: CFPB, *Banking and Credit Access in the Southern Region of the U.S.*, (2023)

¹³ Paul Caruana Galizia, *Black Applicants Twice as Likely to Be Rejected for a US Mortgage*, Financial Times (Sept. 4, 2025), <https://www.ft.com/content/217ccd86-7266-4c26-a5dd-18d6e726abcf>

¹⁴ *Id.*

¹⁵ Urban Institute (Housing Finance Policy Center), *Keys Unlock Dreams: New Orleans* (January 2024), <https://keys.nationalfairhousing.org/wp-content/uploads/2024/01/KUDI-New-Orleans-slide-deck.pdf>.

¹⁶ Ala. Dep’t of Econ. & Comm. Affairs, *Analysis of Impediments to Fair Housing Choice* (2020), <https://adeca.alabama.gov/wp-content/uploads/2020-Analysis-of-Impediments-to-Fair-Housing-Choice.pdf>.

¹⁷ Consumer Financial Protection Bureau, *Banking and Credit Access in the Southern Region of the U.S* (June 2023), https://files.consumerfinance.gov/f/documents/cfpb_ocp-data-spotlight_banking-and-credit-access_2023-06.pdf.

¹⁸ Sara Miller, *Black Households Still Face Higher Mortgage Denials*, Hope Policy Inst. (June 3, 2022), <https://hopepolicy.org/blog/black-households-still-face-higher-mortgage-denials-than-white-applicants-research-finds>.

Disparate Exposure to High-Cost and Predatory Mortgage Credit

Disparities in mortgage lending do not end at loan approval. Research by the Consumer Financial Protection Bureau shows that borrowers in rural Southern communities are more likely to pay higher interest rates on mortgage loans than borrowers in urban areas and other regions of the country.¹⁹ Beyond geographic differences, disparities also persist by race. Even among borrowers who successfully obtain mortgage credit, borrowers of color are disproportionately steered toward higher-cost and riskier loan products.²⁰ In Louisiana, the state’s Analysis of Impediments to Fair Housing Choice found that during the mid-2010s, Black and Latino borrowers were significantly more likely than white borrowers to receive high-cost mortgage loans, even when they met basic qualification standards²¹. Mississippi’s most recent Analysis of Impediments similarly reported that high-cost loans were disproportionately concentrated among Black and Latino borrowers, despite such loans representing a smaller share of mortgage lending overall.²²

The consequences of these disparities are severe. High-cost and predatory mortgage products not only increase monthly payments but also elevate the risk of default and foreclosure. Disproportionate exposure to these risky, high-cost loan terms strips families of assets, undermines housing stability, and can destabilize entire communities.²³

Intergenerational Harms Linked to Lack of Fair Housing Access

Where one lives is closely correlated with one’s chances of economic mobility and with access to the conditions that make opportunity real. Data from the Opportunity Atlas (Figure 3) show that children born into poverty in the South are more likely to remain poor as adults than children born in any other region of the country, with red areas indicating the lowest levels of economic mobility.²⁴

These disparities persist even at the most localized levels. According to the most recent Opportunity Atlas data, a Black child born in the Brownsville neighborhood of Miami can expect to

¹⁹ Consumer Financial Protection Bureau, Banking and Credit Access in the Southern Region of the U.S (June 2023), https://files.consumerfinance.gov/f/documents/cfpb_ocp-data-spotlight_banking-and-credit-access_2023-06.pdf

²⁰ Debra Kamin, *Discrimination Seeps into Every Aspect of Home Buying for Black Americans*, The New York Times, (November 29, 2022), <https://www.nytimes.com/2022/11/29/realestate/black-homeowner-mortgage-racism.html>

²¹ Louisiana Division of Administration, *Analysis of Impediments to Fair Housing Choice*, (report identifying barriers to fair housing for protected classes in the state), (2020), <https://www.doa.la.gov/media/hdtlwqch/proposed-2020-analysis-of-impediments-to-fair-housing-choice.pdf>.

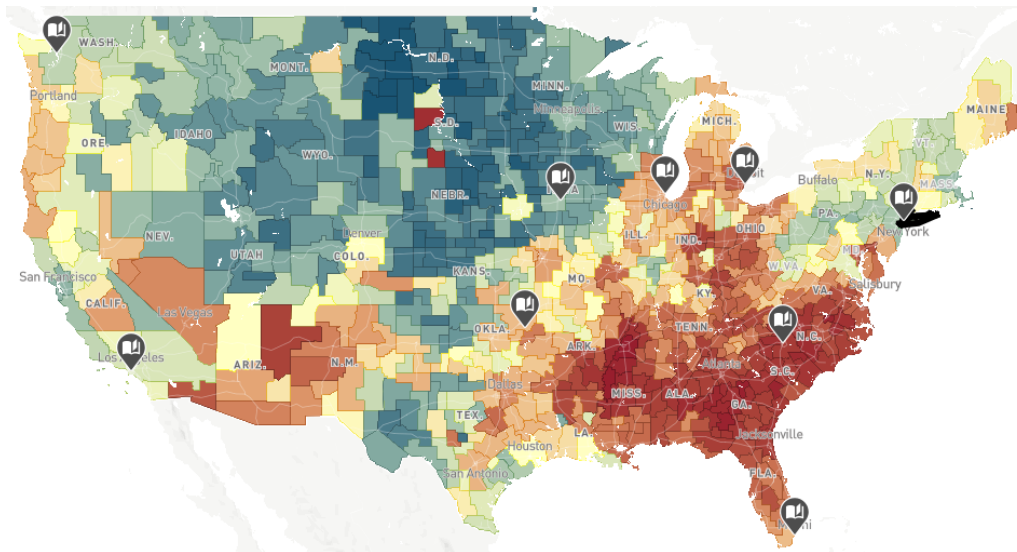
²² State of Mississippi, *Analysis of Impediments to Fair Housing Choice*, final report, (December 31, 2019), https://archivemhc.com/ai/MS_2019_Analysis_of_Impediments_Fair_Housing_Choice.pdf.

²³ See, e.g., Vicki Been, et al, *The High Cost of Segregation: Exploring Racial Disparities in High-Cost Lending*, 36 Fordham Urb. L.J. 361 (2009), <https://ir.lawnet.fordham.edu/ulj/vol36/iss3/1>, (noting that the foreclosure crisis “devastated many predominantly black or Hispanic communities” in part because these groups were “disproportionately likely” to use subprime mortgages, which foreclosed at far higher rates than prime mortgages).

²⁴ Opportunity Atlas, *Neighborhood-Level Estimates of Economic Outcomes*, Opportunity Insights, (accessed February 9, 2026, <https://www.opportunityatlas.org/>).

grow up in a household earning approximately \$19,000 a year. By contrast, a white child born just twenty minutes away in Coral Gables can expect a household income of roughly \$54,000.²⁵

Figure 3: *Map of Child Intergenerational Economic Mobility*



Source: Opportunity Atlas, Mobility Outcomes (2025)

The consequences of unequal housing, however, extend far beyond income. Where a family is permitted to live shapes nearly every dimension of opportunity that follows—access to social and professional networks, exposure to environmental hazards, proximity to health care, and, critically, the quality of the schools a child will attend. In Georgia’s McDuffie County School District, for instance, schools serving higher-property-value neighborhoods are eight times more likely to offer advanced coursework and college-preparatory resources, while students in lower-wealth areas face fewer academic opportunities.²⁶ Health outcomes reflect the same structural divide. Across Mississippi, Alabama, and parts of Georgia, families confined to under-resourced neighborhoods face medical deserts, hospital closures, and limited access to preventive care—conditions that contribute to higher rates of chronic illness and shorter life expectancy.²⁷

²⁵ *Id.* Data retrieved from interactive tract-level estimates of expected adult household income by race for children growing up in Brownsville (Miami, FL) and Coral Gables, FL.

²⁶ ProPublica, *Miseducation: McDuffie County School District* (District 1303570), interactive database on racial inequities in U.S. school districts (based on U.S. Department of Education civil rights data), accessed February 10, 2026, <https://projects.propublica.org/miseducation/district/130357>.

²⁷ See Sam Morris, *Dead Zone: Outdated Internet Is Disconnecting Rural Hospitals and Worsening Health Disparities*, KFF Health News (July 6, 2022), <https://kffhealthnews.org/news/article/dead-zone-rural-hospitals-outdated-internet-disconnect-care-disparities/>; Mary L. K. Peters et al., *Community and Rural Health Indicators: Health and Health Determinants*, 11 *J. Healthy Eating & Active Living* 32, 32–44 (March 11, 2023), <https://pmc.ncbi.nlm.nih.gov/articles/PMC10521985/> (noting that “these two southern regions—Appalachia and the Mississippi Delta—have the lowest life expectancy in the United States, the highest overall mortality rates, and the highest mortality rates associated with cancer and heart, blood, and sleep disorders”).

II. Full Enforcement of the Disparate Impact Standard Is Essential to Combating Housing Discrimination and Persistent Inequality in the Deep South and Beyond

The legacy of racial segregation in housing—created and sustained through government policy at every level—was neither accidental nor fleeting. It dictated where families could live, the schools their children attended, and the economic opportunities available across generations. Congress enacted the Fair Housing Act against this backdrop, fully aware that housing discrimination rarely operates through overt exclusion alone. Section 804(a) of the FHA therefore speaks of prohibiting not only explicit refusals to sell or rent on prohibited grounds but also practices that “otherwise make unavailable or deny” housing.²⁸ In doing so, Congress deliberately focused on consequences rather than intent, recognizing that exclusion often persists through facially neutral policies that entrench long-standing patterns of racial separation. Addressing disparate impact was—and remains—central to the Act’s promise of meaningful fair housing.

That understanding has been reinforced by decades of judicial precedent and social-science research.²⁹ Congress correctly anticipated that unconscious bias and entrenched stereotypes are not relics of the past, but continuing forces that shape decision-making and produce real-world harm. Further, the Supreme Court has noted that such biases can yield “precisely the same effects” as intentional discrimination.³⁰ An enforcement regime that requires proof of subjective intent would therefore miss the most pervasive and consequential forms of housing discrimination today.

Modern housing discrimination rarely announces itself openly. Instead, it is embedded in zoning decisions, lending criteria, tenant-screening practices, and redevelopment policies that disproportionately burden communities of color. As noted in a previous SPLC HUD comment³¹, the discriminatory effects of facially neutral policies remain especially visible across the South.

- In Jackson, Mississippi, decades of segregation, white flight, and disinvestment have left a predominantly Black city facing severe housing instability, exemplified by a failing water system that threatens habitability and affordability. These infrastructure failures function as barriers to fair housing, forcing residents to endure unsafe conditions and escalating costs that undermine housing stability.³²
- In St. Petersburg, Florida, federally funded “urban renewal” displaced a thriving Black community in the Gas Plant neighborhood, replacing homes and businesses with large-scale redevelopment while failing to provide adequate replacement housing. That displacement

²⁸ 42 U.S. Code § 3601.

²⁹ Isabella P. Douglas et al., *Understanding How Racism and Affect Impact Public Opinions toward Affordable Housing in the United States*, 45 *Journal of Planning Education and Research* 512 (2024), <https://doi.org/10.1177/0739456X241230002>.

³⁰ *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 352 (2011).

³¹ Southern Poverty Law Center, Public Comment Urging HUD to Withdraw the 2025 Interim Final Rule on Affirmatively Furthering Fair Housing, (submitted May 2, 2025) <https://www.splcenter.org/resources/policies/urge-hud-withdraw-2025-affh-ifr>.

³² Southern Poverty Law Center, *Timeline: Jackson, Mississippi Water Problems*, Southern Poverty Law Center, (June 28, 2023), <https://www.splcenter.org/resources/stories/timeline-jackson-mississippi-water-problems/>.

continues to reverberate in stark racial disparities in housing cost burdens and access to affordable housing.³³

- In Atlanta, Georgia, redevelopment practices have concentrated Black families—particularly housing-voucher holders—in high-poverty, segregated neighborhoods. The demolition of public and subsidized housing, combined with inadequate relocation support, has perpetuated displacement and exposed families to unsafe living conditions with little meaningful recourse.³⁴

These examples are not isolated policy failures. They reflect the predictable operation of systems that allow facially neutral decisions to reproduce segregation and inequality. Without robust disparate-impact enforcement and affirmative fair-housing obligations, such patterns will continue to shape housing outcomes across the South and beyond. Disparate-impact liability has proven essential to exposing and remedying these systemic harms.

Weakening or eliminating disparate-impact enforcement would exact a profound cost. Without it, the disparities described above—along with inequities in access to housing vouchers, rental markets, and eviction protections—would not merely persist; they would deepen. That risk is magnified by the growing reliance on automated and algorithmic decision-making tools, which threaten to encode historical discrimination into systems that appear neutral on their face.

III. Disparate-Impact Liability Is Legally Sound, Grounded in Over 50 Years of Legislative and Judicial Precedent

In promulgating the proposed rule, HUD asserts that it is acting pursuant to a recent executive order.³⁵ But no executive order—and no President—can unilaterally revise an Act of Congress. Executive directives do not amend statutes, nor do they relieve agencies of their obligation to faithfully enforce the law as written. Nor can an executive order override binding judicial precedent or laws passed by Congress.³⁶ Yet the proposed rule does exactly that: it conflicts directly with decades of case law recognizing disparate-impact liability as a necessary and lawful mechanism for enforcing the FHA.

Congress Intended the Fair Housing Act to Reach Discriminatory Effects, Not Just Intent

Congress intended the FHA to be remedial in purpose and to provide broad relief against housing discrimination and segregation. Congress’s goal was “to provide, within constitutional limitations,

³³ Southern Poverty Law Center, *Activists Oppose Historic Gas Plant District Redevelopment*, Southern Poverty Law Center, (February 2, 2024), <https://www.splcenter.org/resources/stories/tropicana-field-gas-plant-district-redevelopment-residents>.

³⁴ Southern Poverty Law Center, *Forest Cove Residents Denied Proper Housing*, Southern Poverty Law Center, (February 23, 2024), <https://www.splcenter.org/resources/stories/forest-cove-residents-denied-proper-housing/>

³⁵ Exec. Order No. 14,991, *Restoring Equality of Opportunity and Meritocracy*, 90 Fed. Reg. 17,537 (Apr. 15, 2025), <https://www.federalregister.gov/documents/2025/04/28/2025-07378/restoring-equality-of-opportunity-and-meritocracy>

³⁶ See *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 587 (1952) (“In the framework of our Constitution, the President’s power to see that the laws be faithfully executed refutes the idea that he is to be a lawmaker.”).

for fair housing throughout the United States.”³⁷ Because the law did not provide a sufficient enforcement system, Congress amended the FHA to strengthen the Act and affirm that the FHA “provides a clear national policy against discrimination in housing.”³⁸ The statute prohibits practices that “otherwise make unavailable” housing to persons because of protected characteristics including race.³⁹ The Supreme Court has held that “otherwise make unavailable” is a catchall, “results-oriented phrase” and “refers to the consequences of an action rather than the actor's intent.”⁴⁰ This broad reading is consistent with Congress’s intent to meaningfully remedy discrimination in housing.

The Supreme Court and Federal Courts Have Consistently Recognized Disparate-Impact Liability Under the FHA

In the landmark case, *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.*, the Supreme Court ruled that the FHA encompasses disparate impact claims, moving beyond mere proof of intentional discrimination.⁴¹ The case arose from a challenge to how a state agency’s allocation of low-income tax credits disproportionately affected Black residents.⁴² The majority reasoned that the phrase “otherwise make unavailable” in the FHA focuses on the consequences of an action rather than an actor's intent.⁴³ Drawing parallels to the “results-oriented” language in Title VII and the ADEA, the Court concluded that the FHA logically mandates disparate-impact liability. In recognizing these claims, the Court endorsed a burden-shifting framework like existing HUD regulations.

Under the Supreme Court’s three-step framework, a plaintiff must first establish a prima facie case by satisfying a “robust causality” requirement. This threshold “ensures that [a] racial imbalance does not, without more, establish a prima facie case of disparate impact,” thereby protecting defendants from liability for disparities they did not create. (alterations omitted).⁴⁴ If a prima facie case is established, the burden shifts to the defendant to state a legitimate business or governmental objective. And after a legitimate business or governmental interest is established, the burden shifts back to the plaintiff to show that a less discriminatory alternative exists to serve the entity’s legitimate objectives.⁴⁵ To translate these broad judicial principles into functional guidance, HUD’s disparate impact regulations remain essential. For illustration, 24 C.F.R. § 100.500 provides specific definitions for terms like “discriminatory effect” and “legally sufficient justification” that the Court’s holding lacks.⁴⁶ The withdrawal of uniform guidance from HUD would risk a hodgepodge of circuit-specific interpretations, ultimately undermining the consistency of disparate impact litigation under the FHA.

³⁷ 42 U.S.C. § 3601.

³⁸ H.R. Rep. No. 100-711, at 15 (1988).

³⁹ 42 U.S.C. § 3604(a).

⁴⁰ *Texas Dep’t of Hous. & Cmty. Affs. v. Inclusive Communities Project, Inc.*, 576 U.S. 519, 521 (2015).

⁴¹ *Id.*

⁴² *Id.* at 526.

⁴³ *Id.* at 534.

⁴⁴ *Id.* at 542.

⁴⁵ *Id.* at 544.

⁴⁶ *Id.* at 533; see also 24 C.F.R. § 100.500.

Both *Inclusive Communities* and HUD’s disparate impact regulations provide an essential framework that federal courts use to adjudicate FHA claims.⁴⁷ By formalizing the analysis of systemic barriers, this guidance ensures that the promise of fair housing is translated into predictable and enforceable legal standards nationwide. Most recently, in *Saint-Jean v. Emigrant Mortgage Co.*, the Second Circuit reaffirmed that disparate-impact claims remain cognizable under the FHA.⁴⁸ In that case, the plaintiffs alleged that a lender’s “no income, no asset” loan program, which targeted Black and Hispanic borrowers with poor credit but high home equity, violated the FHA.⁴⁹ Following a jury verdict for the plaintiffs, the defendant challenged whether the jury instructions regarding disparate impact were erroneous. The Second Circuit held that the instruction on the “less discriminatory alternative” requirement was proper because it tracked HUD’s disparate impact regulations “nearly word-for-word.”⁵⁰ In doing so, the court underscored the authoritative weight of HUD’s regulatory framework in FHA litigation.

HUD Has Long Interpreted and Enforced the FHA to Include Disparate-Impact Liability

For decades, HUD has recognized that facially neutral practices that have an unjustified discriminatory effect on the basis of protected characteristics, regardless of intent, violate the Fair Housing Act.⁵¹ Administrative decisions demonstrate HUD’s longstanding commitment to enforcing the disparate impact standard.⁵² For example, in one administrative action, complainants who were severely mobility-impaired alleged discrimination based on handicapped status in violation of the FHA against a couple of apartment complexes.⁵³ Complainants claimed that respondents treated them differently from non-wheelchair bound tenants by requiring them to obtain renter’s insurance as a condition for approving construction of wheelchair ramps.⁵⁴ Under disparate impact analysis, the administrative law judge (ALJ) determined that the condition was facially discriminatory because non-wheelchair bound tenants could opt out of obtaining renter’s insurance while complainants could not and that respondents failed to provide a business justification.⁵⁵ The ALJ concluded that complainants had established that respondents discriminated against them in the terms and conditions of tenancy because of their handicap.⁵⁶

⁴⁷ *Farhan v. 2715 NMA LLC*, 161 F.4th 475, 484 (7th Cir. 2025); *Oviedo Town Ctr. II, L.L.L.P. v. City of Oviedo, Fla.*, 759 F. App’x 828, 834 (11th Cir. 2018); *Ellis v. City of Minneapolis*, 860 F.3d 1106, 1112 (8th Cir. 2017); *Nat’l Ass’n of Mut. Ins. Companies v. United States Dep’t of Hous. & Urb. Dev.*, 693 F. Supp. 3d 20, 28 (D.D.C. 2023); *Butler v. Sundo Cap., LLC*, 559 F. Supp. 3d 452, 456 (W.D. Pa. 2021)

⁴⁸ 129 F.4th 124, 139 (2d Cir. 2024), cert. denied, No. 25-229, 2026 WL 79895 (U.S. Jan. 12, 2026).

⁴⁹ *Id.* at 132-33.

⁵⁰ *Id.* at 147.

⁵¹ Reinstatement of HUD’s Discriminatory Effects Standard, 88 Fed. Reg. 19450-01, 19450 (March 31, 2023).

⁵² See *HUD v. Carlson*, No. 08-91-0077-1, 1995 WL 365009, at *14 (HUD ALJ June 12, 1995) (“A policy or practice that is neutral on its face may be found to violative of the Act if the record establishes a prima facie case that the policy or practice has a disparate impact on members of a protected class, and the Respondent cannot prove that the policy is justified by business necessity.”); *HUD v. Ross*, No. 01-92-0466-18, 1994 WL 326437, at *5 (HUD ALJ July 7, 1994) (“Absent a showing of business necessity, facially neutral policies which have a discriminatory impact on protected class violate the Act.”); *HUD v. Carter*, No. 03-90-0058-1, 1992 WL 406520, at *5 (HUD ALJ May 1, 1992) (“The application of the discriminatory effects standard in cases under the Fair Housing Act is well established.”).

⁵³ *HUD v. Twinbrook Vill. Apts.*, HUDALJ Nos. 02-00-0256-8, 02-00-0257-8, 02-00-258-8, 2001 WL 1632533, at *17 (HUD ALJ Nov. 9, 2001).

⁵⁴ *Id.*

⁵⁵ *Id.* at 18.

⁵⁶ *Id.*

In addition to HUD’s longstanding interpretation of disparate-impact liability, HUD’s regulations have been—and remain—essential to the Fair Housing Act’s enforcement. The Supreme Court’s disparate-impact framework serves as a shield to protect the doctrine from constitutional overreach. However, HUD’s disparate impact regulation serves as a sword, designed to provide the tools needed to strike down discriminatory barriers masked as facially neutral policies. Together, they form a cohesive legal framework capable of addressing systemic housing discrimination.

IV. Conclusion

HUD’s mission is to “create strong, sustainable, inclusive communities and to ensure fair housing for all.”⁵⁷ The proposed rule moves the agency in the opposite direction. By retreating from disparate-impact liability, HUD would weaken one of the Fair Housing Act’s most effective tools for identifying and dismantling systemic barriers to housing opportunity. It would make it more likely that discriminatory practices are shielded from scrutiny, undermine HUD’s legal obligations under the FHA, and erode the ability of individuals and organizations to challenge policies that appear neutral on their face but impose real and lasting harm on protected communities.

In *Inclusive Communities*, Justice Kennedy spoke directly to what is at stake. He warned that “much progress remains to be made in our Nation’s continuing struggle against racial isolation,” and that the Fair Housing Act “must play an important part in avoiding the Kerner Commission’s grim prophecy that ‘[o]ur Nation is moving toward two societies, one black, one white—separate and unequal.’”⁵⁸ Those words reflect both our history and our present reality.

Disparate-impact enforcement gives meaningful force to the Fair Housing Act and advances the broader promise of the Civil Rights Movement—a promise that every American, regardless of race or any other protected characteristic, deserves equal access to opportunity, including a safe and stable home. At a moment when vigilance remains essential, HUD must lead with clarity and conviction. We urge the agency to withdraw the proposed rule and reaffirm its commitment to enforcing the Fair Housing Act fully and faithfully, in service of an America where equal opportunity is real, durable, and accessible to all.

Sincerely,

Southern Poverty Law Center

Joined by:

ACLU of Louisiana

ACLU of Mississippi

⁵⁷ U.S. Department of Housing and Urban Development, “HUD Mission,” HUD.gov, <https://www.hud.gov/hud-partners/multifamily-residents>

⁵⁸ Texas Dep’t of Hous. & Cmty. Affairs v. Inclusive Cmty. Project, Inc., 576 U.S. 519, 545 (2015) (Kennedy, J.).

Common Cause Georgia

Florida for All

Indivisible Georgia Coalition

Louisiana Center for Children's Rights

Louisiana Fair Housing Action Center

NAACP Florida State Conference

New Orleans Children and Youth Planning Board

Mississippi Black Women's Roundtable

Mississippi Center for Justice

Mississippi Urban League

Vera Institute of Justice