PRRAC
Poverty & Race
Research Action Council

LAWYERS' COMMITTEE FOR
CIVIL RIGHTS
UNDER LAW

February 13, 2026

Regulations Division,
Office of General Counsel
Department of Housing and Urban Development
451 7th Street SW, Room 10276
Washington, DC 20410-0500
Sent electronically *via* regulations.gov

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

The Poverty & Race Research Action Council (PRRAC), Lawyers' Committee for Civil Rights Under Law (LCCR), and the Washington Lawyers Committee for Civil Rights and Urban Affairs (WLC) strongly oppose the U.S. Department of Housing and Urban Development's ("HUD") Notice of Proposed Rulemaking ("Notice") to remove HUD's Fair Housing Act's (FHA) discriminatory effects regulations, 24 C.F.R. § 100.500 (the "Disparate Impact Rule"), from the Code of Federal Regulations.

PRRAC is a national civil rights law and policy organization that promotes research-based advocacy strategies to address structural inequality and to dismantle systems that disadvantage low-income people of color. Our work is grounded in empirical research, legal analysis, and demonstrated solutions to ensure that federal housing programs advance equity, inclusion, and opportunity. From this perspective, rescinding the Disparate Impact Rule would undercut those goals and thereby prevent HUD from complying with its own civil rights obligations.

The Lawyers' Committee is a nonpartisan, nonprofit civil rights organization founded in 1963 by the leaders of the American bar at the request of President John F. Kennedy to secure equal justice for all through the rule of law by targeting the inequities confronting Black Americans and other people of color. The Lawyers' Committee uses legal advocacy to achieve racial justice and ensure that Black people and other people of color have the voice, opportunity, and power to make the promises of our democracy real. As part of this work, the Lawyers' Committee has participated as counsel or amicus curiae in cases addressing race, ethnicity, and national origin discrimination in a wide range of subjects, including education, employment, health care and fair housing. The Lawyers' Committee advocates for policies that foster inclusive, integrated communities that are free from discrimination and that provide access to opportunity for all their residents, including Black families that have been subjected to

discriminatory housing policies. See, e.g., *MHANY Mgmt., Inc. v. Cty. of Nassau*, 819 F.3d 581 (2nd Cir., 2016).

The Washington Lawyers' Committee is a nonpartisan, non-profit civil rights organization established in 1968 out of the Civil Rights Movement. In the over 50 years since its inception, the WLC has provided legal assistance to individuals and groups in a variety of civil rights matters. Through systemic litigation, we have challenged racial oppression in the areas of education, housing, employment, prisoners' rights, policing, disability, and immigration. We remain committed to protecting and advancing civil rights for disadvantaged and underrepresented individuals and groups. Most relevant here, WLC has, for decades, successfully litigated fair housing cases under the FHA and local laws.

Our combined mission and history make our organizations uniquely qualified to assess and comment on the proposed rescission of HUD's Disparate Impact rule. Disparate impact liability has been a vital part of civil rights and fair housing enforcement for decades, and this notice is a sharp departure from well-established law and agency practice. This rescission is arbitrary and capricious under the Administrative Procedure Act (APA), procedurally defective, contradicts Supreme Court precedent, and dishonors decades of civil rights progress.

The Proposed Rescission Is Arbitrary and Capricious in Violation of the Administrative Procedure Act

If finalized, the Notice would remove the text of HUD's current Disparate Impact Rule from the Code of Federal Regulations, thus leaving a void with respect to what standard - if any - HUD might apply when investigating disparate impact claims in FHA administrative complaints and when assessing the validity of its grantees' civil rights certifications. In the Notice, HUD incorrectly attempts to justify leaving this void on the grounds that it is the province of the courts rather than of administrative agencies to determine what standard applies. The Notice thus reverses decades of largely consistent regulatory interpretation of the FHA without providing a reasoned explanation for the change. The current Disparate Impact Rule, which was first promulgated in 2013 and then recodified in 2023, sought to provide consistency and clarity to disparate impact liability by codifying a three-part burden-shifting framework that was already in use by HUD, including in Administrative Law Judge determinations, and most federal courts.[1] At the time of the 2013 rule, the 11 courts of appeals that had taken up the issue agreed that a

[1] *See* Implementation of the Fair Housing Act's Discriminatory Effects Standard, 78 Fed. Reg. 11,460 (Feb. 15, 2013) (codified at 24 C.F.R. § 100.500 (2024)); *see also* Reinstatement of HUD's Discriminatory Effects Standard, 88 Fed. Reg. 19,450 (Mar. 31, 2023).

facially neutral policy may violate the Fair Housing Act for its discriminatory effects.[2] In the 2013 Final Rule, HUD describes "a small degree of variation" among the methodologies of determining discriminatory effects liability and sought to codify the standard used by HUD, administrative courts, and the majority of the federal circuits.[3] The standard articulated in the 2013 Disparate Impact Rule has remained consistently in effect because a 2020 rule that purported to modify the standard was preliminary enjoined prior to its effective date and the resulting preliminary injunction was in place until HUD recodified the framework in 2023. Now, HUD is contradicting both precedent and itself by rescinding discriminatory effects liability.

In order to fulfill its obligation to avoid arbitrary and capricious decision-making, an agency must "display awareness" that it is changing a policy position.[4] The Notice is replete with examples of HUD ignoring or otherwise obfuscating the implications of its change in position. While HUD attempts to justify the rulemaking by quoting E.O. 14281, which states that "it is the policy of the United States to eliminate the use of disparate-impact liability in all contexts to the maximum degree possible," it then incongruously claims that the truncated 30-day comment period for the Proposed Rule is appropriate by stating that the Notice "does not change any requirements or affect any rights or obligations." By eliminating the language that codified and clarified the long-established legal framework of disparate impact liability for purposes of HUD's administrative enforcement and compliance monitoring activities, HUD is threatening to substantively change policy by substituting ad hoc decision-making, at best, and a refusal to enforce the FHA in the context of disparate impact claims, at worst, for the clear standard now in place. This will alter the legal and practical environment under which fair housing complaints are

[2] *See, e.g.,Graoch Assocs. #33, L.P.* v. *Louisville/Jefferson Cnty. Metro Human Relations Comm'n,* 508 F.3d 366, 374-78 (6th Cir. 2007); *Reinhart* v. *Lincoln Cnty.,* 482 F.3d 1225, 1229 (10th Cir. 2007); *Hallmark Developers, Inc.* v. *Fulton County, Ga.,* 466 F.3d 1276, 1286 (11th Cir. 2006); *Charleston Hous. Auth.* v. *U.S. Dep't of Agric.,* 419 F.3d 729, 740-41 (8th Cir. 2005); *Langlois* v. *Abington Hous. Auth.,* 207 F.3d 43, 49-50 (1st Cir. 2000); *Simms* v. *First Gibraltar Bank,* 83 F.3d 1546, 1555 (5th Cir. 1996); *Jackson* v. *Okaloosa Cnty., Fla.,* 21 F.3d 1531, 1543 (11th Cir. 1994); *Keith* v. *Volpe,* 858 F.2d 467, 484 (9th Cir. 1988); *Huntington Branch, NAACP* v. *Town of Huntington,* 844 F.2d 926, 937-38 (2d Cir. 1988), aff'd, 488 U.S. 15 (1988) (per curiam); *Resident Advisory Bd.* v. *Rizzo,* 564 F.2d 126, 148 (3d Cir. 1977); *Betsey* v. *Turtle Creek Assocs.,* 736 F.2d 983, 987-89 & n.3 (4th Cir. 1984); *Metro. Hous. Dev. Corp.* v. *Vill. of Arlington Heights,* 558 F.2d 1283, 1290-91 (7th Cir. 1977); *United States.* v. *City of Black Jack,* 508 F.2d 1179, 1184-86 (8th Cir. 1974)

[3] *Id.*; 2013 rule, *supra* Note 1 at 11460; *See also, e.g.,HUD* v. *Twinbrook Village Apts.,* No. 02-00025600-0256-8, 2001 WL 1632533, at *17 (HUD ALJ Nov. 9, 2001) ("A violation of the [Act] may be premised on a theory of disparate impact."); *HUD* v. *Carlson,* No. 08-91-0077-1, 1995 WL 365009 (HUD ALJ June 12, 1995) ("A policy or practice that is neutral on its face may be found to be 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 a 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.")

[4] *FCC v. Fox Television Stations*, 556 U.S. 502 (2009)

investigated and in which HUD conducts compliance reviews of its program participants, even if disparate impact liability still hypothetically exists. HUD cannot evade its obligations under the APA to engage in reasoned decision-making and to state and explain the bases for its decisions by claiming that this Notice is non-substantive.

Under *Motor Vehicle Manufacturers Ass'n v. State Farm*,[5] an agency must articulate a rational connection between the policy choices that it has made through rulemaking and the facts that it claims justify the rulemaking, particularly when it reverses an existing policy.[6] Under *F.C.C. v. Fox Television Stations, Inc.*, an agency may not depart from a prior policy *sub silentio* or simply disregard rules that are on the books.[7] Here, HUD has failed to articulate any rational connection between the Proposed Rule and any factual findings. The Notice makes no assertions that the facts upon which disparate impact liability rests are no longer accurate. The Disparate Impact Rule asserts, consistent with Supreme Court precedent and Congressional intent, that facially neutral policies such as zoning laws and occupancy restrictions may be discriminatory, regardless of intent. This Notice does not refute, rebut, or update any of these facts previously relied upon by HUD in its disparate impact rulemaking. Similarly, this rescission fails to explain why previous rules are now legally incorrect. HUD's explanation relies solely on policy disagreement rather than factual findings or critiques of the existing standard grounded in persuasive precedent from the courts. These defects render the rescission arbitrary and capricious under *State Farm* and *FCC v. Fox.*

When HUD asserts that its position on the appropriate burden shifting standard for disparate impact claims is irrelevant because it is the province of the courts to define the standard, the Department ignores - contrary to the APA's prohibition on arbitrary and capricious agency action - an important aspect of the problem. Specifically, HUD ignores the ramifications of having - or not having - a disparate impact rule for purposes of HUD's administrative enforcement of the Fair Housing Act and its compliance monitoring of program participants. Under 42 U.S.C. § 3610, HUD has a statutory obligation to accept administrative complaints, investigate those complaints, and render reasonable cause findings. Under binding Supreme Court precedent,[8] disparate impact complaints are cognizable, and there is nothing in Section 3610 that permits HUD to narrow its administrative enforcement to avoid exercising jurisdiction over disparate impact claims. Thus, in order to discharge its statutory duty, HUD has to have some reference point like the burden-shifting framework embodied in the current rule for deciding whether there is reasonable cause to conclude that discrimination has occurred after

[5] *Motor Vehicle Mfrs. Ass'n of the U.S. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).
[6] *Id.*
[7] *Fox Television Stations*, 556 U.S. at 515.
[8] *Tex. Dep't of Hous. & Cmty. Affs. v. Inclusive Cmtys. Project, Inc.*, 576 U.S. 519, 533–39 (2015).

completing its investigation of a complaint. The proposed rule is entirely silent with respect to what standard HUD might apply in these circumstances and does not grapple with the costs resulting from the confusion of there not being a clear standard.

Just as HUD has a statutory obligation to make cause determinations with respect to administrative complaints, the Department has an obligation to assess whether the certifications of its program participants - such as states, insular areas, local governments, and public housing authorities - that they are complying with the FHA are valid. 42 U.S.C. § 5304(b) specifically states that participants' civil rights certifications must be "to the satisfaction of the Secretary."

The current disparate impact rule provides clarity as to what standard the Secretary will apply in determining whether its program participants' certifications are satisfactory. In the absence of the Disparate Impact Rule, as is the case with administrative enforcement, the field is left with uncertainty as to whether HUD will apply inconsistent standards in an ad hoc manner or refuse to apply the law entirely. Neither option is consistent with HUD's statutory obligations, yet the Notice ignores that fundamental problem and the costs and burdens that it engenders.

Post-Chevron, Agency Interpretations Are Still Entitled to Deference Under Skidmore

HUD's assertion that following the Supreme Court's decision in *Loper Bright Enterprises v. Raimondo*,[9] agency decisions about the interpretation of statutes do not carry any deferential weight is patently false. Even in the absence of *Chevron*, agency decisions and interpretations continue to receive deference under *Skidmore v. Swift*.[10] Under *Skidmore*, agency policies and regulations are held as persuasive authority if they are thorough, well reasoned, consistent, and within the agency's specialized experience. The current Disparate Impact Rule would readily meet these criteria since the Department has consistently interpreted and upheld a standard roughly contiguous with the rule since the 1970s, the courts have repeatedly applied the same or a similar standard (at times while looking to HUD for guidance), and the rule falls squarely within HUD's statutory obligation to administer the FHA in order to effectuate the statute's broader remedial purpose. The notion that codification of HUD's longstanding interpretation of the FHA in regulation does not carry deferential weight is inaccurate. By contrast, the proposed rescission would likely fail *Skidmore* deference because it lacks careful reasoning, disregards previous factual findings without identifying new facts or changed circumstances that justify a change, and abruptly abandons a long-standing policy grounded in institutional expertise. The Notice attempts to justify a regulatory reversal by invoking the absence of *Chevron* deference but fails to consider the standards of persuasiveness that *Skidmore* requires.

[9] *Loper Bright Enters. v. Raimondo*, 609 U.S. 369 (2024).
[10] *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944).

The Shortened Comment Period Is Procedurally Inappropriate, Inadequate, and Unlawful

Disparate impact liability has been a cornerstone of fair housing enforcement, and the rescission of the Disparate Impact Rule setting forth a clear standard for assessing disparate impact claims will have extensive civil rights consequences. The APA provides that agencies must afford a meaningful opportunity for public participation through submission of written data, views, or arguments. Where a proposed rule concerns substantial changes and/or complex regulations, an agency must allow for meaningful public participation and 30 days has been deemed insufficient.[11] A 30-day comment period is also inconsistent with the overarching HUD policy laid out in 24 C.F.R. § 10.1. Longstanding executive orders on regulatory review have also specified that a comment period should generally be at least 60 days.[12]

As such, a complete 60-day public notice and comment period would be appropriate on this Notice, rather than this truncated process. HUD confusingly attempts to justify its decision by referencing the immense interest the public has had on the topic in previous rulemaking, essentially arguing that the public has already expressed all the views that they may hold on this subject. This is misplaced and erroneous; numerous and robust comments on previous rules have no bearing on the rule at hand because none of the previous rules proposed complete rescission. HUD cannot divine and consider what previous commenters would hypothetically say when presented with the Notice. The considerable input from previous comment periods should be treated as evidence that this is a matter of great public interest which demands more engagement with stakeholders and the public, not less. Many interested groups are under-resourced and from impacted communities, consistent with the focus on serving low- and moderate-income people, households, and communities embedded in the criteria for eligibility uses of HUD program funds.[13] They are often not monitoring the day-to-day regulatory channels of every agency that touches their lives and rely on that information to trickle down from trusted organizations or word of mouth. A 30-day comment period is simply too short. The abbreviated comment period deprives these stakeholders from well-researched, thoughtful, on-point comments; disadvantages

[11] *See*, Chamber of Com. of the U.S. v. SEC, 670 F. Supp. 3d 537, 552 (M.D. Tenn. 2023), aff'd, 115 F.4th 740; *See also*, Idaho Farm Bureau Fed'n v. Babbitt, 58 F.3d 1392, 1404 (9th Cir. 1995); Prometheus Radio Project v. FCC, 652 F.3d 431, 450 (3d Cir. 2011); Rural Cellular Ass'n v. FCC, 588 F.3d 1095, 1101 (D.C. Cir. 2009).
[12] *See* Exec. Order No. 12866, 58 Fed. Reg. 51,735 (Sept. 30, 1993), as reaffirmed in Exec. Order No. 13563 (Jan. 21, 2011) and amended by Exec. Order No. 14094 (April 11, 2023).
[13] *See* 42 U.S.C. § 5304(b)(3) (granting CDBG funds "for activities which benefit low- and moderate-income families and persons"); 42 U.S.C. § 1437f(o) (limiting Housing Choice Vouchers to low-income families); 42 U.S.C. § 12705(a) (limiting HOME funds be used to benefit low-income families); 42 U.S.C. § 8013(a) (authorizing supportive housing for very low-income elderly persons and persons with disabilities); 42 U.S.C. § 1437a(b)(2) (defining "low-income family" for the purposes of federal housing assistance as a family whose income does not exceed 80 percent area median income).

impacted and under-resourced communities; and undermines the quality and completeness of the administrative record. As such, this shortened comment period is inadequate, procedurally defective, and further evidence that the Notice, if finalized, would be arbitrary and capricious in violation of the APA.

HUD's Proposal Conflicts with Binding Case Law

This Notice ignores the consistency between the current Disparate Impact Rule and the Supreme Court's holding in *Texas Department of Housing & Community Affairs v. Inclusive Communities Project, Inc.*, which expressly held that disparate impact claims are cognizable under the FHA.[14] This 2015 decision cited the 2013 rule (which was identical to the current HUD rule) when discussing the burden shifting framework for disparate impact claims. Moreover, Justice Kennedy's opinion in that case preserves defenses for meaningful business necessity and legitimate policy objectives, which are present in the current HUD rule via step two of the burden shifting framework.[15] *TDHCA* outlines, but in no way diminishes, the scope of disparate impact liability under the FHA. Despite this, HUD asserted in the Notice that "case law continues to develop and HUD's regulation does not provide an up-to-date picture of the legal landscape" but the overwhelming body of cases support the same cognizable standard found in ICP.[16] Only two appellate decisions, one from the Fifth Circuit and one from the Eighth Circuit, have adopted interpretations that arguably diverge from the burden-shifting framework recognized in *Inclusive Communities*. However, even these two appellate decisions still recognize the validity of disparate impact liability. Despite the fact that the Notice claims the matter is best left to the courts, its reliance on E.O. 14281 as justification for rescission, confirms that the Notice is simply an attempt to achieve through regulation what the Department lacks authority to do as a matter of law.

The Lawyers' Committee and its affiliate the Washington Lawyers' Committee have relied on the disparate impact standard to remove arbitrary barriers to housing for Black People

The Lawyers' Committee and Washington Lawyers' Committee (WLC) have relied on the current standard in working to make available meaningful housing opportunities to all families, regardless of race. While housing segregation has been illegal since the passage of the FHA, tiered economic and housing conditions limit the options for Black people seeking to rent

[14] *Inclusive Cmtys.,* 576 U.S. at 545.
[15] *See* 24 C.F.R. § 100.500(b) (2024).
[16] *Mhany Mgmt., Inc. v. Cnty. of Nassau*, 819 F.3d 581 (2d Cir. 2016); *Ave. 6E Invs., LLC v. City of Yuma*, 818 F.3d 493 (9th Cir. 2016); *Inclusive Cmtys. Project, Inc. v. Lincoln Prop. Co.*, 920 F.3d 890 (5th Cir. 2019).

or buy a home.[17] A person's address determines almost everything about them - their chances of graduating from high school or college, getting arrested, net worth, income, ability to own a home, credit score and how long they will live.[18] Segregation creates a built-in inequitable environment where resources and opportunities get concentrated in predominately White communities and are sparsely located in communities of color.[19] Today, although many policies and guidelines may not be explicitly discriminatory on their face, they generate widespread disparate outcomes based on race and disproportionately disadvantage Black people.[20]

For centuries, policies and practices that deprived people of color the benefits and opportunities to own land, housing, or businesses provided wide-scale benefits to White Americans.[21] These policies and practices have contributed to a stark racial wealth gap that persists to this day. This advantage is solidified through inherited wealth that provides White households lasting momentum in the housing and rental markets.[22] In 2016, the median wealth of White families was 10 times that of the median wealth of Black families.[23] That racial wealth gap is due in large part to housing discrimination by federal and local governments in addition to private actors.[24] Rising rents paired with limited subsidy opportunities for low-income households create disproportionately adverse scenarios for Black renters.[25] High poverty Black communities experience significantly higher rates of eviction compared to comparable White or Hispanic neighborhoods.[26] Black renters make up only 18.6% of all renters but account for 43%

[17] Jung Hyun Choi et al., Urban Inst., *Explaining the Black-White Homeownership Gap: A Closer Look at Disparities across Local Markets* 4–11, https://www.urban.org/sites/default/files/publication/101160/explaining_the_black-white_homeownership_gap_a_closer_look_at_disparities_across_local_markets_0.pdf; *see also Separate and Unequal: The Legacy of Racial Discrimination in Housing: Hearing Before the S. Comm. on Banking, Hous., & Urb. Affs.,* 117th Cong. (2021) (testimony of Lisa Rice, President & CEO, Nat'l Fair Hous. All.). https://nationalfairhousing.org/wp-content/uploads/2022/07/Separate-and-Unequal_The-Legacy-of-Racial-Discrimination-in-Housing_Testimony-of-Lisa-Rice.pdf

[18] *Separate and Unequal*, *supra* note 13, at 7.

[19] *Id.*

[20] *Id.* at 10.

[21] *Id.* at 6.

[22] Ruth Umoh, *How Closing The Racial Wealth Gap Helps The Economy*, Forbes (Aug. 15, 2019), https://www.forbes.com/sites/ruthumoh/2019/08/15/how-closing-the-racial-wealth-gap-helps-the-economy/; *see also* Laurie Goodman & Christopher Mayer, *Homeownership and the American Dream*, Urb. Inst. (Jan. 31, 2018), https://www.urban.org/research/publication/homeownership-and-american-dream.

[23] Umoh, *supra* note 18.

[24] *Id.*; *see also* Choi et al., Urb. Inst., *supra* note 13.

[25] Brian J. McCabe & Eva Rosen, *Eviction in Washington, DC: Racial and Geographic Disparities in Housing Instability* at 21, McCourt Sch. of Pub. Pol'y (2020), https://georgetown.app.box.com/s/8cq4p8ap4nq5xm75b5mct0nz5002z3ap.

[26] Matthew Desmond, *Poor Black Women Are Evicted at Alarming Rates, Setting Off a Chain of Hardship* at 2, MacArthur Found. (2014), https://www.macfound.org/media/files/hhm_research_brief_-_poor_black_women_are_evicted_at_alarming_rates.pdf.

of those evicted. By contrast, White Americans make up 50.4% of all renters but accounted for only 32% of those who were evicted.[27] Black people are also disproportionately denied access to the home buying market. The Black community were disproportionately the victims of predatory lenders offering subprime loans; even to those that qualified for prime loans.[28] Existing Black homeowners were also aggressively solicited for unsafe refinance products that stripped equity and fueled the foreclosure crisis.[29] While trending downward between 2019 and 2024, the homeownership gap between Black and White households remains solid. According to the American Community Survey, the White household owned homes at a 60% higher rate than Black households and 52% higher than Latino households.[30] Despite homeownership being the principal way most families build wealth,[31] our current financial system relies on assessments that can lock underserved groups out of access to credit; making it difficult to secure a home loan.[32] These policies and practices work in concert to create a web of race-neutral but unjustifiably biased obstacles that limit housing choices for black people.

HUD's current disparate impact standard has been integral for the Lawyers' Committee and its affiliates to expand housing opportunities for Black people. These exemplar cases, which relied upon the existing standard to articulate the allegations, opened previously closed housing options for Black people by removing barriers that disproportionately and arbitrarily limit housing options. HUD's existing Disparate Impact Rule has provided a clear guidepost against which to measure the strength of our claims. Without a clear disparate impact standard our organizations will have to navigate differences in the standard applied in different circuits adding an unnecessary layer of uncertainty that HUD's existing standard helps to alleviate. Without meaningful access to HUD's administrative process, plaintiffs making disparate impact claims will likely require private or non-profit organizations to assist them in enforcing the FHA through litigation, putting pressure on their limited resources and ultimately threatening the robust enforcement of fair housing law.

[27] Nick Graetz et al., *A Comprehensive Demographic Profile of the U.S. Evicted Population* at 3, 120 PNAS e2305860120 (2023), https://www.pnas.org/doi/epdf/10.1073/pnas.2305860120.
[28] Urb. Inst., *Reducing the Racial Homeownership Gap*, https://www.urban.org/policy-centers/housing-finance-policy-center/projects/reducing-racial-homeownership-gap (last visited Feb. 12, 2026).
[29] *Id.*
[30] Nat'l Fair Hous. All, *The State of Equitable Homeownership: 2025 Report* at 11 (2025), https://nationalfairhousing.org/wp-content/uploads/2023/04/The-State-of-Equitable-Homeownership-2025-FINAL.pdf.
[31] Goodman & Mayer, *supra* note 18.
[32] Choi et al., Urban Inst., *supra* note 13, at V–VI.

In *Kniaz v. Kay Management,*[33] the individual plaintiffs requested a larger unit in the complex where they already lived.[34] But when the property manager ran a background check, he discovered a felony conviction that was over a decade old, and the individual plaintiffs were required to vacate the smaller apartment they had occupied at the property without incident for years.[35] The Lawyers' Committee and WLC alleged the Defendants' policy of automatically excluding any person with a felony conviction caused Black people to be disproportionately excluded in violation of the FHA.[36] It also alleged that Defendants had no business justification for their policy and that, even if they did, there were less discriminatory alternatives.[37] This case resulted in a partial consent judgement, with parties agreeing that Defendants' already repealed policy of automatically rejecting all applicants with criminal convictions violated the FHA and the Court enjoining Defendants from enforcing the policy in the future.[38]

In *Equal Rights Center v. Lenkin Company,*[39] WLC represented the Equal Rights Center in alleging that the Defendant's policy of not renting to Housing Choice Voucher recipients caused Black people to be disproportionately excluded from Defendant's rental housing in violation of the FHA.[40] The complaint's clearly pled allegations led to an early resolution of the case. In the resulting Consent Order, Defendants agreed to stop discriminating against voucher holders at all of theirDC properties – most of which were in high opportunity areas of the city. They also agreed to affirmative marketing directed toward Housing Choice Voucher holders, and ongoing fair housing compliance testing for 3 years.[41]

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[33] Complaint, *Kniaz v. Kay Mgmt. Co.,* No. 1:19-cv-01343 (E.D. Va. Oct. 23, 2019), https://www.washlaw.org/wp-content/uploads/2019/10/2019.10.23-ECF-001-Complaint.pdf
[34] *Id.* at 31.
[35] *Id.* at 32–37.
[36] *Id.* at 50–71.
[37] *Id.* at 72–79.
[38] Partial Judgment Against Defendants by Consent, *Kniaz v. Kay Mgmt. Co.*, No. 1:19-cv-01343 (E.D. Va. June 9, 2020), https://virginiamercury.com/wp-content/uploads/2020/07/Kniaz_v_Kay_Management_judgment.pdf; *see also* Press Release, Housing Opportunities Made Equal of Va., Inc., *HOME, Kay Management Company, and Former Tenants Reach Settlement Regarding Criminal Background Screening Policy that HOME Alleged Disproportionately Excluded Black and Latinx Housing Applicants* (June 10, 2020), Kay-Management-Settlement-Press-Release_7.16.20.pdf.
[39] Complaint, *Equal Rights Ctr. v. Lenkin Co. Mgmt., Inc.*, No. 2017-CA-002547-B (D.C. Super. Ct. Apr. 12, 2017), https://equalrightscenter.org/wp-content/uploads/lenkin-complaint.pdf. (Author's Note: "The Washington Lawyers' Committee" is the Washington D.C. affiliate of the network of local Lawyers' Committees. While separate entities, the Lawyers' Committee frequently collaborates and co-litigates with the Washington Lawyers' Committee using disparate impact liability.)
[40] *Id.* at 15–20.
[41] Consent Agreement at 5–6, *Equal Rights Ctr. v. Lenkin Co. Mgmt., Inc.*, No. 2017-CA-002547-B (D.C. Super. Ct. Dec. 1, 2017), https://equalrightscenter.org/wp-content/uploads/erc-lenkin-consent-order.pdf; *see also ERC Resolves Race & Source of Income Discrimination Complaint Through Robust, Court Enforced Agreement with DC Housing Provider*, Equal Rts. Ctr. (Nov. 30, 2017), https://equalrightscenter.org/erc-resolves-race-soi-discrimination-complaint/.

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The elimination of the current Disparate Impact Rule would sow confusion with respect to HUD's administrative enforcement of the FHA and compliance monitoring functions, while raising the specter that HUD might decline to enforce the law in the case of disparate impact violations of the Act entirely. Without meaningful access to HUD's administrative process, plaintiffs making disparate impact claims will likely require private or non-profit organizations to assist them in enforcing the FHA through litigation; putting pressure on their limited resources and ultimately threatening the robust enforcement of fair housing law. This will make it harder to effectuate the FHA's purpose of removing arbitrary barriers to housing for all communities, including Black people, in particular. For these reasons, we strongly oppose the Notice issued by HUD and urge the Department to withdraw it promptly.

Sincerely,

Poverty & Race Research Action Council
Lawyers' Committee for Civil Rights Under Law
Washington Lawyers Committee for Civil Rights and Urban Affairs