



100 North Charles Street, 2nd floor
Baltimore, Maryland 21201

410-223-2222
www.brhp.org

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Regulations Division, Office of General Counsel
U.S. Department of Housing and Urban Development
451 7th Street SW, Room 10276
Washington, DC 20410

**Re: HUD’s Implementation of the Fair Housing Act’s Disparate Impact Standard,
Docket No. FR-6540-P-01, RIN 2529-AB09**

The Baltimore Regional Housing Partnership (BRHP) submits this comment in opposition to the U.S. Department of Housing and Urban Development’s (“HUD”) Notice of Proposed Rulemaking regarding the removal of HUD’s Fair Housing Act’s (FHA) discriminatory effects regulations from the Code of Federal Regulations. If finalized, the rule would rescind the agency’s long-standing Discriminatory Effects regulations, a reversal that would undermine decades of precedent, create confusion in compliance, and weaken critical civil rights protections.

BRHP was created out of the landmark civil rights case *Thompson v. HUD* and administers the Baltimore Housing Mobility Program. Since 2003, BRHP has helped more than 6,000 families transition from racially isolated, high-poverty neighborhoods to communities with stronger schools, lower crime, and greater economic opportunity. As the research¹ documents and our own experience substantiates, where a person lives often determines the opportunities they have, from schools they attend to the safety of their streets.

All people deserve the opportunity that comes with housing free from discrimination. This is equally true whether that discrimination takes the form of disparate treatment

¹ Chetty, Raj, Nathaniel Hendren, and Lawrence Katz. 2016. “The Effects of Exposure to Better Neighborhoods on Children: New Evidence from the Moving to Opportunity Project”. *American Economic Review* 106 (4). <https://hendren.scholars.harvard.edu/publications/effects-exposure-better-neighborhoods-children-new-evidence-moving-opportunity>

based on race, having children, or living with a disability or whether it is manifested in the kinds of hidden, subtle forms of discrimination against which the disparate impact standard, as codified in HUD's current regulation and based in over 50 years of legal precedent, has been successful in combatting.

The existing disparate impact standard is a vital tool to ensure that our local housing market operates in a manner that is free from discrimination, and we further oppose the proposed removal for the following reasons.

The Proposed Rule Conflicts with Binding Supreme Court Precedent

The disparate impact standard is not a novel agency invention. Courts began applying it to exclusionary zoning shortly after the FHA's enactment, most prominently in *United States v. City of Black Jack* (8th Cir. 1974), which struck down a facially neutral multifamily ban that functionally excluded Black families²

In *Texas Department of Housing & Community Affairs v. Inclusive Communities Project* (2015), the Supreme Court held that disparate impact claims are cognizable under the FHA. The Court expressly recognized that the FHA "focuses on the consequences of actions" and that impact claims are cognizable under the FHA. The Court expressly recognized that the FHA "focuses on the consequences of actions" and that disparate-impact claims are knowable under the FHA. The Court expressly recognized that the FHA "focuses on the consequences of actions" and that disparate impact liability is necessary to "counteract unconscious prejudices and disguised animus." It also articulated limiting principles: plaintiffs must show a specific policy causing a disparity; defendants may justify their policy by legitimate interests; and courts should consider less discriminatory alternatives.³ By proposing to erase HUD's regulatory framework that implements this holding, and by characterizing prior rules as imposing an overbroad "presumption" of illegality, the proposed rule departs from *Inclusive Communities* and the legal precedent.

HUD's Longstanding Regulatory Role Provides Necessary Clarity

² *United States v. City of Black Jack, Missouri*, 508 F.2d 1179 (8th Cir. 1974).
<https://law.justia.com/cases/federal/appellate-courts/F2/508/1179/366846/>

³ *Texas Dep't of Housing & Community Affairs v. Inclusive Communities Project, Inc.*, 576 U.S. 519 (2015).
<https://supreme.justia.com/cases/federal/us/576/519/>

HUD's 2013 Discriminatory Effects Rule (and subsequent iterations) have provided a uniform, workable framework, harmonizing the Supreme Court's and appellate courts' tests and articulating evidentiary burdens for both plaintiffs and defendants. Removing the rule would create uncertainty across housing, lending, insurance, and local land-use contexts, inviting inconsistent outcomes and higher litigation costs without improving legal accuracy.

The FHA assigns HUD a unique statutory duty to "affirmatively further fair housing," which necessarily includes providing clear interpretive guidance. Eliminating HUD's disparate impact regulations abdicates that responsibility and the Department's history, since 2013, of treating disparate impact as integral to FHA enforcement.

Requested Agency Action

Disparate impact has been a cornerstone of fair housing enforcement for over half a century. Weakening or rescinding HUD's implementing rule would invite uncertainty, diminish enforcement, and thwart the FHA's purpose of dismantling artificial, arbitrary, and unnecessary barriers to housing choice.

Maintaining HUD's clear articulation of the disparate impact standard in the current regulations, fully investigating all HUD-filed complaints that allege disparate impact discrimination, and adhering to Supreme Court and other judicial precedent are vitally important to our efforts to address housing discrimination in our community.

BRHP urges HUD to withdraw the Proposed Rule and commit to robust, workable disparate impact protections.

Respectfully submitted,

Adria Crutchfield
Executive Director