



We build homes and communities in rural America

February 13, 2026

Submitted via regulations.gov

Regulations Division
Office of General Counsel
U.S. Department of Housing and Urban Development
451 7th Street, SW
Room 10276
Washington, DC 20410-0500

Re: HUD's Implementation of the Fair Housing Act's Disparate Impact Standard
Docket No. HUD-2026-0034
RIN 2529-AB09

To whom it may concern:

The Housing Assistance Council (HAC) appreciates this opportunity to comment on the proposal from the Department of Housing and Urban Development (HUD) to remove regulatory provisions regarding disparate impact.

HAC is a national nonprofit organization that helps build homes and communities across rural America. Since 1971, HAC has provided below-market financing for affordable housing and community development, technical assistance and training, research and information, and policy formulation to enable solutions for rural communities across the country. In our work, HAC places a special focus on high-needs rural regions where poverty has persisted for decades. With well over 50 years as a thought leader and voice for rural America, HAC grounds its comments in the need for strong, consistent fair lending enforcement in rural places.¹

HAC does not support the proposed rule change and strongly urges HUD to retain and enforce its current rule. HUD has a responsibility to ensure equal opportunity and freedom from discrimination of all types, intentional or not. Discrimination is not limited to instances when someone announces an intent to treat someone differently than others. The discriminatory effects of facially neutral actions do not become legally acceptable simply because there was no such announcement.

¹ Except where otherwise specified, data in this comment is drawn from Housing Assistance Council, *Taking Stock: Rural People, Rural Places, Rural Housing* (Washington, DC: HAC, 2023), <https://ruralhome.org/information-center/taking-stock-rural/>.

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"Housing affordability and fair housing connect through the principle of 'disparate impact.'" A staffer at a local nonprofit in Vermont, where second homes for wealthy vacationers leave some residents priced out of local housing markets, made this observation in an article published in HAC's magazine. "Places with expensive housing tend to disproportionately exclude lower income people, whether by intent or in effect," he continued. "A statistically larger percentage of people in classes protected by federal or state fair housing laws ... have lower household incomes than their counterparts who are white, American born, and without disabilities, and so forth. Even if there is no explicit intention to discriminate, income disparities can create disparate impact discrimination."²

As our nation faces a housing affordability crisis, this observation is an important illustration of the importance of disparate impact liability. Just as the rich and poor may both be banned from sleeping under bridges, the rich and poor have the same right to purchase homes in places where, for instance, one-acre lots are required – but the effect is unequal, since the poor cannot afford them, and people protected by the Fair Housing Act (those with disabilities, for example) are more likely to be poor. HUD's proposed rule shows that the agency statutorily responsible for fair housing chooses to disregard statistically provable links such as the one between large lots, expensive homes, and low incomes among certain populations.

Changing zoning laws to allow for some smaller lots and multifamily buildings would not discriminate against those who are more likely to have higher incomes; they could still buy larger homes with larger yards. Instigating that change in laws is entirely compatible with the administration's desire to make housing more affordable,³ but it could not be done without recognition of disparate impact liability.

Rural borrowers more often receive loans with more costly terms and rural residents are disproportionately members of protected classes. "High-cost loans" comprised nearly 10 percent of rural mortgage originations in 2022, compared to 6.6 percent nationally. Generally, the rate of high-cost lending has been higher in rural areas than suburban and urban areas for more than a decade. Among those most impacted by the shortage of mortgage credit in rural places are members of protected classes under the Fair Housing Act. The Act prohibits discrimination in the sale, rental, or financing of dwellings and in other housing-related activities on the basis of race, color, religion, sex, disability, familial status, or national origin.⁴ Rural

² Ted Wimpey, "Vermont Tackles Fair Housing Along with Housing Affordability," *Rural Voices* 22 no. 1, May 2018, <https://ruralhome.org/rvmay2018/>.

³ "Rents Hit Four-Year Low as President Trump Continues Affordability Push," The White House, February 2, 2026, <https://www.whitehouse.gov/articles/2026/02/rents-hit-four-year-low-as-president-trump-continues-affordability-push/>.

⁴ 42 U.S. Code § 3601 et seq.

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Americans include disproportionate numbers of people in some of these categories. For example, the median age in rural communities is 41 compared to 38 nationally, and 19 percent of rural residents are over the age of 65, compared to 16 percent in the entire U.S. Younger residents are, of course, also protected by the law. Disability rates are higher in rural places than in urban.⁵ The rural population includes a higher proportion of white Americans than the country as a whole, and more than half (53 percent) of American Indians and Alaskan Natives live in rural places. While rural areas are less diverse than the entire country, 7.4 percent of the rural population is Black and 10 percent is Hispanic (of any race), and those proportions are much higher in some rural regions.

While different outcomes are not, by themselves, proof of either intentional or unintentional discrimination, they point to potential problems and the need for effective tools to address discriminatory treatment where it may exist. HUD's disparate impact rule has been such a tool and should not be changed.

Court decisions have not invalidated disparate impact liability. HUD claims that the Supreme Court's conclusion in *Loper Bright Enterprises v. Raimondo*⁶ means HUD's fair housing regulations "do not receive any judicial deference." This greatly overstates the Supreme Court's *Loper Bright* holding. It is true that, as HUD states, "A reviewing court may wholly reject HUD's claims in prior rulemakings that the regulations provide greater clarity and predictability and may vacate or set aside HUD's rules." It is equally true that a reviewing court may determine that the Fair Housing Act allows HUD to establish disparate impact regulations and that it agrees with HUD's rules. *Loper Bright* does not require agencies to eliminate rules just in case a court might disagree with them.

In fact, the Supreme Court did agree with HUD's 2013 disparate impact rules – in *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.*⁷ The Court not only did not indicate that changes were needed in the regulation, but also implicitly endorsed the regulation by citing it repeatedly. The *Inclusive Communities* Court held "that disparate-impact claims are cognizable under the Fair Housing Act upon considering its results-oriented language, the Court's interpretation of similar language in Title VII and the ADEA, Congress'

⁵ Katrina Crankshaw, "Disability Rates Higher in Rural Areas Than Urban Areas: The South had Highest Disability Rate Among Regions in 2021," U.S. Census Bureau, June 26, 2023, <https://www.census.gov/library/stories/2023/06/disability-rates-higher-in-rural-areas-than-urban-areas.html>.

⁶ *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), https://www.supremecourt.gov/opinions/23pdf/22-451_7m58.pdf.

⁷ *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.*, 576 U.S. 519 (2015), <https://www.law.cornell.edu/supremecourt/text/13-1371>.

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ratification of disparate-impact claims in 1988 against the backdrop of the unanimous view of nine Courts of Appeals, and the statutory purpose."

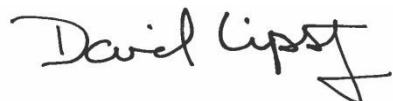
Since *Inclusive Communities*, multiple courts have found that the rule is consistent with the Supreme Court's decision. The *Loper Bright* holding does not change the Court's conclusion in *Inclusive Communities*. Its recognition of disparate impact claims remains valid law.

HUD has an explicit statutory responsibility to ensure equal opportunity and freedom from discrimination. Although this administration is attempting to eliminate disparate impact liability entirely, pursuant to Executive Order 14281,⁸ removing the concept from HUD's regulations does not eliminate it as a cognizable fair housing claim. It simply limits HUD's ability to fulfill its statutory duties under the Fair Housing Act. Without HUD's regulations, then, the only change may be an increase in confusion and greater variation among the federal circuit courts.

Enforcing the Fair Housing Act against discrimination, both intended and incidental, helps our nation move towards inclusive and equitable rural, urban, and suburban communities, where all residents can thrive.

Thank you for your consideration of these comments. Please do not hesitate to contact me if you need additional information.

Sincerely,



David Lipsetz
President & CEO

DL/Irs

⁸ President Donald J. Trump, Restoring Equality Of Opportunity and Meritocracy, Executive Order, April 23, 2025, <https://www.whitehouse.gov/presidential-actions/2025/04/restoring-equality-of-opportunity-and-meritocracy/>.

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