National Fair Housing Alliance
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October 09, 2026

The Honorable Scott Turner
Secretary
U.S. Department of Housing and Urban Development
451 7th Street SW
Washington, DC 20410-0500

Submitted electronically to https://www.regulations.gov/commenton/HUD-2026-0034-0001

Re: HUD's Implementation of the Fair Housing Act's Disparate Impact Standard; Amendments to HUD's Title VI Regulations

The National Fair Housing Alliance (NFHA) and the undersigned civil rights, housing, and consumer advocacy organizations, independent state agencies, and individuals thank you for the opportunity to comment on the U.S. Department of Housing and Urban Development's (HUD) Implementation of the Fair Housing Act's Disparate Impact Standard; Amendments to HUD's Title VI Regulations (HUD proposal).[1] NFHA leads a coalition that works to build inclusive, well-resourced, and resilient communities; expand equitable opportunities; and end housing discrimination.

In an earlier notice of proposed rulemaking in the same regulatory docket, HUD proposed to excise its regulations implementing disparate impact under the Fair Housing Act, purporting to leave that question to the courts.[2] NFHA filed comments on that proposal and incorporates those comments by reference here. Now HUD additionally proposes to remove its decades-old requirement, in regulations implementing Title VI of the Civil Rights Act of 1964, that recipients of HUD funding avoid taking actions that have an unjustified disparate impact based on race. The HUD proposal attacks foundational legal principles and hard-won civil rights safeguards using unjustified legal concerns. The proposal would open the door to municipalities and states using HUD money to reshape their communities to benefit wealthy and powerful communities at the expense of Black, Latino, Asian and Pacific Islander, Native American, and other underserved communities (underserved communities). The result is that HUD will damage the economic growth and prosperity of

[1] HUD, HUD's Implementation of the Fair Housing Act's Disparate Impact Standard; Amendments to HUD's Title VI Regulations, 91 FR 51416 (Aug. 10, 2026), available at: https://www.federalregister.gov/documents/2026/08/10/2026-16228/huds-implementation-of-the-fair-housing-acts-disparate-impact-standard-amendments-to-huds-title-vi
[2] HUD, HUD's Implementation of the Fair Housing Act's Disparate Impact Standard, 91 FR 1475 (Jan. 14, 2026), available at: https://www.federalregister.gov/documents/2026/01/14/2026-00590/huds-implementation-of-the-fair-housing-acts-disparate-impact-standard

the nation and put underserved communities at risk, especially in disaster-prone areas. For this reason, we urge HUD to withdraw its proposal in its entirety.

I. HUD's Proposal Attacks the Foundation of "Simple Justice" that Title VI of the Civil Rights Act of 1964 is Built on

A. Title VI's Foundational Principles of Fairness and Equality under the Constitution

Title VI of the Civil Rights Act of 1964[3] (Title VI) and the statutorily authorized regulations that implement it[4] (including HUD's Title VI regulations)[5] are foundational legal principles won through the blood, sweat, tears, and lives lost during the fight to ensure that the promises of the 14th Amendment reaches all. They provide essential legal safeguards ensuring that the federal government does not engage in illegal discrimination on the basis of protected classes such as race, color, or national origin. Moreover, they prohibit arbitrary, artificial, and unnecessary actions and are an important step forward for equal opportunity. They make clear that we must end unnecessary obstacles in any program or activity that receives federal financial assistance.

In 1963, President John F. Kennedy transmitted a civil rights bill to Congress of which part would become Title VI. "Simple justice requires that public funds, to which all taxpayers of all races contribute, not be spent in any fashion which encourages, entrenches, subsidizes or results in racial discrimination," he explained. "[I]ndirect discrimination, through the use of Federal funds, is just as invidious [as direct discrimination]."[6]

Senator Hubert Humphrey made similar statements in the Senate floor debate over Title VI, noting that "Title VI is simply designed to insure that Federal funds are spent in accordance with the Constitution and the moral sense of the Nation," and that "taxpayers' money, which is collected without discrimination, shall be spent without discrimination."[7]

In signing Title VI into law, President Lyndon Baines Johnson emphasized that "Americans of every race and color have died in battle to protect our freedom. Americans of every race and color have worked to build a nation with widening opportunity."[8] He further added, "those who are equal before God shall now also be equal in . . . places that provide

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[3] 42 U.S.C. § 2000d *et seq*.
[4] 42 U.S.C. § 2000d-1.
[5] 24 CFR part 1.
[6] President John F. Kennedy, Special Message to Congress on Civil Rights and Job Opportunities (June 19, 1963); H.R. Doc. No. 124, 88th Cong., 1st Sess. 3 (1963), available at: https://www.presidency.ucsb.edu/documents/special-message-the-congress-civil-rights-and-job-opportunities
[7] Sen. Hubert Humphrey, 110 Cong. Rec. 6543 (1964)
[8] President Lyndon B. Johnson, Remarks Upon Signing the Civil Rights Act (July 2, 1964), *available at*: https://www.loc.gov/exhibits/civil-rights-act/multimedia/johnson-signing-remarks.html

services to the public."[9] He grounded his signing of the law in his constitutional obligation to "take care that the laws are faithfully executed."[10]

B. Disparate Impact Regulations Serve Title VI's Foundational Principles

Disparate impact is a long-utilized legal tool used to address unlawful discrimination that may not be immediately obvious due to facially neutral policies. In the context of housing and community development, this principle reaches both people and places, ensuring that federal dollars are spent fairly so that all communities in an area can benefit from federal tax dollars and the economic growth that spending them creates.

The first regulation by an agency implementing Title VI (the predecessor to the U.S. Department of Health and Human Services) included a prohibition on "utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination."[11] These regulations were developed in concert with a task force consisting of the White House, the Bureau of Budget, and the Civil Rights Commission. Other agencies' regulations were further coordinated on modeled on this basis.[12] HUD's regulations are no exception, with the current version being most recently amended in 1973 as part of an interagency process and incorporating these prohibitions.[13]

Disparate impact implements the foundational principles of Title VI by addressing "indirect" discrimination that "entrenches" or "results" in discrimination in the words of President Kennedy. In the words of President Johnson, it ensures faithful execution of the law under the Constitution.

Disparate impact accords with Senator Humphrey's "moral sense of the Nation." The people of America widely share the belief that a person's zip code shouldn't determine their outcomes in life. Accordingly, the Supreme Court has ruled that the Fair Housing Act's prohibition on discrimination based on race and other protected classes extends to practices that have an unjustified disparate impact.[14] Federal investments in communities should therefore include revitalizing underserved communities, consistent with Title VI, and not just steering further wealth to already prosperous communities by way of federal taxes and spending. An example of how disparate impact under Title VI is currently creating fairness would be when a city decides to prohibit all housing that would be affordable to working-class people, and that happens to exclude most or all people of color in that

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[9] *Id*.
[10] *Id*.
[11] 29 Fed. Reg. 16298, 16299 (Dec. 4, 1964), codified at 45 C.F.R. § 80.3(b)(2).
[12] Olatunde C. Johnson, *The Agency Roots of Disparate Impact*, 49 HARV. C.R.-C.L. L. REV. 125, 127 133-34, 138-39 (2014), available at: https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=2086&context=faculty_scholarship
[13] 38 FR 17949 (July 5, 1973).
[14] *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.*, 576 U.S. 519 (2015).

region. If the city cannot show why the policy is necessary, or if a fairer and more effective alternative is available, then the policy would have to be set aside.

Disparate impact upholds the obligation that we all have—cities and towns, landlords and real estate agents, corporations and the federal government—to respect and protect equal opportunity in housing and community development. That means avoiding unnecessary policies that discriminate in practice and are rooted in prejudice.

II. HUD's Proposal Puts Underserved Communities at Risk, Especially in Disaster-Prone Areas

A. Disaster Recovery Funds are a Frequent Source of Potential Disparate Impact Issues Under Title VI

Experience has shown that allocations of major disaster recovery funding have been a frequent source of criteria and methods of administration resulting in unjustified discriminatory effects on underserved communities most needing the recovery funds.

Hurricane Ike in 2008 destroyed 569 public housing units at four sites in Galveston, TX. The City of Galveston and the Galveston Housing Authority initially sought to demolish the sites and rebuild far fewer units, which would have effectively forced many lower income residents out of Galveston permanently. The State of Texas had also attempted to reroute funding to interior infrastructure projects in areas not damaged by the hurricane.[15] After a civil rights complaint, HUD ultimately required Galveston to provide one-for-one replacement for units, ensuring that lower income residents of Galveston were able to return.[16]

The post-Hurricane Katrina Louisiana Road Home Program provides another example of the importance of disparate impact protections for disaster recovery allocations. The Road Home Program allocated grants to help homeowners rebuild after Katrina. These grants were capped at the pre-storm value of a home, regardless of the cost to rebuild. This criterion and method of administration left many homeowners in primarily Black neighborhoods in the city with a severe shortfall in funds to try to rebuild. Had this been carried out, it would have displaced a significant amount of the Black population of New Orleans. A civil rights complaint brought by NFHA and others was ultimately settled, resulting in a less-discriminatory grant program that allowed homeowners to return to the city and rebuild their properties.[17]

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[15] https://www.galvnews.com/news/hud-to-mayor-rebuild-the-569-units/article_17381956-09c6-5df1-9c2c-b05e1d7696a9.html

[16] https://texashousers.org/2011/07/15/hud-pointedly-directs-galveston-to-rebuild-its-public-housing/

[17] https://www.washingtonpost.com/business/economy/hud-to-pay-62-million-to-la-homeowners-to-settle-road-home-lawsuit/2011/07/06/gIQAtsFN1H_story.html

Harris County, TX, and the City of Houston's experience after Hurricane Harvey also highlights the importance of disparate impact protections. The Texas General Land Office's (GLO) methods for administering HUD disaster recovery funds resulted in significantly reduced funding for Harris County and Houston, despite that they were among the most impacted areas by the hurricane. The criteria used by the GLO diverted funding to significantly more White areas of the state of Texas and away from Harris County and Houston which have significant Black and Latino populations. A 2022 HUD Title VI determination arising from a civil rights complaint highlighted these arbitrary and unnecessary barriers and the discriminatory effect.[18] However, HUD withdrew that determination in 2025 based on its opposition to lawful disparate impact complaints, harming the residents of Harris County and the City of Houston.[19]

B. HUD Rescinded Sensible Title VI Guidelines for Ensuring Fair Distribution of Disaster Recovery Funds, and the HUD Proposal Seeks to Further Undermine Fair Distribution of Disaster Recovery Funds

In order to prevent such problems related to potential disparate impact in the use of disaster-recovery funds from continuing to recur, HUD put in place a Community Development Block Grant-Disaster Recovery Universal Notice on January 8, 2025 (Universal Notice).[20] Among other things, the Universal Notice required applicants for disaster recovery funds to:

- Comply with Title VI regulations and other civil rights laws;
- Describe how they would address disaster-related unmet needs in a manner that does not have an unjustified discriminatory effect on nor a failure to benefit protected classes in proportion to their communities' needs; and
- Describe the steps to be followed to encourage the participation of those belonging to protected classes.

HUD rescinded these changes in April of 2025.[21] The concepts incorporated in the Universal Notice were based on, among other things, the Title VI regulations that HUD now seeks to rescind through its proposal. The result of revoking these regulations will be that underserved communities bear the brunt of future disasters, while having little recourse if their municipal and state governments choose to use those funds to instead benefit communities with less need for the funds.

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[18] HUD, Letter Finding Noncompliance with Title VI and Section 109, Case No. 06-21-1483-6/9 (Mar. 4, 2022), available at: https://www.relmanlaw.com/media/cases/1258_Title%20IV%20Determination.pdf

[19] HUD, HUD Rescinds Biden-Era Politically Motivated Investigation into the Texas General Land Office (Jan. 28, 2026), available at: https://www.hud.gov/news/hud-no-26-009

[20] 90 FR 1754 (Jan. 8, 2025), available at: https://www.govinfo.gov/content/pkg/FR-2025-01-08/pdf/2024-31621.pdf

[21] https://www.hud.gov/sites/dfiles/CPD/documents/Universal-Notice-04032025.pdf

III. HUD's "Serious Legal Concerns" Are Unjustified

HUD primarily relies on *Students for Fair Admissions, Inc.* v. *President & Fellows of Harvard College* (*SFFA*) to assert constitutional concerns regarding the current rule.[22] HUD asserts a purported conflict between its decades-old Title VI regulations and the holding of SFFA because "the funding recipient must incur investigatory costs, such as conducting an impact analysis, and is coerced to proactively consider race, color, and national origin, and potentially use it to change the unintended disparate outcomes."[23] However, this is a deeply flawed reading of the *SFFA* holding. *SFFA* did not address regulations issued under Section 602 of Title VI, and it explicitly acknowledged that consideration of race to remedy specific instances of past discrimination as lawful.[24] In fact, the Supreme Court explicitly rejected the argument that recognition of disparate impact under the Fair Housing Act is unconstitutional.[25]

HUD's reliance on *Loper Bright Enterprises v Raimondo (Loper Bright)*[26] and *Alexander v Sandoval (Sandoval)*[27] to justify its actions are similarly misplaced. First, HUD simply misstates certain passages of *Sandoval*. HUD states that *Sandoval* held that "Title VI prohibits 'only intentional discrimination.'"[28] What the Court in *Sandoval* actually stated was that Section 601 of Title VI, which is enforceable through a private right of action, only prohibited intentional discrimination.[29] Whether Section 602, upon which HUD's regulation is authorized, can incorporate disparate impact was expressly not addressed by the *Sandoval* Court.[30]

Alongside its misstatements of *Sandoval*, HUD errs in selectively citing from *Loper Bright*. HUD relies on *Loper Bright*'s focus on the search for the best reading of a statute, rather than deference to agency interpretation, in legal statutory interpretation.[31] HUD asserts that, based on dicta in *Sandoval*, it has now found the best interpretation of Title VI as a whole (notwithstanding that, as noted above, *Sandoval* addressed only section 601).[32] However, HUD ignores aspects of *Loper Bright* that support the current regulation. *Loper Bright* acknowledges that "great respect" is due to interpretations of statutes that were "issued roughly contemporaneously with the enactment of the statute" and have "remained consistent over time."[33] Here, as discussed under part I above, the regulations

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[22] HUD Proposal at 51417; 600 U.S. 181 (2023).
[23] *Id*.
[24] *SFFA,* 600 U.S. at 207.
[25] *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.*, 576 U.S. 519 (2015).
[26] HUD Proposal at 51417; 603 U.S. 369 (2024).
[27] HUD Proposal at 51417; 532 U.S. 275 (2001).
[28] HUD Proposal at 51417.
[29] 532 U.S. at 280.
[30] *Id*.
[31] HUD Proposal at 51417.
[32] *Id*. (referencing 532 U.S. at 280).
[33] *Loper Bright*, slip op. at 8. See also slip op. at 10, 17.

that HUD now proposes to remove have remained consistent since that original enactment and were part of a widely shared original understanding of the statute and the agency's role by the officials charged with administering it. *Loper Bright* further recognized that statutes can delegate authority to agencies in various ways that should be respected and acknowledged by courts interpreting a statute.[34] No court has considered whether section 602 would qualify for this type of respect post-*Loper Bright*.

In sum, while HUD cloaks its proposal in compliance with *Loper Bright*, the proposal actually engages in exactly the kind of conduct that *Loper Bright* warns against – it runs roughshod over reliance interests in the current regulation built up over decades[35] and it engages in analysis more suited to a court.[36] HUD's analysis therefore fails to provide adequate support for its proposal under the Administrative Procedures Act.[37]

For the reasons described above, NFHA and the undersigned organizations and individuals urge HUD to immediately withdraw its proposal.

Sincerely,

NATIONAL ORGANIZATIONS
National Fair Housing Alliance
Access Ready, Inc.
African Communities Together
American Association of People with Disabilities
Americans for Financial Reform Education Fund
Center for Law and Social Policy (CLASP)
Center for Responsible Lending
Coalition for Human Needs
Consumer Federation of America
Justice in Aging
League of United Latin American Citizens (LULAC)
Mobility Works, Inc.
National Action Network
National Alliance to End Homelessness
National Coalition for Asian Pacific American Community Development (National CAPACD)
National Community Reinvestment Coalition (NCRC)
National Consumer Law Center (on behalf of its low-income clients)
National Homelessness Law Center
National Housing Law Project
National Housing Resource Center

[34] *Loper Bright*, slip op. at 17.
[35] *Loper Bright*, slip op. at 33.
[36] *Loper Bright*, slip op. at 21-22.
[37] *See, e.g., Motor Vehicle Mfrs. Ass'n of the U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 53 (1983); *FCC v. Fox Television Stations*, 556 U.S. 502, 515–16 (2009).

National Low Income Housing Coalition
National Network for Youth
National Urban League
Operation Restoration
PolicyLink
Public Justice
Race Forward
The Kelsey
The Lawyers' Committee for Civil Rights Under Law
The Leadership Conference on Civil and Human Rights
The Pathfinder Network – Parenting Inside Out
The Redress Movement
The Woodstock Institute
UnidosUS

STATE/LOCAL ORGANIZATIONS

Alabama
Center for Fair Housing

Arizona
Southern Arizona Legal Aid, Inc.
Southwest Fair Housing Council
William E. Morris Institute for Justice

California
CSA San Diego County
Fair Housing Advocates of Northern California
Fair Housing Council of Central CA
Housing Rights Center
Project Sentinel, Inc.
Public Interest Law Project
Western Center on Law & Poverty

Connecticut
Connecticut Fair Housing Center
Open Communities Alliance

District of Columbia/Maryland/Virginia/West Virginia
Equal Rights Center

Florida
Fair Housing Center of the Greater Palm Beaches
Jacksonville Area Legal Aid

Georgia
Metro Fair Housing Services, Inc.

Louisiana
Louisiana Fair Housing Action Center

Idaho
Intermountain Fair Housing Council, Inc.

Illinois
Access Living of Metropolitan Chicago
Open Communities
South Suburban Housing Center

Indiana
Fair Housing Center of Central Indiana

Maryland
Advocacy and Training Center
Public Justice Center

Massachusetts
Boston's Higher Ground
Community Teamwork
Greater Boston Legal Services, Inc., on behalf of BTC et. al.

Michigan
Fair Housing Center of Southwest Michigan
Fair Housing Center of West Michigan
Great Lakes ADA Center of Michigan
The Change Up Midnight Coalition

Minnesota
Metropolitan Interfaith Council on Affordable Housing (MICAH)

Nevada
Nevada Housing Justice Alliance

New Jersey
Fair Housing Council of Northern New Jersey
Housing and Community Development Network of New Jersey

New Mexico

United South Broadway Corporation

New York
A Little Piece of Light
CNY Fair Housing
Fair Housing Justice Center
Housing Opportunities Made Equal, Inc., of Buffalo, NY
Long Island Housing Services, Inc.
South Country Peace Group

North Carolina
North Carolina Justice Center

Ohio
Advocates for Basic Legal Equality, Inc.
Fair Housing Center for Rights & Research
Fair Housing Resource Center
Housing Opportunities Made Equal of Greater Cincinnati
Miami Valley Fair Housing Center, Inc.
The Fair Housing Center

Pennsylvania
Fair Housing Rights Center in Southeastern PA

Tennessee
Fair Housing Council of Metropolitan Memphis

Texas
Fair Housing Council of South Texas
Greater Houston Fair Housing Center
Texas Housers

Vermont
Housing & Homelessness Alliance of VT

Virginia
Hampton Roads Community Action Program
Housing Opportunities Made Equal of Virginia (HOME)
Legal Aid Justice Center

Wisconsin
Metropolitan Milwaukee Fair Housing Council

INDEPENDENT STATE AGENCIES
Vermont Human Rights Commission

FORMER PUBLIC OFFICIALS
Sara Pratt, former Deputy Assistant Secretary for Enforcement and Programs, U.S. Department of Housing and Urban Development