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Regulations Division
Office of the General Counsel
U.S. Department of Housing and Urban Development
451 Seventh St. SW, Room 10276
Washington, D.C. 20410

Submitted electronically at http://www.regulations.gov

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 National Consumer Law Center[1] submits the following comments on behalf of its low-income clients in response to *HUD's Implementation of the Fair Housing Act's Disparate Impact Standard,* Docket No. FR-6540-P-01; RIN 2529-AB09 issued by the U.S. Department of Housing and Urban Development ("HUD").[2] The proposed rule, which seeks to eliminate HUD's disparate impact regulation, will significantly undermine HUD's enforcement of the Fair Housing Act's protections against unlawful discrimination, and make it easier for lenders, landlords and other housing providers to evade the law. Victims of discrimination and the advocates and fair housing agencies that assist them will be hampered in their ability to bring cases challenging violations of the Fair Housing Act. We call on HUD to withdraw this proposed rule.

The current rule was adopted in 2013 to formalize HUD's long-held interpretation of the availability of "discriminatory effects" liability under the Fair Housing Act ("FHA"), 42 U.S.C. 3601 et seq., and to provide consistency in the application of this form of liability.[3] The rule

[1] The **National Consumer Law Center, Inc. (NCLC)** is a non-profit Massachusetts Corporation, founded in 1969, specializing in low-income consumer issues, with an emphasis on consumer credit. On a daily basis, NCLC provides legal and technical consulting and assistance on consumer law issues to legal services, government, and private attorneys representing low-income consumers across the country. NCLC publishes a series of practice treatises on consumer credit laws and unfair and deceptive practices. NCLC attorneys have written and advocated extensively on all aspects of consumer law affecting low-income people, conducted trainings for tens of thousands of legal services and private attorneys, and provided extensive oral and written testimony to numerous Congressional committees on various topics. In addition, NCLC attorneys regularly provide comprehensive comments to federal agencies, including HUD, on the regulations under consumer laws that affect low-income consumers.

[2] 91 Fed. Reg. 1475 (January 14, 2026).

[3] *See* "Implementation of the Fair Housing Act's Discriminatory Effects Standard" 78 Fed. Reg. 11460 (February 15, 2013) (codified at 24 C.F.R. § 100.500).

established the three-part burden shifting framework used by HUD and federal courts to provide clarity and predictability for all parties engaged in housing transactions as to how the discriminatory effects standard applies.[4] HUD now proposes to revise 24 CFR 100.5(b), and remove and reserve 24 CFR part 100, subpart G, which contains § 100.500.[5] Though the regulatory text that HUD proposes to remove has been in place since 2013, the framework that the current text describes has been used consistently by HUD in adjudications of Fair Housing Act complaints, policy statements and other public pronouncements for decades.[6]

The current standard is consistent with long-standing judicial precedent interpreting the FHA, the Supreme Court's holding in *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.* ("*Inclusive Communities"*),[7] and the Act's broad remedial purpose. HUD should withdraw this proposed rule, reaffirm the current framework and step up enforcement under the FHA to dismantle discriminatory policies and practices that deny all people access to fair housing.

We welcome the opportunity to comment on this important civil rights law. The National Consumer Law Center makes full use of the disparate impact standard under the Fair Housing Act to bring about justice for consumers trapped in predatory financial transactions. NCLC has a long history of litigation, advocacy, research and training regarding disparate impact liability under the Fair Housing Act. Annually, NCLC educates hundreds of lawyers regarding the Act and other civil rights statutes at its Consumer Rights Litigation Conference, and other conferences and online trainings. The Center's treatise on credit discrimination examines the Fair Housing Act and other civil rights statutes in detail, and its reports call for strengthening civil rights statutes. NCLC has also promoted the disparate impact standard by co-authoring amicus briefs in the Supreme Court and lower courts, submitting comments to regulatory agencies, including HUD, and through op-eds and other media appearances.

I. Rollback of the current framework is part of a large-scale campaign to water down civil rights and eliminate disparate impact as a tool of federal enforcement.

Disparate impact is a common sense legal tool that ensures that lenders, landlords, and others involved in access to housing do not discriminate and homebuyers and tenants can seek housing free from fear of invidious discrimination . The tool serves to root out hidden forms of discrimination, including those embedded in newer forms of technology powered by artificial intelligence. The disparate impact standard is backed by over 50 years of legal precedent, and affirmed by the Supreme Court in *Inclusive Communities*.

Despite this precedent, HUD, under the current administration, has refused to use this tool to fully and effectively enforce the FHA. This follows not a change in the legal landscape

[4] *See id*.
[5] 91 Fed. Reg. 1475, 1476.
[6] *See id*. At 11462
[7] 576 U.S. 519 (2015).

but Executive Order 14281 that instructs federal agencies to amend or repeal regulations, regardless of their validity, to get rid of disparate impact liability. In guidance issued September 2025, the agency explicitly laid out its intentions to prioritize enforcement actions based on disparate treatment, or intentional forms of discrimination, rather than disparate impact.[8] It went further, withdrawing memorandum, statements, press releases, and other documents from its Guidance Repository that provide guidance or mention disparate impact. This includes a 2016 document titled *Proving Disparate Impact in Fair Housing Cases After Inclusive Communities*.[9] Were these actions insufficient to telegraph the agency's intentions, Secretary Turner explicitly declared "the disparate-impact rule is headed for the ash heap of history."[10] This statement and these actions show that the agency has already decided what course of action it will take, and is not open-minded to input from commenters, as shown further by the unnecessarily truncated 30-day public comment period.

Earlier attempts by the first Trump administration to water down disparate impact failed. HUD issued a rule in 2020 that was unworkable, would have gutted key protections and decreased the utility of this important tool.[11] Three federal lawsuits were filed challenging the 2020 Rule as inconsistent with the FHA and in violation of the Administrative Procedure Act ("APA").[12] In *Massachusetts Fair Housing Center v. HUD*, 3:20-cv-11765, the U.S. District Court for the District of Massachusetts issued a preliminary injunction staying HUD's implementation of the 2020 Rule. The court found that the plaintiffs were substantially likely to prevail on their claim that the 2020 Rule was arbitrary and capricious under the APA.[13] Moreover, the court said, significant changes to the 2013 rule "run the risk of effectively neutering disparate impact liability under the Fair Housing Act."[14] HUD's latest effort dispenses with any pretenses and proposes to remove disparate impact entirely from the regulations. Tenants, homebuyers, and an open and competitive market will all be harmed if this proposal is finalized.

The agency has also taken other steps to undermine enforcement of the Act and civil rights in general, including but not limited to:

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[8] *See* U.S. Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity, Fair Housing Act Enforcement and Prioritization of Resources, September 16, 2025.

[9] It is unclear if this document was created by HUD officials, or a copy of a law review article. See Robert G. Schwemm & Calvin Bradford, *Proving Disparate Impact in Fair Housing Cases After Inclusive Communities*, 2016, available at https://nyujlpp.org/wp-content/uploads/2016/12/Proving-Disparate-Impact-in-Fair-Housing-Cases-After-Inclusive-Communities-19nyujlpp685.pdf.

[10] Scott Turner, *It's Time to Ditch 'Disparate Impact Theory'—and Biden's Weaponization of Civil Rights Law*, Nat'l Rev. (Jan. 19, 2026), https://www.nationalreview.com/2026/01/its-time-to-ditch-disparate-impact-theory-and-bidens-weaponization-of-civil-rights-law/.

[11] *See* HUD's Implementation of the Fair Housing Act's Disparate Impact Standard, 85 Fed. Reg. 60288 (Sept. 24, 2020) ("2020 Rule").

[12] *See Massachusetts Fair Housing Center v. U.S. Dep't of Housing and Urban Development, Case No. 3:20-cv-11765 (D. Mass.);National Fair Housing Alliance v. Carson*, Case No. 3:20-cv-7388 (N.D. Cal.); *Open Communities Alliance v. U.S. Dept. of Housing and Urban Development*, Case No. 3:20-cv-01587 (D. Conn.).

[13] *Mass. Fair Housing Center*, 496 F. Supp. 3d 600, 611 (D. Mass. 2020).

[14] *Id*.

- Closing seven major housing discrimination investigations that relied in whole or in part on disparate impact;[15]
- Withdrawing guidance for cases involving reasonable accommodation for people with disabilities;[16]
- Turning away cases that allege housing discrimination on the basis of sexual orientation or gender identity, as a "novel or tenuous" legal theory not covered by the FHA;[17]
- Attempting to defund Fair Housing Initiatives Programs (FHIP), a grant program created in 1987 under the Reagan Administration to provide local assistance to people facing housing and lending discrimination. FHIPs resolve 75% of fair housing complaints and are the primary means by which the federal government educates consumers about their fair housing rights; and
- Changing its procedures so as to only accept housing discrimination complaints online, rather than through several venues and portals in multiple languages. This will impact people with disabilities, who file the majority of housing discrimination complaints, people with limited English proficiency, and those with limited internet access, including particularly those living in rural areas.

In addition to the above, the agency fired whistleblowers in the Office of Fair Housing, where discrimination is prosecuted, and fired or banished nearly seventy percent of the staff. The agency also cut staff in the Office of Fair Housing and Equal Opportunity, where cases are investigated, by more than fifty percent. As a consequence, redlining cases will go unprosecuted, appraisal discrimination will be allowed to run rampant, and insurers will be allowed to continue to unlawfully charge certain people more based purely on where they come from or the color of their skin.[18]

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[15] Jesse Coburn, *Trump Administration Prepares to Drop Seven Major Housing Discrimination Cases*, Pro Publica, July 18, 2025, available at https://www.propublica.org/article/trump-hud-drop-housing-discrimination-cases-housing-pollution. NFHA, Leading Civil Rights Organizations Urge HUD to Uphold Fair Housing Protections Against Disparate Impact Rollbacks, August 5, 2025, available at https://nationalfairhousing.org/wp-content/uploads/2025/08/2025-08-05_Letter-from-NFHA-et-al-to-HUD-Secretary-Scott-Turner-re-Disparate-Impact_FINAL2.pdf.

[16] *See* Lori Summerfield and Chris Willis, *HUD's New Direction in Fair Housing Act Enforcement and Rescission of Certain Office of Fair Housing and Equal Opportunity Guidance*, Troutman Pepper Locke Consumer Financial Services Law Monitor, Sept. 29 2025, available at https://www.consumerfinancialserviceslawmonitor.com/2025/09/huds-new-direction-in-fair-housing-act-enforcement-and-rescission-of-certain-office-of-fair-housing-and-equal-opportunity-guidance/#.

[17] *See* Jesse Coburn, "How the Trump Administration is Weakening the Enforcement of Fair Housing Laws," Shelterforce, May 15, 2025 available at https://shelterforce.org/2025/05/15/trump-administration-weakening-the-enforcement-of-fair-housing/.

[18] *See* Debra Kamin, "Two Civil Rights Lawyers Dismissed After Raising Concerns about Fair Housing Act Enforcement," The New York Times, December 9, 2025, https://www.nytimes.com/2025/09/29/us/politics/hud-lawyers-whistleblowers.html.

With each roadblock, HUD's actions effectively deny victims of discrimination access to relief. Victims will not be able to use HUD's administrative complaint process to challenge policies with a discriminatory effect, a process that is less costly than filing an action in court and allows for an efficient resolution of the case that may preserve housing for protected classes. Moreover, Fair Housing organizations that assist consumers with filing administrative complaints with HUD will be frustrated in their mission and goal of remediating housing discrimination. Not only is the effectiveness of fair housing programs severely impaired, but lenders, landlords and other housing providers will face little risk of penalty for not complying with the FHA. Allowing discrimination to flourish and emboldening those who would discriminate violates HUD's statutory obligations and jeopardized open and competitive markets.

II. The existing framework is consistent with decades of case law and the Supreme Court's decision in *Inclusive Communities*.

The Fair Housing Act prohibits discrimination in the sale, rental or financing of dwellings and other housing-related activities on the basis of race, color, religion, national origin, sex, disability and familial status.[19] HUD has for decades interpreted the Act to prohibit practices that have an unjustified discriminatory effect, regardless of intent, in keeping with the Act's broad remedial mandate to combat and prevent segregation and discrimination in housing, and promote integrated and inclusive communities.[20] HUD in 2013 adopted the Act's disparate impact standard, long-recognized by the agency and federal circuit courts.[21]

Two years later, in *Inclusive Communities*, the Supreme Court held that disparate impact claims are cognizable under the Fair Housing Act.[22] The Court repeatedly referenced the 2013 rule and highlighted without disagreement the rule's burden shifting framework, especially in discussing appropriate limits on disparate impact liability.[23] Decisions by circuit and district courts after *Inclusive Communities* have recognized that the Court implicitly adopted the rule's framework[24] and accordingly, continue to find that disparate impact claims are cognizable under the FHA.[25]

Under the framework, the first step to bring a disparate impact claim is identification of a defendant's policy or practice that causes a discriminatory effect on the basis of a protected characteristic. Plaintiffs must be able to point to a specific policy or practice and prove that it is the cause of the disparate impact. Once the plaintiff has identified the policy causing the disparate impact, the burden shifts to the defendant to prove that "the challenged practice is

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[19] 42 U.S.C. §§ 3601 et seq.

[20] *See* 78 Fed. Reg. 11460, 11461 (Feb. 15, 2013).

[21] 78 Fed. Reg. 11460, (Feb. 15, 2013). See also 81 Fed. Reg. 69012 (Oct. 5, 2016).

[22] 576 U.S. at 519; 135 S. Ct. 2507 (2015).

[23] 576 U.S. at 527 and 541.

[24] *Prop. Cas. Insurers Assn. of Am. v. Carson*, 13-CV-8564, 2017 WL 2653069, at *9 (N.D. Ill. June 20, 2017).

[25] *Connecticut Fair Housing Center v. Corelogic Rental Properties* LLC, 478 F. Supp 3d 259 (2020); *National Fair Housing Alliance v. Bank of America, N.A.* 401 F.Supp 3d 619 (2019); *Reyes v. Waples Mobile Home Park Limited Partnership*, 903 F.3d 415 (2018); *Mhany Mgt., Inc. v. County of Nassau*, 819 F.3d 581, 588 (2d Cir. 2016).

necessary to achieve one or more substantial, legitimate nondiscriminatory interests."[26] It is only after a defendant has successfully proven that the policy advances a legitimate business interest that the burden shifts back to the plaintiff. A plaintiff may still prevail if the plaintiff is able to demonstrate that those substantial, legitimate nondiscriminatory interests "could be served by another practice that has a less discriminatory effect."[27] The three-part test is not only in the 2013 rule, but is also the test that courts have used for disparate impact cases for the past four decades and the test referenced by the Supreme Court in *Inclusive Communities*.

The first step of proving that a policy is causing a discriminatory effect is often a formidable challenge for consumers. Victims of mortgage discrimination, for example, are usually not privy to a financial institution's internal policies and procedures. Defendants may argue that no such policy exists, or that the discriminatory effect can be linked to other factors. Without discovery, it is often not possible to know what is or is not a financial institution's policy or practice or how that policy is affecting particular groups when put in action. Likewise, in most instances, it is difficult for plaintiffs to know whether other people's experiences with a financial institution are similar or different from their own.

Bringing a successful mortgage discrimination disparate impact claim, for example, often takes significant amounts of data gathering, research and analysis to identify the patterns that demonstrate that a certain policy is causing a disproportionately adverse effect on a certain group. The Administration has focused on alleged overreach of federal agencies in pursuing disparate impact cases. But disparate impact cases are not easily or lightly won. The hurdles to bringing a successful disparate impact claim are even higher for the state and local governments and private plaintiffs who rely on disparate impact theory to address discriminatory practices that affect them directly.

The three-part test continues to provide an effective legal framework to challenge mortgage lending policies and other housing-related policies that may seem neutral on their face but unfairly exclude certain groups of people or isolate particular communities in practice. By bringing mortgage discrimination and other disparate impact claims under the Fair Housing Act within this framework, plaintiffs have been able to confront harmful, inequitable, and unjustified policies that create unnecessary barriers to housing and unfair lending practices for over 40 years. This framework effectively prevents plaintiffs from bringing unsubstantiated claims and defendants from escaping responsibility with hollow reasons for their policies. The three-part test is sufficiently robust and should be reaffirmed by HUD and not withdrawn.

[26] 24 C.F. R. 100.500 § (c).
[27] *Id*. 100.500 § (c).

III. A strong disparate impact framework is vital for protecting renters, credit applicants, and homeowners; and for eliminating residential segregation and addressing discriminatory policies in the housing and credit market.

Housing discrimination is a well-documented and established fact of American life. [28] Disparate impact has been used to challenge housing discrimination and residential segregation in all their forms, including redlining and reverse redlining. Highlighted below are examples of how disparate impact has been and is currently being used in three key areas, mortgage credit, tenant screening, and AI, to challenge discrimination and preserve access to housing.

A. Consumer and civil rights advocates and state and local governments have used disparate impact claims under the FHA for decades to challenge predatory practices that deny consumers equal access to mortgage credit.

The FHA remains an important tool to redress discrimination in the mortgage market. Predatory mortgage lending and the ensuing foreclosure crisis led to a significant loss of wealth for Black communities. Between 2000 and 2015 the gains of the previous decades were more than erased, bringing the Black homeownership rate down to 41.2%.[29] As of the fourth quarter of 2023, 73.8% of non-Hispanic white individuals owned homes, whereas only 45.9% of Black individuals and 49.8% of Hispanic individuals owned homes.[30] In fact, older Black homeowners have the lowest median home equity at $123,000, compared to $251,000 for older white homeowners and $200,000 for older Hispanic owners.[31] Ensuring that mortgage applicants are treated fairly no matter their background is essential to expanding homeownership opportunities in many underserved communities.

A review of housing discrimination cases points to the ongoing need to preserve the essential role of anti-discrimination laws, such as the FHA, in building a more open, fair and robust mortgage market, including through disparate impact claims. These cases demonstrate the need for legal protections both where individuals have been left out of lending opportunities and where they have been targeted for more expensive or abusive products.

Examples of the cases brought by civil rights and consumer advocates on behalf of impacted consumers include:

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[28] *See* Richard Rothstein, *The Color of Law: A Forgotten History of How Our Government Segregated America*, New York. Liveright Publishing Corporation 2017.

[29] Laurie Goodman et al, *Are gains in black homeownership history?*, Urban Institute (Feb. 15, 2017), *available at* https://www.urban.org/urban-wire/are-gains-black-homeownership-history.

[30] Homeownership Rates by Race and Ethnicity, National Association of Home Builders Economic Research Blog (Feb. 6, 2024), *available at* https://eyeonhousing.org/2024/02/homeownership-rates-by-race-and-ethnicity-3/#:~:text=According%20to%20data%20from%20the,and%20Black%20Americans%20%2845.9%25%29.

[31] Jennifer Molinsky, *U.S. is Unprepared to Provide Housing and Care for Millions of Older Adults, Joint Center for Housing Studies, Harvard University* (Nov. 30, 2023), *available at https://www.jchs.harvard.edu/blog/us-unprepared-provide-housing-and-care-millions-older-adults.*

- *Saint-Jean et al. v. Emigrant Mortg. Co.*, 11-cv-2122 (E.D.N.Y.): Legal services and civil rights advocates brought a class action lawsuit against Emigrant Savings Bank for violation of ECOA, the Fair Housing Act, the City's Human Rights Law and other laws after minority homeowners were targeted for high-cost loans that the bank knew would likely result in default. In June 2016, after a month-long trial, a jury awarded six of the plaintiffs a total of $950,000 in damages.[32] Most recently, the Second Circuit upheld claims for reverse redlining in this case.[33]

- *Ramirez v. Greenpoint Mortg. Funding, Inc.*, 08-cv-0369 (N.D. Cal.): This class action alleged that Greenpoint's practices had a disparate impact on minority applicants for home mortgage loans. Specifically, the bank's discretionary pricing policy resulted in Black and Hispanic borrowers receiving less favorable loan pricing than similarly situated white borrowers. In April 2011, the parties settled for $14.75 million.[34]

- *Allen v. Decision One Mortg. Co.*, 07-cv-11669 (D. Mass.): Plaintiffs alleged that private banks and lenders maintained a policy that had a discriminatory impact on Black applicants because the policy allowed a discretionary surcharge of additional points and fees to an otherwise objective risk-based financing rate. In May 2010, the class members settled for $6.5 million, financial education, quarterly reporting, and loan restructuring for class members.[35]

- *Puello v. Citifinancial Servs., Inc.*, 08-cv-10417 (D. Mass.): This class action alleged that Citifinancial Services and Citigroup's lending practices had a discriminatory impact on minority applicants in their home financing policies and practices. In August 2012, the parties settled with Defendants paying compensation to class members who obtained their loans through mortgage brokers, housing counseling services for class members, a non-discretionary pricing policy, training, and Class Counsel's attorney fees.[36]

A survey of mortgage lending-related discrimination cases brought by the federal government prior to the current administration demonstrates the effectiveness of the disparate

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[32] Alan Feuer, *Emigrant Savings Bank Discriminated Against Minorities, Brooklyn Jury Says*, N.Y. Times, June 27, 2016, *available at* https://www.nytimes.com/2016/06/28/nyregion/emigrant-savings-bank-discriminated-against-minorities-brooklyn-jury-says.html?_r=0%20.

[33] *See Saint-Jean v. Emigrant Mortg. Co.*, 129 F.4th 124 (2nd Cir. Feb. 19, 2025).

[34] *See Case Profile: Ramirez v. Greenpoint Mortgage Funding, Inc.*, Civil Rights Litigation Clearinghouse, https://www.clearinghouse.net/detail.php?id=12537.

[35] *Case Profile: Allen v. One Decision Mortgage Company*, Civil Rights Litigation Clearinghouse, https://www.clearinghouse.net/detail.php?id=12531&search=source%7Cgeneral%3BsearchIssues%7C390%2C284%3BsearchCauses%7C49%2C29%3Borderby%7CfilingYear%3B.

[36] *Final Approval Order and Judgment*, *Puello v. v. Citifinancial Servs., Inc.*, 08-cv-10417 (D. Mass.), Aug. 10, 2012, Dkt. No. 128; *see also Case Profile: Puello v. Citifinancial Services, Inc.*, Civil Rights Litigation Clearinghouse, https://www.clearinghouse.net/detail.php?id=12449&search=source%7Cgeneral%3BsearchIssues%7C390%2C284%3BsearchCauses%7C49%2C29%3Borderby%7CfilingYear%3B.

impact standard in addressing systemic discrimination in residential lending policies and practices. Most of the cases settled with a civil penalty and establishment of a settlement fund, often coupled with loan subsidy programs and outreach to impacted community members. The effective and consistent use of disparate impact claims by the government has brought relief to thousands of consumers in a manner that is not equally available to private litigants. Moreover, many of these cases are quite recent, illustrating the present nature of this conduct and the need for ongoing enforcement of the law. In choosing to cease enforcing the law, HUD is stepping away from its statutory obligations and choosing to condone illegal discrimination and thus siding the federal government against Black, Latino, and Asian Americans, all communities that have historically been discriminated against. These cases include:

- *CFPB vs. Draper & Kramer Mortg. Corp.,* 25-cv-00605 (N.D. Ill.): The CFPB settled a case in 2025 against Draper & Kramer Mortgage Corporation (DKMC), a non-depository mortgage lender based in Illinois, for engaging in redlining in the Chicago and Boston metropolitan statistical areas. The complaint alleged that, in July 2019, the company was issued a supervisory letter from the CFPB stating that its internal compliance program was inadequate with respect to fair lending and providing DKMC with recommendations for attending to the inadequacies going forward. However, from 2019 through 2021, DKMC avoided providing mortgage services to residents in majority-Black and Hispanic neighborhoods and discouraged them from obtaining loans by locating all of its offices and focusing its marketing and outreach efforts in majority-white neighborhoods. The consent order barred DKMC from engaging in any residential mortgage lending activities or receiving compensation for any mortgage lending for a period of five years. It also directed the company to pay a civil penalty of $1.5 million to the CFPB.[37]

- *United States v. Mortg. Firm, Inc.*, 0:25-cv-60038 (S.D. Fla.): The DOJ announced a settlement in 2025 with The Mortgage Firm, Inc. to resolve allegations of redlining in predominantly Black and Hispanic neighborhoods in Miami. The complaint alleged that, from 2016 through 2021, the company avoided providing mortgage services in these communities and discouraged individuals living there from seeking or applying for credit. The settlement required the company to invest $1.75 million in a loan subsidy fund, assess its programs, train its staff, maintain an office located in a majority-Black and Hispanic neighborhood in Miami-Dade County, and conduct digital marketing campaigns to reach this and other similarly populated neighborhoods.[38]

- *Consumer Fin. Prot. Bureau v. Fairway Indep. Mortg. Corp.,* 2:24-cv-01405 (N.D. Ala.): The CFPB and the DOJ reached a settlement in 2024 with Fairway Independent Mortgage Corporation to resolve claims of redlining in majority-Black neighborhoods in

[37] *See* Proposed Consent Order, Consumer Fin. Prot. Bureau v. Draper & Kramer Mortg. Corp., No. 1:25-cv-00605 (N.D. Ill. Jan. 17, 2025), *available at* https://files.consumerfinance.gov.
[38] *See United States v. Mortg. Firm, Inc.,* No. 0:25-cv-60038 (S.D. Fla.), *available at* www.justice.gov.

Birmingham, Alabama. The complaint alleged that, from 2018 through 2022, Fairway discouraged Black consumers from applying for loans, such as by concentrating all of its retail loan offices in majority-white areas and directing less than 3% of its direct mail advertising to consumers in majority-Black areas, despite the fact that such areas comprised 33% of the Birmingham metropolitan statistical area. The settlement required Fairway to invest $7 million in a loan subsidy fund and pay a $1.9 million civil penalty to the CFPB. Fairway also was required to spend at least $500,000 for advertising and outreach, $250,000 on consumer financial education, and $250,000 on community-based partnerships. Fairway also was required to open or acquire a new loan production office or full-service retail office in a majority-Black neighborhood.[39]

- *United States v. Citadel Fed. Credit Union*, 2:24-cv-05426 (E.D. Pa.): The DOJ announced a $6.5 million settlement agreement with Citadel Federal Credit Union in 2024 to resolve allegations that Citadel engaged in redlining in majority-Black and Hispanic communities in the Philadelphia area. The complaint alleged that, from 2017 through 2021, Citadel failed to provide mortgage services in majority-Black and Hispanic neighborhoods and discouraged individuals who were looking to obtain home loans for properties in those areas from doing so. Instead, Citadel's lending practices were concentrated disproportionately in white neighborhoods in and around Philadelphia, where the vast majority of its branches (all but one) were located. The settlement required Citadel to open or acquire three full-service branches in majority-Black and Hispanic census tracts in Philadelphia, invest a minimum of $6 million in a loan subsidy fund, and spend at least $250,000 on a community development partnership program and $270,000 on targeted advertising, outreach, consumer financial education, and credit counseling.[40]

- *United States v. OceanFirst Bank Nat'l Ass'n,* 3:24-cv-09248 (D.N.J.): The DOJ, HUD, and the U.S. Attorney's Office for the District of New Jersey announced a $15 million settlement agreement with OceanFirst Bank in September 2024. The complaint alleged that OceanFirst redlined predominantly Black, Hispanic, and Asian neighborhoods in three counties in New Jersey. According to the complaint, from 2018 through 2022, OceanFirst avoided providing mortgage services in the subject communities and discouraged individuals living there from seeking or applying for credit. Specifically, the complaint alleged that OceanFirst concentrated its branches in majority-white areas while it closed its few locations in majority-Black, Hispanic, and Asian census tracts, and that it disproportionately focused its outreach and advertising efforts on majority-white communities. The settlement required the bank to invest at least $14 million in a loan subsidy fund and for OceanFirst to spend $400,000 on a community development

[39] *See Consumer Fin. Prot. Bureau v. Fairway Indep. Mortg. Corp.*, No. 2:24-cv-01405 (N.D. Ala.), *available at* www.justice.gov.
[40] *See United States v. Citadel Fed. Credit Union,* No. 2:24-cv-05426 (E.D. Pa.), *available at* www.justice.gov.

partnership program, plus $700,000 on targeted advertising, outreach, consumer financial education, and credit counseling.[41]

- *United States & North Carolina ex rel. Josh Stein v. First Nat'l Bank of Pa.*, 24-CV-88 (M.D.N.C.): The DOJ and the state of North Carolina announced an agreement in 2024 relating to allegations that First National Bank of Pennsylvania had engaged in redlining Black and Hispanic neighborhoods in the cities of Charlotte and Winston-Salem. The complaint alleged that, from 2017 through 2021, the bank discouraged people in those neighborhoods from seeking and obtaining credit by focusing its lending disproportionately on white neighborhoods, where the majority of the branches were located. In 2021, the bank closed its lone branch in a predominantly Black and Hispanic neighborhood. The consent order mandated staffing and training changes and two full-service branches in majority-Black and Hispanic census tracts in Charlotte and one such branch in Winston-Salem. In addition, the bank was required to invest at least $11.75 million in a loan subsidy fund, spend $1 million on a community development partnership program, and $750,000 on targeted advertising, outreach, consumer financial education, and credit counseling.[42]

- *United States v. Patriot Bank,* 2:24-cv-2029 (W.D. Tenn.): The DOJ announced a $1.9 settlement with Patriot Bank in 2024 resolving allegations of redlining in Memphis. According to the complaint, during the period 2015 through 2020 the bank directed its lending efforts disproportionately toward white areas. Peer lenders generated loan applications from majority-Black and Hispanic areas at 3.5 times the rate of Patriot during the relevant time period. The settlement required Patriot to invest at least $1.3 million in a loan subsidy fund and spend additional monies for community partnerships and targeted advertising, outreach, consumer financial education, and credit counseling.[43]

- *United States v. Ameris Bank,* 3:23-cv-01232 (M.D. Fla.): The DOJ reached a $9 million settlement in 2023 with Ameris Bank relating to allegations of redlining in Jacksonville, Florida in some of the same neighborhoods that were redlined by the Home Owners' Loan Corporation in the 1930s. The complaint alleged that, from 2016 through 2021, Ameris concentrated nearly all of its branches in majority-white areas, and avoided marketing and outreach in majority-Black and Hispanic areas. During the relevant time period, other lenders in the area generated loan applications from residents in majority-Black and Hispanic census tracts at more than three times Ameris's rate. The consent order required Ameris to invest $7.5 million in a loan subsidy fund, as well as $900,000 for targeted advertising and outreach, and $600,000 for community partnerships. The

[41] *See United States v. OceanFirst Bank Nat'l Ass'n,* No. 3:24-cv-09248 (D.N.J.), *available at* www.justice.gov.
[42] *See United States & North Carolina ex rel. Josh Stein v. First Nat'l Bank of Pa.*, No. 24-CV-88 (M.D.N.C.), *available at* www.justice.gov.
[43] *See United States v. Patriot Bank*, No. 2:24-cv-2029 (W.D. Tenn.), *available at* www.justice.gov.

bank also was required to open a new branch in a majority-Black and Hispanic neighborhood.[44]

- *United States v. Wash. Tr. Co.*, 1:23-cv-00399 (D.R.I.): The DOJ announced in 2023 that it had settled allegations that Washington Trust Company, from 2106 through 2021, did not open a branch in a majority-Black and Hispanic neighborhood despite expanding across the state. Over the relevant time period, other banks received nearly four times the number of mortgage loan applications each year compared to Washington Trust in majority-Black and Hispanic areas, and even when the bank did generate applications in these areas the applicants were mostly white. The consent order provided for fair lending compliance measures, the opening of two new full-service branches located in majority-Black and Hispanic census tracts, and investments of at least $7 million in a loan subsidy fund, $1 million over a period of five years on a community development partnership program, and $1 million over that same period on targeted advertising, outreach, consumer financial education, and credit counseling.[45]

- *United States v. Am. Bank of Okla.*, 23-cv-00371 (N.D. Okla.): The DOJ announced a settlement in 2023 resolving allegations that American Bank of Oklahoma engaged in redlining in the historically Black neighborhoods that comprised the location of the 1921 Tulsa Race Massacre. The complaint alleged that, between 2017 and 2021, it avoided proving home loans in majority-Black and Hispanic neighborhoods by locating all of its branches in majority-white areas and relying on mortgage loan officers who worked in those locations as the main source for generating loan applications. The bank did not market or advertise in majority-Black and Hispanic neighborhoods, nor did it train or incentivize its staff to conduct outreach or marketing in order to compensate for its lack of physical presence in those areas. Despite being informed by the FDIC, in 2018, that it had significant fair lending risk, the bank failed to take steps to address that risk and did not implement any of the agency's recommended measures. The settlement provided that the bank would invest in a loan subsidy fund of at least $950,000 and participate in a community development partnership program. The bank also was required to establish a community-oriented production office in a majority-Black and Hispanic census tract and spend at least $100,000 over a period of five years on advertising and outreach directed at both current and prospective residents in the affected areas.[46]

- *United States v. ESSA Bank & Tr.*,2:23-cv-02065 (E.D. Pa.): The DOJ reached a settlement in 2023 resolving allegations of redlining by ESSA Bank & Trust in Philadelphia. The complaint alleged that, from 2017 through 2021, the bank failed to assign loan officers to provide adequate staffing in its branches that served majority-

[44] *See United States v. Ameris Bank*, No. 3:23-cv-01232 (M.D. Fla.), *available at* www.justice.gov.
[45] *See United States v. Wash. Tr. Co.*, No. 1:23-cv-00399 (D.R.I.), *available at* www.justice.gov.
[46] *See United States v. Am. Bank of Okla.*, No. 23-cv-00371 (N.D. Okla.), *available at* www.justice.gov.

Black and Hispanic neighborhoods, excluded these neighborhoods from its marketing and outreach efforts, and adopted a policy that excluded residents from participating in a home ownership opportunity program for low-income and moderate-income households. It also failed to address its redlining risk, of which it was aware via third-party reports. Under the consent order, ESSA was required to invest almost $2.92 million in a loan subsidy fund and spend additional monies on community partnerships, as well as targeted advertising, outreach, consumer financial education, and credit counseling. In addition, the bank was required to hire two new loan officers to serve its branches in West Philadelphia.[47]

- *United States v. Park Nat'l Bank,* 2:23-cv-00822 (S.D. Ohio): The DOJ announced a $9 million settlement in 2023 resolving allegations that Park National Bank of Newark, Ohio engaged in redlining in the Columbus metropolitan area. The complaint alleged that, between 2015 and 2021, the bank avoided the provision of and discouraged home loans and other mortgage services in majority-Black and Hispanic neighborhoods. The consent order provided for a loan subsidy fund of at least $7.75, required the bank to partner with local service organizations, and required the bank to open a new branch and a new loan production office.[48]

- *United States v. City Nat'l Bank*, 2:23-cv-00204 (C.D. Cal): The DOJ announced a $31 million settlement in 2023 resolving redlining allegations against City National Bank—the largest bank headquartered in Los Angeles. The complaint alleged that, from 2017 through at least 2020, the bank avoided providing mortgage services to residents in majority-Black and Hispanic neighborhoods and discouraged them from obtaining loans. During the relevant time period, other banks received over six times as many applications per year in majority-Black and Hispanic neighborhoods in Los Angeles County than City National Bank. The consent order provided for a $29.5 million loan subsidy program, plus additional amounts for advertising and outreach, consumer financial education, and the development of community partnerships.[49]

- *United States v. Lakeland Bank*, 2:22-cv-05746 (D.N.J.): The DOJ entered into an agreement to resolve allegations that Lakeland Bank engaged in redlining in the Newark metropolitan area. The complaint alleged that, at least from 2015 through 2021, the bank avoided providing home loans and other services in majority-Black and Hispanic neighborhoods by having all of its branches outside of these neighborhoods, and largely excluding these areas from its advertising and outreach efforts. Although none of the loan officers at the branches in majority-white areas were assigned to target customers in majority-Black and Hispanic neighborhoods—and the bank knew for years that its

[47] *See United States v. ESSA Bank & Tr.,* No. 2:23-cv-02065 (E.D. Pa.), *available at* www.justice.gov.
[48] *See United States v. Park Nat'l Bank,* No. 2:23-cv-00822 (S.D. Ohio), *available at* www.justice.gov.
[49] *See United States v. City Nat'l Bank*, No. 2:23-cv-00204 (C.D. Cal), *available at* www.justice.gov.

branches were not serving the needs of those communities—it took no meaningful steps to address the disparity. As part of the $13 million settlement in 2022, the proposed consent order provided that the bank would invest a minimum of $12 million in a loan subsidy fund, dedicate $750,000 for advertising and outreach, and direct $400,000 toward community partnerships. In addition, the bank was required to open two new branches in neighborhoods of color and employ a full-time Community Development Officer who would oversee the development of the bank's lending practices in majority-Black and Hispanic census tracts in the Newark Area.[50]

- *CFPB & United States v. Trident Mortg. Co. LP*, 2:22-cv-02936 (E.D. Pa.): The CFPB and the DOJ's complaint alleged that Trident Mortgage Company engaged in a pattern and practice of redlining. The complaint alleged that, from at least 2015 through 2019, Trident avoided providing loans in majority-minority neighborhoods, located nearly all of its offices in white neighborhoods, had predominately white loan officers, and restricted its outreach and marketing activity to white neighborhoods, all while neglecting to place loan offices in or marketing to majority-minority areas. In 2022, the parties reached a $22 million dollar settlement. The consent order required Trident to create a loan subsidy program, participate in community education programs, open branches in majority-minority neighborhoods, partner with a community-based organization to provide home repair grants or foreclosure prevention services, and pay a $4 million dollar fine.[51]

- *United States v. Trustmark Nat'l Bank,* 2:21-cv-02664 (W.D. Tenn.): The CFPB and the DOJ, in concert with the Office of the Comptroller of the Currency, alleged that Trustmark National Bank structured its business and outreach to circumvent majority-Black-and-Hispanic neighborhoods in its residential mortgage lending, thereby discouraging residents from applying for credit. The consent order in 2021 provided that Trustmark would invest $3.85 million in a loan subsidy program, increase the bank's physical presence and expand its outreach efforts in those neighborhoods. It also provided that Trustmark would pay a $5 million penalty to the CFPB.[52]

- *United States v. Cadence Bank, N.A.*, 1:21-mi-9999 (N.D. Ga.): The DOJ alleged that from 2013 to 2017 Atlanta-based Cadence Bank violated federal law by locating almost all of its branches and loan officers in majority-white neighborhoods, focusing its advertising and marketing outreach in majority-white neighborhoods, and avoiding "majority-Black and Hispanic neighborhoods." The DOJ's consent order in 2021 provided that the bank will invest $4.17 million in a loan subsidy fund, $750,000 for

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[50] *See United States v. Lakeland Bank*, No. 2:22-cv-05746 (D.N.J.), *available at* www.justice.gov.

[51] Press Release, Consumer Fin. Prot. Bureau, CFPB, DOJ Order Trident Mortgage Company to Pay More Than $22 Million for Deliberate Discrimination Against Minority Families (July 27, 2022), *available at* www.consumerfinance.gov.

[52] *See* Consent Order, *United States v. Trustmark Nat'l Bank*, No. 2:21-cv-02664 (W.D. Tenn. Oct. 27, 2021), *available at* https://files.consumerfinance.gov.

community partnerships, and at least $625,000 toward advertising, outreach, consumer education, and credit repair initiatives. In addition, Cadence was required to open a full-service branch in a majority-Black and Hispanic census tract and assign four mortgage loan officers within that area to solicit mortgage applications from residents of majority-Black and Hispanic areas.[53]

- *United States & CFPB v. BancorpSouth Bank*, 16-cv-0118 (N.D. Miss.): The DOJ and CFPB alleged that BancorpSouth failed to provide its home mortgage lending services to majority-minority neighborhoods on an equal basis as it provided those services to predominantly white neighborhoods in the Memphis metropolitan area. In July 2016, the parties settled for a $3 million civil penalty, a $4 million loan subsidy program, at least $800,000 in advertising, outreach, and community partnership, and a $2.78 million settlement fund.[54]

- *United States v. Sage Bank*, 15-cv-13969 (D. Mass.): The DOJ alleged that Sage Bank engaged in discrimination on the basis of race and national origin in the pricing of its residential mortgage loans. In December 2015, the parties settled for monitoring, training, and a settlement fund of $1.175 million.[55]

- *CFPB v. Hudson City Savings Bank, F.S.B.*, 15-cv-7056 (D. N.J.): CFPB alleged that from 2009 to 2013, Hudson City failed to provide its home mortgage lending services to majority Black and Hispanic neighborhoods on an equal basis. In November 2015, the parties settled for a $25 million loan-subsidy fund, $2.25 million for advertising, outreach, financial education, and community partnership, opening two full-service branches in affected neighborhoods, and paying a further civil monetary penalty of $5.5 million.[56]

- *CFPB and United States v. Nat'l City Bank*, 13-cv-1817 (W.D. Pa.): CFPB and the DOJ alleged that between 2002 and 2008 National City Bank charged more than 75,000 Black and Hispanic borrowers higher loan prices not based on borrower risk, but because of their race or national origin. In December 2013, the parties settled for $35 million.[57]

- *United States v. Southport Bank*, 13-cv-1086 (E.D. Wis.): The DOJ alleged that from 2007 to 2008 Southport charged higher broker fees on wholesale mortgage loans made to

[53] *See United States v. Cadence Bank, N.A.*, No. 1:21-mi-9999 (N.D. Ga.), *available at* www.justice.gov.
[54] *See United States & CFPB v. BancorpSouth Bank*, 16-cv-0118 (N.D. Miss.), *available at* www.justice.gov.
[55] *See United States v. Sage Bank*, 15-cv-13969 (D. Mass.), *available at* www.justice.gov.
[56] *See CFPB and United States v. Hudson City Savings Bank, F.S.B.*, 15-cv-7056 (D. N.J.), *available at* www.justice.gov.
[57] *See CFPB and United States v. Nat'l City Bank*, 13-cv-1817 (W.D. Pa.), *available at* www.justice.gov.

Black and Hispanic borrowers as compared to non-Hispanic white borrowers. In October 2013, the parties settled for $687,000.[58]

- *United States v. Chevy Chase Bank, F.S.B.*, 13-cv-1214 (E.D. Va.): The DOJ alleged that Chevy Chase Bank charged elevated prices on mortgage loans made to Black and Hispanic borrowers. In September 2013, the parties settled for $2.85 million.[59]

- *United States v. Plaza Home Mortg.*, 13-cv-2327 (S.D. Cal.): The DOJ alleged that Plaza Home Mortgage charged Black and Hispanic borrowers higher fees than white borrowers on wholesale mortgage loans. In September 2013, the parties settled for $3 million, monitoring, fair lending training, and a community enrichment program.[60]

- *United States v. Cmty. State Bank*, 13-cv-10142 (E.D. Mich.): The DOJ alleged that Community State Bank of St. Charles Michigan served the credit needs of the residents of predominantly white neighborhoods in the Saginaw and Flint metropolitan areas to a significantly greater extent than it served the credit needs of majority Black neighborhoods. In January 2013, the parties settled for $165,000 and a nondiscrimination injunction.[61]

- *United States v. Luther Burbank Savings*, 12-cv-7809 (C.D. Cal.): The DOJ alleged that from 2006 to 2011 Luther Burbank Savings enforced a $400,000 minimum loan amount policy for its wholesale single-family residential mortgage loan program and originated very few single-family residential mortgage loans to Black or Hispanic borrowers throughout California. In September 2012, the parties settled for $2 million and a prohibition on establishing or implementing a $400,000 minimum loan amount policy.[62]

- *United States v. GFI Mortg. Bankers*, 12-cv-2502 (S.D.N.Y.): The DOJ alleged that GFI charged Black and Hispanic borrowers higher interest rates and fees on home mortgage loans because of their race or national origin, not based on their creditworthiness. In

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[58] *See United States v. Southport Bank*, 13-cv-1086 (E.D. Wis.), Oct. 11, 2013, *available at* www.justice.gov.

[59] *Justice Department Reaches Fair Lending Settlement with Chevy Chase Bank Resulting in $2.85 Million in Relief for Homeowners*, Sept. 30, 2013, https://www.justice.gov/opa/pr/justice-department-reaches-fair-lending-settlement-chevy-chase-bank-resulting-285-million.

[60] *Justice Department Reaches Settlement with Plaza Home Mortgage Inc. to Resolve Allegations of Mortgage Lending Discrimination*, Sept. 27, 2013, https://www.justice.gov/opa/pr/justice-department-reaches-settlement-plaza-home-mortgage-inc-resolve-allegations-mortgage.

[61] *Justice Department Reaches Settlement with Community State Bank Regarding Alleged Lending Discrimination in Michigan*, Jan. 15, 2013, https://www.justice.gov/opa/pr/justice-department-reaches-settlement-community-state-bank-regarding-alleged-lending.

[62] *Justice Department Reaches Settlement with Luther Burbank Savings to Resolve Allegations of Lending Discrimination in California*, Sept. 12, 2012, https://www.justice.gov/opa/pr/justice-department-reaches-settlement-luther-burbank-savings-resolve-allegations-lending.

August 2012, the parties settled for $3.55 million, compliance monitoring, revised lending, monitoring, and training policies, and a nondiscrimination injunction.[63]

- *United States v. Wells Fargo Bank, N.A.*, 12-cv-1150 (D.D.C.): The DOJ alleged that Wells Fargo engaged in pattern or practice of discrimination against qualified Black and Hispanic borrowers from 2004 to 2009. In July 2012, the parties settled for $184.3 million and an internal review of Wells Fargo's retail mortgage lending.[64]

- *United States v. SunTrust Mortg.*, 12-cv-0397 (E.D. Va.): The DOJ alleged that SunTrust engaged in a pattern or practice of discrimination that increased loan prices for many of the qualified Black and Hispanic borrowers who obtained loans between 2005 and 2009. In May 2012, the parties settled for $21 million.[65]

- *United States v. Midwest BankCentre*, 11-cv-1086 (E.D. Mo.): The DOJ alleged that Midwest BankCentre served the credit needs of the residents of predominantly white neighborhoods in the Missouri portion of the St. Louis metropolitan area to a significantly greater extent than it served the credit needs of majority Black neighborhoods. In April 2012, the parties settled for $1.45 million, the bank opening a full-service branch in a majority Black area, and fair lending training for its employees.[66]

- *United States v. Countrywide Fin. Corp.*, 11-cv-10540 (C.D. Cal.): The DOJ alleged that between 2004 and 2008 Countrywide discriminated by charging more than 200,000 Black and Hispanic borrowers higher fees and interest rates because of their race or national origin, and not because of the borrowers' creditworthiness or other objective criteria related to borrower risk. In December 2011, the parties settled for $335 million.[67]

- *United States v. C&F Mortg. Corp.*, 11-cv-0653 (E.D. Va.): The DOJ claimed that in 2007 C&F obtained higher prices on certain home-mortgage loans to Black and Hispanic borrowers than on loans to certain non-Hispanic white borrowers. In October 2011, the parties settled for $140,000, a nondiscrimination injunction, and monitoring.[68]

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[63] *United States v. GFI Mortg. Bankers*, 12-cv-2502 (S.D.N.Y.), Aug. 27, 2012, *available at* www.justice.gov.

[64] *Justice Department Reaches Settlement with Wells Fargo Resulting in More than $175 Million in Relief for Homeowners to Resolve Fair Lending Claims*, July 12, 2012, https://www.justice.gov/opa/pr/justice-department-reaches-settlement-wells-fargo-resulting-more-175-million-relief.

[65] *Justice Department Reaches $21 Million Settlement to Resolve Allegations of Lending Discrimination by SunTrust Mortgage*, May 31, 2012, https://www.justice.gov/opa/pr/justice-department-reaches-21-million-settlement-resolve-allegations-lending-discrimination.

[66] *Justice Department Reaches Settlement with Midwest BankCentre Regarding Alleged Lending Discrimination in St. Louis*, June 16, 2011, https://www.justice.gov/opa/pr/justice-department-reaches-settlement-midwest-bankcentre-regarding-alleged-lending.

[67] *Justice Department Reaches $335 Million Settlement to Resolve Allegations of Lending Discrimination by Countrywide Financial Corporation*, Dec. 21, 2011, https://www.justice.gov/opa/pr/justice-department-reaches-335-million-settlement-resolve-allegations-lending-discrimination.

[68] *United States v. C&F Mortg. Corp.*, 11-cv-653 (E.D. Va.), Oct. 4, 2011, *available at* www.justice.gov.

- *United States v. Primelending*, 10-cv-2494 (N.D. Tex.): The DOJ claimed that Primelending charged Black borrowers higher annual percentage rates of interest for certain fixed rate loans and loans insured by the Federal Housing Administration In January 2011, the parties settled for $2 million, a nondiscrimination injunction, and monitoring.[69]

- *United States v. AIG Fed. Savings Bank and Wilmington Fin.*, 10-cv-0178 (D. Del.): The DOJ alleged that AIG and Wilmington Finance violated federal discrimination laws when they charged higher fees on wholesale loans to Black borrowers nationwide between July 2003 and May 2006. In March 2010, the parties settled for $6.1 million, an investment of at least $1 million in consumer financial education efforts, and nondiscrimination injunction.[70]

- *United States v. First United Sec. Bank*, 09-cv-0644 (S.D. Ala.): The DOJ alleged discriminatory pricing and redlining. In November 2009, the parties settled for First United opening one new branch, investing $500,000 in a special financing program, and spending more than $110,000 for outreach, promotion, and education.[71]

- *United States v. Centier Bank*, 06-cv-0344 (N.D. Ind.): The DOJ alleged that Centier Bank avoided serving the lending and credit needs of majority minority neighborhoods in Gary, East Chicago, and Hammond. In October 2006, the parties settled for a minimum $3.5 million investment in a special financing program, at least $375,000 in targeted advertising, a $500,000 investment to provide credit counseling, financial literacy, business planning, and other related education programs, training, and reporting.[72]

- *United States v. First Am. Bank*, 04-cv-4585 (N.D. Ill.): The DOJ alleged that First American violated federal discrimination laws by redlining in the Chicago and Kankakee metropolitan neighborhoods. In July 2004, the parties settled for First American Bank opening four full-service branch offices, investing at least $300,000 for consumer education programs, spending at least $400,000 to advertise its products to minority communities, and investing $5 million in a special financing program for residents.[73]

- *United States v. Huntington Mortg. Co.*, 95-cv-2211 (N.D. Ohio): The DOJ alleged that Huntington Mortgage Co. charged African Americans higher upfront fees on home

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[69] *United States v. Primelending Inc.*, 10-cv-2494 (N.D. Tex.), Jan. 11, 2011, *available at* www.justice.gov.

[70] *United States v. AIG Fed. Savings Bank & Wilmington Fin., Inc.*, 10-cv-0178 (D. Del.), Mar. 19, 2010, *available at* www.justice.gov.

[71] *United States v. First United Sec. Bank*, 09-cv-0644 (S.D. Ala.), Nov. 18, 2009, *available at* www.justice.gov.

[72] *United States v. Centier Bank*, 06-cv-0344 (N.D. Ind.), Oct. 16, 2006, *available at* www.justice.gov.

[73] *United States v. First Am. Bank*, 04-cv-4585 (N.D. Ill.), July 19, 2004, *available at* www.justice.gov.

mortgages. In October 1995, the company agreed to create a $420,000 fund to compensate victims and change its policies.[74]

In addition to the federal government, states, cities and local governments have brought cases using disparate impact to redress the severe economic consequences of lending discrimination on their communities. The Supreme Court, in *Bank of Am. Corp. v. City of Miami, Fla.*, affirmed that a city has standing to sue as an "aggrieved person . . .[75] Like many major American cities, Miami bore the brunt of the fallout from the foreclosure crisis and sought to remedy the racially discriminatory lending practices that caused harm to its vulnerable communities and drained public resources.

The settlements below highlight some of the holistic solutions local governments sought to help citizens. The ability to bring disparate impact claims is critical for holding lenders accountable and for restoring some of the wealth that has been drained from communities and city coffers.

- *The People of the State of New York v. Evans Bancorp*, 14-cv-0726 (W.D.N.Y.): New York State alleged that Evans systematically denied its mortgages and services to Black residents of the Buffalo metro area by redlining from at least 2009 to the date of the filing of the suit. In September 2015, the parties settled, with Evans establishing an $825,000 settlement fund and a revision of its lending area to include areas previously excluded.[76]

- *Baltimore v. Wells Fargo Bank, N.A.*, 1:08-cv-00062-JFM (D. Md.): Baltimore alleged that Wells Fargo intentionally targeted the City's minority communities for predatory mortgage loans with discriminatory and unfair terms. Under its agreement with the City in 2012 and a related settlement between DOJ and Wells Fargo, the company would provide $4.5 million in direct down payment assistance, provide an additional $3 million for priority housing and foreclosure-related initiatives, and $425 million in prime mortgage loans in Baltimore over several years, $125 million of which would be in low- and moderate- income neighborhoods. As part of DOJ's settlement with Wells Fargo, the company also would provide $50 million in direct down payment assistance to borrowers in communities around the country, including Baltimore, where the Department identified large numbers of discrimination victims and which were hard hit by the housing crisis.[77]

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[74] *United States v. The Huntington Mortg. Co.*, 95-cv-2211 (N.D. Ohio), Oct. 18, 1995, *available at* www.justice.gov.

[75] 137 S. Ct. 1296 (2017). The court vacated and remanded the case to the Eleventh Circuit to determine the contours of the FHA's proximate cause requirement.

[76] *A.G. Schneiderman Secures Agreement with Evans Bank Ending Discriminatory Mortgage Redlining in Buffalo*, Sept. 10, 2015, https://ag.ny.gov/press-release/ag-schneiderman-secures-agreement-evans-bank-ending-discriminatory-mortgage-redlining.

[77] Press release (Jul. 12, 2012), *available at* https://mayor.baltimorecity.gov/news/press-releases/2012-07-12-mayor-rawlings-blake-department-justice-announce-settlement-wells.

Discrimination based on race, national origin and other factors in mortgage financing persists and is widespread. The ability of governments and private parties to bring enforcement actions against banks and other lenders that engage in a pattern or practice of discrimination with disparate impact claims is essential to obtaining redress for victims, restoring community resources used to support impacted citizens, and maintaining a competitive and fair mortgage market.

B. Disparate impact claims protect renters subject to abusive screening practices powered by artificial intelligence that use seemingly neutral variables to screen out applicants based on protected class status.

One of the most critical roles of the disparate impact standard is to prevent the use of discriminatory tenant screening criteria and algorithms to target protected classes for rejection from rental housing. The disparate impact standard is necessary to ensure that tenant screening tools are relevant, predictive, accurate, and appropriate.

Landlords in the United States almost always engage in some form of screening of rental applicants. This screening often involves reports or scores purchased from specialized tenant screening consumer reporting agencies (CRAs). The reports typically combine information about eviction filings, criminal records, and credit history. Often the reports include a score or recommendation based on these records.

Each of the main components of tenant screening reports is highly problematic and also creates a disparate impact on protected classes, particularly Black and Latino/Hispanic renters. These problems are discussed extensively in the former *HUD Tenant Screening Guidance* issued in April 2024.[78] They are also discussed in NCLC's report *Digital Denials*.[79] HUD is now ignoring a factual record it helped develop.

1. Credit history

The use of credit reports and scores in tenant screening is highly questionable. Credit scores are only designed to predict whether a borrower will be late on a loan obligation,[80] not whether they will pay their rent, which is a very different obligation. There is no definitive public

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[78] HUD, Guidance on the Application of the Fair Housing Act to the Screening of Applicants for Rental Housing (Apr. 29, 2024), https://archives.hud.gov/news/2024/FHEO_Guidance_on_Screening_of_Applicants_for_Rental_Housing.pdf ["HUD Tenant Screening Guidance"]. This guidance was presumably withdrawn in 2025 as part of the mass withdrawal of a number of HUD guidance documents. It is also available at https://library.nclc.org/companion-material/hud-fheo-guidance-application-fair-housing-act-screening-applicants-rental

[79] NCLC, Digital Denials: How Abuse, Bias, and Lack of Transparency in Tenant Screening Harm Renters (Sept. 2023), https://www.nclc.org/resources/digital-denials-how-abuse-bias-and-lack-of-transparency-in-tenant-screening-harm-renters/ ["Digital Denials"]

[80] Consumer Fin. Prot. Bureau, Key Dimensions and Processes in the U.S. Credit Reporting System: A Review of How the Nation's Largest Credit Bureaus Manage Consumer Data 10 (2012), https://files.consumerfinance.gov/f/201212_cfpb_credit-reporting-white-paper.pdf ("The most common credit scores rank the relative probability that a consumer will become 90 days delinquent on a new loan within two years.")

evidence that credit history predicts rental payment. The use of credit history also disproportionately shuts out Black and brown tenants from rental housing, because these communities as a group have lower credit scores likely due to the legacy of discrimination and racial wealth gaps.[81] As HUD itself noted:

> Overbroad screenings for credit history may have an unjustified discriminatory effect based on race or other protected characteristics. HUD is unaware of any studies showing that credit reports and scores accurately predict a successful tenancy, and as mentioned above they were not designed for this purpose. Many households prioritize paying the rent over other debts during times of financial hardship, yet their choice to do so—which should indicate they will continue to prioritize paying rent—is generally not considered in their favor in the credit history analysis.[82]

The *HUD Tenant Screening Guidance* also highlighted that the use of credit history may have a disparate impact on persons with disabilities, stating "individuals with disabilities are more likely to report they have a 'bad' or a 'very bad' credit score than individuals without disabilities."[83]

2. Eviction Records

The use of eviction records is problematic because they are plagued with inaccuracies, and they also include large racial disparities. Problems with inaccuracy include eviction records being reported on the wrong tenant's report; reporting of sealed or expunged records; and missing or incorrect dispositions/outcomes.[84] The *HUD Tenant Screening Guidance* discusses the unreliability of eviction court records, noting that 22% of the eviction records in a large study contained ambiguous information on how the case was resolved or falsely represented a tenant's eviction history.[85] The *Guidance* also notes "Black and Hispanic renters have eviction cases filed against them at higher rates than White renters" and "[e]ven though fewer than one in five renters are Black, over half of all eviction cases are filed against Black renters."[86] Persons with disabilities also are also disproportionately affected by evictions.[87]

The FHA disparate impact standard is critical in this context, because it prevents the use of inaccurate (and thus irrelevant) data that also causes racial disparities in which tenants are approved for housing. As the *HUD Tenant Screening Guidance* notes "screenings that have a discriminatory effect may not be considered legally justified if they are based on records rife

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[81] NCLC, Past Imperfect: How Credit Scores and Other Analytics "Bake In" and Perpetuate Past Discrimination (Feb. 27, 2024), https://www.nclc.org/resources/past-imperfect-how-credit-scores-and-other-analyticsbake-in-and-perpetuate-past-discrimination/

[82] HUD Tenant Screening Guidance at 17-18.

[83] *Id.* at 16.

[84] Digital Denials at 28-30.

[85] HUD Tenant Screening Guidance at 19 (citing Adam Porton, Ashley Gromis & Matthew Desmond, Inaccuracies in Eviction Records: Implications for Renters and Researchers, 31 Housing Policy Debate 377, 382 (2021)).

[86] HUD Tenant Screening Guidance at 19-20

[87] *Id.* at 20 ("renters with disabilities disproportionately report a high likelihood of being evicted in the next two months")

with inaccuracies."[88] And such a conclusion is not only legally justified – it is basic common sense and good public policy perspective to prevent the use of bad data that both harms renters from protected classes and is chock full of errors.

3. Criminal History

As with eviction records, the use of criminal records is problematic because the records are rife with errors and include large racial disparities. Errors on tenant screening reports include criminal records being reported on the wrong report, misclassified offenses, reporting of sealed or expunged records, reporting the same record multiple times on a single report, missing or incorrect disposition information, and reporting of old non-conviction records.[89]

The *HUD Tenant Screening Guidance* emphasized that people who have been involved in the criminal justice system are disproportionately Black and brown people and people with disabilities and that such disparities are explained by biases in the criminal justice system.[90] HUD also noted in another publication the lack of empirical data demonstrating that criminal background checks reliably predict the propensity of renters to skip rental payments, damage property, or disrupt neighborhoods.[91] Indeed, a growing body of evidence suggests that criminal records demonstrably do *not* possess such predictive value that might arguably justify their use in tenant screening.[92]

Renters of color are disproportionately harmed by the reporting of *accurate* criminal record information and are also impacted more frequently by *inaccurate* information. Latino, Asian, and Black renters face a disproportionately higher risk of reporting errors as compared to non-Latino white renters because these communities tend to have fewer unique surnames.[93]

The FHA disparate impact standard is critical in the criminal records context. It can prevent overbroad and inaccurate criminal records screenings that result in racial disparities in rental housing decisions.

4. Preventing Pretext

Finally, we note the importance of the disparate impact standard to prevent the use of seemingly "neutral" tenant screening criteria as a pretext to screen out tenants based on protected class basis. Eviction records, criminal history, and especially credit scores can be used as an excuse for a landlord to reject entire classes of renters. For example, landlords will often use

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[88] *Id.* at 11.

[89] Digital Denials at 36–38.

[90] HUD Tenant Screening Guidance at 21.

[91] Off. Of Pol'y Dev. & Rsch. Senior Leadership, U.S. Dep't of Housing and Urban Dev., Tenant Screening With Criminal Background Checks: Predictions And Perceptions Are Not Causality, PD&R Edge (May 17, 2022).

[92] Digital Denials at 33 n.79 (listing research).

[93] Digital Denials at 36, 37 & ns. 115–16.

credit history to screen out tenants with a housing voucher, despite state law protections against discrimination based on source of income in states such as California[94] and Massachusetts.[95]

For example, in *Louis v. SafeRent Solutions*, the plaintiffs alleged that a tenant screening company violated the Fair Housing Act because its algorithm disproportionately assigned lower tenant screening scores to Black and Hispanic rental applicants who have Housing Choice Vouchers, causing them to be denied housing. The plaintiffs claimed that this was due in part to SafeRent's use of credit history, which included non-tenancy debts.[96] The Department of Justice and HUD weighed in on the case, filing a Statement of Interest explaining the pleading standard for disparate impact claims.[97] The district court denied SafeRent's motion to dismiss, determining that disparate impact claims are actionable under the FHA and that the plaintiffs sufficiently pleaded such a claim.[98]

C. Disparate impact can effectively address fair housing and consumer protection concerns arising from use of Artificial Intelligence (AI) and other emerging technology in housing and credit.

Housing providers, insurers, and lenders use AI-driven technology in rental housing and property management services, residential real estate and related services, mortgages and mortgage broker services, home insurance and more.[99] Disparate impact plays a role in ensuring that use of this technology in housing and residential real estate related services is free of bias and discrimination, including in tenant screening as discussed above. A watering down of the standard would also make it easier for companies to evade responsibility for the harm they cause when building and deploying systems that cut consumers off from housing and mortgages.

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[94] *See* Robin Urevich, Credit History Remains an Obstacle for Section 8 Tenants, Despite Anti-Discrimination Law, Capital & Main, Dec. 17, 2025, https://capitalandmain.com/credit-history-remains-an-obstacle-for-section-8-tenants-despite-anti-discrimination-law ("Dennis Block, a Burbank-based attorney who represents landlords, noted in a June 2024 YouTube broadcast that he had long advised clients to use credit checks as a way to screen out tenants with Section 8 housing vouchers. 'All you have to do is run a credit check, and invariably, a Section 8 tenant is going to have poor credit,'").

[95] Digital Denials at 55-60 (quoting WBUR article discussing how former head of landlord association advised that "the state already legally allows people to reject applicants because of past evictions, poor credit scores and other factors. So he says it's easy enough for landlords who don't want Section 8 tenants to find some other legal excuse to turn them away.")

[96] Amended Complaint, Louis v. SafeRent Sols., LLC, 685 F. Supp. 3d 19 (D. Mass. 2023) (No. 15); *see also* Past Cases, Louis, et al. v. SafeRent Solutions, et al., CohenMilstein, https://www.cohenmilstein.com/case-study/louis-et-al-v-saferent-solutions-et-al/ (last visited Jan. 23, 2026).

[97] Statement of Interest of the United States, Louis v. SafeRent Sols., LLC, 685 F. Supp. 3d 19 (D. Mass. 2023) (No. 37).

[98] Louis v. SafeRent Sols., LLC, 685 F. Supp. 3d 19 (D. Mass. 2023).

[99] See U.S. Department of Housing and Urban Development, *Guidance on Application of the Fair Housing Act to Advertising of Housing, Credit, and Other Real Estate-Related Transactions through Digital Platforms*, April 29. 2024.

Concerns regarding redlining arise with respect to the marketing and advertising of housing. A well-documented example is Facebook's (now Meta) discriminatory ad targeting and ad delivery platform.[100] In 2016, ProPublica reported that Facebook not only allowed advertisers to target users based on their interests or background but also to exclude specific groups based on their race or ethnicity.[101] Following ProPublica's investigation, the National Fair Housing Alliance (NFHA) and other civil rights organizations sued, claiming that Facebook's advertising platform violated the Fair Housing Act. According to the complaint, "the stealth nature of Facebook's technology hides housing ads from entire groups of people," and "Facebook's algorithms can ensure exclusion and deny access to housing."[102] Facebook settled that case as well as other lawsuits alleging that its advertising platform enabled discrimination in 2019, agreeing that it would no longer permit advertisers to target ads based on protected classes or close proxies for protected classes.[103] In 2023, the DOJ also entered into a consent decree with Meta; the company agreed to put in place an auditing system to reduce bias in the delivery of ad campaigns.[104]

Civil rights organizations also sued Redfin for alleged digital redlining as the company offered no marketing service for homes in non-white areas at a greater rate than for homes in white areas due to a minimum loan amount policy.[105] The complaint alleged that Redfin digitally redlined communities of color by setting minimum home listing prices in each housing market on its website. The company did not offer services to buyers or sellers under this threshold.

HUD issued guidance to shape the advertisement of housing and credit for real-estate related transactions.[106] HUD noted that the newest technology can be used to target advertising toward some consumers and away from others. Whether done deliberately or through the operation of a complex automated systems, this ad-delivery system has the potential to cut

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[100] Louise Matsakis, *Facebook's Ad System Might be Hard-Coded for Discrimination*, Wired (Apr. 6, 2019), https://www.wired.com/story/facebooks-ad-system-discrimination/; Muhammad Ali, et al., *Discrimination through Optimization: How Facebook's Ad Delivery Can Lead to Biased Outcomes*, 3 Proceedings of the ACM on Human-Computer Interaction, Nov. 2019, at 199:2, https://www.ccs.neu.edu/~amislove/publications/FacebookDelivery-CSCW.pdf.

[101] Julia Angwin & Terry Parris Jr., *Facebook Lets Advertisers Exclude Users by Race*, ProPublica (Oct. 28, 2016), https://www.propublica.org/article/facebook-lets-advertisers-exclude-users-by-race.

[102] Complaint ¶ 5, Nat'l Fair Hous. All. v. Facebook, Inc., No. 1:18-CV-02689 (S.D.N.Y. Mar. 27, 2018), ECF No. 1; *see also* Valerie Schneider, *Locked Out by Big Data: How Big Data, Algorithms and Machine Learning May Undermine Housing Justice*, 52 Colum. Hum. Rts. L. Rev. 251, 287–88 (2020).

[103] Valerie Schneider, *Locked Out by Big Data: How Big Data, Algorithms and Machine Learning May Undermine Housing Justice*, 52 Colum. Hum. Rts. L. Rev. 251, 288–89 (2020).

[104] DOJ Press Release June 22, 2022, available at https://www.justice.gov/opa/pr/justice-department-secures-groundbreaking-settlement-agreement-meta-platforms-formerly-known.

[105] NFHA, Our Redfin Investigation, available at https://nationalfairhousing.org/issue/redfin-investigation/.

[106] U.S. Department of Housing and Urban Development, *Guidance on Application of the Fair Housing Act to Advertising of Housing, Credit, and Other Real Estate-Related Transactions through Digital Platforms*, April 29. 2024 available at

certain consumers off from housing and credit.[107] This occurs when targeted ads deny people information about housing opportunities, target certain groups for predatory products or services, discourage or deter potential buyers or renters, advertise different prices or conditions to different kinds of people, steer home-seekers to particular neighborhoods, or charge advertisers higher amounts to show ads to some people.[108] Such discriminatory advertising practices may violate the Fair Housing Act when they distinguish along the categories addressed in the FHA.

Aside from the housing market, serious concerns arise regarding lenders' use of AI in the advertising, marketing, underwriting and pricing of credit, evaluation of collateral, customer service, servicing and collections. Hyper targeted online marketing of mortgages and other financial products poses many of the risks identified by HUD, namely steering and digital redlining. These data-driven AI models make it easier for lenders to finely target the audience for their online marketing campaigns. This may put some consumers at a disadvantage if, instead of being shown a wide array of competitively priced mortgage options, they are steered to high-cost, subprime products.[109] Digital redlining may also occur if lenders do not provide equal access to credit or provide credit on unequal terms based on race, color, national origin, or neighborhood.[110] Targeting consumers based on detailed information about their online habits, preferences and financial patterns, geolocation, and other data may result in both digital redlining and steering of people historically discriminated against to high-cost credit.

Discrimination may also occur in the pricing of credit. One study found that AI-driven models increased disparities in interest rates, especially for Black and Hispanic borrowers.[111] Another study found that fintech lenders reduced but did not erase discriminatory lending patterns with respect to the pricing of loans.[112] Latino and Black borrowers paid 7.9 and 3.6 basis points more in interest for home purchase and refinance mortgages respectively because of discrimination. This represented 11.5% of lenders' average profit per loan.[113]

Use of AI can amplify discriminatory behavior in the housing and mortgage market, increases costs to consumers, and creates barriers to affordable housing. Disparate impact can be used to combat the fair lending and consumer protection risks posed by these models so that

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[107] *See id*.

[108] *See id.* at 2.

[109] *See* Carol Evans, Board of Governors of the Federal Reserve System, *From Catalog to Clicks, The Fair Lending Implications of Targeted, Internet Marketing*, Consumer Compliance Outlook (Second Issue 2017) at 4; Amit Datta et al. *Automated Experiments on Ad Privacy Settings: A Tale of Opacity, Choice, and Discrimination*, Cornell Univ., (2015) available at https://arxiv.org/abs/1408.6491.

[110] See Carol Evans, Board of Governors of the Federal Reserve System, *From Catalog to Clicks, The Fair Lending Implications of Targeted, Internet Marketing*, Consumer Compliance Outlook (Second Issue 2017) at 4.

[111] *See* Andreas Fuster, Paul Goldsmith-Pinkham, Tarun Ramadorai, and Ansgar Walther, *Predictably Unequal? The Effects of Machine Learning on Credit Markets* at 36 (Oct. 2020) (Technology penalizes some minority groups significantly by giving them higher and more disperse interest rates), *available at* https://ssrn.com/abstract=3072038..

[112] Robert Bartlett, Adair Morse, et al., *Consumer Lending Discrimination in the Fintech Era, National Bureau of Economic Research*, Working Paper 25943, June 2019.

[113] *Id.*

discriminatory housing practices do not go unrecognized and unchallenged. Now is not the time to remove the disparate impact framework and water down protections for consumers, given the speed and rate of adoption of this technology by the industry. Rather, it is crucial to keep the robust regulatory scheme, centered on disparate impact, to protect consumers from the risk this technology poses.

IV. The 30-day comment period is unjustified, unwarranted, and insufficient to outline the harm that will be done to victims of discrimination under the proposed rule.

HUD imposes a truncated 30-day comment window because HUD has determined, without any factual support, "that it is in the public interest to remove HUD's disparate impact regulations as expeditiously as possible."[114] Thirty days is an exceedingly short amount of time for interested parties to digest and respond to a proposed rule of this significance, bringing forth all relevant evidence that should be put into the agency record. The Administrative Procedure Act 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 or complex regulations, a 30-day comment period is typically insufficient to allow for meaningful public participation. Longstanding executive orders on regulatory review have also specified that in order to "afford the public a meaningful opportunity to comment" on a proposed regulation, a comment period should generally be at least 60 days.[115] There is no valid reason in this instance why the agency could not have provided stakeholders at least the customary 60-day comment period, given the drastic nature of the changes proposed.

HUD asserts that an abbreviated comment period is appropriate because disparate impact under the Fair Housing Act has been the subject of multiple comment periods over the past few years. However, in none of those prior instances has the agency proposed to entirely remove its disparate impact regulations, and so there has been no prior opportunity to comment on the actual proposal at issue here. There has been no prior opportunity to react to the proposed regulatory action at issue in this rulemaking, and the truncated 30-day comment period is not sufficient time for interested parties to have a meaningful opportunity to submit relevant information into the public record.

[114] 91 Fed. Reg. at 1477.

[115] Executive Order 12866, 58 Fed. Reg. 190 (1993); *see also* Executive Order 12,044, 43 Fed. Reg. 12,661 (Mar. 24, 1978) (which set a minimum comment period of sixty days for all federal agencies).

V. No factual nor legal basis exists to justify removing the disparate impact framework from HUD regulations, and HUD's existing regulation carries persuasive weight.

HUD has not described any factual reason for removing the disparate impact standard from its regulations. It does not posit that any change in circumstances has occurred since 2013 making the framework less suited than it was when the agency adopted it. Indeed, there have been no changes to the housing marketplace between 2013 and the present that would justify removing the disparate impact standard from regulations. Of course, the agency does not seek any factual information in its request for public comments because it does not purport to base this rulemaking on changed facts.

Rather, HUD asserts that "case law continues to develop and HUD's regulation does not provide an up-to-date picture of the legal landscape."[116] Yet it points to no case law that conflicts with HUD's existing disparate impact regulation. On the contrary, four decades of case law have confirmed the existence of disparate impact liability under the Fair Housing Act and the burden shifting framework for establishing it, including every circuit to consider the issue[117] as well as the U.S. Supreme Court in *Inclusive Communities*.[118]

HUD's existing 2013 regulation on disparate impact provides the necessary guidance on how to apply the clear legal authority on disparate impact, avoiding a patchwork of different applications or approaches. HUD's well-reasoned, factually supported guidance helps to provide consistency and clear guideposts within the marketplace. Housing industry players will face greater confusion and uncertain litigation risk if the 2013 rule is revoked. Compliance systems that have been created under this system and operating well may be called into question.

HUD incorrectly asserts that, "according to the Supreme Court's decision in *Loper Bright Enterprises v. Raimondo* ('*Loper Bright*'), federal agency interpretations of statutes and agency actions that rely on them do not receive any judicial deference."[119] On the contrary, *Loper Bright* overruled one form of deference in particular circumstances, but cited the form of deference applied in *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944), with approval.[120] As *Loper Bright*

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[116] 91 Fed. Reg. at 1476.

[117] *See* Graoch Assocs. #33, Ltd. P'ship v. Louisville/Jefferson Cty. Metro Human Relations Comm'n, 508 F.3d 366 (6th Cir. 2007); Cox v. City of Dallas, 430 F.3d 734, 746 (5th Cir. 2005); Langlois v. Abington Hous. Auth., 207 F.3d 43 (1st Cir. 2000); Simms v. First Gibraltar Bank, 83 F.3d 1546, 1555 (5th Cir. 1996); Mountain Side Mobile Estates P'ship v. Sec'y of Hous. & Urban Dev., 56 F.3d 1243 (10th Cir. 1995); Jackson v. Okaloosa County, 21 F.3d 1531, 1543 (11th Cir. 1994); United States v. Badgett, 976 F.2d 1176, 1179 (8th Cir. 1992); Keith v. Volpe, 858 F.2d 467, 484 (9th Cir. 1988); Huntington Branch, NAACP v. Town of Huntington, 844 F.2d 926 (2d Cir. 1988), *aff'd*, 488 U.S. 15 (1988); Arthur v. City of Toledo, 782 F.2d 565, 575 (6th Cir. 1986); Smith v. Town of Clarkton, 682 F.2d 1055, 1065 (4th Cir. 1982); Resident Advisory Bd. v. Rizzo, 564 F.2d 126, 147–148 (3d Cir. 1977); Metro. Hous. Dev. Corp. v. Vill. of Arlington Heights (*Arlington Heights II*), 558 F.2d 1283, 1289 (7th Cir. 1977).

[118] 576 U.S. 519 (2015).

[119] 91 Fed. Reg. at 1476.

[120] *See, e.g.*, *Loper Bright*, 603 U.S. at 402.

explains, courts can benefit from an agency's expertise; as a result, agency interpretations have persuasive value and should be accorded "due respect."[121] Moreover, courts are required to "respect" Congressional delegations of authority to agencies and only define the outer statutory limits of this delegated authority.[122] In the Fair Housing Act, Congress delegated to HUD the authority to make rules to carry out the purposes of the act.[123] Pursuant to the premise of *Loper Bright*, HUD's 2013 regulation provides valuable persuasive authority for the courts, as it is based on fact-finding, agency action supported by "factual premises within [the agency's] expertise."[124] The present exercise, based on no fact-finding nor any particular expertise within the agency, carries no such weight.

HUD's 2013 disparate impact standard remains factually supported, well-formulated, and entitled to persuasive weight. There is no valid reason to remove it.

VI. Conclusion

The Fair Housing Act's mandate to eliminate housing discrimination, end residential segregation, and promote integrated and inclusive communities is vital in today's marketplace. HUD has the authority and responsibility for administering and enforcing the Act. The existing discriminatory effects framework has been used effectively and consistently by advocates and governments to challenge a wide range of discriminatory housing practices. HUD should recommit to aggressively enforcing the Act's provisions and protecting people against discrimination.

If you have any questions, please contact Odette Williamson, Staff Attorney, National Consumer Law Center, at owilliamson@nclc.org.

Sincerely,

National Consumer Law Center (on behalf of its low-income clients)

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[121] *Id.* at 402-403 (citing *Skidmore*, 323 U.S. at 140 and other cases).

[122] *Id.* at 394-95 ("In a case involving an agency, of course, the statute's meaning may well be that the agency is authorized to exercise a degree of discretion. Congress has often enacted such statutes."), *id.* at 404 ("That is not to say that Congress cannot or does not confer discretionary authority on agencies. Congress may do so, subject to constitutional limits, and it often has. But to stay out of discretionary policymaking left to the political branches, judges need only fulfill their obligations under the APA to independently identify and respect such delegations of authority, police the outer statutory boundaries of those delegations, and ensure that agencies exercise their discretion consistent with the APA.").

[123] 42 U.S.C. 3614a.

[124] *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944); *see also Loper Bright*, 603 U.S. at 394-95, 402-04.