February 13, 2026

<u>SUBMITTED VIA WWW.REGULATIONS.GOV</u>

Office of the General Counsel
Rules Docket Clerk
Department of Housing and Urban Development
451 Seventh Street SW, Room 10276
Washington, DC 20410-0500

Re: Comment in Response to HUD's Implementation of the Fair Housing Act's Disparate Impact Standard, HUD Docket No. FR-6540-P-01

To Whom It May Concern:

Housing Opportunities Made Equal of Virginia ("HOME") submits this comment in response to the Department of Housing and Urban Development's ("HUD") Implementation of the Fair Housing Act's Disparate Impact Standard, which was published in the Federal Register on January 14, 2026 (RIN 2529-AB09; HUD Docket No. FR-6540-P-01) ("Proposed Rule"). The existing Disparate Impact Rule is a critical tool in addressing policies and practices that appear neutral on their face but have an unjustified and discriminatory impact on members of protected groups. The Proposed Rule will undermine longstanding protections against the most invidious and pervasive forms of housing discrimination, impose significant costs, burdens, and barriers to fair housing enforcement, and effectively deny access to HUD's administrative process for victims of disparate-impact discrimination. We strongly oppose any changes to HUD's current Disparate Impact Rule.

HOME is a non-profit fair housing organization based in Richmond, Virginia. HOME was founded in 1971 out of necessity to enforce the Fair Housing Act and was Virginia's first fair housing organization. HOME tackles systemically divisive housing practices through fair housing enforcement, research, advocacy, and statewide policy work. HOME also aids first-time homebuyers, homeowners under the threat of foreclosure, and housing choice voucher holders seeking fit and habitable housing in communities of opportunity. HOME seeks to achieve equal access to housing and credit to close the growing wealth gap. HOME has an established track record of developing and implementing substantive fair housing projects, collaborations, legal challenges, and publications throughout its history. Over the past fifty years, HOME's litigation and advocacy enforcing fair housing laws have been pivotal in both Virginia and nationwide. In 1982, HOME brought a racial steering case, which resulted in the Supreme Court's landmark decision in *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982), which held that testers and fair housing organizations have standing to sue under the Fair Housing Act.

HOME's multifaceted approach is a powerful catalyst toward eradicating housing discrimination and advancing access to housing opportunity and focuses on three key areas. First, HOME enforces federal and state fair housing laws by investigating instances of discrimination in the housing industry and filing administrative complaints as well as lawsuits. Second, HOME provides outreach and education with individual counseling to Virginia residents, assisting first-time homebuyers and those under the threat of foreclosure. HOME's Move to Opportunity Program aids those with Housing Choice Vouchers with their housing search and provides guidance throughout the leasing process. HOME is also a credible source of housing-related research, studying trends that emerge from fair housing complaints and investigations, which impact HOME's strategic approach, raise public awareness and inform local and state laws. Lastly, HOME engages in policy advocacy, working closely with legislators to champion fair housing laws.

Disparate impact is a necessary tool that HOME uses to challenge the structural inequalities that persist in housing. Protecting access to housing opportunities for historically marginalized and otherwise vulnerable communities is central to HUD's statutory mandate and obligations. HOME regularly relies on HUD's existing disparate impact standards and administrative complaint process to address complaints of disparate impact housing discrimination, particularly in cases where HOME would benefit from HUD's resources and expertise in investigating systemic forms of discrimination and conducting the required analyses required in disparate impact cases. The Proposed Rule is unclear as to the liability standards that HUD would apply to disparate impact complaints it receives and reflects this administration's abandonment of longstanding disparate impact protections in fair housing. For the reasons below, HOME urges HUD to rescind its Proposed Rule and preserve existing protections against unjust housing discrimination.

I. HUD's Proposed Rule Threatens to Undermine Longstanding and Well-Established Protections Against Disparate-Impact Discrimination in Housing.

Housing discrimination and residential segregation remain a pervasive issue in the communities that we serve. Housing segregation is imbedded in Virginia's history as the result of past and present discriminatory policies and practices and continues to contribute to unequal housing conditions and opportunities for Virginia residents. Minority home seekers face discrimination that leads individuals to fewer and/or poorer-quality housing options. In addition to resulting in inequities in access to affordable and high-quality housing, past and present underinvestment in the resulting segregated neighborhoods by local government, insurers, lenders and others negatively impacts other socio-economic outcomes. This underinvestment hampers access to education and public resources, physical and mental health, and secure employment opportunities. HOME's work with clients, along with its own research, has demonstrated that systemic discrimination and starvation of resources has resulted in racially segregated neighborhoods having a significantly higher rate of housing code violations, with major implications for health and safety of individuals and families. Disparate-impact liability is especially critical to combatting many of the discriminatory policies and practices that are rampant in HOME's service area, including some of the following:

- **Overbroad Restrictions on Prior Criminal and/or Eviction History**

Some landlords and companies maintain unlawful and overly restrictive criminal background screening policies, such as policies that automatically bar anyone with a prior conviction from renting housing. These overbroad policies categorically shut applicants out of housing without regard to the age or nature of the past convictions. Because of racial disparities among people with criminal records, automatic bans based on convictions or other criminal history bans have a disparate impact on Black and Latinx applicants.[1] After investigating one such overbroad criminal records policy implemented at a company's five Virginia-based properties, HOME relied on disparate impact liability to bring a federal action seeking a declaration that the policy was illegal and to require critical changes to the policy to ensure the company provides individualized consideration to applicants.[2] HOME reached a settlement with the defendant, in which it agreed to amend its criminal records screening policy to limit the potential discriminatory impact on Black and Latinx applicants.[3]

- **Source-of-Income Discrimination**

Rental policies that categorically disqualify individuals using rental assistance, like Housing Choice Vouchers, from applying, have a discriminatory effect that exclude people of color, women, families with children, and people with disabilities. 10.2 million people in 5.2 million American households use federal rental assistance; a 2017 HUD report surveyed that Housing Choice Voucher holder heads-of-households were 48.5% Black, 17.3% Latinx, 79.3% female, and 43.6% disabled.[4] Many courts have recognized that the Fair Housing Act protects against source-of-income discrimination due to the disparate impact it has on people of color, single mothers, and people with disabilities.[5] HOME has relied on disparate impact liability in filing numerous federal actions and administrative complaints[6] alleging claims related to the treatment of prospective tenants using Housing Choice Vouchers and has settled with defendants, who have agreed to undertake additional training for their employees and to provide accurate information concerning housing vouchers on their websites.

- **Overly Restrictive Occupancy Requirements**

Familial status is a protected class under the Fair Housing Act. Familial status, or families with children, includes anyone who has legal custody of children under 18, including biological parents, stepparents, foster parents, grandparents, or other relatives or guardians.[7] It applies to anyone expecting children, such as pregnant women or individuals in the process of adopting a child. It is illegal to refuse to rent or to change rental conditions for families because they have children. Overly restrictive occupancy requirements, for example, may violate the Fair Housing Act where they disproportionately exclude families with children without justification. After

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[1] Yvette N.A. Pappoe, *The Scarlet Letter "E": How Tenancy Screening Policies Exacerbate Housing Inequity for Evicted Black Women*, 103 B.U. L. REV. 269, 272 (Feb. 2023) (citing Rebecca Oyama, *Do Not (Re)enter: The Rise of Criminal Background Tenant Screening as a Violation of the Fair Housing Act*, 15 MICH. J. RACE & L. 181, 186 (2009)).

[2] *Kniaz, et al. v. Kay Mgmt. Co., et al.*, 19-cv-1343 (E.D. Va. 2019).

[3] *See* HOME, Kay Management Company, and Former Tenants Reach Settlement Regarding Criminal Background Screening Policy that HOME Alleged Disproportionately Excluded Black and Latinx Housing Applicants, (July 16, 2020), https://homeofva.org/wp-content/uploads/2020/07/Kay-Management-Settlement-Press-Release_7.16.20.pdf.

[4] HOME, Source of Funds, https://homeofva.org/get-help/fair-housing/source-of-funds/ (last visited January 29, 2026).

[5] *See generally* Robert G. Schwemm, *Source-of-Income Discrimination And The Fair Housing Act*, 70 CASE W. RES. L. REV. 573 (Spring 2020).

[6] *HOME v. College Square VA Beach Apartments, LLC, et al.*, 24-cv-154 (E.D. Va. 2024); *HOME v. Sylvan Homes, LLC*, 24-cv-212 (E.D. Va. 2024); *Mustamandi v. Lerner Corporation,* HUD Case no. 03-25-5469-8 (FHEO); *Purvis v. ,* FHB File No. 2026-00625 (Virginia Fair Housing Office).

[7] *See* HOME, Familial Status, https://homeofva.org/get-help/fair-housing/familial-status/ (last visited Jan. 30, 2026).

conducting a fair housing investigation, HOME filed a lawsuit on behalf of a client who was denied the opportunity to rent an apartment because the owner refused to rent to families with children.[8] HOME also reached a global settlement with the defendants after filing a fair housing complaint with the Virginia Fair Housing Office alleging that defendants violated federal and state fair housing and civil rights laws by not renting to families with children.[9] The settlement opened homes to families with children in the Richmond region that were not previously available and required defendants to develop a non-discriminatory policy and distribute the policy to staff, agents, and current tenants, and undergo a period of compliance by the Virginia Fair Housing Office.

- **Emergency Transfers**

Domestic violence survivors sometimes face obstacles from property owners and housing providers when they request emergency transfers within housing units to escape abuse. Advocates have relied on HUD's existing Disparate Impact Rule to advocate against the failure to grant these requests, often resulting in the adoption of new policies that ensure that survivors who are in danger may request emergency transfers.[10]

- **Crime-Free Housing Policies and Nuisance Ordinances**

Some landlords and housing providers evict or threaten to evict tenants based on "one-strike" or "crime-free" policies based on alleged criminal activity.[11] In many jurisdictions, nuisance ordinances coerce landlords to evict or threaten to evict households based on calls for police assistance or emergency services, disproportionately harming domestic violence victims, people with disabilities, and communities of color.[12] In Virginia, HOME has investigated a locality that sent letters demanding that landlords evict tenants upon their mere arrest for drug crimes, without a conviction. HOME's research showed that Black residents of that locality were three times more likely to be arrested for a drug offense in that locality than White residents, even though research shows that those populations use drugs at similar rates. HOME has alerted the locality to this racially discriminatory practice and demanded that it cease.

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[8] *HOME v. Everett*, 22-cv-174 (E.D. Va. 2022).

[9] *See* HOME, VC Solutions LLC and The Coleman Group LLC Pay $67K To Settle Alleged Violations of Fair Housing Protections for Families with Children, (last visited January 29, 2026), https://homeofva.org/wp-content/uploads/2022/12/VC-Solutions-Coleman-Press-Release-12-13-22.pdf.

[10] *See Blackwell v. H.A. Hous. LP,* Civil Action No. 05-cv-01225-LTB-CBS (D. Colo. 2005) (prohibiting discrimination against survivors of domestic violence and allowing them to request an emergency transfer when in imminent danger).

[11] *See, generally*, *Warren v. Ypsilanti Hous. Auth.*, Case No. 4:02-cv-40034 (E.D. Mich. 2003) (defendant agreed to cease evicting survivors of domestic violence under its "one-strike policy").

[12] *See, e.g.*, American Civil Liberties Union & New York Civil Liberties Union, *More Than a Nuisance: The Outsized Consequences of New York's Nuisance Ordinances* (2018), https://www.nyclu.org/sites/default/files/field_documents/nyclu_nuisancereport_20180809.pdf; U.S. Dep't of Housing & Urban Development, *Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Enforcement of Local Nuisance and Crime-Free Housing Ordinances Against Victims of Domestic Violence, Other Crime Victims, and Others Who Require Police or Emergency* (2016), available at https://www.hud.gov/sites/documents/FINALNUISANCEORDGDNCE.PDF.

Additionally, HOME has represented several recovery home operators, including one in federal court, seeking to enjoin localities that unfairly use their local zoning and building codes to prevent individuals facing recovery from substance abuse from residing in their areas. These discriminatory practices lead to limited or nonexistent supportive housing opportunities for people with substance use disabilities, despite the pervasive nature of this public health issue following the opioid crisis.

HUD's Proposed Rule will undermine a critical tool for challenging these pervasive and unjust forms of housing discrimination and increase barriers to fair housing opportunities for historically marginalized and vulnerable communities.

II. The Proposed Rule Will Impair Existing Fair Housing Efforts and Deny Access to HUD's Administrative Process for Disparate-Impact Discrimination Claims.

HUD's existing Disparate Impact Rule sets forth a clear and straightforward burden-shifting framework that is consistent with decades of legal precedent, including the Supreme Court's decision in *Texas Department of Housing and Community Affairs v. Inclusive Communities Project*, 576 U.S. 519 (2015), and provides important guidance and clarity to complainants and regulated entities on the appropriate standards applied by HUD in its administrative enforcement.[13] The Proposed Rule's rescission of HUD's existing disparate-impact legal standards not only threatens to undermine a critical tool to challenging systemic discrimination and residential segregation, but also will inflict significant costs and burdens on HOME and directly impair our ability to carry out fair housing enforcement, public education and training, and other core activities in the communities that we serve.

Disparate-impact liability is an important tool in our work, and HOME has long relied on HUD's existing Disparate Impact Rule in fulfilling our mission and carrying out our core activities, as illustrated above. If the Proposed Rule were to become final, victims of housing discrimination would likely be chilled from reporting discrimination, interfering with our ability to provide fair housing education, counseling, and legal representation. The Proposed Rule sends the message that HUD is not interested in disparate impact claims, making it less likely that individuals will report or pursue legal challenges when such discrimination occurs. HOME will have to divert additional resources to uncovering and investigating disparate impact discrimination in housing at the expense of its existing and planned activities.

HOME also has major concerns that HUD will decline to investigate complaints alleging disparate impact discrimination. Importantly, the Proposed Rule's potential loss of administrative avenues for Fair Housing Act disparate impact enforcement would make HOME's enforcement efforts more difficult and burdensome and interfere with its ability to carry out its planned programs and activities. Without HUD's commitment to enforcing disparate impact protections, for example, HOME may be required to hire statistical experts to assist with gathering and analyzing data sets, spend additional time on requesting information and corresponding with respondents, and spend additional time on outreach to potential legal counsel for matters that

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[13] *See Prop. Cas. Insurers Ass'n of Am. v. Donovan*, 66 F. Supp. 3d 1018, 1053 (N.D. Ill. 2014) ("HUD's framework is largely consistent with the framework courts have developed on their own for analyzing disparate impact claims.").

they aren't able to accept. HOME may be forced to forgo disparate impact cases that we might otherwise pursue due to HUD's rescission of its disparate impact standards. HOME also may face greater challenges negotiating settlements and other positive resolutions with respondents—including respondents who feel emboldened to maintain policies that have a discriminatory effect as a result of HUD's rescission of its disparate impact standards. Without the clarity of HUD's disparate impact standards and commitment to enforce such protections through the administrative process, HOME may face greater challenges to persuading housing providers and landlords to come to the table. This will also lead to greater costs and burdens for housing providers and other covered entities, including difficulties navigating regulatory compliance in the absence of a clear and uniform standard, as well as increased costs associated with defending against litigation (especially in successful cases, where certain costs and fees will be passed onto respondent or defendant housing providers). Finally, HOME may be forced to restructure existing organizing and outreach projects that address forms of disparate impact discrimination, such as our Move to Opportunity program, which assists people with Housing Choice Vouchers to rent housing.

By rescinding HUD's existing disparate-impact standards and effectively denying access to HUD's administrative process for disparate-impact discrimination, the Proposed Rule will inflict significant costs and burdens on HOME and directly interfere with our ability to effectively perform our core activities in many ways. These impacts are especially clear based on HUD Secretary Scott Turner's recent public statements that the Proposed Rule will "end the agency's use of disparate-impact theory in fair housing and related civil rights enforcement."[14]

For these reasons, HOME urges HUD to immediately withdraw the Proposed Rule and instead preserve its existing Disparate Impact Rule that helps to ensure access to affordable housing opportunities for all.

Please do not hesitate to contact us to provide further information.

Sincerely,

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[14] Scott Turner, National Review, Jan. 19, 2026, https://www.nationalreview.com/2026/01/its-time-to-ditch-disparate-impact-theory-and-bidens-weaponization-of-civil-rights-law/.