February 13, 2026

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

RE: Docket No. FR-6540-P-01, HUD's Implementation of the Fair Housing Act's Disparate Impact Standard

To Whom It May Concern:

Enterprise Community Partners (Enterprise), Housing Partnership Network (HPN), Local Initiatives Support Corporation (LISC), National Housing Trust (NHT), and Stewards of Affordable Housing for the Future (SAHF) appreciate the opportunity to provide comments on the proposed rule removing HUD's Fair Housing Act's (Act) disparate impact regulations.

Our organizations collectively represent and support mission-driven nonprofit housing providers, lenders, intermediaries, and community development organizations operating across all 50 states, the District of Columbia, Puerto Rico and the U.S. Virgin Islands. Through development, ownership, financing, technical assistance, and policy engagement, we work daily to expand and preserve affordable housing so that everyone can access affordable homes in thriving communities.

With this context, we offer the following comments.

I. Upholding the Fair Housing Act Requires a Clear and Workable Regulatory Framework

The Fair Housing Act prohibits not only intentional discriminatory acts but also facially neutral policies that limit housing opportunities to protected classes. This dual protection is foundational to the Act's purpose: to prevent and eliminate housing discrimination**.**

Federal law directs the Secretary of HUD to enforce the Fair Housing Act under 42 U.S.C. §3608, and a regulatory framework is essential to doing so effectively. Clear regulations provide consistency, transparency, and predictability for housing providers, jurisdictions, lenders, and the communities they serve. They also support fair and even-handed enforcement by HUD and help entities understand their obligations under the law. HUD's proposal to remove its disparate impact regulations entirely undermines this clarity.

The current Disparate Impact rule is also consistent with the 2015 Supreme Court decision, *Texas Department of Housing and Community Affairs v. Inclusive Communities Project*, 135 S. Ct. 2507. Rescinding HUD's regulatory framework now would upend a decade's worth of local efforts to implement the court's interpretation and create uncertainty about how HUD will evaluate discriminatory effects in enforcement actions, investigations, and program oversight in the future. That uncertainty benefits neither housing providers seeking to comply with the law nor individuals and communities relying on HUD to uphold it.

Importantly, the existence of regulations implementing disparate impact liability does not expand the scope of the Fair Housing Act beyond what Congress and the courts have established. Rather, these regulations reflect longstanding legal principles and provide guidance on how HUD will administer and enforce the Act in practice.

II. Regulatory Guidance Is Necessary to Address Systemic and Structural Discrimination

Many of the most persistent fair housing challenges today arise from policies and practices that produce unequal outcomes and limit housing choice for protected classes. Without a meaningful framework for evaluating discriminatory effects, these systemic barriers are far less likely to be identified or remedied. Through our work, we routinely see how facially neutral policies can restrict access to housing for protected classes, including but not limited to:

- Eligibility standards that disproportionately screen out families with children, people with disabilities, or households relying on non-traditional income sources;
- Zoning and land-use policies that raise housing costs, exclude affordable housing types, and limit access to housing, job, and transportation options;
- Housing provider rules that have unequal impacts on protected classes without advancing necessary or proportionate objectives; and
- Lending and underwriting practices that result in disparate outcomes for protected classes.

A regulatory framework for disparate impact claims provides an essential mechanism for identifying these patterns and ensuring that housing policies advance legitimate objectives without unnecessary discriminatory effects. Removing HUD's regulations would make it significantly harder to address discriminatory effects and would weaken fair housing protections precisely where they are most needed.

Rather than eliminating its disparate impact regulations, HUD should maintain and promote **effective enforcement, clear guidance, and consistent application** of the Fair Housing Act. Removing established regulations does not reduce complexity; it undermines certainty, predictability, and consistent enforcement, and adds to litigation risk. That outcome serves neither regulated entities nor the communities HUD is charged with protecting.

For these reasons, Enterprise, HPN, LISC, NHT, and SAHF respectfully urge HUD to **withdraw the proposed rule and to uphold a regulatory framework that supports strong, consistent enforcement of the Fair Housing Act**.

We would be happy to provide additional information on our comments. Please contact Mark Kudlowitz [redacted], Xavier Arriaga [redacted], Shannon Ross [redacted], Beth Cooper [redacted], or Althea Arnold [redacted] with any questions.