WOODSTOCK INSTITUTE

Advancing Economic Justice and Racial Equity

February 12, 2026

Department of Housing and Urban Development
451 7th Street SW
Washington, DC 20410

[submitted via Regulations.gov]

RE: Notice of Proposed Rulemaking on HUD's Implementation of the Fair Housing Act's Disparate Impact Standard (Docket No. FR-6540-P-01; RIN 2529-AB09)

The Trump Administration continues to astound in its ability to ignore facts and contradict its own arguments for convenience, all the while forcing federal agencies to undermine the law and exceed their regulatory powers. Woodstock Institute opposes this attempt by the Department of Housing and Urban Development (HUD) to violate the clear statutory intent of the Fair Housing Act by abandoning the disparate impact standard under the law.

Woodstock Institute is a policy advocacy and research nonprofit that works towards a fairer financial system through action at the local, state, and national levels. Founded in Woodstock, Illinois in 1973 and currently based in Chicago, Woodstock Institute's DNA is interwoven with the community organizing that created our country's foundational financial civil rights laws. We count among our founders Al Raby, who co-led with James Bevel and Dr. Martin Luther King, Jr. the Chicago Freedom Movement, a major force behind the creation of the Fair Housing Act in 1968.

Woodstock believes firmly that **all** our residents deserve to have access to the housing they need without facing unfair and unlawful discrimination. This is equally true whether that discrimination takes the form of disparate treatment based on race, national origin or other protected class characteristics or whether it is manifested in the kinds of hidden, sometimes subtle forms of discrimination against which the disparate impact standard, as codified in HUD's current regulation and based on over 50 years of legal precedent, has been successful in combatting. The existing disparate impact standard is a vital tool to ensure that our housing markets operate in a manner that is free from discrimination. This, in turn, is fundamental to the social and economic vitality of our communities.

Barely two months before the publication of this Notice of Proposed Rulemaking, another federal agency noted that the U.S. Supreme Court has repeatedly held that statutes with "effects-based" language authorize disparate impact claims: "the Court has reviewed each statutory provision, when challenged, to determine… whether the statutory provisions have **'effects-based' language that indicates that Congress intended for the statutory provision to permit disparate-impact claims**" (emphasis added; Consumer Financial Protection Bureau [CFPB] Proposed Rule: Equal Credit Opportunity Act (Regulation B) Fed. Reg. 5090290)[1]. Later in that proposal, the CFPB specifically cites the Fair Housing Act as an example of a statute with "effects-based" language communicating that intent. By the Administration's own logic, in removing disparate impact rules from the Fair Housing Act, this Proposed Rule disregards the intent of the statute and the will of Congress.

Further, HUD's justification for a shortened comment period on this proposal is plainly disingenuous. HUD argues that this proposal is merely updating the agency's position on disparate impact liability to reflect its belief that the matter is best left to the courts, but the courts have already weighed in on the issue. The Supreme Court held in *Texas Department of Housing and Community Affairs* v. *Inclusive Communities Project, Inc.*, that the Fair Housing Act authorizes disparate impact claims. In case this Administration is confused about the roles of our three branches of government, here's a refresher from high school civics class: it is the legislative branch's role to create and pass laws with statutory language reflecting intent; it is the judicial branch's role to interpret statutory intent, when needed, and evaluate whether the executive branch is performing its duty of implementing those laws; and it is the executive branch's role to implement and enforce laws.

As part of the executive branch of government, it is HUD's duty to implement and enforce the Fair Housing Act, not to remake the law. In fact, the Fair Housing Act itself explicitly directs the Secretary of Housing and Urban Development as well as all executive departments and agencies to conduct their operations in a manner "affirmatively to further" the purposes of the Fair Housing Act (42 USC §3608(e)(5)). It is hard to see how HUD could possibly be "affirmatively" implementing fair housing regulations, as directed by Congress, if it strips disparate impact language out after the Court has confirmed that the Fair Housing Act authorizes such language. In this case, HUD fulfilling its duty to implement the law means maintaining disparate impact liability under the law, as intended by Congress and upheld by the Supreme Court.

HUD also asserts that this general statement of policy regarding disparate impact does not change any requirements or affect any rights or obligations; to the contrary, regulations guide both companies and individuals on what their liabilities are and how they should go about ensuring that consumers' right to fair housing as protected under the Fair Housing Act is respected. For example, the existing regulation's focus on less discriminatory alternatives encourages housing providers and others to adopt less arbitrary and restrictive policies where possible, while still meeting their business needs. Doing away with the regulatory language here will hurt both businesses and consumers. Similarly, other federal and state laws ban discriminatory practices by reference to the Fair Housing

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[1] As Woodstock noted in our comment letter on this CFPB proposal, the statutory language of the Equal Credit Opportunity Act and the associated legislative history both make plain that Congress intended ECOA to broadly protect consumers from discrimination in credit. "Effects-based" language is but one way that Congress confers into statute its intent to cover disparate impact liability.

Act – eliminating regulatory language here regarding disparate impact and discriminatory effect won't change the underlying rights and protections that the Fair Housing Act provides as confirmed by the Supreme Court, but it may severely complicate the administration of other federal and state laws.

HUD further argues that the previous comment periods surrounding disparate impact regulations are sufficient to inform the agency of the relevant concerns from stakeholders. However, those previous comment periods did not contemplate a complete rescission of disparate impact language, and so cannot possibly sufficiently inform the agency as to what consumers, fair housing advocates, and housing providers would be concerned about regarding a complete absence of disparate impact regulation under the Fair Housing Act.

This proposal is an abdication of HUD's "affirmative" duty to enforce the Fair Housing Act, and the abbreviated comment period is a clear violation of HUD's obligation to consider stakeholder feedback in connection with regulatory changes. Any competent lawyer would advise HUD to abandon this rescission of disparate impact language, which leads Woodstock to believe that agency leadership is ignoring the expertise of the competent lawyers that still remain at the agency.

Should you have any further questions regarding this comment letter, please contact Jane Doyle, jdoyle@woodstockinst.org.

Sincerely,

Woodstock Institute