JUSTICE IN AGING
FIGHTING SENIOR POVERTY THROUGH LAW

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

RE: Docket No. FR-6540-P-01, RIN 2529-AB09; HUD's Implementation of the Fair Housing Act's Disparate Impact Standard

Justice in Aging appreciates the opportunity to provide comments on HUD's proposed rule on HUD's implementation of the Fair Housing Act (FHA)'s disparate impact standard. Justice in Aging is a national legal advocacy organization with the mission of improving the lives of low-income older adults. We use the power of law to fight senior poverty by securing access to affordable housing, health care, economic security, and the courts for older adults with limited resources. We focus on the needs of low-income populations who have traditionally lacked legal protections such as women, people of color, LGBTQ+ individuals, and people with limited English proficiency.

We strongly oppose this rulemaking, which aims to rescind HUD's regulations on the FHA's disparate impact standard. As HUD acknowledges, the U.S. Supreme Court has held that disparate impact claims are cognizable under the FHA in *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.*[1] HUD's proposal, however, is an effort to undermine disparate impact liability and roll back fair housing protections. We urge HUD to withdraw this proposed rule and maintain its current disparate impact regulations. These regulations established a workable framework for disparate impact claims consistent with longstanding case law, including the Supreme Court's ruling in *Inclusive Communities*.

The FHA and disparate impact liability are critical for combating housing discrimination against older adults. Many seniors, such as older adults of color and older adults with disabilities, face multiple and intersecting forms of discrimination that compound barriers to housing. Disparate impact is vital for challenging facially neutral policies that contribute to this discrimination and disproportionately harm protected classes.

Our comments highlight examples of the importance of the FHA's disparate impact standard for older adults facing some of the highest housing barriers:

Older Adults with Disabilities

One of the most significant ways the FHA advances the rights of older adults is by ensuring that seniors with disabilities can access housing in the community and age in place. Many people develop

[1] *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.*, 576 U.S. 519 (2015).

disabilities as they age, and older adults have higher rates of disability than other age groups. About 51% of people aged 50-74 and 63% of people aged 75 and older report having medical conditions that may qualify them as disabled under civil rights laws.[2] Although seniors may face more care needs as they age, the overwhelming majority prefer to remain in their own homes and communities rather than live in nursing homes.[3] The FHA supports community living for older and disabled people by ensuring they have equal access to affordable and accessible housing.

Advocates have used disparate impact liability to challenge discriminatory rental policies that limit housing opportunities for people with disabilities. In one case, Mr. Spooner – a 67-year-old disabled man who was trying to leave his nursing home and find housing – filed a fair housing lawsuit (*Spooner and Fair Housing Justice Center, Inc. v. Goldfarb Properties, Inc*.) over a housing provider's minimum income policies. The housing provider required tenants to have a minimum gross annual income of 43 times the monthly rent and denied Mr. Spooner's application for failing to meet that requirement. Mr. Spooner received a state rental subsidy that would have enabled him to pay the full rent. An investigation found that the housing provider's income policies effectively excluded all households using similar rental subsidies, a disproportionate number of whom were people with disabilities.[4] Plaintiffs prevailed on their claims of disability discrimination based on disparate impact, and the court ordered the housing provider to amend its policies and adopt non-discriminatory rental criteria.[5]

Disabled older adults are often harmed through other seemingly neutral housing policies. The FHA's disparate impact standard remains a key tool for helping older adults with disabilities age in place and avoid institutionalization.

Older Adults with Arrest or Conviction Histories

Disparate impact liability is also vital for ensuring equal access to housing for older adults with arrest or conviction histories. Older adults are increasingly arrested and incarcerated due to the aging of populations that often face criminalization (such as people experiencing homelessness) and the aging of people in prison. Today, older adults comprise five times as much of the prison population as they did in 1991,[6] and the proportion of older adults in prison is projected to increase to more than 30% by 2030.[7] Many of these older adults are also people with disabilities and people of color, both of whom are

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[2] Michigan Medicine, "Disability After 50: Poll Looks at Self-Identity and Help with Health Care" (October 2025), available at https://www.michiganmedicine.org/health-lab/disability-after-50-poll-looks-self-identity-and-help-health-care.

[3] AARP, "Majority of Adults 50-Plus Want to Age in Place, But Policies and Communities Must Catch Up" (December 2024), available at https://www.aarp.org/press/releases/2024-12-10-new-aarp-report-majority-adults-50-plus-age-place-policies-communities-catch-up.html.

[4] Fair Housing Justice Center, "Another Fair Housing Lawsuit Against Goldfarb Properties" (February 2018), available at https://fairhousingjustice.org/enforcement/opening-acts-february-21-2018/.

[5] *Fair Hous. Just. Ctr., Inc. v. Pelican Mgmt., Inc.,* No. 18-CV-1564 (ER) (OTW), 2023 WL 6390159 (S.D.N.Y. Sept. 29, 2023), aff'd, No. 23-7348-CV, 2025 WL 251723 (2d Cir. Jan. 21, 2025).

[6] Prison Policy Initiative, "The Aging Prison Population: Causes, Costs, and Consequences" (August 2023), available at https://www.prisonpolicy.org/blog/2023/08/02/aging/.

[7] U.S. Department of Health and Human Services, "Aging, Reentry, and Health Coverage: Barriers to Medicare and Medicaid for Older Reentrants" (March 2018), available at https://aspe.hhs.gov/sites/default/files/migrated_legacy_files/185306/Reentry.pdf.

overrepresented in the criminal legal system due to systemic discrimination.[8] When these older adults re-enter the community, they face steep barriers to securing accessible, affordable housing, in large part due to their criminal records.[9] Housing providers – from traditional landlords to nursing homes – widely conduct criminal background checks and reject applicants based on criminal records even though criminal history is not a reliable predictor of housing success.[10]

When housing providers exclude people with arrest or conviction histories due to blanket bans on people with records or other overly broad criteria, these exclusions likely violate the FHA based on disparate impact on protected classes.[11] Disparate impact liability has incentivized housing providers to craft more narrowly tailored criminal records policies that balance fairness and safety. For example, an administrative fair housing complaint with HUD, *GNOFHAC v. Sailboat Bay Apartments, LLC., et al.,* alleged that a housing provider's blanket ban on people with criminal records constituted housing discrimination based on race. The housing provider had a practice of discouraging applications from people with criminal records by making comments such as, "anything on a criminal background check would automatically disqualify [you]." When the case settled, the housing provider agreed to a new policy on criminal history screenings. The new policy specified that the landlord would only consider certain types of felony convictions from the past five years and would conduct individualized assessments for people with relevant criminal records.[12]

Such narrowly tailored policies are crucial for preventing housing denials based on stereotypes and stigma against people with records, including older adults. For older adults returning to the community, fair housing protections are essential for securing the housing and stability they need for successful reentry.

Older Adults with Limited English Proficiency

Disparate impact liability is also important for preventing housing discrimination against older adults with limited English proficiency (LEP). Over 17.5 million older adults age 65+ speak a language other than English at home, and almost 10 million older adults speak English less than "very well," meaning they are older adults with limited English proficiency. Of the 51-64 age cohort, 12.2 million are individuals with LEP, meaning the number of older adults with LEP will continue to grow.[13] Older adults

[8] Lauren Bixby et al., "The Links Between Disability, Incarceration, and Social Exclusion" (Oct. 2022), available at https://www.healthaffairs.org/doi/10.1377/hlthaff.2022.00495.
[9] See Justice in Aging, "Reducing Barriers to Reentry for Older Adults Leaving Incarceration" (May 2022), available at https://justiceinaging.org/wp-content/uploads/2022/05/Reducing-Barriers-to-Reentry-for-Older-Adults-Leaving-Incarceration.pdf.
[10] HUD Office of Policy Development and Research (PD&R), "Tenant Screening With Criminal Background Checks: Predictions and Perceptions Are Not Causality" (May 2022), available at https://www.huduser.gov/portal/pdredge/pdr-edge-frm-asst-sec-051722.html.
[11] Justice in Aging, "Fair Housing Protections for Formerly Incarcerated and Justice-Involved Older Adults" (November 2023), available at https://justiceinaging.org/fair-housing-protections-for-formerly-incarcerated-and-justice-involved-older-adults/.
[12] National Fair Housing Training Academy, "New Orleans Housing Provider Settles Criminal Background Discrimination Complaint" (September 2022), available at https://www.hudexchange.info/programs/nfhta/fair-housing-highlights/4/.
[13] Justice in Aging, Justice in Aging's Testimony on Language Access for Individuals with Limited English Proficiency, (April 2025), available at https://justiceinaging.org/justice-in-agings-testimony-on-language-access-for-individuals-with-limited-english-proficiency/.

with LEP disproportionately include members of protected class groups and frequently face barriers to housing. Advocates in Chicago and New York City, for example, have published reports about problems that older adults with LEP face in trying to access services from Public Housing Authorities.[14] And in some communities, certain groups like Latinos and Asians are significantly underrepresented in federally subsidized housing programs, with language barriers being one likely reason for these inequities.[15] Individuals with LEP also face discrimination in the private rental market from housing providers who may deny applicants due to their limited English proficiency.

HUD has previously affirmed that a policy disfavoring people with LEP, such as English-only policies, may violate the FHA by having a disparate impact based on race, national origin, or another protected characteristic. Disparate impact liability was at issue in the case *CNY Fair Housing v. Swiss Village LLC, et al.,* in which owners and managers of two apartment complexes refused to rent to people with LEP. This refusal even extended to people with LEP who could provide their own interpretation and translation services. Consequently, Asian, Hispanic, and Black individuals were far more likely than white individuals to be excluded during the application process, and foreign-born residents in particular were up to 500 times more likely to be denied than U.S.-born residents.[16]As a result of the litigation and eventual settlement agreement, the owners and managers amended their exclusionary policies. They agreed to rent to qualified LEP applicants and to provide certain translated documents and interpretation services.[17]

This case illustrates how disparate impact liability can uncover discriminatory housing practices preventing equal access to housing for people of color and immigrants. Immigrants in particular are already less likely to report instances of housing discrimination due to fear and mistrust of government agencies.[18] Undermining disparate impact liability would only further reduce opportunities to root out discrimination against this group.

Conclusion

Lastly, we also oppose this rulemaking as it signifies HUD's continued retreat from fair housing enforcement that protects marginalized communities. Even before this proposed rule, HUD had announced its enforcement activities would no longer pursue disparate impact claims.

HUD has a statutory duty to advance the FHA and must not ignore disparate impact or other claims simply because they are disfavored by the current administration. HUD cannot further its own

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[14] See The Center for Urban Research and Learning at Loyola University Chicago, "Falling Flat: The Chicago Housing Authority's Inadequate Implementation of Their Language Access Plan" (September 2019), available at https://www.seniorcaucus.org/language-access-report; CAAV, et al., "No Access: The Need for Improved Language Assistance Services for Limited English Proficient Asian Tenants of New York City Housing Authority" (2015), available at https://caaav.org/wp-content/uploads/2015/09/CAAAV-full-housing-report-v11-HIGH-RES.pdf.

[15] See Vincent Reina and Claudia Aiken, "Fair Housing: Asian and Latino/a Experiences, Perceptions, and Strategies" (April 2021), available at https://muse.jhu.edu/article/794152.

[16] *CNY Fair Hous., Inc. v. Swiss Vill., LLC*, No. 521CV1217MADML, 2022 WL 2643573, at *2 (N.D.N.Y. July 8, 2022).

[17] CNY Fair Housing, "CNY Fair Housing Settles Lawsuit Alleging Housing Discrimination Against Non-English Speaker" (January 2023), available at https://www.cnyfairhousing.org/post/cny-fair-housing-settles-lawsuit-alleging-housing-discrimination-against-non-english-speaker.

[18] Mother Jones, "When Home Isn't Safe: Immigration Enforcement Meets Housing Discrimination" (September 2025), available at https://www.motherjones.com/politics/2025/09/when-home-isnt-safe-immigration-enforcement-meets-housing-discrimination/.

policy preferences on disparate impact when they are contrary to the Supreme Court's decision in *Inclusive Communities*. HUD must expand housing access for the FHA's protected classes and underserved groups, including low-income older adults. We urge HUD to retain its current disparate impact rule and fully enforce the FHA in line with judicial precedent.

Thank you for your consideration of Justice in Aging's comments. If you have any questions, please contact Jennifer Kye, Director of Federal Housing Advocacy, at jkye@justiceinaging.org.

Sincerely,

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