



February 13, 2026

Regulations Division
Office of General Counsel
Department of Housing and Urban Development
451 7th Street SW, Room 102re76
Washington, DC 20410-050

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

To Whom It May Concern:

The Housing Policy Council¹ (HPC) appreciates the opportunity to respond to HUD's proposal (the Proposal) to remove its discriminatory effects regulations (the Rule).

HPC members strongly support lending equality and efforts to prevent discrimination and are committed to full compliance with all applicable federal and state fair lending laws. Regardless of whether disparate impact language is enumerated within the regulations, HPC's members will continue to adhere to the Fair Housing Act, controlling court decisions, including the Supreme Court's decision in *Inclusive Communities*, and internal fair lending compliance standards.

However, HPC members are ready to move beyond the last 15 years of uncertainty surrounding HUD's disparate impact rule, including four separate rulemakings and several court challenges, many of which remain ongoing today. These dramatic changes in how HUD interprets the scope of discriminatory effects liability have resulted in uncertainty for lenders, consumers, courts, and market participants. These frequent changes are not beneficial to anyone. Therefore, we appreciate that HUD's current Proposal, to remove the Rule altogether, is a potential means of ending these disruptive administrative pendulum swings.

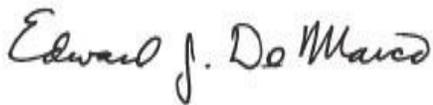
Even though the Proposal makes sense as a way to defer to courts and promote market certainty, HUD may wish to consider an alternative approach that could prove more durable: refine the Rule to better align with the law as clarified by the *Inclusive Communities* decision. HPC has

¹ The Housing Policy Council is a trade association comprised of the leading national mortgage lenders and servicers; mortgage, hazard, and title insurers; and technology and data companies. Our interest is in the safety and soundness of the housing finance system, the equitable and consistent regulatory treatment of all market participants, and the promotion of lending practices that create sustainable homeownership opportunities in support of vibrant communities and long-term wealth-building for families. For more information, visit www.housingpolicycouncil.org.

recommended this approach to both Democratic (see 2021 [letter](#)) and Republican administrations (see [2018](#), and [2019](#) letters). In brief, it would clarify the parties' respective burdens of proof in disparate impact challenges. Such an approach, refining rather than rescinding the Rule, would still align with Executive Order 14281, "Restoring Equality of Opportunity and Meritocracy" (the "EO"), given the Court's decision in *Inclusive Communities*. While courts are the ultimate arbiters of statutory meaning, this approach could be instructive to courts interpreting the Fair Housing Act,² and it would provide greater clarity and certainty for lenders, consumers, and other market participants.

We appreciate the opportunity to provide feedback on the Proposal and thank you for your consideration of HPC's comments.

Yours truly,

A handwritten signature in black ink that reads "Edward J. DeMarco". The signature is written in a cursive style with a large initial "E".

Edward J. DeMarco
President
Housing Policy Council

² See *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944).