The Colorado Health Foundation™

February 3, 2026

Secretary Scott Turner
U.S. Department of Housing and Urban Development
Attention: RIN 529-AB09
451 7th Street, S.W., Room 10276
Washington, D.C. 20410-0500.

Submitted electronically via [Regulations.gov]

RE: Comments on "HUD's Implementation of the Fair Housing Act's Disparate Impact Standard"

Dear Secretary Turner:

The Colorado Health Foundation appreciates the opportunity to submit comments to the Department of Housing and Urban Development (HUD) on its proposed rule: Implementation of the Fair Housing Act's Disparate Impact Standard. We strongly oppose the proposed changes and urge HUD to withdraw the proposed rule.

The Colorado Health Foundation is a nonprofit and nonpartisan private foundation that works statewide to advance our mission to improve the health and well-being of Coloradans. Through community engagement, research, grantmaking, and private sector investments, the Foundation aims to ensure that everyone in Colorado has what they need to be healthy. Access to affordable, safe, and high-quality housing has long been one of our priorities. We believe that housing justice exists when all Coloradans have high-quality, safe, and affordable housing that supports their health, economic well-being, and dignity; have the power to shape and achieve the housing they prefer; and have the ability to influence the policies and systems that impact them. The Foundation opposes HUD's proposed rule because it would make it far more difficult for people experiencing various forms of discrimination to challenge the policies or practices of housing providers, governments, and businesses that have negatively impacted them.

Colorado's Affordable Housing Crisis

Housing is a key determinant of health and plays a critical role in bringing good health in reach for all Coloradans. Currently, Colorado – and the nation – are in the midst of a fair and affordable housing crisis. Increases in Colorado housing costs have outpaced income. As evidenced by our foundation's Pulse Poll in 2023, housing affordability ranks among the top concerns for over 80 percent of Coloradans. According to the statewide poll, 89% of Coloradans say the cost of housing is a serious problem, and more than 70% cite that they are worried about whether they will be able to afford to live in Colorado in the future. As a result of the high cost of housing:

- 63% of Coloradans have to work multiple jobs or more than they want to in order to pay their rent or mortgage,
- 68% have had to cut back on or go without other needs such as food or health care,
- 72% have fallen behind on other bills and payments,
- 73% have taken on high-interest debt like credit card balances or payday loans,
- 77% have stayed in housing that was not right for them because they felt they could not afford alternative options,
- 81% sold property or important assets such as a car that they would have liked to keep but needed to sell in order to afford their rent or mortgage, and
- 67% of renters have avoided asking their landlord to address problems because they were afraid of having their rent increased or being evicted.

The Colorado Health Foundation believes that a safe, accessible, and affordable place to call home is a basic human right and that our communities have a vested interest in ensuring that housing opportunities are available to every individual. This proposed rule change directly contradicts HUD's own goal of providing affordable housing opportunities to those in need. Further, the disparate impact rule is critical to ensuring that the goals and objectives of the Fair Housing Act are achieved.

Housing Discrimination in Colorado

A legacy of discriminatory practices like redlining and restrictive covenants have amplified the impact of the housing crisis for Coloradans of color, particularly Black Coloradans. This crisis calls for reforming housing finance and development to be more equitable. In 2024, Colorado had 631 fair housing complaints. Of these, more than half (58%) were related to discrimination based on a disability. The same trend holds true nationwide, where 52% of complaints filed with Fair Housing organizations, HUD, and Fair Housing Assistance Program (FHAP) agencies were based on a disability. According to the Denver Metro Fair Housing Center, 82 percent of housing voucher holders in Colorado live in households with at least one person with a disability, underscoring the close connection between voucher discrimination and disability discrimination.

In Colorado, discrimination against households using housing vouchers continues even after the state law prohibited source-of-income discrimination in January 2021 (HB20-1332), demonstrating that discriminatory effects persist even where explicit intent is unlawful. Landlord practices such as refusing to accept vouchers, imposing income-to-rent ratios of 3:1 or 4:1, and steering voucher holders to different units are often described as neutral business policies but have predictably exclusionary effects. These practices disproportionately burden protected classes and would be far harder to challenge absent disparate impact liability, because landlords rarely articulate discriminatory intent.

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The Foundation opposes all types of housing discrimination because it is harmful to the health and well-being of our communities. The proposed changes would place virtually all of the burden of remedying the impacts of discrimination on people who are in the "protected classes" defined in the Fair Housing Act – people who are negatively affected by policies or practices due to their race, color, national origin, sex, disability, family status, or religion. The proposed changes would make it much more difficult, if not impossible, for people in protected classes to challenge and overcome discriminatory effects in housing policies or practices going forward.

If finalized, the proposed rule would tip the scales in favor of defendants who are accused of discrimination by shifting the burden of proof entirely to the plaintiffs. Victims of discrimination would be asked to try to speculate what justifications a defendant might pose and then have to counter those justifications in advance.

HUD's Proposal Will Negatively Impact Families and People with Disabilities

Currently, disparate impact cases are already difficult to prove and challenge. The practical effect of the proposed rule would be to require people experiencing housing discrimination to show that a housing provider, government, or business intended to discriminate. The proposed rule would make it virtually impossible for people in protected classes to challenge a range of policies or practices that can harm them, including:

- Housing provider policies that allow only one person per room, which exclude families with children from housing that they can afford, because they have to rent more expensive units.
- Housing provider policies that prohibit renting to families with children.
- Housing provider policies that prevent disabled people from renting an apartment because they do not have full-time jobs, even though they have adequate income to pay rent.
- Exclusionary zoning policies that have the effect of limiting affordable housing opportunities for people of color
- Mortgage lending institution practices of charging unfair or excessive fees or setting higher interest rates to people of color, women, or people with disabilities, even though they have adequate income, resulting in them having to obtain a riskier or costlier loan – or even in denying them access to any financing.

HUD's proposal would also harm Americans and their families who reside in manufactured homes. Manufactured homes house 7.22 million people nationwide, including 1.32 million Hispanic residents (18%), according to HUD's 2023 American Housing Survey. In Colorado, manufactured housing is a critical source of affordable housing for very low-income households: more than 20% of manufactured-home owners earned under $20,000 annually, and over half earned under $50,000 in 2021. Manufactured homes are legally classified as personal property rather than real estate, leaving residents with fewer legal protections than apartment tenants, including limited notice for rent increases or

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evictions. These structural features disproportionately impact individuals living in manufactured homes, even where no explicit discriminatory intent is stated.

Housing Discrimination Negatively Impacts Economic Stability in Communities

Evidence demonstrates that individuals who live in a stable home have better health, education, and employment opportunities, which positively impact overall health and economic opportunities. We echo comments previously sent to HUD by the National Fair Housing Alliance and others stating that, "Studies have shown that discrimination restricts markets and causes economic inefficiencies, while fair practices for all benefits businesses and municipalities. See, e.g., Arrow, K. J. (1998). "What Has Economics to Say About Racial Discrimination?" Journal of Economic Perspectives, 12(2), 91–100 (demonstrating that discrimination leads to inefficiencies in resource allocation and market performance). If one component of the housing and lending ecosystem is not fulfilling its fair housing obligations, the resulting inequality cascades through all housing and lending markets. Families and people will be deprived of participating in the American dream of safe, stable housing; businesses will lose profits; and jurisdictions will operate ineffectively and to the detriment of their residents." Furthermore, leaving the interpretation of these matters solely to courts will create uncertainty and inconsistency, particularly for communities without access to sustained legal representation, which could negatively impact economic development and opportunities.

Conclusion

A long history of discriminatory policies, including housing policies advanced by the federal government, have made safe and affordable housing difficult to attain and maintain for millions of Americans. This is true in Colorado and elsewhere in the country. Access to affordable and safe housing impacts all aspects of an individual's life. If finalized, this proposed rule would allow more discriminatory practices to exist, potentially limiting opportunity and heightening existing disparities in health, education, and wealth. Removing HUD's disparate impact regulations would:

- Shift the burden of addressing systemic discrimination onto individuals least equipped to do so;
- Undermine enforcement in areas where discrimination operates through predictable outcomes rather than explicit intent; and
- Increase housing instability for people with disabilities, people of color, voucher holders, and residents of manufactured housing.

We firmly believe that HUD should focus on ensuring that actors in the housing market comply with the Fair Housing Act and meet the standards set forth by the existing disparate impact rule. The existing disparate impact rule strengthens our communities and nation by allowing people experiencing all types of systemic discrimination to seek recourse and change policies and practices that limit their housing

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opportunities and put them in danger. We cannot allow discrimination to be used to keep safe housing out of reach for anyone.

The Foundation appreciates your consideration of our comments. If you have any questions, please contact Kyle Rojas Legleiter, Colorado Health Foundation Senior Director of Policy, at klegleiter@coloradohealth.org or 303-953-3618.

Sincerely,

Kyle Legleiter

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