

# Biden Administration's First 100 Days Rescinding Anti-Fair Housing Regulations



MAY 2021

The Trump administration advanced several housing proposals to harm immigrants, undermine fair housing laws, and discriminate against transgender people experiencing homelessness. The Biden Administration has taken important steps to rescind/withdraw proposed and finalized anti-fair housing rules. The chart below identifies some of the most harmful housing proposals from the Trump administration and the steps taken to by the Biden Administration to undo them.

REGULATION/AGENCY	CURRENT STATUS	ADDITIONAL INFORMATION
<a href="#">"Public Charge" Rule (DHS, DOJ, DOS, USCIS)</a>	<b>Vacated</b> <a href="#">1999 Interim Field Guidance Reinstated</a>	<p>On March 9, the Supreme Court agreed to dismiss litigation on the previous administration's Public Charge rule at the request of the administration. The Supreme Court agreed to dismiss appeals made by the administration in cases argued in the Second, Seventh, and the Ninth United States Courts of Appeals. The dismissal of the Seventh Circuit appeal now means that the <a href="#">preliminary injunction</a> made in the lower courts is in effect and the Public Charge Rule is suspended indefinitely. DHS announced in a <a href="#">statement</a> that DHS and USCIS will now follow the policy in the <a href="#">1999 Interim Field Guidance</a>, the policy that was in place before the 2019 rule.</p> <p>On March 15, DHS and USCIS published the final rule "<a href="#">Inadmissibility on Public Charge Grounds: Implementation of Vacatur</a>", removing regulation resulting from the 2019 rule including the discontinuation of Form I-944 (Declaration of Self-Sufficiency).</p> <p>President Biden issued an <a href="#">Executive Order</a> on February 2, which directed agencies to examine the effects of the Public Charge Rule, address concerns about the current public charge, and recommend steps to clearly communicate current public charge policies and proposed changes to reduce fear and confusion among impacted communities.</p>
<a href="#">Preserving Community and Neighborhood Choice or the Affirmatively Furthering Fair Housing (AFFH) Rule (HUD)</a>	<b>Withdrawal at OIRA</b> <a href="#">Interim Final Rule Reinstating Statutory Definition to the Rule</a>	<p>On April 13, HUD submitted to the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB) an <a href="#">interim final rule</a> restoring statutory definition to the AFFH rule. This interim final rule will not reinstate the 2015 AFFH rule but it is expected to return the requirement that federal agencies, particularly HUD, as well states, counties, and cities to take <i>meaningful</i> action to affirmatively further fair housing.</p> <p>These new actions by HUD were taken in accordance with a memorandum issued by President Biden to the secretary of HUD instructing the agency to redress the nation's long history of discriminatory housing practices and policies and reaffirming the administration's commitment to end housing discrimination. This memo ordered the HUD secretary to examine the effects of the previous administration's actions against the AFFH Rule and Disparate Impact Rule and the effect that it has had on HUD's statutory duty to ensure compliance with the Fair Housing Act and to affirmatively further fair housing. The memo also ordered the HUD Secretary to take the necessary steps to implement the Fair Housing Act's AFFH requirements and to prevent practices that have a disparate impact.</p>

REGULATION/AGENCY	CURRENT STATUS	ADDITIONAL INFORMATION
<a href="#">Disparate Impact Rule</a> (HUD)	<b><u>Withdrawal at OIRA</u></b> <a href="#">Proposed Rule to Reinstate 2013 Disparate Impact Standard</a>	This rule was set to go into effect on October 25, 2020, but was halted due to a preliminary nationwide injunction issued by the U.S. District Court for the District of Massachusetts. On April 13, HUD submitted to OIRA a <a href="#">proposed rule</a> that will reinstate the 2013 Disparate Impact Rule. President Biden’s aforementioned <a href="#">memorandum</a> orders the Secretary of HUD to reexamine the previous administration’s rulemaking on the AFFH rule and the Disparate Impact Rule. Since the 2020 Disparate Impact Rule was subject to a preliminary injunction and the Biden Administration withdrew the appeal—the 2013 Disparate Impact Standard is still being followed.
<a href="#">“Equal Access” Rule</a> (HUD)	<b><u>Withdrawn</u></b> <a href="#">Proposed Rule Withdrawn in the Federal Register</a>	HUD published in the <i>Federal Register</i> on April 27 a withdrawal of its proposed rule “ <a href="#">Making Admissions or Placement Determinations Based on Sex in Facilities Under Community Planning and Development Housing Programs; Withdrawal; Regulatory Review</a> .” The step will remove the previous administration’s harmful anti-transgender proposal from HUD’s upcoming Spring 2021 Unified Agenda and Deregulatory Actions.  This was done in accordance with an <a href="#">Executive Order</a> directing the federal government to fully implement the U.S. Supreme Court’s landmark ruling in <i>Bostock v. Clayton County, Georgia</i> . The order reinforces laws that prohibit sex discrimination, including the Fair Housing Act, which bars discrimination on the basis of gender identity or sexual orientation.
<a href="#">“Mixed Status” Rule</a> (HUD)	<b><u>Withdrawn</u></b> <a href="#">Proposed Rule Withdrawn in the Federal Register</a>	HUD published on April 2 in the <i>Federal Register</i> a rule withdrawal, “ <a href="#">Housing and Community Development Act of 1980: Verification of Eligible Status; Withdrawal</a> ,” that will remove the previous administration’s harmful and misguided proposed “mixed-status” rule from HUD’s upcoming Spring 2021 <i>Unified Agenda of Regulatory and Deregulatory Actions</i> .
<a href="#">“Mixed Status” Rule</a> (USDA)	<b><u>Withdrawal is Being Developed</u></b> <a href="#">Not Proposed in Federal Register</a>	The proposed rule was never published in the <i>Federal Register</i> and in a stakeholder call with USDA’s Rural Development, they announced they are currently working with HUD to develop a withdrawal of the proposed rule.

**FOR MORE INFORMATION ON THE PUBLIC CHARGE RULE AND HUD/RHS “MIXED STATUS RULE”**

Mixed Status and Public Charge can be found on page [6-55](#) of *NLIHC’s 2021 Advocates’ Guide*

DHS’s “Inadmissibility on Public Charge Grounds; Implementation of Vacatur” Final Rule: <https://bit.ly/3bSvKtW>

HUD’s “Housing and Community Development Act of 1980: Verification of Eligible Status; Withdrawal; Regulatory Review” Withdrawal of Proposed Rule: <https://bit.ly/3xPbxHM>

Executive Order “Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans”: <http://bit.ly/3rkGdfW>

DHS’s “Inadmissibility on Public Charge Ground” Final Rule: <https://bit.ly/38zU9K6>.

DOS's "Ineligibility Based on Public Charge Grounds" Interim Final Rule: <https://bit.ly/2lsP3HE>.

HUD's "Housing and Community Development Act of 1980: Verification of Eligible Status" Proposed Rule: <https://bit.ly/2YGfu07>.

A summary of USDA's current proposal, "Implementation of the Multi-Family Housing Citizenship Requirements," is in the 2020 Spring Regulatory Agenda at: <https://bit.ly/3jZ2FbC>.

Keep Families Together campaign: <https://www.keep-families-together.org/>.

National Housing Law Project: <https://www.nhlp.org/initiatives/immigrant-rights/>.

Protecting Immigrant Families campaign: <https://protectingimmigrantfamilies.org/>. Read PIF's "Public Charge and Affordable Housing: Get the Facts" at: <https://bit.ly/35PepZf>

### **FOR MORE INFORMATION ON PRESERVING COMMUNITY AND NEIGHBORHOOD CHOICE OR THE AFFIRMATIVELY FURTHERING FAIR HOUSING (AFFH) RULE**

AFFH can be found on pages 7-14 and 7-17 of *NLIHC's 2021 Advocates' Guide*

A summary of HUD's current proposal, "Affirmatively Furthering Fair Housing; Restoring Statutory Definitions and Certifications" will be posted in the 2021 Spring Regulatory Agenda at: <https://bit.ly/33c10bt>

HUD's "Preserving Community and Neighborhood Choice" Interim Final Rule: <http://bit.ly/2ZNAovx>

NLIHC, <http://nlihc.org/issues/affh>.

National Housing Law Project, <https://www.nhlp.org/initiatives/fair-housing-housing-for-people-with-disabilities/affirmatively-furthering-fair-housing>.

National Fair Housing Alliance, <http://nationalfairhousing.org/affirmatively-furthering-fair-housing>.

Poverty & Race Research Action Council, <https://prrac.org/fair-housing/affirmatively-furthering-fair-housing>.

### **FOR MORE INFORMATION ON THE HUD "EQUAL ACCESS" RULE**

HUD's "Making Admission or Placement Determinations Based on Sex in Facilities Under Community Planning Development Housing Programs; Withdrawal; Regulatory Review" Withdrawal of Proposed Rule: <https://bit.ly/3vuXaGi>

Executive Order "Preventing and Combatting Discrimination on the Basis of Gender Identity or Sexual Orientation": <https://bit.ly/2Mh4FzC>

HUD's "Making Admission or Placement Determinations Based on Sex in Facilities Under Community Planning and Development Housing Programs" Proposed Rule: <https://bit.ly/3m2Jr4z>.

Housing Saves Lives Campaign: [housing-saves-lives.org](https://housing-saves-lives.org).

National Center for Transgender Equality: <https://transequality.org/>.

True Colors United: <https://truecolorsunited.org/>.

### **FOR MORE INFORMATION ON THE DISPARATE IMPACT RULE**

Disparate Impact is on page [7-8](#) of *NLIHC's 2021 Advocates' Guide*