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.

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<tr>
<th>REGULATION/AGENCY</th>
<th>CURRENT STATUS</th>
<th>ADDITIONAL INFORMATION</th>
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<tr>
<td>“Public Charge” Rule (DHS, DOJ, DOS, USCIS)</td>
<td>Vacated</td>
<td>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 preliminary injunction made in the lower courts is in effect and the Public Charge Rule is suspended indefinitely. DHS announced in a statement that DHS and USCIS will now follow the policy in the 1999 Interim Field Guidance, the policy that was in place before the 2019 rule.</td>
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<td>Preserving Community and Neighborhood Choice or the Affirmatively Furthering Fair Housing (AFFH) Rule (HUD)</td>
<td>Withdrawal at OIRA</td>
<td>On April 13, HUD submitted to the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB) an interim final rule 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 meaningful action to affirmatively further fair housing. 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.</td>
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<td>Reinstated</td>
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<td>Disparate Impact Rule (HUD)</td>
<td>Withdrawal at OIRA Proposed Rule to Reinstate 2013 Disparate Impact Standard</td>
<td>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 proposed rule that will reinstate the 2013 Disparate Impact Rule. President Biden’s aforementioned memorandum 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.</td>
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<td>“Equal Access” Rule (HUD)</td>
<td>Withdrawn Proposed Rule Withdrawn in the Federal Register</td>
<td>HUD published in the Federal Register on April 27 a withdrawal of its proposed rule “Making Admissions or Placement Determinations Based on Sex in Facilities Under Community Planning and Development Housing Programs; Withdrawal; Regulatory Review.” 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 Executive Order directing the federal government to fully implement the U.S. Supreme Court’s landmark ruling in Bostock v. Clayton County, Georgia. 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.</td>
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<td>“Mixed Status” Rule (HUD)</td>
<td>Withdrawn Proposed Rule Withdrawn in the Federal Register</td>
<td>HUD published on April 2 in the Federal Register a rule withdrawal, “Housing and Community Development Act of 1980: Verification of Eligible Status; Withdrawal; Regulatory Review,” that will remove the previous administration’s harmful and misguided proposed “mixed-status” rule from HUD’s upcoming Spring 2021 Unified Agenda of Regulatory and Deregulatory Actions.</td>
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<td>“Mixed Status” Rule (USDA)</td>
<td>Withdrawal is Being Developed Not Proposed in Federal Register</td>
<td>The proposed rule was never published in the Federal Register 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.</td>
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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


1000 Vermont Avenue, NW I Suite 500 I Washington, DC 20005 I 202-662-1530 I www.nlihc.org
DOS’s “Ineligibility Based on Public Charge Grounds” Interim Final Rule: https://bit.ly/2IsP3HE.


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


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


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: housingsaveslives.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