

United States Senate

WASHINGTON, DC 20510

April 29, 2026

The Honorable Scott Turner
Secretary
U.S. Department of Housing and Urban Development
451 7th Street SW
Washington, DC 20410

Dear Secretary Turner:

We write to oppose the Department of Housing and Urban Development (HUD)'s proposed rule, entitled "HUD's Implementation of the Fair Housing Act's Disparate Impact Standard," that would rescind the agency's long-held disparate impact framework under the Fair Housing Act of 1968 (FHA).¹ The proposal would result in a deeply misguided and continued rollback of critical civil rights enforcement in housing.² We have serious concerns that HUD is more broadly abdicating its FHA enforcement obligations, which will ultimately make housing less equitable, less affordable, and less accessible for generations to come. We call on HUD to withdraw its proposed rule and to recommit itself to enforcement of fair housing and civil rights laws for all.

1. The Fair Housing Act of 1968 Provides Clear Statutory Authority and Requires HUD to Conduct Disparate Impact Analyses.

HUD is statutorily obligated to administer and enforce the FHA, which prohibits among other things, discrimination in housing, lending, and community development—whether it occurs through disparate treatment (which often appears as intentional discrimination) or disparate impact (which often appears as facially neutral or unintentional discrimination).³ Disparate impact analysis has historically helped uproot facially neutral policies and practices that result in unequal opportunities in housing. As Senators and Members of Congress, including those who drafted the law, have explained, the FHA was designed to target “acts or practices that have an unjustified discriminatory effect on a person’s ability to acquire housing—not just those proven to be motivated by discriminatory intent.”⁴

¹ U.S. Department of Housing and Urban Development, Proposed Rule, “HUD’s Implementation of the Fair Housing Act’s Disparate Impact Standard,” January 14, 2026, <https://www.federalregister.gov/documents/2026/01/14/2026-00590/huds-implementation-of-the-fair-housing-acts-disparate-impact-standard>.

² Letter from U.S. Senator Elizabeth Warren to HUD OIG Brian D. Harrison, September 22, 2025, https://www.banking.senate.gov/imo/media/doc/20250922%20FINAL%20Warren%20Referral%20Letter%20to%20HUD%20OIG_1xqpn1yzonqxl.pdf; See also Letter from U.S. Senators Elizabeth Warren, Maxine Waters, and U.S. Representative Rashida Tlaib et al., to HUD Secretary Scott Turner, March 17, 2025, https://democrats-financialservices.house.gov/uploadedfiles/b_dem_ltr_hud_re_fheo_oversight_3.17.25.pdf.

³ Public Law 90-284.

⁴ Brief for Current and Former Members of Congress as Amicus Curiae Supporting Affirmance, *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.*, 12-11211, 13-10306, No. 13-1371, p. 1 (5th Circuit, 2014).

HUD promulgated a disparate impact rule in 2013 in an effort to “[formalize] a clear, consistent, nationwide standard for litigating discriminatory effects cases under the Fair Housing Act.”⁵ As the agency said then, “HUD, which is statutorily charged with the authority and responsibility for interpreting and enforcing the Fair Housing Act and with the power to make rules implementing the Act, has long interpreted the Act to prohibit practices with an unjustified discriminatory effect, regardless of whether there was an intent to discriminate.”⁶ It emphasized that “[t]he eleven federal courts of appeals that have ruled on this issue agree with this interpretation.”⁷ HUD’s 2013 rule defined a housing practice with a “discriminatory effect” as one that “actually or predictably results in a disparate impact on a group of persons or creates, increases, reinforces, or perpetuates segregated housing patterns because of race, color, religion, sex, handicap, familial status, or national origin.”⁸ The rule also provided that such practices could still be lawful if “supported by a legally sufficient justification” and established a specific burden-shifting framework for assessing whether a specific practice has an unjustified discriminatory effect.⁹ As noted in several comments submitted by experts and industry in response to HUD’s latest rollback proposal, the agency’s existing rule provides much-needed clarity for potential victims seeking recourse.¹⁰ It lowers the chances that claims will go unsubstantiated just because they lack direct evidence of discrimination that victims often rarely have access to.

Disparate impact liability is well-established in the law and has been reaffirmed since HUD’s 2013 rulemaking. Indeed, in 2015, the Supreme Court of the United States held that “disparate-impact claims are cognizable under the Fair Housing Act” in *Texas Department of Housing & Community Affairs v. Inclusive Communities Project, Inc.*¹¹ Under the first Trump Administration, HUD subsequently moved to update the agency’s 2013 policy by issuing a final disparate impact rule to “better reflect the Supreme Court’s 2015 ruling in *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.* and to provide clarification regarding the application of the standard to state laws governing the business of insurance.”¹² Following several federal lawsuits against the 2020 rule, the U.S. District Court for the District of Massachusetts issued a preliminary injunction in *Massachusetts Fair Housing Center v. HUD*, which stayed and postponed regulatory implementation.¹³ The court stated that the 2020 rule “arms defendants with broad new defenses which appear to make it easier for

⁵ U.S. Department of Housing and Urban Development, “Implementation of the Fair Housing Act’s Discriminatory Effects Standard,” Final Rule, February 15, 2013, <https://www.federalregister.gov/documents/2013/02/15/2013-03375/implementation-of-the-fair-housing-acts-discriminatory-effects-standard#footnote-2-p11461>.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ U.S. Department of Housing and Urban Development, “Comment Submitted by National Housing Conference (HUD-2026-0034-0515),” February 13, 2026, <https://www.regulations.gov/comment/HUD-2026-0034-0515>; See also U.S. Department of Housing and Urban Development, “Comment Submitted by National Association of REALTORS (HUD-2026-0034-0551),” February 17, 2026, <https://www.regulations.gov/comment/HUD-2026-0034-0551>.

¹¹ 576 U.S. 519 (5th Circuit, 2015).

¹² U.S. Department of Housing and Urban Development, “HUD’s implementation of the Fair Housing Act’s Disparate Impact Standard,” Final Rule, September 24, 2020, <https://www.federalregister.gov/documents/2020/09/24/2020-19887/huds-implementation-of-the-fair-housing-acts-disparate-impact-standard>.

¹³ *Massachusetts Fair Housing Center v. United States Department of Housing and Urban Development*, 496 F. Supp. 3d 600 (D. Mass. Oct. 25, 2020).

offending defendants to dodge liability and more difficult for plaintiffs to succeed” and “constitute[d] a massive overhaul of HUD’s disparate impact standards, to the benefit of putative defendants and to the detriment of putative plaintiffs.”¹⁴ HUD reinstated the 2013 policy through a final rule in 2023 to align with legal precedent.¹⁵

2. HUD Disparate Impact Analyses Have Made Housing More Accessible and Affordable for Americans Across the Country.

Under HUD disparate impact analyses, landlords have been held liable for facially neutral eviction and screening policies, such as nuisance ordinances or full-time employment requirements, that have a discriminatory effect on families with children, women, people of color, and persons with disabilities.¹⁶ Housing developers have filed FHAct lawsuits against local government actions that they allege “obstructed, delayed, and denied zoning” for low-income housing developments, which unfairly eliminated housing opportunities that would have disproportionately served Black residents in White segregated neighborhoods.¹⁷

Disparate impact lawsuits have also been used to address predatory lending practices. In 2022, Fannie Mae settled a FHAct lawsuit filed by the National Fair Housing Alliance (NFHA).¹⁸ The plaintiffs claimed both disparate treatment and disparate impact discrimination occurred when “in the wake of the foreclosure crisis, Fannie Mae maintained and marketed its foreclosed homes well in predominantly white neighborhoods, selling them to owner-occupants and preserving neighborhoods, while allowing homes in communities of color to fall into disrepair, leading to prolonged vacancy, sales to out-of-town investors, and neighborhood destabilization.”¹⁹

Disparate impact enforcement has also been a critical tool to ensure fairness in the housing market as the industry has adopted rapidly-evolving technologies, such as tenant screening, automated underwriting and valuation models, and advertising technologies—many of which

¹⁴ *Id.*

¹⁵ U.S. Department of Housing and Urban Development, Proposed Rule, “Reinstatement of HUD’s Discriminatory Effects Standard (FR-6251-P-01),” June 25, 2021, <https://www.federalregister.gov/documents/2021/06/25/2021-13240/reinstatement-of-huds-discriminatory-effects-standard>; U.S. Department of Housing and Urban Development, Final Rule, “Reinstatement of HUD’s Discriminatory Effects Standard,” March 31, 2023, <https://www.federalregister.gov/documents/2023/03/31/2023-05836/reinstatement-of-huds-discriminatory-effects-standard>.

¹⁶ National Women’s Law Center, “The Continuing Need for Gender, Racial, and Disability Justice for Renters,” Talia Grossman, Sarah Hassmer, and Sarah Javaid, July 2025, <https://nwlc.org/wp-content/uploads/2025/07/Aug27-Renters-Brief-Accessible.pdf>; *See also* PNAS, “A comprehensive demographic profile of the US evicted population,” Nick Graetz, Carl Gershenson, Peter Hepburn et al., October 2, 2023, <https://www.pnas.org/doi/10.1073/pnas.2305860120>; *See also* National Housing Law Project, “Fair Housing and Domestic Violence,” p. 10, <https://www.nhlp.org/initiatives/fair-housing-housing-for-people-with-disabilities/fair-housing-and-domestic-violence/>; *See also* Letter from National Fair Housing Alliance, Access Ready, Inc., American Association of People with Disabilities et al., to HUD Secretary Scott Turner and OMB Director Russell Vought, September 9, 2025, https://nationalfairhousing.org/wp-content/uploads/2025/09/2025-09-09_NFHA-et-al-Letter-to-OMB-HUD-re-Disparate-Impact.pdf.

¹⁷ *United States v. Town of Franklinton, Louisiana*, Case 2:24-cv-01633-EEF-MBN, (E.D. La. 2024).

¹⁸ National Fair Housing Alliance, “NFHA Reaches Historic Settlement with Fannie Mae,” press release, February 7, 2022, <https://nationalfairhousing.org/nfha-reaches-historic-settlement-with-fannie-mae/>.

¹⁹ Relman Colfax, “Relman Colfax Secures Landmark Housing Discrimination Settlement Against Fannie Mae,” press release, February 7, 2022, <https://www.relmanlaw.com/news-fannie-mae-settlement>.

have been found to perpetuate and exacerbate discriminatory housing and lending outcomes.²⁰ In fact, under the first Trump Administration, Meta (then Facebook) settled several FHAct lawsuits filed by civil rights groups and the DOJ on behalf of HUD.²¹ The DOJ’s lawsuit, which was brought based on a HUD Secretary-initiated investigation and charge, alleged that Meta’s algorithms resulted in “both disparate treatment and disparate impact discrimination” by allowing its advertising platform customers to actively hide housing ads from Meta users based on geographic and other data proxies for race, family status, and sex.²²

3. HUD Cannot Justify Reversing Its Longstanding Recognition of Disparate Impact Liability under the Fair Housing Act.

Despite well-established precedent and the critical role disparate impact analysis plays in guaranteeing fair and equal access to housing across the country, the Administration released a proposed rule on January 14, 2026, that would gut the agency’s disparate impact rule.²³ This latest proposal abandons HUD’s decades-long commitment to fighting housing discrimination—without any persuasive justification. Specifically, the rule proposes eliminating HUD’s “discriminatory effects regulations” entirely “and leaving to courts questions related to interpretations of disparate impact liability under the Fair Housing Act.”²⁴

To justify this proposal, HUD first points to Executive Order 14281, issued by President Trump in April 2025, which directed agencies “to eliminate the use of disparate-impact liability in all contexts to the maximum degree possible” in their activities and to “deprioritize enforcement of

²⁰ United States Senate Committee on Banking, Housing, and Urban Affairs, “After Waters and Warren Call for Investigation, GAO Releases Reports on the Risks Real Estate Property Technologies and AI Pose to the Housing Market,” press release, December 3, 2025, <https://www.banking.senate.gov/newsroom/minority/after-waters-and-warren-call-for-investigation-gao-releases-reports-on-the-risks-real-estate-property-technologies-and-ai-pose-to-the-housing-market>; See also United States House Committee on Financial Services, “AI Innovation Explored: Insights into AI Applications in Financial Services and Housing,” July 2024, p. 12, https://financialservices.house.gov/uploadedfiles/bipartisan_working_group_on_ai_staff_report.pdf; See also Journal of Financial Economics “Consumer-lending discrimination in the FinTech Era,” Robert Barlett, et al., January 2022, <https://www.sciencedirect.com/science/article/abs/pii/S0304405X21002403>.

²¹ U.S. Department of Justice, “Justice Department Secures Groundbreaking Settlement Agreement with Meta Platforms, Formerly Known as Facebook, to Resolve Allegations of Discriminatory Advertising,” press release, June 21, 2022, <https://www.justice.gov/archives/opa/pr/justice-department-secures-groundbreaking-settlement-agreement-meta-platforms-formerly-known>; See also National Fair Housing Alliance, “Fair Housing Groups Settle Lawsuit with Facebook: Transforms Facebook’s Ad Platform Impacting Millions of Users,” March 19, 2019, <https://nationalfairhousing.org/national-fair-housing-alliance-settles-lawsuit-with-facebook-transforms-facebooks-ad-platform-impacting-millions-of-users/>; See also U.S. Department of Housing and Urban Development, “HUD Charges Facebook with Housing Discrimination Over Company’s Targeted Advertising Practices,” March 28, 2019, <https://archives.hud.gov/news/2019/pr19-035.cfm>.

²² U.S. Department of Justice, “Justice Department Secures Groundbreaking Settlement Agreement with Meta Platforms, Formerly Known as Facebook, to Resolve Allegations of Discriminatory Advertising,” press release, June 21, 2022, <https://www.justice.gov/archives/opa/pr/justice-department-secures-groundbreaking-settlement-agreement-meta-platforms-formerly-known>.

²³ U.S. Department of Housing and Urban Development, Proposed Rule, “HUD’s Implementation of the Fair Housing Act’s Disparate Impact Standard,” January 14, 2026, <https://www.federalregister.gov/documents/2026/01/14/2026-00590/huds-implementation-of-the-fair-housing-acts-disparate-impact-standard>.

²⁴ *Id.*

all statutes and regulations to the extent they include disparate-impact liability.”²⁵ The Supreme Court has never held disparate impact liability unconstitutional and, to the contrary, has repeatedly upheld disparate impact as cognizable under federal law, including the Fair Housing Act.²⁶ The order also mischaracterizes disparate impact liability as creating “a near insurmountable presumption of unlawful discrimination...where there are any differences in outcomes” and requiring “individuals and businesses to...engage in racial balancing to avoid...legal liability.”²⁷ Both assertions are false and ignore the detailed explanation of disparate impact analysis that HUD itself articulated in prior rulemakings.²⁸

HUD also justifies its proposed rule by arguing that, under *Loper Bright Enterprises v. Raimondo*, courts no longer defer to federal agencies on interpretive rulemakings—meaning that the disparate impact rule “[does] not carry deferential weight” and could be “wholly reject[ed]” by a court.²⁹ “It is appropriate,” HUD claims, “for courts, not a Federal agency, to make determinations related to the interpretation of disparate impact liability under the Fair Housing Act.”³⁰ Not only does “HUD overstate[] the holding in *Loper Bright* and its significance for federal agencies,”³¹ it also ignores that the Supreme Court has *already* weighed in on the Fair Housing Act, disparate impact liability, and HUD’s disparate impact rule,³² which “properly codif[ies] the disparate-impact standard as articulated by the courts, including the Supreme Court.”³³

This argument also runs counter to other legal arguments made in the Administration’s broader efforts to gut disparate impact enforcement across the federal government. In a November 2025 proposed rule regarding the Equal Credit Opportunity Act (ECOA), for example, the Consumer Financial Protection Bureau (CFPB) noted that it could consider “remov[ing] the provision relating to disparate impact...based on the fact that neither the Supreme Court nor any other court has made a specific holding with respect to this theory and ECOA. As the Supreme Court made clear in *Loper Bright Enterprises v. Raimondo*, courts are the ultimate arbiters of statutory

²⁵ Executive Order 14281, Restoring Equality of Opportunity and Meritocracy, April 28, 2025, <https://www.federalregister.gov/documents/2025/04/28/2025-07378/restoring-equality-of-opportunity-and-meritocracy>.

²⁶ *Id.*; The Leadership Conference on Civil and Human Rights, “Trump’s Executive Order: Fundamentally Misunderstanding the Law,” January 2026, <https://civilrights.org/disperate-impact-ai-executive-order/>.

²⁷ Executive Order 14281, Restoring Equality of Opportunity and Meritocracy, April 28, 2025, <https://www.federalregister.gov/documents/2025/04/28/2025-07378/restoring-equality-of-opportunity-and-meritocracy>.

²⁸ *Supra notes 5 and 16.*

²⁹ *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024); U.S. Department of Housing and Urban Development, “HUD’s Implementation of the Fair Housing Act’s Disparate Impact Standard,” Proposed Rule, January 14, 2026, <https://www.federalregister.gov/documents/2026/01/14/2026-00590/huds-implementation-of-the-fair-housing-acts-disparate-impact-standard>.

³⁰ *Id.*

³¹ U.S. Department of Housing and Urban Development, “Comment Submitted by Legal Defense Fund (HUD-2026-0034-0480),” February 13, 2026, <https://www.regulations.gov/comment/HUD-2026-0034-0480>.

³² U.S. Department of Housing and Urban Development, “Comment Submitted by American Civil Liberties Union, and Impact Fund (HUD-2026-0034-0469),” February 13, 2026, <https://www.regulations.gov/comment/HUD-2026-0034-0469>.

³³ U.S. Department of Housing and Urban Development, “Comment Submitted by National Fair Housing Alliance (HUD-2026-0034-0545),” February 17, 2026, <https://www.regulations.gov/comment/HUD-2026-0034-0545>.

meaning.”³⁴ Yet, the CFPB “instead used its rulemaking authority to propose a rule interpreting the statute (incorrectly) to bar [disparate impact] claims.”³⁵ In other words, when courts have not yet decided whether a specific anti-discrimination statute encompasses disparate impact claims, the Trump Administration feels free to interpret the law to bar such claims. But the Trump Administration acts as if it is similarly unconstrained even when courts have recognized that a statute permits disparate impact claims. Under the FHAct, the Administration confusingly asserts that “this matter is best left to the courts” as if the Supreme Court had not already interpreted the statute and recognized disparate impact claims when it decided *Inclusive Communities* in 2015.

4. HUD’s Proposed Rule Would Increase Housing Costs.

President Trump promised to lower costs on “day one” under his current administration, but HUD’s efforts to dismantle FHAct enforcement will exacerbate high housing costs for victims of discrimination and hinder the U.S. economy.³⁶ In 2020, Citi economists estimated that the worsening White-Black wealth gap had cost the U.S. economy more than \$16 trillion in lost GDP over the previous 20 years, with \$218 billion attributed to redlining against prospective Black homebuyers.³⁷ If left unaddressed, economists estimated ongoing disparities would result in an additional \$5 trillion in lost GDP over the next 5 years.³⁸ The Trump Administration’s abdication of its fair housing enforcement responsibilities threaten to exacerbate discriminatory outcomes and entrench unfair pricing throughout the housing market.

5. Conclusion

Ultimately, this proposed rule will allow illegal, covert housing and lending discrimination to go unchecked, and raise housing costs for people and families across the country. HUD cites no persuasive reason for dismantling longstanding civil rights laws. We call on HUD to rescind its proposed rule and enforce the FHAct, as required under the law, including by investigating disparate impact cases which the agency has halted under this Administration.

Sincerely,

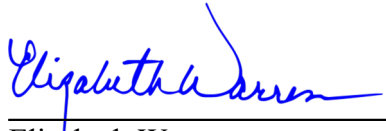
³⁴ Consumer Financial Protection Bureau, “Equal Credit Opportunity Act (Regulation B),” Proposed Rule, February 25, 2025, <https://www.federalregister.gov/documents/2025/11/13/2025-19864/equal-credit-opportunity-act-regulation-b>.

³⁵ U.S. Department of Housing and Urban Development, “Comment Submitted by National Fair Housing Alliance (HUD-2026-0034-0545),” February 17, 2026, <https://www.regulations.gov/comment/HUD-2026-0034-0545>.

³⁶ Letter from U.S. Senator Elizabeth Warren to HUD OIG Brian D. Harrison, September 22, 2025, https://www.banking.senate.gov/imo/media/doc/20250922%20FINAL%20Warren%20Referral%20Letter%20to%20HUD%20OIG_1xqpn1yzonqxl.pdf; See also Letter from U.S. Senators Elizabeth Warren, Maxine Waters, and U.S. Representative Rashida Tlaib et al., to HUD Secretary Turner, Mar 17 2025, https://democrats-financialservices.house.gov/uploadedfiles/b_dem_ltr_hud_re_fheo_oversight_3.17.25.pdf; See also Post on YouTube by NBC Montana, August 9, 2024, <https://www.youtube.com/watch?v=wG7NbwKZPKo>.

³⁷ Citi, “Closing the Racial Inequality Gaps: The Economic Cost of Black Inequality in the U.S.,” September 2020, p. 4 and 7, https://ir.citi.com/NvIUkHHPilz14Hwd3oxqZBLMn1_XPqo5FrxsZD0x6hhil84ZxaxEuJUWmak51UHvYk75VKeHCMI%3D.

³⁸ *Id.*



Elizabeth Warren
Ranking Member
Committee on Banking,
Housing, and Urban Affairs



Angela D. Alsobrooks
United States Senator



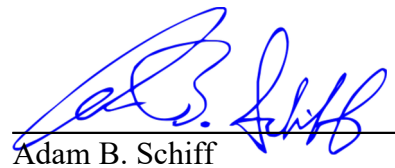
Chris Van Hollen
United States Senator



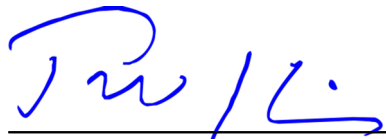
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United States Senator



Jack Reed
United States Senator



Adam B. Schiff
United States Senator



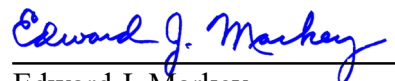
Tim Kaine
United States Senator



Catherine Cortez Masto
United States Senator



Charles E. Schumer
United States Senator



Edward J. Markey
United States Senator



Ruben Gallego
United States Senator



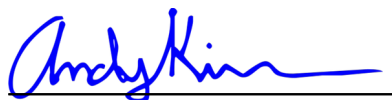
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Bernard Sanders
United States Senator



Cory A. Booker
United States Senator



Andy Kim
United States Senator



Tina Smith
United States Senator



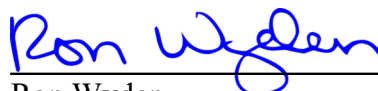
Richard Blumenthal
United States Senator



Mazie K. Hirono
United States Senator



Richard J. Durbin
United States Senator



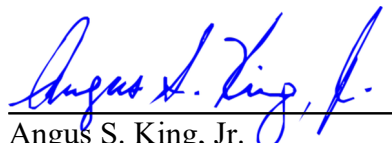
Ron Wyden
United States Senator



Alex Padilla
United States Senator



Kirsten Gillibrand
United States Senator



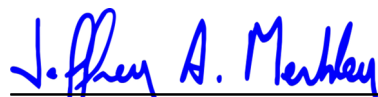
Angus S. King, Jr.
United States Senator



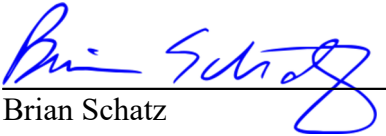
Tammy Baldwin
United States Senator



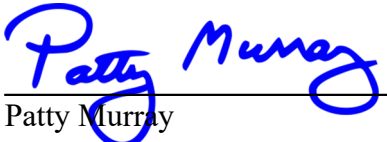
Peter Welch
United States Senator




Jeffrey A. Merkley
United States Senator



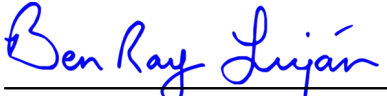
Brian Schatz
United States Senator



Patty Murray
United States Senator



John Fetterman
United States Senator



Ben Ray Lujan
United States Senator



Christopher A. Coons
United States Senator



Michael F. Bennet
United States Senator