

August 5, 2025

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

Re: Reported Plan to Dismiss or Issue No Cause Findings in HUD Investigations and Cases that Allege Disparate Impact Discrimination

Dear Secretary Turner:

The undersigned civil rights, consumer, and real estate organizations write to express grave concern about reports that the U.S. Department of Housing and Urban Development (HUD) plans to dismiss, issue no probable cause findings, or reverse the results of fair housing investigations simply because they allege disparate impact discrimination. As reported by ProPublica, HUD is preparing to close seven major housing discrimination cases, including three in which HUD had already determined that state and local governments concentrated environmental hazards and increased residential segregation in neighborhoods of color ([ProPublica](#)). These cases allege both disparate treatment and disparate impact discrimination under federal civil rights laws—including disparate impact discrimination under the Fair Housing Act, which has been approved by Congress and upheld by the Supreme Court. Such a retreat not only harms millions of people and imperils vulnerable communities, it also contradicts settled law and HUD’s own regulations. Reversing or dismissing meritorious fair housing cases is a dereliction of duty and a violation of your sworn testimony to uphold and vigorously enforce the Fair Housing Act ([CSPAN Video Clip](#)).

The Fair Housing Act prohibits not only acts of intentional discrimination, but also policies that have a disparate impact on people in certain protected classes without sufficient justification. This rule is a longstanding protection, deeply rooted in the caselaw applying the Fair Housing Act, and by now embedded in industry practices, that prevents unjustified policies that unfairly burden or exclude people. It requires landlords, real estate companies, municipalities, banks, insurance companies, and other entities to choose policies and implement practices that apply fairly to all persons. When there is a policy or practice that perpetuates a discriminatory effect against a protected group of people, and there is no business necessity or justification for the policy or practice, entities must opt for a policy with a less discriminatory effect or face legal consequences.

In *Texas Dep’t of Housing & Community Affairs v. Inclusive Communities Project, Inc.*, 576 U.S. 519, 545 (2015), the Supreme Court held that “disparate-impact claims are cognizable under the Fair Housing Act.” The Supreme Court’s decision reaffirmed the Fair Housing Act’s broad remedial purpose. The Court pointed to the fact that, since the Act was adopted, every Court of Appeals addressing the question had upheld this legal theory for proving discrimination. *See id.* at 535-36 (pointing to the “unanimous precedent” of all nine Courts of Appeals to have considered the question). Against that background, the Supreme Court held that Congress ratified disparate impact liability when it amended the Act in 1988 to clarify and strengthen its enforcement mechanisms. HUD, too, has consistently construed the Fair Housing Act to include disparate impact. Regulations to that effect remain on the books and bind your

agency, no matter what an Executive Order may say. *See* 24 C.F.R. 100.500. There is no open question on the matter.

Moreover, disparate impact has been an essential tool for combating housing discrimination since the earliest days under the Fair Housing Act. Soon after the Act took effect, the Nixon Administration utilized disparate impact liability to challenge an ostensibly race-neutral zoning ordinance that had a discriminatory effect on Black people and that would perpetuate segregation. That case ultimately led to an appellate court affirming that this was a proper use of the Fair Housing Act. *See United States v. City of Black Jack*, 508 F.2d 1179 (8<sup>th</sup> Cir. 1975).

Since then, disparate impact has, for decades, served as a vital tool to root out and remedy policies and practices that unfairly harm protected classes—even when race or other characteristics are not explicitly mentioned. It has been successfully deployed to stop unlawful policies that segregate people based on their race or other protected class characteristics; dismantle redlining in insurance and lending; eliminate biased algorithms that harm people and communities; protect survivors of domestic violence; address appraisal bias that causes economic harm to affected homeowners; and halt discriminatory zoning and land-use policies. Beyond prohibiting harm, disparate-impact analysis under the Fair Housing Act has opened doors to greater housing security for individuals with disabilities, seniors on fixed incomes, families with children, and people of faith. It has spurred the development of affordable housing opportunities; safeguarded access to community resources such as transportation, health, and education services; and contributed to the creation of healthy communities that are free from toxins and pollution.

Despite these clear legal precedents and disparate impact’s proven value in achieving the Fair Housing Act’s goal of eradicating discrimination in housing markets, according to news reports, an internal memo from HUD cites President Trump’s April 2025 Executive Order purporting to eliminate federal enforcement based on “disparate impact liability” as justification for abandoning several meritorious HUD fair housing actions ([ProPublica](#)). However, HUD has no discretion to pick and choose among valid Fair Housing Act complaints. By statute, the Secretary “*shall* make an investigation” of all jurisdictional complaints, *see* 42 U.S.C. 3610(a)(1)(B)(ii) (emphasis added), and “*shall* . . . determine based on the facts whether reasonable cause exists to believe that a discriminatory housing practice has occurred,” 42 U.S.C. 3610(g)(1) (emphasis added). The Fair Housing Act does not permit HUD to refuse to investigate or make a reasonable cause finding based on an Executive Order. To vacate findings or rescind meritorious charges on that basis additionally undermines HUD’s statutory mandate to “administer the programs and activities relating to housing and urban development in a manner affirmatively to further the policies” of the FHA (42 U.S.C. § 3608(e)(5)); *see NAACP, Boston Chapter v. HUD*, 817 F.2d 149 (1<sup>st</sup> Cir. 1987) (finding HUD in violation of obligation to affirmatively further fair housing). It also flies in the face of HUD’s longstanding practice to investigate all complaints and the Fair Housing Act’s command that “[i]t is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States.” 42 U.S.C. § 3601. The Executive Order cannot and does not override the statute enacted by Congress and interpreted by the Supreme Court and HUD’s own regulations. It is not only misguided but unlawful to abandon investigations and compliance agreements solely because they rely – in whole or in part – on disparate impact analysis (particularly where the underlying complaints in these matters allege discriminatory intent as well as disparate impact).

Abandoning HUD's duty to protect people in America from disparate impact discrimination in housing makes no sense as it will ultimately harm the nation as a whole. 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. *See, e.g.,* Dana M. Peterson & Catherine L. Mann, *Closing the Racial Inequality Gaps: The Economic Cost of Black Inequality in the U.S.*, available at <https://www.citigroup.com/global/insights/closing-the-racial-inequality-gaps-20200922>. Society thrives when our laws are followed and there are sound and consistent regulations that comply with the law.

Accordingly, we urge you to:

1. **Reaffirm HUD's commitment** to enforcing the disparate impact standard, including as codified in the Fair Housing Act and HUD's own regulations implementing it, and as upheld by every federal appellate court that considered the issue and the Supreme Court.
2. **Continue pursuing** all pending fair housing investigations and charges in which HUD has already determined violations occurred.
3. **Reject any interpretation** of the Executive Order that purports to nullify HUD's authority and mandate to apply the disparate impact standard in fair housing cases.
4. **Retain qualified fair housing experts** within the Office of Fair Housing and Equal Opportunity to investigate and adjudicate fair housing complaints, including those relying on disparate impact.
5. **Vigorously enforce and uphold** all provisions of the Fair Housing Act.

Our nation's civil rights history reminds us that seemingly neutral policies often mask intentional discrimination and deep structural inequities. The disparate impact doctrine remains a vital mechanism for exposing and remedying these injustices. We trust that you will uphold HUD's legal obligations and reject any effort to roll back these fundamental protections. Additionally, we request a meeting with you to discuss this important issue. Please provide dates and times in the next week when you would be available to meet with us.

Thank you for your prompt attention to this critical matter.

Sincerely,

National Fair Housing Alliance

NAACP Legal Defense and Educational Fund, Inc.

Access Ready Inc.

American Civil Liberties Union

Americans for Financial Reform Education Fund

Autistic Self Advocacy Network

Disability Rights Education and Defense Fund

Greater Boston Legal Services (on behalf of client BTC)

Justice in Aging

The Kelsey

National Action Network (NAN)

The National Coalition for Asian Pacific American Community Development (National CAPACD)

National Coalition for the Homeless

National Community Reinvestment Coalition (NCRC)

National Consumer Law Center (on behalf of its low-income clients)

National Housing Law Project

National Low Income Housing Coalition

National Women's Law Center

Poverty & Race Research Action Council

SAGE

Southern Poverty Law Center