

March 30, 2026

The Honorable Kristen Valderrama, Chair
House Economic Matters Committee
231 Taylor House Office Building
Annapolis, Maryland 21401

RE: SB 274 - Fair Housing and Housing Discrimination - Regulations, Intent,
and Discriminatory Effect

Dear Chair Valderrama:

On March 20, 2026, the Maryland State Senate passed Senate Bill (SB) 274, which would codify liability for disparate impact discrimination in Maryland fair housing law and permit the Maryland Department of Housing and Community Development (DHCD) to issue regulations on how counties, cities, and housing agencies must affirmatively further fair housing (AFFH) in Maryland. Unfortunately, the bill was amended in the Senate, and those amendments remove existing protections under state law and create conflicts with federal law. We ask that the House of Delegates amend the bill to ensure the legislation does not conflict with federal law and can be used as an effective tool to remedy decades-long exclusion of Black residents, other residents of color, and other protected classes who have experienced historic and present-day discrimination. The Economic Matters Committee voted favorably on House Bill 573, which included similar language to the SB 274 amendments we propose here. We urge the Committee to amend SB 274 and restore these critical protections.

1. Amendment One: Remove the “or” found on page 5 line 6 and the “or” found on page 5 line 8.

Removing the “or” in the phrase “substantial, legitimate, or nondiscriminatory” is similarly necessary to preserve existing legal protections and ensure consistency with federal fair housing law. HUD’s regulations set a balanced standard for pleading, proving, and defending a fair housing case alleging a policy or practice has a discriminatory effect by codifying a three-step burden-shifting framework for evaluating disparate impact claims. As part of that framework, in order to justify a policy or practice that has a discriminatory effect, federal fair housing regulations require housing providers to show that the policy advances “substantial, legitimate, nondiscriminatory interest.”¹ All three of those factors must be true for the policy to remain in place despite the harms it causes. Numerous cases since *Inclusive Communities* have utilized the HUD Rule’s burden shifting framework to evaluate discriminatory policies.² Justice

¹ While these regulations were first put in place in 2013, they codified decades of prior case law and HUD opinions. U.S. Dep’t of Housing and Urban Development, Implementation of the Fair Housing Act’s Discriminatory Effects Standard, 78 Fed. Reg. 11460 (2013), <https://www.federalregister.gov/documents/2013/02/15/2013-03375/implementation-of-the-fair-housing-acts-discriminatory-effects-standard>. In addition, there must be no less discriminatory policy that achieves those interests; 24 CFR 100.500

² *Mhany Mgmt., Inc. v. Cnty. of Nassau*, 819 F.3d 581, 618-20 (2d Cir. 2016).

Watts indicated the same standard should apply in cases under the Maryland Fair Housing Act when he concurred in *Hare*.³

As amended in the Senate, SB 274 would change Maryland law to permit a wider range of discriminatory policies so long as the housing provider has either substantial or legitimate or nondiscriminatory interest in the policy—despite the significant harms those policies may cause. For example:

- A landlord may have a policy of never renting to people who have been arrested, even if the case was dismissed. The policy may advance a nondiscriminatory interest in maintaining safe premises, but that interest is not legitimate or substantial as an arrest is merely an accusation and there is no evidence that an arrest alone is associated with negative housing outcomes.

The amendments adding “or” to the phrase “substantial, legitimate, or nondiscriminatory” in SB 274 create conflict with federal law and could lead to Maryland permitting a wider range of discriminatory housing policies. If this change is not made in the bill, Maryland law would be substantially weaker than current federal law, and we would have no choice but to withdraw our support for the bill. The main purpose of SB 274 has always been to ensure that current federal fair housing standards are incorporated into Maryland law in the event of a federal rollback, and this amendment to SB 274 undermines that purpose.

2. Amendment Two: Add “regardless of intent” on page 3 line 24 after “status.”

It is necessary to add the language “regardless of intent” to clarify that SB 274 does not merely permit consideration of discriminatory effects to prove intent but prohibits unjustified policies that cause discriminatory effects regardless of whether there is proof of intent. This language is consistent with the U.S. Supreme Court’s decision in *Inclusive Communities*, and the 2025 Maryland Supreme Court’s decision in *Hare*⁴, as well as the U.S. Department of Housing and Urban Development’s (HUD) regulations.⁵ For decades, the law has prohibited disparate impact discrimination, which occurs when a policy or practice disproportionately harms a group of people with a legally-protected characteristic **regardless of intent** and the policy is not justified by a substantial, legitimate, nondiscriminatory reason or a less discriminatory policy is available. Disparate impact protections permit housing providers to rely on well-reasoned policies while protecting people from unjustified practices that cause disproportionate harm. As currently drafted with amendments added in the Senate, SB 274 would remove these protections from the Maryland Fair Housing Act and create a conflict

³ *Hare v. David S. Brown Enterprises, Ltd.*, 491 Md. at 686, 697; see also 1991 Md. Laws, Ch. 571 (explaining that the Maryland Fair Housing Act “prohibit[s] discriminatory housing practices in a manner substantially equivalent or similar to the” FHA).

⁴ *Hare v. David S. Brown Enterprises, Ltd.*, 491 Md. at 686, 697; see also 1991 Md. Laws, Ch. 571 (explaining that the Maryland Fair Housing Act “prohibit[s] discriminatory housing practices in a manner substantially equivalent or similar to the” FHA).

⁵ While these regulations were first put in place in 2013, they codified decades of prior case law and HUD opinions. U.S. Dep’t of Housing and Urban Development, *Implementation of the Fair Housing Act’s Discriminatory Effects Standard*, 78 Fed. Reg. 11460 (2013), <https://www.federalregister.gov/documents/2013/02/15/2013-03375/implementation-of-the-fair-housing-acts-discriminatory-effects-standard>; U.S. Dep’t of Housing and Urban Development, *Reinstatement of HUD’s Discriminatory Effects Standard*, 88 Fed. Reg. 19450, 19463 (Mar. 31, 2023), <https://www.federalregister.gov/documents/2023/03/31/2023-05836/reinstatement-of-huds-discriminatory-effects-standard#citation-60-p19455>

between the Maryland Fair Housing Act and the federal Fair Housing Act. This proposed amendment is necessary to avoid this conflict and maintain the existing protection Maryland residents have against discrimination.

3. Amendment Three: Adding “OR CREATES, INCREASES, REINFORCES, OR PERPETUATES SEGREGATED HOUSING PATTERNS” back into the text.

The definition of “discriminatory effect” that the Economic Matters Committee voted on favorably on HB 573 is the same definition in HUD’s 2013⁶ and 2023 regulations.⁷ It reflects HUD’s decades of expertise interpreting and enforcing the federal Fair Housing Act’s standards⁸ and is grounded in the U.S. Supreme Court’s interpretation of the Act in *Texas Dep’t of Housing & Community Affairs v. Inclusive Communities Project, Inc.*⁹ The Maryland Supreme Court reiterated this finding in *Hare v. David S. Brown Enterprises, Ltd.*¹⁰ The current amendment added in SB 274 weakens the definition of discriminatory effect which would weaken protections for Marylanders and create conflicts between federal and state law.

The Trump administration has abandoned its longstanding position to address and prevent disparate impact discrimination and has, instead, begun to pick and choose which fair housing laws it will enforce. These actions hurt all Marylanders, but Black Marylanders and other marginalized communities will be harmed the most. Maryland must take action to defend its residents against all forms of housing discrimination—not weaken its own laws. The senate amendments added to SB 274 are extremely harmful and conflict with federal and state court decisions. We ask that you reject these efforts to limit protections in existing law by removing “or” found on page 5 line 6, and the “or” found on page 5 line 8, including the phrase “regardless of intent” on page 3, and adding back the original definition of discriminatory effect that passed the ECM in February 2026.

If you have any questions, please contact David Wheaton, Assistant Policy Counsel, at dwheaton@naacpldf.org or Demetria L. McCain, Director of Policy, at dmccain@naacpldf.org.

Signed,

NAACP Legal Defense and Educational Fund (LDF)
Public Justice Center
Poverty & Race Research Action Council
Baltimore Regional Housing Partnership
Maryland Legal Aid

⁶ Implementation of the Fair Housing Act’s Discriminatory Effects Standard, 78 Fed. Reg. 11460 (2013), <https://www.federalregister.gov/documents/2013/02/15/2013-03375/implementation-of-the-fair-housing-acts-discriminatory-effects-standard> (hereinafter “2013 Rule”).

⁷ 2023 Rule, *supra* note 4.

⁸ 24 C.F.R. § 100.500(a).

⁹ *Inclusive Communities* at 541.

¹⁰ *Hare*, 491 Md. at 678.