

Dear NAHMA Members -

Today, the attached proposed revision to the **Fair Housing Act's Disparate Impact Rule** was published in the [Federal Register for public comments](#). In their [press release](#), HUD stated, "The HUD proposed disparate impact rule provides a framework for establishing legal liability for facially neutral practices that have unintended discriminatory effects on classes of persons protected under the Fair Housing Act. The rule has no impact on determinations of intentional discrimination. In its 2015 decision, the Supreme Court upheld the use of a 'disparate impact' theory to establish liability under the Fair Housing Act for business policies and local ordinances even if the policy or ordinance is neutral - in intent and application - if it disproportionately affects a protected class without a legally sufficient justification."

A summary of the proposed rule is provided below. NAHMA will work with our Fair Housing Committee to formulate formal comments. To assist in this effort, NAHMA requests all members provide feedback to NAHMA's Government Affairs staff, Larry or Juliana, **by Friday, September 27**. Members can also find previous NAHMA and Industry Colleagues' comments to HUD, requesting an update to the disparate impact rule [here](#).

Summary:

Title VIII of the Civil Rights Act of 1968, as amended (Fair Housing Act or Act), prohibits discrimination in the sale, rental, or financing of dwellings and in other housing-related activities on the basis of race, color, religion, sex, disability, familial status, or national origin. HUD has long interpreted the Act to create liability for practices with an unjustified discriminatory effect, even if those practices were not motivated by discriminatory intent. This rule proposes to amend HUD's interpretation of the Fair Housing Act's disparate impact standard 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. This rule follows a June 20, 2018, advance notice of proposed rulemaking, in which HUD solicited comments on the disparate impact standard set forth in HUD's 2013 final rule, including the disparate impact rule's burden-shifting approach, definitions, and causation standard, and whether it required amendment to align with the decision of the Supreme Court in *Inclusive Communities Project, Inc.*

Thanks,
Larry

*Larry Keys, Director of Government Affairs
National Affordable Housing Management Association
400 N. Columbus St., Suite 203, Alexandria, VA 22314
Phone 703-683-8630, ext.111 Email lkeys@nahma.org, Website www.nahma.org
NAHMA is the leading voice for affordable housing management, advocating on behalf of multifamily property managers and owners whose mission is to provide quality affordable housing.*