



# The Trump Administration's Latest Attack on Civil Rights in Housing: Disparate Impact and Why It Matters

On August 19, 2019, the U.S. Department of Housing and Urban Development (HUD) published another [proposal](#) in its sustained campaign to dismantle civil rights protections. HUD's proposal will make it easier for landlords and lenders to discriminate, and harder for tenants and advocates to prove discrimination.

## **Housing Discrimination is Still Prevalent**

Despite progress made to expand housing opportunities since the passage of the Fair Housing Act (FHA) in 1968, housing discrimination is still very real across the country. Criminal justice disparities, government-sanctioned policies like redlining, and entrenched patterns of segregation make identifying and ending housing discrimination extremely difficult.

## **Rooting Out Hidden Discrimination**

Discriminatory housing policies often do not appear to target any particular group of people and may even seem to apply to everyone equally. However, in practice, these policies unjustifiably harm some groups (e.g., people with disabilities, people of color) more than others.

For decades, victims of this type of "hidden" discrimination have been able to challenge housing discrimination using disparate impact theory. In this context, disparate impact allows people to show that a housing policy negatively impacts them because of their race, sex, national origin, disability, or other protected characteristic – even if the policy seems fair on the surface.

The U.S. Supreme Court [confirmed](#) in 2015 that disparate impact was a valid legal tool to combat housing discrimination. The Court made no mention in its opinion of the need for changes to HUD's current disparate impact rule.

## **HUD's Proposal**

HUD is effectively attempting to eliminate disparate impact as a means of combatting discrimination. Victims of housing discrimination would be hard-pressed to overcome the exceedingly high bar HUD is proposing to adopt when it comes to bringing fair housing cases using disparate impact.

Without disparate impact theory, people experiencing housing discrimination would have to show that a housing provider, city, or other entity intended to discriminate against them, which is very difficult to do.

Disparate impact cases are already incredibly difficult to prove under HUD's current standards. Even after decades of the use of disparate impact theory, housing providers and insurance companies have still been able to succeed. By making disparate impact cases even more difficult, HUD will basically allow housing providers, insurance companies, and others to have discriminatory policies in place without accountability – unless they are explicit in their discrimination.

In short, HUD's proposal serves industry over people.

### **How Can I Fight Back?**

NHLP is encouraging allies who support equal housing opportunities for all to submit comments to HUD during the agency's 60-day comment period, ending **October 18, 2019**.

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