

HUD's Disparate-Impact Rule Comment Template: Gender-Based Violence

Background: The Fair Housing Act's Disparate Impact Rule

On August 19, 2019, the Department of Housing and Urban Development (HUD) proposed a rule that will gut the Disparate Impact Rule, a longstanding enforcement tool under the Fair Housing Act (FHA). The FHA prohibits housing discrimination on the basis of race, color, national origin, gender, disability, religion, and familial status. **HUD is currently accepting public comments until October 18, 2019. Read on to find out more, and to learn how you can submit comments to HUD.**

The FHA's protections apply to two types of claims: (1) disparate treatment (i.e., intentional or explicit discrimination), and (2) disparate impact (i.e., unjustified housing policies that appear neutral in theory but disproportionately harm protected groups in practice). The Disparate Impact Rule allows a person to challenge policies that fall in the second category, such as zero-tolerance policies, nuisance ordinances, and overly restrictive occupancy policies (i.e., placing overly restrictive limits on the number of persons who can live in a unit). The Disparate Impact Rule has been recognized by courts for 45 years, and was recently affirmed by the Supreme Court in a 2015 ruling in *Texas Department of Housing & Community Affairs v. Inclusive Communities Project*.

What's At Stake

HUD's Proposed Rule will effectively destroy the Disparate Impact Rule through several provisions. First, the Proposed Rule will impose a drastically higher burden on victims of housing discrimination, making it virtually impossible to succeed. Second, the Proposed Rule suggests that a discriminatory policy or practice that is profitable may be immune from liability, and places the burden on victims to show that a company can make at least as much money without discriminating. Third, the Proposed Rule provides several special defenses for business practices that rely on statistics or algorithms—such as credit-scoring.. HUD had previously recognized the impacts of “neutral” policies such as nuisance ordinances on survivors of domestic violence. However, without a viable disparate impact theory, it would be extremely difficult to successfully challenge these “neutral” policies without showing that the housing provider, city, or other entity actually intended to discriminate – which is very hard to do.

What Can Advocates Do?

We urge advocates, organizations, and all interested individuals to submit comments opposing HUD's Proposed Rule. A group of housing and gender-based violence advocates across the country have drafted a Comment Template outlining the Proposed Rule's impact on survivors of gender-based violence. We hope to marshal our resources to get as many comments filed in opposition to the Proposed Rule by **October 18, 2019**.

Please complete the two following action items:

1. Please use the attached Comment Template to create a unique comment in opposition to the rule and submit it through the [Federal Register](#) or through the [Defend Civil Rights Comment Portal](#) by October 18, 2019. Use the highlighted prompts to fill in information, stories, or analysis about the importance and impact of the proposed rule on their work, clients, and communities. Once your comment is completed, please share a PDF version with Sandra Park (spark@aclu.org) and Linda Morris (lindam@aclu.org) of the ACLU Women's Rights Project.
2. Please engage your community partners, impacted individuals, and others in the comment-writing campaign by sharing these materials, posting on social media, and emailing your contacts directly. You can use the materials created on the Defend Civil Rights website.

Comments must be about 30% different from the template to count as a unique comment. The template is [WORD COUNT] words long, so advocates should add [WORD COUNT] words of original content. Please feel free to shorten the template to reduce the required amount of added content, if desired.

Additional resources—including HUD's Proposed Rule, talking points, and analysis—can be found at the Defend Civil Rights website. If you have any questions or would like information, please reach out to Sandra Park (spark@aclu.org) or Linda Morris (lindam@aclu.org) of the ACLU Women's Rights Project.