



The Problem with HUD's Final Rule on Disparate Impact

Problem: On February 15, 2013, HUD issued a final rule under the Fair Housing Act (78 Fed. Reg. 11460, see attached Affordable Housing Alert) which will negatively impact the very communities it aims to assist. This rule embodies the trend of applying disparate impact analysis in many areas, including screening procedures used by property managers/landowners in the rental process. HUD's final rule puts both property managers/landowners and the innocent people to whom they rent in a precarious situation.

As it is written, the finalized rule opens property managers/landowners to costly discrimination litigation when their rental policies follow HUD's own Section 8 requirements¹ and many local ordinances holding them accountable for the character of their tenants. They are required to deny leases to applicants with certain convictions, but under the rule are now also at risk of being sued for discrimination if they comply with that very same requirement. For example, cities such as Chicago and Milwaukee have their own ordinances that hold landowners responsible for the actions of those renting their property. This is mandated under the pretense that those owners are able to screen and reject potential renters who display historical behavior that could lead to future similar malevolence and in turn, landowner punishment.

Hindering the freedom of landowners to screen their tenants not only puts owners at risk, but puts neighbors of these new tenants at greater risk as well. While everyone deserves a place to live, not everyone deserves the right to live at any location they please at all times in their life. HUD has its own restrictions for individuals and families whose members have consciously committed crimes that they have been convicted of by a jury of their peers. It is not unreasonable to expect that those who have been processed through our legal system due to criminal activity would have slightly limited housing options as a result of crimes against others' property, other persons, or involving illegal substances. This creates a direct conflict within HUD's own regulations.

Solution: Repeal the "final rules" rather than issuing a blanket rule that will ultimately drive some property owners out of the rental pool, and in turn limit the availability of housing overall. Instead of increasing landowners' exposure to costly litigation, HUD needs to issue guidance similar to other Federal agencies on the proper use of the background screening data. These are not uncharted waters. Determining a proper balance that protects the property managers/landowners, the neighborhoods, and the disparately impacted is best achieved through careful guidance.

How we would like you to help: Request that HUD withdraw its final rule and re-write it as a regulation consistent with its own Section 8 guidance for the use of background data. What is logical for protecting families in one set of HUD standards should also be applied for the safety of all families.

¹HUD's Housing Choice Voucher Program Guidebook:

http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/hcv/forms/guidebook

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