



FOR IMMEDIATE RELEASE

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U.S. Department of Housing and Urban Development Attempts to Gut Core Civil Rights Protection

Today, the U.S. Department of Housing and Urban Development (HUD) is releasing a proposed rule that will dramatically undermine enforcement of the federal Fair Housing Act.

This is an affront to victims of housing discrimination and to decades of civil rights progress made in our nation. Further, the proposed rule represents an abandonment of the federal government's responsibility to undo longstanding, deeply harmful patterns of residential segregation.

The rule will make it extraordinarily difficult for victims of discrimination to succeed in complaints alleging disparate impact. Housing discrimination complaints based on this concept allege that policies that appear neutral on paper can have a discriminatory effect in practice, because they are disproportionately harmful based on race, ethnicity, disability or other protected classes defined by fair housing laws. Fair housing organizations and other civil rights groups have long used the concept of disparate impact to successfully challenge institutional discrimination in the housing market. Success in such cases has depended on demonstrating discriminatory **effect**, whether or not there is evidence of discriminatory **intent**.

There are several ways HUD's new rule would make it more difficult for complainants to prevail in disparate impact cases:

1. Victims of discrimination will face a drastically higher burden to prove a disparate impact claim under the Fair Housing Act. The newly proposed burden of proof standard will be much higher than that required in employment, education, or other civil rights areas. Further, language in the proposed rule suggests that a rule or policy that is profitable could be immune from challenge for its discriminatory impact. In this, HUD is suggesting that the defendants' profit margins take precedence over the rights of victims, and that it is the complainants' responsibility to protect that profit margin.
2. The rule explicitly provides defendants with greater tools for justifying their actions, thereby increasing their ability to nullify or discredit disparate impact claims. In essence, the proposed rule provides defendants with a blueprint for defeating a claim of discrimination.

3. It provides tremendous legal protections to defendants who use algorithmic models as part of their business practices (e.g., credit scoring, or insurance underwriting, both of which may have disparate impacts based on race). For example, if the algorithmic model in question is “standard in the industry,” the rule states that “the proper party responsible for the challenged conduct is not the defendant, but the party who establishes the industry standard.”

Does this affect us in Wisconsin? Does it mean something here for our housing market? In a word: **yes**.

For example, in the first decade of this century, the Metropolitan Milwaukee Fair Housing Council and other fair housing organizations conducted investigations in the homeowners insurance market, and uncovered a range of policies that had an extremely harmful impact on minority neighborhoods. These policies appeared race-neutral, especially if viewed out of the geographic context in which they were applied. One large homeowners insurance company, for instance, had underwriting requirements that excluded older homes and homes with lower market values from qualifying for their more comprehensive insurance policies. These age and value restrictions appeared facially neutral, but had a disparate impact on homeowners and homes in African American and Latino neighborhoods. In metropolitan Milwaukee, this age restriction policy prevented 82% of homes in predominantly minority neighborhoods from receiving comprehensive coverage, but did so for only 52% of homes in white neighborhoods. Value restrictions excluded 99% of homes in predominantly minority neighborhoods, but only 43% of homes in predominantly white neighborhoods.

These practices cause a lack of insurance or under-insurance for minority neighborhoods, and the consequences are substantial and tragic. If homeowners have inadequate insurance coverage and damage or loss of the home occurs, the wealth of the household is depleted and the home cannot be repaired. The home may be boarded up and torn down, and the entire neighborhood suffers.

When we brought claims against insurers who used policies with disparate impact, we succeeded in changing the way the insurance industry does business. Yet under the proposed new rule, we may not have been able bringing such claims against insurance companies, and our market would be the worse for it.

The promise of the federal Fair Housing Act has yet to be fulfilled, but that doesn't mean we can permit cynical maneuvers to abandon it. In fact, the opposite is true. This is the moment when we must act on our highest ideals and re-energize our efforts to ensure that all us - no matter who we are or where we live – have fair access to the opportunities that make our communities healthy, vibrant and inclusive.

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MMFHC is a private, non-profit organization whose purpose is to promote fair housing throughout the State of Wisconsin by combating illegal housing discrimination and by creating and maintaining racially and economically integrated housing patterns. It operates satellite offices in Dane County (the Fair Housing Center of Greater Madison) and in Northeast Wisconsin (the Fair Housing Center of Northeast Wisconsin).

Persons who feel they may have experienced illegal housing discrimination should call 1-877-647-FAIR, a toll-free number. Callers within the 414 area code may call 414-278-1240. All services to victims of illegal housing discrimination are free of charge.