



Fair Lending

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The banking industry is committed to a discrimination-free lending environment.

- In all communities, banks are actively seeking borrowers. Banks are in business to make loans and they want to make credit available to all qualified borrowers on fair and reasonable terms.
- Banks must, however, make safe and sound loans to borrowers that are prepared to take on the financial burdens.
- To evaluate credit risk, lenders assess a variety of factors, including the applicant's income, debt and credit score information. These factors are objective and unbiased, and meant to measure ability and readiness to repay and possibility of default. They do not, and should not, take into consideration race, gender or ethnicity information.
- State and federal laws prohibit lending discrimination based on race or color, national origin, religion, sex, familial status or disability. Banks establish lending programs that are in full accord with these protections and bank lending standards are constantly tested and examined to ensure they do not inadvertently violate fair lending principles.
- One area that has received great attention in the last few years is the scrutiny on banks and other businesses for potential discrimination based on "disparate impact" - discrimination claims based upon the effect of an action not upon the intent of the action.
- A 2015 Supreme Court case, *Texas Department of Community Affairs vs. Inclusive Communities Project* ("Inclusive Communities") affirmed disparate impact as a basis for a discrimination claim under the Fair Housing Act but shifted the burden of proof to reduce the number of frivolous claims brought under that legal theory.

In 2019, the Department of Housing and Urban Development proposed changes to the rules governing the Fair Housing Act to bring them in line with the Inclusive Communities case.

- HUD's proposed rule would align with Inclusive Communities by requiring the plaintiff to do more than show a statistical disparity. Instead, the plaintiff would have to meet a five-step threshold to bring a case of disparate impact under the Fair Housing Act.
- These steps include the claimant being required to show that the policy or practice in question is unnecessary to achieve any valid business objective, a burden placed on the lender under HUD's current rule.
- We also support HUD's proposed defenses which, consistent with Inclusive Communities, would cause a case to be dismissed if the disparate impact is caused by policies of governmental agencies or government-sponsored enterprises.
- These proposed changes would bring HUD's Fair Housing Act rules in line with existing Supreme Court rulings and would make the application of the disparate impact theory more rational and fairer. HUD should move to finalize the proposal as soon as possible.
- Community banks pride themselves on their history of working with regulators and groups committed to affordable lending to determine why any

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disparities may exist so that they can take necessary steps to eliminate them.

- Efforts like the HUD proposal to revise the Fair Housing Act rules and to bring greater clarity to the Federal Housing Administration will provide lenders with greater clarity and less litigation risk, which will be constructive in expanding credit to underserved borrowers and communities.