



HUD TO SEEK PUBLIC COMMENT ON DISPARATE IMPACT REGULATION

The U.S. Department of Housing and Urban Development (HUD) announced on Thursday that it will formally seek the public's comment on whether its 2013 Disparate Impact Regulation (Regulation) is consistent with the 2015 U.S. Supreme Court ruling in *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.*

The Regulation interpreted the Fair Housing Act to encompass disparate-impact liability. Under the Regulation, in order to bring a challenge for disparate impact practices, a plaintiff has the burden of proving that a challenged practice caused or predictably will cause a discriminatory effect. After the plaintiff establishes a prima facie showing of disparate impact, the burden shifts to the defendant to prove that the challenged practice is necessary to achieve one or more substantial, legitimate, nondiscriminatory interests. If a defendant satisfies its burden, the plaintiff may prevail upon proving that the substantial, legitimate, nondiscriminatory interests supporting the challenged practice could be served by another practice that has a less discriminatory effect. The Supreme Court upheld the use of disparate-impact liability under the Fair Housing Act, but noted that there must be a robust causality requirement to protect defendants from being held liable for racial disparities they did not create.

Please let us know if you have any questions.

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