

Promoting Fair Housing

The Fair Housing Act (Title VIII of the Civil Rights Act of 1968) became law in 1968, and states that it is "...the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States." This Fair Housing Act prohibits discrimination in the sale, rental, and financing of dwellings, and in other housing-related transactions. Specifically, the Act outlawed the following:

- Refusal to sell or rent a dwelling to any person because of race, color, religion, sex, or national origin.
- Discrimination based on race, color, religion, or national origin in the terms, conditions, or privilege of the sale or rental of a dwelling.
- Advertising the sale or rental of a dwelling indicating preference of discrimination based on race, color, religion, or national origin.
- Coercing, threatening, intimidating, or interfering with a person's enjoyment or exercise of housing rights based on discriminatory reasons or retaliating against a person or organization that aids or encourages the exercise or enjoyment of fair housing rights.



There have been many additional Acts and Executive Orders expanding prohibitions to discrimination for various populations, and clarifying laws and rules, for example:

- Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, or national origin in programs and activities receiving federal financial assistance
- Section 504 of the Rehabilitation Act of 1973 prohibits discrimination based on disability in any program or activity receiving federal financial assistance.

A list of fair housing laws and executive orders may be found at the following HUD sites:

http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/FHLaws

http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/progdesc/title8

According to *The Status of Human Rights in Tennessee*, from the Tennessee Human Rights Commission (November 2014), the top 5 issues alleged in housing discrimination in recent years were disability, race, gender, retaliation and national origin.

The report indicated that in recent years, more complaints were filed in Davidson County than in any other county in Tennessee.

http://tn.gov/assets/entities/humanrights/attachments/FINAL_The_Status_of_Human_Rights_in_Tennessee_11.21.14.pdf

Disparate Impact

Disparate impact means that some policy, adopted for a non-racial reason, might end up burdening minority-housing opportunities more heavily than those provided to whites. If so, the policymaker would be required to justify the policy to a court on grounds other than race.

The Supreme Court reaffirmed the consideration of disparate impact related to fair housing in June 2015. The state of Texas asked the Supreme Court to reinterpret the Fair Housing Act to bar disparate-impact claims, despite the fact that circuit courts of appeals that had considered the issue had held that the Act permitted disparate-impact claims. In the *Texas Department of Housing and Community Affairs v. The Inclusive Communities Project (ICP)* case, the plaintiff (ICP) argued that the method in tax credits were awarded in Dallas between 1995 and 2009 caused minorities to be segregated in poor, low-opportunity areas of the city. During that time, Texas did not award any tax credits for family units in predominately white census tracts.

The Supreme Court ruled in a 5-4 decision that policies that segregate minorities in poor neighborhoods, even if they do so unintentionally, violate the Fair Housing Act. The Court considered the Act's "results-oriented language, the Court's interpretation of similar language in title VII and the Age Discrimination in Employment Act, Congress' ratification of disparate-impact claims in 1988, the unanimous view of nine Courts of Appeals, and the statutory purpose." However, the court warned against remedies that impose outright racial quotas, a sign that disparate-impact claims must be brought cautiously.

<http://www.scotusblog.com/case-files/cases/texas-department-of-housing-and-community-affairs-v-the-inclusive-communities-project-inc/>

<http://www.nationalfairhousing.org/PublicPolicy/DisparateImpact/tabid/4264/Default.aspx>



Affirmatively Furthering Fair Housing

Since 1968, the U. S. Department of Housing and Urban Development (HUD) has funded housing with a requirement that funding recipients such as Public Housing Authorities submit an "Analysis of Impediments" (AI) to fair housing in their communities, and certify that they were complying with civil rights laws and doing all they could to "affirmatively further fair housing." Expectations were that communities would use HUD funding to address these impediments as part of their community housing plans. However, the Act provided only limited mechanisms for enforcement, allowing the Justice Department to go to court only in "pattern and practice" cases or when a group of persons was discriminated against in a manner that "raises an issue of general public importance."

<http://www.civilrights.org/resources/civilrights101/housing.html>

New rules take a more affirmative position, requiring an “assessment of fair housing” (AFH) to analyze the local fair housing landscape and set locally-determined fair housing priorities and goals. This expanded approach takes into account many elements such as racial segregation, access to transit and jobs, school quality, and environmental justice. Instead of looking at impediments, the new rule includes out four goals:

1. Reducing segregation
2. Eliminating racial and ethnic concentrations of poverty
3. Reducing disparities in access to jobs, transit, and quality schools
4. Targeting groups with more severe housing problems like the people with disabilities

Applications to HUD will need to include data about communities that explicitly addresses these four goals. To help communities, HUD will provide data, maps and technical assistance about patterns of integration and segregation, racially and ethnically concentrated areas of poverty, disproportionate housing needs, and disparities in access to opportunity.

http://www.huduser.gov/portal/affht_pt.html

http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2015/HUDNo_15-084

HUD plans to assist communities to make the transition to the new rule by providing data, maps, and technical assistance. Key elements of HUD assistance are the following:

- Publicly open data on fair housing and access to opportunity with mapping tools for local use. HUD will provide a mapping tool for localities. A beta test version of the mapping tool and a draft User’s Guide is available online at <http://affht.vsolvit.com/>. The final version of this tool will include additional features.
- Grantees will use local data and knowledge to inform local decision-making, including information obtained through the community participation process.
- Grantees will use local knowledge and local decision-making to determine best strategies and make place-based investments to revitalize distressed areas, expand access to quality affordable housing throughout a community, and expand access to opportunity, including strengthening the stability and security of neighborhoods
- Because grantees have differing responsibilities and geographic areas, HUD will provide Fair Housing Assessment (FHA) tools specific to local jurisdictions and public housing authorities (PHAs).
- The final rule encourages grantees to collaborate on fair housing assessments to advance regional fair housing priorities and goals.
- The rule facilitates community participation in the local process to analyze fair housing conditions and set local priorities and goals.
- The final rule will be phased in, providing additional time for communities to adopt this improved process for setting local fair housing priorities.

http://www.huduser.gov/portal/sites/default/files/pdf/AFFH_Final_Rule_Executive_Summary.pdf

The Assessment of Fair Housing (AFH) Tool will help communities present a picture of local housing using real data about segregation, concentration of poverty, and local efforts to affirmatively plan for actions that will reduce the segregation and make affordable housing more available.

http://www.huduser.gov/portal/affht_pt.html#affhassess-tab

Examples of items in the Assessment Tool:

1. Indicate what goals were selected by program participant(s) in recent Analyses of Impediments and Assessments of Fair Housing:
 - a. Discuss what progress has been made toward their achievement; and
 - b. Discuss how the experience of program participant(s) with past goals has influenced the selection of current goals.
 - c. Discuss any additional policies, actions, or steps that address fair housing issues.
2. Describe demographic patterns in the jurisdiction and region, and describe trends over time (since 1990).
3. Describe and compare segregation levels in the jurisdiction and region. Identify the racial/ethnic groups that experience the highest levels of segregation.
4. Explain how these segregation levels have changed over time (since 1990).
5. Identify areas with relatively high segregation and integration by race/ethnicity, national origin, or Limited-English-Proficiency, and indicate the predominant groups living in each area.

While the final rule took effect 30 days after publication, it will not be fully implemented immediately. HUD will provide support to program participants that need to complete an Assessment of Fair Housing to ensure they understand the process and to identify best practices across a diverse group of communities. More information is available on the Affirmatively Furthering Fair Housing Final Rule:

www.hud.gov/AFFH.

http://www.huduser.gov/portal/affht_pt.html#final-rule

<http://www.nationalfairhousing.org/publicpolicy/affirmativelyfurtheringfairhousing/tabid/4261/default.aspx>

For information or to file complaints related to fair housing, please contact:

- The Tennessee Fair Housing Council - <http://www.tennfairhousing.org/>
- Metropolitan Human Relations Commission - <http://www.nashville.gov/Human-Relations-Commission/Compliance-Program.aspx>
- Tennessee Human Rights Commission - <http://tn.gov/humanrights/>
- U.S. Department of Housing and Urban Development - http://portal.hud.gov/hudportal/HUD?src=/topics/housing_discrimination