

Media Contacts:

Charles McNally
charles.mcnelly@nyu.edu
212-998-6492

Cora Johnson-Grau
cjohnsongrau@berkeley.edu
510-859-7073

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Leading Housing Researchers Challenge Proposed Fair Housing Rule Change

HUD Disparate Impact Rule Ignores Potential Harms of Segregation

New York, NY— The NYU Furman Center and the Turner Center for Housing Innovation at U.C. Berkeley submitted public comments today arguing that a proposed rule from the U.S. Department of Housing and Urban Development (HUD) ignores the demonstrated harms inflicted by segregation, fails to account for the basic structure of local zoning and land-use decisions, and imposes obligations on fair housing plaintiffs inconsistent with the basics of social science. In light of these major flaws, the university researchers urge HUD to withdraw the proposed rule. [Read the joint public comments.](#)

The “Disparate Impact” standard is a legal concept at the crux of fair housing enforcement, one that was affirmed by the U.S. Supreme Court in 2015 in *Texas Department of Housing & Community Affairs v. The Inclusive Communities Project, Inc (Inclusive Communities)*. Under this standard, an unjustified policy or decision that disproportionately affects groups protected by the Fair Housing Act can violate the law regardless of discriminatory intent. In August, HUD published a proposed rule claiming to better align its regulations with the recent *Inclusive Communities* court decision, opening a public comment period that closes on Friday, October 18. Yet, as reflected in the comments submitted by these two leading research organizations, the proposed rule fails to comport with important legal standards and social science research, potentially making use of the disparate impact standard more difficult—and in many circumstances impossible.

“Especially given the ongoing work this nation needs to do to create diverse and inclusive communities, the Fair Housing Act’s disparate impact standard is a critical tool,” said Ken Zimmerman, Distinguished Fellow at the NYU Furman Center. “HUD’s proposed rule is a step backward, failing to acknowledge the harms it would impose and allowing unjustified policies and decisions to escape review.”

The rule is silent on the potential negative consequences of changing the disparate impact regulation – yet assessing such costs during the rule-making process are required by administrative law. Extensive social science research has shown the profound harms segregation inflicts on the health, education, and income of minority communities, and the drag it can put on economic growth across entire regions. Certain vulnerable populations, including people with disabilities and victims of domestic violence, also depend on legal protections that would be eroded by HUD’s new regulation.

“Good policymaking is built on rigorous data and evidence,” said Kathy O’Regan, Faculty Director at the NYU Furman Center. “Yet this proposal ignores voluminous social science research that confirms the damage segregation does to individuals and families, to our neighborhoods, and to our economy.”

In addition to HUD’s failure to account for the rule’s negative effects, the proposed rule seeks to exempt from disparate impact review so-called “single event” zoning and land-use decisions and practices, such as those that occur in variance and rezoning processes, despite the fact that these are critical aspects of contemporary land-use policy. Noting that these proposed changes are inconsistent with the Supreme Court decision and broad consensus among the federal government and research community, the comments demonstrate that the proposed rule misconstrues land-use and zoning practices, and inappropriately legally immunizes many exclusionary land-use choices that perpetuate segregation.

“HUD’s proposed rule fails to recognize the clear and extensive evidence that links restrictive zoning practices and local opposition to patterns of racial segregation and exclusion,” said Carol Galante, Faculty Directory of the Turner Center for Housing Innovation.

“Local governments commonly make their land use and zoning decisions one project or proposal at a time,” said Matthew Murphy, Executive Director of the NYU Furman Center. “Exempting these one-off decisions from any fair housing analysis would effectively remove all potentially racially exclusionary local decisions from judicial review.”

The NYU Furman Center/Terner Center comments come as other fair housing and community development stakeholders respond to HUD’s proposed rule in advance of the October 18 deadline. [Read a copy of the full submitted comments](#), or [learn more about HUD’s disparate impact proposal](#).

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About the NYU Furman Center: The NYU Furman Center advances research and debate on housing, neighborhoods, and urban policy. Established in 1995, it is a joint center of the New York University School of Law and the Wagner Graduate School of Public Service. More information can be found at furmancenter.org and [@FurmanCenterNYU](https://twitter.com/FurmanCenterNYU).

About the Turner Center for Housing Innovation at U.C. Berkeley: The Turner Center for Housing Innovation at the University of California at Berkeley is a collaboration between the College of Environmental Design and the Haas School of Business. The Turner Center formulates bold strategies to house families from all walks of life in vibrant, sustainable, and affordable homes and communities. For more information, visit: turnercenter.berkeley.edu or [@TurnerHousing](https://twitter.com/TurnerHousing).