# HUD Seeks 'Disparate Impact' Revamp

It was considered a key element for the enforcement of HUD new Affirmatively Furthering Fair Housing rule. The Obama administration's civil rights division in the Justice Department considered it important enough to maneuver a stalling process until the U.S. Supreme Court could decide whether Disparate Impact was a legitimate legal strategy.

Within days of the high court's June 2015 decision upholding the legal theory as legitimate, HUD unveiled its AFFH rule, a stricter enforcement mechanism for a new interpretation of the 1968 Fair Housing Act.

The Supreme Court, in its Inclusive Communities decision, held that disparate impact is a legitimate theory of discrimination under the FHA. Enforcers could accuse a person or business of discrimination if a practice, while neutral on its face, could have a discriminatory impact.

While the justices endorsed disparate impact, with the caution that the accusation must have a legally sufficient justification for its application, did not decide a standard for evaluating disparate impact claims. Instead, the justices provided several strict guidelines for necessary limitations.

HUD now concludes than its rule is inconsistent with the high court's limitations and the decision in several respects and is suspending its application until a revision conforms to the Supreme Court's decision.

HUD's reform proposal lays out six questions the department wants to resolve before writing a new rule including potential revisions to the existing rule  -- made final in 2013 but held in abeyance until the 2015 ruling -- that could add to the clarity, reduce uncertainty, reduce the regulatory burden, or otherwise assist the regulated entities and other members of the public in determining what is lawful.

The 60-day comment period ends Aug. 20.  The revisions, however, could take months to formulate, rendering use of the theory in AFFH enforcement moot indefinitely.

**Info:** See the HUD reform proposal at www.cdpublications.com/docs/9482

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