

FEDERAL OVER REACH -- NEW HUD RULES FOR AFFIRMATIVELY FURTHERING FAIR HOUSING

The Fair Housing Act (FHA) of 1968 (Title VIII of the Civil Rights Act of 1968) prohibited discrimination in the sale, rental or financing of a dwelling based on race, color, religion sex or national origin. Amendments in 1988 also prohibited discrimination based on disability, family status, and pregnancy and established administrative enforcement mechanisms for the Department of Housing and Urban Development (HUD) to bring actions before administrative law judges on behalf of victims of housing discrimination.

Rules generally provide specific detail on the administration of an existing law. However, on July 16, 2015 HUD published final rules for Affirmatively Furthering Fair Housing (AFFH) that added new requirements without any amendments to the FHA. The rules apply to recipients of federal funds for such HUD programs as Community Development Block Grant (CDBG), HOME Investment Partnership (HOME), and Housing Vouchers (Section 8 rental assistance). They extend federal control of housing far beyond the Fair Housing Act, as follows:

1. HUD requires recipients to provide mobility (public transportation) for residents of racially/ethnically concentrated areas of poverty to areas of opportunity with good homes, schools, jobs, and medical services. This is an unfunded mandate.
2. HUD targets exclusionary zoning as a barrier to fair housing and can require recipients of HUD funds to locate multifamily, multistory affordable housing in areas currently zoned for single family residential or forego HUD funds and face charges of discrimination.
3. The rules *encourage* a regional approach to fair housing, but HUD has already *forced* a regional approach in several locations across the U.S. HUD ordered the city of Dubuque, Iowa to market its Section 8 housing vouchers in Chicago, Illinois. A clear violation of property rights and local control.
4. The rules mandate the use of HUD's new statistical data tool to assess fair housing and to determine if overt discrimination or inadvertent discrimination through disparate impacts are occurring in the recipient's locality. Rules for the tool, published on December 31, 2015, include questions designed to help recipients to identify areas of racially and ethnically concentrated areas of poverty, patterns of integration and segregation, disparities in access to opportunity and disproportionate housing needs. The Fair Housing Act does not address disparate impacts.
5. The rules stress the building of multifamily high rise housing over the building and rehabilitation of existing low income single family housing which is traditionally found in rural areas. Multistory multifamily housing is not appropriate in rural areas.
6. The rules ignore the provisions in the Fair Housing Act that address changing the local building code to reduce the cost of providing new housing.

HUD funds come from our income taxes and should be available for rural areas to use without the burdens of new rules that were adopted without any new amendments to the Fair Housing Act. Giving up our existing traditional local control over land use and zoning is too high a price to pay for using HUD funds. HUD will accept comments through May 23, 2016 that include the **Docket ID:** HUD-2016-0023, **Agency:** Department of Housing and Urban Development (HUD) by email at https://www.regulations.gov/#!documentDetail;D=HUD_FRDOC_0001-I_4389 or regular mail to Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410-0500.