



H.U.D Rule on Implementation of Fair Housing Act-- Disparate Impact (RIN: 2529-AA96)

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American Bankers Association
American Financial Services Association
Consumer Bankers Association
Consumer Mortgage Coalition
The Financial Services Roundtable

Independent Community Bankers of America
Mortgage Bankers Association

Introduction

- Contours of H.U.D.'s Proposed Rule.
- The legal foundation for H.U.D.'s rule is questionable.
- The burden and standard of proof in the rule are inconsistent with the law.
- Imposition of disparate impact liability will add more uncertainty to already tight credit markets.

Disparate Impact is...

- “Disparate impact” describes ...
- the differential results that arise from ...
- “practices that are facially neutral in their treatment of different groups” but that ...
- may “fall more harshly on one group than another.”
Smith v. City of Jackson, Miss., 544 U.S. 228, 239 (2005).

Foundational Legal Issues

- The plain language of the Fair Housing Act does not allow for disparate impact liability.
- H.U.D. relies on cases that interpret statutes other than the Fair Housing Act.
- The proposed rule exceeds the Department's delegated legal authority.

Legal Issues with the Rule Itself

- The burden and standard of proof outlined in the rule are inconsistent with Supreme Court cases on this issue.

Practical Issues with the Rule

- The rule will encourage loan decisions based on protected characteristics—i.e., quotas. This is contrary to the spirit of the Fair Housing Act and could lead to disparate treatment liability.
- The impact of other regulatory efforts, such as the Qualified Mortgage, make it impossible to predict how compliance with these rules will effect a lender's statistical loan profile.

Conclusions

- Fair lending is of paramount importance and we support use of appropriate tools to ensure it.
- H.U.D.'s rule before you is legally questionable and will cause more legal and practical issues than it will solve.
- Don't create a rule that punishes compliance with other regulations.
- A thoughtful reconsideration of this rule would ensure a fair, broad and open credit market.

Questions?