



INSTITUTE OF REAL ESTATE MANAGEMENT

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August 20, 2018

Office of the General Counsel  
Rules Docket Clerk  
Department of Housing and Urban Development  
451 Seventh Street SW, Room 10276  
Washington, DC 20410-0001

**RE: Docket No. FR-6111-A-01 – *Reconsideration of HUD’s Implementation of the Fair Housing Act’s Disparate Impact Standard***

To the Office of General Counsel:

On the behalf of the Institute of Real Estate Management (IREM®), I greatly appreciate the opportunity to submit comments on Docket No. FR-6111-A-01, *Reconsideration of HUD’s Implementation of the Fair Housing Act’s Disparate Impact Standard*. IREM is an international force of nearly 20,000 individuals united to advance the profession of real estate management. Through training, professional development, and collaboration, IREM supports our members and others in the industry through every stage of their career.

IREM supports equal opportunity in housing and opposes practices and policies that have a known discriminatory effect on any demographic group defined by race, color, religion, national origin, sex, handicap, familial status, sexual orientation, or gender identity. At the same time, IREM supports the ability for real estate professionals to continue such policies or practices if there is a legitimate business purpose for the policy. IREM further opposes actions that require unreasonable research into whether such policies or practices have a disparate impact or discriminatory effect.

In 2015, the Supreme Court held in *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.*, that disparate impact claims are within the purview of the Fair Housing Act (FHA) and independent of HUD’s Disparate Impact Rule. Although recognizing disparate impact under the FHA, the Court focused much of its analysis on the “important and appropriate means of ensuring that disparate-impact liability is properly limited.” HUD is now reviewing its Disparate Impact Rule to determine what changes, if any, may be necessary in light of the *Inclusive Communities* decision.

If HUD incorporates any changes into the Disparate Impact Rule, IREM respectfully requests it contains certain provisions. We request that the proposal supports the right to continue a policy or practice that has or could have a known disparate impact if there is a legitimate business purpose for the practice or policy and that purpose cannot be accomplished in a readily identifiable and not unduly burdensome means with a less discriminatory impact.

IREM would also request the language state that the burden for proving that a policy or practice has a discriminatory effect lies with the party alleging discrimination. Once a policy or practice has been shown to have a disparate impact, or that it will likely have a disparate impact, the property owner or manager implementing the policy or practice need only demonstrate a legitimate business purpose for the policy or practice.

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In addition, the proposal should include a provision which states that the party alleging discrimination has the obligation to demonstrate that there is a readily achievable, less discriminatory alternative to achieving the legitimate business purpose of the policy or practice without being unduly burdensome to the property owner or manager.

Lastly, it should be noted that discrimination of a housing market should be measured by the impact of actions, policies and practices and not solely by the demographics of people living in particular neighborhoods or buildings.

Again, on the behalf of the members of IREM, I appreciate the opportunity to provide comments on this important issue.

If you have any questions, please contact Ted Thurn, IREM Director, Government Affairs at [tthurn@irem.org](mailto:tthurn@irem.org) or (312) 329-6021.

Sincerely,

Eileen Wirth, CPM®  
Chair, IREM Federal Housing Advisory Board