



NATIONAL LOW INCOME HOUSING COALITION

Sheila Crowley, President January 17, 2011

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Regulations Division
Office of General Counsel
U.S. Department of Housing and Urban Development
451 Seventh St SW, Room 10276
Washington D.C. 20410

Re: Docket No. FR-5508-P-01

Implementation of the Fair Housing Act's Discriminatory Effect Standard
Submitted through Federal eRulemaking Portal at www.regulations.gov

Rules Docket Clerk:

The National Low Income Housing Coalition (NLIHC) is an organization whose members include state and local housing coalitions, residents of public and assisted housing, nonprofit housing providers, homeless service providers, fair housing organizations, researchers, public housing agencies, private developers and property owners, local and state government agencies, faith-based organizations, and concerned citizens. While our members include the spectrum of housing interests, we do not represent any segment of the housing industry. Rather, we focus on what is in the best interests of people who receive and those who are in need of federal housing assistance, especially extremely low income people.

NLIHC supports HUD's proposed rule implementing the Fair Housing Act's discriminatory effects standard. The proposed regulation formalizes HUD's long and consistent interpretation of the Fair Housing Act. This interpretation is consonant with the uniform interpretation of the Act by the federal courts of appeals, which for more than forty years have held that liability under Title VIII may be established by showing that a neutral policy or practice either has a disparate impact on a protected group, or creates, perpetuates, or increases segregation.

NLIHC also endorses the improvements to the regulations presented in the formal comments submitted by the Housing Justice Network and the National Fair Housing Alliance.

NLIHC commends HUD for defining and applying a definition of discriminatory effect that specifically incorporates the two distinct forms of discriminatory

effect that have long been recognized by the courts. NLIHC urges HUD to keep this clear

distinction between an adverse “disparate impact” upon a protected class and the separate claims for cases involving “segregative effect.” However, as the Housing Justice Network (HJN) letter notes, in one portion of the proposed regulations the language supporting claims based on segregative effect is omitted. NLIHC urges HUD to add to proposed Section 100.120, the same language used in Sections 100.65(b)(6), and in Section 100.70 (d)(5).

Regarding Section 100.70, Other Prohibited Conduct, NLIHC welcomes HUD’s proposed addition of discriminatory land use laws, policies and practices to the category of prohibited conduct. The final rule, however, should make clear that enactment and *maintenance* of discriminatory land use practices are included in the proscription against discriminatory implementation.

Regarding Section 100.500(b), Legally Sufficient Justification, NLIHC agrees with HJN’s suggestion for strengthening (b)(1) to require the definition of “legally sufficient justification” to be a **substantial**, legitimate, nondiscriminatory interest for the defendant, **including a business necessity as defined in the 1994 *Interagency Policy Statement on Discriminatory Lending.***”

Regarding Section 100.500(c), Burden of Proof, NLIHC concurs with the comments of the National Fair Housing Alliance. Specifically, that the burden of proof should be assigned to the defendant to show that there is no less discriminatory alternative. The defendant will have greater access to information than the plaintiff regarding available alternatives and the advantages and disadvantages of those alternatives.

Finally, NLIHC urges HUD to publish a final rule as quickly as possible.

Sincerely,



Sheila Crowley
President