

# DISPARATE IMPACT

## WHAT YOU NEED TO KNOW

Ben Carson, Secretary of HUD, has opened a new front in his war against fair housing and desegregation by going after a critical tool in the fight against discriminatory housing policy: the disparate impact standard.

Learn about the importance of the Disparate Impact Standard and read examples of how it can make a difference when it is enforced.

### **What is the Disparate Impact Standard?**

It sounds pretty technical, but this part of the enforcement of the Fair Housing Act is quite straightforward and incredibly valuable to the fight against discrimination.

The disparate impact standard allows people to challenge housing discrimination without having to prove “discriminatory intent” in the mind of the discriminator. In other words, it’s the outcome that matters, even if it’s impossible to demonstrate (as it usually is) what a developer or an insurance company or a landlord’s intention was when they took the discriminatory action.

Take for example a landlord that institutes a new rule that any tenant that calls 911 for emergency services more than twice in 6 months can be evicted; as a

result, several women and their children are evicted from their homes after calling the police or an ambulance as a result of domestic violence. This policy has had a “disparate impact” on women, since 95% of domestic violence victims are women—although anyone can be a victim of domestic violence. While the landlord’s policy doesn’t explicitly state they will evict women, the impact of the policy puts up barriers to women renting. That’s the basis of disparate impact: it’s not what you say or intend, it’s what are the results of your actions.

## **Why is the Disparate Impact Standard So Important?**

The Fair Housing Act says that no one can discriminate in the terms, conditions or privileges of sale or rental of housing to people based on their race, color, religion, sex, disability, familial status, or national origin.

Even in an era where white supremacy is crawling out from the shadows into mainstream society, it’s still pretty rare to find big banks, developers, corporate landlords and insurance companies that will put in writing something that says, “let’s design this policy to make it harder for people of color to move into our building.” But, far too often, that’s what their policies do. The Fair Housing Act and its disparate impact standard allows the public—and HUD as the agency tasked with enforcing the law—to hold those accountable whose policies drive unequal outcomes.

## **Why is HUD looking to open this up now?**

Ironically, Carson is opening up the question on how to apply disparate impact following a Supreme Court decision upholding the standard as a critical part of the Fair Housing Law and the fight against discrimination.

While the disparate impact standard has been on the books for 50 years for housing and employment, new rules for how to apply the standard were finalized under the first term of the Obama Administration. Those opposed to accountability wasted no time in suing to strip the rules and the underlying rationale of disparate impact. While the forces opposed to vigorous anti-discrimination policies lost, Carson and industry are using some of the fine print from the Supreme Court decision on how the standard should be applied to begin the process to try and undermine it.

# EXAMPLES

## REFUSAL TO INSURE

### SITUATION

A homeowners insurance company refuses to insure apartment buildings if an owner plans to rent out the units to people with a Section 8 housing assistance voucher.

### OUTCOME

In order to buy the building, the owner has to have insurance, so the insurance company's policy forces them to not accept Section 8 voucher holders. Since people of color suffer from higher rates of poverty than white people, more people of color would be affected by this insurance company's rule and their access to housing diminished.

### RESOLUTION

The insurance company's policy will have a big impact on the availability of subsidized housing to people of color. That policy will have a "disparate impact," or a more severe impact, on people of color and would not be permissible. The insurance company has to strip the source of income discrimination to not violate the law.

## ZONING LAWS

### SITUATION

A high-income, all-white suburb draws up new zoning laws that state they will not allow the construction of any affordable housing in their city.

### OUTCOME

The suburb is surrounded by a large, racially diverse city where people of color are more likely to be lower income. The zoning policy appears—on paper—to be 'race-neutral,' but in practice, it keeps people of color from accessing housing in the opportunity-rich suburb.

### RESOLUTION

The zoning policy appears—on paper—to be 'race-neutral,' but in practice, it disproportionately keeps people of color from accessing housing in the opportunity-rich suburb. The zoning law has a disparate impact on people of color and their ability to access housing and in violation of the Fair Housing Act.

## FULL-TIME EMPLOYMENT REQUIRED

### SITUATION

A 50 unit apartment building has opened up and is accepting new applications. The application states that every tenant must be employed full-time.

### OUTCOME

The landlord says he wants to be sure the applicants can afford their rent. But the full-time employment requirement means that disabled, senior, and potentially veteran applicants who may have enough income to afford the apartment but aren't working full-time are barred from becoming tenants.

### RESOLUTION

By restricting access to seniors and disabled renters, the disparate impact standard would apply. The landlord would be required to rework the application to allow anyone who can afford the rent to get an apartment.

## ONE BEDROOM, TWO PEOPLE

### SITUATION

A new apartment building is planned for the neighborhood and the developer has decided that they will all be one bedroom units. The developer and manager have instituted a rule that no more than two people can live in each unit.

### OUTCOME

This policy would discriminate against a couple with a child that could safely sleep in the single bedroom; it would have a disparate impact on families with children by denying them access to a unit they could afford and thrive in.

### RESOLUTION

Even if the policy appears to be neutral, it has a discriminatory impact—a disparate impact on families with children and would need to change.