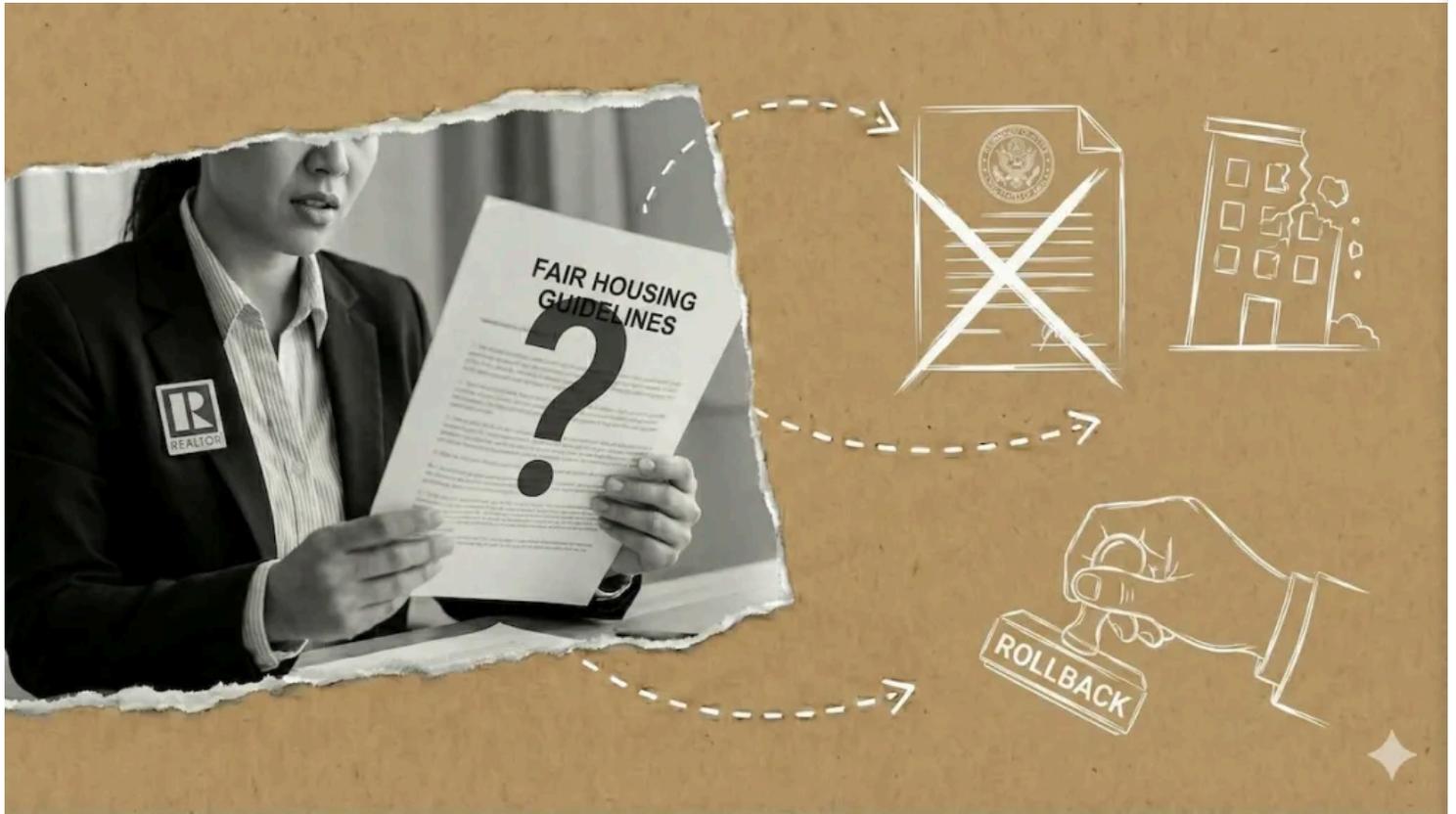




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Real estate pros: Fair housing embedded in duties amid federal changes

Some legal experts say removing HUD guidance could lead to inconsistent court interpretations

January 23, 2026, 8:00am by [Jonathan Delozier](#)

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Article Summary

HUD proposed ending disparate impact guidance, shifting Fair Housing Act interpretation to courts. Critics warn weaker oversight and inconsistent standards;

supporters cite overregulation and housing supply. Realtors say daily practices likely unchanged, but developers and lenders could see bigger effects. Enforcement may decentralize to states and lawsuits amid compliance uncertainty. *AI Summary*

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The **U.S. Department of Housing and Urban Development's (HUD)** proposal to eliminate its discriminatory effects regulations under the Fair Housing Act is igniting questions over how related laws will be enforced.

The proposal would remove HUD's longstanding guidance on disparate impact, a legal theory recognizing that policies appearing neutral can disproportionately affect protected groups even without discriminatory intent.

HUD formalized disparate impact liability in a 2013 rule, and the U.S. Supreme Court affirmed its validity in 2015. After revisions during President Donald Trump's first term, the Biden administration reinstated the 2013 rule in 2023.

Many Realtors say day-to-day practices are unlikely to shift dramatically because professional organizations and state regulators already impose strict fair housing requirements.

Debbie Drummond, head of **The Debbie Drummond Real Estate Team of Simply Vegas**, has been in Las Vegas since 2003. She notes that fair housing compliance remains embedded into routine practice.

"I haven't seen a big difference in the way Realtors do business," she told **HousingWire**. "I don't think you're going to see a lot in terms of the day-to-day, because it's drilled it into our heads with our training. Even the state of Nevada, when you renew your license, you have to have training on fair housing.

"So even if (HUD) rolls things back, I don't think it's going to affect the way Realtors do business."

Equal treatment over equality of outcomes

HUD says the rollback aligns with a Trump executive order emphasizing equal treatment under the law rather than equality of outcomes — adding that courts should determine how the Fair Housing Act is interpreted rather than federal regulators.

Public comments on the proposal are due by Feb. 13.

HUD has also adopted an English-only policy for most services. The agency has faced recent litigation over fair housing funding, with a federal judge ordering allocation of funds nationwide in July following a class-action lawsuit.

Disparate impact claims have historically targeted zoning, lending practices and insurance underwriting — areas where policy choices can shape access to housing across communities.

Some legal experts say removing HUD guidance could lead to inconsistent court interpretations across jurisdictions, creating a patchwork of compliance standards for large housing stakeholders.

Regulation versus housing supply

Supporters of the rollback argue federal oversight has become overly burdensome and contributes to housing shortages.

Critics counter that guidance is necessary to prevent systemic discrimination.

Drummond acknowledged concerns about overregulation while emphasizing the need to uphold core fair housing principles.

“I think we are probably a bit over-regulated,” she said. “I think that’s part of the housing shortage that we currently have. I think a good example you can see is what’s going on in the Pacific Palisades and how long it’s taking those poor people to rebuild their homes. There are times when the regulations can just go too far.

“From what I have read about the (fair housing) rollback, it doesn’t sound like they’re totally just letting it slide.”

Attorney describes guidance vacuum

In September, HUD withdrew more than a decade of internal guidance used by community associations to comply with the Fair Housing Act.

The memos addressed issues such as emotional support animals, residents with limited English proficiency, criminal background screenings and protections for gender identity and sexual orientation.

Florida real estate attorney JoAnn Nesta Burnett said lack of federal guidance has left housing professionals unsure how rules will be interpreted.

“We’re all kind of in a state of limbo because we don’t have that guidance to fall back on,” she said. “So, the only thing, with respect to emotional support and service animals, that’s still in existence is the (**Department of Justice**) HUD statement from 2004. Nobody really knows exactly what we’re supposed to be doing, or if things are more lax or more stringent.”

Burnett said withdrawn guidance has affected criminal background screenings, emotional support animals and LGBTQ protections with no replacement directives issued.

Enforcement uncertainty

Burnett said recent cases have largely followed existing precedent but future enforcement remains unclear.

“So far, [in Florida], the cases and determinations that have come in during this time frame have still followed the HUD guidance, but a lot of that is also codified in case law and the Fair Housing Act and Florida Statutes and things like that,” she said. “So it’s unclear, without knowing how they’re going to do this and what HUD may be sending to the local agencies that are investigating these claims, if anything has changed in a formal way.”

Emotional support animal disputes continue to dominate fair housing complaints and that withdrawal of guidance has not reduced conflicts, Burnett said.

She added that courts continue evaluating accommodation requests using statutes and precedent but the lack of updated guidance leaves uncertainty.

Burnett advises Realtors to counsel clients on providing legitimate documentation for disability-related accommodation requests — and warned against use of fraudulent online certifications.

NAR: enforcement continues beyond federal government

Alexia Smokler — director of fair housing policy and programs at the **National Association of Realtors (NAR)** — says fair housing enforcement has never relied solely on federal agencies and remains active through multiple channels.

“The Fair Housing Act is the law of the land. A variety of regulators and private litigants are empowered to enforce the Fair Housing Act,” she said. “State and local government agencies have always handled the lion’s share of fair housing complaints, along with private fair housing groups,” says Smokler.

She adds, “Private litigants can still bring fair housing claims in local, state and federal courts. Media outlets can still conduct investigations. Real estate professionals should assume that the law will be enforced and conduct themselves accordingly.”

Smokler says Realtors’ legal and ethical responsibilities remain unchanged despite federal shifts.

“The Realtor Code of Ethics requires all Realtors to provide equal, professional service to all clients,” she said. “Real estate professionals’ obligations under the law and the Code haven’t changed. Upholding these standards makes good business sense for brokers and agents looking to expand their business and attract the homebuyers of the future.”

Smokler also emphasized that enforcement is likely to become more decentralized with increased activity at the state level and through private litigation.

“States with strong fair housing laws will continue to enforce them,” she said. “We will see state AGs building their fair housing and fair lending infrastructure to enforce these laws more actively. Private litigants and nonprofit organizations will continue to bring cases challenging systemic discrimination.

[The] industry must continue to emphasize compliance — not only because the law still stands, but because serving the broadest possible base of buyers is the smart business move.”

Common mistakes, emerging risks

Colette Massengale — senior policy representative for fair housing advocacy at NAR — said even well-intentioned professionals can violate fair housing laws through subtle biases or misuse of technology.

“Even real estate professionals who are knowledgeable about fair housing laws may fall into the ‘thinking trap’ of deciding where buyers will be ‘comfortable’ which can lead to steering clients based on their identity,” she said. “While explicit forms of housing discrimination have declined since the Fair Housing Act, more subtle forms of discrimination persist and can cause us to treat consumers of different backgrounds differently.

“Guardrails are essential. Another mistake well-intentioned professionals make is using AI without checking for compliance with fair housing laws.”

Best practices amid uncertainty

Massengale said standardized processes and training are critical to reducing risk regardless of federal policy shifts.

“As of Jan. 1, all 1.5 million NAR members are required to complete two hours of substantive fair housing training every three years,” she said. “This is more fair housing training than is required to maintain a real estate license in a number of states. Through courses like NAR’s Fairhaven, real estate professionals can incorporate best practices to protect consumers and reduce risk.

“In addition, becoming familiar with local fair housing organizations can help real estate professionals better advocate for clients if they experience discrimination.”

Drummond said inclusivity has become a defining feature of her market and a core value for modern real estate professionals.

“I haven’t seen a lot of issues with discrimination over the years,” she said. “I’ve been doing real estate here in Vegas for a long time, and one of the things I liked about Vegas when I first moved here is that we are very inclusive. I mean, you’ve got every ethnicity, every religion, everything all in one town, and we all get along.”

She said cultural shifts within the industry have reduced discrimination risks — but ongoing training and vigilance remain necessary.

Whether the federal rollback leads to streamlined regulation or weaker protections remains contested, but high-level decisions continue to signal a changing fair housing enforcement landscape.

More: Compliance Discrimination Donald Trump Fair Housing HUD



About **Jonathan Delozier**

Jonathan Delozier is a veteran journalist with more than a decade of newsroom experience. In addition to housing and real estate coverage, he has provided detailed analysis of local government, public schools, the COVID-19 pandemic, numerous criminal trials, and the national opioid epidemic.

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