



June 25, 2021

GENERAL NEWS

HUD Publishes Proposed Rule to Reinstate Discriminatory Effects Standard

Today in the *Federal Register*, the Department of Housing and Urban Development ([HUD](#)) published a [proposed rule](#) entitled "Reinstatement of HUD's Discriminatory Effects Standard," which intends to rescind the Department's [2020 disparate impact rule](#) and restore the [2013 discriminatory effects rule](#).

According to a HUD [press release](#) today, under the 2013 rule, the discriminatory effects framework was straightforward: a policy that had a discriminatory effect on a protected class was unlawful if it did not serve a substantial, legitimate, nondiscriminatory interest or if a less discriminatory alternative could also serve that interest. The 2020 rule complicated that analysis by adding new pleading requirements, new proof requirements, and new defenses, all of which made it harder to establish that a policy violates the [Fair Housing Act](#).

The 2020 rule never took effect because a day before its effective date, the U.S. District Court for the District of Massachusetts issued a [preliminary injunction](#) staying its implementation and enforcement. Additionally, on January 26, 2021, President Joe Biden issued an [executive order](#) directing HUD, among other things, to examine the effects of the 2020 rule, including the effect that amending the 2013 rule has had on HUD's statutory duty to ensure compliance with the Fair Housing Act.

Consistent with the President's Memorandum, HUD has reconsidered the 2020 rule and proposes to recodify the 2013 rule, which, as of the date of publication of today's proposed rule, remains in effect due to the preliminary injunction. HUD believes the 2013 rule sets a more appropriately balanced standard for pleading, proving, and defending a fair housing case alleging a policy or practice has a discriminatory effect.

The due date for comments on the proposed rule is **August 24, 2021**. HUD will review the comments, develop responses, and publish a final rule.

Treasury Updates ERAP FAQs and Fact Sheet

The U.S. Department of Treasury ([Treasury](#)) has posted an updated version of the frequently asked questions ([FAQs](#)) for the Emergency Rental Assistance ([ERA](#)) program. The 16-page document, dated June 24, 2021, further clarifies how to promote housing stability for eligible households. Specifically, FAQs 14, 23, 29, 31, 33, and 35 were revised and FAQs 36 to 39 were added, in addition to other minor changes. Treasury has also updated the ERA [fact sheet](#).

You can find the links to both documents and other ERA resources on the [ERAP website](#).

RAD PROGRAM NEWS

Second Component Closed Transactions and Potential Mod Rehab Lists Updated

Recently on the main Rental Assistance Demonstration ([RAD](#)) webpage, HUD announced that it has posted updated versions of the [Closed Transactions under 2nd Component](#) and [Potential RAD Mod Rehab Projects](#) lists. Both lists are dated June 7, 2021. According to the announcement, more information can be found on the [RAD2 webpage](#). You should use Microsoft Edge or Internet Explorer to open both Excel files.



For help with your PIH Alert subscription, email [Laurie Durrett](#). For questions and comments on content, email [Olga Vélez](#). To view or post job announcements at our website, click [here](#). To view our seminar calendar, click [here](#). To read the NMA blog, click [here](#).



Nan McKay & Associates, 1810 Gillespie Way, Suite 202, El Cajon, CA 92020, USA, 1-800-783-3100
[Unsubscribe](#) [Manage preferences](#)