FAIR HOUSING COMPLIANCE

Federal and state fair-housing law for owners and operators

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Sample — Executive Summary & Section 1

Forthcoming Q4 2026 · Editorial board: Mark Kuklis

Fair Housing Compliance

This reference describes the federal and state legal framework governing residential housing discrimination as it stands in May 2026. The intended reader is an underwriter, asset manager, or operations professional who needs to understand both the operational compliance requirements at the property level and the statutory and case-law underpinnings that drive enforcement risk.

The organizing principle for 2026: comply with the most protective applicable state law in your operating footprint. Federal enforcement has substantially retrenched – through guidance withdrawals, enforcement-priority shifts, and a proposed rule to delete the disparate-impact regulation – but none of those actions altered the FHA's statutory text, and none of them binds state enforcers, plaintiffs' bars, or federal courts. State and private enforcement activity has accelerated in direct response to the federal rollback.

EXECUTIVE SUMMARY

- Comply with the most protective applicable state law. The federal rollback has not reduced real-world risk; it has relocated it to state forums and private litigation. - Seven federal protected classes; state law adds source of income, sexual orientation, gender identity, criminal history, and more in 24+ states and DC. - Design-and-construction violations (properties first occupied after March 13, 1991) are treated as continuing – no statute of limitations runs while noncompliance persists. This is an acquisition underwriting issue on 1991-vintage and newer assets. - Disparate impact under HUD's 2013 rule remains enforceable by state agencies and private plaintiffs even if the proposed January 2026 rule to delete 24 C.F.R. Part 100, Subpart G is finalized. Inclusive Communities is binding SCOTUS precedent regardless of regulatory status. - Criminal history, eviction history, credit screening, and geographic advertising placement are the four highest-frequency disparate-impact vectors in active state-forum litigation. - A written tenant selection policy applied consistently is the primary defense against disparate treatment claims. Document every denial with the specific criterion and underlying data.

The legal landscape is unsettled. The current administration began rescinding fair housing guidance documents in September 2025 and, in January 2026, proposed to remove HUD's disparate impact regulation entirely. State and local law has filled – and in many cases overshot – the resulting federal gap. Third-party testing programs are active, plaintiffs' bars in states like California, New York, New Jersey, Massachusetts, and Maryland have aggressive fee-shifting tools, and screening vendors have been sued directly by federal regulators.

1. Federal framework

1.1 The Fair Housing Act

The Fair Housing Act ("FHA"), Title VIII of the Civil Rights Act of 1968, codified at 42 U.S.C. § 3601 et seq., prohibits discrimination in the sale, rental, financing, and advertising of dwellings. The original 1968 statute covered race, color, religion, and national origin. Congress added sex in 1974. The Fair Housing Amendments Act of 1988 added familial status and disability, created the administrative enforcement process at HUD's Office of Fair Housing and Equal Opportunity ("FHEO"), authorized civil penalties in administrative cases, and made the Department of Justice ("DOJ") responsible for pattern or practice litigation under 42 U.S.C. § 3614.

The seven federal classes are race, color, religion, national origin, sex, familial status, and disability. Whether "sex" includes sexual orientation and gender identity is, as of May 2026, contested. In February 2021 HUD issued a memorandum directing FHEO to enforce the FHA's sex prohibition consistent with the Supreme Court's reasoning in Bostock v. Clayton County, 590 U.S. 644 (2020), which held that Title VII's prohibition on sex discrimination encompasses sexual orientation and gender identity. Executive Order 13988, which directed agencies to apply Bostock across sex-discrimination statutes, was rescinded on January 20, 2025 by Executive Order 14168, and HUD withdrew the 2021 memorandum among the FHEO guidance documents formally withdrawn in the Federal Register on April 6, 2026 (effective date of withdrawal September 17, 2025). Statutory text and Bostock's reasoning remain; private plaintiffs continue to bring sex-discrimination claims premised on sexual orientation and gender identity in federal courts, and several circuit panels have applied Bostock to the FHA. Operators should not assume the federal protection has been eliminated, particularly because state and local law independently covers sexual orientation and gender identity in most major MSAs.

1.2 Disability-specific statutes

Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, prohibits disability discrimination in any program or activity receiving federal financial assistance, including most LIHTC properties with federal layered financing and any property with project-based Section 8. Title III of the Americans with Disabilities Act, 42 U.S.C. § 12181 et seq., covers commercial portions of multifamily property and public accommodations such as leasing offices and rental amenities open to the public. The FHA's own disability provisions govern dwelling units and common areas.

1.3 The Civil Rights Act of 1866

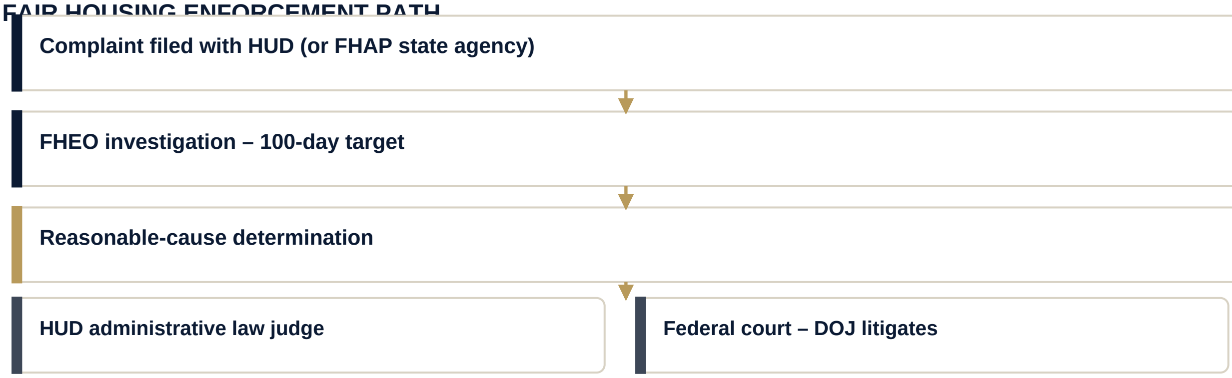
42 U.S.C. §§ 1981 and 1982 prohibit race discrimination in the making and enforcement of contracts and in the conveyance of property. These statutes predate the FHA, carry no administrative exhaustion requirement, and have longer statutes of limitations than the FHA's two-year private right of action under 42 U.S.C. § 3613(a)(1)(A). Plaintiffs frequently plead §§ 1981 and 1982 alongside the FHA when race is the alleged basis of discrimination.

1.4 Equal Credit Opportunity Act

The Equal Credit Opportunity Act ("ECOA"), 15 U.S.C. § 1691 et seq., applies to credit transactions, including mortgages and certain rental credit decisions. ECOA prohibits discrimination on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to contract), and the fact that all or part of the applicant's income derives from public assistance. The ECOA classes of marital status, age, and public assistance income are broader than the FHA on the financing side, which matters for sponsor underwriting of single-family rental and multifamily acquisition financing.

1.5 Enforcement architecture

FAIR HOUSING ENFORCEMENT PATH



Either party may elect the forum. DOJ also brings independent "pattern or practice" cases under §3614.

Remedies: actual + punitive damages, civil penalties (~$25k first violation), and attorneys' fees. Private right of action runs 2 years.

Figure 1. FHA enforcement path – federal framework as of May 2026. HUD directed FHEO in September 2025 to prioritize intentional-discrimination cases; state FHAP agencies and private § 3613 actions now drive the bulk of enforcement activity. Source: 42 U.S.C. §§ 3610–3614; HUD FHEO.

HUD enforces the FHA through FHEO. Complaints filed with HUD trigger an investigation with a 100-day target under 42 U.S.C. § 3610(a)(1)(B)(iv), conciliation, and, where reasonable cause is found, a charge of discrimination. The respondent or complainant may elect to have the case heard by a HUD administrative law judge under 42 U.S.C. § 3612(b) or in federal district court, where DOJ litigates on behalf of the complainant. Administrative civil penalties for first violations are subject to inflation adjustments and currently sit near $25,000 per violation, escalating for repeat conduct.

DOJ has independent authority under § 3614 to bring "pattern or practice" cases and cases of general public importance. State and local agencies certified as Fair Housing Assistance Program ("FHAP") agencies handle the bulk of front-line investigations through cooperative arrangements with HUD.

A private right of action exists under § 3613 with a two-year statute of limitations running from the last act of discrimination, including the date of termination of an ongoing discriminatory housing practice. Standing principles are broad. Testers have standing under Havens Realty Corp. v. Coleman, 455 U.S. 363 (1982), and organizational plaintiffs may sue where the challenged practice frustrates their mission and diverts resources, Trafficante v. Metropolitan Life Insurance Co., 409 U.S. 205 (1972). Available remedies include actual damages (which courts have long held include emotional distress under the FHA itself), punitive damages on a showing of malice or reckless indifference, and attorneys' fees under § 3613(c)(2).

PENALTY EXPOSURE: WHAT THE NUMBERS ACTUALLY LOOK LIKE

The $25,000 first-violation HUD administrative civil penalty is the floor on federal exposure, not the ceiling. DOJ Sexual Harassment in Housing Initiative settlements have ranged from low six figures for single-property cases to over $4 million in multi-property cases. Tenant screening company enforcement (TransUnion Rental Screening Solutions, AppFolio) has produced FCRA settlements in the $4 million to $11 million range with significant injunctive relief. In states with fee-shifting (New Jersey, Massachusetts, Maryland), attorneys' fees multiply effective exposure substantially even on cases that settle before verdict. For an operator with a portfolio-wide policy that affects hundreds of applicants, aggregate exposure substantially exceeds any single-case figure.

Cummings v. Premier Rehab Keller, P.L.L.C., 596 U.S. 212 (2022), held that emotional distress damages are not recoverable in a private action to enforce Section 504 of the Rehabilitation Act or Section 1557 of the Affordable Care Act, both enacted under the Spending Clause. Cummings does not directly limit the FHA, which was enacted under the Commerce Clause and the Thirteenth and Fourteenth Amendments; emotional distress remains compensable under the FHA. The limitation matters for properties with project-based Section 8 or HUD-insured financing, where Section 504 claims overlap; plaintiffs typically plead both, and Cummings makes the FHA claim the principal vehicle for emotional distress recovery.

That’s the sample.

The full **Fair Housing Compliance** brief runs the complete reference end to end — every section, all tables, full citations.

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