Now & Next
Higher Education Alert

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HUD joins federal push to reshape Higher Education compliance

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Colleges face new federal scrutiny of affinity housing, while HUD scales back enforcement on emotional support animals.

What's the impact?

- The Department of Housing and Urban Development's (HUD) recent policy statements expand federal scrutiny of affinity housing while scaling back enforcement of emotional support animal accommodations.
- Colleges should continue individualized accommodation reviews despite HUD's narrower ESA enforcement posture.
- Institutions should review housing eligibility, marketing, and program rationales to reduce Fair Housing Act and Title VI risk.

Over the past eighteen months, colleges and universities have experienced a steady stream of federal agency actions redefining longstanding compliance expectations. The US Department of Housing and Urban Development (HUD) has now joined that broader enforcement effort.

The Fair Housing Act (FHA), prohibits discrimination in the sale or rental of dwellings on the basis of race, color, national origin, religion, sex, familial status, and disability. HUD administers and enforces the FHA, and has long taken the position that campus residential facilities constitute "dwellings" covered by the statute, a position courts have generally accepted. Within weeks of one another, HUD issued two policy documents that provide new insight into changes in enforcement posture of the FHA on college campuses.

First, HUD rescinded longstanding guidance concerning untrained emotional support animals under the Fair Housing Act, replacing it with a significantly narrower enforcement framework. Then, on June 23, HUD issued a Dear Colleague Letter addressing what the agency characterizes as a rise of "institutionalized separatism" on college campuses and reminding educational institutions of their obligations under the Fair Housing Act.

Importantly, neither action changes the text of the Fair Housing Act itself. Rather, each reflects HUD's current enforcement position. Courts remain responsible for interpreting the statute, and institutions must continue to navigate overlapping obligations under the Fair Housing Act, Title VI of the Civil Rights Act, the Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act (Section 504), and applicable state law.

HUD narrows its enforcement framework for emotional support animals

HUD recently rescinded its 2013 and 2020 guidance concerning untrained assistance animals under the Fair Housing Act. For more than a decade, those documents recognized that emotional support animals could qualify as reasonable accommodations following an individualized assessment of disability-related need.

The revised guidance represents a significant departure from that approach. HUD now indicates that it generally will pursue enforcement where an animal has been individually trained to perform work or tasks directly related to an individual's disability, adopting an approach that more closely resembles the ADA definition of a service animal. HUD specifically emphasizes that "the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition." HUD has also announced its intent to pursue rulemaking that would further align the Fair Housing Act with the ADA.

In practical terms, this means that even if HUD declines to pursue a complaint involving an untrained emotional support animal, a student may still bring a claim under the FHA in federal district court. They may also bring a claim directly under the ADA, Section 504, or applicable state law, all of which may impose broader accommodation obligations than HUD's revised enforcement framework. Institutions that eliminate emotional support animal accommodations based solely on HUD's new posture risk liability under these parallel frameworks. Until courts or Congress resolve the tension between HUD's new approach and these statutes, institutions

should continue conducting individualized, good-faith assessments of accommodation requests, documenting the basis for each decision.

HUD targets affinity housing

HUD's second recent action focuses on residential programming. In a Dear Colleague Letter (DCL) dated June 23, 2026, authored by Craig Trainor, Assistant Secretary for Fair Housing and Equal Opportunity, HUD states that educational institutions violate the Fair Housing Act when they "permit the existence of racially segregated student housing," "advertise a discriminatory preference," or maintain policies that discourage students of different races or national origins from living together. The agency further states that it will pursue "every available remedy," including compensatory and punitive damages, civil penalties, and injunctive relief.

The letter repeatedly characterizes affinity housing and similar initiatives as forms of unlawful segregation and criticizes concepts such as "safe spaces," "multiculturalism," and "cultural celebration," asserting that they cannot shield institutions from liability where intentional discrimination exists.

The DCL should not be viewed in isolation. Rather, it appears to represent another step in the federal administration's broader effort to extend the reasoning of *Students for Fair Admissions* beyond admissions and into other aspects of institutional operations. As discussed in our June 17 Alert, since early 2025, federal agencies have increasingly scrutinized race-conscious scholarships; employment practices; affinity groups; Diversity, Equity, and Inclusion (DEI) initiatives; student programming; and other institutional policies.

HUD's rhetoric closely parallels themes and language appearing in prior guidance from both the Department of Education and the Department of Justice. Assistant Secretary Trainor was also the author of the Department of Education's February 14, 2025, Dear Colleague Letter, when he was then serving as the Acting Assistant Secretary for Civil Rights for the Department of Education. The February 14, 2025, ED DCL and a subsequent FAQ were ultimately enjoined by two federal courts, but propounded the theory that *Students for Fair Admissions*' holding "applies more broadly" to include "race in decisions pertaining to admissions, hiring, promotion, compensation, financial aid, scholarships, prizes, administrative support, discipline, housing, graduation ceremonies, and all other aspects of student, academic, and campus life."

Further, the HUD DCL's scrutiny of "safe spaces" or identity-based focused spaces echoes language used in the Department of Justice's July 2025 memorandum directing federal agencies to identify and challenge practices involving the segregation of facilities, resources, or programming based on protected characteristics. While each agency administers different statutes, the similarity in language and enforcement priorities suggests an increasingly coordinated federal approach to civil rights enforcement across higher education.

PRACTICAL IMPLICATIONS FOR HIGHER EDUCATION

The Dear Colleague Letter raises important questions for colleges and universities. Many institutions intentionally structure affinity housing or living-learning communities to be open to all students regardless of race while centering shared cultural, historical, linguistic, or educational experiences. HUD's letter does not meaningfully distinguish between race-exclusive housing assignments and voluntary residential communities that are open to all participants but organized around particular themes or identities.

Whether particular forms of affinity housing violate the FHA is a question courts will ultimately decide, and existing precedent does not squarely resolve it. Courts have consistently held that the FHA prohibits intentional discrimination (disparate treatment) and policies with unjustified disparate impact. However, voluntary, open-enrollment residential communities organized around shared cultural or educational themes present distinct questions, particularly where no student is excluded on the basis of race.

Accordingly, institutions should carefully review not only housing assignment practices but also eligibility criteria, marketing materials, website descriptions, residence life programming, and educational objectives. Institutions should coordinate this review with broader assessments of DEI-related policies already underway in response to recent federal actions and specifically consider the following questions:

- **Who can live there?** Review eligibility criteria for all residential communities. If any program restricts or effectively discourages participation based on race or national origin through application language, marketing, or assignment practice, that program presents a potential risk of legal exposure under both the FHA and Title VI.
- **How is it described?** Review all public-facing materials, including website copy, housing portal descriptions, residence life brochures, and social media. Language suggesting racial or ethnic exclusivity, even if unintentional, could create compliance risks.
- **What is the documented educational rationale?** Institutions with affinity communities organized around language immersion, academic programs, or majors, or documented educational outcomes may be in a stronger position to defend those programs. Documenting those rationales now (before a complaint is filed) is a meaningful risk-mitigation step.

Looking ahead

Although HUD's recent actions address different aspects of campus housing, together they reflect a broader shift in federal civil rights enforcement. Like recent actions by the Departments of Education and Justice, HUD is signaling its intent to reinterpret longstanding agency positions

through guidance while pursuing active enforcement against institutions it believes are not complying with federal civil rights laws.

For colleges and universities, the challenge is not simply determining what HUD now believes the Fair Housing Act requires. Rather, institutions must navigate an increasingly complex compliance environment in which agency guidance, statutory text, judicial precedent, state law, and institutional mission may point in different directions.

Institutions that conduct a thoughtful, structured, documented review of their housing policies now, assessing eligibility criteria, public-facing materials, accommodation procedures, and educational rationales, will be better positioned to defend their programs if challenged, demonstrate good faith to federal agencies, and make any necessary adjustments from a position of strength rather than crisis.

Nixon Peabody's Litigation team helps colleges and universities navigate shifting federal enforcement priorities, assess housing and civil rights compliance risks, and defend institutional programs when challenged. Our attorneys are ready to support proactive reviews, agency responses, and litigation strategies tailored to higher education.

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