

Internet Advertising Guidelines

Section 804(c) of the Fair Housing Act makes it illegal “to make, print, or publish, or cause to be made, printed, or published, any notice or statement with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, national origin, sex, disability, or familial status.” This prohibition applies to all advertising media, including newspapers, magazines, television, radio, and the Internet. Just as the Department has found newspapers in violation of the Fair Housing Act for publishing discriminatory classifieds, the Department also has concluded that it is illegal for Web sites to publish discriminatory advertisements.

Some Web sites assert that they are exempt from liability under Section 804(c) of the Fair Housing Act because of a provision in the Communications Decency Act (“CDA”), 47 US. C. § 230, which limits the liability of interactive computer services for content originating with a third party user of the service. Although the CDA does not state an intent to limit liability under the Fair Housing Act or other civil rights statutes, some believe that Section 230 of the CDA gives Internet publishers immunity from lawsuits brought under federal and state civil rights statutes. However, HUD has concluded that the CDA does not make Web sites immune from liability under the Fair Housing Act or from liability under state and local laws that HUD has certified as substantially equivalent to the Fair Housing Act.

In order to ensure that Web sites do not provide an open market for unlawful discriminatory conduct, HUD will continue to investigate allegations that Web sites have published discriminatory advertisements on the Internet and, where there is cause to believe discrimination has occurred, will issue a Determination of Reasonable Cause. As required by the Fair Housing Act, HUD will attempt conciliation in each case. I recommend that proposed conciliation agreements include provisions designed to prevent discriminatory advertisements from being posted to the Web site; this may include the Web site agreeing to practices such as screening, filtering, pop-up warnings, or user self-certification.

This guidance does not change the established procedures for processing these cases. Regional Directors should continue to process these cases in accordance with current guidelines.