



Credit Union National Association

cuna.org

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January 17, 2012

Regulations Division, Office of General Counsel
Department of Housing and Urban Development
451 7th Street SW
Room 10276
Washington, DC 20410-0500

Re: Docket No. FR-5508-P-01
Comments regarding the proposed rule implementing a Discriminatory
Effects Standard into the Fair Housing Act

Dear Sir or Madam:

The Credit Union National Association (CUNA) appreciates the opportunity to comment on the Department of Housing and Urban Development's (HUD) proposed rule implementing a Discriminatory Effects Standard into the Fair Housing Act. By way of background, CUNA is the nation's largest credit union trade organization, representing approximately 90 percent of our nation's 7,300 state and federal credit unions, which serve approximately 93 million members.

CUNA believes that incorporating a discriminatory effects standard into the Fair Housing Act is premature at this point. HUD should not consider implementing a discriminatory effects standard until after the U.S. Supreme Court has reached a decision in *Magner v. Gallagher*, No. 10-1032.¹ The U.S. Supreme Court granted certiorari in this case on November 7, 2011 and oral argument is scheduled for February 29, 2012.

In *Magner v. Gallagher*, the U.S. Supreme Court will review the precise issues that HUD's proposed rule addresses. The questions presented in the case are (1) whether a lawsuit can be brought for a violation of the Fair Housing Act based on a practice that does not have a discriminatory intent but instead has a discriminatory effect, and (2) if so, what test should be used to determine whether a practice has a discriminatory effect and therefore violates the Fair Housing Act?

CUNA is concerned that implementing a uniform discriminatory effects standard before *Magner v. Gallagher* is decided could cause unnecessary confusion for both lenders and borrowers regarding the proper interpretation of the Fair Housing Act.

¹ *Gallagher v. Magner*, 619 F.3d 823 (8th Cir. 2010), certiorari granted.



Because the U.S. Supreme Court will soon address all of the issues presented by HUD in its proposed rule, CUNA urges HUD to wait until after the U.S. Supreme Court has reached a decision in *Magner v. Gallagher* to propose any rule relating to integrating a discriminatory effects standard into the Fair Housing Act. To avoid future confusion and potential legal challenges to the proposed rule, HUD should ensure that any proposed rule is consistent with the U.S. Supreme Court's anticipated interpretation of the Fair Housing Act.

Thank you for the opportunity to comment on HUD's proposed rule to implement a Discriminatory Effects Standard into the Fair Housing Act. If you have any questions concerning our letter, please feel free to contact CUNA's Senior Vice President and Deputy General Counsel Mary Dunn or me at (202) 508-6776.

Sincerely,

A handwritten signature in black ink, appearing to read "Kristina A. Del Vecchio". The signature is fluid and cursive, with the first name "Kristina" being the most prominent part.

Kristina A. Del Vecchio
Counsel for Special Projects