



January 13, 2011

Regulations Counsel  
Office of General Counsel  
U.S. Department of Housing and Urban Development  
451 Seventh St SW, Room 10276  
Washington D.C. 20410

Re: Docket No. FR-5508-P-01  
Implementation of the Fair Housing Act's Discriminatory Effect Standard  
Submitted through Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov)

To Whom It May Concern:

The Connecticut Fair Housing Center (hereinafter "the Center") supports the Department's efforts to establish standards for determining when a housing practice with a discriminatory effect violates the Fair Housing Act. The Department has requested comments on the issue of which party bears the burden of proof to establish a less discriminatory alternative. For the reasons set out below, we respectfully suggest that the burden of proof as set out in the proposed regulation be assigned to the defendant or respondent to show that it has "a legitimate, bona fide . . . interest and that no alternative would serve that interest with less discriminatory effect." *Gashi et al. v. Grubb & Ellis, et al.*, (Connecticut Federal District Court, Case 3:09-cv-01037-JCH)(June 23, 2011) (hereinafter "*Gashi*" or "*the Gashi case*").

The Connecticut Fair Housing Center is a statewide non-profit organization dedicated to ensuring that individual choice, and not discrimination, determines where people live in Connecticut. Because housing discrimination has a disproportionate effect on people with low incomes, we place a particular focus on the intersection of poverty and discrimination. To accomplish this, the Center takes complaints from people who believe they have been the victim of housing discrimination, conducts investigations into individual complaints as well as to assess whether there is discrimination in the housing market, represents the victims of housing discrimination in filing complaints, provides education on the fair housing laws to both housing providers and those who may be searching for housing, and works with state and local policy makers to promote housing integration.

Each year, the Center receives more than 40 complaints from families with children searching for appropriate housing. Often these families are looking for housing in safe neighborhoods with high performing schools. Unfortunately, the housing in such neighborhoods is expensive and a housing provider's occupancy restrictions often prevent the family from moving into an

affordable unit. In one such case, *Gashi v. Ellis*, our clients, Drita and Florim Gashi, lived in a one-bedroom condominium they owned in Stamford, CT. After having their first child, the couple received a letter from the condominium association informing them they were in violation of the two-person per bedroom occupancy requirement and that if they did not vacate the premises, they would be fined \$500 per month. As a result, the Gashis sold their condominium at a loss. Since the housing market in Stamford was very expensive, the couple's new home cost significantly more than the condominium they sold.

The Center brought a fair housing lawsuit on behalf of the Gashis alleging that the two-person per bedroom rule had a disparate impact on families with children. In June 2011, the Connecticut Federal District Court issued a decision granting the Gashi's motion for summary judgment. In that decision, the Court held that to prevail on a disparate impact claim under the FHA, plaintiffs must first show that the challenged policy has a discriminatory effect, in that it actually or predictably results in discrimination. Once the discriminatory impact is shown by the plaintiffs, the Court held that the burden then shifts to the defendant to

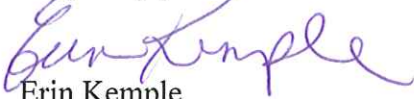
prove that its actions furthered "a legitimate, bona fide . . . interest and that no alternative would serve that interest with less discriminatory effect." *Huntington Branch NAACP v. Huntington*, 844 F.2d 926 at 936 (2<sup>nd</sup> Cir. 1988). The court generally views "subjective rationales" skeptically; however, if the defendant presents objective evidence to support his assertions, the court is less wary of subjective explanations. See *Soules v. HUD*, 967 F.2d 817, 822 (2d Cir. 1992). After the defendant presents a legitimate justification, the court must weigh the defendant's justification against the degree of adverse effect shown by the plaintiff. See *Huntington Branch*, 844 F.2d at 937. *Gashi* at 4.

We urge HUD to adopt the "legitimate bona fide" business standard set out by the Second Circuit in *Gashi* and the cases cited therein. The defendants in *Gashi* attempted to set out such a reason by arguing that the Stamford Fire Code required such a standard. However, the Court held that this assertion was not supported by the Fire Code and that mere assertions without more did not meet the defendants' burden of proof. Adopting the standard in the proposed regulation may have permitted the defendants in the *Gashi* case to meet its burden of proof and thus defeat the Gashi's fair housing claims. Instead, the parties have reached an agreement that includes the condominium association dropping its restrictive occupancy standards thus opening 150 units of housing to families with children.

In addition, the Center wishes to reiterate that we are in full support of the National Fair Housing Alliance's comment letter.

Thank you for the opportunity to comment on the proposed regulation implementing the Fair Housing Act's discriminatory effect standard. We again commend the Department for promulgating the proposed regulations implementing the discriminatory effect standard under the Fair Housing Act. Please contact Erin Kemple at (860)247-4400, ext. 0723 or at [erin@ctfairhousing.org](mailto:erin@ctfairhousing.org) with any questions.

Very truly yours,



Erin Kemple  
Executive Director