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*Practice Group:*  
*Consumer Financial*  
*Services*

## Mortgage Industry Submits Comments on HUD's Proposed Disparate-Impact Rule under the Fair Housing Act

**By Paul F. Hancock, Andrew C. Glass, Melanie Hibbs Brody, Roger L. Smerage, Melissa S. Malpass, Gregory N. Blase**

On January 17, 2012, K&L Gates LLP submitted the comments of six financial services trade associations to the United States Department of Housing and Urban Development (HUD) on the proposed rule to implement a disparate-impact legal standard under the Fair Housing Act. The trade associations on whose behalf we filed the comments are: the American Bankers Association, the American Financial Services Association, the Consumer Bankers Association, the Consumer Mortgage Coalition, the Independent Community Bankers of America, and the Mortgage Bankers Association. Several of the key arguments made by the trade associations are listed below:

- HUD should postpone its rulemaking pending the United States Supreme Court's disposition of *Magner v. Gallagher* (No. 10-1032).
- Disparate-impact liability is inconsistent with the plain language of the Fair Housing Act.
- Even if disparate-impact liability were supported by the plain language of the Fair Housing Act, both the burden allocation and standard of proof in the proposed rule are inconsistent with Supreme Court jurisprudence.
- The proposed rule may lead to efforts by businesses to bring end results more in line with demographics and thus to the use of quotas.
- Recent legislation obligates lenders to comply with more stringent requirements that in and of themselves may have a disproportionate impact on minority groups.

In addition to the legal arguments that are being considered by the Supreme Court in *Magner*, the submission includes a thoughtful analysis, resulting from a collaborative effort of the trade associations, of the many difficult practical issues that would be faced by the industry if the proposed rule is adopted. It also includes an offer to meet with the HUD officials to explain these concerns in greater detail.

A copy of the comment letter is available [here](#).

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K&L Gates' Consumer Financial Services practice provides a comprehensive range of transactional, regulatory compliance, enforcement and litigation services to the lending and settlement service industry. Our focus includes first- and subordinate-lien, open- and closed-end residential mortgage loans, as well as multi-family and commercial mortgage loans. We also advise clients on direct and indirect automobile, and manufactured housing finance relationships. In addition, we handle unsecured consumer and commercial lending. In all areas, our practice includes traditional and e-commerce applications of current law governing the fields of mortgage banking and consumer finance.

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