

Disparate Impact: It's Discrimination

A guide to understanding disparate impact under the Fair Housing Act

Today's Federal housing official commonly inveighs against the evils of ghetto life even as he pushes buttons that ratify their triumph - - even as he ok's public housing sites in the heart of Negro slums, releases planning and urban renewal funds to cities dead-set against integration, and approves the financing of suburban subdivisions from which Negroes will be barred. These and similar acts are committed daily by officials who say they are unalterably opposed to segregation, and have the memos to prove it. . . .

Senator Edward Brooke (R-MA)
114 CONG. REC. 2281, 2527-28 (1968)

After the assassination of the Rev. Dr. Martin Luther King, Jr., Senator Edward Brooke, a key drafter of the Fair Housing Act, remarked on the structural and institutional barriers to housing choice that were largely invisible to most Americans. Although they may not be intentionally discriminatory, these barriers still exist and affect millions of families determined to send their children to the best schools, live near where they work, and make long-lasting contributions in the community of their choice.

On June 25, 2015, the Supreme Court affirmed the cognizability of the disparate impact standard under the Fair Housing Act in *Texas Department of Housing and Community Affairs v. The Inclusive Communities Project, Inc.*, a case challenging the disparate impact doctrine of the Fair Housing Act. The Court's ruling expressed the continued relevance of the Fair Housing Act and affirmed its ability to address systemic housing discrimination.

In this NFHA Info Pack, you will find information about what disparate impact is, why it's important for our economy and our nation's future, and how it helps families.



It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States.

- Title VIII of the Civil Rights Act of 1968
“Fair Housing Act,” 42 U.S.C. 3602

Disparate impact theory safeguards the right to a fair shot for everyone.

Where you live determines where you work and how you get there, your access to healthcare, and the school your child attends. Unfortunately, policies and practices still exist that – intentionally or unintentionally - keep some people out of housing they can afford simply because of who they are.

How does the Fair Housing Act protect basic American fairness?

It prohibits housing discrimination and promotes diverse communities.

The Fair Housing Act prohibits both intentional discriminatory acts and facially “neutral” policies that may limit housing opportunities based on race, color, national origin, religion, or sex or the presence of families with children and people with disabilities.

What is disparate impact theory?

A tool used to challenge a policy that has a discriminatory effect. If a policy has a discriminatory effect, disparate impact theory generally states that the policy must be changed so it is both fair and effective. If the policy has a legitimate reason behind it, and no other policy could achieve the same goal with a less discriminatory effect, then the policy stands.

Why is fair housing disparate impact theory vital to our economy?

It promotes efficiency in financial and housing markets. The disparate impact theory helps us maintain open markets free from discrimination – a critical component to the prosperity of America’s future. Discrimination disrupts our economy, causing inefficiency and instability by constraining the full economic participation of all Americans.

What are some policies that have a disparate impact?

- (a) Families with Children – An apartment building policy that restricts occupancy to one person per bedroom, barring families with kids from renting or forcing them to pay more for multi-bedroom apartments.
- (b) Veterans with Disabilities or Seniors – An apartment complex only allows people with full-time jobs. This bars disabled veterans or elders who cannot work, even if they can afford it.



Disparate impact theory has been used to open housing for all people.

Recent cases brought by fair housing organizations and the Department of Justice show how fundamental disparate impact claims are to maintaining an open housing market.

People with Disabilities: Sally Wiesman was a woman from Fitchburg, Massachusetts, living in a housing authority apartment who suffered from multiple sclerosis, major depression, and a panic disorder – all of which substantially limited her ability to sleep, work, and carry on other important daily activities. Ms. Wiesman’s condition worsened after her downstairs neighbor initiated and repeated confrontational behavior toward her. Ms. Wiesman asked to transfer to a different apartment to help with her condition. The housing authority denied her request, citing a policy that only allowed tenants with mobility impairments to transfer apartments. DOJ filed on Ms. Wiesman’s behalf in 2009 and obtained a consent decree. The housing authority had to revise its transfer policy so as to not have a disparate impact on people with non-mobility-related disabilities. *United States of America v. Fitchburg Housing Authority, et al.*

Families with Children: Drita and Florim Gashi lived in a one-bedroom condo they owned in Stamford, CT. After they had their first child, they got a notice from the condo association informing them that they were in violation of a two-person per bedroom occupancy limit. They could either pay a \$500 monthly fine to stay, or vacate their home. Not being able to afford the additional monthly rent, the Gashis had to sell their condo at a loss. The Gashi’s contacted the Connecticut Fair Housing Center, which brought a fair housing case on their behalf. The Center and the Gashis claimed the two-person per bedroom rule had a disparate impact on families with children. In June 2011, a District Court granted the Gashi’s motion for summary judgment noting that the condo association could not justify the policy and the association dropped its restrictive occupancy standards, opening 150 units of housing to families with children. *Gashi, et al. v. Grubb & Ellis, et al.*

Race and National Origin: From 2004 to 2008 Countrywide Financial Corporation had a business practice that allowed its officers and brokers to vary a loan’s interest rate and other fees, after the price was set based on the borrower’s objective credit-related factors. This resulted in more than 200,000 African-American and Hispanic borrowers paying more for prime loans and receiving more subprime loans compared to similarly qualified white borrowers who got prime loans. In a similar case, DOJ alleged that Wells Fargo’s business practices allowed brokers and officers to place individuals in subprime loans even if they qualified for prime loans, resulting in 300,000 African-American and Hispanic borrowers paying more than similarly-situated white borrowers. In December 2011, DOJ reached a \$335 million settlement with Countrywide and in July 2012, a \$175 million settlement with Wells Fargo. Both Countrywide and Wells Fargo were required to revise their discretionary policies. *United States of America v. Countrywide Financial Corporation; United States of America v. Wells Fargo.*





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HOUSING DISCRIMINATION IS ILLEGAL

If you're looking for an apartment and you can't get in – because of barriers like steps, steep slopes and lack of curb cuts – or if you find the kitchen or bathroom is not accessible, please call. The Fair Housing Act requires most multi-family dwellings built since March 13, 1991, to be accessible to people with disabilities.

We will investigate to make sure the building complies with federal law.



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