

Interagency Task Force On Fair Lending

U.S. Department of Housing
and Urban Development
U.S. Department of Justice
Office of the Comptroller
of the Currency
Office of Thrift Supervision
Federal Reserve System
Federal Deposit Insurance
Corporation
Federal Housing Finance
Board
Federal Trade Commission
National Credit Union
Administration
Office of Federal Housing
Enterprise Oversight

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FEDERAL AGENCIES ADOPT JOINT POLICY STATEMENT ON LENDING DISCRIMINATION

WASHINGTON, D.C. -- Top officials of the 10 federal government agencies responsible for implementing and enforcing the nation's fair lending laws today announced a policy statement on discrimination in lending.

This was the first meeting of the Interagency Task Force on Fair Lending, which was organized to develop a coordinated approach to address discrimination in lending.

The participating federal agencies and their principals included:

- ◆ The Department of Housing and Urban Development -- Secretary Henry G. Cisneros
- ◆ The Department of Justice -- Attorney General Janet Reno
- ◆ The Office of the Comptroller of the Currency -- Comptroller Eugene A. Ludwig
- ◆ The Board of Governors of the Federal Reserve -- Governor Lawrence B. Lindsey
- ◆ The Office of Thrift Supervision -- Acting Director Jonathan L. Fiechter
- ◆ The Federal Deposit Insurance Corporation -- Acting Chairman Andrew C. Hove, Jr.
- ◆ The Federal Housing Finance Board -- Acting Chairman Nicolas P. Retsinas
- ◆ The National Credit Union Administration -- Chairman Norman E. D'Amours
- ◆ The Federal Trade Commission -- Christian S. White, Acting Director, Bureau of Consumer Protection
- ◆ The Office of Federal Housing Enterprise Oversight -- Director Aida Alvarez

"This is an historic occasion," said Henry G. Cisneros, Secretary of the Department of Housing and Urban Development. "Today, the full weight of the U.S. government has been brought to bear to assure fair lending to all Americans. The agencies that oversee lenders of all kinds have joined forces with HUD and the Department of Justice, the two government agencies that enforce civil rights, in a joint declaration against discrimination in lending."

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Attorney General Janet Reno added: "This is the first time that these enforcement and regulatory agencies have spoken with one voice on the critical issue of lending discrimination. While we will enforce the law vigorously, a major thrust of our program is to promote voluntary compliance. The Justice Department will work with the Task Force to continue its efforts to provide further guidance to the industry."

"This is the beginning of the process. We are looking forward to receiving comments about how these principles will apply to individual businesses and consumers, and we expect to provide additional clarification in the future," said Federal Reserve Governor Lawrence B. Lindsey.

"By clarifying the basic principles that all the federal agencies will use in identifying discrimination, this policy statement will benefit everyone -- lenders, consumers, and regulators alike," said Eugene A. Ludwig, Comptroller of the Currency. "In addition, the policy statement will help guarantee a level playing field for all borrowers by applying the same principles not just to banks and thrifts but to everyone who makes loans."

"Discrimination on a prohibited basis is intolerable and socially and economically destructive. Because the contours of the law are often not well defined, depository institutions and other lenders are not always certain what action might be considered to constitute illegal discrimination. The objective of the policy statement is to further the process of providing more guidance and concrete examples of what is and is not illegal discrimination," Jonathan L. Fiechter, Acting Director of the Office of Thrift Supervision, said.

The task force policy statement on fair lending describes what constitutes discrimination under the Equal Credit Opportunity Act (ECOA) and the Fair Housing Act. It is being issued to inform lenders about what factors the agencies consider in determining whether lending discrimination exists, and to provide the agencies with a foundation for future interpretations and rulemakings. The statement will be used by the agencies as a tool for administrative enforcement of fair lending statutes. The policy statement applies to all lenders, including banks and thrifts, credit unions, mortgage brokers, finance companies, retailers, credit card issuers and any other persons or entities who extend credit of any type.

The policy statement describes the ECOA and Fair Housing Act and identifies specific discriminatory practices prohibited by these laws. It continues with a description of the three methods of proving lending discrimination under these statutes -- overt evidence of discrimination, evidence of disparate treatment and evidence of disparate impact.

Overt discrimination and disparate treatment have long been viewed as common methods of lending discrimination under the ECOA and the Fair Housing Act. In its policy statement, the Task Force states that evidence of disparate impact in lending could also constitute discrimination under those laws when a lender cannot show that a "business necessity" exists.

Lenders' most commonly asked questions about fair lending violations are addressed in the final section. Answers to these questions include a detailed discussion of the criteria the agencies will use in determining the nature and severity of sanctions to address discriminatory lending practices, and the conditions under which the primary regulatory agencies will make referrals for investigation and enforcement. Application of the principles outlined in the policy statement will depend on the facts in each case and is subject to continuing development.

"The FDIC continues to place a high priority on Fair Lending and has recently enlarged its examination force to strengthen compliance with this important legislation. I am pleased that the FDIC can be part of this united effort to clarify and enhance the requirements that financial institutions must satisfy to meet both the spirit and letter of the law, and I have recommended to the FDIC Board adoption of the statement," said Andrew C. (Skip) Hove, Jr., Acting Chairman of the Federal Deposit Insurance Corporation.

"I am glad that President Clinton has formally recognized the perniciousness of discrimination in the lending community and has focused our attention on this critical issue. I believe the credit union industry's fair lending record will always be second to none. But no matter how good we think the financial industry is at making credit available to all who desire and deserve that credit, we know it can do better," Norman E. D'Amours, Chairman of the National Credit Union Administration, stated.

"If the Federal Home Loan Bank System is to fulfill its public purpose, member institutions must operate in a non-discriminatory manner," said Nicolas P. Retsinas, Acting Director of the Federal Housing Finance Board, which oversees the Bank System. "For this reason, the Finance Board wholeheartedly endorses the fair lending policy statement. We see it as a bold and timely reaffirmation of the principles which must characterize all aspects of our housing finance system."

Three agencies, the Federal Deposit Insurance Corporation, National Credit Union Administration and Federal Trade Commission, will soon vote on adopting the policy statement. The statement will then be published in the *Federal Register* and is effective upon publication. The agencies welcome comments and questions about the application of the statement's principles to lenders' specific policies and practices.

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INTERAGENCY TASK FORCE ON FAIR LENDING

POLICY STATEMENT

The Interagency Task Force on Fair Lending met on March 8, 1994 to consider the following Policy Statement on Discrimination in Lending. The Department of Housing and Urban Development, the Department of Justice, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Federal Housing Finance Board, and the Office of Federal Housing Enterprise Oversight have adopted the Policy Statement. Governor Lawrence Lindsey was authorized by the Board of Governors of the Federal Reserve System to adopt the Policy Statement on behalf of the Board of Governors and has done so. The participants in the Task Force meeting representing the Board of the Federal Deposit Insurance Corporation, the Board of the National Credit Union Administration, and the Federal Trade Commission fully support the Policy Statement and have agreed to seek approval of the Policy Statement from their agencies. The Task Force participants have agreed that the Policy Statement may be made public pending this process. Upon completion of this process, the Policy Statement will be published in the Federal Register as a Notice. The Notice will state that the agencies welcome comments about the application of the principles in the Policy Statement to specific policies and practices. The agencies anticipate providing further clarification and elaboration on the application of these principles in the future.

Policy Statement on Discrimination in Lending

The Department of Housing and Urban Development ("HUD"), the Department of Justice ("DOJ"), the Office of the Comptroller of the Currency ("OCC"), the Office of Thrift Supervision ("OTS"), the Board of Governors of the Federal Reserve System (the "Board"), the Federal Deposit Insurance Corporation ("FDIC"), the Federal Housing Finance Board ("FHFB"), the Federal Trade Commission ("FTC"), the National Credit Union Administration ("NCUA"), and the Office of Federal Housing Enterprise Oversight ("OFHEO") (collectively, "the Agencies") are concerned that some prospective home buyers and other borrowers may be experiencing discriminatory treatment in their efforts to obtain loans. The 1992 Federal Reserve Bank of Boston study on lending discrimination, Congressional hearings, and agency investigations have indicated that race is a factor in some lending decisions. Discrimination in lending on the basis of race or other prohibited factors is destructive, morally repugnant, and against the law. It prevents those who are discriminated against from enjoying the benefits of access to credit. The Agencies will not tolerate lending discrimination in any form. Further, fair lending is not inconsistent with safe and sound operations. Lenders must continue to ensure that their lending practices are consistent with safe and sound operating policies.

This policy statement applies to all lenders, including mortgage brokers, issuers of credit cards, and any other person who extends credit of any type. The policy statement is being issued for several reasons, including:

- To provide guidance about what the agencies consider in determining if lending discrimination exists; and
- To provide a foundation for future interpretations and rulemakings by the Agencies.

A number of federal statutes seek to promote fair lending. For example, the Home Mortgage Disclosure Act ("HMDA") seeks to prevent lending discrimination and redlining by requiring public disclosure of certain information about mortgage loan applications. The Community Reinvestment Act ("CRA") seeks affirmatively to encourage institutions to help to meet the credit needs of the entire community served by each institution covered by the statute, and CRA ratings take into account lending discrimination by those institutions. The Americans with Disabilities Act prohibits discrimination against persons with disabilities in the provision of goods and services, including credit services. This policy statement, however, is based upon and addresses only the Equal Credit Opportunity Act and the Fair Housing Act, the two statutes that specifically prohibit discrimination in lending.

This policy statement has been approved and adopted by the signatory Agencies listed above as a statement of the Agencies' general position on the Equal Credit Opportunity Act and the Fair Housing Act for purposes of administrative enforcement of those statutes. It is intended to be consistent with those statutes and their implementing regulations and to provide

guidance to lenders seeking to comply with them. It does not create or confer any substantive or procedural rights on third parties which could be enforceable in any administrative or civil proceeding.

This policy statement will discuss what constitutes lending discrimination under these statutes and answer questions about how the Agencies will respond to lending discrimination and what steps lenders might take to prevent discriminatory lending practices.

A. Lending Discrimination Statutes and Regulations

- (1) The Equal Credit Opportunity Act ("ECOA") prohibits discrimination in any aspect of a credit transaction. The ECOA is not limited to consumer loans. It applies to any extension of credit, including extensions of credit to small businesses, corporations, partnerships, and trusts.

The ECOA prohibits discrimination based on:

- Race or color;
- Religion;
- National origin;
- Sex;
- Marital status;
- Age (provided the applicant has the capacity to contract);
- The applicant's receipt of income derived from any public assistance program; and
- The applicant's exercise, in good faith, of any right under the Consumer Credit Protection Act.

The Federal Reserve Board's Regulation B, found at 12 C.F.R. Part 202, implements the ECOA. Regulation B describes lending acts and practices that are specifically prohibited, permitted, or required. Official interpretations of the regulation are found in Supplement I to 12 C.F.R. Part 202.

- (2) The Fair Housing Act ("FH Act") prohibits discrimination in all aspects of residential real-estate related transactions, including, but not limited to:

- Making loans to buy, build, repair or improve a dwelling;
- Purchasing real estate loans;
- Selling, brokering or appraising residential real estate; and
- The sale or rental of a dwelling.

The FH Act prohibits discrimination based on:

- Race or color;
- National origin;
- Religion;
- Sex;
- Familial status (defined as children under the age of 18 living with a parent or legal custodian, pregnant women and people securing custody of children under 18); and
- Handicap.

HUD's regulations implementing the FH Act are found at 24 C.F.R. Part 100.

Because both the FH Act and the ECOA apply to mortgage lending, lenders may not discriminate in mortgage lending based on any of the prohibited factors in either list.

Liability under these two statutes for discrimination on a prohibited basis is civil, not criminal. However, there is criminal liability under the FH Act for various forms of interference with efforts to enforce the FH Act, such as altering or withholding evidence or forcefully intimidating persons seeking to exercise their rights under the FH Act.

What is prohibited. Under the ECOA, it is unlawful for a lender to discriminate on a prohibited basis in any aspect of a credit transaction and, under both the ECOA and the FH Act, it is unlawful for a lender to discriminate on a prohibited basis in a residential real estate related transaction. Under one or both of these laws, a lender may not, because of a prohibited factor:

- Fail to provide information or services or provide different information or services regarding any aspect of the lending process, including credit availability, application procedures, or lending standards;
- Discourage or selectively encourage applicants with respect to inquiries about or applications for credit;
- Refuse to extend credit or use different standards in determining whether to extend credit;
- Vary the terms of credit offered, including the amount, interest rate, duration, or type of loan;
- Use different standards to evaluate collateral;
- Treat a borrower differently in servicing a loan or invoking default remedies; or
- Use different standards for pooling or packaging a loan in the secondary market.

A lender may not express, orally or in writing, a preference based on prohibited factors or indicate that it will treat applicants differently on a prohibited basis.

A lender may not discriminate on a prohibited basis because of the characteristics of:

- A person associated with a credit applicant (for example, a co-applicant, spouse, business partner, or live-in aide); or
- The present or prospective occupants of the area where property to be financed is located.

Finally, the FH Act requires lenders to make reasonable accommodations for a person with disabilities when such accommodations are necessary to afford the person an equal opportunity to apply for credit.

B. Types of Lending Discrimination

The courts have recognized three methods of proof of lending discrimination under the ECOA and the FH Act:

- "Overt evidence of discrimination," when a lender blatantly discriminates on a prohibited basis;
- Evidence of "disparate treatment," when a lender treats applicants differently based on one of the prohibited factors; and
- Evidence of "disparate impact," when a lender applies a practice uniformly to all applicants but the practice has a discriminatory effect on a prohibited basis and is not justified by business necessity.

Overt Evidence of Discrimination. There is overt evidence of discrimination when a lender openly discriminates on a prohibited basis.

Example. A lender offered a credit card with a limit of up to \$750 for applicants aged 21-30 and \$1500 for applicants over 30. This policy violated the ECOA's prohibition on discrimination based on age.

There is overt evidence of discrimination even when a lender expresses -- but does not act on -- a discriminatory preference:

Example. A lending officer told a customer, "We do not like to make home mortgages to Native Americans, but the law says we cannot discriminate and

we have to comply with the law." This statement violated the FH Act's prohibition on statements expressing a discriminatory preference.

Evidence of Disparate Treatment. Disparate treatment occurs when a lender treats a credit applicant differently based on one of the prohibited bases. Disparate treatment ranges from overt discrimination to more subtle disparities in treatment. It does not require any showing that the treatment was motivated by prejudice or a conscious intention to discriminate against a person beyond the difference in treatment itself. It is considered by courts to be intentional discrimination because no credible, nondiscriminatory reason explains the difference in treatment on a prohibited basis.

Example. Two minority loan applicants were told that it would take several hours and require the payment of an application fee to determine whether they would qualify for a home mortgage loan. In contrast, a loan officer took financial information immediately from nonminority applicants and determined whether they qualified in minutes, without a fee being paid. The lender's differential treatment violated both the ECOA and the FH Act.

Example: Redlining refers to the illegal practice of refusing to make residential loans or imposing more onerous terms on any loans made because of the predominant race, national origin, etc., of the neighborhood in which the property is located. Redlining violates both the FH Act and the ECOA.

Disparate treatment may more likely occur in the treatment of applicants who are neither clearly well-qualified nor clearly unqualified. Discrimination may more readily affect applicants in this middle group for two reasons. First, because the applications are all "close cases," there is more room and need for lender discretion. Second, whether or not an applicant qualifies may depend on the level of assistance the lender provides the applicant in preparing an application. The lender may, for example, propose solutions to problems on an application, identify compensating factors, and provide encouragement to the applicant. Lenders are under no obligation to provide such assistance, but to the extent that they do, the assistance must be provided in a nondiscriminatory way.

Example: A nonminority couple applied for an automobile loan. The lender found adverse information in the couple's credit report. The lender discussed the credit report with them and determined that the adverse information, a judgment against the couple, was incorrect since the judgment had been vacated. The nonminority couple was granted their loan. A minority couple applied for a similar loan with the same lender. Upon discovering adverse information in the minority couple's credit report, the lender denied the loan application on the basis of the adverse information without giving the couple an opportunity to discuss the report.

Example: Two minority borrowers inquired with a lender about mortgage loans. They were given applications for fixed-rate loans only and were not offered assistance in completing the loan applications. They completed the applications on their own and ultimately failed to qualify. Two similarly situated nonminority borrowers made an identical inquiry about mortgage loans to the same lender. They were given information about both adjustable-rate and fixed-rate mortgages and were given assistance in preparing applications that the lender could accept.

Both of these are examples of disparate treatment of similarly situated applicants, apparently based on a prohibited factor, in the amount of assistance and information the lender provided. The lender might also generally exercise its discretion to disfavor some individuals or favor others in a manner that results in a pattern or practice of disparate treatment that cannot be explained on grounds other than a prohibited basis.

If a lender has treated similar applicants differently on the basis of a prohibited factor, it must provide an explanation for the difference in treatment. If the lender is unable to provide a credible and legitimate nondiscriminatory explanation, the agency may infer that the lender discriminated.

If an agency determines that a lender's explanation for treating some applicants differently is a pretext for discrimination, the agency may find that the lender discriminated, notwithstanding the lender's explanation.

Example: A lender rejected a loan application made by a female applicant with flaws in her credit report but accepted applications by male applicants with similar flaws. The lender offered the explanation that the rejected application had been processed by a new loan officer who was unfamiliar with the bank's policy to work with applicants to correct credit report problems. However, an investigation revealed that the same loan officer that processed the rejected application had accepted applications from males with similar credit problems after working with them to provide satisfactory explanations.

When a lender's treatment of two applicants is compared, even when there is an apparently valid explanation for a particular difference in treatment, further investigation may establish disparate treatment on a prohibited basis. For example, seemingly valid explanations for denying loans to minority applicants may have been applied consistently to minority applicants and inconsistently to nonminority applicants; or "offsetting" or "compensatory" factors cited as the reason for approving nonminority applicants may involve information that the lender usually failed to consider for minority applicants but usually considered for nonminority applicants.

A pattern or practice of disparate treatment on a prohibited basis may also be established through a valid statistical analysis of detailed loan file information, provided that the analysis

controls for possible legitimate explanations for differences in treatment. Where a lender's underwriting decisions are the subject of a statistical analysis, detailed information must be collected from individual loan files about the applicants' qualifications for credit. Data reported by lenders under the HMDA do not, standing alone, provide sufficient information for such an analysis because they omit important variables, such as credit histories and debt ratios. HMDA data are useful, though, for identifying lenders whose practices may warrant investigation for compliance with fair lending laws. HMDA data may also be relevant, in conjunction with other evidence, to determine whether a lender has discriminated.

Evidence of Disparate Impact. When a lender applies a policy or practice equally to credit applicants, but the policy or practice has a disproportionate adverse impact on applicants from a group protected against discrimination, the policy or practice is described as having a "disparate impact." Policies and practices that are neutral on their face and that are applied equally may still, on a prohibited basis, disproportionately and adversely affect a person's access to credit.

Although the precise contours of the law on disparate impact as it applies to lending discrimination are under development, it has been clearly established that proof of lending discrimination using a disparate impact analysis encompasses several steps. The single fact that a policy or practice creates a disparity on a prohibited basis is not alone proof of a violation. Where the policy or practice is justified by "business necessity" and there is no less discriminatory alternative, a violation of the FH Act or the ECOA will not exist.

The existence of a disparate impact may be established through review of how a particular practice, policy or standard operates with respect to those who are affected by it. The existence of disparate impact is not established by a mere assertion or general perception that a policy or practice disproportionately excludes or injures people on a prohibited basis. The existence of a disparate impact must be established by facts. Frequently this is done through a quantitative or statistical analysis. Sometimes the operation of the practice is reviewed by analyzing its effect on an applicant pool; sometimes it consists of an analysis of the practice's effect on possible applicants, or on the population in general. Not every member of the group must be adversely affected for the practice to have a disparate impact. Evidence of discriminatory intent is not necessary to establish that a policy or practice adopted or implemented by a lender that has a disparate impact is in violation of the FH Act or ECOA.

Identifying the existence of a disparate impact is only the first step in proving lending discrimination. When an Agency finds that a lender's policy or practice has a disparate impact, the next step is to seek to determine whether the policy or practice is justified by "business necessity." The justification must be manifest and may not be hypothetical or speculative. Factors that may be relevant to the justification could include cost and profitability.

Even if a policy or practice that has a disparate impact on a prohibited basis can be justified by business necessity, it still may be found to be discriminatory if an alternative policy or practice could serve the same purpose with less discriminatory effect.

Example: A lender's policy is not to extend loans for single family residences for less than \$60,000.00. This policy has been in effect for ten years. This minimum loan amount policy is shown to disproportionately exclude potential minority applicants from consideration because of their income levels or the value of the houses in the areas in which they live. The lender will be required to justify the "business necessity" for the policy.

Example: In the past, lenders primarily considered net income in making underwriting decisions. In recent years, the trend has been to consider gross income. A lender decided to switch its practices to consider gross income rather than net income. However, in calculating gross income, the lender did not distinguish between taxable and nontaxable income even though nontaxable income is of more value than the equivalent amount of taxable income. The lender's policy may have a disparate impact on individuals with disabilities and the elderly, both of whom are more likely than the general applicant pool to receive substantial nontaxable income. The lender's policy is likely to be proven discriminatory. First, the lender is unlikely to be able to show that the policy is compelled by business necessity. Second, even if the lender could show business necessity, the lender could achieve the same purpose with less discriminatory effect by "grossing up" nontaxable income (i.e., making it equivalent to gross taxable income by using formulas related to the applicant's tax bracket).

Lenders will not have to justify every requirement and practice every time that they face a compliance examination. The Agencies recognize the relevance to credit decisions of factors related to the adequacy of the borrower's income to carry the loan, the likely continuation of that income, the adequacy of the collateral to secure the loan, the borrower's past performance in paying obligations, the availability of funds to close, and the existence of adequate reserves. While lenders should think critically about whether widespread, familiar requirements and practices have an unjustifiable disparate impact, they should look especially carefully at requirements that are more stringent than customary. Lenders should also stay informed of developments in underwriting and portfolio performance evaluation so that they are well positioned to consider all options by which their business objectives can be achieved.

C. Answers to Questions Often Asked by Financial Institutions and the Public

Lending institutions and others often ask the Agencies questions about various aspects of lending discrimination. The Agencies have compiled this list of common questions, with answers, in order to provide further guidance.

Q1: Are disparities in application, approval, or denial rates revealed by Home Mortgage Disclosure Act ("HMDA") data sufficient to establish lending discrimination?

A: HMDA data alone do not prove lending discrimination. The data do not contain enough information on major credit-related factors, such as employment and credit histories, to prove discrimination. Despite these limitations, the data can provide "red flags" that there may be problems at particular institutions. Therefore, regulatory and enforcement agencies may use HMDA data, along with other factors, to identify institutions whose lending practices warrant more scrutiny. Furthermore, HMDA data can be relevant, in conjunction with other data and information, to determine whether a lender has discriminated.

Q2: Does a lending institution that submits inaccurate HMDA data violate lending discrimination laws?

A: An inaccurate HMDA data submission constitutes a violation of the HMDA, the Federal Reserve Board's Regulation C, and other applicable laws, and may subject the lending institution to an enforcement action, which could include civil money penalties, and, if the lender is a HUD-approved mortgagee, the sanctions of the HUD Mortgagee Review Board. An inaccurate HMDA data submission, however, is not in itself a violation of the ECOA or the FH Act. However, a person who intentionally submits incorrect or incomplete HMDA data in order to cover up a violation of the FH Act may be subject, under the FH Act and federal criminal statutes, to a fine or prison term or both. In addition, a failure to ensure accurate HMDA data may be considered as a relevant fact during a FH Act investigation or an examination of the institution's lending activities.

Q3: Does a second review program only for loan applicants who are members of a protected class violate laws prohibiting discrimination in lending?

A: Such programs are permissible if they do no more than ensure that lending standards are applied fairly and uniformly to all applicants. For example, it is permissible to review the proposed denial of applicants who are members of a protected class by comparing their applications to the approved applications of similarly qualified individuals who are not members of a protected class to determine if the applications were evaluated consistently. It is impermissible, however, to review the applications

of members of a protected class in order to apply standards to those applications different from the standards used to evaluate other applications for the same credit program or to apply the same standards in a different manner, unless such actions are otherwise permitted by law, as described in Question 4.

Other types of second review programs are also permissible. For example, lenders could review the proposed denial of all applicants within a certain income range. Lenders also could review a sampling of all applications proposed for denial, or even review all such applications.

Q4: May a lender apply different lending standards to applicants who are members of a protected class in order to increase lending to that sector of its community?

A: Generally, a lender that applies different lending standards or offers different levels of assistance on a prohibited basis, regardless of its motivation, would be violating both the FH Act and the ECOA. There are exceptions to the general rule; thus, applying different lending standards or offering different levels of assistance to applicants who are members of a protected class is permissible in some circumstances. For example, the FH Act requires lenders to provide reasonable accommodation to people with disabilities. In addition, providing different treatment to applicants to address past discrimination would be permissible if done in response to a court order or otherwise in accord with applicable legal precedent. However, the law in this area is complex and developing. Before implementing programs of this sort, a lender should seek legal advice.

Of course, affirmative advertising and marketing efforts that do not involve application of different lending standards are permissible under both the ECOA and the FH Act. For example, special outreach to a minority community would be permissible.

Q5: Should a lender engage in self-testing?

A: Principles of sound lending dictate that adequate policies and procedures be in place to ensure safe and sound lending practices and compliance with applicable laws and regulations, and that a lender adopt appropriate audit and control systems to determine whether the institution's policies and procedures are functioning adequately. This is as true in the area of fair lending as in other operations. Lenders should employ reliable measures for auditing fair lending compliance. A well-designed and implemented program of self-testing could be a valuable part of this process. Lenders should be aware, however, that data documenting lending discrimination discovered in a self-test generally will not be shielded from disclosure.

Corrective actions should always be taken by any lender that discovers discrimination. Self-testing and corrective actions do not expunge or extinguish legal liability for the violations of law, insulate a lender from private suits, or eliminate the primary regulatory agency's obligation to make the referrals required by law. However, they will be considered as a substantial mitigating factor by the primary regulatory agencies when contemplating possible enforcement actions. In addition, HUD and DOJ will consider as a substantial mitigating factor an institution's self-identification and self-correction when determining whether they will seek additional penalties or other relief under the FH Act and the ECOA. The Agencies strongly encourage self-testing and will consider further steps that might be taken to provide greater incentives for institutions to undertake self-assessment and self-correction.

Q6: What should a lender do if self-testing evidences lending discrimination?

A: If a lender discovers discriminatory practices, it should make all reasonable efforts to determine the full extent of the discrimination and its cause, e.g., determine whether the practices were grounded in defective policies, poor implementation or control of those policies, or isolated to a particular area of the lender's operations. The lender should take all appropriate corrective actions to address the discrimination, including, but not limited to:

- Identifying customers whose applications may have been inappropriately processed, offering to extend credit if they were improperly denied; and compensating them for any damages, both out-of-pocket and compensatory; and notifying them of their legal rights;
- Correcting any institutional policies or procedures that may have contributed to the discrimination;
- Identifying, and then training and/or disciplining, the employees involved;
- Considering the need for community outreach programs and/or changes in marketing strategy or loan products to better serve minority segments of the lender's market; and
- Improving audit and oversight systems in order to ensure there is no recurrence of the discrimination.

An institution is not required to report to the Agencies a lending discrimination problem it has discovered. However, a lender that reports its discovery can ensure that the corrective actions it develops are appropriate and complete and thereby minimize the damages to which it will be subject.

Q7: Will a lender be held responsible for discriminatory lending engaged in by a single loan officer where the lending institution has good policies and procedures in place, is otherwise in full compliance with all applicable laws and regulations and neither knows or reasonably could have known that the officer was engaged in illegal discriminatory conduct?

A: Fair lending violations can occur even in the most well-run lending institutions that have good policies in place to ensure compliance with fair lending laws and regulations. Of course, the chances that such violations will occur can be greatly reduced by backing up those policies with proper employee training and supervision and subjecting the lending process to proven systems of oversight and review. Self-testing can further reduce the likelihood that violations may occur. Notwithstanding these efforts, a single loan officer might still improperly apply policies or, worse yet, deliberately circumvent them and manage to conceal or disguise the true nature of his or her practices for a time. It may be particularly difficult to discover this type of behavior when it occurs in the pre-application process.

In any case where discriminatory lending by a lending institution is identified, the lender will be expected to identify and fairly compensate victims of discriminatory conduct just as it would be expected to compensate a customer if an employee's conduct resulted in physical injury to the customer. In addition, such a violation might constitute a "pattern or practice" that must be referred to DOJ or a violation that must be referred to HUD.

As in other cases of discriminatory behavior, where a lender takes self-initiated corrective actions, such actions will be considered as a substantial mitigating factor by the Agencies in determining the nature of any enforcement action and what penalties or other relief would be appropriate.

Q8: If a federal financial institutions regulatory agency has "reason to believe" that a lender has engaged in a pattern or practice of discrimination in violation of the ECOA, the ECOA requires the agency to refer the matter to DOJ. What constitutes a "reason to believe"?

A: A federal financial institutions regulatory agency has reason to believe that an ECOA violation has occurred when a reasonable person would conclude from an examination of all credible information available that discrimination has occurred. This determination requires weighing the available evidence and applicable law and determining whether an apparent violation has occurred. Information supporting a reason to believe finding may include loan files and other documents, credible observations by persons with direct knowledge, statistical analysis, and the financial institution's response to the preliminary examination findings.

Reason to believe is more than an unfounded suspicion. While the evidence of discrimination need not be definitive and need not include evidence of overt discrimination, it should be developed to the point that a reasonable person would conclude that a violation exists.

Q9: If a federal financial institutions regulatory agency has reason to believe that a lender has engaged in a "pattern or practice" of discrimination in violation of the ECOA, the agency will refer the matter to DOJ. What constitutes a "pattern or practice" of lending discrimination?

A: Determinations by federal financial institutions regulatory agencies regarding a pattern or practice of lending discrimination must be based on an analysis of the facts in a given case. Isolated, unrelated or accidental occurrences will not constitute a pattern or practice. However, repeated, intentional, regular, usual, deliberate, or institutionalized practices will almost always constitute a pattern or practice. The totality of the circumstances must be considered when assessing whether a pattern or practice is present. Considerations include, but are not limited to:

- Whether the conduct appears to be grounded in a written or unwritten policy or established practice that is discriminatory in purpose or effect;
- Whether there is evidence of similar conduct by a financial institution toward more than one applicant. Note, however, that this is not a mathematical process, e.g., "more than one" does not necessarily constitute a pattern or practice;
- Whether the conduct has some common source or cause within the financial institution's control;
- The relationship of the instances of conduct to one another (e.g., whether they all occurred in the same area of the financial institution's operations); and
- The relationship of the number of instances of conduct to the financial institution's total lending activity. Note, however, that, depending on the circumstances, violations that involve only a small percentage of an institution's total lending activity could constitute a pattern or practice.

Depending on the egregiousness of the facts and circumstances involved, singly or in combination, these factors could provide evidence of a pattern or practice.

Q10: How does the employment of few minorities and individuals from other protected classes in lending positions -- e.g., Account Executive, Underwriter, Loan Counselor, Loan Processor, Staff Appraiser, Assistant Branch Manager and Branch Manager -- affect compliance with lending discrimination laws?

A: The employment of few minorities and others in protected classes, in itself, is not a violation of the FH Act or the ECOA. However, employment of few members of protected classes in lending positions can contribute to a climate in which lending discrimination could occur by affecting the delivery of services.

Therefore, lenders might consider the following steps, as appropriate to their institutions:

- Advertising lending job openings in local minority-oriented publications;
- Notifying predominantly minority organizations of such openings;
- Seeking employment referrals from current minority employees, minority real estate boards and local historically minority colleges and other institutions that serve minority groups in the community; and
- Seeking qualified independent fee appraisers from local minority appraisal organizations.

Similar outreach steps could be considered to recruit women, persons with disabilities, and other persons protected by the FH Act and the ECOA.

Q11: What is the role of the guidelines of secondary market purchasers and private and governmental loan insurers in determining whether primary lenders practice lending discrimination?

A: Many lenders make mortgage loans only when they can be sold on the secondary market, or they may place some loans in their own portfolios and sell others on the secondary market. The principal secondary market purchasers, Federal National Mortgage Association ("Fannie Mae") and Federal Home Loan Mortgage Corporation ("Freddie Mac"), publish underwriting guidelines to inform primary lenders of the conditions under which they will buy loans. For example, ability to repay the loan is measured by suggested ratios of monthly housing expense to income (28%) and total obligations to income (36%). However, these guidelines allow considerable discretion on the part of the primary lender. In addition, the secondary market guidelines have in some cases been made more flexible, for example, with respect to factors such as stability of income (rather than stability of employment) and use of nontraditional ways of establishing good credit and ability to pay (e.g., use of past rent and utility payment records). Lenders should ensure that their loan processors and underwriters are aware of the provisions of the secondary market guidelines that provide various alternative and flexible means by which applicants may demonstrate their ability and willingness to repay their loans. Fannie Mae and Freddie Mac not infrequently purchase mortgages exceeding the suggested ratios, and their guidelines contain

detailed discussions of the compensating factors that can justify higher ratios (and which must be documented by the primary lender).

A lender who rejects an application from an applicant who is a member of a protected class and who has ratios above those of the guidelines and approves an application from another applicant with similar ratios should be prepared to show that the reason for the rejection was based on factors that are applied consistently without regard to any of the prohibited factors.

These same principles apply equally to the guidelines of private and governmental loan insurers.

Q12: What criteria will be employed in taking enforcement actions or seeking remedial measures when lending discrimination is discovered?

A: Enforcement sanctions and remedial measures for lending discrimination violations vary depending on whether such sanctions are sought by the appropriate federal financial institutions regulatory agencies, DOJ, HUD or other federal agencies charged with enforcing either the ECOA or the FH Act. The following discussion sets out the criteria typically employed by the federal banking agencies (i.e., OCC, OTS, the Board and FDIC), NCUA, DOJ, HUD, OFHEO, FHFB and FTC in determining the nature and severity of sanctions that may be used to address discriminatory lending practices. As discussed in Questions 8 and 9, above, in certain situations, the primary regulatory agencies will also refer enforcement matters to HUD or DOJ.

The federal banking agencies:

The federal banking agencies are authorized to use the full range of their enforcement authority under 12 U.S.C. § 1818 to address discriminatory lending practices. This includes the authority to seek:

- Enforcement actions that may require both prospective and retrospective relief; and
- Civil money penalties ("CMPs") in varying amounts against the financial institution or any institution-affiliated party ("IAP") within the meaning of 12 U.S.C. § 1813(u), depending, among other things, on the nature of the violation and the degree of culpability.

In addition to the above actions, the federal banking agencies may also take removal and prohibition actions against any IAP where the statutory requirements for such actions are met.

The federal banking agencies will make determinations as to the appropriateness of any potential enforcement action after giving full consideration to a variety of factors. In making these determinations, the banking agencies will take into account:

- The number and duration of violations identified;
- The nature of the evidence of discrimination (i.e., overt discrimination, disparate treatment or disparate impact);
- Whether the discrimination was limited to a particular office or unit of the financial institution or was more pervasive in nature;
- The presence and effectiveness of any anti-discrimination policies;
- Any history of discriminatory conduct; and
- Any corrective measures implemented or proposed by the financial institution.

The severity of the federal banking agencies' enforcement response will depend on the egregiousness of the financial institution's conduct. Voluntary identification and correction of violations disclosed through a self-testing program will be a substantial mitigating factor in considering whether to initiate an enforcement action.

In addition, the federal banking agencies may consider whether an institution has provided victims of discrimination with all the relief available to them under applicable civil rights laws.

The federal banking agencies may seek both prospective and retrospective relief for fair lending violations.

Prospective relief may include requiring the financial institution to:

- Adopt corrective policies and procedures and correct any financial institution policies or procedures that may have contributed to the discrimination;
- Train financial institution employees involved;
- Establish community outreach programs and changing marketing strategy or loan products to better serve all sectors of the financial institution's service area;
- Improve internal audit controls and oversight systems in order to ensure there is no recurrence of discrimination; or
- Monitor compliance and provide periodic reports to the primary federal regulator.

Retrospective relief may include:

- Identifying customers who may have been subject to discrimination and offering to extend credit if the customers were improperly denied;
- Requiring the financial institution to make payments to injured parties:
 - **Restitution:** This may include any out-of-pocket expenses incurred as a result of the violation to make the victim of discrimination whole, such as: fees or expenses in connection with the application; the difference between any greater fees or expenses of another loan granted elsewhere after denial by the discriminating lender; and, when loans were granted on disparate terms, appropriate modification of those terms and refunds of any greater amounts paid.
 - **Other Affirmative Action As Appropriate to Correct Conditions Resulting From Discrimination:** The federal banking agencies also have the authority to require a financial institution to take affirmative action to correct or remedy any conditions resulting from any violation or practice. The banking agencies will determine whether such affirmative action is appropriate in a given case and, if such action is appropriate, the type of remedy to order.
- Requiring the financial institution to pay CMPs:

The banking agencies have the authority to assess CMPs against financial institutions or individuals for violating fair lending laws or regulations. Each agency has the authority to assess CMPs of up to \$5,000 per day for any violation of law, rule or regulation. Penalties of up to \$25,000 per day are also permitted, but only if the violations represent a pattern of misconduct, cause more than minimal loss to the financial institution, or result in gain or benefit to the party involved. CMPs are paid to the U.S. Treasury and therefore do not compensate victims of discrimination.

National Credit Union Administration:

For federally insured credit unions, NCUA will employ criteria comparable to those of the other federal financial institutions regulatory agencies, pursuant to its authority under 12 U.S.C. § 1786.

The Department of Justice:

The Department of Justice is authorized to use the full range of its enforcement authority under the Fair Housing Act, 42 U.S.C. § 3601 *et seq.*, and the Equal Credit Opportunity Act, 15 U.S.C. § 1691 *et seq.* DOJ has authority to commence pattern

or practice investigations of possible lending discrimination on its own initiative or through referrals from the federal financial institutions regulatory agencies, and to file lawsuits in federal court where there is reasonable cause to believe that such violations have occurred. DOJ is also authorized under the FH Act to bring suit based on individual complaints filed with HUD where one of the parties to the complaint elects to have the case heard in federal court.

The relief sought by DOJ in lending discrimination lawsuits may include:

- An injunction which may require both prospective and retrospective relief; and,
- In enforcement actions under the FH Act, CMPs not to exceed \$50,000 per defendant for a first violation and \$100,000 for any subsequent violation.

Prospective injunctive relief may include:

- A permanent injunction to insure against a recurrence of the unlawful practices;
- Affirmative measures to correct past discriminatory policies, procedures, or practices, so long as consistent with safety and soundness, such as:
 - Expansion of the lender's service areas to include previously excluded minority neighborhoods;
 - Opening branches or other credit facilities in under-served minority neighborhoods;
 - Targeted sales calls on real estate agents and builders active in minority neighborhoods;
 - Advertising through minority-oriented media;
 - Self-testing;
 - Employee training;
 - Changes to commission structures which tend to discourage lending in minority and low-income neighborhoods; and
 - Changes in loan processing and underwriting procedures (including second reviews of denied applications) to ensure equal treatment without regard to prohibited factors; and

- Record keeping and reporting requirements to monitor compliance with remedial obligations.

Retrospective injunctive relief may include relief for victims of past discrimination, actual and punitive damages, and offers or adjustments of credit or other forms of loan commitments.

The Department of Housing and Urban Development:

The Department of Housing and Urban Development is fully authorized to investigate complaints alleging discrimination in lending in violation of the FH Act and has the authority to initiate complaints and investigations even when an individual complaint has not been received. HUD issues determinations on whether or not reasonable cause exists to believe that the FH Act has been violated. HUD also may authorize actions for temporary and preliminary injunctions to be brought by DOJ and has authority to issue enforceable subpoenas for information related to investigations.

Following issuance of a determination of reasonable cause under the FH Act, HUD enforces the FH Act administratively unless one of the parties elects to have the case heard in federal court in a case brought by DOJ.

Relief under the FH Act that may be awarded by an administrative law judge ("ALJ") after a hearing, or by the Secretary on review of a decision by an ALJ, includes:

- Injunctive or other appropriate relief, including a variety of actions designed to correct discriminatory practices, such as changes in loan processes or procedures, modifications of loan service areas or branching actions, approval of previously denied loans to aggrieved persons, additional record-keeping and reporting on future activities or other affirmative relief;
- Actual damages suffered by persons who are aggrieved by any violation of the FH Act, including damages for mental distress and out-of-pocket losses attributable to a violation; and
- Civil penalties of up to \$10,000 for each initial violation and up to \$25,000 and \$50,000 for successive violations within specific time frames.

HUD also is authorized to direct Fannie Mae and Freddie Mac to undertake various remedial actions, including suspension, probation, reprimand, or settlement, against lenders found to have engaged in discriminatory lending practices in violation of the FH Act or the ECOA.

The Office of Federal Housing Enterprise Oversight:

The Office of Federal Housing Enterprise Oversight is authorized to use its enforcement authority under 12 U.S.C. §§ 4631 and 4636, including cease and desist orders and CMPs for violations by Fannie Mae and Freddie Mac of the fair housing regulations promulgated by the Secretary of HUD pursuant to 12 U.S.C. § 4545.

The Federal Housing Finance Board:

While the Federal Housing Finance Board does not have enforcement authority under the ECOA or the FH Act, in reviewing the members of the Federal Home Loan Bank System for community support, it may restrict access to long-term System advances to any member that within two years prior to the due date of submission of a Community Support Statement, had a final administrative or judicial ruling against it based on violations of those statutes (or any similar state or local law prohibiting discrimination in lending). System members in this situation are asked to submit to the Finance Board an explanation of steps taken to remedy the violation or prevent a recurrence.

The Federal Trade Commission:

The Federal Trade Commission enforces the requirements of the ECOA and Regulation B for all lenders subject to the ECOA, except where enforcement is specifically committed to another agency. The FTC may exercise all of its functions and powers under the Federal Trade Commission Act ("FTC Act") to enforce the ECOA, and a violation of any requirement under the ECOA is deemed to be a violation of a requirement under the FTC Act. The FTC has the power to enforce Regulation B in the same manner as if a violation of Regulation B were a violation of an FTC trade regulation rule.

This means that the FTC has the power to investigate lenders suspected of lending discrimination and to use compulsory process in doing so. The Commission, through DOJ or on its own behalf where the Justice Department declines to act, may file suit in federal court against suspected violators and seek relief including:

- Injunctions against the violative practice;
- Civil penalties of up to \$10,000 for each violation; and
- Redress to affected consumers.

In addition, the Commission routinely imposes recordkeeping and reporting requirements to monitor compliance.

Q13: Will a financial institution be subjected to multiple actions by DOJ or HUD and its primary regulator if discriminatory practices are discovered?

A: In all cases where referrals to other agencies are made, the appropriate federal financial institutions regulatory agency will engage in ongoing consultations with DOJ or HUD regarding coordination of each agency's actions. The Agencies will coordinate their enforcement actions and make every effort to eliminate unnecessarily duplicative actions. Where both a federal financial institutions regulatory agency and either DOJ or HUD are contemplating taking actions under their own respective authorities, the Agencies will seek to coordinate their actions to ensure that each agency's action is consistent and complementary. The financial institutions regulatory agencies also will discuss referrals on a case-by-case basis with DOJ or HUD to determine whether multiple actions are necessary and appropriate.



OFFICE OF THE ASSISTANT SECRETARY
FOR PUBLIC AFFAIRS

FAIR LENDING FACT SHEET

The statement issued today addresses lending discrimination as prohibited by the Fair Housing Act and the Equal Credit Opportunity Act. In addition to those two laws, there is the Home Mortgage Disclosure Act and the Community Reinvestment Act, which address fair access to credit and capital.

Following is a thumbnail sketch of these laws:

- The **Fair Housing Act** prohibits discrimination in housing, based on race, color, religion, sex, national origin, handicap, or family status. The law covers the rental, sale and improvement of housing, as well as discrimination in advertising, and zoning and land use decisions. The law was originally enacted in 1968.
- Under the **Equal Credit Opportunity Act**, it is unlawful for lenders to discriminate in any aspect of a credit transaction. Prohibited factors include race or color, national origin, religion, sex, marital status and age. Mortgage loans, consumer loans, extensions of credit to small businesses, corporations, partnerships and trusts are covered under this law.
- The **Home Mortgage Disclosure Act** was originally enacted in 1975 to prevent lending discrimination and "redlining" by requiring public disclosure of certain information about mortgage loan applications. HMDA data alone does not contain enough information about applicants (such as employment and credit histories) to prove lending discrimination, but the data can provide "red flags" about problems at particular institutions.
- The **Community Reinvestment Act** was originally enacted in 1977, and seeks to encourage lending institutions to meet the credit needs of the entire communities they serve. The goals of the law are to generate loans and consumer banking services in depressed communities.

DEPARTMENT OF JUSTICE FACT SHEET

Lending Laws Enforced by the Justice Department

- **The Fair Housing Act prohibits discrimination based on race, color, national origin, religion, sex, handicap and familial status (families with children) in all residential real estate-related transactions. Those transactions include making loans to buy, build, repair or improve a dwelling; purchasing real estate loans; selling, brokering or appraising residential real estate; and the selling or renting of a dwelling.**
- **The Equal Credit Opportunity Act prohibits discrimination based on race, color, national origin, religion, sex, marital status and age, among others, in any credit transaction. It applies not only to housing-related loans, but to loans for small businesses, corporations, partnerships, and trusts.**

Increase in Civil Rights Division Resources

- **The Attorney General recently added 18 new positions to the Housing Section of the Civil Rights Division that combats housing and lending discrimination -- increasing the staff by nearly one third. The Attorney General also has asked United States Attorneys to handle some housing discrimination cases so that the Housing Section can devote more resources to discrimination in lending.**

Investigations Currently Underway

- **The Civil Rights Division is currently investigating the lending practices of several financial institutions, including major lenders in Chicago and Miami. It also is reviewing cases of possible discriminatory lending practices that it was referred by other federal financial regulators.**

Actions Taken by the Justice Department

- **US v. First National Bank of Vicksburg (Mississippi)**; Filed complaint January 1994, alleging that lender discriminated against blacks seeking unsecured home improvement loans by charging them 4 to 11% higher interest rates than it charged to whites. Under a consent decree filed simultaneously with the complaint, lender agreed to conduct second reviews of applications, train its officers in fair lending, and pay about \$4,400 each to 170 black borrowers who were victims of Vicksburg's alleged discriminatory policies.
- **US v. Blackpipe State Bank (South Dakota)**; Filed complaint November 1993, alleging that lender discriminated against Native Americans by refusing to make loans secured by collateral located on reservations and by charging Native Americans greater interest rates and finance charges than those charged to whites. Under a consent decree filed January 1994, lender agreed to expand its services to reservations, market its products to Native Americans, reduce interest rates and finance charges on existing discriminatory loans, and create a \$125,000 compensation fund for past rejected applicants who may be eligible for compensation.
- **US v. Shawmut Mortgage Company (Connecticut)**; Filed complaint December 1993, alleging that lender discriminated against black and Hispanic applicants for home mortgage loans by failing to provide them with the same level of assistance it provided to white applicants and by applying more stringent underwriting standards to them than were applied to whites. Under a consent decree filed simultaneous with the complaint, lender agreed to create an initial \$960,000 compensation fund from which victims of discrimination will be paid between \$10,000 and \$15,000. Lender also agreed to continue implementing corrective measures it had begun over a year earlier, including training officers in fair lending, conducting random testing to ensure employees are not discouraging minorities from applying for loans, and extending advertising and marketing to reach minority communities.
- **US v. Decatur Federal Savings and Loan (Georgia)**; Filed complaint September 1992, alleging that lender discriminated against blacks by applying stricter underwriting standards to black applicants and by marketing, advertising, and conducting branching activities in a way as to avoid dealing with black applicants. Under consent decree filed simultaneously with the complaint, lender agreed to implement a variety of corrective measures and pay \$1 million in compensatory and punitive damages to 48 black applicants identified as victims of discrimination.

THE FEDERAL RESERVE'S ROLE IN ENFORCEMENT OF THE LENDING DISCRIMINATION LAWS

The Board of Governors of the Federal Reserve System has a primary role in many aspects of the federal government's efforts to combat lending discrimination through its sole responsibility for implementing two major fair lending laws and its enforcement, examination and educational programs.

- The Federal Reserve is the regulatory agency with sole responsibility for writing regulations for, and interpreting, the Equal Credit Opportunity Act (ECOA) and the Home Mortgage Disclosure Act (HMDA). ECOA is the broadest lending discrimination statute enacted into law -- extending to all forms of lending, including mortgages and other consumer and business credit. HMDA requires the collection of extensive information about applicants for mortgages and home improvement loans. As such, it is significant in helping to detect lending discrimination and the enforcement of the ECOA and Fair Housing Act.

- The Board has had a specialized consumer compliance examination program since 1977, and has staff specialists devoted to compliance and regulatory issues concerning fair lending. Further, the 12 regional Federal Reserve Banks maintain an examination program to ensure compliance with the fair lending laws -- on-site examinations are conducted approximately every 18 months. For years, Federal Reserve examiners have conducted detailed investigations -- loan file by loan file -- into possible lending discrimination by comparing applicants who were denied credit with those who were granted credit to ensure that credit decisions have been made on a nondiscriminatory basis. The examiners have enhanced their investigative ability through the use of a sophisticated statistical model for analyzing information drawn from HMDA data and loan files. In addition, the Federal Reserve System conducts an extensive educational program for its examiners in all areas of compliance and will soon institute an extensive specialized training for fair lending investigations. Finally, our community affairs and consumer complaint investigation programs are also important elements of fair lending enforcement by the Federal Reserve.

- The Federal Reserve System has been instrumental in furthering agency detection and enforcement of the fair lending laws in other ways, such as through the significant study of lending discrimination conducted by the Federal Reserve Bank of Boston. The study was initiated to evaluate the differences in the rates of home loan denials shown in the 1990 HMDA data. In response to the Boston Reserve Bank study, the Federal Reserve and the other financial regulatory agencies issued a joint statement alerting lenders to the extent of the problem underlying the statistics and stressing the need for them to intensify their efforts to avoid discrimination in their own lending programs.



Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

March 8, 1994

OFFICE OF THE COMPTROLLER OF THE CURRENCY

The Office of the Comptroller of the Currency (OCC) was established in 1863 as a bureau of the Department of Treasury. The OCC is headed by Comptroller Eugene A. Ludwig, who was appointed in 1993 to a 5-year term by the President, with the advice and consent of the Senate.

The OCC, as regulator and supervisor of the national banking system, regularly examines the country's approximately 3400 national banks to ensure safety and soundness and compliance with all applicable laws and regulations, including the Equal Credit Opportunity Act (ECOA) and the Fair Housing Act.

The OCC takes enforcement actions against national banks that do not conform to laws and regulations or which engage in unsound banking practices, and as appropriate, refers cases involving violations of fair lending laws to the Department of Justice (DOJ) or the Department of Housing and Urban Development (HUD). The OCC, under 12 U.S.C. §1818, has authority to impose enforcement sanctions and require remedial measures to address discriminatory lending practices.

In addition to participation on the Interagency Task Force on Fair Lending, OCC fair lending initiatives include:

Fair Lending Examination Procedures

New examination procedures adopted in May 1993 are designed to detect discrimination in national banks' residential lending activities. Fair lending examination procedures are used in all banks reporting at least five mortgage loan denials in any given year for either blacks, Hispanics or Native Americans, and can also be adapted to detect other forms of lending discrimination.

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Office of Thrift Supervision
Department of the Treasury

1700 G Street, N.W., Washington, D.C. 20552 • (202) 906-6000

March 7, 1994

OTS FAIR LENDING FACT SHEET

Policy: OTS policy with regard to fair lending mirrors the Interagency Task Force on Fair Lending policy statement. Discrimination on a prohibited basis is intolerable and socially and economically destructive. An essential part of the OTS mission is to ensure that the savings associations it regulates treat loan applicants fairly and consistently under the law.

History: The agency established a specialized compliance examination program in 1989. Under this program, compliance examinations are conducted by specially trained and career-professional examiners in the five OTS regional offices. OTS now has approximately 100 compliance examiners. Fair lending laws and regulations are reviewed as part of compliance examinations along with consumer protection laws, Community Reinvestment Act and the Bank Secrecy Act.

In late 1992, the agency began a review of fair lending activities with the goal of improving performance. Out of this review, OTS developed a three-part plan to combat lending discrimination in the thrift industry, involving:

1. Improved discrimination detection techniques used by examiners;
2. Strengthened enforcement response by ensuring that appropriate referrals are made to Justice and HUD and that formal enforcement actions are taken to address noncompliance where warranted; and
3. Working with the industry and other interested groups to create a better sense of awareness about discrimination through education as a means of preventing it.

Action: OTS has taken the following steps so far in implementing its plan:

1. Made five referrals in past 12 months to Justice for violations of Equal Credit Opportunity Act;
2. Cooperated in the development of interagency policy statement issued today.
3. Held a series of meetings with various community organizations to discuss consumer and fair lending issues;
4. With the other banking agencies, will hold this year education seminars on discrimination for the chief executives of banks and thrifts; and
5. Will expand and improve its own compliance training curricula, and work with other regulators to develop an advanced training school.

FDIC DETAILS 1993 FAIR LENDING ENFORCEMENT EFFORTS

The Federal Deposit Insurance Corporation (FDIC) supervises approximately 7,200 financial institutions, including savings banks. FDIC-supervised institutions are state chartered financial institutions that are not members of the Federal Reserve System. To enforce compliance with fair lending laws, the FDIC undertakes two primary activities: bank examinations and complaint investigations. The FDIC conducted 3,537 consumer compliance examinations during calendar year 1993. It also responded to over 5,700 written complaints and inquiries, of which 857 concerned the Equal Credit Opportunity Act (ECOA) and 662 concerned the Fair Housing Act (FHA).

The Division of Supervision (DOS) and the Office of Consumer Affairs (OCA) oversee the FDIC's Compliance Program. DOS examines for fair lending compliance through its compliance examination program. The FDIC has significantly strengthened its compliance enforcement, particularly in the complex areas of ECOA and FHA, through the use of specialized compliance examiners. At the end of 1993, there were 266 field compliance examiner positions with 32 regional office review examiner positions in the program.

The OCA, an independent office reporting directly to the Office of the Chairman, has oversight responsibility for the FDIC compliance examination program and consumer complaint investigations. The OCA also administers the Community Affairs Program (CAP) whose staff does community outreach activity in order to promote enhanced compliance with fair lending laws and regulations by FDIC-supervised institutions.

In 1993, the FDIC participated with the Department of Justice (DOJ) on items that were included in DOJ's consent agreement with the Blackpipe State Bank, an FDIC-supervised institution in Martin, South Dakota. DOJ alleged that the bank had engaged in lending

NEWS

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THE FEDERAL HOUSING FINANCE BOARD

- The Federal Housing Finance Board (Finance Board) was established as an independent agency in the Executive Branch by the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) of 1989.
- The Finance Board has supervisory authority and oversight responsibility for the twelve Federal Home Loan Banks and the Office of Finance. The Finance Board ensures the safety and soundness of the Bank System, administers the Affordable Housing, Community Investment, and Community Support Programs and oversees the FHLBanks' financial performance and operations.
- The Finance Board consists of a five-director board -- one of whom is the Secretary of Housing & Urban Development. The other four directors are appointed by the President and are subject to Senate confirmation. One of the directors is a "consumer/community" director. The current Finance Board directors are:

Secretary Henry G. Cisneros*
Board Director, vacant as of 1/1/94 (2000)
Board Director, vacant as of 11/22/93 (1999)
Board Director, vacant as of 1/1/94 (1997)
Lawrence U. Costiglio of New York (1992-1995)

*Secretary Cisneros has designated Assistant Secretary for Housing - Federal Housing Commissioner, Nicolas P. Retsinas, to serve in his Board position.

- The Finance Board directors are chosen from among people with extensive experience in housing finance or with a commitment to the provision of specialized housing credit. One director must be chosen from organizations representing consumer or community interests on banking services, credit needs, housing or consumer protection.
- The Finance Board is supported by assessments from the twelve Federal Home Loan Banks. The Banks, in turn, finance their own operations by charging for credit products and services they provide to member institutions. No tax dollars or other appropriations are used to support the operations of the Finance Board or the Bank System.



NATIONAL CREDIT UNION ADMINISTRATION

ALEXANDRIA, VA 22314-3428

FACT SHEET

The National Credit Union Administration is an independent Federal agency established by Congress to oversee the federal credit union system. NCUA is funded by credit unions and receives no tax dollars.

Today, NCUA supervises and insures nearly 8,000 federal credit unions and insures member accounts in approximately 4,600 state-chartered credit unions.

The National Credit Union Share Insurance Fund is the arm of the agency that insures member accounts up to \$100,000. It is backed by the full faith and credit of the U.S. government and is managed by the NCUA Board. The fund has never had a net loss and, since it was recapitalized in 1985, the equity ratio (the fund balance as a percentage of insured deposits) has remained at or near 1.25 percent.

NCUA has a three-member board appointed by the President of the United States.

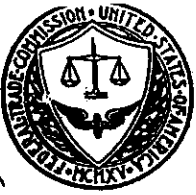
Chairman Norman E. D'Amours is a former U.S. Congressman who was practicing law in his home state of New Hampshire when appointed NCUA chairman in November 1993.

Vice Chairman Shirlee P. Bowné is a former real estate broker in Tallahassee and was on the board of the Florida Housing Finance Agency when she was appointed in October 1991.

Member Robert H. Swan is a former president of Tooele Federal Credit Union, Tooele, Utah, and previously served as Utah deputy director of finance. He took office in April 1990.

Credit unions are non-profit cooperatives organized to provide members with financial service. Well over 60 million Americans save and borrow at credit unions. For ten consecutive years, credit unions have ranked number one, by a large margin, in an annual customer satisfaction survey of financial institutions.

Although most credit unions are relatively small, they are safe and sound. Membership, deposits, assets, and loans grow consistently year after year and capital levels are high. The number of troubled credit unions is declining and loan delinquencies are low.



Federal Trade Commission

THE UNITED STATES FEDERAL TRADE COMMISSION

The Federal Trade Commission has the power to investigate certain lenders suspected of lending discrimination and to compel them to produce written documents or oral testimony in the course of such investigations. The FTC's authority arises from the Equal Credit Opportunity Act and its implementing Regulation B, and extends to all lenders subject to ECOA except banks, savings and loan institutions and credit unions, jurisdiction over which is specifically given to other agencies.

The FTC, through the Department of Justice (or on its own behalf if the Justice Department declines to take action), may file suit in federal district court against lenders suspected of violating the law. In so doing, the Commission can seek injunctions against future illegal conduct, civil penalties of up to \$10,000 for each violation, and redress for consumers unfairly denied loans. In addition, the FTC routinely imposes record-keeping and reporting requirements on defendants -- these are designed to assist the Commission in monitoring their compliance with orders.

Last December, in its most recent ECOA case, the FTC and the Justice Department together entered into a settlement agreement with Shawmut Mortgage Company. Shawmut agreed to pay almost \$1 million into a redress fund to compensate African American and Hispanic applicants who allegedly were unfairly denied mortgage loans from 1990 through late 1992. The agreement establishes a procedure to identify and compensate applicants that the FTC and Justice alleges were illegally discriminated against. It also prohibits Shawmut from discriminating on the basis of race or national origin, in violation of the ECOA or the Fair Housing Act, in the future.



OFFICE OF FEDERAL HOUSING ENTERPRISE OVERSIGHT
1700 G STREET NW WASHINGTON DC 20552 (202) 414-3800

March 8, 1994

OFHEO STATEMENT ON FAIR LENDING

The Office of Federal Housing Enterprise Oversight (OFHEO), the federal government's newest financial regulator, is responsible for overseeing the safety and soundness of the nation's two largest housing finance organizations -- the Federal National Mortgage Association (Fannie Mae), and the Federal Home Loan Mortgage Corporation (Freddie Mac).

The legislation creating OFHEO -- the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (P.L. 102-550) -- also gives the Office enforcement authority over violations by Fannie Mae and Freddie Mac in the area of fair lending.

OFHEO's enforcement authority relates to regulations issued by the HUD Secretary that prohibit discrimination by Fannie Mae or Freddie Mac in the purchase of any mortgage, as spelled out in Sec. 1325 of the Act. The remedies available to OFHEO include cease-and-desist orders, and the imposition of civil money penalties.

"There is no inconsistency between fair lending and financial safety and soundness," said OFHEO Director Aida Alvarez. "Pulling the government's fair lending rules into one coherent policy is an intelligent and long-overdue action that will help lending institutions make the decisions that are right for America," said Ms. Alvarez.

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OFHEO is an independent office of the Department of Housing and Urban Development. OFHEO reports to Congress, but receives no government funds; it is funded through assessments of Fannie Mae and Freddie Mac. In its safety and soundness mission, OFHEO is analogous to such other federal financial regulators as the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, and the Federal Reserve Board.

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