

## IV. Fair Lending – Evaluating Responses and Conclusions

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guide to making loan decisions, refer to **Part D** of the **Credit Scoring Analysis** section of the **Appendix**.

### *I. Disparate Impact Issues.*

These procedures have thus far focused primarily on examining comparative evidence for possible unlawful *disparate treatment*. *Disparate impact* has been described briefly in the Introduction. Whenever an examiner believes that a particular policy or practice of a lender appears to have a *disparate impact* on a prohibited basis, the examiner should refer to **Part A** of the **Special Analyses** section of the **Appendix** or consult with agency managers for further guidance.

### **Part IV—Obtaining and Evaluating Responses from the Lender and Concluding the Examination**

**Step 1.** Present to the institution’s management for explanation:

- a. Any **overt** evidence of disparate treatment on a prohibited basis.
- b. All instances of apparent **disparate treatment** (e.g., overlaps) in either the underwriting of loans or in loan prices, terms, or conditions.
- c. All instances of apparent **disparate treatment** in the form of discriminatory steering, redlining, or marketing policies or practices.
- d. All instances where a denied prohibited basis applicant was not afforded the same **level of assistance** or the **same benefit of discretion** as an approved control group applicant who was no better qualified with regard to the reason for denial.
- e. All instances where a prohibited basis applicant received **conspicuously** less favorable treatment by the lender than was **customary** from the lender or was **required** by the lender’s policy.
- f. Any statistically significant average difference in either the **frequency** or **amount of pricing disparities** between control group and prohibited basis group applicants.
- g. Any evidence of neutral policies, procedures or practices that appear to have a **disparate impact or effect** on a prohibited basis.

Explain that unless there are legitimate, nondiscriminatory explanations (or in the case of disparate impact, a compelling business justification) for each of the preliminary findings

of discrimination identified in this Part, the agency could conclude that the lender is in violation of the applicable fair lending laws.

**Step 2.** Document all responses that have been provided by the institution, not just its “best” or “final” response. Document each discussion with dates, names, titles, questions, responses, any information that supports or undercuts the lender’s credibility, and any other information that bears on the issues raised in the discussion(s).

**Step 3.** Evaluate whether the responses are consistent with previous statements, information obtained from file review, documents, reasonable banking practices, and other sources, and satisfy common-sense standards of logic and credibility.

- a. Do not speculate or assume that the institution’s decision-maker had specific intentions or considerations in mind when he or she took the actions being evaluated. Do not, for example, conclude that because you have noticed a legitimate, nondiscriminatory reason for a denial (such as an applicant’s credit weakness), that no discrimination occurred unless it is clear that, at the time of the denial, the lender actually based the denial on that reason.
- b. Perform follow-up file reviews and comparative analyses, as necessary, to determine the accuracy and credibility of the lender’s explanations.
- c. Refer to **Evaluating Responses to Evidence of Disparate Treatment** in the **Appendix** for guidance as to common types of responses.
- d. Refer to the **Disproportionate Adverse Impact** portion of the **Special Analyses** section of the **Appendix** for guidance on evaluating the institution’s responses to apparent disparate impact.

**Step 4.** If, after completing steps one through three above, you conclude that the institution has failed to adequately demonstrate that one or more apparent violations had a legitimate nondiscriminatory basis or were otherwise lawful, prepare a documented list or discussion of violations, or a draft examination report, as prescribed by agency directives.

**Step 5.** Consult with agency managers regarding whether (a) any violations should be referred to the Departments of Justice or Housing and Urban Development and (b) enforcement action should be undertaken by your agency.