

FAIR HOUSING ACT (FHA)

OVERVIEW

The Fair Housing Act (FHA) is the short title of Title VIII of the Civil Rights Act of 1968, as amended (42 U.S.C. 3601 et seq). Congress amended the FHA in 1988 [Public Law 100-430] to:

- Establish an administrative enforcement mechanism under HUD
- Allow for increased penalties for violations of the FHA
- Include certain secondary mortgage market conduct
- Add two new protected categories to the FHA, i.e., handicap and familial status (having children under the age of 18)

The Department of Housing and Urban Development (HUD) issued comprehensive FHA regulations for the first time in 1989 (24 CFR Parts 100-121). The FHA and the implementing regulations are critically relevant to financial institutions involved in real estate-related transactions.

HUD has primary enforcement authority for compliance with the FHA. The FHA charges the FDIC, as a federal regulatory agency of financial institutions, with the responsibility of ensuring in an affirmative manner that FDIC-supervised institutions comply with the FHA to further the goal of providing for fair housing throughout the U.S. (Section 808(d)).

The FHA makes it unlawful for any lender to discriminate in its housing-related activities against any person because of:

- Race
- Color
- Religion
- National origin
- Sex
- Familial status (the presence of children under the age of 18)
 - Pregnancy
 - A family or individual in the process of adopting or having legal custody of a child under the age of 18
- Handicap
 - Having a record of such impairment
 - Persons diagnosed as being HIV-positive
 - Recovering substance abusers

The FDIC's Part 338, Fair Housing, is the implementing regulation for the FHA.

These factors are referred to throughout this section and the implementing regulations as "prohibited bases."

Examination Objective(s)

The objectives of the examination are to determine:

- Whether the financial institution is adhering to nondiscriminatory practices relative to real estate-related transactions
- Whether the financial institution’s policies, procedures and internal controls are designed to assure nondiscriminatory practices relative to real estate-related transactions

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DEFINITIONS
Residential Real Estate Transaction

Residential real estate-related transaction means the making or purchasing of loans or providing other financial assistance to: purchase, construct, improve, repair or maintain a dwelling; or to be secured by residential real estate; or the selling, brokering or appraising of residential real property. (A home equity loan is covered by the Fair Housing Act in that it can be considered as financial assistance secured by residential real estate).

Dwelling

Dwelling, under the Fair Housing Act, means any building, structure or portion thereof which is occupied as or designed or intended for occupancy as, a residence by one or more families. A dwelling under the Fair Housing Act is also any vacant land that is offered for sale or lease for the construction or location thereon any such building, structure or portion thereof. A vacant lot purchased for investment purposes would not be protected by the provisions of the Fair Housing Act. Whereas a vacant lot purchased for the purpose of building a structure to be occupied by one or more families, or to be used as a mobile home park, are also protected by the provisions of the Fair Housing Act.

**DEFINITIONS
(cont'd)**

ECOA defines dwelling as a residential structure that contains one to four units. ECOA and FHA consider a condominium, a cooperative unit, mobile homes, and other manufactured homes as a dwelling.

**Dwelling
(cont'd)**

Coverage

There are two unique aspects of the Fair Housing Act. First, persons who are connected with a residential real estate-related transaction are protected against discriminatory practices. For example, in instances where a purchaser and the seller of a dwelling both have real estate agents, and the purchaser's application for a mortgage is denied for discriminatory reasons, the seller and both real estate agents are protected under the provisions of the Fair Housing Act just as the purchaser is protected. Second, employers may not take any adverse action against employees who: refuse to engage in illegal discriminatory activity; make other persons aware of, or encourage persons to exercise rights under the FHA; or testify, assist, or participate in any manner in a proceeding under the FHA.

The Fair Housing Act also prohibits discrimination in advertising. It is illegal to make, print, publish or cause to be made, printed or published any statement, notice, or advertisement; to use words, phrases, symbols or photographs; or to express to agents, brokers, or employees a preference for or limitations; or that dwellings are or are not available to a particular group or persons because of race, color, sex, religion, national origin, familial status or handicap. Like the ECOA, creditors under the FHA, may affirmatively solicit or encourage members of traditionally disadvantaged groups to apply for credit.

**FHA AND
IMPLEMENTING
REGULATIONS**

Some of the most important FHA provisions affecting financial institutions involved in real estate-related transactions include:

- Section 801

Section 801 states "it is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States."

- Section 802

Section 802 defines a dwelling as "any building, structure, or portion thereof, which is occupied as, or designed or intended for occupancy as, a residence by one or more families and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure or portion thereof." A family can be comprised of a single individual. Transactions include those for all types of dwellings, such as condominiums, cooperatives, time-sharing properties, and mobile homes.

**FHA AND
IMPLEMENTING
REGULATIONS
(cont'd)**

- Section 804

Section 804, addresses sales, rentals, and related activities. Section 804 prohibits the following with respect to the sale or rental of housing if based on race, color, religion, sex, handicap, familial status, or national origin:

- Refusing to sell or rent housing after a bona fide offer is made, or refusing to negotiate to sell or rent, or otherwise make unavailable or deny, a dwelling to any person
- Discriminating against any person with respect to terms, conditions, or privileges of sale or rental of a dwelling, or with respect to the provision of services or facilities in connection with the sale or rental
- Making any oral or written statement or advertisement with respect to a sale or rental of a dwelling that indicates any preference, limitation, or discrimination or an intention to make any such preference, limitation, or discrimination
- Representing to any person that any dwelling is not available for inspection, sale, or rental when such dwelling is available
- Inducing or attempting to induce for profit, any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a certain person or persons

It should be noted that Section 804 does not explicitly afford to handicapped persons and families with children all the same protections provided to others under the FHA. However, HUD believes that the legislative history of the FHA and the development of fair housing law after the protections of the law were extended in 1974 to prohibit discrimination because of sex support the position that persons with handicaps and families with children must be provided the same protections as other classes of persons. Accordingly, HUD's implementing regulations do afford the same protections to all protected classes.

Section 804 is particularly significant because it makes it unlawful not only to refuse to negotiate or complete a sale or rental, but also to "otherwise make unavailable or deny" a dwelling on a prohibited basis. The court has characterized this language as being "as broad as Congress could have made it" and as "catch-all phraseology which may not be easily discounted or de-emphasized." (United States v. City of Parma, 347 F. Supp. 730 (N.D. Ohio, 1974), a case dealing with the city's zoning practices.) Thus, Section 804 is not only applicable to an institution's lending practices, but also to an institution's managing and marketing of its owned residential real estate.

**FHA AND
IMPLEMENTING
REGULATIONS
(cont'd)**

• Section 805

Section 805 applies to the financing, selling, brokering, and appraising of housing. Under Section 805 it is unlawful for a financial institution to discriminate against any person in making available, or in setting the terms and conditions of, a residential real estate-related transaction because of race, color, religion, sex, handicap, familial status or national origin.

The term “residential real estate-related transaction” is defined as any of the following:

- The making or purchasing of loans or providing other financial assistance for purchasing, constructing, improving, repairing, or maintaining a dwelling
- The making or purchasing of loans or providing other financial assistance secured by residential real estate
- The selling, brokering, or appraising of residential real property

Additional guidance for interpretation of Section 805 can be found in 24 CFR 100.135 as it relates to appraisal practices and 24 CFR 100.125 as it relates to the purchase of loans. These are discussed below.

Appraisals

It is unlawful to use a property appraisal in connection with the financing of any dwelling when the person knows or reasonably should know that the appraisal improperly considers a prohibited basis. The word “improperly” is intended to make it clear that an appraisal may, for example, consider an adaptable physical environment (for example, wheel chair access) as a positive factor in estimating the value of residential real property. While a handicapped-based factor may be considered in this manner, it would not be proper or lawful to consider factors such as race, sex, or national origin in appraising residential real estate.

**Purchasing and
Marketing of
Loans, Debts, or
Securities**

It is unlawful to refuse to purchase loans, debts, or securities that support the purchase, construction, improvement, repair or maintenance of a dwelling, or that are secured by residential real estate, on a prohibited basis. Unlawful conduct includes, but is not limited to, purchasing loans that relate to, or that are secured by dwellings in certain communities or neighborhoods but not in others because of a prohibited basis concerning persons in such neighborhoods or communities. Further, it is unlawful for loans or other debts or securities related to or secured by dwellings, to be pooled or packaged differently because of a prohibited basis. Imposing or using different terms or conditions on the marketing or sale of securities issued on the basis of loans or other debts or securities that related to, or that are secured by, dwellings on a prohibited basis is also unlawful.

**FHA AND
IMPLEMENTING
REGULATIONS
(cont'd)**

**Scope of Certain
FHA Violations**

The courts have held that, although Section 804 generally applies to sales and rentals and Section 805 to extensions of financial assistance in connection with housing, transactions involving sales or rentals and loans or other financial assistance in connection with housing are subject to both. The court said that the same conduct may be prohibited by either or both (*Laufman v. Oakley Building and Loan Company*, 408 F. Supp. 489 (S.D. Ohio, 1976)).

Certain unlawful actions may constitute violations in more than one section of the FHA and its regulations. Consequently, a financial institution's practices in the area of housing finance should be examined in a general way to ensure that they do not "otherwise make unavailable or deny" housing, even though no specific act or practice may violate any explicitly named prohibition of the FHA.

**Allegations of
Discrimination
Under the FHA**

The FHA, in Sections 810, 812, 813, and 814, provide various options for a person who claims to have been discriminated against. A complaint may be filed with HUD which will investigate and attempt to resolve the grievance by means of conference, conciliation, and persuasion. Aggrieved persons also may sue anyone who allegedly discriminated against them, whether or not they file a complaint with HUD. Finally, the Attorney General of the United States may sue for an injunction against any pattern or practice of resistance to the full enjoyment of the civil rights granted by the FHA.

**UNLAWFUL
LENDING
PRACTICES
UNDER FHA**

Like the other civil rights statutes, the FHA was broadly written, and has been accorded "a sweep as broad as its language" in the courts. A wide variety of lending practices has been found illegal under the FHA, including some practices that are not specifically mentioned in the FHA itself but that have been determined to be illegal because they violate requirements and prohibitions that are implicit in its language. What follows are discussions of some prohibited practices, and where relevant, discussions of the cases in which courts have determined them to be prohibited.

**Redlining on a
Prohibited Basis**

Redlining on a racial basis has been held by the courts to be prohibited by the FHA (*Laufman v. Oakley Building and Loan Company*). Redlining is the practice of denying loans for housing in certain neighborhoods even though the individual applicant may be otherwise eligible for credit. The term "redlining" refers to the presumed practice in mortgage lending of drawing red lines around portions of a map to show disfavored neighborhoods.

**UNLAWFUL
LENDING
PRACTICES
UNDER FHA
(cont'd)**

**Redlining on a
Prohibited Basis
(cont'd)**

“Redlining” is unlawful under the FHA, however, only when done on a prohibited basis. The terms “racial redlining” refers to the practice of basing loan, insurance, or investment criteria on the racial characteristics of the people who live in a particular neighborhood, presumably because of a perception of risk arising from the racial or social composition of the population or changes in this composition.

“Redlining” can be a rational response to a real risk. For instance, property located in a flood plain, in a slide area or close to a geologic fault may present a level of risk that would be unacceptable to a mortgage lender or insurer. Redlining practices are said to gain an impropriety, however, when the perceptions of risk upon which they are based are unrealistic, inaccurate or arbitrary, or when the boundaries of the affected area are overbroad so that the practices result in negative decisions being made with respect to whole neighborhoods that may contain sound properties and that might otherwise be stable and viable. Where institutions have excluded areas based on economic considerations such as those mentioned above, the burden is on the institution to substantiate that the exclusion is based solely on those considerations.

Racial redlining has been held to be unlawful by the courts. In addition, the major secondary market organizations that purchase home loans (Federal Home Loan Mortgage Corporation and Federal National Mortgage Association) have stipulated that the racial composition of areas must not be considered in appraisals for home loans submitted for purchase by these organizations.

This does not mean that a lending institution is expected to approve all housing loan applications or that it must make all loans on identical terms.

Denying loans, or granting loans on more stringent terms and conditions, however, must be justified based on economic factors such as:

- An applicant's income or credit history
- The condition, use, or design of the proposed security property (or of nearby properties that clearly affect the value of the proposed security property) provided such determinants are strictly economic or physical in nature
- The availability of neighborhood amenities or city services
- The need of the financial institution to hold a balanced real estate loan portfolio, with reasonable distribution of loans in various neighborhoods, types of property, and loan amounts

Each of the above factors must, however, be applied without regard to the race, color, religion, national origin, sex, handicap, familial or marital status of prospective borrowers or residents of the neighborhood.

**UNLAWFUL
LENDING
PRACTICES
UNDER FHA
(cont'd)**

**Making
Excessively Low
Appraisals**

Making excessively low appraisals, in relation to purchase price, based on prohibited considerations, is closely akin to redlining. This practice, which forces minority loan applicants to make larger downpayments, was held, in connection with a court-approved settlement, to violate FHA Sections 804 and 818 (formerly 817) in the case brought by the Justice Department against the American Institute of Real Estate Appraisers (*U.S. v. American Institute of Real Estate Appraisers*, 442 F. Supp. 1072 (N.D. Ill, 1977)). This decision's logic also applies to financial institutions that lend based on such appraisals.

**Arbitrary,
Subjective, Non-
reviewable Rental
Criteria**

The use of arbitrary, subjective, non-reviewable rental criteria leading to an otherwise unexplained racial (or sex, religious, etc.) imbalance in clientele was found to be illegal under Section 804 in one case (*U.S. v. Youritan Const. Co.* 370 F. Supp. 643 (N.D. Cal., 1973)). Here, the resident manager had instructed the rental agents to use differing procedures when approached by a black applicant than when approached by a white applicant. For example, white applicants were told that no credit check was necessary, whereas black applicants were told a lengthy one would be necessary. White applicants were told that there were vacancies when black applicants were told there were none. The court's rationale would clearly be applicable to lenders who also use such standards in their housing lending.

**Creation and
Exploitation of a
Racially Exclusive
Image**

Creation and exploitation of a racially exclusive image, even where there may be little concurrent evidence of a discriminatory policy put into practice against any given individual applicant, has been repeatedly found to be illegal in the employment context and with respect to the FHA (*U.S. v. Real Estate Development Corp.*, 347 F. Supp. 776 (N.D. Miss., 1972)). One indication of the existence of such an image, and possibly of its exploitation by management might be the absence, or clearly less than conspicuous display, of the required Equal Housing Lending poster in the lobby of each office.

Section 804(c) of the FHA makes it unlawful to make or print a statement or advertisement with respect to the sale or rental of a dwelling indicating any preference or limitation based on a prohibited characteristic. The court has applied this prohibition to newspaper advertisements soliciting tenants and home buyers who spoke certain languages (*Holmgren v. Little Village Community Reporter*, 342 F. Supp. 512 (N.D. Ill, 1971)).

**UNLAWFUL
LENDING
PRACTICES
UNDER FHA
(cont'd)**

**Creation and
Exploitation of a
Racially Exclusive
Image
(cont'd)**

Using advertising that targets applicants of a particular race, etc., is one way in which a housing lender might exploit an exclusive image. The use of only white people in advertisements in such a way as to suggest that only white applicants are sought, is an example of this type of advertising. Another is use of media that caters only to selected segments of the population, if such selectivity is not offset by other advertising efforts. Other examples of selective advertising practices that can lead to discriminatory results and may indicate a violation of the FHA are explicitly noted in 24 CFR 109.25.

Additionally, ECOA prohibits a creditor from discouraging applications for credit on a prohibited basis. The creation of an exclusive image that tends to discourage certain otherwise qualified applicants may be considered a violation of the ECOA with regard to discouraging applications on a prohibited basis. Other examples of discouraging applicants on a prohibited basis are refusing to return black applicants' telephone calls, or providing black applicants with insufficient information to complete an application, as well as outright denials. Read together, the FHA and ECOA produce a strong statutory prohibition against prescreening or discouraging applicants in any manner, beginning with the content of advertising, that may be construed to have a discriminatory impact. Consequently, a financial institution would be well advised to ensure that its advertising and marketing policies do not have the effect, even inadvertently, of prescreening applicants for credit on prohibited bases.

**Discriminatory
Acts That Have a
Negative Impact
on Non-minorities**

Discriminatory acts that have a negative impact on non-minorities, such as white persons, are illegal, and such persons have standing to sue, according to a Supreme Court decision (*Trafficante v. Metropolitan Life Insurance Company*, 409 US 205 (1972)). Two tenants of an apartment complex, one white and one black, were able to bring suit under the FHA for loss of the social and business advantages they suffered because of the owner's policy of discriminating against nonwhites. They also claimed that they were "stigmatized" by policies that made the complex in which they lived a "white ghetto."

Additionally, a white plaintiff who was refused a mortgage on standard terms because the property was in an "integrated" neighborhood was permitted to bring suit under FHA Sections 804 and 818 (formerly 817) (*Harrison v. Heinerth Mtg. Co.*, 430 F. Supp. 893 (N.D. Ohio, 1977)).

**Excessively
Burdensome
Qualification
Standards**

The use of excessively burdensome qualification standards for the purpose, or with the effect, of denying housing to minority applicants, has been held by the court to be illegal under the FHA (*U.S. v. Youritan Const. Co.*, 370 F. Supp. 643 (N.D. Cal 1973)). Here, the rental agents emphasized the security deposit to black applicants, but not to whites, and required credit checks for black applicants, but not for whites.

**UNLAWFUL
LENDING
PRACTICES
UNDER FHA
(cont'd)**

**More Onerous
Interest Rates**

The imposition on minority loan applicants of more onerous interest rates, or other terms, conditions, or requirements, is explicitly prohibited under FHA Section 805. The phrase “terms or conditions” as used in the FHA is very broad, and will cover many types of discriminatory practices. The courts found it to be illegal in one case for a developer to follow a policy of selling lots in a subdivision only to persons having construction contracts with “approved” builders (*Williams v. Mathews Co.*, 499 F. 2d 819 (8th Cir., 1974)). All the “approved” builders were white and none of them would break the segregation barrier by building a house for a black family in a white subdivision.

**Differing
Standards or
Procedures**

As a further development of the “terms or conditions” language of the FHA, Section 805, the courts have held the application of differing standards or procedures in administering foreclosures, late charges, penalties, or reinstatements, or other collection procedures is also unlawful (*Harper v. Union Savings Assoc.*, P.H. Sec. 15,203 (N.D. Ohio, 1977)).

**Terms or
Availability of
Insurance**

Discrimination in the terms or availability of insurance is a subject with respect to which the FHA and the ECOA may seem to diverge somewhat. The ECOA does not prohibit a creditor who sells or participates in the sale of insurance from differentiating in the terms and availability of insurance on prohibited bases. Nor does it prohibit discrimination regarding the availability or terms of credit on the basis that insurance is unavailable, unless the insurance has been denied based on age. However, when dealing with housing credit the result may be different. The Department of Justice has taken the position that the FHA is violated when insurance required for housing credit is denied, or made more difficult to obtain, on a basis prohibited by the FHA.

This does not mean that a financial institution cannot require insurance, particularly casualty insurance, in connection with its mortgage loans. However, if the financial institution offers, or assists in obtaining, insurance, and the insurance is denied or made available on more onerous terms because of unlawful discrimination; or if the customer is adversely effected in the terms or availability of credit because insurance is unavailable, the financial institution has violated the FHA. If, on the other hand, the financial institution merely requires that the customer obtain insurance from an insurance company of the applicant's choice, and the insurance company approached by the customer discriminates unlawfully regarding the terms or availability of insurance, it seems that the institution would have no liability for the insurance company's action.

**UNLAWFUL
LENDING
PRACTICES
UNDER FHA
(cont'd)**
Racial Steering

Racial steering, or deliberately guiding potential purchasers toward or away from certain areas because of race, is illegal and violates Section 804.

The court said:

“Unlawful steering or channeling of a prospective buyer is the use of a word or phrase or action . . . which is intended to influence the choice of a prospective property buyer on a racial basis . . . Where choice influencing factors such as race are not eliminated, freedom of choice in the purchase of real estate becomes a fantasy . . . It is the freedom of choice in the purchaser which the Fair Housing Act protects. Accordingly, any action . . . which in any way impedes, delays, or discourages on a racial basis a prospective home buyer from purchasing housing is unlawful” (Zuch v. Hussey, 394 F. Supp. 1028 (E.D. Mich., 1975)).

**Other Possible
Discriminatory
Lending Practices**

Other possible discriminatory lending practices might include:

- Racial notation or code on appraisal forms or loan forms (other than the information required by law to be retained for monitoring purposes)
- Use of scripts by initial interview personnel that are designed to discourage applications.
- The following are some situations that may be encountered that constitute sex discrimination:
 - Discounting or disregarding the income of a working spouse or single woman
 - Refusing to grant a loan, or granting a loan on different terms and conditions, because of sex
 - Requiring more or different information from a female applicant than from a male applicant
 - Subjecting a female applicant to a different or more extensive credit check than that usually required for male applicants
 - Refusing to include alimony or child support as income where there is evidence of a history of consistent prior payment and indication that payments are likely to continue
 - Basing any aspect of a lending decision on general presumptions about women (for example, women of childbearing age are poor risks)
 - Treating single working parents differently from married working parents
 - Requiring a cosigner for female applicants, but not for male applicants

**UNLAWFUL
LENDING
PRACTICES
UNDER FHA
(cont'd)**

Summary

A further elaboration of unlawful lending practices, with the focus primarily on race, is in the pamphlet "Home Mortgage Lending and Equal Treatment: A Guide for Financial Institutions," published by the Federal Financial Institutions Examination Council (FFIEC). This guide highlights some lending standards and practices that may adversely affect the ability of credit applicants, in obtaining home mortgages. Some less obvious forms of discrimination that may occur through the actions of lenders and ways for lenders to avoid such practices are discussed.

It should be emphasized that financial institutions are not expected to make unsound loans or render services on more favorable terms to applicants solely because of their status as member of a class protected by the FHA or ECOA. The statutes' intent is that loans cannot and should not be denied, or made more onerous, even partially, based on any applicant's status as a member of a protected category.

As the court stated: "Race is an impermissible factor in real estate transactions under both (the Fair Housing and the 1870 Civil Rights Acts) and cannot be brushed aside because it was neither the sole reason for discrimination nor the total factor of discrimination" (Williams v. Mathews Co).

**PART 338 –
FAIR HOUSING**

To provide the monitoring data needed to effectively analyze compliance with the fair lending provisions of the FHA, the FDIC adopted Part 338 in 1978. This regulation provides record keeping requirements with respect to applications for home loans. In 1991, Part 338 was revised to make the Fair Housing Log Sheet conform with the Loan Application Register (LAR) required by the Home Mortgage Disclosure Act (HMDA) and the Federal Reserve Board's Regulation C, its implementing regulation. Part 338 was further revised in 1997 to make the collection of information about a home loan applicant's race and other personal characteristics consistent with the Equal Credit Opportunity Act (ECOA) and Regulation B, the Federal Reserve Board's implementing regulation. This revision also served to notify certain insured state nonmember banks of their duty to maintain an LAR pursuant to Regulation C and to report the reasons for denial of any home loan application that would be reportable under Regulation C.

Particular attention is directed toward the definitions of certain types of loans for the purposes of Part 338's use of the LAR:

A **home loan** means any loan secured by and made for the purpose of purchasing or refinancing a dwelling.

A **home improvement loan** means any loan that is stated by the borrower, at the time of the loan application, to be for the purpose of repairing, rehabilitating, or remodeling a dwelling; and is classified by the financial institution as a home improvement loan.

These definitions conform to those contained in Revised Regulation C.

**PART 338 –
FAIR HOUSING
(cont'd)**

**Recordkeeping
Requirements**

Every financial institution that makes home purchase and refinance loans is required to request and retain the following initial data on each home purchase loan applicant (excluding applications received by telephone):

- Race/national origin
- Sex
- Marital status
- Age

(Section 338.7)

Disclosure

The institution shall inform the applicant(s) that the data regarding race/national origin, marital status, age, and sex is being requested by the Federal government for the purposes of monitoring compliance with the Federal statutes that prohibit discrimination on those bases. The institution shall also inform the applicant(s) that the institution is required to note the race/national origin and sex based on visual observation should the applicant(s) choose not to provide his/her race/national origin, marital status, age, and sex. (12 CFR 202.13(c))

Record Retention

The institution is required to retain the monitoring information requested from applicants for 25 months after the institution notifies an applicant of the action taken on an application (12 CFR 202.12). This requirement also applies to records of home purchase loans originated by the institution and subsequently sold.

FHA AND HMDA

Information maintained and collected under the Home Mortgage Disclosure Act (HMDA) should be reviewed to determine an institution's acceptance/rejection lending ratios as these may indicate possible differential treatment of applicants based on race, sex or marital status. HMDA data also can be very helpful in geographic-based analysis. Determining the percent of primarily minority, majority, and integrated census tracts within an institution's lending area and the percent of applications received, approved, denied and withdrawn can aid in discerning possible race-based redlining and/or prescreening. The HMDA-LAR also can be used to select applications with certain applicant characteristics for purposes of comparison of treatment of the lending institution.

**FHA AND HMDA
(cont'd)**

Where institutions are not HMDA reporters, possible differential treatment indicators may be computed manually depending on the availability of records in the financial institution. This is done by computing the percentage of accepted, rejected, and withdrawn applications submitted by: whites, blacks, Hispanics or other minorities, and females and males. These groups can be compared to other groups in terms of treatment and then compared to their representation in the composition of the community for purposes of possible prescreening or discouragement.

The Workpapers Appendix of this manual contains an “Applications Analysis Worksheet.” This worksheet summarizes the “Mortgage Lending Decision Analysis (MLDA) Worksheet.” This worksheet should be prepared and included in the institution's workpapers. Any apparent disparities resulting from analysis of the volume and group distribution of accepted, rejected, and withdrawn applications should be investigated.

**FHA AND CRA
PUBLIC
EVALUATION**

When a financial institution is subject to the performance tests and standards under Part 345, the examiner must write a paragraph within the performance evaluation about the institution’s record of complying with the antidiscrimination laws using the following guidelines.

Record Compliance with Antidiscrimination Laws in the CRA Public Evaluation
<i>When substantive violations are identified . . .</i>
<p>1. When substantive violations involving illegal discrimination or discouragement are identified by the FDIC or identified through self-assessment(s), the examiner should:</p> <ul style="list-style-type: none"> • State that substantive violations were found • State whether they caused the CRA rating to be adjusted downward • State why the rating was or was not adjusted <p>The examiner should:</p> <ul style="list-style-type: none"> • Identify law(s) and regulation(s) violated • Identify extent of the violation(s) (for example, widespread, or limited to a particular state, office, division, or subsidiary) • Characterize management’s responsiveness in acting upon the violation(s)
<p>2. Determine whether the institution has policies, procedures, training programs, internal assessment efforts, or other practices in place to prevent discriminatory or other illegal credit practices.</p>

**FHA AND CRA
PUBLIC
EVALUATION
(cont'd)**

If no substantive violations were identified . . .

1. If no substantive violations were identified, state that no violations of the substantive provisions of the antidiscrimination laws and regulations were identified.

Even if discrimination has not been identified, comments related to the institution's fair lending policies, procedures, training programs, and internal assessment efforts may still be appropriate. If applicable, technical violations cited in the Compliance Report of Examination should be presented in general terms.

**WORKPAPER
STANDARDS**

Appropriate workpapers must be completed when reviewing compliance with Fair Housing. Refer to Standardized Workpapers, Appendix K, in this manual.



**FDIC LAW,
REGULATIONS,
& RELATED
ACTS**

Applicable Rules

Consumer Protection Act, Title VII – Equal Credit Opportunity, Volume 2, Page 6610

Equal Credit Opportunity Act, Volume 2, Page 6610

Fair Housing Regulations, Volume 3, Page 9633

Federal Reserve Board’s Regulation B, Volume 2, Page 7209

Federal Reserve Board’s Regulation B Official Staff Interpretations, Volume 2, Page 7241

Home Mortgage Disclosure Act, Volume 3, Page 8687

Part 345 – Community Reinvestment Act, Volume 2, Page 2781

Part 338 – Fair Housing, Volume 1, Page 2647

Regulation C – Home Mortgage Disclosure, Volume 3, Page 7553

Advisory Opinions

Equal Credit Opportunity Act: Regulation B, Letter #89-44, Volume 1, Page 4420

Questions Concerning FDIC Enforcement of the Equal Credit Opportunity Act, Letter #87-39, Volume 2, Page 4279

**Statements of
Policy**

FFIEC on Behalf of its Constituent Agencies – Joint Notice of Policy Statement on Discrimination, Volume 2, Page 5065

Equal Credit Opportunity and Fair Housing Acts Enforcement Policy Statement, Volume 2, Page 5221

Policy Statement on Discrimination in Lending, Volume 2, Page 5397

**DCA
MEMORANDA**

Guidelines for Referring Violations of the Anti-Discrimination Provisions of the Equal Credit Opportunity and Fair Housing Acts to the Department of Justice or Notifying the Department of Housing and Urban Development of Violations of the Fair Housing Act, Transmittal #DCA-003, dated 1/23/97



**FDIC LAW,
REGULATIONS,
& RELATED
ACTS (cont'd)**

**FINANCIAL
INSTITUTION
LETTERS (FIL)**

Interagency Fair Lending Examination Procedures, Letter #14-99, dated 2/11/99

Federal Reserve Seeks Comment on Proposed Revisions to Regulation B, Letter #73-97, dated 7/22/97

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