

FAIR LENDING EXAMINATION PROCEDURES

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**OVERVIEW OF
FAIR LENDING
LAWS AND
REGULATIONS**

This overview provides a basic and abbreviated discussion of federal fair lending laws and regulations. It is adapted from the Interagency Policy Statement on Fair Lending issued in March 1994.

**Lending
Discrimination
Statutes and
Regulations**

The Equal Credit Opportunity Act (ECOA) prohibits discrimination in any aspect of a credit transaction. 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
- 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 CFR part 202, implements the ECOA. Regulation B describes lending acts and practices that are specifically prohibited, permitted, or required. Official staff interpretations of the regulation are found in Supplement I to 12 CFR part 202.

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
- Selling or renting a dwelling.

The FH Act prohibits discrimination based on

- Race or color
- National origin
- Religion
- Sex

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(cont'd)**

**Lending
Discrimination
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(cont'd)**

- 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)
- Handicap.

HUD's regulations implementing the FH Act are found at 24 CFR 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.

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
- 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

- An applicant, prospective applicant, or borrower
- A person associated with an applicant, prospective applicant, or borrower (for example, a co-applicant, spouse, business partner, or live-in aide)
- The present or prospective occupants of either the property to be financed or the neighborhood or other 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.

**OVERVIEW OF
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**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 disparate treatment
- Comparative evidence of disparate treatment
- Evidence of disparate impact.

**Disparate
Treatment**

The existence of illegal disparate treatment may be established either by statements revealing that a lender explicitly considered prohibited factors (**overt** evidence) or by differences in treatment that are not fully explained by legitimate nondiscriminatory factors (**comparative** evidence).

Overt Evidence of Disparate Treatment. 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.

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 as well as Section 202.5(a) of Regulation B, which prohibits discouraging applicants on a prohibited basis.

Comparative Evidence of Disparate Treatment. Disparate treatment occurs when a lender treats a credit applicant differently based on one of the prohibited bases. 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.

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, if the applications are "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 completing an application. The lender may, for example, propose solutions to credit or other problems regarding 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.

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**Disparate
Treatment
(cont'd)**

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. The foregoing is an example of disparate treatment of similarly situated applicants, apparently based on a prohibited factor, in the amount of assistance and information the lender provided.

If a lender has apparently treated similar applicants differently on the basis of a prohibited factor, it must provide an explanation for the difference in treatment. If the lender's explanation is found to be not credible, the agency may find that the lender intentionally discriminated.

Redlining is a form of illegal disparate treatment in which a lender provides unequal access to credit, or unequal terms of credit, because of the race, color, national origin, or other prohibited characteristic(s) of the residents of the area in which the credit seeker resides or will reside or in which the residential property to be mortgaged is located. Redlining may violate both the FH Act and the ECOA.

Disparate Impact

When a lender applies a racially or otherwise neutral policy or practice equally to all credit applicants, but the policy or practice disproportionately excludes or burdens certain persons on a prohibited basis, the policy or practice is described as having a "disparate impact."

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.

Although the precise contours of the law on disparate impact as it applies to lending discrimination are under development, it has been clearly established the single fact that a policy or practice creates a disparity on a prohibited basis is not alone proof of a violation.

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**Disparate Impact
(cont'd)**

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 in violation if an alternative policy or practice could serve the same purpose with less discriminatory effect. Finally, evidence of *discriminatory intent* is not necessary to establish that a lender's adoption or implementation of a policy or practice that has a disparate impact is in violation of the FH Act or ECOA.

These procedures do not call for examiners to plan examinations to identify or focus on potential disparate impact issues. The guidance in this Introduction is intended to help examiners recognize potential disparate impact situations if they happen to encounter them. Guidance in the Appendix tells them how to obtain relevant information regarding such situations and how to evaluate and follow up on it, as appropriate.

**General
Guidelines**

These procedures are intended to be a basic and flexible framework to be used in the majority of fair lending examinations conducted by the FFIEC agencies. They are also intended to guide examiner judgment, not to supplant it. The procedures can be augmented by each agency, which can supply such additional procedures and details as are necessary to implement them effectively.

Although these procedures will apply to most examinations, each agency may continue to use for limited numbers of examinations the distinct approaches it has developed that are appropriate for select classes of institutions. Such approaches include, for example, the statistical modeling that some of the agencies use in selected examinations to assist in determining whether race or national origin was a factor in credit decisions.

For a number of aspects of lending -- for example, credit scoring and loan pricing -- the "state of the art" is more likely to be advanced if the agencies have some latitude to incorporate promising innovations. These interagency procedures provide for that.

Any references in these procedures to options, judgment, etc., of "examiners" means discretion within the limits provided by that examiner's agency. An examiner should use these procedures in conjunction with his or her own agency's priorities, examination philosophy, and detailed guidance for implementing these procedures. These procedures should not be interpreted as providing an examiner greater latitude than his or her own agency would. For example, if an agency's policy is to review compliance management systems even in small banks, an examiner for that agency must conduct such a review rather than interpret Part II of these interagency procedures as leaving the review to the examiner's option.

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(cont'd)

General
Guidelines
(cont'd)**

The procedures emphasize racial and national origin discrimination in residential transactions, but the key principles can be applied to other prohibited bases and to nonresidential transactions.

Finally, these procedures focus on analyzing lender compliance with the broad, nondiscriminatory requirements of the ECOA and the FH Act. *Refer* to Sections H1 and H2 of the Section for guidance addressing such explicit or technical compliance provisions as the signature rules or adverse action notice requirements in sections 202.7 and 202.9, respectively, of Regulation B.

**PART I –
EXAMINATION
SCOPE
GUIDELINES

Background**

Scope Guidelines
<p>The scope of an examination encompasses the loan product(s), market(s), decision center(s), time frame, and prohibited basis and control group(s) to be analyzed during the examination. These procedures refer to each potential combination of those elements as a “Focal Point.” Setting the scope of an examination involves, first, identifying all of the potential focal points that appear worthwhile to examine. Then, from among those, examiners select the focal point(s) that will form the scope of the examination, based on risk factors, priorities established in these procedures or by their respective agencies, the record from past examinations, and other relevant guidance. This phase includes obtaining an overview of an institution’s compliance management system as it relates to fair lending.</p> <p>Scoping may disclose the existence of circumstances -- such as the use of credit scoring or the amount of residential lending - which, under an agency’s policy, call for the use of regression analysis or other statistical methods of identifying potential discrimination with respect to one or more loan products. Where that is the case, the agency’s specialized procedures should be employed for such loan products rather than the procedures set forth below.</p> <p>Setting the intensity of an examination means determining the breadth and depth of the analysis that will be conducted on the selected loan product(s). This process entails a more involved consideration of compliance management quality, particularly as it relates to selected products, to reach an informed decision regarding how large a sample of files to review in any transactional analyses performed and whether certain aspects of the credit process deserve heightened scrutiny.</p> <p>Part I of these procedures provides guidance on establishing the scope of the examination. Part II (Compliance Management Review) provides guidance on determining the intensity of the examination. There is naturally some interdependence between these two phases. Ultimately the scope and intensity of the examination will determine the record of performance that serves as the foundation for agency conclusions about institutional compliance with fair lending obligations. The examiner should employ these procedures and the organization of these guidelines to arrive at a well-reasoned and practical conclusion about how to conduct a particular institution’s examination of fair lending performance.</p>

**PART I –
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Background
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In cases where information already in the possession of an agency provides examiners with guidance on priorities and risks for planning an upcoming examination, such information may expedite the scoping process and make it unnecessary to carry out all of the steps below. For example, the report of the previous fair lending examination may have included recommendations for the focus of the next examination.

The scoping process can be performed either off-site, onsite, or both, depending on whatever is determined most feasible. In the interest of minimizing burdens on both the examination team and the lender, requests for information from the institution should be carefully thought out so as to include only the information that will clearly be useful in the examination process. Finally, any off-site information requests should be made sufficiently in advance of the on-site schedule to permit institutions adequate time to assemble necessary information and provide it to the examination team in a timely fashion. (See the **Appendix** on “**Potential Scoping Information**” for guidance on additional information that the examiner might wish to consider including in a request).

Examiners should focus the examination based on:

- An understanding of the credit operations of the institution
- The risk that discriminatory conduct may occur in each area of those operations
- The feasibility of developing a factually reliable record of an institution’s performance and fair lending compliance in each area of those operations.

**Understanding
Credit Operations**

1. Understanding Credit Operations

Before evaluating the potential for discriminatory conduct, the examiner should review sufficient information about the institution and its market to understand the credit operations of the institution and the representation of prohibited basis group residents within the markets where the institution does business. The level of detail to be obtained at this stage should be sufficient to identify whether any of the risk factors in the Steps below are present. Relevant background information includes:

- The types and terms of credit products offered, differentiating among residential, consumer and other categories of credit
- The volume of, or growth in, lending for each of the credit products offered
- The demographics (i.e., race, national origin, etc.) of the credit markets in which the institution is doing business

**PART I –
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**Understanding
Credit
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(cont'd)**

- The institution's organization of its credit decision-making process, including identification of the delegation of separate lending authorities and the extent to which discretion in pricing or setting credit terms and conditions is delegated to various levels of managers, employees or independent brokers or dealers
- The types of relevant documentation/data that are available for various loan products and what is the relative quantity, quality and accessibility of such information. I.e., for which loan product(s) will the information available be most likely to support a sound and reliable fair lending analysis
- The extent to which information requests can be readily organized and coordinated with other compliance examination components to reduce undue burden on the institution. (Do not request more information than the exam team can be expected to utilize during the anticipated course of the examination.)

In thinking about an institution's credit markets, the examiner should recognize that these markets may or may not coincide with an institution's CRA assessment area(s). Where appropriate, the examiner should review the demographics for a broader geographic area than the assessment area.

Where an institution has multiple underwriting or loan processing centers or subsidiaries, each with fully independent credit-granting authority, consider evaluating each center and/or subsidiary separately, provided a sufficient number of loans exist to support a meaningful analysis. In determining the scope of the examination for such institutions, examiners should consider whether:

- Subsidiaries should be examined. The agencies will hold a financial institution responsible for violations by its direct subsidiaries, but not typically for those by its affiliates (unless the affiliate has acted as the agent for the institution or the violation by the affiliate was known or should have been known to the institution before it became involved in the transaction or purchased the affiliate's loans). When seeking to determine an institution's relationship with affiliates that are not supervised financial institutions, limit the inquiry to what can be learned in the institution and do not contact the affiliate.
- The underwriting standards and procedures used in the entity being reviewed are used in related entities not scheduled for the planned examination. This will help examiners to recognize the potential scope of policy-based violations.
- The portfolio consists of applications from a purchased institution. If so, for scoping purposes, examiners should consider the applications as if they were made to the purchasing institution. (For comparison purposes, applications evaluated under the purchased institution's standards should not be compared to applications evaluated under the purchasing institution's standards.)

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(cont'd)**
**Understanding
Credit
Operations
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- The portfolio includes purchased loans. If so, examiners should look for indications that the institution-specified loans to purchase based on a prohibited factor or caused a prohibited factor to influence the origination process.
- A complete decision can be made at one of the several underwriting or loan processing centers, each with independent authority. In such a situation, it is best to conduct on-site a separate comparative analysis at each underwriting center. If covering multiple centers is not feasible during the planned examination, examiners should review one during the planned examination and others in later examinations.
- Decision-making responsibility for a single transaction may involve more than one underwriting center. For example, an institution may have authority to decline mortgage applicants, but only the mortgage company subsidiary may approve them. In such a situation, examiners should learn which standards are applied in each entity and the location of records needed for the planned comparisons.
- Any third parties, such as brokers or contractors, are involved in the credit decision and how responsibility is allocated among them and the institution. The institution's familiarity with third party actions may be important, for a bank may be in violation if it participates in transactions in which it knew or reasonably ought to have known other parties were discriminating.

If the institution is large and geographically diverse, examiners should select only as many markets or underwriting centers as can be reviewed readily in depth, rather than selecting proportionally to cover every market. As needed, examiners should narrow the focus to the MSA or underwriting center that is determined to present the highest discrimination risk. Examiners should use LAR data organized by underwriting center, if available. After calculating denial rates between the control group and minorities for the underwriting centers, examiners should select the centers with the highest disparities. If underwriting centers have fewer than five black, Hispanic, or Native American denials, examiners should not examine for racial discrimination. Instead, they should shift the focus to other loan products or prohibited bases.

**PART I –
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(cont'd)
Evaluating the
Potential for
Discriminatory
Conduct**

2. Evaluating Potential for Discriminatory Conduct

Step One: Develop an Overview

Based on his or her understanding of the credit operations and product offerings of an institution, an examiner should determine the nature and amount of information required for the scoping process and should obtain and organize that information. No single examination can reasonably be expected to evaluate compliance performance as to every prohibited basis, in every product, or in every underwriting center or subsidiary of an institution. In addition to information gained in the process of Understanding Credit Operations, above, the examiner should keep in mind the following factors when selecting products for the scoping review:

- Which products and prohibited bases were reviewed during the most recent prior examination(s) and, conversely, which products and prohibited bases have not recently been reviewed?
- Which prohibited basis groups make up a significant portion of the institution's market for the different credit products offered?

Based on consideration of the foregoing factors, the examiner should request information for all residential and other loan products considered appropriate for scoping in the current examination cycle. In addition, wherever feasible, examiners should conduct preliminary interviews with the lender's key underwriting personnel. Using the accumulated information, the examiner should evaluate the following, as applicable:

- Underwriting guidelines, policies, and standards
- Descriptions of credit scoring systems, including a list of factors scored, cutoff scores, extent of validation, and any guidance for handling overrides and exceptions. (Refer to Part A of the Credit Scoring Analysis section of the Appendix for guidance)
- Applicable pricing policies and guidance for exercising discretion over loan terms and conditions
- The institution's corporate relationships with any finance companies, subprime mortgage or consumer lending entities, or similar institutions
- Loan application forms
- HMDA/LAR or loan registers and lists of declined applications
- Description(s) of databases maintained for loan product(s) to be reviewed, especially any record of exceptions to underwriting guidelines
- Copies of any consumer complaints alleging discrimination and loan files related thereto.
- Descriptions of any compensation system that is based on loan production or pricing

**PART I –
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**Evaluating the
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- Compliance program materials (particularly fair lending policies), training manuals, organization charts, as well as record keeping and any monitoring protocols
- Copies of any available marketing materials or descriptions of current or previous marketing plans or programs.

**Step Two: Identify Compliance Program
Discrimination Risk Factors**

Review information from agency examination work papers, institutional records and any available discussions with management representatives in sufficient detail to understand the organization, staffing, training, recordkeeping, auditing and policies of the institution's fair lending compliance systems. Review these systems and note the following risk factors:

Compliance Program Discrimination Risk Factors:

- C1. Overall institution compliance record is weak.
- C2. Prohibited basis monitoring information is incomplete.
- C3. Data and/or recordkeeping problems compromised reliability of previous examination reviews.
- C4. Fair lending problems were previously found in one or more bank products.
- C5. The size, scope, and quality of the compliance management program, including senior management's involvement, is materially inferior to programs customarily found in institutions of similar size, market demographics and credit complexity.
- C6. The institution has not updated compliance guidance to reflect changes in law or in agency policy.

Consider these risk factors and their impact on particular lending products and practices as you conduct the product specific risk review during the scoping steps that follow. Where this review identifies fair lending compliance system deficiencies, give them appropriate consideration as part of the Compliance Management Review in Part II of these procedures.

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Step Three: Review
Residential Loan
Products
(cont'd)

Step Three: Review Residential Loan Products

Although home mortgages may not be the ultimate subject of every fair lending examination, this product line must at least be considered in the course of scoping every institution that is engaged in the residential lending market.

Divide home mortgage loans into the following groupings: home purchase, home improvements, and refinancings. Subdivide those three groups further if an institution does a significant number of any of the following types or forms of residential lending, and consider them separately:

- Government-insured loans
- Mobile home or factory housing loans
- Wholesale, indirect and brokered loans
- Portfolio lending (including portfolios of Fannie Mae/Freddie Mac rejections)

In addition, determine whether the lender offers any conventional affordable housing loan programs and whether their terms and conditions make them incompatible with regular conventional loans for comparative purposes. If so, consider them separately.

If previous examinations have demonstrated the following, then an examiner may limit the focus of the current examination to alternative underwriting or processing centers or to other residential products that have received less scrutiny in the past:

- A strong fair lending compliance program
- No record of discriminatory transactions at particular decision centers or in particular residential products
- No indication of a significant change in personnel, operations or underwriting standards at those centers or in those residential products
- No unresolved fair lending complaints, administrative proceedings, litigation or similar factors.

**Step Four: Identify Residential Lending
Discrimination Risk Factors**

- Review the lending policies, marketing plans, underwriting, appraisal and pricing guidelines, broker/agent agreements and loan application forms for each residential loan product that represents an appreciable volume of, or displays noticeable growth in, the institution's residential lending.

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- Review also any available data regarding the geographic distribution of the institution’s loan originations with respect to the race and national origin percentages of the census tracts within its assessment area or, if different, its residential loan product lending area(s).
- Conduct interviews of loan officers and other employees or agents in the residential lending process concerning adherence to and understanding of the above policies and guidelines as well as any relevant operating practices.
- In the course of conducting the foregoing inquiries, look for the following risk factors (factors are numbered alphanumerically to coincide with the type of factor, e.g., “O” for “overt”; “P” for “pricing”, etc.):

Overt indicators of discrimination such as:

- | | |
|-----|--|
| O1. | Including explicit prohibited basis identifiers in underwriting criteria or pricing standards |
| O2. | Collecting information, conducting inquiries or imposing conditions contrary to express requirements of Regulation B |
| O3. | Including variables in a credit scoring system that constitute a basis or factor prohibited by Regulation B or, for residential loan scoring systems, the FH Act. (If a credit scoring system scores age, refer to Part E of the Credit Scoring Analysis section of the Appendix .) |
| O4. | Statements made by the institution’s officers, employees or agents which constitute an express or implicit indication that one or more such persons have engaged or do engage in discrimination on a prohibited basis in any aspect of a credit transaction |
| O5. | Employee or institutional statements that evidence attitudes based on prohibited basis prejudices or stereotypes. |

***NOTE:** For risk factors below that are marked with an asterisk, examiners need not attempt to calculate the indicated ratios for racial or national origin characteristics when the institution is not a HMDA reporter. However, consideration should be given in such cases to whether or not such calculations should be made based on gender or racial-ethnic surrogates.*

Indicators of potential disparate treatment in Underwriting such as:

- | | |
|-----|--|
| U1. | *Substantial disparities among the approval/denial rates for applicants by monitored prohibited basis characteristic (especially within income categories) |
|-----|--|

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Step Four:
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U2.	*Substantial disparities among the application processing times for applicants by monitored prohibited basis characteristic (especially within denial reason groups)
U3.	*Substantially higher proportion of withdrawn/incomplete applications from prohibited basis group applicants than from other applicants
U4.	Vague or unduly subjective underwriting criteria
U5.	Lack of clear guidance on making exceptions to underwriting criteria, including credit scoring overrides
U6.	Lack of clear loan file documentation regarding reasons for any exceptions to normal underwriting standards, including credit scoring overrides
U7.	Relatively high percentages of either exceptions to underwriting criteria or overrides of credit score cutoffs
U8.	Loan officer or broker compensation based on loan volume (especially loans approved per period of time)
U9.	Consumer complaints alleging discrimination in loan processing or in approving/denying residential loans.
<i>Indicators of potential disparate treatment in Pricing (interest rates, fees, or points) such as:</i>	
P1.	Relationship between loan pricing and compensation of loan officers or brokers
P2.	Presence of broad discretion in pricing or other transaction costs
P3.	Use of a system of risk-based pricing that is not empirically based and statistically sound
P4.	*Substantial disparities among prices being quoted or charged to applicants who differ as to their monitored prohibited basis characteristics
P5.	Consumer complaints alleging discrimination in residential loan pricing.

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Step Four:
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<i>Indicators of potential disparate treatment by Steering such as:</i>	
S1.	For an institution that has one or more sub-prime mortgage subsidiaries or affiliates, any significant differences, by loan product, in the percentage of prohibited basis applicants of the institution compared with the percentage of prohibited basis applicants of the subsidiary(ies) or affiliate(s)
S2.	Lack of clear, objective standards for (i) referring applicants to subsidiaries or affiliates, (ii) classifying applicants as “prime” or “subprime” borrowers, or (iii) deciding what kinds of alternative loan products should be offered or recommended to applicants
S3.	For an institution that makes both conventional and FHA mortgages, any significant differences in the percentages of prohibited basis group applicants in each of these two loan products, particularly with respect to loan amounts of \$100,000 or more
S4.	For an institution that makes both prime and sub-prime loans for the same purpose, any significant differences in percentages of prohibited basis group borrowers in each of the alternative loan product categories
S5.	Consumer complaints alleging discrimination in residential loan pricing
S6.	A lender with a sub-prime mortgage company subsidiary or affiliate integrates loan application processing for both entities, such that steering between the prime and sub-prime products can occur almost seamlessly; i.e., a single loan processor could simultaneously attempt to qualify any applicant, whether to the bank or the mortgage company, under either the bank’s prime criteria or the mortgage company’s sub-prime criteria
S7.	Loan officers have broad discretion regarding whether to promote conventional or FHA loans, or both, to applicants and the lender has not issued guidelines regarding the exercise of this discretion
S8.	A lender has most of its branches in predominantly white neighborhoods. The lender’s subprime mortgage subsidiary has branches, which are located primarily in predominantly minority neighborhoods.

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Step Four:
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<i>Indicators of potential discriminatory Redlining such as:</i>	
R1.	*Significant differences, as revealed in HMDA data, in the number of loans originated in those areas in the lender's market that have relatively high concentrations of minority group residents compared with areas with relatively low concentrations of minority residents.
R2.	*Significant differences between approval/denial rates for all applicants (minority and nonminority) in areas with relatively high concentrations of minority group residents compared with areas with relatively low concentrations of minority residents.
R3.	*Significant differences between denial rates based on insufficient collateral for applicants from areas with relatively high concentrations of minority residents and those areas with relatively low concentrations of minority residents.
R4.	Other patterns of lending identified during the most recent CRA examination that differ by the concentration of minority residents.
R5.	Explicit demarcation of credit product markets that excludes MSAs, political subdivisions, census tracts, or other geographic areas within the institution's lending market and having relatively high concentrations of minority residents
R6.	Policies on receipt and processing of applications, pricing, conditions, or appraisals and valuation, or on any other aspect of providing residential credit that vary between areas with relatively high concentrations of minority residents and those areas with relatively low concentrations of minority residents.
R7.	Employee statements that reflect an aversion to doing business in areas with relatively high concentrations of minority residents.

**PART I –
EXAMINATION
SCOPE
GUIDELINES
(cont’d)**

**Evaluating the
Potential for
Discriminatory
Conduct
(cont’d)**

Step Four:
Identify
Residential
Lending
Discrimination
Risk Factors

R8.	<p>Complaints or other allegations by consumers or community representatives that the lender excludes or restricts access to credit for areas with relatively high concentrations of minority residents. Examiners should review complaints against the lender filed with their agency; the CRA public comment file; community contact forms; and the responses to questions about redlining, discrimination, and discouragement of applications, and about meeting the needs of racial or national origin minorities, asked as part of “obtaining local perspectives on the performance of financial lenders” during prior CRA examinations.</p> <p><i>NOTE: Broad allegations or complaints are not, by themselves, sufficient justification to shift the focus of an examination from routine comparative review of applications to redlining analysis. Such a shift should be based on complaints or allegations of specific practices or incidents that are consistent with redlining, along with the existence of other risk factors.</i></p>
R9.	<p>A lender that has most of its branches in predominantly white neighborhoods at the same time that the lender’s subprime mortgage subsidiary has branches that are located primarily in predominantly minority neighborhoods.</p>
<p><i>Indicators of potential disparate treatment in Marketing of residential products, such as:</i></p>	
M1.	<p>Advertising patterns or practices that a reasonable person would believe indicate prohibited basis customers are less desirable.</p>
M2.	<p>Advertising only in media serving nonminority areas of the market.</p>
M3.	<p>Marketing through brokers or other agents that the lender knows (or has reason to know) would serve only one racial or ethnic group in the market.</p>

**PART I –
EXAMINATION
SCOPE
GUIDELINES
(cont'd)**

**Evaluating the
Potential for
Discriminatory
Conduct
(cont'd)**

Step Four:
Identify
Residential
Lending
Discrimination
Risk Factors

M4.	Use of marketing programs or procedures for residential loan products that exclude one or more regions or geographies within the lenders assessment or marketing area that have significantly higher percentages of minority group residents than does the remainder of the assessment or marketing area.
M5.	Using mailing or other distribution lists or other marketing techniques for pre-screened or other offerings of residential loan products** that: <ul style="list-style-type: none"> • Explicitly exclude groups of prospective borrowers on a prohibited basis; or • Exclude geographies (e.g., census tracts, ZIP codes, etc.) within the institution’s marketing area that have significantly higher percentages of minority group residents than does the remainder of the marketing area. <p><i>** NOTE: Pre-screened solicitation of potential applicants on a prohibited basis does not violate ECOA. Such solicitations are, however, covered by the FH Act. Consequently, analyses of this form of potential marketing discrimination should be limited to residential loan products subject to coverage under the FH Act.</i></p>
M6.	*Proportion of monitored prohibited basis applicants is significantly lower than that group’s representation in the total population of the market area.
M7.	Consumer complaints alleging discrimination in advertising or marketing loans.

Step Five: Organize and Focus Residential Risk Analysis

Review the risk factors identified in Step 4 and, for each loan product that displays risk factors, articulate the possible discriminatory effects encountered and organize the examination of those loan products in accordance with the following guidance:

- Where **overt** evidence of discrimination, as described in factors O1-O5, has been found in connection with a product, document those findings as described in Part III, A, besides completing the remainder of the planned examination analysis.
- Where any of the risk factors U1-U9 are present, consider conducting an **underwriting comparative file analysis** as described in Part III, B.
- Where any of the risk factors P1-P5 are present, consider conducting a **pricing comparative file analysis** as described in Part III, C.
- Where any of the risk factors S1-S8 are present, consider conducting a **steering analysis** as described in Part III, D.

**PART I –
EXAMINATION
SCOPE
GUIDELINES
(cont'd)**
**Evaluating the
Potential for
Discriminatory
Conduct
(cont'd)**

- Where any of the risk factors R1-R9 are present, consult agency managers about conducting an analysis for **redlining** as described in Part III, F
- Where any of the risk factors M1-M7 are present, consult agency managers about conducting a **marketing analysis** as described in Part III, G.
- Where an institution uses age in any **credit scoring system**, consider conducting an examination analysis of that credit scoring system's compliance with the requirements of Regulation B as described in Part III, H.

Step Six: Identify Consumer Lending Discrimination Risk Factors

For credit card, motor vehicle, home equity and other consumer loan products selected in Step One for risk analysis in the current examination cycle, conduct a risk factor review similar to that conducted for residential lending products in Steps Three through Five, above. Consult with agency managers regarding the potential use of **surrogates** to identify possible prohibited basis group individuals.

*NOTE: The term **surrogate** in this context refers to any factor related to a loan applicant that potentially identifies that applicant's race, color or other prohibited basis characteristic in instances where no direct evidence of that characteristic is available. Thus, in consumer lending, where monitoring data is generally unavailable, an outwardly Hispanic or Asian surname could constitute a surrogate for an applicant's race or national origin because then examiner can assume that the lender (who can rebut the presumption) perceived the person to be Hispanic. Similarly, an applicant's given name could serve as a surrogate for his or her gender. A surrogate for a prohibited basis characteristic may be used as to set up a comparative analysis with nonminority applicants or borrowers.*

Using decision rules in Steps 3 - 5, above, for residential lending products, articulate the possible discriminatory patterns encountered and consider examining those products determined to have sufficient risk of discriminatory conduct.

Step Seven: Analyze Commercial Lending Discrimination Risk

Where an institution does a substantial amount of lending in the commercial lending market, most notably small business loans (and the product has not recently been examined or the underwriting standards have changed since the last examination of the product), the examiner should consider conducting a risk factor review similar to that performed for residential lending products, as feasible, given the limited information available. Such an analysis should generally be limited to determining risk potential based on risk factors U4-U8; P1-P3; R4-R7; and M1-M3.

**PART I –
EXAMINATION
SCOPE
GUIDELINES
(cont'd)**
**Evaluating the
Potential for
Discriminatory
Conduct
(cont'd)**

If the institution makes commercial loans insured by the Small Business Administration (SBA), determine from agency supervisory staff whether SBA loan data (which codes race and other factors) are available for the institution and evaluate those data pursuant to instructions accompanying them.

For large institutions reporting small business loans for CRA purposes and where the institution also voluntarily geocodes loan denials, look for material discrepancies in ratios of approval-to-denial rates for applications in areas with relatively high concentrations of minority residents compared with areas with relatively low concentrations.

Articulate the possible discriminatory patterns identified and consider further examining those products determined to have sufficient risk of discriminatory conduct in accordance with the procedures for commercial lending described in Part III, F.

Step Eight: Complete the Scoping Process

To complete the scoping process, the examiner should review the results of the preceding steps and select those focal points that warrant examination, based on the relative risk levels identified above. In order to remain within the agency's resource allowances, the examiner may need to choose a smaller number of Focal Points from among all those selected on the basis of risk. In such instances, set the scope by first, prioritizing focal points on the basis of (i) high number and/or relative severity of risk factors; (ii) high data quality and other factors affecting the likelihood of obtaining reliable examination results; (iii) high loan volume and the likelihood of widespread risk to applicants and borrowers; and (iv) low quality of any compliance program and, second, selecting for examination review as many focal points as resources permit.

Where the judgment process among competing Focal Points is a close call, information learned in the phase of conducting the compliance management review can be used to further refine the examiner's choices.

**PART II –
COMPLIANCE
MANAGEMENT
REVIEW**

The Compliance Management Review enables the examination team to determine:

- The intensity of the current examination based on an evaluation of the compliance management measures employed by an institution
- The reliability of the institution’s practices and procedures for ensuring continued fair lending compliance.

For regulators whose policy is that examinations of certain types of institutions should focus on factors or conditions other than the quality of an institution’s compliance programs (such as performance in transactions), examiners should follow that policy.

General Procedures

Generally, the review should focus on

- Determining whether the policies and procedures of the institution enable management to prevent, or to identify and self-correct, illegal disparate treatment in the transactions that relate to the products and issues identified for further analysis under Part I of these procedures
- Obtaining a thorough understanding of the manner by which management addresses its fair lending responsibilities with respect to (a) the institution’s lending practices and standards, (b) training and other application-processing aids, (c) guidance to employees or agents in dealing with customers, and (d) its marketing or other promotion of products and services.

To conduct this review, examiners should consider institutional records and interviews with appropriate management personnel in the lending, compliance, audit, and legal functions. The examiner should also refer to the **Compliance Management Analysis Checklist** contained in the **Appendix** to evaluate the strength of the compliance programs in terms of their capacity to prevent or to identify and self-correct, fair lending violations in connection with the products or issues selected for analysis. Based on this evaluation

- Set the intensity of the transaction analysis by minimizing sample sizes within the guidelines established in Part III and the **Sample Size Table** in the **Appendix**, to the extent warranted by the strength and thoroughness of the compliance programs applicable to those Focal Points selected for examination

**PART II –
COMPLIANCE
MANAGEMENT
REVIEW
(cont'd)**

**General
Procedures
(cont'd)**

- Identify any compliance program or system deficiencies that merit correction or improvement and present these to management in accordance with Part IV of these procedures.

Where an institution performs a self-evaluation of any product or issue that is within the scope of the examination and has been selected for analysis pursuant to Part I of these procedures, examiners may streamline the examination, consistent with agency instructions, provided the self-evaluation meets the requirements set forth in **Streamlining the Examination** located in the **Appendix**.

**PART III –
EXAMINATION
PROCEDURES**

**Documenting
Overt Evidence of
Disparate
Treatment**

A. Documenting Overt Evidence of Disparate Treatment

Once the scope and intensity of the examination have been determined, assess the institution's fair lending performance by applying the appropriate procedures that follow to each of the examination Focal Points already selected.

Where the scoping process or any other source identifies overt evidence of disparate treatment, the examiner should assess the nature of the policy or statement and the extent of its impact on affected applicants by conducting the following analysis.

Step 1. Where the indicator(s) of overt discrimination are found in or based on a written policy (for example, a credit scorecard) or communication, determine and document:

- a. The precise language of the apparently discriminatory policy or communication and the nature of the fair lending concerns that it raises
- b. The lender's stated purpose in adopting the policy or communication and the identity of the person on whose authority it was issued or adopted
- c. How and when the policy or communication was put into effect
- d. How widely the policy or communication was applied
- e. Whether and to what extent applicants were adversely affected by the policy or communication.

Step 2. Where any indicator of overt discrimination was an oral statement or unwritten practice, determine and document

- a. The precise nature of either the statement or practice and of the fair lending concerns that they raise
- b. The identity of the persons making the statement or applying the practice and their descriptions of the reasons for it and the persons authorizing or directing the use of the statement or practice
- c. How and when the statement or practice was disseminated or put into effect
- d. How widely the statement or practice was disseminated or applied
- e. Whether and to what extent applicants were adversely affected by the statement or practice.

**PART III –
EXAMINATION
PROCEDURES
(cont'd)**

**Transactional
Underwriting
Analysis—
Residential and
Consumer Loans**

Assemble findings and supporting documentation for presentation to management in connection with Part IV of these procedures.

B. Transactional Underwriting Analysis—Residential and Consumer Loans

Step 1: Set Sample Size

a. For each Focal Point selected for this analysis, two samples will be utilized: (i) prohibited basis group denials and (ii) control group approvals, both identified either directly from monitoring information in the case of residential loan applications or through the use of application data or surrogates in the case of consumer applications.

b. Refer to the **Fair Lending Sample Size Table A** in the **Appendix** and determine the size of the initial sample for each Focal Point, based on the number of prohibited basis group denials and the number of control group approvals by the lender during the twelve month (or calendar year) period of lending activity preceding the examination. In the event that the number of denials and/or approvals acted on during the preceding 12 month period substantially exceeds the maximum sample size shown in Table A, reduce the time period from which that sample is selected to a shorter period. (In doing so, make every effort to select a period in which the lender's underwriting standards are most representative of those in effect during the full 12 month period preceding the examination.)

c. If the number of prohibited basis group denials or control group approvals for a given Focal Point that were acted upon during the 12 month period referenced in 1.b., above, do not meet the minimum standards set forth in the Sample Size Table, examiners need not attempt a transactional analysis for that Focal Point. Where other risk factors favor analyzing such a Focal Point, consult with agency managers on possible alternative methods of judgmental comparative analysis.

d. If agency policy calls for a different approach to sampling (e.g., a form of statistical analysis or a mathematical formula) for a limited class of institutions, examiners should follow that approach.

Step 2. Determine Sample Composition.

a. To the extent the institution maintains records of loan outcomes resulting from exceptions to its credit underwriting standards or other policies (e.g., overrides to credit score cutoffs), request such records for both approvals and denials, sorted by loan product and branch or decision center, if the lender can do so. Include in the initial sample for each Focal Point all exceptions or overrides applicable to that Focal Point.

**PART III –
EXAMINATION
PROCEDURES
(cont'd)**

**Transactional
Underwriting
Analysis—
Residential and
Consumer Loans
(cont'd)**

b. Using HMDA/LAR data or, for consumer loans, comparable loan register data to the extent available, choose approved and denied applications based on selection criteria that will maximize the likelihood of finding marginal approved and denied applicants, as discussed below.

c. To the extent that the above factors are inapplicable or other selection criteria are unavailable or do not facilitate selection of the entire sample size of files, complete the initial sample selection by making random file selections from the appropriate sample categories in the Sample Size Table.

Step 3: Compare Approved and Denied Applications

Although a creditor's written policies and procedures may appear to be nondiscriminatory, lending personnel may interpret or apply policies in a discriminatory manner. In order to detect any disparate treatment among applicants, the examiner should first eliminate all but "**marginal transactions**" (see 3.b. below) from each selected Focal Point sample. Then, a detailed profile of each marginal applicant's qualifications, the level of assistance received during the application process, the reasons for denial, the loan terms, and other information should be recorded on an Applicant Profile Spreadsheet. Once profiled, the examiner can compare the target and control groups for evidence that similarly qualified applicants have been treated differently as to either the institution's credit decision or the quality of assistance provided.

a. Create Applicant Profile Spreadsheet

Based upon the lender's written and/or articulated credit standards and loan policies, identify categories of data that should be recorded for each applicant and provide a field for each of these categories on a worksheet or computerized spreadsheet. Certain data (income, loan amount, debt, etc.) should always be included in the spreadsheet, while the other data selected will be tailored for each loan product and lender based on applicable underwriting criteria and such issues as branch location and underwriter. Where credit bureau scores and/or application scores are an element of the lender's underwriting criteria (or where such information is regularly recorded in loan files, whether expressly used or not), include a data field for this information in the spreadsheet.

In order to facilitate comparisons of the quality of assistance provided to target and control group applicants, respectively, every work sheet should provide a "comments" block appropriately labeled as the site for recording observations from the file or interviews regarding how an applicant was, or was not, assisted in overcoming credit deficiencies or otherwise qualifying for approval. (See **Workpaper Appendix** for sample spreadsheets.)

**PART III –
EXAMINATION
PROCEDURES
(cont'd)**

**Transactional
Underwriting
Analysis—
Residential and
Consumer Loans
(cont'd)**

Step 3: Compare
Approved and
Denied Applications
(cont'd)

b. Complete Applicant Profiles

From the application files sample for each Focal Point, complete applicant profiles for selected denied and approved applications as follows:

- A principal goal is to identify cases where similarly qualified prohibited basis and control group applicants had different credit outcomes, because the agencies have found that discrimination, including differences in granting assistance during the approval process, is more likely to occur with respect to applicants who are *not* either clearly qualified or unqualified, i.e., “**marginal**” applicants. The examiner-in-charge should, during the following steps, **judgmentally select** from the initial sample only those denied and approved applications that constitute **marginal transactions**. (See **Appendix on Marginal Transactions** for guidance)
- If few marginal control group applicants are identified from the **initial sample**, review additional files of approved control group applicants. This will either increase the number of marginal approvals or confirm that marginal approvals are so infrequent that the marginal denials are unlikely to involve disparate treatment.
- The judgmental selection of both **marginal-denied** and **marginal-approved** applicant loan files should be done together, in a “back and forth” manner, to facilitate close matches and a more consistent definition of “marginal” between these two types of loan files.
- Once the marginal files have been identified, the data elements called for on the profile spreadsheet are extracted or noted and entered.
- While conducting the preceding step, the examiner should simultaneously look for and document on the spreadsheet any evidence found in marginal files regarding the following:
 - the **extent of any assistance**, including both **affirmative aid** and **waivers or partial waivers** of credit policy provisions or requirements, that appears to have been provided to **marginal-approved** control group applicants which enabled them to overcome one or more credit deficiencies, such as excessive debt-to-income ratios

**PART III –
EXAMINATION
PROCEDURES
(cont'd)**

**Transactional
Underwriting
Analysis—
Residential and
Consumer Loans
(cont'd)**

Step 3: Compare
Approved and
Denied Applications
(cont'd)

- the extent to which **marginal-denied** target group applicants with similar deficiencies were, or were not, provided similar affirmative aid, waivers or other forms of assistance.

c. Review and Compare Profiles

- For each Focal Point, review all **marginal profiles** to determine if the underwriter followed institution lending policies in denying applications and whether the reason(s) for denial were supported by facts documented in the loan file and properly disclosed to the applicant pursuant to Regulation B. If any (a) unexplained deviations from credit standards, (b) inaccurate reasons for denial or (c) incorrect disclosures are noted, (whether in a judgmental underwriting system, a scored system or a mixed system) the examiner should obtain an explanation from the underwriter and document the response on an appropriate workpaper.

***NOTE:** In constructing the applicant profiles to be compared, examiners must adjust the facts compared so that assistance, waivers, or acts of discretion are treated consistently between applicants. For example, if a control group applicant's DTI ratio was lowered to 42% because the lender decided to include short-term overtime income, and a prohibited basis group applicant who was denied due to "insufficient income" would have had his ratio drop from 46% to 41% if his short-term overtime income had been considered, then the examiners should consider 41%, not 46%, in determining the benchmark.*

- For each **reason for denial** identified within the target group, rank the denied prohibited basis applicants, beginning with the applicant whose qualification(s) related to that reason for denial were **least deficient**. (The top-ranked denied applicant in each such ranking will be referred to below as the **benchmark** applicant.)
- Compare each marginal control group approval to the **benchmark** applicant in each reason-for-denial ranking developed in step (b), above. If there are no approvals who are equally or less qualified, then there are no instances of disparate treatment for the lender to account for. For all such approvals that appear no better qualified than the denied benchmark applicant:
 - Identify the approved loan on the worksheet or spreadsheet as an **"overlap approval,"** and

**PART III –
EXAMINATION
PROCEDURES
(cont’d)**

**Transactional
Underwriting
Analysis—
Residential and
Consumer Loans
(cont’d)**

Step 3: Compare
Approved and
Denied Applications
(cont’d)

- Compare that overlap approval with other marginal prohibited basis denials in the ranking to determine whether additional overlaps exist. If so, identify all overlapping approvals and denials as above.
- Where the Focal Point involves use of a credit scoring system, the analysis for disparate treatment is similar to the procedures set forth in (c) above, and should focus primarily on overrides of the scoring system itself. For guidance on this type of analysis, refer to **Part C** of the **Credit Scoring** section of the **Appendix**.

Step 4. If there is some evidence of violations in the underwriting process but not enough to clearly establish the existence of a pattern or practice, the examiner should expand the sample as necessary to determine whether a pattern or practice does or does not exist.

Step 5. Discuss all findings resulting from the above comparisons with bank management and document both the findings and all conversations on an appropriate worksheet.

**Analyzing
Potential
Disparities in
Terms and
Conditions**

C. Analyzing Potential Disparities in Terms and Conditions	
Step 1: Set Sample Size	
For each Focal Point selected for this analysis, two samples will be utilized: (i) prohibited basis group approvals and (ii) control group approvals, both identified either directly from monitoring information in the case of residential loan applications or through the use of application data or surrogates in the case of consumer or commercial applications. Refer to the Fair Lending Sample Size Table B in the Appendix and determine the size of the initial sample for each Focal Point, based on the number of prohibited basis group approvals and the number of control group approvals received by the lender during the 12 months preceding the examination and the outcome of the compliance management system analysis conducted in Part II.	
Step 2: Determine Sample Composition	
<i>NOTE: Sample composition for a comparison of price and other terms and conditions will initially focus on controlling for two nondiscriminatory variables that can have a significant impact on loan terms: whether the loan was sold and the loan closing date. Other variables, such as household income and loan amount, will be accounted for on a case-by-case basis during the file comparison process.</i>	

**PART III –
EXAMINATION
PROCEDURES
(cont'd)**

**Analyzing
Potential
Disparities in
Terms and
Conditions
(cont'd)**

Step 2: Determine
Sample Composition
(cont'd)

a. Disposition of Loan

Determine whether approved loans from which the sample is to be drawn have been consistently sold to the secondary market or held in portfolio. If both, determine the proportion for each category and use that proportion in selecting loans from each category for the sample. If the number of loans in either the sold or portfolio categories is too small to complete the minimum proportional sample size for that category, ignore loans in that category and complete the sample using loans solely from the larger category.

b. Period of Review

Sort loans selected in (1), above, by **date of loan closing** and match batches of prohibited basis and control group loans that closed either on the same date or within a **range of dates** during which the lender's pricing policies were the same. If dates of loan closing are not consistently available, consider substituting the application date for the closing date.

Step 3: Create Applicant Profile Spreadsheet

Identify data that should be recorded for each loan to allow for a valid comparison regarding terms and conditions and place these onto a spreadsheet. Certain data must always be included in the spreadsheet, while the other data selected will be tailored for each loan product and lender based on loan terms offered and such issues as branch location and underwriter.

**PART III –
EXAMINATION
PROCEDURES
(cont'd)**

**Analyzing
Potential
Disparities in
Terms and
Conditions
(cont'd)**

Step 4: Review Terms and Conditions; Compare with Applicant Outcomes

a. Determine which loan terms and conditions (rates, points, fees, maturity variations, LTV's, collateral requirements, etc.) are left, in whole or in part, to the discretion of loan officers or underwriters. For each such term or condition, identify (a) any **approved prohibited basis group applicants** in the sample who appear to have been treated unfavorably with respect to that term or condition and (b) any **approved control group applicants** who appear to have been treated favorably with respect to that term or condition. The examiner's analysis should be thoroughly documented in the workpapers.

b. Identify from the sample any **approved control group applicant(s)** who appear to have been treated more favorably than one or more of the above-identified prohibited basis group applicants and who have negative creditworthiness factors (under the lender's standards) that are equal to or worse than the prohibited basis group applicant(s).

c. Obtain explanations from the appropriate loan officer or other employee for any differences that exist and reanalyze the sample for evidence of discrimination.

d. If there is some evidence of violations in the imposition of terms and conditions but not enough to clearly establish the existence of a pattern or practice, the examiner should expand the sample as necessary to determine whether a pattern or practice does or does not exist.

e. Discuss differences in comparable loans with the institution's management and document all conversations on an appropriate worksheet. For additional guidance on evaluating management's responses, refer to **Part A, 1 . 6, Evaluating Responses to Evidence of Disparate Treatment** in the **Appendix**.

Steering Analysis

D. Steering Analysis

Institutions that make FHA as well as conventional loans and those that lend in both prime or "A" markets and in sub-prime markets (either directly or through subsidiaries or affiliates), present opportunities for loan officers to refer or "steer" applicants from one product or market to another. Steering is not unlawful *per se* and, in many instances, the availability of a more expensive form of credit may enable an applicant with credit problems to obtain a loan that might otherwise be unavailable. Steering can, however, raise fair lending issues if it occurs differently and less advantageously for prohibited basis group applicants than for similarly situated non-minority applicants. If the scoping analysis reveals the presence of one or more risk factors S1 through S8 for any selected Focal Point, consult with managers about conducting a steering analysis as described below.

**PART III –
EXAMINATION
PROCEDURES
(cont'd)**

**Steering Analysis
(cont'd)**

From the perspective of fair lending analysis, all steering scenarios involve a **decision** by the lender's personnel to guide an applicant's choice between a **more favorable** loan and one or more **less favorable** alternatives (e.g., referral to a more expensive subprime mortgage subsidiary). As such, a steering analysis should be focused on answering the following questions:

Step 1. Clarify which of the options available to customers are the more favorable and less favorable.

Through interviews with appropriate personnel of the institution and review of policy manuals, procedure guidelines, and other directives obtain and verify the following information for each product-alternative product pairing or grouping identified above:

- a.** All underwriting criteria for the product and for the alternative product(s) that are offered by the institution or by a subsidiary or affiliate.
- b.** Pricing or other costs applicable to the product and the alternative product(s), including interest rates, points, and all fees.

Step 2: Document the policies, conditions or criteria that have been adopted by the lender for determining how referrals are to be made and choices presented to customers.

- a.** Obtain not only information regarding the product offered by the lender and alternative products offered by subsidiaries/affiliates, but also information on products and alternatives offered solely by the lender itself, e.g., conventional and FHA, secured and unsecured home improvement loans, prime and subprime mortgages.
- b.** Obtain any information regarding a subsidiary of the lender directly from that entity, but seek information regarding an affiliate or holding company subsidiary only from the lender itself.
- c.** Obtain all appropriate documentation and document all discussions with loan personnel and managers.
- d.** Obtain documentation and/or employee estimates as to the volume of referrals made from or to the institution, for each product, during a relevant time period.
- e.** Resolve to the extent possible any discrepancies between information found in the lender's documents and information obtained in interviews by conducting appropriate follow-up interviews.
- f.** Identify any policies and procedures established by the institution and/or the subsidiary or affiliate for (i) referring a person who applies to the institution, but does not meet its criteria, to a subsidiary or affiliate; (ii) offering to a person who applies to the institution for *a specific product*, but does not meet its criteria, one or more alternative loan products; or (iii) referring a person who applies to a subsidiary or affiliate for its product, but who appears be qualified for a loan from the institution, to the institution.
- g.** Determine whether loan personnel are encouraged, through monetary incentives or otherwise, to make referrals, either from the institution to a subsidiary/affiliate or vice versa.

**PART III –
EXAMINATION
PROCEDURES
(cont'd)**

**Steering Analysis
(cont'd)**

Step 3. Determine how both the decisions and the lender's policies, conditions or criteria are supposed to be documented in loan files, policy manuals, directives, etc.

Determine how, if at all, a referral from the institution to a subsidiary/affiliate, or vice versa, *and the reason for it*, would be documented in the loan files or in any other records of either the referring or receiving entity.

Step 4. Determine to what extent individual loan personnel are able to exercise personal discretion in deciding what loan products or other credit alternatives will be made available to a given applicant.

Step 5. Determine whether the lender's stated policies, conditions or criteria in fact are adhered to by individual decision makers. In the alternative, does it appear that different policies or practices are actually in effect?

Enter data from the prohibited basis group sample on the spreadsheets and determine whether the lender is, in fact, applying its criteria as stated. For example, if one announced criterion for receiving a "more favorable" prime mortgage loan was a back end debt ratio of no more than 38%, review the spread sheets to determine whether that criteria was adhered to. If the lender's actual treatment of prohibited basis group applicants appears to differ from its stated criteria, document such differences for subsequent discussion with management.

Step 6. To the extent that individual loan personnel have any discretion in deciding what credit alternatives (e.g., conventional vs. FHA/VA) to offer applicants, conduct a comparative analysis to determine whether that discretion has been exercised in a nondiscriminatory manner.

Compare the lender's or subsidiary/affiliate's treatment of control group and prohibited basis group applicants by adapting the "benchmark" and "overlap" technique discussed in Part III, B. of these procedures. For purposes of this Steering Analysis, that technique should be conducted as follows:

- a.** For each Focal Point to be analyzed, select a sample of prohibited basis group applicants who received "less favorable" treatment (e.g., referral to a finance company or a subprime mortgage subsidiary or counteroffers of less favorable product alternatives).

**PART III –
EXAMINATION
PROCEDURES
(cont'd)**

**Steering Analysis
(cont'd)**

Step 6 (cont'd)

*NOTE: In selecting the sample, follow the guidance of **Sample Size Table B** in the **Appendix** and select “marginal applicants” as instructed in Part III, Section B, above.*

- b.** Prepare a spreadsheet for the sample that contains data entry categories for those underwriting and/or referral criteria that the lender identified in Step 1. b as used in reaching underwriting and referral decisions between the pairs of products.
- c.** Review the “less favorably” treated prohibited basis group sample and rank this sample from least qualified to most qualified.
- d.** From the sample, identify the **best qualified** prohibited basis group applicant, based on the criteria identified for the control group, above. This applicant will be the “**benchmark**” applicant. Rank order the remaining applicants from best to least qualified.
- e.** Select a sample of *control group applicants*. Identify those who were treated “*more favorably*” with respect to the same product-alternative product pair as the *prohibited basis* group. (Again refer to the Sample Size Table B and marginal applicant processes noted above in selecting the sample.)
- f.** Compare the qualifications of the benchmark applicant with those of the control group applicants, beginning with the least qualified member of that sample. Any control group applicant who appears less qualified than the benchmark applicant should be identified on the spreadsheet as a “**control group overlap.**”
- g.** Compare all control group overlaps with other, less qualified prohibited basis group applicants to determine whether additional overlaps exist
- h.** Document all overlaps as possible disparities in treatment. Discuss all overlaps and related findings (e.g., any differences between stated and actual underwriting criteria) with management, documenting all such conversations.

**PART III –
EXAMINATION
PROCEDURES
(cont'd)**

**Transactional
Underwriting
Analysis –
Commercial
Loans**

E. Transactional Underwriting Analysis – Commercial Loans

Unlike consumer credit, where loan products and prices are generally homogenous and underwriting involves the evaluation of a limited number of credit variables, commercial loans are generally unique and underwriting methods and loan pricing may vary depending on a large number of credit variables. The additional credit analysis that is involved in underwriting commercial credit products will entail additional complexity in the sampling and discrimination analysis process. Although ECOA prohibits discrimination as to all commercial credit activities of a covered institution, the agencies recognize that small businesses (sole proprietorships, partnerships, and small, closely held corporations), including those operated by prohibited basis group members, may have less experience in borrowing. Therefore, in implementing these procedures, examinations should generally be focused on small business credit (commercial applicants that had gross revenues of \$1,000,000 or less in the preceding fiscal year), absent some evidence that a focus on other commercial products would be more appropriate.

Step 1: Understand Commercial Loan Policies

For the commercial product line selected for analysis, the examiner should first review credit policy guidelines and interview appropriate commercial loan managers and officers to obtain written and articulated standards used by the lender in evaluating commercial loan applications.

Step 2: Conduct Initial Sampling

a. Select all (up to a maximum of ten) denied applications that were acted on during the three month period prior to the examination. To the extent feasible, include denied applications from businesses that are (i) located in minority and/or integrated geographies or (ii) appear to be owned by women or minority group members, based on the names of the principals shown on applications or related documents. (In the case of banks that do a significant volume of commercial lending, consider reviewing more than ten applications.)

b. For each of the **denied commercial applications** selected, record specific information from loan files and through interviews with the appropriate loan officer(s), about the principal owners, the purpose of the loan, and the specific, pertinent financial information about the commercial enterprise (including type of business - retail, manufacturing, service, etc.), that was used by the lender to evaluate the credit request on Small Business Loan Profile Spreadsheet. (See **Workpaper Appendix**) In addition, inquire with the loan officer as to the gender and race, if known, of the principals of the business.

**PART III –
EXAMINATION
PROCEDURES
(cont'd)**

**Transactional
Underwriting
Analysis –
Commercial
Loans
(cont'd)**

Step 2: Conduct
Initial Sampling
(cont'd)

c. Select ten approved loans that appear to be similar with regard to business type, purpose of loan, loan amount, loan terms, and type of collateral, as the denied loans sampled. For example, if the denied loan sample includes applications for lines of credit to cover inventory purchases for retail businesses, the examiner should select approved applications for lines of credit from retail businesses.

d. For each approved commercial loan application selected, complete a Small Business Loan Profile Spreadsheet, obtaining and recording information parallel to that obtained for denied applications, including the gender and race of the principals.

e. The examiner should first compare the **credit criteria** considered in the credit process for each of the approved and denied applications to established underwriting standards, rather than comparing files directly.

f. The examiner should identify any deviations from credit standards for both approved and denied credit requests, and differences in loan terms granted for approved credit requests.

g. The examiner should discuss each instance where deviations from credit standards and terms were noted, but were not explained in the file, with the commercial credit underwriter. Each discussion should be documented on an appropriate worksheet. (See **Workpaper Appendix**)

Step 3: Conduct Targeted Sampling

a. If deviations from credit standards or pricing are not sufficiently explained by other factors either documented in the credit file or the commercial underwriter was not able to provide a reasonable explanation, the examiner should determine if deviations were detrimental to any protected classes of applicants.

b. The examiner should consider employing the same techniques for determining race and gender characteristics of commercial applicants as those outlined in the consumer loan sampling procedures.

c. If it is determined that there are members of one or more prohibited basis groups among commercial credit requests that were not underwritten according to established standards or received less favorable terms, the examiner should select additional commercial loans, where applicants are members of the same prohibited basis group and select similarly situated control group credit requests. These additional files should be selected based on the specific applicant circumstance(s) that appeared to have been viewed differently by lending personnel on a prohibited basis.

**PART III –
EXAMINATION
PROCEDURES
(cont'd)**

**Transactional
Underwriting
Analysis –
Commercial
Loans
(cont'd)**

Step 3: Conduct
Targeted Sampling
(cont'd)

d. If there are not enough similarly situated applicants for comparison in the original sample period to draw a reasonable conclusion, the examiner should expand the sample period. The expanded sample period should generally not go beyond the date of the prior examination.

Sampling Guidelines

a. Generally, the task of selecting an appropriate expanded sample of prohibited basis and control group applications for commercial loans will require examiner judgement. The examiner should select a sample that is large enough to be able to draw a reasonable conclusion.

b. The examiner should first select from the applications that were acted on during the initial sample period, but were not included in the initial sample, and select applications from prior time periods as necessary.

c. The expanded sample should include both approved and denied, prohibited basis and control group applications, where similar credit was requested by similar enterprises for similar purposes.

**Analysis of
Potential
Discriminatory
“Redlining”**

F. Analysis of Potential Discriminatory “Redlining”

For purposes of this analysis, “redlining” is a form of illegal disparate treatment in which a lender provides unequal access to credit, or unequal terms of credit, because of the race, color, national origin, or other prohibited characteristic(s) of the residents of the area in which the credit seeker resides or will reside or in which the residential property to be mortgaged is located.

The redlining analysis may be applied to determine whether, on a prohibited basis:

- a lender fails or refuses to extend credit in such an area;
- a lender makes loans in such an area but at a restricted level or upon less-favorable terms or conditions as compared to contrasting areas; or
- a lender omits or excludes such an area from efforts to market residential loans or solicit customers for residential credit.

This guidance focuses on possible discrimination against racial or national origin minorities. The same analysis could be adapted to evaluate relative access to credit for areas of geographical concentration on other prohibited bases -- for example, age.

**PART III –
EXAMINATION
PROCEDURES
(cont'd)**

**Analysis of
Potential
Discriminatory
“Redlining”
(cont'd)**

NOTE: It is true that neither the Equal Credit Opportunity Act (ECOA) nor the Fair Housing Act (FH Act) specifically uses the term “redlining.” However, federal courts as well as agencies that have enforcement responsibilities for the FH Act, have interpreted it as prohibiting lenders from having different marketing or lending practices for certain geographic areas, compared to others, where the purpose or effect of such differences would be to discriminate on a prohibited basis. Similarly, the ECOA would prohibit treating applicants for credit differently on the basis of differences in the racial or ethnic composition of their respective neighborhoods.

Like other forms of disparate treatment, redlining can be proven by overt or comparative evidence. If any written or oral policy or statement of the lender (see risk factors R5, R6, and R7 in Part I, above) suggests that the lender links the racial or national origin character of an area with any aspect of access to or terms of credit, the examiners should refer to the guidance in section A of this Part III, on documenting and evaluating overt evidence of discrimination.

Overt evidence includes not only explicit statements, but also any geographical terms used by the lender that would, to a reasonable person familiar with the community in question, connote a specific racial or national origin character. For example, if the principal information conveyed by the phrase “north of 110th Street” is that the indicated area is principally occupied by Hispanics, then a policy of not making credit available “north of 110th Street” is overt evidence of potential redlining on the basis of national origin.

Overt evidence is relatively uncommon. Consequently, the redlining analysis usually will focus on comparative evidence (similar to analyses of possible disparate treatment of individual customers) in which the lender’s treatment of areas with contrasting racial or national origin characters is compared.

When the scoping process (including consultation within an agency as called for by agency procedures) indicates that a redlining analysis should be initiated, examiners should complete the following steps of comparative analysis:

- Identify and delineate any areas within the lender’s CRA assessment area or market area for residential products that are of a racial or national origin minority character;
- Determine whether any minority area identified in step 1 appears to be excluded, under-served, selectively excluded from marketing efforts, or otherwise less-favorably treated in any way by the lender;
- Identify and delineate any areas within the lender’s CRA assessment area or market area for residential products that are nonminority in character and that the lender appears to treat more favorably;
- Obtain the lender’s explanation for the apparent difference in treatment between the areas and evaluate whether it is credible and reasonable;

**PART III –
EXAMINATION
PROCEDURES
(cont'd)**

**Analysis of
Potential
Discriminatory
“Redlining”
(cont'd)**

- Obtain and evaluate other information that may support or contradict interpreting identified disparities to be the result of intentional illegal discrimination.

These steps are discussed in detail below.

Using information obtained during scoping

Although the five tasks listed are presented below as examination steps in the order given above, examiners should recognize that a different order may be preferable in any given examination. For example, the lender’s explanation (step 4) for one of the policies or patterns in question may already be documented in the CRA materials reviewed (step 2) and the CRA examiners may already have verified it, which may be sufficient for purposes of the redlining analysis.

As another example, as part of the scoping process, the examiners may have reviewed an analysis of the geographic distribution of the lender’s loan originations with respect to the racial and national origin composition of census tracts within its CRA assessment or residential market area. Such analysis might have documented the existence of significant discrepancies between areas, by degree of minority concentration, in loans originated (risk factor R1), approval/denial rates (risk factor R2) and/or rates of denials because of insufficient collateral (risk factor R3). In such a situation in which the scoping process has produced a reliable factual record, the examiners could begin with step 4 (obtaining an explanation) of the redlining analysis below.

In contrast, when the scoping process only yields partial or questionable information, or when the risk factors on which the redlining analysis is based are complaints or allegations against the lender, steps 1, 2, and/or 3 must be addressed.

Step 1: Comparative analysis for redlining
Identify and delineate any areas within the lender’s CRA assessment area or market area for residential products that are of a racial or national origin minority character
<i>NOTE: The CRA assessment area can be a convenient unit for redlining analysis because information about it typically already is in hand. However, the CRA assessment area may be too limited. The redlining analysis focuses on the lender’s decisions about how much access to credit to provide to different geographical areas. The areas for which those decisions can best be compared are areas where the lender actually marketed and provided credit and where it could reasonably be expected to have marketed and provided credit. Some of those areas might be beyond or otherwise different from the CRA assessment area.</i>

**PART III –
EXAMINATION
PROCEDURES
(cont'd)**

**Analysis of
Potential
Discriminatory
“Redlining”
(cont'd)**

Step 1: Comparative
Analysis for
Redlining
(cont'd)

If there are no areas identifiable for their racial or national origin minority character within the lender's CRA assessment area or market area for residential products, a redlining analysis is not appropriate. (If there is a substantial but *dispersed* minority population, potential disparate treatment can be evaluated by a routine comparative file review of applicants.)

This step may have been substantially completed during scoping, but unresolved matters may remain. (For example, several community spokespersons may allege that the lender is redlining, but disagree in defining the area.) The examiners should:

- a.** Describe as precisely as possible why a specific area is recognized in the community (perceptions of residents, etc.) and/or is objectively identifiable (based on census or other data) as having a particular racial or national origin minority character.
 - The most obvious identifier is the predominant race or national origin of the residents of the area. Examiners should document the percentages of racial or national origin minorities residing within the census tracts that make up the area. However, they should bear in mind that it is illegal for the lender to consider a prohibited factor *in any way*. For example, an area might be only 20% black, but if a lender refuses to extend credit there because the lender believes the area is “changing to black,” that too is a violation. Contacts with community groups can be helpful to learn whether there are such subtle features of racial or ethnic character.
 - Geographical groupings that are convenient for CRA may obscure racial patterns. For example, an underserved, low-income, predominantly minority neighborhood that lies within a larger low-income area that primarily consisted of *non*minority neighborhoods, may seem adequately served when the entire low-income area is analyzed as a unit. However, a racial pattern of underservice to minority areas might be revealed if the low-income minority neighborhood shared a border with an underserved, *middle*-income, minority area and those two minority areas were grouped together for purposes of analysis. Review the analysis from prior CRA examinations of whether the assessment area appears to have been influenced by prohibited factors. If there are minority areas that the lender excluded from the assessment area improperly, consider whether they ought to be included in the redlining analysis.
- b.** Describe how the racial or national origin character changes across the suspected redlining area's various boundaries.
- c.** Document or estimate the amount, within the minority area, of types of housing for which the lender offers residential credit. If the minority area does not have a significant amount of such housing, the area is not appropriate for a redlining analysis.

**PART III –
EXAMINATION
PROCEDURES
(cont'd)**

**Analysis of
Potential
Discriminatory
“Redlining”
(cont'd)**

Step 2: Determine whether any minority area identified in step 1 is excluded, under-served, selectively excluded from marketing efforts, or otherwise less-favorably treated in any way by the lender

The examiners should begin with the risk factors identified during the scoping process. The unfavorable treatment may have been substantially documented during scoping and needs only to be finished in this step. If not, this step will verify and measure the extent to which HMDA data show the minority areas identified in Step 1 to be underserved and/or how the lender’s explicit policies treat them less favorably.

- a. Review prior CRA lending test analyses to learn whether they have identified any excluded or otherwise under-served areas or other significant geographical disparities in the institution’s lending. Determine whether any of those are the minority areas identified in Step 1.
- b. Learn from the lender itself whether, as a matter of policy, it treats any separate or distinct geographical areas within its marketing or service area differently from other areas. This may have been done completely or partially during scoping analysis related to risk factors R5, R6, and R7. The differences in treatment can be in marketing, branch operations, appraisal practices, application processing, approval requirements, pricing, loan conditions, evaluation of collateral, or any other policy or practice materially related to access to credit. Determine whether any of those less-favored areas are the minority areas identified in step 1.
- c. Obtain from the lender: (i) its reasons for such differences in policy, (ii) how the differences are implemented, and (iii) any specific conditions that must exist in an area for it to receive the particular treatment (more favorable or less favorable) that the lender has indicated.

Step 3: Identify and delineate any areas within the lender’s CRA assessment area or market area for residential products that are nonminority in character and that the lender appears to treat more favorably

To the extent not already completed during scoping:

- a. Document the percentages of whites and of racial or national origin minorities residing within the census tract(s) that comprise(s) the *non*minority area
- b. Document the nature of the housing stock in the area

**PART III –
EXAMINATION
PROCEDURES
(cont'd)**

**Analysis of
Potential
Discriminatory
“Redlining”
(cont'd)**

Step 3
(cont'd)

c. Describe, to the extent known, how the lender’s practices, policies, or its rate of lending change from less- to more-favorable as one leaves the minority area at its various boundaries (Examiners should be particularly attentive to instances in which the boundaries between favored and disfavored areas deviate from boundaries the lender would reasonably be expected to follow, such as political boundaries or transportation barriers)

d. Examiners should particularly consider whether, within a large area that is composed predominantly of racial or national origin minority households, there are enclaves that are predominantly *non*minority or whether, along the area’s borders, there are irregularities where the *non*minority group is predominant. As part of the overall comparison, examiners should determine whether credit access within those small *non*minority areas differs from credit access in the larger minority area.

Step 4: Obtain the lender’s explanation for the apparent difference in treatment between the areas and evaluate whether it is credible and reasonable

This step completes the comparative analysis by soliciting from the lender any additional information not yet considered by the examiners that might show that there is a nondiscriminatory explanation for the apparent disparate treatment based on race or ethnicity.

For each matter that requires explanation, provide the lender full information about what differences appear to exist in how it treats minority and nonminority areas, and how the examiners reached their preliminary conclusions at this stage of the analysis.

a. Evaluate whether the conditions identified by the lender in step 2 as justifying *more* favorable treatment pursuant to institutional *policy* existed in minority neighborhoods that did *not* receive the favorable treatment called for by institutional policy. If there are minority areas for which those conditions existed, ask the lender to explain why the areas were treated differently despite the similar conditions.

b. Evaluate whether the conditions identified by the lender in Step 2 as justifying *less* favorable treatment pursuant to institutional *policy* existed in *non*minority neighborhoods that received favorable treatment nevertheless. If there are *non*minority areas for which those conditions existed, ask the lender to explain why those areas were treated differently, despite the similar conditions.

c. Obtain explanations from the lender for any apparent differences in treatment observed by the examiners but not called for by the lender’s policies.

**PART III –
EXAMINATION
PROCEDURES
(cont’d)**

**Analysis of
Potential
Discriminatory
“Redlining”
(cont’d)**

Step 4
(cont’d)

- If the lender’s explanation cites any specific conditions in the nonminority area(s) to justify more favorable treatment, determine whether the minority area(s) identified in step 1 satisfied those conditions. If there are minority areas for which those conditions existed, ask the lender to explain why the areas were treated differently despite the similar conditions
- If the lender’s explanation cites any specific conditions in the minority area(s) to justify less favorable treatment, determine whether the nonminority area(s) had those conditions. If there are nonminority areas for which those conditions existed, ask the lender to explain why those areas were treated differently, despite the similar conditions.

d. Evaluate the lender’s responses by applying appropriate principles selected from the Appendix on Evaluating Responses to Evidence of Disparate Treatment.

Step 5: Obtain and evaluate specific types of other information that may support or contradict interpreting identified disparities to be the result of intentional illegal discrimination

As a legal matter, discriminatory intent can be inferred simply from the lack of a legitimate explanation for clearly less-favorable treatment of racial or national origin minorities. That might be the situation after step 4. Nevertheless, if the lender’s explanations do not adequately account for a documented difference in treatment, the examiners should consider additional information that might support or contradict the interpretation that the difference in treatment was intended.

- a. Comparative file review.** If there was a comparative file review conducted in conjunction with the redlining examination, review the results; or, if it is necessary and feasible to do so to clarify what appears to be discriminatory redlining, compare denied applications from within the suspected redlining area to approved applications from the contrasting area.
- Learn whether there were any denials of fully qualified applicants from the suspected redlining area. If so, that tends to support the view that the lender wanted to avoid doing business in the area.
 - Learn whether the file review identified instances of illegal disparate treatment against applicants of the same race or national origin as the suspected redlining area. If so, that tends to support the view that the lender wanted to avoid doing business with applicants of that group, such as the residents of the suspected redlining area. Learn whether any such identified victims applied for transactions in the suspected redlining area.

**PART III –
EXAMINATION
PROCEDURES
(cont'd)**

**Analysis of
Potential
Discriminatory
“Redlining”
(cont'd)**

Step 5
(cont'd)

- If there are instances of either of the above, identify denied *nonminority* residents, if any, of the suspected redlining area and review their application files to learn whether they appear to have been treated in an irregular or less favorable way. If so, that tends to support the view that the character of the area rather than of the applicants themselves appears to have influenced the credit decisions.
- Review withdrawn and incomplete applications for the suspected redlining area, if those can readily be identified from the HMDA-LAR, and learn whether there are reliable indications that the lender discouraged those applicants from applying. If so, that tends to support the view that the lender did not want to do business in the area and may constitute evidence of a violation of Section 202.5(a) of Regulation B.

Conversely, if the comparisons of individual transactions show that the lender treated minority and nonminority applicants within and outside the suspected redlining area similarly, that tends to contradict the conclusion that the lender avoided the areas because it had minority residents.

- b. Interviews of third parties.** The perspectives of third parties will have been taken into account to some degree through the review of available materials during scoping. Later in the examination, in appropriate circumstances, information from third parties may help in interpreting whether the lender’s apparent differences in treatment of minority and nonminority areas were intended.
- Identify persons (such as housing or credit counselors, home improvement contractors, or real estate and mortgage brokers) who may have extensive experience dealing with credit applicants from the suspected redlined area.
 - After obtaining appropriate authorization and guidance from your agency, interview those persons to learn of their *first-hand experiences* related to:
 - Oral statements or written indications by a lender’s representatives that loan applications from a suspected redlined area were discouraged;
 - Whether the lender treated applicants from the suspected redlining area as called for in its own procedures (as the examiners understand them) and/or whether it treated them similarly to applicants from nonminority areas (as the examiners are familiar with those transactions);
 - Any unusual delays or irregularities in loan processing for transactions in the suspected redlining area;

**PART III –
EXAMINATION
PROCEDURES
(cont'd)**

**Analysis of
Potential
Discriminatory
“Redlining”
(cont'd)**

Step 5
(cont'd)

- Differences in the lender’s pricing, loan conditions, property valuation practices, etc., in the suspected redlining area compared to contrasting areas.

Also, learn from the third parties the names of any consumers they described as having experienced the questionable behavior recounted by the third party, and consider contacting those consumers.

If third parties witnessed specific conduct by the lender that indicates the lender wanted to avoid business from the area or prohibited basis group in question, this would tend to support interpreting the difference in treatment as intended. Conversely, if third parties report proper treatment or positive actions toward such area or prohibited basis group, this would tend to contradict the view that the lender intended to discriminate.

- c. Marketing. A clear exclusion of the suspected redlining area from the lender’s marketing of residential loan products supports the view that the lender did not want to do business in the area. Marketing decisions are affirmative acts to include or exclude areas. Disparities in marketing between two areas may reveal that the lender prefers one to the other. If sufficiently stark and supported by other evidence, a difference in marketing to racially different areas could itself be treated as a redlining violation of the Fair Housing Act. Even below that level of difference, marketing patterns can support or contradict the view that disparities in lending practices were intentional.
- Review materials that show how the lender has marketed in the suspected redlined area and in nonminority areas. Begin with available CRA materials and discuss the issues with CRA examiners, then review other materials as appropriate. The materials may include, for example, the lender’s guidance for the geographical distribution of pre-approved solicitations for credit cards or home equity lines of credit, advertisements in local media or business or telephone directories, business development calls to real estate brokers, and calls by telemarketers.

d. Peer performance. Market share analysis and other comparisons to competitors are insufficient by themselves to prove that a lender engaged in illegal redlining. By the same token, a lender cannot justify its own failure to market or lend in an area by citing other lenders’ failures to lend or market there.

However, a lender’s inactivity in an underserved area where its acknowledged competitors are active would tend to support the interpretation that it intends to avoid doing business in the area. Conversely, if it is as active as other lenders, that would suggest that it intends to compete for, rather than avoid, business in the area.

**PART III –
EXAMINATION
PROCEDURES
(cont’d)**

**Analysis of
Potential
Discriminatory
“Redlining”
(cont’d)**

Step 5
(cont’d)

- Develop a list of the institution’s competitors.
- Learn the level of lending in the suspected redlining area by competitors. Check any public evaluations of similarly situated competitors obtained by the CRA examiners as part of evaluating the performance context or obtain such evaluations independently.

e. Institution’s record. Request from the lender information about its overall record of serving or attempting to serve the racial or national origin minority group with which the suspected redlining area is identified. The record may reveal an intent to serve that group that tends to contradict the view that the lender intends to discriminate against the group.

Step 6. For any information that supports interpreting the situation as illegal discrimination, obtain and evaluate an explanation from the institution as called for in Part IV.

*NOTE: If the lender’s explanation is that the disparate results are the consequence of a specific, neutral policy or practice that the lender applies broadly, such as not making loans on homes below a certain value, review the guidance in the **Appendix on Disproportionate Adverse Impact** and consult agency managers.*

**Analysis of
Potential
Discriminatory
Marketing
Practices**

G. Analysis of Potential Discriminatory Marketing Practices

When scoping identifies significant risk factors (M1-M7) related to marketing, examiners should consult their managers and experts about a possible marketing discrimination analysis. If the managers agree to proceed, the examiners should collect information as follows:

Step 1: Identify the bank’s marketing initiatives.

a. Pre-approved solicitations

- Determine whether the bank sends out pre-approved solicitations:
 - For home purchase loans
 - For home improvement loans
 - For refinance loans
- Determine how the bank selects recipients for such solicitations
 - Learn from the bank its criteria for such selections
 - Review any guidance or other information the bank provided credit reporting companies or other companies that supply such lists

**PART III –
EXAMINATION
PROCEDURES
(cont'd)**

**Analysis of
Potential
Discriminatory
Marketing
Practices (cont'd)**

Step 1
(cont'd)

b. Media Usage

- Determine in which newspapers and broadcast media the bank advertises.
- identify any racial or national origin identity associated with those media
- determine whether those media focus on geographical communities of a particular racial or national origin character
- Learn the bank's strategies for geographic and demographic distribution of advertisements.
- Obtain and review copies of the bank's printed advertising and promotional materials.
- Determine what criteria the bank communicates to media about what is an attractive customer or an attractive area to cultivate business.
- Determine whether advertising and marketing are the same to racial and national origin minority areas as compared to nonminority areas.

c. Self-produced promotional materials

- Learn how the bank distributes its own promotional materials, both methods and geographical distribution
- Learn what the bank regards as the target audience(s) for those materials

d. Realtors, brokers, contractors, and other intermediaries

- Determine whether the bank solicits business from specific realtors, brokers, home improvement contractors, and other conduits.
 - learn how the bank decides which intermediaries it will solicit
 - identify the parties contacted and determine the distribution between minority and nonminority areas
 - obtain and review the types of information the bank distributes to intermediaries
 - determine how often the bank contacts intermediaries
- Determine what criteria the bank communicates to intermediaries about the type of customers it seeks or the nature of the geographic areas in which it wishes to do business.

**PART III –
EXAMINATION
PROCEDURES
(cont'd)**

Step 2: Determine whether the bank’s activities show a significantly lower level of marketing effort toward minority areas or toward media or intermediaries that tend to reach minority areas.

Step 3: If there is any such disparity, document the bank’s explanation for it.

For additional guidance, refer to **Part C** of the **Special Analyses** section in the **Appendix**.

Credit Scoring

H. Credit Scoring

If the scoping process results in the selection of a Focal Point that includes a credit or mortgage scored loan product, refer to **Part B** of the **Credit Scoring Analysis** section of the **Appendix**.

If the institution utilizes a credit scoring program which scores *age* for any loan product selected for review in the scoping stage, either as the sole underwriting determinant or only as a guide to making loan decisions, refer to **Part D** of the **Credit Scoring Analysis** section of the **Appendix**.

**Disparate Impact
Issues**

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 CON-
CLUDING THE
EXAMINATION**
**Disparate Impact
Issues
(cont'd)**

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.

**PART IV –
OBTAINING
AND
EVALUATING
RESPONSES
FROM THE
LENDER
AND CON-
CLUDING THE
EXAMINATION**

(cont'd)

**Disparate Impact
Issues**

(cont'd)

Step 3
(cont'd)

- 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 1 – 3, 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 in the Workpapers Appendix or 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.

TYPES OF VIOLATIONS

Identifying Patterns of Violations or Unlawful Policies

Unlawful discrimination practices range from overt to very subtle. The motivations behind such practices range from prejudice to simple ignorance of the law.

Violations generally fall into two categories:

- Substantive
- Technical or procedural

Substantive violations involve actual discrimination on a prohibited basis, either disparate treatment or disparate impact. Within the category of procedural violations, some may be merely technical, such as not having the Equal Housing Lender poster on display. Technical violations however, especially of a repetitive nature, can be indicators of possible substantive violations.

It is important to identify both individual violations and patterns of violations. Individual violations may be part of a pattern. To be engaged in a “pattern” of unlawful conduct, a lender need not discriminate uniformly. A few incidents, if they are more than isolated departures from a generally nondiscriminatory norm, can be a “pattern.” A pattern or practice exists where the denial of rights consists of something more than an isolated, sporadic incident, but is repeated, routine, or of a generalized nature. One or two errant employees can create a “pattern” of violations. Statements contained in documents or in a form can also constitute evidence of a pattern. A pattern or practice of discrimination is shown by a “preponderance of evidence” that prohibited bases discrimination is the standard operating procedure rather than the unusual practice. Preponderance of evidence is more fully discussed under the portion of this section entitled “Proof of Discrimination.”

There is no minimum number of incidents that must be proven as a prerequisite to finding a pattern or practice. To provide the existence of a pattern or practice of discrimination, the evidence need not identify even one victim but, must show more than the mere occurrence of isolated, accidental, or sporadic discriminatory acts. The policy need not be uniform. Further, it need not be shown that the violator always discriminates. In pattern and practice cases, the courts have considered not only evidence of discriminatory policies or practices that have occurred at any time regarding the time limitations of the statute under which the possible violation is being considered but also evidence of acts and practices that took place even before the statute was enacted. In other words, where violations are of a continuing nature, evidence before the time limitations contained within the fair lending laws and regulations can be considered.

The fair lending examination process should focus on detecting the presence of both individual instances and systemic violations, and should ensure the presence of internal controls within the institution to prevent discrimination. Identifying patterns or policies that are unlawful is very important, as these may have a significant effect on both the public and the financial institution.

TYPES OF VIOLATIONS (cont'd)
Identifying Patterns of Violations or Unlawful Policies (cont'd)

The examiner should be familiar with information that can reveal evidence of a pattern, practice or policy in violation of the law. Examples of these include:

- Policy documents – loan manuals, training materials, interbank memoranda, minutes of board of directors/trustees or loan committees
- Forms – applications, appraisals, notice and disclosure forms, informational or internal worksheets, financial statements
- Statements of officers and employees made to the examiner; statements relayed by a complainant, a real estate broker or a third party; or other observations made by the examiner
- Former employees, rejected applicants, brokers, appraisers, and community groups
- A comparison of approved and declined loan files tabulated on the basis of race, sex, or other prohibited bases to lending patterns among particular groups of applicants
- Individual and aggregated Home Mortgage Disclosure Act data and census tract information
- Consumer complaints and related correspondence
- Previous reports of examination, related workpapers, and correspondence with the FDIC

Institutions and their employees may not recognize that they are engaging in practices that violate the ECOA or the FHA and their implementing regulations. However, it is not a defense to an allegation of discrimination, if the institution did not act out of malicious intent. In other words, if a financial institution refuses to make a purchase money real estate loan to a minority person in a certain neighborhood because the institution truly believes that nonhomogeneity causes property values to decline, a violation is still present. Promises of good faith and reform are not given weight under the law when they occur only after a violation has been cited. Such reform is not regarded as a substitute for appropriate corrective action.

Responsibility for nondiscriminatory credit services cannot be delegated. A financial institution is liable for the acts of third parties, including independent contractors, where the third party can reasonably be said to be operating as the institution's agent or on the institution's behalf in connection with a loan transaction. Therefore, the acts of appraisers, as well as brokers and dealers who prequalify applicants and inquirers may expose the institution to liability. Accordingly, where an institution has regular relationships with brokers or retail dealers who "feed" loans to an individual or entity, an examiner cannot be certain of the institution's compliance (nor can the financial institution be certain for its own protection) without determining whether these third parties are engaged in illegal "pre-screening" and other discriminatory actions.

Discrimination can occur in a variety of different stages of the credit process. During the pre-application stage, the creditor may discourage the applicant before there is a formal application. During the application stage, the creditor could ask the applicant to provide too much personal information.

**TYPES OF
VIOLATIONS
(cont'd)**

**Identifying
Patterns of
Violations or
Unlawful Policies
(cont'd)**

Discrimination occurs at the evaluation stage when the creditor takes into account the applicant's race, color, sex, age, marital status, etc., in determining the applicant's creditworthiness; or exceptions may not be made for marginal applicants because of their race, color, sex, age, or the location of the collateral, etc.

Some examples of discriminatory activity that are illegal under ECOA and the FHA include, but are not limited to:

- Subjecting a female applicant to a different or more extensive credit check than usually required for a male applicant
- Discounting or disregarding the income of a working wife or unmarried woman when a similarly situated man's income would not be discounted
- Varying the terms of credit offered, including the amount, interest rates, terms or types of loans to adversely impact protected group members
- Using different standards to evaluate collateral
- The absence of females or minorities when human models are used to advertise housing opportunities

**Proof of
Discrimination**

A preponderance of evidence that unlawful discrimination likely existed and/or now exists, is the minimum civil standard for proving discrimination. The word preponderance denotes

- Evidence that is of greater weight or more convincing than the evidence offered in opposition
- Proof that leads the examiner to find that the existence of one view is more probable than not

Unless the lender can explain to an examiner bona fide, nondiscriminatory reasons for cited violations, it would be fair to conclude that discrimination is present.

**Detection of
Substantive
Violations**

To identify substantive fair lending violations, there must be a determination of whether the institution's credit standards, articulated and actual, are nondiscriminatory in purpose and effect and whether these standards are consistently applied.

Discrimination analysis relies on the comparative process. Steps in this analysis include determining the articulated and actual credit standards of the institution and comparing these to the fair lending laws and regulations for consistency. The articulated standards can be determined by a review

**TYPES OF
VIOLATIONS
(cont'd)**

**Detection of
Substantive
Violations (cont'd)**

of lending and appraisal policies, memoranda and other documents, including training manuals, and through interviews with employees involved in the loan process. Actual standards are derived from the sampling and comparative loan analysis process and are based on lending practices. The articulated lending standards should agree with actual standards and practices identified during loan analysis. If these standards are not found to be consistently applied to all applicants, examiners should investigate these inconsistencies. In addition, during each compliance examination, the process of granting credit exceptions on a prohibited basis, should be scrutinized.

In reviewing the articulated credit standards for possible violations, the examiner should analyze for:

- Purposeful discrimination

This includes both overt and pretextual types of discrimination, the latter being less obvious, where strict standards exist to reject certain applicants on a prohibited basis, but are selectively applied to other.

- Effects test

This includes “impact” analyses that ultimately requires justification as to business necessity. Proof is comprised of prohibited basis disparate impact. Effects test practices, while not discriminatory in intent, have a disproportionate adverse impact on protected class members (those persons covered by one of the prohibited bases (202.2(z)). A financial institution may be in violation of ECOA or FHA if a particular practice has a disproportionate adverse impact on a protected group, and is not reasonably related to creditworthiness. For example, a requirement that applicants have unreasonably extensive credit histories in order to receive credit may be illegal discrimination because of its disproportionate adverse effect on married women or young adults.

- Unduly subjective credit standards

This includes no credit standards or non-specific credit standards. Such subjectivity can unintentionally lead to the introduction of prohibited factors into the institution’s decision-making process. Historic patterns and customs concerning race and gender discrimination may continue to be practiced until clear and direct policies ensuring nondiscrimination are present.

- Present effects of past practices

This includes an evaluation of credit practices, standards, and procedures to ensure that these are kept current to reflect changing laws, rules and interpretations. An example of this type of discrimination would be for a financial institution that had engaged in discounting a spouse’s income to cease this practice and then effectively continue the practice by another means, such as lowering the debt-to-income ratio to get a similar result.

**TYPES OF
VIOLATIONS
(cont'd)**

**Detection of
Substantive
Violations (cont'd)**

Policies and procedures must be reviewed regarding any effects test implications, such as, where policies and practices may appear neutral on their face, but have the net effect of a disparate impact on a protected group. If an adverse effect is shown, it is the responsibility of the institution to prove that the particular policy or practice is justified by “business necessity”.

Some policies or practices that may raise “effects test” questions include, but are not limited to the following:

- A requirement that the property securing a mortgage loan must not exceed a particular age
- Appraisal practices that establish unrealistically low values for older properties
- Restricting mortgage lending to loans for certain types of properties, such as single family homes, properties having no more than two floors, those with large lots, garages, or with large square footage requirements
- A policy of not making business loans on properties in certain locations or appraisal practices that arbitrarily discount the value of a property because of its location
- A policy of extending credit only to applicants under a certain age group
- Establishing highly restrictive downpayment or income requirements
- Setting high minimum mortgage loan amounts that effectively exclude low-income borrowers, or low maximum loan amounts that limit the financial institution’s participation in the mortgage market
- Arbitrarily discounting participation in FHA or VA mortgage loan programs

Nonspecific and subjective lending criteria also may raise effects test questions. Examples of subjective lending criteria that may lead to possible unlawful discrimination include:

- The property should be in a “stable” or “rising” area, should be “well-maintained” and have an “attractive appearance” or “good curb appeal”
- The neighborhood should be “desirable”; there should be “homogeneity of residents and structures”; or the neighborhood should reflect “satisfactory pride of ownership”
- Applicants must not be of “questionable” character; must have an “excellent” credit rating; or must have “adequate” longevity on the job

Such subjective criteria may allow lending personnel to arrive at different interpretations. Such criteria may have the effect of discouraging creditworthy applicants.

**ECOA/FHA POLICY
STATEMENT**

The FDIC, with the other federal financial institution regulators, has adopted the “Equal Credit Opportunity and Fair Housing Acts Enforcement Policy Statement.” The objective of this statement is to ensure that the rights of credit applicants are further protected by requiring creditors to take corrective action for certain more serious violations. Whenever such violations are discovered, the FDIC will require the institution to take sufficient corrective action to ensure that the effects of the violations are remedied and the violations will not recur in the future.

Fair Lending violations in the following areas are especially serious and will usually be subject to retrospective and current correction:

- Discouraging applicants on a prohibited basis
- Using credit criteria in a discriminatory manner to evaluate applications
- Imposing different terms on a prohibited basis
- Requiring cosigners, guarantors, or the like on a prohibited basis
- Failing to furnish separate credit histories as required
- Failing to provide an adequate notice of adverse action

**REFERRALS TO
DOJ OR
NOTIFICATION TO
HUD OF
VIOLATIONS OF
ANTI-
DISCRIMINATION
PROVISIONS OF
ECOA/FHA**

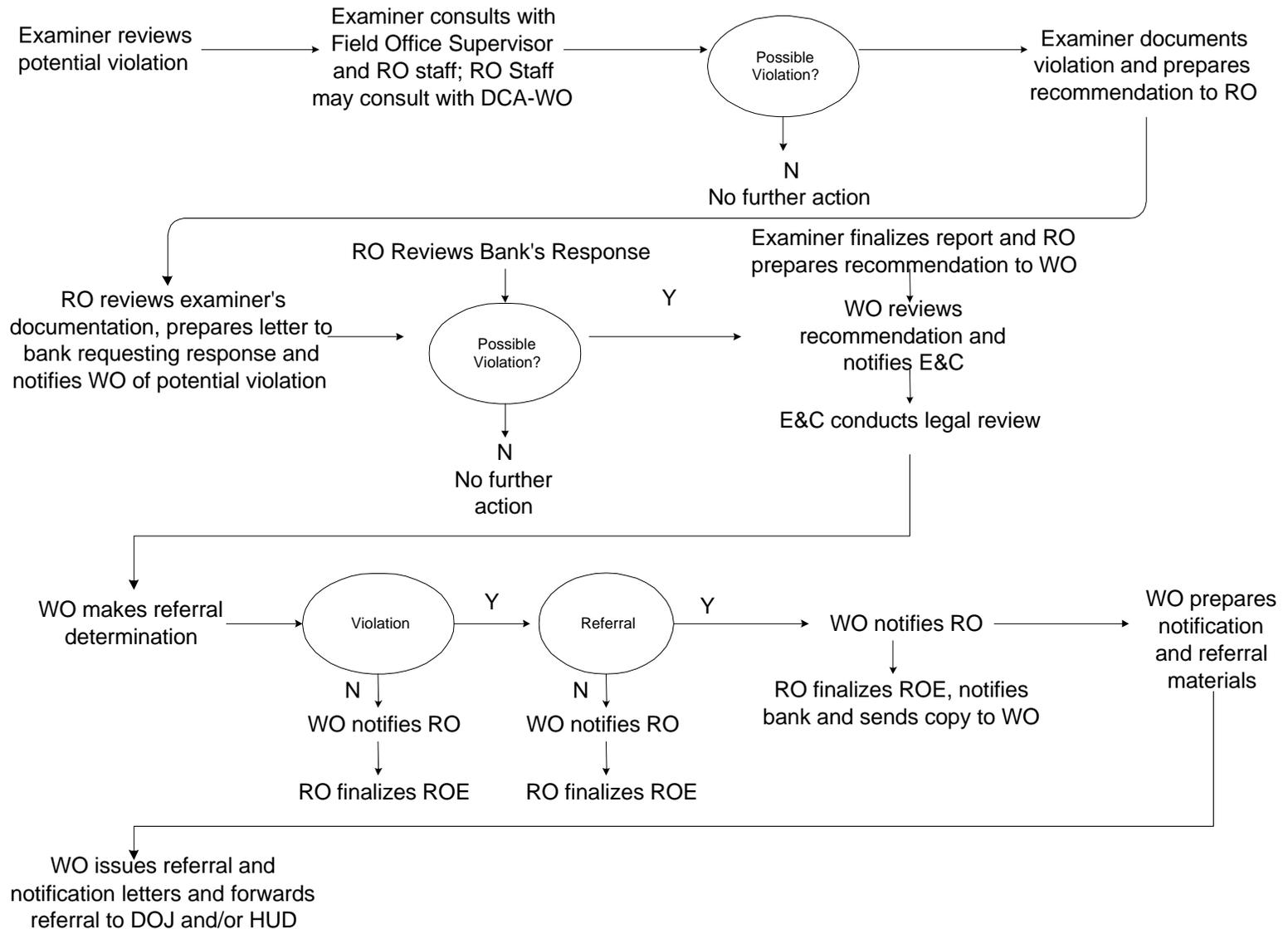
Section 223 of the FDIC Improvement Act of 1991 (FDICIA) amended the ECOA to require that the federal financial institution regulatory agencies refer matters to the Attorney General “whenever the agency has reason to believe that one or more creditors has engaged in a pattern or practice of discouraging or denying applications for credit” in violation of the ECOA’s general rule prohibiting discrimination. FDICIA also amended the ECOA to require that whenever one of the federal financial institution regulatory agencies “has reason to believe, as a result of receiving a consumer complaint, conducting a consumer compliance examination, or otherwise, that a violation” of ECOA has occurred; “has reason to believe that the alleged violation would be a violation of the Fair Housing Act; and does not refer the matter to the Attorney General”, the agency shall notify HUD of the violation. The FDIC shall notify the applicant that HUD has been notified of the alleged violation and that remedies for the violation may be available under the FHA.

In other words, all pattern and practice violations of the anti-discrimination provisions of ECOA must be referred to the Attorney General (Department of Justice). Further, all pattern and practice violations of the anti-discrimination provisions of the FHA, as well as isolated violations of these provisions, that are also violations of the anti-discrimination provisions of ECOA must be referred to either the Attorney General or HUD.

**REFERRALS TO
DOJ OR
NOTIFICATION TO
HUD OF
VIOLATIONS OF
ANTI-
DISCRIMINATION
PROVISIONS OF
ECOA/FHA
(cont'd)**

Procedures for referring violations of anti-discrimination provisions of ECOA and FHA are described in the memorandum "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. The flow chart on the following page provides a visual summary of these procedures.

FAIR LENDING ENFORCEMENT TREE/FLOW CHART



CONCLUSIONS

Examination Conclusions	
1.	<p>Review the results of the fair lending examination and summarize your conclusions about the institution’s policies, procedures, and practices regarding fair lending compliance, focusing on:</p> <ul style="list-style-type: none"> • Material policy deficiencies • Material internal control weaknesses • Violations of laws, rulings, and regulations
2.	<p>The examiner should document the factors used to select the sample(s), such as, the control group, the prohibited basis group, and the number of files reviewed.</p>
3.	<p>The examiner should include a comment on Page A of the Report of Examination (ROE) discussing the Fair Lending sampling procedures performed during the examination.</p> <p>The comment should include:</p> <ul style="list-style-type: none"> • The examiner’s hypothesis • The identity of target and control groups • The number of loan files reviewed • The conclusion based on the procedures performed <p><i>Refer to the Bank of Anytown Report section of this manual for an example.</i></p>
4.	<p>The examiner should prepare a memorandum for future compliance examinations and investigations detailing any information that might aid in understanding any significant or on-going problems found in the area of unlawful discriminatory treatment or impacts.</p> <ul style="list-style-type: none"> • The memorandum should be sent with the examination report to the Regional office for inclusion in the institution file • Relevant comments should also be included on Page A of the Report of examination (ROE)
5.	<p>Where problems are found, determine if areas of noncompliance are subject to the Policy Statement for the Enforcement of the Equal Credit Opportunity Act and/or the Fair Housing Acts.</p> <p>The following six elements should be known for each violation:</p> <ul style="list-style-type: none"> • Description (summary of regulatory section and the six digit violation code) • Discovery (violation found by examiner or institution)

**CONCLUSIONS
(cont'd)**

- Frequency
- Primary Cause
- Intensity
- Disposition

Refer to the Instructions for Compliance ROE, Part VII, Section C, for details.

6. Substantive Fair Lending issues should be reviewed with the Regional office prior to discussions with the institution's management as supervisory action may be warranted.

Refer to the "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" Memorandum to Regional Directors, transmittal # DCA-003, dated 1/23/97.

7. Following the review with the Regional Office, the institution's management should be advised of all violations of law, rulings, regulations or significant internal control deficiencies, emphasizing their causes.

Discussions with management should also include recommended corrective action for deficiencies cited and obtaining management's commitment to specifications for correcting deficiencies.

**WORKPAPER
STANDARDS**

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

Compliance Management Analysis Checklist

This checklist is for use in conjunction with Part II of these procedures as a device for evaluating the quality of preventive and corrective measures, identifying worthwhile innovations and offering suggestions for improvement. The checklist is not, however, intended to be an absolute test of a lender's compliance management program. Lender programs containing all or most of the features described in the list may nonetheless be flawed for other reasons; conversely, a compliance program which encompasses only a portion of the factors listed below may nonetheless adequately support a strong program under appropriate circumstances. In short, the examiner must exercise his or her best judgment in utilizing this list and in assessing the overall quality of a lender's efforts to ensure fair lending compliance.

If the transactions within the proposed scope are covered by a listed self-compliance measure, check the box in the left column. Reduce the intensity (mainly the sample size) of the planned comparative file review to the degree that the self-compliance measures cover transactions within the proposed scope. Document your findings in sufficient detail to justify any resulting reduction in the intensity of the examination.

You are not required to learn whether self-compliance measures apply to specific products outside the proposed scope. However, if the information you have obtained shows that the self-compliance measure is a general practice of the lender, check the box in the second column in order to assist future examination planning.

A. Preventive Measures

Determine whether policies and procedures exist that tend to prevent illegal disparate treatment in the transactions you plan to examine. There is no legal or agency requirement for institutions to conduct these activities. The absence of any of these policies and practices is never, by itself, a violation.

1. Lending practices and standards:

--Within the proposed scope.

--Lender-wide

a. Principal policy issues

YES **NO**

- | | | |
|---|---|---|
| . | . | Are underwriting practices clear and similar to industry standards? |
| . | . | Is pricing within reasonably confined ranges with guidance linking variations to risk and/or cost factors? |
| . | . | Does management monitor the nature and frequency of exceptions to its standards? |
| . | . | Are denial reasons accurately and promptly communicated to unsuccessful applicants? |

***NOTE:** The items above are not compliance measures, but they are fundamental features of lending that tend to work against disparate treatment.*

b. Do training, application-processing aids, and other guidance correctly and adequately describe:

- | | | |
|---|---|--|
| . | . | Prohibited bases under ECOA, Regulation B, and the Fair Housing Act? |
| . | . | Other substantive credit access requirements of Regulation B (e.g., spousal signatures, improper inquiries, protected income |

c. Is it specifically **communicated to employees** that they must not, on a **prohibited basis**:

- . . . Refuse to deal with individuals inquiring about credit?
- . . . Discourage inquiries or applicants by delays, discourtesy, or other means?
- . . . Provide different, incomplete, or misleading information about the availability of loans, application requirements, and processing and approval standards or procedures (including selectively informing applicants about certain loan products while failing to inform them of alternatives)?
- . . . Encourage or more vigorously assist only certain inquirers or applicants?
- . . . Refer credit seekers to other lenders?
- . . . Waive or grant exceptions to application procedures or credit standards?
- . . . State a willingness to negotiate?
- . . . Use different procedures or standards to evaluate applications?
- . . . Use different procedures to obtain and evaluate appraisals?
- . . . Provide certain applicants opportunities to correct or explain adverse or inadequate information, or to provide additional information?
- . . . Accept alternative proofs or creditworthiness?
- . . . Require co-signers?
- . . . Offer or authorize loan modifications?
- . . . Suggest or permit loan assumptions?
- . . . Impose late charges, reinstatement fees, etc.?
- . . . Initiate collection or foreclosure?

d. Has the institution taken specific initiatives to **prevent forms of unintentional discrimination**, including:

- . . . Basing credit decisions on assumptions derived from racial, gender, and other stereotypes, rather than facts?
- . . . Seeking customers from a particular racial, ethnic, or religious group, or of a particular gender, to the exclusion of other types of customers, on the basis of how “comfortable” the employee may feel in dealing with those different from him/her?
- . . . Because of their discomfort or unease in dealing with customers from certain racial, ethnic, or religious groups, or of a certain gender, limiting the exchange of credit-related information or their effort to qualify the applicant?
- . . . Is the institution’s CRA assessment area drawn without unreasonably excluding minority areas?

e. Does the institution have procedures to ensure that it does not:

- . . . State racial or ethnic limitations in advertisements?
- . . . Employ code words in advertisements that convey racial or ethnic limitations?
- . . . Place advertisement that a reasonable person would regard as indicating minority customers are less desirable?

- Advertise only in media serving non-minority areas of the market?
- Conduct other forms of marketing only in non-minority areas of the market?
- Market only through brokers known to serve only one racial or ethnic group in the market?
- Use a prohibited basis in any pre-screened solicitation?

2. Compliance Audit Function: Does the Bank Attempt to Detect Prohibited Disparate Treatment by Self-Evaluation?

***NOTE:** The following items are intended to obtain information about the bank's approach for self-evaluation. Evaluating the results of self-evaluations is described in **Streamlining the Examination** in the **Appendix**.*

Mark the box if the answer is "yes" for the transactions within the scope.

a. Are the transactions reviewed by an independent analyst who:

- Is directed to report objective results?
- Has an adequate level of expertise?
- Produces written conclusions?

b. Does the bank's approach for self-evaluation call for:

- Attempting to explain major patterns shown in the HMDA data?
- Determining whether actual practices and standards differ from stated ones and basing the evaluation on the actual practices?
- Evaluating whether the reasons cited for denial are supported by facts relied on by the decision maker at the time of the decision?
- Comparing the treatment of prohibited basis group applicants to control group applicants?
- Obtaining explanations from decision makers for any unfavorable treatment of the prohibited basis group that departed from policy or customary practice?
- Covering significant decision points in the loan process where disparate treatment might occur, including:
 - The approve/deny decision?
 - Pricing?
 - Other terms and conditions?
- Covering at least as many transactions as examiners would independently, if using the "Fair Lending Sample Size Guide" for a product with the application volumes of the product to be evaluated?

c. In the bank's plan for comparing the treatment of prohibited basis group applicants with that of control group applicants:

- . . Are control and prohibited basis groups based on a prohibited basis found in ECOA or the FH Act and defined clearly to isolate that prohibited basis for analysis?
- . . Are appropriate data to be obtained to document treatment of applicants and the relative qualifications vis-a-vis the requirement in question?
- . . Are the data to be obtained the data on which decisions were based, not later or irrelevant information?
- . . Does the plan call for comparing the denied applicants' qualifications related to the stated reason for denial with the corresponding qualifications for approved applicants?
- . . Are comparisons designed to identify instances in which prohibited basis group applicants were treated less favorably than control group applicants who were no better qualified?
- . . Is the evaluation designed to determine whether control and prohibited basis group applicants were treated differently in the processes by which the bank helped applicants overcome obstacles and by which their qualifications were enhanced?
- . . Are responses and explanations to be obtained for any apparent disparate treatment on a prohibited basis or other apparent violations of credit rights?
- . . Are reasons cited by credit decision makers to justify or explain instances of apparent disparate treatment to be verified?

3. Correcting Discriminatory Conduct

a. Determine whether the lender has provisions to **take appropriate corrective action** and **provide adequate relief** to victims for any violations in the transactions you plan to review.

- Who is to receive the self-evaluation results?
- What decision process is supposed to follow delivery of the information?
- Is feedback to be given to staff whose actions are reviewed?
- What types of corrective action may occur?
- Are customers to be:

- . . Offered credit if they were improperly denied?
- . . Compensated for any damages, both out of pocket and compensatory?
- . . Notified of their legal rights?

b. Other corrective action:

- . . Are institutional policies or procedures that may have contributed to the discrimination to be corrected?
- . . Are employees involved, to be trained and/or disciplined?
- . . Is 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 to be considered?
- . . Are audit and oversight systems to be improved in order to ensure there is not recurrence of any identified discrimination?

Credit Scoring Analysis

These procedures are intended to assist an examiner in arriving at supportable conclusions with respect to an institution's record of non-discrimination when the Focal Point involves a product for which the institution uses automated underwriting or when credit scoring risk factors make such a product the Focal Point

A. Structure and Organization of the Scoring System

Determine the utilization of credit scoring at the institution including:

1. For each customized credit scoring model or scorecard for any product, or for any credit scoring model used in connection with a product held in portfolio, identify:
 - a. The number and inter-relationship of each model or card applied to a particular product,
 - b. The purposes for which each card is employed (e.g., approval decision, set credit limits, set pricing, determine processing requirements, etc.)
 - c. The developer of each card used (e.g., in-house department, affiliate, independent vendor name) and describe the development population utilized;
 - d. The types of monitoring reports generated (including front-end, back-end, account management and any disparate impact analyses), the frequency of generation and recent copies of each;
 - e. All policies applicable to the use of credit scoring;
 - f. Training materials and programs on credit scoring for employees, agents and brokers involved in any aspect of retail lending;
 - g. Any action taken to revalidate or re-calibrate any model or scorecard used during the exam period and the reason(s) why;
 - h. The number of all high-side and low-side overrides for each type of override occurring during the exam period and any guidance given to employees on their ability to override;
 - i. All cutoffs used for each scorecard throughout the examination period and the reasons for any change made during the exam period;
 - j. All variables scored by each product's scorecard(s) and the values that each variable may take; and
 - k. The method used to select for disclosure those adverse action reasons arising from application of the model or scorecard.

2. For each judgmental underwriting system that includes as an underwriting criteria a standard credit bureau or secondary market credit score identify:
 - a. The vendor of each credit score and any vendor recommendation or guidance on the usage of the score relied upon by the institution.
 - b. The institution's basis for using the particular bureau or secondary market score and the cutoff standards for each product's underwriting system and the reasons for any changes to the same during the exam period;
 - c. The number of exceptions or overrides made to the credit score component of the underwriting criteria and the basis for those exceptions or overrides, including any guidance given to employees on their ability to depart from credit score underwriting standards, and;
 - d. Types of monitoring reports generated on the judgmental system or its credit scoring component (including front-end, back-end, differential processing and **disparate impact analysis**), the frequency of generation and recent copies of each.

B. Adverse Action Disclosure Notices

Determine the methodology used to select the reasons why adverse action was taken on a credit application denied on the basis of the applicant's credit score. Compare the methodology used to the examples recited in the Commentary to Regulation B and decide acceptability against that standard. Identify any consumer requests for reconsideration of credit score denial reasons and review the action taken by management for consistency across applicant groups.

Where a credit score is used to differentiate application processing, and an applicant is denied for failure to attain a judgmental underwriting standard that would not be applied if the applicant had received a better credit score (thereby being considered in a different-presumably less stringent--application processing group), ensure that the adverse action notice also discloses the bases on which the applicant failed to attain the credit score required for consideration in the less stringent processing group.

C. Disparate Treatment in the Application of Credit Scoring Programs

1. Determine what controls and policies management has implemented to ensure that the institution's credit scoring models or credit score criteria are not applied in a discriminatory manner; in particular:
 - a. Examine institution guidance on using the credit scoring system, on handling overrides and on processing applicants and how well that guidance is understood and observed by the targeted employees and monitored for compliance by management
 - b. Examine institution policies that permit overrides or that provide for different processing or underwriting requirements based on **geographic identifiers** or **borrower score ranges** to assure that they do not treat protected group applicants differently than other similarly situated applicants.
2. Evaluate whether any of the bases for granting credit to control group applicants who are low-side overrides are applicable to any prohibited basis denials whose credit score was equal to or greater than the lowest score among the low-side overrides. If such cases are identified, obtain and evaluate management's reason for why such different treatment is not a fair lending violation.
3. Evaluate whether any of the bases for denying credit to any prohibited basis applicants who are high side overrides are applicable to any control group approvals whose credit score was equal to or less than the highest score among the prohibited basis high-side overrides. If such cases are identified, obtain and evaluate management's reason for why such different treatment is not a fair lending violation.
4. If credit scores are used to segment applicants into groups that receive different processing, or are required to meet additional underwriting requirements (e.g., "tiered risk underwriting"); perform a comparative file review, or confirm the results and adequacy of management's comparative file review, that evaluates whether all applicants within each group are treated equally.

D. Credit Scoring Systems that Include Age

Regulation B imposes certain requirements on credit scoring systems that include age as a variable in the determination of creditworthiness. This examination section applies only to credit scoring systems that consider age.

Age is considered in a credit scoring system either (a) when it is explicitly included as a variable in the items scored by the system, or (b) when the population is segmented into more than two groups that are separated by the age of the members and each group is then separately scored.

1. Age as an Explicit Variable.

- a. When age is an explicit variable, the examiner must first determine whether 202.6(b)(2)(ii) is met by the system. A credit scoring system meets this regulatory requirement when it assigns applicants age 62 or older the same or higher number of points for their age as are assigned to the most favored age (or age group) among all other applicants less than 62 years old. If the system fails this requirement, then, even if it is empirically derived and statistically sound, it still violates Regulation B. For purposes of assessing the degree of damage caused by the violation, the examiner should obtain a count of the number of applicants age 62 or older who, but for the difference in the score received for age as compared to the age (or age group) most favored by the system, (i) would have received credit, (ii) received credit on terms other than those for which they applied, or (iii) received credit on terms less favorable than which they would otherwise have qualified.
- b. If the system examined assigns applicants age 62 or older a value for “age” that is equal to or greater than the value assigned to any other age or age group and the values assigned to the variable “age” for all applicants under age 62 is the same, then the system is permissible without further analysis. This conclusion results from the fact that even if the system was not empirically derived and demonstrably and statistically sound, age is only being used to favor the elderly and accordingly is permissible under 202.6(b)(2)(iv). Therefore, it is immaterial to the examiner whether the system is an empirically derived, demonstrably and statistically sound credit scoring system or is a judgmental system.
- c. If the system assigns applicants age 62 or older a value for “age” that is equal to or greater than the value assigned to any age or age group less than 62, but among applicants less than 62 the values for “age” are not equal, then the system must be empirically derived, demonstrably and statistically sound. To examine for these properties, the examiner should consult the agency’s most recent guidance on that issue.

2. Age-split Scorecards

The commentary to Regulation B declares that a creditor may segment the population of applicants into scorecards based on the age of an applicant. When a system uses a card covering a wide age range that encompasses elderly applicants, the credit scoring system does not score age. But if a system segments the population by age into multiple scorecards, and includes elderly applicants in a narrower age range, the credit scoring system does score age. For those systems falling into the first category of being deemed as not scoring age, there is no obligation to conduct a review for empirical derivation and statistical soundness.

If age-split scorecards are deemed to score age, they must be empirically derived, demonstrably and statistically sound, and must treat persons 62 or older at least as favorably as any other age group.

E. Examination for Empirical Derivation and Statistical Soundness

Regulation B requires credit scoring systems that use age to be empirically derived, and demonstrably and statistically sound. This means that they must fulfill the requirements of 202.2(p)(1)(i) - (iv). Obtain documentation provided by the developer of the system and consult the agency's most recent guidance for making that determination.

Evaluating Responses to Evidence of Disparate Treatment

A. Responses to Comparative Evidence of Disparate Treatment

The following are responses that a lender may offer -- separately or in combination -- to attempt to explain that the appearance of illegal disparate treatment is misleading, and that no violation has in fact occurred. The responses, if true, rebut the appearance of disparate treatment. The examiners must evaluate the validity and credibility of the responses.

1. The lender's personnel were unaware of the prohibited basis identity of the applicant(s).

If the lender claims to have been unaware of the prohibited basis identity (race, etc.) of an applicant or neighborhood, ask it to show that the application in question was processed in such a way that the institution's staff who made the decisions could not have learned the prohibited basis identity of the applicant.

If the product is one for which the institution maintains prohibited basis monitoring information, assume that all employees could have taken those facts into account. Assume the same when there was face-to-face contact between any employee and the customer.

If there are other facts about the application from which an ordinary person would have recognized the applicant's prohibited basis identity (for example, the surname is an easily recognizable Hispanic one), assume that the institution's staff drew the same conclusions. If the racial character of a community is in question, ask the institution to provide persuasive evidence why its staff would **not** know the racial character of any community in its service area.

2. The difference in treatment was justified by differences in the applicants (applicants not "similarly situated").

Ask the lender to account for the difference in treatment by pointing out a specific difference between the applicants' qualifications, or some factor not captured in the application but that legitimately makes one applicant more or less attractive to the lender, or some non-prohibited factor related to the processing of their applications. The difference identified by the lender must be one that is important enough to justify the difference in treatment in question, not a meaningless difference.

The factors commonly cited to show that applicants are not similarly situated fall into two groups: those that can be evaluated by how consistently they are handled in other transactions, and those that cannot be evaluated in that way.

a. Verifying "not similarly situated" explanations by consistency

The appearance of disparate treatment remains if a factor cited by the lender to justify favorable treatment for a control group applicant also exists for an otherwise similar prohibited basis applicant who was treated unfavorably. Similarly, the appearance of disparate treatment remains if a factor cited by the lender to justify unfavorable treatment for a prohibited basis applicant also exists for a control group applicants that got favorable treatment. If this is not so, ask the lender to document that the factor cited in its explanation was

used consistently for control group and prohibited basis applicants.

Among the responses that should be evaluated this way are:

- **Customer relationship.** Ask the lender to document that a customer relationship was also sometimes considered to the benefit of prohibited basis applicants and/or that its absence worked against control group customers.
- **“Loan not saleable or insurable.”** If file review is still in progress, be alert for loans approved despite the claimed fatal problem. At a minimum, ask the lender to be able to produce the text of the secondary market or insurer’s requirement in question.
- **Difference in standards or procedures between branches or underwriters.** Ask the lender to provide transactions documenting that each of the two branches or underwriters applied its standards or procedures consistently to both prohibited basis and control group applications it processed, and that each served similar proportions of the prohibited basis group.
- **Difference in applying the same standard (difference in “strictness”) between underwriter, branches, etc.** Ask the lender to provide transactions documenting that the stricter employee, branch, etc., was strict for both prohibited basis and control group applicants and that the other was lenient for both, and that each served similar proportions of the prohibited basis group. The best evidence of this would be prohibited basis applicants who received favorable treatment from the lenient branch and control group applicants who received less favorable treatment from the “strict” branch.
- **Standards or procedures changed during period reviewed.** Ask the lender to provide transactions documenting that during each period the standards were applied consistently to both prohibited basis and control group applicants.
- **Employee misunderstood standard or procedure.** Ask the lender to provide transactions documenting that the misunderstanding influenced both prohibited basis and control group applications. If that is not available, find no violation if the misunderstanding is a reasonable mistake.

b. Evaluating “not similarly situated” explanations by other means.

If consistency cannot be evaluated, *consider* an explanation *favorably* even without examples of its consistent use if:

- the factor is documented to exist in (or be absent from) the transactions, as claimed by the institution;
- the factor is one a prudent lender would consider;
- file review found no evidence that the factor is applied selectively on a prohibited basis (in other words, the lender’s explanation is “not inconsistent with available information”); and
- the lender’s description of the transaction is generally consistent and reasonable.

Some factors that may be impossible to compare for consistency are:

- **Unusual underwriting standard.** Ask the lender to show that the standard is prudent. If the standard is prudent and not inconsistent with other information, accept this explanation even though there is no documentation that it is used consistently.
- **“Close calls.”** The lender may claim that underwriters’ opposite decisions on similar applicants reflects legitimate discretion that the examiners should not second-guess. That is not an acceptable explanation for identical applicants with different results, but is acceptable when the applicants have differing strengths and weaknesses that different underwriters might reasonably weigh differently. However, do not accept the explanation if other files reveal that these “strengths” or “weaknesses” are counted or ignored selectively on a prohibited basis.
- **“Character loan.”** Expect the lender to identify a specific history or specific facts that make the applicant treated favorably a better risk than those treated less favorably.
- **“Accommodation loan.”** There are many legitimate reasons that may make a transaction appealing to a lender apart from the familiar qualifications demanded by the secondary market and insurers. For example, a customer may be related to or referred by an important customer, be a political or entertainment figure that would bring prestige to the institution, be an employee of an important business customer, etc. It is not illegal discrimination to make a loan to an otherwise unqualified control group applicant who has such attributes while denying a loan to an otherwise similar prohibited basis applicant without them. However, be skeptical when the lender cites reasons for “accommodations” that an ordinary prudent lender would not value.
- **“Gut feeling.”** Be skeptical when lenders justify an approval or denial by a general perception or reaction to the customer. Such a perception or reaction may be linked to a racial or other stereotype that legally must not influence credit decisions. Ask whether any specific event or fact generated the reaction. Often, the lender can cite something **specific** that made him or her confident or uncomfortable about the customer. There is no discrimination if it is credible that the lender indeed considered such a factor and did not apply it selectively on a prohibited basis.

c. Follow up customer contacts

If the lender’s explanation of the handling of a particular transaction is based on customer traits, actions, or desires not evident from the file, consider obtaining agency authorization to contact the customer to verify the lender’s description. Such contacts need not be limited to possible victims of discrimination, but can include control group applicants or other witnesses.

3. The different results stemmed from an inadvertent error.

If the lender claims an **identified error** such as miscalculation or misunderstanding caused the favorable or unfavorable result in question, evaluate whether the facts support the assertion that such an event occurred.

If the lender claims an **“unidentified error”** caused the favorable or unfavorable result in question, expect the lender to provide evidence that discrimination is inconsistent with its demonstrated conduct, and therefore that discrimination is the less logical interpretation of the situation. Consider the context (as described below).

4. The apparent disparate treatment on a prohibited basis is a misleading portion of a larger pattern of random inconsistencies.

Ask the institution to provide evidence that the unfavorable treatment is not limited to the prohibited basis group and that the favorable treatment is not limited to the control group. Without such examples, do not accept a lender's unsupported claim that otherwise inexplicable differences in treatment are distributed randomly.

If the lender can document that similarly situated prohibited basis applicants received the favorable treatment in question approximately as frequently and in comparable degree as the control group applicants, conclude there is no violation.

***NOTE:** Transactions are relevant to “random inconsistency” only if they are “similarly situated” to those apparently treated unequally.*

5. Loan terms and conditions.

The same analyses described in the preceding sections with regard to decisions to approve or deny loans also apply to pricing differences. Risks and costs are legitimate considerations in setting prices and other terms and conditions of loan products. However, generalized reference by the lender to “cost factors” is insufficient to explain pricing differences.

If the lender claims that specific borrowers received different terms or conditions because of **cost or risk considerations**, ask the lender to be able to identify specific risk or cost differences between them.

If the lender claims that specific borrowers received different terms or conditions because they were **not similarly situated as negotiators**, consider whether application records might provide relevant evidence. If the records are not helpful, consider seeking authorization to contact customers to learn whether the lender in fact behaved comparably toward prohibited basis and control group customers. The contacts would be to learn such information as the lender's opening quote of terms to the customer and the progress of the negotiations.

If the institution responds that an average price difference between the control and prohibited basis groups is based on cost or risk factors, ask it to identify specific risk or cost differences between individual control group applicants with the lowest rates and prohibited basis group applicants with the highest that are significant enough to justify the pricing differences between them. If the distinguishing factors cited by the institution are legitimate and verifiable as described in the sections above, remove those applications from the average price calculation. If the average prices for the remaining control group and prohibited basis group members still differ more than minimally, consult within the agency about obtaining an analysis of whether the difference is statistically significant. Find a violation only if (1) there is evidence of disparate treatment of similarly situated borrowers or (2) there is a particular risk factor that meets all the criteria for a disproportionate adverse impact violation.

B. Responses to Overt Evidence of Disparate Treatment

1. Descriptive references vs. lending considerations

A reference to race, gender, etc., does not constitute a violation if it is merely descriptive—for example, “the applicant was young.” In contrast, when the reference reveals that the prohibited factor influenced the lender's decisions and/or customer behavior, treat the situation as an apparent violation to which the lender must respond.

2. Personal opinions vs. lending considerations

If an employee involved with credit availability states unfavorable views regarding a racial group, gender, etc., but does not explicitly relate those views to credit decisions, review that employee's credit decisions for possible disparate treatment of the prohibited basis group described unfavorably. If there are no instances of apparent disparate treatment, treat the employee's views as permissible private opinions. Inform the lender that such views create a risk of future violations.

3. Stereotypes related to credit decisions

There is an apparent violation when a prohibited factor influences a credit decision through a stereotype related to creditworthiness, even if the action based on the stereotype seems well-intended -- for example, a loan denial because "a single woman could not maintain a large house." If the stereotyped beliefs are offered as "explanations" for unfavorable treatment, regard such unfavorable treatment as apparent illegal disparate treatment. If the stereotype is only a general observation unrelated to particular transactions, review that employee's credit decisions for possible disparate treatment of the prohibited basis group in question. Inform the lender that such views create a risk of future violations.

4. Indirect reference to a prohibited factor

If negative views related to creditworthiness are described in non-prohibited terms, consider whether the terms would commonly be understood as surrogates for prohibited terms. If so, treat the situation as if explicit prohibited basis terms were used. For example, a lender's statement that "It's too risky to lend north of 110th Street" might be reasonably interpreted as a refusal to lend because of race if that portion of the lender's lending area north of 110th Street were predominantly black and the area south white.

5. Lawful use of a prohibited factor

a. Special Purpose Credit Program (SPCP)

If a lender claims that its use of a prohibited factor is lawful because it is operating an SPCP, ask the lender to document that its program conforms to the requirements of Regulation B. An SPCP must be defined in a written plan that existed before the lender made any decisions on loan applications under the program. The written plan must:

- demonstrate that the program will benefit persons who would otherwise be denied credit or receive credit on less favorable terms; and
- state the time period the program will be in effect or when it will be re-evaluated.

No provision of an SPCP should deprive people who are not part of the target group of rights or opportunities they otherwise would have. Qualified programs operating on an otherwise-prohibited basis will not be cited as a violation.

***NOTE:** Advise the lender that an agency finding that a program is a lawful SPCP is not absolute security against legal challenge by private parties. Suggest that an institution concerned about legal challenge from other quarters use exclusions or limitations that are not prohibited by ECOA or the FH Act, such as "first-time home buyer."*

b. Second review program

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 *prohibited basis groups* by comparing their applications to the approved applications of similarly qualified individuals who are *in the control group* to determine if the applications were evaluated consistently.

Ask the lender to demonstrate that the program is a safety net that merely attempts to prevent discrimination, and does not involve underwriting terms or practices that are preferential on a prohibited basis.

Statements indicating that the mission of the program is to apply different standards or efforts on behalf of a particular racial or other group constitute overt evidence of disparate treatment. Similarly, there is an apparent violation if comparative analysis of applicants who are processed through the second review and those who are not discloses dual standards related to the prohibited basis.

c. Affirmative marketing/advertising program:

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.

Fair Lending Sample Size Tables

Table A
Underwriting (Accept/Deny) Comparisons

	Sample 1 Prohibited Basis Denials				Sample 2 Control Group Approvals		
Number of Denials or Approvals	5 - 50	51 - 150	> 150		20 - 50	51 - 250	> 250
Minimum to review:	All	51	75		20	51	100
Maximum to review:	50	100	150		5x prohibited basis sample (up to 50)	5x prohibited basis sample (up to 125)	5x prohibited basis sample (up to 300)

Table B
Terms and Conditions Comparisons

	Sample 1 Prohibited Basis Denials				Sample 2 Control Group Approvals		
Number of Approvals	5-25	26 - 100	> 100		20 - 50	51 - 250	> 250
Minimum to review:	All	26	50		20	40	60
Maximum to review:	25	50	75		5x prohibited basis sample (up to 50)	5x prohibited basis sample (up to 75)	5x prohibited basis sample (up to 100)

See Explanatory Notes on following page.

Explanatory Notes to Sample Size Tables

1. When performing both underwriting and terms and conditions comparisons, use the same control group approval sample for both tasks.
2. If there are fewer than 5 prohibited basis denials or 20 control group approvals, refer to “Sample Size” instructions in the procedures.
3. “Minimum” and “maximum” sample sizes: select a sample size between the minimum and maximum based on the outcome of the Compliance Management Review conducted in Part II of these procedures. Once the sample size has been determined, select individual transactions judgmentally. Refer to procedures.
4. If two prohibited basis groups (e.g., black and Hispanic) are being compared against one control group, select a control group that is 5 times greater than the larger prohibited basis group sample, up to the maximum.
5. Where the institution’s discrimination risk profile identifies significant discrepancies in withdrawal/incomplete activity between control and prohibited basis groups, or where the number of marginal prohibited basis group files available for sampling is small, an examiner may consider supplementing samples by applying the following rules:
 - If prohibited basis group withdrawals/incompletes occur after the applicant has received an offer of credit that includes pricing terms, this is a reporting error under Regulation C (the lender should have reported the application as approved but not accepted) and therefore these applications should be included as prohibited basis group approvals in a terms and conditions comparative file analysis.
 - If prohibited basis group incompletes occur due to lack of an applicant response with respect to an item that would give rise to a denial reason, then include them as denials for that reason when conducting an underwriting comparative file analysis.

Marginal Transactions

A. Marginal Denials

Denied applications with any or all the following characteristics are “marginal.” Such denials are compared to marginal approved applications. Marginal applications include those that:

- Were close to satisfying the requirement that the adverse action notice said was the reason for denial;
- Were denied by the lender’s rigid interpretation of inconsequential processing requirements;
- Were denied quickly for a reason that normally would take a longer time for an underwriter to evaluate;
- Involved an unfavorable subjective evaluation of facts that another person might reasonably have interpreted more favorably (for example, whether late payments actually showed a “pattern,” or whether an explanation for a break in employment was “credible”);
- Resulted from the lender’s failure to take reasonable steps to obtain necessary information.
- Received unfavorable treatment as the result of a departure from customary practices or stated policies. For example, if it is the lender’s stated policy to request an explanation of derogatory credit information, a failure to do so for a prohibited basis applicant would be a departure from customary practices or stated policies even if the derogatory information seems to be egregious;
- Were similar to an approved control group applicant who received unusual consideration or service, but were not provided such consideration or service;
- Received unfavorable treatment (for example, were denied or given various conditions or more processing obstacles) but appeared fully to meet the lender’s stated requirements for favorable treatment (for example, approval on the terms sought);
- Received unfavorable treatment related to a policy or practice that was vague, and/or the file lacked documentation on the applicant’s qualifications related to the reason for denial or other factor.
- Met common secondary market or industry standards even though failing to meet the lender’s more rigid standards;
- Had a strength that a prudent lender might believe outweighed the weaknesses cited as the basis for denial;
- Had a history of previously meeting a monthly housing obligation equivalent to or higher than the proposed debt; and/or
- Were denied for an apparently “serious” deficiency that might easily have been overcome. For example, an applicant’s total debt ratio of 50 percent might appear grossly to exceed the lender’s guideline of 36 percent, but this may in fact be easily corrected if the application lists assets to pay off sufficient non-housing debts to reduce the ratio to the guideline, or if the lender were to count excluded part-time earnings described in the application.

B. Marginal Approvals

Approved applications with any or all of the following characteristics are “marginal.” Such approvals are compared to marginal denied approved applications. Marginal approvals include those:

- Whose qualifications satisfied the lender’s stated standard, but very narrowly;
- That bypassed stated processing requirements (such as verifications or deadlines);
- For which stated creditworthiness requirements were relaxed or waived;
- That, if the lender’s own standards are not clear, fell short of common secondary market or industry lending standards;
- That a prudent conservative lender might have denied;
- Whose qualifications were raised to a qualifying level by assistance, proposals, counteroffers, favorable characterizations or questionable qualifications, etc.; and/or
- That in any way received unusual service or consideration that facilitated obtaining the credit.

Potential Scoping Information

This Appendix offers a full range of documentation and other information that might conceivably be brought to bear in an examination. In that sense, it is a “menu” of resources to be considered and selected from, depending on the nature and scope of the examination being conducted. Any decision to select one or more particular items from this Appendix for inclusion in a particular examination should, of course, include consideration of any burdens to the agency and lender in assembling and providing the selected item(s).

A. Internal Agency Documents and Records.

1. Previous examination reports and related workpapers for the most recent Compliance / CRA and Safety and Soundness Examinations.
2. Demographic data for the institution’s community.

Comment: The examiner should obtain the most recent agency demographic data, for information on the characteristics of the institution’s assessment/market areas.

B. Information from the institution.

Comment: Prior to beginning a compliance examination, the examiner should request the institution to provide the information outlined below. This request should be made far enough in advance of the on-site phase of the examination to facilitate compliance by the institution. In some institutions, the examiner may not be able to review certain of this information until the on-site examination.

1. Institution’s Compliance Program. (For examinations that will include analysis of the lender’s compliance program.)

- a. Organization charts identifying those individuals who have lending responsibilities or compliance, HMDA or CRA responsibilities, together with job descriptions for each such position.
- b. Lists of any pending litigation or administrative proceedings concerning fair lending matters.
- c. To the degree that your agency’s policy permits you to solicit and utilize the results of self-evaluations, copies of audit or compliance reviews of the institution’s program for compliance with fair lending laws and regulations, including both internal and independent audits.

NOTE: The request should advise the lender that it is not required to disclose whether it has engaged in self-testing programs of the type protected under amendments to ECOA and the FH Act nor the results of such programs.

- d. Complaint file.

- e. Any written or printed statements describing the lender's fair lending policies and/or procedures.
- f. Training materials related to fair lending issues including records of attendance.

2. Lending Policies / Loan Volume.

- a. Internal underwriting guidelines and lending policies for all consumer and commercial loan products.

Comment: If guidelines or policies differ by branch or other geographic location, request copies of each variation.

- b. A description of any credit scoring system(s) in use now or during the exam period.

Comment: Inquire as to whether a vendor or in-house system is used; the date of the last verification; the factors relied on to construct any in-house system and, if applicable, any judgmental criteria used in conjunction with the scoring system.

- c. Pricing policies for each loan product, and for both direct and indirect loans.

Comment: The lender should be specifically asked whether its pricing policies for any loan products include the use of “**overages**”. The request should also ask whether the lender offers any “**sub-prime**” loan products for “B”, “C” or “D” risk level customers or otherwise uses any form of **risk-based pricing**. A similar inquiry should be made regarding the use of any **cost-based pricing**. If any of these three forms are or have been in use since the last exam, the lender should provide pricing policy and practice details for each affected product, including the lender's criteria for differentiating between each risk *or cost* level. Regarding **indirect lending**, the lender should be asked to provide any forms of agreement (*including compensation*) with brokers/dealers, together with a description of the roles that both the lender and the dealer/broker play in **each stage** of the lending process.

- d. A description of each form of compensation plan for all lending personnel and managers.
- e. Advertising copy for all loan products.
- f. The most recent HMDA / LAR, including unreported data if available. Information should be provided on diskette if possible.

Comment: The integrity of the institution's HMDA / LAR data should be verified prior to the pre-examination analysis. Verification should take place approximately two to three months prior to the on-site phase of the examination.

- g. Any existing loan registers for each non-HMDA loan product.

Comment: Loan registers for the 3 month period preceding the date of the

examination, together with any available lists of declined loan applicants for the same period should be requested. Registers / lists should contain, to the extent *available*, the complete name and address of loan applicants and applicable loan terms, including loan amount, interest rate, fees, repayment schedule and collateral codes.

h. A description of any databases maintained for each loan product, including a description of all data fields within the database.

i. Forms used in the application and credit evaluation process for each loan product.

Comment: At a minimum, this request should include all types of credit applications, forms requesting financial information, underwriter worksheets, any form used for the collection of monitoring information, and any quality control or second review forms or worksheets.

j. Lists of service providers.

Comment: Service providers may include: realtors, real estate developers, appraisers, home improvement contractors and private mortgage insurance companies. Request the full name and address and geographic area served by each provider. Also request documentation as to any fair lending requirements imposed on, or commitments required of, any of the lender's service providers.

k. Addresses of any Internet Site(s)

Comment: Internet "Home Pages" or similar sites that a lender may install on the Internet may provide information concerning the availability of credit, or means for obtaining it. All such information would have to comply with the nondiscrimination requirements of the fair lending laws. Moreover, future enhancements to the Internet may include the capacity to conduct partial or complete credit transactions via that medium. Accordingly, it is important for examiners to review a lender's Internet sites to ensure that all of the information or procedures set forth therein are in compliance with any applicable provisions of the fair lending statutes and regulations.

3. Community Information.

a. Demographic information prepared or used by the institution.

b. Any fair lending complaints received and lender responses thereto.

Special Analyses

- **Disproportionate Adverse Impact**
- **Pre-Application Screening**
- **Marketing**

A. Disproportionate Adverse Impact Violations

When all five conditions below exist, consult within your agency whether to present the situation to the lender and solicit an explanation of the lender's business justification for the policy or criterion that appears to cause the disproportionate adverse impact. Note that condition 5 can be satisfied by **either** of two alternatives.

The contacts between examiners and lenders described in this section are information-gathering contacts within the context of the examination and are not intended to serve as the formal notices and opportunities for response that an agency's enforcement process might provide. Also, the five conditions are not intended as authoritative statements of the legal elements of a disproportionate adverse impact proof of discrimination; they are paraphrases intended to give examiners practical guidance on situations that call for more scrutiny and on what additional information is relevant.

***NOTE:** Even if it appears likely that a policy or criterion causes a disproportionate adverse impact on a prohibited basis (condition 3), do not proceed with this analysis if the policy or criterion is obviously related to predicting creditworthiness or to some other basic aspect of prudent lending, and there appears to be no equally effective alternative for it. Examples are reliance on credit reports or use of debt-to-income ratio.*

Conditions

1. A specific policy or criterion is involved.

The policy or criterion suspected of producing a disproportionate adverse impact on a prohibited basis must be clear enough that the nature of action to correct the situation can be determined.

***NOTE:** Gross HMDA denial or approval rate disparities are not appropriate for disproportionate adverse impact analysis because they typically cannot be attributed to a specific policy or criterion. Similarly, a lender's policies of allowing employees to exercise discretion and to negotiate terms or conditions of credit can better be described as the **absence** of policies or criteria than as a situation in which a policy or criterion generates a disproportionate adverse impact. Broad discretion and vague standards raise concerns about discrimination, but examiners should focus on possible disparate **treatment**.*

2. The policy or criterion on its stated terms is neutral for prohibited bases.
3. The disparity on a prohibited basis is significant.

The difference between the rate at which prohibited basis group members are harmed or excluded by the policy or criterion and the rate for control group members must be large enough that it is unlikely that it could

have occurred by chance. If there is reason to suspect a significant disproportionate adverse impact may exist, consult the supervisory office, compliance manager, district counsel, and/or compliance management department, as appropriate.

4. There is a causal relationship between the policy or criterion and the adverse result.

The link between the policy or criterion and the harmful or exclusionary effect must not be speculative. It must be clear that changing or terminating the policy or criterion would reduce the disproportion in the adverse result.

5. Either a or b:

a. The policy or criterion has no clear rationale, or appears to exist merely for convenience or to avoid a minimal expense, or is far removed from common sense or standard industry underwriting considerations or lending practices.

The legal doctrine of disproportionate adverse impact says that the policy or criterion that causes the impact must be justified by “business necessity” if the lender is to avoid a violation. There is very little authoritative legal interpretation of that term with regard to lending, but that should not stop examiners from making the preliminary inquiries called for in these procedures. For example, the rationale is not clear for basing credit decisions on factors such as location of residence, income level (*per se* rather than relative to debt), and accounts with a finance company. If black applicants were denied loans significantly more frequently than white applicants because they failed a lender’s minimum income requirement, it would appear that the first four conditions plus 5a existed; therefore, the examiners should consult within their agency about obtaining the lender’s response, as described in the next section below.

b. **Alternatively**, even if there is a sound justification for the policy, it appears that there may be an equally effective alternative for accomplishing the same objective with a smaller disproportionate adverse impact.

The law does not require a lender to abandon a policy or criterion that is clearly the most effective method of accomplishing a business objective. However, if an alternative that is approximately equally effective is available that would cause a less-severe impact, the policy or criterion in question will be a violation.

At any stage of the analysis of possible disproportionate adverse impact, if there appears to be such an alternative, and the first four conditions exist, consult within the agency how to evaluate whether the alternative would be equally effective and would cause a less-severe impact. If the conclusion is that it would, solicit a response from the lender, as described in the next section below.

Obtaining the lender’s response

If the first four conditions plus either 5a or 5b appear to exist, consult within your agency about whether and how to inform the lender of the situation and solicit the lender’s business justification. The communication with the lender should explain:

- The specific neutral policy or criterion that appears to cause a disproportionate adverse impact.
- How the examiners learned about the policy.

- How widely the examiners understand it to be implemented.
- How strictly they understand it to be applied.
- The prohibited basis on which the impact occurs.
- The magnitude of the impact.
- The nature of the injury to individuals
- The data from which the impact was computed.

The communication should state that no violation exists if the policy or criterion is used because of business necessity *and* there is no alternative that would accomplish the lender's objective with a smaller disproportionate adverse impact. It should inform the lender that cost and profitability are factors the agency will consider in evaluating the lender's business necessity. It should ask the lender to describe any alternatives it considered before adopting the policy or criterion at issue.

Evaluating and following up on the response

The analyses of "business necessity" and "less discriminatory alternative" tend to converge because of the close relationship of the questions of what purpose the policy or criterion serves and whether it is the most effective means to accomplish that purpose.

Evaluate whether the lender's response persuasively contradicts the existence of the significant disparity or establishes a business justification. Consult the supervisory office, compliance manager, district counsel, and/or compliance management department, as appropriate.

B. Discriminatory pre-application screening.

Obtain an explanation for any:

- Withdrawals by applicants in prohibited basis groups without documentation of customer intent to withdraw;
- Denials of applicants in prohibited basis groups without any documentation whether qualified; or
- On a prohibited basis, selectively quoting *strongly unfavorable* terms (for example, high fees or down payment requirements) to prospective applicants, or quoting *strongly unfavorable* terms to all prospective applicants but waiving such terms for control group applicants. (Evidence of this might be found in withdrawn or incomplete files.)

If the lender cannot explain the situations, examiners should consider obtaining authorization to contact the customers to verify the lender's description of the transactions. Information from the customer may help determine whether a violation occurred.

In some instances, such as possible "prescreening" of applicants by lender personnel, the results of the procedures discussed so far, including interviews with customers may be inconclusive in determining whether a violation has occurred. In those cases, examiners should, if authorized by their agency, consult with management regarding the possible use of "testers" who would pose as apparently similarly situated applicants, differing only as to race or other applicable prohibited basis characteristic, to determine and compare how the lender treats them in the application process.

C. Possible discriminatory marketing

1. Obtain full documentation of the nature and extent, together with management's explanation, of any:
 - Prohibited basis limitations stated in advertisements;
 - Code words in advertisements that convey prohibited limitations; or
 - Advertising patterns or practices that a reasonable person would believe indicate prohibited basis customers are less desirable.

2. Obtain full documentation as to the nature and extent, together with management's explanation, for any situation in which the lender, despite the availability of other options in the market:
 - Advertises only in media serving non-minority areas of the market;
 - Markets through brokers or other agents that the lender knows, or could reasonably be expected to know, to serve only one racial or ethnic group in the market; or
 - Utilizes mailing or other distribution lists or other marketing techniques for pre-screened or other offerings of residential loan products* that:
 - Explicitly exclude groups of prospective borrowers on a prohibited basis; or
 - Exclude geographies (e.g., census tracts, ZIP codes, etc.) within the institution's marketing area that have demonstrably higher percentages of minority group residents than does the remainder of the marketing area, but which have income and other credit-related characteristics similar to the geographies that were targeted for marketing.

** NOTE: Pre-screened solicitation of potential applicants on a prohibited basis does not violate ECOA. Such solicitations are, however, covered by the FH Act. Consequently, analyses of this form of potential marketing discrimination should be limited to residential loan products subject to coverage under the FH Act.*

3. Evaluate management's response particularly with regard to the credibility of any nondiscriminatory reasons offered as explanations for any of the foregoing practices. Refer to **Evaluating Responses to Evidence of Disparate Treatment** elsewhere in the **Appendix** for guidance.

Streamlining the Examination

Institutions may find it advantageous to conduct self-evaluations and, provided the examiners confirm the reliability and appropriateness of the self-evaluation (or even parts of it), they need not repeat those tasks. If the institution has performed a self-evaluation of any of the product(s) selected for examination, unless agency policy prohibits examiners from requesting the results, obtain a copy thereof and proceed through the remaining steps of this section on Streamlining the Examination. If the institution has conducted a self-evaluation of a product not selected in the scope of the examination, consider whether the product evaluated by the institution is appropriate under the scoping guidelines to substitute for another product that was selected. If such a substitution is considered appropriate, obtain the results of the self-evaluation for the substituted product and proceed through the remaining steps of this section.

Determine whether the research and analysis of the planned examination would duplicate the institution's own efforts. If the answers to Questions A and B below are both **Yes**, each successive **Yes** answer to Questions C through L indicates that the institution's work up to that point can serve as a basis for eliminating steps for the examiners.

If the answer to either Question A or B is **No**, the self-evaluation cannot serve as a basis for eliminating examination steps. However, you should still evaluate the self-evaluation to the degree possible in light of the remaining questions and communicate the findings to the lender so that it can improve its self-evaluation process.

- A. Did the transactions covered by the self-evaluation occur not longer ago than two years prior to the examination? *If the self-evaluation covered more than two years prior to the examination, incorporate only results from transactions in the most recent two years.*
- B. Did it cover the same product, prohibited basis, decision center, and stage of the lending process (for example, underwriting, setting of loan terms) as the planned examination?
- C. Did the self-evaluation include comparative file review? **NOTE:** One type of "comparative file review" is statistical modeling to determine whether similar control group and prohibited basis group applicants were treated similarly. If a lender offers self-evaluation results based on a statistical model, consult appropriately within your agency.
- D. Were control and prohibited basis groups defined accurately and consistently with ECOA and/or the FH Act?
- E. Were the transactions selected for the self-evaluation chosen so as to focus on marginal applicants or, in the alternative, selected randomly?
- F. Were the data abstracted from files accurate? Were those data actually relied on by the credit decision-makers at the time of the decisions?

To answer these two questions and Question G below, for the institution's control group sample and each of its prohibited basis group samples, request to review 10% (but not more than 50 for each group) of the transactions covered by the self-evaluation. For example, if the institution's self-evaluation reviewed 250 white and 75 black transactions, plan to verify the data for 25 white and seven black transactions.

- G. Did the 10% sample reviewed for Question F also show that customer assistance and lender judgment that assisted or enabled applicants to qualify were recorded systematically and accurately and were compared for differences on any prohibited bases?
- H. Were prohibited basis group applicants' qualifications related to the underwriting factor in question compared to corresponding qualifications of control group approvals? Specifically, for self-evaluations

of approve/deny decisions, were the denied applicants' qualifications related to the stated reason for denial compared to the corresponding qualifications for approved applicants?

- I. Did the self-evaluation sample cover at least as many transactions at the initial stage of review as examiners would initially have reviewed using the sampling guidance in these procedures?

If the lender's samples are significantly smaller than those in the sampling guidance but its methodology otherwise is sound, review additional transactions until the numbers of reviewed control group and prohibited basis group transactions equal the minimums for the initial stage of review in the sampling guidance.

- J. Did the self-evaluation identify instances in which prohibited basis group applicants were treated less favorably than control group applicants who were no better qualified?
K. Were explanations solicited for such instances from the persons responsible for the decisions?
L. Were the reasons cited by credit decision-makers to justify or explain instances of apparent disparate treatment supported by legitimate, persuasive facts or reasoning?

If the questions above are answered **Yes**, incorporate the findings of the self-evaluation (whether supporting compliance or violations) into the examination findings. Indicate that those findings are based on verified data from the institution's self-evaluation. In addition, consult appropriately within the agency regarding whether or not to conduct corroborative file analyses in addition to those performed by the lender.

If not all of the questions in the section above are answered **Yes**, resume the examination procedures at the point where the lender's reliable work would not be duplicated by the examiners. In other words, use the reliable portion of the self-evaluation and correspondingly reduce independent comparative file review by examiners. For example, if the institution conducted a comparative file review that compared applicants' qualifications without taking account of the reasons they were denied, the examiners could use the qualification data abstracted by the institution (if accurate) but would have to construct independent comparisons structured around the reasons for denial.