Fair Housing Act (FHAct)

Overview

The examination procedures in this section are primarily for the technical compliance review. Although the fair lending procedures are addressed under a separate section of the Handbook; findings from the technical review may aid the review for fair lending. These procedures should be conducted to ensure compliance with all sections of the subject regulation.

Background and Introduction

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

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

The FHAct prohibits discrimination based on

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

The Department of Housing and Urban Development's (HUD) regulations implementing the FHAct are found at 24 CFR Part 100. The FDIC's Part 338, Fair Housing, is the implementing regulation for the FHAct.

Examination Procedures

- Examiners must review compliance with these provisions in all compliance examinations that include review of files, and they may elect to do so as part of a regular, scheduled supervisory activity that includes a review of fair lending risk.
- Examiners must determine whether the financial institution's policies, procedures, and internal controls are adequate for compliance with FHAct.

Technical Compliance Checklist

Recordkeeping Requirements

Determine if the financial institution that makes home purchase and refinance loans requests and retains the following initial data on each home purchase loan applicant (excluding applications received by telephone) (§338.7):

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

Disclosure

Determine that the institution informs the applicant(s) that the data regarding race/national origin, marital status, age, and sex is being requested by the Federal government for the purposes of monitoring compliance with the Federal statutes that prohibit discrimination on those bases. The institution shall also inform the applicant(s) that the institution is required to note the race/national origin and sex based on visual observation should the applicant(s) choose not to provide his/her race/national origin, marital status, age, and sex. (12 CFR 1002.13(c))

Compilation of Loan Data

Determine that banks and other lenders required to file a Home Mortgage Disclosure Act loan application register (LAR) with the Federal Deposit Insurance Corporation maintain, update and report such LAR's in accordance with Federal Reserve Board Regulation C, Home Mortgage Disclosure (Regulation C), (§ 338.8).

Record Retention

Determine that the institution retains the monitoring information requested from applicants for 25 months after the institution notifies an applicant of the action taken on an application (12 CFR 1002.12). This requirement also applies to records of home purchase loans originated by the institution and subsequently sold.

Mortgage Lending of a Controlled Entity

Determine through interviews with financial institution staff and review of the loan files, whether the institution:

- Refers any applicants to a controlled entity, and
- Purchases any home loans or home improvement loans (as defined by Regulation C) originated by the controlled entity as a condition to transacting any business with the controlled entity.

If this arrangement exists, the financial institution is required to enter into a written agreement with that entity. The written agreement shall provide that the entity will:

- Comply with §338.3, §338.4, and §338.7, and if otherwise subject to Regulation C Home Mortgage Disclosure, §338.8 (§338.9(a));

- Provide its books and records for examination by the FDIC (§338.9(b)); and
- Comply with all instructions and orders issued by the FDIC with respect to its home loan practices (§338.9(b)).

Advertisements and Public Notices

1. If a printed advertisement of a loan for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling or any loan secured by a dwelling is used, determine whether the Equal Housing Lender or Equal Housing Opportunity logotype and legend are appropriately used.

   NOTE: The Equal Housing Lender (symbol of house) with legend (the phrase "Equal Housing Lender") or the Equal Housing Opportunity (symbol of house) with the legend (the phrase "Equal Housing Opportunity") must be used together, respectively. (§338.3)

   NOTE: This section may be satisfied in an oral advertisement by stating "Equal Housing Lender" or "Equal Housing Opportunity."

2. Determine that the required Fair Housing Poster, either the Equal Housing Lender poster or HUD's Equal Housing Opportunity poster is:
   - 11 x 14 inches in size;
   - Conspicuously displayed in a central location within the bank where deposits are received or residential real estate-related transactions are made (§338.4); and
   - The Equal Housing Lender poster contains the correct text in the proper format of §338.4(b) or 24 CFR Part 110.25(a) for HUD's Equal Housing Opportunity poster.

References

The following can be found at the fair lending webpage:

- Fair Housing Act, 42 USC §3601
- 12 CFR Part 338