

**BANKING REGULATORY AGENCIES' ENFORCEMENT OF
THE EQUAL CREDIT OPPORTUNITY ACT AND
THE FAIR HOUSING ACT**

HEARINGS
BEFORE A
SUBCOMMITTEE OF THE
COMMITTEE ON
GOVERNMENT OPERATIONS
HOUSE OF REPRESENTATIVES
NINETY-FIFTH CONGRESS
SECOND SESSION

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BANKING REGULATORY AGENCIES' ENFORCEMENT OF THE EQUAL CREDIT OPPORTUNITY ACT AND THE FAIR HOUSING ACT

TUESDAY, SEPTEMBER 12, 1978

**HOUSE OF REPRESENTATIVES,
COMMERCE, CONSUMER,
AND MONETARY AFFAIRS SUBCOMMITTEE
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
*Washington, D.C.***

The subcommittee met, pursuant to notice, at 9:35 a.m., in room 2247, Rayburn House Office Building, Hon. Benjamin S. Rosenthal (chairman of the subcommittee) presiding.

Present: Representatives Benjamin S. Rosenthal, Robert F. Drinan, and Elliott H. Levitas.

Also present: Donald P. Tucker, chief economist; Eleanor M. Vanyo, assistant clerk; and Henry C. Ruempler, minority professional staff, Committee on Government Operations.

OPENING STATEMENT OF CHAIRMAN ROSENTHAL

Mr. ROSENTHAL. The subcommittee will be in order.

Previous hearings and studies have established that many low-income urban neighborhoods do not receive a normal proportion of their home financing needs from banks and savings and loan associations. The public is obviously deeply concerned, therefore, that banks and savings and loans are discriminating unfairly against these neighborhoods. They want something done. This hearing will examine what the depository institution regulatory agencies are doing, through exercise of their enforcement responsibilities under the Fair Housing Act and the Equal Credit Opportunity Act to address this problem.

One agency, the Federal Home Loan Bank Board, has taken major steps in this area. They have established programs to stimulate neighborhood reinvestment, and they have issued regulations prohibiting discriminatory redlining practices.

These regulations do not lay down an absolute prohibition against all locational factors in judging loan risk, but they do place the burden of proof on savings and loans to justify their actions when they deny home mortgage credit or impose unfavorable terms. A savings and loan that denies housing credit must be able to present objective evidence that the loan would be unacceptably risky. Casual assumptions and arbitrary underwriting rules without supporting evidence are not permitted.

The other regulatory agencies; namely, the Office of Comptroller of the Currency, the Federal Deposit Insurance Corporation, the

Federal Reserve Board, and the National Credit Union Administration, have failed to issue similar antiredlining regulations.

The first issue these hearings will examine is why. Do these agencies still adhere to the philosophy that the burden of proof lies fundamentally with each applicant to show that he or she deserves credit? Do they adhere to the philosophy that, except for lending discrimination expressly prohibited by precise statutory language, banks and credit unions should be immune from public scrutiny or accountability for their lending practices, free to make whatever arbitrary loan decisions they wish, regardless of the social consequences? If not, what are they doing about redlining?

Regulations are only the beginning of a comprehensive enforcement effort. They have no effect without the backup provided by strong agency programs for: (1) Detecting violations; (2) taking enforcement actions when violations are found; (3) investigating and acting on consumer complaints; and (4) informing the public of their rights so they can demand fair treatment.

For enforcement purposes, redlining discrimination is currently handled by the Bank Board, and presumably would be handled by the other agencies also, as part of the broader problem of credit discrimination prohibited by the Fair Housing and Equal Credit Opportunity Acts, for which the agencies already have established enforcement programs. Accordingly, the second issue this hearing will examine is the adequacy of the agencies' present enforcement efforts to eliminate sex, race, age, marital status, et cetera, discrimination in housing and other credit.

The most crucial of these is detection. Do the agencies have effective programs for detecting substantive discrimination in loan denials or setting loan terms, as opposed to detecting just violations of the mechanical procedural rules required by the regulations?

Also very important are the actions and remedies that are taken by the agencies when violations are found. Are the enforcement policies of the agencies, as stated by the proposed uniform enforcement guidelines for regulation B, sufficiently strong to insure general compliance with the law?

Finally, we shall also hear testimony about the agencies' handling of consumer complaints alleging discrimination and about their consumer information activities.

In all these areas there are wide variations between the agencies in their enforcement activities. These hearings will examine the significance and implications of these differences.

Our first witness is Mr. William L. Taylor, director of the Center for National Policy Review, Catholic University Law School.

Mr. Taylor, we are pleased you could be with us and we are very anxious to hear from you.

STATEMENT OF WILLIAM L. TAYLOR, DIRECTOR, CENTER FOR NATIONAL POLICY REVIEW, SCHOOL OF LAW, CATHOLIC UNIVERSITY; ACCOMPANIED BY JENNIFER DOUGLAS, STAFF EXPERT, NATIONAL URBAN LEAGUE; AND JAMES HARVEY, EXECUTIVE DIRECTOR, METROPOLITAN WASHINGTON PLANNING AND HOUSING ASSOCIATION

Mr. TAYLOR. Thank you.

Let me introduce my colleagues this morning.

On my right is Jim Harvey, executive director of the Metropolitan Washington Planning and Housing Association, and on my left is Jennifer Douglas, who is a staff expert with the National Urban League office here in Washington.

We are all part of a coalition that has been working for the past 7 years to get the four principal agencies that regulate lending institutions to acknowledge a responsibility for dealing with discrimination in home mortgage lending. We are here to report this morning on the status of our efforts and some of the remaining problems.

I have a somewhat detailed statement that I have submitted to the subcommittee and with your permission I will just include that in the record.

Mr. ROSENTHAL. Without objection, the entire statement shall be included.

Mr. TAYLOR. I will try to summarize it as I go along.

Our center on behalf of a coalition of some dozen organizations, including the ones represented here as well as the National Committee Against Discrimination in Housing, the National Urban Coalition, the League of Women Voters, and others filed a petition in 1971 with the four regulatory agencies asking them to adopt nondiscrimination regulations and take a series of specific steps to eliminate discriminatory mortgage and lending practices.

The biggest problems that we have had over the years are, first, getting these agencies to recognize and acknowledge that there is a problem of discrimination and, second, to recognize that they have a responsibility to deal with it.

On the first problem, I think the agencies did acknowledge that historically overt practices of discrimination existed, labeling neighborhoods, equating homogeneous neighborhoods with stable and economically healthy neighborhoods and equating heterogeneous or racial or economically mixed neighborhoods with deterioration. But the agencies felt that was something in the past and that the practices that existed in the past had no current effects. They felt that after turning people away from savings and loan institutions for many years, if you just said, "we do not do that any more," that cured the problem.

The second problem we have had with the agencies is that there was a series of practices that they acknowledged that lending institutions engaged in, but that they did not recognize as discrimination.

For example, the explanation for redlining or refusing to make loans in areas because of the character of the property or the age of the property, was "that is generally a judgment based on sound business considerations and we cannot oversee the exercise of that business judgment by savings and loans." Or, a similar practice was to say that where you have a two-income family, you must discount the income of the working wife because the bank presumes that it is not stable income. That again was thought to be an exercise of sound business judgment.

After 4 or 5 years, we did get the agencies to undertake a survey, a so-called pilot fair housing information survey, in which racial data on home mortgage applications was collected in 18 metropolitan areas throughout the country.

All of the surveys showed loan rejection rates among minorities that were roughly double those among whites. The one survey that collected economic data on applicants showed that the discrepancies persisted even when income levels and other credit-worthiness indicators were kept constant. In other words, blacks at the same income level as whites were rejected roughly twice as often. So the explanation could not be that they had lower incomes. Yet, despite these surveys, the agencies continued to persist in their refusal to implement an effective examination program and they started poking holes in the methodology of their own surveys.

Finally, to get us more up to date, in April of 1976, 11 members of our coalition filed a lawsuit seeking to compel the banking agencies to take the basic steps required to detect and remedy discrimination. I might footnote here that we were seeking essentially the same thing as the then Assistant Attorney General in Charge of Civil Rights recommended in hearings that were held by Senator Proxmire in March of 1976. Yet when we brought our lawsuit, the Civil Division of the Justice Department turned around and defended the suit with technical arguments such as a claimed lack of standing on the part of the plaintiffs.

Following the court's rejection of the Justice Department's arguments on standing and refusal to dismiss the suit, three of the four agencies agreed to substantially similar settlement terms with the plaintiffs.

First of all, they agreed to adopt what we regard as the most important method for detecting discrimination, the collection and analysis of data concerning the race and sex of mortgage applicants so that potential patterns of discrimination could be identified for followup by examiners.

Here the Federal Reserve remains, as in other areas, the lone holdout. In 1977 it adopted amendments to regulation B, which required the notation of limited race and sex data on home purchase loan applications. But it was very narrowly drawn and was entirely silent on the use of the data, which of course is the critical matter.

The other agencies agreed to centralize the analysis of the data to identify patterns at particular institutions for in-depth study.

Second, each of the three agencies agreed to improve the training and instruction they give to examiners in techniques for fair lending examination, including specifically the techniques for using race and sex data to detect discriminatory patterns. They each agreed to look carefully at the data under the Home Mortgage Disclosure Act to detect possible redlining and they also agreed to review their procedures for investigating fair lending complaints and to adopt time schedules for resolving those complaints.

These agencies did not have personnel with background and experience and skills in civil rights enforcement. The settlement agreements provided that each agency would appoint a full-time civil rights specialist at a policy level in Washington, and part-time specialists in the regional offices, with responsibility for developing improved examiner training, looking at the examiner reports, and recommending enforcement action.

Finally, as part of the settlement agreements, the agencies agreed to advise lenders that they intended to use the full range of

their ordinary powers and sanctions whenever discrimination was discovered. We think this new enforcement program will have a broad preventive effect and that many lenders will have cleaned up their act even before the examiners arrive. That is what the emphasis on the potential use of sanctions was designed to achieve.

As I am sure you know, the Federal Reserve declined to adopt the measures that the other agencies agreed to and ultimately the Department of Justice did secure the dismissal of the suit against the Federal Reserve on grounds that the plaintiffs remaining in the suit after settlement with the others did not have standing.

It was interesting to us that within days of the dismissal of the suit, the Federal Reserve was handed a detailed report by its own consultant which made the very same criticisms of its examination and enforcement program that the plaintiffs had been making for years, and recommended essentially the same series of remedial measures.

That was the Warren Dennis report, of which you have a copy.

Mr. DRINAN. Mr. Chairman, could I ask precisely when did the Department of Justice secure that dismissal?

Mr. TAYLOR. I should have the date of that with me.

Mr. DRINAN. More importantly, did the Attorney General concur in the judgment? He sought it, the Department of Justice sought it. Is there information that the Attorney General himself, Mr. Griffin Bell, did he concur in the dismissal on technical grounds?

Mr. TAYLOR. I cannot say that he did, Congressman Drinan, and there is an interesting story. The dismissal was approximately 4 months ago. I am sorry I do not have the precise date. The civil rights groups have engaged in a long series of discussions with Assistant Attorney General Babcock of the Civil Division about what their policy is or will be in cases where Federal agencies are sued for carrying out policies which, if they were done by private people, would result in a lawsuit by the Department of Justice.

We have been assured repeatedly that there is cooperation between the Civil Rights Division and the Civil Division and that, whatever the policies in the past, the Civil Division was not going to be seeking technical dismissals of suits where Government agencies were simply wrong on civil rights matters. But despite those assurances, let's put it this way, those assurances have yet to be put into practice.

We raised this case when the new administration came in as the very first test of that policy under the new administration, and we were somewhat discouraged by their refusal—though it was already in the courts—to work out a settlement and try to secure the dismissal not on technical grounds but with everybody agreeing.

Now, one or two other things I should say. I have no reason to believe that the Attorney General himself became involved in any way in this. This was a matter discussed with Assistant Attorneys General Days and Babcock, and I do not know that there was any concurrence on the part of the Attorney General.

The other thing I should say is, I suppose a factor in this case is that the Federal Reserve is thought of as an independent agency, perhaps more independent than other agencies, and that may have a bearing on this case that would not be present in other cases. On the other hand, they were being defended by the Department of

Justice. So to that extent there was the tie with the executive branch.

I am not sure, I really think the Department of Justice ought not to be representing agencies and taking positions that are contrary to national policy.

That is a long answer to your question.

Mr. DRINAN. I think you are too kind to Mr. Griffin Bell.

I thank you.

Mr. TAYLOR. Let me turn now to the progress that has been made under the settlements and report briefly on that.

The first settlement was in March 1977 with the Federal Home Loan Bank Board, which is the most important agency in terms of the volume of home loans made by its member institutions. Since that settlement, the most important action of the Bank Board has been the issuance of improved nondiscrimination regulations which the chairman referred to in his opening statement. They go beyond the requirements of the settlement and they represent the stepped-up commitment to deal with redlining and other unfair practices.

There are several important features of these regulations. First, they attack redlining by barring discrimination on the basis of the location of the security property, its age, or the racial composition of the neighborhood.

Second, they contain a straightforward statement of the so-called effects test, the basic legal principle that says if a practice works against minorities and cannot be justified as a sound business practice, then it is unlawful regardless of whether you can prove that it is insidiously motivated. They require that loan decisions be based on an individualized judgment about the application and not on presumed characteristics of groups. They warn against such practices as giving preference to prior homeowners or old customers because of the discriminatory impact of such rules.

Finally, for the first time they require lenders to review their business and marketing practices to make sure they are not discriminatory; for example, by dealing exclusively with brokers or developers who serve a restricted clientele or a limited geographic area.

The Bank Board deserves high marks for its regulations and we wish that other agencies would follow its example. But the other agencies have clung to a claim that they lack authority to issue substantive regulations or guidelines on fair lending. We think they are wrong. The agencies have a responsibility to enforce the Fair Housing Act. That they now recognize.

They should also recognize that discrimination is an unsafe, unsound, and uneconomic bank practice, which subjects or exposes lenders to potential financial liability in the form of damages, and it is that factor that provides a basis for issuing the regulations to advise lenders on how to conform to the law.

We do understand the FDIC is now reconsidering its legal authority, and we hope the other agencies will follow suit on this matter.

On the collection and monitoring of data, the Bank Board, the FDIC, and the Comptroller are in various stages of developing and testing forms of data collection and analysis, and we think they are now all prepared to act within the spirit as well as the letter of the

agreements. They are experimenting with the collection of not only race and sex data on loan rejections, but also creditworthiness, property age and location, and loan terms as well. What this will do is permit the identification of discriminatory patterns in the area in the terms of approved loans and discrimination based on both borrower and property characteristics.

Our concern has been the slow pace of the progress at the Bank Board. But we think they are finally moving and by mutual consent we have extended the term of our agreement, which was scheduled to expire next year, by 18 months so that we can work together to fully analyze and evaluate the data systems and what they produce.

On the question of examiner training, progress is also being made. The impact of this training has been demonstrated by the Bank Board's experience in the year following the introduction of the new program.

Before 1977, very few fair housing violations were reported by examiners. But in 1977, about 2,800 actual or possible violations were found; 1,949 so-called supervisory letters were sent; 52 special examinations were conducted; and more serious actions, supervisory action, was taken in 8 cases.

That level has continued, or an increase has occurred, during a test this past summer using the monitoring data now required by the Bank Board's regulations. So once they start looking into these areas with trained people, they do find the violations that they once said did not exist.

There is one area of weakness here. That is in the detection of prescreening. Prescreening is the various means, subtle or not, that are used to discourage would-be borrowers before they actually get to the point of filing an application. That is a significant source of discrimination. We believe it may increase in its importance as the programs become more effective in dealing with post-application discrimination.

Now the FDIC requires banks to record the race and sex of people who inquire concerning loan terms but do not file applications so as to enable the agency to determine whether a disproportionate number of minorities or women are being turned away. The Comptroller is considering other statistical methods of identifying prescreening, but at best they can only identify patterns for examiners to investigate.

All of the agencies need to train their examiners in techniques that may help in detecting prescreening devices. But, in addition, we think that the detection of prescreening requires testing which, as you know, is a standard technique that fair housing groups use in dealing with discrimination in real estate transactions. What it involves is making telephone or in-person inquiries concerning the availability of loans on properties of different ages and in different neighborhoods and having pairs of individuals, one minority, one white, one male, or one female, make inquiries concerning similar loans.

The agencies are resisting this. They think there is something not kosher about assuming the role of a borrower or that it is inconsistent with what they view as the traditional relationship of

cooperation and assistance that they should have with the lending institution.

But we think that that idea of the relationship is inappropriate to an examination that is intended to detect violations of the law and we regard testing as both a legitimate and an indispensable technique for dealing with the problem of prescreening.

That technique has been used in the Massachusetts banking department for some time. Commissioner Greenwald, I understand, is one of your witnesses and she is going to meet this afternoon with a group of Federal agency staff to discuss her department's experience, and we hope that that will get the agencies to reconsider.

The last area of progress deals with the fact that the agencies have now designated staff positions to deal specifically with fair lending enforcement, both in Washington and in the regional offices. They now do recognize that civil rights is a specialized responsibility which requires specialized personnel.

Up to this point I have been dealing with three agencies and I have not mentioned the posture of the Federal Reserve Board, and that is for a fairly simple reason. It really cannot be discussed in the same breath as the other three agencies. The Federal Reserve has no examination or enforcement program that is worthy of the name. The reasons were perhaps best summarized by Warren Dennis and I quote from his report:

Our negative conclusions with respect to the Board's antidiscrimination enforcement efforts derive principally from our observation relating to the Board's not having recognized civil rights compliance as a discreet and separate area of responsibility differing from other consumer protection measures and requiring specialized expertise and policy consideration.

The failure runs through every aspect of the program; its organization, examiner training, examination methods, complaint processing. The responsibility for fair lending compliance rests with a Consumer Affairs Division which has responsibility for all of the consumer measures that Congress has passed over recent years. That division is also responsible for enforcement of regulation B and the Fair Housing Act, but it does not recognize any distinction between the enforcement problems in civil rights and the general problems in consumer protection. It has no specialized expertise on its staff, no individual with particular responsibilities for civil rights matters.

And finally, the division reports to a member of the Board of Governors who, candidly, is simply not sympathetic to consumer and civil rights compliance problems.

The examiner instruction and training methods are deficient in almost every respect. According to the Federal Reserve's consultant, Mr. Dennis, examiners evidence what he calls a mild hostility toward civil rights matters based partly on a perception that the devotion of their time and effort to civil rights matters would not materially advance their progress within the system, as it was not an area to which the Federal Reserve attached great importance.

I would have to say that the perception of the examiners, as I see it, is probably a correct perception. We are told by the Federal Reserve's staff that their manual and training programs are under

review, but given the current situation, we do not expect very much from that review.

As for monitoring data, the Federal Reserve is the author of regulation B, which does require lenders to collect data on the race and sex of the applicants for home mortgage purchases. But they rely entirely on voluntary self-identification by applicants, which is not adequate and needs to be supplemented by identification by the loan officers. And they do not call for other information on credit-worthiness, property characteristics, or loan terms.

The data could be of some value if the Federal Reserve made use of it, but it does not. It does not have any centralized analysis and it does not attempt to identify potentially discriminatory patterns.

The Federal Reserve examiners are not instructed on use of the Home Mortgage Disclosure Act data which might reveal possible redlining. In fact, they are told that the act is not an antiredlining measure but simply a disclosure act. So they are told simply to check the data to make sure that it is actually filed.

As for the investigation of discrimination complaints, the Federal Reserve does not have any procedures at all. Information furnished during our lawsuit shows that the Federal Reserve's investigation consists of a written or verbal inquiry to a bank official, occasionally accompanied by a review of bank records, following which the complainant is advised that no evidence of discrimination has been found. But the complainant is never interviewed, nor are there any other areas of inquiry outside of the bank itself.

Now if there is any ray of hope in this gloomy picture, it is the new Chairman of the Federal Reserve, I guess he is not so new any more, William Miller. His record indicates sensitivity to civil rights issues and a commitment to addressing the disadvantages suffered by racial minorities in our economic life. Our hope is that his influence will be felt within the Board of Governors and among the staff, and that the Federal Reserve will begin to catch up with the other agencies.

Although the Federal Reserve supervises lenders who only make a small portion of home mortgage loans, as long as this important agency does not do the basic job, other agencies will be tempted to slip back.

In conclusion, Mr. Chairman, I have described the somewhat difficult and protracted struggle to convince these four agencies that they must respond to the rights and needs of people who long have been neglected by financial institutions. We have occasionally become discouraged, but we recognize that these are ingrained traditions and practices of institutions which take a long time to correct.

At last we do have heartening action on the part of three of the four agencies, action that we think will make a real difference to people and communities that have been victimized by discrimination. The progress that has been made has been due in a very large measure to public scrutiny and to congressional scrutiny. That is why all of us join in expressing our appreciation that you have decided to undertake these hearings and pursue this important oversight mission, and we think that your continued interest in this matter is going to be very important in monitoring the efforts

of the three agencies that have made a commitment, and in turning around the Federal Reserve, which has been so recalcitrant. Thank you.

Mr. ROSENTHAL. Thank you very much, Mr. Taylor, for a very, very thoughtful all-inclusive and well-prepared statement.

How do you think we can turn around, as you described, the recalcitrant Federal Reserve?

Mr. TAYLOR. Well, that is a tall order because the Reserve is not the most responsive institution in American life to the interests of or the expressed wishes of elected representatives of the public.

I do think that these hearings may serve a purpose in that regard. That the pursuit of discussion with the chairman, the expression of a continuing interest on your part in knowing what policies the Reserve has adopted as of the moment, and a continuing reporting requirement expressing your continued interest in knowing what is happening may really have an impact. I think they are going to turn around eventually.

Mr. ROSENTHAL. One other point. We have not touched on it because it was not within our parameter of jurisdictional concern.

What have the States done other than what Ms. Greewald is going to talk about? Have you followed the States to any extent?

Mr. TAYLOR. California has some of the strongest antiredlining policies and practices in the country. They are still relatively new. So we still have not completely assessed progress as to them. But they appear to have an important effect.

Your own State, New York, has wrestled with this problem to some extent. Though it has generally strong fair housing laws, I am not sure it really comes to grips completely with redlining and some of the other discriminating lending practices. But it is really a handful of States that have taken this on. We would like to see more States do so.

We will not deal with the problem as a national problem unless the Federal agencies do it.

Mr. ROSENTHAL. We have all heard people pay tribute to their opposition to redlining and we know people are thinking about it. I find it difficult to assess the totality of the impact, of the negative impact it has had on our society. Is there any way to describe it in measurable terms? What is the significance of these activities?

Mr. TAYLOR. I will take a crack at that and then I will ask my colleagues whether either or both of them wants to say something.

I think it has been a significant factor in the deterioration of cities throughout the country. It is part of a web of negative judgments reinforcing negative judgments, of people saying, "We give up on this area because we do not think we can make money here or because we think that municipal service has declined." Then municipal services decline because there is no private investment coming into the area.

I think that the hopelessness that has existed in the central cities of the country that relates to no jobs, to inferior education, has been reinforced by these lending institution patterns. It received a good deal of attention in the sixties. It has not received as much attention in the seventies, and we are going to have to turn this around. There are some hopeful signs that it is getting turned

around in a number of limited areas, but it still is a major problem.

Jim or Jennifer?

Mr. HARVEY. One of the things I think that is an intangible maybe, but in my view is important, is the negative community attitude that results when people know over past years that you cannot get loans, that nobody is interested in their community. Then when you have a slight change on the part of the lending institutions, it is important to have the change take place in the community. Just one quick example.

I have been involved in the last 2 months in looking at various neighborhoods here in the city of Washington for another neighborhood housing services program. As we meet with community people, community leaders, and representatives of organizations, the pervasive questions include: "Are you really serious? Are banks really going to come into our neighborhood? Can we trust them? They have not been here for the 20 years or whatever that I have been living in this neighborhood."

To change that kind of attitude, where people would take pride, would take some serious initiative to improve their neighborhood has a serious kind of impact; it takes time.

I think if we had more of an attitudinal change and an outreach effort on the part of the Federal establishment, it would help us deal on the community level.

Mr. ROSENTHAL. I am still trying to find out how you can gage the seriousness of this problem? How negative has been the impact on our society? Is it the kind of thing we should be very excited about, moderately excited about?

Mr. TAYLOR. I think we should be very distressed about the conditions that continue to persist in urban areas around the country. When you are talking about 4 out of 10 black teenagers in this country not having jobs and not having hope, you are talking about a problem that has—

Mr. ROSENTHAL. We all know that. How much has the redlining contributed to that problem? Is there any way of estimating that?

Mr. TAYLOR. I do not know if it is easy to separate out the strands of this. What I am saying is, it is very important that when you grow up in an environment where you think all of the forces that can make a difference in your life are against you, that that makes a significant contribution.

An important part of that is the policies of lending institutions which can really determine whether a neighborhood is a neighborhood that is pleasant to live in or a neighborhood that is a constant struggle to live in. So I do not know that you can quantify it.

Mr. LEVITAS. If the chairman will yield, would not one way to quantify and corroborate Mr. Harvey's description be to go to a map and identify the redlined neighborhoods and describe those neighborhoods in terms of their infrastructure, in terms of the type of community problems they have, and show that where you have a defined redlining neighborhood, these are the conditions you find.

If that is a pattern, that tells you something quantifiably about what the consequences of redlining are. It may be a parallel type of cause and effect, but it certainly would be a demonstrable means of

showing what the conditions are in those neighborhoods which we have identified as being redlined. That is one possibility.

Mr. TAYLOR. I think that is a fair and helpful observation and you can go through major cities of the country and identify those.

Mr. LEVITAS. In fact, Mr. Chairman, one of the things that struck me is, Mr. Harvey is talking about the psychological impact of what it means for people to accept the fact or realize that their area has been redlined, and it sort of feeds on itself.

Here is an interesting situation I ran into where we have competing, conflicting governmental policies. In the case of the lending institutions, supervisory agencies under the laws passed by Congress, you cannot redline, that is, you must make loans equally available in areas regardless of other factors. I came across a situation in my congressional district, and I am sure it is elsewhere, where HUD, another agency of Government, has adopted a policy of not making loans in areas which we would describe as redlined areas. They have specifically established a policy that in neighborhoods which are predominantly minority, they will not permit FHA loans and other Federal housing assistance programs to go in.

When I asked why, the answer was: Well, we are trying to discourage the concentration of public-assisted financing in these areas; we want it to be done elsewhere. Consequently, neighborhoods which have deteriorated and are trying to come back, but which at the present are predominantly minority, are cut off from Federal assistance, FHA and otherwise, because of this policy which is directly in conflict with what you are talking about.

I do not know if you have run into that.

Mr. TAYLOR. I was going to say that I suspect that that is a misapplication of what is a legitimate policy. The legitimate policy is to seek housing opportunities for minorities outside of areas of racial and economic concentration. I should say that in the emphasis on redlining, I hope we do not lose sight of the fact that part of this whole problem, a very important part, has simply been the denial of credit opportunities and of housing opportunities to people outside the areas that have been labeled as ghetto areas for them.

So that the problem we have had with HUD is that HUD has not vigorously pursued or enforced that policy so as to open up parts of the suburban and urban areas where minorities have traditionally been excluded.

There is a real need, as your question suggests, to make sure that in areas of the central city, some of which are now being targets of reinvestment or revitalization, that low-income groups do not lose out and that they have an opportunity to acquire their own homes and remain. What we are talking about is a choice, and I think we ought not lose sight of that.

Ms. DOUGLAS. In terms of the changes in HUD's regulations, there is a section in the urban policy about fostering dispersion of the minority and the poor. In the last rewriting, it was changed to increase the opportunity for housing whenever people wanted to live in their areas.

I think that is an area that needs to be looked at. It is also hooked up with the displacement issue. In that area, no one really knows what is causing it, the volume, or the magnitude.

In relation to redlining in cities and disinvestment, the fact if I cannot get a loan someplace, means that I cannot move there. So if I cannot move there, and no one else can move into that area, and people cannot get money to maintain the units that they already have or fix them up, then people have to leave. That is how the disinvestment cycle starts. There is a loss to the tax base as it relates to central cities because of the redlining.

Mr. LEVITAS. I think you perceived the very important aspect that HUD policies have directly to this, because so many of the priced residential properties which people would be able to afford fall within guidelines for FHA financing and for that reason, if HUD policies are contrary to policies which Congress has enacted in equal credit opportunity, they create economic problems for people because they may not be able to afford a conventional loan, would need to go to FHA-insured lending. Then you run into the conflicting policy.

Mr. ROSENTHAL. Congressman Drinan.

Mr. DRINAN. Thank you, Mr. Chairman.

Mr. Taylor, I commend you on this long and lonely fight that you and your colleagues have ventured on.

In the staff report concerning these hearings, the suggestion is made, and I think it is an emerging one, that conceivably Congress might legislate that banks must devote a certain portion of their assets to high risk inner city neighborhood loans, with the understanding that there would be a new Federal guarantee.

Would you react to that idea?

Mr. TAYLOR. I do think that idea is worthy of some serious consideration. I have an ambivalent reaction only in one sense; I think we have to avoid the problem of saying that Congress and the Federal taxpayers will bail out savings and loan or other lending institutions for making loans because they decide they are risky loans when in fact there is no demonstrated evidence that they are risky loans. So I would not want to see everything put on a Federal guarantee basis.

On the other hand, I do think it is important that somehow we get to the point where we have a steady flow of credit into the housing area that is not subject to the business cycle and we try to assure some equity in the direction of that flow. In that sense I think that kind of legislation would be helpful.

Mr. DRINAN. Scratch the idea of a Federal reinsurance. Should we require in housing what we already require in education and employment?

If Catholic University does not have x amount of minority students, then the presumption is there may be discrimination. Simultaneously, if General Motors does not hire x number of blacks or Puerto Ricans or women, the presumption arises. Should we not begin to say that in housing, if the banks do not go into these areas, we could apply a—benign quota, or some other word might be appropriate?

In the testimony Ms. Greenwald has given, she has a description of Boston with which I am very familiar. The situation is the same

now as it was 20 or 30 years ago, no credit, no mortgage credit going into these areas of South and North Dorchester. I am more and more persuaded, unless we begin to do in housing what we do in education and employment, then the banks will continue to justify quite properly their contention that these are risky loans and we really cannot go forward with them.

Mr. TAYLOR. Well, I basically agree with the thought that is expressed there. I am not sure that it would be necessary or desirable to try to reduce all this to numerical terms.

Mr. DRINAN. No.

Mr. TAYLOR. But I do think we are going to make some progress by identifying communities where there has been disinvestment; by identifying particular kinds of loans that are not made and by the agencies then saying to the lending institutions, "you must redress that condition, you must direct loans into areas where you have traditionally refused to make loans or engaged in disinvestment."

So I think we can make a lot of progress if the agencies will move on the authority they now have. But there should be some consideration of further legislation.

Mr. DRINAN. Have they moved on that authority in the guidelines promulgated 3 months ago on which comments were concluded on September 1, 1978?

Mr. TAYLOR. They are finally making a little bit of progress. But, as I indicated in my statement, I do not think it is moving fast enough. There has been too lengthy consideration of all the technicalities of collecting data. It is about time now we moved into an operational phase where the data is collected. It is not a research project, it is a law enforcement project. So, we need the data collected and then we begin.

Mr. DRINAN. Would you say these guidelines are a major step forward or is it just another little phase that will not accomplish anything?

Mr. TAYLOR. The guidelines you are talking about here are the—

Mr. DRINAN. The Comptroller, the FDIC, and the Federal Reserve.

Mr. TAYLOR. These are the uniform enforcement guidelines regulation B?

Mr. DRINAN. Right.

Mr. TAYLOR. I think they are a step forward, but I have some problems with those guidelines. One of the problems I have with those guidelines is that they assume that if you order the termination of a practice, that is all you really need to do. They really do not give enough effect, Mr. Drinan, to the problem of dealing with the continuing consequences of past discrimination.

In other words, they say, to oversimplify it, "you take out an ad to say that you no longer discriminate and you expect the people will come through the door". If there has been a problem in the past, I think we have to do more than that. I think if minority neighborhoods have been neglected, you may need to assign additional staff from the lending institution to work in those neighborhoods.

You may also need to review the employment patterns of the lending institution and bring more minorities and women onto the staff.

As Jim Harvey said a few minutes ago, if people have had no reason in the past to believe that the lending institution was their friend, you have to give them some reason to believe that the lending institution is ready to deal with them. The guidelines do not deal with the fact that a lender has to go to his loan sources, community groups, and talk to them about the new policies. The Bank Board guidelines, by the way, do do this.

Also, there has to be followup of regular examinations to see that changes are being made. So my answer is that the guidelines that they have are not sufficient to deal with the problem.

Mr. DRINAN. One last question.

Even if the Drinan-Edwards fair housing bill became law, would you feel that the banks as they are presently constituted could really thwart the ultimate thrust of that bill?

Mr. TAYLOR. Well, I think if the Drinan-Edwards bill became the law, it deals more with other segments of the housing industry. It deals with the continuing problem with developers, real estate brokers. And if you are successful as I believe you ultimately will be, not through a miracle but through hard work, in getting that bill through, I think that, combined with the changes in the practices of the banking agencies and oversight of the banking agencies, can make a real change.

Mr. DRINAN. I thank you very much, Mr. Taylor.

Mr. ROSENTHAL. Thank you very, very much, Mr. Taylor, and we thank your associates too.

[Mr. Taylor's prepared statement follows:]

PREPARED STATEMENT OF WILLIAM L. TAYLOR, DIRECTOR, CENTER FOR NATIONAL
POLICY REVIEW, SCHOOL OF LAW, CATHOLIC UNIVERSITY

Mr. Chairman and Members of the Subcommittee:

I am William L. Taylor, Director of the Center for National Policy Review. The Center is a foundation-funded public interest law organization located at the Catholic University Law School. Our primary function is to monitor the performance of federal agencies in the area of civil rights enforcement, and to represent the interests of civil rights organizations within the federal policy-making and administrative arena. In this capacity, we have since 1971 acted as counsel to a coalition of organizations concerned with fair housing in an effort to secure action by the financial regulatory agencies to enforce fair lending practices among supervised lenders. The coalition has included the National Urban League, whose Washington housing specialist Jennifer Douglas is here this morning, and the Metropolitan Washington Planning and Housing Association, whose Executive Director James Harvey also is joining in this panel. Other coalition organizations include the NAACP, the League of Women Voters, the National Committee Against Discrimination in Housing and several others.

Discrimination in home finance has been a principal strand in the web of private and public practices which have trapped minority families in residential ghettos. Residential segregation in turn has deprived minority children of equal access to favored schools, and minority workers of equal access to better jobs, especially as business, industry and government has abandoned downtown in favor of the suburbs.

Of course, discrimination in mortgage lending is only one of the factors contributing to residential segregation and inferior housing for minorities. It happens, however, to be an element most amenable to the exercise of federal responsibility. The bulk of home loans are made by financial institutions which are closely supervised by federal agencies having vast regulatory resources: large forces of bank examiners, plus a full array of enforcement sanctions. It was for this reason that civil rights organizations turned their attention to the four federal financial regulatory agencies soon after the Fair Housing Act took effect.

In 1971, our Center filed petitions on behalf of thirteen national and regional groups asking the four agencies to adopt non-discrimination regulations and take a series of specific steps to detect and eliminate discriminatory mortgage lending practices by member institutions. Let me sketch for you the sort of practices with which we were -- and still are -- concerned.

In the textbooks and traditions of the real estate and home finance industries, there have long been certain racial rules of thumb. For example, "homogenous" neighborhoods are said to be desirable and stable; the introduction of "inharmonious elements" is the harbinger of decline. In other words, neighborhoods should be and remain segregated. The Department of Justice recently sued the two chief societies of professional real estate appraisers for teaching and enforcing discriminatory appraisal standards among their members. Similar racial mythology permeated the lending manuals of the Federal Housing Administration until 1949. The

federal government said that integrated and minority neighborhoods were poor credit risks.

Another stereotype concerns the so-called neighborhood life-cycle. Following a growth phase, neighborhoods are said inevitably to age and decline. Thus many lenders refuse loans on older homes, or on homes in older neighborhoods -- the neighborhoods where racial and ethnic minorities are most likely to live. Sex stereotypes have affected both women and minority families seeking home loans. The income of working wives has routinely been discounted in calculating family income, affecting women in general, but also minority families, which more often than whites rely on two incomes. Excessively restrictive underwriting standards also work a hardship on minority families, who are often accustomed to spending a higher proportion of their income on housing and carrying a heavier burden of debt.

Openly acknowledged mortgage lending practices such as these have made home loans less readily available to women and minority home-buyers, and have discriminated against minority and integrated neighborhoods. In addition, while overt policies of discrimination have declined, unacknowledged racial stereotyping which still places barriers in the way of minority homeseekers.

As a result of our efforts following the 1971 rule-making petitions, the financial regulatory agencies conducted three pilot Fair Housing Information Surveys, in which racial data on home mortgage applicants were collected in 18 metropolitan areas throughout the country. All of the surveys showed loan rejection rates among

minorities were roughly double those among whites. The one survey which collected economic data on applicants showed that the discrepancy persisted even when income levels and other creditworthiness indicators were kept constant. Despite the results of the surveys, the regulatory agencies persisted in their refusal to implement an effective examination and enforcement program.

Finally, in April, 1976, eleven members of the coalition filed suit, seeking to compel the agencies to take the basic steps required to detect discrimination through the examination process, and to use their supervisory powers to eliminate discrimination where discovered. The steps we were seeking were essentially those recommended by the Assistant Attorney General in charge of the Civil Rights Division in March, 1976 testimony before the Senate Committee on Banking, Housing and Urban Affairs, and by the Committee itself in its report of those hearings. We found it ironic, to say the least, when the Justice Department's Civil Division defended the agencies against the suit, using technical arguments such as a claimed lack of standing to try to have the suit dismissed.

Following the court's refusal to dismiss the suit, three of the four agencies agreed to substantially similar settlement terms with the plaintiffs. First of all, the agencies agreed to adopt the single most important method for detecting discrimination: the collection and analysis of data concerning the race and sex of mortgage applicants, so as to identify patterns of potential discrimination for detailed investigation by examiners. The Federal Reserve Board remains the lone holdout. While its 1977 amendments to Regulation B required the notation of limited race and sex data on home

purchase loan applications, the Regulation was narrowly drawn and was altogether silent concerning the use of the data -- which of course is the critical matter. In the settlement agreements, the agencies agreed to centralized, computerized analysis to identify individual institutions for in-depth study, and also to indicate problem areas and trends over time so as to measure progress in achieving nondiscriminatory lending.

Secondly, each of the agencies agreed to improve the training and instructions given to examiners in techniques of fair lending examination, including specifically the techniques for using race and sex data in the detection of discriminatory patterns. Each agency also agreed to give careful consideration to the use of Home Mortgage Disclosure Act data to detect possible redlining. And each agency undertook to review its procedures for investigating fair lending complaints and to adopt time schedules for resolving them.

At the time of the litigation, each of the agencies had a consumer affairs office, with responsibilities for a wide range of consumer protection laws and regulations -- from Truth in Lending, through interest rate ceilings and national flood insurance, to real estate settlement procedures. None of them, however, had a single staff member with background, expertise and specific responsibility for civil rights enforcement policies and procedures. Indeed, there was little understanding of the basic distinction between consumer protection, which typically involves ensuring disclosure and adherence to ceilings on charges, and nondiscrimination enforcement, which requires sensitivity to a range of hidden practices and

traditional stereotypes, as well as a distinct body of newly developing law. The settlement agreements therefore provided that each agency would appoint a full-time civil rights specialist at a policy level in Washington, and part-time specialists in each regional office, with responsibility for developing improved examiner training and examination methods, reviewing examiner reports, recommending enforcement action and the like.

Finally, the agencies agreed to advise lenders that they intended to employ their full range of powers and sanctions whenever discrimination was discovered. It was and is our belief that the combination of data collection and analysis, improved examination methods, and the announced intention to apply sanctions for violations will cause lenders to take a fresh look at their lending policies and the practices of their employees. We think that the new enforcement programs will have a broad prophylactic effect and that many lenders will have cleaned up their act before the examiners arrive. That is of course the very purpose of law enforcement.

As you know, the Federal Reserve Board declined to the measures agreed to by the other three agencies, and ultimately the Department of Justice secured dismissal of the suit against the Board on the ground that the plaintiffs remaining after settlement with the other agencies. Interestingly, within days of the dismissal, the Board was handed a detailed report by its own consultant, which made the very same criticisms of its examination and enforcement program that the plaintiffs had been making for years, and recommended essentially the same series of remedial measure as those agreed to by the other three agencies. That was the Warren Dennis Report of which the

Subcommittee has a copy.

Progress under the Settlements

Let me now report to you briefly on the status of the other agencies' compliance with the terms of the settlement agreements and, more generally, the status of their fair lending enforcement programs.

The first settlement was reached in March, 1977, with the Federal Home Loan Bank Board, the most important agency in terms of the volume of home loans made by its member institutions. Since settling, the Board's most noteworthy action has been the issuance last May of improved nondiscrimination regulations. These regulations, I should say, go beyond the requirements of the settlement agreement and represent a stepped-up commitment to deal with redlining and other unfair and unlawful practices.

The Board's regulations have several significant features. First of all, they attack redlining by barring discrimination on the basis of the location of the security property, the age of the property, or the racial composition of the neighborhoods. Secondly, the regulations contain a straightforward statement of the so-called "effects test" a fundamental legal principle applicable to lending discrimination. They require that loan decisions be based on individualized judgments and not rules of thumb based upon presumed characteristics of groups. And they warn against such practices as giving preference to prior home owners or old customers, because of the discriminatory impact of such rules. Finally, the regulations

for the first time require lenders to review their business and marketing practices to make sure that they are not discriminatory -- for example, by dealing exclusively with brokers or developers who serve a restricted clientele or a limited geographic area.

We think the Bank Board deserves high marks for its nondiscrimination regulations and we wish the other regulatory agencies would follow its example. Unfortunately, they have clung to their claim that they lack authority to issue substantive regulations or guidelines on fair lending. We think this narrow construction is wrong. The agencies have a responsibility for enforcing the Fair Housing Act, as they now recognize. Discrimination, they should also recognize, is an unsafe, unsound and uneconomic banking practice, one which exposes lenders to financial liability in the form of damages. These considerations form an ample basis for issuing regulations to advise lenders on how to conform to law. We understand that the FDIC's staff is now reviewing its legal authority in this area, and we hope that the other agencies will follow suit.

Turning to collection and analysis of monitoring data, the Bank Board, the FDIC and the Comptroller are in various stages of developing and testing alternative forms of data collection and analysis, and all three seem prepared now to act in accord with the spirit as well as the letter of the settlement agreements. First of all, they are experimenting with the collection and analysis not only of race/sex data on loan rejections, but data on creditworthiness, property age and location, and loan terms as well. This will permit

identification of discriminatory patterns in the terms of approved loans, and discrimination based on both borrower and property characteristics. Our concern has been the slow pace of progress of the Home Loan Bank Board. But we believe the Board is finally moving and by mutual consent the settlement agreement has been extended by eighteen months to allow time for a full evaluation of the data analysis system which the Board ultimately adopts.

Another area of progress is examiner training, on which the agencies had made a good start even before the settlement agreements were reached. The impact of examiner training has been strikingly demonstrated by the Home Loan Bank Board's experience in the year following the introduction of its new training program. Prior to 1977, few fair housing violations were reported by examiners. But in 1977, as examiners were retrained, 2,804 actual or possible violations were found, 1,949 supervisory letters were sent, 52 special examinations were conducted, and more serious supervisory action was taken in eight cases. A further increase in the level of violations was noted by examiners this summer during a test using monitoring data now required by the Board's regulations.

One area of weakness, however, bears special comment. That is in the detection of pre-screening -- the various subtle means used to discourage or screen out would-be borrowers before they get to the point of filing applications. Pre-screening has always been a major source of discrimination, and we believe that its significance may increase as the supervisory agencies improve their means of detecting discriminatory practices at the post-application stage. The FDIC now requires banks to record the race and sex of persons who

inquire concerning loan terms but do not file applications, so as to enable the agency to determine whether a disproportionate number of minorities or women are being turned away. The OCC is considering other statistical methods of identifying discriminatory pre-screening patterns. But at best, statistics can only identify patterns for examiners to investigate.

All of the agencies therefore need to train examiners in techniques capable of detecting various pre-screening devices. Examiners must learn to observe how bank personnel deal with people who visit or telephone the bank.

In addition, we believe that detection of pre-screening requires use of a technique known as testing which has been the stock-in-trade of fair housing groups dealing with discrimination in real estate transactions. This involves making telephone or in-person inquiries concerning the availability of loans on properties of different ages and in different neighborhoods, and having paired individuals, one minority and one white, make inquiries concerning similar loans. The agencies have expressed reluctance to make use of this technique. They appear discomfited by the idea of assuming the role of a borrower, and some feel it inconsistent with what they view as the traditional relationship of the bank examiner to the bank -- that is, of one cooperation and assistance. But we think that this concept of the relationship is inappropriate to an examination intended to detect violations of law, and we regard testing as both a legitimate and indispensable technique for dealing with the problem of pre-screening. As you may know, the Massachusetts State

Banking Department has used this technique for some time as a part of their investigation process, and Commissioner Greenwald will meet this afternoon with a group of federal agency staff members to discuss her department's experience. We hope that this may cause the agencies to reconsider.

Last but not least, each of the three agencies has now designated staff positions to deal specifically with fair lending enforcement, both in Washington and in the regional offices. These agencies now recognize that civil rights enforcement is a specialized responsibility, requiring specialized personnel, and they are on their way to acquiring the necessary staff.

The Default of the Federal Reserve Board

Up to this point, I have not mentioned the fair lending enforcement posture of the Federal Reserve Board -- and for a simple reason. It cannot be discussed in the same breath as that of the other three agencies. The Federal Reserve has no examination or enforcement program worthy of the name, and the reasons are fundamental. They are perhaps best summarized in the report of the Board's own consultant, Warren Dennis:

Our negative conclusions with respect to the Board's anti-discrimination enforcement efforts derive principally from our observations relative to the Board's not having recognized civil rights compliance as a discrete and separate area of responsibility differing from other consumer protection measures, and requiring specialized expertise and policy consideration.

This failure to come to grips with fair lending enforcement is manifest in every aspect of the Fed's organization, staffing, examiner training, examination methods, and complaint processing procedures.

First of all, responsibility for fair lending compliance rests with the Consumer Affairs Division, which has responsibility for enforcing compliance with the Real Estate Settlement Procedures Act, Truth in Lending, the Fair Credit Reporting Act, the Fair Credit Billing Act, the Consumer Leasing Act, the Federal Trade Commission Act provisions applicable to banks, and Regulation Q dealing with interest on deposits. This Division is also responsible for enforcement of Regulation B and the Fair Housing Act, but it does not recognize the distinction between the examination and enforcement problems inherent in civil rights compliance and those involved in consumer protection. It has no specialized expertise on its staff, and no individual with particular responsibilities in civil rights matters. And finally, the Division reports to a member of the Board of Governors who is not sympathetic to consumer and civil rights compliance.

Examiner training, instructions and methods are deficient in almost every respect. Once again, the Board's consultant offers a succinct summary:

Examiners are given virtually no guidance in how to recognize discriminatory lending practices or the legal standards for evaluating such practices.

Investigative tools and techniques for finding discrimination are lacking, and the sampling techniques in use are wholly inappropriate for finding substantive violations of law.

According to the Board's consultant, the result of their training is that examiners seem "unsure of their expertise in the area of civil rights investigation." They evidence "a mild hostility toward civil rights matters based partly on a perception that devotion of their time and effort to civil rights matters would not materially advance their progress within the System, as it was not an area to

which the Board attached great importance"

We are told by the Board's staff that fair lending examination manuals and training programs are under review, and that many of the Dennis report's recommendations will be implemented. But to date there has been no concrete sign of change, nor is there a basis to be confident that an effective fair lending program will emerge from a group which has resisted for so long.

As for monitoring data, the Federal Reserve Board is the author of Regulation B, which does require lenders to ask the race and sex of applicants for home purchase mortgages. But the regulation relies wholly on voluntary self-identification by applicants -- a technique which experience shows to be inadequate; it does not require monitoring information on home construction, refinancing, rehabilitation or improvement loans; and it does not call for recording of any information on creditworthiness, property characteristics, or loan terms. Nonetheless, the Regulation B monitoring data could be of some value for enforcement purposes, if the Board made proper use of it. Unfortunately, however, it doesn't. Not only is there no centralized analysis, which could identify potentially discriminatory patterns at individual banks, but examiners are not taught how to analyze the data systemically during the course of examinations. Our conclusion in this regard is fully supported by the Dennis report.

Likewise, Federal Reserve Examiners are not instructed to make use of Home Mortgage Disclosure Act data, which might reveal evidence of possible redlining. On the contrary, their HMDA examination instructions state that "The Act is not an anti-redlining measure"

it is simply a disclosure act, relying on public scrutiny for its effect." Therefore, examiners are not told to review HMDA data for evidence of possible redlining, but simply check to make sure it is maintained by the bank in compliance with HMDA's requirements.

As for investigation of discrimination complaints, the Board lacks any procedures whatever. Information furnished during the civil rights lawsuit shows that in practice the Board's investigation consists of a written or verbal inquiry to a bank official, occasionally accompanied by a review of bank records, following which the complainant is advised that no evidence of discrimination has been found. The complainant is never interviewed, nor are any other avenues of inquiry pursued outside the bank.

If there is any ray of hope in this gloomy picture, it is the new Chairman of the Federal Reserve Board, William Miller, whose record indicates sensitivity to civil rights issues and a commitment to addressing the disadvantages suffered by racial minorities in our economic life. We hope that his influence will be felt within the Board of Governors and among the staff, and that the Federal Reserve may begin to catch up to the other agencies in this important area of responsibility. Although the Board supervises lenders who make only a small proportion of home mortgage loans, so long as this prestigious agency fails to adopt the measures necessary to enforce fair lending, other agencies will be tempted to slip backwards, under pressure from member institutions who would like to retain the old ways of doing business.

Conclusion

Mr. Chairman, I have described a difficult and protracted struggle to convince four Federal agencies that they must respond to the rights and needs of people long neglected by financial institutions.

While we occasionally have become discouraged, we recognize that changes in the ingrained practices of institutions rarely are easy to accomplish. And at last we have some heartening action on the part of three of the four agencies, action which we believe will ultimately make a real difference to people and communities that have been victimized by discrimination.

The progress that has been made is attributable is no small measure to public and congressional scrutiny. Thus we welcome these hearings and thank the members of the Subcommittee for pursuing this important oversight mission. Your continued interest will be very important in monitoring the efforts of the three agencies that have made a commitment and in turning around the recalcitrant Reserve.

Mr. ROSENTHAL. Our next witness is Carol Greenwald, Banking Commissioner of the State of Massachusetts.

It is nice to see you again. We are delighted to have you with us. We are delighted that you have taken time out from a busy schedule to join us on this auspicious occasion.

Mr. DRINAN. I want to echo the words of the chairman and welcome you back here. I commend you upon your testimony.

One simple question that I have that is not entirely relevant, but could the commissioner of banking do something about the Boston Red Sox?

STATEMENT OF CAROL S. GREENWALD, COMMISSIONER OF BANKS, STATE OF MASSACHUSETTS; ACCOMPANIED BY WILLARD P. OGBURN, DEPUTY COMMISSIONER, CONSUMER CREDIT; AND RICHARD C. SEIBERT, DIRECTOR, EQUAL CREDIT OPPORTUNITY DIVISION

Ms. GREENWALD. Even my authority is limited.

Thank you for asking me back. I brought with me Will Ogburn, the new deputy commissioner for consumer credit, and Richard Seibert, director of the equal credit opportunity division of the banking department.

With the subcommittee's permission, I am going to summarize my testimony rather than read it.

Mr. ROSENTHAL. Without objection, the entire testimony shall be included in the record.

Ms. GREENWALD. I would like to make fairly brief remarks: What I think is needed for effective enforcement of equal credit opportunity, then describe what we are doing, and then answer any questions that the committee might have.

I have to really echo what Mr. Taylor said, that the most important thing that is needed is commitment from the heads of the Federal regulatory agencies that enforcement of equal credit and the civil rights laws is terribly important and is really crucial to our society, and that as long as there are elements of our society who believe they are outside of the system that we have a crisis on our hands.

That kind of feeling seems to be absent from the Federal regulatory agencies, even those that I would commend for having created a Civil Rights Division. I cannot really feel that they feel this is more than a token gesture to consumerism; they ought to realize that they are not management consulting firms for the banks but in fact they are here to protect the public and they are in fact law enforcement agencies.

When we have gotten a commitment from the Federal regulatory agencies, their commitment has not been so far as to actually commit resources. The resource we found to be crucial is computer resources. There really is no way to do this examination simply by glancing through applications. I am going to talk about that later.

A subjective analysis by the examiner scanning through 100 loan applications will never let him judge whether he has seen discrimination in lending in a bank. There are just too many variables.

Every application is slightly different; there are not 100 applications where everybody's income is the same, or price of the home is the same, or the neighborhood is the same, or the credit history is

the same, or where the proportion of the woman's income to the family income is the same. It is not going to be the same. It is going to be different in every one of those cases.

To flip through applications and say, "It does not seem to me anybody is discriminated against here," which is the result we have gotten from the Federal examination, is really simply to say that you cannot do it that way. It has to be done statistically on a computer which can hold constant what the variables are and determine whether sex or other discriminatory bases are entering the decision process.

And that crucial commitment of resources; namely, the vast computer resources that all of the agencies have, has not been given to their Civil Rights Division. In essence, by that refusal they have made their examination process almost a mockery. They cannot come out with a conclusion that a bank discriminates. If you review their compliance reports, that is what you find, there is no discrimination.

I think the second commitment that has to be made from the very top is that you have to feel this is important enough that you are willing to accept some antagonism from the banking community over enforcement because there is going to be antagonism generated by effective enforcement because I believe, just as with truth in lending, there will be no effective self-enforcement unless there are punitive damages assessed by the regulatory agencies.

Just as we have done and was done in Connecticut and Maine and several other States with truth in lending, one must require restitution. Larry Connell, now that he is head of the Credit Union Administration, is requiring restitution of the federally chartered credit unions. Unless the agencies find violations and they insist that money go back to the damaged person, there will never be self-enforcement of this or any other consumer compliance law.

Finally, the commitment must be made to reorient both the agencies and the staff that consumerism is not an annoying public relations obligation but is really the essence of the agencies' being, that they are here to promote the public interest in banking.

What we have been doing is trying to take the law very seriously because I believe it is a serious law.

Mr. ROSENTHAL. You do not have any antiredlining statute in Massachusetts, do you?

Ms. GREENWALD. We do not have an antiredlining statute. On redlining, what I have acted under is basically the authority granted me to grant branches, which says that they can only be granted if they meet the public need and convenience. There is now a Federal statute, the Community Reinvestment Act, which says that, as I read the act—and the Federal regulators have chosen to read it somewhat differently in issuing their regulations—that the agency cannot grant a branch, allow an institution to merge or allow a holding company to acquire a bank unless there is an affirmative finding that the bank is meeting the credit needs of its community.

Meeting the credit needs of a community can only mean serving those that have not had access to credit for years.

Mr. ROSENTHAL. There is where you draw your strength for enforcement?

Ms. GREENWALD. That is right.

Mr. ROSENTHAL. Tell us about your situation, what is happening?

Ms. GREENWALD. I think we sent to the subcommittee a copy of the report on home mortgage lending patterns in Metropolitan Boston.

Mr. ROSENTHAL. Can you push that microphone about 3 inches closer and about an inch and a half up?

Ms. GREENWALD. We did an analysis of data we collected. The data is very similar to that collected under the Home Mortgage Disclosure Act passed by the Congress. What we found was that in many sections of Boston less than half of the homes sold had received bank financing. I think that is the best measure of redlining because it gets at the argument there was no demand for mortgage funds. A home was actually purchased and sold. The easiest way to do that is with bank financing. If you find financing elsewhere, it must mean that the banks would not give financing.

We found in areas with a high proportion of racial minorities that over half the mortgages were being granted outside of banking financial institutions.

Mr. DRINAN. What do you mean? Who can give money besides banks? How could people possibly buy a house?

Ms. GREENWALD. There are mortgage brokers. They are the major source of funds for people who cannot get bank loans. Also, there are seller mortgages, which is a tremendous inconvenience. In other words, in order to sell your house you have to become the bank. You have to say, "I will receive money each month over the next 20 years."

Mr. ROSENTHAL. You mean they take back a purchase money mortgage?

Ms. GREENWALD. That is right.

Mr. ROSENTHAL. The net effect of this to the individual homeowner is obviously he is paying more than he would to a bank.

Ms. GREENWALD. Paying more and especially to the mortgage brokers—

Mr. ROSENTHAL. Because of the fees?

Ms. GREENWALD. The fees, that is right, up-front money is much greater. The points make the rates much higher than the comparable rates.

What we have done by concerted policy not only of the banking department but of the Governor, the whole administration, is really to focus on reinvestment in urban areas, by focusing public attention on the problem, and we have done that for the last 3½ years. By making it quite clear to the banks that the public considers this socially unfair, we have seen an appreciable change in bank lending practices, and we have documented that in this report. A higher proportion of the home sales are now being financed by banks.

Mr. ROSENTHAL. Some of the areas that you sort of suggested that they move into, some of the loans you helped direct them toward, have you followed those up to see whether they were prudent loans, whether the repayment was on schedule, things of that nature?

Ms. GREENWALD. Yes, we have. There has been no increase in delinquencies. Of course, given the time period we are talking

about, usually if there is going to be a delinquency, it is in the first year or two of the home mortgage. Over the period there has not been an increase in defaults from these loans.

Mr. ROSENTHAL. In the sense when the banks redline a community and force purchasers to go to mortgage brokers and to pick up extra points, they are contributing to an inflationary push in that community, pushing up the prices of homes to each successive seller?

Ms. GREENWALD. Well, what they are doing though is something even more demoralizing; since the points are often paid by the seller, you get the attitude—there is an attitudinal as well as a money thing—which means, “In order to sell my house I have to pay \$3,000 to a person to sell it.” Not only the brokerage fee which is 6 percent, but, “I have to actually pay a bank or a lending institution several thousand dollars before he is willing to sell my house.”

Mr. ROSENTHAL. We all understand that.

By the banks refraining from lending in those communities, they are permitting all these other inflationary forces to take over?

Ms. GREENWALD. Yes, you are right, to the individuals involved there is an inflationary impact.

Mr. ROSENTHAL. Of course they are forcing up the price. I have seen this myself hundreds of times, they are forcing up the prices of those homes. Everybody has to get \$3,000 to \$5,000 more to cover all the side arrangements.

Ms. GREENWALD. I am not sure if it does not have an offsetting impact here. When you cannot get bank financing, it is so much harder to sell the homes, and that also has a depressing effect on the value property in the neighborhoods. So there are both effects on it.

Let me go back to a similar point on equal credit. The first year we were into equal credit examination we adopted the same procedure basically as the Federal agencies are now using, which is a procedural examination. We went through the banking institutions and acted as a management advisory service, which is all the Federal regulators ever do in these areas. We thought we were being fair.

We were going through once and telling them what the procedures should be. If the procedures were wrong—which they were—there were no penalties, we were simply telling them, “This is how you should do it, here are the correct forms, here is the compliance information you should be keeping.”

In doing these we found three times as many errors as the FDIC had recorded on the same examinations. We also checked 127 FDIC examinations done in the last year, because the new FDIC form has a question which seems to get at the heart of equal credit. It says, did the bank discriminate in its lending practices? Was there actual discrimination, a substantive, not a procedural violation; did they actually discriminate? In no case did the FDIC find a bank that had substantively discriminated.

I think that is quite understandable because the way they answer that question is by asking a loan officer, do you discriminate, which at best is an unreliable way of obtaining an accurate answer and at worst is ridiculous.

I might comment that despite those 127 clean bills of health, we had several valid complaints on equal credit discrimination against some of those institutions, complaints that we had investigated and where we had recommended to the institution that they make the loan, and that they did, after a discussion with our department. This even included one case which we referred to the Justice Department, and the Justice Department was actively investigating the complaint.

That bank too received a clean bill of health from the FDIC, although the examiner did note that the Justice Department was investigating a complaint against the bank that had been referred to them by the State banking department, or actually by the State attorney general's office. We had referred it to the attorney general. Our statute of limitations had run out but there still was help to be found in the Federal statute. That is why it was sent to Justice.

Our period of procedural examinations has been over for some time now and we have been doing substantive examinations.

I think there are several elements to how you get an effective examination. Everybody always wants to limit the cost of these programs. So it seems to me if you are going to limit the cost, you have to do some preselection. You have to think about, which bank am I going to examine? Rather than saying there are 14,000 commercial banks in the United States, we are going to examine all of them this year. The preselection can be determined in several ways so you get to the most important, or those banks that are most likely to be violating the law.

One way is to use data which is already collected. There is the Home Mortgage Disclosure information which has been sitting rotting in the files of the Federal regulatory agencies waiting for somebody to take a look at them. We use that information. It is already computerized as it is for the Federal agencies. It comes on computer tapes. We put it up and we then map it against racial compositions by census tract. We compare that with applications and loans made by institutions.

If an institution has very few mortgage loans in a given area, or if it has very few applications from a given area that has a high proportion of minorities, that bank is a likely candidate for an equal credit examination. We would like to know why they have no applications and why they have no loans.

The second part, why they have no applications, gets to a second prescreening process on our own part, which is testing. I agree with Mr. Taylor there is no way to find out if a bank is discouraging applications, refusing to give people an application, unless you do testing. We have found, in fact, that banks do prescreen.

We have included as part of our testimony a slightly fictitious map because this is in criminal investigation at the present time. The data from an actual bank has been made slightly fictitious so as not to be identifiable. From our data we found that this bank had no applications from areas with a high racial composition. We did some testing by pairing testers, calling the bank and having each one ask for an application. When they were asked the location of the property, if the answer was that it was in an area with a high minority population, the bank said, I am sorry, we do not

make loans in that area, we restrict our loans. The bank named three basically white population areas which were not suburban, where they said they make their loans. Then when someone called and said, we want an application for a suburban area, the bank said, we will send you the application in the mail today.

That kind of preselective testing is not time consuming, it can be done in an office. Many banks can be done at one time. Once you find a bank which has been preselected through the use of testers, then you get into a more time consuming process of actually sending people out to the bank.

We are doing that in conjunction with the State attorney general's office, who has a great deal more experience using testers than we do. We would recommend that the Federal agencies also establish close working relationships with law enforcement authorities. These are violations of law and it seems to me that we have to stop acting as management consultants and treat ourselves as law enforcement agencies in some areas.

Finally, another good source of preselecting institutions are consumer complaints. We have found that consumer complaints are often valid, in fact we are pretty close to a 90 percent validity rate on consumer complaints. Banks that have valid consumer complaints against them should be high on the list of banks chosen for selection.

After you select a bank, as I have said, the examination must use a statistical analysis. It is not enough simply to flip through the files and say, "Oh, well, they have given three loans to women and that seems to be adequate." A computer analysis is essential to determine whether equally situated individuals were treated equally.

Finally, what happens when you find violations? That seems to me to be almost the heart of it. Unless we have some damages assessed against the bank, self-enforcement may well be very lax as it was with truth in lending.

Under the present guidelines that have been issued, that you referred to, Congressman, on September 1, what the agencies have said is, "If we find you have been violating the law we will ask you to stop violating it," period. So the game is, you know, heads I win, tails I cannot lose, all I can end up doing is what I was supposed to be doing in the first place.

It seems to me when a violation is found, some kind of monetary penalty has to be assessed. We are experimenting, using approaches similar to what we did in truth in lending. When we find a violation where we can validate that the person has been discriminated against, we have different standards for different kinds of things.

For credit cards, we are asking the institution to issue the person a credit card with a line of credit similar to the line they would have issued to a person of similar income and credit history, and as the punitive part of it, the credit should be available without interest up to a limit of \$500 for the life of that particular card, which is usually about 2 years.

For mortgages, we are asking if the person got a mortgage elsewhere at a higher rate, for the first institution which turned them down unfairly to hand them a cash settlement of the difference

between what they have to pay at the other institution and the rate at the first institution at the time the person applied.

Mr. ROSENTHAL. Would that cover all kinds of excess, sometimes unreported costs?

Ms. GREENWALD. Well, the fees and other handling charges, yes; we are using up to a maximum of \$1,000. In other words, we are asking for settlements that are less than the Federal statute would allow but we do advise individuals in the letters that we send to them when we accept their consumer complaint that they have a valid complaint. We do tell them what the Federal penalties are and what their rights would be if they should sue in court, which is something the Federal agencies have absolutely refused to do.

It seems to me their absolute refusal shows their attitude—they see themselves as management consultants to banks and not at all as agencies there to represent the public interest. We have written to the agencies and others have asked them also. They absolutely refuse to tell anyone whose complaint they are handling, even when the complaint is valid, that the person has another avenue of redress, that there are financial penalties in the act.

We have enclosed a copy of the letter we send to the consumer. We do not want to be a buffer between the law and the bank. That is the role the agencies have put themselves in. When they tell a consumer we will handle your complaint and get you redress, what they usually mean is, "You were right and therefore the bank is going to make the loan to you," they do not say, "You were right, you are going to get the loan and you also have redress under the law." That last part they do not say.

Mr. ROSENTHAL. You say these agencies are management consultants to the bank?

Ms. GREENWALD. That is right.

Mr. ROSENTHAL. All of them?

Ms. GREENWALD. At the present time I think they are, because there are no punitive damages. When you are found to make a violation of law, they tell you what it is and tell you not to do it again. Is that not what a management consultant is? There is no penalty. They refuse to tell the person injured what his penalties could be.

Mr. ROSENTHAL. You may be aware that the Federal Home Loan Bank Board recently joined in a lawsuit in California opposing the application of a State nondiscriminatory law at the federally chartered savings and loans and the court agreed with the Bank Board and concluded that the State law was preempted in favor of the Bank Board's regulation.

I do not know if you know about it, but do you have any comments about whether the Home Loan Bank Board has undermined the rather strong California statute against discrimination?

Ms. GREENWALD. I believe it has. I believe the law should be amended as was done in truth in lending, that where a State law is stronger or equally as strong in enforcement, the Federal law should not preempt it.

Mr. ROSENTHAL. Obviously we did not intend to undermine State laws by interposing weaker Federal action.

Ms. GREENWALD. No, I do not think you did. I think the court's ruling was incorrect in this case but that is how they found, so now there is a need for clarifying legislative language.

In conclusion, what I would ask is that the Federal agencies do more in the area of consumer education and that just as they sometimes ask a bank which has been found to violate a consumer law to advertise its availability of loans at that institution, that the Federal agencies be required to advertise in the newspapers across the country that they offer consumer complaint handling services and that if you believe you have been discriminated against, the proper place to call is the regional office of one of the Federal agencies.

I believe the public is not aware that each of these agencies have consumer complaint handling services.

Mr. ROSENTHAL. How about doing the cigarette thing, say "Banks are dangerous to your health," or something similar.

Ms. GREENWALD. I do not think we need to say that, but I think it would be useful to say that Federal agencies are there to be helpful. We have taken it gratuitously upon ourselves to tell the public that in Massachusetts. We have this Pocket Credit Guide, distributed by the banks, on their counters, paid for by the State banking department. In it we have a section on credit denial. We said lenders cannot discriminate in lending because of sex, marital status, race, color, and so forth, and we give the phone number of each of the Federal agencies and ask them to be sure to call if they feel they were discriminated against.

Mr. ROSENTHAL. That looks like very small type. Can most people read that?

Ms. GREENWALD. It has gotten a lot of publicity. We are in our second printing. We could distribute as many of them as we could afford to print. In fact, even some banks have volunteered to pay for it, because they say it is so popular at the banks and we cannot give them the volume that they need. They said, "We will pay for a printing if you will print it."

Mr. ROSENTHAL. Have any average citizens walked into any of these places you listed in the book under "Where to Make Complaints," Federal Home Loan Bank of Boston, 1 Federal Street?

Ms. GREENWALD. I cannot tell you if they have walked in. We have a consumer compliance service which is very widely used. We average about 1,200 complaints a month. We have begun to keep statistics on how many calls we get which involved a Federal institution, and we cannot handle the Federal institutions so—

Mr. ROSENTHAL. I understand.

Have you ever heard of a case where a complaining consumer walked into the Federal Home Loan Bank of Boston at 1 Federal Street and got attention?

Ms. GREENWALD. No, I have not, but that does not mean they do not. They certainly walk into the Massachusetts banking department, 100 Cambridge Street.

Mr. ROSENTHAL. I know, but I would think most of them would get arrested if they walked into the Federal Home Loan Bank of Boston.

Ms. GREENWALD. I really do not know, sir.

Mr. ROSENTHAL. Congressman Drinan.

Mr. DRINAN. What kind of an image do you have of Boston?

Ms. GREENWALD. I commend you upon your attention and devotion to this area. I am intrigued by this map here. This apparently is only one bank. But am I to conclude that other banks do not lend in the black area here? It is astonishing that an area with 30 percent or more minority, there was no application for mortgage received.

Is that true of all the banks in that area?

Ms. GREENWALD. I am sorry, we did not bring those figures with us. We do have them. I do not know if others—I do not believe others would show zero.

Mr. DRINAN. But in general we could conclude that this entire area of Roxbury and Dorchester, at least the minorities there are deprived of the availability of any mortgage money?

Ms. GREENWALD. No, we could not say any mortgage money.

Mr. DRINAN. Or any substantial mortgage money?

Ms. GREENWALD. That is right.

Let me cite from our redlining study. In 1975—76 only 20 percent of the homes sold in Roxbury had bank financing.

Mr. DRINAN. I am sorry, 20 percent what?

Ms. GREENWALD. Had bank financing. So there was some mortgage money.

Mr. DRINAN. How much of that is from the Unity Bank, the black bank?

Ms. GREENWALD. I cannot give you that figure as a breakdown. I do not have it with me. That ratio has risen in the last year that we have data to 32 percent. So there has been an increase but that is still two-thirds financing being done outside of the banks.

This map is taken from a bank—you start with your clearest cases. They said they had no applications, although they have a branch very close by. We found that hard to believe. Our use of testers indicates why they have no applications; they do not accept them.

I do not think that is a totally unusual situation. The banks have gotten fairly sophisticated when they do not want to make loans in a certain area. They know what the law says; they change their procedures.

We have found appraisal techniques now used as a way of discriminating both by area and against women. They simply appraise the property for less than it is worth. They say, "We cannot make the loan because it is overpriced."

Mr. ROSENTHAL. Is that not a subtle technique for denying a mortgage application?

Ms. GREENWALD. That is right, I would consider that subtle.

When they have to fill out the reason for loan denial, they are not going to say "inadequate income," because the person had income. Then you have to get to more sophisticated examination techniques. We look at comparables, at what price other homes in the area sold.

Mr. ROSENTHAL. I would think the assessment would be a basis for comparing comparable values in the community.

Ms. GREENWALD. Not in Boston. If we moved to 100-percent valuation, that would be true, but at the present time valuations are very varied.

Mr. DRINAN. On this one bank, whose name unfortunately you cannot identify, is this the bank that ordinarily would be expected to be the local bank, giving most of the mortgages? This is not a Greater Boston bank, this is a local bank?

Ms. GREENWALD. It is a bank that has a branch in that area. It is located in Boston but has a branch in the area.

Mr. DRINAN. And it does business in South Boston and in Milton and in Hyde Park, and so on?

Ms. GREENWALD. Yes. It does business everywhere around that area.

Mr. DRINAN. Why are you precluded from naming the bank?

Ms. GREENWALD. The fact that we are right now using testers with the State attorney general's office, to name the bank would end our lawsuit. We plan to bring suit and naming the bank now would destroy our case. We are in the process of using testers right now.

Mr. DRINAN. Coming to the point of testers, I speak perhaps with the sensitivity of the civil libertarians as regards the partial deceit involved, but do you see any reason why the Federal agencies should not use testers?

Ms. GREENWALD. I think they have to use testers. There is going to be absolutely no way to detect prescreening without them. Let's take this bank. It says, "We received no applications. How can you expect us to make mortgages in an area in which we have no applications, not one? We would have made the loan if we ever received an application." Without the use of testers, how are you going to deny what appears statistically unusual? But "statistically unusual" does not mean it is not true.

Mr. ROSENTHAL. Could you define what a tester is?

Ms. GREENWALD. You send in an individual or two paired for specific characteristics, with one difference; we were just using geography in this case.

Mr. ROSENTHAL. You mean sending somebody to go in and submit a fictitious application?

Ms. GREENWALD. That is right. It does not even have to get all the way through the application. What we were asking is, could we get an application? The answer was yes, if we gave the location of the property as a white area and no if we gave the area of the property as one in which there was a high concentration of minorities, we could not get an application.

That is what we are testing, that the law says that you cannot prescreen that way and the bank clearly is prescreening. That is why their figures are so good. I am quite concerned that we may hit the wrong banks if we do not look at applications because banks will say, "We do not have loans because we do not have applications." We have to ask the question, "Why do you not have applications?"

Mr. ROSENTHAL. Do you think there should be Federal anti-redlining regulations for banks?

Ms. GREENWALD. Yes, I do. I think the vehicle is there, the Community Reinvestment Act, which was meant to do just that. It is very much weakened in intent by the regulations that came out.

Mr. DRINAN. If I may be personal for a moment, for 7 years before I came to the Congress I was the chairman of the Massachu-

sets Advisory Committee to the United States Commission on Civil Rights. We conducted hearings more than once on this topic and I recall well the housing report, which I reread last night, which came out in 1966 from my committee; it went into this problem.

You are the first statewide official that I know of that has taken the initiative in this area, and I simply want to commend you.

Ms. GREENWALD. Thank you very much.

Mr. ROSENTHAL. Let me just ask one last question.

The proposed enforcement guidelines that the regulatory agencies are pursuing state that the supervisory agency can consider, in addition to the nature of the violation, the condition of the creditor and the cost of the corrective action proposed. This has been criticized as a crutch for weak bank management and the imposition of an inadequate remedy for an innocent victim of discrimination.

In view of your responsibility with respect to both the enforcement of the law and the safety and soundness of banks in your jurisdiction, do you believe it is necessary to take into account the condition of the creditor bank?

Ms. GREENWALD. Yes, I do.

We found that we had to do that when we were doing truth in lending. I do not believe that the Congress meant for a bank to be pushed into being closed because of violations and remedies sought by the regulator; I do not think the court would award a settlement that ended up with the closing of a bank. Short of that extreme, however, I think we can go quite far in asking for financial penalties and I think we have to ask for some.

I think the regulations as proposed are really quite weak. My director said the word "terrible." That is because they really do not get at saying more than, "If you are found to violate, you risk a slap." It is not even a slap. There is no penalty. If you are found to violate, you are simply told, "You should now advertise that you are a good bank."

Mr. ROSENTHAL. I think your description of a management consultant says an awful lot. I found it very articulately phrased.

Thank you again. As usual, you have made a very significant contribution to our concerns.

Ms. GREENWALD. Thank you very much for allowing us to appear.

[Ms. Greenwald's prepared statement follows:]

PREPARED STATEMENT OF CAROLE S. GREENWALD, COMMISSIONER OF BANKS, STATE
OF MASSACHUSETTS

EQUAL CREDIT OPPORTUNITY ENFORCEMENT

I am pleased to testify before the Subcommittee about enforcement of equal credit opportunity laws. Proper enforcement will ensure that loan applicants are treated without regard to sex, marital status, race, and other illegal discriminatory bases. We have found that illegal credit discrimination continues to exist, that innovative examination procedures must be used to detect it, and that enforcement penalties imposed by agencies must be substantial to serve as an effective deterrent. This can only be accomplished when an agency perceives its role as consumer-oriented, develops and implements sophisticated investigative and examination methods, and recognizes its enforcement responsibilities are shared with the courts.

I. Massachusetts Banking Department Program

The Banking Department established an Equal Credit Opportunity Division in June, 1977. It was initially staffed by four examiners trained in equal credit opportunity. We quickly learned that our compliance efforts should be split into two categories - procedural and substantive. Massachusetts and Federal equal credit opportunity regulations, which are substantially similar, require creditors to comply with administrative procedures intended to minimize the likelihood of discrimination.

Initially, we developed an examination geared toward discerning procedural violations, for example, failure to use appropriate application forms, to send reasons for credit denial, to furnish credit information for women, and so on. This program emphasized bank education and voluntary corrective action. Our equal credit examiners, in effect, acted as rather

inexpensive management consultants for over 180 financial institutions. This program concluded in July of this year. A copy of our examination report is attached as Enclosure I.

The report, for the most part, did not address substantive violations, this is, actual credit discrimination. Substantive violations include refusal to extend credit to a creditworthy individual on the basis of sex, marital status, race, etc., and granting credit with higher rates or on less favorable terms because of a prohibited basis. During our first year of equal credit opportunity enforcement, we addressed substantive violations only when we received a complaint alleging credit discrimination.

Since its establishment, all consumer complaints involving alleged credit discrimination have been referred to the Equal Credit Opportunity Division. Since January 1, 1978, the Division has handled 44 such complaints, 39 of which were found valid at least to the extent that the creditor committed a procedural violation. Where a substantive violation appeared likely, a special examination was conducted. These examinations usually involved a review of the creditor's records concerning the complainant, a review of approved applications to determine if similarly situated persons were granted credit, and, where the individual complaint was valid, a review of other denied files to determine if a pattern or practice of substantive violations existed. Thirty of the 44 complaints were actual cases of credit discrimination. Several previously denied loan applicants received loans as a result of our efforts. Valid complaints tipped us off to patterns or practices of credit discrimination. In one of these, a divorced woman with an annual income of \$25,000 was told she could not afford a home mortgage of \$41,400; her written loan application was thrown away by a bank officer. A subsequent special examination revealed that under the bank's credit standards she was qualified for the loan as requested

and further, that several other qualified applicants were denied credit due to sex or age. The Department is taking three courses of action on the matter: First, we are seeking a cash settlement of over \$2,500 for the complainant.* Second, we are imposing recordkeeping requirements. The bank will be required to keep detailed loan, property, and applicant information for 12 months in a manner that will allow for bank and examiner monitoring of progress toward non-discriminatory lending. Third, we are sending notifications of our findings to other adversely affected applicants. A sample copy of the notification is attached as Enclosure II. In addition, since our investigation, the Department has sent women testers posing as prospective borrowers into the bank to check for prescreening. None was found.

Because the bank acted to correct problems which caused the discriminatory credit decisions, and because the number of adversely affected women was small in relation to all women applicants, the above complaint was handled by our agency. Other complaints and subsequent investigations revealed forms of credit discrimination which affected entire classes of individuals. For example, we received a complaint from a resident of the racially mixed Hyde Park section of Boston. He was denied a credit card

* The complainant applied for a 90 percent home mortgage loan of \$41,400. If approved, she would have received an APR of 9 percent over a term of 30 years with consequent interest of \$78,520.95; instead, she received a 90 percent loan from another bank at an APR of 9 1/4 percent for 25 years. The interest charges for the requested loan at 9 1/4 percent for 30 years would total \$81,211.54. The difference between this figure and \$78,520.95 is \$2,690.59, the amount requested for cash settlement.

from a major oil company, partially on the basis of "our credit experience in your immediate geographical area." Upon investigation, we found that the oil company used a credit scoring system, so that point values were assigned for each of several characteristics of an applicant. One of the characteristics was residence, as defined by zip code. Most zip codes in Massachusetts were given a positive value; but some received one of two negative values, both of which sharply reduced the likelihood of receiving a credit card. Supposedly, these negative values reflected the poor payment histories of cardholders who lived in the respective zip codes; however, our statistical analysis suggests this was a proxy for racial discrimination--within the Boston SMSA, 30 percent of the minority population received the lowest score for the zip code characteristic, as opposed to 9 percent of non-minorities. Further, one-half of all minorities living in the Boston SMSA received one of the two negative scores. Because the case involved an apparent widespread practice of disproportionate treatment to minorities, it was referred to the State Attorney General's office for further action.

We received another complaint from a minority individual who telephoned a Boston bank to inquire about mortgage loan rates. He was asked the location of the property to be purchased, which was in a racially-mixed Boston neighborhood. A bank officer said that the bank did not have enough money available to lend in the neighborhood, that its lending was limited to other neighborhoods. A subsequent Equal Credit Opportunity Examination revealed that the bank's stated lending area, in effect on the day of the complainant's call, included all Boston and substantial portions of its suburbs. A review of the bank's written applications indicated that virtually none were received from mortgage applicants for properties located in racially mixed and substantially minority neighborhoods. It was clear that the bank was prescreening prospective minority applicants and/or destroying written applications. The bank's practice precluded lending to minorities, and because of its widespread impact, this case was also referred to the State Attorney General.

The volume and high validity rate of our credit discrimination complaints are, we feel, a result of consumer education efforts. My staff has spoken to consumer groups about equal credit opportunity; we have even done a radio talk show on the subject. Together with three other State agencies, we wrote an equal credit opportunity pamphlet similar to those put out by some of the Federal financial regulatory agencies. Even our recently published "Pocket Credit Guide", which assists loan shoppers with interest rate tables, includes a section on credit denial and how to file a credit discrimination complaint.

Early in our program, we recognized that detection of substantive violations is a more complicated task than discerning procedural violations. Several months were spent experimenting with statistical sampling methodologies for the analysis of loan files. Our initial objective was to find a quick and easy method of finding disparate treatment on the basis of sex. One method used for home mortgage loans involved a comparison of male versus female income. Our simple procedure involved calculating the percentage of female contribution to income for approved and denied loan files and averaging the female contributions for the approvals and denials, in order to determine whether women's income was being discounted. Still another quick and easy procedure was tried for credit cards. We compared income with credit line granted by sex. Again, other factors pertinent to the credit decision were not included, so that our results were inconclusive. Because factors other than income were not held constant by these simple tests, their results were not conclusive; however, the results can be used to indicate whether more detailed analyses may be productive.

We finally began to build models of bank credit decision systems; these were more conclusive. Recently, we began systematic examinations of credit card issuers, utilizing statistical methods designed to determine substantive violations of sex discrimination. These examinations include several steps: First, examiners determine the creditor's loan policy by interviewing appropriate loan officers and reviewing written credit standards. A substantial sample of credit card applications is taken from the files. The examiner records information from each file, including the applicant's sex, the credit line granted, if any, as well as pertinent characteristics such as monthly income, expenses, duration of employment, credit history, and more, depending upon the bank's articulated standards. The information is submitted to the Department, where it is coded and fed into a computer which performs a type of statistical analysis, called multiple regression analysis, in order to determine which factors play a significant role in the bank's credit decision process. In this manner we are able to determine whether women are assigned lower credit lines than similarly qualified men. These same credit card issuers are also examined for procedural violations in each loan department. Similar statistical methods for home mortgage loans and instalment loans are in the advanced stages of development. The Equal Credit Opportunity Division now has an econometrician and is supported by computer analysis personnel.

The Banking Department receives home mortgage and deposit information from banks with assets of \$20 million or more located in an SMSA. This is similar to the data submitted to the Federal Reserve under the Home Mortgage Disclosure Act. Unlike the federal bank regulatory agencies, we analyze this data, not just collect it. This mortgage and deposit data is organized into table form and mapped for comparison with racial com-

position of respective census tracts or zip codes. We also receive summaries of home mortgage application activity from most Boston based thrift institutions. This is also organized for comparison with racial composition. We then review this information to pinpoint banks which do not grant, or grant disproportionately few, loans to applicants for properties located in minority areas. Banks may be chosen for comprehensive examinations based upon this information alone.

Another means of selection involves testing for applicant prescreening and discouragement on a prohibited basis. We have found that a substantial number of potential applicants are discouraged from completing a written loan application. Our system involves the use of testers who are paired on the bases of differences in sex and race. A female and a male are given similar credit backgrounds; the female calls a bank, requests a loan, discusses terms, answers the bank's questions, requests an application form, and records the bank's response. Her male counterpart does the same. Their experiences are compared for evidence of differential treatment.

Institutions are selected for racial prescreening in home mortgage credit by use of the home mortgage application summaries and home mortgage and deposit information received by the Banking Department. One bank was chosen for testing based upon its lack of application activity within racially mixed and minority neighborhoods, as shown by the attached map and table (Enclosures III and IV). A subsequent test produced startling results: A white and black tester were paired; each was given similar credit backgrounds, with the exception of property location. The white tester was given a property address located within a generally recognized white neighborhood, the black tester an address in a black neighborhood. Each telephoned the bank, requested information about mortgage loans, and

gave their respective property addresses. Our black tester explained that the property was located in Roxbury, a predominantly black Boston neighborhood. The bank officer who handled the call immediately responded that the bank does not service Roxbury, but only two other Boston neighborhoods and one suburban community. The very next day our white tester called, similarly requested information about a mortgage, and gave a property address in another suburban community. The bank officer mailed an application to our white tester.

These tests were repeated over a period of several weeks with similar incriminating results. Telephone testing confirmed our suspicions about prescreening and discouragement of blacks; unfortunately, it is not a strong basis for court action. We have currently undertaken a cooperative effort with the Attorney General's Office for in-person testing; this will serve as a basis for court action against creditors which prescreen and discourage applicants due to race, sex, or other discriminatory bases.

II. Federal Enforcement Efforts

The Federal Deposit Insurance Corporation examines state-chartered nonmember banks. The FDIC equal credit opportunity examination is part of a "Compliance Report" for all consumer laws and regulations. Up until recently, its equal credit opportunity report page placed emphasis on the procedural aspects of the regulations. It dealt with 11 compliance categories within Regulation B and required the examiner to indicate, yes or no, whether the bank was in compliance with each. State examiners have examined 21 banks also examined by FDIC. Enclosure V shows the examination results of each agency. Our examiners have found nearly three times the number of procedural violations reported by FDIC. In addition, our examiners have reviewed three compliance categories not addressed by FDIC,

one of these the Federal monitoring information requirements. We have found ourselves in the peculiar position of enforcing a Federal requirement - of the 21 banks examined, 19 had violations of the monitoring provisions.

A new examination format, together with FDIC's new Fair Housing Regulations, could portend a brighter future for enforcement efforts. Recently, the Equal Credit Opportunity examination report page was expanded to include 17 compliance categories. But in one of the first exams using the page, only one category was found in violation. The bank was given a clean bill of health for questions like "...has the bank taken a prohibited basis into account in evaluating the creditworthiness of an applicant?" and "Has the bank refused to grant an individual account to a creditworthy applicant on the basis of sex, marital status, or other prohibited bases?" How does the examiner know?

Answers to substantive questions require the use of sampling methodologies to compare granted and denied loans and may well require testing. Certainly asking bank officers whether they employ discriminatory practices is no way to discern discrimination. The bank has been told it is virtually free of discriminatory procedures and substantive evaluation and processing of applications. Given the procedures used, is this appropriate? Probably not. (We have reviewed 127 FDIC equal credit opportunity examinations of the state-chartered, FDIC-insured institutions conducted during 1977 and 1978. None of these reports cites a bank for a violation of the Regulation B general rule which prohibits actual credit discrimination. In contrast, the Banking Department has received several complaints alleging credit discrimination against FDIC-insured banks.

In some cases, the banks granted credit to the complainants after our investigations; one is in the hands of the Justice Department.

The new FDIC Fair Housing Regulations include extensive log and recordkeeping requirements. These provisions employ plans to monitor inquiries about and applications for home mortgage and home improvement loans. They also require banks to keep detailed information about loan, property, and applicant characteristics. Unfortunately, the log and recordkeeping requirements do not apply to inquiries and oral applications taken by telephone. Individuals are prescreened or discouraged from applying by some banks over the telephone. We strongly urge FDIC to reconsider its position regarding telephone inquiries and applications. Further, in using the logs and records, we urge that telephone and in-person testing be conducted to ensure that logs and records are kept; that logs and records be used to select banks for comprehensive equal credit opportunity examinations; that procedures be developed and implemented for the analysis of loan files to detect substantive violations; and, that a consumer-oriented enforcement policy be developed to deal with substantive violations.

The Comptroller of the Currency has also included equal credit opportunity as part of its "Consumer Compliance Report." While it is legally impossible for the State to review these examinations, their Consumer Affairs Handbook, which outlines examination procedures for equal credit opportunity, places emphasis upon the procedural aspects of the regulations as opposed to substantive problems, i.e. discriminatory patterns or practices. The Comptroller should consider the adoption of similar log and recordkeeping requirements as FDIC's so that it can actually be determined if a bank is discriminating in its loan practices. Again, a procedure for utilization of this information needs to be developed and

implemented.

The Federal Home Loan Bank Board recently revised its nondiscrimination regulations to address the problem of redlining. The banking industry has long disclaimed the existence of redlining, but a Banking Department analysis of home mortgage and deposit data submitted from 1975 through 1977, Home Mortgage Lending Patterns in Metropolitan Boston, clearly documents that (1) a substantially lower proportion of Boston banks' savings deposits are reinvested in urban mortgages than in suburban areas; (2) suburban areas receive more bank mortgages relative to the number of home sales than urban areas; (3) almost half the home sales in Boston were taking place without the aid of bank financing; and, (4) bank home mortgage lending appears to be racially discriminatory in effect, if not in intent. The Bank Board's nondiscrimination regulations fail to address some important issues which contribute to redlining. The regulations prohibit use of appraisals which are discriminatory, or discriminatory in effect, on the basis of age or location of a dwelling. However, underwriting standards which are discriminatory in effect are not prohibited. A state-chartered, FDIC insured institution located in my home city was required to submit an Affidavit of Community Service in connection with a branch application to the State Board of Bank Incorporation. In the affidavit, the bank stated that it makes home mortgage loans for single family properties only and attempted to justify this practice by further stating that the policy had no impact upon urban areas within its lending area; however, a quick look at the housing census data for the city in which the bank's main office is located indicated that over one half of the houses are not singles but two to four family homes, many of which are owner occupied. The Bank Board should recognize that

underwriting policies may be discriminatory in effect by first prohibiting such policies and second, establishing examination procedures for examiner review of underwriting standards.

The Federal Reserve Board recently commissioned an outside study of its credit discrimination enforcement program. The report, "The Detection and Correction of Credit Discrimination," issued in May of this year, states, "The Board has appeared hesitant to issue an unambiguous statement of its commitment to vigorous enforcement of civil rights laws among state member banks and has not identified civil rights legislation as having any particular priority among the Board's enforcement responsibilities." The study also points out that while the Board's examinations are adequate to find procedural violations, they are generally deficient in detecting substantive violations, i.e. credit discrimination. In this respect, the Fed's examinations are similar to those of the other agencies. Perhaps the study was a first step towards effective civil rights enforcement. It is our understanding that the Fed is developing civil rights specialists for each bank, giving some thought to revising examination procedures, and using testers. The Board should clearly state its commitment to equal credit opportunity and fair housing, and direct its staff to continue development and implementation of a comprehensive program for detecting credit discrimination.

III. Comprehensive Equal Credit Opportunity Program

A comprehensive program includes three major elements - selection, examination, and enforcement. Ideally, every institution under an agency's purview should receive a procedural and substantive examination for each of its loan departments. Because of staffing constraints, some agencies may have to select institutions which are the most likely discriminators. This should not and need not be on a random basis, but rather based upon a systematic program of pre-examination evaluation. The elements

of this include analysis of home mortgage information which is already collected, testing, and consumer complaint review. Institutions which make disproportionately few home mortgage loans in areas with substantial minority composition as determined by the home mortgage data; banks which prescreen or discourage female and minority applicants as determined by testers; banks which have a record of valid credit discrimination complaints are likely first candidates for a comprehensive examination. Even where selection is random, disclosure data, testing, and complaints are vital to a comprehensive examination. Mortgage lending patterns can help an examiner find discriminatory appraisal and underwriting practices; testing is virtually the only way of checking prescreening and discouragement; and complaints can tip the examiner off to widespread problems.

The Comprehensive Equal Credit Opportunity Examination must include procedural and substantive reviews. To limit the ECOA exam to procedures is to make a mockery of enforcement. It is the equivalent of assuming that if we check to ensure that all the traffic lights in a city are operating, no one will go through a red light.

IV. Enforcement

The Bank Board's general enforcement policy for handling violations of its nondiscrimination regulations is inadequate. Generally, three types of actions are required: 1) that the bank correct the violation in the future; 2) that the bank undertake affirmative marketing; and, 3) that discriminatory conditions are corrected. Since these actions are not punitive in nature, they are not likely to effectively discourage a bank from repeating a violation. Affirmative marketing could make the bank appear favorable in the public eye, depending upon the manner in which public notification is set up. Ironically, a bank which is required to advertise its credit

services to women may be viewed by the community as a progressive institution.

The proposed uniform enforcement guidelines for the Equal Credit Opportunity and Fair Housing Acts issued by the five Federal financial regulatory agencies are also constructed on a "no penalty" basis, with the exception of application fee refunds in the case of actual credit discrimination. A copy of our comments on these guidelines is attached. (Enclosure VI) Congress clearly viewed violations of the Equal Credit Opportunity Act as serious breaches of law. This is evident from the substantial punitive damages allowable - \$10,000 for individual actions and up to \$500,000 in class actions.

At the heart of the Massachusetts enforcement effort is a close working relationship with the Civil Rights and Consumer Protection Divisions of the State Attorney General's Office. During the last year, we have referred two pattern or practice cases to the Attorney General for further investigation and litigation. One of the cases is in the discovery process; another is still under investigation. In both, we have shared expertise in developing evidence and legal theories. One combined effort involves the use of testers, who have posed as prospective borrowers, contacted the bank, and discerned disparate treatment on the bases of race and neighborhood. Another cooperative effort involved the preparation of a civil investigative demand for complex statistical data. The Attorney General's staff has provided us with valuable insight into the legal subtleties of equal credit opportunity litigation; we, in turn, have provided their staff with banking expertise necessary for an understanding of creditor activities. The Federal agencies should establish similar working relationships with the Justice Department. When patterns of credit discrimination are found, either by complaints, examinations, or both, cases can be referred through established channels for litigation.

It is important that aggrieved consumers be informed about the variety of options and penalties available under federal and state laws. An individual who files a complaint with the Banking Department alleging credit discrimination is immediately sent an acknowledgment letter (Enclosure VII), which also informs him or her that other agencies handle credit discrimination complaints and that substantial penalties are available, especially under the federal law. Such a letter is essential so that consumers can most intelligently select one or more courses of action. Failure to explain other options and penalties could result in a less than appropriate remedy; in effect, an enforcement agency might serve as a buffer to substantial penalties.

As our enforcement program expands, we anticipate finding many institutions with more substantive violations. When this happens, it may be unrealistic to ask our Attorney General to litigate each case. To meet this anticipated problem, we are in the process of developing general guidelines for substantive violations.

In addition to remedies intended to correct discriminatory actions, we are convinced that the credit industry will not take equal credit opportunity seriously unless violations will result in some penalty. An enforcement agency can request a creditor to pay monetary compensation to individuals who are discriminated against; if the creditor does not comply, the files can be turned over to the appropriate law enforcement authority. The dollar amounts may be substantially less than those granted as a result of successful court action. This serves as an incentive for the creditor to pay the amount requested by the agency.

Under consideration by the Banking Department are the following guidelines: For each substantive violation found in the credit card department we may

require:

- 1) the issuance of a card or adjustment of credit line upward to the amount given to similarly qualified applicants; and,
- 2) interest free credit for the first term of the credit card up to a total of \$500.

Where there are several substantive violations, creditors would be required to retain records for one year of applicant and credit characteristics in a prescribed manner so that examiners could review the bank's lending activity and the bank could check its own progress toward non-discriminatory practices.

For each substantive violation found in the instalment loan department we may require:

- 1) that the institution grant the credit on terms given to similar- situation applicants; and,
- 2) interest free credit up to \$500.

Again, record retention requirements will be imposed if there is a pattern of discriminatory activity.

For each substantive violation found in the home mortgage loan department we may require that the creditor

- 1) offer to grant the loan on terms given to similarly-situated applicants;
- 2) refund any fees, costs, or prepayment penalties paid as a result of the denied application.
- 3) pay the first 6 months of interest charges, not to exceed \$1,000; and,
- 4) where the applicant has received financing elsewhere, pay all settlement costs and excessive interest (if the rate was higher at the bank which granted the loan) for a combined total

not to exceed \$1,000.

Finally, prescribed record retention requirements would be imposed.

It should be pointed out that these corrective actions and penalties are lighter than those consumers would gain under the Federal laws. Where an institution fails to comply with our requested remedial action, the examination would be submitted to the Attorney General.

Conclusion

The enforcement programs of the Federal regulatory agencies emphasize procedural compliance. The agencies must recognize that use of available home mortgage disclosure data, testing, and statistical sampling methodologies is necessary to find credit discrimination. Once found, enforcement should include both corrective action and penalties.

ENCLOSURE 1
EQUAL CREDIT OPPORTUNITY
REPORT OF EXAMINATION

INDEX

Statement of Violations	Page 1
Reference to Violations	Page 2
Comments and Recommendations	Page 3

Institution Name _____
 Address _____
 Telephone _____
 Chief Executive Officer _____ Title _____
 Senior Mortgage Officer _____ Title _____
 Senior Installment Officer _____ Title _____

Assets \$ _____ as of _____
 Home Mortgage \$ _____ Home Improvement \$ _____
 Closed-end Installment \$ _____ Open-end Installment \$ _____

The equal credit opportunity laws and regulations prescribe procedures which, if followed, minimize the likelihood of illegal credit discrimination. This Report of Examination contains a statement of violations and questionable practices related to the prescribed procedures. The examiner found one or more violations or questionable practices in each of the compliance areas checked below:

_____ Posting of Signs
 _____ Application Forms
 _____ Application Rules
 _____ Monitoring Information
 _____ Evaluation Rules
 _____ Extension Rules
 _____ Notifications
 _____ Credit Furnishing Information
 _____ Record Retention

NAME OF INSTITUTION	END DATE																																			
STATEMENT OF VIOLATIONS																																				
<p>Below is a partial list of possible violations of the State and Federal equal credit opportunity laws and regulations. The number of violations in each category is placed in the column headed "Violations". Conclusions reached by the examiner are based upon interviews with institution personnel, responses of officers to questionnaires, and the sample of loan files which follows. Reference is made on page 2 of this report to the interview, officer's response, or loan file which indicates a violation.</p>																																				
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STATEMENT OF VIOLATIONS		Page 1																																		

NAME OF INSTITUTION		END DATE	
STATEMENT OF VIOLATIONS			
	State	Federal	VIOLATIONS
	Regulation	Regulation	Home Mortgage Installment
5. Failure to use application forms which comply with the regulations:	Sec. 5	Sec. 202.5	
a. _____			_____
b. _____			_____
c. _____			_____
d. _____			_____
e. _____			_____
6. Asking information about a spouse or former spouse when not permitted.	Sec. 5(c)	Sec. 202.5(c)	_____
7. Asking marital status information of applicants for individual, unsecured credit.	Sec. 5(d)(1)	Sec. 202.5(d)(1)	_____
8. Asking marital status using terms other than "married", "unmarried", and "separated".	Sec. 5(d)(1)	Sec. 202.5(d)(1)	_____
9. Failure to disclose prior to general questions concerning income that alimony, child support, or separate maintenance payments need not be revealed if the applicant does not desire the creditor to consider such income in determining the applicant's creditworthiness.	Sec. 5(d)(2)	Sec. 202.5(d)(2)	_____
10. Asking the sex of an applicant (except when lawful for government monitoring purposes).	Sec 5(d)(3)	Sec. 202.5(d)(3)	_____
11. Failure to disclose that an applicant need not designate a courtesy title when the creditor asks for courtesy titles.	Sec. 5(d)(3)	Sec. 202.5(d)(3)	_____
12. Requesting information about birth control practices, intentions concerning the bearing or rearing of children, or capability to bear children.	Sec. 5(d)(4)	Sec. 202.5(d)(4)	_____
13. Requesting information about the race, color, religion, or national origin of an applicant (except when lawful for government monitoring purposes).	Sec. 5(d)(5)	Sec. 202.5(d)(5)	_____
STATEMENT OF VIOLATIONS			Page 1a

NAME OF INSTITUTION		END DATE	
STATEMENT OF VIOLATIONS			
	State Regulation	Federal Regulation	VIOLATIONS Home Mortgage Installment
14. Failure to allow an applicant to open or maintain an account in a birth-given first name and surname that is the applicant's birth-given surname, the spouse's surname, or a combined surname.	Sec. 7(b)	Sec. 202.7(b)	_____
<u>REQUESTING GOVERNMENT MONITORING INFORMATION</u>			
15. Monitoring information in the case of consumer credit relating to the purchase of residential real property:	-	Sec. 202.13	_____
a. Failure to inform an applicant why the information is being requested.			_____
b. Failure to use an appropriate form.			_____
c. Failure to request information when appropriate.			_____
d. Requesting information when not appropriate, e.g. refinance transactions.			_____
e. Failure to request information of each applicant, if joint application.			_____
f. Failure to make a notation if applicant(s) refuse to provide the information.			_____
<u>EVALUATION OF APPLICATIONS</u>			
16. Using a credit scoring system which includes age as a variable when the creditor cannot show it is a demonstrably and statistically sound, empirically derived credit system.	Sec. 6(b) (2)(ii)	Sec. 202.6(b) (2)(ii)	_____
17. Taking into account the existence of a telephone listing of an applicant.	Sec. 6(b)(4)	Sec. 202.6(b)(4)	_____
<u>OTHER RULES CONCERNING CREDIT</u>			
18. Concerning existing open-end credit, requiring a reapplication, changing the terms of the account, or terminating the account because of an applicant's age or a change in the applicant's name or marital status, except where there is evidence of inability to repay.	Sec. 7(c)	Sec. 202.7(c)	N/A
STATEMENT OF VIOLATIONS			Page 15

NAME OF INSTITUTION	END DATE			
STATEMENT OF VIOLATIONS				
	State Regulation	Federal Regulation	VIOLATIONS Home Mortgage Installment	
19. Requesting or requiring the signature on a credit instrument of an applicant's spouse or another person in the case of an individual application for credit, unless the individual applicant is determined not creditworthy under the creditor's normal standards.	Sec. 7(d)	Sec. 202.7(d)	_____	_____
20. Requesting or requiring an applicant's spouse to serve as a co-signer or guarantor when a co-signer or guarantor is necessary and allowable.	Sec. 7(d)(5)	Sec. 202.7(d)(5)	_____	_____
21. Refusing to extend or maintain an account because credit life, health, accident, or disability insurance is not available because of an applicant's age.	Sec. 7(e)	Sec. 202.7(e)	_____	_____
<u>NOTIFICATIONS</u>				
22. Failure to notify an applicant of action taken on an application within 30 days after receiving a completed application.	Sec. 9(a) (1)(i)	Sec. 202.9(a) (1)(i)	_____	_____
23. Failure to notify an applicant of action taken within 30 days after taking adverse action on an uncompleted application.	Sec. 9(a) (1)(ii)	Sec. 202.9(a) (1)(ii)	_____	_____
24. Failure to notify an applicant of action taken within 90 days after the creditor has granted a counter-offer where the applicant has not accepted the counter-offer.	Sec. 9(a) (1)(iv)	Sec. 202.9(a)(2)	_____	_____
25. Notification of adverse action: a. Failure to give the Federal Equal Credit Opportunity Act notice. b. Failure to give the name and address of the appropriate Federal enforcement agency. c. Failure to make reference to the State enforcement agency (NEAD) in the Federal Equal Credit Opportunity Act notice (effective June 1, 1978).	Sec. 9(a)(2)	Sec. 202.9(a)(2)	_____	_____
STATEMENT OF VIOLATIONS			Page 1c	

NAME OF INSTITUTION		END DATE	
STATEMENT OF VIOLATIONS			
	State Regulation	Federal Regulation	VIOLATIONS Home Mortgage Installment
d. Failure to give the name and address of the State enforcement agency (effective June 1, 1978).	Sec. 9(b)(1)		_____
e. Failure to give specific and accurate reason(s) for adverse action.			_____
<u>FURNISHING OF CREDIT INFORMATION</u>			
26. Failure to determine and designate spouse participation on an account upon which the applicant's spouse is contractually liable or a user to reflect the fact of participation of both spouses.	Sec. 10(a) (1)	Sec. 202.10(a) (1)	_____
27. Failure to determine and designate the participation of another person (except those under 18 or children of applicants) on an account upon which a person other than the applicant is contractually liable or a user to reflect the fact of participation of both individuals.	Sec. 10(b)(1)		_____
28. Failure to furnish credit information in response to a credit rating inquiry in the name of the spouse about whom the information is requested.	Sec. 10(a) (3)	Sec. 202.10(a) (3)	_____
29. Failure to furnish credit information to a consumer reporting agency in a manner that will enable the agency to provide access to the information in the name of each spouse.	Sec. 10(a) (2)	Sec. 202.10(a) (2)	_____
30. Failure to take appropriate action to determine and designate accounts established prior to and in existence on June 1, 1977 to reflect the fact of participation of contractually liable spouses.		Sec. 202.10(b)	_____
STATEMENT OF VIOLATIONS			Page 1d

NAME OF INSTITUTION	END DATE			
STATEMENT OF VIOLATIONS				
	State Regulation	Federal Regulation	VIOLATIONS Home Mortgage Installment	
<u>RECORD RETENTION</u>				
31. Failure to preserve for 25 months (after the creditor notifies an applicant of action taken) applications, monitoring information, and any written or recorded information used in evaluating the application.	Sec. 12(b)	Sec. 202.12(b)	_____	_____
32. Failure to keep for 25 months a copy of any notification of action taken, statement of specific reasons for adverse action, and any written statement submitted by the applicant alleging credit discrimination.	Sec. 12(b)	Sec. 202.12(b)	_____	_____
STATEMENT OF VIOLATIONS				Page 1e

NAME OF INSTITUTION	END DATE
REFERENCE TO VIOLATIONS	
<p>Below is a list of references to the violations listed on page 1 of this report. Reference is made to interviews with institution personnel, responses of officers to questionnaires, or loan files sampled. Numbers below correspond to the appropriate violations summarized on page 1.</p>	
REFERENCE TO VIOLATIONS	Page 2

NAME OF INSTITUTION	END DATE
REFERENCE TO VIOLATIONS	
REFERENCE TO VIOLATIONS	Page 2

NAME OF INSTITUTION	END DATE
COMMENTS AND RECOMMENDATIONS	
COMMENTS AND RECOMMENDATIONS	Page 3



The Commonwealth of Massachusetts

Office of the Commissioner of Banks

*State Office Building, Government Center
100 Cambridge Street, Boston 02202*

ENCLOSURE II

Dear _____ :

During a recent examination of _____ it was found
name of institution
that you applied for a _____ loan on _____. After
type of credit date of application
careful review of your application file and those of several other applicants,
it appears that you may have been treated in a discriminatory manner.

The Federal Equal Credit Opportunity Act and Massachusetts General
Laws prohibit creditors from discriminating in the granting of credit
because of race, national origin, religion, color, sex, marital status,
age, or receipt of income from public assistance programs. You may have
been discriminated against on the basis of _____. This
prohibited basis
view is based upon _____
explanation

This Office has established procedures under which you may receive
consideration for discriminatory treatment. In addition, you may exercise
a number of other options, including 1) filing a complaint with the Mass.
Commission Against Discrimination (727-3990), 2) filing a complaint with
the Civil Rights Division, Mass. Department of the Attorney General
(727-1090), 3) filing a complaint with a Federal enforcement agency, and
4) consulting a private attorney.

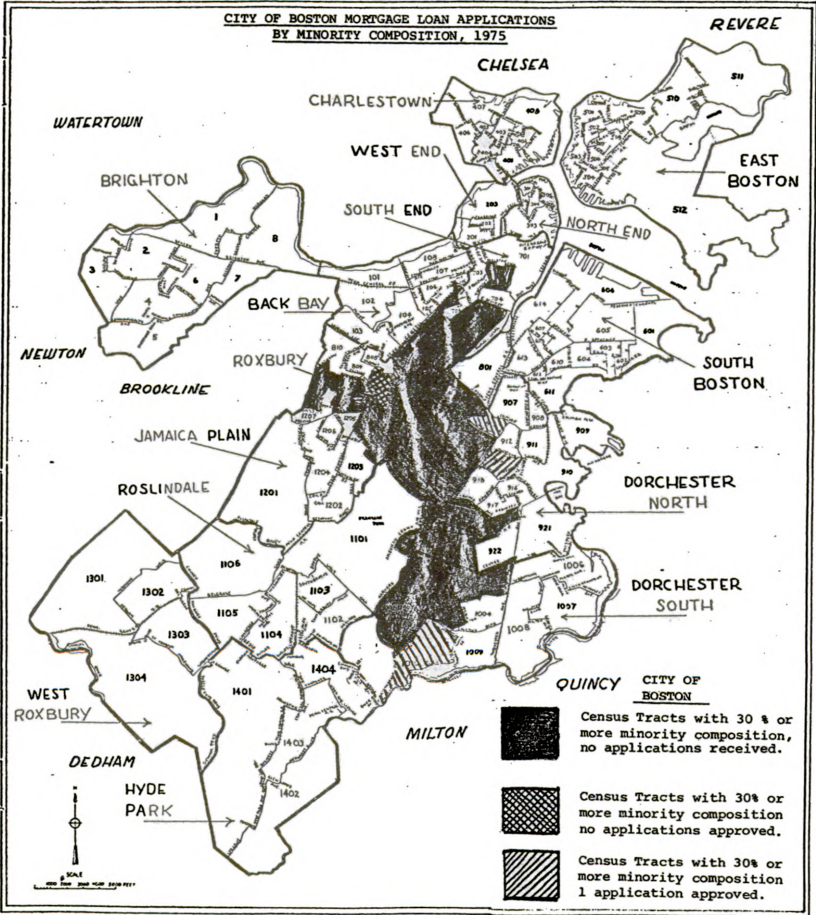
If you sue in Federal court and win, the Federal law provides penalties
up to \$10,000 plus actual damages, attorneys fees, and other costs. In the
case of class action suits, the Act provides for up to \$500,000 in punitive
damages.

Please contact me at 727-2449 if you would like to discuss the matter
further.

Yours truly,

Director
Equal Credit Opportunity Division

ENCLOSURE III



NOTE: The above map presents a representative but fictitious picture of one Boston bank's mortgage lending activity. The actual activity is being kept confidential pending enforcement action.

ENCLOSURE IV

CITY OF BOSTON MORTGAGE LOAN APPLICATIONS

A BANK

Neighborhood	Census Tract	%Adult Minorities 1975	% Racial Change* 1970-1975	<u>Applications Received</u>		<u>Applications Approved</u>		<u>Applications Declined</u>	
				#	\$	#	\$	#	\$
Dorchester North	919	100	34	0	0	0	0	0	0
Dorchester North	923	100	44	0	0	0	0	0	0
Dorchester North	924	100	13	0	0	0	0	0	0
Roxbury	804/806	100	5	0	0	0	0	0	0
Roxbury	814	100	48	1	12,000	0	0	1	12,000
Roxbury	818	100	11	0	0	0	0	0	0
South End	702	100	23	0	0	0	0	0	0
Dorchester South	1002	94	24	0	0	0	0	0	0
South End	708/712	94	10	0	0	0	0	0	0
Dorchester North	901/903	91	-5	0	0	0	0	0	0
Dorchester South	1011	89	40	0	0	0	0	0	0
Roxbury	819	89	-5	0	0	0	0	0	0
Roxbury	820/821	89	-4	0	0	0	0	0	0
Roxbury	815/817	85	-4	0	0	0	0	0	0
South End	707	85	19	0	0	0	0	0	0
Dorchester South	1001	84	10	0	0	0	0	0	0
Roxbury	812	82	23	0	0	0	0	0	0
Roxbury	802/803	72	7	0	0	0	0	0	0
Roxbury	813	68	-3	0	0	0	0	0	0
Dorchester South	1003	67	56	0	0	0	0	0	0

ENCLOSURE IV
CITY OF BOSTON MORTGAGE LOAN APPLICATIONS
A BANK

Neighborhood	Census Tract	% Adult Minorities 1975	% Racial Change* 1970-1975	<u>Applications Received</u>		<u>Applications Approved</u>		<u>Applications Declined</u>	
				#	\$	#	\$	#	\$
Dorchester North	904/906	64	22	0	0	0	0	0	0
Dorchester North	914	64	21	0	0	0	0	0	0
Roxbury	811	60	46	0	0	0	0	0	0
Roxbury	807	59	-14	0	0	0	0	0	0
South End	705	42	5	0	0	0	0	0	0
Dorchester North	920	38	33	0	0	0	0	0	0
Dorchester North	915	33	25	1	24,500	1	24,500	0	0
Dorchester North	913	32	14	3	61,000	3	61,000	0	0
Dorchester South	1005	31	18	0	0	0	0	0	0
Dorchester South	1010	31	25	2	36,000	2	36,000	0	0
All Other Neighborhoods	-	30 or below	-	370	9,609,731	300	7,464,864	70	2,144,867

* % adult minority, 1975 less % adult minority, 1970
% adult minority, 1970

NOTE: The above table presents a representative but fictitious picture of one Boston bank's lending activity. Actual figures are being kept confidential pending enforcement action.

ENCLOSURE V

EQUAL CREDIT OPPORTUNITY - REGULATION B
COMPARISON OF FDIC AND MASSACHUSETTS ENFORCEMENT EFFORTS
STATE-CHARTERED, FDIC INSURED INSTITUTIONS

		<u>FDIC - VIOLATIONS</u>											
	Exam Date	Application Rules 202.5	ECOA Notice 202.9 (a)(2)	Information Rules 202.6	Other Rules 202.7 (c)	Credit History 202.6 (b)(6)	Notifi-cations 202.9	Credit Furnishings 202.10	Signa-tures 202.7 (d)	Financa Charges 202.11 (e)	Record Retention 202.12 (b)	Gen'l Rule 202.4	Total
<u>SAVINGS INSTITUTIONS</u>													
Bank A	7/16/78				X		X						2
B	9/23/77	X			N/A		X						1
C	10/26/77	X											0
D	7/25/77				N/A								0
E	12/2/77												0
F	12/2/77												0
G	8/15/77	X	X		N/A								2
													7
													Subtotal
<u>COMMERCIAL BANKS</u>													
Bank H	10/16/77	X											1
I	9/23/77	X											1
J	2/1/78	X						X					2
K	1/25/78					N/A							0
L	6/22/78		X										2
M	5/23/78		X										2
N	8/9/78						X						1
O	7/8/77	X		X									2
P	1/27/78	X											1
Q	10/11/77	X											1
R	2/23/78	X					X						2
S	6/22/77				N/A								0
T	7/18/78						X						1
U	6/7/77	X	X	X	N/A		X						4
													20
													Subtotal
													Total
													41
<u>STATE BANKING DEPARTMENT - VIOLATIONS</u>													
<u>SAVINGS INSTITUTIONS</u>													
Bank A	9/22/77	X									X		2
B	1/3/78	X	X		N/A								2
C	9/27/77	X	X										2
D	12/13/77	X			N/A		X						2
E	8/18/78	X	X	X					X				5
F	12/30/77	X					X						3
G	4/19/78	X			N/A		X				X		3
													19
													Subtotal
													Total
													39
<u>COMMERCIAL BANKS</u>													
Bank H	11/3/77	X		X			X						3
I	3/1/78	X	X		N/A		X				X		4
J	10/13/77	X					X						2
K	12/17/77	X	X	X	N/A		X				X		4
L	6/1/78	X					X		X				6
M	3/3/78	X	X				X		X		X		6
N	10/12/77	X					X						2
O	5/26/78	X					X	X	X		X		5
P	10/19/77	X				X	X	X					4
Q	4/11/78	X	X				X		X		X		6
R	7/3/78	X	X				X						4
S	10/11/77	X	X		N/A		X		X		X		5
T	12/9/77	X	X				X				X		3
U	5/24/78	X	X		N/A		X	X			X		5
													38
													Subtotal
													Total
													77



MICHAEL S. DUKAKIS
Governor

CAROL S. GREENWALD
Commissioner

The Commonwealth of Massachusetts
Office of the Commissioner of Banks
State Office Building, Government Center
100 Cambridge Street, Boston 02202

August 31, 1978

ENCLOSURE VI

Equal Credit Opportunity Guidelines
Room B-4107
Washington, D. C. 20551

Re: Proposed Equal Credit Opportunity Enforcement Guidelines

Dear Sir or Madam:

The proposed enforcement guidelines issued by the Federal enforcement agencies have serious shortcomings which should be corrected prior to implementation. The stated objectives of the guidelines are to require corrective action for violations and to assure future compliance. The General Enforcement Policy section contains the following statement: "In all cases, the enforcing agency will consider the suitability of the prescribed remedy for the circumstances - for example, the character of the violation, the condition of the creditor, and the cost and effectiveness of the correction action - and will make whatever modifications it deems appropriate."

Conspicuously absent from these considerations is the adverse impact upon individuals and protected classes. The corrective actions outlined for substantive violations do not compensate persons who were discriminated against; nor does assurance of future compliance. A creditor which illegally discriminates and is caught by a Federal enforcement agency will merely be required to act in a non-discriminatory manner on past and future loan applications, i.e., do what should have been done in the first place. Victims of substantive discriminatory practices should also be advised of practical avenues of redress and receive substantive compensation.

Since September, 1977, the Massachusetts Banking Department has maintained enforcement provisions similar to those for procedural violations concerning monitoring information, adverse action notifications, and credit histories. These provisions are adequate in most situations. Failure to take remedial and future corrective action on a voluntary basis is met with other administrative action, including referral to the Attorney General.

Substantive violations, which include discouraging applications, discriminatory credit evaluation, imposing more onerous terms, requiring co-signers, and terminating or changing the terms of open-end accounts on a prohibited basis, should be dealt with by stronger actions than merely requiring remedial and future corrective action. In these

situations, it is also the responsibility of an enforcement agency to 1) inform adversely affected persons or members of an adversely affected class of the available enforcement options under Federal and State law, including the right to file complaints and to sue; 2) inform same of the substantial actual, punitive and other damages and fees available in the case of successful actions; 3) arrange for monetary compensation to adversely affected persons; and 4) where a creditor refuses to provide compensation, forward examination report to the appropriate law enforcement authority.

Notwithstanding the above comments, some of the proposed enforcement actions for non-procedural violations as far as they go, appear appropriate. We do, however, have some thoughts regarding certain violations:

(1) Concerning discouraging applications on a prohibited basis, serious questions have arisen concerning the adequacy of Federal agency examination procedures to detect this practice. Aside from asking bank officers, which is at best unreliable and at worst ridiculous, the only way to discern prescreening is by using testers. The Banking Department currently conducts a systematic program where personnel, paired on the basis of opposite race or sex, contact institutions to test for possible differential treatment. Prior to issuing an enforcement policy concerning prescreening, the agencies should revise their examination procedures in order to more effectively detect this type of violation. When prescreening is detected, the proposed enforcement policy is to require affirmative advertising. This may be useful, but only if it results in increased applications from the discouraged class. Enforcement agencies should follow-up advertising by measuring its impact; if ineffective, revised or additional advertising should be undertaken. The guidelines should clearly spell this out.

((2) Concerning use of discriminatory elements in credit evaluation systems, the proposed policy requires creditors to solicit new applications from discriminatorily rejected individuals. Many such persons will not be interested in reapplying, because they received credit elsewhere, because they do not wish to do business with the offending creditor, or for other reasons. Consequently, acts of credit discrimination will go unremedied. This likely occurrence is another reason why enforcement agencies should attempt to arrange monetary compensation for persons who are discriminated against.

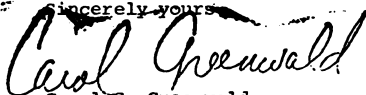
(3) Concerning imposition of more onerous terms on a prohibited basis, the proposed policy requires reimbursement, adjustment, or release. Again, creditors would merely be required to right a wrong. In addition, monetary compensation should be required.

(4) Concerning prohibited co-signer requirements, the proposed policy requires the release of unnecessary co-signers. This is appropriate. Where a co-signer is necessary to support the credit extension, but the applicant's choice was restricted to his or her spouse, the creditor must inform the applicant that a creditworthy substitute may be provided. However, an applicant who would have originally provided a non-spouse

co-signer, but who cannot provide one at the time of notification, should not necessarily be forced to retain an illegally required co-signer. To prevent this problem, the notification should request the applicant to contact the creditor if he or she (a) wishes to drop the spouse co-signer and (b) a substitute is no longer available. If contacted, the creditor must reevaluate the applicant using objective standards applicable to his or her current creditworthiness, including the payment history on the existing loan. Where the applicant is now creditworthy as an individual, the co-signer spouse must be released; where the applicant remains individually uncreditworthy, the spouse would, as a matter of sound banking practice, remain on the note.

(5) Concerning terminating or changing the terms of open end accounts on a prohibited basis, the proposed policy requires the account to be returned to its previous condition. Again, creditors are not discouraged from committing this violation by any monetary compensation to victims.

Sincerely yours



Carol S. Greenwald
Commissioner of Banks

CSG:esr
Enclosures

Mr. ROSENTHAL. Our next witness is Ellen Broadman, attorney with Consumers Union.

Ms. Broadman, we appreciate very much your being with us. We know you have a prepared statement. Why don't you go ahead?

STATEMENT OF ELLEN BROADMAN, ATTORNEY, WASHINGTON OFFICE, CONSUMERS UNION

Ms. BROADMAN. Mr. Chairman, we appreciate this opportunity to testify at the oversight hearings on the enforcement of the Equal Credit Opportunity Act. We are especially pleased to be here today because of the importance of this act to consumers of credit.

The enactment of ECOA established a strong national commitment to the abolition of discrimination in the granting of credit. Vigorous enforcement was provided for in the act. As the Senate report that accompanies ECOA explains:

Since discrimination is inherently invidious, almost presumptively intentional yet often difficult to ferret out, the committee believes that strong enforcement of this act is essential to accomplish its purpose.

To enforce the law, agencies must first adopt effective means to identify violations. Educational programs should be established to inform individuals of their rights so that they can report infractions to the enforcement agencies. Complaint procedures should be adopted that allow consumers to report violations easily to the appropriate agencies.

For example, agencies should test the effectiveness of using a toll-free WATS line for consumers to telephone in complaints and requiring lenders to post the phone number in a location visible to the public.

Skilled examiners and rigorous examination procedures also should be employed by agencies to detect unlawful conduct. Career incentives should be created to attract and retain competent and skilled examiners. A separate career ladder with attractive advancement opportunities for consumer examiners should be formed, for, consumer specialists are more likely to possess the skill and sensitivity required to recognize ECOA violations.

We believe the agencies should respond to violations they discover in a manner that motivates lenders to comply with the law. It is not enough for the agencies to just require lenders to comply with the law prospectively. Compliance actions should put persons injured by violations as nearly as possible in the positions they would have been in but for the violation. Because violations of ECOA are violations of civil rights, violators have an affirmative duty to remedy all the effects of their past unlawful behavior. And the agencies that discover unlawful conduct have an obligation to require lenders to do so.

I would like to briefly address the ECOA enforcement guidelines mentioned earlier this morning. These guidelines are not the strong enforcement measures that Congress intended to establish when it enacted ECOA. They do not establish powerful incentives for lenders to comply with the law. They do not put injured consumers in the position they would be in but for the violations. They are very vague in many respects and leave uncertain the vigor with which ECOA will be enforced. Given the failure of the agen-

cies to enforce the law adequately in the past, we are very concerned by this vagueness.

There are two major problems in the guidelines I would like to address today. The first is the failure to require that consumers be informed of infringements of their rights under ECOA.

As a practical matter, agencies will not be able to determine the full range of injuries sustained by consumers as a result of ECOA violations. They may damage someone's credit history. Due to unusual circumstances, they may cause special injuries. Because agencies cannot determine the extent or severity of all injuries caused by unlawful conduct, they will not be able to require full compensation and will not be able to satisfy their obligation to remedy injuries resulting from discrimination. Agencies should therefore inform the appropriate individuals of these violations and let them take informal or formal action to obtain full compensation.

We think disclosure is especially important when an agency can identify measurable damages but does not require full compensation. It would be preferable to have full compensation, but if the agencies do not require full compensation, we believe disclosure is imperative, so that then the individual can obtain compensation for him or herself.

There is one flagrant example of this in the guidelines. This deals with the lender who uses a discriminatory evaluation system. That lender is not required under the guidelines to reimburse rejected applicants for the additional cost that they incur when they buy more expensive credit elsewhere after being denied credit.

Disclosure would serve a second important enforcement role in that it would establish incentives for lenders to comply with the law. Disclosure is especially appropriate where there has been discrimination since this is the most serious of the ECOA violations. Disclosure should also be required when violations do not result in measurable damages, for here strong compliance incentives are needed. Unfortunately, the guidelines do not provide those incentives.

For example, the lender who terminates or changes the terms of an open end account on a discriminatory basis would merely be required to comply with the law in the future. Also, the lender who unlawfully requires a cosigner would merely be required to offer to release and in effect offer to comply with the law. If these meek enforcement sanctions are adopted, we think disclosure is absolutely necessary.

Disclosure can also serve a valuable educational function.

Mr. ROSENTHAL. As far as the disclosure concern, are there other groups advocating the kind of disclosure that Consumers Union is?

Ms. BROADMAN. In the comments that the U.S. Department of Justice filed with the agencies on these guidelines, they recommended that disclosure of violations be made to individual consumers. So they have come out in support as well. Also, others who have commented on the guidelines, including people who testified this morning, have commented that the guidelines are ineffective because they only require people to conform to the law in the future. This kind of disclosure would, in part, take care of that objection by establishing greater incentives for compliance.

Disclosure also serves as an important educational role. It can inform consumers of their rights under the law and thereby enable them to report violations to the agencies. We think there is a very special opportunity here to educate the public. When people are told their rights are infringed upon, they will be more likely to want to learn about those rights.

The subcommittee in its report in 1977 on the enforcement of truth in lending concluded that individual consumers should be informed of violations that impair their ability to shop for credit. The subcommittee found that disclosure was required to afford individuals the degree of consumer protection that Congress intended. It also determined that disclosure could reduce enforcement costs by providing a strong incentive for lenders to comply with the law.

For identical reasons, we believe consumers should be informed of violations of their rights under ECOA.

The Federal Home Loan Bank Board in its memo on enforcement guidelines for its fair lending regulations encourages lenders to disclose violations to consumers, but it merely gives lenders the option of notifying individuals of unlawful practices. It warns lenders that if disclosures are not made, the Board will consider instituting cease and desist proceedings to require disclosure. Unfortunately, the memo does not explain what criteria will be used to decide when a cease and desist proceeding will be instituted. We think that the board should instead routinely require that these disclosures be made.

Not only should the individual consumers whose rights have been infringed be informed of violations, but the public should also have access to this information. The information would allow citizens to evaluate the effectiveness of ECOA and its enforcement and would allow them to advocate legal or administrative reform where it is needed. It would also establish full incentives for lenders to comply with the law.

Unfortunately, information on violations cannot be obtained under the Freedom of Information Act. In a recently decided case brought by Consumers Union, the U.S. Court of Appeals found that the Comptroller could withhold from Consumers Union a survey of 27 national banks that revealed widespread noncompliance with TILA and overcharges of approximately \$1.6 million. In a concurring opinion, Chief Judge Skelly Wright agreed that the act did not require disclosure, but suggested that legislative reform was needed.

Some regulators and lenders have expressed a fear and others, lenders as well, that disclosure to either consumers or the public will result in widespread litigation that could be harmful to lenders. We believe that this fear is simply unjustified. The Equal Credit Opportunity Act merely allows consumers to recover actual damages and authorizes courts to award punitive damages in narrowly circumscribed situations, for example, where there has been bad faith. If violations result in damages, consumers should be able to bring a suit to obtain compensation. If a lender acts in bad faith or repeatedly violates the act, punitive damages should be assessed. Therefore, we feel that ECOA provides adequate protection against excessive litigation and only encourages appropriate lawsuits.

It has also been argued that disclosure of violation to the public is unfair to lenders. Because examinations are conducted at different times and not for all lenders, information would not be made available on a uniform basis. Some are concerned that individual lenders might be singled out and the public might be misled by disclosure. We think the public is capable of evaluating information. We think the public should be informed of all substantive violations as well as the incompleteness of the information they are given.

Mr. ROSENTHAL. What mechanism for disclosing violations would there be?

Ms. BROADMAN. I think there are several different ways of handling this. The information should first of all be available to interested groups, for example Consumers Union, to evaluate the extent of noncompliance and the need for reform. The information should also be published on a uniform basis.

Mr. ROSENTHAL. Where?

Ms. BROADMAN. I think the agencies could distribute press releases or have available press releases for interested reporters to obtain. I think a variety of methods of distributing the information should be experimented with to see which is most effective.

There is another problem with the guidelines I would like to address. That is the problem with the repeat violator. The guidelines fail to adequately address the problem of the repeat violator. The guidelines should, but do not, require agencies to refer all cases involving a pattern or practice of discrimination to the Attorney General. Referrals will allow the Attorney General, through litigation, to achieve a more complete enforcement of the act and more complete compensation of the individuals injured by violations.

In closing, I would like to again thank the subcommittee for the opportunity to testify and urge you to encourage the enforcement agencies to adopt stronger guidelines.

Mr. ROSENTHAL. Congressman Drinan.

Mr. DRINAN. Thank you very much, Mr. Chairman, and thank you, Ms. Broadman.

These guidelines, did they become effective September 1, or did the period for comment terminate September 1?

Ms. BROADMAN. The period for comment terminated September 1.

Mr. DRINAN. Your organization gave suggestions, I suppose?

Ms. BROADMAN. Yes. Also, in our written testimony we recommend specific changes.

Mr. DRINAN. Is there any hope that the agencies in charge will in fact accept some of the recommendations that you and others made?

Ms. BROADMAN. We certainly hope so, but we do not know what they are going to do.

Mr. DRINAN. I would assume, Mr. Chairman, that the subcommittee could possibly ask for an extended period or a reopening of the period during which comments could be made, and during that time the subcommittee could make its own comments?

Ms. BROADMAN. I think that would be very advisable. There are some very good comments in the record too that you might want to

look at and consider in developing your position. There have been numerous suggestions of ways to strengthen the guidelines. They are not vigorous enough, they are not strong enough.

I think the subcommittee's comments—

Mr. DRINAN. Did banking organizations take any position?

Ms. BROADMAN. Yes. There are many comments by lender institutions.

Mr. DRINAN. They said they are going too far?

Ms. BROADMAN. That is right.

Mr. DRINAN. Mr. Chairman, I think that the subcommittee ought to take this into consideration because I would predict that the agencies in charge would take the bankers' comments and the consumers' comments and the civil rights comments and come out with another dish of mishmash. We would have guidelines that would not be effective at all, and then we would have to start all over to amend those guidelines.

Mr. ROSENTHAL. Some of the agency people responsible for this area will be testifying on Thursday and Friday, and we will have an opportunity to discuss this matter with them.

Mr. DRINAN. Very well.

Do you have any reflections on testers? Do you feel that is the one way that is necessary to smoke out these characters?

Ms. BROADMAN. I think testing is a very valuable tool for identifying violations, especially with prescreening.

Mr. DRINAN. Who is opposed to testing except the Federal agencies?

Ms. BROADMAN. I do not know who opposes it.

Mr. DRINAN. The banks. You call them lenders.

Ms. BROADMAN. Or banks. We have savings and loans, credit unions.

Mr. DRINAN. Your testimony was very helpful. I am sorry I have no questions because you have laid it out and made it very clear, and I am very grateful to you and to your organization.

Mr. ROSENTHAL. I, too, want to join with Congressman Drinan in thanking you for a very, very significant contribution, for a deep and abiding interest in the subject.

The subcommittee stands adjourned.

[Ms. Broadman's prepared statement follows:]

PREPARED STATEMENT OF ELLEN BROADMAN, ATTORNEY, WASHINGTON OFFICE,
CONSUMERS UNION

Mr. Chairman and members of the Subcommittee, Consumers Union* appreciates the opportunity to testify at these oversight hearings on the enforcement of the Equal Credit Opportunity Act. We are especially pleased to be here today because of the importance of this Act to consumers of credit.

I. Introduction

The Equal Credit Opportunity Act expresses a strong national commitment to the abolition of discrimination in the granting of credit. Recognizing that credit is not a luxury but rather a necessity for many consumers who want to buy a home, automobile or other consumer goods or services, Congress prohibited lenders from withholding credit on the basis of sex, race and other characteristics unrelated to the creditworthiness of an individual. Vigorous enforcement was also provided for in the Act. Credit applicants, the Attorney General and the federal agencies with supervisory responsibilities for lenders all were authorized to bring enforcement actions. As explained in the Senate Report accompanying ECOA:

Since discrimination is inherently insidious, almost presumptively intentional, yet often difficult to ferret out, the Committee believes that strong enforcement of this Act is essential to accomplish its purpose. 1/

* Consumers Union is a nonprofit membership organization chartered in 1936 under the laws of the State of New York to provide information, education, and counsel about consumer goods and services and the management of the family income. Consumers Union's income is derived solely from the sale of Consumer Reports, its other publications and films. Expenses of occasional public service efforts may be met, in part, by nonrestrictive, noncommercial grants and fees. In addition to reports on Consumers Union's own product testing, Consumer Reports, with its almost 1.8 million circulation, regularly carries articles on health, product safety, marketplace economics, and legislative, judicial and regulatory actions which affect consumer welfare. Consumers Union's publications carry no advertising and receive no commercial support.

1/ S. Rep. No. 94-589, 94th Cong., 2d Sess., 13 (January 21, 1976).

II. Administrative Enforcement

To fulfill their enforcement responsibilities the agencies should adopt enforcement measures that effectively identify a violation, establish strong incentives for compliance and fully compensate all individuals who are injured by ECOA violations.

A. Identifying Violations

Complaints filed with the agencies can be a valuable source of information on violations. To solicit informed complaints, the agencies should establish education programs that inform individuals of their rights under ECOA and enable them to identify infringements. Education programs should utilize media that reach those classes of people protected by ECOA. Educational materials should be designed to attract the attention of consumers and be written in simple easily understood language. All educational efforts should be tested to assure their effectiveness.

The agencies also should establish procedures by which consumers can easily lodge complaints with the appropriate agency. For example, lenders should be required to place complaint forms in a location visible to the public. And, the agencies should establish a toll free "hot-line" through which individuals may file complaints and require that this "hot-line" number be posted in the lobbies of all lenders. After testing those and other complaint solicitation mechanisms, agencies should adopt the most effective one(s).

Skilled examiners and rigorous examination procedures should also be employed by the agencies as part of their enforcement efforts. Effective training programs for examiners are a must; however, training alone is not enough. Having talked with examiners in consumer training programs, I am convinced of the need to upgrade the career stature of consumer examiners. There should be a separate career ladder with attractive advancement opportunities for consumer examiners. These consumer examiners are more likely to possess

the sensitivity and skill required to spot ECOA violations. By establishing attractive career incentives, agencies are more likely to attract and retain skilled and motivated consumer examiners.

B. Establishing Incentives for Compliance

The agencies should respond to violations in a manner which establishes strong incentives for lenders to comply with the law on their own initiative. The importance of these incentives is illustrated well by the result of inadequate enforcement of the Truth in Lending Act (TILA). As revealed in hearings held by Chairman Rosenthal, weak administrative enforcement of TILA resulted in widespread non-compliance and substantial financial injury to consumers. 2/ The unwillingness of lenders to follow the mandate of TILA, despite the civil remedies available to individuals under that statute, should serve as a reminder of the importance of establishing forceful inducements for lenders to obey consumer protection laws. Thus, it is not enough for agencies to require violators to comply with the law in the future. Additional sanctions should be levied against these lenders. Agencies, when they discover unlawful conduct, must fashion comprehensive, effective remedies that address all the effects of ECOA violations. 3/

2/ See The Truth in Lending Act: Federal Banking Agency Enforcement and the Need for Statutory Reform, Third Report by the Committee on Government Operations, May 10, 1977.

3/ See Albemarle Paper Co. v. Moody, 422 U.S. 405 (1975); Franks v. Bowman Transportation Company, 424 U.S. 747 (1976); Green v. County School Board, 391 U.S. 430 (1968).

C. Full Compensation for Injured.

If violations result in measurable damages, lenders should be required to compensate fully all victims of these violations. Lenders have an obligation under ECOA to return consumers to the position they would be in but for the lender's infringements on their rights. Infringements on ECOA rights are violations of civil rights. As recognized by Congress in the legislative history of ECOA, judicial construction of anti-discrimination legislation should serve as guides for applying ECOA. 4/ Thus, lenders who violate ECOA have an affirmative duty to remedy the effects of their past unlawful behavior. As explained in Albermarle Paper Co. v. Moody, an equal employment case cited in the legislative history of ECOA as controlling precedent:

If employers faced only the prospect of an injunction order, they would have little incentive to shun practices of dubious legality. It is the reasonably certain prospect of a back pay award that 'provide[s] the spur or catalyst which causes employers and unions to self examine and to self-evaluate their employment practices and to endeavor to eliminate, so far as possible the last vestiges of an unfortunate and ignominious page in this country's history. 5/

Agencies, when they discover unlawful conduct, must fashion comprehensive, effective remedies that address all the effects of ECOA violations. 6/

III. The Proposed Guidelines

On June 27, 1978, the agencies responsible for the enforcement of the Equal Credit Opportunity Act published for public comment proposed enforcement guidelines. These guidelines most definitely are not the "strong enforcement" measures envisioned by Congress

4/ S. Rep. No. 94-589, supra at 4-5.

5/ 422 U.S. at 418.

6/ See ft. nt. 3.

when enacting ECOA. They do not establish powerful incentives for complying with the Act nor require that injured consumers be made whole. In many respects these guidelines are vague and leave uncertain the vigor with which ECOA will be enforced.

A. Guidelines Should Provide for Disclosure of Violation to Consumers

Enforcement agencies that discover violations should inform consumers of these infringements on their rights. As a practical matter, agencies may not be able to determine the full range of injuries sustained by consumers as a result of ECOA violations. Unlawful actions may have damaged a consumer's credit history or have resulted in credit denials or higher charges for credit elsewhere. Or, a consumer may have sustained measurable damages due to unusual circumstances. Because agencies often will not be able to determine the extent or severity of the injuries caused by unlawful conduct, they will not be able to require full compensation. To satisfy their obligation to remedy injuries resulting from discrimination, agencies should inform individuals of these violations and enable consumers to undertake actions to obtain full compensation.

Disclosure is imperative when agencies can identify measurable damages, but do not require lenders to make full compensation. Thus, for example, if lenders are not required to compensate consumers for the additional costs they incurred by purchasing credit elsewhere after a discriminatory denial, individuals should be informed of this discrimination. The proposed guidelines contain no such compensation requirement when discriminatory credit scoring systems are used. Disclosure at least will allow consumers to seek complete redress elsewhere, possibly through civil actions.

Disclosure serves a second important enforcement role by creating forceful reasons for lenders to comply with ECOA. Disclosure is especially appropriate when lenders discriminate against protected classes of people since this is the most serious of ECOA violations

and the prime target of the Act. Disclosure also should be required when violations do not result in measurable damages. Here lenders cannot be required to compensate individuals for damages, so other compliance incentives are needed. Unfortunately, in many such situations the guidelines do not provide such incentives. For example, the lender who failed to send adverse action notices would be required merely to send notices for the preceding two years. The guidelines also merely require the lender who has discriminatorily terminated or changed the terms of an open end account to comply with the law in the future. The effects of these lenders' past conduct are ignored entirely by the guidelines. The creditor who required a co-signer on a prohibited basis is similarly treated gingerly. It must only offer to release any unnecessary co-signer and, in effect, offer to comply with the law. If these meek enforcement sanctions are adopted by the agencies, disclosure is necessary to motivate lenders to observe the law.

Disclosures also can serve a valuable educational function. Consumers should be informed of their rights under ECOA generally and of the specific right which has been infringed. They should also be informed of all efforts being undertaken to remedy the effects of these violations and of their right to bring a civil action for actual and punitive damages.

Disclosure materials provide agencies with an excellent opportunity to educate key members of the public as to their rights under the Act. Recipients of these materials are likely to be members of classes that traditionally have been victims of discrimination and are most in need of this information. Educational materials will make it more likely that these individuals will understand their rights under ECOA. Thus, such disclosure materials would provide an unusually effective forum for consumer education. Also, disclosure materials could serve a valuable enforcement function by assisting these persons to identify violations and to protect

themselves in the future. 6a/

Some regulators have expressed a fear that disclosure might result in excessive litigation harmful to lenders. This fear is simply unjustified. ECOA merely allows consumers to recover actual damages, and authorizes courts to award punitive damages in narrowly circumscribed situations, for example, when the lender acts in bad faith. If violations result in actual damages, consumers should be able to recover these losses. If lenders act in bad faith or repeatedly violate the law, punitive damages should be assessed. The limits on the liabilities of lenders contained in ECOA provide adequate protection against excessive litigation, and encourage only those lawsuits which rightly seek appropriate redress for injuries and serve to enforce important national laws.

B. The Guidelines Should Require Public Disclosure of Violations.

Information on all ECOA violations should be made available to all interested members of the public. This information enables citizens to evaluate the effectiveness of ECOA and related enforcement efforts. It enables the public and advocates of public interests to voice an informed opinion on the need for legal or administrative reform. And, it establishes forceful inducements for lenders to follow legal mandates.

6a/ The Federal Home Loan Bank Board gives lenders "the option" of notifying people of unlawful practices and of the particular regulatory provisions that may have been violated. Lenders are also notified that the Board "will consider" instituting cease and desist proceedings to require this notification. See Memorandum dated May 25, 1978 entitled "Synopsis: General Enforcement Policy for Handling Violations of the Nondiscrimination Regulations," at page 3. The Board rightly appears to support the concept of disclosure. However, it is unclear what criteria they will be used by the Board to decide whether to bring a C & D proceeding. The examples presented at page four indicate that disclosure will be required in two situations: (1) when a loan is denied on a discriminatory basis or; (2) a borrower is given a loan at a higher rate, lower amount or on less favorable terms. We strongly support such disclosure.

C. Creditors Who Use Discriminatory Credit Evaluation Systems.

The guidelines do not fully compensate individuals for losses incurred due to a lender's use of a discriminatory credit evaluation system. These individuals should be, but ~~would not be,~~ reimbursed the difference between the cost of credit denied them and the cost of credit they purchased in lieu of the credit discriminatorily denied them.

Lenders also should be required to forward corrected information to any credit reporting agencies to which lenders sent information on discriminatory credit denials whenever agencies can be identified from the lenders records. Also, applicants should be informed that the lenders' conduct may have damaged their credit ratings. This disclosure will allow individuals who were later denied credit or charged higher interest rates because of a poor credit rating to re-apply for credit or better credit terms. The guidelines should, but do not, include any of the above provisions that we suggest.

Creditors who use discriminatory criteria in their credit evaluation systems should be required to re-evaluate credit applications as far back as these prohibited criteria were used or back to the enactment of ECOA, whichever is earlier. However, the guidelines leave with the agencies discretion to determine a period of time over which these applications must be reviewed. This flexibility flies in the face of the objectives of ECOA. Use of discriminatory criteria is one of the most serious of civil rights violations under ECOA. All individuals who suffer from this type of discrimination should be identified and compensated. There is absolutely no justification for ignoring the rights of certain individuals solely because those rights were infringed upon during an earlier time period when the agencies were not enforcing the Act. Failure to enforce the Act during

any time period would be an abrogation of the agencies' responsibility to enforce the law during those years. ^{7/}

Also, if each agency independently adopts its own arbitrary cut-off date, inconsistency in enforcement inevitably will result. Such inconsistency is unfair to those consumers who are not compensated for infringements of their civil rights and for resulting injuries. Inconsistency also puts those lenders under the jurisdiction of the more lenient enforcement agencies at an unfair competitive advantage.

Although we are disturbed by the above omissions from the guidelines, we strongly support the sanctions proposed by the enforcement agencies. The guidelines would require creditors to solicit applications from individuals who had previously been rejected due to discriminatory lending policies, and would prohibit the assessment of fees for these new applications. Fees paid for the earlier application would be returned. If the latter application were approved, the applicant accepted the loan, and the applicant prepaid an existing loan obtained in lieu of the discriminatorily denied credit, the creditor would be required to reimburse the applicant for any prepayment penalty.

D. Creditors Who Terminate or Unfavorably Change the Terms of an Existing Open End Account on a Prohibited Basis.

The proposed guidelines would require these creditors to return the account to its previous condition unless an evaluation of the creditworthiness of the affected parties justifies other action. This guideline merely requires lenders to comply with the law henceforth, provides no compensation to persons injured

^{7/} Green v. County School Board, 391 U.S. 430 (1968); Adams v. Richardson, 351 F.Supp. 636, implementing order, 350 F.Supp. 92 (D.D.C. 1973); Souder v. Brennan, 367 F.Supp. 808 (D.D.C. 1973).

by the lenders past discrimination or other unlawful conduct and, therefore, is inadequate. If, as a result of a lender's actions, a consumer was forced to purchase credit elsewhere at a higher cost, the creditor should be required to reimburse the consumer for the difference between the cost of the credit purchased and the cost of credit the consumer would have purchased but for the lenders unlawful conduct. To determine if consumers have incurred such expenses, lenders should be required to solicit such information and documentation from consumers. Lenders should also reimburse consumers for any charges incurred in connection with applying for a new account or an account with more favorable terms. In addition, consumers should be informed that if they have been denied credit since the change in or termination of their account, this denial may have been based on information wrongfully communicated by the lender to a reporting agency and the consumer may wish to reapply for that credit.

E. Creditors Who Have Discouraged Applications on a Prohibited Basis.

The proposed guidelines would require creditors who have discouraged applications on a prohibited basis to solicit credit applications from the discouraged class through affirmative advertising. We concur that affirmative advertising should be required to inform the public that the lender will henceforth comply with the law. However, affirmative advertising alone is not enough. Whenever actual victims of this type of discrimination can be identified, they should be compensated as described below. The guidelines should require the agencies to review complaints filed with and against a lender to determine if any of the complainants were discouraged from applying for credit on a prohibited basis.

Once these individuals are identified, lenders should be required to compensate these consumers for all their injuries. Those

persons who later purchased credit from a secondary source should be reimbursed the difference between the cost of credit purchased and the cost they would have paid but for the discrimination. 8/ 9/ Those consumers who (a) were unable to obtain credit elsewhere, (b) would have qualified for credit but for the discrimination, and (c) still desire credit, should be offered credit on the terms available at the time they were discouraged from applying for credit. This is important because the establishment of a credit record with the lenders of original choice has a positive effect on the applicant's future credit rating.

F. Creditors Who Impose More Onerous Terms on a Prohibited Basis.

The proposed guidelines would require a creditor engaging in this class of violation to reimburse borrowers for any overcharges and to notify applicants who have been denied more favorable credit terms that they may obtain the credit terms for which they were qualified at the time credit was originally granted.

8/ It has been argued that the agencies lack authority to require lenders to reimburse consumers for this amount. These advocates claim that such reimbursement constitutes a penalty since the lender would be reimbursing the consumer for monies paid to a third party, rather than monies wrongfully paid to the lender. This argument is entirely without merit. Such reimbursement is not a penalty since it merely returns the consumer to position he or she would be in but for the discrimination perpetrated by the creditor. The agency not only has authority to require such compensation, but has an obligation to do so. The guidelines themselves acknowledge the authority of the agencies in this respect. Section 11 would require lenders to reimburse consumers for prepayment penalties they sustain upon prepaying a loan they obtained in lieu of the credit discriminatorily denied them. Here lenders are required to reimburse consumers for monies paid to a third party as compensation for injuries caused by the lender's discrimination.

9/ If the individual would not have qualified for credit on a nondiscriminatory basis, this amount will be equal to zero.

We support this provision because it would return persons who suffered discrimination to the position they would have been in but for the unlawful conduct of lenders. However, the guidelines are too vague as to how reimbursement will be made. They should be clarified and public comment solicited prior to implementing reimbursement programs.

G. Creditors Who Fail to Collect Monitoring Information.

The proposed guidelines would require these creditors to solicit monitoring information from all borrowers who had applied for real estate loans since March 23, 1977, the effective date of the FHA, or the previous examination, whichever is later.

Lenders should be required to collect monitoring information for whatever time period they have not done so--either back to March 23, 1977, or the previous examination, whichever is earlier. Agencies need this information to determine if violations of ECOA or FHA have occurred and to require complete remedial action. Failure to collect this information for any time period subsequent to March 23, 1977, is therefore an abrogation of the agency's enforcement duties.^{10/}

H. Creditors Who Fail to Provide Adverse Action Notices.

The guidelines would require creditors who fail to provide adverse action notices to send notices to all applicants denied credit within 25 months of the date of the examination in which this violation is discovered. The guidelines should be amended to require also that corrected notices be sent whenever notices that do not conform to the requirements of Regulation B, Section 202.9 have been sent. Thus, for example, if the reasons given for the credit denial are not specific, notices with specific reasons should be sent.

^{10/} See ft. nt. 7.

I. Creditors Who Require Co-Signers on a Prohibited Basis.

The proposed guidelines would require these creditors to offer to release from liability on a loan any co-signers required on a prohibited basis. Instead, the creditor should be required to release that co-signer from liability. Then, if a co-signer wishes voluntarily to co-sign the loan, co-signers should be allowed to again sign the loan agreement. This procedure will assure that only those co-signers who want to co-sign, e.g. to establish a credit history, remain liable under the loan agreement. Other co-signers, who would not have signed the loan instrument but for the unlawful conduct of the lender, will be released from liability on the loan instrument.

The guidelines should also direct lenders to reimburse all co-signers required on a prohibited basis for all monies they paid due to their liabilities as a co-signer. Creditors should not be permitted to retain the unfair advantage of unlawfully having required a co-signer.

J. The Guidelines Fail to Address Two Common Violations

The guidelines fail to address two common violations: (1) improper solicitation of information regarding other income, in violation of Regulation B, Section 202.5(d)(2) and (2) wrongfully requesting marital status information in violation of Regulation B, Section 202.5(c). In both situations, the guidelines should require lenders to disclose this violation to persons from whom the above information was unlawfully requested. As explained above, such disclosure would perform important enforcement and educative functions.

IV. The Condition of the Creditor is No Justification for Failing to Enforce ECOA.

The conditions of the creditor should not be used as justification for denying injured consumers full compensation. Instead,

if enforcement sanctions will render a lender insolvent or near insolvent, the agencies should make two determinations. First, they should determine if the lender's insolvency or near insolvency will be detrimental to the community it serves. In making this determination, agencies should consider whether another institution might better serve the needs of a community. It is difficult to conceive of a situation where discrimination is so rampant that compliance with administrative orders will render an institution insolvent or financially insecure. In these unusual cases, one must question the desirability of permitting a lender to stay in the lending business at the expense of the victims of discrimination where another institution could provide lending services and comply with the law.

If the agency decides that the financial impact of usual enforcement measures will be detrimental to the community served by an institution, they should formulate remedial actions that accommodate a lender's solvency problems, yet fully compensate injured consumers. For example, monies owed to consumers might be paid out over time (with interest) rather than immediately.

V. Repeated Violations

The proposed guidelines fail to adequately address the problem of the lender who repeatedly violates the Act. The General Enforcement Policy section states that if violations remain uncorrected, enforcing agencies will exercise appropriate authority, including cease and desist authority, to insure correction. The guidelines also provide that agencies that require corrective action will not be precluded from referring cases involving a pattern or practice of discrimination to the Attorney General.

The guidelines should, but do not, require agencies to refer all cases involving a pattern or practice of discrimination to the Attorney General. ECOA authorizes the Attorney General to bring

an action against creditors who so violate the Act. Referrals of these cases to the Attorney General would not necessarily result in a lawsuit in each case, but would allow the Attorney General to exercise his or her discretion under the Act. A referral requirement also will act as an important inducement to lenders not to engage in a pattern or practice of violating the Act. Moreover, referrals will allow the Attorney General, through litigation, to achieve a more complete enforcement of the Act and more complete compensation of individuals injured by violations. For example, the Attorney General may seek punitive damages through the courts, while the agencies appear to believe they are without authority to assess punitive damages. Also, the Attorney General might obtain greater affirmative relief for the victims of discrimination than is awarded through administrative action. Thus, a referral requirement would comport with Congressional intent to establish a network of effective enforcement measures under ECOA.

VI. An Interagency Commission Should be Formed to Oversee Enforcement

An interagency committee should be formed to oversee and evaluate enforcement efforts generally and to maximize uniformity in administrative requirements.^{11/} Whenever the treatment of a specific situation is left uncertain under the present guidelines, the enforcement agency should be required to submit a description of the situation to the committee. The committee should then make recommendations on appropriate enforcement responses and, if necessary, draft more detailed guidelines.^{12/} For example, whenever lenders have discouraged applications on

^{11/} Despite the formation of this committee, each agency will retain final authority to determine the enforcement requirements it will impose.

^{12/} Before adopting any additional guidelines, the committee should publish and solicit public comment on proposed measures.

a prohibited basis, lenders would have to solicit credit applications from the discouraged class through advertising. The committee should review violations of this kind, recommend enforcement responses and develop standards which may be used in the future to design appropriate sanctions. Such standards should give guidance on the media through which ads must be run, the frequency with which ads must be placed and the content of the ads.

The committee should also review and make recommendations for all factual situations that an agency believes deserves special treatment because of the character of the violation, the condition of the creditor, or the cost and effectiveness of the corrective actions. Also, the committee should develop standard disclosure forms to inform consumers of violations and educational materials to accompany these disclosures. See pp. 5-7 supra. Disclosures and educational materials should be written in simple English and tested to assure that they can be understood by the general public.

The Committee should also include several consumer representatives. Consumers whose rights have been infringed on will not have an opportunity to comment on appropriate committee recommendations in specific factual situations. Yet, the institutions that have violated their rights are likely to have ample opportunity to express their views to the committee on the desirability of alternative remedies. This is indeed an inequitable situation. To remedy this inequity, individuals representative of the classes of consumers affected by enforcement actions should be afforded the opportunity to participate in committee determinations and to vote on committee recommendations. Also, inclusion of consumer representatives on the committee will better assure that consumer interests are accommodated in determinations on specific factual situations.

VII. Conclusion

In closing, we would again like to express our appreciation for this opportunity to voice our concerns about the proposed ECOA enforcement program. We hope that this subcommittee will carefully consider our testimony and encourage the enforcement agencies to adopt the vigorous enforcement program envisioned by Congress when it passed this Act.

[Whereupon, at 11:18 a.m., the subcommittee adjourned, to reconvene at 9:30 a.m., Thursday, September 14, 1978.]

BANKING REGULATORY AGENCIES' ENFORCEMENT OF THE EQUAL CREDIT OPPORTUNITY ACT AND THE FAIR HOUSING ACT

THURSDAY, SEPTEMBER 14, 1978

HOUSE OF REPRESENTATIVES,
COMMERCE, CONSUMER,
AND MONETARY AFFAIRS SUBCOMMITTEE
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:45 a.m., in room 2247, Rayburn House Office Building, Hon. Benjamin S. Rosenthal (chairman of the subcommittee) presiding.

Present: Representatives Benjamin S. Rosenthal, Robert F. Drinan, and Tom Corcoran.

Also present: Donald P. Tucker, chief economist; Doris Faye Taylor, clerk; Henry Ruempler, minority professional staff, Committee on Government Operations.

Mr. ROSENTHAL. The subcommittee will be in order. We continue this morning. Our first witness is Mr. Warren L. Dennis.

Mr. Dennis? Who is the second witness? We shall suspend for a few minutes.

[Recess.]

Mr. ROSENTHAL. Mr. Dennis, we will be pleased to hear from you.

STATEMENT OF WARREN L. DENNIS, ATTORNEY, TROY, MALIN & POTTINGER, WASHINGTON, D.C.

Mr. DENNIS. Thank you. I am very pleased to be here in response to your invitation, Mr. Chairman.

I have submitted a written statement for the record. I think perhaps the most useful thing for me to do in the verbal statement is to discuss a number of concerns that I have about this area of agency enforcement.

Mr. ROSENTHAL. Let me just say one thing in advance. Without objection, your entire statement will be included in the record.

Mr. DENNIS. Thank you, sir. The concerns I have I would break down into three categories. First is that institutions, lending institutions have a very real exposure to liability. You will recall the *Griggs* case which in the employment field resulted in employers literally having to change their policies all over the country. That case did not come down until 6 or 7 years after the law had changed.

We are now in the infancy of enforcement in this credit area, and there are sleeping giants all around. One of the roles of the agencies that I see is to point out those sleeping giants and to

insulate institutions from exposure, not to insulate them from compliance but to insulate them from exposure as part of the legitimate role that they have.

The second observation is that I think it is not realistic to expect these agencies to be aggressive enforcers in the same mode that let us say the Department of Justice or Federal Trade Commission is expected to be an enforcer. Their only job is to find the violations and do something about them in a very aggressive way. The regulatory agencies are somewhat schizophrenic. They have two legitimate functions. One which I understand was characterized here recently as "management consultant". I do not think that this is an illegitimate function, it is a legitimate one because of the visitorial structure of the way they regulate. While they have to be enforcers or advocates in some mode, they do have a legitimate kind of consulting function. It is almost organically impossible to measure them against the criteria that we use to measure say the Department of Justice for its vigor. There are other criteria which I will get into. The most important observation is that nobody, none of the agencies in my judgment, really understand what it is they are looking for.

When we get into the question of finding discrimination, where is this sleeping giant? The issue is, what is discrimination? You have to have a process for understanding what that means. When we ask that question the answer is: "Discrimination is what the courts say it is." I have a couple of sterling examples as to what I think the problem is in this regard. In discussions with people in agencies over the years, I frequently will ask them, when we are discussing some kind of statistical approach or some approach to discrimination, "What is your definition?" They will pull out the statute, text of the law, and say, "Here it is," and sometimes go to a dictionary or some economic model. All of that misses the point.

Discrimination is what courts say it is. It depends upon the nature of the transaction between the person and the institution. You cannot always measure that or to take a picture of it looking only at documents or statistics.

The classic example of that is a case that I just want to go over very briefly *Harrison v. Heinzeroth Mortgage Co.* The Harrisons were a white couple who wanted to live in a particular integrated neighborhood. They went to this mortgage company and asked about the area and about getting a loan. The loan officer said to them, "Look, I grew up in this neighborhood, my mother still lives there, I know what is going on, the schools are changing. You don't want to live there." Very casual kind of "friendly uncle advice."

On the basis of that kind of transaction the court found a violation of three sections of the Fair Housing Act, and imposed a liability, an exposure of \$5,000 in compensatory damages and \$2,500 in punitive damages, plus attorneys fees. And the lesson of the case is that to identify what is discrimination you have to look at that point-to-point contact between the public and the person with responsibility for dealing with the public. That particular violation would not have shown up in any of the recordkeeping kinds of approaches that are being used by any of the agencies now. Something else is needed to find that.

It is also instructive to note that the conduct which occasioned that kind of liability was incredibly casual. And the point that I make repeatedly to lenders whom we would advise, as well as the agencies, is that the exposure, the victim machines, if you will, are created on the front line, by those individuals who have responsibility for dealing with the public. Ironically all of the managerial discretion in the institution, the judgment, the training, the authority, is somewhere behind that front line, in loan committees, loan officers, and boards of directors. Compliance seminars are attended by these types of folks.

There is a lacking generally in the industry of the internal controls to bring all of this knowledge about compliance, what we should be doing, down to the front line, and it is the front line where it is happening. So part of my point of view is we are focusing the light on the wrong area of the processes.

There is another lesson in the *Heinzeroth* case. The court held that because the institution had taken steps to instruct the employee not to do the thing that he had done, that the institution would not be liable for punitive damages, could recover the compensatory damages that it paid the victims back from the employee, and would not be subject to an injunction because the court held that injunction was not needed, they already did the things they were supposed to do.

So that line of communication from management down to the field is essential, and I am not certain that it is being concentrated upon sufficiently by institutions, or by agencies in their enforcement and compliance programs.

On page 7 of the prepared statement that we submitted, I have excerpted a number of criteria for evaluation of the Federal Reserve Board's program. This pertained particularly to the Federal Reserve Board because we did the study for them. But these are criteria which apply to all of the agencies, and place in context our view of the dual roles that they hold. Without reading them, paraphrasing them briefly, we think when you measure an agency's success in being effective as an enforcer, the criteria which are important are: Whether or not the lenders who are subject to the regulation have a clear and unambiguous statement of the agency's expectations. I take fault with some of the regulations, even some of the regulations by the Home Loan Bank Board, which is by far the leader in the field of coming to grips with these issues, as being obtuse, and as requiring an inside knowledge or a specialized knowledge. It is interesting to observe that we prepared a 130-page manual with 500 pages of appendices to explain 14 pages of regulation. It takes us about 12 hours of lecture format to bring a group of lenders to a level of comfort, where they say, "Oh, that's what they meant."

I do not think that should be necessary.

The second criterion is that compliance standards should be practical and realistic, and not so procedurally difficult or complex that efforts at assuring compliance become unduly burdensome. I have found there is a rising level of frustration that I think has come to a crisis point.

You are dealing with a finite number of people in the lending institutions. When new regulation is layered upon previous regula-

tion and new jargons are created, rarely can the majority of institutions go out and add people. So the same people are trying to pick up an expertise. Usually the new regulation is imposed with new triggers for differing disclosure, and notice requirements. In essence, we have an information bottleneck. So I see a marginal and diminishing return every time we attempt to correct some practice in the industry. The bottlenecks arise and new remedies are not being effectively carried out because of the difficulty of understanding what is going on, the conflicts of regulations, and the overlap of various triggers. That is a real problem that has not been addressed.

I think also it is very important for standards that agencies look for to be consistent with the standards that courts are going to impose or other agencies. Agencies may have a fairly narrow viewpoint of what is discrimination, which is fine from their editorial point of view. However, if their lenders, those that they regulate, are subject to a court interpretation that is significantly more severe, they are not doing their lenders a service by ignoring these definitions and not equipping them to comply.

In appendix B to the material that we prepared and submitted, there are a number of summarized findings on this point with respect to the Federal Reserve Board at the time that the study was submitted. I would like to go over those briefly and I think that they characterize to some extent problems in the other agencies.

I think that there is such a thing as generations of compliance in the same way that we create computers and we get into third and fourth generations of sophistication. There are generations of sophistication with respect to compliance. In the first generation, so to speak, you have the agencies recognizing the responsibility to begin developing mechanisms to respond, but they still only do the minimum necessary to keep the heat off, whether the heat be from oversight hearings such as these or private-public interest groups and lawsuits of that nature. I think until very recently, and I mean within the last 18 to 24 months, we had all of the agencies in that mode and some of them not even in that mode.

Remember that the historical context in which we have to view this, is that these agencies have come kicking and screaming into this dark night. I have this mental image of a Disney character, a grizzly bear clinging to a tree, being pulled away paw by paw very reluctantly.

Mr. ROSENTHAL. As you said, they did not view themselves as civil rights enforcement agencies and they were very uncomfortable in this new role.

Mr. DENNIS. I believe that is correct. As a result, they lack an institutional memory or commitment to it. I think, commendably, some of the agencies are bringing in people from the outside, which they were more or less forced to do. We are really in such an infant stage of this process that we have not really developed the—Arthur Burns—you are probably familiar with this statement—used to say there is a competition in laxity.

Mr. ROSENTHAL. I read that in your statement.

Mr. DENNIS. As we merge into the second generation there is now a competition in who can do more. But we have always sort of

viewed the agencies as in a horserace and in this first generation. Before you step out of the stall you look around and see what everybody else is doing. I think most of the agencies have emerged into the second generation where you recognize that you are not really helping the lenders if you do not prepare them to comply because of the so-called sleeping giant exposure. This stage is characterized by an attitude where although you are putting the people in the field, and are gearing up, you are still not thrilled when you find discrimination.

You prefer not to find it, because then you have to face the problem of what do I do when I find it? To get back to specifics, the Federal Reserve Board is emerging now from the first generation. I think that the fact that they commissioned our report with the expectation that it would probably be critical—in fact I think that is why they came to us as opposed to someone else—is commendable, and I think that the reception that I can see, the outward signs of the reception have been that it was needed, that there are lots of things in the report that can realistically be done. I understand that over the summer there has been a task force that has taken the report and analyzed what it is they can do. I do not know the results, what kind of program will emerge from it.

Into the second generation I would place the FDIC, the Comptroller and the Credit Union Administration, which is to say that they realize that they have to do something, they are not quite certain what they are doing. But I think that in terms of commitment they are on the right road. I think they are sincere, I think they are trying to build a program and find out what to do. I would place the Home Loan Bank Board in a third generation of sophistication, which is to say that I think that as an institution it has had enough experience and enough commitment to really want to understand what it is they are doing and be creative in the sense that somebody sits down and says, "Well, what is really going on in the world? What is the nature of the transaction that takes place in the institution? How do we find out about it, and how do we make sure there is no discrimination?"

That has resulted in regulations that have gone further than the other agencies. I still have, and have expressed to the Board, technical problems with the way that was done, mainly from the editorial point of view, that it should not be necessary for a lender who has to wake up in the morning and plan what he or she is going to do about something, to have to come to a 12-hour compliance seminar to figure it out. This kind of intervention by folks like us should not be necessary in the process.

Some important observations with respect to the Federal Reserve Board are in appendix B. They capsule what some of the problems are: We concluded that the Board has appeared hesitant to issue an unambiguous statement of its commitment to vigorous enforcement among State member banks and has not identified civil rights legislation as having particular priority among the Board's enforcement responsibilities. Such commitment is important because examiners have only so much time. They have a number of competing priorities. If you do not elevate civil rights to the priority Congress intended it to have, it gets lost.

I also think that civil rights compliance is by definition a very symbolic affair as well. You get a very great deal of mileage out of the symbolism that agencies express.

Mr. ROSENTHAL. Hold it for a moment.

Mr. DENNIS. Yes, sir.

Mr. ROSENTHAL. Proceed.

Mr. DENNIS. On civil rights compliance, the symbolic position taken by an agency is very important in conveying to examiners and to lenders a sense of enforcement priority the Government is going to bring to it. I have found that simply the passage of the ECOA and regulation B and the beginning of serious enforcement efforts has had a tremendous prophylactic effect.

Thus real egregious problems that the law was passed to eliminate, particularly in the sex discrimination area, have really been eliminated. From this "symbolism" point of view we faulted the Board. In fact, we felt the Board was conveying somewhat the image of a mild hostility toward activity into this area. We also felt that the Board did not adequately reflect in their advisory programs and in the training of examiners the special nature of civil rights laws.

By way of example, if you look at truth in lending, fair credit reporting, they are fairly technical procedural laws. The civil rights law comes from an entirely different historical context and has a different judicial literature.

If you go and look for violations in ECOA in the same way that you look for violations in truth in lending, you are guaranteed not to find any violations. When you report there are no violations you are reporting simply a self-fulfilling prophesy, because the nature of the animal requires comparisons and judgments that are not like calculating whether a particular finance charge is as it should be under the regulation or a form was or was not as it should be.

We also felt that the historical context in which the current civil rights laws affecting lending practices grew up is something that has to be brought home very directly to examiners to let them understand the whole evolution and priority that we give to this. I usually find that when I talk to examiners there is a lack of awareness of the extent to which there were pretty serious problems out there in the world. Sometimes these civil rights laws are regarded as social legislation, social tinkering. When you bring to both the lenders and examiners an appreciation of what really occurred within our own recent memory, it really enforces, motivates, and enforces their compliance efforts.

Mr. ROSENTHAL. We are going to have to take a very, very short break so we can vote.

[Recess.]

Mr. ROSENTHAL. Proceed.

Mr. DENNIS. Continuing with conclusions that we made in our report to the Fed, one of the important ones was that examiners are given very little guidance in how to recognize discriminatory lending practices, or the legal standards for evaluating such practices, that investigative tools and techniques for finding discrimination were lacking. For instance, sampling techniques that would be used were wholly inappropriate. An example of this would be if you go to sample for whether or not someone is violating a proce-

dural aspect of ECOA, regulation B, or truth in lending, you want to take a statistically significant example and see if there is an incidence of violation and you have an objective standard to look at—did they give the notice or not? When you talk about finding discrimination, the whole sampling has to be whites against blacks, rejects against acceptances. It is a different kind of standard and sampling.

We were concerned about a lack of nationwide uniformity. I think this affects each of the agencies, that as between various home loan banks, various Federal Reserve banks, various district offices of the other agencies there is not a uniformity in how complaints are handled, what triggers an investigation, what triggers a recommendation of some enforcement action.

I would be pleased at this point to take questions.

Mr. ROSENTHAL. Let me ask this. We heard on Tuesday from Commissioner Greenwald of Massachusetts that the only effective way of detecting preapplication discouragement is through the use of testing. What do you think about that?

Mr. DENNIS. I think ultimately that is 100 percent correct. That when you take all of the procedures and techniques being used now, and you use them and use them well, you still come up with a shortcoming, what is really happening in that little room when the loan officer takes the people in. It is a question of innocence as much as assumed culpability.

Mr. ROSENTHAL. In other words, it is your view testing is an appropriate vehicle for use?

Mr. DENNIS. The yes or no answer to that is yes, with a very important qualification.

Mr. ROSENTHAL. The second question is, what do you think about any legal inhibitions, constitutional problems?

Mr. DENNIS. Based on the case law in fair housing on testing, I do not believe there are constitutional inhibitions or entrapment problems with testing if it is done correctly. I do not believe examiners should be doing the testing. I believe the testing technique has to be very careful to be objective, and I also think that what testing will reveal is a large degree of compliance. I sometimes recommend to clients who are lenders, let's go out and ourselves test what is happening at our front door and we will see where our real problems are.

It is a very good objective technique for proving the absence of discrimination.

Mr. ROSENTHAL. On the other side, the agencies argue that using testers would destroy the close cooperative relationship they have with the institutions they supervise. What do you think about that?

Mr. DENNIS. I think there is merit to that, which is why I indicated I do not think examiners should be doing the testing. Where you have the examiner wearing the enforcement hat and wearing a compliance hat and perhaps wearing the compliance management hat more than the enforcement hat, there is a tremendous, marvelous opportunity for the examiner to help the lender. If he becomes an advocate or she becomes an advocate, you destroy that. If there is a testing—if there is an appropriate place for testing, I think it would have to be done by the agencies that

were given the role by Congress of being the aggressive pattern and practice kinds of enforcers, which would be Justice and FTC.

I really do think there are different mechanisms, each has its own role and this should be recognized.

Mr. ROSENTHAL. We also heard testimony on Tuesday concerning the proposed enforcement guidelines for Regulation B, and the thread of these comments has been that the guidelines are too weak; they do not convey a commitment to vigorous enforcement on the part of the regulatory agencies. I am interested in your thoughts, your views on the guidelines, whether they deal adequately with the problems of repeat or recalcitrant violators.

Mr. DENNIS. There are two sets of policies. One is the joint policy drafted by a task force that all the agencies subscribe to. I would characterize that as simply not terribly informative. They have gone through the regulation and said, "Where we find this we are going to require you to undo it." I think that is a minimum statement of what exists. I think the Bank Board's policy is much more informative because it reflects more closely, how a court might approach remedies. Actually, I think some of the things the Bank Board indicated they would do administratively, if push came to shove, and there was a cease and desist action, the association would have a fairly good argument that some of them the Board does not have the authority to do. They are more appropriately judicial remedies. There is a question as to how much, in the administrative context, the Board can do in awarding damages and things of that kind.

That also brings up the question of penalties which I would like to discuss for a moment. The law does not provide penalties. It provides for punitive damages in a court context but it does not provide a punitive kind of penalty structure. Where the law does not provide for this, the agencies cannot impose it. I think this is a limitation that has to be recognized.

Mr. ROSENTHAL. Should the law be changed?

Mr. DENNIS. I come down on that to say no, for this reason. If you impose a jail sentence for what a jury or a judge would probably not regard, or an agency, as a criminal matter, when compared to other criminal acts, you will find enforcement will be lacking. They simply would not do it, because you can have over-penalties. I think the formulation of compensatory damages and punitive damages is a very wise one. But my ear to the ground with lenders has been that the Bank Board's statement has done a great deal in motivating people by fear. People have regarded it as an austere policy and one of seriousness. I think in fairness the Board's policy statement is one of saying, "Where we find you violating it, we are going to zap you, we are going to do whatever we have to do to make things right."

Mr. ROSENTHAL. One last question. Your testimony mentioned the special training and I agree with this, special training and expertise needed by examiners in the civil rights credit enforcement areas. In light of the need for special expertise, do you think it makes any sense, as the FDIC and Comptroller have, to have these duties performed by a corps of regular examiners who have been given a temporary or 6-month assignment and a crash training course in these compliance areas?

Mr. DENNIS. As the permanent and best way, I do not think that is. Given budgetary constraints, the reality we are not going to go out and duplicate another 600 examiners to do this, the way I come down is as follows. You have these commercial examiners, they are going to be in the institutions. Whether they do the bulk of it or not, they should be trained to this. I see situations where commercial examiners give directions contradictory to what other examiners do. I think each examination for civil rights area should be directed by a senior examiner who is given intensive training, more than a crash course, and that a good deal of the work in the institution of gathering, marshaling information can be done by commercial examiners who are trained toward the gathering of information, but that the evaluations and judgments of "well, we are going to move here, look here," should be done by someone fairly senior, so you can combine both of those, minimize the additional expense necessary and still get the expertise into the field.

I am troubled that in each of the agencies, let me say none of the agencies do you have that civil rights compliance and enforcement expertise really in the regional offices. There are a few people scattered here and there. Even the Bank Board's community investment officers who provide a very valuable role, it is not the role of being civil rights enforcement experts—it is some other role that is needed.

So I do not see the examinations now being done by this senior corps of people who are trained. I do think there is a need for this.

Mr. ROSENTHAL. Thank you very much for a very thoughtful and elaborate presentation.

[Mr. Dennis' prepared statement follows:]

PREPARED STATEMENT OF WARREN L. DENNIS, ATTORNEY, TROY, MALIN &
POTTINGER, WASHINGTON, D.C.

Chairman Rosenthal and Honorable Members of this Subcommittee:

I am pleased to testify today in response to your invitation of August 18, 1978. I plan to discuss briefly the conclusions contained in the report which our firm prepared for the Federal Reserve Board entitled "The Detection and Correction of Credit Discrimination: A Report to the Board of Governors of the Federal Reserve System." You have also asked me to address seven questions dealing generally with the activities of the federal financial regulatory agencies in the area of consumer protection and civil rights enforcement.

I would like to begin by disclosing my biases. Presently, a significant portion of my time is devoted to working with lenders and trade associations of lenders in designing and implementing approaches to "compliance management." In addition to dealing with specific problems as they arise, we try to develop practical internal controls to assure compliance as a part of normal business operation and business planning. A good deal of this effort is directed toward training of senior executives, loan officers and other internal staff, and development of training tools and guidelines to make compliance easier, more effective and routine. We also consult to several federal agencies in the same areas. Prior to leaving the government I headed the Task Force on Financing Discrimination in the Department of Justice. In that capacity, in addition to trying cases when significant violations of federal law were alleged, I worked with

the regulatory agencies and several interagency task forces to help develop administrative compliance programs.

If there is a particular editorial perspective which has characterized my view and the view of my colleague, Stan Pottinger, former Assistant Attorney General for Civil Rights, it has been that Civil Rights Compliance and enforcement should not be a game of "cat and mouse" on the part of the industry or of the government. In other words, it is not a matter of playing "gotcha" or of imposing severe regulatory burdens as a sort of "penalty" for untried crimes, but it is, or should be a process of identifying the reasonable requirements of the law and creating reasonable mechanisms to implement the law in its historical context.

For the most part, civil rights laws are remedial, not punitive in nature. In the modern context, enforcement is not so much a question of "good guys" and "bad guys" as it is a need to undo certain historical patterns of conduct that have evolved over the years which we have now identified as arbitrary, uneconomic, fiscally harmful or socially undesirable. There is considerable difficulty in accomplishing these high-sounding goals, however, because of the following factors:

- a. The "law" is sometimes vague and thus requires either the imposition of intricate explanatory regulations or, alternatively, subjective case by case interpretations. In either event, it frequently occurs that the persons who are subject to the regulations are given no reliable guidance

which tells them clearly the nature of the conduct or changes in conduct expected to flow from the law.

b. The cumulative impact of layered regulation has created a real crisis in the industry because most institutions, being of moderate or small size cannot, afford and should not have to rely on expensive experts or consultants on every aspect of operation. Bank and savings association personnel are literally at the saturation point in terms of their capacity to absorb intricate new regulations. Since regulations are effectuated only through the conduct of the men and women on the front lines in financial institutions, a bottleneck of this kind effectively thwarts the remedial measures intended by Congress to be carried out. The larger this crisis grows, the less effective is each new attempt to correct some industry practice.

c. In the field of civil rights, the regulators themselves have only recently accepted the responsibility for enforcement and compliance and are still in the process of sorting out their proper roles. Two dynamics are at work here. Historically, the financial regulatory agencies never perceived their jobs as pertaining to the civil rights compliance activities of regulated lenders. Consequently, there is no institutional memory of or commitment to the subject matter. In fact, to the extent that regulators were recruited from the industry, they, as individuals,

may have shared some of the very perceptions which called forth the corrective statutes and regulations at issue. Accordingly, the very entry of the agencies into this field over the past six years can be characterized as "reluctant," and accomplished through a combination of several vector forces including Congressional oversight hearings, private lawsuits, passage of new laws with specific delegation of responsibility, persuasion and influence from other government agencies, and public pressure. As institutions, the agencies are, perhaps, still uncomfortable with their roles, and are, commendably, bringing in new personnel with civil rights experience.

The second dynamic at work is the requirement that the agencies simultaneously fulfill two inherently conflicting functions. On the one hand they have to be enforcers, protecting the public generally and specific complainants specifically. This might sometimes require action inimicable to the financial position of an institution by exposing it to liability for damages and private actions. It also calls for a fact finding process and a semi-prosecutorial function, requiring examiners to be investigative experts and, once a violation is found, advocates. On the other hand, the agencies also must act in a protective way, helping institutions anticipate and meet regulatory requirements. This is an educational function and

requires examiners to be genuine experts in the subject matter and be able to delicately balance their advisory and advierial roles. The key to controlling this inherent conflict is examiner training, not just in investigative techniques and the text of laws and court cases, but in the overall proper discharge of their difficult duties. Some questions arise as to whether it is appropriate or efficacious to place responsibilities of this type primarily on examiners who were recruited and trained to perform financial auditing functions, or whether a special corp of examiners would perform better in this area.

In any event, the conditions described above provide the context and background in which we find ourselves today.

I must also point out that, in my experience, the overwhelming majority of financial institutions recognize the existence of problems, and the need to change with the times; and do not stand as apologists for the relatively small number of lenders who do abuse the rules and who are legitimately subject to corrective action. I have found that most lenders want very much to comply with both the procedural and substantive requirements of the consumer protection laws. However, there is an enormous frustration level rising in the industry because of the extreme complexity of some requirements and, paradoxically, the extraordinary vagueness of others.

Some regulations, in fact, represent what I call "regulation by telepathy." An example of this phenomena is the proposal by the agencies under the Community Reinvestment Act. I have taken the liberty of attaching to this testimony a copy of comments

prepared by the Pennsylvania Savings League on this proposal which point out some of the problems in this regard, by way of illustration.

There is an additional phenomenon which should be noted in the course of any analysis of the role of the agencies in consumer credit protection.

The current method of rule-making and enforcement typically calls forth a whole new jargon and regulatory structure to accommodate each new remedy, with little effort at over-all coordination. For instance, definitions such as "dwelling" or "application" are different under ECOA, the Fair Housing Act, Truth-in-Lending and Respa. There are also divergent requirements within each regulation so that various notice, disclosure, recordkeeping and rescission provisions each have different definitional triggers. Experts who specialize in consumer credit protection struggle with the vagaries here. It is simply unrealistic to expect this patchwork legal framework to be administered with anything approaching ease. Accordingly, in evaluating the performance of both regulator and regulatee it is not just a matter of assessing motivation, good faith, technical knowledge or budget constraints. An accurate estimation of success at enforcement requires analysis of a larger mosaic of these and other factors.

As a beginning in the measurement process, we found it necessary to develop criteria for designation of a successful compliance program. That analysis, which is applicable to the activities of all of the agencies is set forth below:

B. Criteria For Evaluation Of The Board's Program

We begin with the observation that, with respect to member banks the Board has a three-fold objective in the interlocking scheme of federal bank regulation and consumer credit protection:

(a) To assure that all of the protections and benefits intended by Congress to be realized through passage of consumer protection and civil rights laws are in fact extended to borrowers and applicants who deal with member lending institutions;

(b) To assure the continued safety and soundness of state member banks by requiring that they not make loans which are unsound, and by helping banks avoid liability for monetary damages on account of noncompliance with consumer protection and civil rights laws;

(c) To contribute to the stability of the credit marketplace by eliminating practices, such as discriminatory lending practices, which interfere with the efficient matching of available credit sources and creditworthy borrowers.

In determining whether the procedures, materials and policies currently employed by the Board in its experimental consumer compliance program fairly and effectively fulfill the Board's objectives with respect to civil rights enforcement, we have measured these materials, procedures and policies against the following general criteria which, we believe, should characterize a successful compliance program:

1. Institutions subject to an agency's enforcement powers should be provided with a clear and unambiguous statement of the agency's expectations in the area of civil rights compliance, so that they can anticipate changes which they might have to make in their practices.
2. Compliance standards should be practical and realistic and not so procedurally difficult or complex that efforts at assuring compliance become unduly burdensome, either for examiners or regulated institutions.
3. Compliance standards should, to the extent possible, be consistent with the standards imposed by other sources of authority (e.g., the courts and other enforcement agencies with concurrent jurisdiction). This is necessary in order to assure that affected institutions are not simultaneously exposed to liability under inconsistent standards and also, to adequately prepare institutions for challenges which may come from sources other than the primary regulating agency.

4. Methods and techniques for uncovering unlawful practices must be accurate and efficient, so that institutions which persistently violate the law can be identified for appropriate corrective action. This is also necessary in order to assist the large majority of institutions which attempt, in good faith, to comply, to recognize potential problems in their practices and take steps to reduce any possible exposure to liability. Examiners should be given objective standards and an adequately detailed investigative program with which they can determine whether discrimination is or is not present in a fair manner.

5. Procedures for corrective action with respect to institutions which do not comply should be consistent and should be relatively visible and vigorous, for prophylactic purposes.

6. The administrative enforcement climate created with respect to civil rights laws should reflect the sense of priority which Congress and the courts have traditionally assigned to enforcement of such laws. This is necessary in order for examiners to place their responsibilities under these laws in proper perspective and in order to convey to regulated institutions the importance of their civil rights compliance efforts.

7. A civil rights enforcement program should adequately reflect the extent to which civil rights laws are unlike other consumer credit protection measures, or regular banking regulations. This is important because of the unique standards of judicial construction attached to civil rights laws. Inasmuch as regulated lenders are subject to these rules of construction, the administrative evaluation of their compliance should be undertaken with this in mind, and examiners should be equipped with the necessary background to make these evaluations.

8. In the area of civil rights compliance it is particularly important for examiners and others engaged in carrying out an enforcement program to have an adequate understanding of the history of events which called forth the laws and regulations which they administer, in order to understand their intended scope and application.

In Appendix B I have reproduced a six page general summary of the Report which sets forth our over-all conclusions regarding the activities at the Federal Reserve Board. I am advised that over the summer the Board has had an internal

task force analyzing the report and its recommendations for the purpose of revising its compliance program. I should also add that the Board and its staff have been exceptionally helpful and cooperative to us in the course of this endeavor and to my knowledge, quite receptive to many of the suggestions made. I believe that they commissioned the report with the expectation that it might be somewhat critical, and that is certainly to their credit.

I have also reproduced and attached several other sections of the report which deal with specific recommendations for program changes or new teaching tools or other compliance devices. The text of the full Report is 145 pages with about 300 pages of appendices. I have included at the end of this statement the following sections which I think will be of particular interest. These are recommendations which are applicable to each of the other agencies, as well as the Federal Reserve Board. I hope that this Report will be of some assistance to other agencies, as well as to the industry itself, which is subject to these regulations. In my judgement, in the area of consumer protection there is a complete convergence of private and public interests here and that implementation of the recommendations made will lead directly to more rational and well informed enforcement and compliance education activities. This inures directly to the benefit of lenders as well as to the benefit of the public.

The additional appendices are:

- Appendix C: Discussion of a model rating system for evaluation of institutions (pp. 99-106);
- Appendix D: Discussion of complaint Procedures and specific recommendations for improvement (pp. 107-125)
- Appendix E: Discussion of observations and recommendations for Examiner Training.

With respect to the seven questions enumerated in your letter of August 18th, I wish to point out an important caveat. You have asked me, in some instances, to compare the activities of a number of the agencies. Since I have not recently analyzed the program of the other agencies with the same degree of intensity as we analyzed the program at the Fed, it would be unfair to imply that my comments are based on the same level of familiarity. I will attempt to answer your questions, however, based upon our general knowledge of the publically disclosed programs of the agencies.

1. How satisfactory is the civil rights enforcement work of the other agencies, and how do they compare with the Federal Reserve and with each other, in
 - a. comprehensiveness of current program of detection and enforcement;
 - b. technical competence of the staff;
 - c. adequacy of budget resources devoted to civil rights enforcement; and
 - d. general agency commitment to civil rights enforcement.

ANSWER:

Arthur Burns once characterized the four federal financial agencies as participants in a "competition in laxity." Recently, however, the opposite is true in the area of civil rights compliance. Each agency is now in a period of transition and, in fact, is still in the process of hiring new personnel and designing their programs. It is thus, too early to make concrete assessments. Each, however, has shown outward signs of commitment and the leadership of each have apparently accepted, in principal, a role for their agencies in civil rights enforcement. This development, albeit somewhat late in coming is welcome and should provide a good foundation for future activity.

The comprehensiveness of the program of each agency, in my judgement, is limited primarily by budgetary constraints. I am concerned that the agencies have not evolved to the point of being able to identify enforcement priorities and techniques for serving these priorities. For instance, I would suggest that we recognize that it is not possible (nor necessarily desirable) to try to find each and every procedural violation in the world. Examiners should emphasize these priorities.

- a. finding and correcting significant, substantive violations and
- b. providing accurate and reliable assistance to each institution in setting up prophylactic programs and internal controls and
- c. assuring that employees of institutions are all given reasonable adequate instruction in compliance, since institutions act only through their employees.

The establishment of these priorities is what I call the "second generation" of enforcement efforts. We are still only emerging from the "first generation."

As to the technical competence of staff, there are two sets of staff at issue. In most cases the Washington staff, naturally, contains more specialized expertise in civil rights than the regional staff and this expertise is growing. This is not really a question of "competence" because, in my judgement the agencies attract and are peopled by very competent individuals. The issue is familiarity with civil rights precedents and enforcement. I am concerned, as to each agency, including the Home Loan Bank Board, which has been a leader in this area, that examiners who constitute the front line of enforcement and compliance are not being adequately trained and tested. The heart of an agency's program is the proficiency

of the examiners. Civil Rights, unlike other aspects of consumer compliance, requires more than textual knowledge of laws and regulations. A good deal of judgement and familiarity with case law is required. I get frequent reports from lenders of examiners giving what I regard as incorrect advice, and this is troublesome. I am moving toward a conclusion that, while all examiners should be given exposure to training in this area, it is necessary to have, in each regional office or Bank, a corps of specialists in civil rights and lending, if for no other reason, to keep current in a rapidly changing area. Examiners, like everyone else, do not have an endless capacity to absorb new regulations and interpretations.

2. What level of agency staffing - how many examiners and how many personnel in other functions - are required for adequate enforcement of fair housing and equal credit opportunity in financial institutions? In supervising institutions that make both home loans and other types of consumer and small business loans, what relative proportions of effort should be devoted to home loans and to other types of credit?

ANSWER:

The number of federal examiners has not grown proportionately to the number of new laws and regulations which they enforce. However, in these times of a healthy and concentrated effort to control government spending, it is unrealistic to expect or rely on large budgetary increases to bolster the efficiency of enforcement. Accordingly, better enforcement techniques must be developed. I believe that existing staff, with the addition of one or two specialists in each region can adequately do the job. There are ways of conducting examinations, comparing files and analyzing records which are more efficient than other ways. I

do not believe that all of the agencies are aware of this. One suggestion is to do a very comprehensive initial exam for civil rights and community investment, preparing a record which is more complete than a normal exam would be. Thereafter, subsequent regular examinations can be tailored to the facts at hand. Perhaps only an update is necessary. Certain forms of spot checking, if based on a knowledge of civil rights principles, can be used. Perhaps lenders with very good records and good internal controls need not be examined as thoroughly as others. There are key "indices of compliance" which can be used as short cuts in examinations. Contact with organizations outside the institution might help identify where problems are.

Because of the relatively greater amounts of money involved and because of the importance of home finance, this area of credit probably justifies more attention.

However, home improvement loans, which in banks are a "retail" category are also important. Virtually no programs have been developed in the area of business credit. Also, very little attention has been paid, except by the Fed, in mostly theoretical work, to the operations of credit scoring systems. Many of the lawsuits now pending involve credit scoring and, in my judgement, some banks are remaining open to significant financial exposures which can be avoided if caught early.

3. Are discriminatory redlining practices of the sort prohibited by the nondiscrimination regulations of the Federal Home Loan Bank Board a significant problem at banks? Would banking agency regulations similar to those of the Bank Board, coupled with a suitable program of detection and enforcement, be an effective way to deal with this problem? Do the banking agencies have adequate statutory authority for issuing and enforcing such regulations against redlining?

ANSWER:

There is, in my judgement, adequate authority in each agency to issue comparable regulations. The question is the advisability of doing so. We recently authored a 130 page manual with a five hundred page appendix explaining fourteen pages of Bank Board regulation. We generally need eight to twelve hours of lecture time to bring lenders to a level of comfort with the regulation.

The substance of the Bank Board's regulations are in the right direction. However, they were obtuse and mystical, using new jargon and assuming levels of knowledge which do not exist among most institution personnel. Although we have ourselves been called on to provide professional services interpreting these and similar regulations, I think it should be unnecessary for lenders to have to call on outside specialists to implement a rule which applies to day to day operation.

For the most part, the Bank Board's regulation is really a codification of existing law. To this extent it will be helpful to savings associations, in the long run, to come to grips with these issues. Ultimately, this has helped them avoid future liability. Commercial banks would definitely benefit from this type of exposure, for this reason. Also, banks and savings associations, as a matter of principal, should probably be subject to the same legal interpretations. I would, however, draft and implement these guidelines in a different fashion, if issued for commercial banks.

4. How important to the elimination of credit discrimination is a program of statistical monitoring of all loan applications and inquiries? Is statistical monitoring as important to the detection of redlining discrimination as it is to the detection of discrimination related to applicant characteristics? What items of information is it essential to monitor? Is Home Mortgage Disclosure Act data useful for detecting discrimination?

ANSWER:

There are two myths at work here. First, it is still believed that the more elaborate or sophisticated a data collection system, the more helpful it is. Probably the opposite is true and I believe that several of the statistical monitoring programs being tested or undertaken by the agencies, at considerable cost, are a waste of money. They will not add significantly to the ability to detect and correct discrimination.

Myth No. 2 is that the Home Mortgage Disclosure Act data is useless. The data should not and can not be used to draw dispositive conclusions about discrimination. However, it is essential for identifying gross patterns that call for more discrete analysis. Some observers have stated that HMDA is useless because it is never asked for by the public. The value of HMDA data, however, is its potential use by examiners who should regularly plot HMDA data on maps with demographic overlays. Naturally, there may be many bona fide explanations for certain patterns, and these must be explored with management and confirmed by analysis of files. But where a lending pattern is diverse and well distributed, HMDA can be a very good defense for lenders and an indication to the examiner that further investigation is not needed. It also identifies the kinds of further inquiry needed.

The nature of "discrimination" as that term is defined by the courts precludes that use of statistics as accomplishing much more than the establishment of a prima facie case, or as evidence which can shed light on certain practices. I have seen agencies try to use elaborate statistical models to "prove" the presence or absence of discrimination. This effort comes usually from a lack of knowledge of the rules of construction under civil rights laws. One cannot impose an "economic model" or a dictionary definition of "discrimination" to prove or disprove the presence of a legal condition. Discrimination is what the courts say it is, and cannot always be uncovered by computer-based studies which define it as something else. Frequently, it occurs at some part of the transaction which is not even recorded. Also, one problem with the elaborate studies attempted thus far is that their complexity results in a very low accurate completion rate at the primary data collection stage, thus resulting in a low level of confidence in the results.

Depending on their accuracy and format, statistics can be very important in (a) identifying enforcement priorities (b) establishing a prima facie case and (c) tending to proving the likelihood of discrimination. However, there is probably no way to escape the need for reviewing anecdotal evidence, and documentary evidence. Also, given the many variables which go into every loan decision, I do not think that a program of monitoring which is much more complex than that now used by the FDIC or the FHLBB, can be successful, or more successful, in finding discrimination, unless designed around a specific theory being tested for. The key in general compliance is the training and competency of the examiner, on the premises, in identifying patterns and making an informed judgement.

In fact, I believe some degree of overkill is involved in making all institutions regardless of size and location, carry out extensive recordkeeping.

5. What are the most effective regulatory approaches to the problem of pre-screening and discouragement of loan applicants and potential applicants?

There has been a good deal of confusion on this subject. There are two types of "pre-screening." One is "substantive," such as an informal turn down on account of sex, race, neighborhood racial composition, etc. This is a serious violation not because of the informality involved, but because of the prohibited basis involved. "Procedural" pre-screening, on the other hand, is the process whereby serious applicants or potential applicants are turned away at some point in their discussions with the lenders, with no record being made of the contact. This "pre-screening" may or may not take place on account of a "prohibited basis." In any event, it presents an enforcement problem because it prohibits the regulator from (a) reviewing the loan decisions being made in these informal contacts, to see if they are being made on a discriminatory basis and (b) obtaining an accurate understanding of the type of demand made to the institution, so that a profile of the persons who have obtained loans can be compared with a profile of the persons requesting loans. The need to "profile" demand for loans is particularly important in dealing with "effects test" questions and in dealing with alleged redlining. (It is also important because it is as useful in constructing a defense against unfounded charges of discrimination as it is in determining whether discrimination is present.)

Regulation B deals with pre-screening in the following ways, which, if implemented correctly, accomplishes the agencies objectives and complements the agencies' other proposed record-keeping requirements. Normally, a written record is always made of credit applications which are granted. The Regulation B notice provisions described below provide for a written record of instances where credit is not granted.

12 C.F.R. 202.9 provides that notice of favorable or adverse action must be provided to an applicant within thirty days of receiving a "completed application," or thirty days after taking "adverse action" on an "uncompleted application" or within 90 days of making a counteroffer if the applicant does not accept the counteroffer during that time. Notice on adverse action must be in writing and include either the specific reasons for rejection or disclosure of the applicant's rights to obtain the specific reasons in writing. Section 202.12 requires the lender to keep, for 25 months, the notice itself together with any "written or recorded" information used in evaluating the application. This includes the application form and any information conveyed, if recorded.

The important trigger which sets in motion all of the above, is the definition of "application" provided in 12 C.F.R. 202.2(f). Regulation B provides:

Application means an oral or written request for an extension of credit that is made in accordance with procedures established by a creditor for the type of credit requested. The term does not include the use of an account or line of credit to obtain an amount of credit that does not exceed a previously established credit limit. A completed application for credit means an application

in connection with which a creditor has received all the information that the creditor regularly obtains and considers in evaluating applications for the amount and type of credit requested (including, but not limited to, credit reports, any additional information requested from the applicant, and any approvals or reports by governmental agencies, or other persons that are necessary to guarantee, insure, or provide security for the credit or collateral); provided, however, that the creditor has exercised reasonable diligence in obtaining such information. Where an application is incomplete respecting matters that the applicant can complete, a creditor shall make a reasonable effort to notify the applicant of the incompleteness and shall allow the applicant a reasonable opportunity to complete the application.

In an unofficial staff opinion (No. 6, June 22, 1977)

Anne Geary, Chief of the Federal Reserve Board's Equal Credit Opportunity Section, analyzed the language of 12 C.F.R. 202.2(f) to conclude that "general inquiries concerning the availability of funds, prevailing interest rate or the lender's credit policies . . . would not be an application triggering notice requirements because . . . the creditor would not have received sufficient information on which to base a credit decision." The logic behind this approach is that the creditor sets up the criteria and procedures for accepting applications, and that an "application" occurs when these procedures are followed. The problem with this definition has been that most creditors, as institutions, adopt formal application procedures as a matter of policy, while employees, as a practical matter, often have the opportunity to make informal qualitative decisions at various points in the application process which in reality, can result either in credit being granted or not being granted. This informal decision may be no more than the decision that it would be fruitless for the applicant to proceed to the next stage in the application procedures established by the creditor.

The Federal Reserve Board, working with the Home Loan Bank Board recently issued a new interpretive letter setting forth clearly, with examples, the way that an "application" comes into being. Under this definition, most "procedural" pre-screening is eliminated and, at the same time, lenders are given a consistent guide to follow on a day-to-day basis. The FDIC goes further and requires each "inquiry" to be recorded.

As to "substantive pre-screening" there is virtually no way to detect it by a review of records alone. By definition, it is an act which is unrecorded. Even under the FDIC approach, assuming that a discriminating lender is honestly filling in the register, inquirers would have to be interviewed.

6. What should be the role of the financial regulatory agencies in informing the general public about the existence and possible usefulness to them of the civil damages provisions of the Fair Housing Act and the Equal Credit Opportunity Act? Are the agencies performing this role adequately?

Individuals should be fully informed of their rights and encouraged to exercise their rights at their option. I believe it is misleading, however, to assume that each suspected violation must result in litigation in order to be successfully resolved. The various applicable laws provide many avenues of redress, including administrative measures and even moral suasion. There is a significant difference between assuring that consumers are informed of their rights and encouraging them to file lawsuits. I am particularly troubled by the prospect of examiners or other agency personnel regularly recommending lawsuits on the basis of incomplete investigations, tentative conclusions or the like. In fact, short of an administrative finding of discrimination accompanied by due process safeguards, I am uncertain of the pro-

priety of doing so. While an agency might, in some circumstances justify disclosing its conclusions, and even attempt to provide relief to individuals through the administrative process, it should be wary of recommending that suits be filed in particular instances.

We have discussed this issue and the dilemma facing agencies in the FRB report, and I direct your attention to pages 119-121, in Appendix D.

7. What is your evaluation of the proposed uniform enforcement guidelines for Regulation B? What is your evaluation of the Federal Home Loan Bank Board's statement of enforcement policy for handling violations of that agency's nondiscrimination regulations?

As "guidelines" and "statements" of enforcement policy neither document has the force of law. Each represents a statement of the agencies' intentions, in the event of an enforcement action. Some of the items listed, in my judgement, might not withstand judicial scrutiny if attempted to be imposed by these agencies, particularly if imposed without the full due process elements of a cease and desist hearing.

In terms of format, the Bank Board's statement reflects much more closely the flexibility and structure of relief which characterizes civil rights cases. The joint statement seems patterned on the Truth-in-Lending Enforcement Guidelines and not terribly informative.

To some extent these statements are symbolic and intended as an indication of seriousness. From a prophylactic point of view, there is nothing wrong with this, particularly since

both statements reflect the kinds of relief which courts might order if a serious violation were found. It is important for the industry to be aware of this, from a defensive point of view.

I hope that the above information and opinions have been helpful. Thank you again for inviting our view.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Warren L. Dennis". The signature is written in black ink and is positioned to the right of the typed name.

Warren L. Dennis

Appendix A

Pennsylvania Savings League Inc. comments on proposed Community Reinvestment Act regulations, August 1978

Appendices B-E

Excerpts from THE DETECTION AND CORRECTION OF CREDIT DISCRIMINATION:
A REPORT TO THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM,
by Warren L. Dennis, Pottinger and Company, May 1978

Appendix B: Summary and Conclusions (pages 9-14)

Appendix C: Discussion of a model rating system for evaluation of institutions (pages 99-106)

Appendix D: Discussion of complaint procedures and specific recommendations for improvement (pages 107-121)

Appendix E: Discussion of observations and recommendations for examiner training (pages 121-125, 135-145)



APPENDIX A

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 TELEPHONE (717) 238 9438

August 14, 1978

GLENN O. STULL
President

Mr. Theodore Allison
 Secretary to the Board of Governors
 of the Federal Reserve System
 20th and Constitution Avenue, N. W.
 Washington, D. C. 20551

Dear Mr. Allison:

Re: F.R.B. Docket No. R-0139
Community Reinvestment Act Regulations

The Pennsylvania Savings League Inc. wishes to take this opportunity to comment on the proposed regulations promulgated under the Community Reinvestment Act of 1977. Mr. Warren L. Dennis, of the law firm of Troy, Malin & Pottinger, Washington, D. C., assisted in the preparation of these comments. These comments are based upon a review of the legislative history of the Community Reinvestment Act ("CRA") including Hearings on S. 406 ^{*}/, as well as analysis of the extensive transcript of testimony at hearings before the four financial regulatory agencies in Washington, D. C., Dallas, Atlanta, Boston and San Francisco.

First, we wish to extend more than obligatory congratulations to the interagency task force for capturing in the proposed regulations the sense of flexibility and moderation which was

^{*}/Hearings before the Committee on Banking, Housing & Urban Affairs, United States Senate, 95th Congress, First Session on S. 406, March 23, 24 and 25, 1977 [hereafter, Hearings].

reflected in the legislative history of the Act. ^{*/} At the same time, we wish to point out aspects of the proposed regulations which appear to be somewhat Delphic, and might appropriately be characterized as "regulation by telepathy." This occurs where the probable intended meanings of certain phrases and proscriptions are really known only to a relatively small group of insiders and specialists.

We are very concerned that the men and women with day-to-day responsibility for formulating and implementing savings association policy be able to understand the scope and impact of the regulations without translation or mystery. In this regard our comments and suggestions will fall into three categories.

- (a) Suggestions for additional, clarifying language.
- (b) Suggestions relating to the redundancy of certain criteria listed in the regulations.
- (c) Proposals for greater guidance with respect to standards for acceptable levels of compliance under the Act. The need for such objective standards is particularly appropriate for Federally chartered or insured savings associations because of the legal

^{*/} Senator Proxmire, the leading proponent of the law, characterized the bill and its system of evaluation as a "mild proposal" (Hearings at 323) and as a "mild incentive" (Hearings at 326), and approached the ends of the bill as being "limited" and not intended to "reach as far as housing is concerned, everyone." (Hearings at 225)

limitations on the types of loans which they can make, and because of the applicability of the Federal Home Loan Bank Board's Non-discrimination Requirements, which affect savings associations, but not other financial institutions.

We will begin with suggestions relating to the last point first.

Ascertaining And Meeting Credit Needs

The agencies have provided a list of factors which will be taken into account in "assessing the record" but have given very little guidance as to the editorial or policy goals which the Act, in the opinion of the agencies, is intended to fulfill. There is repeated reference to the statutorily derived phrase "credit needs of the entire community," which is a keystone of construction; however, the agencies have deftly avoided coming to grips with the real meaning of that phrase.

It does little good for associations to know that they have an obligation to "ascertain" these needs and to "meet" them, or that the Board will "assess" their record of doing so, when the Board fails to provide a reasonable hint as to the nature and substance of actual conduct expected to flow from the regulations. While we concur that the regulations should be flexible, we do not think that they have to be vague. */

*/ In the prefatory material announcing the regulations the agencies state that, "[The] proposed regulations are designed to encourage institutions to become aware of the full range of credit needs of their communities and to seek the views of all segments of their communities regarding those needs." This kind of guidance is so broad, that it is virtually meaningless. Association executives must be able to anticipate with greater certainty the kinds of activity for which they and their associates will be held accountable.

On closer inspection it appears that the agencies perceived dramatically different concepts of the phrase "credit needs" in the testimony provided by representatives of consumer and community groups as opposed to that provided by lenders and their representatives. The current regulations appear to be an attempt to satisfy all concerned through the use of a certain amount of "creative ambiguity." That is, the definition of "ascertaining and meeting credit needs" under these regulations can mean whatever the person interpreting them wishes it to mean. In one sense, this state of affairs can be beneficial to lenders who can assert, at a later time, that the phrase has the meaning which they wish it to have. There is a false security here, however, because it is just as likely that, at some future date, perhaps in another political context, the agencies and community groups may assert that it has an opposite meaning. It is, therefore, unfair to all concerned for the agencies to avoid expressing a view initially with respect to the essence of the process of defining "credit needs of the community."

As mentioned, there are two basic viewpoints expressed in the Hearings testimony. The first, voiced by community groups and consumer advocates, is that the "credit need" within a community is a relatively finite commodity which can be measured, albeit crudely, by reference to certain objective indicia of economic activity. These include land records, census data, activity of lenders and activity levels of types of lenders (e.g., finance companies vs. savings and loans). By ascertaining the number of households, the condition of buildings, turnover rates and the like by census tract, it is stated that an estimated benchmark of actual "need" can be

derived. */ A savings association's record of lending would be compared with this empirically derived index of "need."

Many lenders, on the other hand, have posited the theory that the only valid indication of need is the number of actual applications made to an institution. Under this theory, "need" is not regarded as a "fixed" entity, but as one which is transient and variable in meaning, depending on market conditions. Under this model, "need" is a market concept and a lender "meets the credit needs of the community" if it fairly and impartially evaluates the applications which happen to come to its door.

While there are elements of truth in both conceptualizations, the Pennsylvania League believes that neither is necessarily the best test for CRA purposes.

First, the "fixed need" model is unrealistic, both from a practical standpoint and on the merits. We believe this was recognized by the agencies by virtue of their not articulating this model in the regulations. There is no calculus which can adequately express "need" in some number which can be used to measure an ideal projected loan activity. Even the kinds of data suggested for use by consumer groups are prohibitively expensive to collect, and notoriously inaccurate. Also, the idea that a true index of needs within a community could be derived by looking at home sales transactions, etc., assumes that the only types of legitimate "needs" are those which are expressed in this kind of data, which is an unduly narrow assumption. In addition, and most importantly, this approach to measuring need appears to

*/ See, e.g., The Citizens Regulatory Guidelines, Center for Community Change, 1000 Wisconsin Avenue, N. W., Washington, D. C., June 1978.

be based on a view of the word "needs" not justified by the Act or its legislative history.

It is important for the agencies to make clear that the following is not the concept of "need" intended to control under the regulations. Using a generic definition of need, there is a direct linear relationship between poverty and need, so that the lowest income areas and individuals, ipso facto, have the greatest "need" for credit. A poor person "needs" money more than a wealthy person. This cannot be the definition of "need" intended under this "modest" act.

Also, it is important not to confuse "housing need" with "credit need." The areas of greatest physical deterioration have the greatest "need" for revitalization, but at the same time may not have the greatest "credit need" because of a lack of financially viable buyers or investors willing to become involved with such properties. Lenders cannot reasonably be held to a litmus test which simply equates deterioration and need for physical rehabilitation with the greatest "credit need" and thus the greatest responsibility to lend. Note that this is inappropriate, not just for "safety and soundness" reasons but because this concept of "credit need" is not the concept intended by the sponsors of the Act. Unless this is made clear in the regulations, we anticipate that challengers to association applications will eventually seek to argue that a lender has not met its CRA responsibilities because it did not seek out areas where the "need" was greatest, as measured by the degree of deterioration in the area, and not the degree of demand from creditworthy borrowers.

In reality, people have credit needs, not "neighborhoods" or "communities," and it is neither particularly helpful nor

practical to identify "credit needs" in the abstract and impose obligations on institutions to meet and satisfy a hypothetical measure of "need" or demand. Remarks in the legislative record indicate that the words "need" and "demand" are used somewhat interchangeably by the Act's sponsors.

In an exchange with a lender who testified on S. 406, Senator Proxmire said:

I'm not saying you have to have 95 or 100 percent of your loans in the local community. You might have 50, 40, 30 or less. If the situation in the local community was fully met, you may have less. (Hearings at 392)

In another exchange with a lender discussing the balance between investing locally or in securities, the Senator said:

I am not saying put everything in the local community. There may be situations where you can put in 10 or 5 percent. This bill says where there is a local credit need, where the need is sound, it should be provided for. (emphasis added) (Hearings at 321)

The Report of the Senate Committee on Banking, Housing and Urban Affairs on the Housing and Community Development Act of 1977 */ described the purpose of the Act as to "encourage" lenders to give priority to credit needs of their home areas, and characterizes the problem at which the Act is aimed as that of lenders failing to take advantage of "sound local lending opportunities" (emphasis added).

In criticizing certain lenders, Senator Proxmire cited the failure to "see the loan demand in their own communities" (Hearings at 2, emphasis added). He exhorts lenders to take steps to "find" demand and states that the CRA will encourage this.

*/ S. Rep. No. 95-175, May 16, 1977 at 33.

In an exchange on P. 326 of the Hearings Senator Proxmire refers to a "demand" which "materializes" when lenders seek it out. In fact, Senator Proxmire notes (Hearings at 2) that, "Demand in our economy is not a passive, fixed thing."

The above suggests that "credit needs" within a community are likewise not a "passive fixed thing," but are variable.

We are also willing to acknowledge that the lender's extreme model of "need" being ascertainable only through reference to applications made, without an effort to market credit services, may also be inappropriate as a trigger under the CRA. "Need" measured in this way also may fail to adequately account for the fact that demand is elastic and that a lack of application flow may evidence a perception by borrowers that credit is unavailable or unlikely to be granted.

There is, then, a need to fashion an approach to measuring "credit needs" and a lender's record of ascertaining and meeting such needs which satisfies the goals of the Community Reinvestment Act, and at the same time provides some objective standard of behavior for lenders.

We believe that the proposed CRA regulations and the Bank Board's existing nondiscrimination requirements together can provide a mechanism for establishing such an objective standard of conduct against which associations can be measured. Before discussing this fairly simple mechanism, it is important to examine the "evaluation" process itself.

At several points in the legislative history it is suggested that lenders will be compared with one another, and that the application of the lender with the best record will be "approved." In reality

this kind of "comparison" will only occur in the most indirect way, inasmuch as:

- (a) most applications do not involve "competing" organizations but are before the Board on their own merits;
- (b) the competition, if any, may exist, in fact, between different types of financial institutions, in different forums, so that one agency is not making the "comparison";
- (c) the factors involved are so subjective that it is impossible, except in exceptional circumstances, to "rank" lenders, or to devise a "bell curve" as one would in grading exams with relative weights.

Accordingly, in order for rational determinations to be made in the evaluation process, and in order for lenders to be able to anticipate what is expected of them, there must be some agency direction as to those steps which are considered to be in basic conformity with the Act. In fact, absent some such standard, it is difficult to see how an agency will be able to sustain its actions as reasonable and non-arbitrary in the event of a challenge under the Administrative Procedures Act (either by an unsuccessful applicant or on unsuccessful challenges).

The Community Reinvestment Act regulations and the Bank Board's nondiscrimination regulations can dovetail to provide an approach to this objective standard, and at the same time solve the difficult problem of providing a mechanism for "ascertaining and

meeting the credit needs in the community." This approach would recognize that there may be creditworthy individuals and organizations in the community (including low and moderate income neighborhoods) who have a credit need that can be met "consistent with the safe and sound operation" of the institution, but who may be unaware of the availability of funds or how to apply for them, or who, under ordinary circumstances, may feel that submitting an application to a conventional depository institution might be a waste of effort. Reaching such individuals can be the highest priorities under any CRA compliance program. If it can be determined that such individuals or organizations do not exist, despite a bona fide, good faith, affirmative attempt to reach them, then it can reasonably be concluded that there is no unmet "credit need" in the targeted community. The key to this approach is the effort to communicate with the community.

Both the CRA regulations and the FHLBB Nondiscrimination Requirements contain provisions relating to affirmative marketing. Provisions of Part 563e.5 of the CRA regulations relating to efforts to ascertain needs (Part a), consultation with persons in the communities (Part b), programs to make members of the community aware of services offered (Part c), are all somewhat redundantly aimed at the same process. Likewise, §§528.3, 528.4 and 531.8(d) of the Nondiscrimination Regulations and Guidelines are aimed at outreach efforts of associations. Under the CRA regulations, the requirements are vague and directionless, whereas, with some modification, they can be made to be substantive and useful.

We propose that the language set forth below be substituted for sections (a), (b), (c) and (d) of Section 563e.4. Incidentally, the present language of paragraphs (b) and (c) can be easily inter-

puted to be meaningless. First, in paragraph (b), "members of local communities" can mean anyone: the mayor, the Kiwanis Club, community groups, or local indigenous derelicts. This combined with the concept of an affirmative obligation to "consult" with such persons can be read either to require an institution to attempt to consult with everyone, or to actually consult with virtually no one. What is intended, we believe, is provision of a fair and reasonable opportunity to all groups and persons who are so disposed to make their views known to the institution. This requires a good faith effort at notice, and due consideration of viewpoints, but does not mandate "consultation" with undefined, phantom "members" of a community.

Paragraphs (b) and (c) are particularly redundant, and again, use of the unmodified word "members" in paragraph (c) is confusing. The agencies should also keep in mind that no organization has a monopoly on representation of a community. Grass roots community organizations can include business, civic, service, church, civil rights and women's groups as well as "community groups" and "coalitions against redlining." The degree to which an organization is vocal or visible is not necessarily an accurate indication of the degree to which it is representative.

Also, the loose language of paragraph (d) is a potential maelstrom. The very process of negotiating terms of a loan involves, implicitly, "discouragement" of some form or another. If the agencies meant "discriminatory" discouragement or "unreasonable" discouragement, they should so indicate. Currently, the language of paragraph (d) is thoroughly unworkable and provides no standard whatever.

Our proposal for substitute language under Section 563e.5 for savings associations is as follows:

A. The Basic Approach To Ascertaining Credit Needs:

The Bank Board recognizes that the Congress did not set forth specific, rigid criteria for ascertaining and meeting the credit needs of the persons in a community. This is so because "credit needs," in the context of the Community Reinvestment Act, implies the presence of a valid demand for loans from creditworthy borrowers as the best measurement of sound lending opportunities. Congress specifically mandated that the CRA was not to be interpreted to diminish the lenders' obligation to make loans which satisfy criteria for safety and soundness. The Act also recognizes, however, that demand is somewhat elastic and that a bona fide latent demand in a community might not become expressed without the stimulus of a good faith effort to make the availability of credit known to potential borrowers. The Bank Board's current nondiscrimination requirements already require lenders to examine all phases of their outreach and image projection procedures to assure that all segments of the community are being reached, and that applicants are not being discouraged on a basis which is prohibited either in purpose or effect. Accordingly, under the Community Reinvestment Act, each association will be evaluated against the expectation that it has an obligation to make the availability of its loan services known in a reasonable way in the "entire community" which it has designated as its "community" for CRA purposes, including the persons who reside in low and moderate income neighborhoods in this community. Outreach activity may include, but need not be limited to (or necessarily include), advertising in radio and general circulation newspapers. It can, however, consist of advertising in local newspapers, flyers, notices to depositors and loan customers, notices to or meetings with representatives of civic, service, church, business, civil rights, women's, or community organizations, and lobby notices. It can also consist of contact with real estate brokers and builders in the community to apprise them of loan availability, where this has been a usual practice in an association. While it is expected that outreach activities will be conducted among diverse segments of the community, and not just in high income areas, it is self-evident that an institution cannot treat all neighborhoods in its market area the same. Some neighborhoods in the same socioeconomic stratum will ultimately such areas can be marketed to with mathematical equality. Also, the marketing campaign (which is the basic tool for identifying demand), will probably generate demand unevenly from area to area. However, by letting the market

itself define demand, neither the institution nor the Bank Board has to impose artificial criteria for "meeting credit needs."

Basic outreach is expected to have two components:

(a) communication by the association to the community of the availability of funds for lending (when funds are available), including information on the types of loans made, the terms of loans and other disclosure requirements set forth in the Nondiscrimination Regulations (e.g., loan underwriting standards), and (b) an opportunity communicated to members of the community to make their views known to the association with respect to aspects of credit services which they believe should be brought to the association's attention. There is no set prescribed way for this feedback to be structured, and any approach which is reasonable in the circumstances will be considered in compliance.

B. Innovative Approaches To Ascertaining Credit Needs:

Lenders are encouraged to explore additional innovative mechanisms for exploring the ways in which their credit services can be expanded. The presence of such innovative approaches will be most relevant when considering competing applications from two or more lenders. Examples of innovative approaches include, but are not limited to, community advisory boards, public meetings, and counseling activities. Each institution must decide for itself the appropriateness of such vehicle in designing their role in the community.

As to the "meeting of credit needs" the proposed regulations fail to make clear the limitations of the CRA. It was made explicit in the Act (Section 804(5)) as well as in the legislative history that safety and soundness and other valid considerations were not removed or diminished by passage of the CRA. In fact, while other factors, such as the anticompetitive aspects of an application, will be "balanced" with community investment factors, the safety and soundness considerations are not subject to such a balancing test. The Act provides that the effort to "meet credit needs" must be "consistent with the safe and sound operation of such institution."

The agencies have missed an important opportunity to explain how these sometimes competing interests must be accommodated under the CRA. For instance, in introducing S. 406 in the Senate, Senator Proxmire made clear that:

The bill is not intended to force financial institutions into making high risk loans that would jeopardize their safety.

Congressional Record, daily ed., January 24, 1977 at 1203.

At the CRA hearings, he said:

If they can show that the community where they haven't made the loans is not a community in which they could make sound loans I think that would be a complete and adequate answer.
(Hearings at 154)

Also:

The bill also does not substitute the judgement of the regulator for the judgement of a banker on individual loans. Each bank or savings association will be free to exercise its best judgement on individual loan applications.
(Hearings at 11)

The problem in reconciling "safety and soundness" with community reinvestment is paramount in "assessing" a lender's record of "meeting credit needs." If an individual applies for a loan from a low or moderate income area, or any other area, and is not personally creditworthy, or if negative aspects relating to the condition of the property, or legitimate adverse locational factors are present, these factors cannot and should not be ignored. Here, again, the Board's nondiscrimination regulations are pertinent and distinguish member savings associations from other types of lenders. The CRA regulations should make clear that a lender cannot be determined to be in violation of the CRA on the basis of bald numerical showings about loan distribution without consideration of safety and soundness factors.

Accordingly, paragraph (f) of "Part 563e.5 is wholly inadequate because it suggests that the Board believes that the simple "geographic distribution" of loans, without more, is pertinent. It is also inadequate for its lack of information. What aspects of an institution's "geographic distribution of loans" are important? The mere knowledge that "geographic distribution" will be taken into account adds nothing to an association's ability to interpret and comply with the CRA. Clearly it would be inappropriate to expect a lender's statistics to reflect some preconceived geographical relationship, since it was made abundantly clear that the CRA was not intended to result in "credit allocation" of any kind. */

The relevant geographical distribution of loans can only be that which is compared with the geographical distribution of applications for loans generated by the affirmative marketing efforts discussed earlier. A lender cannot be deemed responsible for not making loans in areas where, after a good faith attempt at affirmative marketing, either

- (a) no loan demand was subsequently generated; or
- (b) loans applied for did not meet creditworthiness and safety and soundness standards.

For savings associations (unlike commercial banks), compliance with the Board's prohibitions against discrimination on account of

*/ See the statement of Senator Proxmire, Hearings at p. 2 and p. 154: "[T]his was not a credit allocation bill and I certainly don't see it that way. Whatever we can do to prevent it from being a credit allocation bill I want to do," and Senate Report No. 95-175, 95th Cong., 1st Sess. 35 (1977): "Therefore, the Committee rejects the assertion that this Title allocates credit"

"age of dwelling" and improper locational factors builds in a guarantee that loans applied for will be evaluated in a nondiscriminatory, non-arbitrary way.

The message of all of this is twofold.

First, paragraph (f) of 563e.5 is inadequate. Second, for savings associations, compliance with the Board's nondiscrimination regulations, already in place, should figure more prominently in CRA compliance. In fact, in both their goals and their means the two sets of rules overlap, and where the nondiscrimination rules are being complied with, a healthy CRA record almost necessarily follows. The Board should articulate this point, so as to provide additional guidance with respect to objective standards of conduct which will be considered satisfactory under the CRA. Currently, the only mention of nondiscrimination requirements is indirect (Item J) and it refers to a history of prohibited discrimination. The Bank Board's requirements are so much broader than this, and require such a great degree of institutional compliance through review of practices and employee training, that associations in compliance should be given formal recognition in the course of CRA evaluations. Currently, only negative credit can be given for noncompliance with rules on non-discrimination. No incentive is provided for affirmative institutional steps to comply with the nondiscrimination requirements.

Additional Factors Relating To Section 563e.5

We are troubled by the emphasis in paragraph (h) on an institution's purchase of loans "originated in its community." This paragraph seems to ignore the important caveat in the legislative history of the CRA to the effect that its sponsors did not intend to subvert or impair an active, fluid secondary market, necessary to import funds to capital-short areas.

Senator Proxmire himself said:

"I agree also that the bill should not be designed to impede capital flow from capital surplus areas to capital deficit areas. We do not want to do that. That is not the intention of the bill. We should do all we can to prevent that effect."
(Hearings at 293)

This concession is significant because prior to World War II banking markets were generally localized, and expansion into "national markets" has been an important part of modern banking as well as post-war Federal policy. ((See 12 U.S.C. §1716 et seq., (FNMA and GNMA); 12 U.S.C. §1451-1459 (FHLMC)). The CRA should not be read as intended to undo three decades of movement toward a liquid national mortgage market.

Accordingly, the regulations should not dissuade lenders from purchasing loans in areas outside of their communities. In fact, to do so might subvert the very purpose of the CRA by making funds unavailable in the capital-short areas where they are needed most.

We are also confused by Item (1) of 563e.5. Is this intended to encourage or discourage government-insured loans? There was evidence in the record before Congress that FHA loans "stigmatized" an area and, in concentration, were a sign of poor economic health of an area. In fact, Senator Proxmire once commented that, "[T]his is really a bill that has to go primarily to conventionally financed housing" (Hearings at 225). Some institutions, due to the red tape and need for specialized knowledge and staff, currently avoid FHA loans. Also, in some areas, buyers and sellers avoid such loans. Lenders should not be judged on their record of making government-insured loans without a sensitive inquiry into the market conditions of an area. Which, for instance, is the better "community lender," the association that makes FHA-insured loans in older mature areas and thus has a better

record on such loans, or the institution which makes conventional loans in the area, at greater risk, contributing to private investment and confidence in an area? In its present form, Item (i) is subject to either interpretation.

Item (k) is likewise nonsensical. Every institution has a history of "opening and closing offices" or providing services at offices. The paragraph reveals nothing about the Board's expectations with respect to such history. Consequently, it is impossible to comment intelligently, other than to point out the omission.

Definition Of Community

The flexible rule for defining "community" proposed by the agencies, in our judgement, is sound and consistent with the purposes of the Act. It delegates maximum discretion to the institution to designate community. We have only a few suggestions.

We perceive confusion in the use of the words "local community" and "entire community."

In the original version of the bill, the phrase "local community" was modified by the phrase "primary savings service area" and, wisely or unwisely, the geographic focus of the bill was made relatively clear. In the final version of the CRA, the references to "local community" are retained in the findings and statement of purpose but "primary savings service area" was deleted and replaced by the requirement that the regulatory agencies

assess the institution's record of meeting
the credit needs of its entire community
including low and moderate income neighbor-
hoods . . . (emphasis added).

While the juxtaposition of the phrases "entire community" and "local communities in which they are chartered" raises questions about the proper test to be devised by the agencies for determining the

geographic parameters of the area to be served under the CRA, it appears that in the final version of the bill they are intended to be synonymous. Thus, reference in 563e.3 and 563e.4(b) (1) to a difference between "local community" and "entire community," and particularly the emphasis placed on "the contiguous areas surrounding each office or group of offices," seems inappropriate.

On the floor of the Senate, Mr. Proxmire, the sponsor and principal proponent of the bill, was asked by Senator Morgan to explain the differences between the bill as originally acted on by the Senate in June, and as amended in Conference. Senator Proxmire's answer illustrates the extent to which the phrase "local communities" is really intended to mean something broader than the area contiguous to deposit facilities:

The Community Investment Act, as we agreed to it earlier in the Senate, was designed, as the Senator will recall, to provide as much incentive as we could for local investment in local communities. We found, in many cases, that banks had taken a great deal of money from local communities and invested it outside their communities and had not met the needs and requirements of the local communities.

We provided that when a bank wanted to open a branch the regulating agencies would have to take into account how much they invested locally, and they might have this as a decisive consideration under some circumstances.

What this legislation does, in contrast to what passed, is to delay implementation for 390 days, just about a month longer than a year, after enactment. It also redefines the primary service area to be served on a broader basis, so that there be no question that it is not simply the immediate community where the bank was located.

Those are the two principal modifications (emphasis added). */

*/ Congressional Record, daily ed., October 1, 1977, S. 16114.

An association's appropriate "community" might be "contiguous" to its offices, but it might not. For instance, downtown commercial district branches, train station and airport offices, for loan purposes, may serve areas proximate to the office, but not necessarily contiguous. Contiguity might be one of the relevant factors, but not a mandatory one. Thus, the mandatory language of 563e.3(b) appears incorrect. This is particularly so in light of the express Congressional deletion of the definition "Primary Savings Service Area."

We suggest that the designation of "entire community" be based principally and initially on (1) proximity to offices and (2) historical effective lending territory, as evidenced by an association's history of retail loan origination activity and loan marketing activity. Naturally, low and moderate income areas within the scope of that radius would not be excluded.

As to "low and moderate" income neighborhoods, we believe that some additional explanation is in order. First, the Bank Board should make clear that some associations, particularly those which do not market to an entire SMSA or regional market, might conceivably and legitimately have no low and moderate income neighborhoods within their own delineated "entire community." There is no need, under the CRA, to "adopt" such an area in order to have one in an institution's market. On the other hand, some institutions may have many such areas in their "entire communities." It should be made clear that the CRA does not require that each such area be the recipient of any matched or quota-based marketing effort or loan production. Even given compliance with CRA, loan and marketing activity within different neighborhoods can be expected to vary.

Community Reinvestment Act Statement

For member institutions subject to the Bank Board's nondiscrimination rules, this requirement dovetails with the requirement for disclosure of an institution's loan underwriting standards. Accordingly, it does not appear to be significant additional burden. However, as we saw during the comment process on the Board's non-discrimination rules, the Board is capable of changing proposed regulations and reissuing final regulations with new provisions. We believe that it was made abundantly clear by Congress that any substantial additional paperwork burden would be prohibited under CRA and that the CRA statement cannot justifiably be made more extensive than its current version.

In the Committee Report on S. 406, it states (at 34):

As originally introduced, S. 406 would have required the filing of certain additional material. The Committee was informed that substantial data is already filed in connection with both charter applications and applications for new deposit facilities, and after a full discussion, concluded that these additional reporting burdens would not be necessary or appropriate to the endorsement of this Title.

Also, when he introduced the basic amendment which changed Section 4 during the mark-up session, Senator Proxmire pointed out that the original version ". . . would not have required significant reporting burdens since most of the data already exists. The idea was to require the regulators to analyze existing data in connection with branch applications and supplement it (sic) where necessary. But the amendment I am offering makes it absolutely clear that no additional reports are to be required" (emphasis added) (Mark-up Transcript, Vol. IV, p. 283).

Later in the mark-up session the Senators discussed the possibility that the regulatory agencies might use the general language of Section 6 as a lever to impose extensive additional reporting requirements. While the opponents of the bill feared that this would occur, the supporters of the bill appeared certain that by deleting the reporting elements of Section 4, they had insured against this. (Mark-up Transcript, Vol. V, Tuesday, May 10, 1977, at 352-357).

In debate on S. 406 Senator Proxmire discussed this decision and said:

The committee considered this provision in mark-up, and we unanimously agreed that bank examiners already have access to ample data to carry out the purposes of this title. We deleted the reporting requirements. */

We strongly urge that associations located outside of SMSAs and those under \$25 million in assets be exempted from the CRA statement requirement. While this response from an industry trade association is not unexpected, the reasons for creating such an exemption are nonetheless compelling. We need not repeat here the familiar litany of complaint about governmental paperwork and the failure to apply a rational cost/benefits analysis. However, for savings associations covered by the Board's nondiscrimination rules, there are no size and location exemptions. Accordingly, the Boards of Directors of smaller institutions are already very much aware of requirements in this area. The CRA statement requirement is unnecessary for such institutions, in this context.

*/ Congressional Record, daily ed., June 6, 1977, S. 8958.

Additional Considerations

The proposed regulations are silent with respect to how far back in time a lender's record will be reviewed under the CRA. We believe that the pertinent period for evaluation should begin 90 days after the regulation goes into effect, to coincide with the date that the CRA statement must be prepared. In no event should the pertinent period be considered as extending earlier than the effective date of the regulations.

We are pleased to see an emphasis on coordination with state supervisory authorities, particularly in the light of certain recent cases underscoring the role of state regulators in passing on applications of FSLIC-insured, state-chartered institutions.

Finally, we believe, again, that it is necessary to emphasize for examiners, supervisory agents and lenders the limited role intended by Congress for this statute, which has been too often portrayed as a "draconian" measure. When placed in context, the Act and its regulations are layered on top of existing considerations in evaluating applications for change in structure. The CRA is not a substitute for traditional considerations, and approval of applications can be affected as much by traditional factors as by new ones.

As stated by Senator Proxmire in his statement introducing S. 406 into the Senate:

. . . This does not mean that the regulators would consider community credit services as the only factor in approving or denying deposit facility applications.

On the contrary, the agencies would continue to apply the criteria they have traditionally used for approving deposit facility applications, as spelled out under existing law and regulations. These include the financial history and condition of the bank, the adequacy of its capital structure,

its future earnings prospects, the general character of the management, and the convenience and needs of the community to be served.

The bill would not inject any significantly new element into the deposit facility application approval process already in place. Instead, it merely amplifies the "community need" criteria already contained in existing law and regulation and provides a more explicit statutory statement of what constitutes "community need" to make clear that it includes credit needs. Congressional Record, daily ed., January 24, 1977 at 1202-1203.

We suggest that the above quotation be incorporated or referred to by the Bank Board in the prefatory comments which precede the final regulations.

Respectfully submitted,



Glenn O. Stull
President

APPENDIX B

SUMMARY OF REPORTA. Background

Responsibility for enforcement of consumer credit and anti-discrimination regulations within the Federal Reserve System is shared between the Compliance Section of the Consumer Affairs Division, located in Washington, and the corps of examiners in the Reserve Banks. The attitude of the Compliance Section towards civil rights enforcement can be described as very positive and affirmative and characterized by a desire to develop the tools and the staff necessary to do an effective job. The attitude of examiners, in general, might be described as more cautious. Examiners interviewed seemed unsure of their expertise in the area of civil rights investigation, and suggested that this "unsureness" was shared by most of their colleagues. In some respects there was evidence of a mild hostility toward civil rights matters based partly on a perception that devotion of their time and effort to civil rights matters would not materially advance their progress within the System, as it was not an area to which the Board attached great importance, and partly on a lack of confidence in their own knowledge of the rules of construction in the area.

Examiners also placed a healthy emphasis on the need to maintain the safety and soundness of institutions, but expressed concern that enforcement of civil rights laws might be incon-

sistent with this responsibility.

Significantly, after exposure to some detailed explanation of the purposes behind the laws in question, and the rules of construction under civil rights laws, as well as discussion of the problems and techniques of civil rights investigation, the examiners exhibited much greater comfort with the subject matter and a noticeably more positive attitude toward their role in enforcement.

In general, the Board's enforcement and education programs with respect to technical disclosure-type regulations (e.g., Truth in Lending, Home Mortgage Disclosure, RESPA, Fair Credit Reporting) and with respect to the procedural aspects of non-discrimination regulations (e.g., certain aspects of Regulation B) are substantially more effective than programs relating to the detection and correction of discrimination. Examiners seemed most comfortable in checking for disclosure-type violations and violations in forms. Procedures and training material related to the uncovering of such procedural violations are well developed. This is understandable inasmuch as the Board has had considerable experience (since 1968), with enforcement of technical provisions of Regulation Z, whereas until recently, the Board appears to have had little experience in checking for civil rights compliance.

Presumably, the Board's lack of emphasis on civil rights matters derives from the fact that, historically, it has not viewed itself as a "civil rights enforcement agency." Almost without exception, the individuals responsible for consumer compliance within the system have been given no indepth exposure to civil rights enforcement or formulation of civil rights policy. Accordingly, even though the Board has been delegated by Congress with the responsibility for writing and interpreting regulations under the Equal Credit Opportunity Act, this effort, and the allied enforcement activities of the Board among state member banks, have consistently reflected the Board's primary experience with administration of consumer credit, and not civil rights statutes. In fact, it was not until the recent + passage of ECOA that the Board perceived itself as possessing any direct obligation for civil rights enforcement. */

*/ It has been argued that the Board had a responsibility to become directly involved in civil rights enforcement under the Fair Housing Act of 1968, but the Board has historically disagreed with its critics on the scope of that responsibility. See Hearings before the Committee on Banking, Housing & Urban Affairs, United States Senate, 94th Cong., Second Session On Oversight of Equal Opportunity in Lending Enforcement, Mar. 11 & 12, 1976. See also, Complaint, Urban League, et al. v. Home Loan Bank Board, et al. In May of 1978 the complaint in this case was dismissed as to the Board of Governors on the basis of lack of standing to sue on the part of the plaintiffs. No judicial determination had been made with respect to the Board's responsibility under the Fair Housing Act. The other regulatory agencies named as defendants in this suit have entered into settlement agreements with the plaintiffs, also without any judicial determination of their duties under the Fair Housing Act.

Our negative conclusions with respect to the Board's anti-discrimination enforcement efforts derive principally from our observations relative to the Board's not having recognized civil rights compliance as a discrete and separate area of responsibility differing from other consumer protection measures, and requiring specialized expertise and policy consideration. Our observations in this regard can be summarized as follows:

B. Summary Of Observations

1. The Board has appeared hesitant to issue an unambiguous statement of its commitment to vigorous enforcement of civil rights laws among state member banks and has not identified civil rights legislation as having any particular priority among the Board's enforcement responsibilities. Consequently, examiners and other agency staff have not identified civil rights compliance as a priority within the agency and this has had a negative influence on the effectiveness of the entire enforcement program. At the same time, regulated lenders subject to the Board's supervisory jurisdiction have not had the benefit of clear policy direction on civil rights matters from their principal regulator. Further, they have not been given reasonable guidance as to the salient elements and indices of compliance with civil rights laws, necessary for their own protection in the event of a court-based challenge by individual, class or governmental plaintiffs.

2. The Board's enforcement and advisory programs do not adequately reflect the special nature of civil rights laws as construed by the courts and the extent to which it is inappropriate to interpret such laws in the same manner as other consumer or banking measures. Also, the Board's programs do not adequately reflect the presence and influence of a vast judicial literature containing precedents in the civil rights area in fields other than credit (housing, employment, education and voting.) which, under settled principles of construction, are also applicable to credit practices.

3. The Board's enforcement and advisory programs do not adequately reflect the historical context in which current civil rights laws affecting lending practices were enacted. Consequently, interpretation of these laws to lenders, both in advisory visits and in the course of regular examinations, are likely to be lacking in sufficient information about the scope and application of civil rights laws.

4. Examiners are given virtually no guidance in how to recognize discriminatory lending practices or the legal standards for evaluating such practices.

5. Investigative tools and techniques for finding discrimination are lacking, and the sampling techniques in use are wholly inappropriate for finding substantive violations of law.

6. The Board's program lacks nationwide uniformity, with the level of resources, procedures and enforcement policies varying widely among the Reserve Banks.

7. The Board's procedures for handling complaints do not adequately assure that individual allegations of discrimination are investigated thoroughly and fairly or that potential "patterns" of discrimination are identified in the course of investigating individual matters.

APPENDIX C

4. The Rating System: The rating system set forth in the Examination Report and explained in the Instructions is confusing and not well suited to summarizing non-discrimination requirements.

First, it is confusing to use criteria of "adequate, fair and inadequate" as to one category (management) while using "satisfactory, fair, poor" for other categories. Also, the definitions given each criterion are not the same. For consistency, one set of qualitative ratings should be used.

Second, the composite rating system is confusing because it does not build directly on the various component ratings, but appears to be a new set of standards requiring application of yet another set of criteria. Also, some of the language used is fairly awkward (e.g., rating No. 3: "An immoderate volume of weaknesses is present that could reasonably develop into a situation creating considerable financial liability to the bank.")

Third, and most important, we believe that some of the ratings are qualitatively inappropriate. For instance, an institution in which "management is deficient in some of the more important aspects of administration . . ." should not be rated "fair." Presumably these ratings are not based on a "bell curve" with the "high quality" of one bank's performance being judged relative to the degree of "low quality" of the rest of the banks being evaluated. Ratings should convey some insightful and objective evaluation of the real risk of exposure, or index of non-compliance present in the bank. Again, "fair"

seems too high a rating for an institution where "little emphasis has been placed on the educational aspects of those involved in effectuating the various requirements of the consumer statutes and regulations and the examiner believes that correction of the situation is not immediately planned." A designation as "fair" in such circumstances is misleading and also provides the lender with little motivation to improve, since, in the judgement of the Board, it is in no worse shape, in terms of compliance, than other lenders, and it is, apparently, at a level which the Board deems acceptable.

With respect to the composite ratings, a No. 2, the second highest rating, can be won even where violations "range from relative moderate to moderately severe or (c) educational processes at staff level have been neglected . . ." Moreover, a "No. 4," the lowest possible rating represents an "apparent inability to cope with necessary responsibility," yet, even this rating would only "trigger an informal correction agreement . . ."

We recommend that the rating system be revised to reflect realistic compliance expectations, particularly with respect to non-discrimination matters. Banks should be rated with one uniform composite rating of "satisfactory," "good," "unsatisfactory," and "hazardous."

To be rated satisfactory -- i.e., as needing no enforcement action or internal changes, a bank would have to meet certain minimum objective standards of compliance and internal control. Banks which took extra steps would be able to reach a rating of "good." This provides incentive to take the extra steps, and a rating of "good" would be helpful under Community Reinvestment Act evaluations. Likewise, a rating of "unsatisfactory" or "hazardous" would also be relevant to the CRA evaluation. Banks which are rated "unsatisfactory" would have to take definitive steps to improve to the "satisfactory" level. Institutions rated "hazardous" or those unwilling or unable to take steps to remove "unsatisfactory" ratings would be considered for formal action.

Our proposed overall rating system is as follows:
(pages 102 to 106, below)

SATISFACTORY: The bank can demonstrate the presence of institutionalized policies and procedures in the compliance area.

1. Senior management is cognizant of obligations under consumer laws and civil rights laws as demonstrated by tangible evidence of cogent, unambiguous direction to staff to develop compliance mechanisms (memoranda, minutes of meetings, policy declarations, etc.).

2. Middle management is cognizant of requirements for implementing compliance under consumer laws and civil rights laws, as demonstrated by tangible evidence of clear and com-

prehensive instruction to employees in appropriate procedures. (memoranda, manuals, courses, minutes of meetings, etc.)

3. Operations staff (loan interviewers, loan officers, appraisers) are cognizant of their obligations and job functions in light of consumer laws and civil rights laws, as demonstrated by tangible evidence of:

(a) attendance at briefings which are adequate to impart a reasonable understanding of their functions;

(b) availability of resources to resolve problems of compliance which arise and answer questions (e.g., resource materials, access to a management superior with direct responsibility for providing direction);

(c) awareness of management policy with regard to compliance (e.g., signed or verbal acknowledgements obtained by examiner).

4. The number of violations found is minor and potential seriousness of any problem is regarded as relatively moderate. Management is receptive to suggestions to correct existing violations.

GOOD: The bank can demonstrate the presence of an affirmative approach to compliance.

1. Bank advertising, public relations, contacts with brokers, dealers and appraisers provide evidence of bank's

awareness of need to present positive affirmative image in community as an equal opportunity lender.

2. Bank has appointed a compliance officer to oversee employee training, updating of management, resolution of consumer complaints. Compliance officer is adequately trained to the job.

3. Senior management and Board of Directors keep current on new developments which affect bank operation in consumer and civil rights area and take an active interest in assuring compliance, as evidenced in memoranda and minutes of meetings.

4. Affected employees are given frequent opportunity and encouraged to obtain additional training in compliance.

5. Management is alert to the need for finding and eliminating violations, as evidenced by:

(a) an internal complaint resolution mechanism or procedure.

(b) an internal audit program to uncover violations.

6. The level of violations is minor (as in "satisfactory") and in addition, management willingly demonstrates ability and desire to take necessary steps to correct any violations.

UNSATISFACTORY: The bank is not fully aware of its obligations under consumer and civil rights laws or, being aware of its obligations, has not taken sufficient steps to implement compliance.

1. Senior management rarely considers issues of impact of civil rights laws and consumer laws on bank operation: provides no definite directions to staff to develop adequate compliance procedures.

2. Loan policies and procedures are unwritten or are unduly subjective, so that lending employees have no objective criteria upon which to make loans on an equal basis.

3. Middle management has developed no (or inadequate) manuals, instructions, memoranda, etc., to implement compliance. (Procedures are inadequate if they are not reasonably designed to give operations-level employees a reasonable knowledge of their obligations.)

4. Operations level employees are unaware of compliance obligations: outmoded forms used; no cogent, regular procedure for notices, disclosures, etc.; employees not given exposure to training in compliance obligations.

5. Bank is not flagrantly violating statutes or regulations, but because of lack of competency, many violations exist and will require an administrative change to afford future understanding and adherence.

HAZARDOUS: Bank is operating in conscious disregard of consumer or civil rights laws. (This status might involve exposure of bank employees to criminal penalties and should be dealt with as a matter of urgency.)

1. Many violations are in evidence that will require astute handling to avoid severe penalties, particularly in the area of large potential financial liability.

2. There are no policies or procedures in place to implement compliance.

3. Management at all levels demonstrate indifference to matters of compliance.

APPENDIX D

B. Complaint Procedures

The Board's consumer complaint procedures are contained Regulation AA (12 CFR §227) and the Manual on the Consumer Complaint Control Procedure (1/1/77) (hereinafter CCCP).

Regulation AA essentially formalizes the existence of a complaint procedure and encourages complaints to be filed in writing and contain basic information about the complaint. A response is required within 15 business days and provision for referral to other agencies is made, in the case of a complaint incorrectly filed with the Federal Reserve System.

The definition of consumer complaint in the CCCP is broader than that in Regulation AA and the CCCP is an umbrella for procedural control of all consumer oriented complaints filed with the System.

Theoretically, the CCCP provides for centralized review of consumer complaints in Washington, by requiring that the basic complaint recordation form (Form FR 1182) be filled out in triplicate, with a copy going to the Division of Consumer Affairs (DCA) in the instance of a complaint filed with one of

the Reserve Banks. However, in practice this centralized system is only a central docket, and complaints received in the field are handled primarily in the field. In fact, complaints received at the Board in Washington are routinely referred to the appropriate Reserve Bank for substantive handling. This means that there is no centralized quality control on the investigations done in response to complaints. This does not suggest that the various Reserve Banks respond inadequately to complaints; only that there is no way for the Board, which is charged with ultimate responsibility for enforcement, to know whether they do or do not.

Given the overall structure of the Federal Reserve System, with significant control over examination procedures residing historically, in the decentralized Reserve Banks, we do not suggest that authority over consumer complaints be totally concentrated in Washington. We do recommend, however:

- (a) establishment of system-wide minimum procedures for investigating complaints and responding to the complainant */
- (b) establishment of the capacity and authority in the Compliance Section of the Division of Consumer Affairs to review the

*/ Both the Comptroller of the Currency and the FHLBB have special instructions for "Special Examinations" when complaints are made. (Appendices and). Both rely on investigative techniques found successful by the Department of Justice.

handling of all consumer complaints to determine compliance with these minimum procedures and to provide overall consistency with Board policy on compliance matters.

(c) clarification of the authority of the DCA to have a special examination performed when, in its discretion, this is necessary in connection with a complaint.

(d) establishment of an increased capacity in the DCA to provide the Reserve Banks with technical assistance and continuing up-date on developments in the compliance area, to enhance both examination and advisory services through:

(1) more frequent exposure of examiners and consumer specialists to training, including training in the field;

(2) more frequent visits to the Reserve Banks by representatives of DCA, to evaluate compliance programs, and help provide visibility and credibility to the program among Reserve Bank personnel;

(3) regular circulation of a periodic up-date report on compliance matters so that all of the Reserve Banks receive consistent and correct information about new cases, interpretations and enforcement policies.

(e) establishment of a program of joint examinations by examiners at the Reserve Banks and review examiners and consumer affairs specialists from Washington, designed to assist both groups in the performance of their functions.

(f) establishment of a system-wide program to evaluate the effectiveness of consumer complaint procedures. Currently, a "follow up letter" is sent only to those complainants who filed their complaints with the Board. (and by a few of the Reserve Banks, for those who filed regionally.) The DCA should regularly follow up with questionnaires to all consumer complainants.

(g) Expansion of the capacity of the Compliance Section to deal creatively with the Board's enforcement program. Currently, the Board is staffed with two review examiners and three consumer affairs specialists, two secretaries and a Section Chief. Current responsibilities include handling of complaints made to the Board, handling of phone calls, letters and inquiries from member banks, Reserve Banks, other agencies and Congress. Responsibilities also include liaison with other agencies in cooperative programs, development of examination manuals, instructions, checklists and forms and design and presentation of consumer schools.

In this report, we have recommended adding more responsibilities for overall review of complaints throughout the system. However, this office should also be continually considering methods for improving techniques in consumer compliance, including techniques to enhance examiner efficiency and reduce the costs of examinations to the government and member banks. It should also be developing advanced as well as basic seminars in compliance, and regional seminars for Reserve Banks.

We hesitate to recommend increased staffing of the Compliance Section as a panacea. This hesitation is based partly on budgetary considerations and partly on a general reluctance to suggest expansion rather than contraction of governmental regulatory initiatives. We believe increased staffing may be inevitable here, however, for several reasons.

The Compliance Section grew in an ad hoc way. The old Office of Saver and Consumer Affairs (OSCA) was formed in 1974 in the anticipation of combining ECOA, Truth-in-Lending, Fair Credit Reporting and Securities Credit Regulation enforcement. Personnel for OSCA initially came from these sections. Later, OSCA became the Division of Consumer Affairs. Securities Credit was dropped, but a new Regulation C and a greatly expanded "B" were added to the Division's responsibilities. Meanwhile, enforcement of various new credit regulations among state member banks was not centrally organized, even though the Board's own Consumer Affairs Staff had rulemaking authority in this area. Moreover, procedures for Fair Housing enforcement among state member banks had, apparently, never been focused

upon, according to testimony before the Senate Banking Committee in March 1976. Although not prepared for it in terms of staff or historical orientation, the Board became a civil rights enforcement agency as to state member banks upon enactment of ECOA. It also became a comprehensive consumer credit protection enforcement agency.

Against the background, the concept of a Compliance Section came out of recommendations of a Task Force appointed by the Reserve Bank Presidents in September 1976, to develop a proposal to respond to this new reality and to develop system-wide enforcement of various consumer laws.

The Compliance Section was established in January 1977 to undertake training and enforcement responsibilities in this area.

In March 1978 the Board announced its current compliance program, but made clear in its public announcement that it was "experimental" and for a "test period." Accordingly, the Compliance Section was never staffed with an expectation of permanence. Also, it was staffed more for the purpose of "evaluating" the task ahead, than carrying out that task. Moreover, many of the Reserve Banks, responding to the temporary character of the program, have not devoted substantial resources to consumer or civil rights compliance, in proportion to the size of the ultimate task involved in advising and examining approximately 2000 institutions.

In June 1977 the Complaint handling function was transferred to the Compliance Section from the Administrative Division and currently, the Compliance Section borrows attorneys from other sections in DCA to deal with its own backlog.

It would be premature, in this report, to make projections as to the optimum or appropriate size of the Compliance Section.

Part of that decision will depend on the changes in the enforcement program, if any, adopted by the Board, and the degree of priority which the Board decides to assign to this area of compliance among member banks. When these and other pertinent policy decisions are made, we suggest that a zero-based analysis be made of person-years required to accomplish the tasks assigned to the Section, and that staff expansion, if necessary be based thereon.

Additional Observations Regarding The Board's Complaint Procedures

Complaint procedures, including the "minimum" system-wide program for investigating complaints recommended herein should be based upon some common principles:

1. Complainants frequently do not have the expertise to adequately articulate their complaints in precise terms and, therefore, should not be required to. Also, the complainant, typically, does not know enough about the reasons the creditor used to make its judgements to be able to provide this kind of information to the Board -- that is the reason for the Board's investigation procedures.

Accordingly, the burden should not be on the complainant to adduce evidence or proof in an "adversarial" way. It is the examiner's job to fairly and objectively evaluate both versions of the dispute and use his or her expertise to "get behind" the lender's version, as well as uncover all salient facts about the complainant's version. Except in rare cases of undisputed factual issues, it is inappropriate to close a case merely upon a review of the lender's explanation without verifying the facts and contentions asserted. Neither lenders nor complainants have a monopoly on truth, accuracy or recall. The examiner is well-armed with a healthy skepticism, but should not be more hostile to one constituency than another.

Adequate investigation, then, will almost always require a visit to the Bank, particularly in cases of alleged discrimination.

Adequate investigation also requires an interview with the complainant. As pointed out earlier in this report, the most important information may have passed verbally. Also, it is most unlikely that in a letter of complaint, a complainant will set forth all of the pertinent facts. Reliance only on the face of such letters is generally inadequate for getting at the facts. Examiners may not have experience in interviewing consumers in a way designed not only to get the facts, but to test credibility as well. This suggests strongly that either examiners be given special training in this area, or that the Board develop a corps of consumer specialists capable of skillful consumer and civil rights interview techniques.

During discussions with examiners, a consensus was expressed that, under present procedures, an examiner would be severely reprimanded if, in the course of an examination, he or she contacted loan applicants to obtain information about their dealings with the bank, or to clarify some aspects of their dealings. Whether this perception comes about formally, by rule or informally, by general impression, it seriously limits the examiners capacity to make fair and objective determinations, and fails to recognize one whole dimension of effective investigation.

2. The goal of complaint procedures is to encourage, not discourage use of the administrative process to resolve complaints. This will, naturally, increase the quotient of unjustified complaints received, but this nuisance factor may be acceptable when one considers the alternatives. The alternatives are, on the one hand, to have complainants resort increasingly to lawsuits or to other agencies with overlapping jurisdiction (HUD, Justice, local agencies) to seek relief or, on the other hand, to discourage bona fide complainants from seeking assistance.

Because of the above, complainants who contact the Board or the Reserve Banks, in person or by phone, should not routinely be required to submit written letters if sufficient information can be obtained verbally (with copies of documents mailed in). Similarly, complainants who write in should not be routinely asked to submit additional written information.

Both techniques are certain to reduce the flow of complaints brought to the Board or the Reserve Banks for administrative resolution.

3. An individual complaint should be viewed within the system as an opportunity to uncover a possible broader problem, and thus help the Bank protect itself from increased liability.

Sometimes a form, procedure or errant employee operates like a "victim machine." A creditor is fortunate if that "machine" can be shut off early. Accordingly, when investigating individual complaints, an examiner should be instructed to look for evidence of "patterns" as outlined in his or her manuals and instructions.

Also, if, in the course of investigating alleged violation "X," the examiner comes across violation "Y," this should not be ignored simply because it is not part of the instant investigation. It should be noted and brought up with management, for the Bank's own protection.

4. Procedures for reporting and cataloging complaints should not artificially limit the scope of the investigation. In this regard, the instructions for completion of Form FR 1182 require designation of a "complaint code." On page 9 and 10 are listed numerous possible violations of Regulation B. This is problematic, when filled in before an investigation begins, because it suggests a limitation on the scope of the investigation. Most often, complainants cannot and do not spell out the type of violation which has occurred. The complainants know only that he or she has a problem, and not which "niche" it falls into. Speculation by the person taking the complaint is just that - because it is unknown what the examiner will or will not find once the investigation is commenced. Also, the list is by no means complete in terms of

possible civil rights violations (e.g., redlining, appraisal practices, etc.). Also the list on p. 9, under "credit denied or adverse action" is awkward because it mixes "discriminatory" reasons and non-discriminatory reasons. As to non-discriminatory reasons it does not even list all of the possible categories for "reasons for denial" permissible in the Board's own suggested form, contained in Regulation B.

Moreover, discriminatory practices do not necessarily occur on only one prohibited basis. Both sex and race may be involved at the same time or sex and marital status, or age and receipt of public assistance, etc. Again, the type of complaint cannot really be ascertained until after investigation. Accordingly, for anti-discrimination laws we recommend that only the broadest categories be used when initiating a complaint (e.g., "substantive" vs. "procedural"). If more detailed coding is desired for recordkeeping purposes, it should be entered at closing of the file, and the list of coded practices should be expanded to be more comprehensive.

5. Where a violation is uncovered, some official response should be forthcoming. Even if such a response is only a letter of understanding with the bank with regard to the resolution achieved. Violations should rarely be handled casually, and even where informal resolutions occur, documentation in the Board's file should show that the agency exercised its responsibilities. Accordingly, on p. 28 of the Complaint Procedures, under "Investigation Made," the final entry may

be inappropriate without a follow up category. As it stands, "Possible Bank Violation - Unresolved" implies that it will remain unresolved, despite the finding that a violation occurred. A follow-up entry might be:

Possible Bank Violation - Resolution Pending

Possible Bank Violation - Referred for formal action.

A file containing findings of violations should not be closed until "resolved," even if the resolution is an informal one.

Additional categories might be:

Consumer Informed Of Resolution

Consumer Satisfied With Resolution

6. The consumer should generally know as much as the Bank about the Board's finding and resolution.

Sometimes the Board or the Reserve Banks will be faced with a difficult choice. If discrimination is found, there is frequently an understandable reluctance to tell the consumer about it because (a) the agency may be wrong, but may nonetheless generate litigation which is expensive for both the consumer and the bank; (b) public "findings" of discrimination are most appropriately a judicial and not an administrative function, absent the trappings of an administrative hearing with adequate due process to both sides; (c) a declaration of "discrimination" by the agency might be given undue extra weight as an "official" finding, and generate

many lawsuits which might threaten the soundness of the bank.

The other side of the issue requires consideration of the consumers' rights.

The Board's obligation is to eliminate discrimination, not insulate discriminating lenders. If the lender has engaged in unlawful practices, it and its shareholders will have to take the consequences, as in any other area of law violation, or else the incentive to comply with the law would be non-existent. The argument that the FDIC might have to absorb losses based on excessive liability, as a justification for not revealing the existence of discriminatory practices is misleading because (a) lawsuits under ECOA, while they might threaten short-term profitability, are not likely to threaten basic soundness and (b) the same argument can be asserted to encourage the FRB to do all it can to discourage violations, by disclosing violations where found. Ultimately, the law is intended to protect members of the public and when individuals avail themselves of an administrative remedy, or rely on the agency to protect them, they should be fairly advised of their rights and the likelihood of their recovery.

Even where the Board is able to reach successful, informal resolutions of complaints, the problems inherent in the above dilemma are not completely eliminated. The question comes up every time an examiner finds evidence of a violation and must determine whether to notify potential victims of

the possibility that discrimination exists.

While we have set forth the policy considerations which we believe are involved, ultimate resolution of this • policy issue must be made by the Board.

We do recommend that all complainants be given routine written notice of the rights they may have, when they file a complaint. This notice should point out any important time limits (e.g., 180 days under the Fair Housing Act) and all optional remedies available. The current letter used in Fair Housing matters does not provide information on ECOA remedies and should be expanded. It is patterned after the form used by the Comptroller which is based on an old form used by the Department of Justice, which has been since amended.

APPENDIX E

C. Case Studies And Curriculum Of Consumer Schools

Presently, the Consumer Affairs School is the principal homogenizing influence that ties the system's geographically diverse examiners and consumer affairs specialists together. The Schools provide some helpful introduction to civil rights enforcement through guest lecture from the Civil Rights Division of the Department of Justice. However, examiners who have been through the Schools still express reservations about their ability to deal with questions of discrimination. One of the major recommendations of this report, consequently, is that

the Schools add an expanded curriculum to adequately present information needed by examiner and consumer affairs specialists to handle matters of credit discrimination.

In addition to current instruction, we recommend at least four hours of instruction in the history of discrimination in lending and the rules of construction under civil rights laws. At least two additional seminar hours should be devoted to discussion of these matters and of specific cases which affect lending practices.

Naturally, examiners should be given materials revised as discussed throughout this report. They should also be given a supplement consisting of pertinent civil rights cases to be read outside of class. It would also be appropriate to distribute copies of relevant consent decrees obtained by the Justice Department, FTC and private parties, to illustrate types of relief in these cases. We also recommend that students be given a selection of articles and handouts of two kinds:

(a) technical materials which help explain and interpret Regulation B, and the Fair Housing Act. There are numerous sources from which to make appropriate selections, including materials written by DCA staff attorneys;

(b) a selection of articles from newspapers, magazines and trade journals which present the full dimensions of contemporary issues in civil rights and consumer protection enforcement.

Examiners and consumer specialists should be at least as worldly on these subjects as the lenders with whom they deal. They should know about controversies in the industry, the various positions being taken by the industry, civil rights, community and consumer groups and governmental agencies. This is necessary in order to convey a sense of currency to the examiner and specialist. Knowledge of industry efforts to address "redlining" for instance and the response to these efforts by Congress, agencies and the public can add vitality to an examiner's view of his or her own role in the controversy. Information about new initiatives being planned by government in this area help place current enforcement options in context. Also, it is very important to acquaint examiners and consumer affair specialists with criticisms of his or her own agency by both public interest groups and industry groups.

Without this kind of information, civil rights (and consumer compliance) enforcement takes on a detached isolation from real world issues. This, in turn, warps the perspective and motivation of examiners and consumer specialists.

At least two hours of seminar time should be directed to a general discussion of enforcement issues and problems, based in part on readings such as those referred to above. This recommendation is based on two observations: First, it has been our experience, confirmed by discussions at length with FRS examiners that examiners need a forum (out of the workplace atmosphere) in which to candidly discuss with others, particularly

the DCA staff which is responsible for enforcement, problems and concerns which they have with the enforcement and compliance process. Many misconceptions which they may have about the proper scope and performance of their jobs can be resolved by discussion of the realistic expectations of the Board, and by discussion of similar experiences and perceptions of others involved in the same process. Currently, so few people at each Bank are involved in consumer compliance that there is, in fact, this sense of "isolation." Moreover, other staff members at the regional banks frequently have no greater background in civil rights or consumer affairs than have the examiners, namely, attendance at the early consumer schools. An unstructured seminar at the Consumer Affairs Schools would be helpful in dealing with this problem. A second reason for undertaking such seminars is to allow staff from the various Reserve Banks to interchange ideas and observations with their counterparts throughout the System in a way that otherwise would not occur.

In addition to current case studies and materials, additional case studies in the civil rights area should be prepared and used in the Schools. Case studies fall into two categories. The first variety is the "narrative," represented by current Case Study 5. This is a case study developed by the Department of Justice and in use by a number of the enforcement agencies. Trainees review the narrative and discuss their conclusions and findings. The other type of case studies are

"mock loan files" which contain contrived cases, completed forms, rejected loans, loan policies, bank memoranda, etc. The students try to identify both procedural and substantive violations in the files. Additional materials include tests (true/false and multiple choice). Generally, the case studies in use at Consumer Schools are well done. For the most part, however, they deal with procedural, not substantive matters. Accordingly, we recommend that considerably more time be spent in dealing with issues of discrimination.

For instance, two other narrative case studies dealing with discrimination are in use in other agencies and can be adopted for use by the Board (Appendix 13). Additional case studies can be created with little difficulty.

We do have some observations with respect to current case study materials. The materials which do deal with discrimination frequently convey a negative or exceptionally cautious approach to finding violations, and do not provide practical guidance in how to compare files and make determinations. Generally, if recommendations contained in this report are accepted, case study materials will have to be rewritten to illustrate the new Examiner Instructions for Credit Discrimination:

Additional Observation With Respect to Training

1. It is important that lecturers presented at Consumer Affairs Schools not be dry and humorless. A lecture consisting of an attorney reading Regulation B out loud can be fatal as a technique for educating and motivating examiners and consumer specialists. Material should be presented with a healthy sympathy for the problems faced by examiners in the field. We recommend that individuals with actual experience in the field be recruited and trained to participate as instructors in schools. It is also of great importance to have senior examination and Reserve Bank personnel identified positively with this program. It should not be perceived as only a Washington based program forced, unwillingly, on the Districts. Accordingly, senior offices from the Reserve Banks should speak at the Schools to emphasize the importance of this program. Lecturers from outside the System can also be very useful. The Civil Rights Division of the Department of Justice has traditionally provided assistance to other agencies in this regard and in a more limited way, to the Board. This source of expertise can be most helpful, and is available at no cost to the Board.

2. Every examiner in the System should be exposed to consumer protection and civil rights training. This is necessary for several reasons.

(a) without this training commercial examiners can and do provide incorrect or inconsistent direction to bankers in the course of commercial

examinations. It is a frequent complaint among banks that the consumer examiners say one thing and the commercial examiner another. For example, attempts to prohibit redlining are frustrated when commercial examiners, unaware of the newer developments in appraisal techniques and new approaches to risk assessment, or the historical abuses in this field, criticize loans in certain areas because of the examiner's own traditional perception of risk. Examiners are not unlike lenders. Without exposure to specialized briefings, they cannot necessarily be expected to perceive the impact of their actions on civil rights compliance.

(b) At the current time, participation in consumer examination may be somewhat stigmatized within the System. It may not be regarded as among the complement of skills needed to be considered a well qualified examiner. It is not identified with career progression within the System. Accordingly, there is a need to regularize the place of consumer protection and civil rights compliance in the constellation of skills which examiners are required to have. Compliance with consumer laws and sound commercial lending should not be regarded as separate or as mutually exclusive phenomena. Institutionalizing training of all examiners in the consumer and civil rights area will help in this regard.

3. Training in consumer and civil rights matters should not be a "one-shot" affair. Compliance methods change, legal interpretations change, and people forget things. To be effective, the Board's training must be periodically re-inforced. This can best be done by bringing seminars to the Reserve Banks on a rotating basis. This degree of activity will also lend credibility to the Board's commitment to compliance in the eyes of the examiners, bankers and the public.

4. The Board should develop advanced seminars for consumer affairs specialists and examiners who specialize in consumer compliance. Individuals who participate in the Educational Advisory Service, particularly, need to be very comfortable in dealing with practical problems of lenders. Specialists from various banks should have an opportunity to collaborate on techniques and materials which can be helpful in assisting lenders. For instance, in a recent meeting of examiners from different Districts, it was discovered that each had observed a similar problem with smaller banks adopting forms, procedures and policies of larger banks, without adequately studying and understanding the materials, and without making changes necessary to adapt the materials to their own circumstances. By confirming this as a generalized problem, the examiners felt more comfortable in giving guidance to banks about this practice.

5. A segment in each school should be devoted to equipping the examiner with standards for taking action. In other words, given the rules of construction and other materials used in training, which provide standards for identifying violations, what constitutes sufficient information or sufficient levels of violation to warrant a recommendation for action and, in such cases, what action is appropriate? An in-depth review of the Board's current and proposed standards for corrective action is beyond the scope of this report. However, the following observations are relevant to examiner training and preparation:

(a) standards for corrective action should not be a mystery to bankers or examiners. The examiner's ability to relate well to his or her investigative function is closely allied with the predictable results of the effort. If an examiner knows that he or she is dealing with a violation that can send someone to prison, or result in substantial damages, or serious administrative action, the examiner will logically use greater care in preparing findings and devote more time to the process. It is natural and efficient for the amount of time and care spent in an examination to be reflective of the gravity of the matter. Accordingly, the Board should

have a remediation policy that spells out the remedy the Board will seek for violations of various degrees of severity. The violations should be described both in terms of "type" and seriousness.

(b) The Board's policy on corrective action should be relatively consistent with judicial standards for comparable violations, with allowance for the differences between judicial and administrative enforcement. In other words, where pertinent patterns of violation would call for affirmative measures to correct past practices, the same standards should be adhered to administratively, since the overall remedy sought to be obtained is the same.

(c) The Board's policy with respect to corrective action should be consistent from bank to bank and among all of the Federal Reserve Banks.

In other words, if a certain level of violation would call for a written agreement to assure or monitor compliance as to Bank A, the same standard should apply to Bank B. The standards can and should have built-in flexibility, providing for exceptions on a case by case basis when certain factors are present. These standards should be announced well

in advance, however, so that all regulated banks can anticipate the same policy. The basic standards should not vary from Reserve Bank to Reserve Bank.

The standards should contain a clear description of when formal action will be taken and the nature of the formal action-(e.g., write-up in file; letter of agreement; letter of admonishment; Cease and desist order). */ This is particularly important in anticipation of implementation of the Community Reinvestment Act, where a bank's record in civil rights compliance will, presumably, be part of the review.

The standards should also contain explicit criteria for referral of cases to the Department of Justice. ECOA provides specifically for such referral in individual cases and pattern and practice cases. Standards for referral which will trigger such a referral should be established and announced.

*/ We have reviewed the proposed Joint Guidelines for Enforcement and find them deficient in some respects if measured against the above criteria. They do not address themselves to traditional forms of generic relief appropriate in civil rights cases and concentrate primarily on violations of specific provisions of Regulation B.

D. Additional Recommendations And Conclusion

We have concentrated in this report on the need to separate considerations of civil rights and consumer credit protection and the need to identify civil rights compliance as a matter of priority within the Board. The latter consideration is like a fulcrum upon which the direction of the Board's entire program is balanced. Without visible and vigorous policy direction from the Board, civil rights compliance will not, cannot, be identified within the Reserve Banks and among examiners and among regulated banks, as an issue of priority.

Interestingly, in the ten years since the 1968 Fair Housing Act, and in the several years since enactment of ECOA, the Board's enforcement program has identified very few instances of substantive discrimination. This might be, as some have argued, because such discrimination does not exist. It might also be, as others argue, because no one has been looking for it.

A parallel circumstance existed with respect to the compliance program of the Federal Home Loan Bank Board. In the 9 month period after instituting a revised training program, the HLBB, through its examiners, found 580 instances of non-compliance

whereas it had found no violations in the eight years preceding. In the next full fiscal year, 2800 violations were identified and hundreds of supervisory letters were issued.

If the Board does determine, as a policy matter, to announce a clear and unambiguous position on civil rights and consumer credit compliance, we recommend that several corollary steps be taken to implement such a policy:

1. The consumer credit compliance program should be formally reconstituted as a consumer credit and civil rights compliance program and it should be declared a permanent, not temporary, program.

2. A conference of Presidents of the Reserve Banks should be convened to provide them with a detailed briefing on consumer credit and civil rights compliance and on the Board's policy. This is necessary to bring the policy into the Districts and to elicit the expertise, experience and prestige of the Bank presidents in implementing the program. It is important that any articulation of policy by the Board not be regarded as merely cosmetic.

3. Each member bank should be provided with compliance materials including manuals and training materials. In addition to consumer advisory services, the Reserve Banks should consider holding seminars for bankers to go over in detail the Board's expectations as to internal controls and general compliance.

Again, this is particularly important since compliance evaluations will probably be a part of Community Reinvestment Act evaluations.

4. The Board should appoint a compliance official with a background in civil rights compliance and civil rights enforcement. This is needed to complement the backgrounds of current staff who exhibit outstanding competence in matters of consumer credit protection, but who have not had extensive experience in the specialized area of civil rights enforcement. Similar positions should be created in each of the Reserve Banks. It is important to develop this expertise within the system so that reliance on outside sources can be minimized.

5. Proficiency in civil rights and consumer examinations should be given formal and visible recognition within the examination program. Experience in this area should be a prerequisite in career-path development for examiners. This simple expedient can have a significant impact on the productivity of examiners in this area and the attitude of examiners, including commercial examiners toward consumer compliance.

CONCLUSION

Both the banking industry and the agencies which regulate commercial banks may be rapidly approaching the point where they cannot absorb additional regulation, either in terms of sheer

paperwork or in terms of the ability of bankers and regulators to comprehend a quantity of new definitions, requirements and complex instructions. Thoughtful observers of banking economy must be cognizant of a saturation point. At the same time, existing laws in the area of civil rights call for implementation in a balanced, responsible and objective manner.

There is such a thing as over-regulation and there is such a thing as unintelligent regulation, but in an effort to avoid these abuses we do not necessarily have the luxury of opting for non-regulation.

In the field of civil rights, particularly, we are in a period of transition, where historical and traditional modes and courses of conduct, only recently challenged, are being rethought, and, where appropriate, changed.

This current state of flux creates both an opportunity and a responsibility for regulators to midwife the coming changes through a sensitive and earnest effort to encourage lenders in their good faith attempts to cope, and assist lenders for whom coping has proven to be more difficult. In this report, we have tried to identify for the Board some of the more important strategies for meeting this challenge while, at the same time, meeting the reasonable expectations of the public with respect to enjoyment of the benefits and protections mandated under our Nation's civil rights laws.

The Board of Governors of the Federal Reserve System, if for no other reason than because of its highly visible role as an arbiter of practices under important laws dealing with civil rights and credit, should be in the forefront of this effort.

Mr. ROSENTHAL. Our next witness is Mr. Lawrence Connell, Administrator, National Credit Union Administration.

Mr. Connell, I want to welcome you. It is a pleasure to have you here. I also want to thank you for the rather prompt written responses to our extensive questions.

**STATEMENT OF LAWRENCE CONNELL, ADMINISTRATOR,
NATIONAL CREDIT UNION ADMINISTRATION**

Mr. CONNELL. Thank you, Mr. Chairman. My name is Lawrence Connell, National Credit Union Administrator.

Mr. Chairman, members of the subcommittee, I am pleased to be here today to present my views on enforcement of the Equal Credit Opportunity and Fair Housing Acts.

Despite claims to the contrary, I believe that passage of the Equal Credit Opportunity Act has resulted in a direct benefit to the economy. According to several recent publications, a significant proportion of new housing sales has been attributed to lenders counting in full the incomes of house-buying couples. In addition, a significant number of women have entered the credit marketplace for the first time. Both factors have greatly expanded the potential credit market. The revenues flowing to both homebuilders and creditors as a result have, in my opinion, gone far beyond merely offsetting the increased costs engendered by Equal Credit Opportunity Act notice and recordkeeping requirements. Thus, I believe that the Equal Credit Opportunity Act has had a decidedly positive impact on the economy in addition to having greatly reduced the incidence of discrimination in the credit marketplace.

I would hope that your deliberations might review in depth the economic impact on the general economy as a consequence of these statutes. The committee has asked a number of questions in a number of areas, and I will try to address each of them according to their particular subject, the first being redlining. The committee has requested us to comment on whether there is a problem of redlining discrimination in home lending by financial institutions, and credit unions in particular, and whether urban neighborhood decay is in any way due to discriminatory practices in the handling of loan inquiries and applications by financial institutions. About 2 years ago, when I was bank commissioner in Connecticut, we conducted a study with respect to the urban disinvestment issue. From that study it was quite clear that redlining did exist. As a consequence of that study, Connecticut passed an antiredlining law that made it unlawful to redline and required the banking department to analyze the data that was generated by the Home Mortgage Disclosure Act.

However, redlining has not surfaced as a noticeable problem for federally chartered credit unions because they only recently received authority to engage in long-term real estate lending. Prior to May 8, 1978, Federal credit unions were limited to making real estate loans with a maximum maturity of 10 years. As a consequence, they just were not in the market. During the year 1977, the 13,000 or so Federal credit unions made only 444 real estate loans. Consequently, Federal credit unions have not been a significant enough component of the market to have a discernible redlining problem.

I certainly do believe that urban neighborhood decay is in part due to discriminatory practices in the handling of loan inquiries and applications. When current and prospective residents of an urban neighborhood find it difficult or impossible to secure loans to buy, rent or renovate homes, the neighborhood obviously must deteriorate physically. Only with adequate access to financial resources can a neighborhood be preserved or revitalized.

Equally important is the adverse psychological effect created by redlining. When there is a feeling that the loans would not be available, they are not requested. In my opinion, many other factors have also contributed to the problem of urban neighborhood decay. These include the economy's dependence on new construction; a once prevailing public attitude that new housing is preferable to old; a reluctance on the part of prospective homeowners to undertake the extensive remodeling effort that an older home often requires; and government-imposed standards in the area of land use, building codes, and punitive property taxes.

Antidiscrimination laws and the accompanying consciousness-raising process have helped to largely eliminate overt discrimination against minorities in mortgage lending. Residual bias still manifests itself in more subtle discriminatory practices which financial institution regulators must learn to detect and strive to eliminate. Any remaining ignorance of lenders which contributes to their reluctance to make urban mortgage loans must be combated through education programs geared toward teaching lenders how to accurately appraise urban dwellings, how to take advantage of Government rehabilitation programs and how to evaluate lower income individuals as credit risks.

While at this time we have not uncovered evidence that Federal credit unions have redlined, in order to prevent that in the future as credit unions become more involved in the real estate lending area we announced on July 27, 1978, that we will be drafting an antiredlining regulation, and at this point we are reviewing the regulations that exist at State and Federal levels to determine the best format.

I might also mention credit unions are different than other financial institutions in that they do not deal with the general public. They are limited to serving persons falling within a defined common bond of occupation; association or residence. At year end 1977, 81 percent of all Federal credit unions served a membership based on the common bond of occupation; the field of membership of 15 percent was associational; only 4 percent served a common bond based on community. Credit union members working in the same plant could live in many different parts of a town or county. Nonetheless, they must have this common bond of occupation.

By proposing a redlining regulation, we believe we are taking a step to prevent an undesirable practice but we are also affirming the duty of a credit union to serve its members fairly and equally. The idea of providing equal access to credit to all individuals is one which triggered the evolution of the credit union movement. Thus, in fashioning an antiredlining regulation, NCUA will be reemphasizing and carrying forth the ideals upon which the credit union movement is founded.

We believe that adequate statutory authority exists for NCUA to issue such a regulation under the Equal Credit Act, the Fair Housing Act and the agency's general authority to regulate long-term real estate loans as set forth in the Federal Credit Union Act. Therefore, we will not need new legislation to convey this authority.

NCUA's regulation will address specific redlining practices. For example, we contemplate prohibitions against underappraising the value of a home based solely on age of the home and against considering the racial composition of the neighborhood and/or the prospective occupancy of the community. The thrust of the regulation will be to prohibit Federal credit unions from redlining, without imposing extensive recordkeeping requirements on them.

In addition, NCUA is expecting to expand its consumer compliance program through the addition of specialized consumer examiners. These examiners will be trained by civil rights specialists in the most advanced investigative and analytical techniques for detecting subtle or unintentional discrimination in mortgage lending. This past year we doubled the size of our Washington consumer protection staff, and in drafting the position descriptions for those positions we made a special effort to require that the people have background in consumer affairs and human rights issues, and the people that were brought on did have that background.

In addition, over this past year we have appointed consumer specialists in each region whose job it will be to review the various examination reports, to educate examiners, credit unions and the public in the various consumer rights laws.

Based upon the findings of our regular examiners, the specialists and the Washington staff, NCUA will take any action necessary to bring offending credit unions into compliance with our antiredlining regulation, Regulation B and the Fair Housing Act. We will not hesitate to exercise our cease-and-desist authority, if necessary, to prevent the continuance of discriminatory practices in mortgage lending by Federal credit unions.

One major benefit we see resulting from the antiredlining regulation will be the potential of playing a positive psychological role in urban renewal. We expect the knowledge of credit union members that their credit union does not engage in redlining and the feeling of assurance this engenders, to encourage prospective urban homeowners to apply to their credit union for a mortgage loan. By providing prospective urban mortgage applicants with a sense of optimism, credit unions can thus play a significant role in the revitalization of American cities.

You asked about our present enforcement efforts. NCUA conducts an examination of every federally chartered credit union approximately once a year. Examinations are conducted to assure that the credit union is financially sound and is in compliance with all laws and applicable consumer regulations.

In conducting the compliance portion of the examination, NCUA examiners employ a checklist and Consumer Regulation Compliance Summary form prepared by our Division of Consumer Affairs. The checklist is a list of questions covering the most important requirements of each Federal consumer law or regulation applicable to Federal credit unions. Two sections of the checklist deal with

requirements of the Equal Credit Opportunity and Fair Housing Acts.

In completing the summary, the examiner assigns a code to each checklist question and a code rating indicating the credit union's overall compliance with each law or regulation. We use numbers 1 through 5 as codes. "1" means the credit union was in compliance, "2" that the credit union was not in compliance but that the area of noncompliance was corrected prior to completion of the examination, "3" that the credit union was not in compliance but that the examiner and credit union officials reached agreement that all areas of noncompliance would be corrected, "4" that minor areas of concern were not corrected and "5" that major areas of concern were not corrected.

In terms of the actual findings, the latest compiled data that we have available is preliminary data for January to September of 1977. Approximately 6,500 Federal credit unions were examined during this period.

Of these, 30 had overall Equal Credit Opportunity Act compliance codes of "4" and 49 had overall codes of "5." With regard to specific areas of noncompliance, 31 were found to be in noncompliance by virtue of using improper terminology on their application forms, 52 were found to be in noncompliance with the previous Equal Credit Opportunity Act notice requirements of regulation B, 31 were found to have failed to clearly label optional information requested on their application form, another 31 were designated as having failed to clearly indicate when spouse's income should be listed on their application forms, and 24 credit unions were found to be in violation of the rejection notification requirements.

By comparison, some 1,162 of the 6,500 credit unions had one or more areas of noncompliance for which specific plans for corrective action were developed and agreed to prior to completion of the examination. When we do this we indicate the area of the problem, we designate a credit union official to be responsible for the recommended action and then in the next followup examination the examiner's first action is to determine whether the corrections have been made and whether the particular person responsible for them has carried out that responsibility. In terms of more serious situations, for corrective action beyond agreement to take the particular correction of form, or whatever it is, the NCUA regional office can follow up with a preliminary warning letter or other administrative action. We view the examination as only one way of educating credit union officials as to the consumer compliance responsibility. In order to prepare credit union officials for the new compliance portion of the examination, we distributed copies of the checklist and accompanying materials to officials even before the checklist was actually employed by NCUA examiners.

I would like to emphasize that despite the rapid growth in total aggregate assets of the credit union movement, credit unions remain a relatively small movement, operated for the most part by volunteers with limited access to specialized legal resources. At the end of 1977, of the 12,750 federally chartered credit unions in operation, only 3,955 had assets of more than \$1 million each. This left 8,795 with assets under \$1 million each. Smaller credit unions thus account for 69 percent of the total number, but for only 9

percent of the total assets of federally chartered credit unions. Most of these small credit unions are run on a part-time basis by volunteers. They have neither the benefits of full-time paid staff, nor legal advice on what they should or should not do.

Since many small credit unions in particular have experienced problems in designing application forms which are in compliance with the Equal Credit Opportunity Act, as part of NCUA's enforcement effort, we are in the process of preparing a model credit union loan application form. This form will be written in simple English and designed to meet the special needs of credit unions. We will be requesting State credit union league attorneys to bring the basic form into compliance with the laws of each State as well. We will then make the form available to all credit unions. As a result of this project, we hope to eliminate most Equal Credit Opportunity Act application form violations.

In addition, to help small credit unions in particular, we are planning to sponsor local clinics on compliance problems, for credit union officials and staff.

As a general comment on NCUA's future enforcement efforts, it was my desire that NCUA begin separate consumer compliance examinations in the next fiscal year. Separate compliance examinations have proven highly effective in discovering and correcting consumer law violations in banks.

In my testimony approximately a year and a half ago I think it was pretty well determined that the States that had the separate compliance examinations had a better record of uncovering violations.

In addition, NCUA will seek criminal prosecution of Federal credit union officials, and/or institute cease and desist or removal proceedings against officials, where the facts clearly indicate that an official intentionally committed a substantial violation of law, where an official instituted a practice in the credit union with the intention of causing the credit union to be in violation of the law, or where the facts clearly indicate that the official was grossly negligent in failing to assure that proper procedures were instituted in order to assure that the credit union was in compliance with the law. We have already instituted removal proceedings against officials of credit unions in cases of fraud. Our statute is broader in that we can remove an official merely for being unfit, we do not have to find them also to be dishonest. We have used that section in other cases.

In order to evaluate possible remedies, I believe that we must refer back to the legislative history of the Equal Credit Opportunity Act, much in the manner described by Mr. Dennis here earlier. In addition to being a consumer protection statute, the Equal Credit Opportunity Act is an antidiscrimination statute. As such, enforcement remedies should be designed to "effectuate the cessation" of a discriminatory practice; to insure full restitution to the injured party and to eliminate the lingering effects of past discrimination. Thus, in fashioning a suitable remedy for any type of violation, all three goals must be taken into account. In cases of repeat violations, where a credit union has failed to correct conditions found on a previous examination, we also believe that notification of the victim is an appropriate remedy.

As you are aware, the financial regulatory agencies are attempting to fashion interagency guidelines for enforcement of the Equal Credit Opportunity Act. We believe that is highly desirable action for the financial regulatory agencies to agree to employ the same set of rules in enforcing the act since differences in agency enforcement could result in some types of institutions facing less stringent compliance standards than others.

NCUA is participating in the drafting of interagency enforcement guidelines in the hope that uniform enforcement will foster healthy credit market conditions and increase overall compliance. Therefore, we are in support of the endeavor. We must note, however, that we consider the draft guidelines to be deficient at least in one major respect.

As I mentioned earlier, Congress intended remedies for violations of the Equal Credit Opportunity Act to fulfill three goals. In addition to insuring that the discriminatory practice would not be continued in the future, remedies are also required to make the injured party whole and to eliminate the lingering effects of past discrimination.

Based on comments we have received from consumer and civil rights groups, we believe that the remedies contained in the draft interagency enforcement guidelines do not adequately fulfill all three goals. We hope that this deficiency will be corrected when the agencies reconvene and reconsider the draft guidelines. At such time, NCUA will make every effort to bring the guidelines into harmony with Congress intentions as we understand them.

The committee has also asked under what circumstances NCUA would release publicly the names of institutions that have refused or failed to eliminate discriminatory practices. As Connecticut banking commissioner, I believe before this committee a year or two ago, I supported disclosure of habitual violators where such institutions dealt with the general public, and sometime following that hearing we did promulgate a regulation approved by the general assembly's regulation review committee with respect to truth-in-lending violations. Although credit unions do not deal with the general public and therefore a notice in the paper might be expected to have less impact on the credit union, we do support the concept of disclosure of the habitual violator to the membership. So the form of disclosure might be different but the principle is the same.

Mr. ROSENTHAL. Do you believe the draft enforcement guidelines deal adequately with the problem of repeat or habitual violators?

Mr. CONNELL. No, I think that the whole remedy section of the enforcement guidelines needs strengthening.

Mr. ROSENTHAL. Let me ask the question because I do not understand this. Suppose you are unsatisfied or dissatisfied with the interagency group's report on the guidelines; what happens then?

Mr. CONNELL. Well, we agreed to disagree. On the coordinating committee, we do not have to always agree. We use the committee to try to reach agreement.

Mr. ROSENTHAL. If you disagree, will the public or the Congress be notified? Obviously they would because you would be publishing the regulations differently?

Mr. CONNELL. That is right, the regulations would come out in different form.

Mr. ROSENTHAL. Is there any agency that you feel is more recalcitrant than the others?

Mr. CONNELL. No, I do not think I could say that, Mr. Chairman. In terms of the truth in lending guidelines, we are pretty well now coming to a final form. We had about 30 questions, 30 issues, and I would say there was disagreement back and forth, across many agencies in different areas. I guess when you get five people together and 30 issues, it is very difficult to reach a consensus. I think that also reflects the great difficulty of addressing this issue at a Federal level.

You have heard testimony from the commissioner from Massachusetts. I firmly believe that probably the best way for consumer laws and human rights laws to be enforced is at the local level. I would certainly like to see more in the way of States requesting exemptions from the Equal Credit Opportunity Act as well as the truth in lending laws, to enforce the law within the State. In fact, I have sent a letter to the Federal Reserve endorsing the Massachusetts application to examine Federal credit unions for truth in lending enforcement. I would do the same for equal opportunity enforcement where the State has that authority. But I find it difficult to fashion enforcement guidelines in a detailed statute on a national basis among four or five different agencies. I think we could get a lot more done if more States stepped up—

Mr. ROSENTHAL. On the other hand, the national agencies have a responsibility. You certainly have to have a common thread of responsibility running through it.

Mr. CONNELL. I think the Federal agency could set a minimum floor. As we get involved in the many technical—

Mr. ROSENTHAL. You think the States should be permitted to do their own thing on condition that their enforcement is more vigorous than the Fed?

Mr. CONNELL. Yes, either equal or more vigorous. In fact, that is a deficiency in the Truth in Lending Act because it says "substantially similar," not stronger. So the Truth in Lending Act needs an amendment to be more consistent with the Equal Credit Opportunity Act, a later act.

Mr. ROSENTHAL. Speaking about truth in lending, this committee and other committees have been concerned about the banking agencies' apparent lack of progress in developing truth in lending enforcement guidelines. Do you have any notion what is happening on these guidelines?

Mr. CONNELL. Last month I think we came to a final resolution of the guidelines, and I would expect that within the next week or two that the final form will be out.

Mr. ROSENTHAL. Are you satisfied with the result of those meetings?

Mr. CONNELL. I would regard the final form, as I understand them and I was out of town the day of the meeting but as I understand the form they would be a minimum. I would expect that the National Credit Union Administration would probably take somewhat stronger enforcement in certain areas. One of the particular issues that has been publicly discussed in terms of the

truth in lending guidelines is the cutoff date for restitution to borrowers. Our examination process is such that we conduct a sampling of the entire loan portfolio. So it is possible we can pick up occasionally a loan that would go back as far as 1969, because credit unions could make up to 10-year loans then. We believe any time—my position is any time that a consumer has been injured, whether a statute of limitation is passed or not, that the regulatory agency has the responsibility to effect restitution.

Mr. ROSENTHAL. I just want to summarize. You expect to propose and enact a set of guidelines different than the interagency working group?

Mr. CONNELL. If there are areas that I feel where our processes are not consistent. Some of the examining processes in the larger institutions usually involve only analyzing loans since the previous examination. So their process would be unlikely to pick up an old loan. Ours is not that way, because of the sampling technique that we have been using for years. Installment loan portfolios are essentially the only portfolios we look at. So we have a different process.

In that process I am sure we are going to pick up older ones. So I could not consciously find a consumer injured and not provide restitution merely because a statute of limitations under a civil action had passed. So in that area if the other agencies feel that 1974 date is more appropriate, we would have to differ in our enforcement area, mainly because of the methodology we use and also the philosophy that, once picked up, it has to be addressed. So that would be one area.

Mr. ROSENTHAL. Do you want to finish? You were up to education on page 14.

Mr. CONNELL. I will abbreviate the rest of this, Mr. Chairman, I think, because you have a copy of it, in the interest of time.

Mr. ROSENTHAL. Without objection, the entire statement will be included in the record.

Mr. CONNELL. Thank you, sir.

In terms of education, we are planning to develop our educational processes, in fact, it is already in place in terms of dealing both with the credit unions, smaller credit unions and the credit union membership. We have done this by preparing manuals for credit unions with a discussion of all the laws affecting credit unions, including the consumer laws and the manual is written in plain English instead of just the statutory law.

In addition, we have slide show presentations on regulation B and other types of educational programs which our staff puts on for credit union membership and the general public. The consumer specialists in the regional offices are available for public interest groups, consumer groups as well as the credit union movement.

In addition, the people that we are hiring in the consumer area, a number of them have strong consumer educational backgrounds. We expect this particular effort to be considerably expanded in the years ahead.

The committee has also inquired as to our view on private litigation in enforcing credit antidiscrimination laws. NCUA believes the private litigation route is a proper role in bringing about compliance with the laws against credit discrimination. In drafting the Equal Credit Opportunity Act, Congress clearly provided two sepa-

rate avenues through which compliance would be achieved. The first is administrative enforcement. Congress granted each regulatory agency authority to ascertain, through its examination program, the degree to which institutions under its jurisdiction were in compliance with the act. It was envisioned that the agencies would issue cease-and-desist orders against institutions that persisted in violating the law.

In addition to providing for administrative enforcement, Congress fashioned a potent civil remedy available to individuals whose rights had been violated. The fact that the civil liability provision is so stringent indicates that Congress expected it to play a deterrent role in addition to compensating injured parties.

Thus, NCUA views the availability of a private remedy with the possibility of large damage awards by the courts as one mechanism through which Congress intended to achieve credit compliance with the Equal Credit Opportunity Act. We have also provided you with detailed descriptions in terms of our examination process, and I do not believe I need repeat that again. I think I can conclude now, Mr. Chairman, and thank you for providing me with this opportunity to share our views on enforcement and education under the Equal Credit Opportunity and Fair Housing Acts with you.

I commend this committee for recognizing the important role these two laws play in the credit marketplace and for focusing its attention on the efforts of the financial regulatory agencies to achieve compliance under these laws. An exercise of this requires us to review our procedures and policies and actions. Just that review itself has brought to our attention a number of areas that needed improvement. We will be proceeding in that direction over the next year.

Mr. ROSENTHAL. Congressman Drinan.

Mr. DRINAN. Thank you, Mr. Chairman, and thank you, Mr. Connell. I am sorry I was unavoidably delayed. I had to attend the full Judiciary. I welcome you to the Federal forum from Connecticut where you were the very able banking commissioner.

You apparently did not mention testing. We had information yesterday and the day before to the effect that testing is a very effective weapon. I take it NCUA does not use testing. Would you comment on that.

Mr. CONNELL. Yes. We do not use testing. I do not think there is any legal barrier to using testing. It can be done. As Mr. Dennis indicated, it is not apparently constitutionally prohibited on its face. One of the reasons we had not really was because a member of the credit union usually has to be employed by a company; it is somewhat difficult to be able to impersonate a potential customer when you are not employed by the particular company. The credit unions, again, do not serve the general public. So the tester would have to fashion a situation where he or she were an employee of a particular institution in a particular department. The smaller credit unions, which are the greater number, are under \$1 million. The chances are that the people know the members pretty well. It is fairly difficult. I think we felt it would be fairly difficult to pose as a member of a very small company in that fashion because they would say—

Mr. DRINAN. Do you have any technique that is equally effective?

Mr. CONNELL. No, I do not think we do. I think this area needs considerable strengthening within our agency. This is what we are in the process of doing.

Mr. DRINAN. If it is a feasible mechanism for you, would you do it?

Mr. CONNELL. Yes, we certainly would.

Mr. DRINAN. On another point you indicate that habitual violators should be revealed or their names should be given to the members of the credit unions. But apparently you do not support the concept of disclosure of habitual violators to the entire world. Would you comment on that.

Mr. CONNELL. It is not that I oppose it. I am not sure it is of that much value in the credit union situation. The purpose of the disclosure of the habitual violator, as I understood it when we did it in Connecticut, was to give the general public notice of the institution that is not properly disclosing, say, a truth in lending violation or that type of thing, so the person would know enough in the comparison context that the information might not be accurate from that institution so they ought not to do business with it.

Mr. DRINAN. Would you reveal this to the press, though, in the event you find a habitual violator, would your organization put out a press release so that in fact the press could notice this?

Mr. CONNELL. We could.

Mr. DRINAN. But you do not do it?

Mr. CONNELL. No, we do not do it at this point.

Mr. DRINAN. Wouldn't that be an effective deterrent to this group? Would it not scare them a bit?

Mr. CONNELL. It would probably make them feel very uncomfortable.

Mr. DRINAN. Wouldn't it deter them if they thought their name was going to be in the Washington Post?

Mr. CONNELL. Yes, it does have a deterrent effect. I guess my main concern was to focus the disclosure to the members as such so that the individual members would learn. My thought was a credit union with a widespread employment membership, not many of the members would read the newspaper. My interest was to get the information to the members as effectively as possible, not concealing the violation.

Mr. DRINAN. On an additional point, the last point, do you feel that the two statutes in question need any amendment by the Congress?

Mr. CONNELL. The Equal Credit Opportunity Act and the Fair Housing Act? I do not have any recommendations for either of those two. My principal recommendation is really somewhat outside the subject of this particular hearing, that is, the Truth in Lending Act should be amended to be more like the Equal Opportunity Act in the State exemption area—I take that back. If there is a specific amendment that might be worthwhile, it would be specific exemptions to extend to State authorities examining Federal institutions, if the Congress is not sure that the exemption could already extend to it. I feel it does, it does extend to federally chartered institutions and a State authority should be able to examine both.

Mr. DRINAN. Thank you very much for coming, and thank you for your testimony.

Mr. ROSENTHAL. Mr. Corcoran.

Mr. CORCORAN. Thank you, Mr. Chairman.

Mr. Connell, I appreciate your testimony. There are two areas about which I would like to question you. First of all, can you give me any idea about how much money or what percentage of your agency's budget you devote to the enforcement of the ECOA?

Mr. CONNELL. Yes; we have submitted that to the committee in an appendix, exhibit C. Our budget is in this particular area. We carefully analyze all our examination components on a regular basis. We time the different components of each examination, whether it be loan analysis for solvency or compliance. We have indicated here that in fiscal year 1977-78, from July of 1977 to the end of June 1978, which I guess really is not a fiscal year, this area of consumer examination and training activity absorbed some \$698,300 and it is projected in the next comparable time to be \$834,000.

Mr. CORCORAN. Is the increase brought about by more examiners or more training?

Mr. CONNELL. I believe it is brought about by both, in the sense we are planning to put more people in that area and we have to train them as well. We allot each examiner 2 weeks of training per year in the time schedule, and we place that as an educational expense. The training in consumer laws has been usually the No. 1 area that examiners request additional training. Again, in our training courses we at the end of each course ask them which particular subject they would like more time on, and which less. Without fail, every single training course we have given, greater time has been requested in the consumer law area.

Mr. CORCORAN. The other area I want to ask you about concerns a subject about which there has been some disagreement among the witnesses. This regards whether or not there ought to be some monetary penalties when you find violations, in addition to the restitution making the potential customer whole. What is your view on that?

Mr. CONNELL. I think monetary civil penalties are an effective tool. Again, in my experience in the State law where we did have those civil penalties, it is an effective tool that has a direct impact on the institution and when you have to deal with just the criminal side of things the courts, as was stated earlier by Mr. Dennis, are unlikely to take up a case of that sort when they are faced with a bank robbery or a violent crime. So the civil penalty route has I think considerable merit because it takes it out of the court process. So I would favor that.

Mr. CORCORAN. Thank you very much.

Mr. ROSENTHAL. I do want to commend you again for the very effective and vigorous direction you have given to this agency. It is a pleasure to see you.

Mr. CONNELL. Thank you.

[Mr. Connell's prepared statement follows.]

PREPARED STATEMENT OF LAWRENCE CONNELL, NATIONAL CREDIT UNION
ADMINISTRATION

INTRODUCTION

Mr. Chairman, members of the Subcommittee, I am pleased to be here today to present my views on enforcement of the Equal Credit Opportunity and Fair Housing Acts.

Despite claims to the contrary, I believe that passage of the Equal Credit Opportunity Act has resulted in a direct benefit to the economy. According to recent publications, a significant proportion of new housing sales have been attributed to lenders counting in full the incomes of house-buying couples. In addition, an enormous number of women have entered the credit marketplace for the first time. Both factors have greatly expanded the potential credit market. The revenues flowing to both homebuilders and creditors as a result have, in my opinion, gone far beyond merely offsetting the increased costs engendered by Equal Credit Opportunity Act notice and recordkeeping requirements. Thus, I believe that the Equal Credit Opportunity Act has had a decidedly positive impact on the economy in addition to having greatly reduced the incidence of discrimination in the credit marketplace.

REDLINING

The Committee has requested me to comment on whether there is a problem of redlining discrimination in home lending by financial institutions, and whether urban neighborhood decay is in any way due to discriminatory practices in the handling of loan inquiries and applications by financial institutions. From a study conducted for the Connecticut Banking Department, I understand that the problem of redlining discrimination in home lending did exist. However, redlining has not surfaced as a noticeable problem for federally chartered credit unions because they only recently received authority to engage in long term real estate lending. Prior to May 8, 1978, Federal credit unions were limited to making estate loans with a maximum maturity of 10 years. Under that authority Federal credit unions made relatively few home mortgage loans, (only 444 in 1977), indicating that most prospective home owners desired the longer term mortgages available at other financial institutions. Therefore, to date Federal credit unions have not been a significant enough component of the home lending market to have had any discernible redlining problem.

I certainly do believe that urban neighborhood decay is in part due to discriminatory practices in the handling of loan inquiries and applications by financial institutions. When current and prospective residents of an urban neighborhood find it difficult

or impossible to secure loans to buy and renovate homes, the neighborhood obviously must deteriorate physically. Only with adequate access to financial resources can a neighborhood be preserved or rejuvenated. Equally important is the adverse psychological effect created by redlining. Such practices impress upon the residents in redlined areas the fact that attempting to obtain a mortgage loan is a futile endeavor.

In my opinion, many other factors have also contributed to the problem of urban neighborhood decay. These include the economy's dependence on new construction; a once prevailing public attitude that new housing is preferable to old; a reluctance on the part of prospective homeowners to undertake the extensive remodeling effort that an older home often requires; and government imposed standards in the area of land use, building codes, and punitive property taxes.

Anti-discrimination laws and the accompanying consciousness raising process have helped to largely eliminate overt discrimination against minorities in mortgage lending. Residual bias currently manifests itself in more subtle discriminatory practices which financial institution regulators must learn to detect and strive to eliminate. Any remaining ignorance of lenders which contributes to their reluctance to make urban mortgage loans must be combated through education programs geared toward teaching lenders how to accurately appraise urban dwellings, how to take advantage of government rehabilitation programs and how to evaluate lower income individuals as credit risks.

While redlining has not been a problem in Federal credit unions, the National Credit Union Administration (NCUA) intends to insure that such practices do not develop with the new authority. Unlike other financial institutions that are community based, individual credit unions are confined to serving persons falling within a defined common bond of occupation; association or residence. At yearend 1977, 81% of all Federal credit unions served a membership based on the common bond of occupation; the field of membership of 15% was associational; only 4% served a common bond based on community. Credit union members working in the same plant could live in many different parts of a town or county. In order to prevent any potential credit union redlining problem from developing, whether knowingly or unknowingly, NCUA is in the process of drafting an anti-redlining regulation.

By taking this step, in addition to ensuring that an undesirable practice does not arise, NCUA is affirming the duty of a credit union to serve its members fairly and equally. The idea of providing equal access to credit to all individuals is one which triggered the evolution of the credit union movement. Thus, in fashioning an anti-redlining regulation, NCUA is re-emphasizing and carrying forth the ideals upon which the credit union movement is founded.

We believe that adequate statutory authority exists for NCUA to issue such a regulation under the Equal Credit Opportunity Act, the Fair Housing Act and the agency's authority to regulate long term real estate loans as set forth in the Federal Credit Union Act. Therefore, we will not need new legislation to convey this authority.

NCUA's regulation will address specific redlining practices. For example, we contemplate prohibitions against underappraising the value of a home based solely on age of the home and against considering the racial composition of the neighborhood and/or the prospective occupancy of the community. The thrust of the regulation will be to prohibit Federal credit unions from redlining, without imposing extensive recordkeeping requirements on them.

In addition, NCUA is expecting to expand its consumer compliance program through the addition of specialized consumer examiners. These examiners will be trained by civil rights specialists in the most advanced investigative and analytical techniques for detecting subtle or unintentional discrimination in mortgage lending.

Based on the findings of these examiners, NCUA will take any action necessary to bring offending credit unions into compliance with our anti-redlining regulation, Regulation B and the Fair Housing Act.

We will not hesitate to exercise our cease and desist authority, if necessary, to prevent the continuance of discriminatory practices in mortgage lending by any Federal credit union.

Our anti-redlining regulation will be published in draft for public comment in the near future. At that time, we will solicit the views of civil rights groups and consumer groups, in addition to credit unions. Our regulation will attempt to achieve the delicate balance between minimizing the administrative burden on credit unions while obtaining sufficient assurance that the consumer/member's rights are fully protected.

One major benefit I foresee resulting from our anti-redlining regulation is that it has the potential of playing a positive psychological role in urban renewal. I expect the knowledge of credit union members that their credit union does not engage in redlining and the feeling of assurance this engenders, to encourage prospective urban homeowners to apply to their credit union for a mortgage loan. By providing prospective urban mortgage applicants with a sense of optimism, credit unions can thus play a significant role in the revitalization of American cities.

PRESENT ENFORCEMENT

I will next turn to a consideration of NCUA's present Equal Credit Opportunity and Fair Housing Act enforcement efforts.

NCUA conducts an examination of every federally chartered credit union approximately once a year. Examinations are conducted to assure that the credit union is financially sound and is in compliance with all applicable consumer regulations.

In conducting the compliance portion of the examination, NCUA examiners employ a checklist and Consumer Regulation Compliance Summary form prepared by our Division of Consumer Affairs. The checklist is a list of questions covering the most important requirements of each Federal consumer law or regulation applicable to Federal credit unions. Two sections of the checklist deal with requirements of the Equal Credit Opportunity and Fair Housing Acts.

In completing the summary, the examiner assigns a code to each checklist question and a code rating indicating the credit union's overall compliance with each law or regulation. We use numbers 1 through 5 as codes. "1" means the credit union was in compliance, "2" that the credit union was not in compliance but that the area of non-compliance was corrected prior to completion of the examination, "3" that the credit union was not in compliance but that the examiner and credit union officials reached agreement that all areas of non-compliance would be corrected, "4" that minor areas of concern were not corrected and "5" that major areas of concern were not corrected.

The latest compiled data that we have available is preliminary data for January-September of 1977. Approximately 6,500 Federal credit unions were examined during this period.

Of these, 30 had overall Equal Credit Opportunity Act compliance codes of "4" and 49 had overall codes of "5". With regard to specific areas of non-compliance, 31 were found to be in non-compliance by virtue of using improper terminology on their application forms, 52 were found to be in non-compliance with the previous Equal Credit Opportunity Act Notice requirements of Regulation B, 31 were found to have failed to clearly label optional information requested on their application form, 31 were designated as having failed to clearly indicate when spouse's income should be listed on their application forms, and 24 credit unions were found to be in violation of the rejection notification requirements.

By comparison, 1,162 of the 6,500 credit unions had one or more areas of non-compliance for which specific plans for corrective action were developed and agreed to prior to completion of the examination. (The vast majority of the violations related to faulty loan applications. There were 279, however, which had failed to provide proper adverse action notifications.) In addition, 508 Federal credit unions were found to have areas of non-compliance which were fully corrected prior to completion of the examination.

EXAMINATION PROCEDURES

Whenever an examiner finds a violation that is not corrected in the course of the examination, he/she writes up a plan for corrective action. This plan describes the actions the credit union needs to take in order to correct the violation in the future. In the overwhelming majority of cases, credit union officials agree to make the necessary changes and target dates are set and officials designated to carry out the plan and follow up to assure that the credit union continues to carry out the plan in the future.

At the next regularly scheduled examination, one of the first things the examiner does is to check that the credit union has followed its plan for corrective action. All but a few credit unions would normally be in compliance by the next examination. In the few cases in which an examiner finds that the credit union has not carried out the plan for corrective action, the examiner makes an appropriate recommendation to the NCUA Regional Director regarding administrative action.

In the case of a really serious violation discovered for the first time, the credit union would be coded on our early warning system, a system we have developed to flag credit unions with significant operating or financial problems, for interim examiner contacts.

Those credit unions that have serious violations but do not agree to the examiner's plan for corrective action receive NCUA Regional Office follow up which may include a preliminary warning letter or other appropriate administrative action.

We view the examination as one way of educating credit union officials as to their consumer compliance responsibilities. In order to prepare credit union officials for the new compliance portion of the examination, we distributed copies of the checklist and accompanying explanatory materials to officials even before the checklist was actually employed by NCUA examiners.

SMALL CREDIT UNIONS

Despite the rapid growth and total aggregate assets of the credit union movement, credit unions remain a relatively small movement, operated for the most part by volunteers with limited access to specialized legal sources. At the end of 1977, of the 12,750 federally chartered credit unions in operation, only 3,955 had assets of more than one million dollars each. This left 8,795 with assets under one million dollars each. Smaller credit unions thus account for 69 percent of the total number, but for only 9 percent of the total assets of federally chartered credit unions. Most of these small credit unions are run on a part time basis by volunteers. They have neither the benefits of full time paid staff, nor legal advice on what they should or should not do.

Since many small credit unions in particular have experienced problems in designing application forms which are in compliance with the Equal Credit Opportunity Act, as part of NCUA's enforcement effort, we are in the process of preparing a model credit union loan application form. This form will be written in simple English and designed to meet the special needs of credit unions. We will be requesting state

credit union league attorneys to bring the basic form into compliance with the laws of each state as well. We will then make the form available to all credit unions. As a result of this project, we hope to eliminate most Equal Credit Opportunity Act application form violations.

In addition, to help small credit unions in particular, we are planning to sponsor local clinics on compliance problems, for credit union officials and staff.

FUTURE ENFORCEMENT

As a general comment on NCUA's future enforcement efforts, it was my desire that NCUA begin separate consumer compliance examinations in the next fiscal year. Separate compliance examinations have proven highly effective in discovering and correcting consumer law violations in banks. Despite the fact that NCUA is self supporting through assessment of supervisory and examination fees, we are subject to Office of Management and Budget authorization.

As noted earlier, we are hoping to expand our consumer compliance examination program for this fiscal year through the addition of some specialized consumer examiners.

In addition, NCUA will seek criminal prosecution of Federal credit union officials, and/or institute cease and desist or removal proceedings against officials, where the facts clearly indicate that an official intentionally committed a substantial violation of law, where an official instituted a practice in the credit union with the intention of causing the credit union to be in violation of the law, or where the facts clearly indicate that the official was grossly negligent in failing to assure that proper procedures were instituted in order to assure that the credit union was in compliance with the law. We have already instituted removal proceedings in cases of fraud perpetrated by credit union officials.

In order to evaluate possible remedies, I believe that we must refer back to the legislative history of the Equal Credit Opportunity Act. In addition to being a consumer protection statute, the Equal Credit Opportunity Act is an anti-discrimination statute. As such, enforcement remedies should be designed to "effectuate the cessation" of a discriminatory practice; to ensure full restitution to the injured party and to eliminate the lingering effects of past discrimination. Thus, in fashioning a suitable remedy for any type of violation, all three goals must be taken into account. In cases of repeat violations, where a credit union has failed to correct conditions found on a previous examination, we believe that notification of the victim is an appropriate remedy.

As you are aware, the financial regulatory agencies are attempting to fashion interagency guidelines for the enforcement of the Equal Credit Opportunity Act. We believe that it is highly desirable for the financial regulatory agencies to agree to employ the same set of rules in enforcing the Act since differences in agency enforcement could result in some types of institutions facing more stringent compliance standards than others.

NCUA is participating in the drafting of interagency enforcement guidelines in the hope that uniform enforcement will foster healthy credit market conditions and increase overall compliance. Therefore, we are supportive of the endeavor. We must note, however, that we consider the draft guidelines to be deficient in one major respect.

As I mentioned earlier, Congress intended remedies for violations of the Equal Credit Opportunity Act to fulfill three goals. In addition to ensuring that the discriminatory practice would not be continued in the future, remedies are also required to make the injured party whole and to eliminate the lingering effects of past discrimination. Based on comments we have received from consumer and civil rights groups, we believe that the remedies contained in the draft interagency enforcement guidelines do not adequately fulfill all three goals. We hope that this deficiency will be corrected when the agencies reconvene and reconsider the draft guidelines. At such time, NCUA will make every effort to bring the guidelines into harmony with Congress' intentions as we understand them.

The Committee has asked under what circumstances NCUA would release publicly the name of institutions that have refused or failed to eliminate discriminatory practices. As Connecticut Banking Commissioner, I supported disclosure of habitual violators where such institutions dealt with the general public. Since credit unions do not deal with the general public, such notice could be expected to have less impact on the credit union. However, I do support the concept of disclosure of habitual violators to the credit union membership.

EDUCATION

I will next turn my attention to a consideration of NCUA's educational efforts. Since credit unions do not serve the public at large, but only members of specific groups and residents of specific areas, we focus our educational efforts toward the consumer/member as well as credit union officials and examiners.

A major component of our education program is the recently completed and distributed loose leaf binder entitled Manual of Laws Affecting Federal Credit Unions. NCUA distributed the Manual free of charge to all Federal credit unions. The Manual contains copies of Federal consumer laws and regulations applicable to Federal credit unions. Each section is preceded by a simple English explanation of the highlights of the law or regulation and includes citations to the law itself. An abbreviated version of the Manual is being provided by NCUA free of charge to all federally-insured state chartered credit unions. I have received numerous letters from credit unions thanking us for providing the Manual and commenting

on how valuable it has been as both a comprehensive reference tool and a source of understandable information on the consumer laws. In addition, NCUA has prepared a slide show presentation on Regulation B, designed to be used by credit unions in educating their officials and members. Many credit unions have been provided copies of this slide show free of charge and have reported that the Equal Credit Opportunity Act workshops they sponsored for their members using the slide show have been extremely successful.

NCUA also offers to make both its regional and central office consumer affairs staff available for presentations to credit union members and consumer groups. As a result of our standing offer, members of NCUA's consumer affairs staff make frequent consumer education presentations on the Equal Credit Opportunity and Fair Housing Act which again have brought favorable comments.

NCUA recently expanded its Division of Consumer Affairs through the creation of the position of Associate Assistant Administrator for Consumer Affairs and the addition to the division of four consumer affairs professional slots. This expansion was in large part undertaken to enable the division to engage in a more comprehensive consumer education program. Two of the new consumer affairs slots were filled by individuals with extensive backgrounds in consumer education.

Our expanded educational effort will include more emphasis on educating consumer/members about their rights under the Equal Credit Opportunity Act and Fair Housing Act. Towards this end, we have embarked on a review of all available Equal Credit Opportunity Act and Fair Housing Act educational materials programs prepared for use by credit unions and their members. We are in the process of assessing what educational needs of credit union members remain unfilled and how we can best fill them. Our goal is to supplement existing educational programs, while avoiding unnecessary duplication of effort.

As soon as we determine exactly what information needs exist, we will focus on how to most effectively present this information to the consumer/member. A brochure and a movie are two likely components of our expanded efforts. We will utilize sources outside of the agency if necessary to provide artistic and technical assistance in the preparation of our educational materials. I am committed to producing educational materials of the highest quality and to making these materials available to all credit union consumer/members.

The committee has inquired as to NCUA's view on the role of private litigation in enforcing the credit anti-discrimination laws. NCUA believes that private litigation has a proper role in bringing about compliance with the laws against credit discrimination. In drafting the Equal Credit Opportunity Act, Congress clearly provided two separate avenues through which compliance would be achieved. The first is administrative enforcement. Congress granted each regulatory agency

authority to ascertain, through its examination program, the degree to which institutions under its jurisdiction were in compliance with the Act. It was envisioned that the agencies would issue cease and desist orders against institutions that persisted in violating the law.

In addition to providing for administrative enforcement, Congress fashioned a potent civil remedy available to individuals whose rights had been violated. The fact that the civil liability provision is so stringent indicates that Congress expected it to play a deterrent role in addition to compensating injured parties.

Thus, NCUA views the availability of a private remedy with the possibility of large damage awards by the courts as one mechanism through which Congress intended to achieve creditor compliance with the Equal Credit Opportunity Act.

We distinguish between the administrative and private remedy as follows. When a consumer/member makes a complaint against a Federal credit union to NCUA, we assume that the individual is choosing to pursue an administrative remedy. We conduct a full in-depth investigation of the complaint, using regional supervisory personnel and consumer analysts. If the consumer at any point in our investigation requests information about his/her rights under the Equal Credit Opportunity and/or Fair Housing Acts, we supply brochures published by other government agencies describing these rights. If the consumer asks an NCUA consumer affairs staff member whether a private remedy is available

at any stage, they inform the complainant that a private cause of action may be brought and that the complainant should seek the advice of an attorney of his/her choice if he/she desires to pursue this remedy.

When NCUA has concluded its investigation of the complaint, if we have found no evidence of discrimination, our recently instituted procedure is to explain first to the complainant what steps we have taken in investigating the complaint, second, that we have concluded our investigation and have not found evidence of discrimination and third, that the Equal Credit Opportunity and/or Fair Housing Acts provide individuals with the right to bring a private action. We further notify the complainant that if he/she wishes to pursue this course of action, the advice of an attorney of his/her choice should be sought.

Thank you for providing me with this opportunity to share my views on enforcement and education under the Equal Credit Opportunity and Fair Housing Acts with you. I commend this Committee for recognizing the important role these two laws play in the credit marketplace and for focusing its attention on the efforts of the financial regulatory agencies to achieve compliance under these laws.

Mr. ROSENTHAL. Our next witness is Anita Miller, a member of the Federal Home Loan Bank Board.

Ms. Miller, we want to thank you for the very prompt and comprehensive written response to our questions. We very much appreciate that and want to congratulate you on the very effective job you have done in this area.

STATEMENT OF ANITA MILLER, BOARD MEMBER, FEDERAL HOME LOAN BANK BOARD

Ms. MILLER. Thank you. May I request that my written statement be put in the record.

Mr. ROSENTHAL. Absolutely. Without objection, the statement shall be included in the record.

Ms. MILLER. What I did this morning was to decide to do away with the prepared statement I have for today and try to tell you something about the history and the evolution of the Bank Board's program in all of these areas.

Mr. ROSENTHAL. That is fine.

Ms. MILLER. I will attempt a conversational way, if I may.

I hope that the ad hoc quality of the presentation will do justice to the Bank Board's program.

As you know, our Bank Board has had a new chairman since, August 1977, Bob McKinney. I think that from the testimony we have heard today and from our own experience, we know that the leadership of a board and its chairman is terribly important to the environment in which that board is going to work, and to industry and consumer understanding of what the Board's program, motivation, and commitment are all about.

The first thing that Chairman McKinney did in his first speech to a trade industry group in Dallas, Tex., was to announce this new Board's commitment to the areas of equal opportunity and antidiscrimination.

I would like to take this opportunity to quote to you just a very few words from this speech which he gave October 21, 1977. He started out by saying to the industry:

We also might as well face the hard, cold fact the Federal Home Loan Bank Board often has been accused of being too close to its industry. While not passing on the truth of this charge, it is certainly true that in some cases the Board has not taken a leadership position in its dealings with the industry.

He then went on to say, at the conclusion of his speech, after talking about lending opportunities and partnerships, and the successful work of the Urban Reinvestment Task Force:

Our examination function may be described in a word—vigorous. We will be vigorous in our enforcement, not only of our basic safety and soundness regulations but also of civil rights and consumer protection laws as well.

He concluded by saying, "Make no mistake, violators will not have a friend at the Federal Home Loan Bank Board."

Mr. ROSENTHAL. Do you think the fact that the Senate gave Mr. McKinney such a difficult time caused him to respond in this fashion?

Ms. MILLER. I would hate to second guess a subject which I have not discussed with the Chairman. My personal analysis leads me to believe that the Chairman became far more aware of the importance of these issues to both the Congress and to consumers as a

result of the hearing process. But he is basically a very committed and fair human being. I think that it is a combination of his commitment to the law, his own sense of what is fair, and his own realization of what an important issue this was nationally that resulted in his taking such a strong position.

Mr. ROSENTHAL. When did you come on the Board?

Ms. MILLER. In May of this year.

Mr. ROSENTHAL. In other words, you had a long background in community preservation, neighborhood revitalization, things of that nature, both in Rhode Island and in New Jersey?

Ms. MILLER. That is right. I would be happy to respond to questions, but I really wanted to show you where the Chairman and we as a Board have followed up since that opening statement to the Board about his commitment.

Mr. ROSENTHAL. Please do.

Ms. MILLER. The response to your question is, I think, another indication of the commitment of this Board and this administration. When it came to choosing a new Board member, the Chairman worked very closely with the President and his staff. The fact that I was chosen as the second Democrat and the third Board member is very indicative of this commitment as well. I cut my teeth in housing in the civil rights movement, the fair housing movement in Rhode Island. I was vice president of Citizens United for Fair Housing Law. It took us 7 years to get it through that State's legislature. Thereafter, I went to New York and I worked for another 7 years in housing production in East Harlem with the Upper Park Avenue Community Association there; a \$50 million new construction and rehabilitation program involving HUD and State programs.

Thereafter, I went to the Ford Foundation and worked as a senior program officer in the department of urban and metropolitan development. I was clearly a fair housing, urban advocate, who, in fact, had served as a tester when on the board of directors of the Fair Housing Council of Bergen County. So I think that my choice is just another indication of the fact that the Chairman not only made that statement but put it into action. I would welcome the opportunity to just follow through on this theme because I think it is really very important. After all, we are the agency that regulates the dominant home lending, neighborhood lending industry in the country. And I think that it is extremely appropriate that we have set the tone and the pace in this entire area, for the entire Nation. Now I would like to just quickly tell you the events that have followed, that reinforce our commitments in this area.

Mr. ROSENTHAL. Tell us when we are going to see some results from this new policy, also.

Ms. MILLER. OK, I will try to do that as well.

That speech was followed with action; proposed new antidiscrimination regulations, and that was done, as you know, at the White House with the Vice President. They were the toughest regs that had ever been proposed. Thereafter, the Chairman moved ahead to establish a Department of Community Investment, a new office within the Bank Board, and he chose to head up that office, Alvin Hirshen, the former executive director of the Housing Law Project in Berkeley, which was the housing backup center for the Legal

Services Corporation. That office was staffed with 17 experts. It is now going to full complement of 39. Its mission is to give technical assistance and program assistance to the institutions that we regulate. The notion here being that we not only wanted to move ahead with the shall-nots but we really wanted to achieve urban lending and to assure that there was the kind of assistance to savings and loans that would result in loans going in to efforts to revitalize communities.

Thereafter, the Chairman moved ahead to establish civil rights specialists in each of the Federal home loan banks and turned to the National Urban League to hire Johnnie Booker as our civil rights specialist in the Washington office. We appropriated additional funds for the Urban Reinvestment Task Force, and their level of support from the Board now stands at \$1.1 million a year. We implemented a plan of affirmative action throughout the Board and all its agencies, with particular emphasis on recruiting minority and women examiners.

Mr. ROSENTHAL. How many minority and women examiners have you recruited?

Ms. MILLER. As of June 30, 1977, we had 86 women and minority examiners.

Mr. ROSENTHAL. Out of how many?

Ms. MILLER. Out of a total of 783. As of June 30, 1978, we have 124. What we have done is to institute a new program to hire and train examiners. We have developed a new level at which women and minorities can come in and then move up through the system after having had explicit training. More than that, we are also promoting women and minorities up through the system so that we have more at higher levels now. We have only made a beginning.

Mr. ROSENTHAL. Tell me those numbers again, I could not hear you. Can you move the microphone a little closer?

Ms. MILLER. Certainly. As of June 30, 1977, there were 86.

Mr. ROSENTHAL. Eighty-six out of how many?

Ms. MILLER. I am sorry. There are—wait—I gave you the wrong number.

Mr. ROSENTHAL. As of June 30, 1977, there were 86 women and minority examiners out of how many?

Ms. MILLER. Eighty-six were minority and female, 50 were female, and 36 who were minority.

Mr. ROSENTHAL. Out of how many?

Ms. MILLER. 783.

Mr. ROSENTHAL. 783. About 14, 15 percent, I guess.

Ms. MILLER. Today, as of June 30, 1978, there are 124 who are minority and females, there are 78 who are females and there are 58 who are minorities.

Mr. ROSENTHAL. Out of how many?

Ms. MILLER. 824.

Mr. ROSENTHAL. Eight what?

Ms. MILLER. 824 examiners.

Regarding the Federal Home Loan Mortgage Corporation, there, too, there is tremendous movement. The Corporation has come up with an affirmative hiring plan, and the Corporation has also made an extensive study of its criteria for buying loans across the country to assure that its criteria are in no way discriminating against

those lenders who are indeed originating urban loans. So we have moved on that front also.

Mr. ROSENTHAL. You are now getting to the nub of the issue. What about redlining; what are you doing about it? What about the interagency task force; what about the proposed guidelines?

Ms. MILLER. All right—

Mr. ROSENTHAL. Do you represent your agency in the interagency grouping?

Ms. MILLER. I have represented the agency on certain issues and not on others. I have worked with the interagency group on the CRA. I have not worked on the other guidelines.

Mr. ROSENTHAL. What do you know about the proposed guidelines?

Ms. MILLER. What I know about the proposed guidelines is that there has been a great deal of discussion and effort to come together around one set of guidelines. It was felt that it was extremely important to do that in order to avoid confusion on the part of consumers because of the various financial institutions in the country.

At the Monday meeting—I was not there for the entire meeting—my understanding is that there was agreement on what the final draft should look like and should say. Staff is now at work putting that into exact language, and they will be going back to the full coordinating committee very quickly for final approval and their issuance. In terms of the Bank Board's own guidelines on antidiscrimination, I think they are new, landmark guidelines, because these guidelines which came out at the same time as our new nondiscrimination regulation relate to our prohibition of redlining, discrimination on the basis of age and location of a property.

In the case of those guidelines we do require restitution to the individual; we require advertising to the community of changed policies.

Mr. ROSENTHAL. How about punitive damages?

Ms. MILLER. As far as punitive—we feel we only have legal authority right now to ask for restitution. We do inform individuals that they can file civil suits under the fair housing law. In fact, we have posters which inform the public—

Mr. ROSENTHAL. If the lending institution you supervise has been guilty of discrimination, what happens?

Ms. MILLER. What happens is that our new guidelines require restitution to the individual and/or the class of individuals that have been so discriminated against.

Mr. ROSENTHAL. Let's assume—how does the rest of the community find out about this? Or do they?

Ms. MILLER. We also have the option of requiring that the institution publicize their change in lending policies and their new programs.

Mr. ROSENTHAL. Have you done that in any case?

Ms. MILLER. We have with these new enforcement guidelines, yes, we have done it a number of times.

Mr. ROSENTHAL. How many?

Ms. MILLER. We have required changes in lending policies about 90 times and we have required accommodation or adjustment made

to a complainant, even in cases where no explicit violation has been found, 20 times.

Mr. ROSENTHAL. Is redlining prevalent, for example? I saw those PIRG studies in Brooklyn, the Bronx, and so forth. Is it still as prevalent as it was a few years ago? What is the situation in your view?

Ms. MILLER. The situation in my view is that there has been a tremendous amount of education of the industry.

Mr. ROSENTHAL. That is not my question. My question is, what is the situation on the ground? Forget about the industry. Has there been massive redlining in urban communities in the United States?

Ms. MILLER. I think that in the past there has been extensive redlining. I do believe that as the issue has surfaced, as the Bank Board has taken more explicit action, as the Congress has passed new laws, as the examination and our training processes have improved, the industry has been educated and we are finding fewer examples of redlining than we found previously.

Mr. ROSENTHAL. Is it still going on?

Ms. MILLER. What we are finding is that there is discrimination often in effect as a result of lending policies that have the effect of being discriminatory. This is why we have required in our new antidiscrimination regulations that lending policies be public and be available to the public and that loan underwriting criteria be available to the public. This we think is also going to be very, very effective in getting at the problem.

Mr. ROSENTHAL. I am sort of acknowledging that you are an expert in this field, which I think you are, and I am asking you, what is the situation on the ground today?

Ms. MILLER. I cannot tell you that there is no redlining today. I do believe there is redlining today.

Mr. ROSENTHAL. Where is it most notorious? What community would you say is the worst, what States?

Ms. MILLER. I cannot really—

Mr. ROSENTHAL. Obviously Massachusetts and Connecticut have done a fairly good job. So I suppose it has been pressed there. But what other States would you say are the worst?

Ms. MILLER. Do we have any valid information that I can give you on that? I cannot. I cannot.

Mr. ROSENTHAL. You do not have any idea?

Ms. MILLER. No, I have no idea.

Mr. ROSENTHAL. How do you measure the extent of the problem? Is it a serious problem? Witnesses have testified that redlining has contributed significantly, I think is the word they used, to urban decay. Do you agree with that?

Ms. MILLER. I think it was one of the important factors in urban decay. I would not attribute all urban decay to redlining. I think we all know much better than that. We all can look at cities where services were pulled out, we can all look at the lack of lending in certain areas, and it is very hard to know which came first, the chicken or the egg, to be quite honest.

Mr. ROSENTHAL. I am trying to find out, has the situation changed in the last year or two? Has it gotten better or worse?

Ms. MILLER. I think the situation has gotten better in the last year or two.

Mr. ROSENTHAL. What do you base that on?

Ms. MILLER. I base that on the fact that there has been a tremendous education of both the consumer and the industry. I think—

Mr. ROSENTHAL. Where has the consumer been educated?

Ms. MILLER. I think that has happened through just the raising of the issue, through a lot of the grants that the Ford Foundation made, to consumer groups across the country. The issue was brought to Congress by the consumer groups. It was not brought up because the Congress on its own discovered it. They have been hard at work in identifying it. But more importantly, there are positive programs out there now to positively address the issue of redlining.

Mr. ROSENTHAL. What programs?

Ms. MILLER. You have Urban Reinvestment Task Force, operating in 50 cities across the country. There are 800 savings and loans across the United States involved in neighborhood housing services programs. They are putting up money for administrative expenses, they are sitting on boards of directors, they are working in partnership with communities, the cities. It is a tragedy New York has only one in Jamaica, and that was a struggle to get started. But this program involves 800 lenders.

The whole availability of community development funds now makes it possible to build partnership, to build positive programs. We now have a community investment fund of \$10 billion that is going out to the industry, when they come in with positive programs and plans to address mature communities, underserved communities.

Mr. ROSENTHAL. How much would it cost the United States to rebuild decayed urban housing?

Ms. MILLER. Sir, I cannot answer that.

Mr. ROSENTHAL. Why use a figure like \$10 million, that is a drop in the bucket, is it not?

Ms. MILLER. No, wait a second. We have \$10 billion.

Mr. ROSENTHAL. \$10 billion.

Ms. MILLER. Of specially priced advances going through our Federal Home Loan Bank system to savings and loans and mutual savings banks who belong to that system, who come in with special strategies for serving mature communities, communities experiencing displacement, communities in need of additional credit, and that program is, I think, an extremely positive thrust.

It is costing the bank system well over \$200 million over 5 years of private capital—I mean \$200 million over the life of the 5-year program of private capital. It is the kind of encouragement tool that together with our technical assistance efforts together with the strict enforcement of the regulation, the shall-nots, can make an increasingly big difference. And this is along with emphasis on public-private partnerships at the same time that our examiners are being retrained, our supervisory agents are being retrained and we have put out strong guidelines. We are enforcing the regulations, a new regulation, as there has never been enforcement before.

This combination of tools which is totally new for any regulatory agency is, to me, going to be the most responsive way to address the question.

Mr. ROSENTHAL. I understand everything you are saying. Things are better than they were. They were bad. How can you measure that? Are they 1 percent better, 3 percent better? Is redlining still prevalent, for example, let's say, in Brooklyn and the Bronx?

Ms. MILLER. I think that the studies that the New York State Banking Commission conducted tell us that it is, that there are deficiencies of mortgage credit available in those areas.

Mr. ROSENTHAL. Right now you have jurisdiction over the banks that are in those communities; is that not correct?

Ms. MILLER. No, over the savings and loans.

Mr. ROSENTHAL. Savings and loans, that is what I meant. So what are you doing about it?

Ms. MILLER. What we are doing is that we are examining those institutions, just as we examine other institutions. We follow up promptly on complaints where we have those complaints. We have a special problem now in New York because of the New York State deadlock on the usury rate which is being held hostage for antidiscrimination legislation, and the fact that the usury rate is 8½ percent and the cost of funds is way beyond that. It is pretty tough to move ahead under circumstances like that. But yet we will not tolerate any discrimination or any redlining.

Mr. ROSENTHAL. In the real world, it is not doing any good, then?

Ms. MILLER. That is not true at all.

Mr. ROSENTHAL. Well——

Ms. MILLER. I must refute that statement, that is not true at all.

Mr. ROSENTHAL. Could you refute it with some facts?

Ms. MILLER. The fact is that through the——

Mr. ROSENTHAL. Are your institutions making loans in the areas that we knew were redlined, for example in Brooklyn?

Ms. MILLER. I would have to go back to the examiner reports. I would have to look at any complaints that have come through from New York.

Mr. ROSENTHAL. You do not know?

Ms. MILLER. I cannot give you the information now.

Mr. ROSENTHAL. You did not think I would ask that kind of a question here today?

Ms. MILLER. I would be happy to forward it—it had not quite occurred to me.

[The information referred to follows:]

The Bank Board has received very few complaints and has not been able to substantiate any instances of redlining in Brooklyn and the Bronx by the financial institutions we regulate.

Specifically, in the past 15 months (July 1977 through October 1978), we received only one complaint alleging redlining in the New York City area. The complainant alleged that a Federal association was redlining because it wouldn't re-finance a loan on his property. Our investigation disclosed that the complainant already had a loan with the association on that particular piece of property and that the association had rejected the complainant's application because it found that the property was very poorly maintained and that its condition had greatly deteriorated in the hands of the complainant. We determined that the association's position was substantiated and that no other supervisory action was warranted.

Our examiners found what they thought might be indications of discriminatory action on the part of one State-chartered, FSLIC-insured association. That particular association would only accept mortgage applications after a personal interview at its main office and had purchased the overwhelming majority of its loan portfolio out-of-State rather than originating many loans in the area from which it drew its deposits. The association contended that the extra cost of training additional mortgage officers and staffing a branch office was not justified because of the small number of loan applications it received since it was located in a built-up, stable neighborhood of primarily multi-family dwellings and the relative closeness of the branch office to the main branch (1 1/2 miles). The association also felt that the extremely low ceiling on interest rates imposed by New York State's usury law made it economically unfeasible for the association to originate many loans within New York State.

As a result of work by our examiners and the Supervisory Agent, the association has agreed to improve its application procedure. Walk-in applicants are to be informed of their right to file a written mortgage application and appointments for personal interviews with the mortgage officer will be made by branch personnel for a mutually convenient time and may be held at the branch office. In addition, in order to increase its local lending, the association has committed

\$1 million to purchase a participation in a \$12.8 million construction and rehabilitation loan for a large low and moderate income rental apartment project in the Bronx; has committed \$1 million to purchase FHA/VA loans on properties located in the Bronx and lower Westchester Counties; and has contacted three local originators of FHA mortgages and hopes to increase its local commitments through them.

In their examination of another association in the New York City area, our examiners noted that the association did not appear to apply its underwriting standards uniformly throughout its lending territory and that not all of the association's underwriting policies had been reduced to writing and promptly communicated to the association's employees. The association's president explained that the difference in terms offered different areas (75% LTV and 25 year maximum versus an 80% LTV and 30 year maximum) was due to competitive needs. The association had recently opened a branch in the area with the more liberal terms and these terms were necessary to meet those being offered by other lenders in the area. He said the problem of getting all the association's underwriting policies in writing and promptly distributed was due to an oversight which would be promptly corrected.

When our examiners returned to check on the association's corrective action the next year, they were accompanied by the District's civil rights specialist. They found that as of March 1977, when the amended version of Regulation B went into effect, the association had redocumented its lending policies to fully comply with the new regulations and now uniformly applied the 80% LTV, 30 year maximum terms to all areas it served. The examiners reviewed the association's adverse action files and could find no indication of discriminatory rejections. The examiners noted that the association, whose lending record had been cited with approval by several citizens groups, had made almost 70% of its new loans in the Brooklyn area and that as of the time of examination, 77% of its total loan portfolio was invested in Brooklyn, 9% on Long Island, 5% in other boroughs of New York City, and 9% in purchased out-of-state loans. The examiners concluded that the problems noted in the earlier examination had been fully corrected, that there was no evidence of other discriminatory practices, and that this association was generally viewed as having one of the best lending records in the area.

As a result of the New York City Commission on Human Rights' extensive 1976 hearings on redlining in New York City and a group of studies on redlining produced by various citizen groups about the same time, much attention has been focused on this subject. However, as noted above, the Bank Board has not been able to substantiate instances of redlining by the institutions it regulates. We are not sure whether this is because they have a clean bill of health or because this is a very difficult problem to uncover, particularly given the state of lending in New York State at the moment.

There are several reasons why few allegations of redlining have been made about savings and loan associations. First, as can be seen from the attached charts, savings and loan associations comprise a very small part of the lending resources available in New York City (and New York State). Statewide, as of mid-1978, S&Ls held about 8% of the state's total deposits but held almost 22% of its total real estate loans. It is quite clear from the figures that commercial banks and mutual savings banks hold the overwhelming share of deposits in New York State and that mutual savings banks in particular are the largest mortgage lenders by far and thus have been the financial institutions on which most redlining studies have concentrated. The figures for the state are somewhat skewed because of the presence of the nation's major commercial banks in New York City which are normally less interested in mortgage lending than savings banks and S&Ls.

However, because of the restrictive New York State usury ceiling, which was set at 8 1/2% until very recently, many financial institutions found it less profitable in these times of high money costs to do much lending anywhere in New York State. What the usury ceiling was doing has making it much more profitable for financial institutions in New York to lend outside the state than within it. Because of this, it is very difficult to determine if any one financial institution was deliberately redlining a particular part of the city or the state since relatively little conventional mortgage lending was going on anywhere. As a result, many New York associations were purchasing large amounts of loans originated outside the state. During the first half of 1978, FSLIC-insured associations in New York State closed loans totalling \$595,027,000 and made net purchases of participations totalling \$577,439,000. As you can see, the total amount of purchased loans is almost as high as that originated in-state. (See attached article dated June 27, 1978, from the American Banker).

Commercial banks have been taking up some of the slack in mortgage lending, though, since Federally chartered banks can raise their mortgage lending rate a full percentage point above the Federal discount rate (which was 9 1/2% as of December 8, 1978). The recent action by the New York State legislature to increase the usury rate to 9 1/2% (with an escalator clause which may go into effect next spring) should encourage other lenders to get back into the mortgage market. However, this action will not completely solve New York's problems since this rate is still below what National banks can charge and is below the rates allowed in many other parts of the country.

The Bank Board will continue to use the tools it has at its disposal to combat redlining and to encourage the financial institutions we regulate to meet their community's credit needs. The implementation of our new monitoring system and of Community Reinvestment Act will give us the tools to determine if they are in fact doing this.

RESOURCES - DECEMBER 31, 1976¹

	New York State		New York City	
	Amount	%	Amount	%
Commercial Banks	171,656,000,000	64.54	145,868,000,000	69.8
Mutual Savings Banks	73,230,000,000	27.54	53,227,000,000	25.5
S&Ls	<u>21,067,000,000</u>	<u>7.92</u>	<u>9,788,000,000</u>	<u>4.7</u>
Total	265,953,000,000	100.00	208,883,000,000	100.0

	NORTHWEST BRONX - 1976 ²		Mortgage Originations in NW Bronx		Mortgage originations as percentage of deposits.
	Amount	%	Amount	%	
Commercial Banks	318,135,000	14.5	1,740,015	40.9	0.50
Mutual Savings Banks	1,547,100,000	70.4	1,460,900	34.4	0.01
S&Ls	<u>331,922,000</u>	<u>15.1</u>	<u>1,052,000</u>	<u>24.7</u>	0.30
Total	2,197,157,000	100.0	4,252,915	100.0	

¹ Source - 1976 Annual Report of Superintendent of Banks, State of New York, legislative document (1977), No. 91, p. 267

² Source - Testimony of Richard Callagher, Chairman, Reinvestment Committee of the Northwest Bronx Community and Clergy Coalition Before the House Banking Subcommittee on Financial Institutions, August 9, 1978.

[From the American Banker, June 27, 1978]

NEW YORK STATE SAVINGS AND LOANS INFLOWS TRAIL THOSE OF 1977

SCARSDALE, N.Y.—A net savings gain of only \$102 million was recorded by New York State savings and loan associations last month, \$59 million below the gain in May 1977. For the first 5 months of 1978, the flow of net savings into the State's 130 savings and loans was almost \$600 million below last year, the Savings Association League of New York State said.

May's inflow was probably influenced by savers leaving their money on deposit in anticipation of the higher-yielding short-term certificates which became available June 1, SALNYS continued. Heavy buying of the new 6-month certificates during the first 2 weeks of June was indicated in a survey of league members. However, approximately 82 percent of the funds were coming from existing passbook accounts, greatly increasing the cost of funds to the associations, according to the league.

As the slowdown in savings continued and associations prepared for a sharp hike in the cost of funds, the impact of New York's 8.5 percent mortgage interest ceiling became noticeable in the pattern of mortgage lending. Of the \$293 million in mortgages made by savings and loans in May, the league noted, almost 60 percent were secondary market purchases, such as Government National Mortgage Association securities, and out-of-state loan participations. At the same time, the associations committed an additional \$362 million to future loans, considerably below the \$483 million in commitments during the same month last year. In May 1977, new mortgage loans totaled \$274 million.

[From the American Banker, November 29, 1978]

14 SAVINGS AND LOANS PROVIDING \$12.3 MILLION BRONX REHABILITATION LOAN

(By KEITH ROLLAND)

NEW YORK.—Fourteen savings and loan associations in the metropolitan New York area are providing a \$12.8 million construction and permanent loan for rehabilitation of a run-down apartment complex in the central Bronx which will provide housing for 291 working poor families, it was announced here this week.

The complex, known as Roosevelt Gardens, consists of 14 buildings which are being renovated and managed by Kraus Enterprises, Inc., a development firm here. The S&Ls are making the loan through the Thrift Associations Service Corporation, a statewide service corporation jointly-owned by 70 New York S&Ls.

Kraus Enterprises, a 13-year-old development firm which manages about 2,100 government-financed housing units in New York City, is relatively unusual among developers in that it provides many of the housing services needed for its buildings from within its own organization.

Kraus provides its own management services, maintenance crew including pest control and elevator maintenance specialists, security guard service, architects, inhouse computer system, vending equipment, landscaping division, and equity brokerage service.

This "all under one roof" development approach enables the firm to keep its buildings in good repair and to control development and maintenance costs, explained Alexander Schachter, Kraus's senior vice president. "It gives us control," which is the best long-term strategy, added the firm's president, Herman I. Kraus.

"We want to get paid and you're entitled to service," said Mr. Kraus, describing the company's approach towards its tenants. The firm follows a "quite strict" policy on rent collection, sending out dispossession notices 25 days after due rent is unpaid, Mr. Kraus said.

The Kraus firm employs architects, engineers, project managers and construction superintendents who oversee subcontractors who perform the rehabilitation work.

The New York City firm, which has been employing retired city and transit policemen for its 24-hour security force, now is training local unemployed people for this work. The first group of 13 internally trained security guards will be graduated in January.

Furthermore, the firm is discussing with federal Housing and Urban Development officials a Kraus proposal to train unemployed persons to carry out minor rehabilitation work such as painting and landscaping. The Roosevelt Gardens area has an unemployment rate of about 40 percent, Mr. Kraus noted.

The loan carries a basic interest rate of 9 percent and a 30-year term, and is insured by the Federal Housing Administration. Under HUD's Section 8 housing

program, HUD subsidizes about 60 percent to 80 percent of tenants' rent. Kraus Enterprises, meanwhile, receives an effective tax exemption of about 20 years on the Roosevelt Gardens complex under the city's 151 tax-exemption and abatement program.

Kraus Enterprises has an in-house program to sell an equity interest in the complex to high-income investors who can use their investments as tax shelters. Under a special Internal Revenue Service allowance for construction of low- and moderate-income housing, these investors can obtain accelerated depreciation over a five-year period of construction costs, estimated at \$10 million in the Roosevelt Gardens complex.

The investors become limited partners in Roosevelt Gardens Associates, a limited partnership created by Kraus Enterprises and the recipient of the TASC0 loan. Affiliates of Kraus Enterprises provide management, maintenance and other services to the partnership. Mr. Kraus is general managing partner in Roosevelt Gardens Associates.

Arthur Richardson, president of BRASH (Bronx Residents to Attain Sponsorship in Housing), a three-year-old development corporation engaged in housing and economic development, said this week that the Roosevelt Gardens rehabilitation "definitely is in the best interests of the community" and added that Kraus Enterprises has "very good housing and generally good management services." But, he said, there should have been more input from the community on the project.

TASC0, which made a similar loan to a Kraus-rehabilitated complex called Aldus Green in the South Bronx in 1975, already has made advances on the construction loan for the Roosevelt Gardens complex. Rehabilitation began about two months ago and occupancy is expected to begin late in 1979.

Gerald M. Calvario, vice president-treasurer of TASC0, said the service corporation has made more than \$120 million of investments in state housing during the past seven years and has \$15 million of additional projects in process. TASC0 has made no other loans this year and made one loan of about \$3.5 million for rehabilitation in Buffalo in 1977, he added.

The 14 S&Ls are: Allied Federal Savings and Loan Association, Jamaica; Bankers Federal Savings and Loan Association, New York; Brooklyn Federal Savings and Loan Association; Columbia Savings and Loan Association, Woodhaven; First Federal Savings and Loan Association of New York; Knickerbocker Federal Savings and Loan Association, New York; Ponce de Leon Federal Savings and Loan Association, Bronx; Serial Federal Savings and Loan Association, New York; The Tremont Savings and Loan Association, Bronx; West Side Federal Savings and Loan Association, New York; Empire State Federal Savings and Loan Association, White Plains; Suffolk County Federal Savings and Loan Association, Centereach; Westchester County Savings and Loan Association, Ossining, and the Westchester Federal Savings and Loan Association, New Rochelle.

[From the New York Post, Tuesday, July 5, 1977]

REDLINING FOES URGE BOYCOTT

(By Peter Freiberg)

An anti-redlining group in Brooklyn's Park Slope today kicked off a campaign to persuade residents to withdraw \$1 million from the Greater New York Savings Bank this week.

Leaders of the United Blocks Against Investment Discrimination (AID) held a news conference at the bank's Park Slope branch, 110 Seventh Ave. Brooklyn Assemblymen Frank Barbaro, Michael Pesce and Joseph Ferris and Manhattan Councilman Carter Burden joined them.

They asked Park Slope residents to re-deposit their money in three savings and loan associations that AID says have a good record of mortgage investment in Brooklyn.

AID contends that Greater New York, which has two branches in Park Slope and is the neighborhood's only savings institution, is redlining the area. Redlining is when banks refuse to loan mortgages in neighborhoods they say are deteriorating.

But the bank has denied it practices redlining, reiterating this position in letters sent to thousands of Park Slope depositors by Board Chairman Albert Casazza.

According to a recent state Banking Dept. study, Greater New York invested only 8.4 per cent of the money deposited by Brooklyn residents in mortgages within the borough.

AID Chairman Herbert Steiner says the three "good banks" where residents are being asked to save—Atlantic Liberty, Brooklyn Federal and Hamilton Federal—all make a "significant number of Brooklyn mortgages."

The \$1 million sought in withdrawals, Steiner says, "is a small number insofar as Greater New York is concerned, but it's not a small number as far as tiny little savings and loan associations [are concerned]."

"Our long range hope," he says, "is to start to build relationships with good banks so that they will want to come into the neighborhood and set up a branch." None of the three "good banks" has a branch in Park Slope. But Jerome Maron, Greater New York's executive vice president, predicted that the withdrawal week "will have very little effect on the savings bank, if any."

Maron said the anti-redlining activists "don't represent depositors, they are not depositors themselves. Our depositors represent a different point of view. They're content with the investment policy of the bank."

Maron says credit-worthy loan applications for private homes are considered. At the same time, he admits, Greater New York is not reaching out for Brooklyn applicants because it finds other investments more profitable.

Greater New York is also the target of the Bank on Brooklyn Campaign, an anti-redlining group in the East Flatbush-Prospect Lefferts Gardens neighborhoods.

The organization is picketing a Greater New York branch twice weekly, and is collecting "greenlining" cards from residents pledging to withdraw savings if asked to do so.

A number of anti-redlining activists in other areas have expressed doubt about the Park Slope withdrawal strategy, contending that the tactic should only be used as a last resort. AID is the first group in the city to seek withdrawals.

Mr. ROSENTHAL. Tell me any community in the country where something positive happened as a result of the new attitude of your Board which I commend you for. Getting beyond the rhetoric, give me an example.

Ms. MILLER. We now have 200 institutions which have applied to us for the first half a billion dollars of this community investment fund. Now every one of those institutions have come in with a plan for how they are going to operate in mature communities in urban revitalization.

Mr. ROSENTHAL. Where are those institutions? Can you give us an example of where some of those 200 are located, what communities?

Ms. MILLER. They are all over the country, they include New York City, the New York Bank for Savings I know is one.

Mr. ROSENTHAL. New York Bank for Savings is not one of your institutions, is it?

Ms. MILLER. New York Bank is a member of the Federal Home Loan Bank of New York.

Mr. ROSENTHAL. It is not one of yours?

Ms. MILLER. No, we do not regulate it.

Mr. ROSENTHAL. I am interested in where you have jurisdiction.

Ms. MILLER. I just explained that some 800 savings and loans are involved in the NHS program. Those include savings and loans involved in the program in New York as well. This is a program which was originated by the Federal Home Loan Bank Board back in about 1972. It is a program which is now operating very successfully in over 50 cities in the United States, all over New York State, in California, Texas, almost every State in the Union. It is a program that is growing. I personally was a program officer on about seven of the neighborhood housing services programs, including Baltimore and Dallas, and I helped to put the Jamaica one in place. It is an extremely effective program.

Mr. ROSENTHAL. Jamaica is going downhill so fast you cannot get hold of it.

Ms. MILLER. Well, I am not willing to accept the responsibility for what is happening in Jamaica.

Mr. ROSENTHAL. I am not blaming you personally.

Ms. MILLER. If we had had our way, and we have made every effort over the years, there would be additional neighborhood housing services programs in New York City. We have not been successful. Our staff has gone into New York—I know when I was at the Ford Foundation I arranged and set up those meetings—and asked for an opportunity to expand the program, willing to put in staff at their expense; willing to put in money; to seed high risk loan funds; to set up NHS's in every borough in New York City, and, we were unsuccessful in getting the city to move. Even with all of this laid out, a successful program that leverages bank and savings and loan dollars, a successful program that brings technical assistance to homeowners that we know will result in reinvestment in mature communities, we could not expand. It has been my great frustration that we have not been able to do this despite all our efforts.

Mr. ROSENTHAL. Does this happen in other cities around the country, do you know?

Ms. MILLER. There have been some very few cities who decided they had more advantageous programs or decided not to go that way. But there is a long waiting list for neighborhood housing service efforts.

Mr. CORCORAN. Could I ask a question here?

Mr. ROSENTHAL. Sure.

Mr. CORCORAN. Regarding the specific case in California where the action taken by the Federal Home Loan Bank Board that I think was really pulling the punch. I realize that the decision that the Federal Home Loan Bank Board made occurred before you became a member, Ms. Miller, but it does bring up the point as to whether or not the leadership in the Federal Home Loan Bank Board is going to be there to encourage States and consumer groups to be advocates in terms of eliminating this redlining and eliminating this discrimination which does take place. In the case decided last month the court ruled in favor of the Federal Home Loan Bank Board, and I just wonder if there is going to be any change in attitude in the Federal Home Loan Bank Board regarding the question of State preemption.

Ms. MILLER. I was not a member of the Board when the suit was being adjudicated, but I would have supported the Board's position had I been there. I think that the Bank Board has been extremely open to consumer interests. We were very careful in the nondiscrimination regulations to make sure that our loan underwriting standards and policies would be available to the public. In the CRA we have been strong advocates for public knowledge and participation in all of the CRA proceedings that the industry will have to undertake.

Now in terms of California—I know that Mr. Connell comes from a State banking background—I come from a civil rights background—my background tells me that the dual banking system is very, very important and that Federal law and Federal regulation are extremely important. Now California has a statute, 18 months

old, and they do not yet have a regulation that has been published. California has, I think, an aggressive program. We have a great deal of respect for it. But for us to give away the responsibility that we have under statute for the entire country I think would be a very grave error.

Mr. ROSENTHAL. Even if the State had a more vigorous enforcement practice?

Ms. MILLER. Let me tell you what the problem is there, as I see it, and I think it is a very complex and difficult one. We know that our examiners have very explicit training and are being continually retrained. We know how strong our enforcement guidelines are. We know our commitment to moving ahead with them. In addition to supporting the dual banking system and our responsibilities under it, if we even thought about giving responsibility to a State, we would be involved in making very serious judgments about not only the regulations and the laws of that State, but also the quality of its examination and its enforcement.

We would then have to review that on a continuing basis because State budgets change, regulations change, commitments change. We could not be sure that the quality and the control would be maintained State by State. We have instances where the States have come to us and we have rethought the issue and we keep coming out the same way. We have a responsibility. I think that our program is a landmark program, in terms of not only our regulation, but also our enforcement, our examiner training, our supervisory agent training, and the technical assistance that is available. And I think a national standard has to be met and kept across the country.

Mr. CORCORAN. It may be a national standard but if you recall in the truth in lending area, there were a couple of States that took the lead and based on their experience and on the excellence of their program, I recall particularly Massachusetts, that elevated the standards and the aggressive program of the Federal Government in that respect. Isn't there some value here to allowing the States to, in fact, giving them an incentive to exert some leadership here in the question of dealing with redlining?

Ms. MILLER. That is the value of the dual system really. When it comes to State-chartered federally insured institutions in California or anywhere else, we work very closely with State examiners. Our examiners and their examiners go in together. Now, this is for State-chartered, federally insured. Where a problem is found, it is the State agency that we defer to in taking the lead to have the problem corrected. But we track what is happening and we work very, very closely with them. So while they do take the lead and we do encourage them, because they are State-chartered, we never give up our responsibility to make sure that whatever is wrong is promptly corrected. We are not prepared to do more.

Mr. CORCORAN. The thing we are talking about here is the discrimination problem, redlining. I recognize that you have your examiners who look at the federally chartered savings and loans and there are examiners from the State who look at the State-chartered savings and loans on all of the other aspects of the audit. But the thing we are talking about here is a problem which I think the State of California at least is ahead of the Federal Government

in dealing with. And the question is whether the Federal Home Loan Bank Board in the court suit has preempted a State program, which is by all accounts more aggressive and stricter than the Federal policies. And I question that in view of the new attitude, in view of the new leadership which you claim exists at the Federal Home Loan Bank Board.

Ms. MILLER. Sir, I would be happy to forward to you a detailed analysis that will show you that our regulation is not weaker than California's, in fact stronger in some respects. We include multi-family and they do not. We would not agree that their program is stronger, nor are we prepared to relinquish what we see as our important statutory obligation to enforce our regulations across the country.

Mr. CORCORAN. That analysis would be much appreciated. I yield back.

[The information referred to follows:]

In response to your request for a comparison of the provisions of the Bank Board's new Nondiscrimination Regulations and the State of California's redlining law and regulations, we have prepared the attached chart. It should be noted that the Bank Board's regulations went into effect on July 1, 1978 (monitoring requirements effective as of September 1, 1978). No regulations have yet been adopted to implement the new California law, the Housing Financial Discrimination Act of 1977, which went into effect on January 1, 1978.

The major differences between the Bank Board's regulations and the statute and regulations of California are:

1. The 1976 California regulations and 1977 statute only cover housing accommodations of 1 to 4 units which generally must be owner occupied; whereas the Bank Board regulations cover any dwelling, including mobile homes and apartment buildings, regardless of ownership. In addition, the Bank Board's regulations also cover any vacant land which is offered for sale or lease for the construction or location of a dwelling.

2. Besides prohibiting discrimination based on race, color, religion, sex, marital status, national origin, or neighborhood, as do the California law and regulations, the Bank Board's regulations prohibit discrimination based on the age of the dwelling, the applicant's age, receipt of public assistance and good faith exercise of rights under the Consumer Protection Act. Only the 1976 California regulations, not the 1977 Act, address discrimination based on the applicant's age and only the Guidelines to these regulations address discrimination based on the age of the dwelling. The other items are not addressed by either the California law or regulations.

3. The Bank Board's prohibition against the use of discriminatory appraisals is much broader than California's regulations in that it prohibits the use of appraisals which discriminate on the basis of the age or location of the dwelling as well as those which are discriminatory *per se* or in effect under the Fair Housing Act or ECOA. The California regulations merely prohibit consideration of the racial, ethnic (or religious or national origin, in the case of the 1977 Act) or changing composition of the neighborhood.

4. The remedies available to an individual whose rights have been violated are more substantial under Federal law than under California law. First, an individual has direct access to the courts under both the ECOA and the Fair Housing Act. Under California law, an individual must first file an administrative complaint and exhaust his administrative remedies before he can request judicial review of the administrative decision. Second, both the ECOA and the Fair Housing

Act permit recovery of actual and substantial punitive damages, in addition to court costs and reasonable attorney's fees if one is the prevailing party. Under the ECOA, for example, a non-governmental entity may be liable for punitive damages in an amount not to exceed \$10,000 in an individual action or the lesser of \$500,000 or 1% of the creditor's net worth in a class action. Under the Fair Housing Act, a creditor may be liable for up to \$1000 in punitive damages in addition to actual damages. Under the 1977 California law, the Secretary of the Business and Transportation Agency can only award the financial assistance applied for or, if that is no longer available, up to \$1000 in damages. Upon petition to the court, the prevailing party may also be awarded costs and reasonable attorney's fees. The California regulations make no provision for any additional remedies for an aggrieved individual.

Although both the Bank Board and the California Secretary of Business and Transportation can issue cease and desist orders against a financial institution in violation of the applicable law or regulation, the Bank Board can issue a cease and desist order against individual officers, directors, and employees and can impose civil fines of up to \$1000 per day against any association or officer, director, or employee in violation of a final cease and desist order of the Bank Board. In addition, the Community Reinvestment Act explicitly requires the Bank Board to take an association's record in meeting its community's credit needs into account when determining whether to grant charters and approve deposit insurance, branches and other facilities, relocations, mergers, consolidations, and the like.

We hope that these materials will answer the questions you had about the comparative coverage of the Bank Board's regulations and California's law and regulations.

PROVISIONS	FHLBB REGULATIONS (12 CFR §§528 and 531.8)	CALIFORNIA LAW (California Health and Safety Code §§35800-35833)	CALIFORNIA REGULATIONS (Subchapter 23 of the Rules and Regulations of the S&L Commissioner)
I. Effective Date	Revised regulations went into effect on July 1, 1978. Non-discrimination Regs have been in effect since 1972.	Effective January 1, 1978. (Regs proposed to implement this act have not yet been made final.)	Adopted as emergency measure 1976.
II. Institutions Affected	FSLIC-insured State-chartered and Federally-chartered S&Ls which are members of the FHLB System. Hence, FSLIC-insured State-chartered associations must comply with both Board regs and State law. Federal associations must only comply with Board regs.	Any bank, S&L, or other institution of the State, including a public agency, that regularly makes, arranges, or purchases loans for the purchase, construction, rehabilitation, improvement or refinancing of housing accommodations.	State-chartered S&Ls.
III. Type of Property Covered	Any dwelling, which is defined as any building, structure, or portion thereof, including a mobile home, which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure or portion thereof.	Any housing accommodation with four or less dwelling units that is used as a residence and is or will be owner-occupied, except that the property does not have to be owner-occupied if the loan is a secured home improvement loan.	Structure designed for residential use by 1-4 families, which is to be occupied as the borrower's primary residence.
IV. Prohibitions	<p>1) Prohibits discrimination in:</p> <ul style="list-style-type: none"> -making home loans -application, collection and enforcement procedures -terms of home loans <p>based on:</p> <ul style="list-style-type: none"> race color religion sex marital status national origin 	<p>1) Prohibits discrimination in:</p> <ul style="list-style-type: none"> -making home loans -terms of home loans <p>based on:</p> <ul style="list-style-type: none"> race color religion sex marital status national origin or ancestry 	<p>1) Prohibits discrimination in:</p> <ul style="list-style-type: none"> -making home loans -application procedures -terms of home loans <p>based on:</p> <ul style="list-style-type: none"> race color religion sex marital status national origin or ancestry

PROVISIONS

FHLBB REGULATIONS

CALIFORNIA LAW

CALIFORNIA REGULATIONS

IV. Prohibitions (Cont.) -

age of person
 receipt of public assistance
 good faith exercise of rights
 neighborhood in which dwelling located
 age of dwelling

conditions, characteristics or trends in the neighborhood or geographic area surrounding the dwelling except in a particular case where it is required to avoid an unsafe or unsound business practice.

age of person
 conditions, characteristics or trends in the neighborhood or geographic area surrounding the dwelling except in a particular case where it is required to avoid an unsafe and unsound business practice.

Guidelines interpreting regs generally prohibit discrimination against older homes because of impact on minorities (Subchapter 24 of the Rules and Regs of the S&L Commissioner)

2) Refusal to lend in particular neighborhoods is unlawful. Therefore, refusal to lend, or varying terms, because of the income level or racial composition in a neighborhood or because of unfounded or unsubstantiated assumptions regarding the effect on loan risk of the physical or economic characteristics of a neighborhood is prohibited.

3) Prohibits use of appraisals which discriminate on basis of age or location of dwelling or are discriminatory per se or in effect under Fair Housing Act or ECOA.

Caveat: It is Board policy that JOAN decisions are to be based on the value of the individual property offered as security unless specific neighborhood factors affecting its present or short-range future value—such as current market trends based on actual transactions involving comparable property, zoning changes, or housing abandonment in the immediate vicinity — are clearly established and documented.

2) No financial institution should consider the racial, ethnic, religious, or national origin composition of a neighborhood or geographic area or whether or not such composition is undergoing change or is expected to, in appraising, determining whether to grant or in setting the terms of the loan.

3) No financial institution shall consider the racial, ethnic, religious or national origin composition of a neighborhood in appraising or use appraisal practices inconsistent with the provisions of the statute.

Caveat: Nothing in law 1) requires a financial institution to provide financial assistance if it is clearly evident that occupancy would create an imminent threat to the health or safety of the occupant, or 2) precludes a financial institution from considering the fair market value of the property.

2) An association, in appraising or in determining whether or not or under what conditions to make a loan, shall not consider the racial or ethnic composition of the neighborhood or geographic area, or whether or not such composition is undergoing change.

3) Contains extensive guidelines on use of appraisal forms to complement regulatory prohibition against consideration of racial or ethnic composition of neighborhood. Requires strict separation of appraisal and underwriting process, describes means of selecting comparables and appropriate numbers thereof; requires proof of any adjustments based on consideration of neighborhood factors, requires explanation of any difference between appraisal and selling price; suggests process for considering neighborhood effect on future value of property and principles relating to projecting a probable rate of decline in value.

PROVISIONS

FHLBB REGULATIONS

CALIFORNIA LAW

CALIFORNIA REGULATIONS

Fair market value is defined as the highest price which a property will bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller acting prudently and knowledgeably.

Caveat: Same caveat as '78 law regarding imminent threat to health which is explained to mean only in extreme circumstances. Contains section on "avoidance of unsafe or unsound business practice."

Section permits lender to consider "properly appraised current fair market value" - approximately same definition as found in statute.

If an association can document that one or more factors relating to geographic area such that, even assuming the availability of nondiscriminatory financing in the area, it is probable that such factors will cause the fair market value to decrease during the early years of the mortgage term it may adjust the loan to value ratio or require a shorter term to maturity - provided that adjustment does not exceed "minimum required for the security property to continue to be a reasonable security for the loan."

Permissible factors regarding a neighborhood are:

-- geological hazard to the extent necessary to avoid unsafe or unsound business practice.

V. Rulemaking

Secretary of Business and Transportation has rulemaking authority.

PROVISIONS	FHLBB REGULATIONS	CALIFORNIA LAW	CALIFORNIA REGULATIONS
VI. Enforcement	Board has authority to use full supervisory tools to enforce regs.	Secretary shall monitor and investigate lending patterns and practices and take appropriate enforcement action and recommend that State funds not be deposited in institutions violating the statute.	-- statistical analysis indicating 10 times the loan concentration in the area as population when related to that of the metropolitan area as a whole. Guidelines further describe concept of "reasonable security" and allowable evidence relative to preventing a probable rate of decline.
VII. Complaint Resolution	Complaints concerning lending discrimination may go either to Board's Office of Community Investment's (OCI) Consumers Affairs Division or to HUD's Assistant Secretary for Equal Opportunity. As a practical matter, the Board receives many complaints of this sort through its local offices and the FHLBanks. Where necessary, formal enforcement is effected by the Board in the normal manner. Initially, both the Board and HUD try to achieve informal voluntary compliance.	Complaints made to Secretary of Business and Transportation, who shall try to eliminate unlawful practice by conference, conciliation or persuasion. If unlawful practice has occurred Secretary must, within 30 days of receipt of complaint, make findings of fact and order the institution to cease and desist and take such other action as needed (such as making the financial assistance requested or paying damages of up to \$1,000). Institution or complainant may appeal through administrative hearing before the Office of Administrative Hearings, and judicial review is available thereafter.	Complaints are to be filed with the S&L Commissioner. Establishes Boards of Inquiry to review complaints filed with the Commissioner which Commissioner doesn't resolve to the satisfaction of the applicant within 21 days of receipt of complaint. Composition of Board of Inquiry: one public member, one representative of S&L industry, one employee of Business and Transportation Agency.
VIII. Public Notice	Member institutions must post and maintain an easily legible Equal Housing Lender Poster (at least 11" x 14") in a prominent place. The poster (the text of which is prescribed) recites the prohibitions of the Federal Fair Housing Act, Equal Credit Opportunity Act,	At the time of written application, applicants must be notified of prohibitions and right of review created by Act. Notice must use at least 10-point type and include address of Secretary, and information on where complaints may be filed and where questions may be asked. The notice must also be posted.	Each preliminary applicant (defined as any one who inquires of a loan officer or broker or agent for lending institution about the prospects of obtaining a loan) and each applicant (i.e. one who files a written application) shall be requested to read and fill out the Fair Lending Information Form which contains information similar to the Equal Housing Lender Poster and which requires racial,

PROVISIONS	FHLBB REGULATIONS	CALIFORNIA LAW	CALIFORNIA REGULATIONS
	and these regulations and states to whom complaints may be addressed.		ethnic, sex, and age notation by the applicant or by visual observation by loan officer if applicant refuses to give it.
1) Loan Denials	Pursuant to the ECOA, institutions must inform applicants in writing of reasons for denial or variation in terms. In such event they must maintain records of loan denials or variation in terms and reasons therefor.		Forms are to be kept in loan or loan denial file and must contain written statement of reasons for denial or variance in terms if applicable. Applicants must be notified in writing of reasons for loan denial if the loan is denied or of a variation in terms if such is the case. Associations must respond to written applications within 30 days.
2) Recordkeeping	Regulation requires notation, on a voluntary basis, by loan applicant (defined as the one making oral or written request for credit), of race, sex, marital status and age or by visual observation by loan officer if applicant refuses to give it, of race and sex only. Lenders required to maintain a loan application register of all loan applications beginning September 1, 1978.		A separate file of withdrawn applications (with a notation of the reason why) must be kept.

PROVISIONS

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CALIFORNIA REGULATIONS

IX. Written Underwriting Standards

Each institution must have written loan underwriting standards which will be available to the public upon request and which must be annually reviewed by the association. (These standards will also be reviewed by our examiners during the examination process.) Each institution must inform each inquirer of his/her right to file a written loan application and to receive a copy of the underwriting standards.

Each association shall make available at every office for public distribution a pamphlet explaining the association criteria for deciding whether and under what conditions to approve an application for a loan. Must file a copy with Commissioner. Pamphlet must state that all persons have a right to file a written application for a loan.

X. Marketing Policies and Advertising

Prohibits directly or indirectly engaging in advertising which suggests a policy of discrimination or exclusion in violation of Title VIII or ECOA or these regs. Requires institutions to review their advertising and marketing practices to ensure that their services are available to the community they serve. Defines discrimination in lending as including improperly restricting ones clientele to certain segments of the community. Expected is an examination of the association's loan portfolio and application flow to ascertain whether, in view of the demographic characteristics and credit demands of the community, the institution is adequately serving the community on a nondiscriminatory basis. Also, institutions must include the PHLBB EQUAL HOUSING (or OPPORTUNITY) LENDER in their non-savings advertisements.

No association shall use or engage in a marketing system or in an underwriting policy which has a discriminatory effect against a racial, religious, sex, marital status, or nation origin or ancestral group unless the association can show that the system is required to achieve an overriding legitimate business purpose.

Each association must maintain on file with the Commissioner a document describing the marketing policies and programs of the association. The document must include a description of 1) market areas, 2) media used, 3) focus of advertising and sample advertisements, 4) the use of informational brochures and posters, 5) mortgage counseling programs, if any, 6) working relationships with brokers, 7) budget

(Our Community Reinvestment Act (CRA)) regulations require each association to list the specific types of credit that it is prepared to offer the community it serves and is encouraged to include in its CRA Statement:

- (1) A description of how its current efforts, including special credit-related programs, help to meet community credit needs;
- (2) A periodic report regarding its record of helping to meet community credit needs; and
- (3) A description of its efforts to ascertain the credit needs of its community, including efforts to communicate with members of its community regarding credit services.

The CRA Statements are available to the public upon request.)

breakdowns, 8) staff responsibilities, 9) other information. In describing such information, the association is to give special emphasis to the extent to which such information relates to affirmative programs designed to market services to protected groups and to residents of various neighborhoods.

Copies of that portion of the report which deals with the association's lending activity must be available for public inspection

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XI. Guidelines concerning prohibited practices with regard to sex and marital status, age of borrower, prior history

Sex and Marital Status
Prohibits numerous practices, including but not limited to: discounting of spouse's income or refusal to consider part-time income, prohibits questions on childbearing. Reg B prohibits disallowing alimony, child support or maintenance payments.

Age of Borrower
Refers to Reg B's discussion of this which says lender can't use it as a negative factor, may consider source of income and security, and that terms should be consistent with likelihood of future income.

Prior History

Prohibits undue consideration of prior history factors such as credit difficulties, lack of homeownership, frequent job or residence changes, limited formal education, not having previously dealt with lender.

Effects Test

Reg. B prohibits discrimination "in effect."

Sex and Marital Status
Virtually identical to FHLBB Guidelines and Reg B concerning sex and marital status discrimination.

Age of Borrower
Prohibits use of arbitrary rule that no loan will be made to an applicant who is over a certain age, or whose age plus the mortgage term exceeds a certain number of years.

May consider likelihood of income continuation and all sources of income over early years of loan.

Prior History

While discussed as possible discrimination in effect, the guidelines cite all the examples used in FHLBB guidelines on prior history plus: prior arrest record, use of overly restrictive payment to income ratios; arbitrary minimum cut-off points for borrower income or loan amount; minimum square footage cut-offs.

Effects Test

Contains explanation of effects test and examples of practices which have a discriminatory effect.

Mr. ROSENTHAL. What portion of the Board's antiredlining regulations derive their legal authority from the Fair Housing Act and the Laufman case, and not from the enabling statutes of the Home Loan Bank system?

Ms. MILLER. There was a question that was raised yesterday afternoon at about 4:30 and when we got back to the office and we discussed it with our legal staff they said that it was really a complex issue and that they would have to spend some time in preparing a response. And we would be more than pleased to forward it to you.

Mr. ROSENTHAL. I am trying to understand and develop for the record the authority that all of the agencies perceive themselves as having for enforcement and enactment of antiredlining regulations.

Ms. MILLER. We do give you the answer to the question in the supportive documentation in the original set of questions that you gave us. Question No. 1, and we cite all the acts that are relied upon by the Bank Board in adopting the new nondiscrimination regulations and they are very much intertwined. We would really have to go through a process of sorting it out.

Mr. ROSENTHAL. I am trying to understand where your agency perceives its authority as compared to where the other agencies do. It might be that you have identical authority if you do not rely on your own enabling statutes. Ms. Miller, if you could look back to question 1, you would see there is a long list, including the Home Owners' Loan Act, the fair housing law, the Equal Credit Opportunity Act, the Civil Rights Act.

Mr. ROSENTHAL. That is exactly what I am coming to. If you are relying on the Civil Rights Act, the Equal Credit Opportunity Act and other things, then I would assume the other agencies have the same authority as you do.

Ms. MILLER. I assumed that that is the question you were getting at. I recognized that yesterday afternoon when it was posed to me. I think it is an important question for you. I would like to be able to provide our legal answer and do it thoughtfully in written form.

[The information referred to follows:]

Question No. 1

What provisions of law and what court decisions comprise the legal basis for the Federal Home Loan Bank Board's new nondiscrimination regulations and for the enforcement program that will be followed to ensure compliance with these regulations?

Answer (Revised)

The legal authority relied upon by the Bank Board in adopting the new nondiscrimination regulations was that cited in Board Resolution 78-302:

1. The Community Reinvestment Act, Title VIII, Pub. L. No. 95-128, 91 Stat. 1147 (12 U.S.C. 2901);
2. Equal Credit Opportunity Act Amendments of 1976, Title VII, Pub. L. No. 93-495 (15 U.S.C. 1691);
3. The Civil Rights Act of 1968, Title VIII (Fair Housing), Pub. L. No. 90-284, 82 Stat. 81 (42 U.S.C. 3601-3619);
4. Act of May 31, 1870, c. 114, §16, 16 Stat. 144, (42 U.S.C. 1981);
5. Act of April 9, 1866, c. 31, §1, 14 Stat. 27 (42 U.S.C. 1981, 1982).
6. E.O. 11063 - Equal Opportunity in Housing, 27 FR 11527;
7. Federal Home Loan Bank Act, §17, 47 Stat. 736, as amended (12 U.S.C. 1437);
8. Title IV (Insurance of Savings and Loan Accounts) of the National Housing Act, §402, 403, 407, 48 Stat. 1256, 1257, 1260, as amended (12 U.S.C. 1725, 1726, 1730);
9. Home Owners Loan Act of 1933, §5, 48 Stat. 132, as amended (12 U.S.C. 1464);
10. Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR 1943-48 Comp. 1071.

These various authorities fall into two broad categories:

(1) Items 1 through 6 are the broad statutory authorities which generally prohibit discrimination in housing and credit on the basis of race, color, religion, age, sex, marital status and the like. Several of these authorities, specifically items 1, 2, 3, and 6, require the Bank Board, among others, to adopt enforcement programs to insure that the prohibitions against discrimination contained in these authorities are adhered to by the institutions it regulates.

(2) Items 7 through 10 are the grants of general authority to the Bank Board and the Federal Savings and Loan Insurance Corporation (FSLIC), which the Bank Board directs, to supervise the lending practices of those financial institutions chartered by the Bank Board or insured by FSLIC. These authorities make no specific reference to nondiscrimination, but they do give the Bank Board wide ranging authority and enforcement powers over the institutions it regulates.

The following is a brief analysis of the various paragraphs of the Bank Board's Nondiscrimination Regulations and a reference to these authorities, as appropriate, to indicate the bases for these provisions:

Part 528 of the Bank Regulations:

Section 528.1 Definitions

(a) Application - This definition refers to the definition found in Regulation B (which the Federal Reserve Board has issued pursuant to the ECOA, item 2).

(b) Member institution - This definition is derived from §4(a) of the Federal Home Loan Bank Act and §403(a) of Title IV of the National Housing Act and defines member institution to cover those financial institutions which are both members of the Federal Home Loan Bank system and insured by FSLIC (items 7 and 8).

(c) Dwelling - This definition is derived from §802(b) of Title VIII of the Civil Rights Act of 1968 (item 3).

Section 528.2 Nondiscrimination in Lending and Other Services

(a) This section is derived from §805 of Title VIII of the Civil Rights Act of 1968 (item 3). The court in Laufman v. Oakley Bldg. & Loan Co., 408 F. Supp. 489 (S.D. Ohio, 1976), upheld the Bank Board's issuance of the original version of this regulation which interpreted §805 as prohibiting redlining of particular neighborhoods since this often had a disproportionate effect on protected classes. Similarly, redlining an area because of the age of the housing alone often has a similar effect, since many members of these protected classes may only be able to buy in older neighborhoods where the housing is usually less expensive. The prohibition against discrimination in application, collection, or enforcement procedures is derived from Regulation B (and thus the ECOA, item 2) as well as from Title VIII of the Civil Rights Act of 1968 (item 3).

(b) This section is derived from Regulation B, the ECOA and §527 of the National Housing Act.

(c) This section refers directly to §202.2(z) (definition of prohibited basis) of Regulation B.

Section 528.2a Nondiscriminatory appraisal and underwriting

(a) This section follows from the prohibitions contained in 528.2(a) (derived from §805 of Title VIII of the 1968 Civil Rights Act as amplified by Laufman v. Oakley Bldg. & Loan Co. and applies the prohibition against discrimination in lending to appraisals, one of the major components in a lender's decision on the soundness of a proposed loan. This interpretation was also upheld by the court in United States v. Am. Inst. of Real Estate Appraisers, Supp. 1072, 1079 (N.D. Ill., 1977).

(b) This section is derived from Title VIII of the Civil Rights Act of 1968, Regulation B and the ECOA, the Community Reinvestment Act (items 1, 2, 3) and our general regulatory authority (items 7 through 10).

Section 528.3 Nondiscrimination in applications

(a) This section is derived from §805 of Title VIII of the Civil Rights Act of 1968 and the ECOA (as amplified by §202.5(a) of Regulation B) (items 2 and 3).

(b) This section is a necessary corollary to the enforcement of the other provisions of these regulations, including §528.3(a) above. It is derived from §805 and 808(d) of Title VIII of the Civil Rights Act of 1968, the ECOA (particularly, as amplified by §202.5(a) of Regulation B), and the Community Reinvestment Act (items 1, 2, 3).

Section 528.4 Nondiscriminatory advertising

This section is derived from §804, 805 and 808(d) of Title VIII of the Civil Rights Act of 1968 and §701 and 704 of the ECOA (as amplified by §202.5(a) of Regulation B) (items 2 and 3).

Section 528.5 Equal Housing Lender Poster

This section is derived from Title VIII of the Civil Rights Act of 1968 and the ECOA (items 1 and 2).

Section 528.6 Monitoring Information

This section is based on all of the authorities listed above since the collection of this information is needed to determine if regulated associations are in fact lending in a nondiscriminatory manner (items 1-10).

Section 528.7 Nondiscrimination in employment

This section was adopted pursuant to Title VII of the Civil Rights Act of 1964 and Executive Order No. 11246.

As must be apparent, it is often not possible to offer citations to specific provisions of individual statutes as constituting the bases of a particular regulatory provision. In the Federal Home Loan Bank Act and, particularly, the Home Owner's Loan Act, Congress specifically directed the Bank Board to supervise the savings and loan industry and give "primary consideration to the best practices of local mutual thrift and home-financing institutions." It is this authority, along with comparable provisions of the National Housing Act, which give the Bank Board broad authority to adopt and enforce the regulations it has enacted pursuant to the mandate contained in the ECOA and the various civil rights acts to prohibit discrimination in the offering of credit for housing by the financial institutions it regulates.

Mr. ROSENTHAL. What happens if the proposed interagency guidelines are weaker than yours; what do you do then?

Ms. MILLER. We then have the option of strengthening ours, as was mentioned by Mr. Connell. Our enforcement guidelines in the fair housing and antidiscrimination area are quite strong. We have already taken steps in one case, where we have found a problem in the way interest was computed on some 413 mortgages, of ordering restitution to the borrowers in that case. That is now in the courts, we issued a cease and desist. Now that was a landmark kind of—

Mr. ROSENTHAL. That was a truth in lending kind of situation. I am more precisely interested in the redlining situation. The proposed guidelines I suspect may be weaker than what your folks are already doing.

Ms. MILLER. Our guidelines, we have our own guidelines for antidiscrimination, which are very strong; they require compensation, they require notification to the public.

Mr. ROSENTHAL. My question is, what happens if the interagency guidelines are weaker than what you now have in place? You are not going to soften yours?

Ms. MILLER. No, sir, we would not.

Mr. ROSENTHAL. Are you trying to use your influence within the community to strengthen the interagency proposed guidelines?

Ms. MILLER. We have been, of course, debating these regulations for a long period of time. Since we had already taken steps in our own guidelines on fair housing, we had our own precedent to go by. We have also ordered the cease and desist and ordered an institution to compensate some 413 borrowers because of their having miscalculated the interest rate on their loans.

Mr. ROSENTHAL. That is a different subject.

Ms. MILLER. I know. But what we had in effect was a policy. We have also requested legislation that will permit us to issue a cease and desist against an individual and penalties of up to \$1,000 a day for noncompliance. So we are seeking remedies through statute now that would be greater than the powers that we now have. Have I answered the question?

Mr. ROSENTHAL. Yes, you have answered the question. I still have that gnawing lack of understanding, however. If you have had this new commitment which I acknowledge that you do have, why have things not changed? Or if they have changed, have they changed significantly? Nobody seems to know the answer.

Ms. MILLER. They have changed. If you will be patient with me for one moment I would like to explain to you the dynamics of what is happening. When we have a new statute, we put out

regulations under that statute. The examiners will go in to examine for compliance with that statute and the regulation. All right. What you will find at that time is massive numbers of violations, many of them of a technical nature: recordkeeping, posters, and so on. The examiner will talk to the association on the spot. What happens is that the supervisory agent then sends a letter to the board of directors, and they have to respond that corrective action has been taken. In those cases where they do not respond we go back to them again. So what you have in the case of any new legislation and any new regulation is a massive educational and enforcement program that takes place.

Mr. ROSENTHAL. How long does that take?

Ms. MILLER. Wait. The next time you go back on that examination on that same issue you will find much fewer problems. Then you begin to look for patterns and practices, much more subtle and sophisticated kinds of things. You are looking for them the first time but you know—

Mr. ROSENTHAL. What time frame are you talking about?

Ms. MILLER. There is an examination done on every institution at least every 14 months.

Mr. ROSENTHAL. How long does it take to eradicate this very nefarious process of redlining within the institutions you have under your jurisdiction? Twenty years?

Ms. MILLER. I would hope not.

Mr. ROSENTHAL. Give me a number.

Ms. MILLER. It would seem to me that the more overt forms of discrimination have either been eradicated or are going to be eradicated within the next 14 months.

Mr. ROSENTHAL. You know they have not been eradicated.

Ms. MILLER. No; I mean on the part of the institutions. Particular institutions have already changed their policies, have, they are more aware—

Mr. ROSENTHAL. Could it possibly be they have become more subtle?

Ms. MILLER. Now what we are looking for and what we are defining is more subtle forms. We have gotten rid of the overt, the technical.

Mr. ROSENTHAL. Right. But on the ground today, is redlining still in business?

Ms. MILLER. I think so.

Mr. ROSENTHAL. So what can we look forward to?

Ms. MILLER. We can look forward to a steady, vigorous continuing effort of enforcement, of education, of technical assistance, of incentives of positive programs from—

Mr. ROSENTHAL. You get A for effort. When do we get results? When does redlining end insofar as the institutions you have jurisdiction over? When do they stop their role? That is what the people on the street want to know. You and I could talk this Washington talk for years. The people on the street want to know, when is it going to change the neighborhood?

Ms. MILLER. I think that the only intelligent answer that I can give you is that we will never reach zero, but that we will reach a point in time when equal credit opportunity and fair housing are very much alive in this land, and that is coming and it is on the

way and it is getting better daily and it is going to be better tomorrow than it was yesterday.

Mr. ROSENTHAL. You know—

Mr. MILLER. Sir, if I sat here and said to you—

Mr. ROSENTHAL. I find you a very cooperative, pleasant witness.

Ms. MILLER. My problem is I am not a liar. I cannot sit here—

Mr. ROSENTHAL. You have learned how not to answer a question.

Ms. MILLER. All right. Let me try—

Mr. ROSENTHAL. When are we going to eliminate redlining within the jurisdiction of the institutions that you have responsibility for? 6 months, 26 years, 106 years? I have to tell the people something.

Ms. MILLER. You can tell the people that the—

Mr. ROSENTHAL. That you are working hard?

Ms. MILLER. That the commitment is there.

Mr. ROSENTHAL. That is—

Ms. MILLER. That sometimes the problem is a very subtle one—

Mr. ROSENTHAL. Oh, stop it.

Ms. MILLER [continuing]. That you have sometimes effects of policies that are very difficult to recognize, that we are on top of every consumer complaint, they are all going to be satisfied fairly, and that we are moving ahead aggressively. I cannot sit here and say to you that tomorrow there will not be another case of redlining or next year or the year after, but what I will say is that we will see a marked decrease; we are seeing it already, I know, and that we are going to see a continuing, vigorous effort to enforce the best law that I have seen and the best regulation that I have seen.

Mr. ROSENTHAL. Would you say that you are one of the most knowledgeable people here in Washington on this subject?

Ms. MILLER. I think I am a knowledgeable person.

Mr. ROSENTHAL. You are clearly qualified as one who we would consider very knowledgeable.

Ms. MILLER. I would say that.

Mr. ROSENTHAL. What is your prognosis as to redlining?

Ms. MILLER. My prognosis as to redlining is that it is going—it is a decreasing element on the urban lending scene. As more and more enforcement moves ahead, as more and more positive programs move ahead, as more and more technical assistance moves ahead, we will see a changing—a very much changing scene. I think we have to recognize, sir, that there are certain parts of certain cities where you are going to need largely public action.

We have moved ahead now with HUD to develop a co-insurance program so that lenders together with the Federal Government can be more involved in neighborhoods, where you cannot have private sector involvement alone. There are other neighborhoods where a partnership between city and lenders and community can respond to the problem alone. But you have varying levels of treatment areas and you do not—you cannot say that there should be solely lender activity in certain areas of the city. Now, that is different from redlining. And I think we have to acknowledge that. But we will not tolerate redlining. The industry knows it.

We have got the positive programs to move them ahead. We also have a new market climate in this country where people are

coming back to buy housing, suburban housing is so expensive, there are market forces at work that complement everything else that we are trying at the Federal end. We have got HUD's community development program which gives flexibility to those communities that know how to use it, to target money into neighborhoods, to leverage private investment.

We have all these factors operating. We have not only the shall-nots and the rigorous enforcement and the restitution, but we have many positive forces. And that is what we need to eradicate the problem. And I cannot sit here and tell you it is going to be gone tomorrow or the next day. The only thing I can tell you, even though the answer is not what I would like it to be, is that we have the strongest commitment of any agency that I know of doing everything possible to revitalize our cities to make equal credit opportunity available on an equal basis to all people, and we have demonstrated our commitment in that area. I have no magical answers. I worked too long and too hard in these types of efforts to be able to think that there are magical answers.

Mr. ROSENTHAL. OK. We will take another crack at this in 6 months and at that point you will give me facts and figures and enforcement actions.

Ms. MILLER. Sir, our book is loaded with facts and figures. You presented us with a very challenging set of questions. We spent hundreds and hundreds of hours of staff time. It was an important exercise for us. The facts and figures are here. I did not choose to read them into the record because I did not want to take your time. But they are here and we will be happy to update them at any time. And know that through our continuing efforts and the new efforts that are going ahead, we are going to have an even more positive record to show you.

Mr. ROSENTHAL. Thank you very, very much. We very much appreciate your testimony.

The subcommittee stands adjourned.

[Ms. Miller's prepared statement follows:]

PREPARED STATEMENT OF ANITA MILLER, BOARD MEMBER, FEDERAL HOME LOAN
BANK BOARD

Mr. Chairman and Members of the Subcommittee:

The fact that these hearings relate to fair and equal opportunity in housing makes, I think, particularly appropriate the traditional opening statement that "I welcome this opportunity to testify before your Subcommittee." I do so first for a personal reason. A realistic opportunity for a decent home for all our families is, it seems to me, fundamental to our sense of a decent society, and our persisting failures in this regard must be a matter of persisting concern to all members of the community. This is an area to which I have devoted many years of effort before my appointment to the Bank Board. In the 1960's, when I lived in Rhode Island, I was Vice President of Citizens United for Fair Housing, which helped achieve fair housing legislation for that State. Later on, when I lived in New Jersey, I served on the Bergen County Fair Housing Council. I was active as well in personal investigations (for example, as a tester) in housing discrimination cases. Most recently, as a senior program officer at the Ford Foundation, in its Department of Urban and Metropolitan Development, I was responsible for the national portfolio of grants made by that foundation on housing conservation, neighborhood revitalization, and community development.

Since I became a member of the Bank Board several months ago, I have had to develop for myself a sense of the Board's role, its policies, and its efforts in putting an end to what is literally, as well as figuratively, a blight on our American landscape. I shall be glad this morning to do what I can to assist your Committee in its effort to obtain its own sense of the Bank Board's responsibilities and activities in this area.

The Bank Board has a comprehensive approach toward the goal of achieving fair and equal housing opportunities: one which involves both enforcement tools, to prevent and impose sanctions against discriminatory lending, and special assistance programs to encourage and enable associations to make the greatest number of home lending opportunities available. Our enforcement tools include:

- o Regulation B (implementing the ECOA which we enforce for Federal Home Loan Bank system members);
- o Regulation C (implementing the Home Mortgage Disclosure Act which we enforce for our Bank System members);
- o the Community Reinvestment Act regulations which will be in final form by November of this year.

They also include:

- o our new Nondiscrimination Regulations which attack forcefully and specifically discriminatory home lending policies;

- o a formal enforcement policy for our nondiscrimination regulations containing explicit directions to our supervisory personnel on required corrective action; and
- o intensive training for our examiners and supervisory personnel in the detection and correction of nondiscrimination violations.

Finally, we have requested statutory amendments to our supervisory authority to strengthen our sanctions against savings and loan associations and introduce sanctions against individual officers and directors who violate our regulations.

To coordinate and further develop our special assistance and incentive programs, we have,

- o created a new office, the Office of Community Investment, to assist S&Ls in identifying investment opportunities in areas which have been ignored traditionally;
- o established Community Investment Officers in each Federal Home Loan District Bank, at the Vice Presidential level, to coordinate the technical assistance and community investment programs within their districts;
- o expanded the successful program initiated by the Bank Board, the Neighborhood Housing Services program, which now involves 800 S&Ls in 35 states;

- o established the Community Investment Fund, a special \$10 billion fund which makes loans at reduced rates to S&Ls which are actively involved in neighborhood revitalization and community development investment, and
- o proposed legislation, which has been favorably considered by the House and Senate Banking Committees, to expand Federal associations' lending authority to permit the greatest flexibility in community development investment, neighborhood revitalization, and support of local government housing programs.

I would like to explain in somewhat greater detail these tools and programs and their relationship because they demonstrate the Bank Board's commitment to achieving fair and equal housing opportunity in this country.

Nondiscrimination Regulations

The Bank Board's new nondiscrimination regulations took effect on July 1, 1978. They are, we believe, an important step to assure that member institutions are not making arbitrary lending decisions based on unsubstantiated assumptions. The regulations implement the Fair Housing Act and reflect the Equal Credit Opportunity Act.

A three pronged approach is represented in the regulations by which:

- (1) the Bank Board will monitor compliance through effective detection and enforcement procedures;

- (2) member institutions will be continuously examining and evaluating their own commitment to fair lending; and
- (3) the public will have access to important new information to assist them in obtaining equal treatment in the lending process.

Specific major provisions of the new regulations are:

1. Institutions may not automatically refuse to lend because of the location or age of a dwelling.

This does not mean that the age and location of the dwelling will be eliminated from consideration in the loan evaluation process and that institutions will consequently be forced to make unsafe loans. What it does mean is that it is illegal to automatically refuse to consider or make a loan simply because a property is old or located in an area thought to be declining. Such arbitrary behavior is the antithesis of good underwriting, and may result in further deterioration of existing housing stock as well as limit the areas and price range of housing.

2. Institutions may not base their loan decisions on appraisals which are discriminatory.

Our examiners have reported in their review of appraisals a number of examples of appraisals indicating the "changing" nature of a neighborhood and using other code words representing discriminatory judgments against an area. Although we had interpreted our previous regulations as prohibiting the use of discriminatory

appraisals, the new regulations are specific as to the prohibition and prohibit the use of appraisals which discriminate on any of the bases described in the regulations. Our prohibition is intended to have a direct effect upon the appraisal industry as well as the savings and loan industry.

3. Institutions may not discourage loan applications on the basis of any protected borrower characteristic or because of the location or age of the dwelling.

This includes refusing to answer questions about loans or implying that no loan would be approved or application considered on the basis of any protected borrower characteristic or because of the age or location of the dwelling involved. Furthermore, an institution must notify a person inquiring about a loan or loan terms that he or she has a right to file a written application. The Bank Board believes that this will do much to prevent arbitrary pre-screening, a practice of major concern to our agency.

4. Institutions must have written nondiscriminatory underwriting standards which must be available to the public upon request at each office.

Nondiscriminatory underwriting standards will have to be written clearly, and each institution will have to review its standards, and the business practices implementing them, on an annual basis. Also, persons inquiring about loans, in addition to being informed about their right to file applications, must be told they have a right to a copy of these standards. We believe such availability will help borrowers evaluate their own ability to qualify for a loan and to understand better the factors which are considered in

the loan underwriting process.

5. Institutions must consider all relevant factors respecting an individual's creditworthiness in making loan decisions without giving undue weight to any one factor.

Loan decisions must be based upon a realistic evaluation of all pertinent factors respecting an individual's credit worthiness. Because of the pervasiveness of past discriminatory practices, member institutions are not to give undue weight to any of the following factors:

- (a) educational level;
- (b) lack of previous homeownership;
- (c) a history of numerous jobs; or
- (d) arrest records.

6. Institutions must comply with a new monitoring system for fair housing and equal opportunity lending compliance.

As of September 1, 1978, institutions must maintain a loan application register that, with regard each loan application, contains such information as the sex, race, age and marital status of the applicant; the amount and term of any final loan and the fees connected therewith; the loan-to-value ratio; the age of the security house; its census tract location; and application disposition as compared with the terms requested by the borrower. The register will prove useful to us in detecting lending patterns which may show a need for close examination of lending practices. We expect also that it will prove useful to the association for self-monitoring purposes and to identify missed lending opportunities.

Enforcement Policy

We have also published, on May 25, 1978, our policy describing the strong enforcement actions we will take in correcting nondiscrimination violations or patterns. The range of specific measures would include:

- (1) action to correct the violation and ensure that it is not repeated;
- (2) action to inform the public that the unlawful practice has been discontinued; and
- (3) affirmative action to correct conditions resulting from the type of violation with respect to individuals or classes of individuals or areas.

Using this policy, our supervisory personnel will when necessary to correct a violation or conditions resulting from the type of violation, in addition to notifying individuals of their own rights to sue, require restitution of fees and the solicitation of new loan applications from individuals unlawfully denied home mortgage credit. They will require the institution to correct onerous terms and refund to the borrower any overcharges. In addition to the individual relief required, the supervisory agents will require affirmative advertising in areas underserved by institutions announcing the institutions' nondiscriminatory lending policy. And they will require institutions in violation to notify the members of the class discriminated against, of the possibility of discriminatory action and their remedies.

It should be noted that this enforcement policy reflects a substantially increased emphasis by the Bank Board on specific redress for the victim or victims of discrimination.

Staff Training

Our examiners and supervisory personnel have received specialized training which reflects the Bank Board's commitment to the elimination of discrimination in housing credit. Examiners, field civil rights specialists, district appraisers, and examination officers at the management level of our District Banks, will receive intensive training in the new Nondiscrimination regulations during the week of October 2-6, 1978. The course outline provided in our written response indicates the scope of this training program which has been designed by the Bank Board Civil Rights Specialist. Supervisory personnel will receive similar training at a later date.

Regulation B - Equal Credit Opportunity Act (ECOA)

The Bank Board enforces Regulation B for all Federal and FSLIC insured state chartered S&Ls. Rather than restate Regulation B, with which I am sure you are all familiar, I think it would be more helpful to explain the relationship between our Nondiscrimination regulations and Regulation B.

ECOA as you know generally prohibits a creditor from discriminating against an applicant on a prohibited basis regarding any aspect of a credit transaction. Prohibitions against discrimination under the ECOA are included in our nondiscrimination regulations. This highlights for S&L management, in integrated form, all

the pertinent nondiscrimination in home lending requirements. For consistency, we use the Reg B definition of an "application."

Also, the revised Equal Housing Lender poster, required under our new regulations, contains a clear explanation of both the Fair Housing and Equal Credit Opportunity Acts. Finally the loan application register includes the record keeping data required under Reg B (§202.13) plus loan terms and location to provide us with a fuller picture of each loan application and disposition.

Home Mortgage Disclosure Act (HMDA) - Regulation C

The Bank Board also enforces the Home Mortgage Disclosure Act. The Act, which went into effect in 1976, requires lenders which have assets of \$10 million or more and main or branch offices in SMSAs, to reveal publicly the areas in which they lend. Broadly speaking, this is done by disclosure of all types of first mortgage loans for the purpose of purchasing residential property, and of all secured and unsecured home improvement loans -- broken down into loans originated by the institution and loans purchased by the institution.

We find the Home Mortgage Disclosure Act data to be an important component in enforcing the Fair Housing and Equal Credit Opportunity Act because it provides our examiners at every regular examination with information on where lending institutions have been making loans. We have begun the process of supplying our examiners with the economic and social characteristics of all census tracts so that

in reviewing HMDA data, they will have a complete picture of areas being served and those not being served.

Community Reinvestment Act

The Bank Board is in the process of implementing this new Act which will complement effectively our enforcement strategy. The CRA requires the Bank Board, in connection with every regular examination, to assess how well each institution under its jurisdiction is meeting the credit needs of its entire community, including low and moderate income neighborhoods, consistent with safe and sound operation. It also mandates that the Bank Board take that assessment into account when we evaluate any application by the institution for a branch or other deposit facility. We receive approximately 3500 applications a year of the type covered by the Act which gives you some idea of its magnitude.

We have proposed regulations jointly with the other Federal financial regulatory agencies which we are now developing in final form for the November 1978 adoption date required under the Act. The proposed regulations would require each lender to prepare and publish a Community Reinvestment Act Statement through which it would delineate the community it serves and describe the credit services it is prepared to offer there. CRA Statements would have to be adopted within 90 days after the effective date of the regulations and would have to be available for

scrutiny and comment by the public and would be reviewed by our examiners. Any comments received would have to be kept in a public file for at least two calendar years, and would have to be reviewed by the institution's board of directors at least once a year and by our examiners during every regular examination.

Although flexibility is given the lender, two significant checks on how institutions delineate their communities have been built into the proposal. First, the proposed regulations prevent gerrymandering by requiring that communities consist of the contiguous areas surrounding each institution's office or group of offices, without excluding low- and moderate-income neighborhoods. And, second, each delineation's acceptability will be further assured by the public's right to submit comments and the review of the delineation and public comments by Bank Board examiners.

I am hopeful that at this point a clear picture has emerged of the relationship of these enforcement tools. As you can see our examiners will have the benefit of three tools:

- (1) the loan application register required by the Nondiscrimination Regulations indicating from whom and for what properties loan applications have been received and their dispositions;
- (2) the HMDA data indicating the location and types of loans that the institution has granted; and
- (3) the CRA Statement indicating the entire community which the institution has stated it will serve and the types of credit it will offer.

Our examiners will review this as part of every regular examination; the S&Ls themselves will also have this annual picture of lending activity. I feel confident in saying that this combination of legislative and regulatory action represents the most comprehensive enforcement scheme developed to date to ensure fair and equal home lending opportunity.

Affirmative and Special Assistance Programs

As indicated, there is also the other side of the coin, the positive assistance and technical support which the Bank Board believes is equally necessary to build fully effective fair and equal home lending policies into our home loan system.

Office of Community Investment

Late in 1977, the Bank Board created a new Office of Community Investment (OCI). This Office is developing programs and policies to support agency goals relating to the prevention of disinvestment and to stimulate investment in communities throughout the nation. The Office has authority to hire 17 people and we have included a supplemental request in our 1979 Fiscal year budget for 21 additional slots to raise the staff level to 38.

The Office identifies and analyzes problems characteristic of urban areas, studies the nature and extent of current savings and loan industry activity in these areas, and then proposes methods and programs to enable the savings and loan industry to deal more effectively with these problems. OCI also coordinates the Bank Board's handling of consumer and discrimination complaints.

OCI is designed to provide training and technical assistance

to the savings and loan industry in discovering economically sound lending opportunities in our nation's communities and neighborhoods. The Office works together with other Federal agencies, and national, regional, and local interest groups, to develop sound policies and programs for community investment with the assistance of Community Investment Officers located in each of the 12 District Federal Home Loan Banks at the Vice Presidential level.

OCI recently completed a two day Forum on community investment and revitalization at which representatives from financial institutions, federal and local government agencies, the insurance industry, the home building industry, community groups, civil rights groups, legal aid groups, and labor unions, met and discussed ways to solve the problems of redlining, dislocation, and how to create community vitality and investment. We are now following up on this Forum with programs of common effort and action among these groups.

The Office is also responsible for administrative oversight of our activities in connection with the Urban Reinvestment Task Force, a joint effort of the Bank Board, the Department of Housing and Urban Development and the financial regulatory agencies to encourage neighborhood preservation efforts through the NHS program. As you know, since the creation of URTF, the Bank Board has provided all staff support services for URTF; during last year, the Bank System contributed over \$1 million for the administrative expenses of the Task Force activities.

Neighborhood Housing Services (NHS)

The Bank Board continues to be encouraged by the work of the Urban Reinvestment Task Force. By using local resources while requiring sound underwriting criteria, the Task Force has taught us that much can be done in our underserved communities. There are now Neighborhood Housing Services programs in 45 cities. In addition, the Neighborhood Preservation Projects program has developed 16 promising strategies to supplement the NHS program in areas like apartment building rehabilitation, neighborhood commercial revitalization, and the rehabilitation and sale of seriously deteriorated structures. During 1978 the Task Force is working to develop NHS programs in 24 additional cities, expand 10 existing NHS programs to new neighborhoods, support 6 new Neighborhood Preservation Projects and undertake new trial programs in 8 cities.

Community Investment Fund

Another major initiative of the Bank Board is an incentive program for the thrift industry to encourage greater lending in unserved areas. This is our \$10 billion Community Investment Fund (CIF). The CIF in each of the next five years will make available to FHLBank members \$2 billion in specially priced advances, with the objective of stimulating institutions to make mortgage credit available to mature communities in imaginative ways that will encourage preservation or revitalization of those communities. Priced at what will amount to $1/2 - 3/4$ of one percent below regular rates

the advances will be generated entirely by the FHLBank System, which will raise the funds in the capital markets by traditional methods. It is important to note that the preferential rate inherent in the CIF will come from FHLBank earnings; not a penny of it will come from taxes.

Since the creation of the Fund, three months ago, we have made over \$ 1/2 billion in these specially priced advances to over 200 institutions.

It is the Bank Board's belief that central to the task of preserving and revitalizing America's communities is the establishment of an effective partnership between the nearly \$500 billion savings and loan industry and State and local governments and community organizations. We anticipate that the CIF will both provide the spark necessary for this partnership, and act as a catalyst to institutionalize and make permanent the role of private financial institutions as active members of it. Institutions which have a record of involvement in mature community lending and have developed expertise in this specialty will be rewarded and encouraged to expand their efforts. Other institutions will be stimulated to acquire the capabilities required to participate in the Fund. Accordingly, the pool of individuals experienced in such lending will grow, and more institutions will familiarize themselves with its opportunities. By encouraging linkages with HUD, for example, through the Community Development block grant or Urban Development Action grant programs, and similar governmental and private sector programs, it is expected that CIF funds can act to encourage the release

of a substantially greater quantity of dollars than is represented by the \$10 billion amount alone.

Community Lending Proposal

Finally, the Bank Board has proposed legislation which would expand the authority of Federal associations in a cooperative effort with State and local government agencies to provide increased and more flexible financing for rehabilitation, home modernization, and residential construction. This too should have a powerful leveraging effect in the conservation and revitalization of our older housing stock. It too would involve our lending institutions more directly and more consistently in our efforts to stop neighborhood decay and to end discrimination and its effects.

The Specific Subcommittee Questions

It is the Board's hope that the replies and related material provided your Subcommittee in advance of this testimony have been responsive to the Subcommittee's needs. Let me now address myself to your questions specifically.

1. a. To what extent are the problems of urban neighborhood decay and redlining the result of discriminatory practices in the handling of individual loan inquiries and applications? In what ways and to what extent will the Federal Home Loan Bank Board's new nondiscrimination regulations address these problems of neighborhood decay and redlining?

Data already presented to your Subcommittee confirms the presence of discriminatory practices. Certainly the absence of adequate home financing has an effect on the quality of neighborhoods. The studies relating to neighborhood

decay also indicate that there are a number of factors that, in addition to redlining or individual discriminatory action, have been fundamental causes for neighborhood decay. For example, we refer to the fact of neighborhood disinvestment in general, commercial as well as residential. We also have in mind disinvestment by local government itself in maintaining, and indeed providing, the public services and support necessary to maintain livable neighborhoods or to upgrade deteriorating ones. As another contributing factor we have in mind the disinvestment by existing, often absentee, property owners. And we have in mind the whole question of disinvestment both public and private as it relates to the city as a whole.

It is in part for these reasons that the Bank Board has committed itself to the development of affirmative programs to make home financing resources available to those who need them on the terms needed. The Bank Board is committed, as well, to work together with all other possible agencies, public and private, in order to marshal and direct our collective resources on behalf of positive efforts aimed at preventing or correcting the problems of neighborhood decay.

This, in no way, of course, diminishes our commitment to eliminate redlining and other discriminatory practices by the institutions we regulate. Our position is simple enough: whatever the specific impact of such practices

and whatever the necessity of other programs as well, there can only be an unremitting effort to eliminate discriminatory practices.

Thus, the new nondiscrimination regulations are intended to emphasize to our own staff, the industry, and to the community, that this is in fact the Bank Board's commitment.

The regulations address the problems of neighborhood decay and redlining by identifying and prohibiting discriminatory conduct that constitutes or is related to redlining and neighborhood decay; and they establish clear rules for the industry to follow in maintaining fair and equal housing lending practices.

Specifically:

1. The regulations prohibit refusals to consider a loan or make a loan simply because a property is old or located in an area which the institution considers undesirable -- the classic redlining situation. Our previous nondiscrimination regulations prohibited refusals to lend in an area because of the racial characteristics or national origin of the residents. The present prohibition is broader and seeks to prevent loan officers from denying loans on the basis of any generalized assumptions. The regulations likewise prohibit the use of discriminatory appraisals which contain unsubstantiated judgments about neighborhoods. We are convinced that there are many sound loans not currently being made in urban areas and that they can be made within our regulations on a prudent basis. We do permit consideration on an individual basis of the condition and utility of improvements

to the security property and of conditions of the area which can be reliably related to risk. These may include street conditions, amenities, availability of public utilities and municipal services and exposure to flooding and land faults. However, such adverse factors must be clearly documented.

2. Consideration of the creditworthiness of the borrower must follow a similar pattern. Here, too, our standards emphasize that determinations must be based on the actual facts rather than on the basis of any kind of generalized standard, no matter how traditional. In connection with minority groups which have had to face discrimination in all aspects of their activities and needs, with employment, education, housing, or otherwise, our standards therefore call for recognition of the fact that weaknesses suggested in a particular record may, because of this pervasive discrimination, simply reflect lack or denial of opportunity rather than inadequacies of the borrower.

3. The regulations attack the pre-screening process in several ways. They emphasize that potential borrowers have a right to file a written loan application and are to be so informed. Institutions may not discourage applications by implying a loan would not be approved. The underwriting standards of the institution must comply with our nondiscrimination regulations, must be clearly disclosed in writing and must be available to the public. Persons

inquiring about loans must be informed of these standards and their right to a copy of them, as well as of their right to file a written application.

In summary, the Bank Board's new regulations:

- (1) identify for savings and loans, borrowers, public interest groups, and the community generally what residential underwriting standards are acceptable; and
- (2) assure that under these underwriting standards, fair and equal housing opportunities will be available to families seeking credit from insured savings and loan associations.

b. How will the Federal Home Loan Bank Board detect redlining discrimination at individual associations, and how will you enforce compliance with the nondiscrimination regulations, especially the anti-redlining provisions of these regulations? What role will the monitoring information specified in section 528.6 have in this program of detection and enforcement?

Detection:

The detail of recordkeeping and information required by the new monitoring system, HMDA, and CRA, combined with the firm charge to our examiners and supervisory agents to consider this problem area as one of our prime areas of concern, will contribute fundamentally to detection. The intensiveness of the examination procedure as it relates to possible discriminatory actions is indicated in the materials submitted to your Subcommittee.

In addition, we have instructed our examiners that the basic norm for discrimination is not intent but effect.

"Good faith" will simply no longer do. Further by "effect" the basic question or standard is whether the particular practice or action may have a discriminatory effect.

Finally, we have developed intensive training programs for our examiners in the detection of discriminatory practices. Basic to an effective detection program is the experience and expert judgment of our examining staff. This staff, with its familiarity with the community itself as well as with savings and loan operations generally, is in an effective position to uncover the most sophisticated types of discrimination. We have therefore added to our general training program specialized training in nondiscrimination for examiners and supervisory personnel. Additional intensive training explaining the new Nondiscrimination regulations will be conducted during the week of October 2-6, 1978.

Enforcement

Since enforcement of the regulations is the subject of question number 2, I will confine my answer on enforcement of our anti-redlining provision to that question.

Monitoring

With regard to the role which the monitoring information, specified in section 528.6, will have in our program of detection, let me first state what information (as to both borrowers and co-borrowers) we require on the loan application register:

- (1) race/national origin
- (2) sex

- (3) marital status
- (4) age
- (5) census tract
- (6) loan terms: interest rate, amount and term
of loan
- (7) fees
- (8) loan-to-value ratio
- (9) age of property
- (10) any change in terms offered from those
requested
- (11) disposition of the application

This information is designed to flag for the examiner possible discriminatory practices. If the register indicates a possible discriminatory pattern, such as denial of loans on older homes or denial of loans to minorities or women, the examiner would then review the loan application files themselves to determine whether or not there has been discrimination.

As already indicated, the examiner will also have the advantage in detecting nondiscrimination of:

1. The CRA Statement which will identify the association's lending area and what services it has stated it will offer in it, plus the public comment file on the CRA Statement.

2. The Home Mortgage Disclosure Act data, along with the census tract data, to indicate where loans have been made by the association and the characteristics of those areas.

c. What is your expectation about the date by which you can reasonably expect to achieve full compliance with these regulations throughout the industry?

The number of violations detected on an association by association basis should decrease with each examination as S&Ls practices under the new regulations become increasingly institutionalized. In addition, we fully expect that compliance will be furthered as S&L's find that in fact fair and equal opportunity in housing makes both good community sense and good business sense. We are optimistic also, that the dynamics of the Bank Board efforts together with efforts of other agencies, public and private, will have far reaching positive effects.

However, it should also be recognized that with additional examiner training and experience the number of reported violations may increase in the early years. Also, we anticipate that examiners increasingly will uncover more sophisticated and subtle forms of discrimination. So our basic answer is that this is an on-going process but one which will result in institutional change in the industry.

2. Recent Enforcement:

a. How many and what types of violations of the Fair Housing Act, the Equal Credit Opportunity Act, or Regulation B have the Bank Board's examiners found in insured savings and loan associations in 1977 and 1978? What portion of these violations were clear violations of the substance and spirit of the laws prohibiting discrimination? What remedial or enforcement actions has the Bank Board taken to correct these violations?

During the 12 month period from July 1, 1977 through June 30, 1978, our examiners noted 4,091 Equal Credit Opportunity Act violations and 1,427 violations of the Bank Board's Nondiscrimination Regulations implementing the Fair Housing Act. The types are tabulated in our written response to your questions. Violations of the Fair Housing Act were found in approximately 13% of the industry and violations of the ECOA and Reg B were found in approximately 43% of the industry.

A problem arises in the context of determining which violations are technical in nature, and which are substantive. Even an unintentional violation of a technical nature could have a substantive effect upon an individual applicant or class of applicants. In addition, various inadequacies in keeping the required records or in sending out the proper notices may in themselves seem technical but they also mean that the data is not available for the examiner to review to determine if substantive violations have in fact taken place. Consequently, we

have had a very difficult time in answering your question regarding the number of substantive violations. Our best judgment is that at least 10% of the violations noted were of a substantive nature. This percentage represents clear violations such as discounting a wife's income or using appraisals containing references to minority or ethnic characteristics of the area in which the security property is located. However, as indicated, a certain portion of the other 90% of the violations found in the year ending June 30, 1978, may also have been of a substantive nature but necessary data for our review in order to make that determination is not available. Because of the seriousness of recordkeeping and notification requirements, we have insisted on correction of these procedures to insure that data will be available in the future.

Remedial action

After the examiner has noted violations in the examination report, the Supervisory Agent writes a supervisory letter to the association requesting correction of the violations found by the examiner. Corrective action which has been required of institutions is as follows:

- o notifying individuals of the violations of their rights
- o refunding fees and other costs
- o permitting refiling of applications
- o affirmative advertising in underserved areas
- o obtaining new appraisals

- o sending new adverse action notices to prospective borrowers
- o changing lending policies.

In addition, where it is clear that an association has no nondiscrimination policy or that it is not followed, the Supervisory Agent insists on a meeting with the association's Board of Directors. Through this meeting, the Supervisory Agent makes the Board of Directors aware of the seriousness of the problem and his or her inability to correct it by working with management personnel.

A cease and desist order has been filed in one case where an association persisted in its refusal to take corrective action. In that case, the association refused to make home mortgage loans, investing its assets instead in government securities. It argued that its function was to act as a repository of savings and that its investments were all lawful. The Bank Board brought the cease and desist action against this association to require it to meet its basic obligation of providing home mortgage funds in serving its community. The order is presently in effect and the association is now actively seeking home mortgage investments throughout its community.

Evidence of the Bank Board's commitment to use strong sanctions against associations found in violation of our regulations is present in a recent case in which we ordered an institution to make restitution to over 400 borrowers who had been overcharged interest on their mortgage contracts.

This major action will be published in the Bank Board Journal, which is distributed to all savings and loan associations in the Bank System. In our view, redress to the individual is essential to the proper enforcement of laws and regulations designed for their protection.

b. Were there any instances of repeat violations, in which associations were found to be continuing to engage in discriminatory practices after having previously been told to stop? What enforcement actions has the Bank Board taken in these cases of repeat violations?

We have not found a substantial number of repeat violations. However the special examiner training program in nondiscrimination was not completed until May of 1977. Consequently, most institutions have not undergone a second comprehensive examination of their compliance with nondiscrimination requirements. The Supervisory Agents have reported only two instances of repeat violations of a clear, substantive nature. In one case, the Bank Board issued the Cease and Desist Order described above. In this case also we began our policy of publishing notice of cease and desist orders to inform the industry of situations in which the Bank Board has brought such proceedings. In the other case, the prior examination disclosed that an association was making few loans in census tracts with high minority concentration. Although the association then developed an affirmative lending program, the subsequent examination disclosed that the program was not achieving good results. As a consequence, the Supervisory Agent required the association to strengthen

its affirmative lending program by including specialized media advertising, and by hiring a qualified loan agent for the area.

3. Future Enforcement: How will the Federal Home Loan Bank Board deal in the future with cases of repeat violations of the Fair Housing Act, the Equal Credit Opportunity Act, or Regulation B, where an association is found on the second or third examination to have failed to correct conditions found on a previous examination?

Under our current enforcement policy, published May 25, 1978, an association is required to take corrective action immediately following the discovery of the violation. Moreover, the Supervisory Agent does not wait until a subsequent examination to see whether the necessary corrective action has been taken. Follow-up special examinations are performed to review the association's implementation of corrective action.

However, if an association proves recalcitrant in correcting a violation, or if a recurrence should be found in a subsequent examination, the matter would be referred to the Bank Board for cease and desist action.

a. In particular, in the case of repeat violations will you inform, or require the association to inform, the victims of lending discrimination that unlawful discrimination has been found in the institution's handling of a previous application or inquiry from them?

In both first instance cases and repeat violations our policy is to require that victims of discrimination be notified.

In addition, the institution would be given the option, unless it wishes to be subject to a cease and desist order,

to notify the class of affected individuals that their rights may have been violated.

Also, going beyond notification to particular individuals Supervisory Agents may require institutions to

- (1) Adopt an advertising program aimed at the class or area which was adversely affected which will be effective in reaching the class;
- (2) Notify sources of loans, such as real estate brokers, and community groups, of its new policies or practices;
- (3) Inform real estate brokers or others who accept applications of the correct procedures to follow to prevent perpetuation of the effects of the violation.

b. Under what circumstances will you release publicly the names of institutions that have refused or failed to eliminate discriminatory practices?

In cases where a Cease and Desist Order has been issued and the affected institution fails to comply with the terms of such order, the name of the institution would become public since enforcement action would occur in the courts.

c. Under what circumstances will you seek criminal prosecution of or other punitive action against associations or their officers who fail to eliminate discriminatory practices?

We would seek criminal prosecution in cases where we find falsification of records or reports, perjury, intimidation, or other action of a like nature. In general, our experience has been that the substantial civil sanctions, and particularly

the cease and desist order, will be as effective in discrimination cases as they have been for other types of regulatory violations. The cease and desist order carries with it the possible sanction of contempt of court, which could involve imposition of a fine or a jail sentence. In addition, the Bank Board has proposed legislation which would give us direct cease and desist authority against individual officers and directors, as well as against the association, and which would provide for civil penalties of \$1,000 per day for violation of a cease and desist order.

The Fair Housing Act likewise reinforces the civil sanctions that are available. Under its provisions, when the Board finds discriminatory patterns, it may refer the matter to the Attorney General for action by the Department of Justice as well as by the Bank Board.

Beginning this fall, the CRA, will make available yet another important sanction. As part of every S&L examination there will be an assessment of the record of the association in meeting the credit needs of its "entire community". This record will have to be taken into account by the Bank Board in the case of any application by an association for a branch office, electronic deposit facility, and various other deposit facility applications.

4. Civil Damages Litigation:

- a. What is the view of the Federal Home Loan Bank Board about the effectiveness and proper role of civil damages litigation by private individuals in bringing about general compliance with the laws against credit discrimination?

To the extent they are successful, they will act as a deterrent to violations by increasing the risks generally to S&Ls of suit. They can also serve as a very effective means of alerting other victims both of the same and other S&Ls of the possibility of discriminatory action or practices.

In such litigation the Bank Board itself is in a position both to help and to be helped. As indicated by one of the landmark cases in this area Laufman v. Oakley Bldg and Loan Co., referred to in our written answers, in which the Bank Board participated as an amicus, such participation can prove effective not only in securing redress for the victim in a particular case but also in helping develop legal precedent to make civil litigation a much more effective tool. We are making every effort to provide consumers with information enabling them to determine whether or not they have been the victims of discrimination and their rights as to civil damages litigation.

Nevertheless, the Bank Board feels strongly that the onus of protecting victims against violation of their civil rights should not be placed fundamentally on them. Such litigation may be difficult and costly. Primary responsibility for assuring that the public is in fact protected against violation of their civil rights is a public responsibility and one which we respect.

b. What steps does the FHLBB take to inform consumers of their right to file civil damage suits under the Fair

Housing Act and the Equal Credit Opportunity Act, or to facilitate in other ways consumer use of the civil damages provisions of these acts?

As indicated above, in the case of violations of our nondiscrimination regulations our policy is to require that victims of lending discrimination be informed by the Supervisory Agents that unlawful discrimination has been found in the institution's handling of an application or inquiry from them. In addition, the Bank Board regulations require that all savings and loan associations display prominently in their lobbies an Equal Housing Lending poster which informs prospective borrowers of their rights under the Fair Housing and Equal Credit Opportunity Acts.

Under the new regulations the poster is significantly more informative in alerting borrowers as to the possibility of discrimination. It specifically instructs them on the three means available to seek correction of discriminatory action by a savings and loan lending officer: complaint to the management of the association itself, complaint to the Bank Board or HUD, or direct civil law suit. These are cumulative remedies.

5. Consumer Information: What other consumer information and education activities does the FHLBB conduct to inform the general public about the laws against credit discrimination? Do you have any plans to expand these activities?

We believe that the required written underwriting standards which must be made available to prospective borrowers will provide needed information to the public on home mortgage credit decisions. We are currently

preparing a series of pamphlets on consumer rights for distribution through local consumer groups as well as by savings and loan associations. One pamphlet series will outline the borrowers' rights under pertinent consumer credit protection statutes, the Fair Housing Act and Bank Board regulations. (A draft copy is in our written materials.) A second series of brochures will educate consumers on how to go about shopping for and financing a home. Our Office of Community Investment also sponsors seminars with consumer protection groups; a recent one has been on the proposed CRA regulations. The Bank Board is now working with HUD in connection with its Women and Credit Program to help determine how public information campaigns can be made most effective. We expect to develop other materials and techniques as we gain experience in this area. In brief, we see the area of consumer information as a continuing obligation that requires consistent re-examination and expansion.

Conclusion

In summary then, as to redlining, and discriminatory action generally, we are committed to making every effort to assure that savings and loan associations will know what constitutes discriminatory practice and that they are aware of the Bank Board's commitment to end such practices. We have focused our efforts on affirmative

programs designed to make home mortgage credit opportunities available to all on a nondiscriminatory basis. We have directed our concerns and efforts also to prevention.

In essence, as I see it, the effect of recent legislative and administrative efforts has been to tell S&Ls that the "gut" choice is really theirs. If they choose to join with us, in a sense of common effort, to wipe out discrimination and its effects, then the legislative focus, the agency focus, and the prevailing community focus, will be on providing them with all possible aid and support. If instead they choose to reject the sense, most recently reaffirmed in the CRA, of their "continuing and affirmative obligation to meet the credit needs of their entire community," then the legislative focus, the regulatory focus, and the community focus, will have to be on the policing process and on sanctions.

We can assure you, in any case, of the Bank Board's recognition of its own responsibility, as an agency of the public, and of its commitment, to move aggressively in order that the objective of fair and equal opportunity in housing may become a reality for all our citizens.

[Whereupon, at 11:55 a.m., the subcommittee adjourned to reconvene at 9:30 a.m., Friday, September 15, 1978.]

BANKING REGULATORY AGENCIES' ENFORCEMENT OF THE EQUAL CREDIT OPPORTUNITY ACT AND THE FAIR HOUSING ACT

FRIDAY, SEPTEMBER 15, 1978

**HOUSE OF REPRESENTATIVES,
COMMERCE, CONSUMER,
AND MONETARY AFFAIRS SUBCOMMITTEE
OF THE COMMITTEE OF GOVERNMENT OPERATIONS,
*Washington, D.C.***

The subcommittee met, pursuant to notice, at 9:40 a.m., in room 2247, Rayburn House Office Building, Hon. Benjamin S. Rosenthal (chairman of the subcommittee) presiding.

Present: Representatives Benjamin S. Rosenthal, Robert F. Drinan, and Garry Brown.

Also present: Donald P. Tucker, chief economist; Eleanor M. Vanyo, assistant clerk; Beth Preis, intern; and Henry C. Ruempler, minority professional staff, Committee on Government Operations.

Mr. ROSENTHAL. The subcommittee will be in order.

Governor Jackson, you are the senior person on the panel, so you go first. We are delighted to have you all with us.

STATEMENTS OF CANTWELL F. MUCKENFUSS III, DEPUTY COMPTROLLER FOR POLICY PLANNING, OFFICE OF THE COMPTROLLER OF THE CURRENCY; THOMAS W. TAYLOR, ASSOCIATE DEPUTY COMPTROLLER FOR CONSUMER PROGRAMS; PHILIP C. JACKSON, JR., MEMBER, BOARD OF GOVERNORS, FEDERAL RESERVE SYSTEM; AND CARMEN J. SULLIVAN, ACTING DIRECTOR, OFFICE OF CONSUMER AFFAIRS AND CIVIL RIGHTS, FEDERAL DEPOSIT INSURANCE CORPORATION

STATEMENT OF PHILIP C. JACKSON, JR.

Mr. JACKSON. Thank you, Mr. Chairman. It is a pleasure to be here this morning. I appreciate the opportunity to appear before this subcommittee on behalf of the Board of Governors to discuss the Board's enforcement of the Equal Credit Opportunity Act and the Fair Housing Act.

The Board is firmly committed to the goal of eliminating unlawful discrimination in credit transactions and to the full exercise of its enforcement powers to assure that banks subject to its jurisdiction comply with these laws.

In keeping with your request, the Board has directed its testimony to the topics of redlining, recent and future enforcement, civil litigation and consumer information. The first questions related to

redlining regulations and redlining monitoring. Unfortunately, the term redlining is used to describe a wide variety of credit underwriting practices. Thus it becomes necessary to describe the practices to which the word applies before responding to the questions and issues.

To some the word "redlining" describes the refusal to consider loan applications relating to properties in a geographic area because of the area's racial or ethnic characteristics. That practice has been declared unlawful by the courts under the Fair Housing Act. It is also prohibited by regulation B, which implements the ECOA. While it does not refer to the practice as redlining, the regulation makes clear that it is unlawful to discriminate against an applicant because of the characteristics of persons to whom the extension of credit relates—for example, the prospective tenants in an apartment complex to be constructed with the proceeds of the credit requested; or because of the characteristics of other individuals residing in the neighborhood where the property offered as collateral is located.

To others, redlining refers to the arbitrary refusal to consider loans in a geographic area without any apparent rational economic basis for doing so. This type of lending practice, to the extent that it may exist, is not prohibited under present Federal law. While several bills on the subject have been introduced in the Congress, none has been enacted.

The Congress has addressed the problems that flow from this latter concept of redlining in a different way under the Community Reinvestment Act which was passed in this Congress. Regulations to implement this act have been published for comment to become effective on November 6, 1978.

The fundamental purpose of the CRA is to help the Nation's communities by emphasizing to insured financial institutions and their Federal regulators that the standards imposed by Federal banking statutes with regard to the "convenience and needs" of the community being served include credit as well as deposit and other services.

The CRA objective is similar to that of the Home Mortgage Disclosure Act of 1975, although the approach taken by the CRA is quite different and promises to be far more effective than the HMDA approach. The HMDA, as you will recall, requires that depository institutions in metropolitan areas furnish to the public information about the location of the collateral securing residential real estate loans. This was required in the belief that local public officials and private citizens could take appropriate action on a local level if they had the proper information.

The CRA directs the four financial regulatory agencies to encourage the institutions they regulate to fulfill their continuing and affirmative obligation to meet the credit needs of their communities, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of those institutions.

The Board believes that the CRA approach, which permits evaluation of a State member bank's credit services in the context of local circumstances and the community's perceived needs, may prove to be a more effective way to deal with the problem of

geographic redlining than a legal prohibition against geographic discrimination in the extension of credit.

At the same time, the Board recognizes that a better understanding by Federal Reserve examiners and by State member banks of racial redlining and of creditor practices that result in unlawful discrimination will enhance examination techniques and will improve compliance with credit nondiscrimination laws.

As part of a review of our entire program of consumer affairs enforcement, the Board earlier this year contracted with Mr. Warren Dennis, a former member of the Civil Rights Division of the Department of Justice, for an evaluation and critique of our civil rights enforcement program. The Dennis Report on the Detection and Correction of Credit Discrimination was submitted to us in May. Subsequently, the Board and Board staff have been engaged in a review and revision of our ECOA and fair housing examination and enforcement program. When the revision is complete, details of the new program will be furnished to the subcommittee.

To assist the enforcement agencies in monitoring compliance, regulation B requires a creditor to request information about an applicant's race/national origin, sex, marital status and age when it receives a written mortgage loan application for the purchase of residential real estate. This information is used for monitoring compliance with the ECOA and the Fair Housing Act.

The Board has no present plans to expand the detail or scope of regulation B monitoring information. The regulation applies to many types of creditors that are subject to the enforcement jurisdiction of different Federal agencies. The regulation permits an enforcement agency to substitute its own monitoring program for the one specified in the regulation. The Federal Home Loan Bank Board and the Federal Deposit Insurance Corporation have done so. The Board believes it is preferable to evaluate the effectiveness of these current monitoring programs before considering more extensive data notation requirements for State member banks.

In reviewing our recent enforcement, we find that Federal Reserve consumer affairs examinations of 861 State member banks were conducted between April 1977 and August 1978, and that examiners found a total of almost 18,000 individual possible violations of the two acts. The vast majority are procedural rather than substantive violations. For example, of 17,525 relating to noncompliance with the requirements of regulation B, almost half related to nonconforming application forms—about 8,000. Another quarter involved incomplete notifications of reasons for credit denials—4,000. Failure to comply with data notation requirements—2,000—and recordkeeping violations—700—accounted for the bulk of the remaining citations. Similarly, the fair housing citations—about 300—related almost exclusively to failure to display the "Equal Housing Lender" poster.

The major substantive violation of regulation B—almost 2,000 instances reported—related to improper requests for the signature of a nonapplicant spouse. Other substantive violations included failure to give reasons for denials and failure to report jointly held accounts in the name of each account holder.

Second examinations of 105 banks indicate that about half of them were still not in full compliance. Again, violations were large-

ly procedural: three-fourths related to forms—65 involved applications and 15 involved statements of adverse action. A good number of these institutions have now been brought into compliance after further clarification as to what regulation B requires. The Federal Reserve banks are dealing with the others on a case-by-case basis.

The Federal Reserve's enforcement program seeks to effect voluntary compliance whenever possible. In most instances, corrective action is initiated by bank management as a result of an onsite, postexamination discussion. The bank's board of directors is subsequently also apprised of the examiner's findings and where appropriate a special followup examination is scheduled.

Where warranted the Federal Reserve Bank will take appropriate administrative action against a State member bank. That action includes proceedings under the Financial Institutions Supervisory Act of 1966, which empowers the Board to issue an order requiring a bank to cease and desist from the unlawful action and to correct the conditions resulting from the violation. The Board is also authorized under the ECOA to refer the matter to the Attorney General, who, in turn, may file an appropriate civil action.

With regard to future enforcement, the Board and four other Federal regulators—the Comptroller of the Currency, the FDIC, the Home Loan Bank Board, and the National Credit Union Administration—have published proposed guidelines for the enforcement of regulation B and the Fair Housing Act.

The guidelines indicate the corrective actions that creditors will be required to take regarding violations discovered in the course of examinations or through investigation of complaints. The proposed guidelines do not directly require a bank to inform an applicant of violations; however, some of the corrective actions that a bank would be required to take will give notice to applicants of the bank's noncompliance—for example, the required resolicitation of applicants in cases where a bank has been found to have discriminated unlawfully.

In your questions, you asked about the circumstances under which the Board would publicly name institutions that repeatedly fail to correct discriminatory practices. The Board does not now contemplate routinely publicizing violations of the ECOA, Fair Housing Act or other consumer credit regulations. If repeated violations occur and voluntary compliance is not obtained, the Board could decide to make the identity of the institution public.

With regard to possible criminal prosecution against banks or their officers, there is no criminal liability provision under either the ECOA or the Fair Housing Act for the failure to eliminate discriminatory practices. Hence, the Board is without authority to seek criminal prosecution.

The ECOA and the Fair Housing Act do give private individuals the right to sue a creditor for unlawful discrimination. The Board believes that the possibility of monetary damages and adverse publicity resulting from a lawsuit provides creditors with an important incentive for complying voluntarily. It is impossible to establish the extent to which the civil damages provisions have deterred creditors from unlawful discrimination, but we do know that creditors are keenly aware of the potential liability. Many of them cite their

exposure to the civil damages provisions when they write to ask the Board for interpretations of the regulations.

Consumers can exercise their legal rights, however, only if they know about these rights. The consumer education activities of the Federal Reserve inform consumers about laws barring credit discrimination in a variety of ways: (a) Through brochures explaining the purposes and basic provisions of the statutes; about 7 million copies have been distributed through creditors, Federal agencies, schools, consumer organizations, civic associations and other community groups; (b) through public speeches by the staff of the Reserve Banks and of the Board; (c) through the staff's responses to consumer complaints, including referrals for investigation; and (d) through other means of an experimental character. The Reserve Bank of Chicago, for example, has been experimenting with information booths at the national meetings of professional groups and social organizations, and I understand that the response has been excellent.

In closing, I want to emphasize again that the Board is committed to the enforcement of the laws against credit discrimination. We have already taken a number of steps toward this end. We are constantly seeking better ways to do so.

Thank you.

Mr. ROSENTHAL. Thank you very much, Governor Jackson.

Ms. Sullivan?

STATEMENT OF CARMEN J. SULLIVAN

Ms. SULLIVAN. Mr. Chairman, the FDIC, as a Federal supervisor of banks, places a high priority on insuring that the credit needs of communities and individuals are being met in an affirmative, non-discriminatory manner.

In my testimony today, my focus will be on the FDIC's enforcement activities in the areas of equal credit opportunity and fair housing. I will attempt to present our initial difficulties in ascertaining bank compliance with these statutes, how these difficulties are being resolved and the direction our present and proposed enforcement program is taking.

However, because discriminatory lending practices are often subtle and were difficult to detect on the basis of records available to us, our initial enforcement program did not turn up many violations. With the adoption of racial notation requirements in regulation B as amended and recordkeeping and racial notation requirements in the FDIC's fair housing regulation, part 338, our ability to enforce the Equal Credit Opportunity Act and the Fair Housing Act has been enhanced. Retention of racial, financial, and other information on the applicants and the property which is the subject of the application are essential elements in an effective civil rights compliance enforcement program.

The FDIC's initial compliance enforcement program was limited to an evaluation of compliance with consumer laws, primarily truth in lending, as a part of the regular examination.

Recognizing the need for a still more effective compliance enforcement program, the FDIC developed and implemented a separate compliance examination program early in 1977. Essentially, this program includes an examination of each FDIC-supervised

bank at least once every 15 months for compliance with consumer protection, civil rights, and related laws and regulations. Examiners are selected to participate in the examination program generally for a 6-month tour of duty. They receive special training in consumer protection and civil rights prior to their participation in the program.

This program has resulted in a significant increase in commitment of examiner resources. It also has resulted in more thorough compliance examinations and a recognition by FDIC-supervised banks that the FDIC takes very seriously their compliance with consumer protection and civil rights laws and regulations. In turn, the banks have increased their own vigilance and most try hard to comply with laws and regulations.

Corrective action on violations discovered during the course of a compliance examination generally begins with the examiner pointing out to bank management the violations discovered and the corrective actions necessary to make the affected individual whole and to preclude a recurrence.

After review in the regional office, the report of compliance examination is transmitted to the bank's board of directors. If the violations are not corrected voluntarily or satisfactorily, a strongly worded supervisory letter is addressed to the bank's board of directors. In some cases the directors are requested to sign a written agreement on corrective measures. A continuation of unsatisfactory compliance will result generally in a recommendation for formal cease-and-desist action.

Since January 1977, the FDIC's Board of Directors has issued 13 cease-and-desist orders in which one of the items stated was non-compliance with the Equal Credit Opportunity Act and its implementing regulation B. Corrective action required to be taken by the bank included providing rejected applicants with a written notice of adverse action, designating a compliance officer in the bank, adopting a written compliance program subject to the approval of the regional office and providing periodic progress reports on compliance efforts to the regional director.

Recently, uniform guidelines for enforcing the Equal Credit Opportunity Act and its implementing regulation B were proposed for comment by those Federal agencies that regulate banks, thrift institutions and credit unions. The basic objective of these guidelines, as proposed, is to require offending institutions to take corrective action to make their customers whole where prohibited discriminatory practices are uncovered.

Investigation of consumer complaints has been another means of determining compliance with fair lending laws and regulations. Prior to the ECOA, however, we received few complaints. In 1975, for example, we received only eight credit discrimination complaints. Since that time, the number of complaints has increased. In 1976 we received 78 complaints and in 1977 we received 219.

The Equal Credit Opportunity Act notice, giving the name and address of the creditor's Federal supervisory agency, has been of considerable help in assisting consumers who wanted to register a complaint of discriminatory lending practices. The FDIC also has developed and distributed several information brochures to assist

consumers in understanding fair lending laws and their rights under these laws.

During the past year we have distributed over 6 million educational pamphlets on the antidiscrimination laws. In addition, we attempt to provide every consumer who inquires or complains to the FDIC about credit discrimination with information on his or her rights under laws.

Monitoring consumer protection and civil rights compliance statutes cannot be accomplished effectively, however, without well-trained examiners. Each year our commitment of training resources to compliance matters has increased.

Finally, in late 1977, the FDIC's Board of Directors established a Civil Rights Branch within the Office of Consumer Affairs and Civil Rights to provide leadership in the overall administration of the FDIC's enforcement of civil rights laws and regulations.

I would like now to turn to the subject of redlining. The term redlining has evolved to mean a financial institution's restriction of credit, either wholly or partially, in the community it serves based on the characteristics of the inhabitants of that community, age of the housing stock or location of the housing stock.

Urban decay has surely been aggravated by redlining practices, as has been pointed out in the congressional hearings on the Home Mortgage Disclosure Act and the Community Reinvestment Act. But to consider redlining practices and urban decay as merely a cause-and-effect situation is too simplistic. Poverty, decline in city services due to a deflated tax base, crime, unemployment, counterproductive subsidy programs, usury laws, rent control and inflation also contribute significantly to urban decay.

Mr. ROSENTHAL. What is a counterproductive subsidy program?

Ms. SULLIVAN. Well, for example, a subsidy program by HUD to promote low- and moderate-income housing in the suburbs when, on the other hand, other Federal programs are trying to increase housing opportunities in the city.

Mr. ROSENTHAL. That is counterproductive?

Ms. SULLIVAN. Yes. To me, they seem to be working in opposite directions.

Banking agency promulgation and enforcement of regulations to prohibit redlining discrimination conceivably would insure more equitable treatment of individual loan applicants. Such regulations can really only have a significant impact on urban decay in tandem with a united partnership at the Federal, State and local levels to provide adequate public services and other forms of assistance to solve urban problems.

The FDIC's legal division has advised us that we have the authority to issue nondiscrimination regulations to prohibit redlining. It is the legal division's view that the FDIC may prohibit age and location of dwelling redlining practices on the grounds that these practices are arbitrary and unnecessary and that they conflict with a bank's obligations under the provisions of the Community Reinvestment Act and the Federal Deposit Insurance Act.

The need for regulations prohibiting redlining discrimination is under study. Because of inadequate and insufficient information, judgments on the existence of redlining practices have proved difficult.

The FDIC recently initiated a pilot project in Brooklyn, N.Y., in response to this problem. The study will attempt to: (1) Ascertain the cost of acquiring information useful in determining the extent to which financial institutions are meeting the credit needs of their communities; (2) identify underserved neighborhoods; and (3) evaluate supplementary data collection and analysis techniques which might be used by examiners to assist in their review of a bank's compliance with the Community Reinvestment Act, CRA.

The agencies expect to publish the final CRA regulation no later than October 6, 1978, to become effective November 6, 1978. It is expected that under the regulations banks will be required to publish a CRA statement no later than February 6, 1979.

Generally speaking, the statement will include a delineation of the community and a list of the community's credit needs the bank is prepared to serve. A notice that this statement is available for public comment will be posted in the lobby of the bank so that the agencies will have the benefit of the public's reaction to the bank's intentions as well as its performance. We are hopeful that banks will comply faithfully with the spirit as well as the purpose of this act.

This problem is already being addressed in part by recordkeeping requirements for insured State nonmember banks with respect to one-to-four-family home loan inquiries and applications. In addition, each insured State nonmember bank having an office located in a standard metropolitan statistical area and assets exceeding \$10 million is required to retain credit-related information for home loan applications.

All insured State nonmember banks are required by part 338 to request from the applicant and to retain any information provided on the name, address, race/national origin, sex, marital status and age of persons making inquiries about applications for home loans. In addition, these banks are required to request and to retain information on the location of the property involved. If the inquirer refuses to provide the information concerning race/national origin or sex, the bank is required to note the information on the basis of observation or surname. All insured State nonmember banks are required to indicate sex, race, age and marital status for each inquiry and each application on a special log sheet.

During the course of compliance examinations and fair lending complaint investigations, FDIC examiners will review the log sheets and loan records in conjunction with a data collection and analysis program for evidence of possible discriminatory practices concerning inquiries and applications for home loans. Banks identified as possibly engaging in such practices by the analysis system will be subjected to a more detailed examination.

In addition to using information retained by banks pursuant to part 338 of the FDIC regulations, FDIC examiners will employ Home Mortgage Disclosure Act data as an auxiliary tool in examining banks for evidence of redlining practices.

Information generated by the requirements of this statute includes the total amount and census tract locations of home mortgage and home improvements loans by a financial institution in the standard metropolitan statistical area during the reporting

period. This information by itself, however, cannot confirm or disprove the existence of redlining practices.

Possibly the most beneficial aspect of the Home Mortgage Disclosure Act disclosure statement is that it shows the extent of an institution's housing-related lending to specific geographic areas. This provides the basis to those using the disclosure statement to raise questions regarding an institution's policies in extending housing credit to particular areas. To some degree the data also help to show the availability of housing credit in specific neighborhoods; however, the usefulness of the Home Mortgage Disclosure Act data is affected by basic conceptual difficulties.

Taken by themselves, the data are susceptible to misinterpretation because they reveal little about the actual demand for housing credit in specific geographic areas. Furthermore, the disclosed data cover only a portion of the total housing credit flows to a neighborhood or market area. Institutions that are not subject to the act can be significant mortgage originators. Credit flows within a particular area will be understated to the extent that nondepository institutions retain the mortgages they originate, or sell them to institutions either located outside of the standard metropolitan statistical area of origination or to institutions not covered by the Home Mortgage Disclosure Act.

In addition, the exclusion of the secondary mortgage market institutions such as FNMA and FHLMC from Home Mortgage Disclosure Act coverage will also cause housing credit flows to be understated.

These conceptual and technical problems, as well as statutory responsibilities for enforcing the Home Mortgage Disclosure Act and for recommending improvements in the Act, prompted the FDIC and the Federal Home Loan Bank Board to fund a comprehensive study of the Home Mortgage Disclosure Act. Disclosure of home loan data is effective only if the information provided is timely, accurate, meaningful and useful to potential users of the information.

While Home Mortgage Disclosure Act data appear to possess the first two qualities, there is doubt about the other two. If it is deemed appropriate to continue some form of mandatory disclosures after the expiration of the Home Mortgage Disclosure Act, a more useful system of disclosure should be designed. In designing such a system, the costs to financial institutions and to the public should be determined and should be measured against the anticipated benefits. The results of the FDIC/FHLBB study should be useful in designing an effective and cost efficient Home Mortgage Disclosure Act.

Mr. Chairman, this concludes my summary statement. I will be pleased to respond to any questions you may have.

Mr. ROSENTHAL. Thank you very much.

Mr. Muckenfuss?

STATEMENT OF CANTWELL F. MUCKENFUSS III

Mr. MUCKENFUSS. Mr. Chairman and members of the committee, I appreciate this opportunity to participate in the committee's oversight hearings on the enforcement of the Equal Credit Opportunity

Act and the Fair Housing Act. I have with me Tom Taylor, Associate Deputy Comptroller for Consumer Programs.

The statutes we are discussing today represent important steps taken by the Congress to assure that all of the citizens of our country have fair access to credit. We believe that history has demonstrated their wisdom.

It should be emphasized at the outset that we are not wedded to existing approaches nor to our current organizational structure. The laws we are discussing today are relatively new. Even the Fair Housing Act is a new mission for the agency relative to other functions assigned by Congress. Moreover, a significant new law will soon be woven into the fabric of our enforcement program in this area when the regulation implementing the Community Reinvestment Act becomes effective in November 1978.

It is therefore to be expected that there will be certain differences of opinion and experimentation involved in the implementation of these new missions. Accordingly, we view these oversight hearings as timely and constructive. While we hope they will be informative to the Congress and to the public, they also provide the opportunity for us to review and question our own programs.

Notwithstanding the difficulties always associated with the implementation of new missions by governmental agencies, we believe that the Comptroller of Currency has made significant strides in the past 5 years in these areas. These efforts are outlined in great detail in our response to the questions which you asked us in your letter of August 16, 1978.

In the interest of time, I will not attempt to repeat our answers. What I would like to do instead is to outline briefly new initiatives which our office is taking in this area and to emphasize certain general points with respect to redlining. We are confident these new initiatives will add significantly to our efforts to assure fair access to national bank credit.

As a part of the reorganization of the Office of the Comptroller of the Currency, a Civil Rights Division was created which will have significant responsibilities with respect to the Fair Housing Act and the Equal Credit Opportunity Act. The Civil Rights Division is one of three divisions comprising a new Office of Customer and Community Programs. The other two divisions are a Consumer Programs Division and a Community Development Division.

Under the reorganization, the existing Consumer Examinations Division will continue to be responsible for the examination and supervision of national banks' compliance with civil rights laws. The new Civil Rights Division will be policy oriented. Among the functions which it will perform are monitoring and review of the supervisory process, outreach to public interest and banking groups, internal advocacy and the review of our policies and regulations.

In conjunction with the reorganization of our customer and community programs in Washington, the present consumer positions in the regional offices are being upgraded to regional directors of customer and community programs. This will result in a significantly more senior official being responsible for these functions and will provide substantially more support for our efforts in the field.

In addition, a separate career path is being devised for consumer examiners. This will provide incentives for our personnel to focus upon civil rights and consumer matters and will result in the development of an ever-deepening pool of expertise in this area.

I might also add that these steps are symbolic to our examiners; they are both real and symbolic to the examiners, demonstrating the commitment of the senior officials to these efforts.

Mr. ROSENTHAL. We have to take a very short recess.

[Brief recess.]

Mr. ROSENTHAL. The subcommittee will be in session.

Without objection, the statements in totality will be included in the record.

Why don't you continue.

Mr. MUCKENFUSS. In December 1977, the Comptroller's Office settled a fair housing lawsuit brought against it and other agencies by a number of civil rights and public interest groups. In the agreement we reaffirmed our commitment to the already existing facets of our civil rights enforcement program.

One additional significant undertaking is the establishment of a computer-based data collection and analysis system. This system, which is well along in its development, is designed to flag those institutions where there appear to be patterns of discrimination. This will enable us to focus our resources where the problems are most severe and should greatly increase the efficiency and effectiveness of our examination and supervisory processes. In addition, we believe that this system will provide data which are of significant use in enforcing the Community Reinvestment Act.

Finally, we believe that it is appropriate to inform you of three other initiatives. Although not directly involved in enforcement of the Fair Housing Act or the Equal Credit Opportunity Act, they are, in our judgment, relevant to assuring nondiscriminatory access to national bank credit, in that they seek to encourage the development of the partnership among government, local communities, and the private sector, which the President spoke of in his urban message.

As I have indicated, the Comptroller of the Currency has established the Office of Community Development, which will soon be operational. Its purpose is to encourage and facilitate commercial bank participation in the development process in local communities and neighborhoods. In short, the objective of this office is to achieve the aims of the CRA through nonregulatory means.

The Community Development Office will perform, among others, the following functions: (a) The office will serve as a clearinghouse for information as to the efforts of financial institutions in community reinvestment; (b) the office will catalog and inform banks of Government programs which might be employed in their efforts in the community development process; (c) the office will integrate the knowledge gained through the first two functions and develop model programs that banks might employ; and (d) the office will provide the Comptroller liaison with community and banking groups as a vehicle for encouraging the partnership among commercial banks, community groups, and government.

Second, the President's urban message charged the Comptroller's Office with responsibility for chairing a task force which would

“expand the urban reinvestment task force housing concept into the commercial credit area.” In response to this charge, the Comptroller convened a task force composed of concerned agencies and departments. We are presently involved in two initial phases which involve the application of the concept. The first phase involves the application of the concept developed by the Urban Reinvestment Task Force to projects already in progress around the country which would significantly benefit from increased financial institution participation.

The second phase of the program, presently in the planning stage, involves the development of four new neighborhood commercial development projects. Sites are now being selected for both phases.

Finally, the Comptroller's Office will review policies and practices in order to make maximum use of our own authority to encourage community development and reinvestment efforts. An example was our recent approval of the establishment for the first time of a community development corporation by North Carolina National Bank, Charlotte, N.C. This is the first time the Comptroller has authorized a national bank to establish a whollyowned subsidiary to promote the revitalization of inner city residential neighborhoods.

In the context of these programs it is useful to discuss briefly the subject of redlining. It is, as you know, a subject which has aroused much controversy. In our judgment, much of this controversy and confusion that surround the subject of redlining arises out of the difficulty associated in defining the term. Redlining means different things to different people.

At least part of the difficulty in defining redlining arises out of the fact that the term has been employed to describe four conceptually distinct categories of phenomena, each of which has somewhat different legal implications. It is useful to outline these categories because they provide a framework in which to analyze the legal and regulatory implications of redlining.

First, the failure to lend or the imposition of more stringent terms on loans made in certain geographical areas may reflect a conscious decision to discriminate on a basis prohibited under the Equal Credit Opportunity Act and the Fair Housing Act. Such conduct is, of course, clearly illegal under these acts.

Second, the failure to lend or the imposition of more stringent terms in a certain geographical area may have the effect of discriminating against a class of people protected under the ECOA. Although determinations under the effects test are sometimes difficult, such conduct may, depending on the circumstances, also be illegal under the ECOA and regulation B.

Third, failure to lend or the imposition of more stringent terms may not be justified in financial or economic terms and yet not involve either directly or indirectly a prohibited discrimination. Although not illegal under either of these two statutes, such conduct is pernicious, in that it serves to deny credit to a neighborhood or community in which sound loans can be made. The Community Reinvestment Act provides legal and regulatory tools to deal with this type of conduct.

Fourth, careful analysis on a block-by-block basis may demonstrate that there are some areas in which the failure to lend or imposition of more stringent terms is clearly warranted by concrete economic factors and any other conduct would constitute an unsound banking practice. Although the unavailability of credit in such circumstances can serve to further the decay of such an area, few have suggested financial institutions should make such loans. In these cases the targeting of Government subsidies and guarantees aimed at changing the circumstances of such areas, combined with private sector involvement, are clearly warranted.

In these cases what is required is not the extension of credit on an unsound basis. Such loans are self-defeating and harmful, not only to the lender but also the community or individual who receives them. Rather, what is required is precisely the sort of partnership that the President described in his urban message.

What is needed in these cases is a creative partnership of the private sector, government, and local communities in developing a strategy which will turn around the factors which make lending difficult. It is to facilitate and encourage precisely this partnership that we have established our Office of Community Development.

In conclusion, I should emphasize that we at the Comptroller's Office are serious about the enforcement of the civil rights laws, whether that involves redlining or not. Moreover, we are serious in our endeavor to attack the problem of redlining in its four distinct forms. We do not believe that we have all the answers, nor do we foreclose any available approaches.

We look forward to working with this committee and the Congress as we seek to devise strategies which will reverse the spiral of decay which besets many of our neighborhoods and communities.

Mr. ROSENTHAL. Thank you very, very much.

Let me back up a bit, Mr. Muckenfuss.

In your statement you bring out the distinction between racial redlining and nonracial redlining. Under the effects test doctrine, racial redlining is clearly prohibited by law. Nonracial redlining involves no racial or other protected minority and is not explicitly prohibited by law.

I think we all agree that regulation B, through an obscure footnote reference, prohibits racial redlining, and all the agencies are supposed to be enforcing that provision of regulation B. But it appears from the statements and materials submitted to the subcommittee, at least in my judgment, that only the Comptroller's Office has made some serious plans to enforce it in the future, relying on its data analysis program to detect redlining.

The FDIC says vaguely it could check its monitoring data for redlining but implies it has no plans to do so.

The Federal Reserve's statement is entirely silent on this subject, in spite of our specific question directed to the Board.

What we are interested in is your comment on whether or not each of your agencies is enforcing and will enforce the law against racial redlining.

Governor Jackson?

Mr. JACKSON. I am not certain I understand your question, Mr. Chairman.

Mr. ROSENTHAL. Well, the other agencies, it seems to me, were more out in front in terms of enforcing the law on racial redlining. The FDIC was stronger than the Board in saying that it could check its monitoring data for redlining, but it has no plans to do so.

You, the Board, were silent in response to our specific question on this subject.

Mr. JACKSON. The Board has no specific programs at the present time to equate the data required under regulation B with geographical distribution of racial or ethnic groups.

Mr. ROSENTHAL. My sense is that the Board is way behind the other agencies in making any effort to deal with this problem of redlining or racial redlining.

As a matter of fact, in the Dennis report, Mr. Dennis himself reported finding a mild hostility to civil rights matters among the examiners. He said that in his report.

What is your comment?

Mr. JACKSON. Well, Mr. Dennis may be correct, or he may be incorrect; I frankly don't know the answer to that.

As you know, Mr. Chairman, the Board instituted this program of special examinations and enforcement for all the so-called consumer protection laws. We initiated this program for a period of 2 years with the specific understanding on our part that after having had actual experience in this process we would review our procedures, study the extent to which they are effective or ineffective, and amend them to improve them.

Obviously, we are in the process of doing so, or we wouldn't have hired Mr. Dennis as an outside consultant to evaluate the work that we are doing.

We are now in the process of amending them to reflect the judgment of others as well as our own experiences.

Mr. ROSENTHAL. Dennis said that the Board has not been willing to make a commitment at the top policy level to pursue vigorous civil rights enforcement. Is that a valid observation?

Mr. JACKSON. I don't believe that is a valid observation myself, Mr. Chairman.

Mr. DRINAN. Mr. Chairman, if I may intervene on that point—

Governor, in your testimony, on page 3, you come out and you say that the Board is against a legal prohibition against geographic discrimination in the extension of credit. If everything is in a state of transition and if you are waiting for these guidelines and techniques and experiments to work out, why did the Board come out against a legal prohibition against geographic discrimination?

Mr. JACKSON. Because geographical discrimination under the ECOA would go far beyond redlining, Mr. Drinan.

Mr. DRINAN. I know all of that, sir; but that is not the question I asked. I said you people hired Mr. Dennis; you are waiting to see the conclusions and all, and yet you have taken a position—that I take solemnly. You say that the Board believes—did you have a full meeting of the Board and they came out against legal prohibition against geographic discrimination?

Mr. JACKSON. Yes, sir.

Mr. DRINAN. You did?

Mr. JACKSON. Yes, sir.

Mr. DRINAN. Are the minutes available, the discussion?

Mr. JACKSON. This testimony and its position were reviewed at a full, open meeting of the Board, open to the public, on Wednesday morning.

Mr. DRINAN. Could Mr. Dennis conclude from that that there is a certain hostility at the highest level, or at least a lack of commitment, to civil rights at the highest level of the Board?

Mr. JACKSON. I personally don't think the two are related.

Mr. DRINAN. A lot of people would think that they are related.

Mr. JACKSON. Well, I understand that.

Mr. DRINAN. There are bills pending in the Congress to do precisely that, which say that present legislation does not reach the problem, that we need a legal prohibition against ZIP codes, against geographic discrimination.

I yield back to the chairman.

Mr. ROSENTHAL. We are going to have to go and vote.

Governor Jackson, the Federal Reserve is the only agency among the four major agencies we inquired of that did not provide an answer to the subcommittee's question about consumer complaints and how they compared with the findings of violations. Do you have any comment or statement you would like to make about why yours was the only agency that couldn't answer the questions?

Mr. JACKSON. I believe we supplied answers to the questions requested, Mr. Chairman.

Mr. ROSENTHAL. No, that is not correct; you didn't. Every other agency—we sent specific questions—they responded numerically in kind to the questions we postulated. The Board did not do that.

Mr. JACKSON. It may be the information you requested was not available. I don't know the extent to which you are suggesting that we didn't respond to your question, but to the extent that we didn't, in most cases the information was not available in the form you requested.

Mr. ROSENTHAL. The other agencies had it. Let me give you one little example: The Board did not comply with our request for estimated information on examiner hours spent on discrimination compliance. Every one of the agencies gave their best estimate of the number of hours spent in this area; the Board didn't do that.

Mr. JACKSON. I think if you will refer to our specific answer to that question, you will find that we don't maintain separate breakdowns of examiner hours for each consumer-related law.

For instance, we have the Equal Credit Opportunity Act; we have the Fair Housing Act; we have the Home Mortgage Disclosure Act, Real Estate Settlement Procedures Act and the Truth in Lending Act, and we don't maintain time sheets on them separately.

Mr. ROSENTHAL. I am wondering out loud why the other agencies are able to make—Ms. Sullivan, you were able to make an estimate of the time your examiners spent?

Ms. SULLIVAN. Yes.

Mr. ROSENTHAL. You were too?

Mr. MUCKENFUSS. Yes.

Mr. ROSENTHAL. I can't understand why you couldn't.

Mr. JACKSON. I think if you will refer to our answers to your questions, we guessed that about 40 percent of the time spent in consumer examination had to do with regulation B, the Equal Credit Opportunity Act.

We stated in our answer to the question that we do not maintain detailed data. The other agencies may have provided you with specific hours based on their guess. It would be easy to take the number of hours that we furnished you, multiply by 40 percent and supply an answer to your question.

It is my judgment that we answered substantively the question that you asked within the capacity we have to answer it, because we don't maintain detailed information about that specific law and the hours spent on that specific law.

Mr. ROSENTHAL. I couldn't understand why the other people were able to do it and you weren't.

Mr. JACKSON. Perhaps—and I will have to ask these other witnesses—do they maintain special timesheets under each consumer law?

Mr. ROSENTHAL. How did either one of your agencies promulgate the answers to that question?

Ms. SULLIVAN. For FDIC, each examination report includes hours by the major laws; for example, Truth in Lending.

Mr. ROSENTHAL. That is simple. That is how they did it. How did you do it?

Mr. MUCKENFUSS. It is an estimate.

Mr. ROSENTHAL. They kept a log of all that time.

We have to adjourn for a few minutes. We will be right back.
[Brief recess.]

Mr. ROSENTHAL. The subcommittee will be in order.

I want to ask each of you to discuss some of these issues:

For example, on nonracial redlining, the Home Loan Bank Board already prohibits that, and the FDIC, as I read the statement, says it has the authority to prohibit it if its Brooklyn pilot study shows this to be warranted. The Federal Reserve and the Comptroller, however, disclaim any ability or authority to act, or any interest in acting, on nonracial redlining, except through implementation of the Community Reinvestment Act.

Is that an accurate characterization of the situation? Redlining may be OK in terms of the authority of the agencies if a bank doesn't want any new branches, and it may well be that the problem isn't large enough to be worth worrying about. I am curious as to your views on this subject because I gather there is a widespread difference in attitude.

How about you first, Mr. Muckenfuss, left to right?

Mr. MUCKENFUSS. Our lawyers advise us that there is, at the present, some doubt as to our authority to issue such regulations and that we would probably be challenged, given the state of the present law.

Mr. ROSENTHAL. Hold it one second.

Your lawyers have a different point of view; isn't that correct?

Ms. SULLIVAN. Yes.

Mr. MUCKENFUSS. What I suggested, and I suspect that the FDIC lawyers would confirm this, is that there is some doubt as to our authority and there would likely be a challenge and litigation.

I might point out the Comptroller has requested the Congress to enact or to clarify the Comptroller's general rulemaking authority which has been challenged and is presently in litigation here in the District. We are particularly sensitive on this point and hope that

the Financial Institutions Regulatory Act will go through with that authority so clarified.

But our basic position with respect to the matter of redlining is that there is enough law on the books including enough law on the books to deal with the pernicious type of nonracial redlining.

We do have an open mind on the subject. If we conclude that the better wisdom is with the Home Loan Bank Board's approach, then I think we will go forward with such an approach.

Mr. ROSENTHAL. When are you going to do that?

Mr. MUCKENFUSS. Well, at this point we have got a lot on our plate, with the implementation of the Community Reinvestment Act, with getting those regulations into effect, and with getting our examiners in the field properly educated and sensitized to that. We are now in the process of developing our examination instructions to implement properly the Community Reinvestment Act.

Mr. ROSENTHAL. Do you remember the question I asked?

Mr. MUCKENFUSS. Yes.

Mr. ROSENTHAL. What was the question?

Mr. MUCKENFUSS. The question was, why—

Mr. ROSENTHAL. No, that wasn't the question. The question was, quote: "When are you going to do that?" That question is answered by day or month.

Mr. MUCKENFUSS. If we find that in a reasonable period—and I think that would be 2 or 3 years—the instructions that we give our examiners with respect to the Community Reinvestment Act and redlining are not proving to be as effective as we think they will be, then I think that you will have fair cause to complain.

Mr. ROSENTHAL. You are going to have another Comptroller by that time.

Mr. MUCKENFUSS. Let me make a point: I am a lawyer and I think lawyers focus too much on regulations. If you want to find out where the CRA has teeth in it and is going to be effective, the one place to look—and it is going to be a matter of public record—is the instructions we give our bank examiners.

Mr. ROSENTHAL. Is the answer to the question you are not going to do anything for 2 or 3 years because you have to take a look at a number of other things, period; that is the answer?

Mr. MUCKENFUSS. Right.

Mr. ROSENTHAL. How about your legal authority, you don't seem to have any problems with the legal authority on racial redlining?

Ms. SULLIVAN. As viewed by our legal division.

Mr. ROSENTHAL. What does your legal division tell you?

Ms. SULLIVAN. Well, they felt that we had sufficient authority under both the Community Reinvestment Act and the FDI Act to promulgate regulations prohibiting redlining on the basis of race—

Mr. ROSENTHAL. How about your folks, Governor Jackson?

Mr. JACKSON. Our attorneys haven't specifically addressed the issue you have described, Mr. Chairman; but it would be my judgment that the Board of Governors has unique authority under the Federal Trade Commission Improvement Act of 1975 to prohibit unfair and deceptive practices by banks. My limited reading of that Act—and I am no attorney and don't want to suggest my judgment would have the validity that the judgment of somebody with legal

training might have—however, it is my judgment that the scope of our authority under that act would allow us to do so if it were found to be necessary.

Mr. ROSENTHAL. Mr. Muckenfuss, you said on page 37 of your statement that when the second violation occurs, your agency will consider the option of notifying the victims that a violation of law has occurred. Can you be more specific about what you meant by that? What kind of circumstances would warrant notification of victims?

Mr. MUCKENFUSS. If it were a substantive violation, one which impeded the applicant's access to credit—and there is a range of those and I would ask Mr. Taylor to outline them, if you wish—and when the institution on its own part has not taken steps to correct that, then I think we would either require the institution to give notice to the applicant or we would do so ourselves.

Mr. ROSENTHAL. The proposed enforcement guidelines for regulation B do not mention notification of victims that a violation of law has occurred. Thus, your decision to give notice of violations in certain circumstances represents an agency policy on enforcement that in this respect is different from the uniform enforcement policy stated in the guidelines.

This appears to me to violate the principle of uniformity.

Mr. MUCKENFUSS. The guidelines themselves state that they are meant to be minimum guidelines. I think all of the agencies view these as minimums and that, under certain circumstances, the enforcement will be tailored to the violation.

I think it is fair to say that all the agencies—

Mr. ROSENTHAL. Enforcement will be tailored to which agency is supervising the particular institution?

Mr. MUCKENFUSS. I would prefer to say to the circumstances of the violation.

Mr. ROSENTHAL. Take the truth in lending guidelines: Yesterday, Mr. Connell testified that his agency will issue supplementary enforcement guidelines for truth in lending because the guidelines tentatively agreed upon by the interagency group are unsatisfactory, in his opinion, for the protection of credit union borrowers.

In the interest of uniformity, will the Comptroller's Office adhere to all of the provisions of the uniform agency guidelines on truth in lending?

Mr. MUCKENFUSS. Here, again, I think we would have to look at the facts of a particular case. I don't think any agency when presented with a set of facts that required enforcement, and where we have the authority to go forward with it, would, if it were proper, fail to go forward.

Mr. ROSENTHAL. I don't understand your answer, but perhaps you don't understand the question.

What was the interagency group's decision on restitution of overcharges, do you know?

Mr. MUCKENFUSS. You mean in truth in lending?

Mr. ROSENTHAL. In truth in lending, yes.

Mr. MUCKENFUSS. The decision was to require restitution.

Mr. ROSENTHAL. How far back in time will restitution apply?

Mr. MUCKENFUSS. To October 28, 1974.

Mr. ROSENTHAL. Do you think that is fair to consumers in that respect?

Mr. MUCKENFUSS. I am not certain that I would necessarily have agreed with that date. That date was based upon a date in a piece of legislation which was proposed in the Senate, S. 2802, the truth-in-lending simplification bill. There was much discussion with respect to picking the date and it is fair to say that among the agencies there were differences of view. In the interest of uniformity we did agree to that date.

Mr. ROSENTHAL. What was the difference of views? You were for an earlier date, I presume?

Mr. MUCKENFUSS. It is fair to say that we would have gone back further.

Mr. ROSENTHAL. To when, where would you have gone to?

Mr. MUCKENFUSS. To July 1969.

Mr. ROSENTHAL. You would have gone to 1969?

Mr. MUCKENFUSS. For mortgages.

Mr. ROSENTHAL. Where did you folks want to go, Ms. Sullivan, do you know?

Ms. SULLIVAN. I am not sure; I believe it is the 1974 date.

Mr. ROSENTHAL. 1974.

Governor Jackson, do you have any recollection?

Mr. JACKSON. Yes. The Board in an open meeting advocated that our position on this uniform approach be the 1974 date.

Mr. ROSENTHAL. So the 1974's won.

Let me just ask one other question so I can yield to my colleagues.

One of the themes that I think I have learned from these hearings is that examination procedures all recognize preapplication discouragement as a potential source of discrimination. In each of your respective procedures you seek to attack this in various ways.

We heard testimony from two people who seem to have some significant experience in this area—Commissioner Greenwald of Massachusetts, and Mr. Dennis who was hired by the Board—that in reality the only effective method to confirm the existence of preapplication discouragement is through the use of testers.

I wonder if each of you would offer a comment on that. How about you, Mr. Muckenfuss?

Mr. MUCKENFUSS. It is fair to say prescreening is one of the more difficult problems in the area, and testing is a technique which Commissioner Greenwald is pioneering.

We are going to watch that very closely, and consider whether or not to go forward with something along those lines.

I must say, there are great differences of opinion even among the people who propose testing as to how it should be done. It is not an easy question.

Mr. ROSENTHAL. Ms. Sullivan, have you any thoughts on the subject?

Ms. SULLIVAN. I agree, that prescreening is a source of a great deal of—maybe a source of a great deal of discrimination, and testing is a very effective method of getting at that. I disagree it is the only method.

Mr. ROSENTHAL. What other techniques can you use other than testing?

Ms. SULLIVAN. Well, for example, an examination of a bank's loan policy.

Mr. ROSENTHAL. Of what?

Ms. SULLIVAN. An examination of a bank's loan policy. For example, what circumstances under which they would not accept an application.

Mr. ROSENTHAL. You couldn't tell that, because you would come up with a lot of rhetoric.

Ms. SULLIVAN. No, we have such a case documented.

Mr. ROSENTHAL. As of now, you are not moving in the direction of testing?

Ms. SULLIVAN. No, that is not true. We are studying it.

Mr. ROSENTHAL. What is your policy, what are you doing?

Ms. SULLIVAN. At the moment, in the examination process our prescreening efforts are primarily directed to both discussions with bank personnel and observation of their responses to telephone and in-person inquiries on the availability of credit, the terms of that credit, and we draw a judgment on that.

Mr. ROSENTHAL. Governor Jackson, are you folks doing much?

Mr. JACKSON. We are in the process of reviewing all these procedures and I am sure testing will be one of the techniques we will evaluate.

Mr. Chairman, I must say though that this problem extends beyond the financial institution. For example, the builder, the broker, the intermediary through whom people might negotiate for the purchase of a house, often will engage in prescreening a long time before the prospective financial institution ever sees a customer. To that extent, it is going to be most difficult, if not altogether impossible, for enforcement agencies dealing only with the financial institution to get at the fundamental problem.

Mr. ROSENTHAL. We can only deal with what we have to deal with. But we do have Federal regulatory agencies that supervise, I guess, 14,000 or more banks, and they are an important force in our communities.

States have very strong attitudes toward real estate brokers, for example. They have licensing procedures. You have other tools. We have to deal with what we can deal with.

Mr. JACKSON. Testing will be among the techniques we will consider. We now have questions in our examination directly pertaining to the way in which interviews by bank officers or personnel are conducted with applicants, to see if we notice any prescreening effects in the instructions to the application-takers or bank officers at the time a customer comes in. I recognize that is not testing, in the sense that you have asked it, but we are doing something in that direction now.

Mr. DRINAN. Would the chairman yield?

Mr. ROSENTHAL. I am happy to yield.

Mr. DRINAN. All three say that testing is very effective, yet all three are resistant to testing. Testing has been going on in the minority communities for a generation. The Massachusetts Commission Against Discrimination has used it for years and years.

Mr. Chairman, I fail to understand why they are so reluctant, why they say that "testing is a very good technique but we are not going to use it, or we are not using it." It is beyond me.

Mr. JACKSON. Mr. Drinan, I didn't say that we had decided not to use testing.

Mr. DRINAN. No; Ms. Sullivan did, and Mr. Muckenfuss did. Everywhere testing is going on by the civil liberties committees and the civil rights groups.

Mr. Chairman, it distresses me there is not a single black person in this room except one reporter.

I have another question: Are you involving the civil rights community in something they passionately feel about, or are they being locked out? They are doing all the testing. Why can't the federally financed banking institutions do it? Just tell me why.

Ms. SULLIVAN. Well, I guess in terms of FDIC, you are correct, we haven't used it.

Mr. ROSENTHAL. Why don't you use the microphone.

Ms. SULLIVAN. Sorry.

Mr. ROSENTHAL. Move it over, please.

Ms. SULLIVAN. You are correct; we haven't used it; we acknowledge it is an effective tool.

Mr. ROSENTHAL. Have you ever talked to Ms. Greenwald about it?

Ms. SULLIVAN. Yes, sir; as a matter of fact, just this week.

Mr. ROSENTHAL. Were you impressed by her experience?

Ms. SULLIVAN. Yes.

Mr. DRINAN. Mr. Chairman, I presented a question.

Just give me one rational reason why the FDIC is not using the most effective tool which everybody for a generation has agreed to?

Ms. SULLIVAN. We have concentrated our efforts at this point to internal discriminatory lending practices rather than—

Mr. DRINAN. You are going to be reborn after tonight, today come back into the state of grace. Are you going to use it tomorrow?

Ms. SULLIVAN. No; we are not going to use it tomorrow.

Mr. DRINAN. Next year, next month?

Ms. SULLIVAN. That could be possible.

Mr. DRINAN. What is that?

Ms. SULLIVAN. I say that could be possible.

Mr. DRINAN. This is an oversight hearing; we are just trying to do our job, Ma'am.

Ms. SULLIVAN. I understand.

Mr. DRINAN. When I go home this weekend, I am going to talk to thousands of people and right now I am going to say that all the banking regulatory agencies bombed out on redlining. I am going to say that to a group tonight in Boston. That is my impression.

Give me some hope for this interracial group that I am going to speak to tonight. Let me tell them that you people are going to move effectively on this terrible problem, in Boston and across this country. Give me a little hope.

Ms. SULLIVAN. Well, I have felt that we have taken an aggressive approach toward redlining, particularly in response to—

Mr. DRINAN. Let's just talk about testing, Ms. Sullivan. You say that the FDIC has no intention of using testing. Could you give me one reason why they are not going to use testing?

Mr. ROSENTHAL. Would you object if we gave her 5 minutes to think over an answer?

Mr. DRINAN. No, Mr. Chairman.

Mr. ROSENTHAL. All right. We will be right back.

[Brief recess.]

Mr. ROSENTHAL. Congressman Drinan?

Mr. DRINAN. Thank you, Mr. Chairman.

Ms. Sullivan, you can tell me anything that you want.

Ms. SULLIVAN. OK, thank you.

First of all, something I did not mention, which is included in our materials that we furnished to the subcommittee, were the steps, all the steps we are taking right now for prescreening.

Specifically, in July of this year, Part 338 of the FDIC regulations requires that each bank we supervise maintain a log of the race, sex, age, marital status of all inquirers and applicants for credit. We frankly feel we would like to have some experience with that as a tool for detecting prescreening discriminatory practices before moving to other methods.

Mr. DRINAN. And that information does not already exist in the extensive record over 20 years on redlining? You have insufficient information; you have a doubt where this is going on? You get all this information and it will show that one-third of the people are single, or married women living without a husband and that they don't get a mortgage. So what are you going to conclude from that? You will not get from that the information what you can only get from testing. Would you agree? Is this a substitute for testing? You admit it is effective?

Ms. SULLIVAN. No.

Mr. DRINAN. You admitted testing is very, very effective? I am still going to say to my people that the FDIC concedes that testing is very effective. The civil rights community has been doing it for years and years, but "we have absolutely no intention of doing it, ever"—that is the way it comes out to me.

Ms. SULLIVAN. Well, that is not true.

Mr. DRINAN. You might do it sometime, like when?

Ms. SULLIVAN. I can't give you a month or a date because, as I said, we want to see what our experience with this inquiry log is going to be.

Mr. DRINAN. I still lose you. You say it is not the only effective way but it is very effective. Why can't you go and use the very effective way to carry out the obligations the Congress placed in the FDIC?

Ms. SULLIVAN. Right now we have another system in place which we feel will be effective.

Mr. DRINAN. As equally effective as testing?

Ms. SULLIVAN. We don't know.

Mr. DRINAN. Why abandon testing when everyone says at this table and across the country that testing is a very effective method? So why give up a known method, one that is known to be effective, for something that is problematical? That is the question?

Ms. SULLIVAN. Well, again, testing is effective but I cannot conclude this is the only effective means. This may well be as or more effective.

Mr. DRINAN. I am sorry to be so insistent, but I was a tester years ago in 1963, in Boston we had a group of testers and we did a very effective job in trying to secure property that otherwise would

have deteriorated. However, the situation in Boston and all across the country in the inner city has deteriorated since that time.

I complain to the insurance companies because they redline. I complain against all types of sociological phenomena. Right now, this morning, we as people with oversight on your agency and other agencies have to say what is the FDIC doing? Back in 1963 when I was testing, it was very effective, it was done by all the civil rights groups. Even now, 15 years later, the FDIC says, "Sure, it is effective; we admit it is effective, but we are not going to use it," because you have something else that might be allegedly equally effective. It appalls my mind and I have no answer.

Mr. ROSENTHAL. Congressman Brown?

Mr. GARRY BROWN. Thank you, Mr. Chairman.

Have you all testified before Don Edwards' committee in the Judiciary Committee also, in his hearing?

Mr. JACKSON. No.

Ms. SULLIVAN. No.

Mr. GARRY BROWN. He conducted hearings on an amendment to the Fair Housing Act.

The thing that bothers me about it all is that I don't believe that loan officers of financial institutions have a commitment, a deep-seated commitment to discriminate. The reason that discriminatory practices occur is because under even all the regulations under which financial institutions operate, those institutions are obligated to conduct their institutions in a prudent way, not make bad loans. There is no question but what the quality of a loan is affected by the collateral and therefore by the area in which the property is located and certain demographic factors.

Now I can believe that if we had a program at the Federal level, as has been discussed in the Banking Committee somewhat, which provides for loan guarantees if loans are made in priority areas so that in effect it would then be a prudent loan, irrespective of where it was made or what demographic factors were involved with a particular loan applicant, I don't believe we would be holding these hearings. That is the problem of substance, I think. You wouldn't need testers; you wouldn't need a Home Mortgage Disclosure Act; you wouldn't need an Equal Opportunity Credit Act; you wouldn't need a lot of those things.

That brings us to the second point: The procedures—each committee of the Congress in its own jurisdiction comes up with a new proposal which is basically focused at the same problem, that is, equal credit opportunity. The Home Mortgage Disclosure Act—that was to make sure there was equal opportunity in home mortgages, that there wasn't a disproportionate or an inappropriate refusal of home mortgages.

The Equal Credit Opportunity Act goes beyond home mortgages; it goes to credit generally. The Community Reinvestment Act, the CRA, is aimed at the same thing, to make sure that the institutions in a community, in a given area, are appropriately meeting the credit needs of the people of that area.

Then, of course, we have the Omnibus Civil Rights Act which also touches upon it. Now, why do we need four pieces of legislation just to make sure that there is equal, nondiscriminatory opportunity for credit? Can any of you tell me why? Should we have

different rules with respect to home mortgages? Is there something special about the Community Reinvestment Act which attempts to direct itself to the same problem, to make sure that institutions that are not giving equal credit opportunity, that they are to be permitted to plan those kinds of things? All of those are basically procedures and mechanisms to accomplish the one basic substantive purpose, aren't they?

Mr. JACKSON. I am sure one of the questions you might properly ask is why the Board of Governors in its promulgation of Regulation B singled out home mortgage applications as the particular type of application for which datakeeping was required. And the multiplicity of laws that you described is among the background.

At that time we had conflicting testimony about the desirability of doing so. For example, representatives of B'nai Brith and the Antidefamation League testified extremely strongly that any sort of ethnic or racial datakeeping was against public policy and would open public policy to the abuses that other countries had seen in this area, and strongly urged that we not allow any sort of datakeeping whatever.

Today we are discussing two acts that say almost identically that it is against the law to discriminate on housing loans for these purposes. The Fair Housing Act, section 803 of title VIII of the Civil Rights Act of 1968 is under the supervision primarily of the Department of Housing and Urban Development. In connection with their implementation of that act, they advised us that if we did not require datakeeping under regulation B, they would do so under the Fair Housing Act.

It was our judgment and theirs that the Equal Credit Opportunity Act was a more effective public device to attack discrimination in housing.

In addition to that, we found that the application forms used by the Federal Housing Administration, the Veterans Administration and uniformly promulgated by the Federal National Mortgage Association and Federal National Home Loan Corporation already had similar requirements.

Altogether this represents a large segment of the home mortgage market that is already engaged in some sort of datakeeping. So, as a consequence of that, and I believe my colleagues join me in the judgment that it was wise to experiment with data notation in this narrow sector of credit.

And you are correct, unfortunately, we do have a multiplicity of laws, somewhat layered, that relate to the same issue. For example, you were concerned about the possibility of insurance. We already have the Federal Housing Administration, a part of the Department of HUD, that engages in Federal insurance.

Mr. GARRY BROWN. But, Governor, I can show you where HUD in effect redlines in the granting of insurance.

Mr. JACKSON. I understand.

Mr. Chairman, I might add—you asked earlier about public programs that result in the degradation of neighborhoods—I believe if you visit such cities as Detroit, in Mr. Brown's State, you will see that HUD programs sometimes result in the degradation of neighborhoods in the inner cities. The existence of a subsidy may be the greatest evil that you could foist on them.

Mr. ROSENTHAL. The subsidy she talked about was outside, in the suburbs, which presumably drew people out of the inner city.

Mr. GARRY BROWN. Let me go back and ask the basic question: In your experience and from all of the activities of your regulatory agencies, is it your opinion that discriminatory practices occur for any reason other than their interfacing or their confronting good business practices as far as loan policy? In short, absent the economic reason in conducting institutions wouldn't a different decision on loan applications occur? I mean, is there a basic intent to discriminate absent economic reasons?

Mr. MUCKENFUSS. There are two dimensions to that: One is racial and the second is irrational in other ways. I think it is fair to say that certainly 10 years ago—certainly where I grew up—there were problems with racial discrimination. I think that there are far less now and I think—I won't even say the vast—

Mr. GARRY BROWN. Let me stop you there on that one.

I can see that there would be the opposition that you are saying, that there was a practice there—in the purchase, that is, but did that reflect upon the institution if it made a loan, for instance, to a black person?

Mr. MUCKENFUSS. What I am saying is, I don't think we can discount the possibility that some bankers, somewhere, still have racial animus, just as we can't discount the possibility that there are bankers who are dishonest and overreach in their transactions, just as there are bankers who make unsound loans.

We believe, not just the vast majority but the overwhelming preponderance of bankers around the country, don't harbor that, but the reason that we have civil rights laws still on the books, is the possibility that those people do exist.

The second side of it is the irrational factor—and I think this is vastly improving. While bankers themselves concede that their underwriting standards needed improving, I think they are doing just that. Yet we can't discount the possibility that there are still irrational practices which unfairly deny access to credit.

Mr. GARRY BROWN. I don't think I was saying that. After all, as you indicated, there are individuals in our society for whom you can't write laws. Supposing felons decided they were being discriminated against, should we then require a maintenance of records on felons?

I can give you any of a dozen other similar categories. Then should we have testers go out and say, "I am a former convict and I want to get a loan."

Mr. MUCKENFUSS. Let me go back to your original question. Underlying what you are saying is the question of how we can deal most effectively with those people who have either racial animus or who are irrational in their underwriting tactics. In our testimony, on page 4, we suggested that at some point, very soon, Congress might review all of these laws with the long-run goal of consolidating them into a simpler statute reflecting the lessons we have learned.

Mr. DRINAN. What are the lessons that we have learned? We have learned that redlining still goes on in a massive way and that none of these laws have been effectively carried out, or that the laws themselves are deficient. You suggest mildly here that we

have a simpler statute that reflects the lessons. You haven't demonstrated that any of the laws have in fact eliminated redlining; that it goes on in a massive way in the slums of downtown Syracuse, Los Angeles, San Diego is a testament to that. You have yet to demonstrate that anything has happened by reason of the implementation of these laws to improve the situation.

I yield back.

Mr. MUCKENFUSS. I was going to follow up. We suggest one of the reasons for establishing our Civil Rights Office and our Regulatory Reform Office is the fact that we can do some of these things more efficiently. In point of fact, one of the arguments for testing, is that testing is far more efficient than recordkeeping, which imposes burdens on small institutions. Also, we recognize that there are a lot of different ways to perform these tests.

Mr. GARRY Brown. One short question: I would be curious to see a comparison of the cost of the maintenance, both from a governmental standpoint and from the institutional standpoint, of all these four different acts that you have to administer and enforce; the cost of those compared with some kind of an insurance program that would assure that if you make loans in risky areas, that the lender will be protected?

I am not sure that the costs would be much different and I don't think we would be having this enforcement problem. I think there shouldn't be redlining. I think there ought to be equal credit opportunity. But I am saying, if you are going to adhere to a mandate that these institutions be safe and sound, it seems to me this is an area that we are attempting to, in effect, put a Band-aid on through these regulatory procedures without getting at the root cause of the problem.

We have got a vote. I won't be able to come back, Mr. Chairman.

Mr. ROSENTHAL. We are going to adjourn right after this.

The time of the gentleman has expired.

Mr. Muckenfuss, the tabulations you provided the committee on consumer discrimination complaints show there were 129 complaints that received no investigation and arose from institutions subsequently examined; in 30 of those 129 cases in which no investigation was made of the complaint, a similar discrimination violation was found at the institution's next compliance examination. Doesn't that indicate a serious weakness in the handling of the complaints?

Mr. MUCKENFUSS. We are trying to improve our complaint-handling processes.

Mr. ROSENTHAL. I want to apologize to each of you for the interruptions we had. We will have to have another followup series of hearings, and I suppose 6 months would be a proper time. We shall not do it on a day when Congress comes in at 10 o'clock. We are anxious to fulfill our responsibility.

Mr. DRINAN. We didn't get to the question. Are there any referrals to the Justice Department for prosecution? I haven't heard of any. Are there guidelines between the banking agencies and the Justice Department governing what kind of discrimination will, in fact, be referred to the Justice Department? Does anybody have a quick answer on that?

Ms. SULLIVAN. There is a memorandum of understanding right now between the three agencies here, the Bank Board, HUD and Justice, concerning exchanges of information.

Mr. ROSENTHAL. Would you furnish us with a copy of that memorandum?

[The material referred to follows:]

MEMORANDUM OF UNDERSTANDING REGARDING
INTERCHANGE OF INFORMATION CONCERNING COMPLAINTS
INVOLVING DISCRIMINATION IN FINANCING

The Department of Housing and Urban Development, the Department of Justice, and the four principal Federal Financial Regulatory Agencies (the Comptroller of the Currency, the Federal Home Loan Bank Board, the Federal Reserve Board and the Federal Deposit Insurance Corporation) agree to the following exchange of information concerning complaints of discrimination in financing.

I. The Department of Housing and Urban Development

- A. HUD will provide the appropriate Federal Financial Regulatory Agency with a copy of all complaints received pertaining to discrimination in financing that have been accepted for investigation.
- B. HUD will provide a copy of the notice to resolve or not to resolve served on the respondent to the appropriate Federal Financial Regulatory Agency.
- C. The Department of HUD will provide the Department of Justice a monthly listing of financial institutions against whom complaints have been filed.
- D. In appropriate instances, where there is a failure to conciliate, the Department of HUD will refer such cases to the Department of Justice for its consideration for action under Section 805.
- E. HUD will provide a copy to the appropriate Federal Financial Regulatory Agency of the notification to Justice when HUD's attempts to conciliate a complaint have failed.

II. The Federal Financial Regulatory Agencies

- A. Each Federal Financial Regulatory Agency will provide HUD with a copy of all complaints received by the Agency pertaining to discrimination in financing together with an indication of action taken or contemplated by the Agency on the complaint.

- B. Each Federal Financial Regulatory Agency will provide HUD with a periodic report of the status of complaints referred by HUD to the Agency.
- C. At the discretion of each Federal Financial Regulatory Agency, cases reflecting possible discrimination in lending will be referred to the Justice Department.

III. The Department of Justice

- A. At the discretion of the Justice Department, cases reflecting discrimination in lending by financial institutions will be referred to the appropriate Federal Financial Regulatory Agency. Justice will furnish notice when it is decided to institute suit against a financial institution.
- B. Department of Justice will provide a monthly list of financing investigations to HUD.

Mr. DRINAN. It is just exchange of information; there are no guidelines for prosecution?

Ms. SULLIVAN. That is right, sir.

Mr. ROSENTHAL. Why aren't there? The law, all these laws have provisions in them set forth by Congress that there shall be prosecutions by the Justice Department in appropriate cases. Are we being told there have never been any prosecutions under the law?

Ms. SULLIVAN. I don't think that is true.

Mr. DRINAN. Is that true?

Ms. SULLIVAN. The Justice Department has prosecuted.

Mr. DRINAN. There are no guidelines as to any reasons, any common reasons for the referral?

Ms. SULLIVAN. That is right.

Mr. DRINAN. Unbelievable.

Thank you very much.

Mr. ROSENTHAL. I think the last thing I would have to say, it seems to me that the interagency group is going to have to strengthen the product that they are working from and try to get some uniformity of attitude and action here, because you can't have four banking regulatory agencies coming up with different sets of guidelines. The Home Loan Bank Board is out front in one area; somebody else is doing something else in another area. The community absolutely doesn't understand the level and attitude of commitment of the Federal regulatory establishment.

Again, I want to apologize for this disoriented, disjointed hearing.

The subcommittee stands adjourned.

[The prepared statements of Ms. Sullivan and Mr. Muckenfuss follow:]

PREPARED STATEMENT OF CARMEN J. SULLIVAN, ACTING DIRECTOR, OFFICE OF
CONSUMER AFFAIRS AND CIVIL RIGHTS, FEDERAL DEPOSIT INSURANCE CORPORATION

Mr. Chairman, we at the Federal Deposit Insurance Corporation welcome this opportunity to testify on our enforcement of the Equal Credit Opportunity Act, the Fair Housing Act, and matters related to these Acts.

The FDIC, as a Federal supervisor of banks, places a high priority on ensuring that the credit needs of communities and individuals are being met in an affirmative, nondiscriminatory manner.

FDIC enforcement of antidiscriminatory statutes is the subject of criticism on two sides. Consumer groups and other organizations are always concerned that the agencies' enforcement efforts are not as vigorous as they should be. On the other hand, bankers complain about the costs generated by paperwork required by regulations implementing these statutes and point out that it is the bank customer who ultimately bears these costs. It is the policy of the FDIC to design the most effective and efficient regulatory and supervisory mechanisms to enforce the fair lending laws.

In my testimony today, my focus will be on the FDIC's enforcement activities in the areas of equal credit opportunity and fair housing. In the course of my testimony, I will attempt to present our initial difficulties in ascertaining bank compliance with these statutes, how these difficulties are being resolved, and the direction our present and proposed enforcement program is taking.

Ten years ago the FDIC for the first time was delegated responsibility for enforcing a Federal antidiscriminatory statute-- the Fair Housing Act. That Act prohibits a bank from denying a loan

or other financial assistance to an applicant for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling, or from discriminating against the applicant in the fixing of the terms and the conditions of that loan or other financial assistance because of the applicant's race, color, religion, national origin, or sex. In 1974 the Equal Credit Opportunity Act was passed which, as amended, makes it unlawful for any lender to discriminate against any applicant with respect to any aspect of a credit transaction on the basis of race, color, religion, marital status, age, sex, the receipt of public assistance, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. In 1975 the Home Mortgage Disclosure Act was enacted, requiring banks with \$10 million or more in total deposits located in standard metropolitan statistical areas to make available to the public on request data disclosing the amount and the location of their residential real estate and home improvement lending activity for each fiscal year. Finally, in 1977 the Community Reinvestment Act was passed requiring the Federal financial supervisory agencies when examining financial institutions to encourage them to help meet the credit needs of the local communities in which they are chartered and to take into account their record in meeting community credit needs when passing on applications for branches, mergers, and so forth.

These four statutes are designed to eliminate discriminatory lending practices that adversely affect individuals, organizations, neighborhoods, and communities. However, because discriminatory lending practices are often subtle and were difficult to detect on

the basis of records available to us, our initial enforcement program did not turn up many violations. With the adoption of racial notation requirements in Regulation B as amended and record keeping and racial notation requirements in the FDIC's Fair Housing regulation (Part 338), our ability to enforce the Equal Credit Opportunity Act and the Fair Housing Act has been enhanced. Retention of racial, financial, and other information on the applicants and the property which is the subject of the application are essential elements in an effective civil rights compliance enforcement program.

FDIC's Compliance Enforcement Program

The FDIC's initial compliance enforcement program was limited to an evaluation of compliance with consumer laws, primarily truth in lending, as a part of the regular examination. On December 17, 1971, the Board of Directors of the Federal Deposit Insurance Corporation adopted a statement entitled "Policy on Nondiscrimination in Real Estate Activities" which required a bank to give notice of equal lending opportunity in its advertisements for loans and public disclosure of equal credit opportunity on a bank premises.

As of January 1, 1974, the FDIC developed a separate compliance report. This report was developed in conjunction with our withdrawal from the examination of banks for safety and soundness in three states. The FDIC continued to examine these banks for compliance with Federal laws and regulations. Recognizing that there were certain advantages to the new approach, the FDIC required the use of a separate report for compliance in the examinations of all State nonmember banks effective September 9, 1974.

Recognizing the need for a still more effective compliance enforcement program, the FDIC developed and implemented a separate compliance examination program early in 1977. Essentially, this program includes an examination of each FDIC-supervised bank at least once every 15 months for compliance with consumer protection, civil rights, and related laws and regulations. Examiners are selected to participate in the examination program generally for a 6-month tour of duty. They receive special training in consumer protection and civil rights prior to their participation in the program.

This program has resulted in a significant increase in commitment of examiner resources. It also has resulted in more thorough compliance examinations and a recognition by FDIC-supervised banks that the FDIC takes very seriously their compliance with consumer protection and civil rights laws and regulations. In turn, the banks have increased their own vigilance and most try hard to comply with laws and regulations. FDIC examiners try to assist bankers whenever possible in understanding the requirements of applicable laws and regulations.

To measure the effectiveness of our separate compliance examinations, we undertook a survey of examination reports to compare our experience under the new separate compliance examination system with that of the old system. From the results of that survey we found that we are able to detect better instances in which the bank, either through inadvertance or otherwise, has failed to comply with consumer regulations. Accordingly, we intend to continue to examine banks for compliance in a separate examination with examiners

especially trained for that purpose. These examiners are helpful not only with respect to detection of apparent violations, but also in obtaining corrective action on the part of banks.

Corrective action on violations discovered during the course of a compliance examination generally begins with the examiner pointing out to bank management the violations discovered and the corrective actions necessary to make the affected individual whole and to preclude a recurrence. After review in the Regional Office, the report of compliance examination is transmitted to the bank's board of directors. If the violations are not corrected voluntarily or satisfactorily, a strongly worded supervisory letter is addressed to the bank's board of directors. In some cases, the directors are requested to sign a written agreement on corrective measures. A continuation of unsatisfactory compliance will result generally in a recommendation for formal cease-and-desist action.

Since January 1977 the FDIC's Board of Directors has issued 13 cease-and-desist orders in which one of the items stated was substantial noncompliance with the Equal Credit Opportunity Act and its implementing Regulation B. Corrective action required to be taken by the bank included providing rejected applicants with a written notice of adverse action, designating a compliance officer in the bank, adopting a written compliance program subject to the approval of the Regional Office, and providing periodic progress reports on compliance efforts to the Regional Director. The foregoing represents a summary of our present approach to achieving compliance with fair lending statutes by FDIC-supervised banks.

Apart from the compliance program I have described, we have considered public release of the names of institutions that have

refused or failed to eliminate discriminatory lending practices. There are two reasons why such public disclosure might not be advisable. First, disclosure could present a misleading picture unless there were a full explanation of the nature of the violation. Second, public disclosure would deny an institution the benefit of asking for an administrative hearing and the attendant safeguards such a hearing could entail. It should be noted in this regard that final cease-and-desist orders issued, following an administrative hearing or after being consented to, are available to the public upon request.

The law presently does not authorize criminal prosecution of either a bank or its officers who fail to comply with the fair lending statutes. However, the Equal Credit Opportunity Act authorizes the FDIC to refer cases to the Department of Justice which may seek appropriate relief in court, including injunctive relief. The FDIC presently has no statutory authority to penalize a bank or a bank official for failure to eliminate illegal discriminatory lending practices. However, if the Financial Institutions Regulatory Act of 1978 should become law, the FDIC will gain the power to impose penalties for the violation of Federal laws and regulations. If it is determined that civil penalties can be imposed for such activity by an enforcement agency under State law, the FDIC would refer the matter to the appropriate State agency for disposition.

During the course of the safety and soundness examination, bank officers are required to provide information on all litigation involving the bank, including civil damages litigation. While litigation information is collected, it has never systematically

been collated. Thus, we do not know the extent to which customers of FDIC-supervised banks have pursued such litigation as a means of corrective action and redress for discriminatory lending practices. While civil damages litigation can be an effective way of achieving general compliance with the laws against credit discrimination, such litigation is expensive, time consuming, and generally applicable only to the facts of the specific case adjudicated. However, we recognize that well publicized cases involving substantial penalties can have a salutary effect in encouraging compliance.

Recently, uniform guidelines for enforcing the Equal Credit Opportunity Act and its implementing Regulation B were proposed for comment by those Federal agencies that regulate banks, thrift institutions, and credit unions. The basic objective of these guidelines, as proposed, is to require offending institutions to take corrective action to make their customers whole where prohibited discriminatory practices are uncovered. The comment period on the proposed guidelines ended in early September. The agencies are currently reviewing the comments. When this review has been completed it is our expectation that the agencies will develop and adopt final uniform guidelines.

Other FDIC Civil Rights Activities

Investigation of consumer complaints has been another means of determining compliance with fair lending laws and regulations. Prior to the Equal Credit Opportunity Act we received few complaints. In 1975, for example, we received only 8 credit discrimination complaints. Since that time the number of complaints has increased. In 1976 we received 78 complaints and in 1977 we received 219. We

think this increase is due primarily to the Equal Credit Opportunity Act notice.

The Equal Credit Opportunity Act notice, giving the name and address of the creditor's Federal supervisory agency, has been of considerable help in assisting consumers who wanted to register a complaint of discriminatory lending practices. The FDIC has developed and distributed several information brochures to assist consumers in understanding fair lending laws and their rights under these laws. During the past year, we have distributed over 6 million educational pamphlets on the antidiscrimination laws. One of these pamphlets briefly summarizes the Federal consumer protection statutes applicable to banks, explains how to file a complaint, and provides a form for filing an inquiry or complaint. In addition, we attempt to provide every consumer who inquires or complains to the FDIC about credit discrimination with information on his or her rights under laws. We intend to expand our educational efforts with materials on our fair housing enforcement activities, the Home Mortgage Disclosure Act, the Community Reinvestment Act, and the steps involved in applying for and obtaining a loan.

Monitoring consumer protection and civil rights compliance statutes cannot be accomplished effectively, however, without well trained examiners. Each year our commitment of training resources to compliance matters has increased. In 1979 training hours in civil rights, including the Fair Housing Act, the Equal Credit Opportunity Act, Regulation B, the Home Mortgage Disclosure Act, the Community Reinvestment Act, and the FDIC's Fair Housing regulations (Part 338) will almost double with the introduction of a 1-week civil rights

school for those examiners selected for the separate compliance examination program.

Finally, in late 1977 the FDIC's Board of Directors established a Civil Rights Branch within the Office of Consumer Affairs and Civil Rights to provide leadership in the overall administration of the FDIC's enforcement of civil rights laws and regulations. In addition, Regional Office specialists assist the Civil Rights Branch in a liaison capacity with the field examiner force.

Redlining

The term "redlining" has evolved to mean a financial institution's restriction of credit, either wholly or partially, in the community it serves based on the characteristics of the inhabitants of that community, age of the housing stock, or location of the housing stock.

Urban decay has surely been aggravated by redlining practices, as has been pointed out in the Congressional hearings on the Home Mortgage Disclosure Act and the Community Reinvestment Act. But to consider redlining practices and urban decay as merely a cause and effect situation is too simplistic. Poverty, decline in city services due to a deflated tax base, crime, unemployment, counter-productive subsidy programs, usury laws, rent control, and inflation also contribute significantly to urban decay.

Banking agency promulgation and enforcement of regulations to prohibit redlining discrimination conceivably would ensure more equitable treatment of individual loan applicants. Such regulations can really only have a significant impact on urban decay in tandem with a united partnership at the Federal, State, and local levels to

provide adequate public services and other forms of assistance to solve urban problems.

The FDIC's Legal Division has advised us that we have the authority to issue nondiscrimination regulations to prohibit redlining. It is the Legal Division's view that the FDIC may prohibit age and location of dwelling redlining practices on the grounds that these practices are arbitrary and unnecessary, and that they conflict with a bank's obligations under the provisions of the Community Reinvestment Act and the Federal Deposit Insurance Act.

Specifically, the foregoing conclusion is based on the following: (1) that Congress found in enacting the Community Reinvestment Act that financial institutions have a continuing obligation to meet community credit needs; (2) that the Senate Report on the Community Reinvestment Act suggests that such an obligation has always existed under the Corporation's statutory authority in the FDI Act relating to application requirements; (3) that the Corporation has statutory authority under Section 9 of the FDI Act to promulgate regulations to implement the provisions of the Act; (4) that the purpose of the Community Reinvestment Act is to revitalize communities; (5) that the national policy as noted in the Fair Housing Act promotes fair housing; (6) that lending discrimination based on the age or location of a dwelling is inequitable and has adverse effects on community development; and (7) that such an arbitrary practice can be eliminated without undue hardship to banks.

The need for regulations prohibiting redlining discrimination is under study. Because of inadequate and insufficient information, judgments on the existence of redlining practices have proved difficult. The FDIC recently initiated a pilot project in Brooklyn, New

York, in response to this problem. The study will attempt to: (1) ascertain the cost of acquiring information useful in determining the extent to which financial institutions are meeting the credit needs of their communities; (2) identify underserved neighborhoods; and (3) evaluate supplementary data collection and analysis techniques which might be used by examiners to assist in their review of a bank's compliance with the Community Reinvestment Act (CRA).

The agencies expect to publish the final CRA regulation no later than October 6, 1978, to become effective November 6, 1978. It is expected that under the regulations banks will be required to publish a CRA statement no later than February 6, 1979. Generally speaking, the statement will include a delineation of the community and a list of the community's credit needs the bank is prepared to serve. A notice that this statement is available for public comment will be posted in the lobby of the bank so that the agencies will have the benefit of the public's reaction to the bank's intentions as well as its performance. We are hopeful that banks will comply faithfully with the spirit as well as the purpose of this Act.

FDIC's Fair Housing Regulation

Part 338 of FDIC's regulations establishes record keeping requirements for insured State nonmember banks with respect to one-to-four family home loan inquiries and applications. In addition, each insured State nonmember bank having an office located in a standard metropolitan statistical area and assets exceeding \$10 million is required to retain credit-related information for home loan applications.

All insured State nonmember banks are required by Part 338 to request from the applicant and to retain any information provided on the name, address, race/national origin, sex, marital status, and age of persons making inquiries about applications for home loans. In addition, these banks are required to request and to retain information on the location of the property involved. If the inquirer refuses to provide the information concerning race/national origin or sex, the bank is required to note the information on the basis of observation or surname. All insured State nonmember banks are required to indicate sex, race, age, and marital status for each inquiry and each application on a special log sheet.

During the course of compliance examinations and fair lending complaint investigations, FDIC examiners will review the log sheets and loan records in conjunction with a data collection and analysis program for evidence of possible discriminatory practices concerning inquiries and applications for home loans. Banks identified as possibly engaging in such practices by the analysis system will be subjected to a more detailed examination. This data collection and analysis system is presently under development and full implementation of the program is not expected before early 1979. While the Fair Housing regulations are intended to assist in the detection of discrimination against individuals on the basis of race, sex, age, or marital status, information required under the regulation on location of property and age of structure could prove useful in investigating redlining practices.

Home Mortgage Disclosure Act

In addition to using information retained by banks pursuant to Part 338 of the FDIC regulations, FDIC examiners will employ Home Mortgage Disclosure Act data as an auxiliary tool in examining banks for evidence of redlining practices. Information generated by the requirements of this statute includes the total amount and census tract locations of home mortgage and home improvement loans made by a financial institution in the standard metropolitan statistical area during the reporting period. This information by itself, however, cannot confirm or disprove the existence of redlining practices.

Possibly the most beneficial aspect of the Home Mortgage Disclosure Act disclosure statement is that it shows the extent of an institution's housing-related lending to specific geographic areas. This provides the basis to those using the disclosure statement to raise questions regarding an institution's policies in extending housing credit to particular areas. To some degree the data also help to show the availability of housing credit in specific neighborhoods. However, the usefulness of the Home Mortgage Disclosure Act data is affected by basic conceptual difficulties.

Taken by themselves, the data are susceptible to misinterpretation because they reveal little about the actual demand for housing credit in specific geographic areas. Furthermore, the disclosed data cover only a portion of the total housing credit flows to a neighborhood or market area. Institutions that are not subject to the Act can be significant mortgage originators. Credit flows within a particular area will be understated to the extent that nondepository institutions

retain the mortgages they originate, or sell them to institutions either located outside of the standard metropolitan statistical area of origination or to institutions not covered by the Home Mortgage Disclosure Act. In addition, the exclusion of the secondary mortgage market institutions such as FNMA and FHLMC from Home Mortgage Disclosure Act coverage will also cause housing credit flows to be understated.

These conceptual and technical problems, as well as statutory responsibilities for enforcing the Home Mortgage Disclosure Act and for recommending improvements in the Act, prompted the FDIC and the Federal Home Loan Bank Board to fund a comprehensive study of the Home Mortgage Disclosure Act. Disclosure of home loan data is effective only if the information provided is timely, accurate, meaningful, and useful to potential users of the information. While Home Mortgage Disclosure Act data appear to possess the first two qualities, there is doubt about the other two. If it is deemed appropriate to continue some form of mandatory disclosure after the expiration of the Home Mortgage Disclosure Act, a more useful system of disclosure should be designed. In designing such a system, the costs to financial institutions and to the public should be determined and should be measured against the anticipated benefits. The results of the FDIC/FHLBB study should be useful in designing an effective and cost efficient Home Mortgage Disclosure Act.

Mr. Chairman, this concludes my testimony. I will be pleased to respond to any questions you may have.

PREPARED STATEMENT OF CANTWELL F. MUCKENFUSS III, DEPUTY COMPTROLLER
FOR POLICY PLANNING, OFFICE OF THE COMPTROLLER OF THE CURRENCY

I appreciate this opportunity to participate in the Committee's oversight hearings on the enforcement of the Equal Credit Opportunity Act and the Fair Housing Act. These statutes represent important steps taken by the Congress to assure that all of the citizens of our country have fair access to credit. The Comptroller's Office supported the enactment of these laws and has made substantial efforts to assure that they are enforced.

A significant new law will soon be woven into the fabric of our enforcement program in this area when the regulation implementing the Community Reinvestment Act becomes effective in November 1978. Thus, the problems of unlawful discrimination, redlining and disinvestment in certain neighborhoods will be addressed in concert through the enforcement of the Fair Housing Act, the Equal Credit Opportunity Act, the Home Mortgage Disclosure Act and the Community Reinvestment Act.

In your letter of August 16, 1978, you asked us to address six groups of questions at this hearing: redlining regulations; redlining monitoring; recent enforcement; future enforcement; civil damages litigation; and consumer information. We have addressed each of these in this Statement. In addition, you requested that we supply the answers to 34 additional questions regarding our enforcement efforts with respect to the Equal Credit Opportunity Act and the Fair Housing Act. We have done so under separate cover. Before turning to the specific questions, it is appropriate to outline briefly the commitment of resources which the Office has made to this important area to date and to highlight for the Committee several new initiatives which will contribute significantly to our efforts to assure both individuals and communities of fair access to the credit provided by national banks.

During 1973 a task force prepared recommendations for the Comptroller as to how the Office could best fulfill its obligations to consumers. This resulted in the establishment of a Consumer Affairs Division, which was announced in March, 1974 and became operational later that year. This initiative was undertaken by the Office prior to the time it was mandated by Congress.

Since that time several significant objectives have been accomplished. Consumer complaints and inquiries are investigated and responded to in an expeditious manner, a

consumer compliance examination procedure has been established which enables the Comptroller's Office to perform comprehensive on-site examinations, a dialogue has been undertaken with consumer and public interest groups and industry, and meaningful inter-agency liaison has been established with other enforcement agencies so that we can all perform our obligations more effectively.

We believe that we have made major strides in developing an effective enforcement program in the fair lending area. Our commitment to the effort is illustrated by the resources we have allocated to this area. We now spend in excess of \$4.5 million per year in consumer activities, of which \$1.8 million is allocated exclusively to ECOA and Fair Housing lending practices. More than 25,000 person days per year are devoted by field examiners to enforcing consumer laws.

It should be emphasized at the outset that we are not wedded to existing approaches nor to our current organizational structure. The laws we are discussing today are relatively new. Even the Fair Housing Act is a new mission for the agency relative to other functions assigned by Congress.

It is therefore to be expected that there will be certain differences of opinion and experimentation involved in the implementation of these new missions. Accordingly, we view these oversight hearings as timely and constructive. While we hope they will be informative to the Congress and to the public, they also provide the opportunity for us to review and question our own programs.

In the process of assessing the effectiveness of federal laws and enforcement efforts to deal with the problems of discrimination in lending, we believe that the Congress should reexamine all of the laws in this area, including the Community Reinvestment Act and the Home Mortgage Disclosure Act with the long-run goal of consolidating them into a simpler statute which reflects the lessons we have learned and will learn in the coming months.

Notwithstanding the difficulties always associated with the implementation of new missions by governmental agencies, we believe that the Comptroller of the Currency has made significant strides in the past five years in these areas. Moreover, we are confident that new initiatives which are currently under way will add significantly to our efforts to assure that every citizen has fair access to national bank credit.

In conjunction with the reorganization of our customer and community programs in Washington, the present consumer positions in the regional office are being upgraded to Regional Directors for Customer and Community Affairs. This will enable us to provide substantially more support for our field efforts. Also, a separate career path is being devised for consumer examiners which will provide incentives for them to remain in the program.

In December, 1977, the Comptroller's Office settled a Fair Housing suit brought against it and other agencies by a number

of civil rights and public interest groups. In the agreement we reaffirmed our commitment to continue the several facets of our enforcement program pertaining to civil rights. One additional significant undertaking was to establish a computer-based data collection and analysis system. This is designed to help target the regular Fair Housing portion of consumer examination and make it more efficient and effective. The system is described more fully in response to the questions submitted with this statement.

As a part of the reorganization of the Office of the Comptroller of the Currency, approved by the Secretary of the Treasury in February 1978, a Civil Rights Division was created which will have significant responsibilities with respect to the Fair Housing Act and the Equal Credit Opportunity Act. The Civil Rights Division is one of three divisions comprising a new Office of Customer and Community Programs. The other two divisions are a Consumer Programs Division and a Community Development Division.

The new Civil Rights Division will be policy oriented, performing six distinct functions, including:

1. Policy Formulation and Initiation. This function includes a variety of sub-tasks, including: (a) Taking primary responsibility for the substantive aspects of participation in interagency task forces (e.g., Reg B Enforcement Task Force); (b) Developing of positions for testimony; (c) Drafting of speeches in the relevant area; and (d) Developing new initiatives in the area.

2. Oversight and Monitoring. This office should in some manner review the operational aspects of the Comptroller's efforts in these areas. It should seek to determine whether our efforts in this area are efficient, effective and consistent.
3. Regulatory Reform. Arising out of the office's oversight function, it should be expected that it will propose initiatives which would lead to more efficient and effective enforcement of the civil rights laws. Many financial institutions, especially small institutions, feel that regulation in these areas is unduly costly and burdensome. At the same time, civil rights and consumer groups believe that we are not acting effectively. This suggests that there is room for some significant improvement in regulatory strategies in these areas. Offices such as these which are outside day-to-day operations should be expected to work with the operational people to effect improvements in our systems.
4. Outreach. This office should be the principal link between the agency and both public interest groups and banking groups. It should be expected that groups maintain an effective liaison with relevant groups and that as part of this function we seek to bring together public interest and banking groups in their own dialogue.
5. Internal Advocacy Function. This office will be expected to identify for the agency issues which need to be addressed in these respective areas and the office should be expected to advocate responsively the interests of those which the civil rights and consumer laws seek to protect.
6. Special Programs. The office will be principally responsible for running special programs. (e.g., banker training programs).

The existing Consumer Examinations Division will continue to be responsible for examination and supervision of national banks' compliance with civil rights laws.

Finally, we believe that it is appropriate to inform you of three other initiatives which, although not directly involved in enforcement of the Fair Housing Act and the Equal Credit

Opportunity Act, are relevant to assuring non-discriminatory access to national bank credit.

There is a growing recognition that the problems of declining or disadvantaged communities cannot be solved by the Federal Government alone. Thus, President Carter called for a "New Partnership to Conserve America's Communities" composed of the Federal Government, the states, local governments, voluntary associations, neighborhoods and the private sector. It was this same recognition which led House and Senate conferees to conclude their discussion of the Community Reinvestment Act with this statement:

In adopting the Senate provision the conferees recognize the vital interconnection between successful community and housing development and local private investment activities. The effectiveness of the community development program, the housing assistance programs, and the mortgage insurance programs, as amended by this conference report depend in large part upon the availability of private capital, particularly as made available through local lending and financial institutions. This title and amendments contained in this bill are designed to encourage more coordinated efforts between private investment and federal grants and insurance in order to increase the viability of our urban communities.

As a part of an agency-wide plan of reorganization, the Comptroller of the Currency, with the approval of the Secretary of the Treasury, has established the Office of Community Development. The purpose of this office will be to encourage and facilitate commercial bank participation in the development process in local communities and neighborhoods. In short, it is the objective of this office to achieve the aims of the CRA through non-regulatory means.

The following are among the functions which the Community Development Office will perform seeking to advance that end:

-- The office will serve as a clearing-house for information as to the efforts of commercial banks and other financial institutions in community reinvestment areas. That is, the office will act to inform banks and community groups of the creative efforts of others around the country.

-- The office will catalogue and inform national banks of government programs which might be employed in their efforts in the community development area.

-- The office will integrate the knowledge gained through the first two functions and develop model programs that banks might employ in the community development area.

-- The office will provide the Comptroller liaison with community and banking groups as a vehicle for encouraging the partnership between commercial banks, community groups, and government.

We are currently in the process of recruiting staff for this office and will keep the Committee apprised of its progress.

Second, the President's Urban Message provided for the creation of "Neighborhood Commercial Reinvestment Centers":

This would expand the Urban Reinvestment Task Force housing concept into the commercial credit area. These new "centers" would be local organizations comprised of merchants, residents, government officials, and commercial bankers. The Comptroller of

the Currency would head a Task Force composed of SBA, EDA, HUD, and perhaps the Federal Home Loan Bank Board, FDIC, and the Federal Reserve Board.

In response to this charge the Comptroller convened a task force composed of those agencies and departments. After two meetings of the Task Force and a number of sessions of a staff working group, the Task Force has agreed upon an immediate strategy which will consist of two phases aimed at translating the successful experience of the Urban Reinvestment Task Force in housing into the commercial credit area through the establishment of Commercial Reinvestment Centers. These centers will be local organizations comprised of merchants, residents, government officials, and private lending institutions.

The first of the two initial phases will involve the application of the concept developed by the Urban Reinvestment Task Force to projects now in progress. These projects would benefit significantly from increased lending institution participation through the local partnership process developed by the Urban Reinvestment Task Force. The second phase of the program, presently in the planning stage, involves the development of four entirely new, innovative neighborhood commercial development projects geographically distributed in the Northeast, Southeast, Midwest and West. Sites are now being selected for both phases.

At this stage, we are pleased to report the exceptionally high degree of cooperation that has existed among all of the

agencies involved and to compliment especially the splendid efforts of the Director and staff of the Urban Reinvestment Task Force in helping to get this effort launched.

Finally, the Comptroller's Office will review policies and practices in order to make maximum use of our authority to encourage community development and reinvestment efforts. An example was our recent approval of the establishment of the Community Development Corporation by North Carolina National Bank, Charlotte, North Carolina. This is the first time the Comptroller has authorized a national bank to establish a wholly-owned subsidiary to promote the revitalization of inner-city residential neighborhoods.

I would like to turn now to the specific inquiries you have directed to this Office.

1. Redlining Regulations

- a. Is there a problem of redlining discrimination in home lending by financial institutions, and is the problem of urban neighborhood decay due in any way to discriminatory practices in the handling of individual loan inquiries and applications by financial institutions?

To answer the second of the two questions first: certainly the unavailability of credit is a factor in a downward spiral of neighborhood decay, but it must be recognized that it is only one among a number of mutually reinforcing factors. To the degree that banks unreasonably decline to lend in an area, that failure may well contribute to the community's decay. It is not reasonable or fair, however, to suggest that the problems of neighborhood urban decay are entirely or perhaps even predominantly the result of bank practices.

The answer to the question of whether there is a problem in redlining discrimination in home lending by financial institutions is difficult because the term "redlining" is not precisely understood. In the mortgage lending industry, redlining is commonly considered to be the refusal by financial institutions to make mortgage or home improvement loans on property in a certain geographical area. It may also include practices which are somewhat less obvious such as the requirement of terms and conditions significantly more stringent than are normally required.

At least part of the difficulty in defining redlining arises from the fact that the term has been employed to describe four conceptually distinct categories of phenomena, each of which has a somewhat different legal implication. It is useful to outline these categories because they provide a framework in which to analyze the legal and regulatory implications of redlining.

First, the failure to lend or the imposition of more stringent terms on loans made in a certain geographical area may reflect a conscious decision to discriminate on a basis prohibited under the Equal Credit Opportunity Act and the Fair Housing Act. Such conduct is, of course, clearly illegal under these Acts.

Second, the failure to lend or imposition of more stringent terms in a certain geographical area may have the effect of discriminating against a class of people protected under the Equal Credit Opportunity Act. Such conduct may, depending on the circumstances, be illegal under the Equal Credit Opportunity Act and Regulation B.

Third, failure to lend or the imposition of more stringent terms on loans in a geographical area may not be justified in financial or economic terms and yet not involve either directly or indirectly a prohibited discrimination under either the Fair Housing Act or under the Equal Credit Opportunity Act. Although not illegal under either of these two statutes, such conduct is pernicious in that it may serve to deny credit

to a neighborhood or community deserving of it. The Community Reinvestment Act provides statutory and regulatory tools to deal with this type of conduct.

Fourth, careful analysis on a block-by-block basis may demonstrate that there are some areas in which the failure to lend or imposition of more stringent terms is clearly warranted by concrete economic factors and any other conduct would constitute an unsound banking practice.

Although the unavailability of credit can serve to further the decay of such an area, few have suggested financial institutions should make such loans. In these cases the targeting of government subsidies and guarantees aimed at changing the circumstances of the neighborhood combined with private sector involvement are clearly warranted.

The extent to which banking practices fall in one or another of these categories seems to require an institution-by-institution analysis. Broader studies have produced generally inconclusive results. We believe that Community Reinvestment Act examinations and our new data collection and analysis system, combined with our Fair Housing examinations, will facilitate such determination.

There have been numerous statistical studies of lending patterns which suggest the existence of discriminatory redlining in that they show a general absence of mortgage lending by banks in certain neighborhoods. Some studies refine this analysis by showing that in such neighborhoods, property transfers disproportionately are achieved through

noninstitutional financing. Generally, however, these studies have been inconclusive because they do not adequately address the question of whether the absence of lending is due to discriminatory or irrational lending decisions and policies rather than reasonable decisions to avoid unsound lending. In other words, these studies generally do not answer the question of whether and how many potential creditworthy applicants are being shut out by the policies and practices of banks. In this regard, several studies have concluded that lack of demand from creditworthy persons may explain the absence of lending in some neighborhoods.

One important type of evidence of the existence of discriminatory redlining and appraisal practices is the evidence gathered in conjunction with the Department of Justice suit against two leading professional real estate appraisal societies. This evidence indicated a pattern in manuals and training materials of discriminatory consideration of racial factors in evaluating neighborhoods and neighborhood trends.

Probably the best evidence that some banks engage in discriminatory or irrationally restrictive lending practices based on neighborhood is that in cases where banks have reviewed their underwriting criteria they have often found that they have been able to revise their criteria in a manner so as to increase substantially their lending in historically mortgage-deficient neighborhoods, without jeopardizing safety and soundness. The voluntary efforts of the banks in Philadelphia under the Philadelphia Mortgage Plan is an important example.

- b. Would banking agency promulgation and enforcement of nondiscrimination regulations explicitly prohibiting redlining discrimination contribute materially toward more equitable treatment of individuals and a reduction of the problem of neighborhood decay?

We believe provisions of the Equal Credit Opportunity Act and Regulation B, taken together with the Community Reinvestment Act, provide the agencies with powerful tools for dealing with redlining which is either illegal or which indicates denial of credit for reasons which cannot be rationally justified. It is our current judgment that new regulations would add little to this framework. Moreover, given the need to implement our new Community Reinvestment Act regulations, to ensure that our implementation of the Community Reinvestment Act in the examination and applications processes is effective, to establish a new data collection and monitoring system to support our Fair Housing examinations and adopting regulations to effect it, and to upgrade our enforcement efforts generally, we do not believe that priority should be given to the development of such a regulation.

We will, however, follow closely the Federal Home Loan Bank Board's experience and carefully consider our own experience under the Community Reinvestment Act in order to determine whether this judgment is correct. We do not preclude the possibility of issuing such regulations.

It should be noted that, quite apart from the body of the

federal statutes and regulations we are considering, a number of states have adopted specific antiredlining statutes. The Comptroller has decided that national banks should be determined to be subject to these statutes so long as they do not conflict with federal law. Accordingly, we have undertaken to cooperate with state authorities with respect to the enforcement of these statutes and to work with them in the development of implementing regulations which may be meshed with the pattern of federal statutes and regulations.

- c. Has the Comptroller sufficient statutory authority to issue and enforce such nondiscrimination regulations, or does it plan to request legislation to convey this authority?

The principal statutory direction and authority to issue regulations in this area seems rather clearly to have been vested by the Congress in the Federal Reserve Board. The Comptroller could not issue regulations, for example, to implement the Equal Credit Opportunity Act which would in any way be inconsistent with, or attempt to supplant, the Board's authority. Of course, the Comptroller may issue interpretive guidelines as distinguished from substantive regulations with respect to statutes which the Office enforces.

Finally, the extent of our general rulemaking authority is now in litigation. In order to clarify ambiguities in this area, we have specifically requested legislative clarification of our general rulemaking authority, and the current version of the Financial Institutions Regulatory Act of 1978 contains such clarification. We have no present plans to request

authority beyond that provided by this bill.

- d. Has the Comptroller any plans to issue such nondiscrimination regulations addressed at least in part, to redlining discrimination? If not, what is the Comptroller's present approach to the regulatory control of redlining discrimination?

We do not at the present time intend to issue nondiscrimination regulations as it is our view that the Fair Housing Act, the Equal Credit Opportunity Act, the Community Reinvestment Act and the Home Mortgage Disclosure Act; Regulation B, our new Community Reinvestment Act regulation; our new Data Collection and Analysis System; and the other policies and procedures associated with our examination and complaint processes provide an effective legal and regulatory framework for dealing with the problem of discrimination, including redlining. We believe that what is needed is effective implementation and not another regulation. However, we have indicated that we will carefully follow the Federal Home Loan Bank Board's experience and will keep the adoption of such a regulation under consideration.

In assessing the current approach of this Office to the problem of redlining, one should bear in mind that this approach will change markedly upon the implementation of the Community Reinvestment Act guidelines in November of this year and again upon the implementation of our new data collection and analysis system described in response to Question 2.

As of this date, the approach of the Comptroller's Office is to enforce the existing statutes and regulations related to housing credit by means of bank examinations, follow-up activities, resolution of complaints and various other means.

Examiner training is the initial step in our compliance program. We train our examiners to make them aware of current law, specific discriminatory practices and the effects test. Equipped with the basic principles of these concepts, examiners should be able to detect actual or potential problems in national banks. Examiners attend two-week schools for instruction in consumer laws and examination techniques. Approximately 33 percent of instruction time is devoted to Fair Housing, ECOA and Home Mortgage Disclosure Act.

The fair lending portion of the consumer bank examination involves a review of individual loan files, analysis of the bank's lending policies and lending criteria, and investigation into whether the policies and lending criteria are applied fairly to all applicants. Sample loan files, both accepted and declined, are scrutinized for any indication of discriminatory practices. In reviewing the sample, the examiner checks to see that no prohibited information has been requested or considered and that appraisals are free of prohibited comments on the applicant and his neighborhood. Bank lending policies are examined to determine whether there are lending criteria which are inconsistent with the provisions of the laws. It is then necessary to ensure that the policies, if nondiscriminatory,

are uniformly applied to all applicants to determine credit-worthiness. Examiners are trained to look for indications of prescreening, in which prospective applicants are discouraged on a prohibited basis from applying for credit. In addition, the examiner reviews the home mortgage disclosure data to detect redlining practices (see answer to Question 2c.). It should be emphasized that a major new addition to the examination process will be specific procedures by examiners to assess banks' records in accordance with the Community Reinvestment Act.

Enforcement of fair lending laws, including redlining, is also achieved through specialized Fair Housing examinations. These examinations may be triggered by a complaint from a community or public interest group or as a result of problems discovered during a regular consumer examination which require further investigation. Six pilot fair housing examinations were conducted by examiners from the Comptroller's Office and observers from the Department of Justice, and the specialized fair housing examination procedures were then developed from these experiences. The specialized examination contains a large sample of loan files, and consists of a detailed review of appraisal practices and HMDA data. As an additional measure, the Comptroller established procedures for investigation of fair housing complaints in August, 1977 which include on-site investigations at the bank, as well as interviews with the complainant and bank personnel.

2. Redlining Monitoring

- a. Has the Comptroller any plans to collect monitoring information on home loan applications and inquiries

more detailed or covering more types of transactions than is now required under the monitoring provisions of Regulation B? Will the required monitoring information be similar in detail to the information to be collected by the FDIC and the Federal Home Loan Bank Board? Will monitoring information be required on applications for home improvement loans or mortgage refinancings? Will it be required on inquiries for home loans? If not, why not?

The Comptroller's Office is developing a proposed regulation which would require national banks to report specific items of information on housing related loans made and denied. The information to be reported includes information on the characteristics of the loan, applicant and property. It is generally similar to information to be collected by the FHLBB and FDIC, although just as there are specific differences in detail between the programs of the FHLBB and FDIC, the Comptroller's program is also expected to vary in specific detail. Information on mortgage loans on all 1 to 4 family owner occupied housing made and denied, including refinancing, will be included. Consideration is also being given to including information on home improvement loan applications. Inclusion of limited information, such as race, sex and address of property, on in-person specific inquiries, is also being considered.

- b. How will this monitoring information be employed to examine individual banks for evidence of redlining discrimination?

The purpose of our new data collection and analysis system is to help target the examination process and make it more efficient and effective. At present examiners are

handicapped by not having available basic statistical information indicating the lending patterns of the bank. In addition, in the absence of the data system, there is no way in which an examiner can efficiently target in on the precise loan files and denied loan files most in need of review. The new data collection and analysis system is designed to address directly these problems. We believe that it will substantially increase our capacity to detect redlining and other discriminatory practices.

Prior to the regular Fair Housing examination of a national bank, the information in the reporting system will be analyzed by computer to identify specific disparities which may be indicative of possible discrimination. We anticipate that for each covered bank at least eight basic statistical tables will be produced, with each table focusing on lending patterns in relation to a different variable. There would be separate tables analyzing lending patterns by race, sex, percent of household income earned by a woman, marital status, age of borrower/applicant, income, age of property and neighborhood. The tables analyzing lending patterns by age of property and neighborhood directly relate to redlining. In addition, the table analyzing lending patterns by race will reflect the racial impact of redlining practices.

We plan to utilize a large number of measures or indicators of possible discrimination. These indicators are designed to identify possible discrimination in the accept-reject decision, in the terms of loans granted, in appraisal practices and by

prescreening. By comparing these indicators across different categories of the variable being focused on by the particular table, it will be possible to identify, for example, disparities between different racial groups, between different age of property categories, and between different neighborhood groupings or groupings of census tracts.

To illustrate further, the data might indicate that for a given bank, there is a higher rejection rate on applications for loans on older homes or in particular neighborhoods or the data might indicate that a higher average interest rate or a shorter average term to maturity is being imposed on older homes or in certain neighborhoods. Other data might suggest that higher downpayment requirements are being imposed in certain neighborhoods, or that higher than normal fees are being imposed. Further, since our data base will include information on both the appraised value and the selling price, we will be able to identify instances where the appraised value is significantly lower than the selling price. While such instances certainly could result from legitimate practices, if such instances occur disproportionately in connection with older homes or in certain neighborhoods, this could suggest the possibility of discriminatory appraising.

Thus it can be seen that the data collection and analysis system will enable us to identify very specific kinds of disparities suggestive of possible discrimination. In that we will have identified disparities in a given bank so specifically,

we will be able to target the examination in a way not now possible. Perhaps most significantly, in addition to identifying the specific disparities, we will be able to use the data base to identify specific loan files and denied loan files which manifest these disparities. The examiner can then review these specific files to ascertain whether the disparities are due to legitimate considerations or whether they are due to discriminatory or needlessly restrictive considerations.

An additional important use of the new data system relates to prescreening. The concept of prescreening covers a broad range of practices, including not only telephone and in-person prescreening by the bank, but also situations where brokers may be prescreening under instructions from the bank, and the use of marketing methods which tend to exclude certain racial groups or neighborhoods.

We anticipate that in several ways, the new data collection and analysis system will be helpful in detecting possible prescreening problems. For example, even if there are no disparities in denial rates or terms of loans granted, if the loan volume to, say, a particular racial group is substantially lower than would normally be expected, given demographic characteristics of the population, this is an indication of a possible prescreening problem. Particularly, if such a fact pattern is combined with a relatively low overall denial rate by the bank, this provides an indication that prescreening may be a problem.

If the data suggests that prescreening may be a problem for a given bank, we intend to give extra attention to it during the examination.

- c. How do you employ Home Mortgage Disclosure Act (HMDA) data to examine individual banks for evidence of red-lining discrimination?

The HMDA data are tools used by national bank examiners in the fair lending portion of the regular consumer compliance examination and in specialized Fair Housing examinations. HMDA has proven to be more useful in specialized Fair Housing examinations than in regular consumer examinations.

As previously noted, specialized Fair Housing examinations are conducted either in response to a complaint from a community or public interest group, or as a follow up to questionable practices discovered during the regular consumer examination. Review of the data is one of the initial steps⁴ of the examination and can give the examiner some indication of possible problem areas to explore further. The HMDA data are extracted from the disclosure statements and plotted by census tract on census maps for the SMSA in which the bank is located.

Laying out the data in this manner enables the examiner to visualize the bank's overall real estate lending pattern. Areas which are void of mortgage lending activity or disproportionate to other areas are readily apparent from the maps. The examiner continues the investigation by ascertaining the

reasons mortgage loans are not made in certain areas. The HMDA disclosures do not indicate the characteristics of an area, e.g., whether it consists of all commercial buildings or whether it is a low-income residential area. However, use of the data is valuable as an initial investigation procedure.

HMDA is used, to a lesser extent, in the regular consumer examination for the purpose of examining for fair lending laws. Our regional offices have taken varying approaches to HMDA data use with regard to fair lending. Several regions plot the data on census tract maps, which are color-coded by race, income level and other variables, and analyze the results only for banks in large metropolitan SMSA's. In at least one region, examiners are plotting the HMDA data in all covered banks as a matter of course. Examiners in other regions do not plot the entire data. They do, however, analyze the data on the disclosure statements for evidence of redlining. We may conclude that thorough analysis of HMDA data in each regular consumer examination is not efficient or necessary after we have implemented the planned data collection and lending patterns. As in the specialized Fair Housing examinations, the HMDA data can serve as a preliminary indicator of redlining discrimination, but cannot be relied upon exclusively.

- d. Have you any suggestions for improvement of this Act or of its implementing regulation, Regulation C, to improve the usefulness of this data for regulatory purposes?

As this time we have no specific suggestions for improving

the Act or Regulation C. It is important to keep in mind that the Home Mortgage Disclosure Act was deliberately enacted with a sunset provision, to require reevaluation before the termination of its four-year life span. We are now only at the midpoint of this four-year period, and the jury is still out. Several studies directly related to HMDA are in progress. The Federal Reserve Board was mandated by the Act to study the feasibility of extending the Act to depository institutions located outside the SMSA's. In addition, the Federal Home Loan Bank Board and the FDIC are jointly conducting a study with HMDA data in three SMSA's.

Also, it should be noted that, since the passage of the Act, additional related public policy initiatives have been undertaken. The financial regulatory agencies are substantially increasing their enforcement efforts in the Fair Housing area. New Fair Housing examination procedures have been instituted, and a new data collection and analysis system is being developed. Also, the Community Reinvestment Act is another important development. Accordingly, ultimate evaluation of HMDA must take into account its relationship to developments regarding the Fair Housing Act and the Community Reinvestment Act. To evaluate HMDA's role in this evolving scheme, more experience is needed.

Ultimately, we may conclude that initiatives in implementing the Fair Housing Act and the Community Reinvestment Act supplant the need for HMDA. Or we may conclude that it is not cost effective. Alternatively, we may conclude that it is an effective tool or that it could be effective if expanded in certain ways. More experience concerning HMDA and its relationship to implementation of the Fair Housing Act and Community Reinvestment Act is needed before informed conclusions can definitively be reached.

3. Recent Enforcement

- a. How many and what types of violations of the Fair Housing Act, the Equal Credit Opportunity Act or Regulation B have your examiners found in national banks in 1977 and 1978? What portion of these violations were clear violations of the substance and spirit of the laws prohibiting discrimination? What remedial or enforcement action have you taken to correct these violations?

The Comptroller's Office has a computer based system, the Consumer Examination Information System, which contains data regarding violations of consumer and civil rights laws. The violations are categorized by particular law and sections within that statute or regulation. We view some violations as having a much more immediate impact on consumers than others and, therefore, as "substantive" rather than "technical." In essence, violations which may impair the consumer's access to credit in the immediate transaction are deemed to be substantive. In evaluating the figures which follow, it is important to bear in mind that, while we view all substantive violations as serious, many are inadvertent. Swift and voluntary compliance is normally obtained in those instances.

Examinations of national banks conducted from July 1977 through June 1978 revealed substantial numbers of violations of Regulation B. Of the more than 2,000 banks examined during this time period, the examination results of 1,682 of

these banks have been entered into our computer system. Patterns of violation of one or more provisions of Regulation B were found in 89.3% of the banks examined. 35.9% of these banks had at least one pattern of violation relating to mortgage credit. If the analysis is confined to substantive violations, 66.2% of the banks examined were found to have a pattern of violation of one or more provisions. 22.5% of the banks reviewed had at least one pattern of substantive violations in mortgage credit.

Of the 1,682 banks we found altogether 3,212 separate patterns of violations. (Based on these figures, when all banks examined during the July 1977 - June 1978 time period have been entered in the data base, we anticipate that the number of separate patterns of substantive violations will exceed 4,000.) Of these patterns of substantive violations, 64.6% involve a violation of one of the provisions of section 202.5 "Rules Concerning Applications." 29.5% of the patterns of substantive violations concern a violation of some provision of section 202.7(d) concerning "signature of spouse or other person."

With respect to mortgage credit, we found 517 patterns of substantive violations. (When all banks examined in the one-year period have been entered, we anticipate that this number will be approximately 650.) Of these 517 patterns of substantive violations, 117 involve patterns of violations of section 202.5(a) which prohibits the discouraging of applications on a prohibited basis, 170 involve impermissible

requests for information about marital status in violation of section 202.5(d)(8), 13 involve some other violation of section 202.5, 186 involve some violation of section 202.7(d) concerning "signature of spouse or other person," 14 were categorized as violations of section 202.5 which is the general rule against discrimination on a prohibited basis, 9 involve violations of section 202.6(b)(5) prohibiting the discounting of income on a prohibited basis or because income is derived from part-time employment, a retirement benefit, or alimony, child support or maintenance, 2 involve violations of section 202.6 concerning evaluation of applications, and 6 involve violations of section 202.7(a) which prohibits the refusal to grant an individual account to a creditworthy applicant on a prohibited basis.

We cannot provide a precise breakdown of violations of the Fair Housing Act since such violations have generally been entered into our data base as violations of Regulation B under the relevant, more specific citation. However, a number of the violations of Regulation B cited above involving mortgage credit would also be violations of the Fair Housing Act.

At present, banks are required to prevent recurrences of discovered violations by altering their policies, procedures or forms. Corrective action for violations in which customers have been substantially harmed, will be ordered, at a minimum in accordance with the uniform enforcement guidelines currently being considered by the financial institution regulatory

agencies. Examples of the types of remedial action we have ordered include reappraisal of property when the initial appraisal was deemed inadequate, reevaluation of an application when it was rejected on a prohibited basis, and release of a spouse's signature when it was not required.

- b. Were there any instances of repeat violations in which the bank was found to be continuing to engage in discriminatory practices after having previously been told to stop? What enforcement actions have you taken in these cases of repeat violations?

As of June 30, 1978, 92 banks had received a second consumer examination, although the results of most of these examinations were not entered into our data system. Twelve of these banks (13%) had at least one repeat violation of a provision found in violation in the first examination. We are attaching a schedule of the provisions with repeat violations. As indicated in the schedule, the great majority of the repeat violations involved continued use of old application forms which requested marital status in the wrong terms and other income without making proper disclosure. Several of these violations were found where the new forms obtained by the bank as a result of the first examination were still found to be in violation. Also, in a couple of instances a bank properly obtained new forms, but some of the old forms

were used in error. Considering these circumstances, we feel that the number of repeat violations has been small and indicative of the effectiveness of our consumer examination.

It should be noted that banks, as well as enforcement agencies, are going through a learning process with respect to a substantial amount of recently enacted consumer and civil rights legislation. One of the great benefits of the examination process is that it provides an effective vehicle for educating banks as to their obligation. In most instances, compliance is voluntary. This point is critical given limited regulatory and judicial resources.

Regarding enforcement actions in cases of repeat violations, we have thus far been able to achieve corrective action after discovery of a violation the second time through routine supervisory procedures which involve presentation of examination reports to the Board of Directors seeking a positive program to effect correction. Corrective action has already been effected in ten of these banks and is in process at the remaining two.

REPEAT VIOLATIONS

Section of 12 CFR 202 in Violation

<u>Bank</u>	<u>5(a)</u>	<u>5(c)</u>	<u>5(d)1</u>	<u>5(d)2</u>	<u>5(d)3</u>	<u>7(d)5</u>
1			x	x		
2	x		x	x		
3		x	x			
4		x	x	x		
5				x		
6						x
7			x	x		
8			x			
9					x	x
10				x		
11			x			
12				x		

GENERAL DESCRIPTION OF SECTION IN VIOLATION

- Section 202.5(a) - Discouraging applications on a prohibited basis.
- Section 202.5(c) - Requesting information about a non-applicant spouse or former spouse.
- Section 202.5(d) (1) - Request for an applicant's marital status in other than the terms "married," "unmarried" and "separated."
- Section 202.5(d) (2) - Inquiring about other income without disclosing that the applicant need not report income derived from alimony, child support, or separate maintenance payments unless the applicant desires the creditor to consider such income in determining the applicant's creditworthiness.
- Section 202.5(d) (3) - Requesting the sex of an applicant, using terms in an application form that are not neutral as to sex, or requesting applicant to designate a title (such as Ms., Miss, Mr., or Mrs.) without disclosing that the designation of such title is optional.
- Section 202.7(d)5 - Requiring the applicant's spouse to be a party to the credit, as co-signer, guarantor, or the like.

4. Future Enforcement: How will you deal in the future with cases of repeat violations of the Fair Housing Act, the Equal Credit Opportunity Act, or Regulation B, where a bank is found on the second or third examination to have failed to correct conditions found on a previous examination?

Depending on the circumstances, violations involving special policy considerations require regulatory response substantially more stringent than for initial violations. It is appropriate to outline the corrective action routinely employed for initial violations to contrast the measures available when violations are found to persist in subsequent examinations.

Upon finding a violation of law examiners are instructed to investigate its causes, and determine how widely it has occurred throughout the bank. Once its causes have been isolated, the examiner will assist the bank in planning corrective action to avoid recurrences of the violation. The proposed Regulation B uniform enforcement guidelines incorporate this approach, requiring creditors found to have committed substantive violations to adopt a nondiscriminatory written loan policy and develop a compliance plan to avoid future violations. It is expected that the vast majority of such banks will implement proper compliance plans to insure future compliance.

Beyond taking steps to avoid future violations, banks with specific substantive violations will be required to institute remedial action to correct conditions resulting from the violations. The guidelines are intended to outline action required to be taken to make customers whole following such violations. To the

extent that particular customers are found to have suffered harm not specifically addressed in the guidelines, further administrative action may be in order. The guidelines represent minimum standards, and we intend to take appropriate action to fully protect the interests of bank customers.

As noted above, banks will always be required to make customers whole for damages resulting from substantive violations, and adopt procedures to avoid future compliance problems. If a bank is found to have persisted in violating the law in subsequent examinations, a different approach will be in order. There are several possible tools available for these contingencies, as more fully described in a.), b.), and c.) below. We will approach these problems on a case by case basis, and take the action we feel is most likely to achieve quick remedy.

- a. In the case of repeat violations will you inform, or require a bank to inform, the victims of lending discrimination that unlawful discrimination has been found in the institution's handling of a previous application or inquiry from them?

Violations will be addressed in accordance with proposed uniform corrective action guidelines for the enforcement of the Equal Credit Opportunity Act, which were recently issued for public comment by the five federal financial regulatory agencies. When it is discovered that individuals have been adversely affected by an unlawful discriminatory policy or practice it is contemplated the financial institution will be required by the

appropriate agency to reevaluate - according to a written, nondiscriminatory loan policy - all affected credit applications and solicit new applications from applicants who were rejected on a discriminatory basis. When the same violations are discovered in subsequent examinations, use of the full range of enforcement options will be considered, including notification of borrowers.

- b. Under what circumstances will you release publicly the names of institutions that have refused or failed to eliminate discriminatory practices?

Among the administrative remedies which may be used to require compliance by recalcitrant institutions are cease and desist proceedings which, while normally private, can be public when the Comptroller finds that a public proceeding is necessary to protect the public interest. A public proceeding may be particularly appropriate with respect to this type of violation when an institution is recalcitrant or unresponsive to other supervisory requests for correction

- c. Under what circumstances will you seek criminal prosecution of or other punitive action against banks or their officers who fail to eliminate discriminatory practices?

We believe that we can attain corrective action through agency supervisory enforcement tools. If we decided punitive action were desirable in a given situation, referrals could be made to the Department of Justice under authority of Section 706 of ECOA so that that agency might bring action which would include requests for punitive damages.

5. Civil Damages Litigation

- a. What is your view about the effectiveness and proper role of civil damages litigation by private individuals in bringing about general compliance with the laws against credit discrimination?

It is our belief that the examination and administrative procedures of this office are the more effective method of accomplishing systematic compliance with both the substantive and technical requirements of credit discrimination laws. However, litigation by private individuals is a potentially effective means of enforcing these laws. Very few cases have been brought by individuals against financial institutions under the Fair Housing Act, although some of these have been significant and precedent setting. We were able to find only one reported case thus far under the Equal Credit Opportunity Act.

- b. What steps does your office take to inform consumers of their right to file civil damage suits under the Fair Housing Act and Equal Credit Opportunity Act, or to facilitate in other ways consumer use of the civil damage provisions of these acts?

Upon receipt of a complaint alleging a violation of the Fair Housing or Equal Credit Opportunity Acts, if we are unable to resolve the matter, the complainant is informed that he or she has certain rights under the Act and may want to contact an attorney to seek redress through the courts. Loan applicants or potential applicants have not been informed of the civil damages provisions of the fair lending laws on a uniform basis. We are reviewing our policy and are actively considering advising complainants of such rights.

6. Consumer Information

What other consumer information and education activities does your office conduct to inform the general public about the laws against credit discrimination? Do you have any plans to expand these activities?

The effectiveness of laws against credit discrimination increases as the level of consumer awareness regarding these laws is raised. Consumer education is a primary prerequisite to full implementation of the spirit and intent of legislation protecting the public against credit discrimination. Recognizing these imperatives, the Comptroller's Office has been involved with educational efforts for the benefit of the public and has maintained active communication with groups representing various public interests. Our consumer representatives have lectured or taught before students at high schools, colleges, and universities, informing them about consumer and civil rights legislation, as it pertains to credit. The Comptroller's Handbook for Consumer Examinations has been disseminated to public libraries, state consumer agencies, and is available to the public for a nominal charge. Consumers registering complaints are provided information regarding their rights, with copies of laws and regulations often given to them as supplementary information. Representatives of consumer groups have been invited, and have attended, OCC Consumer Affairs Training Schools, and meetings between OCC and such groups for the purpose of discussing laws against credit discrimination continue to be held. These groups are encouraged to, and do, provide the general public with educational material dealing with credit discrimination.

Additionally, we have recently made an effort to better inform the public by issuance of a consumer complaint pamphlet. This pamphlet contains basic information on all consumer laws, including the Fair Housing Act and the Equal Credit Opportunity Act, and provides a form and convenient postage paid envelope for filing a complaint with this Office. We have distributed approximately 1 million pamphlets to date, and have requested banks to make them available to the public in their lobbies.

One of the biggest obstacles to realization of the full potential of these laws lies in the failure of consumer education to adequately reach the general public. A comprehensive educational program will be necessary to accomplish this and a program of this magnitude is frankly beyond the capacities of any of the agencies charged with enforcing these laws. A program of this type should include, at a minimum, development and dissemination of teachers' guides and student texts at the high school level, and public service messages in the popular media. We are exploring the development of this sort of effort as a joint project by the federal regulatory agencies and consumer groups to develop materials for consumer education programs.

[Whereupon, at 11:43 a.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.]

A P P E N D I X E S

APPENDIX 1.—STATUTES AND AGENCY REGULATIONS

Fair Housing Act

Public Law 90-284
April 11, 1968

TITLE VIII—FAIR HOUSING

POLICY

SEC. 801. It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States.

DEFINITIONS

SEC. 802. As used in this title—

(a) "Secretary" means the Secretary of Housing and Urban Development.

(b) "Dwelling" means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

(c) "Family" includes a single individual.

(d) "Person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees in bankruptcy, receivers, and fiduciaries.

(e) "To rent" includes to lease, to sublease, to let and otherwise to grant for a consideration the right to occupy premises not owned by the occupant.

(f) "Discriminatory housing practice" means an act that is unlawful under section 804, 805, or 806.

(g) "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, or any of the territories and possessions of the United States.

EFFECTIVE DATES OF CERTAIN PROHIBITIONS

SEC. 803. (a) Subject to the provisions of subsection (b) and section 807, the prohibitions against discrimination in the sale or rental of housing set forth in section 804 shall apply:

(1) Upon enactment of this title, to—

(A) dwellings owned or operated by the Federal Government;

(B) dwellings provided in whole or in part with the aid of loans, advances, grants, or contributions made by the Federal Government, under agreements entered into after November 20, 1962, unless payment due thereon has been made in full prior to the date of enactment of this title;

(C) dwellings provided in whole or in part by loans insured, guaranteed, or otherwise secured by the credit of the Federal Government, under agreements entered into after November 20, 1962, unless payment thereon has been made in full prior to the date of enactment of this title: *Provided*, That nothing contained in subparagraphs (B) and (C) of this subsection shall be applicable to dwellings solely by virtue of the fact that they are subject to mortgages held by an FDIC or FSLIC institution; and

(D) dwellings provided by the development or the redevelopment of real property purchased, rented, or otherwise obtained from a State or local public agency receiving Federal financial assistance for slum clearance or urban renewal with respect to such real property under loan or grant contracts entered into after November 20, 1962.

(2) After December 31, 1968, to all dwellings covered by paragraph (1) and to all other dwellings except as exempted by subsection (b).

(b) Nothing in section 804 (other than subsection (c)) shall apply to—

(1) any single-family house sold or rented by an owner: *Provided*, That such private individual owner does not own more than three such single-family houses at any one time: *Provided further*, That in the case of the sale of any such single-family house by a private individual owner not residing in such house at the time of such sale or who was not the most recent resident of such house prior to such sale, the exemption granted by this subsection shall apply only with respect to one such sale within any twenty-four month period: *Provided further*, That such bona fide private individual owner does not own any interest in, nor is there owned or reserved on his behalf, under any express or voluntary agreement, title to or any right to all or a portion of the proceeds from the sale or rental of, more than three such single-family houses at any one time: *Provided further*, That after December 31, 1969, the sale or rental of any such single-family house shall be excepted from the application of this title only if such house is sold or rented (A) without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate broker, agent, or salesman, or of such facilities or services of any person in the business of selling or renting dwellings, or of any employee or agent of any such broker, agent, salesman, or person and (B) without the publication, posting or mailing, after notice, of any advertisement or written notice in violation of section 804(c) of this title; but nothing in this proviso shall prohibit the use of attorneys, escrow agents, abstractors, title companies, and other such professional assistance as necessary to perfect or transfer the title, or

FDIC or FSLIC
institution.

Exemptions.

(2) rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his residence.

(c) For the purposes of subsection (b), a person shall be deemed to be in the business of selling or renting dwellings if—

(1) he has, within the preceding twelve months, participated as principal in three or more transactions involving the sale or rental of any dwelling or any interest therein, or

(2) he has, within the preceding twelve months, participated as agent, other than in the sale of his own personal residence in providing sales or rental facilities or sales or rental services in two or more transactions involving the sale or rental of any dwelling or any interest therein, or

(3) he is the owner of any dwelling designed or intended for occupancy by, or occupied by, five or more families.

DISCRIMINATION IN THE SALE OR RENTAL OF HOUSING

SEC. 804. As made applicable by section 803 and except as exempted by sections 803 (b) and 807, it shall be unlawful—

(a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, or national origin.

(b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, or national origin.

(c) To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, or national origin, or an intention to make any such preference, limitation, or discrimination.

(d) To represent to any person because of race, color, religion, or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.

(e) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, or national origin.

DISCRIMINATION IN THE FINANCING OF HOUSING

SEC. 805. After December 31, 1968, it shall be unlawful for any bank, building and loan association, insurance company or other corporation, association, firm or enterprise whose business consists in whole or in part in the making of commercial real estate loans, to deny a loan or other financial assistance to a person applying therefor for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling, or to discriminate against him in the fixing of the amount, interest rate, duration, or other terms or conditions of such loan or other financial assistance, because of the race, color, religion, or national origin of such person or of any person associated with him in connection with such loan or other financial assistance or the purposes of such loan or other financial assistance, or of the present or prospective owners, lessees, tenants, or occupants of the dwelling or dwellings in relation to which such loan or other financial assistance is to be made or given: *Provided*, That nothing contained in this sec-

tion shall impair the scope or effectiveness of the exception contained in section 803(b).

DISCRIMINATION IN THE PROVISION OF BROKERAGE SERVICES

SEC. 806. After December 31, 1968, it shall be unlawful to deny any person access to or membership or participation in any multiple-listing service, real estate brokers' organization or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against him in the terms or conditions of such access, membership, or participation, on account of race, color, religion, or national origin.

EXEMPTION

SEC. 807. Nothing in this title shall prohibit a religious organization, association, or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association, or society, from limiting the sale, rental or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted on account of race, color, or national origin. Nor shall anything in this title prohibit a private club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members.

ADMINISTRATION

Authority and
responsibility.
Assistant Secre-
tary.

SEC. 808. (a) The authority and responsibility for administering this Act shall be in the Secretary of Housing and Urban Development.

(b) The Department of Housing and Urban Development shall be provided an additional Assistant Secretary. The Department of Housing and Urban Development Act (Public Law 89-174, 79 Stat. 667) is hereby amended by—

42 USC 3533.

(1) striking the word "four," in section 4(a) of said Act (79 Stat. 668; 5 U.S.C. 624b(a)) and substituting therefor "five,"; and

42 USC 3535.

(2) striking the word "six," in section 7 of said Act (79 Stat. 669; 5 U.S.C. 624(c)) and substituting therefor "seven."

Delegation of
authority.

(c) The Secretary may delegate any of his functions, duties, and powers to employees of the Department of Housing and Urban Development or to boards of such employees, including functions, duties, and powers with respect to investigating, conciliating, hearing, determining, ordering, certifying, reporting, or otherwise acting as to any work, business, or matter under this title. The persons to whom such delegations are made with respect to hearing functions, duties, and powers shall be appointed and shall serve in the Department of Housing and Urban Development in compliance with sections 3105, 3344, 5362, and 7521 of title 5 of the United States Code. Insofar as possible, conciliation meetings shall be held in the cities or other localities where the discriminatory housing practices allegedly occurred. The Secretary shall by rule prescribe such rights of appeal from the decisions of his hearing examiners to other hearing examiners or to other officers in the Department, to boards of officers or to himself, as shall be appropriate and in accordance with law.

80 Stat. 415,
528.

(d) All executive departments and agencies shall administer their programs and activities relating to housing and urban development

in a manner affirmatively to further the purposes of this title and shall cooperate with the Secretary to further such purposes.

(e) The Secretary of Housing and Urban Development shall—

(1) make studies with respect to the nature and extent of discriminatory housing practices in representative communities, urban, suburban, and rural, throughout the United States;

(2) publish and disseminate reports, recommendations, and information derived from such studies;

(3) cooperate with and render technical assistance to Federal, State, local, and other public or private agencies, organizations, and institutions which are formulating or carrying on programs to prevent or eliminate discriminatory housing practices;

(4) cooperate with and render such technical and other assistance to the Community Relations Service as may be appropriate to further its activities in preventing or eliminating discriminatory housing practices; and

(5) administer the programs and activities relating to housing and urban development in a manner affirmatively to further the policies of this title.

EDUCATION AND CONCILIATION

SEC. 809. Immediately after the enactment of this title the Secretary shall commence such educational and conciliatory activities as in his judgment will further the purposes of this title. He shall call conferences of persons in the housing industry and other interested parties to acquaint them with the provisions of this title and his suggested means of implementing it, and shall endeavor with their advice to work out programs of voluntary compliance and of enforcement. He may pay per diem, travel, and transportation expenses for persons attending such conferences as provided in section 5703 of title 5 of the United States Code. He shall consult with State and local officials and other interested parties to learn the extent, if any, to which housing discrimination exists in their State or locality, and whether and how State or local enforcement programs might be utilized to combat such discrimination in connection with or in place of, the Secretary's enforcement of this title. The Secretary shall issue reports on such conferences and consultations as he deems appropriate.

80 Stat. 499.

Reports on
conferences.

ENFORCEMENT

SEC. 810. (a) Any person who claims to have been injured by a discriminatory housing practice or who believes that he will be irrevocably injured by a discriminatory housing practice that is about to occur (hereafter "person aggrieved") may file a complaint with the Secretary. Complaints shall be in writing and shall contain such information and be in such form as the Secretary requires. Upon receipt of such a complaint the Secretary shall furnish a copy of the same to the person or persons who allegedly committed or are about to commit the alleged discriminatory housing practice. Within thirty days after receiving a complaint, or within thirty days after the expiration of any period of reference under subsection (c), the Secretary shall investigate the complaint and give notice in writing to the person aggrieved whether he intends to resolve it. If the Secretary decides to resolve the complaint, he shall proceed to try to eliminate or correct the alleged discriminatory housing practice by informal methods of conference, conciliation, and persuasion. Nothing said or done in the course of such informal endeavors may be made public or used as evidence in a sub-

Complaints.
Procedure for
filing.

Penalty.

sequent proceeding under this title without the written consent of the persons concerned. Any employee of the Secretary who shall make public any information in violation of this provision shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$1,000 or imprisoned not more than one year.

(b) A complaint under subsection (a) shall be filed within one hundred and eighty days after the alleged discriminatory housing practice occurred. Complaints shall be in writing and shall state the facts upon which the allegations of a discriminatory housing practice are based. Complaints may be reasonably and fairly amended at any time. A respondent may file an answer to the complaint against him and with the leave of the Secretary, which shall be granted whenever it would be reasonable and fair to do so, may amend his answer at any time. Both complaints and answers shall be verified.

(c) Wherever a State or local fair housing law provides rights and remedies for alleged discriminatory housing practices which are substantially equivalent to the rights and remedies provided in this title, the Secretary shall notify the appropriate State or local agency of any complaint filed under this title which appears to constitute a violation of such State or local fair housing law, and the Secretary shall take no further action with respect to such complaint if the appropriate State or local law enforcement official has, within thirty days from the date the alleged offense has been brought to his attention, commenced proceedings in the matter, or, having done so, carries forward such proceedings with reasonable promptness. In no event shall the Secretary take further action unless he certifies that in his judgment, under the circumstances of the particular case, the protection of the rights of the parties or the interests of justice require such action.

Commencement of civil actions.

(d) If within thirty days after a complaint is filed with the Secretary or within thirty days after expiration of any period of reference under subsection (c), the Secretary has been unable to obtain voluntary compliance with this title, the person aggrieved may, within thirty days thereafter, commence a civil action in any appropriate United States district court, against the respondent named in the complaint, to enforce the rights granted or protected by this title, insofar as such rights relate to the subject of the complaint: *Provided*, That no such civil action may be brought in any United States district court if the person aggrieved has a judicial remedy under a State or local fair housing law which provides rights and remedies for alleged discriminatory housing practices which are substantially equivalent to the rights and remedies provided in this title. Such actions may be brought without regard to the amount in controversy in any United States district court for the district in which the discriminatory housing practice is alleged to have occurred or be about to occur or in which the respondent resides or transacts business. If the court finds that a discriminatory housing practice has occurred or is about to occur, the court may, subject to the provisions of section 812, enjoin the respondent from engaging in such practice or order such affirmative action as may be appropriate.

(e) In any proceeding brought pursuant to this section, the burden of proof shall be on the complainant.

(f) Whenever an action filed by an individual, in either Federal or State court, pursuant to this section or section 812, shall come to trial the Secretary shall immediately terminate all efforts to obtain voluntary compliance.

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82 STAT. 87

INVESTIGATIONS; SUBPENAS; GIVING OF EVIDENCE

SEC. 811. (a) In conducting an investigation the Secretary shall have access at all reasonable times to premises, records, documents, individuals, and other evidence or possible sources of evidence and may examine, record, and copy such materials and take and record the testimony or statements of such persons as are reasonably necessary for the furtherance of the investigation: *Provided, however,* That the Secretary first complies with the provisions of the Fourth Amendment relating to unreasonable searches and seizures. The Secretary may issue subpoenas to compel his access to or the production of such materials, or the appearance of such persons, and may issue interrogatories to a respondent, to the same extent and subject to the same limitations as would apply if the subpoenas or interrogatories were issued or served in aid of a civil action in the United States district court for the district in which the investigation is taking place. The Secretary may administer oaths.

Records and documents, access.

Subpoenas.

(b) Upon written application to the Secretary, a respondent shall be entitled to the issuance of a reasonable number of subpoenas by and in the name of the Secretary to the same extent and subject to the same limitations as subpoenas issued by the Secretary himself. Subpoenas issued at the request of a respondent shall show on their face the name and address of such respondent and shall state that they were issued at his request.

(c) Witnesses summoned by subpoena of the Secretary shall be entitled to the same witness and mileage fees as are witnesses in proceedings in United States district courts. Fees payable to a witness summoned by a subpoena issued at the request of a respondent shall be paid by him.

Witnesses, compensation.

(d) Within five days after service of a subpoena upon any person, such person may petition the Secretary to revoke or modify the subpoena. The Secretary shall grant the petition if he finds that the subpoena requires appearance or attendance at an unreasonable time or place, that it requires production of evidence which does not relate to any matter under investigation, that it does not describe with sufficient particularity the evidence to be produced, that compliance would be unduly onerous, or for other good reason.

(e) In case of contumacy or refusal to obey a subpoena, the Secretary or other person at whose request it was issued may petition for its enforcement in the United States district court for the district in which the person to whom the subpoena was addressed resides, was served, or transacts business.

(f) Any person who willfully fails or neglects to attend and testify or to answer any lawful inquiry or to produce records, documents, or other evidence, if in his power to do so, in obedience to the subpoena or lawful order of the Secretary, shall be fined not more than \$1,000 or imprisoned not more than one year, or both. Any person who, with intent thereby to mislead the Secretary, shall make or cause to be made any false entry or statement of fact in any report, account, record, or other document submitted to the Secretary pursuant to his subpoena or other order, or shall willfully neglect or fail to make or cause to be made full, true, and correct entries in such reports, accounts, records, or other documents, or shall willfully mutilate, alter, or by any other means falsify any documentary evidence, shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

Failure to testify, penalty.

(g) The Attorney General shall conduct all litigation in which the Secretary participates as a party or as amicus pursuant to this Act.

ENFORCEMENT BY PRIVATE PERSONS

SEC. 812. (a) The rights granted by sections 803, 804, 805, and 806 may be enforced by civil actions in appropriate United States district courts without regard to the amount in controversy and in appropriate State or local courts of general jurisdiction. A civil action shall be commenced within one hundred and eighty days after the alleged discriminatory housing practice occurred: *Provided, however,* That the court shall continue such civil case brought pursuant to this section or section 810(d) from time to time before bringing it to trial if the court believes that the conciliation efforts of the Secretary or a State or local agency are likely to result in satisfactory settlement of the discriminatory housing practice complained of in the complaint made to the Secretary or to the local or State agency and which practice forms the basis for the action in court: *And provided, however,* That any sale, encumbrance, or rental consummated prior to the issuance of any court order issued under the authority of this Act, and involving a bona fide purchaser, encumbrancer, or tenant without actual notice of the existence of the filing of a complaint or civil action under the provisions of this Act shall not be affected.

Civil action
without fees,
etc.

(b) Upon application by the plaintiff and in such circumstances as the court may deem just, a court of the United States in which a civil action under this section has been brought may appoint an attorney for the plaintiff and may authorize the commencement of a civil action upon proper showing without the payment of fees, costs, or security. A court of a State or subdivision thereof may do likewise to the extent not inconsistent with the law or procedures of the State or subdivision.

Damages, limi-
tation.

(c) The court may grant as relief, as it deems appropriate, any permanent or temporary injunction, temporary restraining order, or other order, and may award to the plaintiff actual damages and not more than \$1,000 punitive damages, together with court costs and reasonable attorney fees in the case of a prevailing plaintiff: *Provided,* That the said plaintiff in the opinion of the court is not financially able to assume said attorney's fees.

ENFORCEMENT BY THE ATTORNEY GENERAL

SEC. 813. (a) Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by this title, or that any group of persons has been denied any of the rights granted by this title and such denial raises an issue of general public importance, he may bring a civil action in any appropriate United States district court by filing with it a complaint setting forth the facts and requesting such preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the person or persons responsible for such pattern or practice or denial of rights, as he deems necessary to insure the full enjoyment of the rights granted by this title.

EXPEDITION OF PROCEEDINGS

SEC. 814. Any court in which a proceeding is instituted under section 812 or 813 of this title shall assign the case for hearing at the earliest practicable date and cause the case to be in every way expedited.

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EFFECT ON STATE LAWS

SEC. 815. Nothing in this title shall be construed to invalidate or limit any law of a State or political subdivision of a State, or of any other jurisdiction in which this title shall be effective, that grants, guarantees, or protects the same rights as are granted by this title; but any law of a State, a political subdivision, or other such jurisdiction that purports to require or permit any action that would be a discriminatory housing practice under this title shall to that extent be invalid.

COOPERATION WITH STATE AND LOCAL AGENCIES ADMINISTERING FAIR HOUSING LAWS

SEC. 816. The Secretary may cooperate with State and local agencies charged with the administration of State and local fair housing laws and, with the consent of such agencies, utilize the services of such agencies and their employees and, notwithstanding any other provision of law, may reimburse such agencies and their employees for services rendered to assist him in carrying out this title. In furtherance of such cooperative efforts, the Secretary may enter into written agreements with such State or local agencies. All agreements and terminations thereof shall be published in the Federal Register.

Publication in
Federal Register.

INTERFERENCE, COERCION, OR INTIMIDATION

SEC. 817. It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by section 803, 804, 805, or 806. This section may be enforced by appropriate civil action.

APPROPRIATIONS

SEC. 818. There are hereby authorized to be appropriated such sums as are necessary to carry out the purposes of this title.

SEPARABILITY OF PROVISIONS

SEC. 819. If any provision of this title or the application thereof to any person or circumstances is held invalid, the remainder of the title and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

Equal Credit Opportunity Act (as amended
March 23, 1976)

TITLE V—PUBLIC LAW 93-495

Sec.

502. Findings and purpose.
503. Amendment to the Consumer Credit Protection Act.

§ 502. Findings and purpose

The Congress finds that there is a need to insure that the various financial institutions and other firms engaged in the extensions of credit exercise their responsibility to make credit available with fairness, impartiality, and without discrimination on the basis of sex or marital status. Economic stabilization would be enhanced and competition among the various financial institutions and other firms engaged in the extension of credit would be strengthened by an absence of discrimination on the basis of sex or marital status, as well as by the informed use of credit which Congress has heretofore sought to promote. It is the purpose of this Act to require that financial institutions and other firms engaged in the extension of credit make that credit equally available to all credit-worthy customers without regard to sex or marital status.

§ 503. Amendment to the Consumer Credit Protection Act

The Consumer Credit Protection Act (Public Law 90-321) is amended by adding at the end thereof a new title VII:

TITLE VII—EQUAL CREDIT OPPORTUNITY

Sec.

701. Prohibited discrimination; reasons for adverse action.
702. Definitions.
703. Regulations.
704. Administrative enforcement.
705. Relation to State laws.
706. Civil liability.
707. Annual reports to Congress.
708. Effective date.
709. Short title.

§ 701. Prohibited discrimination; reasons for adverse action*

(a) It shall be unlawful for any creditor to discriminate against any applicant, with respect to any aspect of a credit transaction—

(1) on the basis of race, color, religion, national origin, sex or marital status, or age (provided the applicant has the capacity to contract);

(2) because all or part of the applicant's income derives from any public assistance program; or

(3) because the applicant has in good faith exercised any right under the Consumer Credit Protection Act.

(b) It shall not constitute discrimination for purposes of this title for a creditor—

(1) to make an inquiry of marital status if such inquiry is for the purpose of ascertaining the creditor's rights and remedies applicable to the particular extension of credit and not to discriminate in a determination of creditworthiness;

(2) to make an inquiry of the applicant's age or of whether the applicant's income derives from any public assistance program if such inquiry is for the purpose of determining the amount and probable continuance of income levels, credit history, or other pertinent element of creditworthiness as provided in regulations of the Board;

(3) to use any empirically derived credit system which considers age if such system is demonstrably and statistically sound in accordance with regulations of the Board, except that in the operation of such system the age of an elderly applicant may not be assigned a negative factor or value; or

(4) to make an inquiry or to consider the age of an elderly applicant when the age of such applicant is to be used by the creditor in the extension of credit in favor of such applicant.

(c) It is not a violation of this section for a creditor to refuse to extend credit offered pursuant to—

(1) any credit assistance program expressly authorized by law for an economically disadvantaged class of persons;

(2) any credit assistance program administered by a nonprofit organization for its members or an economically disadvantaged class of persons; or

* Effective date for amendments to section 701 is March 23, 1977. All other amendments are effective upon enactment.

(3) any special purpose credit program offered by a profitmaking organization to meet special social needs which meets standards prescribed in regulations by the Board; if such refusal is required by or made pursuant to such program.

(d)(1) Within thirty days (or such longer reasonable time as specified in regulations of the Board for any class of credit transaction) after receipt of a completed application for credit, a creditor shall notify the applicant of its action on the application.

(2) Each applicant against whom adverse action is taken shall be entitled to a statement of reasons for such action from the creditor. A creditor satisfies this obligation by—

(A) providing statements of reasons in writing as a matter of course to applicants against whom adverse action is taken; or

(B) giving written notification of adverse action which discloses (i) the applicant's right to a statement of reasons within thirty days after receipt by the creditor of a request made within sixty days after such notification, and (ii) the identity of the person or office from which such statement may be obtained. Such statement may be given orally if the written notification advises the applicant of his right to have the statement of reasons confirmed in writing on written request.

(3) A statement of reasons meets the requirements of this section only if it contains the specific reasons for the adverse action taken.

(4) Where a creditor has been requested by a third party to make a specific extension of credit directly or indirectly to an applicant, the notification and statement of reasons required by this subsection may be made directly by such creditor, or indirectly through the third party, provided in either case that the identity of the creditor is disclosed.

(5) The requirements of paragraph (2), (3), or (4) may be satisfied by verbal statements or notifications in the case of any creditor who did not act on more than 150 applications during the calendar year preceding the calendar year in which the adverse action is taken, as determined under regulations of the Board.

(6) For purposes of this subsection, the term "adverse action" means a denial or revocation of credit, a change in the terms of an existing credit arrangement, or a refusal to grant credit in substantially the amount or on substantially the terms

requested. Such term does not include a refusal to extend additional credit under an existing credit arrangement where the applicant is delinquent or otherwise in default, or where such additional credit would exceed a previously established credit limit.

§ 702. Definitions

(a) The definitions and rules of construction set forth in this section are applicable for the purposes of this title.

(b) The term "applicant" means any person who applies to a creditor directly for an extension, renewal, or continuation of credit, or applies to a creditor indirectly by use of an existing credit plan for an amount exceeding a previously established credit limit.

(c) The term "Board" refers to the Board of Governors of the Federal Reserve System.

(d) The term "credit" means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment or to purchase property or services and defer payment therefor.

(e) The term "creditor" means any person who regularly extends, renews, or continues credit; any person who regularly arranges for the extension, renewal, or continuation of credit; or any assignee of an original creditor who participates in the decision to extend, renew, or continue credit.

(f) The term "person" means a natural person, a corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative, or association.

(g) Any reference to any requirement imposed under this title or any provision thereof includes reference to the regulations of the Board under this title or the provision thereof in question.

§ 703. Regulations

(a) The Board shall prescribe regulations to carry out the purposes of this title. These regulations may contain but are not limited to such classifications, differentiation, or other provision, and may provide for such adjustments and exceptions for any class of transactions, as in the judgment of the Board are necessary or proper to effectuate the purposes of this title, to prevent circumvention or evasion thereof, or to facilitate or substantiate compliance therewith. In particular, such regulations may exempt from one or more of the provisions of this title any class of transactions not primarily for personal, family,

or household purposes, if the Board makes an express finding that the application of such provision or provisions would not contribute substantially to carrying out the purposes of this title. Such regulations shall be prescribed as soon as possible after the date of enactment of this Act, but in no event later than the effective date of this Act.

(b) The Board shall establish a Consumer Advisory Council to advise and consult with it in the exercise of its functions under the Consumer Credit Protection Act and to advise and consult with it concerning other consumer related matters it may place before the Council. In appointing the members of the Council, the Board shall seek to achieve a fair representation of the interests of creditors and consumers. The Council shall meet from time to time at the call of the Board. Members of the Council who are not regular full-time employees of the United States shall, while attending meetings of such Council, be entitled to receive compensation at a rate fixed by the Board, but not exceeding \$100 per day, including travel time. Such members may be allowed travel expenses, including transportation and subsistence, while away from their homes or regular place of business.

§ 704. Administrative enforcement

(a) Compliance with the requirements imposed under this title shall be enforced under:

(1) Section 8 of the Federal Deposit Insurance Act, in the case of—

(A) national banks, by the Comptroller of the Currency;

(B) member banks of the Federal Reserve System (other than national banks), by the Board;

(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), by the Board of Directors of the Federal Deposit Insurance Corporation.

(2) Section 5(d) of the Home Owners' Loan Act of 1933, section 407 of the National Housing Act, and sections 6(i) and 17 of the Federal Home Loan Bank Act, by the Federal Home Loan Bank Board (acting directly or through the Federal Savings and Loan Insurance Corporation), in the case of any institution subject to any of those provisions.

(3) The Federal Credit Union Act, by the Administrator of the National Credit Union Administration with respect to any Federal Credit Union.

(4) The Acts to regulate commerce, by the Interstate Commerce Commission with respect to any common carrier subject to those Acts.

(5) The Federal Aviation Act of 1958, by the Civil Aeronautics Board with respect to any air carrier or foreign air carrier subject to that Act.

(6) The Packers and Stockyards Act, 1921 (except as provided in section 406 of that Act), by the Secretary of Agriculture with respect to any activities subject to that Act.

(7) The Farm Credit Act of 1971, by the Farm Credit Administration with respect to any Federal land bank, Federal land bank association, Federal intermediate credit bank, and production credit association.

(8) The Securities Exchange Act of 1934, by the Securities and Exchange Commission with respect to brokers and dealers; and

(9) The Small Business Investment Act of 1958, by the Small Business Administration, with respect to small business investment companies.

(b) For the purpose of the exercise by any agency referred to in subsection (a) of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this title shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in subsection (a), each of the agencies referred to in that subsection may exercise for the purpose of enforcing compliance with any requirement imposed under this title, any other authority conferred on it by law. The exercise of the authorities of any of the agencies referred to in subsection (a) for the purpose of enforcing compliance with any requirement imposed under this title shall in no way preclude the exercise of such authorities for the purpose of enforcing compliance with any other provision of law not relating to the prohibition of discrimination on the basis of sex or marital status with respect to any aspect of a credit transaction.

(c) Except to the extent that enforcement of the requirements imposed under this title is specifically committed to some other Government agency under subsection (a), the Federal Trade Commission shall enforce such requirements. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act, a violation of any requirement imposed under this title shall be deemed a violation of a requirement imposed

under that Act. All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Commission to enforce compliance by any person with the requirements imposed under this title, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act, including the power to enforce any Federal Reserve Board regulation promulgated under this title in the same manner as if the violation had been a violation of a Federal Trade Commission trade regulation rule.

(d) The authority of the Board to issue regulations under this title does not impair the authority of any other agency designated in this section to make rules respecting its own procedures in enforcing compliance with requirements imposed under this title.

§ 705. Relation to State laws

(a) A request for the signature of both parties to a marriage for the purpose of creating a valid lien, passing clear title, waiving inchoate rights to property, or assigning earnings, shall not constitute discrimination under this title: *Provided, however,* That this provision shall not be construed to permit a creditor to take sex or marital status into account in connection with the evaluation of creditworthiness of any applicant.

(b) Consideration or application of State property laws directly or indirectly affecting creditworthiness shall not constitute discrimination for purposes of this title.

(c) Any provision of State law which prohibits the separate extension of consumer credit to each party to a marriage shall not apply in any case where each party to a marriage voluntarily applies for separate credit from the same creditor: *Provided,* That in any case where such a State law is so preempted, each party to the marriage shall be solely responsible for the debt so contracted.

(d) When each party to a marriage separately and voluntarily applies for and obtains separate credit accounts with the same creditor, those accounts shall not be aggregated or otherwise combined for purposes of determining permissible finance charges or permissible loan ceilings under the laws of any State or of the United States.

(e) Where the same act or omission constitutes a violation of this title and of applicable State law, a person aggrieved by such conduct may

bring a legal action to recover monetary damages either under this title or under such State law, but not both. This election of remedies shall not apply to court actions in which the relief sought does not include monetary damages or to administrative actions.

(f) This title does not annul, alter, or affect, or exempt any person subject to the provisions of this title from complying with, the laws of any State with respect to credit discrimination, except to the extent that those laws are inconsistent with any provision of this title, and then only to the extent of the inconsistency. The Board is authorized to determine whether such inconsistencies exist. The Board may not determine that any State law is inconsistent with any provision of this title if the Board determines that such law gives greater protection to the applicant.

(g) The Board shall by regulation exempt from the requirements of sections 701 and 702 of this title any class of credit transactions within any State if it determines that under the law of that State that class of transactions is subject to requirements substantially similar to those imposed under this title or that such law gives greater protection to the applicant, and that there is adequate provision for enforcement. Failure to comply with any requirement of such State law in any transaction so exempted shall constitute a violation of this title for the purposes of section 706.

§ 706. Civil liability

(a) Any creditor who fails to comply with any requirement imposed under this title shall be liable to the aggrieved applicant for any actual damages sustained by such applicant acting either in an individual capacity or as a member of a class.

(b) Any creditor, other than a government or governmental subdivision or agency, who fails to comply with any requirement imposed under this title shall be liable to the aggrieved applicant for punitive damages in an amount not greater than \$10,000, in addition to any actual damages provided in subsection (a), except that in the case of a class action the total recovery under this subsection shall not exceed the lesser of \$500,000 or 1 per centum of the net worth of the creditor. In determining the amount of such damages in any action, the court shall consider, among other relevant factors, the amount of any actual damages awarded, the frequency and persistence of

failures of compliance by the creditor, the resources of the creditor, the number of persons adversely affected, and the extent to which the creditor's failure of compliance was intentional.

(c) Upon application by an aggrieved applicant, the appropriate United States district court or any other court of competent jurisdiction may grant such equitable and declaratory relief as is necessary to enforce the requirements imposed under this title.

(d) In the case of any successful action under subsection (a), (b), or (c), the costs of the action, together with a reasonable attorney's fee as determined by the court, shall be added to any damages awarded by the court under such subsection.

(e) No provision of this title imposing any liability shall apply to any act done or omitted in good faith in conformity with any official rule, regulation, or interpretation thereof by the Board or in conformity with any interpretation or approval by an official or employee of the Federal Reserve System duly authorized by the Board to issue such interpretations or approvals under such procedures as the Board may prescribe therefor, notwithstanding that after such act or omission has occurred, such rule, regulation, interpretation, or approval is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(f) Any action under this section may be brought in the appropriate United States district court without regard to the amount in controversy, or in any other court of competent jurisdiction. No such action shall be brought later than two years from the date of the occurrence of the violation, except that—

(1) whenever any agency having responsibility for administrative enforcement under section 704 commences an enforcement proceeding within two years from the date of the occurrence of the violation,

(2) whenever the Attorney General commences a civil action under this section within two years from the date of occurrence of the violation,

then any applicant who has been a victim of the discrimination which is the subject of such proceeding or civil action may bring an action under this section not later than one year after the commencement of that proceeding or action.

(g) The agencies having responsibility for administrative enforcement under section 704, if

unable to obtain compliance with section 701, are authorized to refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted.

(h) When a matter is referred to the Attorney General pursuant to subsection (g), or whenever he has reason to believe that one or more creditors are engaged in a pattern or practice in violation of this title, the Attorney General may bring a civil action in any appropriate United States district court for such relief as may be appropriate, including injunctive relief.

(i) No person aggrieved by a violation of this title and by a violation of section 805 of the Civil Rights Act of 1968 shall recover under this title and section 812 of the Civil Rights Act of 1968, if such violation is based on the same transaction.

(j) Nothing in this title shall be construed to prohibit the discovery of a creditor's credit granting standards under appropriate discovery procedures in the court or agency in which an action or proceeding is brought.

§ 707. Annual reports to Congress

Not later than February 1 of each year after 1976, the Board and the Attorney General shall, respectively, make reports to the Congress concerning the administration of their functions under this title, including such recommendations as the Board and the Attorney General, respectively, deem necessary or appropriate. In addition, each report of the Board shall include its assessment of the extent to which compliance with the requirements of this title is being achieved, and a summary of the enforcement actions taken by each of the agencies assigned administrative enforcement responsibilities under section 704.

§ 708. Effective date

This title takes effect upon the expiration of one year after the date of its enactment. The amendments made by the Equal Credit Opportunity Act Amendments of 1976 shall take effect on the date of enactment thereof and shall apply to any violation occurring on or after such date, except that the amendments made to section 701 of the Equal Credit Opportunity Act shall take effect 12 months after the date of enactment.

§ 709. Short title

This title may be cited as the "Equal Credit Opportunity Act."

BOARD OF GOVERNORS
of the
FEDERAL RESERVE SYSTEM

EQUAL CREDIT OPPORTUNITY

REGULATION B
(12 CFR 202)

Effective March 23, 1977

(Amended March 13 and April 21, 1978)



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STATUTORY AUTHORITY

This regulation is based upon and issued pursuant to provisions of section 703 of the Equal Credit Opportunity Act, U.S.C., Title 15, sec. 1691 *et seq.*

REGULATION B

(12 CFR 202)

Effective March 23, 1977

(Amended March 13 and April 21, 1978)

EQUAL CREDIT OPPORTUNITY

SECTION 202.1—AUTHORITY, SCOPE, ENFORCEMENT, PENALTIES AND LIABILITIES, INTERPRETATIONS

(a) **Authority and scope.** This Part¹ comprises the regulations issued by the Board of Governors of the Federal Reserve System pursuant to Title VII (Equal Credit Opportunity Act) of the Consumer Credit Protection Act, as amended (15 U.S.C. § 1601 *et seq.*). Except as otherwise provided herein, this Part applies to all persons who are creditors, as defined in section 202.2(f).

(b) **Administrative enforcement.** (1) As set forth more fully in section 704 of the Act, administrative enforcement of the Act and this Part regarding certain creditors is assigned to the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Board of Directors of the Federal Deposit Insurance Corporation, Federal Home Loan Bank Board (acting directly or through the Federal Savings and Loan Insurance Corporation), Administrator of the National Credit Union Administration, Interstate Commerce Commission, Civil Aeronautics Board, Secretary of Agriculture, Farm Credit Administration, Securities and Exchange Commission, and Small Business Administration.

(2) Except to the extent that administrative enforcement is specifically committed to other authorities, compliance with the requirements im-

posed under the Act and this Part will be enforced by the Federal Trade Commission.

(c) **Penalties and liabilities.** (1) Sections 706(a) and (b) of the Act provide that any creditor who fails to comply with any requirement imposed under the Act or, pursuant to section 702(g), this Part is subject to civil liability for actual and punitive damages in individual or class actions. Pursuant to section 704 of the Act, violations of the Act or, pursuant to section 702(g), this Part constitute violations of other Federal laws that may provide further penalties. Liability for punitive damages is restricted by section 706(b) to non-governmental entities and is limited to \$10,000 in individual actions and the lesser of \$500,000 or one percent of the creditor's net worth in class actions. Section 706(c) provides for equitable and declaratory relief. Section 706(d) authorizes the awarding of costs and reasonable attorney's fees to an aggrieved applicant in a successful action.

(2) Section 706(e) relieves a creditor from civil liability resulting from any act done or omitted in good faith in conformity with any rule, regulation, or interpretation by the Board of Governors of the Federal Reserve System, or with any interpretations or approvals issued by a duly authorized official or employee of the Federal Reserve System, notwithstanding that after such act or omission has occurred, such rule, regulation, interpretation, or approval is amended, rescinded, or otherwise determined to be invalid for any reason.

¹ As used herein, the words "this Part" mean Regulation B, 12 CFR 202.

(3) As provided in section 706(f), a civil action under the Act or this Part may be brought in the appropriate United States district court without regard to the amount in controversy or in any other court of competent jurisdiction within two years after the date of the occurrence of the violation or within one year after the commencement of an administrative enforcement proceeding or a civil action brought by the Attorney General within two years after the alleged violation.

(4) Sections 706(g) and (h) provide that, if the agencies responsible for administrative enforcement are unable to obtain compliance with the Act or, pursuant to section 702(g), this Part, they may refer the matter to the Attorney General. On such referral, or whenever the Attorney General has reason to believe that one or more creditors are engaged in a pattern or practice in violation of the Act or this Part, the Attorney General may bring a civil action.

(d) **Issuance of staff interpretations.** (1) Unofficial staff interpretations will be issued at the staff's discretion where the protection of section 706(e) of the Act is neither requested nor required, or where a rapid response is necessary.

(2)(i) Official staff interpretations will be issued at the discretion of designated officials. No such interpretation will be issued approving creditors' forms or statements. Any request for an official staff interpretation of this Part must be in writing and addressed to the Director of the Division of Consumer Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The request must contain a complete statement of all relevant facts concerning the credit transaction or arrangement and must include copies of all pertinent documents.

(ii) Within 5 business days of receipt of the request, an acknowledgment will be sent to the person making the request. If, in the opinion of the designated officials, issuance of an official staff interpretation is appropriate, it will be published in the *Federal Register* to become effective 30 days after the publication date. If a request for public comment is received, the effective date will be suspended. The interpretation will then be published in the *Federal Register* and the public given an opportunity to comment. Any official staff interpretation issued after opportunity for public comment shall become effective upon publication in the *Federal Register*.

(3) Any request for public comment on an official staff interpretation of this Part must be in writing and addressed to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, and postmarked or received by the Secretary's office within 30 days of the interpretation's publication in the *Federal Register*. The request must contain a statement setting forth the reasons why the person making the request believes that public comment would be appropriate.

(4) Pursuant to section 706(e) of the Act, the Board has designated the Director and other officials of the Division of Consumer Affairs as officials "duly authorized" to issue, at their discretion, official staff interpretations of this Part.

SECTION 202.2—DEFINITIONS AND RULES OF CONSTRUCTION

For the purposes of this Part, unless the context indicates otherwise, the following definitions and rules of construction shall apply:²

(a) **Account** means an extension of credit. When employed in relation to an account, the word **use** refers only to open end credit.

(b) **Act** means the Equal Credit Opportunity Act (Title VII of the Consumer Credit Protection Act).

(c) **Adverse action.** (1) For the purposes of notification of action taken, statement of reasons for denial, and record retention, the term means:

² Note that some of the definitions in this Part are not identical to those in 12 CFR 226 (Regulation Z).

(i) a refusal to grant credit in substantially the amount or on substantially the terms requested in an application unless the creditor offers to grant credit other than in substantially the amount or on substantially the terms requested by the applicant and the applicant uses or expressly accepts the credit offered; or

(ii) a termination of an account or an unfavorable change in the terms of an account that does not affect all or a substantial portion of a classification of a creditor's accounts; or

(iii) a refusal to increase the amount of credit available to an applicant when the applicant requests an increase in accordance with procedures established by the creditor for the type of credit involved.

(2) The term does not include:

(i) a change in the terms of an account expressly agreed to by an applicant; or

(ii) any action or forbearance relating to an account taken in connection with inactivity, default, or delinquency as to that account; or

(iii) a refusal or failure to authorize an account transaction at a point of sale or loan, except when the refusal is a termination or an unfavorable change in the terms of an account that does not affect all or a substantial portion of a classification of the creditor's accounts or when the refusal is a denial of an application to increase the amount of credit available under the account; or

(iv) a refusal to extend credit because applicable law prohibits the creditor from extending the credit requested; or

(v) a refusal to extend credit because the creditor does not offer the type of credit or credit plan requested.

* * * * *

(3) An action that falls within the definition of both subsections (c)(1) and (c)(2) shall be governed by the provisions of subsection (c)(2).

(d) **Age** refers only to natural persons and means the number of fully elapsed years from the date of an applicant's birth.

(e) **Applicant** means any person who requests or who has received an extension of credit from a creditor, and includes any person who is or may be contractually liable regarding an extension of credit other than a guarantor, surety, endorser, or similar party.

(f) **Application** means an oral or written request for an extension of credit that is made in accordance with procedures established by a creditor for the type of credit requested. The term

does not include the use of an account or line of credit to obtain an amount of credit that does not exceed a previously established credit limit. A **completed application for credit** means an application in connection with which a creditor has received all the information that the creditor regularly obtains and considers in evaluating applications for the amount and type of credit requested (including, but not limited to, credit reports, any additional information requested from the applicant, and any approvals or reports by governmental agencies or other persons that are necessary to guarantee, insure, or provide security for the credit or collateral); provided, however, that the creditor has exercised reasonable diligence in obtaining such information. Where an application is incomplete respecting matters that the applicant can complete, a creditor shall make a reasonable effort to notify the applicant of the incompleteness and shall allow the applicant a reasonable opportunity to complete the application.

(g) **Board** means the Board of Governors of the Federal Reserve System.

(h) **Consumer credit** means credit extended to a natural person in which the money, property, or service that is the subject of the transaction is primarily for personal, family, or household purposes.

(i) **Contractually liable** means expressly obligated to repay all debts arising on an account by reason of an agreement to that effect.

(j) **Credit** means the right granted by a creditor to an applicant to defer payment of a debt, incur debt and defer its payment, or purchase property or services and defer payment therefor.

(k) **Credit card** means any card, plate, coupon book, or other single credit device existing for the purpose of being used from time to time upon presentation to obtain money, property, or services on credit.

(l) **Creditor** means a person who, in the ordinary course of business, regularly participates in the decision of whether or not to extend credit. The term includes an assignee, transferee, or subrogee of an original creditor who so participates; but an assignee, transferee, subrogee, or other creditor is not a creditor regarding any violation of the Act or this Part committed by the original or another creditor unless the assignee, transferee, subrogee, or other creditor knew or had reasonable notice of the act, policy, or practice that constituted the violation before its involvement with the credit transaction. The term does not include a person whose only participa-

tion in a credit transaction involves honoring a credit card.

(m) **Credit transaction** means every aspect of an applicant's dealings with a creditor regarding an application for, or an existing extension of, credit including, but not limited to, information requirements; investigation procedures; standards of creditworthiness; terms of credit; furnishing of credit information; revocation, alteration, or termination of credit; and collection procedures.

(n) **Discriminate against an applicant** means to treat an applicant less favorably than other applicants.

(o) **Elderly** means an age of 62 or older.

(p) **Empirically derived credit system.** (1) The term means a credit scoring system that evaluates an applicant's creditworthiness primarily by allocating points (or by using a comparable basis for assigning weights) to key attributes describing the applicant and other aspects of the transaction. In such a system, the points (or weights) assigned to each attribute, and hence the entire score:

(i) are derived from an empirical comparison of sample groups or the population of creditworthy and non-creditworthy applicants of a creditor who applied for credit within a reasonable preceding period of time; and

(ii) determine, alone or in conjunction with an evaluation of additional information about the applicant, whether an applicant is deemed creditworthy.

(2) A **demonstrably and statistically sound, empirically derived credit system** is a system:

(i) in which the data used to develop the system, if not the complete population consisting of all applicants, are obtained from the applicant file by using appropriate sampling principles;

(ii) which is developed for the purpose of predicting the creditworthiness of applicants with respect to the legitimate business interests of the creditor utilizing the system, including, but not limited to, minimizing bad debt losses and operating expenses in accordance with the creditor's business judgment;

(iii) which, upon validation using appropriate statistical principles, separates creditworthy and non-creditworthy applicants at a statistically significant rate; and

(iv) which is periodically revalidated as to its predictive ability by the use of appropriate

statistical principles and is adjusted as necessary to maintain its predictive ability.

(3) A creditor may use a demonstrably and statistically sound, empirically derived credit system obtained from another person or may obtain credit experience from which such a system may be developed. Any such system must satisfy the tests set forth in subsections (1) and (2); provided that, if a creditor is unable during the development process to validate the system based on its own credit experience in accordance with subsection (2)(iii), then the system must be validated when sufficient credit experience becomes available. A system that fails this validity test shall henceforth be deemed not to be a demonstrably and statistically sound, empirically derived credit system for that creditor.

(q) **Extend credit and extension of credit** mean the granting of credit in any form and include, but are not limited to, credit granted in addition to any existing credit or credit limit; credit granted pursuant to an open end credit plan; the refinancing or other renewal of credit, including the issuance of a new credit card in place of an expiring credit card or in substitution for an existing credit card; the consolidation of two or more obligations; or the continuance of existing credit without any special effort to collect at or after maturity.

(r) **Good faith** means honesty in fact in the conduct or transaction.

(s) **Inadvertent error** means a mechanical, electronic, or clerical error that a creditor demonstrates was not intentional and occurred notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

(t) **Judgmental system of evaluating applicants** means any system for evaluating the creditworthiness of an applicant other than a demonstrably and statistically sound, empirically derived credit system.

(u) **Marital status** means the state of being unmarried, married, or separated, as defined by applicable State law. For the purposes of this Part, the term "unmarried" includes persons who are single, divorced, or widowed.

(v) **Negative factor or value**, in relation to the age of elderly applicants, means utilizing a factor, value, or weight that is less favorable regarding elderly applicants than the creditor's experience warrants or is less favorable than the factor, value, or weight assigned to the class of applicants that

are not classified as elderly applicants and are most favored by a creditor on the basis of age.

(w) **Open end credit** means credit extended pursuant to a plan under which a creditor may permit an applicant to make purchases or obtain loans from time to time directly from the creditor or indirectly by use of a credit card, check, or other device as the plan may provide. The term does not include negotiated advances under an open end real estate mortgage or a letter of credit.

(x) **Person** means a natural person, corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative, or association.

(y) **Pertinent element of creditworthiness**, in relation to a judgmental system of evaluating applicants, means any information about applicants that a creditor obtains and considers and that has a demonstrable relationship to a determination of creditworthiness.

(z) **Prohibited basis** means race, color, religion, national origin, sex, marital status, or age (provided that the applicant has the capacity to enter into a binding contract); the fact that all or part of the applicant's income derives from any public assistance program, or the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act³ or any State law upon which an exemption has been granted by the Board.

(aa) **Public assistance program** means any Federal, State, or local governmental assistance program that provides a continuing, periodic income supplement, whether premised on entitlement or

³ The first clause of the definition is not limited to characteristics of the applicant. Therefore, "prohibited basis" as used in this Part refers not only to the race, color, religion, national origin, sex, marital status, or age of an applicant (or of partners or officers of an applicant), but refers also to the characteristics of individuals with whom an applicant deals. This means, for example, that, under the general rule stated in section 202.4, a creditor may not discriminate against a non-Jewish applicant because of that person's business dealings with Jews, or discriminate against an applicant because of the characteristics of persons to whom the extension of credit relates (e.g., the prospective tenants in an apartment complex to be constructed with the proceeds of the credit requested), or because of the characteristics of other individuals residing in the neighborhood where the property offered as collateral is located. A creditor may take into account, however, any applicable law, regulation, or executive order restricting dealings with citizens or governments of other countries or imposing limitations regarding credit extended for their use.

The second clause is limited to an applicant's receipt of public assistance income and to an applicant's good faith exercise of rights under the Consumer Credit Protection Act or applicable State law.

need. The term includes, but is not limited to, Aid to Families with Dependent Children, food stamps, rent and mortgage supplement or assistance programs, Social Security and Supplemental Security Income, and unemployment compensation.

(bb) **State** means any State, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

(cc) Captions and catchlines are intended solely as aids to convenient reference, and no inference as to the substance of any provision of this Part may be drawn from them.

(dd) Footnotes shall have the same legal effect as the text of the regulation, whether they are explanatory or illustrative in nature.

SECTION 202.3—SPECIAL TREATMENT FOR CERTAIN CLASSES OF TRANSACTIONS

(a) **Classes of transactions afforded special treatment.** Pursuant to section 703(a) of the Act, the following classes of transactions are afforded specialized treatment:

(1) extensions of credit relating to transactions under public utility tariffs involving services provided through pipe, wire, or other connected facilities if the charges for such public utility services, the charges for delayed payment, and any discount allowed for early payment are filed with, or reviewed or regulated by, an agency of the Federal government, a State, or a political subdivision thereof;

(2) extensions of credit subject to regulation under section 7 of the Securities Exchange Act of 1934 or extensions of credit by a broker or dealer subject to regulation as a broker or dealer under the Securities Exchange Act of 1934;

(3) extensions of incidental consumer credit, other than of the types described in subsections (a)(1) and (2):

(i) that are not made pursuant to the terms of a credit card account;

(ii) on which no finance charge as defined in section 226.4 of this Title (Regulation Z, 12 CFR 226.4) is or may be imposed; and

(iii) that are not payable by agreement in more than four instalments;

(4) extensions of credit primarily for business or commercial purposes, including extensions of

credit primarily for agricultural purposes, but excluding extensions of credit of the types described in subsections (a)(1) and (2); and

(5) extensions of credit made to governments or governmental subdivisions, agencies, or instrumentalities.

(b) **Public utilities credit.** The following provisions of this Part shall not apply to extensions of credit of the type described in subsection (a)(1):

(1) section 202.5(d)(1) concerning information about marital status;

(2) section 202.10 relating to furnishing of credit information; and

(3) section 202.12(b) relating to record retention.

(c) **Securities credit.** The following provisions of this Part shall not apply to extensions of credit of the type described in subsection (a)(2):

(1) section 202.5(c) concerning information about a spouse or former spouse;

(2) section 202.5(d)(1) concerning information about marital status;

(3) section 202.5(d)(3) concerning information about the sex of an applicant;

(4) section 202.7(b) relating to designation of name, but only to the extent necessary to prevent violation of rules regarding an account in which a broker or dealer has an interest, or rules necessitating the aggregation of accounts of spouses for the purpose of determining controlling interests, beneficial interests, beneficial ownership, or purchase limitations and restrictions;

(5) section 202.7(c) relating to action concerning open end accounts, but only to the extent the action taken is on the basis of a change of name or marital status;

(6) section 202.7(d) relating to signature of a spouse or other person;

(7) section 202.10 relating to furnishing of credit information; and

(8) section 202.12(b) relating to record retention.

(d) **Incidental credit.** The following provisions of this Part shall not apply to extensions of credit of the type described in subsection (a)(3):

(1) section 202.5(c) concerning information about a spouse or former spouse;

(2) section 202.5(d)(1) concerning information about marital status;

(3) section 202.5(d)(2) concerning information about income derived from alimony, child support, or separate maintenance payments;

(4) section 202.5(d)(3) concerning information about the sex of an applicant to the extent necessary for medical records or similar purposes;

(5) section 202.7(d) relating to signature of a spouse or other person;

(6) section 202.9 relating to notifications;

(7) section 202.10 relating to furnishing of credit information; and

(8) section 202.12(b) relating to record retention.

(e) **Business credit.** The following provisions of this Part shall not apply to extensions of credit of the type described in subsection (a)(4):

(1) section 202.5(d)(1) concerning information about marital status;

(2) section 202.9 relating to notifications, unless an applicant, within 30 days after oral or written notification that adverse action has been taken, requests in writing the reasons for such action;

(3) section 202.10 relating to furnishing of credit information; and

(4) section 202.12(b) relating to record retention, unless an applicant, within 90 days after adverse action has been taken, requests in writing that the records relating to the application be retained.

(f) **Governmental credit.** Except for section 202.1 relating to authority, scope, enforcement, penalties and liabilities, and interpretations, section 202.2 relating to definitions and rules of construction, this section, section 202.4 relating to the general rule prohibiting discrimination, section 202.6(a) relating to the use of information, section 202.11 relating to State laws, and section 202.12(a) relating to the retention of prohibited information, the provisions of this Part shall not apply to extensions of credit of the type described in subsection (a)(5).

SECTION 202.4—GENERAL RULE PROHIBITING DISCRIMINATION

A creditor shall not discriminate against an applicant on a prohibited basis regarding any aspect of a credit transaction.

SECTION 202.5—RULES CONCERNING APPLICATIONS

(a) **Discouraging applications.** A creditor shall not make any oral or written statement, in adver-

tising or otherwise, to applicants or prospective applicants that would discourage on a prohibited basis a reasonable person from making or pursuing an application.

(b) **General rules concerning requests for information.** (1) Except as otherwise provided in this section, a creditor may request any information in connection with an application.⁴

(2) Notwithstanding any other provision of this section, a creditor shall request an applicant's race/national origin, sex, and marital status as required in section 202.13 (information for monitoring purposes). In addition, a creditor may obtain such information as may be required by a regulation, order, or agreement issued by, or entered into with, a court or an enforcement agency (including the Attorney General or a similar State official) to monitor or enforce compliance with the Act, this Part, or other Federal or State statute or regulation.

(3) The provisions of this section limiting permissible information requests are subject to the provisions of section 202.7(e) regarding insurance and sections 202.8(c) and (d) regarding special purpose credit programs.

(c) **Information about a spouse or former spouse.** (1) Except as permitted in this subsection, a creditor may not request any information concerning the spouse or former spouse of an applicant.

(2) A creditor may request any information concerning an applicant's spouse (or former spouse under (v) below) that may be requested about the applicant if:

(i) the spouse will be permitted to use the account; or

(ii) the spouse will be contractually liable upon the account; or

(iii) the applicant is relying on the spouse's income as a basis for repayment of the credit requested; or

(iv) the applicant resides in a community property State or property upon which the applicant is relying as a basis for repayment of the credit requested is located in such a State; or

⁴ This subsection is not intended to limit or abrogate any Federal or State law regarding privacy, privileged information, credit reporting limitations, or similar restrictions on obtainable information. Furthermore, permission to request information should not be confused with how it may be utilized, which is governed by section 202.6 (rules concerning evaluation of applications).

(v) the applicant is relying on alimony, child support, or separate maintenance payments from a spouse or former spouse as a basis for repayment of the credit requested.

(3) A creditor may request an applicant to list any account upon which the applicant is liable and to provide the name and address in which such account is carried. A creditor may also ask the names in which an applicant has previously received credit.

(d) **Information a creditor may not request.** (1) If an applicant applies for an individual, unsecured account, a creditor shall not request the applicant's marital status, unless the applicant resides in a community property State or property upon which the applicant is relying as a basis for repayment of the credit requested is located in such a State.⁵ Where an application is for other than individual, unsecured credit, a creditor may request an applicant's marital status. Only the terms "married," "unmarried," and "separated" shall be used, and a creditor may explain that the category "unmarried" includes single, divorced, and widowed persons.

(2) A creditor shall not inquire whether any income stated in an application is derived from alimony, child support, or separate maintenance payments, unless the creditor appropriately discloses to the applicant that such income need not be revealed if the applicant does not desire the creditor to consider such income in determining the applicant's creditworthiness. Since a general inquiry about income, without further specification, may lead an applicant to list alimony, child support, or separate maintenance payments, a creditor shall provide an appropriate notice to an applicant before inquiring about the source of an applicant's income, unless the terms of the inquiry (such as an inquiry about salary, wages, investment income, or similarly specified income) tend to preclude the unintentional disclosure of ali-

⁵ This provision does not preclude requesting relevant information that may indirectly disclose marital status, such as asking about liability to pay alimony, child support, or separate maintenance; the source of income to be used as a basis for the repayment of the credit requested, which may disclose that it is a spouse's income; whether any obligation disclosed by the applicant has a co-obligor, which may disclose that the co-obligor is a spouse or former spouse; or the ownership of assets, which may disclose the interest of a spouse, when such assets are relied upon in extending the credit. Such inquiries are allowed by the general rule of subsection (b)(1).

mony, child support, or separate maintenance payments.

(3) A creditor shall not request the sex of an applicant. An applicant may be requested to designate a title on an application form (such as Ms., Miss, Mr., or Mrs.) if the form appropriately discloses that the designation of such a title is optional. An application form shall otherwise use only terms that are neutral as to sex.

(4) A creditor shall not request information about birth control practices, intentions concerning the bearing or rearing of children, or capability to bear children. This does not preclude a creditor from inquiring about the number and ages of an applicant's dependents or about dependent-related financial obligations or expenditures, provided such information is requested without regard to sex, marital status, or any other prohibited basis.

(5) A creditor shall not request the race, color, religion, or national origin of an applicant or any other person in connection with a credit transaction. A creditor may inquire, however, as to an applicant's permanent residence and immigration status.

(e) **Application forms.** A creditor need not use written applications. If a creditor chooses to use written forms, it may design its own,⁶ use forms prepared by another person, or use the appropriate model application forms contained in Appendix B. If a creditor chooses to use an Appendix B form, it may change the form:

(1) by asking for additional information not prohibited by this section;

(2) by deleting any information request; or

(3) by rearranging the format without modifying the substance of the inquiries; provided that in each of these three instances the appropriate notices regarding the optional nature of courtesy titles, the option to disclose alimony, child support, or separate maintenance, and the limitation concerning marital status inquiries are included in the appropriate places if the items to which they relate appear on the creditor's form. If a creditor uses an appropriate Appendix B model form or to the extent that it modifies such a form

⁶ A creditor also may continue to use any application form that complies with the requirements of the October 28, 1975 version of Regulation B until its present stock of those forms is exhausted or until March 23, 1978, whichever occurs first. The provisions of this Part shall not determine and are not evidence of the meaning of the requirements of the previous version of Regulation B.

in accordance with the provisions of clauses (2) or (3) of the preceding sentence or the instructions to Appendix B, that creditor shall be deemed to be acting in compliance with the provisions of subsections (c) and (d).

SECTION 202.6—RULES CONCERNING EVALUATION OF APPLICATIONS

(a) **General rule concerning use of information.** Except as otherwise provided in the Act and this Part, a creditor may consider in evaluating an application any information that the creditor obtains, so long as the information is not used to discriminate against an applicant on a prohibited basis.⁷

(b) **Specific rules concerning use of information.**
(1) Except as provided in the Act and this Part, a creditor shall not take a prohibited basis into account in any system of evaluating the creditworthiness of applicants.⁸

(2)(i) Except as permitted in this subsection, a creditor shall not take into account an applicant's age (provided that the applicant has the capacity to enter into a binding contract) or whether an applicant's income derives from any public assistance program.

(ii) In a demonstrably and statistically sound, empirically derived credit system, a creditor may use an applicant's age as a predictive variable, provided that the age of an elderly applicant is not assigned a negative factor or value.

(iii) In a judgmental system of evaluating creditworthiness, a creditor may consider an applicant's age or whether an applicant's income derives from any public assistance program only

⁷ The legislative history of the Act indicates that the Congress intended an "effects test" concept, as outlined in the employment field by the Supreme Court in the cases of *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971), and *Albemarle Paper Co. v. Moody*, 422 U.S. 405 (1975), to be applicable to a creditor's determination of creditworthiness. See Senate Report to accompany H.R. 6516, No. 94-589, pp. 4-5; House Report to accompany H.R. 6516, No. 94-210, p. 5.

⁸ This provision does not prevent a creditor from considering the marital status of an applicant or the source of an applicant's income for the purpose of ascertaining the creditor's rights and remedies applicable to the particular extension of credit and not to discriminate in a determination of creditworthiness. Furthermore, a prohibited basis may be considered in accordance with section 202.8 (special purpose credit programs).

for the purpose of determining a pertinent element of creditworthiness.⁹

(iv) In any system of evaluating creditworthiness, a creditor may consider the age of an elderly applicant when such age is to be used to favor the elderly applicant in extending credit.

(3) A creditor shall not use, in evaluating the creditworthiness of an applicant, assumptions or aggregate statistics relating to the likelihood that any group of persons will bear or rear children or, for that reason, will receive diminished or interrupted income in the future.

(4) A creditor shall not take into account the existence of a telephone listing in the name of an applicant for consumer credit. A creditor may take into account the existence of a telephone in the residence of such an applicant.

(5) A creditor shall not discount or exclude from consideration the income of an applicant or the spouse of the applicant because of a prohibited basis or because the income is derived from part-time employment, or from an annuity, pension, or other retirement benefit; but a creditor may consider the amount and probable continuance of any income in evaluating an applicant's creditworthiness. Where an applicant relies on alimony, child support, or separate maintenance payments in applying for credit, a creditor shall consider such payments as income to the extent that they are likely to be consistently made. Factors that a creditor may consider in determining the likelihood of consistent payments include,

⁹ Concerning income derived from a public assistance program, a creditor may consider, for example, the length of time an applicant has been receiving such income; whether an applicant intends to continue to reside in the jurisdiction in relation to residency requirements for benefits; and the status of an applicant's dependents to ascertain whether benefits that the applicant is presently receiving will continue.

Concerning age, a creditor may consider, for example, the occupation and length of time to retirement of an applicant to ascertain whether the applicant's income (including retirement income, as applicable) will support the extension of credit until its maturity; or the adequacy of any security offered if the duration of the credit extension will exceed the life expectancy of the applicant. An elderly applicant might not qualify for a five-percent down, 30-year mortgage loan because the duration of the loan exceeds the applicant's life expectancy and the cost of realizing on the collateral might exceed the applicant's equity. The same applicant might qualify with a larger downpayment and a shorter loan maturity. A creditor could also consider an applicant's age, for example, to assess the significance of the applicant's length of employment or residence (a young applicant may have just entered the job market; an elderly applicant may recently have retired and moved from a long-time residence).

but are not limited to, whether the payments are received pursuant to a written agreement or court decree; the length of time that the payments have been received; the regularity of receipt; the availability of procedures to compel payment; and the creditworthiness of the payor, including the credit history of the payor where available to the creditor under the Fair Credit Reporting Act or other applicable laws.

(6) To the extent that a creditor considers credit history in evaluating the creditworthiness of similarly qualified applicants for a similar type and amount of credit, in evaluating an applicant's creditworthiness, a creditor shall consider (unless the failure to consider results from an inadvertent error):

(i) the credit history, when available, of accounts designated as accounts that the applicant and a spouse are permitted to use or for which both are contractually liable;

(ii) on the applicant's request, any information that the applicant may present tending to indicate that the credit history being considered by the creditor does not accurately reflect the applicant's creditworthiness; and

(iii) on the applicant's request, the credit history, when available, of any account reported in the name of the applicant's spouse or former spouse that the applicant can demonstrate accurately reflects the applicant's creditworthiness.

(7) A creditor may consider whether an applicant is a permanent resident of the United States, the applicant's immigration status, and such additional information as may be necessary to ascertain its rights and remedies regarding repayment.

(c) **State property laws.** A creditor's consideration or application of State property laws directly or indirectly affecting creditworthiness shall not constitute unlawful discrimination for the purposes of the Act or this Part.

SECTION 202.7—RULES CONCERNING EXTENSIONS OF CREDIT

(a) **Individual accounts.** A creditor shall not refuse to grant an individual account to a credit-worthy applicant on the basis of sex, marital status, or any other prohibited basis.

(b) **Designation of name.** A creditor shall not prohibit an applicant from opening or maintaining

an account in a birth-given first name and a surname that is the applicant's birth-given surname, the spouse's surname, or a combined surname.

(c) **Action concerning existing open end accounts.** (1) In the absence of evidence of inability or unwillingness to repay, a creditor shall not take any of the following actions regarding an applicant who is contractually liable on an existing open end account on the basis of the applicant's reaching a certain age or retiring, or on the basis of a change in the applicant's name or marital status:

- (i) require a reapplication; or
- (ii) change the terms of the account; or
- (iii) terminate the account.

(2) A creditor may require a reapplication regarding an open end account on the basis of a change in an applicant's marital status where the credit granted was based on income earned by the applicant's spouse if the applicant's income alone at the time of the original application would not support the amount of credit currently extended.

(d) **Signature of spouse or other person.** (1) Except as provided in this subsection, a creditor shall not require the signature of an applicant's spouse or other person, other than a joint applicant, on any credit instrument if the applicant qualifies under the creditor's standards of creditworthiness for the amount and terms of the credit requested.

(2) If an applicant requests unsecured credit and relies in part upon property to establish creditworthiness, a creditor may consider State law; the form of ownership of the property; its susceptibility to attachment, execution, severance, and partition; and other factors that may affect the value to the creditor of the applicant's interest in the property. If necessary to satisfy the creditor's standards of creditworthiness, the creditor may require the signature of the applicant's spouse or other person on any instrument necessary, or reasonably believed by the creditor to be necessary, under applicable State law to make the property relied upon available to satisfy the debt in the event of default.

(3) If a married applicant requests unsecured credit and resides in a community property State or if the property upon which the applicant is relying is located in such a State, a creditor may require the signature of the spouse on any instrument necessary, or reasonably believed by the

creditor to be necessary, under applicable State law to make the community property available to satisfy the debt in the event of default if:

(i) applicable State law denies the applicant power to manage or control sufficient community property to qualify for the amount of credit requested under the creditor's standards of creditworthiness; and

(ii) the applicant does not have sufficient separate property to qualify for the amount of credit requested without regard to community property.

(4) If an applicant requests secured credit, a creditor may require the signature of the applicant's spouse or other person on any instrument necessary, or reasonably believed by the creditor to be necessary, under applicable State law to make the property being offered as security available to satisfy the debt in the event of default, for example, any instrument to create a valid lien, pass clear title, waive inchoate rights, or assign earnings.

(5) If, under a creditor's standards of creditworthiness, the personal liability of an additional party is necessary to support the extension of the credit requested,¹⁰ a creditor may request that the applicant obtain a co-signer, guarantor, or the like. The applicant's spouse may serve as an additional party, but a creditor shall not require that the spouse be the additional party. For the purposes of subsection (d), a creditor shall not impose requirements upon an additional party that the creditor may not impose upon an applicant.

(e) **Insurance.** Differentiation in the availability, rates, and terms on which credit-related casualty insurance or credit life, health, accident, or disability insurance is offered or provided to an applicant shall not constitute a violation of the Act or this Part; but a creditor shall not refuse to extend credit and shall not terminate an account because credit life, health, accident, or disability insurance is not available on the basis of the applicant's age. Notwithstanding any other provision of this Part, information about the age, sex, or marital status of an applicant may be requested in an application for insurance.

¹⁰ If an applicant requests individual credit relying on the separate income of another person, a creditor may require the signature of the other person to make the income available to pay the debt.

**SECTION 202.8—SPECIAL PURPOSE
CREDIT PROGRAMS**

(a) **Standards for programs.** Subject to the provisions of subsection (b), the Act and this Part are not violated if a creditor refuses to extend credit to an applicant solely because the applicant does not qualify under the special requirements that define eligibility for the following types of special purpose credit programs:

(1) any credit assistance program expressly authorized by Federal or State law for the benefit of an economically disadvantaged class of persons; or

(2) any credit assistance program offered by a not-for-profit organization, as defined under section 501(c) of the Internal Revenue Code of 1954, as amended, for the benefit of its members or for the benefit of an economically disadvantaged class of persons; or

(3) any special purpose credit program offered by a for-profit organization or in which such an organization participates to meet special social needs, provided that:

(i) the program is established and administered pursuant to a written plan that (A) identifies the class or classes of persons that the program is designed to benefit and (B) sets forth the procedures and standards for extending credit pursuant to the program; and

(ii) the program is established and administered to extend credit to a class of persons who, pursuant to the customary standards of credit-worthiness used by the organization extending the credit, either probably would not receive such credit or probably would receive it on less favorable terms than are ordinarily available to other applicants applying to the organization for a similar type and amount of credit.

(b) **Applicability of other rules.** (1) All of the provisions of this Part shall apply to each of the special purpose credit programs described in subsection (a) to the extent that those provisions are not inconsistent with the provisions of this section.

(2) A program described in subsections (a)(2) or (a)(3) shall qualify as a special purpose credit program under subsection (a) only if it was established and is administered so as not to discriminate against an applicant on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract), income derived

from a public assistance program, or good faith exercise of any right under the Consumer Credit Protection Act or any State law upon which an exemption has been granted therefrom by the Board; except that all program participants may be required to share one or more of those characteristics so long as the program was not established and is not administered with the purpose of evading the requirements of the Act or this Part.

(c) **Special rule concerning requests and use of information.** If all participants in a special purpose credit program described in subsection (a) are or will be required to possess one or more common characteristics relating to race, color, religion, national origin, sex, marital status, age, or receipt of income from a public assistance program and if the special purpose credit program otherwise satisfies the requirements of subsection (a), then, notwithstanding the prohibitions of sections 202.5 and 202.6, the creditor may request of an applicant and may consider, in determining eligibility for such program, information regarding the common characteristics required for eligibility. In such circumstances, the solicitation and consideration of that information shall not constitute unlawful discrimination for the purposes of the Act or this Part.

(d) **Special rule in the case of financial need.** If financial need is or will be one of the criteria for the extension of credit under a special purpose credit program described in subsection (a), then, notwithstanding the prohibitions of sections 202.5 and 202.6, the creditor may request and consider, in determining eligibility for such program, information regarding an applicant's marital status, income from alimony, child support, or separate maintenance, and the spouse's financial resources. In addition, notwithstanding the prohibitions of section 202.7(d), a creditor may obtain the signature of an applicant's spouse or other person on an application or credit instrument relating to a special purpose program if required by Federal or State law. In such circumstances, the solicitation and consideration of that information and the obtaining of a required signature shall not constitute unlawful discrimination for the purposes of the Act or this Part.

SECTION 202.9—NOTIFICATIONS

(a) **Notification of action taken, ECOA notice, and statement of specific reasons.**

(1) **Notification of action taken.** A creditor shall notify an applicant of action taken within:

(i) 30 days after receiving a completed application concerning the creditor's approval of, or adverse action regarding, the application (notification of approval may be express or by implication, where, for example, the applicant receives a credit card, money, property, or services in accordance with the application);

(ii) 30 days after taking adverse action on an uncompleted application;

(iii) 30 days after taking adverse action regarding an existing account; and

(iv) 90 days after the creditor has notified the applicant of an offer to grant credit other than in substantially the amount or on substantially the terms requested by the applicant if the applicant during those 90 days has not expressly accepted or used the credit offered.

(2) **Content of notification.** Any notification given to an applicant against whom adverse action is taken shall be in writing and shall contain: a statement of the action taken; a statement of the provisions of section 701(a) of the Act; the name and address of the Federal agency that administers compliance concerning the creditor giving the notification; and

(i) a statement of specific reasons for the action taken; or

(ii) a disclosure of the applicant's right to a statement of reasons within 30 days after receipt by the creditor of a request made within 60 days of such notification, the disclosure to include the name, address, and telephone number of the person or office from which the statement of reasons can be obtained. If the creditor chooses to provide the statement of reasons orally, the notification shall also include a disclosure of the applicant's right to have any oral statement of reasons confirmed in writing within 30 days after a written request for confirmation is received by the creditor.

(3) **Multiple applicants.** If there is more than one applicant, the notification need only be given to one of them, but must be given to the primary applicant where one is readily apparent.

(4) **Multiple creditors.** If a transaction involves more than one creditor and the applicant expressly accepts or uses the credit offered, this section does not require notification of adverse action by any creditor. If a transaction involves more than one

creditor and either no credit is offered or the applicant does not expressly accept or use any credit offered, then each creditor taking adverse action must comply with this section. The required notification may be provided indirectly through a third party, which may be one of the creditors, provided that the identity of each creditor taking adverse action is disclosed. Whenever the notification is to be provided through a third party, a creditor shall not be liable for any act or omission of the third party that constitutes a violation of this section if the creditor accurately and in a timely manner provided the third party with the information necessary for the notification and was maintaining procedures reasonably adapted to avoid any such violation.

(b) **Form of ECOA notice and statement of specific reasons.**

(1) **ECOA notice.** A creditor satisfies the requirements of subsection (a)(2) regarding a statement of the provisions of section 701(a) of the Act and the name and address of the appropriate Federal enforcement agency if it provides the following notice, or one that is substantially similar:

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law concerning this creditor is (name and address as specified by the appropriate agency listed in Appendix A).

The sample notice printed above may be modified immediately following the required references to the Federal Act and enforcement agency to include references to any similar State statute or regulation and to a State enforcement agency.

(2) **Statement of specific reasons.** A statement of reasons for adverse action shall be sufficient if it is specific and indicates the principal reason(s) for the adverse action. A creditor may formulate its own statement of reasons in check-list or letter form or may use all or a portion of the sample form printed below, which, if properly completed, satisfies the requirements of subsection (a)(2)(i). Statements that the adverse action was based on the creditor's internal standards or pol-

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icies or that the applicant failed to achieve the qualifying score on the creditor's credit scoring system are insufficient.

**STATEMENT OF CREDIT DENIAL,
TERMINATION, OR CHANGE**

DATE _____

Applicant's Name: _____

Applicant's Address: _____

Description of Account, Transaction, or Requested
Credit: _____

Description of Adverse Action Taken: _____

Street address: _____

Telephone number: _____

Information obtained from an outside source other than a consumer reporting agency. Under the Fair Credit Reporting Act, you have the right to make a written request, within 60 days of receipt of this notice, for disclosure of the nature of the adverse information.

Creditor's name: _____

Creditor's address: _____

Creditor's telephone number: _____

[Add ECOA Notice]

(3) **Other information.** The notification required by subsection (a)(1) may include other information so long as it does not detract from the required content. This notification also may be combined with any disclosures required under other titles of the Consumer Credit Protection Act or any other law, provided that all requirements for clarity and placement are satisfied; and it may appear on either or both sides of the paper if there is a clear reference on the front to any information on the back.

(c) **Oral notifications.** The applicable requirements of this section are satisfied by oral notifications (including statements of specific reasons) in the case of any creditor that did not receive more than 150 applications during the calendar year immediately preceding the calendar year in which the notification of adverse action is to be given to a particular applicant.

(d) **Withdrawn applications.** Where an applicant submits an application and the parties contemplate that the applicant will inquire about its status, if the creditor approves the application and the applicant has not inquired within 30 days after applying, then the creditor may treat the application as withdrawn and need not comply with subsection (a)(1).

(e) **Failure of compliance.** A failure to comply with this section shall not constitute a violation when caused by an inadvertent error; provided that, on discovering the error, the creditor corrects it as soon as possible and commences compliance with the requirements of this section.

(f) **Notification.** A creditor notifies an applicant when a writing addressed to the applicant is deliv-

**PRINCIPAL REASON(S) FOR ADVERSE
ACTION CONCERNING CREDIT**

- Credit application incomplete
- Insufficient credit references
- Unable to verify credit references
- Temporary or irregular employment
- Unable to verify employment
- Length of employment
- Insufficient income
- Excessive obligations
- Unable to verify income
- Inadequate collateral
- Too short a period of residence
- Temporary residence
- Unable to verify residence
- No credit file
- Insufficient credit file
- Delinquent credit obligations
- Garnishment, attachment, foreclosure, repossession, or suit
- Bankruptcy
- We do not grant credit to any applicant on the terms and conditions you request.
- Other, specify: _____

**DISCLOSURE OF USE OF INFORMATION
OBTAINED FROM AN OUTSIDE SOURCE**

- Disclosure inapplicable
- Information obtained in a report from a consumer reporting agency
- Name: _____

ered or mailed to the applicant's last known address or, in the case of an oral notification, when the creditor communicates with the applicant.

SECTION 202.10—FURNISHING OF CREDIT INFORMATION

(a) **Accounts established on or after June 1, 1977.** (1) For every account established on or after June 1, 1977, a creditor that furnishes credit information shall:

(i) determine whether an account offered by the creditor is one that an applicant's spouse is permitted to use or upon which the spouses are contractually liable other than as guarantors, sureties, endorsers, or similar parties; and

(ii) designate any such account to reflect the fact of participation of both spouses.¹¹

(2) Except as provided in subsection (3), if a creditor furnishes credit information concerning an account designated under this section (or designated prior to the effective date of this Part) to a consumer reporting agency, it shall furnish the information in a manner that will enable the agency to provide access to the information in the name of each spouse.

(3) If a creditor furnishes credit information concerning an account designated under this section (or designated prior to the effective date of this Part) in response to an inquiry regarding a particular applicant, it shall furnish the information in the name of the spouse about whom such information is requested.¹²

(b) **Accounts established prior to June 1, 1977.** For every account established prior to and in existence on June 1, 1977, a creditor that furnishes credit information shall either:

(1) not later than June 1, 1977

(i) determine whether the account is one that an applicant's spouse, if any, is permitted to use or upon which the spouses are contractually liable other than as guarantors, sureties, endorsers, or similar parties;

¹¹ A creditor need not distinguish between participation as a user or as a contractually liable party.

¹² If a creditor learns that new parties have undertaken payment on an account, then the subsequent history of the account shall be furnished in the names of the new parties and need not continue to be furnished in the names of the former parties.

(ii) designate any such account to reflect the fact of participation of both spouses;¹³ and

(iii) comply with the reporting requirements of subsections (a)(2) and (a)(3); or

(2) mail or deliver to all applicants, or all married applicants, in whose name an account is carried on the creditor's records one copy of the notice set forth below.¹⁴ The notice may be mailed with a billing statement or other mailing. All such notices shall be mailed or delivered by October 1, 1977. As to open end accounts, this requirement may be satisfied by mailing one notice at any time prior to October 2, 1977, regarding each account for which a billing statement is sent between June 1 and October 1, 1977. The notice may be supplemented as necessary to permit identification of the account by the creditor or by a consumer reporting agency. A creditor need only send notices relating to those accounts on which it lacks the information necessary to make the proper designation regarding participation or contractual liability.

NOTICE

CREDIT HISTORY FOR MARRIED PERSONS

The Federal Equal Credit Opportunity Act prohibits credit discrimination on the basis of race, color, religion, national origin, sex, marital status, age (provided that a person has the capacity to enter into a binding contract); because all or part of a person's income derives from any public assistance program; or because a person in good faith has exercised any right under the Federal Consumer Credit Protection Act. Regulations under the Act give married persons the right to have credit information included in credit reports in the name of both the wife and the husband if both use or are responsible for the account. This right was created, in part, to insure that credit histories will be available to women who become divorced or widowed.

If your account with us is one that both husband and wife signed for or is an account that is being used by one of you who did not sign, then you are entitled to have us report credit

¹³ See footnote 11.

¹⁴ A creditor may delete the references to the "use" of an account when providing notices regarding closed end accounts.

(B) the statement of specific reasons for adverse action; and

(iii) any written statement submitted by the applicant alleging a violation of the Act or this Part.

(2) For 25 months after the date that a creditor notifies an applicant of adverse action regarding an account, other than in connection with an application, the creditor shall retain as to that account, in original form or a copy thereof:¹⁹

(i) any written or recorded information concerning such adverse action; and

(ii) any written statement submitted by the applicant alleging a violation of the Act or this Part.

(3) In addition to the requirements of subsections (b)(1) and (2), any creditor that has actual notice that it is under investigation or is subject to an enforcement proceeding for an alleged violation of the Act or this Part by an enforcement agency charged with monitoring that creditor's compliance with the Act and this Part, or that has been served with notice of an action filed pursuant to section 706 of the Act and sections 202.1(b) or (c) of this Part, shall retain the information required in subsections (b)(1) and (2) until final disposition of the matter, unless an earlier time is allowed by order of the agency or court.

(4) In any transaction involving more than one creditor, any creditor not required to comply with section 202.9 (notifications) shall retain for the time period specified in subsection (b) all written or recorded information in its possession concerning the applicant, including a notation of action taken in connection with any adverse action.

(c) **Failure of compliance.** A failure to comply with this section shall not constitute a violation when caused by an inadvertent error.

SECTION 202.13—INFORMATION FOR MONITORING PURPOSES

(a) **Scope and information requested.** (1) For the purpose of monitoring compliance with the provisions of the Act and this Part, any creditor

that receives an application for consumer credit relating to the purchase of residential real property, where the extension of credit is to be secured by a lien on such property, shall request as part of any written application for such credit the following information regarding the applicant and joint applicant (if any):

(i) race/national origin, using the categories American Indian or Alaskan Native; Asian or Pacific Islander; Black; White; Hispanic; Other (Specify);

(ii) sex;

(iii) marital status, using the categories married, unmarried, and separated; and

(iv) age.

(2) "Residential real property" means improved real property used or intended to be used for residential purposes, including single family homes, dwellings for from two to four families, and individual units of condominiums and cooperatives.

(b) **Method of obtaining information.** Questions regarding race/national origin, sex, marital status, and age may be listed, at the creditor's option, either on the application form or on a separate form that refers to the application.

(c) **Disclosure to applicant and joint applicant.** The applicant and joint applicant (if any) shall be informed that the information regarding race/national origin, sex, marital status, and age is being requested by the Federal government for the purpose of monitoring compliance with Federal anti-discrimination statutes and that those statutes prohibit creditors from discriminating against applicants on those bases. The applicant and joint applicant shall be asked, but not required, to supply the requested information. If the applicant or joint applicant chooses not to provide the information or any part of it, that fact shall be noted on the form on which the information is obtained.

(d) **Substitute monitoring program.** Any monitoring program required by an agency charged with administrative enforcement under section 704 of the Act may be substituted for the requirements contained in subsections (a), (b), and (c).

¹⁹ See footnote 18.

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FEDERAL HOME LOAN BANK BOARD

☛ [1 4081] NONDISCRIMINATION REQUIREMENTS

[CFR Title 12, Ch. V, Subchapter B, Part 528; 43 Fed. Reg. 22392, eff. 7-1-78]

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☛ [1 4081.1] § 528.1 Definitions.—As used in this Part 528—

(a) *Application.* For purposes of this Part and § 531.8, an application for a loan or other service is as defined in Regulation B, 12 CFR 202.2(f).

[Reg. B definition: Application means an oral or written request for an extension of credit that is made in accordance with procedures established by a creditor for the type of credit requested. The term does not include the use of an account or line of credit to obtain an amount of credit that does not exceed a previously established credit limit.]

(b) *Dwelling.* The term "dwelling" means any building, structure, or portion thereof, including a mobile home, which is occupied as, or designed or intended for occupancy as a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof. (*Amended 39 Fed. Reg. 43619, eff. 12-17-74.*)

(c) *Member institution.* The term "member institution" means any institution which is a member of a Federal Home Loan Bank, other than:

- (1) A savings bank whose deposits are insured by the Federal Deposit Insurance Corporation.
- (2) An insurance company, or
- (3) The Federal Home Loan Mortgage Corporation.

☛ [1 4081.1a] § 528.1a Supplementary guidelines.—The Board's § 531.8 policy statement supplements, and should be read together with, Part 528. Refer also to 12 CFR 202, Federal Reserve Regulation B.

☛ [1 4081.2] § 528.2 Nondiscrimination in lending and other services.—(See also, § 531.8(b) and (c).)

(a) No member institution may deny a loan or other service, or discriminate in fixing the amount, interest rate, duration, application procedures, collection or enforcement procedures, or other terms or conditions of such loan or other service on the basis of the age or location of the dwelling, or on the basis of the race, color, religion, sex, or national origin of:

- (1) an applicant or joint applicant;
- (2) any person associated with an applicant or joint applicant regarding such loan or other service, or with the purposes of such loan or other service;
- (3) the present or prospective owners, lessees, tenants, or occupants of the dwelling(s) for which such loan or other service is to be made or given;

(4) the present or prospective owners, lessees, tenants, or occupants of other dwellings in the vicinity of the dwelling(s) for which such loan or other service is to be made or given.

(b) A member institution shall consider without prejudice the combined income of joint applicants for a loan or other service.

(c) No member institution may discriminate against an applicant for a loan or other service on any prohibited basis (as defined in 12 CFR 202.2(z)).

☛ [1 4081.2a] § 528.2a Nondiscriminatory appraisal and underwriting.—(See also, § 531.8(b), (c) (6), and (c) (7).)

(a) *Appraisal.* No member institution may use or rely upon an appraisal of a dwelling which the institution knows, or reasonably should know, is discriminatory on the basis of the age or location of the dwelling, or is discriminatory *per se* or in effect under the Fair Housing Act of 1968 or the Equal Credit Opportunity Act.

(b) *Underwriting.* Each member institution shall have clearly written, non-discriminatory loan underwriting standards, available to the public upon request, at each of its offices. Each institution shall, at least annually, review its standards, and business practices implementing them, to ensure equal opportunity in lending.

☛ [1 4081.3] § 528.3 Nondiscrimination in applications.—(See also, § 531.8(a) through (d).)

(a) No member may discourage, or refuse to allow, receive, or consider, any application, request, or inquiry regarding a loan or other service, or discriminate in imposing conditions upon, or in processing, any such application, request, or inquiry on the basis of the age or location of the dwelling, or on the basis of the race, color, religion, sex, national origin or other characteristics prohibited from consideration in § 528.2(c) of this Part, of the prospective borrower or other person, who:

(1) Makes application for any such loan or other service;

(2) Requests forms or papers to be used to make application for any such loan or other service; or

(3) Inquiries about the availability of such loan or other service.

☛ [1 4081.4] § 528.4 Nondiscriminatory advertising.—No member institution may directly or indirectly engage in any form of advertising which implies or suggests a policy of discrimination or exclusion in violation of Title VIII of the Civil Rights Act of 1968, the Equal Credit Opportunity Act, or this Part. Advertisements other than for savings shall include a facsimile of the following logotype and legend (except that the legend "Equal Opportunity Lender" may be substituted for the legend "Equal Housing Lender"):

☛ [1 4081.5] § 528.5 Equal Housing Lender Poster.—(a) Each member institution shall post and maintain one or more Equal Housing Lender Posters, the text of which is prescribed in paragraph (b) of this section, in the lobby of each of its offices in a prominent place or places readily apparent to all persons seeking loans. The poster shall be at least 11 by 14 inches in size, and the text shall be easily legible. It is recommended that member institutions post a Spanish language version of the poster in offices serving areas with a substantial Spanish-speaking population.

(b) The text of the Equal Housing Lender Poster shall be as follows (except that

the legend "Equal Opportunity Lender" may be substituted for the legend "Equal Housing Lender"):



EQUAL HOUSING LENDER

**WE DO BUSINESS IN ACCORDANCE WITH THE FEDERAL
FAIR HOUSING LAW AND THE EQUAL CREDIT OPPORTUNITY ACT
IT IS ILLEGAL TO:**

- DISCOURAGE** a loan inquiry or refuse to accept a written loan application;
- DISCRIMINATE** in fixing the amount, interest rate, duration, application procedures, or other terms or conditions of a loan; or
- DENY** a loan for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling.

**ON THE BASIS OF
RACE, COLOR, NATIONAL ORIGIN, RELIGION, SEX,
MARITAL STATUS OR AGE;**

OR BECAUSE

**A PERSON RECEIVES INCOME FROM A PUBLIC ASSISTANCE PROGRAM,
OR HAS IN GOOD FAITH EXERCISED ANY RIGHT UNDER THE
CONSUMER CREDIT PROTECTION ACT,**

**IF YOU BELIEVE YOU HAVE BEEN DISCRIMINATED AGAINST,
YOU MAY:**

SPEAK with the management of this institution;

COMPLAIN TO The office of Community Investment, Federal Home Loan Bank Board, Washington, D.C. 20552, or the Assistant Secretary for Fair Housing and Equal Opportunity, Department of Housing and Urban Development, Washington, D.C. 20010; or

CONSIDER filing a civil suit under Federal laws.

KEY [¶ 4081.6] § 528.6 **Monitoring information.**—(a) *Information to be requested.* (1) Each member institution which receives an in-person or written application from a natural person for a loan related to a dwelling shall request, but not require, either on the application form or a form referring to the application, the following information regarding the applicant and joint applicant (if any):

(i) race/national origin, using the categories American Indian or Alaskan Native; Asian or Pacific Islander; Black; White; Hispanic; Other (specify);

(ii) sex;

(iii) marital status, using the categories married, unmarried, and separated; and

(iv) age.

(b) If the applicant(s) choose not to provide the information or any part of it, that fact shall be noted on the monitoring form, and the member institution shall, to the extent possible, on the bases of sight and/or surname, designate race and sex of each loan applicant and joint applicant.

(c) *Disclosure notice.* Any form used to collect monitoring information required by paragraph (a) shall contain a written notice that such information is requested by the Federal government to monitor compliance with Federal statutes which prohibit member institutions from discriminating on those bases against applicants for a loan or other service, and that the member institution is required to note race and sex, on the basis of sight and/or surname, if the applicant(s) choose not to do so.

(d) *Loan application register.* For examination purposes, each member institution shall maintain a current, readily accessible loan application register containing at a minimum the information required by the Board on its sample form.

(e) *Reporting.* Each member institution shall report monitoring data to the Board in such manner as the Board may prescribe.

(f) *Recordkeeping.* For purposes of this Part, each member institution shall retain records as required by 12 CFR 202.12.

Key [1 4081.7] § 528.7 Nondiscrimination in employment.—(a) No member institution shall, because of an individual's race, color, religion, sex, or national origin:

(1) Fail or refuse to hire such individual;

(2) Discharge such individual;

(3) Otherwise discriminate against such individual with respect to such individual's compensation, promotion, or the terms, conditions, or privileges of such individual's employment; or

(4) Discriminate in admission to, or employment in, any program of apprenticeship, training, or retraining, including on-the-job training.

(b) No member institution shall limit, segregate, or classify its employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect such individual's status as an employee because of such individual's race, color, religion, sex, or national origin.

(c) No member institution shall discriminate against any employee or applicant for employment because such employee or applicant has opposed any employment practice made unlawful by Federal, State, or local law or regulation or because he has in good faith made a charge of such practice or testified, assisted, or participated in any manner in an investigation, proceeding, or hearing of such practice by any lawfully constituted authority.

(d) No member institution shall print or publish or cause to be printed or published any notice or advertisement relating to employment by such member institution indicating any preference, limitation, specification, or discrimination based on race, color, religion, sex, or national origin.

(e) This regulation shall not apply in any case in which the Federal Equal Employment Opportunities law is made inapplicable by the provisions of section 2000 e-1 or sections 2000e-2 (e) through (j) of title 42, United States Code.

(f) Any violation of the Department of the Treasury regulations, 41 CFR, Subpart 10-12.8—Equal Opportunity in Employment, as amended from time to time, by a member institution subject to such regulations shall be deemed to be a violation of this Part 528.

☛ [1 4081.8] § 528.8 **Complaints.**—Complaints regarding discrimination in lending by a member institution should be referred to the Office of Housing and Urban Affairs, Federal Home Loan Bank Board, Washington, D.C. 20552, or to the Assistant Secretary for Equal Opportunity, U.S. Department of Housing and Urban Development, Washington, D.C. 20410. Complaints regarding discrimination in employment by a member institution should be referred to the Equal Employment Opportunity Commission, Washington, D.C. 20506. (*Amended 39 Fed. Reg. 43620, eff. 12-17-74.*)

FEDERAL HOME LOAN BANK BOARD

☛ [1 4083] NONDISCRIMINATION GUIDELINES

[CFR Title 12, Chapter V, Part 531.8; revised FHLBB release]

☛ [1 4083.8] § 531.8 **Guidelines relating to nondiscrimination in lending.**—

(a) *General.* Fair housing and equal opportunity in home financing is a policy of the United States established by Federal statutes and Presidential orders and proclamations. In furtherance of the Federal civil rights laws and the economical home financing purposes of the statutes administered by the Board, the Board has adopted, in Parts 528 and 529 of this subchapter, nondiscrimination regulations which, among other things, prohibit arbitrary refusals to consider loan applications on the basis of the age or location of a dwelling, and prohibit discrimination based on race, color, religion, sex, or national origin in fixing the amount, interest rate, duration, application procedures, collection or enforcement procedures, or other terms or conditions of housing related loans. This section provides supplementary guidelines to aid member institutions in developing and implementing nondiscriminatory lending policies. Each institution should re-examine its underwriting standards at least annually in order to insure equal opportunity.

(b) *Loan underwriting standards.* The basic purpose of the Board's nondiscrimination regulations is to require that every applicant be given an equal opportunity to obtain a loan. Each loan applicant's credit worthiness should be evaluated on an individual basis without reference to presumed characteristics of a group. The use of lending standards which have no economic basis and which are discriminatory in effect is a violation of law even in the absence of an actual intent to discriminate. However, a standard which has a discriminatory effect is not necessarily improper if its use achieves a genuine business need which cannot be achieved by means which are not discriminatory in effect or less discriminatory in effect.

(c) *Discriminatory practices*—(1) *Discrimination on the basis of sex or marital status.* The Civil Rights Act of 1968 and the National Housing Act prohibit discrimination in lending on the basis of sex. The Equal Credit Opportunity Act, in addition to this prohibition, forbids discrimination on the basis of marital status. Refusing to lend to, requiring higher standards of creditworthiness of, or imposing different requirements on, members of one sex or individuals of one marital status, is discrimination based on sex or marital status. Loan underwriting decisions must be based on an applicant's credit history and present and reasonably foreseeable economic prospects, rather than on the basis of assumptions regarding comparative differences in creditworthiness between married and unmarried individuals, or between men and women.

(2) *Discrimination on the basis of language.* Requiring fluency in the English language as a prerequisite for obtaining a loan may be a discrimination practice based on national origin.

(3) *Income of husbands and wives.* A practice of discounting all or part of either spouse's income where spouses apply jointly is a violation of Section 527 of

the National Housing Act. As with other income, when spouses apply jointly for a loan, the determination as to whether a spouse's income qualifies for credit purposes should depend upon a reasonable evaluation of his or her past, present, and reasonably foreseeable economic circumstances. Information relating to child-bearing intentions of a couple or an individual may not be requested.

(4) *Supplementary income.* Lending standards which consider as effective only the non-overtime income of the primary wage-earner may result in discrimination because they do not take account of variations in employment patterns among individuals and families. The Board favors loan underwriting which reasonably evaluates the credit worthiness of each applicant based on a realistic appraisal of his or her own past, present and foreseeable economic circumstances. The determination as to whether primary income or additional income qualifies as effective for credit purposes should depend upon whether such income may reasonably be expected to continue through the early period of the mortgage risk. Automatically discounting other income from bonuses, overtime, or part-time employment, will cause some applicants to be denied financing without a realistic analysis of their credit worthiness. Since statistics show that minority group members and low-and moderate-income families rely more often on such supplemental income, the practice may be racially discriminatory in effect, as well as artificially restrictive of opportunities for home financing.

(5) *Applicant's prior history.* Loan decisions should be based upon a realistic evaluation of all pertinent factors respecting an individual's creditworthiness, without giving undue weight to any one factor. The member institution should, among other things, take into consideration that: (a) in some instances, past credit difficulties may have resulted from discriminatory practices; (b) a policy favoring applicants who previously owned homes may perpetuate prior discrimination; (c) a current, stable earnings record may be the most reliable indicator of creditworthiness, and entitled to more weight than factors such as educational level attained; (d) job or residential changes may indicate upward mobility; and (e) preferring applicants who have done business with the lender can perpetuate previous discriminatory policies.

(6) *Income level or racial composition of area.* Refusing to lend or lending on less favorable terms in particular areas because of their racial composition is unlawful. Refusing to lend, or offering less favorable terms (such as interest rate, downpayment, or maturity) to applicants because of the income level in an area can discriminate against minority group persons.

(7) *Age and location factors.* Sections 528.2, 528.2a, and 528.3 prohibit loan denials based upon the age or location of a dwelling. These restrictions are intended to prohibit use of unfounded or unsubstantiated assumptions regarding the effect upon loan risk of the age of a dwelling or the physical or economic characteristics of an area.

Loan decisions should be based on the present market value of the property offered as security (including consideration of specific improvements to be made by the borrower) and the likelihood that the property will retain an adequate value over the term of the loan. Specific factors which may negatively affect its short-range future value (up to 3-5 years) should be clearly documented. Factors which in some cases may cause the market value of a property to decline are recent zoning changes or a significant number of abandoned homes in the immediate vicinity of the property. However, not all zoning changes will cause a decline in property values, and proximity to abandoned buildings may not affect the market value of a property because of rehabilitation programs or affirmative lending programs, or because the cause of abandonment is unrelated to high risk.

Proper underwriting considerations include the conditions and utility of the improvements, and various physical factors such as street conditions, amenities

such as parks and recreation areas, availability of public utilities and municipal services, and exposure to flooding and land faults. However, arbitrary decisions based on age or location are prohibited, since many older, soundly constructed homes provide housing opportunities which may be precluded by an arbitrary lending policy.

(d) *Marketing practices.* Member institutions should review their advertising and marketing practices to ensure that their services are available without discrimination to the community they serve. Discrimination in lending is not limited to loan decisions and underwriting standards; an institution does not meet its obligations to the community or implement its equal lending responsibility if its marketing practices and business relationships with developers and real estate brokers improperly restrict its clientele to segments of the community.

A review of marketing practices could begin with an examination of an institution's loan portfolio and applications to ascertain whether, in view of the demographic characteristics and credit demands of the community in which the institution is located, it is adequately serving the community on a nondiscriminatory basis. The Board will systematically review marketing practices where evidence of discrimination in lending is discovered.



FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, D. C. 20249

OFFICE OF THE CHAIRMAN

BL-25-78
April 5, 1978

TO THE CHIEF EXECUTIVE OFFICERS OF INSURED STATE NONMEMBER BANKS:

SUBJECT: Fair Housing Regulations (Part 338) and Enforcement Program

This letter transmits a copy of the Federal Deposit Insurance Corporation's Fair Housing Regulations (Part 338) adopted by the Corporation's Board of Directors on March 14, 1978, and published in the *Federal Register* on March 20, 1978 (43 Fed. Reg. 11564).

The provisions of Part 338 become effective on May 19, 1978, and will require insured State nonmember banks to (1) display a new Fair Housing Lender Poster, (2) observe rules regarding non-discriminatory advertising, and (3) keep records on home loans.

These regulations are intended to provide a basis for a more effective FDIC fair housing lending enforcement program under the Fair Housing Act and the Equal Credit Opportunity Act. The information which the regulations require the banks to obtain and record is necessary for the execution of this program.

As defined in the regulations, a **home loan** means any extension of credit relating to the purchase, construction, refinancing, improvement, repair, or maintenance of a dwelling which: (1) is or will be comprised of one to four residential units, at least one of which the applicant intends to occupy as a principal residence; and (2) secures or will secure the extension of credit.

The new regulations establish recordkeeping requirements for insured State nonmember banks with respect to home loan inquiries and applications. An **inquiry** is defined to mean a written or an oral in-person request by an individual for information about the terms of a home loan which is received on a bank's premises by a bank employee who is authorized to receive such requests. An **application** is a written or an oral in-person request by an individual for a home loan which is received in the same fashion. Neither definition includes telephone requests.

All insured State nonmember banks will be required to request and retain information on the name, address, race/national origin, sex, marital status, and age of persons making inquiries about the applications for home loans. In addition, these banks will be required to request and retain information on the location of the property involved. If the applicant or inquirer refuses to provide the information concerning race/national origin or sex, the bank is required to note the information on the basis of observation or surname.

Each insured State nonmember bank having an office located in a Standard Metropolitan Statistical Area (SMSA) and assets exceeding \$10 million will also be required to request and retain credit-related information for home loan applications. This information will be substantially similar to the information requested on the model residential loan application form contained in Appendix B of (FRB) Regulation B and may be recorded on one or more forms presently being used by the banks.

Further, each such bank will be required to maintain a **log-sheet** on applicant and inquirer information. The banks will be required to log:

- (1) every inquiry and application for a home loan;
- (2) information on the sex, race/national origin, age, and marital status of each inquirer, applicant, and co-applicant; and
- (3) information on the type and disposition of each requested loan.

FDIC will send two copies of the log-sheet, suitable for reproduction, to each bank required to maintain a log. Reproduction of the form is the responsibility of each bank required to maintain a log of home loan inquiries and applications. FDIC will not furnish supplies of this form for bank use, nor will it distribute loan application forms.

The FDIC compliance examiners will review these log-sheets and loan records for evidence of possible illegal discrimination in processing inquiries and applications for home loans. In addition, the log-sheets and loan records will be used to conduct a statistical analysis for indication of possible illegal discrimination. Banks so identified as possibly engaged in illegal discrimination will be subjected to a more detailed compliance examination.

The FDIC will send copies of the new **Equal Housing Lender Poster** to each banking office. Additional copies may be obtained by writing the **FDIC Office of Information** at 550 17th Street, N.W., Washington D.C. 20429.

Any questions concerning the fair housing regulations or enforcement program should be directed to an **FDIC Regional Office**. A roster is included in this pamphlet on page 16.


George A. LeMaistre
Chairman

Distribution: Insured State nonmember Banks (main and branch offices).

TITLE 12 -- Banks and Banking

CHAPTER III -- FEDERAL DEPOSIT INSURANCE CORPORATION

Part 33b -- Fair Housing

Fair Housing Advertising, Poster, and
Recordkeeping Requirements

AGENCY: Federal Deposit Insurance Corporation

ACTION: Final rules.

SUMMARY: The Federal Deposit Insurance Corporation ("FDIC") adopts a new Part 338 to its Rules and Regulations which: (1) incorporates an amended version of the advertising and poster requirements contained in the FDIC's policy statement on fair housing entitled "Nondiscrimination in Real Estate Loan Activities," and (2) establishes recordkeeping requirements for monitoring insured State nonmember bank compliance with the Federal fair housing laws. The regulations are intended to provide a basis for a more effective FDIC fair housing enforcement program.

EFFECTIVE DATE: Sixty (60) days from date of publication.

FOR FURTHER INFORMATION CONTACT: Jerry L. Langley, Attorney, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429, telephone (202) 389-4237.

SUPPLEMENTARY INFORMATION: On October 7, 1977, the FDIC published proposed fair housing regulations (42 Fed. Reg. 54566) pertaining to the home loan practices of insured State nonmember banks. The regulations were proposed by the FDIC under its responsibility to require and enforce insured State nonmember bank compliance with the Fair Housing Act (42 U.S.C. § 3601, et seq.) and the Equal Credit Opportunity Act (15 U.S.C. § 1691, et seq.). Comments on the proposed regulations were solicited from the public. After a careful review of all comments received, the Board of Directors has decided to adopt the regulations as originally proposed, with the following modifications:

(1) Minor changes were made with respect to the terms defined in section 338.1. The terms "Applicant", "Application", "Dwelling", and "Inquirer" were modified for purposes of clarification. The definitions of the terms "Home Mortgage Loan" and "Home Improvement Loan" were incorporated in the definition of the term "Home Loan". The language of the home improvement loan portion of the definition was changed to exclude unsecured home improvement loans. Also, a definition of the term "Inquiry" was added.

(2) Section 338.2 concerning nondiscriminatory advertising was changed to state more completely the manner in which a bank may satisfy the Equal Housing Lender notice requirement specified in the section.

(3) Minor editorial changes were made in section 338.3 entitled "Equal Housing Lender Poster" for purposes of clarification. Also, a paragraph was added to indicate that the fair housing poster specified in the section replaces the existing poster now being used by insured State nonmember banks.

(4) Substantial changes were made in the recordkeeping requirements of section 338.4, with the most significant being listed below:

(a) To facilitate the identification of recordkeeping requirements for a particular bank, the recordkeeping requirements were re-organized and listed according to two categories of banks: (i) those located outside of Standard Metropolitan Statistical Areas ("SMSA"s) or having \$10 million or less in total assets and (ii) those located within SMSAs and having total assets exceeding \$10 million.

(b) The recordkeeping requirements were changed for rural banks (i.e., banks located outside of SMSAs) and banks with \$10 million or less in total assets. These banks are not required to request the extensive credit-related information outlined in the proposed regulations with respect to applications; nor are they required to keep log-sheets on applicant and inquirer information. However, the banks located within SMSAs and with total assets exceeding \$10 million will be required to request the credit-related information from home loan applicants and to maintain log-sheets on applicant and inquirer information.

(c) Except for census tract information, the credit-related information which is to be requested for home loan applications was changed to conform with that listed on the Residential Loan Application form contained in Appendix B of Regulation B of the Board of Governors of the Federal Reserve System (12 C.F.R. 202, Appendix B). The information may be recorded by a bank on one or more forms which it is presently using.

(d) The separate recordkeeping requirements and sample loan forms for home mortgage loans and home improvement loans were eliminated. One set of requirements was established for both types of loans.

(e) New Collection of Data paragraphs (§§ 338.4(a)(1)(ii) and 338.4(a)(2)(iii)) were added to provide guidance to the banks concerning when the information is to be collected and what the bank is required to do in the event the requested information is not provided by an applicant or inquirer.

(f) A new requirement was added to the Disclosure paragraph (§ 338.4(b)(3)) which requires a bank to advise an applicant or an inquirer that if the applicant or inquirer refuses to provide the information concerning race/national origin or sex, the bank is required to note the information on the basis of visual observation or surnames.

Of the 188 comments received, the vast majority were from insured State nonmember banks (or their representatives) which generally opposed the issuance of the recordkeeping portion of the regulations on the ground that it would impose an unwarranted burden on their institutions. Accordingly, they suggested that this part of the regulations should not be adopted. The FDIC believes that the recordkeeping component of the regulations is essential for an effective fair housing enforcement program because it requires the compilation of records necessary for monitoring compliance with the fair housing laws. While it recognizes that the provisions will place some additional burden on the banks, it does not believe that the burden is so significant as to warrant the elimination of those provisions. As was noted by the American Bankers Association in its comments, virtually all of the information required to be requested by the proposed regulations is already maintained by most banks. The FDIC has made every effort to impose the minimum administrative burden on the banks consistent with its need to carry out its monitoring and enforcement responsibilities under the Fair Housing Act and the Equal Credit Opportunity Act. The FDIC will review the recordkeeping requirements periodically for the purpose of assessing their effectiveness.

Among the other suggestions which were not adopted are the following:

(1) It was suggested that the recordkeeping requirements on inquirers be eliminated because inquirers are not likely to provide the requested information and may be discouraged from pursuing questions related to the lending activities of a bank. FDIC has concluded that the information on the inquirers is needed for monitoring discriminatory prescreening activity by banks in their home loan programs. It believes that, with the appropriate disclosures to the inquirer as specified in the regulations, insured State nonmember banks should be able to obtain the information in most cases without the difficulties mentioned above.

(2) It was suggested that the provision directing banks to make race and sex notations about inquirers and applicants on the basis of visual observations should be eliminated because it requires an unwarranted invasion of personal privacy. The FDIC does not believe that the requirement involves a question of invasion of personal privacy since it merely requires a bank officer to record for FDIC's enforcement program that information which the bank officer has observed and will generally possess in any event. The observation requirement has been included in order to maximize the amount of information collected for monitoring purposes.

(3) It was suggested that the footnote in section 338.4(a) concerning a bank's use of the collected information be expanded to include guidance regarding actions by banks which could have illegal discriminatory effects. In view of the complexity of the subject and the unsettled state of the law in this area, the FDIC has concluded that the subject should be given additional consideration.

(4) It was suggested that the recordkeeping requirements should include a provision which would permit States to substitute their own fair housing recordkeeping requirements for those required by FDIC. The FDIC is not aware of any present State requirements which are comparable to those contained in its regulations. In any event, it has concluded that in order to retain data uniformity, such a provision should not be included.

In consideration of the foregoing, the regulations are adopted as set forth below, effective sixty (60) days from the date of publication in the Federal Register.

PART 338 - FAIR HOUSING

Sec.

- 338.1 Definitions.
- 338.2 Nondiscriminatory Advertising.
- 338.3 Equal Housing Lender Poster.
- 338.4 Recordkeeping Requirements.
- 338.5 Mortgage Lending of a Controlled Entity.

AUTHORITY: Sec. 2, Pub. L. 86-671, 74 Stat. 547, 12 U.S.C. 1817; sec. 8, Pub. L. 797, 64 Stat. 879, as amended by sec. 202, 204, Pub. L. 89-695, 80 Stat. 1046, 1054 and sec. 110, Pub. L. 93-495, 88 Stat. 1506, 12 U.S.C. 1818; sec. 9, Pub. L. 797, 64 Stat. 881, as amended by sec. 205, Pub. L. 89-695, 80 Stat. 1055, 12 U.S.C. 1819; sec. 203, Pub. L. 89-695, 80 Stat. 1053, 12 U.S.C. 1920(b); sec. 805, Pub. L. 90-284, 82 Stat. 83, 84, as amended by sec. 808 Pub. L. 93-383, 88 Stat. 729, 42 U.S.C. 3605, 3608; sec. 501, Pub. L. 93-495, 88 Stat. 1521, as amended by sec. 2, Pub. L. 94-239, 90 Stat. 251, 15 U.S.C. 1691, et seq.; 40 F.R. 49306, 12 C.F.R. 202; 37 F.R. 3429, 24 C.F.R. 110.

§ 338.1 Definitions.

(a) "Applicant" means a natural person, including a co-applicant, who makes an application.

(b) "Application" means a written, or an oral in-person, ^{*/} request for a home loan by a natural person which is received on a bank's premises by any person at the bank who customarily receives or is authorized to receive such requests.

(c) "Bank" means an insured State nonmember bank as defined in section 3 of the Federal Deposit Insurance Act.

(d) "Controlled entity" means a corporation, partnership, association, or other business entity with respect to which a bank possesses, directly or indirectly, the power to direct or cause the direction of management and policies, whether through the ownership of voting securities, by contract or otherwise.

(e) "Dwelling" means any building, structure (including a mobile home), or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more natural persons and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure or portion thereof.

(f) "Home loan" means any extension of credit relating to:

(1) the purchase or construction of or the refinancing for a dwelling which is or will be comprised of one to four residential units, at least one of which the applicant intends to occupy as a principal residence, and which secures or will secure the extension of credit; or

(2) the improvement, repair or maintenance of a dwelling which is comprised of one to four residential units, at least one of which the applicant intends to occupy as a principal residence, and which secures or will secure the extension of credit.

(g) "Inquirer" means a natural person who makes an inquiry.

(h) "Inquiry" means a written, or an oral in-person, ^{*/} request for information about the terms of a home loan by a natural person on his behalf which is received on a bank's premises by any person at the bank who customarily receives or is authorized to receive such requests.

^{*/} Telephone communications are excluded.

§ 338.2 Nondiscriminatory Advertising.

(a) Any bank which directly or through third parties engages in any form of advertising of loans for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling shall prominently indicate in such advertisement, in a manner appropriate to the advertising medium and format utilized, that the bank makes such loans without regard to race, color, religion, sex or national origin.

(1) With respect to written and visual advertisement, this requirement may be satisfied by including in the advertisement a facsimile of the logotype with the Equal Housing Lender legend contained in the Equal Housing Lender Poster prescribed in section 338.3(b).

(2) With respect to oral advertisement, this requirement may be satisfied by a statement, in the spoken text of the advertisement, that the bank is an "Equal Housing Lender."

(3) When an oral advertisement is used in conjunction with a written or visual advertisement, the use of either of the methods specified in subparagraphs (1) and (2) will satisfy the requirements of this paragraph (a).

(b) No advertisement shall contain any words, symbols, models or other forms of communication which express, imply, or suggest a discriminatory preference or policy of exclusion in violation of the provisions of the Fair Housing Act or the Equal Credit Opportunity Act.

§ 338.3 Equal Housing Lender Poster.

(a) Each bank engaged in extending loans for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling shall conspicuously display an Equal Housing Lender Poster in any public lobby and area within the bank where deposits are received or where such loans are made in a manner clearly visible to the general public entering such areas.

(b) The Equal Housing Lender Poster shall be at least 11 by 14 inches in size and have the following text:

* / Telephone communications are excluded.



**EQUAL HOUSING
LENDER**

**We Do Business in Accordance With the
Federal Fair Housing Law**

**IT IS ILLEGAL, BECAUSE OF RACE, COLOR,
RELIGION, SEX, OR NATIONAL ORIGIN TO:**

- Deny a loan for the purpose of purchasing, constructing, improving, repairing or maintaining a dwelling or
- Discriminate in fixing the amount, interest rate, duration, application procedures, or other terms or conditions of such a loan.

**IF YOU BELIEVE YOU HAVE BEEN DISCRIMINATED
AGAINST UNDER THIS LAW, YOU MAY SEND A
COMPLAINT TO:**

Assistant Secretary for Fair Housing and Equal Opportunity
Department of Housing & Urban Development
Washington, D.C. 20410

or

The Office of Consumer Affairs and Civil Rights
Federal Deposit Insurance Corporation
Washington, D.C. 20429

**IT IS ALSO ILLEGAL UNDER THE
EQUAL CREDIT OPPORTUNITY ACT
TO DISCRIMINATE IN EXTENDING CREDIT:**

- On the basis of race, color, religion, national origin, sex, marital status, or age (providing the applicant has the legal capacity to enter a binding contract),
- Because income is from public assistance
- Because a right was exercised under the Consumer Credit Protection Act.

**IF YOU BELIEVE YOU HAVE BEEN DISCRIMINATED
AGAINST UNDER THIS LAW, YOU MAY SEND A
COMPLAINT TO THE FEDERAL DEPOSIT INSURANCE
CORPORATION AT THE ABOVE ADDRESS OR ANY
FDIC REGIONAL OFFICE**

(c) The Equal Housing Lender Poster specified in this section was adopted under section 110.25(b) of the United States Department of Housing and Urban Development's Rules and Regulations as an authorized substitution for the poster required in section 110.25(a) of those rules and regulations. It replaces the poster required by FDIC's 1972 policy statement on fair housing entitled "Nondiscrimination in Real Estate Loan Activities."

§ 338.4 Recordkeeping Requirements.

(a) Records to be Retained. ^{*/}

(1) A bank which has no office located in a Standard Metropolitan Statistical Area ("SMSA"), as defined by the Federal Office of Management and Budget, or which had total assets as of December 31 of the preceding calendar year of \$10 million or less shall request and retain the following information:

(i) Data on Home Loan Inquirers and Applicants.

- (A) Name.
- (B) Address.
- (C) Race/national origin, using the categories American Indian or Alaskan Native; Asian or Pacific Islander; Black; Hispanic; White; or Other (Specify).
- (D) Sex.
- (E) Marital status, using the categories married, unmarried, and separated.
- (F) Age.
- (G) Location (street address, city, state, and zip code) of property being purchased, constructed, improved, repaired or maintained.

* / These records are to be retained for the purpose of monitoring compliance and may not be used for the purpose of extending or denying credit or fixing credit terms where prohibited by law.

(ii) Collection of Data. No bank shall engage in any activity which discourages an applicant or inquirer from providing the information in subparagraph (a)(1)(i). Each bank shall attempt to collect the information in the subparagraph during the initial contact with the inquirer or applicant. If the applicant or inquirer refuses to furnish all or part of this information, the bank shall note the fact or have the applicant or inquirer note the fact on the form used for recording the information. If the information regarding the race and sex is not voluntarily furnished, the bank shall, on the basis of visual observations or surnames, separately note the information on the form or an attached document.

(2) A bank which has an office in an SMSA and which had total assets exceeding \$10 million as of December 31 of the preceding calendar year shall request and retain the following information:*/

(i) Data on Home Loan Inquirers and Applicants.

- (A) Name.
- (B) Address.
- (C) Race/national origin, using the categories American Indian or Alaskan Native; Asian or Pacific Islander; Black; Hispanic; White; or Other (Specify).
- (D) Sex.
- (E) Marital Status, using the categories married, unmarried, and separated.
- (F) Age.
- (G) Location (street address, city, state, and zip code) of property being purchased, constructed, improved, repaired or maintained.

*/ Except for census tract information in subparagraph (a)(2)(ii)(B)(5), all information is listed on the Residential Loan Application Form contained in Appendix B of Regulation B of the Board of Governors of the Federal Reserve System (12 C.F.R. 202, Appendix B). The information may be recorded on the Regulation B model Residential Loan Application Form or on one or more existing form or forms used by the bank.

(ii) Additional Data on Applications for Home Loans.

(A) Other Characteristics of Applicants.

(1) Employment.

- (a) Number of years employed in present line of work or profession.
- (b) Self-employed -- Yes or No.
- (c) Years on Present Job -- (Number of continuous years employed by the current employer. For self-employed persons, the number of continuous years self-employed. If a person is not employed, record as zero years.)

(2) Income.

- (a) Base Employment Income. (Enter only normal monthly base salary, wages and retirement income. For self-employed persons, enter average or normal monthly income.)
- (b) Other Income. (Average per month. If received on a regular basis include, by so stating, overtime pay bonuses, commissions, dividends, interest, rental income, and income from part-time employment. Include alimony, separate maintenance and child-support payment information only if the applicant has been advised that such information need not be provided and elects to have it considered.)

(3) Number of Dependents.

(Each dependent should be counted only once. The applicant and any co-applicant(s) should be excluded.)

- (4) Total Assets.
- (a) Liquid assets. (Include all cash and other items which are readily convertible to cash (e.g., checking, savings and time deposit accounts at banks, savings and loan associations, credit unions, or similar institutions; stocks and bonds for which there is a ready market; and the cash surrender value of any life insurance policies).)
- (b) All other assets.
- (5) Total Liabilities.
- Exclude any liabilities which will result from the approval of the application and list the following:
- (a) Liabilities which will be satisfied upon sale of real estate owned, or upon refinancing of property, associated with this application.
- (b) All other outstanding liabilities.
- (6) Total Monthly Payments on Liabilities.
- Exclude any payments on liabilities which will result from the approval of the application and list the following:
- (a) Payments on liabilities which will be satisfied upon sale of real estate owned, or upon refinancing of property, associated with this application.
- (b) All other payments on outstanding liabilities.
- (7) Customer(s) of Bank -- Yes or No.
- (B) Characteristics of Subject Property.
- (1) Year Built.
- (2) Purchase Price or Approximate Current Market Value.

- (3) Value of Land (Construction Loan Only).
 - (4) Street Address, City, County, State, Zip Code.
 - (5) Census Tract.
 - (6) Number of Residential Units.
- (C) Characteristics of Loan Request.
- (1) Purpose of Loan.
 - (a) Purchase of existing dwelling.
 - (b) Refinancing of existing home loan.
 - (c) Construction loan only.
 - (d) Construction-Permanent.
 - (e) Other, including loan for improvement, repair, or maintenance (specify).
 - (2) Type Mortgage.
 - (a) Conventional.
 - (b) VA.
 - (c) FHA.
 - (d) Other (specify).
 - (3) Amount of Loan.
 - (4) Interest Rate.
 - (5) Months to Maturity.

(For short-term, renewable mortgages or those with some other provision for varying rates, a brief explanation of the provisions should be appended to the application form.)

- (6) Monthly Payment, Principal and Interest.
- (7) Estimated Total Closing Costs.
(Excluding downpayment.)
- (8) Estimated Closing Costs Paid by Seller.
- (9) Estimated Real Estate Taxes and Insurance.
(Indicate annual or monthly.)

(iii) Collection of Data.

(A) Each bank shall attempt to collect that information in subparagraph (a)(2)(i) during the initial contact with the inquirer or applicant. If the applicant or inquirer refuses to furnish all or part of this information, the bank shall note the fact or have the applicant or inquirer note the fact on the form used for recording the information. If the information regarding race and sex is not voluntarily furnished, the bank shall, on the basis of visual observations or surnames, separately note the information on the form or an attached document.

(B) No bank shall engage in any activity which discourages an applicant or inquirer from providing the information in subparagraphs (a)(2)(i) and (a)(2)(ii). If the bank is unable to obtain any part of the information requested of the applicant under subparagraph (a)(2)(ii), it shall note the reason in the application file. Also, if the bank rejects an application before it has had the opportunity to collect all of the information under subparagraph (a)(2)(ii), it shall note the reason for the rejection in the application file and need not obtain the remaining information.

(iv) Log-Sheet. In addition to the other recordkeeping requirements specified in this subparagraph (a)(2), each bank covered by the provision shall keep a log-sheet on its home loan inquiries and applications by bank office. The log-sheet shall contain the information reflected on the sample form in Appendix A. The bank shall be able to trace each entry on the log-sheet to the relevant inquiry or application file, using the name of the inquirer or applicant or a unique case number assigned by the bank.

(b) Disclosure to Applicant or Inquirer.

The bank shall advise an applicant or inquirer that:

(1) the information regarding race/national origin, marital status, age and sex in subparagraphs (a)(1) and (a)(2)

is being requested to enable the Federal Deposit Insurance Corporation to monitor compliance with the Federal Fair Housing and Equal Credit Opportunity Acts which prohibit creditors from discriminating against applicants or inquirers on these bases;

(2) the Federal Deposit Insurance Corporation encourages the applicant or inquirer to provide the information requested;

(3) if the applicant or inquirer refuses to provide the information concerning race/national origin or sex, the bank is required, where possible, to note the information on the basis of visual observations or surnames.

(c) Record Retention.

Each bank shall retain the records required by section 338.4 for 25 months after the bank notifies an applicant of action taken on an application or after the date of receipt of an inquiry. This requirement applies to records of home loans which are originated by the bank and subsequently sold. The Federal Deposit Insurance Corporation may by written notice extend the retention period.

(d) Substitute System.

The recordkeeping provisions of section 338.4 constitute a substitute monitoring program adopted under section 202.13(d) of Regulation B of the Board of Governors of the Federal Reserve System (12 C.F.R. § 202.13(d)). A bank collecting the data in compliance with section 338.4 will be in compliance with the recordkeeping requirements of section 202.13 of Regulation B.

(e) Review of Records.

Each bank shall make all information collected under paragraph (a) available to FDIC examiners for review upon request.

§ 338.5 Mortgage Lending of a Controlled Entity.

Any bank which refers any applicants or inquirers to a controlled entity and which purchases any home loans originated

by the controlled entity, as a condition to transacting any business with the controlled entity, shall require the controlled entity to enter into a written agreement with the bank. The written agreement shall provide that the controlled entity (a) shall comply with the requirements of §§ 338.2, 338.3 and 338.4, (b) shall open its books and records to examination by the Federal Deposit Insurance Corporation, and (c) shall comply with all instructions and orders issued by the Federal Deposit Insurance Corporation with respect to its home loan practices.

By order of the Board of Directors, *March 14,* 1978.

FEDERAL DEPOSIT INSURANCE CORPORATION



Alan R. Miller
Executive Secretary

(SEAL)

FDIC REGIONAL OFFICES

ATLANTA REGIONAL OFFICE Mr. Lewis C. Beasley Regional Director Federal Deposit Insurance Corporation 233 Peachtree Street, N.E., Suite 2400 Atlanta, Georgia 30303	FTS 242-6631 COML (404) 221-6631 Alabama Florida Georgia	MEMPHIS REGIONAL OFFICE Mr. Roy E. Jackson Regional Director Federal Deposit Insurance Corporation 1 Commerce Square, Suite 1800 Memphis, Tennessee 38103	FTS 222-3872 COML (901) 521-3872 Arkansas Louisiana Mississippi Tennessee
BOSTON REGIONAL OFFICE Mr. Edwin B. Burr Regional Director Federal Deposit Insurance Corporation 60 State Street, 17th Floor Boston, Massachusetts 02108	FTS 223-6420 COML (617) 223-6420 Connecticut, Maine Massachusetts New Hampshire Rhode Island, Vermont	MINNEAPOLIS REGIONAL OFFICE Mr. Anthony S. Scalzi Regional Director Federal Deposit Insurance Corporation 730 Second Avenue South, Suite 286 Minneapolis, Minnesota 55402	FTS 725-2046 COML (212) 826-2046 Minnesota, Montana North Dakota South Dakota Wyoming
CHICAGO REGIONAL OFFICE Mr. James A. Davis Regional Director Federal Deposit Insurance Corporation 233 S. Wacker Drive, Suite 6116 Chicago, Illinois 60606	FTS 353-2600 COML (312) 353-2600 Illinois Indiana	NEW YORK REGIONAL OFFICE Mr. Claude C. Philippe Regional Director Federal Deposit Insurance Corporation 345 Park Avenue, 21st Floor New York, New York 10022	FTS 964-4762 COML (212) 826-4762 New Jersey New York Puerto Rico Virgin Islands
COLUMBUS REGIONAL OFFICE Mr. John R. Curtis Regional Director Federal Deposit Insurance Corporation 1 Nationwide Plaza, Suite 2600 Columbus, Ohio 43215	FTS 943-7301 COML (614) 489-7301 Kentucky Ohio West Virginia	OMAHA REGIONAL OFFICE Mr. Burton L. Blasingame Regional Director Federal Deposit Insurance Corporation 1700 Farnam Street, Suite 1200 Omaha, Nebraska 68102	FTS 984-3366 COML (402) 221-3366 Iowa Nebraska
DALLAS REGIONAL OFFICE Mr. Quinton Thompson Regional Director Federal Deposit Insurance Corporation 300 North Ervay Street, Suite 3300 Dallas, Texas 75201	FTS 749-7691 COML (214) 749-7691 Colorado New Mexico Oklahoma Texas	PHILADELPHIA REGIONAL OFFICE Mr. Frank T. Locki Regional Director Federal Deposit Insurance Corporation 5 Penn Center Plaza, Suite 2901 Philadelphia, Pennsylvania 19103	FTS 597-2295 COML (215) 597-2295 Delaware Maryland Pennsylvania
KANSAS CITY REGIONAL OFFICE Mr. Robert V. Shumway Regional Director Federal Deposit Insurance Corporation 2345 Grand Avenue, Suite 1500 Kansas City, Missouri 64108	FTS 758-2851 COML (816) 374-2851 Kansas Missouri	RICHMOND REGIONAL OFFICE Mr. John Stathos Regional Director Federal Deposit Insurance Corporation 908 E. Main Street, Suite 435 Richmond, Virginia 23219	FTS 925-2403 COML (804) 843-6716 District of Columbia North Carolina South Carolina Virginia
MADISON REGIONAL OFFICE Mr. Bernard J. McKeon Regional Director Federal Deposit Insurance Corporation 1 South Pinckney Street, Room 813 Madison, Wisconsin 53703	FTS 364-5226 COML (608) 262-5226 Michigan Wisconsin	SAN FRANCISCO REGIONAL OFFICE Mr. Charles E. Doster Regional Director Federal Deposit Insurance Corporation 44 Montgomery Street, Suite 3600 San Francisco, California 94104	FTS 556-2736 COML (415) 556-2736 Alaska, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, Utah, Washington

FEDERAL DEPOSIT INSURANCE CORPORATION, 550 17th Street, N.W., Washington, D.C. 20429
Office of Information (202) 389-4221

Bank Name
FDIC Number

**FAIR HOUSING LENDING
HOME LOAN INQUIRY AND APPLICATION
LOG SHEET**

Branch or Office
Other Designation

INSTRUCTIONS: Use the codes listed below in the appropriate columns. Indicate by an asterisk (*) if the information recorded is the bank officer's observation rather than borrower's statement.

RACE CODES I - American Indian or Alaskan Native A - Asian or Pacific Islander B - Black H - Hispanic W - White O - Other	MARITAL STATUS CODE M - Married U - Unmarried S - Separated	LOAN TYPE CODES P - Purchase of existing dwelling R - Refinancing of existing home loan I - Construction loan only C - Construction permanent H - Home improvement, repair or maintenance O - Other	CASE DISPOSITION CODES A - Accepted R - Rejected O - Other Action D - Other Adverse Action as defined in F.R.B. Regulation B, Sec. 202.2
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Date of Application or Inquiry	Case Identification	Appl. or Inquiry (A or I)	BORROWER				CO-BORROWER				Loan Type	Case Disposition	Date of Disposition	Examiner Use Only	
			Sex (F or M)	Race	Age	Marital Status	Sex (F or M)	Race	Age	Marital Status					
1															
2															
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APPENDIX

Definition of "Application"
(Federal Reserve Board staff interpretation)

No. 8

Section

202.2(f)

Application ". . . procedures established by a creditor . . ." refer to actual practices, not stated policies, governing each phase of the application process. (Examples in letter).

April 20, 1978

This responds to your . . . letter requesting a staff interpretation of the definition of application (particularly the phrase "made in accordance with procedures established by a creditor . . .") in § 202.2(f) of Regulation B. Your inquiry concerns credit shopping and prescreening in residential mortgage lending and asks, in essence, when communications between prospective home buyers or real estate brokers and lenders cease to be shopping discussions and become applications made in accordance with a lender's procedures.

The Equal Credit Opportunity Act and Regulation B prohibit discrimination against credit applicants on nine specific bases. Unless a lender's policies or procedures discriminate against an applicant on a prohibited basis or have that effect, the lender may adopt any policies or procedures that it wishes (consistent with any other applicable laws). For that reason § 202.2(f) defines an application as a request "made in accordance with procedures established by a creditor for the type of credit requested."

The focus, however, is on a lender's actual practices, not its stated policies, governing each phase of the application process. For example, even though a real estate lender's stated policy is to require all applications to be in writing, if the lender makes a credit decision based on an oral request, then an application has been "made

in accordance with procedures established by [that] creditor" The question of whether a credit decision has been made is one of fact and turns, in the staff's opinion, on whether the lender has received sufficient information about the applicant or the collateral on which to base a credit decision (again, considering its actual practices) and whether the lender takes any action to reject the request or to discourage its further pursuit.

The following examples illustrate the staff's views on when an application has been received for Regulation B purposes in the context of residential real estate financing. Each example assumes that the lender has a stated policy of considering applications only when they are in writing.

Example A: Shopping Inquiry

A woman telephones or meets with a loan officer and states that she is purchasing a home in the area and needs a loan. She asks about the lender's loan terms. The loan officer quotes the lender's current finance charge, maximum loan-to-value ratio, maximum maturity, and maximum loan amount. Since the finance charge may vary with the amount of the downpayment or mortgage insurance may be required, the loan officer asks the purchase price of the house and the amount of the contemplated downpayment in order to provide the correct loan term information. The woman supplies the requested information, writes down the loan terms, and concludes the conversation. Has an "application" come into being? No. Although the lender has received some information regarding the woman (the amount of the downpayment that she has available) and the property (the purchase price), it has not made any decision based upon that information.

Example B: Application is Made

Assume the same facts as in example A, except the woman, after learning the loan terms, asks for a 95% loan or states her income and asks whether she qualifies for a loan from the lender. The loan officer, for whatever reason, says no or indicates that there is little point in the woman's applying for a loan. Has an "application" for credit been made? Yes. The loan officer's willingness to reject or discourage the woman's loan request indicates that the request was made in accordance with the application process used by the lender.

Note that, although an application has been received, the lender may not have taken adverse action as defined in § 202.2(c) of Regulation B if applicable law prohibits the lender from making the requested loan or the lender does not extend residential mortgage

credit. Otherwise, adverse action has been taken, and the notification and record retention provisions of the regulation apply. If the application is conveyed via telephone and adverse action is taken, then the lender must request the applicant's name and address. If the applicant refuses to provide that information, then the lender, of course, has no further notification obligation.

Example C: No Application Made

Assume the same facts as in example B, except the loan officer, pursuant to the lender's uniform policy, tells the potential applicant (and all potential applicants, without exception) that applications can be considered only if they are in writing. The loan officer gives the potential applicant an application form (or, in a telephone conversation, perhaps offers to mail an application) and invites her to apply. The loan officer may provide general information about the lender's loan policies, but does not evaluate any information given voluntarily by the potential applicant. Has an application been made?

No, because the loan request was not made in "accordance with procedures established by the creditor for the type of credit requested." The lender insists uniformly on written applications before making any judgments. No evaluation has been made at this point, and the lender's procedure for taking a "request for an extension of credit" has been fully disclosed to the potential applicant. If the loan officer had made even a preliminary judgment and communicated it to the potential applicant (as in example B), then the request would have to be treated as an application since, by that action, the lender would be using an application process that involves an evaluation of oral requests for credit.

Example D: Application Is Made

A woman telephones a financial institution and asks about obtaining a loan. The person answering the phone asks about the woman's income and the loan amount sought. The lender's employee determines that the woman's income is insufficient to handle the debt and tells the inquirer that submitting a written application would be a waste of time. Has an "application" been submitted? Yes. The employee's willingness to make a credit decision based on the information provided indicates that the request was made in accordance with the application process used by this particular lender.

Example E: No Application Made

A woman visits a financial institution and asks about obtaining a loan. The interviewing loan officer does not ask the woman about her income, but she volunteers the information anyway. The loan officer, instead of calculating the loan payment-to-income ratio, provides the woman with a simple explanation of the lender's policy on housing expense-to-income and debt-to-income ratios and invites the woman to submit an application if she wishes. No "application" has been submitted up to this point. Although a request for credit has been made, the application process used by the lender requires applications to be in writing. This fact has been communicated to the potential applicant, who has been invited to submit an application in the manner required of all applicants.

Example F: Application is Made

A real estate broker telephones a loan officer at a financial institution and asks if the lender will make a loan to a couple to finance the purchase of a particular piece of property. The broker outlines the couple's financial situation and the terms of the sale's contract. The lender has maintained a relationship with the broker for a number of years and regularly gives a preliminary indication as to whether it will make loans to the broker's clients. Has an "application" been made? Yes, the couple's request for credit was communicated to the lender by the broker. The fact that the lender was willing to evaluate the information provided and made a preliminary credit decision at that point is evidence that the request is an application for purposes of Regulation B.

As the examples above illustrate, the "procedures established by a creditor for the type of credit requested" are those procedures that are, in fact, employed. Lenders may not avoid their responsibilities under the Equal Credit Opportunity Act and Regulation B by invoking formal standards not consistently applied to all requests for credit.

I trust that this response clarifies when an application exists for purposes of Regulation B. If I can be of further assistance, please let me know.

Very truly yours,

Nathaniel E. Butler
Associate Director

APPENDIX 2.—ENFORCEMENT GUIDELINES



FEDERAL RESERVE

press release

For immediate release

June 27, 1978

NOTE: This release has been issued on behalf of the following Federal regulatory agencies:

Comptroller of the Currency
Federal Deposit Insurance Corporation
Federal Home Loan Bank Board
National Credit Union Administration
Federal Reserve Board

Proposed guidelines for the enforcement of the Equal Credit Opportunity Act, its implementing Regulation B, and the Fair Housing Act were today issued for public comment by the five Federal agencies that regulate banks, thrift institutions and credit unions.

Comment should be sent by September 1, 1978 to Equal Credit Opportunity Guidelines, Room B-4107, Washington, D.C. 20551.

This was the second set of uniform guidelines worked out jointly by the Federal regulators for enforcement of a major consumer credit protection statute and proposed for comment. The agencies are currently considering the first set, which was for the enforcement of Truth-in-Lending and its implementing Regulation Z.

The Equal Credit Opportunity Act prohibits discrimination against an applicant for credit on the basis of age, sex, marital status, race, color, religion or national origin. Other "prohibited bases" include receipt of public assistance or good faith exercise of rights under the Federal consumer credit protection laws. The Act also requires written notice of credit denials.

The Fair Housing Act prohibits discrimination in residential lending on the basis of race, color, religion, national origin or sex.

(445)

The Equal Credit Opportunity guidelines define "corrective action" as a "course of conduct to be undertaken by a creditor at the direction of an enforcing agency to correct the conditions resulting from violations of the Act."

In an accompanying general enforcement policy statement the five agencies said:

"The objectives of the agencies' enforcement policy are to require corrective action for violations of the Act and to ensure compliance in the future. The enforcing agencies will encourage voluntary correction and compliance with the Act. Whenever substantive violations are discovered, however, a creditor that has not previously adopted a written loan policy which is consistent with the Act will be required to adopt one and to formulate a compliance plan to implement that policy.

"In all cases the enforcing agency will consider the suitability of the prescribed remedy for the circumstances -- for example, the character of the violation, the condition of the creditor and the cost and effectiveness of the corrective action -- and will make whatever modifications it deems appropriate. If violations remain uncorrected, the enforcing agency will take administrative action by appropriate means, such as a cease and desist order, to insure correction."

The statement also said that corrective action would not preclude the enforcing agencies from referring cases involving a pattern or practice of discrimination to the Attorney General.

The draft guidelines include the following remedies for specific violations of the Equal Credit Opportunity Act, Regulation B and the Fair Housing Act. The proposal was accompanied by comments to illustrate implementation of these suggested remedies.

1. If applications have been discouraged on a prohibited basis, the creditor would be required to solicit credit applications from the discouraged class through affirmative advertising subject to review by the enforcing agency. The creditor may also be required to inform interested parties that it pursues a nondiscriminatory lending policy.

2. If discriminatory elements have been used in credit evaluation systems, the creditor would be required to reevaluate--according to a written, nondiscriminatory loan policy--all credit applications rejected during a period of time to be determined by the enforcement agencies and to send letters soliciting new applications from individuals rejected on a discriminatory basis. Any application fees previously paid by these applicants would be refunded, and no new application fees would be charged prior to the acceptance of an offer.

3. Where a creditor has charged a higher rate of interest on a prohibited basis or required insurance in violation of the Fair Housing Act or the relevant section of Regulation B, corrective action would be taken in the form of reimbursement or adjustment. In other cases where more onerous terms have been imposed, such as a discriminatory down payment, the creditor would be required to notify applicants of their right to renegotiate the credit extension. The creditor would also be required to offer to release the applicant from such illegally required terms, and to reimburse the applicant for illegally required payments.

4. If a cosigner has been required on a prohibited basis, creditors would be required to offer to release any unnecessary cosigner from liability, or to substitute a new cosigner if the applicant's choice had been restricted on a prohibited basis.

5. Creditors failing to provide appropriate notices of adverse action must send such notices to all applicants denied credit within 25 months of the date of the compliance examination.

6. Creditors failing to maintain and report separate credit histories for married persons would be required to obtain such information, to reflect the participation of both spouses on joint accounts, and to properly report information. They must also notify joint account holders that either spouse may want to reapply for credit denied since January 1, 1978, on the basis of insufficient credit history.

Specific sanctions were also proposed for failure to collect information for monitoring purposes and for termination of accounts on a prohibited basis. Such accounts would be returned to their previous condition, unless an evaluation justified other action.

The draft guidelines are attached.

FEDERAL RESERVE SYSTEM

[Reg. B]

Equal Credit Opportunity

Joint Notice of Proposed Enforcement Guidelines

AGENCIES: The Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, and the National Credit Union Administration.

ACTION: Proposed uniform guidelines for administrative enforcement of Regulation B, Equal Credit Opportunity, and the Fair Housing Act.

SUMMARY: This document sets forth the guidelines which the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board and the National Credit Union Administration propose to follow in order to correct the conditions resulting from violations of Regulation B or the Fair Housing Act. The agencies believe that the adoption of guidelines will promote uniform enforcement of the Equal Credit Opportunity Act and Fair Housing Act.

DATES: Comments must be received on or before

(60 days from publication in the Federal Register.)

ADDRESSES: Written comments should be addressed to:

Equal Credit Opportunity Guidelines
Room B - 4107
Washington, D.C. 20551

FOR FUTURE INFORMATION CONTACT: William Resnik, Comptroller of the Currency, 202-447-1600; Anne Geary, Federal Reserve Board, 202-452-2761; Karl Seif, Federal Deposit Insurance Corporation, 202-389-4422; Frank Passarelli, Federal Home Loan Bank Board, 202-377-6525; Edward Dobranski, National Credit Union Administration, 202-632-4870.

SUPPLEMENTARY INFORMATION: This document sets forth the guidelines the federal financial regulatory agencies propose to follow when violations of the Equal Credit Opportunity Act or Fair Housing Act are discovered in the course of examinations or through investigation of complaints. The agencies believe that coordination among the agencies will promote uniform enforcement of the law.

The guidelines indicate what corrective action creditors will be required to take when substantive violations are discovered. It should be noted that creditors will be required to correct all violations, including such matters as an error on an application form.

The guidelines will neither preclude the use of any other administrative authority that any of the agencies possess to enforce these laws, nor limit the agencies' discretion to take other action to correct conditions resulting from violations of these laws. The agencies retain discretion to consider the suitability of the prescribed remedy under the circumstances of each case.

The guidelines will not preclude the enforcing agencies from referring to the Attorney General cases involving a pattern or practice of discrimination nor will the guidelines foreclose a customer's right to bring a civil action under the Equal Credit Opportunity or Fair Housing Acts.

To aid the agencies in consideration of this matter, interested persons are invited to submit relevant comments or data. Any such material should be submitted in writing to:

Equal Credit Opportunity Guidelines
Room B-4107
Washington, D.C. 20551

The comments will be made available for inspection and copying upon request, except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information (12 C.F.R. Part 261.6(a)).

AUTHORITY

These guidelines are proposed pursuant to the enforcing agencies' authority under the Equal Credit Opportunity Act (ECOA) (15 U.S.C. 1691, et seq.) and under Section 8(b) of the Federal Deposit Insurance Act (12 U.S.C. 1818(b)) for the Board of Governors of the Federal Reserve System, the Comptroller of the Currency and the Federal Deposit Insurance Corporation; the Home Owners Loan Act of 1933 (12 U.S.C. 1464(d)) and the National Housing Act (12 U.S.C. 1730) for the Federal Home Loan Bank Board; and the Federal Credit Union Act (12 U.S.C. 1786(e)(1)) for the National Credit Union Administration.

DRAFTING INFORMATION

The principal drafters of this document were Roberta Boylan, Comptroller of the Currency; Karl Seif, Federal Deposit Insurance Corporation; Anne Geary, Federal Reserve Board; James Kristufek, Federal Home Loan Bank Board and Edward Dobranski, National Credit Union Administration.

PROPOSED STATEMENT

In consideration of the foregoing, the agencies propose the following guidelines:

STATEMENT OF ENFORCEMENT POLICY

DEFINITIONS

1. "Act" means the Equal Credit Opportunity Act (15 U.S.C. 1691, et seq.), Regulation B (12 C.F.R. 202), and the Fair Housing Act (42 U.S.C. 3601, et seq.).
2. "Applicant" means "applicant" as defined in section 202.2(e) of Regulation B.
3. "Corrective action" means a course of conduct to be undertaken by a creditor at the direction of an enforcing agency to correct the conditions resulting from violations of the Act.
4. "Creditor" means "creditor" as defined in section 202.2(1) of Regulation B.
5. "Enforcing agency" means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Home Loan Bank Board, the Federal Deposit Insurance Corporation, and the National Credit Union Administration.

GENERAL ENFORCEMENT POLICY

The objectives of the agencies' enforcement policy are to require corrective action for violations and to assure compliance

in the future. The enforcing agencies will encourage voluntary correction and compliance with the Act. Whenever substantive violations are discovered, however, a creditor that has not previously adopted a written loan policy which is consistent with the Act will be required to adopt one and to formulate a compliance plan to implement that policy. In addition, the enforcing agency will take action as indicated in these guidelines to correct the conditions resulting from the violations. In all cases, the enforcing agency will consider the suitability of the prescribed remedy for the circumstances - for example, the character of the violation, the condition of the creditor and the cost and effectiveness of the corrective action - and will make whatever modifications it deems appropriate. If violations remain uncorrected, the enforcing agency will take administrative action by appropriate means, such as a cease and desist order, to insure correction.

Corrective action under these guidelines will not preclude the enforcing agencies from referring cases involving a pattern or practice of discrimination to the Attorney General, nor does corrective action cut off the rights of individuals under § 706 of the ECOA.

These guidelines should not be considered all inclusive of possible enforcement action by the agencies.

SPECIFIC VIOLATIONS

I. DISCOURAGING APPLICATIONS ON A PROHIBITED BASIS IN VIOLATION OF SECTION 202.5(a) OF REGULATION B

The creditor will be required to solicit credit applications from the discouraged class through affirmative advertising, and all advertising will be subject to review by the enforcing agency. The content as well as the medium of advertising should relate to the discouraged class. The creditor may be required to advise agents, dealers, community groups, and brokers that it pursues a non-discriminatory lending policy.

COMMENT: Identifying the actual victims of pre-screening may not be feasible. Therefore, requiring the solicitation of applications from the discouraged class through affirmative advertising may be the only expedient means of correcting this violation. For example, if a creditor advertises only for deposits in minority areas but directs loan advertising only to white neighborhoods, it would be required to extend similar loan advertising to the minority areas. Or, if a creditor discourages applications from women, future advertising for particular type(s) of credit over a specific period would have to affirmatively solicit that group. In ruling on the adequacy and timing of the proposed affirmative advertising, the enforcing agency will consider the extent of the violation, the resources of the creditor, the type and cost of past advertising, as well as the efficacy of the advertising in reaching the discouraged class.

II. USING DISCRIMINATORY ELEMENTS IN CREDIT EVALUATION SYSTEMS IN VIOLATION OF THE FAIR HOUSING ACT AND SECTIONS 202.6(a) AND 202.7 OF REGULATION B

The creditor will be required to re-evaluate, in accordance with a non-discriminatory written loan policy, all credit applications

rejected during a period of time to be determined by the agency. The creditor will be required to send letters soliciting new applications from individuals discriminatorily rejected. These individuals must be refunded any fees or costs paid by them in connection with their original applications. Any individuals who make a new application as a result of such solicitation shall not be required to pay any fee, including but not limited to an application fee, appraisal fee or fee for a credit check, prior to the acceptance of an offer of credit by the creditor. If such application is approved, and the applicant accepts the credit, the creditor shall reimburse the applicant for any penalty incurred in connection with the prepayment of any existing loan which was obtained in lieu of the discriminatorily denied credit.

COMMENT: The past period for which a creditor will be required to re-evaluate applications will be determined by an assessment of the nature of the violation and the type of credit involved. The standards of creditworthiness used to re-evaluate applications shall not be more stringent than those in effect at the time the applicant was denied credit.

III. IMPOSING MORE ONEROUS TERMS ON A PROHIBITED BASIS IN VIOLATION OF THE FAIR HOUSING ACT AND SECTION 202.6(b) OF REGULATION B

Where a creditor has charged a higher rate or required insurance in violation of the Act, corrective action will be taken in the form of reimbursement or adjustment. Where other more onerous terms, such as a higher downpayment, were required in violation of the Act, the

creditor must notify those applicants that they may renegotiate the extension of credit on terms for which they qualified at the time credit was originally granted. Furthermore, the creditor must offer to release the applicant from any other term illegally required, and to reimburse the applicant for any other money illegally required.

COMMENT: The procedures for correcting violations such as charging a higher rate or requiring credit insurance will be those adopted by the agencies for correcting violations of Regulation Z. (See proposed enforcement guidelines for Regulation Z, 42 Federal Register 55786, October 18, 1977.)

IV. REQUIRING CO-SIGNERS ON A PROHIBITED BASIS IN VIOLATION OF THE FAIR HOUSING ACT AND SECTION 202.7(d) OF REGULATION B

Where a co-signer is required in violation of the Act, the creditor must offer to release any unnecessary co-signer from liability. Where a co-signer is necessary to support the extension of credit but the creditor has restricted the applicant's choice of co-signer on a prohibited basis, the creditor must notify the applicant that another financially responsible co-signer may be substituted.

V. FAILING TO COLLECT MONITORING INFORMATION IN VIOLATION OF SECTION 202.13 OF REGULATION B

If a creditor has failed to collect and retain required monitoring information, it must solicit such information from all who have applied for real estate loans since March 23, 1977, or the previous examination, whichever is later.

COMMENT: Agencies with substitute monitoring programs may use other forms of corrective action.

VI. FAILING TO PROVIDE NOTICES OF ADVERSE ACTION IN VIOLATION OF SECTION 202.9 OF REGULATION B

Appropriate notices of adverse action must be sent to all applicants denied credit within 25 months of the date of the examination.

VII. FAILING TO MAINTAIN AND REPORT SEPARATE CREDIT HISTORIES FOR MARRIED PERSONS IN VIOLATION OF SECTION 202.10 OF REGULATION B

If the creditor has failed to obtain sufficient information to report credit information in accordance with the requirements of Section 202.10 of Regulation B for accounts held by married persons, the creditor will be required to obtain all the necessary information it lacks. Thereafter, the creditor shall properly report the credit information.

Whenever the creditor has failed to report credit information in accordance with the requirements of Section 202.10 of Regulation B on accounts held by married persons but has sufficient information to do so, it will be required to designate joint accounts to reflect the participation of both spouses. Thereafter, the creditor shall properly report the credit information.

In addition, where the creditor has failed to report a separate credit history as required, each account must also receive a statement advising the account holders that if either spouse has been

refused credit since January 1, 1978, on the basis of insufficient credit history, he or she may want to reapply for that credit since the denial may have been caused by the creditor's failure to report all credit information.

VIII. TERMINATING OR CHANGING THE TERMS OF EXISTING OPEN END ACCOUNTS ON A PROHIBITED BASIS IN VIOLATION OF SECTION 202.7(c) OF REGULATION B

Where a creditor has violated the Act by terminating an account or making a change in terms which is less favorable to the borrower, the creditor will be required to return the account to its previous condition, unless an evaluation of the creditworthiness of the affected parties justifies other action.

Dated: June 22, 1978



G. William Miller
Chairman, Board of Governors of
the Federal Reserve System



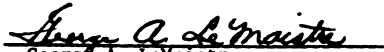
Robert H. McKinney
Chairman, Federal Home Loan
Bank Board



H. Joe Selby
Acting Comptroller of
the Currency



Lawrence Connell, Jr.
Administrator, National Credit
Union Administration



George A. LeMaistre
Chairman, Federal Deposit
Insurance Corporation

FEDERAL HOME LOAN BANK BOARD
OFFICE OF EXAMINATIONS AND SUPERVISION

M E M O R A N D U M

#SP-15

From: James W. McBride
To: Supervisory Agents and District Directors

May 25, 1978

Violations of Part 528 and Section 531.8 of the Bank System Regulations

SYNOPSIS: GENERAL ENFORCEMENT POLICY FOR HANDLING VIOLATIONS OF THE NONDISCRIMINATION REGULATIONS

INTRODUCTION

The objectives of this enforcement policy are to secure member compliance and correction of conditions resulting from violations of the regulations. The Bank Board encourages voluntary correction and compliance; however, if violations remain uncorrected, the Bank Board will issue cease and desist orders to ensure correction. Whenever violations are discovered, members that have not previously adopted adequate nondiscrimination written underwriting standards will be required to adopt them, make them available to the public, and formulate a compliance plan to implement them. Enforcement action taken under these guidelines will not preclude the Bank Board from referring cases involving a pattern or practice of discrimination to the Attorney General. These guidelines should not be considered to be all inclusive of possible enforcement action, but should be regarded as minimum requirements.

GENERAL

Three basic types of corrective action will be considered in connection with any violation of the regulations as follows:

1. Action to correct the violation and ensure that it is not repeated.
2. Action to inform the public that the unlawful practice has been discontinued.
3. Affirmative action to correct conditions resulting from the violation with respect to identifiable individuals or classes of individuals or areas.

SPECIFIC ACTIONS REQUIRED -ADDITIONAL ACTIONS TO BE CONSIDERED

Using its existing supervisory procedures, the Board will take action and consider additional action, based on the circumstances, in accordance with the following:

1. Action to correct the violation and ensure that it is not repeated.

A. Mandatory

- . Obtain written assurance that the violation will not recur.
- . Obtain a written description of action taken or to be taken to ensure nonrecurrence.
- . Ensure, through the regular examination process, that the violation has been corrected.

B. Discretionary

- . Ensure, through more frequent special limited examinations, that the violation has been corrected.

2. Action to inform the public that the unlawful practice has been discontinued.

A. Mandatory

Determine whether additional action is needed to prevent perpetuation of the effect of the violation after its correction, e.g., due to reluctance to submit applications by the affected group or traditional loan sources.

B. Additional (if the determination in 2A is affirmative)

- . Require the member to inform the public of its current nondiscrimination lending practices by:
 - . Advertising aimed at the class or area which was adversely affected, which will be effective in reaching the class or area.
 - . Notifying sources of loans, such as real estate brokers, and community groups of its new policies and/or practices.
 - . Informing real estate brokers or others who accept applications, of the correct procedures to follow to prevent perpetuation of the effects of the violation, if appropriate.

3. Affirmative action to correct conditions resulting from violation of regulations.

A. Mandatory

Identify affected individuals.

- . Require the member to solicit new loan applications from individuals who have been unlawfully denied loans.

- . Require the member to refund any fees, costs, etc., and prepayment penalties, paid by the applicant in connection with or as a result of a denied application.
- . Require the member to offer to correct onerous terms and to refund to the borrower any overcharges acquired by the member.
- . Give the member the option to notify the affected individuals of the unlawful practice employed and that their rights may have been violated, specifying the particular regulatory provision involved. This option will be given with the understanding that if the association does not notify the affected individuals, the Board will consider instituting C&D proceedings to require that affected and identifiable persons be notified by the member.

ILLUSTRATIVE EXAMPLE

To illustrate how the foregoing policy would be implemented, assume a determination is made that a member has been denying loans or making loans on more onerous terms, in a certain neighborhood or on properties over a certain age, in violation of the regulations. The following actions would be taken:

1. A written statement would be obtained from the member containing assurances that such activity has ceased and describing the actions taken or to be taken to ensure nonrecurrence of the violation. This could be obtained by the examiner at the time the violation was first observed, in correspondence with the Supervisory Agent, or, if necessary, in response to a cease and desist order.
2. The circumstances resulting in the violation and its correction would be reviewed. In all cases other than isolated incidents which have been corrected, a special limited examination would be conducted within an appropriate time period after the member's assurance of correction.
3. Public awareness of the member's practice would be estimated by review of the factors surrounding the violation. If the practice of the member is long-standing, it would be assumed that traditional loan suppliers and sources would not submit applications on properties in certain areas or over a certain age to the member. The member would be required to notify community groups, brokers, and other loan sources, including residents of the neighborhood, of its new policy. However, if the violation occurred due to the actions of one of the member's employees over a brief period of time, it would ordinarily be assumed that no public perception existed that a loan application on a property in a certain neighborhood or over a certain age would be denied, and corrective action outside the member's operation would not be required. In any case, this determination would be based on evaluation of all the circumstances

surrounding the violation. If necessary to resolve doubt, brokers and other loan sources would be interviewed by Board representatives. In any case, a written determination will be made by the examiner, the Supervisory Agent, or the Bank Board as to whether notification to loan sources need be made.

4. A review would be made of the member's files to identify specific applicants who were disadvantaged by the practice. If the member appeared to be acting in good faith to correct the violation, the applications or loans would be identified by the member's staff and a spot check conducted by Bank Board examiners. If the member appeared not to be acting in good faith, the examiners would identify the affected persons. The member would be required to take the following actions with respect to affected persons.
- A. Regarding those denied a loan in violation of the regulations.
- . Refund application, appraisal, credit and similar fees.
 - . Offer to consider a new application and pay any prepayment penalties, under terms offered by the member at the time the application was made.
 - . Inform the applicant that the loan was denied in violation of the regulations.
- B. Borrowers granted a loan at a higher rate, lower amount, or less favorable terms (private mortgage insurance, short term).
- . Offer to consider an application for an additional loan at initial interest rate (if appropriate).
 - . Offer to reduce rate, extend term, or drop private mortgage insurance, as applicable.
 - . Reimburse borrower for private mortgage insurance premiums if private mortgage insurance was unlawfully required.
 - . Inform the borrower the loan was made on a more onerous basis contrary to the regulations.

Actual actions taken in connection with any violation could vary from the foregoing as appropriate, based on the facts of the case.

Enforcement guidelines for violations of Regulation B will be the subject of a later memorandum.

Office of Examinations and Supervision

by  _____

**APPENDIX 3.—1977 ANNUAL REPORT TO CONGRESS ON THE EQUAL CREDIT
OPPORTUNITY ACT**

ANNUAL REPORT TO CONGRESS

ON

THE EQUAL CREDIT OPPORTUNITY ACT

FOR THE YEAR 1977

Board of Governors of the Federal Reserve System

January 26, 1978

(463)

The Board of Governors of the Federal Reserve System is pleased to submit to Congress this second Annual Report on the Equal Credit Opportunity Act (ECOA). This Report describes the highlights of the year, including extensive amendments to the act, outlines the Federal Reserve System's enforcement activities, and provides the Board's assessment of the extent of compliance on the part of State member banks. The Report also discusses the compliance and enforcement efforts of other agencies assigned administrative responsibilities under Section 704 of the act and their assessment of compliance on the part of creditors that they supervise.

The Report does not contain recommendations for statutory amendments. Such recommendations, if any, will be made in the Board's Annual Report to the Congress.

The amendments to the ECOA and the regulations implementing the amended act became effective in March 1977. In an effort to mitigate many of the compliance problems that creditors had experienced under the original Regulation B, the Board published several model application forms. As to the substantive requirements of Regulation B, the chief problem for banks seems to be understanding and complying with Regulation B's limits on requests for the signature of an applicant's spouse. The Board's advisory visit program was developed to explain this provision and other provisions of the regulation to member banks.

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The Board issued four interpretations of Regulation B and the Board's staff issued seven official staff interpretations to clarify technical ambiguities in the regulation.

Few lawsuits, to the Board's knowledge, were filed under the act either by private parties or by the Department of Justice.

I. ENFORCEMENT AND ASSESSMENT OF COMPLIANCE

As described below, the Board and the other Federal agencies substantially increased their enforcement efforts in 1977.

A. Federal Reserve System

1. Examination

Examination of banks is the primary means by which the Federal Reserve System enforces the act. To improve enforcement of Regulation B, the Board developed new examiner manuals, checklists, instructions and report forms. The Board also initiated a program of special compliance examinations aimed specifically at consumer credit regulations, including Regulation B. Since the implementation of this program approximately 400 member banks have undergone the special compliance examination. By April 1, 1978, 1 year after the revised Regulation B became effective, nearly all member banks will have been examined for compliance with the regulation. A copy of the examination report is reviewed by the Board's Division of Consumer Affairs to determine the individual bank's compliance and to evaluate and improve the examination program.

To ensure that its examiners are thoroughly versed in Regulation B, the Board conducted three 2-week training institutes

in 1977. Ninety-six System examiners and several representatives of other Federal and State agencies attended these schools. Four more schools are planned for 1978. In response to a General Accounting Office recommendation, joint consumer regulation schools were initiated by the Board, the Federal Deposit Insurance Corporation (FDIC), and the Comptroller of the Currency to supplement their respective training programs. Two sessions, attended by 64 participants from the three agencies, were held. Another joint school was scheduled for early 1978.

The Board's figures indicate that while 73 per cent of the banks that have received special consumer examinations were not in full compliance with Regulation B, the overwhelming majority of violations relate to the use of outdated credit applications and forms. Most other violations involve the unlawful request for the signature of a nonapplicant spouse, the notification requirements of Regulation B, and the failure to request information for monitoring purposes.

During the course of consumer examinations, Reserve Bank examiners explain the nature of any violations discovered and outline the prospective corrective action necessary for compliance. All State member banks are either in compliance at the conclusion of the examination or have agreed to establish policies and procedures designed to prevent recurrence of violations. Continuing emphasis on the special consumer examination program, in conjunction with the Board's advisory visit program, should aid achievement of full compliance for all State member banks.

2. Advisory Visit Program

The Board's examination experience indicates that a lack of familiarity with Regulation B's requirements is the single most significant obstacle to full compliance with the regulation. This is particularly true of smaller banks, which often do not possess either the personnel or resources to study the regulation and develop procedures for compliance. In response to this need and in an effort to improve compliance, the Board initiated a voluntary advisory visit program, consisting of both group meetings and individual visits, for all interested member banks. In half-day or full-day meetings with bank management, Federal Reserve Bank personnel review the bank's forms, procedures, and policies, as well as discuss any problems or questions that the management and operating staff may have concerning compliance. Approximately 770 such visits were made during 1977; the total number of banks that received assistance was higher, approximately 900, since certain meetings were attended by several banks. This program has been well received by member banks.

3. Model Forms

Prior to the revision of Regulation B, many creditors experienced difficulty in adapting their credit application forms to the regulation's restrictions on permissible questions. To alleviate this problem, the Board developed five model forms for the following types of credit: open end, unsecured consumer credit transactions; closed end, secured transactions; closed end transactions, whether unsecured or secured; credit in community property States; and

residential real estate mortgage transactions. The model forms appear in an appendix to the regulation. While their use is optional, proper usage by a creditor assures compliance with the requirements of Regulation B relating to application forms. These model forms not only should promote compliance but should reduce the cost of compliance.

4. Consumer Complaints

Another method by which the Federal Reserve System enforces compliance with the act is the investigation of consumer complaints. In the course of an investigation, an attempt is made to resolve the problem of the individual complainant. The Board has developed a Systemwide computerized complaint control procedure to monitor the handling of complaints and to aid in their resolution.

From January 1, 1977, through October 31, 1977, the Federal Reserve System received 731 complaints involving the act or Regulation B, of which approximately 40 per cent were related to State member banks and 60 per cent to other creditors. The latter group was handled either by referring them to the appropriate agency or by supplying information or an explanation to the complainant.

With respect to the 293 complaints regarding State member banks, 132 investigations have been completed, 69 are still under investigation, and 92 were handled by furnishing information or an explanation. The 132 completed investigations yielded the following results: the bank was determined to be legally correct in 83 cases; was found to be legally correct but nevertheless reached an accommodation

with the complainant in 28 cases; was found to have made an error, which has since been corrected, in 13 cases; was involved in a possible violation, which has since been resolved in 6 cases; and was involved in a possible violation, which is still unresolved, in 2 cases.

The most common complaint (574 out of a total of 731) was unfair denial, termination, or change in terms of credit. Not all of these 574, however, claimed discrimination on one of the bases prohibited in the act. For example, 159 complainants believed that the reason for the adverse action was their credit history. Level of income was cited by 68 as the perceived reason for the denial. On the other hand, 42 complainants felt that marital status was the reason for the creditor's adverse action, 41 cited discrimination because of sex, and 16 because of race, color, or national origin.

In an effort to evaluate consumer satisfaction with the Federal Reserve's handling of complaints, the Board has sent a followup questionnaire to those persons whose complaints were received subsequent to April 1, 1977. The questionnaire is sent to complainants shortly after the investigation is completed. The questionnaire deals with the acceptability of the resolution, the clarity of the explanation, the amount of time in which the complaint was handled, the courteousness of System staff, and whether or not the consumer would contact the Federal Reserve in the event of a future problem. The Board is reviewing returns from the followup letter and the entire procedure to determine if any changes should be made to improve this service to the public.

5. Other Compliance Activities

The Board is currently conducting a survey of selected major creditors that extend open end credit to determine the extent to which consumers are exercising their rights to a credit history reported separately from that of a spouse and to a notification of specific reasons for the denial of credit. The results should assist the Board in evaluating the effectiveness of these requirements as well as in determining the cost of compliance.

The Board and the other financial institution regulatory agencies are working on a uniform set of guidelines for enforcement of Regulation B, specifying corrective action that will be taken by the appropriate agency when certain violations are discovered. The guidelines are intended to promote better and more uniform enforcement among all Federally regulated financial institutions.

B. Other Agencies

1. Comptroller of the Currency

The Comptroller of the Currency, who is responsible for enforcing the act for national banks, instituted in October 1976 a program of consumer affairs examinations. To date, 2,859 national banks have undergone such examinations. The examinations are conducted by specially trained examiners who have completed a 2-week consumer school. Six such schools have been conducted.

Enforcement of Regulation B also occurs through the resolution of consumer complaints. From January 1, 1977, through

November 30, 1977, the Comptroller received 451 complaints, the majority of which alleged discrimination on the basis of sex or marital status. When a violation is discovered through investigation, the bank not only must take corrective action in the applicant's case but is required to establish policies and procedures to prevent future violations.

The Comptroller's examinations reveal that 97 per cent of all national banks were in violation of the act to some extent. However, 86 per cent of the violations appear to be technical in nature, that is, attributable to the use of obsolete credit applications and other forms. Most (86 per cent) of the substantive violations involve the unlawful request for the signature of a nonapplicant spouse and the denial of separate credit to married applicants. All national banks have taken or have promised to take prospective corrective action when the examination has disclosed violations. The Comptroller believes that substantial compliance is achieved by national banks after a consumer examination has occurred and the directed corrective action taken.

2. Federal Deposit Insurance Corporation

The FDIC, which enforces the act for insured nonmember banks, initiated in May 1977 a program of separate compliance examinations, conducted by specially trained examiners, to determine compliance with consumer protection laws and regulations. Under this program, the FDIC expects to examine each insured nonmember bank at least once every 15 months.

From October 1, 1976, through September 30, 1977, 26.6 per cent of the compliance examination reports indicated apparent violations, which related primarily to the notification requirements of Regulation B and to the provisions concerning applications, particularly the conditions governing permissible terminology on application forms and permissible requests for information.

During the same period, the FDIC received 291 consumer complaints alleging ECOA violations. Sex or marital status discrimination comprised the largest category, followed by consumer disagreement with the bank's reasons for taking adverse action. A thorough inquiry is conducted to determine the merits of all discrimination complaints. Should violations be found, the FDIC takes appropriate action to bring the bank into compliance.

From October 1, 1976, through September 30, 1977, the FDIC's Board approved six cease-and-desist orders involving equal credit opportunity.

In assessing the extent of compliance with the ECOA, the FDIC reports that the majority of violations discovered thus far relate to form and procedure rather than substantive discrimination.

3. Federal Home Loan Bank Board

The Federal Home Loan Bank Board (FHLBB), which enforces the act for Federally chartered savings and loan associations, conducts regular examinations to determine compliance with Regulation B. During late 1976 and early 1977, the FHLBB conducted 2-1/2 day training sessions in consumer law for all of its examiners.

In July 1977, the FHLBB instituted a new consumer complaint procedure. During the first 11 weeks of operation, 48 discrimination complaints were received. Redlining was the most common type of complaint, followed by discrimination on the bases of race or national origin and sex and marital status. As of December 5, 1977, discrimination complaints received numbered approximately 200. Each complaint is investigated to determine whether a violation has occurred and the complainant is notified of the result of the investigation.

The FHLBB believes that most savings and loan associations wish to comply, but that confusion on procedural matters as well as extremely literal interpretations on the part of association staff often defeat the act's purpose. Thus, most noncompliance derives from "technical violations" and compliance is promptly obtained.

4. National Credit Union Administration

The National Credit Union Administration (NCUA) enforces the act for Federally chartered credit unions. Enforcement activities, like those of the other financial regulatory agencies, include examiner training, specialized examination procedures, and, if a violation is discovered, appropriate followup with credit union officials. Approximately 90 per cent of the 12,800 Federal credit unions were examined by the year-end.

The NCUA conducts a field investigation of all written consumer complaints and, when necessary, institutes corrective action. The agency has received 30 complaints or requests for information, with the largest group pertaining to discrimination of the basis of race or

national origin. The next most common complaint alleged discrimination due to factors not prohibited by existing law, followed by discrimination alleged to be based on marital status. Eight complaints are still under investigation, but of the remainder, only two were substantiated by objective review of the facts. In both of those cases, corrective action was undertaken promptly and in several other instances, subsequent loan applications by complainants were approved as a result of improved understanding between the parties.

NCUA's preliminary results indicate that 83 per cent of the credit unions examined were in compliance at the conclusion of the examination and the remainder had agreed to take prompt corrective actions.

5. Federal Trade Commission

The Federal Trade Commission (FTC) enforces the act for all creditors not subject to the jurisdiction of any of the other enforcement agencies. Potential violators of the act are identified through several sources of information, including consumer complaints, consumer and civil rights organizations, and other enforcement agencies. When there is evidence that a violation may have occurred, an informal inquiry is made, followed by a full investigation when warranted. During 1977 the FTC staff initiated a number of investigations, which are expected to result in formal action in the near future.

During the first 10 months of 1977, the FTC received 6,500 complaints and inquiries concerning equal credit opportunity. The

agency states that many complaints allege discrimination on the basis of sex and marital status while a significant number of complaints claim discrimination on the basis of race and age.

The FTC believes that creditors are making a good faith effort to comply with the act and are achieving a substantial degree of compliance. However, some evidence indicates that smaller creditors may be less familiar with the requirements of the act and with Regulation B than major national creditors. The FTC hopes that this problem will be alleviated by increased creditor and consumer education efforts and by the deterrent effect of litigation and administrative enforcement actions.

6. Civil Aeronautics Board

The Civil Aeronautics Board (CAB), which enforces the act for domestic and foreign air carriers, continues to monitor industry practices through the resolution of consumer complaints, none of which, to date, have been considered valid. Enforcement measures include contacting the carrier or supplying information to the consumer. On the basis of complaints received, the CAB believes that compliance within the industry is relatively good.

7. Interstate Commerce Commission

The Interstate Commerce Commission (ICC) enforces the act for regulated common carriers. In its view, common carriers are forbidden to discriminate in the granting of credit by Section 3(1) of the Interstate Commerce Act and by several ICC credit regulations. Thus, the ICC believes that the ECOA does not have a significant impact on the surface transportation industry.

8. Department of Agriculture

The U.S. Department of Agriculture (USDA) includes agencies with responsibilities under the act. The Packers and Stockyards Administration enforces the act for creditors under its jurisdiction. Since the livestock industry characteristically operates on a cash basis, the agency's monitoring is handled on a complaints received basis, and in the event of a violation, remedial action will be initiated. As no complaints have been received to date, the Packers and Stockyards Administration assumes there is substantial compliance within the industry.

The Farmers Home Administration, itself a creditor, is under the enforcement authority of the FTC. During 1977, 140 complaints against this organization concerning the denial of loans were received by the USDA's Office of Equal Opportunity.

9. Small Business Administration

The Small Business Administration (SBA) enforces the act for small business investment companies and, through a letter of understanding with the FTC, with regard to other recipients of SBA assistance and with regard to SBA program offices. During fiscal year 1977, seven SBA program offices were reviewed and 15,954 recipient businesses were monitored for compliance, with 844 being subjected to on-site reviews.

Six complaints were received alleging sex discrimination when applying for loans from SBA program offices, but investigations revealed that the complaints were unsubstantiated. No consumer

complaints alleging discrimination were received from customers or clients of recipients of SBA assistance.

Due to the general nature of SBA recipients (small businesses) and the lack of consumer complaints received, the SBA believes creditors subject to its authority to be in adequate compliance.

10. Securities and Exchange Commission

The Securities and Exchange Commission (SEC) enforces the act for securities brokers and dealers. The SEC reports having received no complaints during 1977 that alleged discrimination in securities credit transactions and states that creditors subject to its jurisdiction appear to be complying with the act and Regulation B.

11. Farm Credit Administration

The Farm Credit Administration (FCA) enforces the act for Federal land banks, Federal land bank associations, Federal intermediate credit banks, and production credit associations. FCA's enforcement activities include regular examinations, conducted every 12 to 18 months. Such examinations in the current year have not disclosed significant problems in the area of discrimination.

In 1977 approximately a dozen complaints were received by the agency and reviewed for appropriate followup. In none of the nine complaints resolved thus far was evidence disclosed of intent to discriminate and no known complaints have resulted in litigation. The FCA concludes that the record of compliance by farm credit institutions appears to be good.

II. CONSUMER ADVISORY COUNCIL

The Consumer Advisory Council, established in late 1976 to advise and consult with the Board on matters relating to consumer credit, held four meetings in 1977. The Council considered such topics as consumer education and the survey of consumers (both mentioned below).

Those members of the Council appointed to 1-year terms in 1976 were reappointed to 3-year terms in 1977, and three members resigned during the year. A list of current Council members appears below as an appendix.

III. ADMINISTRATIVE FUNCTIONS

A. Amendments and Interpretations of Regulation B

1. Board Interpretations

On April 28, 1977, the Board adopted two interpretations of revised Regulation B, both concerning the possible inconsistency of California law with the act and the regulation. One interpretation, designated 202.1101, states that a law requiring delivery of a notice explaining the obligations of a cosigner only when the signers of a consumer credit contract are not married to each other is not inconsistent with Regulation B. The other interpretation, designated 202.1102, states that a law requiring translation of certain consumer credit documents into Spanish but not into other languages is not inconsistent with Regulation B.

On July 8, 1977, the Board adopted an interpretation of Regulation B, designated 202.1103, determining that State laws making contracts enforceable against married persons at a younger age than against unmarried persons are not inconsistent with the act.

On August 4, 1977, the Board issued an interpretation, designated 202.801, dealing with special-purpose credit programs under Section 202.8 of the regulation. The interpretation states that a credit program is to be considered "expressly authorized by Federal or State law," as required for programs seeking to qualify under Section 202.8(a)(1), if it is authorized either by the terms of a Federal or State statute, or by a regulation lawfully promulgated by the agency administering the program. The interpretation further states that participating creditors will not violate Regulation B by complying with regulations that implement the program. Finally, the Board stated that determinations on another of the criteria for qualification under Section 202.8(a)(1), namely, whether particular programs benefit an "economically disadvantaged class of persons," should be made by the agency administering the program, not by the Board.

2. Official Staff Interpretations

Regulation B was amended during 1976 to implement the provisions of the 1976 amendments to the act, which authorized the Board to empower staff members to issue interpretations of Regulation B or the act. Creditors can rely on such interpretations to the same extent as on formal Board interpretations. During 1977 seven official staff interpretations of Regulation B were issued. Their

subject matter includes names in which accounts may be carried, the effect of Regulation B on State loan-splitting laws, the scope of the real estate credit-monitoring requirements, use of credit-scoring systems in combination with judgmental credit evaluation methods, the application of notification and record retention requirements to business credit, information gathering by creditors for noncredit purposes, and whether or not adverse action can occur at the point of sale.

Two official staff interpretations, designated EC-0007 and EC-0008, were taken under reconsideration at the request of the FTC and the Department of Justice. On October 3, 1977, the Board issued alternative proposed amendments to Regulation B, which would cover the same issue as interpretation EC-0008, whether or not adverse action occurs at the point of sale. These are discussed in greater detail in the following section of this Report.

The FTC and Justice also petitioned the Board for a change in the procedures by which official staff interpretations are issued. They urged the Board to allow opportunity for public comment before official staff interpretations are issued in final form. This matter is currently under consideration.

3. Amendments

In order to resolve the questions raised by the requests for reconsideration of EC-0008, the Board issued alternative proposed amendments to Regulation B. Under the regulation, a creditor, in each instance of adverse action, must either provide a written explanation to the customer of the reason for the adverse

action or advise the customer of the right to obtain an explanation upon request. Each proposal would amend the definition of "adverse action." The first would generally result in an affirmation of EC-0008; in general, adverse action commonly would not occur when use of an open end credit account is denied at the point of sale. The other proposal would generally adopt the position of the FTC and the Justice Department; adverse action would occur at the point of sale in many instances. Approximately 200 comments on the proposed amendments have been received, and the matter is still under consideration.

B. Education

The past year has seen increased educational activity on the part of both the Federal Reserve System and the other agencies responsible for Regulation B compliance.

Within the Federal Reserve System, educational efforts included speeches and seminars involving consumers, creditors, school groups, professional associations, and others. Nearly 350 of these presentations were made by staff members of the Federal Reserve Banks during 1977 and about 60 by Board staff during the first 8 months of the year. In addition, Board and Reserve Bank staff on several occasions participated in radio and television programs relating to equal credit opportunity.

During 1977 the Board published two pamphlets to inform consumers of their rights under Regulation B. One deals with rights of women under the regulation and the other with credit discrimination

on the basis of age. Approximately 4.4 million copies of the former, and 2.9 million copies of the latter have been distributed. The Board also published a pamphlet summarizing Regulation B requirements applicable to small businesses and professionals who extend credit with no finance charge imposed. Approximately 1 million copies of this pamphlet have been distributed. Current plans include a pamphlet on housing credit and a filmstrip explaining consumer protection laws, including equal credit opportunity.

During 1977 a nationwide survey of consumers was conducted for the Board in an effort to ascertain the extent of consumer knowledge of credit and consumer credit legislation. The results are currently being analyzed.

A number of the other enforcement agencies report similar educational efforts including slide presentations, consumer pamphlets, journal articles, seminars, and speeches.

APPENDIX

CONSUMER ADVISORY COUNCIL
Board of Governors
Federal Reserve System

Leonor K. Sullivan Chairman St. Louis, Missouri 12-31-78	Joseph F. Holt, III Oxnard, California 12-31-78
William D. Warren Vice Chairman Los Angeles, California 12-31-80	Edna DeCoursey Johnson Baltimore, Maryland 12-31-79
Roland E. Brandel San Francisco, California 12-31-80	Robert J. Klein New York, New York 12-31-80
Agnes H. Bryant Detroit, Michigan 12-31-78	Percy W. Loy Portland, Oregon 12-31-79
John G. Bull Fort Lauderdale, Florida 12-31-79	R. C. Morgan El Paso, Texas 12-31-80
Robert V. Bullock Frankfort, Kentucky 12-31-80	Reece A. Overcash, Jr. Dallas, Texas 12-31-78
Linda M. Cohen Washington, D. C. 12-31-78	Raymond J. Saulnier New York, New York 12-31-79
Robert R. Dockson Los Angeles, California 12-31-80	E. G. Schuhart Dalhart, Texas 12-31-80
Anne G. Draper Washington, D. C. 12-31-78	James E. Sutton Dallas, Texas 12-31-78
Carl Felsenfeld New York, New York 12-31-79	Anne Gary Taylor Alexandria, Virginia 12-31-79
Marcia A. Hakala Omaha, Nebraska 12-31-80	Richard D. Wagner Simsbury, Connecticut 12-31-80
	Richard L. Wheatley, Jr. Stillwater, Oklahoma 12-31-78

Dates indicate expiration of term

APPENDIX 4.—FAIR HOUSING LAW SUIT BY NATIONAL URBAN LEAGUE,
ET AL., AGAINST REGULATORY AGENCIES

AMENDED COMPLAINT (July 1976).
National Urban League, et al., v. Office
of the Comptroller of the Currency, et al.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

NATIONAL URBAN LEAGUE)
500 E. 62nd Street)
New York, New York 10021)
(212) 644-6500)

NATIONAL COMMITTEE AGAINST DISCRIMINATION)
IN HOUSING)
1425 H Street, N.W.)
Washington, D.C. 20005)
(202) 783-8150)

NATIONAL ASSOCIATION FOR THE ADVANCEMENT)
OF COLOURED PEOPLE)
1790 Broadway)
New York, New York 10019)
(212) 245-2100)

AMERICAN FRIENDS SERVICE COMMITTEE)
1501 Cherry Street)
Philadelphia, Pennsylvania 19102)
(215) 241-7000)

LEAGUE OF WOMEN VOTERS OF THE UNITED STATES)
1730 M Street, N.W.)
Washington, D.C. 20037)
(202) 296-1770)

Civil Action No. 76-0718

NATIONAL NEIGHBORS)
17 Maplewood Mall)
Philadelphia, Pennsylvania 19144)
(215) 848-9094)

HOUSING ASSOCIATION OF DELAWARE VALLEY)
1317 Filbert Street)
Philadelphia, Pennsylvania 19107)
(215) 563-4050)

LEADERSHIP COUNCIL FOR METROPOLITAN)
OPEN COMMUNITIES)
407 South Dearborn Street)
Chicago, Illinois 60605)
(312) 341-1470)

METROPOLITAN WASHINGTON PLANNING AND)
HOUSING ASSOCIATION)
1225 K Street, N.W.)
Washington, D.C. 20005)
(202) 737-3700)

RURAL HOUSING ALLIANCE)
1346 Connecticut Avenue, N.W.)
Washington, D.C. 20036)
(202) 659-1680)

NATIONAL ASSOCIATION OF REAL ESTATE BROKERS)
1028 Vermont Avenue, N.W.)
Washington, D.C. 20005)
(202) 638-1280)

Plaintiffs

v.

OFFICE OF THE COMPTROLLER OF THE CURRENCY)

Department of the Treasury)
 490 L'Enfant Plaza East)
 Washington, D.C. 20219)

JAMES E. SMITH, Individually, as Comptroller)
 of the Currency, and as a Member of the)
 Board of Directors of the Federal Deposit)
 Insurance Corporation)
 490 L'Enfant Plaza East)
 Washington, D.C. 20219)

THE BOARD OF GOVERNORS OF THE FEDERAL)
 RESERVE SYSTEM)
 Constitution Avenue and 20th Street, N.W.)
 Washington, D.C. 20551)

ARTHUR BURNS, Individually and as Chairman)
 of the Board of Governors of the Federal)
 Reserve System)
 Constitution Avenue and 20th Street, N.W.)
 Washington, D.C. 20551)

PHILIP E. CALDWELL, STEPHEN GARDNER, ROBERT)
 C. HOLLAND, PHILIP JACKSON, J. CHARLES)
 PARTEE AND HENRY C. WALLICH, Individually)
 and as Members of the Board of Governors)
 of the Federal Reserve System)
 Constitution Avenue and 20th Street, N.W.)
 Washington, D.C. 20551)

THE FEDERAL DEPOSIT INSURANCE CORPORATION)
 550 17th Street, N.W.)
 Washington, D.C. 20429)

ROBERT E. BARNETT, Individually and as)
 Chairman of the Board of Directors of)
 the Federal Deposit Insurance Corpora-)
 tion)
 550 17th Street, N.W.)
 Washington, D.C. 20429)

GEORGE A. LEMAISTRE, Individually and as)
 a Member of the Board of Directors of)
 the Federal Deposit Insurance Corpora-)
 tion)
 550 17th Street, N.W.)
 Washington, D.C. 20429)

THE FEDERAL HOME LOAN BANK BOARD)
 320 First Street, N.W.)
 Washington, D.C. 20552)

GARTH MARSTON, Individually and as Acting)
 Chairman of the Federal Home Loan Bank)
 Board)
 320 First Street, N.W.)
 Washington, D.C. 20552)

and)

GRADY PERRY, JR., Individually and as a)
 Member of the Federal Home Loan Bank)
 Board)
 320 First Street, N.W.)
 Washington, D.C. 20552)
)
)
 Defendants.)

AMENDED COMPLAINT FOR DECLARATORY, INJUNCTIVE AND OTHER RELIEF

INTRODUCTION

1. This is an action for declaratory and injunctive relief against the four federal agencies which supervise and regulate the vast majority of the Nation's home mortgage lending institutions. The action is brought to remedy the continuing failure and refusal of these agencies to take action to end discriminatory mortgage lending practices by institutions which they regulate and to which they provide substantial federal benefits. This failure and refusal has persisted despite the accumulation of evidence, including evidence in the files of the defendant agencies, that such practices are widespread among regulated lending institutions; despite efforts of other federal agencies, including the United States Department of Justice, the Department of Housing and Urban Development, and the United States Commission on Civil Rights, to induce the defendant agencies to institute effective enforcement procedures; and despite the fact that such practices violate the Constitution and laws of the United States (most notably Title VIII of the Civil Rights Act of 1968), artificially restrict credit opportunities of borrowers and business opportunities of lenders, and subject discriminating institutions to the risk of substantial civil liability.

2. Plaintiffs are eleven organizations whose activities are devoted to aiding and assisting all Americans in securing equal housing opportunity; whose membership and clientele have suffered damage from the failure and refusal of the defendants to act against discriminatory lending practices of institutions which they regulate; and whose membership and clientele will continue to suffer damage from such practices unless the defendants act to prevent them. In 1971 ten of the plaintiffs filed rule making petitions with the four defendant agencies, which these agencies entertained but which they have not made any formal disposition of in the five years since. This action is brought in the conviction that only court intervention will induce the defendant agencies to carry out their duty to enforce non-discrimination among the institutions whose lending practices they supervise and regulate.

3. This action arises under the Fifth Amendment to the United States Constitution Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000(d) et seq.; Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601 et seq.; the Civil Rights Acts of 1870 and 1866, 42 U.S.C. 1981, 1982; the Financial Institutions Supervisory Act, 12 U.S.C. 1730, 1818; 12 U.S.C. 1464 (d) 1437; Section 2 of the Housing Act of 1949, 42 U.S.C. 1441, 1441a; Section 527 of the National Housing Act, as amended, 12 U.S.C. 1735f-5; and the Administrative Procedure Act, 5 U.S.C. 555. The matter in controversy exceeds, exclusive of interest and costs, the sum of value of \$10,000.

4. This court has jurisdiction under 28 U.S.C. 1331, 1337, 1343, 1346, 1361, 2201, 2202, 5 U.S.C. 701-706, 12 U.S.C. 1819, and 42 U.S.C. 3612, 3617.

PLAINTIFFS

5. The National Urban League is a non-profit corporation organized under New York law, with headquarters at 500 E. 62nd Street, New York,

New York. The League and its predecessors have been in existence for more than 65 years; currently it has 104 affiliated Leagues located in cities throughout the United States. Its general purposes are, among others to improve the living and working conditions of blacks and other similarly disadvantaged minorities and to foster better race relations and increased understanding among all persons. In furtherance of these purposes it develops, organizes and carries out, and assists its affiliates in conducting action programs in such fields as housing and employment. Specifically, through its "Operation Equality", the League and its affiliates seek to assist black residents of low income, deteriorating neighborhoods to find and finance standard housing outside such areas. It conducts studies and provides information concerning discriminatory practices of real estate and mortgage lending firms, and organizes communities to combat such practices. As part of its efforts to eliminate discriminatory mortgage lending practices, it filed a petition for rule making with the defendants in this action in 1971. In their efforts to find and finance homes outside ghetto areas, the clientele served by the League and its affiliates, as well as members of the League and of its affiliates, suffer and continue to suffer from the discriminatory practices listed in Paragraph 25 of this complaint, engaged in by lending institutions regulated and supervised by the defendants. Accordingly, the League, its affiliates, their members and clientele, are directly and adversely affected by the failure and refusal of the defendants to act to end such discriminatory practices by institutions which they regulate. Such discrimination also interferes with the League's efforts to aid and assist its members and other minority persons in securing their right to equal housing opportunity. In addition, the defendants' failure injures the League and its affiliates in that it compels them to expend funds, staff time, and other resources in combating such practices which they would not be compelled to expend were the defendants to take action as prayed in this complaint.

6. The National Committee Against Discrimination in Housing (NCDH) is a non-profit corporation organized under the laws of the District of Columbia and located at 1425 H Street, N.W., Washington, D.C. A principal objective of NCDH is to assist minority group persons in securing the right to equal housing opportunities guaranteed under Title VIII of the Civil Rights Act of 1968 and other fair housing laws. In carrying out this objective, NCDH engages in fair housing litigation on behalf of minority group homeseekers challenging, among other discriminatory housing practices, discrimination in mortgage lending. NCDH also aids and assists minority group homeseekers by representing them in administrative proceedings before such executive agencies as the Department of Housing and Urban Development. Further, NCDH participated in a petition for rule making submitted to the defendants in this action, as part of its effort to eliminate discrimination in mortgage lending as a barrier to equal housing opportunity. The failure and refusal of the defendants to take action necessary to correct the discriminatory practices of lending institutions which they regulate, alleged in Paragraph 25 of the complaint, causes injury to the clientele served by NCDH and interferes with NCDH's efforts to assist its clientele in securing their right to equal housing opportunity. Such failure and refusal also injures NCDH by requiring it to spend funds, staff, and other resources, to eliminate discriminatory practices in mortgage lending. But for the failure and refusal of the defendants to remedy these discriminatory practices, NCDH would not be forced to deplete its scarce resources to seek compliance with the nondiscrimination requirements of federal law in mortgage lending.

7. The National Association for the Advancement of Colored People (NAACP), organized as a non-profit corporation under New York law in 1909, and with headquarters at 1790 Broadway, New York, New York, is the oldest and largest civil rights organization in the country. It has a membership of 450,000 persons, most of them black, and 1,700 branches in all 50 states and the District of Columbia. A principal objective of the organization is to assist minority group persons, both NAACP members and others, in securing rights guaranteed under various

civil rights laws, including Title VIII of the Civil Rights Act of 1968. The organization endeavors to remove all barriers of racial discrimination, including barriers to equal housing opportunity resulting from discriminatory practices in mortgage lending, through the enforcement of legal rights for the benefit of its members and other persons seeking its assistance. Throughout its existence the NAACP has actively sought to achieve fair housing for minority Americans through such means as litigation, administrative actions, including a petition for rule making submitted to the defendants in this action, and through efforts to resolve complaints from minority citizens, both members of the NAACP and others who seek its assistance. NAACP members have suffered and continue to suffer discrimination in their efforts to secure mortgage loans from lending institutions supervised by the defendants in this action. The continuation of such discrimination directly and adversely affects the NAACP and its members, and interferes with the organization's efforts to aid and assist its members and other minority persons in securing their right to equal housing opportunity. The failure and refusal of the defendants to take action necessary to eliminate the discriminatory practices alleged in Paragraph 25 of this complaint have caused and continue to cause injury to the NAACP, to its members, and other persons to whom it provides assistance.

8. The American Friends Service Committee (AFSC) is a non-profit corporation organized under Delaware law and with headquarters at 1501 Cherry Street, Philadelphia, Pennsylvania. It has been actively concerned with the denial of equal housing opportunity for over 25 years. Its Community Relations Division, with a staff of 100 in 32 states administers programs for the benefit of the poor, minority group persons, and other disadvantaged persons, in the fields of housing, jobs and income, education, health and the administration of justice. In past years it has operated specific action programs in Chicago, San Francisco, Philadelphia, Atlanta, Washington, D.C. and Richmond, Indiana, designed to assist minority group and other disadvantaged persons confronted with housing discrimination, through direct assistance to individuals and by seeking changes in institutional discriminatory policies and practices in the real estate

industry. As part of this effort, it petitioned the defendants in this action to exercise their regulatory authority over mortgage lending institutions so as to end discriminatory home finance practices. The clientele served by AFSC has suffered injuries from the discriminatory practices of lending institutions which the defendants regulate, listed in Paragraph 25 of this complaint, and will continue to suffer such injuries unless the defendants take action to end such practices. The failure of defendants to act to end discriminatory mortgage lending practices interferes with AFSC's efforts to assist minorities in securing their right to equal housing opportunity and causes it to expend funds, staff and other resources which it would not be compelled to expend were the defendants to take effective action as prayed in this complaint.

9. The League of Women Voters of the United States is a non-partisan, non-profit District of Columbia Membership Corporation with its principal office at 1730 M Street, N.W., Washington, D.C. Its general purpose is to encourage the informed and active participation of all citizens in the processes of government. It has a membership of 150,000, mostly women, in more than 1300 state and local Leagues in all 50 states, the District of Columbia, the Commonwealth of Puerto Rico and the Virgin Islands. Since 1964, it has given concerted attention to efforts at securing equal opportunity, without regard to sex or race, in housing, jobs, transportation and recreation. In furtherance of its efforts to secure fair housing, it distributes educational literature to state and local Leagues and individual members informing them of methods for monitoring compliance with federal fair housing laws and regulations and for challenging restrictive housing and land-use practices. The League, state and local Leagues, and individual members have been active in such monitoring and enforcement activities, and have participated directly or as amicus curiae in lawsuits and other activities (including a rule making petition to these defendants) designed to end housing discrimination, and to secure housing opportunities for the poor and minority groups in the suburbs. Members of the League have

suffered discrimination on the basis of their sex in seeking mortgage loans and have been otherwise injured by the discriminatory practices of lending institutions which the defendants regulate, listed in Paragraph 25 of this complaint. They will continue to suffer these injuries unless the defendants take action to end these practices as sought in this action.

10. National Neighbors is a non-profit corporation organized under Missouri law, with headquarters at 17 Maplewood Mall, Philadelphia, Pennsylvania. Its purpose is to encourage the development and maintenance of stable multi-racial residential communities throughout the United States. Approximately 100 local organizations with similar purposes are members of National Neighbors. The national organization provides information, advice and technical assistance to these and other community groups to assist them in achieving and stabilizing integrated neighborhoods and in combating forces which inhibit the development and stabilization of such neighborhoods. Among these forces are mortgage lending practices, including practices listed in Paragraph 25 of this complaint, engaged in by lending institutions supervised and regulated by the defendants in this action. National Neighbors and its members accordingly are directly injured by the defendants' failure to take action to end such practices by institutions which they supervise and regulate, since this failure interferes with the achievement of the purposes of National Neighbors and its members to aid and assist its members and others to secure the right to equal housing opportunity and causes these organizations to spend money, staff time and other resources combating practices which would not occur were the defendants to take such enforcement action. In addition, individual members of National Neighbors' constituent organizations, who desire to live in multi-racial neighborhoods, are injured by defendants' failure to act against mortgage lending practices engaged in by lending institutions regulated by them which make financing of homes in such

neighborhoods more difficult and which tend to destabilize such neighborhoods.

11. The Housing Association of Delaware Valley is a non-profit corporation organized under the laws of Pennsylvania with headquarters at 1317 Filbert Street, Philadelphia, Pennsylvania. It is devoted to the goals of a decent home and decent living environment within the means of every family, freedom of housing choice, and equality of housing opportunity. The Association studies and reports on the extent of discrimination in both private and government housing agencies and programs, acts as a clearinghouse for housing information of importance to communities throughout the Delaware Valley, prepares publications and proposals which offer alternative solutions to housing problems, and upon request, assists community groups in solving redlining and other housing problems in their communities throughout the Delaware Valley. Its activities have included testifying before local and national governmental and administrative bodies concerned with housing and housing discrimination, and the filing of rule making petitions with the defendants in this action. The Association has over 400 members, both individuals and organizations. Individuals who are members of the Association or of its organizational members have been injured and continue to be injured by mortgage lending practices of lending institutions regulated by the defendants and listed in Paragraph 25 of this complaint, and such injuries will continue unless the defendants act to correct such practices as prayed herein. Further, these practices interfere with the Association's efforts to aid and assist others in securing the right to equal housing opportunity. The Association has been compelled to expend funds, staff time and other resources in combatting redlining and other discriminatory practices which it would not have had to expend had the defendants acted to end such practices.

12. The Leadership Council for Metropolitan Open Communities is a non-profit corporation organized under Illinois law for the purpose of securing equal housing opportunity for all. Its office

is at 407 South Dearborn Street, Chicago, Illinois. It has filed more than 120 suits under the 1968 and 1866 Civil Rights Acts and engaged in other action designed to achieve its corporate purpose, including the filing of a rule making petition with the defendants in this action. The Council has been particularly concerned with discrimination by banks in mortgage lending; and the failure and refusal of the defendants in this action to take action to end discriminatory practices by regulated lending institutions has caused, and continues to cause, the Council to expend money, staff time and other resources combatting such practices which it would not be compelled to expend were the defendants to take action as prayed in this complaint.

13. Metropolitan Washington Planning and Housing Association (MWPFA) is a District of Columbia non-profit membership corporation organized in 1935 under the name Washington Committee on Housing, Inc., with its office at 1225 K Street, N.W., Washington, D.C. It has approximately 125 members, including those of the former Housing Opportunities Council of Metropolitan Washington, which merged with MWPFA in 1975. The Association's purpose is to promote improved housing conditions for all throughout the metropolitan Washington area through planning, educational and other activities. In particular, its efforts are directed at assuring black people equal access to housing for low and moderate income families throughout the metropolitan area. On behalf of members and other minority residents seeking its assistance or referred to it, it has sought to resolve complaints of housing and home finance discrimination against Washington area real estate and lending institutions. Its members and others whom it serves have suffered and continue to suffer from the discriminatory practices of lending institutions regulated by the defendants, listed in Paragraph 25 of this complaint. These practices also interfere with MWPFA's efforts to aid and assist in securing equal housing opportunities for its members and other minority individuals. For this reason, MWPFA

joined in petitioning the defendants in this action. The failure of the defendants to take such action continues to cause injury to MWPFA's members and other whom it serves; continues to interfere with its efforts to secure equal housing opportunities in the Washington Metropolitan area; and further injures MWPFA by compelling it to expend money, staff time and other resources to resolve mortgage lending discrimination complaints which would not occur were the defendants to take the actions sought in this suit.

14. The Rural Housing Alliance (RHA), formed in 1966 as the International Self-Help Housing Association, is a non-profit, educational organization, incorporated under the laws of the District of Columbia with offices at 1346 Connecticut Avenue, N.W., Washington, D.C. It provides technical and advisory services to individuals and groups seeking to provide homes for low-income families in rural areas. RHA has approximately 500 members and is supported by individual contributions as well as grants from foundations and the government. The majority of RHA's clientele, the beneficiaries of its services, are black or from other minority groups in rural areas. RHA's purpose is to see that this clientele is adequately sheltered in decent and sanitary housing, using as a vehicle its educational and technical services. The achievement of RHA's goals is made more difficult by the discriminatory practices listed in Paragraph 25 of this complaint, and for that reason RHA petitioned the defendants in this action to use their regulatory and enforcement powers to end such practices among lending institutions which they supervise. Moreover, RHA's members and clientele are injured by these practices, directly and by interfering with their efforts to aid and assist minority families in securing their right to equal housing opportunity, and therefore by the defendants' failure and refusal to end them through regulatory and enforcement action.

15. The National Association of Real Estate Brokers (NAREB), founded in 1947, is organized under the laws of the State of Michigan, and is located at 1028 Vermont Avenue, N.W., Washington, D.C. Its

principal function is to serve the needs of the nation's minority real estate brokers, sales persons, and allied professionals. It has 2,600 members, engaged in real estate and related business, in 31 states. A goal of NAREB is to increase housing opportunities for minority homeseekers. The members of NAREB deal mainly with minority clientele and operate principally in areas and neighborhoods where minority families reside in disproportionate numbers. NAREB members assist minority families in securing equal housing opportunities, including the right to reside in neighborhoods in which few such families currently reside. The failure and refusal of the defendants to take action necessary to correct discriminatory practices of lending institutions regulated by them, listed in Paragraph 25 of this complaint, have caused injury to NAREB, to its members and to its members' clients. The continuation of such discriminatory practices, unchecked by the defendants, severely restricts business opportunities for NAREB members by imposing undue burdens on their minority clientele in securing mortgage loans and by making it more difficult to finance the purchase of homes in minority neighborhoods, where NAREB members principally operate. The failure and refusal of the defendants to end such discriminatory practices among lending institutions which they supervise also injures NAREB and its members by interfering with their efforts to assist minority families in securing their rights to equal housing opportunity, regardless of the racial character of the neighborhood.

DEFENDANTS AND INSTITUTIONS WHICH THEY REGULATE

16. Defendant Office of the Comptroller of the Currency is an agency within the United States Department of the Treasury. Defendant James E. Smith is the Comptroller of the Currency. The Office of the Comptroller of the Currency approves the issuance of federal charters to National banks, specifies the terms and conditions of such issuance, and supervises and regulates the activities of such National banks.

17. National banks receive the benefits associated with federal charters, including exclusive right among commercial banks to use the word "National" in their title. By law they are members of the Federal Reserve System and their deposits are insured by the Federal Deposit Insurance Corporation (FDIC); thus they are accorded the benefits and privileges of such membership and insurance. They represent 33 percent of the nation's commercial banks, but hold in the aggregate 58 percent of all commercial bank resources. As of 1974, they held \$43 billion in non-farm residential mortgages.^{1/}

18. Defendant Board of Governors of the Federal Reserve System (hereafter Federal Reserve Board) is an agency of the United States. Defendant Arthur Burns is Chairman of the Federal Reserve Board. Defendants Philip E. Caldwell, Stephen Gardner, Robert C. Holland, Philip Jackson, J. Charles Partee, and Henry C. Wallich, are members of the Federal Reserve Board. The Federal

^{1/} All figures based on 1-4 family residential properties.

Reserve Board admits state-chartered commercial banks as members of the Federal Reserve System, specifies the terms and conditions of such membership, and supervises and regulates the activities of such state-chartered member banks.

19. State-chartered Federal Reserve member banks (like National banks) receive the benefits of membership in the Federal Reserve System, including use of Federal Reserve clearinghouse facilities and access to loans from Federal Reserve banks. Deposits of state-chartered Federal Reserve member banks by law are also FDIC-insured, thereby according such banks the benefits of such insurance. State-chartered member banks represent 11 percent of the nation's state-chartered commercial banks, but hold 46 percent of the resources of such banks. As of 1974, state-chartered member banks held \$11 billion in non-farm residential mortgages.

20. Defendant Federal Deposit Insurance Corporation (FDIC) is an agency of the United States. Defendant Robert E. Barnett is Chairman of FDIC. Defendants George A. LeMaistre and James E. Smith are members of the Board of Directors of FDIC. FDIC admits state-chartered, non-Federal Reserve member commercial banks and mutual savings banks as members of FDIC, specifies the terms and conditions of such membership, insures deposits at such institutions, and supervises and regulates their activities.

21. Ninety-eight percent of the nation's commercial banks (all National banks, all state-chartered Federal Reserve member banks, and 8,436 of the 8,685 state-chartered, non-member banks) are members of FDIC and hold 99 percent of all commercial bank resources. Sixty-seven percent of the nation's mutual savings banks are members of FDIC and hold 87 percent of the resources of all mutual savings banks. FDIC member commercial and mutual savings banks receive the benefits of insurance of deposits by FDIC. As of 1974, FDIC member commercial and mutual savings banks held \$115 billion in non-farm residential mortgage loans, constituting 94 percent of all such outstanding loans of commercial and mutual savings banks. FDIC insurance is essential to the prosperity and growth of commercial and mutual savings banks.

22. Defendant Federal Home Loan Bank Board (hereafter FHLBB) is an agency of the United States. Defendant Garth Marston is Acting Chairman of the FHLBB. Defendant Grady Perry, Jr. is a member of the FHLBB. The FHLBB issues federal charters to Federal savings and loan associations and specifies the terms and conditions of such charters; admits state-chartered savings and loan associations as members of the Federal Home Loan Bank System (hereafter FHLBS) and specifies the terms and conditions of such membership; directs the activities of the Federal Savings and Loan Insurance Corporation (hereafter FSLIC), admits state-chartered savings and loan associations as members of FSLIC, and specifies the terms and conditions of such membership. The FHLBB supervises and regulates the activities of all Federal savings and loan associations and all state-chartered savings and loan associations which are members of the FHLBS and/or FSLIC.

23. Savings and loan associations engage almost exclusively in residential loans. Forty percent of all savings and loan associations, holding 57 percent of all savings and loan resources, operate under federal charters issued by the FHLBB, and receive the benefits associated with federal charters, including the exclusive right among savings and loan associations to use the word "Federal" in their title. By law Federal savings and loan associations are members of the FHLBS and their deposits are FSLIC-insured, thereby according them the benefits and privileges of such membership and insurance. Eighty-four percent of all savings and loan associations, holding 98 percent of all savings and loan resources, are members of the FHLBS and receive the benefits of such membership, including the right to secure advances, in the form of loans, from Federal Home Loan banks. Eight-one percent of all savings and loan associations, holding 98 percent of all savings and loan resources, are members of the FSLIC and receive the benefits of FSLIC insurance of their accounts. As of 1974, the aggregate of FSLIC-insured savings and loan associations held \$195 billion in non-farm residential mortgage loans, 97 percent of the non-farm residential mortgage loans held by all savings and loan associations. FHLBS Membership and FSLIC insurance are essential to the prosperity and growth of savings and loan associations.

24. As of 1974, the total amount of residential mortgage loans held by federally regulated commercial and mutual savings banks and savings and loan associations was \$310 billion, 75 percent of outstanding non-farm residential mortgage loans.

RACE AND SEX DISCRIMINATION IN HOME

MORTGAGE LENDING BY REGULATED INSTITUTIONS

25. Mortgage lending institutions supervised, regulated and benefitted by the defendant federal agencies maintain discriminatory policies and practices, in violation of federal laws, including the following:

- (a) They deny loans to otherwise qualified non-white families because of their race;
- (b) They impose more stringent terms and conditions on loans to otherwise qualified non-white families because of their race;
- (c) They refuse to make loans to otherwise qualified non-white families for the purchase of homes in residential areas occupied by white families;
- (d) They refuse to make mortgage loans to otherwise qualified female-headed families because of the family head's sex;
- (e) They impose more stringent terms and conditions on loans to otherwise qualified female-headed families because of the family head's sex;
- (f) They discount all or a substantial part of a wife's income, because of her sex, in determining the eligibility of families for mortgage loans. Since a higher proportion of wives in black families than in white families work, this practice also discriminates against black borrowers;
- (g) They refuse to make loans to otherwise qualified families, white and non-white, for the purchase of homes in racially integrated or predominantly non-white neighborhoods, because of the racial composition of such neighborhoods;

(h) They impose more stringent terms and conditions on loans to families, white and non-white, for the purchase of homes in racially integrated or predominantly non-white neighborhoods, because of the racial composition of such neighborhoods;

(i) They designate certain residential neighborhoods, principally in central city areas, that are racially integrated or predominantly non-white as ineligible for any mortgage loans;

(j) They refuse to lend to married women in their own names;

(k) They require information concerning a wife's birth control practices in connection with a mortgage loan application;

(l) They require fluency in the English language as a prerequisite for obtaining a loan;

(m) They use isolated past credit difficulties as a bar to receiving a mortgage loan. Since non-whites, in part because of discriminatory credit practices, experience a higher incidence of credit difficulties, this practice discriminates against them without regard to current credit-worthiness.

(n) They use the existence of a prior criminal record or a prior arrest record, regardless of the nature of the charge and even without conviction, as a bar to a mortgage loan. Since non-whites, in part because of discrimination in law enforcement, experience a higher incidence of arrest with and without conviction, this practice discriminates against them.

(o) They deny loans to persons who have not previously owned their own home. Since home ownership is less common among non-whites, in part because of discriminatory real estate and lending practices, this practice discriminates against them.

(p) They refuse to count stable income from overtime, production bonuses or part-time work, thus discriminating against minority and female borrowers who more frequently rely on such income;

(q) They impose overly restrictive payment-to-income ratios on loans to black and female borrowers;

(r) They refuse to make loans in certain areas, or make them on less favorable terms, based solely on the age of the homes or the income level of the neighborhood. Since non-whites, in part because of discriminatory real estate and lending practices, more commonly live in lower income neighborhoods and neighborhoods of older homes, this practice discriminates against them.

(s) They finance and otherwise do business with builders, developers, brokers or other firms that practice racial and sex discrimination;

(t) They avoid doing business with minority brokers or brokers whose clientele is predominantly non-white;

(u) They fail to advertise their services in media reaching predominantly minority borrowers while continuing to advertise in media reaching predominantly white borrowers;

(v) They refuse to make federally subsidized or federally guaranteed loans or to make loans to borrowers receiving federal subsidies, thus discriminating against minority persons who more frequently seek such loans and subsidies.

26. These discriminatory lending policies and practices place arbitrary and artificial restraints upon the free flow of mortgage credit. They deny to otherwise qualified non-white families the opportunity to purchase homes, and to purchase homes outside areas of non-white concentration; deny otherwise qualified female-headed families the opportunity to purchase homes; and deny to otherwise qualified families, white and non-white, the opportunity to purchase homes in racially integrated or predominantly non-white residential areas. The policies and practices also contribute to the deterioration and abandonment of racially integrated and predominantly non-white residential areas.

27. In part because of the greater difficulty experienced by minority families in securing mortgage loans from institutions supervised, regulated and benefitted by the defendants; disproportionately few black families own

their homes compared with other families. In 1970, only 42% of black households and 44% of Hispanic households owned their own homes compared to 65% of other households. This racial disparity existed between black and other homeowners of equal income levels. For example, in 1970, 70% of black but 82% of other families earning \$15,000 or more owned their own homes; 57% of black but 74% of other families earning \$10,000 to \$15,000 owned their own homes; and 47% of black but 63% of other families earning \$7,000 to \$10,000 owned their own homes. These disparities prevailed in urban, suburban and rural areas.

28. In part because of greater difficulty in securing home financing, the housing conditions of black homeowner families are worse than those of other homeowner families. For example, in 1970, 15% of black but only 4% of other owner-occupied homes lacked some or all normal plumbing facilities; 4% of black but only 1% of other owner-occupied homes had all plumbing facilities but were in dilapidated condition; 5% of black but only 1% of other owner-occupied homes had more than 1.5 persons per room; and 43% of black but only 35% of other owner-occupied homes were built before 1940.

29. In part as a result of the practices listed in paragraph 25, minority homeowners who are able to secure mortgages are subject to more restrictive terms than white homeowners. In 1970 20% of black homeowners but only 10% of white homeowners paid interest rates of 8% or more on their first mortgages. Similarly, 39% of black homeowners but only 16% of white homeowners had first mortgages of 12 years or less duration. Nine percent of black but only 3% of white homeowners paid 25 to 50% of their incomes in interest and principal on their first mortgages.

30. In part because of the practices listed in paragraph 25, disproportionately few black homeowners who secure mortgages are able to secure them from institutions supervised, regulated and benefitted by the defendants. In 1970, only 57% of black homeowners were able to secure first mortgages from commercial banks, mutual savings banks or savings and loan associations, while 74% of white homeowners secured their first mortgage loans from these institutions.

31. In part because of the practices listed in paragraph 25, residential segregation is widespread, especially in metropolitan areas which have experienced housing growth in recent decades. In 1970, there were 47 cities with populations above 100,000 which had black populations above 50,000. Although the aggregate populations of these cities was only 28% black, 85% of the black residents lived in majority-black census tracts and 53% lived in 90-100% black census tracts. By way of illustration:

City	Percent of population which is black	Percent of black population living in majority-black census tracts	Percent of black population living in 90-100% black census tracts
Atlanta	51	91	76
Baltimore	46	92	71
Cleveland	38	94	67
Chicago	33	94	78
Houston	26	83	39
Pittsburgh	20	81	38
Los Angeles	18	87	30
Milwaukee	15	86	42
Oklahoma City	14	91	60

Racial segregation in housing has contributed substantially to racial segregation in public schools. In 45 of the 47 cities referred to above, ^{2/} having total black student enrollment of 2,906,941 in 1973, 67% of black students attended schools with 90-100% minority enrollment.

32. Since at least 1971, the defendant agencies have had in their possession concrete evidence of discrimination by regulated lending institutions. In June of that year, at the instance of the Department of Housing and Urban Development, the defendant agencies distributed a questionnaire to more than 18,000 lending institutions inquiring into their lending practices as they might be discriminatory with respect to minority loan applicants. The responses from more than 15,000 institutions revealed widespread discrimination

^{2/} Jackson, Mississippi, and Savannah, Georgia, are two of the 47 cities, but school enrollment figures are not available for them.

in mortgage lending. For example, 899 institutions admitted considering the racial or ethnic character of neighborhoods in determining whether to make loans secured by property therein; 99 admitted considering the applicant's race in determining whether to approve a loan. Four hundred fifteen institutions admitted that they refuse to make loans on property in areas of minority concentration; in some large cities with large minority populations, over half of the savings and loan associations admitted refusal to make such loans.

33. In March, 1972, the FHLBB released the results of a survey conducted among selected member institutions concerning their lending practices and criteria. Among those responding, four percent admitted requiring lower loan-to-value ratios and shorter loan terms on loans to minority-group applicants, and 1.35 percent admitted requiring higher interest rates on loans to such applicants. In addition, in the case of loans on property located in low-income or minority group neighborhoods, 28 percent admitted requiring lower loan-to-value ratios (averaging 12.5 percent lower); 11 percent admitted requiring higher interest rates (averaging 1/2 percent higher); 32 percent admitted requiring shorter loan terms (averaging 7.5 years shorter); and 30 percent admitted disqualifying some such neighborhoods altogether on the basis of their income or racial characteristics. Furthermore, substantial proportions of the respondent institutions stated that they evaluated and even disqualified applicants on the basis of discriminatory criteria, such as whether the applicant had ever been arrested (23 percent used to evaluate, 12 percent to disqualify), marital status (64 percent used to evaluate, 13 percent to disqualify), type of employment (81 percent used to evaluate, 39 percent to disqualify), prior home ownership (57 percent used to evaluate, 23 percent to disqualify), length of present employment (89 percent used to evaluate, 49 percent to disqualify), and length of residence in community (42 percent used to evaluate, 5 percent to disqualify). Finally, 78 percent of the respondent institutions stated that, in considering the income of a 25-year-old wife with two school-age children

working full time as a secretary, her income would be discounted by 50 to 100 percent for underwriting purposes.

34. Between June 1, 1974 and November 30, 1974, the defendant agencies conducted fair housing information surveys covering lending institutions in 18 Standard Metropolitan Statistical Areas (SMSA's). The surveys were conducted to determine, inter alia, whether supervised lending institutions were in compliance with statutory prohibitions against discrimination in mortgage lending. These surveys collected information concerning approximately 105,000 mortgage applications. The results demonstrate sharp disparities in the rejection rates of white and minority applications, further evidencing widespread and continued discriminatory policies and practices by lending institutions. Specifically:

- A. The Survey A approach, devised and analysed by the FHLEBB, was used in Atlanta, Georgia; Buffalo, New York; Chicago, Illinois; San Antonio, Texas; San Diego, California; and Washington, D.C. This survey collected information on the race, sex, marital status, and age of the applicants and the census tract in which the security property was located. Among the 53,705 applications analysed, ^{3/} white applicants suffered an 8% rejection rate while black applicants suffered an 18% rejection rate. This disparity existed in each of the six SMSAs included in Survey A:

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- ^{3/} 66,320 applications were collected, of which 18% were not analysed because they did not include race or other personal data. The furnishing of this data by the applicant was optional. A sampling of those electing not to furnish this data indicates that they suffered a somewhat higher rejection rate than those who furnished it.

<u>SMSA</u>	<u>White Rejection Rate (%)</u>	<u>Black Rejection Rate (%)</u>
Atlanta	7.1	12.4
Buffalo	15.1	28.8
Chicago	7.0	18.4
San Antonio	8.8	23.3
San Diego	5.4	18.2
Washington, D.C.	8.8	15.1

In the two Southwestern cities, similar disparities appeared in the rejection rates of white and Spanish applicants:

<u>SMSA</u>	<u>White Rejection Rate (%)</u>	<u>Spanish Rejection Rate (%)</u>
San Antonio	8.8	18.0
San Diego	5.4	8.7

- B. The Survey B approach, devised by the Federal Reserve Board and FDIC and analyzed by the Federal Reserve Board, was used in Baltimore, Maryland; Jersey City, New Jersey; Tampa-St. Petersburg, Florida; Galveston-Texas City, Texas; Jackson, Mississippi; and Valejo-Fairfield-Napa, California. Lending institutions collected data on the race of loan applicants and the postal ZIP code of the security property, aggregated this information by ZIP code, and submitted aggregate figures to the Federal Reserve Board. Among more than 20,000 applications received in the six SMSA's covered by this survey, whites suffered a rejection rate of approximately 12% while minority applicants suffered a rejection rate of approximately 22%. The approximate rejection rates for each SMSA are:

<u>SMSA</u>	<u>White Rejection Rate (%)</u>	<u>Minority Rejection Rate (%)</u>
Baltimore	12	24
Jersey City	12	22
Tampa-St. Petersburg	11	18
Galveston-Texas City	7	18
Jackson	14	17
Valejo-Fairfield-Napa	24	10

C. The Survey C approach, devised and analyzed by the Comptroller of the Currency, was used in Bridgeport, Connecticut; Cleveland, Ohio; Memphis, Tennessee; Montgomery, Alabama; Topeka, Kansas; and Tucson, Arizona. This survey collected data concerning the race, sex and marital status of each applicant; information relevant to his or her creditworthiness; the census tract of the security property; the amount of loan requested and the purchase price of the property. Of the 12,707 applications analyzed, ^{4/} 14.8% of white applicants were rejected while 24.8% of non-white applicants were rejected. The comparative rejection rates in each SMSA were as follows:

<u>SMSA</u>	<u>White Rejection Rate (%)</u>	<u>Non-white rejection rate (%)</u>
Bridgeport	11.1	15.8
Cleveland	16.2	26.5
Memphis	13.1	23.0
Montgomery	15.6	48.5
Topeka	11.5	33.5
Tucson	9.3	22.0

Because this survey included creditworthiness data, an analysis is possible holding constant certain factors relating to creditworthiness. This analysis strongly suggests that the difference in white and minority rejection rates cannot be explained by differences in creditworthiness. In every case, minority rejection rates are far higher than white rejection rates among persons having the same gross annual income, the same gross assets, the same outstanding indebtedness, the same monthly debt payment burden, and the same number of years in present occupation. For example:

- (1) Among persons with gross annual incomes of \$15,001 to \$25,000, the white rejection rate is 13.9% and the non-white 20.9%. Among persons with gross annual income over \$25,000, the white rejection rate is 12.1% and the non-white 22.6%.

^{4/} Of 18,372 forms collected from 152 institutions, 5665 were not analyzed because they were incomplete or appeared to contain substantial errors.

- (2) Among persons with assets between \$60,001 and 100,000, the white rejection rate is 14.0% and the non-white 18.8%. Among persons with assets over \$100,000 the white rejection rate is 13.8% and the non-white 18.8%.
- (3) Among persons with outstanding indebtedness under \$5,000, the white rejection rate is 14% and the non-white is 22.2%.
- (4) Among persons with monthly debt payments under \$100, the white rejection rate is 12.9% and the non-white 20.0%.
- (5) Among persons with more than five years in current occupation, the white rejection rate is 14.1% and the non-white is 23.2%.

DEFENDANTS' NON-DISCRIMINATION ENFORCEMENT DUTIES

Non-Discrimination Obligations of Federally Regulated
Mortgage Lending Institutions

35. All national banks, state-chartered Federal Reserve member banks, and state-chartered non-member FDIC-insured banks are subject to applicable federal laws and to rules, regulations and procedures adopted respectively by the Comptroller of the Currency, the Federal Reserve Board, and FDIC. All federal savings and loan associations and those state-chartered savings and loan associations which are members of FHLSB or FSLIC are subject to applicable federal laws and to rules, regulations and procedures adopted by the FHLSB.

36. Mortgage lending discrimination by federally regulated lending institutions, because of race, color, religion, national origin, or sex, violates the provisions of the United States Constitution and various applicable federal statutes.

(a) The Fifth Amendment to the United States Constitution prohibits such discrimination by mortgage lending institutions that are regulated, supervised, and benefitted by federal agencies.

(b) Sections 1981 and 1982 of 42 U.S.C., which implement the Thirteenth Amendment to the United States Constitution, prohibit racial discrimination in mortgage lending.

(c) Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, prohibits discrimination on the basis of race, color, or national origin in programs or activities receiving federal financial assistance, including federal financial assistance by way of charters, loans, and advances provided to federally regulated lending institutions by the defendant agencies. Accordingly, federally regulated lending institutions are prohibited under Title VI from practicing such discrimination in their mortgage lending programs and activities.

(d) Section 527 of the National Housing Act (12 U.S.C. 1735f-5), as added by Section 808 of the Housing and Community Development Act of 1974, prohibits sex discrimination in mortgage lending by lending institutions supervised by, or whose deposits or accounts are insured by, any of the defendant agencies.

(e) Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601 *et seq.*, prohibits *inter alia*, discrimination because of race, color, religion, national origin, or sex in mortgage lending.

37. Mortgage lending discrimination based on race, color, religion, national origin, or sex, subjects lending institutions to civil liabilities, including compensatory and punitive damages, and attorneys fees, under Sections 1981, 1982, and 3601 *et seq.* of Title 42 U.S.C. Accordingly, such discrimination subjects these lending institutions to probable substantial financial loss, as well as other damage resulting from the loss of public confidence associated with adverse publicity for engaging in such discrimination.

38. Mortgage lending discrimination based on race, color, religion, national origin, or sex, unduly limits the business opportunities of lending institutions and credit opportunities of borrowers.

39. Because mortgage lending discrimination based on race, color, religion, national origin, or sex violates federal law, subjects lending institutions to financial loss, and unduly restricts business opportunities, such discrimination constitutes unsafe and unsound practices within the meaning of 12 U.S.C. 1730 and 1818.

40. Mortgage lending discrimination based on race, color, religion, national origin, or sex, by federally insured commercial banks and mutual savings banks is in conflict with the FDIC requirement that insured banks serve "the convenience and needs of the community" (12 U.S.C. 1816, 1828(c) (5)).

41. Mortgage lending discrimination based on race, color, religion, national origin, or sex, by federally chartered, FHLBS-member, and FSLIC-insured savings and loan associations is in conflict with the major purpose of federal chartering of savings and loan associations and for which the FHLBS and FSLIC insurance were established, namely: to enable Americans to become homeowners by facilitating mortgage credit. Such discrimination also violates basic conditions of eligibility for membership in the FHLBS and insurance of deposits by FSLIC, namely: that the character of the institutions' management or its home financing policy not be "inconsistent with sound and economical home finance practices" (12 U.S.C. 1424(a), 1464(a), 1726(c)).

Non-Discrimination Enforcement Obligations of Defendant Agencies

42. The Fifth Amendment to the United States Constitution prohibits discrimination by the United States Government, including all departments and agencies thereof, and requires such departments and agencies to assure against discrimination by institutions with which they are significantly involved. Under the Fifth Amendment, the defendant agencies are obligated to take such action as is necessary and appropriate to prevent discrimination in mortgage lending by the lending institutions they regulate, supervise, and benefit.

43. Section 602 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d-1, directs federal departments and agencies empowered to extend federal financial assistance to any program or activity by way of grant, loan, or contract other than a contract of insurance or guarantee, to issue appropriate rules, regulations, or orders, and to take other appropriate steps to assure against discrimination on the basis of race, color, or national origin in such

programs or activities. The Comptroller of the Currency and the FHLBB issue charters to National banks and Federal savings and loan associations, respectively, subject to specific terms and conditions. Such issuance confers upon federally chartered banks and savings and loan associations the exclusive right to use the words "National" and "Federal" respectively in their names, endowing them with the prestige and imprimatur of United States Government approval associated with these terms. The Federal Reserve Board extends financial assistance to National banks and to state-chartered banks which are members of the Federal Reserve System by making loans to them through Federal Reserve Banks when they are in need of additional funds (12 U.S.C. 347), by supplying them with currency when needed, and allowing use of its facilities for collecting checks, clearing balances and transferring funds to other cities (12 U.S.C. 248). The FDIC, in addition to insuring deposits of all banks (National and state-chartered) which are members of FDIC, makes loans or deposits and purchases assets when its members are in danger of closing (12 U.S.C. 1823(c)). The FHLBB extends financial assistance to savings and loan institutions which are members of the FHLBS by making loans to them through Federal Home Loan Banks (12 U.S.C. 1429, 1430). Through the FSLIC, in addition to insuring accounts at institutions which are members of FSLIC, the FHLBB makes loans to or purchases the assets of institutions which are in danger of default or liquidation (12 U.S.C. 1729).

44. Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601 et seq., requires all federal departments and agencies that administer programs and activities relating to housing and urban development to administer such programs and activities in a manner affirmatively to further the purposes of the Act. Under Title VIII, the defendant agencies, all of which administer programs and activities relating to housing and urban development, are obligated to issue rules and regulations, adopt procedures, and otherwise administer their programs and activities, so as to assure against mortgage lending discrimination on the basis of race, color, religion, national origin, and sex, by the lending institutions they regulate, supervise and benefit.

45. Sections 1441 and 1441a of 42 U.S.C. direct all federal departments and agencies having powers, functions, or duties with respect to housing, to exercise them consistently with the national housing policy and in a manner that will facilitate sustained progress in attaining the national housing objective of "a decent home and suitable living environment for every American family." Those sections further direct that all such departments and agencies act to encourage "the development of well planned, integrated, residential neighborhoods." Pursuant to these statutory mandates, the defendant agencies are obligated to take such actions as are necessary and appropriate to ensure against mortgage lending discrimination by the lending institutions they regulate, supervise and benefit.

46. The Financial Institutions Supervisory Act, 12 U.S.C. 1464, 1730, 1818, requires that whenever a federally regulated or insured savings and loan association or commercial or mutual savings bank is violating or has violated an applicable law, rule, regulation, or order, or is engaging or has engaged in an unsafe or unsound practice, the appropriate defendant agency must take steps to secure corrective action. In the event such corrective action is not secured, these agencies are authorized to impose sanctions, including removal of the federal charter, termination of membership in the FHLBS or Federal Reserve System, issuance of cease and desist orders, and termination of federal insurance of accounts or deposits. The Financial Institutions Supervisory Act, 42 U.S.C. 1730, 1818, also authorizes the appropriate federal agency to suspend or remove a director or officer of a member lending institution for violating any applicable law, rule, or regulation, or final cease and desist order, or for engaging in any unsafe or unsound practice, when the agency determines that the lending institution has suffered or will probably suffer substantial financial loss or other damage.

DEFENDANTS' VIOLATION OF THEIR DUTY TO
ENSURE AGAINST DISCRIMINATION IN MORTGAGE LENDING

47. The principal way in which defendants normally assure compliance with law and the soundness and safety of operations by supervised institutions

is by issuing rules and regulations, establishing procedures, conducting periodic examinations of individual institutions, and requiring the collection and maintenance of sufficient records and data to enable examiners to detect violations so that necessary corrective action may be taken. The provisions of the Constitution and laws referred to in paragraphs 42 through 46 impose upon defendants the affirmative duty to exercise these powers in such a manner as to detect and prevent discriminatory mortgage lending practices by institutions subject to their supervision.

48. On March 8, 1971, plaintiffs (other than National Neighbors) filed a petition pursuant to 5 U.S.C. 553(e) with each of the defendant agencies requesting each of them to adopt rules, regulations and procedures which would assure against discriminatory lending practices by institutions which they supervise and regulate. Included in the procedures requested was a requirement that each lending institution collect and retain for examination by the supervising agency, data on the race or ethnic group identification of all mortgage loan applicants, together with information concerning the disposition of each application. Such racial or ethnic data is routinely required by most federal agencies having non-discrimination enforcement responsibilities, and is essential to the identification of patterns of potential discrimination and the initiation of effective remedial action.

49. Previously, in June of 1969, pursuant to the powers and responsibilities vested in him by 42 U.S.C. 3608, the Secretary of the Department of Housing and Urban Development (HUD) had recommended to the four defendant agencies the adoption of rules, regulations and procedures similar to those proposed by plaintiffs in their petitions, including specifically the requirement that supervised lending institutions collect and retain for examination racial and ethnic data on loan applicants. Section 3608 of 42 U.S.C. requires all federal agencies to administer their programs and activities relating to housing in a manner affirmatively to further fair housing, and to cooperate with the Secretary of HUD to further such purpose.

50. In the five years since plaintiffs filed their petitions, the defendant agencies, in violation of 5 U.S.C. 555(b) and (e) and their duties as alleged in paragraph 42 through 46, have not acted upon them. Only one of these agencies, the FHLEBB, has adopted regulations dealing in any significant way with the issues raised by the petitions, but as alleged in paragraph 51, even in that one case the adoption of regulations has not been followed by effective implementation and enforcement. Specifically:

- (a) The Comptroller of the Currency on December 17, 1971 announced his intention to consider regulations prohibiting discrimination in mortgage lending by national banks (36 F. R. 25167). No such regulations have ever been proposed or adopted, nor have hearings been held.
- (b) The Federal Reserve Board has not even formally considered the adoption of regulations.
- (c) The FDIC on December 17, 1971 announced its intention to consider regulations (36 F.R. 25167), on September 20, 1972 published proposed regulations for comment (37 F.R. 19385), and on December 19, 1972 held hearings on the proposed regulations. Despite favorable comments from the Office of Management and Budget, the Department of Justice, the Department of Housing and Urban Development, and the United States Commission on Civil Rights on the proposed regulations, including specifically the proposal to require the collection and retention of racial and ethnic data on mortgage applicants, no further action has been taken by the FDIC and no regulations have ever been issued.
- (d) The FHLEBB on December 17, 1971 announced its intention to consider regulations (36 F.R. 25151), on January 13, 1972 published proposed regulations for comment (37 F.R. 811), on April 27, 1972 published general regulations concerning non-discrimination by insured savings and loan associations (37 F.R. 8436), on July 5, 1973 published regulations implementing Title VI of the Civil

Rights Act of 1964 (38 F.R. 17929), and on December 17, 1974 published "Guidelines" discussing certain discriminatory practices (39 F.R. 43618). These regulations and "Guidelines" omitted the provisions contained in the original proposed regulations requiring the collection and retention of racial and ethnic data on loan applicants, despite the endorsement of this requirement by the Office of Management and Budget, the Department of Justice, the Department of Housing and Urban Development, and the United States Commission on Civil Rights.

51. In addition, all of the defendants have failed and refused to adopt effective procedures for detecting discriminatory patterns or practices at particular institutions which they supervise and regulate, and have failed and refused to undertake enforcement action against institutions where such discriminatory practices appear to exist. Specifically:

- (a) They do not require institutions to collect and retain racial or ethnic data on loan applicants which could serve to identify institutions at which discriminatory practices may exist, warranting further detailed investigation.
- (b) They have failed to investigate, or even schedule for investigation, institutions as to which they already possess data indicating the existence of discriminatory practices, derived from the 1971 HUD-sponsored lending practices survey (see paragraph 32, supra) and the 1974 Fair Housing Information Survey (see paragraphs 33 and 34, supra).
- (c) They do not include detailed investigation of potential discriminatory lending practices as part of their routine examinations, such as a review of appraisal forms, underwriting standards, and geographic lending patterns, and with the exception of the FHLBB they lack any procedures for conducting such investigations.

(d) They do not adequately train or instruct examination staff with respect to the investigation of discriminatory lending practices, an area of responsibility with which such staff is generally unfamiliar.

(e) They do not conduct appropriate investigations of complaints which they receive concerning discrimination in mortgage lending by institutions which they supervise.

52. The refusal and failure of defendants to act upon plaintiffs' petitions or HUD's recommendations or otherwise to adopt effective rules, regulations and procedures to ensure against discrimination by lending institutions which they supervise and regulate has persisted despite repeated efforts by petitioners, by other federal agencies and by other persons and organizations to secure such action.

53. Defendants' failure and refusal to adopt appropriate rules, regulations, and procedures to ensure against discrimination in mortgage finance by institutions which they supervise violate duties imposed on them by the Fifth Amendment to the United States Constitution; Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d et seq.; Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601 et seq.; the Financial Institutions Supervisory Act, 42 U.S.C. 1464, 1730, 1818; and Section 2 of the Housing Act of 1949, 42 U.S.C. 1441, 1441a. Such failure and refusal also denies to plaintiffs and their members rights secured under the Fifth Amendment to the United States Constitution; Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d et seq.; the Civil Rights Acts of 1870 and 1866, 42 U.S.C. 1981 and 1982; Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601 et seq.; and Section 527 of the National Housing Act, 12 U.S.C. 1735f-5.

W H E R E F O R E, plaintiffs pray that this Court advance the case on the docket and order a speedy hearing thereof and, after such hearing, enter an order:

A. Declaring that defendants' failure and refusal to carry out their responsibilities to ensure against discrimination in mortgage finance by supervised lending institutions violates plaintiffs' and their members' rights secured by the Constitution and laws of the United States.

B. Enjoining the defendants from continuing their failure and refusal to enforce the laws against discrimination in mortgage lending with respect to institutions which they supervise, regulate and benefit.

C. Ordering the Comptroller of the Currency, the Federal Reserve Board, and the FDIC forthwith to adopt rules and regulations to ensure against such discrimination, including regulations defining and prohibiting, in specific terms, lending practices which are discriminatory on the basis of race or sex.

D. Ordering all of the defendants to adopt procedures for the detection and investigation of potential discriminatory practices and for the prompt elimination of such practices where they are found to exist, including the following:

1. Procedures requiring the collection and retention of racial and ethnic data concerning mortgage applicants and concerning the areas in which loans are requested, and data concerning the sex of mortgage applicants.
2. Procedures for reviewing the foregoing data concerning loan applicants and lending areas, and for reviewing appraisal, underwriting and other practices which may be discriminatory in purpose or effect, as a regular part of routine examinations.
3. Special investigation procedures and examination schedules for institutions as to which information secured during routine examinations or complaints received indicate possible violation of laws concerning lending discrimination.
4. Training of examiners in routine and special examination and investigation procedures concerning non-discrimination in mortgage lending.

5. Schedules and deadlines for the commencement and conclusion of enforcement proceedings where violations of laws or regulations are discovered.
6. Requirements that lending institutions which have engaged in discriminatory practices or have historically financed and done business primarily with brokers and developers serving almost exclusively white clientele take affirmative action to overcome the effects of such practices and to make certain that minority and female applicants are no longer discouraged from applying for mortgage loans.

Plaintiffs pray for such additional relief as the interests of justice may require, together with the costs, including reasonable attorneys' fees, incurred in maintaining this action.

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 Roger Kuhn

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Counsel for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

NATIONAL URBAN LEAGUE, et al.,)

Plaintiffs,)

v.)

OFFICE OF THE COMPTROLLER OF
THE CURRENCY, et al.,)

Defendants.)

Civil Action No. 76-0718

STIPULATION OF DISMISSAL

FILED

MAR 23 1977

JAMES F. DAVEY, Clerk

IT IS HEREBY STIPULATED that, in consideration of the attached Settlement Agreement, dated March 22, 1977, between Plaintiffs and Defendants Federal Home Loan Bank Board, Garth Marston, and Grady Perry, Jr., the above-entitled action against the defendants named herein may be and is hereby dismissed without prejudice.

Respectfully submitted,

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Attorneys for defendants
Federal Home Loan Bank Board
Garth Marston and Grady Perry, Jr.

Attorneys for Plaintiffs

ORDER

IT IS SO ORDERED:

This 23 day of March, 1977.

Richard A. Farrell
UNITED STATES DISTRICT JUDGE

SETTLEMENT AGREEMENT

This Agreement between Plaintiffs National Urban League, National Committee Against Discrimination in Housing, National Association for the Advancement of Coloured People, National Neighbors, Metropolitan Washington Planning and Housing Association, and National Association of Real Estate Brokers (hereafter "Plaintiffs") and defendants Federal Home Loan Bank Board, Garth Marston and Grady Perry, Jr. (hereafter "Board") is made to resolve, as to the parties hereto, without adjudication of any issue of law or facts, litigation presently pending between Plaintiffs and the Board in the United States District Court for the District of Columbia entitled National Urban League, et al. v. Office of the Comptroller of the Currency, et al., (Civil Action No. 76-718) (hereinafter "the lawsuit"). In executing this Agreement, none of the parties hereto makes any admission whatsoever as to any issue of law or facts raised in the lawsuit or which might be raised in the lawsuit. The Board has entered this Agreement not only to settle the lawsuit, but also to further its existing commitment to effective enforcement of its nondiscrimination policies.

Section 1.

The Board agrees that it will use its best efforts to insure compliance by the financial institutions regulated by the Board with the prohibitions against mortgage lending discrimination, including the prohibitions provided in Title VIII of the Civil Rights Act of 1968 and Board Regulations issued pursuant thereto. The Board will use its best efforts to assure that applicants for real estate mortgage loans and for home improvement loans at institutions regulated by the Board shall be requested by the lender to indicate their race (as defined in 12 C.F.R. § 202.13(a)(i)) and sex. Plaintiffs have requested the Board to order that, in situations where applicants decline voluntarily to furnish data concerning their race and sex, the lenders be required to furnish such data, based upon visual observation and/or surnames of the appli-

cants. The Board at this time has declined to impose such a requirement. The Board recognizes, however, that effective monitoring and enforcement procedures may dictate that such a requirement be imposed on the lenders regulated by it at a later date. To this end, the Board agrees that it will select, within 60 days from the effective date of this Agreement, through voluntary cooperation, an adequate number of insured savings and loan associations to constitute a control sample group; that the institutions so designated as a control sample group shall be required to designate the race and sex of loan applicants (in a manner to be specified by the Board at a later time) whenever the applicants decline to provide such data; that the notice to the applicants advising them that the racial/sex data is being sought for monitoring purposes shall also indicate that if the applicant does not provide the information, the lender will do so.

If the Board, after good faith efforts, cannot obtain such a control sample group voluntarily, it promptly will take action to establish such a group through any means authorized by law, including a temporary regulation.

At the end of the year following establishment of the control group (or sooner, if significant and sufficient data is available before that time) the Board will make a study to compare the usefulness, for compliance and enforcement purposes, of the applicants' racial/sex notation data received at the control group of institutions with the racial/sex notation data received at other insured savings and loan associations. Should the facts indicate that the information obtained from the control group of associations has materially enhanced the Board's ability to enforce compliance with its nondiscrimination regulations at the control group or that the lack of similar information at other insured savings and loan associations has materially impeded the Board's efforts to monitor non-compliance with its nondiscrimination regulations at said other insured institutions, the Board

will take adequate steps to eliminate the problem by proposing a final regulation which would require all insured savings and loan associations to provide racial/sex notation data for loan applicants when the applicants themselves decline to do so, or will take other action, to the extent authorized by law, to produce substantially equivalent results.

The Board further agrees that it will make available to the Plaintiffs the information on non-response rates which is used by the Board to evaluate the results of the Board's efforts in this area, including the information called for in Section 10 of this Agreement, and to give Plaintiffs the opportunity to offer suggestions to the Board regarding actions the Board might take to make its enforcement efforts in this area more effective. The Board agrees that it will consider such suggestions which may be provided by Plaintiffs, and will provide Plaintiffs with an explanation when their suggestions in this area are not accepted by the Board. Information furnished to the Plaintiffs by the Board pursuant to this Section 1 of the Agreement will not include examiners' work papers, examination reports or excerpts therefrom, confidential examiner programs, specific enforcement recommendations, material identifying particular savings and loan associations, or legal advice prepared by the Board's Office of General Counsel.

The signatory parties to this Agreement agree that the review conducted by the Board pursuant to this Section 1 of this Agreement will deal only with review of the effectiveness of the system for the collection of racial/sex notation data and will not encompass review of enforcement actions resulting from the collection of this data.

Section 2.

The Board agrees to develop and implement a system for the collation and analysis of the racial/sex notation data collected in accordance with Section 1 of this Agreement, which system will produce effective and meaningful use of the aforesaid data as

an aid to the Board's compliance program, without undue expense or undue diversion of personnel. The Board further agrees that it will review the system devised hereunder within one year following implementation of such system in accordance with Section 10 of this Agreement. The Board will provide to the Plaintiffs the data and analyses produced under this system, including those used by the Board to evaluate said system in order to enable the Plaintiffs to review such system and to provide suggestions to the Board for the improvement of such system; provided that the Board will not be obligated to turn over to the Plaintiffs copies of examination reports or excerpts therefrom, examiners' work papers and confidential examination programs, specific enforcement recommendations, material identifying specific savings and loan associations, and legal advice prepared by the Board's Office of General Counsel.

The Board further agrees that any system devised by it under this Section 2 of the Agreement will be structured so as to enable the Board, at a minimum, to discover areas and institutions where deviant adverse action or rejection rates are occurring, to identify patterns of rejections or adverse actions that warrant further study, to flag individual institutions for indepth studies, and to measure changes in rejection or adverse action rates over time. The Board further agrees that the tabulation system established by it pursuant to this Section 2 of the Agreement will provide data to indicate where a lender has taken adverse action on an application other than rejection of the application. (In this context, the phrase "adverse action" shall have the definition set forth in 12 C.F.R. § 202.2(c)(1)(i)).

Section 3.

The Board is presently studying the usefulness of data available to it under the Home Mortgage Disclosure Act and will attempt to develop a system for meaningful use of this data in connection with the Board's nondiscrimination in home mortgage lending regulations (12 C.F.R. § 528). Plaintiffs acknowledge

that they have been advised by Board representatives that devising such a system may be unfeasible. It is understood that the Board has no obligation to implement such a system if the Board reasonably and in good faith determines that it is unfeasible to implement such a system. Before the Board makes a final determination on feasibility, it will consult with Plaintiffs pursuant to Section 10 of the Agreement.

Section 4.

The Board agrees that it will continue its program of providing training to examiners which will enable the examiners to enforce the Board's nondiscrimination regulations, and that it will provide Plaintiffs with copies of new and additional course materials and examination manual sections and other non-confidential instructions used in such training sessions, as it has done in the past. This will include appropriate training in the use of race/sex data, as it becomes available. The Board will consult with the Plaintiffs periodically on the subject of examiner training, as set forth in Section 10 of this Agreement.

Section 5.

The Board agrees that it will provide extensive training in civil rights matters to one person in each of its 12 districts who will spend approximately 50 percent of his/her time on civil rights enforcement matters; each such person will serve on a level which will enable him/her to have direct access to the District Director. Such person will have a general responsibility to review the nondiscrimination aspects of examination reports in order to make them more effective, including review of individual examination reports and discussions with examiners; to make recommendations for improvements in examination methods; and to consult with Supervisory Agents through the District Directors on enforcement recommendations. It is understood that the workload of such specialists is expected to vary from district to district, and that such specialists may

devote more or less than 50% of their time to nondiscrimination matters, depending upon their actual workloads; it is further understood that the time spent on such matters by such specialists will be adequate to carry out their responsibilities, as described herein.

In addition to the foregoing, the Board agrees that it will do one of the following: (a) the Board will hire a full time civil rights specialist who will have the title of Special Assistant to the Director of the Board's Office of Examinations and Supervision (OES) and who will report directly to the said Director of OES, or (b) if hiring said person would be burdensome, in light of personnel or budgetary restraints, the Board, as an alternative, will hire, on a contract basis for a one-year period, a civil rights specialist (who will have an extensive civil rights background). Said specialist will assist in the training and guidance of the civil rights specialists in the field and the Washington and field staffs generally, and will recommend improvements in examination and enforcement methods and training.

Within one year following implementation of this program, the Board will review its effectiveness with Plaintiffs, pursuant to Section 10 of this Agreement.

Section 6.

The Board is now in the process of developing nondiscrimination complaint processing procedures, which will be implemented within 90 days following the effective date of this Agreement. The Board agrees that these procedures will include time limits for actions thereunder, with exceptions for special circumstances. The Board further agrees that, not later than thirty days following the date of the execution of this Agreement, it will provide Plaintiffs with an outline of said proposed procedures, will allow Plaintiffs the opportunity to comment thereon, and will consider any comments Plaintiffs may submit.

Section 7.

The Board agrees that, as a general rule, it will apply the same procedures concerning special examinations, supervisory letters, cease and desist orders, etc. in cases of suspected or observed nondiscrimination violations as in cases of other kinds of violations.

Section 8.

The Board agrees that it will advise all insured institutions of its commitment to vigorous enforcement of its nondiscrimination regulations; it will also advise said institutions that the Board will use the enforcement procedures usually employed in cases of other kinds of violations in the event of noncompliance with said regulations. The Board agrees that it will make this communication public. Although the Board agrees to do the foregoing, it contends that it has, in the past, given similar advice to insured institutions.

Section 9.

The Board agrees that it will give the Plaintiffs an opportunity to make suggestions for changes in the Board's nondiscrimination regulations, and will consider seriously any suggestions made by the Plaintiffs.

Section 10.

The Board agrees that, for a period of 36 months following execution of this Agreement, it will provide Plaintiffs with the following data or their equivalent at least annually, and more often if available:

- A. Copies of race/sex data notation forms and instructions for their use.
- B. Description of the Board's system for collation and analysis of race/sex data, with copies of relevant instructions to personnel performing collation or analysis.

- C. Data and analyses produced pursuant to Section 2 of this Agreement and reports -- if available -- showing results of analyses which would indicate trends and comparisons of lending patterns showing various types of discrimination in various regions, cities, or SMSA's, and individual institutions (but only to the extent this can be done without revealing information which in the Board's judgment could reasonably permit identification of said individual institutions).
- D. Data indicating non-response rates on race/sex notation forms, including information on whether there are deviant rates at particular institutions -- specific institutions are not to be identified.
- E. Examiner training materials and examination manual sections dealing with data analysis and all other aspects of fair housing components of examinations.
- F. Reports concerning the number of possible fair housing violations identified by examiners, the number of special examinations conducted, the number of supervisory letters sent, and other enforcement actions taken with respect to fair housing violations.
- G. The number of examiners, supervisory personnel and others undergoing special fair housing training.
- H. Job descriptions of personnel having specific civil rights enforcement responsibilities (as specified in Section 5 of this Agreement), organization table showing location of such personnel within the agency, and description of special qualifications of and/or training given to such personnel concerning fair housing matters.
- I. Copies of regulations and/or instructions concerning procedures for investigating and resolving complaints.

J. Reports concerning number of complaints received, investigated and resolved (showing separately those dismissed, those resolved by issuance of mortgage, those resolved by other means, and those resulting in enforcement action).

K. Copies of any other instructions, regulations, guidelines, procedures or reports concerning fair housing enforcement, if any, not covered by paragraphs A-J herein.

It is understood and agreed between the parties as follows... with respect to the Board's undertaking to provide the foregoing information: (a) the Board will not provide any data which identifies specific savings and loan associations, nor will it provide confidential examination programs; (b) the Board will not provide copies of: examination reports, examiners' workpapers, or excerpts therefrom; (c) the Board will not provide copies of material which deals with specific compliance matters at specific savings and loan associations or contain recommendations for specific enforcement actions; (d) the Board will not provide legal analyses, opinions and conclusions of the Board's Office of General Counsel; and (e) the Board will not provide data which is identical to that previously provided.

The Board agrees that Plaintiffs will have the opportunity to comment on the Board's mortgage lending nondiscrimination enforcement programs in order to provide the Board with suggestions for improvements therein. Specifically this means that during the 30 months following execution of this Agreement Board representatives will meet periodically (at least every six months) with representatives of Plaintiffs to discuss the Board's various programs in this area and to receive and consider suggestions from them. Plaintiffs will receive a written explanation when their recommendations are not accepted. It is understood and agreed to by all parties to this Agreement that the responsibility for the implementation of these programs is solely the Board's and not the Plaintiffs'.

Section 11.

Plaintiffs agree that, in consideration for the Board's undertakings delineated heretofore in this Agreement, they will:

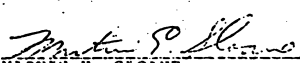
(a) forever give up any right to sue the Board to obtain relief for any action taken by the Board or any action not taken by the Board in the area of mortgage lending discrimination, from 1968 to the date of execution of this Agreement; and (b) give up any right to sue the Board on any matter within the scope of the lawsuit for a period of thirty (30) months from the date of this Agreement, except for violations of the Agreement.

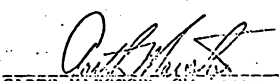
Section 12


Upon execution of this Agreement, the Plaintiffs and the Board will file a stipulation in the United States District Court to dismiss the lawsuit without prejudice, insofar as it relates to the Board and its Members.

Dated: March 22, 1977

Dated: March 22, 1977


 MARTIN E. SLOANE
 KAREN KRUEGER
 MICHAEL W. WARREN
 National Committee Against
 Discrimination in Housing


 GARTH KARSTON, Chairman


 GRADY PERRY, JR., Member

Federal Home Loan Bank Board


 WILLIAM L. TAYLOR

ROGER S. KUHN
 Center for National Policy
 Review
 Catholic University Law School

JACK GREENBERG
 JAMES E. HARRIS, III
 CHARLES WILLIAMS
 NAACP Legal Defense and
 Educational Fund

AMENDMENT TO SETTLEMENT AGREEMENT

between

the National Urban League, National Committee Against Discrimination in Housing, National Association for the Advancement of Colored People, National Neighbors, Metropolitan Washington Planning and Housing Associations, and National Association of Real Estate Brokers ("Plaintiffs")

and

the Federal Home Loan Bank Board ("Board").

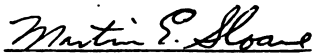
1. On March 22, 1977, the Plaintiffs and the Board entered into a Settlement Agreement in an action entitled National Urban League, et al. v. Office of the Comptroller of the Currency, et al. (CA No. 76-0718, D.D.C.), in consideration of which the action was dismissed without prejudice. It now appears to the parties to that Agreement that a longer period of time than originally contemplated will be required to implement the provisions of Section 2 of the Agreement.
2. Accordingly the parties have agreed as follows:
 - (a) The Board will use its best efforts to implement Section 2 according to the schedule proposed by the Board and agreed to by the Plaintiffs. The schedule is set forth in Appendix A.
 - (b) The Board will provide the Plaintiffs with data to the extent provided by Section 2 and 10 of the Agreement.

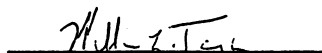
Appendix A

- July 1, 1978: Examiners begin completing 52-column loan application form for sample of 100 recent loans closed by each S&L examined.
- August 15, 1978: Special report from OES providing analysis of examiners' assessment of costs and usefulness of 23-column and 52-column loan application registers.
- September 1, 1978: Loan application registers become effective for S&L's.
- September 30, 1978: Specification of edit test completed at the Bank Board.
- December 1, 1978: Examiners compile 52-column loan application registers for all S&L's in three SMSA's for loan applications beginning September 1978.
- January 30, 1979: Statistical testing format specified and reliability of statistical procedure tested with a trial run for first months data.
- February 28, 1979: Data in form ready for use; edits completed; and statistical routines tested.
- February 28 - April 30, 1979: Analysis of data in process.
- April 30, 1979: Final testing of alternative mortgage application registers completed and written analysis available for distribution.
- July 1, 1979: Adoption by the Board of final loan application register as determined to be appropriate.
- October 1, 1979: Effective date for final loan application register as adopted by the Bank Board on July 1, 1979.

(c) The Settlement Agreement is hereby extended to expire on
March 1, 1981.

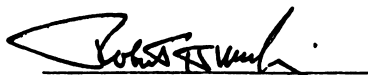
Dated: September , 1978


Martin E. Sloane
National Committee Against
Discrimination in Housing

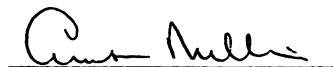

William L. Taylor
Center for National Policy
Review

Attorneys for the Plaintiffs

Dated: September , 1978


Robert H. McKinney
Chairman


Garth Marston
Member


Anita Miller
Member

Federal Home Loan Bank Board

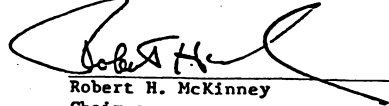
It is hereby agreed by the signors that Appendix A to the Amendment to Settlement Agreement, dated September 20, is amended to read as follows:

- July 1, 1978: Examiners begin completing 52-column loan application form for sample of 100 recent loans closed by each S&L examined.
- August 15, 1978: Special report from OES providing analysis of examiners assessment of costs and usefulness of 23-column and 52-column loan application registers.
- September 1, 1978: Loan Application Registers become effective for S&L's.
- September 31, 1978: Specification of edit test completed at the Bank Board.
- December 1, 1978: Examiners compile 52-column loan application registers for all S&L's in three SMSA's for loan applications beginning September 1978.
- January 30, 1979: Statistical testing format specified and reliability of statistical procedure tested with a trial run for first months data.
- February 28, 1979: Data in form ready for use; edits completed; and statistical routines tested.
- February 28 - April 1979: Analysis of data in process.
- April 30, 1979: Final testing of alternative mortgage application registers completed and written analysis available for distribution.
- July 1, 1979: Adoption by the Board of final loan application register and data collection and analysis as determined to be appropriate.

on or about
October 1, 1979:

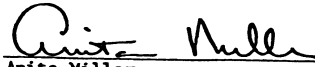
Effective date for final loan application register and implementation of a data collation and analysis system to the extent provided in Section 2 & 10 of the Agreement.

Martin E. Sloane
National Committee Against
Discrimination in Housing



Robert H. McKinney
Chairman

William L. Taylor
Center for National Policy
Review



Anita Miller
Member

Attorneys for the Plaintiffs

Federal Home Loan Bank Board

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RECEIVED

MAY 13 1977

JAMES E. DAVEY, Clerk

NATIONAL URBAN LEAGUE, et al.,

Plaintiffs,

v.

OFFICE OF THE COMPTROLLER OF
THE CURRENCY, et al.,

Defendants.

Civil Action No. 76-0718

STIPULATION OF DISMISSAL

IT IS HEREBY STIPULATED that, in consideration of the attached Settlement Agreement, dated May 13, 1977, between Plaintiffs and Defendants Federal Deposit Insurance Corporation (FDIC), Robert E. Barnett, George A. LeMaistre, Robert Bloom as Director of FDIC and not as Comptroller of the Currency, the above-entitled action against the defendants named herein may be and is hereby dismissed.

Respectfully submitted,

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ORDER

IT IS SO ORDERED:

This _____ day of May, 1977.

UNITED STATES DISTRICT JUDGE

SETTLEMENT AGREEMENT

This Agreement between Plaintiffs National Urban League, National Committee Against Discrimination in Housing, National Association for the Advancement of Coloured People, National Neighbors, Metropolitan Washington Planning and Housing Association, and National Association of Real Estate Brokers (hereinafter "Plaintiffs") and defendants Federal Deposit Insurance Corporation (hereinafter the "FDIC"), Robert E. Barnett, George A. LeMaistre, and Robert Bloom, as a director of FDIC and not as Comptroller of the Currency, (hereinafter the "Directors") is made to resolve, as to the parties hereto, without adjudication of any issue of law or fact, litigation presently pending between Plaintiffs, the FDIC and the Directors in the United States District Court for the District of Columbia entitled National Urban League, et al. v. Office of the Comptroller of the Currency, et al., (Civil Action No. 76-0718) (hereinafter "the lawsuit"). In executing this Agreement, none of the parties hereto makes any admission whatsoever as to any issue of law or fact raised in the lawsuit or which might be raised in the lawsuit. The FDIC has entered this Agreement not only to settle the lawsuit, but also to further its existing commitment to effective enforcement of its nondiscrimination policies.

Section 1. FDIC's Enforcement Program. The FDIC agrees that it will take the following actions in connection with its supervision and enforcement of the fair housing lending practices of insured State nonmember banks (including insured mutual savings banks) as governed by Title VIII of the Civil Rights Act of 1968, 42 U.S.C. § 3601, et seq. and Title VII of the Consumer Credit Protection Act, 15 U.S.C. § 1591, et seq., as they relate to home mortgage lending (hereinafter the "home mortgage lending laws"):

- A. The FDIC will establish a data collection and analysis system (the "FDIC System") which will apply to written applications for loans to finance the purchase of one to four unit residential buildings in which the applicant intends to occupy one unit as a residence.

The FDIC System will make use of race/sex identification information voluntarily given by the applicant and collected by the bank pursuant to Federal Reserve Board Regulation B, and additional financial information on the applicant and the loan terms. If Regulation B is modified to not require race/sex data, FDIC will continue to require such data unless such requirement is prohibited by law. All of the financial information to be required is now included in mortgage application forms approved by FRMA or FHLMC and widely used by mortgage lenders, or the form approved by the Federal Reserve Board in Regulation B.

In the course of a regular compliance examination, the examination team will select some or all accepted and rejected mortgage loan applications which were received since March 23, 1977 or the last regular compliance examination, whichever is most recent. The personal and certain financial information on each of these forms will be forwarded to the FDIC's Washington Office for transcription to a computer based data file for analysis. If the number of such applications is small, information from all applications will be recorded. However, if the volume exceeds the cutoff point set by the FDIC in accordance with generally accepted statistical sampling principles, a sample of rejected and accepted applications will be selected in accordance with generally accepted sampling techniques. The data collected during examination will be analyzed by appropriate statistical techniques to evaluate race or sex as factors in the bank's lending decisions. The objective of this analysis will not be to establish the actual existence of discrimination, but rather to identify institutions at which sufficient evidence of discrimination exists to warrant further investigation. If race or sex appears to be a factor in the decision, a more detailed investigation will be made by specially trained examiners. A by-product of the statistical analysis will be the generation of data on applications

broken down by race and sex and on approval/rejection rates by race and sex. These data will permit observation of trends over time and will permit comparison of geographic areas such as SMSA's. Within two years following implementation of the FDIC System, FDIC will give consideration to including within the System statistical data on adverse actions (as such term is defined in Regulation B) and on differential loan terms that may be associated with race or sex. If the identification rate obtained by the FDIC differs substantially in composition by race or sex from the results achieved by the Federal Home Loan Bank Board in the control study to be undertaken pursuant to its settlement of the lawsuit, the FDIC will consult with Plaintiffs about using other means of obtaining identification. Such means may include advertising, use of additional lobby posters, mandating identification by bank officials, or other means that the parties may agree upon. It is the FDIC's intent that a means of identification be used which will produce a reliable statistical sample.

The FDIC agrees to give further consideration to the inclusion of applications for secured home improvement loans in the FDIC System. The inclusion of such applications will depend, in part, upon the ease with which such loans can be segregated from loans made for purposes other than the repair or remodeling of residential property, and whether, after consultation with Plaintiffs, FDIC believes sufficient additional information relating to lending practices can be obtained to justify the additional data collection costs.

- B. The FDIC will continue its current training program outlined in Exhibit "A" hereto. In addition, the FDIC will conduct programs to train selected examiners to (i) collect samples of race and sex data maintained by institutions pursuant to the home mortgage lending laws, and (ii) use the Washington Office analysis of those

data in examinations for compliance with the home mortgage lending laws.

- C. The FDIC will provide appropriate level personnel specially trained in fair housing lending matters who will be present in each Regional Office, and who shall be responsible in the Regional Office, among other things, for reviewing fair housing lending aspects of examination reports, advising examiners on fair housing lending matters, reviewing individual examination reports and discussing them with examiners, making recommendations for improvements in examination methods, and consulting with Regional Directors on fair housing lending enforcement recommendations.
- D. The FDIC will create a position for a full-time civil rights specialist to serve as special assistant to the Director of its Office of Bank Customer Affairs. This individual will report directly to the Director of OBCA and will be responsible for reviewing the work of OBCA staff in Washington and persons referred to in paragraph C above, with respect to fair housing lending aspects of compliance examinations, disposition of complaints relating to fair housing lending, and enforcement actions involving violations of the home mortgage lending laws.
- E. The FDIC will amend its current processing procedures for complaints with respect to violations of the home mortgage lending laws within 90 days after the date of this Agreement, to include time limits for actions thereunder, with exceptions for special circumstances. A copy of the current procedures is attached as Exhibit "B" hereto. The FDIC will consider all comments on such procedures Plaintiffs may submit.
- F. The FDIC will, in general, apply the same procedures concerning special examinations, visitations, investigations, supervisory

letters, and cease and desist orders in cases of suspected violations of home mortgage lending laws as in cases of violations of other laws.

- G. FDIC will determine deviations in nonresponse rates on race/sex notation forms among the institutions examined by it, and where such deviation affects the ability of FDIC to analyze the data obtained from such institution, FDIC will inquire into the reasons for the deviation and will take such action as is necessary and appropriate to eliminate the deviation.
- H. The FDIC will again advise all insured State nonmember banks (including insured mutual savings banks) about its intent to enforce the home mortgage lending laws and the various sanctions which may be used by the FDIC for this purpose. Such notice will be sent within 90 days after the date of this Agreement.
- I. The FDIC is presently studying the usefulness of data available to it under the Home Mortgage Disclosure Act and will attempt to develop a system for meaningful use of this data in connection with the FDIC's enforcement of the home mortgage lending laws. Plaintiffs acknowledge that they have been advised by the FDIC's representatives that devising such a system may be unfeasible. It is understood that the FDIC has no obligation to implement such a system if it reasonably and in good faith determines that it is not feasible to implement such a system. Before the FDIC makes a final determination on feasibility, it will consult with Plaintiffs pursuant to the procedures outlined below.

The FDIC agrees that Plaintiffs will have the opportunity to comment on the FDIC's enforcement programs and the FDIC System described in this Section in order to provide the FDIC with suggestions for improvements therein. During the term of this Agreement, FDIC representatives will meet periodically (at least every six months) with representatives of Plaintiffs to discuss the programs described in this Section and to receive and consider suggestions.

from them. If so requested, Plaintiffs will receive a written explanation when their recommendations are not accepted. It is agreed by all parties to this Agreement that the responsibility for the implementation of these programs is solely the FDIC's and not the Plaintiffs', and that in conducting enforcement programs pursuant to this Agreement the FDIC may give due regard to the allocation of its financial and personnel resources among all of the duties which it carries out. Nothing in this Agreement is intended to subject the decisions of the FDIC as to the appropriate allocation of such resources to review by any person or authority not otherwise empowered by law to review such decisions.

Section 2. Disclosures to Plaintiffs. The FDIC agrees that during the term of this Agreement it will provide Plaintiffs with the following data or their equivalent at least annually, and more often if available:

- A. Copies of blank race/sex data notation forms and instructions which are used in the FDIC System.
- B. Description of the FDIC System and any changes in that System.
- C. Copies of instructions to personnel performing collation or analysis of race/sex data collected pursuant to the FDIC System.
- D. Data and analyses produced pursuant to the FDIC System and reports showing results of such analyses.
- E. Data indicating nonresponse rates on race/sex notation forms, including information on whether there are deviant rates at particular institutions.
- F. Data on approvals and rejections by race and sex and the results of the regression equation on each bank.

- G. Examiner training materials and examination manual sections dealing with data analysis and all other aspects of home mortgage lending components of examinations.
- H. Reports concerning the number of possible violations of home mortgage lending laws identified, the number of special examinations conducted, the number of supervisory letters sent, and other enforcement actions taken with respect to violations of home mortgage lending laws.
- I. The number of examiners, supervisory personnel and others undergoing special training in the analysis of home mortgage lending and information showing location of such personnel within the FDIC.
- J. Copies of instructions concerning procedures for investigating and resolving complaints with respect to home mortgage lending.
- K. Reports as to the number of complaints received and their disposition.
- L. Copies of any other instructions, regulations, guidelines, procedures or reports concerning home mortgage lending enforcement, if any, not covered by paragraphs A - K herein.
- M. Copies of the FDIC's analysis of its 1976 fair housing lending survey when such analysis is available.
- N. Job descriptions for persons described in Section 1, paragraphs C and D.

It is understood and agreed between the parties as follows with respect to the FDIC's undertaking to provide the foregoing information: (a) the FDIC will not provide any data which identifies or could reasonably lead to the identification of specific institutions or persons, nor will it provide confidential examination programs; (b) the FDIC will not provide copies of

examination reports, examiners' workpapers, or excerpts therefrom; (c) the FDIC will not provide copies of material which deals with specific compliance matters at specific institutions or contains recommendations regarding specific enforcement actions; (d) the FDIC will not provide legal analyses, opinions and conclusions of its Legal Division or Office of Bank Customer Affairs; and (e) the FDIC will not provide data which is identical to that previously provided.

Section 3. Release. Plaintiffs agree that, in consideration for the FDIC's undertakings in this Agreement, they hereby: (a) release and forever give up any right to sue the FDIC and the Directors to obtain relief for any action taken by the FDIC or any action not taken by the FDIC in the area of home mortgage lending discrimination, from 1968 to the date of this Agreement; and (b) release and forever give up any right to sue the FDIC and the Directors on any matter within the scope of the lawsuit; Provided, that (i) during the term of this Agreement Plaintiffs shall not be barred from bringing an action alleging that the FDIC has breached this Agreement, and (ii) after the expiration of this Agreement, Plaintiffs shall not be barred from bringing an action alleging that the FDIC has failed, at any time after the expiration of this Agreement, to properly enforce the obligations of insured State nonmember banks (including insured mutual savings banks) under the then existing home mortgage lending laws. Nothing herein shall be construed to prevent Plaintiffs, in the trial of an action under (ii) above, from presenting evidence of the FDIC's enforcement activities under the home mortgage lending laws prior to the date of this Agreement, so long as such evidence is material, relevant and otherwise admissible in such trial. Nothing herein shall be construed as an admission by FDIC that Plaintiffs will have standing or a cause of action to challenge the FDIC's enforcement of such laws.

Prior to initiating any action alleging a breach of this Agreement, the Plaintiffs shall first contact the General Counsel of the FDIC and attempt, in good faith, to resolve any differences by negotiation. The parties agree

that such negotiations shall continue for a period of at least sixty days, unless emergency circumstances require immediate action. In any action alleging breach or anticipatory breach of this Agreement, the party initiating the action shall attach to its complaint an affidavit of counsel setting forth the steps taken in compliance with this provision.

Section 4. Dismissal. Upon execution of this Agreement, the Plaintiffs and the FDIC will file a stipulation in the United States District Court to dismiss the lawsuit insofar as it relates to the FDIC and the Directors.

Section 5. Term. The term of this Agreement shall be three years from the date set forth below.

DATED: May 13, 1977

DATED: May 13, 1977

FEDERAL DEPOSIT INSURANCE CORPORATION

Robert E. Barnett
Counsel for Plaintiffs

By

Robert E. Barnett
Robert E. Barnett
Chairman

Martin E. Sloan
Counsel for Plaintiffs

SETTLEMENT AGREEMENT

This agreement between plaintiffs National Urban League, et al. (hereinafter "plaintiffs") and defendants Office of the Comptroller of the Currency and John G. Heimann, Comptroller of the Currency (hereinafter "Comptroller") is made to resolve, as to the parties hereto, without adjudication of any issue of law or fact, litigation presently pending between plaintiffs, the OCC and the Comptroller in the United States District Court for the District of Columbia entitled National Urban League, et al. v. Office of the Comptroller of the Currency, et al., (Civil Action No. 76-0718) (hereinafter "the lawsuit"). In executing this agreement, none of the parties hereto makes any admission whatsoever as to any issue of law or fact raised in the lawsuit or which might be raised in the lawsuit. The OCC has entered this agreement not only to settle the lawsuit, but also to further its existing commitment to effective enforcement of its nondiscrimination policies.

Section 1. OCC's Enforcement Program

The OCC has implemented and will continue in effect special training ^{1/} and examination procedures ^{2/} related to consumer protection statutes and regulations, including fair housing lending, and a Consumer Affairs Division and system of trained Regional Consumer Specialists both with advisory and supervisory responsibilities in

1/ Over 400 examiners have attended two-week schools for training in the consumer laws and examination procedures and additional examiners will receive such training next year. The OCC intends to train all assistant national bank examiners and selected national bank examiners in these procedures. Training and experience in consumer examinations have been established as prerequisites for a commission as a national bank examiner.

In the school for consumer examiner training, 33% of student instruction time is spent on Fair Housing, Equal Credit Opportunity and Home Mortgage Disclosure. The schools stress examination techniques and feature heavy reliance on case studies to give experience in examining for compliance. The OCC training program includes training examiners to (i) sample mortgage loans and (ii) analyze the data in examinations for compliance with the home mortgage lending laws. The OCC expects and anticipates that the training program and materials will be revised on a continuing basis in the future as experience dictates. Revisions are also expected to result from comments and suggestions from the Civil Rights Division of the Justice Department and other interested government agencies, and private organizations or individuals.

2/ Specialized consumer affairs examinations are made of each national bank by examiners who have been trained in consumer laws and examination

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the area of fair housing lending.^{3/} However, the OCC agrees that it will take the following additional actions in connection with its supervision and enforcement of fair housing lending practices of national banks as governed by Title VIII of the Civil Rights Act of 1968, 42 U.S.C. §3601 et seq. and Title VII of the Consumer Credit Protection Act, 15 U.S.C. §1591 et seq., as they relate to home mortgage lending (hereinafter the "home mortgage lending laws"):

2/ -- continued --

procedures. The Fair Housing portion of the consumer examination is divided into three parts. The examiner first determines the bank's lending policies. Then, a determination is made as to whether or not the policies, or any parts of them are unlawfully discriminatory. Finally, through statistical sampling, a determination is made as to whether or not the policy is consistently applied.

To facilitate determining the bank's policy, the examiner completes two forms. One is a guideline for the interview of bank personnel and deals with information requested in an application, factors used in evaluating an application such as income, credit scoring, etc., and action taken on the application. In completing this form, the examiner also discusses internal control procedures employed to ensure compliance with the Fair Housing Act. The second form is completed to obtain the objective criteria used in evaluating the application. Objective criteria include income and debt service requirements, how interest rates and durations of loans are determined, evaluation of credit history and source of equity, and down payment requirements. At this time the examiner also determines the bank's appraisal standards. The information compiled above is then evaluated for compliance with the Fair Housing Act and Regulation B.

The examiner then reviews a sample of accepted and rejected mortgage loans. Applications accepted should meet the bank's objective criteria. Applications rejected should fail to meet the criteria. In reviewing the sample, the examiner also checks to see that no prohibited information has been requested or considered, and that appraisal forms and loan memoranda are free of comments concerning the applicant's race, sex, religion, or national origin and the racial/national origin make-up of the neighborhood in which the house is located. Following this evaluation, a discussion is held with bank management. The examiner asks management why any applicants accepted that did not meet the criteria were in fact accepted, and why any rejected applicants who met the criteria were in fact rejected. The examiner also discusses with management any bank policies or practices which appear unlawful, including any practices which indicate prescreening.

In addition, the examiner determines that data is being maintained by the bank as required by the Home Mortgage Disclosure Act and reviews the data in connection with fair housing lending. The examiner plots mortgage loans, or a representative sampling, as well as rejected applications, on census tract maps to detect possible redlining practices. If it appears that a bank is not lending in an area which is included in its trade area, the examiner further investigates to ascertain the reason for this lack of lending activity and to determine whether a pattern or practice of discrimination exists.

3/ The OCC's Consumer Affairs Division in Washington is jointly responsible with the Regional Offices for supervision of national banks in fair housing lending. In addition, each of the 14 National

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A. The OCC will establish a data collection and analysis system (the "OCC system") in Washington which will apply to written applications for loans to finance the purchase of one to four unit residential buildings in which the applicant intends to occupy one unit as a residence. The OCC system will make use of race/sex identification information voluntarily given by the applicant and collected by the bank pursuant to Federal Reserve Board Regulation B, and additional financial information on the applicant and the loan terms. All of the financial information to be required is now included in the mortgage application forms approved by FNMA or FHLMC and widely used by mortgage lenders, or the form approved by the Federal Reserve Board in Regulation B. If the Regulation B is modified to not require race/sex data, the OCC will continue to require such data to the extent permitted by law.

The data collection and analysis system will consist of the following: Information from all or a statistically valid sample of applications which have been acted upon will be collected concerning the characteristics of the applicant and co-applicant, the race, sex, marital status and age of the applicant, and the loan disposition which would include whether or not the loan was granted, and if granted, on what terms. The personal and certain financial information on each of these forms will be forwarded to the OCC's Washington Office for transcription to a computer based data file for analysis. The data collected will be analyzed in Washington by generally accepted statistical techniques to evaluate race, sex, marital status or age as factors in the bank's lending decisions. The objective of this analysis will not be to establish the actual existence of discrimination but rather to identify institutions which warrant further investigation. The analysis will not only focus on the acceptance or rejection of the loan, but also upon the

3/ -- continued --

Bank Regions has an examiner designated as a Regional Consumer Specialist who is responsible for coordinating and reviewing the consumer compliance examinations including fair housing, advising examiners, making recommendations for improvements in examination methods, and consulting with examiners, the Regional Administrator, and Washington on enforcement recommendations. All professional staff members of the Consumer Affairs Division and all Regional Consumer Specialists have undertaken the training program for consumer examiners referred to in note 1 above. Any persons hired for or promoted to such positions in the future will also undertake or have undertaken this training.

terms given to the borrower. If personal characteristics such as race or sex appear to be a factor in the decision, a more detailed investigation will be made by specially trained examiners who will use the analyses prepared in the Washington Office in their investigation. A byproduct of the statistical analysis will be the generation of data on applications broken down by race, sex, marital status, age and geographical location and on both approval/rejection rates and adverse action. These data should permit observation of trends over time and comparison of geographic areas such as SMSA's. This system will be in effect for a minimum of three years but is subject to change if the methodology does not prove to provide reliable data.

The OCC will determine deviations in response rates among the institutions examined by it and where such deviation affects the ability of OCC to analyze the data obtained from such institution or suggests possible failure to properly request information from applicants or discouragement of response, OCC will inquire into the reasons for the deviation and will take such action as is necessary and appropriate to eliminate the deviation.

If the identification rate obtained by the OCC materially affects the reliability of the resulting data or should the results achieved by the FHLBB in the control study which it will undertake indicate that an alternative method will materially enhance the Comptroller's ability to enforce compliance with nondiscrimination laws, the OCC will take action to improve the identification rate. In choosing the appropriate action, the OCC will publish for comment in the Federal Register alternative or complementary proposals, including advertising, use of additional lobby posters, mandating identification by bank officials and other means suggested by public interest groups, government organizations, trade associations, banks, or others upon their own motion. It is the OCC's intent that a means of identification be used which will produce a reliable statistical sample.

The OCC will give further consideration to the inclusion of applications for secured home improvement loans in the OCC system.

The inclusion of such applications will depend, in part, upon the ease with which such loans can be segregated from loans made for purposes other than the repair or remodeling of residential property, and whether the OCC believes sufficient additional information relating to lending practices can be obtained to justify the additional data collection costs.

B. The OCC will periodically review and update if necessary its special procedures for the investigation and processing of complaints concerning discrimination in home mortgage lending described and set forth in Appendix "A" hereto.

C. The Comptroller has represented to the plaintiffs in a letter dated November 23, 1977, that he intends to hire within three months a fulltime civil rights specialist to serve in a Washington Office policy-level position with full access to him. This individual will be responsible for (1) reviewing the effectiveness of the fair housing lending examination and enforcement program and advising the Comptroller with respect to improvements therein, and (2) reviewing the work of Washington staff engaged in fair housing lending examination and enforcement activities and the work of the persons referred to in paragraph E below. These responsibilities will include the review of fair housing lending aspects of compliance examinations, disposition of complaints relating to fair housing lending, and enforcement actions involving violations of the home mortgage lending laws. A copy of the letter is attached hereto as Appendix "B".

D. Within 90 days after the date of this memorandum, the OCC will again advise all national banks that it is the policy of the OCC that the range of investigatory and enforcement methods available to the agency, including but not limited to special examinations and cease and desist proceedings under the Financial Institutions Supervisory Act of 1966, 12 U.S.C. §1818, will be used to detect or remedy prohibited discrimination in the same manner as these methods are used to detect and/or remedy possible or actual violations of other statutes applicable to national banks.

E. The OCC has designated (see note 3, supra) and will continue to provide appropriate level personnel specially trained in fair housing lending matters, who will be present in each Regional Office, and who shall have as their chief responsibility in the Regional Office, among other things, the reviewing of fair housing lending aspects of examination reports, advising examiners on fair housing lending matters, reviewing individual examination reports and discussing them with examiners, making recommendations for improvements in examination methods, and consulting with Regional Administrators on fair housing lending enforcement recommendations.

F. The OCC will study the usefulness of data available to it under the Home Mortgage Disclosure Act and will attempt to develop a system for further meaningful use of this data in connection with the OCC's enforcement of the home mortgage lending laws. It is understood that the OCC has no obligation to implement such a system if it reasonably and in good faith determines that it is not feasible to implement such a system. Before the OCC makes a final determination on feasibility, it will advise plaintiffs and other members of the public pursuant to the procedures outlined below.

G. Comments and suggestions from anyone on the foregoing matters may be submitted at any time or discussed with OCC personnel on reasonable notice, unless contrary to law. The inclusion in this agreement of footnotes describing portions of the OCC's current enforcement programs does not imply plaintiffs' acceptance thereof as fully adequate. The OCC agrees that plaintiffs will have the opportunity to comment on the OCC's enforcement programs and the OCC's system described in this section in order to provide the OCC with suggestions for improvement therein. During the term of this agreement, the OCC will schedule meetings on equal opportunity and home mortgage lending (at least every six months) at which representatives of the OCC will discuss the programs described in this section and any changes made or proposed therein

and will receive and consider suggestions from plaintiffs. OCC will suggest to plaintiffs alternative dates for such meetings at least one month in advance and, if requested, will attempt to schedule such meetings at a time when the maximum number of plaintiffs' representatives may attend. In addition, the public will be notified of all such meetings, which shall be open to the public; and other organizations and individuals shall have a like opportunity to make comments and suggestions with respect to the OCC's enforcement programs and the OCC system, which will receive like consideration from the OCC. Upon request, plaintiffs or others making comments or suggestions will receive a written explanation when their recommendations are not accepted, which explanation will be made available to the public.

It is agreed by all parties to this agreement that the responsibility for the implementation of these programs is solely the OCC's and not the plaintiffs, and that in conducting enforcement programs pursuant to this agreement the OCC may give due regard to the allocation of its financial and personnel resources among all of the duties which it carries out. Nothing in this agreement is intended to subject the decisions of the OCC as to the appropriate allocation of such resources to review by any person or authority not otherwise empowered by law to review such decisions.

Section 2. Public Information

During the term of this agreement, the OCC will provide plaintiffs the following materials and/or data at least annually or more often if available. These materials and data also are or will be available to the public. With the exception of computerized data, they will be maintained in one file, to be known as the Fair Housing Lending File, for easy identification and public access.

A. Copies of blank race/sex data notation forms and instructions which are used in the OCC system.

B. A description of the OCC system. Any significant changes in that system will be announced publicly and will also be made available.

C. Copies of instructions to personnel performing collation or analyses of race/sex data collected pursuant to the OCC system.

D. Data, analyses and reports produced pursuant to the OCC system including data on applications broken down by race, sex, marital status, age and geographic location and approval/rejection rates and terms of approval. Such analyses will be produced in report form at least annually, and will show the results of the analysis of individual bank data to the extent available which evaluates race or sex as a factor in the bank's lending decision (without, however, disclosing individual bank identities or any information from which, in the Comptroller's judgment, individual bank identities could reasonably be ascertained). Consistent with Office needs for computer time and personnel, and their capabilities, analyses of a more limited scope and/or analyses at other intervals, can be produced upon request if the requesting party assumes the costs.

E. Data indicating response rates on race/sex notation forms including information on whether there are deviant rates at particular institutions--information which, in the Comptroller's judgment, could reasonably permit identification of specific institutions is not to be released.

F. Examiner training materials and examination manual sections concerned with the Home Mortgage Disclosure Act, the Equal Credit Opportunity Act, and the Fair Housing Act. Any significant change in these materials will be publicly announced and will also be made available. With prior arrangement, the OCC's Consumer Examiner training sessions may be observed.

G. The Comptroller annually will provide statistics concerning the number of examiners and other personnel who have undergone special consumer examination training including training in fair housing lending; the number of consumer examinations conducted during the year; the number of possible violations of the home mortgage lending laws identified; the number of complaints received ~~pertaining to the home mortgage lending laws and their disposition~~; the number of investigatory actions taken as a result of possible violations of the home mortgage lending laws; and the number of enforcement actions taken pertaining to these laws.

H. An organization chart of the Consumer Affairs Division of the OCC, as well as job descriptions of the professional staff of this Division. Any significant changes in the organization of this Division or in its position in the organization of the Comptroller's Office as a whole, or in the system of Regional Consumer Specialists, will be publicly announced.

I. The procedures of the OCC for investigating and resolving complaints concerned with the home mortgage lending laws. Any significant changes in the Comptroller's procedures concerning consumer complaints in general or home mortgage lending complaints in particular will be publicly announced.

J. The OCC's analysis of its 1976 Fair Housing Lending Survey when such analysis is completed.

K. Significant new or revised proposals, instructions, regulations, guidelines, procedures or reports concerning Fair Housing Lending and the OCC's data analysis system will be publicly announced and/or noticed in the Federal Register for comment as appropriate. Copies of all instructions, regulations, guidelines, procedures or reports of the OCC concerning Fair Housing Lending and currently in effect will be available in the Fair Housing Lending file.

L. Job descriptions for the persons described in Section 1, paragraphs C and E.

It is understood and agreed between the parties that the OCC will not provide (a) any data or item which identifies or could reasonably lead to the identification of specific institutions or persons, nor confidential examination programs if such are developed in the future; (b) copies of examination reports, examiners' workpapers, or excerpts therefrom except for blank copies of such reports or forms; (c) material which deals with specific compliance matters at specific institutions or which contains inter- or intra-agency advisory opinions, conclusions and recommendations; (d) legal analyses, opinions and conclusions of

its Law Department or Consumer Affairs Division; and (e) data or materials identical to those previously provided.

Section 3. Plaintiffs' Undertakings

Plaintiffs will:

1. Refer to the OCC's Consumer Affairs Division or advise it of any complaints of plaintiffs' members of which plaintiffs may be aware concerning prohibited discrimination in mortgage lending by national banks, unless the complainant objects.
2. Advise the OCC in the future of any studies of which plaintiffs may be aware concerning the existence or nonexistence of prohibited discrimination in mortgage lending or other aspects of fair housing lending.
3. Upon request of the OCC make available to the OCC qualified persons to speak on mortgage lending discrimination at OCC consumer examiner training sessions or similar programs, consistent with the other duties of such persons.
4. Use their best efforts to encourage their members and constituents to complete the race/sex/data collection form used by national banks pursuant to the provisions of Federal Reserve Regulation B.

Section 4. Release

In consideration for the OCC's undertakings in this agreement, plaintiffs hereby: (a) release and forever give up any right to sue the OCC and the Comptroller of the Currency to obtain relief for any action taken by the OCC or any action not taken by the OCC in the area of home mortgage lending discrimination, from 1968 to the date of this agreement; and (b) release and forever give up any right to sue the OCC and the Comptroller of the Currency on any matter within the scope of the lawsuit entitled National Urban League, et al. v. Office of the Comptroller of the Currency, et al.; Provided, that (i) during the term of this agreement plaintiffs shall not be barred from bringing an action alleging that the OCC has breached this agreement; and (ii) after the expiration of this agreement, plaintiffs shall not be barred from bringing an action

alleging that the OCC has failed, at any time after the expiration of this agreement, to properly supervise compliance by national banks with the then existing home mortgage lending laws. Nothing herein shall be construed to prevent plaintiffs, in the trial of an action under (ii) above, from presenting evidence of the OCC's enforcement activities under the home mortgage lending laws prior to the date of this agreement, so long as such evidence is material, relevant and otherwise admissible in such trial. Nothing herein shall be construed as an admission by the OCC that plaintiffs will have standing or a cause of action to challenge the OCC's enforcement of such laws.

Prior to initiating any action under (i) above, the plaintiffs will first contact the Chief Counsel of the OCC and attempt, in good faith, to resolve any differences by negotiation. The parties agree that such negotiations shall continue for a period of at least sixty days, unless emergency circumstances require immediate action. In any such action, the party initiating the action shall attach to its complaint an affidavit of counsel setting forth the steps taken in compliance with this provision.

Section 5. Dismissal

Upon execution of this agreement, the plaintiffs and the OCC will file a stipulation in the United States District Court to dismiss the lawsuit insofar as it relates to the OCC and the Comptroller of the Currency.

Section 6. Term

The term of this agreement shall be three years from the date set forth below.

DATED: November 30, 1977

DATED: November 28, 1977

Martin E. Sloan
Counsel for plaintiffs

OFFICE OF THE COMPTROLLER
OF THE CURRENCY

Roger S. Fisher
Counsel for plaintiffs

By: John G. Heimann
Comptroller of the Currency

Comptroller of the Currency
Administrator of National Banks

Washington, D. C. 20219

November 23, 1977

Mr. William L. Taylor, Director
Mr. Roger S. Kuhn, Co-Director
Center for National Policy Review
Catholic University of America
School of Law
Washington, D. C. 20064

Mr. Martin E. Sloane
National Committee Against
Discrimination in Housing
1425 H Street, N.W., Suite 410
Washington, D. C. 20005

Dear Messrs. Taylor, Kuhn, and Sloane:

As I have previously advised you in personal meetings, it is my intent to appoint as soon as possible, hopefully within the next three months, a fulltime civil rights specialist to serve in a Washington office policy level position. This individual will be responsible for (1) reviewing the effectiveness of fair housing lending aspects of compliance examinations, and enforcement programs related to these examinations, (2) reviewing the performance of Washington and regional office staff engaged in fair housing aspects of compliance examinations and related enforcement activities, (3) reviewing the disposition of complaints relating to possible violations of the home mortgage lending laws, and (4) recommending to the Comptroller improvements in these programs.

While I have not as yet finally determined the precise organizational position in which I would prefer to place this individual, it is my intent that this person shall have full access to me on all matters pertaining to enforcement of the home mortgage lending laws. I shall be pleased to advise you of my selection for this position as soon as it has been made. In the meantime, it is my understanding that you are willing to accept this personal commitment in lieu of a specific agreement concerning a civil rights specialist as part of the settlement in National Urban League, et al. v. Office of the Comptroller of the Currency, Civil No. 76-0718, D. D.C.

Sincerely,



John G. Heimann
Comptroller of the Currency

APPENDIX "B"

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

NATIONAL URBAN LEAGUE,)	
)	
Plaintiff,)	
v.	)	Civil Action No. 76-718
OFFICE OF THE COMPTROLLER)	
OF THE CURRENCY, ET AL.,)	
Defendants.)	

FILED

MAY 1978

MEMORANDUM AND ORDER

JAMES F. DAVEY, Clerk

Relying in part on Title VIII of the Civil Rights Act of 1968, 42 U.S.C. §§ 3601-19 (1970 & Supp. V 1975), plaintiff National Urban League seeks aid of this Court to require the Federal Reserve Board adequately to enforce its alleged responsibility to prevent race and sex discrimination in home mortgage lending. Following extended pretrial discovery, plaintiff seeks partial summary judgment, claiming on the basis of affidavits and other data that banks subject to the Board's regulatory control discriminate and that the Board's regulatory procedures designed to prevent such discrimination are faulty and insufficient. The Board opposes and counters with a motion for summary judgment, asserting plaintiff's lack of standing. The issues were extensively briefed and argued.

I.

This statement of the issues does not reflect what has preceded these discrete motions, and some background is needed to understand the context in which the Court must turn to consideration of the challenge to the ^{Plaintiff's} Board's standing. As early as 1971 a coalition of civil rights organizations commenced strenuous efforts to persuade four federal banking agencies to adopt what the coalition perceived to be appropriate examination and enforcement

procedures necessary to alleviate racial discrimination by home mortgage lenders subject to federal regulation. Conditions in the home mortgage field have received congressional attention, and considerable indications of pervasive race and sex discrimination in home mortgage lending can be documented from field surveys, congressional hearings, and similar sources. Failing to receive adequate assurances, 11 of these civil rights organizations commenced this omnibus suit in April 1976 against the four agencies -- the Federal Home Loan Bank Board, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, and the Federal Reserve Board -- and their chief officials.

The complaint is predicated on three basic propositions:

- (1) Race and sex discrimination has long existed and continues to exist in the home mortgage lending operations of institutions supervised by the defendant agencies, and the defendants are aware of this.
- (2) Defendants are obligated by statute to exercise their supervisory and regulatory powers to ensure against such discrimination.
- (3) Defendants have abdicated this responsibility by failing to adopt standard procedures used by other agencies in civil rights enforcement.

Over the ensuing months the case has been satisfactorily resolved by agreement except as to the Federal Reserve Board and its officers (hereinafter collectively referred to as the "Board"). The three other agencies whose activities are much more prominent in the field of home mortgage lending have entered into arrangements which plaintiffs believe give assurance of adequate enforcement and monitoring of the problems perceived when suit was initiated. The Board, on the other hand, has strenuously opposed the suit from the outset in the belief that it presently exercises supervision

over the relatively small amount of home mortgage lending accountable to its members^{1/} and that such supervision is effective against discrimination and adequate in all respects.

From the very beginning of the litigation the Court has repeatedly expressed concerns as to the standing of plaintiffs to proceed. Because of its doubts as to the institutional standing claimed, the Court required strict compliance with Sierra Club v. Morton, 405 U.S. 727 (1972), and gave plaintiffs opportunity to file affidavits showing injury to members. Continuances were sought and granted, but when forthcoming the submissions were minimal and sketchy, thus indicating the tenuous nature of the plaintiffs' genuine standing. Doubts were initially resolved in favor of plaintiffs after some plaintiff organizations presented by affidavit a prima facie showing that one or more members claimed injury at the hands of a regulated bank because the bank failed to lend due to race or sex.

Once settlements with the Board's sister agencies were arranged, standing was again considered. Most of the plaintiffs were dropped since they had made no showing that they or any of their members had been injured by any action of the Board, the only remaining defendant. Now only the National Urban League remains, and its status from the viewpoint of standing rests solely on the allegations of the complaint and on the affidavit of one Birgit Fein who suspected sex discrimination in her dealings with a single bank regulated by the Board. When plaintiff moved for partial summary judgment, the Board sought and received permission to inquire more fully into the alleged basis of the Urban League's standing, and having done so its counter

1/ Defendants' affidavits indicate that Federal Reserve member banks hold less than two percent of the dollar amount of all outstanding purchase-money home mortgage loans.

motion for summary judgment followed. The League's standing must be examined more closely in the light of the further facts developed.

II.

In the amended, unverified complaint filed July 14, 1976, the National Urban League alleges that its general purposes are, among others, to improve the living and working conditions of blacks and other similarly disadvantaged minorities and to foster better race relations and increased understanding among all persons; that the League and its affiliates seek to assist black residents of low-income, deteriorating neighborhoods to find and finance standard housing outside such areas; that in their efforts to find and finance homes outside ghetto areas, the clientele served by the League and its affiliates, as well as members of the League and of its affiliates, suffer and continue to suffer from the discriminatory practices listed in the complaint engaged in by lending institutions regulated and supervised by the defendants; that the League, its affiliates, and their members and clientele are directly and adversely affected by the failure and refusal of the defendants to act to end such discriminatory practices by institutions which they regulate; and that the defendants' failure injures the League and its affiliates in that it compels them to expend funds, staff time, and other resources in combating such practices which they would not be compelled to expend were the defendants to take action as prayed in this complaint. These generalized allegations have no specificity as far as the Board is concerned.

Birgit Fein, the only individual member of the Urban League claiming injury, states that in December 1976 she spoke to a Ms. Hugel, an assistant manager of the Bankers Trust Company in New York regarding a mortgage loan on a

\$32,000 home she wished to buy in Brooklyn. She further states that Ms. Hugel first categorically denied that Bankers Trust made mortgage loans, but subsequently said that some mortgage loans were made in exceptional circumstances, for example, to a person who was earning \$100,000 a year. Ms. Fein then states that Ms. Hugel did not ask her for any information regarding her credit record or income or the house and did not offer an application. After Ms. Fein wrote to the New York State Banking Department to complain of sex discrimination, a vice-president of Bankers Trust contacted her to apologize for the misinformation. His apology was restated in a letter dated February 24, 1977, in which the bank apologized for the "shoddy treatment" Ms. Fein received but offered no intimation that Ms. Fein was denied a mortgage loan for discriminatory reasons.

Bankers Trust provided defendants with the affidavit of Mary Hugel, the loan officer who dealt with Birgit Fein, to explain why Ms. Fein was not offered a mortgage loan. In her affidavit Ms. Hugel states that she informed Ms. Fein that the mortgage loan policy of the bank "was not making mortgage loans subject to a few exceptions, but particularly where circumstances existed indicating important relations where the denial of a mortgage application to a customer might result in a substantial loss of business to the bank in other areas. . . . Ms. Fein was plainly not the substantial relationship which justify an exception to the bank's policy. She merely had a special checking account and a small savings account at the bank."

Mrs. Hugel further states that she has since "reviewed the bank's policy with regard to mortgage loans with my superiors and these discussions have confirmed my understanding that residential mortgage loans were then made

only as an exception." The exceptional nature of the bank's mortgage loan policy is evident from Bankers Trust's overall reduction of its family home mortgage portfolio, and also by comparing its outstanding commercial loans (\$8,000,000) against the total number of residential mortgage loans made in 1976 (three). Ms. Fein's sex was not shown to be a factor in her inability to secure a mortgage loan from Bankers Trust, although it is clear that at the time of her brief dealings with the Board before arranging a loan elsewhere she felt she was the object of sex discrimination.

III.

The National Urban League seeks to establish standing both in its own right and as a representative of injured members. Neither position remains tenable, however, when the above undisputed facts are appraised against the standards for determining standing enunciated in Simon v. Eastern Kentucky Welfare Rights Organization, 426 U.S. 26 (1976); Trafficante v. Metropolitan Life Insurance Co., 409 U.S. 205 (1972); Warth v. Seldin, 422 U.S. 490 (1975); Harrington v. Bush, 553 F.2d 190 (D.C. Cir. 1977); and other pertinent cases, including especially the recent decision of this Circuit in American Jewish Congress v. Vance, No. 76-1983 (D.C. Cir. Apr. 21, 1978).

Plaintiff, relying on Trafficante, claims that it has been conferred statutory standing under Title VII of the Civil Rights Act of 1968. See Warth v. Seldin, 422 U.S. at 513-14 & n. 21. Title VIII, among other things, makes it unlawful to interfere with a person because of his having aided and encouraged others to enjoy rights protected by the Fair Housing Act. 42 U.S.C. § 3617 (1970). Trafficante, however, did no more than declare that standing in suits brought under Title VIII should be defined "as broadly as is permitted by Article III of the Constitution." 409 U.S.

at 209 (quoting Hackett v. McGuire Bros., Inc., 445 F.2d 442, 446 (3d Cir. 1971)). It explicitly did not, nor could it, abrogate the Article III requirement that a plaintiff establish that either it or its members suffered "injury in fact" and that this injury "was the consequence of the defendants' actions, or that prospective relief will remove the harm." Warth v. Seldin, 422 U.S. at 505; accord, Simon v. Eastern Kentucky Welfare Rights Organization, 426 U.S. at 38, 41 n. 22; see Trafficante v. Metropolitan Life Insurance Co., 409 U.S. at 209, 211. This "irreducible constitutional minimum," Schlesinger v. Reservists Committee to Stop the War, 418 U.S. 208, 227 n. 16 (1974), is not met by plaintiff either as an institution or as a representative of its members.

As an institution, plaintiff's interest in and commitment to the problem of housing discrimination, no matter how strong, "cannot substitute for judicially cognizable injury." American Jewish Congress v. Vance, slip op. at 7; see, e.g., Schlesinger v. Reservists Committee to Stop the War, 418 U.S. at 226. Neither, apparently, can its alleged expenditure of money on the problem. Although the Supreme Court has never explicitly determined whether an organization's expenditures in combating a general problem are sufficient to establish "injury in fact" in a lawsuit on the same subject matter, the tone of its decisions indicates that they are not. In Simon, a case in which plaintiff quite likely did expend such funds, the Court explicitly stated not only that no injury to the plaintiff institution had been shown, but that in addition no such injury could be shown. 426 U.S. at 40. Many other cases appear also to have implicitly so held. In Sierra Club v. Morton, 405 U.S. 727 (1972), for example, standing was denied plaintiff despite the near certainty that the plaintiff club had previously devoted considerable funds to obtain the result sought in the lawsuit.

As far as Birgit Fein's claim is concerned, it is clear that discovery has demonstrated no claim of present harm or threat of specific future harm. Her unfounded fears that she was a victim of sex discrimination are not enough. There is a total absence of any causal relationship between the matters alleged in the complaint and what occurred in her particular dealings with Bankers Trust. She, too, has failed to establish injury in fact, and therefore plaintiff has no standing to sue as her representative. Warth v. Seldin, 422 U.S. at 511.^{2/}

Even assuming that injury in fact has been demonstrated, there is no showing that the Urban League's expenditures were in any way fairly traceable to the Board's failure adequately to regulate its members, who account even in the aggregate for only a miniscule percentage of home mortgage loans. Nor does it appear that the conditions of which Urban League complains would be rectified if the Board's regulatory techniques took a different form.

Because it has failed to satisfy the Article III requirement of standing, plaintiff's motion for summary judgment is moot. Defendants' motion for summary judgment is granted, and the complaint against them must be and hereby is dismissed.

SO ORDERED.



UNITED STATES DISTRICT JUDGE

May 3, 1978.

2/ By way of motion to revise an earlier Order of the Court, plaintiff seeks to reinstate National Neighbors as an additional plaintiff on the grounds that the affidavit of Betsy Collard, a member of an affiliate of National Neighbors, demonstrates sufficient injury and causal relationship to establish the standing of National Neighbors to sue as her representative. The representations made in the motion simply reinforce the Court's prior determination that the relationship between Ms. Collard and National Neighbors is too tenuous to support the latter's standing. Moreover, the affidavit makes no prima facie showing of either race or sex discrimination or of any injury suffered therefrom. Indeed, an attachment to the affidavit indicates that the affiant apparently received a mortgage from the only Federal Reserve member bank with whom she dealt. The motion is therefore denied.

APPENDIX 5.—COMPTROLLER OF THE CURRENCY

BENJAMIN S. ROSENTHAL, N.Y., CHAIRMAN
 CARDISS COLLINS, ILL.
 ROBERT F. DRINAN, MASS.
 ELLIOTT H. LEVITAN, GA.
 DAVID W. EVANS, IND.
 ANTHONY MOFFETT, CONN.
 FERNAND J. ST. GERMAIN, R.I.
 HENRY A. WAXMAN, CALIF.

GARRY BROWN, MICH.
 CLARENCE J. BROWN, OHIO
 TOM CONCORAN, ILL.

(202) 225-4407

NINETY-FIFTH CONGRESS
Congress of the United States
House of Representatives
 COMMERCE, CONSUMER, AND MONETARY AFFAIRS
 SUBCOMMITTEE

OF THE
 COMMITTEE ON GOVERNMENT OPERATIONS
 RAYBURN HOUSE OFFICE BUILDING, ROOM B-377
 WASHINGTON, D.C. 20515

August 16, 1978

Hon. John G. Heimann
 Comptroller of the Currency
 Administrator of National Banks
 Washington, D. C. 20219

Dear Mr. Heimann:

In connection with its general oversight responsibilities over the federal financial regulatory agencies, the Commerce, Consumer and Monetary Affairs Subcommittee has scheduled oversight hearings in September on the financial regulatory agencies' enforcement of the Equal Credit Opportunity Act and the Fair Housing Act. I am writing to request your testimony on the morning of September 15 at 9:30 A.M.

The hearings will address the topics of nondiscrimination regulations to implement the purposes of the Fair Housing Act, the proposed uniform enforcement guidelines for Regulation B, and other aspects of the financial regulatory agencies' policies and activities for securing financial institution compliance with the Equal Credit Opportunity Act and the Fair Housing Act. These other aspects will include the collection and use of monitoring information, examiner training for and the organization of the civil rights compliance examination work, the handling of consumer discrimination complaints, and actual enforcement activities to date.

The topics and specific questions on which the subcommittee requests the testimony of the Comptroller of the Currency are the following:

1. Redlining Regulations:

- a. Is there a problem of redlining discrimination in home lending by financial institutions, and is the problem of urban neighborhood decay due in any way to discriminatory practices in the handling of individual loan inquiries and applications by financial institutions?

- b. Would banking agency promulgation and enforcement of nondiscrimination regulations explicitly prohibiting redlining discrimination contribute materially toward more equitable treatment of individuals and a reduction of the problem of neighborhood decay?
- c. Has the Comptroller sufficient statutory authority to issue and enforce such nondiscrimination regulations, or does it plan to request legislation to convey this authority?
- d. Has the Comptroller any plans to issue such nondiscrimination regulations addressed, at least in part, to redlining discrimination? If not, what is the Comptroller's present approach to the regulatory control of redlining discrimination?

2. Redlining Monitoring:

- a. Has the Comptroller any plans to collect monitoring information on home loan applications and inquiries more detailed or covering more types of transactions than is now required under the monitoring provisions of Regulation B? Will the required monitoring information be similar in detail to the information to be collected by the FDIC and the Federal Home Loan Bank Board? Will monitoring information be required on applications for home improvement loans or mortgage refinancings? Will it be required on inquiries for home loans? If not, why not?
- b. How will this monitoring information be employed to examine individual banks for evidence of redlining discrimination?
- c. How do you employ Home Mortgage Disclosure Act (HMDA) data to examine individual banks for evidence of redlining discrimination?
- d. Have you any suggestions for improvements of this Act or of its implementing regulation, Regulation C, to improve the usefulness of this data for regulatory purposes?

3. Recent Enforcement:

- a. How many and what types of violations of the Fair Housing Act, the Equal Credit Opportunity Act, or Regulation B have your examiners found in national banks in 1977 and 1978? What portion of these violations were clear violations of the substance and spirit of the laws prohibiting discrimination? What remedial or enforcement action have you taken to correct these violations?

- b. Were there any instances of repeat violations, in which the bank was found to be continuing to engage in discriminatory practices after having previously been told to stop? What enforcement actions have you taken in these cases of repeat violations?
4. Future Enforcement: How will you deal in the future with cases of repeat violations of the Fair Housing Act, the Equal Credit Opportunity Act, or Regulation B, where a bank is found on the second or third examination to have failed to correct conditions found on a previous examination? In particular,
- a. In the case of repeat violations will you inform, or require a bank to inform, the victims of lending discrimination that unlawful discrimination has been found in the institution's handling of a previous application or inquiry from them?
- b. Under what circumstances will you release publicly the names of institutions that have refused or failed to eliminate discriminatory practices.
- c. Under what circumstances will you seek criminal prosecution of or other punitive action against banks or their officers who fail to eliminate discriminatory practices?
5. Civil Damages Litigation:
- a. What is your view about the effectiveness and proper role of civil damages litigation by private individuals in bringing about general compliance with the laws against credit discrimination?
- b. What steps does your office take to inform consumers of their right to file civil damage suits under the Fair Housing Act and Equal Credit Opportunity Act, or to facilitate in other ways consumer use of the civil damage provisions of these acts?
6. Consumer Information: What other consumer information and education activities does your office conduct to inform the general public about the laws against credit discrimination? Do you have any plans to expand these activities?

In addition to these questions to be addressed in testimony, the subcommittee requests that you provide in advance answers to certain specific questions and certain related materials, as follows:

1. What specific evidence have you that discriminatory redlining and appraisal practices are occurring or have recently occurred in home mortgage or home improvement lending by banks? Please provide to

the subcommittee copies of any staff studies or other reports, or citations of any independent research or investigative studies, on which you rely as evidence. In the case of evidence arising from examinations, please report as fully as possible the nature of the findings, the types of communities or neighborhoods involved, the number of institutions involved, and all other information pertinent to a full description of your findings of redlining practices.

2. Do banks maintain in their files information that would identify individual home loan applications denied or withdrawn, or outstanding home loans foreclosed, for lack of acceptable fire, homeowners, or mortgage insurance? Has your office utilized this information, or would it be feasible for your office to utilize this information, possibly in conjunction with the other financial regulatory agencies, to derive statistics on the extent and geographic distribution of insurance redlining?
3. How do your examination procedures and regulations deal with discrimination in real estate appraisals? Please supply to the subcommittee the text of any examiner instructions that address the detection of discrimination in appraisals. If there are no such instructions, please so state.
4. Have you considered requiring, as a part of the adverse action notice required under Regulation B, that the bank include a copy of the appraisal with the adverse action notice sent to an applicant when his application for a home loan is denied on the basis of an inadequate appraised value? What factors have you considered or will you consider in reaching a decision on this matter?
5. How do the Comptroller's examination procedures determine whether discriminatory "pre-screening" and discouragement of potential loan applicants are occurring? In particular:
 - a. Please explain how the examination procedures will determine whether the loan application files and monitoring records maintained by each bank are complete and have not had certain cases intentionally omitted.
 - b. What procedures will detect the discouragement of applicants by certain subtle devices such as (i) informing certain applicants whom the bank wishes to discourage that six to eight weeks will be required to process an application, when in fact only one week is required, or (ii) quoting a higher rate of interest to certain inquirers or applicants whom the bank wishes to discourage than to favored applicants?

- c. Please supply to the subcommittee the text of all examiner instructions that address the problem of "pre-screening" and discouragement. If there are no such instructions, please so state.
6. How do you currently employ the race, age, sex, and marital status monitoring information gathered on home mortgage applications by banks, as required by Regulation B?
7. Do you find this information sufficient for monitoring national bank compliance with the Equal Credit Opportunity Act and Regulation B, or do you plan to require that national banks record additional monitoring information? What inadequacies do you find with the present monitoring information?
8. Have you considered requiring each national bank to have clearly written nondiscriminatory loan underwriting standards, available to the public in printed form at each office, as the Federal Home Loan Bank Board has done for savings and loan associations? What factors have you considered or will you consider in reaching a decision on this matter?
9. How do national bank examiners evaluate whether formalized credit scoring systems are in compliance with the Fair Housing Act, the Equal Credit Opportunity Act, and Regulation B? Please supply to the subcommittee the text of any examiner instructions that address the evaluation of credit scoring systems. If there are no such instructions, please so state.
10. How do national bank examiners evaluate the internal management controls and organized civil rights compliance program of each bank? Please supply to the subcommittee the text of any examiner instructions that address the evaluation of internal management civil rights compliance programs. If there are no such instructions, please so state.
11. In their examinations for compliance with the Fair Housing Act, the Equal Credit Opportunity Act, and Regulation B, what procedures or guidelines do your examiners follow in determining what portion of their examination effort is to be devoted to each bank? How is the size determined for the loan sample that will be reviewed for compliance in each institution? In particular, is recognition given to the volume of loan originations, as distinct from loans held in the portfolio, in allocating examination effort to institutions that are active in originating loans for resale? Please supply to the subcommittee the text of any examiner instructions, policy guidelines, or other documents that address this question of the allocation of compliance examination effort among the different institutions to be examined.

12. In their examinations for compliance with the Fair Housing Act, the Equal Credit Opportunity Act, and Regulation B, what procedures or guidelines do your examiners follow in determining what portion of their examination effort is to be devoted to each type of loan or credit? In particular, is recognition given to the volume of loan originations, as distinct from loans held in the portfolio, in allocating examination effort at institutions that are active in originating loans for resale? In your answer please distinguish between home loans on 1-4 family dwellings, other loans on residential property, other consumer loans or credit, other small business loans or credit, and all other credit (including loans or credit to large businesses). Please supply to the subcommittee the text of any examiner instructions, policy guidelines, or other documents that address this question of the allocation of compliance examination effort among the different types of loans or credit. If there are no such documents, please so state.
13. Please describe the organizational structure and responsibilities of the Washington headquarters and the regional offices of the Comptroller of the Currency as they apply to the fair housing and equal credit compliance examination function. What are the relevant responsibilities and authorities associated with each position in this organizational structure, and what degree of autonomy is exercised by officials assigned to the regional offices in the performance of this function? What are the procedures followed for systematic oversight and review by the staff in Washington of the equal credit compliance examinations performed by the field examination staff?
14. How does the system of recognition and advancement for examiners convey an agency commitment to and provide personal reward for vigorous enforcement of the laws against credit discrimination? In particular,
 - a. In giving recognition and advancement to examiners, what weight is given to performance in civil rights compliance work?
 - b. What are the standards by which examiner performance in civil rights compliance work is judged?
15. Please provide the following actual or estimated figures for the full gross costs of the Comptroller's activities related to the enforcement of national bank compliance with the Fair Housing Act, the Equal Credit Opportunity Act, and Regulation B. These cost figures should include an appropriate allowance for overhead, including clerical support, travel and per diem expenses, computer usage, rent or imputed rent, and utilities. Please state the method by which any estimates were derived.

- a. The full costs for all activities in the twelve-month period from July 1977 through June 1978, and the projected full costs for the twelve-month period from July 1978 through June 1979.
 - b. A percentage breakdown of each total to show the proportions spent on training, field examinations and associated supervision, consumer complaint handling, consumer education, creditor education, and any other appropriate categories.
 - c. A percentage breakdown of each total in part (a) to show separately the proportions applicable to home loans and to all other credit.
16. Please provide the following actual or estimated figures on numbers of banks and numbers and sizes of loans. Please state the method by which any estimates were derived. In this request, "home loans" refers to real estate loans secured by 1-4 family residences and also consumer installment loans for repair and modernization of residential property.
- a. The number of national banks examined in the twelve-month period from July 1977 through June 1978 and the number that will be examined in the twelve-month period from July 1978 through June 1979.
 - b. The numbers of home loan applications received and home loans granted, and the dollar volume of home loans granted, by the examined banks in the twelve months ending June 1978.
 - c. The projected numbers of home loan applications to be received and home loans to be granted, and the projected dollar volume of home loans to be granted in the year ending June 1979 by the banks to be examined in that year.
 - d. The dollar volume of home loans held by the examined banks in their portfolios as of the December 1977 call report date, and the corresponding dollar volume projected for December 1978.
 - e. The numbers of credit applications received and loans and credit lines granted, and the dollar volume of loans and credit lines granted, for other consumer or small business credit (excluding home loans) by the examined banks in the twelve months ending June 1978.
 - f. The projected numbers of credit applications to be received and loans and credit lines to be granted, and the projected dollar volume of loans and credit lines to be granted, for other consumer or small business credit (excluding home loans) in the year ending June 1979 by the banks to be examined in that year.

- d. A percentage breakdown of each regional total to show separately the proportions applicable to home loans and to all other credit.
19. Please restate the figures given in answer to the previous question, as follows:
- a. The answers to parts (a) and (c) of the previous question restated to show examiner hours per bank examined (or to be examined).
 - b. From the answers to parts (b) and (d) of the previous question:
 - (i) examiner hours applicable to home loans restated as examiner hours per bank examined (or to be examined), per 100 home loan applications received (or expected), per 100 home loans granted (or expected to be granted), per \$100,000 of home loans granted (or expected to be granted), and per \$100,000 of home loans held (or expected to be held) in the banks' portfolios at the midpoint of the period.
 - (ii) examiner hours applicable to all other credit (excluding home loans) restated as examiner hours per bank examined (or to be examined), per 100 applications received (or expected) for other consumer or small business credit, per 100 loans or credit lines granted (or expected to be granted) for other consumer or small business credit, per \$100,000 of loans or credit lines granted (or expected to be granted) for other consumer or small business credit, and per \$100,000 of consumer and small business credit outstanding (or expected to be outstanding) from the examined banks at the midpoint of the period.
20. Do you employ, for enforcement or any other purpose, a distinction between "technical" and "substantive" violations of law? If so, please explain in precise terms how this distinction is used and what it means, as applied to violations of the Fair Housing Act and the Equal Credit Opportunity Act. Please list the types of violations of these acts that fall into each class.
21. Please provide a detailed tabulation, by region and for all regions combined, of Fair Housing Act, Equal Credit Opportunity Act, and Regulation B violations found by national bank examiners in the twelve-month period from July 1977 through June 1978. In this tabulation, please distinguish between violations related to home loans or applications and violations related to other credit. Within each of these two classes, please classify the violations by the specific nature of the violations, separating technical violations from substantive violations, and please indicate how many violations of each specific type were repeat violations that the institutions had previously been requested to correct. Where

more than one type or class of violation was found at a single institution, please count each type of violation separately, as this request is for a tabulation of violations, not of institutions in violation.

22. Please restate certain elements of the above tabulation of violations to show, by region and for all regions combined,
 - a. Technical and substantive home loan violations per 100 examiner hours devoted to civil rights compliance examination of home loans, per 100 home loan applications received, per 100 home loans granted, and per \$100,000 of home loans held in the bank's portfolios at December 31, 1977.
 - b. Technical and substantive violations related to other credit per 100 examiner hours devoted to civil rights compliance examination of other credit, per 100 applications received for other consumer or small business credit, per 100 loans or credit lines granted for other consumer or small business credit, and per \$100,000 of consumer and small business credit outstanding from the examined banks at December 31, 1977.
23. Please provide a tabulation, by region and for all regions combined, of institutions found to be in violation of the Fair Housing Act, the Equal Credit Opportunity Act, or Regulation B in the period from July 1977 through June 1978. If you distinguish between technical and substantive violations, please classify every institution in each region into one of three groups according to whether no violations were found, only technical violations were found, or one or more substantive violations were found. Then please subdivide each of the latter two classes according to whether the violations found at each institution were all first time violations or included one or more repeat violations that the institution had previously been requested to correct. Then please subdivide further according to whether the violations found were related only to home loans or applications, only to other credit, or to both home loans and other credit.
24. Please restate the above tabulation of institutions in violation to show institutions in violation as a percentage of all examined institutions in the region.
25. What are the established procedures of your office for investigating and/or responding to written consumer complaints alleging discrimination in some aspect of the credit granting process? Please supply to the subcommittee the text of all staff instructions, policy guidelines, or other documents that specify the procedures to be followed in investigating and/or responding to consumer complaints that allege discrimination in the credit granting process, whether relating to home loans or to other credit.

26. If the individual complaints are handled primarily in the regional offices, what are the procedures followed for systematic oversight and review of the complaint handling work by the headquarters staff in Washington?
27. Please provide figures giving the numbers of consumer complaints received by your office in the twelve-month period from July 1977 through June 1978 alleging discrimination in some aspect of the lending process, as follows:
 - a. Total complaints related to home loans or home loan applications.
 - b. Total complaints related to other consumer or small business credit or credit applications.
 - c. A disaggregation by region of the total complaints related to home loans or home loan applications.
 - d. A disaggregation by region of the total complaints related to other consumer or small business credit or credit applications.
28. Please provide a further tabular breakdown, as indicated below, of each of these figures of discrimination complaints received. For each region separately and for all regions combined, please provide the numbers of complaints in each category below for complaints related to home loans or applications and, separately, for other consumer or small business credit or credit applications.
 - a. Complaints the investigation of which found one or more violations of law that substantiated the complainant's claim;
 - b. Complaint cases in which no violation was found but in which an adjustment or accommodation was offered by the bank and accepted by the complainant (including correction of bank errors);
 - c. Complaints based on a factual dispute, in which the complainant received no satisfaction;
 - d. All other complaints that received a thorough investigation but resulted in no violations related to the complaint and no satisfaction for the complainant; and
 - e. All other complaints (including information requests) in which no investigation, or only a cursory investigation, was deemed necessary.

29. Please provide further supplementary information, as indicated below, on each group of complaints identified in the answers to the previous question. For each group of complaints enumerated above, please specify
- a. What portion of these complaints were about banks in which a violation similar to the complaint had been found previously, at the most recent prior general compliance examination?
 - b. What portion of these complaints were about banks in which a violation similar to the complaint was found subsequently, at the next subsequent general compliance examination?
 - c. What portion of these complaints were about banks that have not been given a general compliance examination since the filing of the complaint?
30. How many private law suits for civil damages under the Fair Housing Act or the Equal Credit Opportunity Act have been filed against national banks in 1977 and 1978? In how many of these instances had the plaintiff previously filed a complaint with your office, prior to filing the law suit?
31. In what ways does your office inform loan applicants or potential applicants of the existence and possible usefulness to them of the civil damages provisions of the Fair Housing Act and the Equal Credit Opportunity Act? Please supply to the subcommittee examples of any letters, pamphlets, or other educational or informational materials in which these civil damages provisions are mentioned.
32. Approximately how many of each type of letter, pamphlet, or other educational or informational material mentioned in the answer to the previous question were sent out or distributed to the public in the twelve-month period from July 1977 through June 1978? Please indicate the method of distribution and types of groups or individuals to which these materials were distributed.
33. Have you any reliable and representative information concerning the costs incurred by banks to comply with Regulation B and the laws against credit discrimination? If so, what portion of these costs are associated with the initial training and other front end start-up costs of the banks' compliance programs, and what portion are continuing expenses directly associated with processing of applications? Can the continuing expenses be stated as costs per loan application received or per \$100,000 of mortgage loan or other consumer credit assets held? Can they be stated in terms of fractions of a percentage point on the interest rate of a mortgage loan or other credit? What was the method by which these measurements were made?

34. Please identify and describe any major surveys, reports, or studies, either by outside experts or by your staff, that have recently been completed, are currently in progress, or are planned for the near future on any aspect of the responsibilities of your office under the Fair Housing Act or the Equal Credit Opportunity Act.

Please provide 75 copies of your prepared statement to the subcommittee at least 24 hours in advance of your appearance. The responses to the supplementary questions should be provided by Friday, September 8. If for any reason not all of these responses can be compiled by that time, then please deliver to the subcommittee on September 8 the answers and materials that are ready at that time, with the remaining answers and materials to be supplied as soon thereafter as possible. If you have any questions concerning this request, please contact Don Tucker of the subcommittee staff.

Sincerely,

Benjamin S. Rosenthal
Chairman

BSR:tt

Comptroller of the Currency

Responses to Supplementary Questions
Requested in Letter of August 16, 1978 by the
Commerce, Consumer, and Monetary Affairs
Subcommittee
of the
House Committee on Government Operations

1. What specific evidence have you that discriminatory redlining and appraisal practices are occurring or have recently occurred in home mortgage or home improvement lending by banks? Please provide to the subcommittee copies of any staff studies or other reports, or citations of any independent research or investigative studies, on which you rely as evidence. In the case of evidence arising from examinations, please report as fully as possible the nature of the findings, the types of communities or neighborhoods involved, the number of institutions involved, and all other information pertinent to a full description of your findings of redlining practices.

There is some evidence of discriminatory redlining and appraisal practices by banks. For example, in a few instances, we have discovered banks using appraisal forms which ask for prohibited information regarding the racial characteristics of the neighborhood in the course of our own examinations. In another case, we found evidence of a bank engaging in prescreening on the basis of location. In addition, we have under way investigations of banks in which there is some evidence of discriminatory redlining and appraisal practices, although in these cases we have not yet reached any conclusions.

There have been numerous statistical studies of lending patterns which suggest the existence of discriminatory redlining in that they show a general absence of mortgage lending by banks in certain neighborhoods. Some studies refine this analysis by showing that in such neighborhoods property transfers disproportionately are achieved through noninstitutional financing. Generally, however, these studies have been inconclusive because they do not adequately address the question of whether the absence of lending is due to discriminatory or irrational lending decisions and policies rather than reasonable decisions to avoid

unsound lending. In other words, these studies generally do not answer the question of whether and how many potential creditworthy applicants are being shut out by the policies and practices of banks. In this regard, several studies have concluded that lack of demand from creditworthy persons may explain the absence of lending in some neighborhoods.

One important type of evidence of the existence of discriminatory redlining and appraisal practices is the evidence gathered in conjunction with the Department of Justice suit against two leading professional real estate appraisal societies. This evidence indicated a history, in manuals and training materials, of discriminatory consideration of racial factors in evaluating neighborhoods and neighborhood trends.

Probably the best evidence that some banks engage in discriminatory or irrationally restrictive lending practices based on neighborhood is that in cases where banks have reviewed their underwriting criteria they have often found that they have been able to revise their criteria in a manner so as to substantially increase their lending in historically mortgage deficient neighborhoods, without jeopardizing safety and soundness. The voluntary efforts of the banks in Philadelphia under the Philadelphia Mortgage Plan is an important example.

We believe that our new data collection and analysis system will improve our capacity to focus on discriminatory redlining in the examination process.

2. Do banks maintain in their files information that would identify individual home loan applications denied or withdrawn, or outstanding home loans foreclosed, for lack of acceptable fire, homeowners, or mortgage insurance? Has your office utilized this information, or would it be feasible for your office to utilize this information, possibly in conjunction with the other financial regulatory agencies, to derive statistics on the extent and geographic distribution of insurance redlining?

The withdrawal of fire or homeowner's insurance coverage from a neighborhood, or the availability of such insurance only on onerous terms, can substantially increase obstacles to homeownership in the affected neighborhood. Moreover, the unavailability of property insurance coverage would severely limit the availability of mortgage credit, since extension of a mortgage loan without such insurance could be considered an unsound practice. For this reason, mortgage files contain information regarding insurance. Also, if a loan were denied based on unavailability of insurance, this would be noted in the denied loan file.

In accordance with a request from the Justice Department, OCC examiners will be instructed to include, starting in October, a comment in the report of examination if they detect or suspect insurance redlining. This information may be referred to the Department of Justice for its use. It is also possible that referrals could be made to the primary insurance company regulators, the state insurance commissioners.

While it is possible to detect individual instances of insurance redlining by reviewing loan files, we doubt whether the information is amenable to useful statistical analysis.

3. How do your examination procedures and regulations deal with discrimination in real estate appraisals? Please supply to the subcommittee the text of any examiner instructions that address the detection of discrimination in appraisals. If there are no such instructions, please so state.

Examiner instructions concerning appraisals are contained in the Handbook Section 12.4, page 1, Nos. 1.b., 1.c., and 3.b. (Exhibit A.) These instructions are verification procedures designed to enable the examiner to determine the adequacy of bank appraisals, the level of training received by appraisers, the familiarity of the bank with its or outside appraisal standards, and whether or not appraisals and/or appraisal standards are discriminatory.

Consumer examiners are provided Fair Housing case studies at the consumer training schools which deal with discrimination in real estate appraisals. Case Study, Section 12, Handout 2, (Exhibit B-1,) specifically provides examples of discriminatory appraisals that examiners are assigned to detect and analyze. Included also are situation examples which are thoroughly discussed at the school in breakout groups. Case Study, Section 12, Handout 3, (Exhibit B-2,) also provides additional verification procedures concerning appraisal policies, appraisal standards, techniques for detecting discrimination in appraisal policies, and interviewing techniques.

On a verbal basis, examiners receive Fair Housing lectures at the consumer training schools. Outlines and copies of these lectures are attached. Additionally, instructors at the school

and/or a representative from the Department of Justice discuss discrimination in real estate appraisals with the examiners at breakout groups. Specific methods for evaluating real property are outlined and ways in which such appraisals can discriminate are explained. For example, homes in a particular neighborhood are compared by size, number of rooms, etc. Values are equated and appreciation factors are added to the values of the homes. Depending upon the racial composition of the neighborhood, appreciation factors are shown to vary on a discriminatory basis.

Beginning in 1978, the consumer training schools will include additional handouts dealing with discrimination in real estate appraisals. They will include examples of appraisal methods and policies and will exemplify both discriminatory and nondiscriminatory appraisal standards for class discussion.

In addition to reviewing appraisals, the examiner determines whether bank personnel are aware of the appraisal standards the bank utilizes. If they are unaware of such standards, this is treated as an internal control problem. If internal or external appraisals are discriminatory, this is treated as a violation of the Fair Housing Act. If these appraisals are determined by the examiner to have the effect of discriminating, such as with low values for older homes which are located in a neighborhood that has residents which are predominantly of a protected class, the examiner provides an analysis of the possible discriminatory effect in the report of examination for further review by the Consumer Affairs Division, Washington, D. C.

4. Have you considered requiring, as part of the adverse action notice required under Regulation B that the bank include a copy of the appraisal with the adverse action notice sent to an applicant when his application for a home loan is denied on the basis of an inadequate appraised value? What factors have you considered or will you consider in reaching a decision on this matter?

The Federal Home Loan Bank Board has issued a proposed regulation to implement such a requirement. It is our understanding that the Bank Board has received considerable comment on the proposal from the savings and loan industry. We intend to review the comments the Board has received and to consider the proposal.

This proposal may be desirable in that it would increase accountability and provide applicants with basic information upon which to better understand and evaluate the reason for adverse action. This would facilitate enforcement in that it would provide the rejected applicant with the basis for filing a complaint if he or she believed the denial discriminatory. Moreover, a significant prophylactic effect might be achieved.

While the proposal appears to have some merit from a regulatory and equitable perspective, serious concerns have been expressed. In the past it has been argued that providing copies of appraisal reports to denied loan applicants might create pressures on appraisers which could hamper their independence and objectivity. The concern has also been expressed that if appraisal reports are made available, home purchasers might rely on information in the report relating to the condition of the property, and appraisers might be held legally liable if they make mistakes.

5. How do the Comptroller's examination procedures determine whether discriminatory "pre-screening" and discouragement of potential loan applicants are occurring, in particular:
- a. Please explain how the examination procedures will determine whether the loan application files and monitoring records maintained by each bank are complete and have not had certain cases intentionally omitted.

Examiners are instructed to review a sample of the loan file and rejected applications for violations. This review includes examining application forms for completeness and monitoring records for completion by applicants or notation by bank officials. Incomplete forms are treated as internal control problems in the report of examination. Examiners determine under what conditions applications might be withdrawn from the files through interviews with bank personnel.

When the data collection and analysis system is implemented and, if it includes a separate file on inquiries, a spot check of the loan file and rejected applications would be made to see if an application was submitted subsequent to an inquiry. We would also consider sampling those persons who made inquiries but for whom an application is not on file to determine if an application was made, or why not. This procedure would indicate whether applications are missing from the file.

- b. What procedures will detect the discouragement of applicants by certain subtle devices such as (i) informing certain applicants whom the bank wishes to discourage that six to eight weeks will be required to process an application, when in fact, only one week is required, or (ii) quoting a higher rate of interest to certain inquirers or applicants who the bank wishes to discourage than to favored applicants?

Examiners review a bank's policies, practices, procedures and internal controls. Therefore, they obtain some indication of what interest the bank charges for certain loans, what down payments are required, the length of time usually required to process a loan, etc. By using the procedures noted in the response to question 5.a. (above), a review of prescreening procedures and interviews with first contact personnel, examiners should, in most cases, become aware of possible discouragement tactics.

The new data collection and analysis system will further assist our efforts by highlighting banks where the data indicates that loan volume to particular groups is substantially lower than might be expected from demographic data. Where this data suggests the possibility of prescreening, extra emphasis on detecting prescreening problems will be given in the examination. In addition, consideration is being given to requiring the collection of limited monitoring information in connection with specific in-person inquirers. Use of information in this file would be a further tool for examiners in detecting prescreening. For example, minority inquirers who did not subsequently file an application could be contacted by the examiner to ascertain the reason why no application was filed.

- c. Please supply to the subcommittee the text of all examiner instructions that address the problem of "pre-screening" and discouragement. If there are no such instructions, please so state.

Most banks employ prescreening procedures. These are reviewed to determine that they reflect no prohibited discrimina-

tory practices. Moreover, a bank's records may indicate a low ratio of rejected applications suggesting that there is prohibited prescreening which the examiner will pursue in more detail. Interviews are also conducted with loan officers and first contact personnel concerning prescreening procedures. Examiner instructions which address the problem of prescreening and discouragement are set forth in Handbook Section 10.3, 10.4, 12.3 and 12.4, Fair Housing Handouts, and lecture outlines, which are attached as Exhibits A, B-1, B-2, C, and D.

6. How do you currently employ the race, age, sex, and marital status monitoring information gathered on home mortgage applications by banks, as required by Regulation B?

Monitoring this information which is required by Section 202.13 of Regulation B is essential to the examination of fair lending practices regarding home mortgage applications. This information enables examiners to determine which applicants, classified by personal characteristics, are being accepted or rejected. Rejected applicants are evaluated by the examiner against the bank's stated loan policy and creditworthiness criteria and they are compared to accepted applicants to ascertain if the bank follows its own standards in all cases. For example, it is determined if different income, net worth and other credit standards are detrimentally applied to minorities.

Examiner instructions which prescribe the use of monitoring information are set forth in Handbook Section 12.4, No. 3, with the attached as Exhibit A.

7. Do you find this information sufficient for monitoring national bank compliance with the Equal Credit Opportunity Act and Regulation B, or do you plan to require that national banks record additional monitoring information? What inadequacies do you find with the present monitoring information?

The present monitoring data have a number of deficiencies. First, they are limited to 1-4 family mortgages for home purchase. Second, because the method of racial data collection is limited to voluntary self-identification, there is considerable missing information. Third, there are no data on those inquiries which do not result in a written application. In light of these deficiencies, in our substitute monitoring program under development, we are studying the desirability of 1) requiring the use of racial/ethnic identification by visual observation and/or surname where the applicant does not supply the information by self-identification, 2) expanding the coverage of the racial data provisions to home improvement loans, and 3) requiring that limited monitoring information be collected in conjunction with specific in-person inquiries.

The new data collection and analyses system being developed will substantially increase the usefulness of the monitoring information. The information on race, sex, marital status and age will be combined with other information on loan terms, borrower characteristics and property characteristics into a reporting system to create a computer data base which will allow statistical analyses to be run for each bank prior to the examination. The statistical analyses will be used to identify specific disparities for examiner investigation. Also, specific loan

files and denied loan files, which manifest these disparities, will be identified for examiner review.

8. Have you considered requiring each national bank to have clearly written nondiscriminatory loan underwriting standards, available to the public in printed form at each office, as the Federal Home Loan Bank Board has done for savings and loan associations? What factors have you considered or will you consider in reaching a decision on this matter?

It is the present policy of the OCC to strongly encourage banks to maintain written loan policies. Examiners review these policies to determine their adequacy and appropriateness. They are careful in the course of that review to assure that these policies are not discriminatory. When a bank has no written policies but has been found to have violated substantive provisions of Regulation B, as part of corrective action it is required to develop a written nondiscriminatory loan policy.

The Office has for some time discussed the possibility of requiring banks to maintain written loan policies. That this has never been decided is attributable to the fact that it might impose an undue burden on small banks, that many banks already have such policies, and that nearly all banks will probably have written policies within the next two years because of our commercial examination procedures.

We are aware of the Federal Home Loan Bank Board's new requirement and intend to carefully monitor their experience with respect to it. We do see potential advantages to requiring such policies and making them public. This would alert applicants to the policies of the bank and would serve to provide better

means of determining whether the policies are being applied in a nondiscriminatory manner. At the same time, it must be recognized that the asset mix of a commercial bank is much more varied than that of a thrift institution and most banks claim that their loan policies contain proprietary information, such as collateral and security terms.

9. How do national bank examiners evaluate whether formalized credit scoring systems are in compliance with the Fair Housing Act, the Equal Credit Opportunity Act, and Regulation B? Please supply to the subcommittee the text of any examiner instructions that address the evaluation of credit scoring systems. If there are such instructions, please so state.

Formalized credit scoring systems, as well as informal evaluation systems utilized by banks, are reviewed for compliance with the Fair Housing Act, the Equal Credit Opportunity Act, Regulation B, and state fair lending statutes. The examiner considers whether the bank has incorporated prohibited bases into its scoring system, such as in assigning more points to an applicant who has a home telephone in his or her own name or in assigning less weight to part-time income. Additionally, expertise in evaluating such systems is gained through experience, communications with regional support staff, and by means of training techniques provided at consumer training schools. The examiner is exposed to various types of credit scoring systems and learns of the history of scoring systems utilized by financial institutions in the past, some of which are shown to be discriminatory. Consideration is also given to civil rights court cases which serve to emphasize ways in which discriminatory policies can overtly or subtly become incorporated into management

policies. Such information supplements the specific discriminatory practices defined in Regulation B.

Instructions for evaluating a bank's credit system are provided examiners at the training schools. Regulation B and the Fair Housing Act are taught in conjunction with credit systems through lectures, workshops and a presentation by a representative of the Department of Justice. Additionally, examiners receive handouts to assist them. The Guidelines for Interview of Bank Personnel, court cases and legislative background documents dealing with discrimination and the effects test are provided to examiners. These are attached as Exhibits C and D, as well as Handbook sections 10.1, 10.3(2), 10.3(4), 10.3(10), 10.3(11), 10.4(4a), 12.1, 12.4(2) and 12.4(3d). (Exhibit A.)

10. How do national bank examiners evaluate the internal management controls and organized civil rights compliance program of each bank? Please supply to the subcommittee the text of any examiner instructions that address the evaluation of internal management civil rights compliance programs. If there are no such instructions, please state.

Examiners follow the instructions in the Comptroller's Handbook for Consumer Examinations in conjunction with handouts and training provided at the Consumer Affairs Training School for evaluating the internal management controls and organized civil rights compliance of each bank. Examiners interview bank personnel on their knowledge of the Equal Credit Opportunity Act and the Fair Housing Act. Bank policies and procedures are also reviewed for compliance, as are its internal compliance programs. The actual practices of

the bank are then compared against the stated policies and the requirements of the law.

Overall internal controls are evaluated at the beginning of every examination. Section 1.5 of the handbook (See Exhibit A) discusses the importance of a good internal controls program and Section 1.8 of the handbook (see Exhibit A) lists the criteria used by examiners to evaluate the bank's internal controls management. Examination and Verification Procedures in Sections 10 and 12 of the handbook (see Exhibit A) provide examiners with specific instructions in evaluating civil rights compliance and internal controls relating to the Fair Housing and Equal Credit Opportunity Acts. Handouts with the same section numbers also deal with these subjects.

11. In their examinations for compliance with the Fair Housing Act, the Equal Credit Opportunity Act, and Regulation B, what procedures or guidelines do your examiners follow in determining what portion of their examination effort is to be devoted to each bank? How is the size determined for the loan sample that will be reviewed for compliance in each institution? In particular, is recognition given to the volume of loan originations, as distinct from loans held in the portfolio, in allocating examination effort to institutions that are active in originating loans for resale? Please supply to the subcommittee the text of any examiner instructions, policy guidelines, or other documents that address this question of the allocation of compliance examination effort among the different institutions to be examined.

Each Regional Office makes the determination as to bank assignment and the anticipated time frame for the examination. Guided by past experience, the amount of time scheduled for an examination is based primarily upon bank size. Generally, a bank with a greater asset size will require more examination time.

The time schedules are flexible enough, however, to allow for additional time when problems are uncovered which require further investigation.

In the consumer compliance examination, the examiner has examination and verification procedures which must be performed for every bank. The examiner does not initially decide how much time and effort will be allocated to any particular subject; the examiner works through the procedures until they are completed. Generally, the examiner does not establish priorities in the examination unless the suspicion of problems in a specific area is raised by the existence of consumer complaints, comments in the previous Report of Examination or working papers, or some other source raises questions regarding bank practices. In such cases additional examination effort is allocated to the area in question. An established work schedule has been adopted (See Exhibit # A, Handbook #10, Section 3). Since the examiner must rely on bank personnel to gather much of the information and to answer questions, the work order follows a different path in every bank. Moreover, it would be practically impossible to determine the amount or percentage time which is allocated to any one area such as Fair Housing or Equal Credit Opportunity. In many areas, the procedures overlap. For example, when a loan file is being reviewed, the examiner is performing Truth in Lending, Equal Credit Opportunity, Fair Housing and Fair Credit Reporting procedures simultaneously.

A statistical sample of loans is reviewed for compliance with Fair Housing and Equal Credit Opportunity. A minimum

statistical sample of 35 accepted and 18 rejected loans is selected from all the bank's loans made in the past three months. However, if all loan types are not represented, the examiner judgmentally selects several of each of the unrepresented loan types to complete the sample. In addition, a minimum of at least five accepted and five rejected real estate mortgage loans is reviewed for compliance with the Fair Housing Act. The sample size is the minimum acceptable consistent for all national banks regardless of bank size or portfolio size. However, if the examiner runs into problems or questions in the original sample, he/she is expected to review additional loans to determine the extent of the problem. In specialized Fair Housing examinations the examiner statistically samples 35 accepted and 18 rejected real estate loans and performs the Fair Housing and Equal Credit Opportunity Act procedures for those loans.

The statistical sampling process employed in selecting loans for review will result in loans of each type being selected based on their frequency of occurrence in the population. The population also is defined as loans originated by the bank regardless of final disposition. Therefore the primary factor in determining the examination effort devoted to loans originated for resale is their proportional relationship to total loans originated by the bank.

12. In their examinations for compliance with the Fair Housing Act, the Equal Credit Opportunity Act, and Regulation B, what procedures or guidelines do your examiners follow in determining what portion of their examination effort is to be devoted to each type of

loan or credit? In particular, is recognition given to the volume of loan originations, as distinct from loans held in the portfolio, in allocating examination effort at institutions that are active in originating loans for resale? In your answer please distinguish between home loans on 1-4 family dwellings, other loans on residential property, other consumer loans or credit (including loans or credit to large businesses). Please supply to the subcommittee the text of any examiner instructions, policy guidelines, or other documents that address this question of the allocation of compliance examination effort among the different types of loans or credit. If there are not such documents, please so state.

As mentioned in our response to question 11, the sample of 35 accepted and 18 rejected loans should contain a representative number of all of the types of loans made by the bank. If some loan types are not represented in the original sample, examples of those loan types are selected from the population and added to the sample. The population would include all types of loans including commercial, installment, real estate, etc. The sample size of 35 and 18 loans has been determined to be statistically valid. This means that problems appearing in the sample will be representative of those occurring in the entire population. The percentage of loans of any type in the sample should be proportional to the percentage of loans of the same type in the entire population of loans. Therefore, the primary factor in determining the examination effort devoted to each type of loan in the sample is the frequency of occurrence of the loan type in the total population. Such loan types will have originated within three months prior to the examination.

If a violation or questionable practice is discovered in a particular type of loan, the sample will be expanded for that type of loan. Therefore, the second factor that affects the

amount of examination time spent on a given loan or credit type is the extent of violations or problems found.

Again, as in the answer to question 11, the volume of loan originations, as distinct from loans held in the portfolio is not a consideration in allocating examination effort among types of loans or credit at banks that are active in originating loans for resale.

The examination outline and the statistical sampling instructions used by examiners are enclosed for your information in Exhibits E and F. The sampling instructions address, at least in part, the question of allocation of examination effort among the different types of loans or credit.

13. Please describe the organizational structure and responsibilities of the Washington headquarters and the regional offices of the Comptroller of the Currency as they apply to the fair housing and equal credit compliance examination function. What are the relevant responsibilities and authorities associated with each position in this organizational structure, and what degree of autonomy is exercised by officials assigned to the regional offices in the performance of this function? What are the procedures followed for systematic oversight and review by the staff in Washington of the equal credit compliance examinations performed by the field examination staff?

The Consumer Examination Division has responsibility for the fair housing and equal credit opportunity compliance examination function. In accordance with the recent reorganization of this office (organization chart attached as Exhibit G) the Division Director reports to the Deputy Comptroller for Specialized Examinations, who in turn reports to the Deputy Comptroller for Bank Supervision. There are presently eight permanent

members of this staff. Position descriptions outlining the duties, responsibilities, and authority of the major positions are attached. Two of these positions, the Consumer Examinations Review Assistant and the Manager, Examination Analysis, are primarily responsible for the review of all examinations conducted by the regional offices and oversight of the consumer examination program.

Each regional office operates autonomously, but under examination guidelines and procedures established by the Consumer Examination Division in the Washington Office. At the present time there is a Regional Consumer Affairs Specialist assigned to each regional office, under the supervision of the Deputy Regional Administrator for Examinations, who is responsible for the Fair Housing and Equal Credit Opportunity examination functions. It is contemplated that this position will soon be upgraded to create a Regional Director of Customer and Community Affairs who will be responsible for both policy and operational efforts in the areas of consumer affairs, civil rights and community programs.

The Comptroller of the Currency has established Civil Rights and Community Development Divisions within the Office of Customer and Community Programs. These divisions will have major responsibility with respect to Fair Housing Act and Equal Credit Opportunity Act matters.

14. How does the system of recognition and advancement for examiners convey an agency commitment to and provide personal reward for vigorous enforcement of the laws against credit discrimination? In particular,
- a. In giving recognition and advancement to examiners, what weight is given to performance in civil rights compliance work?

OCC has developed a career path for consumer examiners that is to be implemented in the fourth quarter of 1978. Prior to a formalized career path, consumer examiners have been recognized for their contributions to the consumer examination function by means of high quality salary increases, promotion to higher grade levels, assignment to areas of greater responsibility in both the consumer and commercial functions, and desirable performance evaluations that will affect their later careers with OCC in a positive manner. When the career path has been formally adopted, higher grade levels will be available to consumer examiners, with a possible progression from GS 7 to GS 14. Prior to receiving a national bank commission, a consumer examiner will advance on the basis of expertise in the area of consumer and civil rights laws and regulations. Commercial examination expertise will also be required for obtaining a commission, along with consumer and civil rights expertise.

While a consumer examiner is evaluated by his or her overall ability to detect violations of laws and regulations, the nature of the training program emphasizes that particular weight will be placed upon the examiner's ability to be effective in the area of civil rights.

- b. What are the standards by which examiner performance in civil rights compliance work is judged?

The examiner is first tested for knowledge at the Consumer Affairs Training School. The examiner then conducts examinations and his or her work is reviewed for thoroughness and accuracy. Working papers are reviewed for proper documentation and analysis. The working papers are compared to the report of examination to ensure detected violations have been included in the report. If the documents obtained from the bank (in the working papers) have been analyzed properly or if the working papers indicate the examiner has not completed the necessary procedures for the civil rights work programs, the examiner is contacted and criticized. Weak performance is emphasized in the examiner's performance evaluation, which subsequently affects the examiner's ability to receive a salary increase or promotion. Reports of examination that contain very few violations of law are reviewed in greater depth by the Regional Consumer Specialist (Refer to Working Papers checklist, Exhibit I).

15. Please provide the following actual or estimated figures for the full gross costs of the Comptroller's activities related to the enforcement of national bank compliance with the Fair Housing Act, the Equal Credit Opportunity Act, and Regulation B. These cost figures should include an appropriate allowance for overhead, including clerical support, travel and per diem expenses, computer usage, rent or imputed rent, and utilities. Please state the method by which any estimates were derived.

- a. The full costs for all activities in the twelve-month period from July 1977 through June 1978, and the projected full costs for the twelve-month period from July 1978 through June 1979.

The estimated gross cost of the Comptroller's activities related to the enforcement of the Fair Housing Act, the Equal Credit Opportunity Act and Regulation B from July 1977 through June 1978 are detailed below.

Note: By program design, forty percent of consumer efforts are allocated to Fair Housing and Equal Credit Opportunity. Feedback from the field indicates this breakdown is fairly accurate.

Washington Office

The full cost of the Consumer Affairs Division: \$610,000 (per OCC Financial Management Division). Forty percent of Division activities are related to fair lending enforcement: $.40 \times \$610,000 = \$244,000$.

Field Personnel

National Bank Consumer Examinations:	22,492 person days
Schools :	<u>3,000</u> person days
Total :	25,492 person days

The average yearly cost of a GS-8/5 Assistant National Bank Examiner, including salary and 9% benefits: \$16,875. Average per diem expenses of a National Bank Examiner, based upon a regional survey: \$4,800. Average cost per bank examiner year: \$21,675. Average cost per bank examiner day: $\$21,675 \div 220 \text{ days} = \98.52 . Total yearly cost of Consumer Examiners: $\$98.52 \times 25,492 \text{ days} = \$2,511,472$.

Forty percent of national bank consumer examinations are related to the enforcement of fair lending laws and regulations: $.40 \times \$2,511,472 = \underline{\$1,004,589}$.

Consumer Specialists

The average yearly cost of a GS-9/5 Regional Consumer Specialist, including benefits equal to 9 percent of the annual salary: $1.09 \times \$17,102 = \$18,641$.

The annual cost of 14 Regional Consumer Specialists: $14 \times \$18,641 = \$260,974$.

Forty percent of the activities of Regional Consumer Specialists are estimated to be related to the enforcement of fair lending laws and regulations: $.40 \times \$260,974 = \$104,389$.

Regional Counsels

The average yearly cost of a GS-14/4 Regional Counsel, including 9 percent benefits: $1.09 \times \$33,825 = \$36,869$.

The annual cost of 14 Regional Counsels: $14 \times \$36,869 = \$516,166$. An estimated ten percent of the activities of Regional Counsels are related to consumer affairs; 40 percent of these activities are concerned with fair lending compliance enforcement: $.04 \times \$516,166 = \$20,647$.

Regional Administrators

The average yearly cost of a GS-16 Regional Administrator, including 9 percent annual benefits: $1.09 \times \$42,423 = \$46,241$.

The annual cost of 14 Regional Administrators: $14 \times \$46,241 = \$647,374$.

An estimated four percent of the activities of Regional Administrators are related to the enforcement of fair lending laws and regulations: $.04 \times \$647,375 = \$25,895$.

Deputy Regional Administrators

The average yearly cost of a GS-15 Deputy Regional Administrator, including 9 percent annual benefits: $1.09 \times \$36,171 = \$39,426$. The annual cost of 14 Deputy Regional Administrators: $14 \times \$39,426 = \$551,964$.

An estimated four percent of the activities of Deputy Regional Administrators are concerned with the enforcement of fair lending laws and regulations: $.04 \times \$551,964 = \$22,079$.

Miscellaneous Support

The average salary of four support personnel, such as secretaries, paralegals and interns, for consumer activities in each region, with a median grade level of GS-6, including 9 percent of the annual salary for employee benefits: $1.09 \times \$11,101 = \$12,100$.

The cost of four support personnel for 14 regions: $56 \times \$12,100 = \$677,600$.

Forty percent of the activities of these support personnel are related to the enforcement of fair lending laws and regulations: $.40 \times \$677,600 = \$271,040$.

Regional Office Overhead

Total regional office overhead expenses: \$4,220,958 (per OCC Financial Management Division).

Roughly six percent of total overhead can be imputed to consumer affairs, and forty percent of that total is imputed to Fair Lending. $\$4,220,958 \times .024 = \$101,303$.

The total estimated cost of all OCC activities related to the enforcement of fair lending laws and regulations: \$1,793,942.

We anticipate that costs for 1978-1979 will be comparable to those noted above.

- b. A percentage breakdown of each total to show the proportions spent on training, field examinations and associated supervision, consumer complaint handling, consumer education, creditor education, and any other appropriate categories.

Estimated Percentage Breakdown

Examinations	85 percent
Training	10 percent
Consumer Complaints	3 percent
Consumer Education	1 percent
Credit Education	1 percent

- c. A percentage breakdown of each total in part (a) to show separately the proportions applicable to home loans and to all other credit.

OCC efforts to enforce national bank compliance with the Fair Housing Act, the Equal Credit Opportunity Act, and Regulation B are approximately evenly divided between oversight of home loan activities and all other types of credit.

Fifty percent of the components noted above at 15a represent costs attributable to housing loan supervision.

Estimated Percentage Breakdown

Examinations	42.5 percent
Training	5 percent
Consumer Complaints	1.5 percent
Consumer Education	.5 percent
Creditor Education	.5 percent

16. Please provide the following actual or estimated figures on numbers of banks and numbers and sizes of loans. Please state the method by which any estimates were derived. In this request, "home loans" refers to real estate loans secured by 1-4 family residences and also consumer instalment loans for repair and modernization of residential property.

- a. The number of national banks examined in the twelve-month period from July 1977 through June 1978 and the number that will be examined in the twelve-month period from July 1978 through June 1979.

1695 consumer examinations conducted from July '77 through June '78 have been entered into a computerized data base. Of these examinations, 13 represented banks examined for the second time, thus 1682 banks, and 1695 examinations, are entered into the data base. At least 384 examinations from this period have been received by the Consumer Examination Division in Washington, yet have not been reviewed and entered into the data base. A smaller number of reports (estimated to about 75) from the same period have not yet been received by the Washington Office, and remain in Regional Offices throughout the country. We estimate the total number of examinations conducted during this period as being 2,154. We anticipate comparable numbers for the current year.

- b. The number of home loan applications received and home loans granted, and the dollar volume of home loans granted, by the examined banks in the twelve months ending June 1978.

This data is not currently available, but we expect to be able to provide information concerning the number of housing related loan applications

received, and number of such loans granted, following completion of a survey now being conducted as part of our implementation of a computerized data collection and analysis system designed to assist in our enforcement of Fair Lending laws. [See attachment to Muckenfuss letter of January 22, 1979]

- c. The projected numbers of home loan applications to be received and home loans to be granted, and the projected dollar volume of home loans to be granted in the year ending June 1979 by the banks to be examined in that year.

We have no basis for projecting this information.

- d. The dollar volume of home loans held by the examined banks in their portfolios as of the December 1977 call report date, and the corresponding dollar volume projected for December 1978.

The dollar volume of home loans held in the portfolio of all national banks reported in the December 31, 1977 Call Report was \$59,399,079,000. This figure is the sum of items 1.c. and 6.d. from Schedule A of the Call Report.

Projections of the dollar volume of home loans during the year from July '78 through June '79 are not available.

- e. The numbers of credit applications received and loans and credit lines granted, and the dollar volume of loans and credit lines granted, for other consumer or small business credit (excluding home loans) by the examined banks in the twelve months ending June 1978.

This information is not available for national banks, nor can it be developed at a reasonable cost, to the best of our knowledge.

- f. The projected numbers of credit applications to be received and loans and credit lines to be granted, and the projected dollar volume of loans and credit lines to be granted, for other consumer or small business credit (excluding home loans) in the year ending June 1979 by the banks to be examined in that year.

We have no basis for projecting this information.

- g. The dollar volume of consumer and small business credit outstanding (excluding home loans) in the portfolios of the examined banks as of the December 1977 call report data, and the corresponding dollar volume projected for December 1978.

The dollar volume of consumer credit outstanding in the portfolios of national banks reported in the December 31, 1977 Call Report was \$75,223,473,000. This figure is item 6 of Schedule A of the call report, less 6.d. We have no basis for projecting forward this information. Our call data does not separately report information concerning small business credit, thus our response does not reflect loans made to small businesses.

17. Please restate the cost figures given in answer to question 15.a. and 15.c. to show:
- a. The total costs of the earlier period and the projected total costs of the later period restated as costs per bank examined (or to be examined).

Cost Per Bank Examined

\$1,793,942 (total costs) ÷ 2,154 (banks examined) = \$833.00 per bank. We anticipate that comparable costs per bank examined will be incurred in the coming year.

- b. The total costs of the earlier period and the projected total costs of the later period that are applicable to home loans restated as costs per bank examined (or to be examined), per home loan application received (or expected), per home loan granted (or expected to be granted), per \$1,000 of home loan granted (or expected to be granted), and per \$1,000 of home loans held (or expected to be held) in the banks' portfolios at the midpoint of the period.

We estimated that 50% of our Fair Lending efforts relate to housing credit, and would therefore estimate such housing related enforcement costs to amount to about \$869,971 or \$416.50 per bank.

Dividing the above Fair Lending enforcement costs for housing credit by \$1,000 of loans outstanding yields a figure of \$.015100 per \$1,000 of home loans held as of December 31, 1977.

We are unable to provide projections of this data for the following year, or figures relating to costs per the number or amounts of applications granted or denied.

- c. The total costs of the earlier period and the projected total costs of the later period that are applicable to all other credit (excluding home loans) restated as costs per bank examined (or to be examined), per application received (or expected) for other consumer or small business credit, per loan or credit line granted (or expected to be granted) for other consumer or small business credit, per \$1,000 of loans or credit lines granted (or expected to be granted) for other consumer or small business credit, and per \$1,000 of consumer and small business credit outstanding (or expected to be outstanding) from the examined banks at the midpoint of the period.

The total cost of the Fair Lending portion of consumer examinations, related to all other credit activities during the year from July 1977 through June 1978, per bank examined was \$416.50. See (b.), above.

The total cost of the Fair Lending portion of consumer examinations, related to all other credit activities, during the year ending June 1978, per \$1,000 of consumer and small business credit maintained in the portfolio of all national banks as of December 31, 1977 was \$.011924.

$$\begin{aligned} \$1,793,942 + 2 &= \$896,971 \\ \$896,971 + 75,223,473 &= \$.011924 \end{aligned}$$

The average cost of consumer bank examinations related to consumer and small business credit activities, with respect to credit applications received, lines of credit granted and per \$1,000 of consumer and small business credit granted during the year from July 1978 through June 1979 could not be derived. The average cost projections for the year ending June 1979 are unavailable.

18. Please provide the following actual or estimated figures for the number of examiner hours spent in performing on-site examination at national banks for compliance with the Fair Housing Act, the Equal Credit Opportunity Act, and Regulation B. Please state the method by which any estimates were derived.
- a. Total examiner hours for the twelve-month period from July 1977 through June 1978, and projected total examiner hours for the twelve-month period from July 1978 through June 1979.

71,974 examiners hours: Fair Lending Enforcement

The data base reflected 17,710 person days devoted to consumer examinations. Because only 1,695 reports of an estimated total of 2,154 exams were entered

into the data base, all results were multiplied by $\frac{2,154}{1,695}$, or 1.27, to yield weighted data representative of our enforcement program. The total person days thus became 22,492, which when multiplied times eight equals 179,936 examiner hours for consumer examinations. Since 40% of our enforcement program is estimated to be allocated to Fair Lending, we estimate that 71,974 examiner hours were devoted to enforcing these laws. See CEIS Special Violation Summary appendix to Question 23, dated 9/13/78 for weighted data concerning examiner days.

We anticipate comparable figures for the following year.

- b. A percentage breakdown of each total to show separately the proportions applicable to home loans and to all other credit.

Since we estimate that 50% of our Fair Lending examination is devoted to Real Property loans, the figure noted above at (a.) was simply divided by 2, to yield an estimated figure of 35,987 examiner hours.

- c. A disaggregation by region of the totals given in answer to part (a).

The same approach noted above at (a.) was followed, multiplying weighted data by (8 x .40) for each region's examiner day data.

<u>Region</u>	<u>Total Fair Lending Examiner Hours</u>
1	2,259
2	3,622
3	3,834
4	7,712
5	5,363
6	4,528
7	6,109
8	5,734
9	7,245
10	8,685
11	8,493
12	3,507
13	1,722
14	3,158
Total U.S.	*71,974

*may not total due to rounding.

- d. A percentage breakdown of each regional total to show separately the proportions applicable to home loans and to all other credit.

Given that home loans represent an estimated 50% of our Fair Lending effort, the figures for (c.), above, were divided by 2 to yield examiner hours for enforcing Fair Lending laws for real property and other types of consumer credit.

Examiner Hours

<u>Region</u>	<u>Home Loans</u>	<u>Other Credit</u>
1	1130	1130
2	1811	1811
3	1917	1917
4	3856	3856
5	2682	2682
6	2264	2264
7	3054	3054
8	2867	2867
9	3622	3622
10	4342	4342
11	4246	4246
12	1754	1754
13	861	861
14	1579	1579
Total	35,987	35,987

19. Please restate the figures given in answer to the previous question, as follows:

- a. The answers to part (a) and (c) of the previous question restated to show examiner hours per bank examined (or to be examined).

Examiner hours per examination: 33.4
 71,974 hours ÷ 2153 examinations = 33.4

<u>Region</u>	<u>Examiner Hours/Examination</u>
1	30.1
2	32.3
3	35.8
4	36.5
5	35.5
6	23.3
7	33.6
8	35.0
9	26.4
10	49.1
11	25.4
12	49.4
13	37.4
14	56.4

Note: Disparities in personnel allocations may to some degree be explained by an analysis of the sizes of banks in each region. See Appendix to Question 19, which shows examiner days for banks of varying sizes in each region.

b. From the answers to parts (b) and (d) of the previous question:

- (i) examiner hours applicable to home loans restated as examiner hours per bank examined (or to be examined), per 100 home loan applications received (or expected), per 100 home loans granted (or expected to be granted), per \$100,000 of home loans granted (or expected to be granted), and per \$100,000 of home loans held (or expected to be held) in the banks' portfolios at the midpoint of the period.

<u>Region</u>	<u>Examiner Hours (Housing) per bank examined</u>	<u>Examiner Hours (Housing) per 100,000 Home Loans held</u>
1	15.1	.587
2	16.2	.260
3	17.9	.424
4	18.3	.684
5	17.8	.635
6	11.4	1.010
7	16.8	.427
8	17.5	1.280
9	13.2	1.116
10	24.5	2.822
11	12.7	2.264
12	24.7	.846
13	18.7	.299
14	28.2	.123
Total	16.7	.606

- (ii) examiner hours applicable to all other credit (excluding home loans) restated as examiner hours per bank examined (or to be examined), per 100 applications received (or expected) for other consumer or small business credit, per 100 loans or credit lines granted (or expected to be granted) for other consumer or small business credit, per \$100,000 of loans or credit lines granted (or expected to be granted) for other consumer or small business credit, and per \$100,000 of consumer and small business credit outstanding (or expected to be outstanding) from the examined banks at the midpoint of the period.

<u>Region</u>	<u>Examiner Hours (Other) Per Bank Examined</u>	<u>Examiner Hours (Other) Per \$100,000 Other Loans</u>
1	15.1	.483
2	16.2	.256
3	17.9	.410
4	18.3	.533
5	17.8	.408
6	11.4	.455
7	16.8	.428
8	17.5	.511
9	13.2	1.290
10	24.5	1.376
11	12.7	.684
12	24.7	.535
13	18.7	.236
14	28.2	.150
Total	16.7	.478

20. Do you employ, for enforcement or any other purpose, a distinction between "technical" and "substantive" violations of law? If so, please explain in precise terms how this distinction is used and what it means as applied to violations of the Fair Housing Act and the Equal Credit Opportunity Act. Please list the types of violations of these acts that fall into each class.

We view some violations as having a much more immediate impact on consumers than others. We have developed the following list of violations as being "substantive". Our criteria for this categorization is that these violations may impair the consumer's access to credit in the immediate transaction. While other violations will impede full implementation of the purposes of these laws, their effect is much less direct.

Substantive Violations

42 USC 3605	Fair Housing Act
12 CFR 202.4	Refers to definitions as to what constitutes discrimination on a prohibited basis.
12 CFR 202.5(a)	Discouraging applicants on a prohibited basis.
.5(d)(1)	Requesting marital status where prohibited.
.5(d)(4)	Requesting information about birth control or child bearing/rearing practices or intentions.
.5(d)(5)	Requesting race, color, religion or national origin.
12 CFR 202.6(b)	Rules concerning the use of information in evaluating applications.
12 CFR 202.7(a)	Refusal to grant individual account on any prohibited basis.

Substantive Violations

.7(c)	Adverse action on open-end account because of change in marital status or age.
.7(d)	Requiring signature of spouse or other person where not permitted.
.7(e)	Refusal to extend credit because insurance is unavailable on basis of applicant's age.
12 CFR 202.11(c)	Combining individual accounts of married applicants to determine permissible finance charges and loan ceiling under state or federal law.

Technical Violations

All Equal Credit Opportunity Act/Fair Housing violations not specified above are viewed as being less likely to impair the customer's access to credit in the immediate transaction. All of the citations appearing in the left hand margin of Appendix 2 to question 21 have been so categorized, and have been termed 'technical' violations. Note that C.F.R. has been abbreviated to "c" and periods have been omitted, so that 12 C.F.R. 202.5(c), for example, is shown as 12C2025d. Similar treatment of U.S. Code citations causes 42 U.S.C. 3605 to show as 42U3605. Examples of typical technical violations are the following:

12 CFR 202.5(c)	Improperly requesting information about a spouse or former spouse, typically on application forms.
12 CFR 202.5(d)(2)	Improperly requesting information about alimony or child support payments. Typically this involved failure to provide the required notice.
12 CFR 202.5(d)(3)	Inquiring about an applicant's sex, or using terms on an application form which are not neutral as to sex.
12 CFR 202.9	Failure to provide adequate notice of adverse action.
42 USC 3605 (Substantive fair housing violations would be cited to equivalent ECOA violations.)	Failure to display Equal Opportunity Lender Posters, or failure to include fair housing logo in advertisements.

21. Please provide a detailed tabulation, by region and for all regions combined, of Fair Housing Act, Equal Credit Opportunity Act, and Regulation B violations found by national bank examiners in the twelve-month period from July 1977 through June 1978. In this tabulation, please distinguish between violations related to home loans or applications and violations related to other credit. Within each of these two classes, please classify the violations by the specific nature of the violations, separating technical violations from substantive violations, and please indicate how many violations of each specific type were repeat violations that the institutions had previously been requested to correct. Where more than one type or class of violation was found at a single institution, please count each type of violation separately, as this request is for a tabulation of violations, not of institutions in violation.

See Consumer Examination Information System, report of substantive violations by Region (appendix 1 to Question 21), and report of technical violations by Region (appendix 2 to Question 21), both dated 9/13/78. See also Number 20 above, for categorization of violations as being either technical or substantive.

Note: These reports have been weighted by a factor of 1.27 to reflect reports not yet entered into the data base.

The reports are organized by department as follows:

- | | | |
|---------------------|-------------------------|-------------------|
| 1. Note | 4. Open End | 7. Leasing |
| 2. Installment Loan | 5. Interest on Deposits | 8. Operating Sub. |
| 3. Real Estate | 6. Indirect | 9. Trust |

Citations to CFR have been abbreviated to read "C", e.g., 12 CFR 202.5(a) would appear as 12 C 2025A. Additionally, technical violations of the Fair Housing Act, primarily relating to poster and advertising requirements, are reported as 42 U 3605. Substantive violations of the Fair Housing Act are normally reported under the appropriate Regulation B citation.

Violations are reported by department. Thus violations involving real property in, for example, the installment loan department (e.g., home improvement loans) will not be broken out in our real estate department figures. The system is unable to distinguish them.

See appendix 3 to Question 21 for an analysis of repeat violations.

It should be noted that all figures represent patterns of violations within departments of a particular institution. For example, a pattern of violations involving 500 real estate loans would show as 1 violation.

NOTE: Examiners selected citations to describe violations they discovered. Some were more specific than others, who merely identified a general section of the Act. Thus, for example, the same fact pattern might have been identified as 12 CFR 202.8, 12 CFR 202.8(d), 12 CFR 202.8(d)(2). Additionally, keypunch errors resulted in a number of violations being entered with improper department codes. Though they represent violations actually discovered in an examination, the data base cannot properly identify their location in a particular bank department. Totals noted for a given violation, or region, are therefore greater than the totals yielded by simply adding the department totals showing in these appendices.

22. Please restate certain elements of the above tabulation of violations to show, by region and for all regions combined,

It should be noted that all figures represent patterns of violations within departments of a particular institution. For example, a pattern of violations involving 500 real estate loans would show as 1 violation.

- a. Technical and substantive home loan violations per 100 examiner hours devoted to civil rights compliance examination of home loans, per 100 home loan applications received, per 100 home loans granted, and per \$100,000 of home loans held in the bank's portfolios at December 31, 1977.

The actual number of reported violations as of September 2, 1978 were weighted by a factor of 1.27 in order to account for the consumer examination reports not yet entered into the data base.

Home Loans

Region	Patterns of Technical Violations		Patterns of Substantive Violations	
	<u>Per 100 Hrs.</u>	<u>Per \$100,000</u>	<u>Per 100 Hrs.</u>	<u>Per \$100,000</u>
1	5.841	0.003 426	1.327	0.000 779
2	5.356	0.001 392	0.718	0.000 187
3	5.738	0.002 434	0.886	0.000 376
4	7.106	0.004 861	1.452	0.000 993
5	5.667	0.003 601	1.976	0.000 256
6	2.429	0.002 453	0.972	0.000 981
7	8.481	0.003 619	2.620	0.001 118
8	7.011	0.008 971	1.674	0.002 142
9	5.052	0.005 640	1.574	0.001 757
10	6.817	0.019 237	3.478	0.009 814
11	5.323	0.012 050	2.332	0.005 278
12	2.908	0.002 461	0.798	0.000 676
13	4.878	0.001 459	1.045	0.000 313
14	3.800	0.002 466	1.457	0.000 179
Total U.S.	5.755	0.003 487	1.826	0.001 106

- b. Technical and substantive violations related to other credit per 100 examiner hours devoted to civil rights compliance examination of other credit, per 100 applications received for other consumer or small business credit, per 100 loans or credit lines granted for other consumer or small business credit, and per \$100,000 of consumer and small business credit outstanding from the examined banks at December 31, 1977.

The number of violations was weighted by a factor of 1.27 in order to derive the relevant ratios.

Other Credit

Region	Patterns of Technical Violations		Patterns of Substantive Violations	
	Per 100 Hrs.	Per \$100,000	Per 100 Hrs.	Per \$100,000
1	20.265	0.009 787	4.867	0.002 351
2	11.209	0.002 867	5.853	0.001 511
3	7.668	0.003 120	2.765	0.001 133
4	13.226	0.007 036	5.757	0.003 069
5	17.487	0.007 132	9.806	0.004 000
6	16.034	0.007 302	11.440	0.005 210
7	18.730	0.008 012	13.523	0.005 785
8	18.591	0.009 509	9.871	0.005 049
9	16.289	0.021 052	9.083	0.011 719
10	18.862	0.027 949	12.736	0.017 489
11	18.865	0.012 906	11.587	0.007 911
12	12.087	0.006 465	8.552	0.004 575
13	13.124	0.003 103	7.898	0.001 867
14	12.223	0.001 837	11.146	0.001 675
Total U.S.	15.986	0.007 648	9.509	0.004 550

23. Please provide a tabulation, by region and for all regions combined, of institutions found to be in violation of the Fair Housing Act, the Equal Credit Opportunity Act, or Regulation B in the period from July 1977 through June 1978. If you distinguish between technical and substantive violations, please classify every institution in each region into one of three groups according to whether no violations were found, only technical violations were found, or one or more substantive violations were found. Then please subdivide each of the latter two classes according to whether the violations found at each institution were all first time violations or included one or more repeat violations that the institution had previously been requested to correct. Then please subdivide further according to whether the violations found were related only to home loans or applications, only to other credit, or to both home loans and other credit.

See CEIS Special Violation Summary Appendix to Question 23 dated 9/13/78. This data has been weighted by a factor of 1.27 to compensate for reports not yet entered into the data base. See Appendix 3 to Question 21, referenced earlier.

24. Please restate the above tabulation of institutions in violation to show institutions in violation as a percentage of all examined institutions in the region.

<u>Region</u>	<u>No Violations</u>	<u>Percent of Examinations</u>
1		8.000
2		9.821
3		25.234
4		12.796
5		9.934
6		7.732
7		6.044
8		5.488
9		13.869
10		4.520
11		16.467
12		5.634
13		6.522
14		0
Total U.S.		10.636

See Appendix to Question 24 for more complete tabulation.

25. What are the established procedures of your office for investigating and/or responding to written consumer complaints alleging discrimination in some aspect of the credit granting process? Please supply to the subcommittee the text of all staff instructions, policy guidelines, or other documents that specify the procedures to be followed in investigating and/or responding to consumer complaints that allege discrimination in the credit granting process, whether relating to home loans or to other credit.

Complaints received by the Washington or Regional Offices are acknowledged by the return of a post card to the complainant with a control number for future reference. Data are then recorded into our computerized Consumer Complaint Information System which is used to track the complaint processing function and gather data for reports and management purposes. When we have insufficient information to respond to complainants on the basis of his/her letter, normal procedure is to correspond with the bank to obtain additional information and its explanation of the situation. Following a review of this information and any supplemental information that may have been requested from complainant and the bank, we make a determination based on the facts presented by both parties. (See Exhibit No. J)

An exception to these procedures has been established for complaints involving real estate loans or applications where a violation of the Fair Housing Act is alleged. Examining Circular No. 158 dated August 8, 1977 (attached as Exhibit K), outlines the specific procedures used in processing such complaints including the assignment of an examiner to conduct a field investigation of the complaint. These procedures include

requests for information from the bank, an interview with the complainant and other interested parties, an investigation at the bank and interviews with personnel. The investigation is to be completed within thirty (30) days of the receipt of the complaint.

Prior to commencing a Consumer Affairs Compliance Examination, the field examiner is supplied with a copy of all data which has been compiled by the Consumer Complaint Information System regarding the specific bank. The examiner performs an in-bank investigation of each of the consumer complaints received. In addition, the examiner reviews the complaints for indications of potential problems within the various departments of the bank. (See Exhibit No. I)

26. If the individual complaints are handled primarily in the regional offices, what are the procedures followed for systematic oversight and review of the complaint handling work by the headquarters staff in Washington?

Approximately 75% of all the consumer complaints are processed by the Regional Offices. The Consumer Complaint Information System provides a convenient means for the Washington Office to review the number and type of complaints received, the timeliness of the processing, and the resultant resolutions. Complaints are frequently filed in Washington on matters that have already been investigated by a Regional Office. These complaints provide additional insight into the nature of complaints received and the manner in which they are handled.

When an allegation is received that a complaint was not handled properly, a complete investigation is made into the original complaint. The investigation of such a complaint entails a review of how the original complaint was processed and whether the procedures were followed completely and accurately. The original complaint, if closed, is reopened and the investigation resumes.

According to our records, this office has received 25 consumer complaints thus far in 1978 in the category of Bank Supervision. This category primarily includes, but is not limited to, complaints against this agency. As this type of complaint is received, it is used as a review mechanism for evaluating internal policies and procedures relating to the consumer complaint resolution process. The OCC consumer complaint handling process has undergone several re-evaluations and revisions since the founding of the division. We remain continuously receptive to new procedures and innovations that will improve the complaint process. We are now in the process of establishing a permanent oversight mechanism to identify and address such concerns in the future. It should be noted that, in accordance with procedures established for processing complaints alleging violation of the Fair Housing Act, all such complaints are reviewed by the Washington Office before a resolution is reached.

27. Please provide figures giving the number of consumer complaints received by your office in the twelve-month period from July 1977 through June 1978 alleging discrimination in some aspect of the lending process, as follows:
- a. Total complaints related to home loans or home loan applications.
 - b. Total complaints related to other consumer or small business credit applications.
 - c. A disaggregation by region of the total complaints related to home loans or home loan applications.
 - d. A disaggregation by region of the total complaints related to other consumer or small business credit or credit applications.

Chart follows.

See Appendix to Question 27 for more detail.

Question 27

Consumer Complaints Alleging Discrimination
From 7/1/77 to 6/30/78

<u>Region</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>6</u>	<u>7</u>	<u>8</u>	<u>9</u>	<u>10</u>	<u>11</u>	<u>12</u>	<u>13</u>	<u>14</u>	<u>Total</u>
Related to Home Loans or Home Loan Applications	2	2	0	1	1	2	5	1	0	1	0	0	0	10	25
Related to Other Consumer or Small Business Credit or Credit Applica- tion	<u>15</u>	<u>68</u>	<u>33</u>	<u>33</u>	<u>41</u>	<u>42</u>	<u>47</u>	<u>27</u>	<u>10</u>	<u>20</u>	<u>34</u>	<u>20</u>	<u>16</u>	<u>98</u>	<u>504</u>
Total	17	70	33	34	42	44	52	28	10	21	34	20	16	108	529

28. Please provide a further tabular breakdown, as indicated below, of each of these figures of discrimination complaints received. For each region separately and for all regions combined, please provide the numbers of complaints in each category below for complaints related to home loans or applications and, separately, for other consumer or small business credit or credit applications.
- a. Complaints the investigation of which found one or more violations of law that substantiated the complainant's claim;
 - b. Complaint cases in which no violation was found but in which an adjustment or accommodation was offered by the bank and accepted by the complainant (including correction of bank errors);
 - c. Complaints based on a factual dispute, in which the complainant received no satisfaction;
 - d. All other complaints that received a thorough investigation but resulted in no violations related to the complainant and no satisfaction for the complainant; and
 - e. All other complaints (including information requests) in which no investigation, or only a cursory investigation, was deemed necessary.

Charts follow.

Question 28

Resolution of Discrimination Complaints Related to
Other Consumer or Small Business Credit or Credit Applications
From 7/1/77 to 6/30/78

<u>Region</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>6</u>	<u>7</u>	<u>8</u>	<u>9</u>	<u>10</u>	<u>11</u>	<u>12</u>	<u>13</u>	<u>14</u>	<u>Total</u>
- Violation found to substantiate the complainant's claim				1				1					1	2	5
- No violation found but adjustment or accommodation was offered and accepted	1	3		1		2	1			1	1	1		6	17
- Complaints based on factual dispute			1	4			1	1		1	2				10
- Complaints receiving thorough investigation but resulting in no violation	3		3	2	5	3	2	1	1		5	1		9	35
- All other complaints and information requests in which no investigation, or only a cursory investigation was deemed necessary	6	56	24	20	31	28	32	19	8	13	15	15	14	58	339
- Referred to proper agency for investigation			1			1	2							2	6
- Investigation still in process	5	9	4	5	5	8	9	5	1	5	11	3	1	21	92
Total	15	68	33	33	41	42	47	27	10	20	34	20	16	98	504

29. Please provide further supplementary information, as indicated below, on each group of complaints identified in the answers to the previous question. For each group of complaints enumerated above, please specify.
- a. What portion of these complaints were about banks in which a violation similar to the complaint had been found previously, at the most recent prior general compliance examination?
 - b. What portion of these complaints were about banks in which a violation similar to the complaint was found subsequently, at the next subsequent general compliance examination?
 - c. What portion of these complaints were about banks that have not been given a general compliance examination since the filing of the complaint?

Chart follows.

Question 29

Complaints Alleging Discrimination
From 7/1/77 to 6/30/78

	<u>Number</u>	<u>Number With Similar Violations Found in Prior Examination</u>	<u>Number With Similar Violations Found in Subsequent Examination</u>	<u>Number With No Examination Since Filing of Complaint</u>
- Violations found to substantiate the complainant's claim	6	0	0	3
- No violation found but adjustment or accommodation was offered and accepted	17	2	3	12
- Complaints based on factual dispute	12	0	0	10
- Complaints receiving thorough investigation but resulting in no violation	41	9	2	35
- All other complaints and information requests in which no investigation, or only a cursory investigation was deemed necessary	347	40*	30*	210*
- Referred to proper agency or still in process of investigation	<u>106</u>	<u>-</u>	<u>-</u>	<u>-</u>
Total	529	51	35	270*

*Based on a 10% sample

**255 of these banks received prior examinations

30. How many private law suits for civil damages under the Fair Housing Act or the Equal Credit Opportunity Act have been filed against national banks in 1977 and 1978? In how many of these instances had the plaintiff previously filed a complaint with your office, prior to filing the law suit?

Aggregate information regarding this area is not available.

As a part of the consumer affairs examination process, the examiner performs an investigation of pending and threatened litigation involving alleged violations by the bank of consumer affairs legislation. This litigation is commented upon fully in the Report of Examination. To date, however, no centralized recordkeeping system has been implemented to facilitate compilation and analysis of this information.

31. In what ways does your office inform loan applicants or potential applicants of the existence and possible usefulness to them of the civil damages provisions of the Fair Housing Act and the Equal Credit Opportunity Act? Please supply to the subcommittee examples of any letters, pamphlets, or other educational or informational materials in which these civil damages provisions are mentioned.

Upon receipt of a complaint alleging a violation of the Fair Housing or Equal Credit Opportunity Acts, if we are unable to resolve the matter, the complainant is informed that he or she has certain rights under the Act and may want to contact an attorney to seek redress through the courts.

Loan applicants or potential applicants have not been informed of the civil damages provisions of fair lending laws on a uniform basis. We have reviewed our policy and are actively considering advising complainants of such rights.

32. Approximately how many of each type of letter, pamphlet, or other educational or informational material mentioned in the answer to the previous question were sent out or distributed to the public in the twelve-month period from July 1977 through June 1978? Please indicate the method of distribution and types of groups or individuals to which these materials were distributed.

The two Equal Credit Opportunity Act pamphlets on age and sex discrimination are sent out to consumers and interest groups in response to written and oral requests. (Exhibit M.) The requests generally originate from interested consumers, students, newspapers and consumer groups. Approximately 300 of each pamphlet were distributed during the period from July 1977 through June 1978. However, since no record are kept on the number of informational material that are distributed this is only a very rough estimate.

33. Have you any reliable and representative information concerning the costs incurred by banks to comply with Regulation B and the laws against credit discrimination? If so, what portion of these costs are associated with the initial training and other front end start-up costs of the banks' compliance programs, and what portion are continuing expenses directly associated with processing of applications? Can the continuing expenses be stated as costs per loan application received or per \$100,000 of mortgage loan or other consumer credit assets held? Can they be stated in terms of fractions of a percentage point on the interest rate of a mortgage loan or other credit? What was the method by which these measurements were made?

We have no representative information concerning such costs.

34. Please identify and describe any major surveys, reports, or studies, either by outside experts or by your staff, that have recently been completed, are currently in progress, or are planned for the near future on any aspect of the responsibilities of your office under the Fair Housing Act or the Equal Credit Opportunity Act.

In 1974, the Office of the Comptroller of the Currency conducted a 6-month survey of primary residence mortgage applications in six

Standard Metropolitan Statistical Areas (SMSAs). That survey was intended to determine whether data on lenders and borrowers could be used to monitor compliance with the laws and to ascertain the feasibility of conducting an on-going reporting program. The OCC approach requested certain economic and personal data from applicants as well as data on the characteristics of the subject property.

The results of the survey, as noted in a press release, "did not provide data sufficient to support sophisticated analysis." However, "the experience gained in conducting a sensitive survey of this nature will be useful in considering any future efforts of this type". Essentially the results of the survey reflected deficiencies in the form itself. First, the form provided for ranges of dollar amounts rather than specific dollar amounts. That prevented the calculation of ratios and the use of modern statistical procedures. Second, the form did not include terms of the loan, i.e., years to maturity, interest rate, and requested or required down payment. Third, 31 percent of the survey responses were not analyzed due to blank or invalid responses or inconsistencies.

In an effort to rectify the problems encountered in the first survey, the Office of the Comptroller of the Currency in conjunction with the Federal Deposit Insurance Corporation (FDIC) conducted a second survey beginning in September 1976. That survey was national in scope, requested specific dollar amounts, contained information regarding loan terms, creditworthiness of the applicant, and property characteristics.

The sample of banks that were stratified nationally, by whether the bank was inside or outside a SMSA, by size, and by the bank's mortgage loan activity within each stratum. The banks were mailed forms to be used in conjunction with every application for a home mortgage or home improvement loan of more than \$4,000. The form consisted of two parts. Part I, completed by the bank and mailed to the FDIC when a final loan decision was reached, requested information regarding the characteristics of the loan applied for as well as the applicant's financial position. Part II, completed and mailed to the FDIC by the applicant, contained necessary information regarding personal characteristics of the applicant and co-applicant, if any. Each part contained a unique identification number which allowed the two parts to be matched and the bank to be identified. The results of the second OCC survey were of benefit to the agency. Information gleaned from the survey procedure and the analysis of the data has been helpful in the consideration of alternative approaches for our new data collection and analysis system.

To provide further assistance in the establishment of reporting requirements for our new system, the Comptroller on July 28, 1978 mailed a special survey to each national bank requesting information on the volume of 1-4 family mortgage loans made and denied, and home improvement loans made and denied. The results of this survey are now being tabulated. Also, beginning this month, the OCC is planning a field test of our new data collection and analysis system.

A proposed regulation to implement our new reporting requirements is expected to be published for comment in the near future.

APPENDIX TO QUESTION 19

CEIS EXAMINATION SUMMARY

ASSETS (\$1000)	Bost MA	NY NY	Phil PA	Clev OH	Rich VA	Atl GA	Chi IL	Memp TN	Minn MN	KS MO	CY TX	Dal CO	Denv OR	Port OR	S.F. CA	U.S.
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	Total	
UNDER \$5000																
NUMBER OF EXAMINATIONS	5	8	3	2	4	6	7	2	14	8	18	5	3	0	85	
AVERAGE DAYS PER EXAM	5.20	4.80	3.60	6.00	7.50	5.10	6.80	23.50	5.20	6.30	5.40	7.20	4.30	0.00	6.00	
\$5000 TO \$9,999																
NUMBER OF EXAMINATIONS	12	8	22	18	22	20	31	15	42	27	61	10	7	4	299	
AVERAGE DAYS PER EXAM	6.90	5.60	5.50	6.30	6.20	5.30	6.30	5.90	6.30	12.20	4.80	8.40	6.20	6.50	6.40	
\$10,000 TO \$24,999																
NUMBER OF EXAMINATIONS	60	42	75	80	58	91	87	75	140	70	171	41	21	19	1,030	
AVERAGE DAYS PER EXAM	6.30	5.50	6.40	7.70	7.20	6.60	9.00	6.20	9.90	9.30	5.80	11.30	6.00	10.90	7.60	
\$25,000 TO \$99,999																
NUMBER OF EXAMINATIONS	65	88	90	162	89	151	153	145	148	80	188	45	28	26	1,458	
AVERAGE DAYS PER EXAM	7.50	7.10	8.30	8.40	10.70	11.90	8.50	8.30	8.50	15.50	7.40	11.60	9.30	14.50	9.30	
\$100,000 TO \$299,999																
NUMBER OF EXAMINATIONS	14	32	25	38	26	40	49	25	32	19	31	8	5	11	355	
AVERAGE DAYS PER EXAM	13.10	10.80	10.20	17.50	10.90	9.70	12.20	11.70	12.20	24.20	16.20	23.60	15.60	20.20	13.70	
\$300,000 TO \$999,999																
NUMBER OF EXAMINATIONS	5	24	9	9	8	16	8	17	5	13	23	3	4	3	147	
AVERAGE DAYS PER EXAM	18.80	15.70	15.30	20.70	22.50	14.10	33.20	19.60	22.00	39.10	25.20	21.30	14.00	44.00	22.10	
OVER \$1,000,000																
NUMBER OF EXAMINATIONS	8	8	9	9	8	5	4	6	4	2	9	6	5	6	89	
AVERAGE DAYS PER EXAM	13.20	27.30	22.30	30.50	27.30	17.40	54.70	24.60	34.00	39.50	29.60	46.80	31.40	56.80	30.70	
ALL BANKS																
NUMBER OF EXAMINATIONS	169	210	233	318	215	329	339	285	385	219	501	118	73	69	3,463	
AVERAGE DAYS PER EXAM	8.00	8.90	8.40	10.10	10.30	9.80	10.00	9.00	9.40	15.10	8.20	13.90	10.00	18.90	10.00	

APPENDIX 1 TO QUESTION 21

REGULATION B
CITATION

SUBSTANTIVE VIOLATIONS

	Bost MA 1	NY NY 2	Phil PA 3	Clev OH 4	Rich VA 5	Atl GA 6	Chi IL 7	Memp TN 8	Minn MN 9	KS. MO 10	City TX 11	Denv CO 12	Port OR 13	S.F. CA 14	U.S. TOTAL
12 CFR 202.4	0	4	0	0	8	2	3	3	4	40	24	3	0	56	147
12 CFR 202.5 a	1	23	6	60	76	55	138	92	88	161	171	44	24	49	988
12 CFR 202.5 d(1)	33	41	43	120	145	104	167	186	167	195	188	61	42	17	1509
12 CFR 202.5 d(4)	0	6	7	0	1	0	23	0	0	8	11	0	0	0	56
12 CFR 202.5 d(5)	0	1	1	0	6	9	3	9	3	2	16	5	0	1	56
12 CFR 202.6 b	0	0	0	0	0	0	0	0	0	0	1	0	0	0	1
12 CFR 202.6 b(1)	0	0	0	0	0	0	0	2	0	2	1	0	0	0	5
12 CFR 202.6 b(2)	0	0	0	0	8	0	1	0	0	0	0	0	0	0	9
12 CFR 202.6 b(2) (i)	0	0	0	0	0	0	0	0	0	0	2	0	0	0	2
12 CFR 202.6 b(2) (iii)	0	0	0	0	0	0	0	0	0	0	0	0	1	0	1
12 CFR 202.6 b(4)	0	0	1	1	1	0	1	0	0	0	4	0	0	1	9
12 CFR 202.6 b(5)	4	0	1	0	6	0	10	1	3	16	0	0	1	1	43
12 CFR 202.6 b(6)	0	0	0	0	0	1	0	0	0	0	0	0	0	3	4
12 CFR 202.6 b(7)	0	0	0	0	0	0	0	0	0	2	0	0	0	0	2
12 CFR 202.7 a	0	0	0	5	0	0	2	1	1	15	1	3	0	1	29
12 CFR 202.7 c	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
12 CFR 202.7 c(1)	0	2	0	0	0	0	0	1	0	0	0	0	0	0	3
12 CFR 202.7 d	16	16	1	22	13	27	42	0	57	18	35	2	1	9	259
12 CFR 202.7 d(1)	8	9	0	43	44	51	46	28	33	142	105	31	1	9	550
12 CFR 202.7 d(2)	3	0	0	0	0	1	0	1	1	1	1	0	0	0	8
12 CFR 202.7 d(3)	0	0	0	0	0	0	0	0	0	0	7	0	0	9	16
12 CFR 202.7 d(4)	1	0	0	5	1	20	21	2	9	14	7	0	1	3	84
12 CFR 202.7 d(5)	2	17	9	19	5	9	31	4	19	84	14	15	6	39	273
TOTAL VIOLATIONS	68	119	69	275	314	279	489	330	385	700	588	164	77	198	4055

SUBSTANTIVE VIOLATIONS BY REGION

Page 1

MONTH	DATE	SUBSTANTIVE VIOLATIONS BY REGION														U.S.
		Bost MA	NY NY	Phil PA	Clev OH	Rich VA	Atl GA	Chi IL	Memp TN	Minn MN	Kansas City MO	Dallas TX	Den CO	Port OR	S.F. CA	
DEPARTMENT	1 (Note Dept.)	1	2	3	4	5	6	7	8	9	10	11	12	13	14	Total
	12C2024	0	0	0	0	3	0	0	0	3	11	11	3	0	20	51
	12C2025A	0	4	0	14	23	11	34	22	27	41	39	5	1	5	226
	12C202501	10	9	10	44	57	37	66	71	85	81	65	29	17	5	587
	12C202504	0	1	3	0	1	0	9	0	0	3	3	0	0	0	19
	12C202505	0	0	0	0	1	4	0	1	1	1	4	0	0	1	14
	12C202601	0	0	0	0	0	0	1	0	1	0	0	0	0	0	3
	12C202602	0	0	0	0	4	0	0	0	0	0	0	0	0	0	4
	12C202602I	0	0	0	0	0	0	0	0	0	0	1	0	0	0	1
	12C202604	0	0	0	0	0	0	1	0	0	0	1	0	0	0	3
	12C202605	0	0	0	0	1	0	1	0	1	5	0	0	0	0	9
	12C2027A	0	0	0	1	0	0	1	0	0	5	0	0	0	1	9
	12C20270	4	4	0	6	4	13	15	0	23	6	10	1	1	5	93
	12C202701	3	3	0	13	14	17	13	10	10	48	29	11	1	4	175
	12C202702	1	0	0	0	0	1	0	1	1	0	0	0	0	0	5
	12C202703	0	0	0	0	0	0	0	0	0	0	3	0	0	4	6
	12C202704	0	0	0	1	0	6	6	1	1	4	1	0	0	1	23
	12C202705	1	4	1	4	3	6	9	1	6	42	4	8	3	18	109
	TOTALS	19	24	14	84	110	95	156	109	159	249	171	57	23	65	1,336

SUBSTANTIVE VIOLATIONS BY REGION

MON DATE: 09/13/78

	Bost MA	NY NY	Phil PA	Clev OH	Rich VA	Atl GA	Chi IL	Memp TN	Minn MN	Kansas City MO	Dallas TX	Denv CO	Port OR	S.F. CA	U.S.
DEPARTMENT 2 (Instalment Loan)	1	2	3	4	5	6	7	8	9	10	11	12	13	14	Total
12C2024	0	3	0	0	4	1	3	3	0	18	6	0	0	28	65
12C2025A	0	11	4	29	28	25	51	32	36	50	70	9	9	15	368
12C202501	10	18	15	48	52	47	56	71	48	63	66	15	10	6	527
12C202504	0	3	3	0	0	0	6	0	0	4	3	0	0	0	18
12C202505	0	1	1	0	1	5	3	3	1	0	9	3	0	0	27
12C202601	0	0	0	0	0	0	0	0	0	0	1	0	0	0	1
12C202601	0	0	0	0	0	0	0	1	0	1	1	0	0	0	4
12C202602	0	0	0	0	4	0	1	0	0	0	0	0	0	0	5
12C202602111	0	0	0	0	0	0	0	0	0	0	0	0	1	0	1
12C202604	0	0	0	1	1	0	0	0	0	0	1	0	0	1	5
12C202605	1	0	1	0	3	0	5	0	1	6	0	0	0	1	19
12C202606	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
12C2027A	0	0	0	1	0	0	0	0	1	5	0	0	0	0	8
12C2027L1	0	1	0	0	0	0	0	0	0	0	0	0	0	0	1
12C20270	6	11	1	8	4	10	15	0	15	6	17	1	0	3	98
12C202701	5	5	0	20	19	23	18	13	13	39	42	13	0	4	213
12C202702	1	0	0	0	0	0	0	0	0	1	1	0	0	0	4
12C20270J	0	0	0	0	0	0	0	0	0	0	1	0	0	1	3
12C202704	0	0	0	1	0	11	5	1	4	6	4	0	1	1	36
12C202705	1	10	3	9	1	3	19	3	9	22	6	5	1	17	108
TOTALS	25	63	28	118	117	127	182	126	129	222	229	46	23	77	1,511

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DATE: 09/13/78

Department	Kansas														U.S. Total	
	Bost MA 1	NY NY 2	Phil PA 3	Clev OH 4	Rich VA 5	Atl GA 6	Chi IL 7	Memp TN 8	Minn MN 9	City MO 10	Dallas TX 11	Denv CO 12	Port OR 13	S.F. CA 14		
3 (Real Estate)																
12C2024	0	0	0	0	1	0	0	0	0	10	3	0	0	4	18	
12C2025A	1	4	1	13	15	4	17	10	13	28	27	1	4	11	149	
12C202501	5	6	13	19	20	8	24	28	14	33	32	8	3	4	216	
12C202504	0	0	1	0	0	0	5	0	0	1	1	0	0	0	9	
12C202505	0	0	0	0	0	0	0	4	0	0	3	1	0	0	8	
12C202604	0	0	0	0	0	0	0	0	0	0	1	0	0	0	1	
12C202605	0	0	0	0	1	0	3	1	1	4	0	0	1	0	11	
12C202607	0	0	0	0	0	0	0	0	0	1	0	0	0	0	1	
12C2027A	0	0	0	1	0	0	1	0	0	4	1	0	0	0	8	
12C20270	6	0	0	6	4	3	11	0	15	5	1	0	0	11	53	
12C202701	0	0	0	10	9	5	9	5	8	46	25	3	0	1	121	
12C202702	1	0	0	0	0	0	0	0	0	0	0	0	0	0	1	
12C202703	0	0	0	0	0	0	0	0	0	0	1	0	0	0	1	
12C202704	1	0	0	3	1	3	9	0	3	4	1	0	0	0	24	
12C202705	0	3	1	4	1	0	1	0	4	15	3	1	1	1	36	
TOTALS	15	13	17	56	53	22	80	48	57	151	99	14	9	23	657	

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ATE: 09/13/78

SUBSTANTIVE VIOLATIONS BY REGION

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Department	4 (Open End Credit)	Bost MA	NY NY	Phil PA	Clev OH	Rich VA	Atl GA	Chi IL	Memp TN	Minn MN	Kansas		Denv CO	Port OR	S.F. CA	U.S.
											City MO	Dallas TX				
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	Total	
12C 2024	0	1	0	0	0	1	0	0	1	1	4	0	0	4	13	
12C 2025A	0	1	1	4	9	11	28	22	8	22	18	18	6	17	164	
12C 202501	8	5	3	5	10	5	19	5	9	6	13	3	5	1	97	
12C 202504	0	1	0	0	0	0	3	0	0	0	3	0	0	0	6	
12C 202505	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1	
12C 2026021	0	0	0	0	0	0	0	0	0	0	1	0	0	0	1	
12C 202604	0	0	0	0	0	0	0	0	0	0	1	0	0	0	1	
12C 202605	3	0	0	0	0	0	1	0	0	0	0	0	0	0	4	
12C 202606	0	0	0	0	0	0	0	0	0	0	0	0	0	3	3	
12C 202607	0	0	0	0	0	0	0	0	0	1	0	0	0	0	1	
12C 2027A	0	0	0	1	0	0	0	1	0	1	0	3	0	0	6	
12C 2027C	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1	
12C 2027C1	0	1	0	0	0	0	0	1	0	0	0	0	0	0	3	
12C 2027D	0	0	0	0	1	0	0	0	4	0	0	0	0	0	5	
12C 2027D1	0	0	0	0	1	0	1	0	0	1	0	0	0	0	4	
12C 2027D3	0	0	0	0	0	0	0	0	0	0	1	0	0	4	5	
12C 2027D4	0	0	0	0	0	0	0	0	0	0	1	0	0	1	3	
12C 2027D5	0	0	4	1	0	0	1	0	0	3	0	0	0	3	11	
TOTALS	10	10	8	11	22	18	55	29	23	36	42	23	11	32	329	

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SUBSTANTIVE VIOLATIONS BY REGION

HUN DA

DEPARTMENT	Bost MA	NY	Phil PA	Clev OH	Rich VA	Atl GA	Chi IL	Memp TN	Minn MN	Kansas					S.F. CA	U.S.
										City MO	Dallas TX	Denv CO	Port OR	Total		
6 (Indirect)*	1	2	3	4	5	6	7	8	9	10	11	12	13	14	Total	
12C2025A	0	3	0	0	1	3	6	6	4	11	10	10	3	0	57	
12C2025U1	0	3	1	3	6	1	1	11	6	4	9	5	4	1	56	
12C2025U5	0	0	0	0	4	0	0	1	0	1	0	1	0	0	8	
12C2026U4	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1	
12C2026U5	0	0	0	0	1	0	0	0	0	1	0	0	0	0	3	
12C2027A	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1	
12C2027U	0	0	0	0	0	0	1	0	0	1	6	0	0	0	9	
12C2027U1	0	0	0	0	1	0	4	0	1	3	4	4	0	0	17	
12C2027U4	0	0	0	0	0	0	1	0	1	0	0	0	0	0	3	
12C2027U5	0	0	0	1	0	0	1	0	0	1	1	1	0	0	6	
TOTALS	0	5	3	5	14	4	15	19	13	23	30	22	6	1	160	

*Loans purchased from others.

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IN DATE

SUBSTANTIVE VIOLATIONS BY REGION

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	Bost MA	NY NY	Phil PA	Clev OH	Rich VA	Atl GA	Chi IL	Memp TN	Minn MN	Kansas		Denv CO	Port OR	S.F. CA	U.S.
										City MO	Dallas TX				
PANIMENT 8(Operating Sub.)	1	2	3	4	5	6	7	8	9	10	11	12	13	14	Total
12C2025A	0	0	0	0	0	0	0	0	0	1	0	0	1	0	3
12C2025D1	0	0	0	0	0	0	0	0	0	3	1	0	0	0	4
12C2027D	0	0	0	0	0	0	0	0	0	0	1	0	0	0	1
12C2027U1	0	0	0	0	0	0	0	0	0	1	5	0	0	0	6
TOTALS	0	0	0	0	0	0	0	0	0	5	8	0	1	0	14

SUBSTANTIVE VIOLATIONS BY REGION

Region	Bost MA 1	NY NY 2	Phil PA 3	Clev OH 4	Rich VA 5	Atl GA 6	Chi IL 7	Memp TN 8	Minn MN 9	KS. City MO 10	Dallas TX 11	Denv CO 12	Port OR 13	S.F. CA 14	U.S. Total
R.E.*	15	13	17	56	53	22	80	48	57	151	99	14	9	23	657
Other	55	106	53	222	263	259	413	283	329	553	492	150	68	176	3,422
Total	70	119	70	278	316	281	493	331	386	704	591	164	77	199	4,079

*Real Estate

APPENDIX 2 to Question 21

TECHNICAL VIOLATIONS

REGULATION B CITATION	Bost	NY	Phil	Clev	Rich	Atl	Chi	Memp	Minn	KS.	City	Dal	Denv	Port	S.F.	U.S.
	MA	NY	PA	OH	VA	GA	IL	TN	MN	MO	TX	CO	OR	CA		
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	TOTAL	
12 CFR 202.1 b	0	0	0	0	0	0	0	0	0	0	0	1	0	0	1	
12 CFR 202.2	0	0	0	0	0	0	0	0	0	0	2	0	0	0	2	
12 CFR 202.2 c (1)	0	1	0	0	0	0	0	0	0	0	0	0	0	0	1	
12 CFR 202.2 e	0	0	0	0	0	0	0	0	0	0	0	0	0	2	2	
12 CFR 202.2 f	0	0	0	0	0	0	0	0	0	0	2	0	0	0	2	
12 CFR 202.2 l	0	0	0	0	0	0	1	0	0	0	0	0	1	0	2	
12 CFR 202.2 n	0	0	0	0	0	0	0	0	0	0	1	0	2	0	3	
12 CFR 202.2 z	2	0	0	0	0	0	1	0	0	0	3	0	0	1	7	
12 CFR 202.3 e (1)	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1	
12 CFR 202.3 e (2)	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	
12 CFR 202.5	0	0	0	0	0	0	0	0	3	0	0	0	0	4	7	
12 CFR 202.5 b	1	0	0	0	0	0	1	0	4	0	1	0	0	0	7	
12 CFR 202.5 b (2)	0	0	0	3	0	1	5	0	0	0	2	0	0	0	11	
12 CFR 202.5 c	1	15	1	63	45	2	59	30	33	47	31	15	9	0	351	
12 CFR 202.5 c (1)	15	10	10	26	36	28	36	75	19	57	3	4	4	0	323	
12 CFR 202.5 c (2)	5	6	5	13	25	7	19	5	41	41	20	5	10	0	202	
12 CFR 202.5 d	0	2	0	3	0	5	20	2	1	1	3	0	0	3	40	
12 CFR 202.5 d (2)	110	69	61	154	202	136	188	258	185	233	229	75	40	51	1991	
12 CFR 202.5 d (3)	19	32	16	55	59	16	51	47	97	140	74	23	9	23	661	
12 CFR 202.5 e	0	0	0	0	0	0	3	0	0	0	0	0	0	0	3	
12 CFR 202.6	0	0	0	0	0	0	0	0	0	0	1	0	0	0	1	
12 CFR 202.6 a	0	0	0	0	0	1	1	0	0	0	7	0	0	0	9	
12 CFR 202.7 b	0	5	0	0	0	0	0	1	3	9	1	12	0	7	38	
12 CFR 202.8 a	0	0	0	0	0	0	0	0	0	0	1	0	0	0	1	
12 CFR 202.9	0	5	11	34	10	0	45	3	12	4	46	2	4	3	179	
12 CFR 202.9 a	7	10	3	14	8	15	40	17	24	24	33	8	3	2	208	
12 CFR 202.9 a (1)	8	6	4	50	11	11	28	10	23	62	37	21	6	13	290	

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REGULATION B CITATION	Bost	NY	Phil	Clev	Rich	Atl	Chi	Memp	Minn	KS.	City	Dal	Denv	Port	S.F.	U.S.
	MA	NY	PA	OH	VA	GA	IL	TN	MN	MO	TX	CO	OR	CA	TOTAL	
	1	2	3	4	5	6	7	8	9	10	11	12	13	14		
12 CFR 202.9 a(1)(i)	1	2	3	1	7	0	1	1	0	4	4	0	0	4	28	
12 CFR 202.9 a(1)(ii)	0	0	0	0	0	0	0	0	0	0	1	0	0	0	1	
12 CFR 202.9 a(1)(iii)	0	0	0	0	0	0	1	0	0	0	0	0	0	1	2	
12 CFR 202.9 a(1)(iv)	1	2	2	25	1	1	0	6	0	3	1	0	0	0	42	
12 CFR 202.9 a(2)	37	35	39	84	81	105	69	94	142	110	144	33	17	33	1023	
12 CFR 202.9 a(2)(i)	2	6	5	13	5	8	10	2	0	9	6	1	0	13	80	
12 CFR 202.9 a(2)(ii)	5	1	1	12	0	0	1	3	0	3	9	0	4	1	40	
12 CFR 202.9 a(3)	0	0	0	0	1	0	0	0	0	0	0	0	0	0	1	
12 CFR 202.9 a(4)	1	1	1	3	2	1	1	3	4	4	0	1	1	0	23	
12 CFR 202.9 b	5	0	10	6	1	1	13	6	0	0	11	0	0	4	57	
12 CFR 202.9 b(1)	22	12	13	21	17	2	32	7	30	61	45	6	9	22	298	
12 CFR 202.9 b(2)	9	1	6	1	19	6	23	3	6	20	24	3	0	10	131	
12 CFR 202.9 c	1	0	0	2	0	0	0	0	0	0	0	0	0	2	5	
12 CFR 202.9 f	0	0	0	3	0	0	0	0	0	0	1	0	0	0	4	
12 CFR 202.10	3	2	0	2	0	0	11	9	23	24	15	0	2	1	92	
12 CFR 202.10 a	1	4	3	10	0	0	0	3	13	8	50	8	5	5	110	
12 CFR 202.10 a(1)	0	1	0	5	0	0	4	8	10	20	15	0	0	0	63	
12 CFR 202.10 a(2)	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	
12 CFR 202.10 a(3)	0	0	0	16	2	0	0	0	1	9	0	2	0	0	30	
12 CFR 202.10 b	0	5	1	12	0	0	8	9	11	6	20	3	1	0	76	
12 CFR 202.10 b(2)	0	0	0	1	0	0	0	0	0	1	5	0	0	0	7	
12 CFR 202.10 c	1	0	0	0	0	0	0	0	0	0	0	0	0	0	1	
12 CFR 202.11 a	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1	
12 CFR 202.12	0	0	0	0	0	0	13	3	0	2	8	0	0	1	27	
12 CFR 202.12 a	0	0	0	3	0	0	3	3	0	0	3	0	0	2	14	
12 CFR 202.12 b	0	11	0	11	9	3	23	0	10	27	22	8	2	6	132	
12 CFR 202.12 b(1)	6	6	3	18	8	13	7	24	23	78	32	5	1	6	230	
12 CFR 202.12 b(1)(i)	0	0	0	0	0	0	0	0	0	1	1	0	0	0	2	
12 CFR 202.12 b(1)(ii)	0	0	0	0	0	6	2	1	0	0	5	2	0	0	16	
12 CFR 202.12b1(ii)a	0	0	0	0	0	0	3	0	0	0	0	0	0	0	3	
12 CFR 202.12b1(ii)b	0	0	0	0	0	0	0	0	0	0	1	0	0	0	1	
12 CFR 202.12 b(2)	6	0	2	3	1	0	0	4	9	11	0	0	0	0	36	

REGULATION B CITATION	Bost	NY	Phil	Clev	Rich	Atl	Chi	Memp	Minn	KS. City	Dallas	Denv	Port	S.F.	U.S.
	MA	NY	PA	OH	VA	GA	IL	TN	MN	MO	TX	CO	OR	CA	
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	TOTAL
12 CFR 202.12 b (4)	0	0	0	0	0	0	0	0	1	3	0	0	0	0	4
12 CFR 202.12 c	0	0	0	0	0	0	0	0	0	0	1	0	0	0	1
12 CFR 202.13	1	6	16	21	10	4	22	9	5	18	11	3	3	5	134
12 CFR 202.13 a	13	25	23	70	37	23	54	24	44	47	58	8	20	11	457
12 CFR 202.13 a (1)	1	6	4	11	16	5	4	55	5	10	24	6	0	1	148
12 CFR 202.13 a(1)(i)	0	0	0	0	0	1	0	0	0	1	0	0	0	0	2
12 CFR 202.13 b	0	0	0	6	0	0	9	0	1	0	0	1	0	0	17
12 CFR 202.13 c	3	10	9	5	3	13	15	4	6	11	4	6	1	1	91
12 CFR 202.13 d	0	1	0	0	0	0	0	0	0	0	0	0	0	0	1
4203605	6	1	3	0	1	1	3	0	3	1	12	0	0	4	35
TOTAL VIOLATIONS	292	299	255	780	617	415	830	729	794	1110	1030	262	154	244	7812

TECHNICAL VIOALTIONS BY REGION

DEPARTMENT	TECHNICAL VIOALTIONS BY REGION														U.S.
	Boston Mass. 1	N.Y. NY 2	Phil. PA 3	Clev. OH 4	Rich. VA 5	Atl. GA 6	Chi. IL 7	Memp. TN 8	Minn. MN 9	Kansas City MO 10	Dallas TX 11	Denv. CO 12	Port. OR 13	S.F. CA 14	
14C20210	1	1	0	1	0	0	4	4	10	10	6	0	0	0	38
14C20210A	0	1	3	3	0	0	0	1	5	3	22	3	4	1	44
14C20210A1	0	0	0	1	0	0	0	3	0	6	5	0	0	0	15
14C20210A3	0	0	0	4	1	0	0	0	1	1	0	1	0	0	9
14C20210B	0	0	1	3	0	0	3	4	4	3	6	1	0	0	24
14C20210B2	0	0	0	0	0	0	0	0	0	0	1	0	0	0	1
14C20211A	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
14C20212	0	0	0	0	0	0	4	1	0	1	4	0	0	0	10
14C20212A	0	0	0	1	0	0	0	1	0	0	0	0	0	0	3
14C20212B	0	3	0	3	1	1	8	0	3	10	6	4	1	0	39
14C20212B1	1	1	0	5	3	3	3	10	10	20	11	3	1	0	79
14C20212B11	0	0	0	0	0	0	0	0	0	0	1	0	0	0	1
14C20212B111	0	0	0	0	0	4	0	0	0	0	1	1	0	0	6
14C20212B111A	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
14C20212B2	1	0	0	0	0	0	0	1	3	4	0	0	0	0	9
14C20212B4	0	0	0	0	0	0	0	0	0	1	0	0	0	0	1
14C20213	0	0	1	1	0	0	0	0	0	0	1	0	0	0	4
14C20213A	0	0	0	0	0	6	1	0	4	1	4	1	0	0	18
14C20213A1	0	0	0	0	1	0	0	4	0	0	1	1	0	0	8
14C2022F	0	0	0	0	0	0	0	0	0	0	1	0	0	0	1
14C2022N	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1
14C2022Z	0	0	0	0	0	0	0	0	0	0	1	0	0	1	3
14C2023E1	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
14C2025	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1
14C2025b	0	0	0	0	0	0	0	0	4	0	1	0	0	0	5
14C2025B2	0	0	0	1	0	0	0	0	0	0	1	0	0	0	3

12C2025C	0	4	0	14	15	0	19	11	11	18	8	8	4	0	112
12C2025C1	4	0	4	6	14	10	11	25	8	15	0	1	1	0	100
12C2025C2	1	0	1	4	10	3	4	3	10	14	4	1	0	0	55
12C2025D	0	0	0	1	0	1	11	1	0	0	1	0	0	1	18
12C2025D2	30	18	17	50	70	52	72	94	84	88	74	34	13	20	715
12C2025D3	5	5	5	15	20	4	17	15	42	48	20	5	3	9	213
12C2026A	0	0	0	0	0	0	0	0	0	0	3	0	0	0	3
12C2027B	0	0	0	0	0	0	0	0	0	3	0	0	0	1	4
12C2028A	0	0	0	0	0	0	0	0	0	0	1	0	0	0	1
12C2029	0	3	4	11	3	0	9	1	3	3	17	0	3	0	55
12C2029A	3	1	1	6	3	4	9	5	6	10	10	4	1	0	63
12C2029A1	3	0	0	15	0	4	4	4	5	18	13	8	1	1	75
12C2029A11	0	0	1	0	0	0	0	1	0	0	1	0	0	0	4
12C2029A111	0	0	0	0	0	0	0	0	0	1	0	0	0	0	1
12C2029A11V	0	0	1	4	0	1	0	3	0	1	0	0	0	0	10
12C2029A2	5	10	8	22	14	25	19	30	41	39	48	8	3	3	274
12C2029A21	0	0	1	3	1	1	3	1	0	3	0	0	0	3	15
12C2029Ac11	1	0	0	3	0	0	0	1	0	1	3	0	0	0	9
12C2029B	1	0	3	1	0	0	1	1	0	0	4	0	0	0	11
12C2029B1	4	3	3	5	5	1	9	3	8	22	11	1	1	3	77

TECHNICAL VIOLATIONS BY REGION

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	Kansas														U.S.	
	Boston MA 1	N.Y. NY 2	Phil PA 3	Clev OH 4	Rich VA 5	Atl GA 6	Chi IL 7	Memp TN 8	Minn MN 9	City MO 10	Dallas TX 11	Deny CO 12	Port OR 13	S. F. CA 14		
DEPARTMENT 1 (Note Dept.)																
12C2029B2	0	0	0	0	1	0	4	0	1	5	6	1	0	1	20	
12C2029C	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1	
12C2029F	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1	
4203605	0	0	0	0	0	0	0	0	0	1	0	0	0	1	3	
TOTALS	61	50	53	185	163	121	215	230	264	357	301	86	36	48	2,169	

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TECHNICAL VIOLATIONS BY REGION

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DEPARTMENT	Kansas														U.S.
	Bost MA 1	NY NY 2	Phil PA 3	Clev OH 4	Rich VA 5	Atl GA 6	Chi IL 7	Memp TN 8	Minn MN 9	City MO 10	Dallas TX 11	Denv CO 12	Port OR 13	S.F. CA 14	
2 (Instalment Loans)															
12C2021B	0	0	0	0	0	0	0	0	0	0	0	1	0	0	1
12C20210	1	1	0	0	0	0	3	4	6	8	6	0	1	1	32
12C20210A	0	3	0	4	0	0	0	1	4	3	15	4	1	3	37
12C20210A1	0	0	0	3	0	0	0	3	0	5	5	0	0	0	15
12C20210A2	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1
12C20210A3	0	0	0	6	1	0	0	0	0	3	1	0	0	0	11
12C20210B	0	4	0	6	0	0	1	4	3	1	9	1	1	0	30
12C20210B2	0	0	0	1	0	0	0	0	0	0	3	0	0	0	4
12C20212	0	0	0	0	0	0	5	1	0	1	3	0	0	0	10
12C20212A	0	0	0	1	0	0	1	1	0	0	3	0	0	1	8
12C20212B	0	4	0	3	4	1	8	0	3	8	11	3	0	3	46
12C20212B1	4	4	3	5	3	8	1	9	8	27	18	1	0	5	94
12C20212B11	0	0	0	0	0	0	0	0	0	1	0	0	0	0	1
12C20212B111	0	0	0	0	0	1	1	1	0	0	3	1	0	0	8
12C20212B111A	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
12C20212B2	3	0	1	3	1	0	0	1	3	4	0	0	0	0	15
12C20212B4	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
12C20212C	0	0	0	0	0	0	0	0	0	0	1	0	0	0	1
12C20213	0	0	1	1	0	1	0	0	0	0	0	0	0	0	4
12C20213A	0	0	0	3	3	0	1	1	0	3	1	1	0	0	15
12C20213A1	0	0	0	0	3	1	0	1	0	0	1	1	0	0	8
12C20213C	0	0	0	0	0	0	0	0	0	0	1	0	0	0	1
12C2022C1	0	1	0	0	0	0	0	0	0	0	0	0	0	0	1
12C2022F	0	0	0	0	0	0	0	0	0	0	1	0	0	0	1
12C2022L	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
12C2022N	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1

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12C 2022Z	1	0	0	0	0	0	1	0	0	0	1	0	0	0	4
12C 2023L2	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1
12C 2025	0	0	0	0	0	0	0	0	3	0	0	0	0	1	4
12C 2025b	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
12C 2025b2	0	0	0	1	0	0	3	0	0	0	0	0	0	0	4
12C 2025C	1	9	0	27	17	1	23	9	11	14	13	5	3	0	132
12C 2025C1	5	8	4	10	9	13	9	24	4	20	3	0	1	0	109
12C 2025C2	3	4	1	5	11	4	9	1	17	13	13	3	3	0	85
12C 2025D	0	1	0	1	0	3	6	1	1	0	1	0	0	1	17
12C 2025D2	37	29	19	56	62	58	58	90	52	67	89	15	13	19	665
12C 2025D3	8	14	4	15	20	9	17	15	32	44	32	11	1	8	230
12C 2025t	0	0	0	0	0	0	3	0	0	0	0	0	0	0	3
12C 2026A	0	0	0	0	0	1	1	0	0	0	3	0	0	0	5
12C 2027B	0	5	0	0	0	0	0	0	1	1	0	4	0	3	14
12C 2029	0	1	4	11	3	0	17	1	3	1	13	1	1	1	57
12C 2029A	1	8	1	4	4	8	15	5	11	5	15	3	1	1	83
12C 2029A1	3	5	3	20	10	6	15	4	9	25	17	10	4	8	138
12C 2029A11	1	1	1	1	4	0	1	0	0	3	3	0	0	3	18
12C 2029A1111	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1
12C 2029A111v	0	0	1	11	0	0	0	3	0	1	1	0	0	0	18

TECHNICAL VIOLATIONS BY REGION

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DATE: 09/13/78

PANTMENT	2 (Instalment Loans)	Kansas														U.S. TOTAL
		Bost MA 1	NY NY 2	Phil PA 3	Clev OH 4	Rich VA 5	Atl GA 6	Chi IL 7	Memp TN 8	Minn MN 9	City MO 10	Dallas TX 11	Denv CO 12	Port OR 13	S.F. CA 14	
12C2024A2		20	14	13	32	42	62	25	37	47	39	65	18	9	17	439
12C2024A21		1	3	3	6	3	4	3	1	0	5	5	1	0	9	43
12C2024A211		3	0	1	6	0	0	1	0	1	5	0	4	1	23	
12C2024A3		0	0	0	0	1	0	0	0	0	0	0	0	0	1	
12C2024A4		1	1	0	0	1	1	1	0	3	3	0	0	1	13	
12C2024H		3	0	4	1	0	1	6	3	0	0	6	0	0	25	
12C2024B1		8	3	5	9	6	1	10	3	13	20	20	0	4	112	
12C2024B2		8	0	4	1	11	6	9	3	4	10	11	1	0	76	
12C2024C		1	0	0	1	0	0	0	0	0	0	0	0	0	4	
12C2024F		0	0	0	1	0	0	0	0	0	0	1	0	0	3	
TOTALS		112	122	72	258	218	194	257	229	237	334	400	86	50	109	2,678

650

APARTMENT	3 (Real Estate)	Kansas													U.S.	
		Bost MA	NY NY	Phil PA	Clev OH	Rich VA	Atl GA	Chi IL	Memp TN	Minn MN	City MO	Dallas TX	Denv CO	Port OR		S.F. CA	Total
12C20210		1	0	0	1	0	0	3	1	4	5	3	0	0	0	16
12C20210A		0	0	0	3	0	0	0	1	4	1	10	1	0	1	22
12C20210A1		0	0	0	1	0	0	0	1	0	5	4	0	0	0	11
12C20210A3		0	0	0	5	0	0	0	0	0	3	0	0	0	0	8
12C20210B		0	0	0	3	0	0	3	1	4	1	5	1	0	0	18
12C20210B2		0	0	0	0	0	0	0	0	0	0	1	0	0	0	1
12C20212		0	0	0	0	0	0	4	1	0	0	1	0	0	1	6
12C20212A		0	0	0	1	0	0	1	1	0	0	0	0	0	1	5
12C20212B		0	4	0	4	3	0	6	0	4	6	5	1	1	3	37
12C20212B1		1	0	0	4	1	1	3	4	4	19	1	1	0	0	39
12C20212B111		0	0	0	0	0	0	0	0	0	0	1	0	0	0	1
12C20212B111A		0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
12C20212B2		1	0	0	0	0	0	0	1	3	3	0	0	0	0	8
12C20213		1	6	14	18	10	3	22	9	5	18	10	3	3	5	126
12C20213A		13	25	23	66	34	14	52	23	39	46	46	6	19	11	420
12C20213A1		1	6	4	11	11	4	4	50	5	10	22	3	0	1	132
12C20213A11		0	0	0	0	0	1	0	0	0	1	0	0	0	0	3
12C20213B		0	0	0	6	0	0	9	0	1	0	0	1	0	0	18
12C20213C		3	10	9	5	3	13	15	4	6	11	3	6	1	1	90
12C20213D		0	1	0	0	0	0	0	0	0	0	0	0	0	0	1
12C2022		0	0	0	0	0	0	0	0	0	0	1	0	0	0	1
12C2022E		0	0	0	0	0	0	0	0	0	0	0	0	0	1	1
12C2022Z		1	0	0	0	0	0	0	0	0	0	0	0	0	0	1
12C2025		0	0	0	0	0	0	0	0	0	0	0	0	0	1	1
12C2025B2		0	0	0	1	0	0	1	0	0	0	1	0	0	0	4
12C2025C		0	1	0	14	9	0	11	6	6	0	6	0	1	0	63

TECHNICAL VIOLATIONS BY REGION

DATE: 09/13/78

	Bost MA	NY NY	Phil PA	Clev OH	Rich VA	Atl GA	Chi IL	Memp TN	Minn MN	Kansas City MO	Dallas TX	Denv CO	Port OE	S.F. CA	U.S.
Department 3 (Real Estate)	1	2	3	4	5	6	7	8	9	10	11	12	13	14	Total
12C2025C1	3	1	1	4	3	1	5	14	3	10	0	0	0	0	44
12C2025C2	0	1	3	4	3	0	4	0	3	8	3	1	0	0	28
12C2025D	0	1	0	1	0	0	3	0	0	1	1	0	0	1	9
12C2025D2	19	11	19	34	36	11	19	48	20	39	32	11	4	6	311
12C2025D3	1	10	6	17	10	1	6	6	9	23	10	3	1	5	109
12C2026A	0	0	0	0	0	0	0	0	0	0	1	0	0	0	1
12C2027B	0	0	0	0	0	0	0	0	1	1	0	0	0	0	3
12C2029	0	0	3	10	4	0	15	1	3	0	11	0	1	1	50
12C2029A	3	1	1	1	1	0	11	4	6	8	4	1	1	1	44
12C2029A1	1	1	1	14	1	1	8	1	5	17	3	3	1	1	58
12C2029A11	0	0	1	0	0	0	0	0	0	1	0	0	0	0	3
12C2029A11111	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
12C2029A11V	1	0	1	9	1	0	0	0	0	1	0	0	0	0	14
12C2029A2	5	10	13	22	14	3	22	19	36	28	23	5	4	6	208
12C2029A21	0	0	1	4	1	0	4	0	0	0	0	0	0	0	10
12C2029A211	1	0	0	3	0	0	1	1	0	1	1	0	0	0	9
12C2029U	1	0	3	3	0	0	5	1	0	0	1	0	0	3	17
12C2029U1	5	3	4	5	5	0	9	0	9	17	8	1	4	3	71
12C2029B2	0	1	1	0	1	0	9	0	1	4	4	1	0	1	24
12C2029F	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1
42U3605	3	0	3	0	1	1	3	0	3	0	1	0	0	3	17
TOTALS	66	97	110	274	152	55	259	201	183	296	226	51	62	60	2,071

652

12C2027B	0	0	0	0	0	0	0	1	0	3	0	6	0	3	13
12C2029	0	0	0	0	0	0	4	0	0	0	0	0	0	1	5
12C2029A	0	0	0	3	0	3	5	0	0	0	1	0	0	0	11
12C2029A1	1	0	0	1	0	0	1	0	4	0	1	0	0	3	11
12C2029A1I	0	1	0	0	1	0	0	0	0	0	0	0	0	1	4
12C2029A1IV	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1
12C2029A2	6	0	4	8	10	8	3	4	6	1	4	1	0	6	61
12C2029A2I	1	3	0	0	0	3	0	0	0	0	0	0	0	0	0
12C2029A21I	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0
12C2029A4	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
12C2029B	0	0	0	1	1	0	1	1	0	0	0	0	0	0	5
12C2029B1	4	3	1	1	1	0	4	0	0	1	3	1	0	6	25
12C2029B2	1	0	1	0	5	0	1	0	0	0	3	0	0	0	11
12C2029C	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1
	51	14	13	39	63	28	77	29	42	52	50	23	11	32	525

	Bost MA	NY NY	Phil PA	Clev OH	Rich VA	Atl GA	Chi IL	Memp TN	Minn MN	Kansas City MO	Dallas TX	Denv CO	Port OR	S.F. CA	U.S.
Department 6 (Indirect)*1		2	3	4	5	6	7	8	9	10	11	12	13	14	Total
12C20210A	0	0	0	0	0	0	0	0	0	1	3	0	0	0	4
12C20210A3	0	0	0	0	0	0	0	0	0	1	0	0	0	0	1
12C20210B	0	0	0	0	0	0	0	0	0	1	0	0	0	0	1
12C20212B	0	0	0	0	0	0	0	0	0	1	0	0	0	0	1
12C20212B1	0	0	0	0	0	0	0	1	1	1	1	0	0	0	5
12C20212B4	0	0	0	0	0	0	0	0	0	1	0	0	0	0	1
12C2022L	0	0	0	0	0	0	0	0	0	0	0	0	1	0	1
12C2025B2	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
12C2025C	0	1	1	5	1	1	1	3	1	1	0	1	1	0	19
12C2025C1	0	0	0	3	0	0	1	0	1	5	0	3	1	0	22
12C2025C2	0	1	0	0	1	0	1	1	4	1	0	0	3	0	13
12C2025D2	0	3	1	5	10	1	6	15	8	11	9	5	4	1	80
12C2025D3	0	3	0	1	4	1	3	5	6	8	6	1	3	1	42
12C2027B	0	0	0	0	0	0	0	0	0	1	1	1	0	0	4
12C2029	0	1	0	1	0	0	0	0	0	0	1	0	0	0	4
12C2029A	0	0	0	0	0	0	0	3	0	0	3	0	0	0	5
12C2029A2	0	0	0	0	0	3	0	3	1	1	1	1	0	1	11
12C2029A21	0	0	0	0	0	0	0	0	0	1	0	0	0	0	1
12C2029A4	0	0	0	3	1	0	0	3	1	1	0	1	0	0	10
12C2029B1	0	0	0	1	0	0	0	1	0	1	3	0	0	0	6
12C2029B2	0	0	0	0	0	0	0	0	0	1	0	0	0	0	1
TOTALS	0	9	3	19	18	8	13	42	24	42	26	14	13	4	235

*Loans purchased from others.

TECHNICAL VIOLATIONS BY REGION

IN DATE: 09/13/78

DEPARTMENT	8 (Operating Sub.)	1	2	3	4	5	6	7	8	9	Kansas					14	Total
											City MO	Dallas TX	Denv CO	Port OR	S.F. CA		
12C20210		0	0	0	0	0	0	0	0	0	1	0	0	0	0	1	
12C20210A		0	0	0	0	0	0	0	0	0	0	1	0	0	0	1	
12C20212d		0	0	0	0	0	0	1	0	0	1	0	0	0	0	3	
12C2025C		0	0	0	0	0	0	0	0	0	0	1	0	0	0	1	
12C202502		0	0	0	0	1	0	1	0	0	1	1	0	0	0	5	
12C202503		0	0	0	0	0	0	0	0	0	1	0	0	0	0	1	
12C2029		0	0	0	0	0	0	0	0	0	0	4	0	0	0	4	
12C2029A1		0	0	0	0	0	0	0	0	0	1	0	0	0	0	1	
12C2029A11		0	0	0	0	1	0	0	0	0	0	0	0	0	0	1	
12C2029A2		0	0	0	0	1	0	0	0	0	1	0	0	0	0	3	
12C2029B1		0	0	0	0	0	0	0	0	0	0	3	0	0	0	3	
12C2029B2		0	0	0	0	1	0	0	0	0	0	0	0	0	0	1	
TOTALS		0	0	0	0	5	0	3	0	0	8	10	0	0	0	25	

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TECHNICAL VIOLATIONS BY REGION

Region	Bost MA 1	NY NY 2	Phil PA 3	Clev OH 4	Rich VA 5	Atl GA 6	Chi IL 7	Memp TN 8	Minn MN 9	KS. City MO 10	Dallas TX 11	Denv CO 12	Port OR 13	S.F. CA 14	U.S. Total
R.E. *	66	97	110	274	152	55	259	201	183	296	226	51	42	60	2,071
Other	229	203	147	510	469	363	572	533	590	819	801	212	113	143	5,753
Total	295	300	257	784	621	418	831	734	773	1,115	1,027	263	155	253	7,824

*Real Estate

657

APPENDIX 3 TO QUESTION 21

REPEAT VIOLATIONS*

<u>Section of 12 CFR 202 in Violation</u>						
<u>Bank</u>	<u>5(a)</u>	<u>5(c)</u>	<u>5(d)1</u>	<u>5(d)2</u>	<u>5(d)3</u>	<u>7(d)5</u>
1			x	x		
2	x		x	x		
3		x	x			
4		x	x	x		
5				x		
6						x
7			x	x		
8			x			
9						
10				x	x	x
11			x			
12				x		

*Corrective action has been effected at 10 of these banks and is in process at the remaining two.

GENERAL DESCRIPTION OF SECTION IN VIOLATION

Section 202.5(a) - Discouraging applications on a prohibited basis.

Section 202.5(c) - Requesting information about a non-applicant spouse or former spouse.

Section 202.5(d)(1) - Request for an applicant's marital status in other than the terms "married", "unmarried", and "separated".

Section 202.5(d)(2) - Inquiring about other income without disclosing that the applicant need not report income derived from alimony, child support, or separate maintenance payments unless the applicant desires the creditor to consider such income in determining the applicant's creditworthiness.

Section 202.5(d)(3) - Requesting the sex of an applicant, using terms in an application form that are not neutral as to sex, or requesting applicant to designate a title (such as Ms., Miss, Mr., or Mrs.) without disclosing that the designation of such a title is optional.

Section 202.7(d)5 - Requiring the applicant's spouse to be a party to the credit, as co-signer, guarantor, or the like.

CEIS SPECIAL VIOLATION SUMMARY

UN DATE: 09/13/

APPENDIX TO QUESTION 23

	Kansas														U.S.
	Bost MA	NY NY	Phil PA	Clev OH	Rich VA	Atl GA	Chi IL	Memp TN	Minn MN	City MO	Dallas TX	Denv CO	Port OR	S.F. CA	
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	TOTAL
Total examiner days	706	1,132	1,198	2,410	1,676	1,415	1,909	1,792	2,264	2,714	2,654	1,096	538	987	22,492
Number of examinations	75	112	107	211	151	194	182	164	274	177	334	71	46	56	2,153
Number of banks examined	72	112	105	211	151	194	180	164	271	174	331	71	44	55	2,136
Examined banks not in violation of specified laws	6	11	27	27	15	15	11	9	38	8	55	4	3	0	229
Bank with technical violations only:															
Real Estate Dept only	4	5	11	13	1	6	8	3	9	0	10	1	0	0	71
Other Depts only	15	17	9	13	19	30	8	8	27	6	43	8	4	1	207
Both	15	15	17	44	13	8	15	22	25	5	27	6	0	3	215
Total Banks	34	37	37	70	33	44	30	32	61	11	80	15	4	4	493
Banks with one or more substantive violations:															
Real Estate Dept only	3	5	8	9	4	1	5	3	3	5	4	1	3	0	52
Other Depts only	19	52	28	67	58	117	83	83	127	65	132	41	32	30	933
Both	10	6	6	38	41	17	51	38	42	85	61	10	4	20	429
Total Banks	32	63	42	114	103	135	138	123	171	155	197	52	38	51	1,415

APPENDIX TO QUESTION 24

CEIS Special Violation Summary
Percent of Examinations Showing Violations

	Bost MA 1	NY NY 2	Phil PA 3	Clev OH 4	Rich VA 5	Atl GA 6	Chi IL 7	Nemp TN 8	Minn MN 9	KS. City MO 10	Dallas TX 11	Denv CO 12	Port OR 13	S.F. CA 14	Total U.S.
Percent of Banks Not In Violation of Specified Laws	8.0	9.8	25.2	12.8	9.9	7.7	6.0	5.5	13.9	4.5	16.5	5.6	6.5	0.0	10.6
Percent of Banks With Technical Violations Only	45.3	33.0	34.6	33.2	21.9	22.7	16.5	19.5	22.3	6.2	24.0	21.1	8.7	7.1	22.9
Percent of Banks With Real Estate Department Violations Only	5.3	4.5	10.3	6.2	0.7	3.1	4.4	1.8	3.3	0.0	3.0	1.4	0.0	0.0	3.3
Percent of Banks With Other Credit Violations Only	20.0	15.2	8.4	6.2	12.6	15.5	4.4	4.9	9.9	3.4	12.9	11.3	8.7	1.8	9.6
Percent of Banks With Both Types of Violations	20.0	13.4	15.9	20.9	8.6	4.1	8.2	13.4	9.1	2.8	8.1	8.5	0.0	5.4	10.0
Percent of Banks With One Or More Substantive Violations	42.7	56.3	39.3	54.0	68.2	70.0	75.8	75.0	62.4	87.6	59.0	73.2	82.6	91.1	65.7
Percent of Banks With Real Estate Department Violations Only	4.0	4.5	7.5	4.3	2.6	0.5	2.7	1.8	1.1	2.8	1.2	1.4	6.5	0.0	2.4
Percent of Banks With Other Credit Violations Only	25.3	46.4	26.2	31.8	31.4	60.3	45.6	50.6	46.4	36.7	39.5	57.7	69.6	53.6	43.3
Percent of Banks With Both Types of Violations	13.3	5.4	5.6	18.0	27.2	8.8	28.0	23.2	15.3	48.0	18.3	14.1	8.7	35.7	19.9

APPENDIX TO QUESTION 27

CONSUMER COMPLAINTS ALLEGING DISCRIMINATION
FROM 7/1/77 to 6/30/78

REGION

	<u>1</u> - Boston	<u>2</u> - New York	<u>3</u> - Philadelphia
Related to Home Loans or Home Loan Appli- cations	Redlining - 2	Religion - 1 Redlining - $\frac{1}{2}$	0
Related to Other Con- sumer or Small Business Credit or Credit Appli- cations	Bank Card Sex/Marital Status - 7 Race/National Origin - 1 Check Credit/Overdraft Sex/Marital Status - 1 Commercial Business/ Agriculture Race/National Origin - 1 Instalment Sex/Marital Status - 4 Race/National Origin - 1	General Age - 1 Sex/Marital Status - 1 Race/National Origin - 2 Bank Card Age - 6 Sex/Marital Status - 39 Race/National Origin - 5 Religion - 1 Check Credit/Overdraft Sex/Marital Status - 1 Commercial Business/ Agriculture Sex/Marital Status - 1 Instalment Age - 2 Sex/Marital Status - 7 Race/National Origin - 1 Single Payment/Demand Sex/Marital Status - 1	General Sex/Marital Status - 2 Race/National Origin - 1 Bank Card Age - 4 Sex/Marital Status - 15 Race/National Origin - 3 Check Credit/Overdraft Age - 1 Sex/Marital Status - 1 Commercial Business/ Agriculture Age - 1 Instalment Sex/Marital Status - 3 Race/National Origin - 1 Home Improvement/Mobile Homes Sex/Marital Status - 1
	<u>15</u>	<u>68</u>	<u>33</u>
TOTAL	<u>17</u>	<u>70</u>	<u>33</u>

REGION4 - Cleveland5 - Richmond6 - Atlanta

Related to Home Loans
or Home Loan Appli-
cations

Sex/Marital Status - 1

Sex/Marital Status - 1

Age - 1
Sex/Marital Status - $\frac{1}{2}$

Related to Other Con-
sumer or Small
Business Credit
or Credit Appli-
cations

General
Sex/Marital Status - 1
Religion - 1
Bank Card
Age - 3
Sex/Marital Status -14
Race/National Origin - 2
Commercial Business/
Agriculture
Sex/Marital Status - 1
Race/National Origin - 2
Instalment
Sex/Marital Status - 6
Home Improvement/Mobile
Homes
Sex/Marital Status - 2
Race/National Origin - 1

General
Sex/Marital Status - 3
Race/National Origin - 1
Bank Card
Age - 1
Sex/Marital Status -28
Race/National Origin - 2
Commercial Business/
Agriculture
Sex/Marital Status - 1
Instalment
Sex/Marital Status - 4
Home Improvement/Mobile
Homes
Race/National Origin - 1

General
Age - 1
Sex/Marital Status - 3
Bank Card
Sex/Marital Status -31
Check Credit/Overdraft
Race/National Origin - 1
Instalment
Age - 1
Sex/Marital Status - 4
Race/National Origin - 1

33

41

42

TOTAL

34

42

44

REGION7 - Chicago8 - Memphis9 - Minneapolis

Related to Home Loans
or Home Loan Appli-
cations

Race/National Origin - 2
Redlining - 3
5

Race/National Origin - 1

0

Related to Other Con-
sumer or Small
Business Credit
or Credit Appli-
cations

General
Sex/Marital Status - 1
Bank Card
Sex/Marital Status -36
Race/National Origin - 4
Commercial Business/
Agriculture
Race/National Origin - 1
Instalment
Age - 1
Sex/Marital Status - 2
Race/National Origin - 2

General
Sex/Marital Status - 2
Race/National Origin - 3
Bank Card
Age - 3
Sex/Marital Status -12
Commercial Business/
Agriculture
Sex/Marital Status - 1
Race/National Origin - 1
Instalment
Sex/Marital Status - 3
Race/National Origin - 2

General
Race/National Origin - 1
Bank Card
Sex/Marital Status - 5
Instalment
Sex/Marital Status - 1
Race/National Origin - 3

47

27

10

TOTAL

52

28

10

REGION10 - Kansas City11 - Dallas12 - Denver

Related to Home Loans
or Home Loan Appli-
cations

Sex/Marital Status - 1

0

0

Related to Other Con-
sumer or Small
Business Credit
or Credit Appli-
cations

General
Age - 1
Sex/Marital Status - 1
Bank Card
Age - 6
Sex/Marital Status -11
Instalment
Sex/Marital Status - 1

General
Sex/Marital Status - 2
Bank Card
Sex/Marital Status -22
Race/National Origin - 2
Check Credit/Overdraft
Race/National Origin - 1
Instalment
Sex/Marital Status - 3
Race/National Origin - 3
Single Payment/Demand
Race/National Origin - 1

General
Sex/Marital Status - 1
Bank Card
Age - 1
Sex/Marital Status -15
Instalment
Age - 1
Race/National Origin - 1
Single Payment/Demand
Sex/Marital Status - 1

20

34

20

TOTAL

21

34

20

<u>REGION</u>	<u>13 - Portland</u>	<u>14 - San Francisco</u>	<u>TOTAL</u>
Related to Home Loans or Home Loan Appli- cations	0	Sex/Marital Status - 3 Race/National Origin - 2 Redlining - 5 <u>10</u>	25
Related to Other Con- sumer or Small Business Credit or Credit Appli- cations	General Age - 1 Sex/Marital Status - 1 Bank Card Age - 2 Sex/Marital Status - 8 Race/National Origin - 1 Commercial Race/National Origin - 1 Instalment Sex/Marital Status - 2	General Sex/Marital Status - 1 Bank Card Age - 4 Sex/Marital Status - 68 Race/National Origin - 4 Check Credit/Overdraft Sex/Marital Status - 2 Race/National Origin - 1 Commercial Sex/Marital Status - 1 Instalment Age - 4 Sex/Marital Status - 9 Religion - 1 Single Payment/Demand Race/National Origin - 1 Home Improvement/Mobile Homes Sex/Marital Status - 1 Redlining - 1	
	<u>16</u>	<u>98</u>	504
TOTAL	<u>16</u>	<u>108</u>	529

665

List of Exhibits

Exhibit A	<u>Comptroller's Handbook for Consumer Examinations</u>
Exhibit B-1	Fair Housing Handout No. 2
Exhibit B-2	Fair Housing Handout No. 3
Exhibit C	Fair Housing and ECOA Lectures
Exhibit D	Fair Housing Handout No. 1 and ECOA Handouts Nos. 1-5
Exhibit E	Examination Outline
Exhibit F	Statistical Sampling Handouts and Lectures
Exhibit G	Office of the Comptroller of the Currency Organizational Chart
Exhibit H	Position Descriptions
Exhibit I	Working Papers Checklist
Exhibit J	CCIS Blackbook
Exhibit K	Examining Circular No. 158
Exhibit L	CCIS Handout No. 8
Exhibit M	Federal Reserve Board ECOA Pamphlets

Certain portions of the following exhibits submitted to the subcommittee by the Office of the Comptroller of the Currency were judged not relevant and were omitted from this volume: Exhibits A, C, D, F, and J. Exhibit H was omitted entirely. All other exhibits are included in full. Exhibit M, the Federal Reserve pamphlets on age and sex discrimination, is included in Appendix 8 of this volume.



Comptroller of the Currency
Administrator of National Banks

COMPTROLLER'S HANDBOOK FOR CONSUMER EXAMINATIONS

[Excerpts applicable to examinations for compliance with Equal Credit Opportunity Act, Fair Housing Act, and Home Mortgage Disclosure Act]

United States Department of the Treasury
Washington, D.C. 20219

Foreword

The Office of the Comptroller of the Currency (OCC) is responsible for enforcing compliance with state and federal consumer laws as they apply to national banks. This is accomplished through examinations and through review and resolution of complaints from the public. Consumer law, now a major factor in bank regulation, continues to draw increasing interest from the public. The role of the OCC in carrying out congressional mandates relating to consumer law is significant.

Banks are chartered to serve a particular customer market. Compliance with consumer protection legislation is a prerequisite to successful banking and a bank is acting in its own best interest by serving the public fairly and within the scope of the law.

Civil liability under many of those laws may be substantial; some, notably Truth in Lending, require total compliance. What may appear to be a trivial, highly technical violation may support civil actions exposing the bank to significant liability for damages and to adverse publicity resulting in the loss of the bank's goodwill and image.

This handbook is not intended to be a complete legal reference. It is a convenient working tool designed to assist the examiner in understanding those selected portions of consumer laws and regulations pertinent to the examination. The examiner is also expected to be familiar with all aspects of consumer law and regulatory requirements.

Introduction
Table of Contents**Section 1.0**

- 1.1 Use of Handbook
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 - Internal Controls
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Introduction Use of Handbook

Section 1.1

The *Comptroller's Handbook for Consumer Examinations* is divided into 14 sections, each relating to a specific law, regulation or banking activity. Under each section, where applicable, there are four areas of interest:

- Introduction
- Examination Objectives
- Examination Procedures
- Verification Procedures

The introduction of each section is a summary description of the respective topic and will be supplemented by the examiner's experience and the Office of the Comptroller of the Currency's (OCC) educational programs. It details the major provisions of the law or regulation being discussed. Its purpose is to apply the language of the regulation to various banking operations and to deal not only with "normal" transactions, but also with "special" situations.

References, appearing in each column throughout the handbook, are identified in the Reference Guide (Appendix B) at the end of this section. A Study Guide (Appendix A) is also provided in this section to assist examiners in preparing for the Consumer Affairs Examiners' Training School. The use of the study guide and reference guide together with the introduction of each topic will aid the examiner in understanding consumer protection laws and the OCC enforcement program.

The examination objectives subsections describe the goals that should be of *primary* interest to the examiner. They are specific statements of what the examiner must determine. As compliance with laws is the major determination of the examination, most examination objectives will focus on a particular provision of the regulation being discussed.

The examination procedures are the "what to do" of the examination. They explain the order in which the work programs should be executed and should facilitate satisfactory accomplishment and resolution of the

examination objectives. The procedures briefly indicate what actions should be taken for working papers' documentation, for discussion with management and for the inclusion of violations and exceptions in the report of examination.

The verification procedures are the "how to do it" of the examination. They are designed to verify the accuracy of the conclusions drawn from the examination procedures and to clarify the precision of the answers to the Internal Controls Questionnaire. The verification procedures are tools to be used by the examiner to satisfy the target objectives. It may not always be necessary to perform all of the verification procedures to arrive at conclusions set forth in the examination procedures. However, each verification procedure will be performed at the initial consumer affairs examination and in subsequent examinations if the examiner decides it is necessary. For certain banks, the performance of additional verification procedures may be appropriate. The examiner must document in the working papers the procedures and information used to arrive at the conclusion expressed in the report of examination.

The general examination objectives, the general examination procedures, and the Internal Controls Questionnaire at the end of this section apply to the *entire* examination. They set the direction and tone for each examination. The Internal Controls Questionnaire is designed to give the examiner an overview of those internal controls instituted by the bank to comply with consumer laws and regulations. The examiner must evaluate all aspects of a bank's internal controls to accurately assess their adequacy. The questions are not precise and should only be used as a guide. They should be kept in mind while performing the examination and verification procedures in each section. A "no" answer may not indicate, by itself, problems with the bank's internal controls. However, all "no" answers must be considered in the appraisal of internal controls adequacy and require comment in the report of examination.

Introduction

Report of Examination

Section 1.2

The consumer affairs report of examination is a separate report equal in stature to all OCC reports of examination. It replaces any other report pages currently in use that deal with consumer regulations. Its function is to provide national banks and the Comptroller of the Currency with an overall evaluation of a bank's compliance with consumer statutes and regulations. As with the commercial report, the consumer report is written to the board of directors and will state the findings of the examination. Because it is written to the board, the term "subject bank" is not used. The report will be processed and countersigned by the regional administrator or the deputy regional administrator. The regional office will forward final copies to the bank and to the OCC's Consumer Affairs Division in Washington.

Reports consist of the following:

Open Portion

- Examiner's Letter to the Board of Directors
- Noncompliance and Corrective Action
- Internal Controls
- Other Matters

Confidential Portion

- Discriminatory Practices and Policies
- Impact of Noncompliance
- Other Matters

(In certain cases, regional administrator's comments may precede the examiner's letter to the board of directors. The letter, noncompliance and corrective action, internal controls, and other matters sections are returned to the bank from the regional office. Discriminatory practices and policies and impact of noncompliance and other matters are confidential sections written to the OCC.)

Open Portion

Letter to the Board of Directors

The examiner's letter to the board of directors summarizes the content of the report and highlights only the most important findings. Components of the letter are:

- Statement of the scope of the examination.
- Violations of law which have affected consumers adversely.
- Internal control deficiencies.
- Causes of problems and recommended corrective action.
- General statement of the bank's degree of compliance with consumer laws.
- Signature of the consumer examiner.

This section is the only place in the report where the examiner's signature is required. After processing in the regional office, the regional administrator or the deputy regional administrator signs beneath the examiner's name.

Noncompliance and Corrective Action

This section should detail in narrative form specific noncompliance problems by violation. The examiner should state, in numerical order, the specific law or regulation violated, using the appropriate USC or CFR citation, and the reason for noncompliance. Cautionary comments on questionable violations are to be reported in the other matters section. The narrative should indicate in which department(s) or function(s) the violation occurred:

- Instalment Loan
- Real Estate Mortgage
- Open-End Credit
- Note
- Leasing
- Deposits
- Advertising.

Neither the names of customers nor the number of customers affected should be reported in this section. Only those areas and practices found to be in general noncompliance should be stated. Although the examiner should not report isolated violations, they should be discussed with management and treated as an indication of a possible weakness in internal controls.

Corrective action comments should immediately follow each listed violation. Those comments should indicate the procedures the bank plans to implement for future compliance and/or to remedy violations. When the bank is unsure of the actions it will take, the examiner may recommend alternatives. The bank should always be advised to consult legal counsel prior to instituting corrective action. It should consider all possible options and pursue only those that are consistent with the law and equitable to the consumer. Examiners should not approve or disapprove corrective actions, but may give their opinions as to the adequacy of the proposed action. They should advise that, upon review by the OCC, the bank may be directed to institute other measures, if necessary.

As this section will be forwarded to the bank as part of the final report, the examiner must review with management *all* items reported here *before* leaving the bank. The examiner should be as specific as possible in this section in explaining the violations, their ramifications and corrective action.

Internal Controls

The internal controls section of the report explains in detail internal control weaknesses within the bank. Most violations arise because of the absence of proper internal safeguards. Most consumer protection laws provide insulation from civil liability for inadvertent errors. However, they simultaneously stipulate that the bank would be free from liability only if it can show that the violation was not intentional and resulted from a *bona fide* error despite

Introduction

Report of Examination

Section 1.2

the maintenance of procedures reasonably adapted to avoid such errors.

A comment is required for each negative answer reported in the Internal Controls Questionnaire, and any deficiencies in staff knowledge, training and internal audit procedures should be noted. The examiner should also indicate those instances when internal control weaknesses have caused violations noted in the noncompliance and corrective action or other matters sections.

Responses to the Internal Controls Questionnaire, together with a review of written policies and forms, should indicate management's knowledge of consumer protection laws. Since consumer loans are often made by front line lending officers, their education in consumer protection is imperative. The examiner assesses staff knowledge of applicable laws by interviewing department heads and selected lending officers about the operating procedures of each department. The examiner should question officers concerning violations of law or substantive departures from consumer compliance procedures noted during the review of selected loans, as well as the lack of adequate documentation. If staff knowledge of legal requirements is inadequate, appropriate comment should be made in the internal controls section of the report. The examiner should ascertain the way in which that inadequacy is reflected in operations and the impact, if any, upon consumers.

Other Matters

The other matters section of the open portion of the report discusses questionable practices and includes cautionary comments on matters not clearly in violation of law. If substantial doubt surrounds the propriety of any practice noted in a consumer examination, the practice should be discussed here as "raising substantial questions," etc. The discussion should include in detail the nature of the practice and a statement as to why the practice is questioned. Banks should be encouraged to reconsider such practices.

Significant information which may not fit neatly into the preceding sections should be reported here as well as penetration ratios of credit insurance.

Exceptions and deficiencies of electronic fund transfer system (EFTS) controls should also be reported in this section. (The basic controls suggested to maximize the security of EFT systems are discussed in section 14 of this handbook.) EFTS practices that have contributed to violations of law should be discussed in conjunction with the citation in the noncompliance and corrective action section and summarized here. Similarly, when EFTS exceptions are clearly manifested as internal controls exceptions, they should be reported in the internal controls sections and summarized here.

The other matters section should include comments relating to Consumer Complaint Information System (CCIS) data. Those comments should include the number of complaints received by the OCC and the bank. Complaints concentrated in specific areas of the bank should be noted. This section will conclude with a list of officers with whom the contents of the report were discussed.

The preceding sections are in the open portion of the report. Although those sections are written to the board of directors, the information must also be useful to management, to the regional office and to the Consumer Affairs Division in Washington. All sections should be specific, detailed and succinct.

Confidential Portion

Discriminatory Practices and Policies

The confidential portion of the report begins with discriminatory practices and policies. In that section the examiner should discuss in detail any indications of discriminatory lending practices or questionable policies. Policies which possibly may discriminate against a group, but do not constitute clearly defined violations of law should be discussed here. Specific, well-defined discriminatory violations and practices should be reported in the open section and only referenced here.

Impact of Noncompliance

The impact of noncompliance section is structured identically to the noncompliance and corrective action section; however, only those items that have had significant impact upon the consumer or the bank are discussed. The analysis of each area should include:

- An estimate of the total number of items involved.
- An estimate of the total amount of excess charges on loans or insufficient interest on deposits.
- Any other adverse impact on bank customers.
- The duration of noncompliance.

This section should also discuss pending litigation against the bank involving noncompliance with consumer laws and regulations, the validity of the litigation, etc. It will conclude with an estimate of the total dollar amount of excess charges and insufficient interest on deposits and total dollar amounts of pending consumer litigation.

Information contained in the impact of noncompliance section should be as precise as possible. However, estimates, not exact amounts, are requested. Thus, the examiner should not detail every account affected, but should estimate the amounts involved based on the best information available. When no estimate can be made during the examination, the bank should be requested to supply the information directly to the regional office. In such cases, the report should note that the bank will supply estimates of the number of customers affected

and the total dollar amounts of impact. That information should be estimated for compilation in the Washington office and for use in monitoring the health of the National Banking System with respect to consumer protection.

Other Matters

The confidential portion concludes with an other matters section. That section includes information which augments findings in the open portion of the report but which

should be disclosed only to the OCC. In all cases involving overcharges, examiners should comment on the standard of care exercised by the bank. This is merely the degree to which they have tried to comply with the laws. In particular, any evidence that indicates that bank personnel might have been aware that customers were being overcharged should be discussed in detail. The section may be used to further elaborate on other matters in the open portion of the report.

Introduction
Working Papers**Section 1.3**

Working papers should document in writing the procedures followed and conclusions reached during the examination. Accordingly, they are to include, but are not necessarily limited to, the findings in the examination and verification programs, memoranda, schedules, questionnaires, checklists, abstracts of bank documents, analysis prepared or obtained by examiners, and photocopies of documents in violation of laws, rules and regulations.

The working papers should support the information and conclusions in the report. The importance of highly organized working papers which fully document the findings of the report cannot be overemphasized. Working papers should be prepared with the same diligence as the report itself.

The working papers should be indexed according to the working paper index for consumer affairs. The retained data should be organized to facilitate the construction of

the report of examination and to facilitate future review and reference. The working papers should be retained in a location that will allow for immediate reference.

Permanent File

Not all working papers will be pertinent to future examinations; eventually some will become obsolete. To alleviate that situation, a permanent file should be maintained for each bank that includes only those working papers of continuing interest. An index to the permanent file should be attached to the inside cover to prevent the loss of items.

The contents of the permanent file are a matter of judgment. Lengthy documents should be summarized or highlighted (underlined) to facilitate reference to the important provisions. It also may be desirable to have a complete copy of the document in the file to support the summaries or answer specific questions.

Introduction Sampling Procedures

Section 1.4

The examination procedures include tests of all relevant forms, policy statements, internal controls and other administrative procedures. In addition, the consumer examiner analyzes certain loans and supporting documents drawn from the loan portfolio through a specified random sampling technique. Although the testing of blank forms and administrative procedures may not reveal violations, they may occur as a result of clerical, typographical and computer errors, or from failure of individual loan officers or other personnel to understand or properly apply the bank's procedures.

The sampling of loans and other records should reveal within a reasonable degree of certainty the existence of significant violations and possible sources of additional ones. A relatively modest-sized sample generally will suffice. All applicable examination procedures must be performed on every loan in the sample.

In the event that an analysis of the initial sample indicates the presence of violations, further investigation should reveal their sources and patterns. The qualitative factors surrounding the violation should be isolated before any numerical estimates are made.

Since the basic purpose of the examination is to ensure compliance with existing regulations, the major focus should be on the bank's current performance. Thus, the sample should be selected from new loans or recent applications rather than from the total portfolio of loans outstanding and related records. This will avoid the risk of sampling records that pre-date the regulation or its major amendments.

The sample should assure a random selection of units. To accomplish this, the organization of the bank's records must be investigated to avoid the selection of a sample unduly concentrated in loans of a particular type, in loans originating at a single branch, or in loans processed by one or a few loan officers.

Compliance testing also includes a review of *rejected* loan applications. When a large number of those applications are available, a recent group should be analysed to determine whether they display characteristics for rejection on a prohibited basis such as age, sex or race. Those should be retained and discussed with management to determine possible discrimination. When few, if any, recently rejected applications are available, the evaluation of prescreening, creditscoring, and other procedures becomes especially important, and such

rejections must be carefully examined. However, strict application of random sampling procedures in this area may not be feasible.

Systematic errors should command greater attention than clerical or typographical ones, e.g., a transposition of digits. For example, the violations may be attributable to a particular dealer, loan officer, branch, bookkeeper or processing procedure. In that event, the examiner should select additional loans having that specific characteristic for further analysis. The number of loans selected should only be that number sufficient to determine the validity or lack of validity of the examiner's preliminary finding. In some cases, it may not be possible to determine sources of recurrent violations and the examiner should request management to investigate its operations in order to find and correct the causes of the violations.

All relevant procedures must be performed for each loan, unless forms and procedures are identical, e.g., computerized. Line sheets will serve as organizational tools for those procedures.

As the population of loans includes branch loans, a separate sample of loans from each branch will not be required. However, evidence may suggest the possible existence of violations at branches other than those represented in the sample. If the analysis of the bank's operations indicates that certain branches operate with considerable independence and that standard forms and procedures do not exist, those branches may require a thorough basic examination, an evaluation of branch personnel performance, and an analysis of a small sample of individual loans.

Advertising, home mortgage disclosure, and interest on deposits (savings) do not require statistical sampling, though random selection may be appropriate in choosing samples for the savings work program.

The sample design adopted by the OCC is taught in its training schools. Since it does not have any allowance for error, any error found in the sample is unacceptable and should be investigated. The violation should be carefully scrutinized for any pattern or suggestion of its nature or source. If the nature or source of errors can be isolated, additional work may be directed to the affected areas. If the error cannot be isolated, or time constraints prevent the examiner from performing additional work, it may be possible to arrange for assistance from the bank's internal auditors or other employees.

Introduction Internal Controls

Section 1.5

Compliance with consumer laws can only be accomplished by the board of directors and bank management acting together to adopt written policies and procedures. Proper internal control programs to insure compliance with all federal and state consumer laws cannot be overemphasized in the examiner's review with management.

Each question on the Internal Controls Questionnaire should be answered fully. As explained earlier, all "no" answers should be fully explained in the report. In many cases, the examiner should ask additional questions about practices or policies peculiar to the bank being examined.

Proper written policy and internal controls will serve the bank in two ways: (1) in maintaining compliance with complex and changing laws and regulations; and (2) in proving that the bank is making a good faith effort to comply with those laws where the possibility exists that noncompliance may result in litigation.

To minimize the potential for loss, the bank should designate an officer to insure compliance with consumer laws and regulations and with its written policies. That officer should possess the following qualifications:

- Familiarity with all aspects of consumer law and the methods and equipment used by the bank.
- Mathematical ability to discover programming errors or errors in calculation by independently computing Annual Percentage Rates, interest rebates, late charges, etc.

The officer should be responsible for:

- Ensuring that all bank forms provide proper disclosure and do not request or contain prohibited information.
- Reviewing bank policies and procedures to ensure compliance with consumer laws.
- Transmitting to line and staff management information on recent changes in consumer protection legislation.
- Ensuring that bank personnel are properly informed and trained to ensure compliance.

Also, an officer or employee should be appointed to oversee procedures for receiving complaints and resolving disputes. Effective communication between the bank and the consumer can often avoid potentially dangerous situations or unnecessary loss of goodwill.

Management should also ensure compliance with law and bank policy through constant surveillance by the bank's auditors. The examiner should insist that testing for compliance with all federal and state consumer laws be included as part of the normal audit function. Only in this way can management be continually appraised of improper practices and potential problems.

Introduction
General Examination Objectives**Section 1.6**

1. To determine compliance with applicable consumer protection laws, rulings and regulations.
2. To determine if bank policies, practices, procedures and objectives regarding consumer laws and regulations are adequate.
3. To determine if bank personnel are operating in accordance with established bank guidelines.
4. To initiate corrective action when policies, practices, procedures or objectives are deficient or when violations of laws, rulings or regulations have been noted.
5. To convey to bank management the full gravity of consumer protection laws in order to effect compliance.

Introduction

General Examination Procedures

Section 1.7

1. Request written bank policies and procedures concerning consumer laws, rules and regulations. If they do not exist, attempt to ascertain the bank's unwritten policies.
2. Request all blank forms to be reviewed in the work programs.
3. Request a detailed list of pending litigation resulting from alleged noncompliance with consumer laws. Specifically, ask the head of each department if there either are or were any actual or suspected consumer compliance problems in their departments.
4. Answer the questions in the Internal Controls Questionnaire during the examination.
5. Determine that an officer in the bank knows how to verify the accuracy of computations independent of tables and automated equipment used daily and, if the electronic data processing is not performed on the premises, that he or she is familiar with the methods and calculations used by the servicer and has verified them to be consistent with the bank's disclosures.
6. Review consumer complaint data supplied by the regional consumer specialist for evidence of concentrations of problems. Also review relevant information from the previous commercial examination.
7. Determine whether the bank is a subsidiary of any bank holding company or a member of a consortium of banks subscribing to common forms or a common servicer.
8. Determine whether internal or external auditors audit branch operations. If so, review those reports for pertinent comments.
9. Determine whether there are any branches specializing in certain types of consumer transactions or employing procedures or forms different from those of the main office, and determine the need to review any loans of branches not included in the sample.
10. Use an appropriate sampling technique to gather documents for review in the applicable work program.
11. Perform work programs and review for compliance with written bank policies and procedures and laws and regulations.
12. If noncompliance is found in the initial test or sample, select additional items, if necessary, to determine:
 - a. Specific area and reason for noncompliance.
 - b. Duration of noncompliance.
 - c. Estimate of the extent of the problem, expressed in dollar amount and number.
 - d. Potential effects of noncompliance on bank's safety and soundness.
13. Contact regional consumer specialist, if necessary, for guidance in instances of questionable compliance.
14. Discuss formally with management all violations of law, internal controls exceptions and other comments appearing in the open portion of the report. Examiner and bank estimates of the impact of noncompliance and corrective action to be taken should also be discussed at that meeting.
15. If violations of law resulting in monetary harm to customers are discovered, direct management to perform a comprehensive review of the matter to be reported to the Comptroller of the Currency and the board of directors. Advise management that a request for a summary of its findings will accompany the processed report when it is returned to the bank.
16. Index working papers according to the working papers index for consumer affairs and include other documents pertinent to the findings of the examination.
17. Prepare comments for the consumer affairs report of examination and document findings in the working papers.

Introduction
Internal Controls Questionnaire**Section 1.8**

1. Has the board of directors adopted written policies and procedures concerning consumer laws and regulations?
2. Have consumer policies and procedures been implemented and are they effective?
3. Do the policies and procedures provide for proper training and dissemination of information?
4. Has management designated a bank officer to be responsible for compliance with consumer laws and regulations?
5. Has management designated a bank officer or employee to handle consumer complaints and resolve disputes?
6. Do the persons responsible for insuring compliance with consumer laws and the handling of consumer complaints have sufficient knowledge to perform their work effectively?
7. Does the bank monitor complaints to discover areas that require attention?
8. Do the bank's auditors, as a routine audit procedure, check for:
 - a. Compliance with the specific laws, rules and regulations?
 - b. Staff's knowledge of regulations?
 - c. Indications of discriminatory practices?

Introduction

Appendix A—Examiner's Study Guide

Section 1.9

This study guide is to be used in reviewing the *Comptroller's Handbook for Consumer Examinations*. The material in the handbook is divided into 14 sections pertaining to specific laws or banking activities.

The information contained in the handbook will be fully discussed in lectures and in resource materials distributed at the consumer affairs training sessions. Each section contains text and procedures that conform with the new examination procedures adopted by the OCC.

The introductions of each section contain extensive background information on each area of the examination. The examination and verification procedures focus on the problem areas in which noncompliance may adversely affect consumers.

The handbook includes supplementary materials to help you understand the consumer protection laws. However, you should refer to the complete acts and regulations.

The following summarizes the major areas to be studied before attending the training sessions. The acts and regulations are described briefly together with their purposes and scope.

Advertising. Regulations exist to ensure consumer protection through the prohibition of deceptive or misleading advertising. In studying Regulation Z (12 CFR 226), you will learn the restrictions on advertising credit and lease terms. Regulation Q (12 CFR 217) imposes constraints on advertising for deposits. FDIC regulations on advertising (12 CFR 328) require insured banks to disclose in certain promotional activities the existence of this insurance.

The major purpose of those regulations is to ensure that the consumer will not be misled by ambiguous terminology in advertising. OCC Banking Circular No. 16, dated June 6, 1969, provides retention requirements for national banks.

In addition to studying the "trigger" terms of Regulation Z, you should also concentrate on:

- The Statement of Principle of Financial Advertising.
- FDIC advertising requirements and exceptions.
- FDIC advertising requirements and exceptions.
- Disclosures required by Regulation Q.
- Retention requirements.

Interest on Deposits (12 USC 371a and 371b), implemented by Regulation Q (12 CFR 217), regulates the system of payment of deposits and interest on deposits. It does not regulate the method of computing interest, but, rather, sets ceilings on interest rates for different classes

of interest-bearing deposits. As mentioned earlier, it imposes certain constraints on advertising of interest on deposits.

You should study:

- The distinction between types of deposits.
- The constraints imposed on each with respect to payment of interest, withdrawals and penalties.

Truth in Lending (15 USC 1601), implemented by Regulation Z (12 CFR 226), provides a standard method for disclosing the terms and the cost of consumer credit. The uniform description of required terms enables the consumer to compare the cost of similar credit transactions at various institutions and make informed credit decisions. The regulation defines and sets forth information to be disclosed in the extensions of credit covered under it. It requires separate methods of disclosure for two basic types of loans: "open-end" credit, such as credit cards and revolving charge accounts, and "other-than-open-end" credit, such as instalment and consumer demand loans, sometimes called "closed-end" credit. It also sets forth special requirements for real estate mortgage loans.

In addition to loan transactions, the regulation also contains certain requirements on credit advertising. In the Fair Credit Billing Amendments to Regulation Z, provisions are set forth to protect the consumer against inaccurate and unfair billing practices. Those amendments also provide consumers with the tools to resolve billing error disputes promptly and fairly.

The regulation was later amended to implement the Consumer Leasing Act of 1976, the purpose of which is to protect the consumer against inadequate and misleading leasing information, to assure meaningful disclosure of leasing terms, and to limit the consumer's ultimate liability in lease contracts.

You should concentrate on the following provisions of Regulation Z:

- The inter-relationship between the amount financed, the finance charge and the Annual Percentage Rate.
- Method of computing the Annual Percentage Rate.
- Components of the amount financed and finance charge.
- Required disclosure under open-end and closed-end credit, noting the special disclosure for loans secured by real property.
- Billing error resolution procedures.
- Disclosure of lease terms.
- Recordkeeping requirements.

Introduction

Appendix A—Examiner's Study Guide

Section 1.9

State Laws. The OCC is also responsible for examining national banks for compliance with state laws. You should review the state consumer protection codes for those states in which the banks you examine are located. Pay particular attention to the usury statutes for national banks (12 USC 85 and 86). National banks are granted a varying degree of freedom in the rate of interest they may charge based on the rates allowed other creditors in the particular state.

You should review state usury and consumer protection laws for:

- Applicability to national banks.
- Consistency with federal regulations.
- Extraordinary or peculiar provisions.
- Most favored lender status.

The *Real Estate Settlement Procedures Act (RESPA)* (12 USC 2601) imposes certain requirements on financial institutions regarding the settlement process for real estate mortgage loans. RESPA, implemented by Regulation X (24 CFR 3500), reforms the settlement process of real estate mortgage transactions, insures proper disclosures and prohibits certain practices.

For RESPA, concentrate on:

- Covered and exempted transactions.
- The Uniform Settlement Statement.
- The Good Faith Estimates.
- The Settlement Cost Booklet.

The *Equal Credit Opportunity Act (ECOA)* (15 USC 1691) is implemented by Regulation B (12 CFR 202). You should pay particular attention to the definition of terms in Regulation B as compared to that in Regulation Z, and the footnotes.

Initially, the purpose of ECOA was to prevent discrimination on the basis of an applicant's sex or marital status in any aspect of a credit transaction. Although a part of consumer protection, the ECOA also addresses business credit. It imposes certain restrictions on the bank's evaluation of an applicant's creditworthiness and use of nonobjective credit criteria. ECOA was amended and now prohibits discrimination on the basis of:

- Race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract);
- The fact that all or part of the applicant's income derives from any public assistance program; or
- The fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act.

In studying the Equal Credit Opportunity Act, you should concentrate on:

- Definitions and footnotes.
- Specialized classes of credit transactions.

- Differentiation in approach to secured and unsecured credit.
- Notification requirements.
- Credit History of Married Persons provisions.

The *Fair Credit Reporting Act* (15 USC 1681) was enacted initially to regulate Consumer Reporting Agencies (CRA), usually credit bureaus, and to impose obligations on users of credit information from a CRA. The act also contains provisions to allow the consumer to correct erroneous credit information. As you study this act, note the similarities with certain provisions of Regulation B.

Emphasis should be placed on:

- The distinction between a Consumer Reporting Agency (CRA) and a user of information from a CRA.
- Retention limitations.
- Actions constituting a denial of credit.
- Required notices.

The *Fair Housing Act*, a section of Title VIII of the Civil Rights Act of 1968 (42 USC 3605), prohibits discrimination in real estate mortgage loans and home improvement loans for reasons of race, color, religion, sex or national origin. The act addresses the need for individuals to have free access to open housing. Much of the substance of the act has also been embodied into the Equal Credit Opportunity Act.

As you read the provisions of the Fair Housing Act, keep in mind the information in the ECOA relating to:

- Redlining.
- Racial coding.
- Neighborhood analysis.
- Appraisal standards.

The *Home Mortgage Disclosure Act* (12 USC 2801), implemented by Regulation C (12 CFR 203), provides for public disclosure of information regarding the mortgage lending activities of certain institutions by geographic areas. Regulation C requires those banks to disclose information which might aid in determining compliance with the Fair Housing Act and Regulation B with respect to real estate mortgage loans and home improvement loans.

In reviewing the Home Mortgage Disclosure Act, emphasis should be placed on:

- Definitions.
- Covered and exempted institutions.
- Special situations.
- Review of HMDA-1.

Electronic Fund Transfer Systems (EFTS) are a rapidly expanding and evolving part of the nation's banking system. There are no federal laws or regulations which directly impose constraints on the way transactions, information and processes must be handled. However, certain transactions, information gathering processes or

internal controls are affected by consumer laws. Consumer examiners will share responsibility with EDP and commercial examiners in evaluating EFTS controls and processes in the bank.

In studying the EFTS section, the consumer examiner should pay particular attention to the major considera-

tions in the design of such systems with respect to the following:

- Compatibility with consumer protection regulations.
- Security measures to prevent fraud.
- Privacy rights.
- "EFTS Guidelines" and other related materials.

Introduction

Appendix B—Reference Guide

Section 1.10

Citations of the applicable acts, regulations, interpretations and letters appear throughout the handbook. On this page is a listing of consumer protection laws and regulations and their corresponding United States Code and Code of Federal Regulations citations. Codification means that Acts of Congress are compiled by subject matter and numbered serially, e.g., all banking matters are found in Title 12 and all consumer matters are found in Title 15. A "statute" is an individually numbered section in the U.S. Code, e.g., 12 USC 84. The following abbreviations are used in the handbook citations:

USC	- United States Code
A	- A section of the corresponding act being studied, e.g., A-125(b).
CFR	- Code of Federal Regulations. Since regulations B, Z, etc., contain numerous subsections, in many instances their references have been shortened, e.g., 226.8(b)(2) and 202.6(a)(1).
I	- Formal interpretations of the Board of Governors of the Federal Reserve System. For example, under Regulation Z, an interpretation of section 226.1 would read I-226.101.
FC and EC	- Official interpretations of the staff of the Board of Governors of the Federal Reserve System. They are designated by an "FC" or "EC" number beginning with FC-0001 and EC-0001.
L	- Unofficial staff interpretations, known as public information letters. They are numbered in chronological order according to date of issuance, e.g., L-506.

Consumer Credit Protection Act

The *Consumer Credit Protection Act* (CCPA) was enacted by Congress on May 29, 1968, and became effective on July 1, 1969. The law incorporates five major pieces of legislation each of which is known separately by its descriptive title. The act may be viewed as follows to better understand the legislative format.

- *Truth in Lending Act* (TIL). Title I, Chapter 1 to 3. Truth in Lending was the only matter considered when the CCPA was enacted.
- *Fair Credit Billing Act* (FCBA). Title I, Chapter 4. The act became effective on October 28, 1975, and amended Title I.
- *Consumer Leasing Act of 1976*. Title I, Chapter 5. The act has an effective date of March 23, 1977, and amends Title I.

(Note: The three acts are implemented by Regulation Z of the Board of Governors of the Federal Reserve System.)

- *Fair Credit Reporting Act* (FCRA). Title VI of the CCPA. There are no specific regulations to implement the FCRA.
- *Equal Credit Opportunity Act* (ECOA). Title VII of the CCPA. The act has an effective date of October 28, 1975. Most of the amendments to ECOA have an effective date of March 23, 1976. The act is implemented by Regulation B of the Federal Reserve Board.

Table of Citations

Act or Subject	Citation	Regulation	Citation
Consumer Credit Protection Act:			
Truth in Lending Act	15 USC 1601	Z	12 CFR 226
Fair Credit Billing Act	15 USC 1666	Z	12 CFR 226
Consumer Leasing Act of 1976	15 USC 1667	Z	12 CFR 226
Fair Credit Reporting Act	15 USC 1681		
Equal Credit Opportunity Act	15 USC 1691	B	12 CFR 202
Home Mortgage Disclosure Act	12 USC 2801	C	12 CFR 203
Real Estate Settlement Procedures Act	12 USC 2601	X	24 CFR 3500
Fair Housing Act	42 USC 3605		
Interest on Deposits	12 USC 371a and b	Q	12 CFR 217
Interest—Usury	12 USC 85 and 86		
Advertising:			
Credit and Leasing Costs	15 USC 1661	Z	12 CFR 226
Interest on Deposits	12 USC 371	Q	12 CFR 217
FDIC Insurance	12 USC 1828(a)	FDIC	12 CFR 328

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The Equal Credit Opportunity Act (ECOA) (15 USC 1691) became effective on October 28, 1975 and is implemented by Regulation B (12 CFR 202). ECOA was amended on March 23, 1976, and the revised regulation was effective on March 23, 1977. Regulation B prohibits discrimination with respect to any aspect of a credit transaction on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract), receipt of income from public assistance programs, and good faith exercise of any rights under the Consumer Credit Protection Act. Those factors are referred to throughout the regulation, and this section, as "prohibited bases." In addition, discrimination is unlawful if an applicant is declined because of the race of an applicant's business associates or that of the persons who will be related to the extension of credit, e.g., those residing in the neighborhood where collateral is located. Discrimination may be defined as the treating of one applicant or group of applicants less favorably than another group for any of the reasons discussed above. Regulation B sets forth certain acts and practices which are specifically prohibited or permitted. To prevent discrimination, Regulation B imposes a delicate balance on the credit system, between the bank's need to know about a prospective borrower, and the borrower's right not to disclose information inapplicable to the transaction. The regulation deals with taking, evaluating and acting on the application, and the furnishing and maintenance of credit information. Regulation B does not prevent a creditor from determining any pertinent information necessary to evaluate the credit-worthiness of an applicant.

Taking the Application

Discouraging Applications

Regulation B's concern with the application process starts before the application is taken. Lending officers and employees must be aware of the provisions of the regulation and must take no action that would, on a prohibited basis, discourage a reasonable person from applying for a loan. This prohibition against discouraging applicants applies to oral and telephone inquiries as well as personal contact. In addition, advertising must not have the effect of discouraging an applicant on a prohibited basis.

Regulation B does not distinguish between oral and written applications in its prohibition of discriminatory action. Therefore, in the interview prior to and during the taking of an application, lending officers must refrain from asking for prohibited information. Questions must be neutral with regard to sex, and asked of all applicants who desire the same type and amount of credit.

Inquiries Concerning Marital Status

Individual Credit—Generally, when an applicant applies for individual credit, the bank may not ask the applicant's marital status. There are two exceptions to this rule:

- If the credit transaction is to be secured, the bank may ask the applicant's marital status. (This information may be necessary to determine access to the asset in the event of default).
- If the applicant resides in a community property state, or lists assets located there to support the debt, the bank may ask the applicant's marital status. (In community property states, assets owned by a married individual may also be owned by the spouse, thus complicating the accessibility of the asset in the event of default). The examiner should contact the regional consumer specialist to determine whether such laws exist in the state in which a particular bank extends credit.

Joint Credit—Whenever a request for credit is joint (made by two or more persons who will be primarily liable), the bank may always ask the applicant's marital status whether the credit is to be secured or unsecured.

Terminology—If the bank is permitted to request marital status, only the terms "married", "unmarried" and "separated" may be used. This pertains to both oral and written requests. "Unmarried" may be defined to include divorced, widowed or never married, but the application must not be structured in such a way as to encourage the applicant to distinguish among those categories.

The bank may ask questions which indirectly disclose marital status to obtain relevant information. Those questions may concern the source of income or ownership of assets supporting the debt, and whether the debt obligations of the applicant have a co-obligor. However, any such question must not be structured so as to force the applicant to indicate marital status. Regarding debt payments, a bank may inquire whether the applicant is obligated to make alimony, child support or separate maintenance payments.

Request for Information Concerning Spouse or Former Spouse

The bank must not inquire about the applicant's spouse or former spouse either on the application or orally, unless one of the following conditions exist:

- The spouse will be a user* of, or contractually liable on, the account.

* The term user applies only to open-end accounts.

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- The applicant is relying on a spouse's income to repay the debt.
- The applicant resides in or is relying on property located in a community property state to support the credit request.
- The applicant is relying on alimony, child support or separate maintenance income to repay the debt.

In general, when a bank uses one application form for more than one purpose, written applications must not seek information about the applicant's spouse without a disclosure that the information is not required unless one of the above conditions exists.

Alimony, Child Support and Separate Maintenance Income

Income derived from alimony, child support or separate maintenance payments need not be revealed unless the applicant wishes to rely on it to repay the debt. The applicant must be advised of that option before any questions concerning such payments are asked. The option must also precede, on the printed application, any general request concerning income and the source of income. Therefore, a creditor must either ask questions designed to solicit only such specific information about income as salary, wages, employment income, or must state that disclosure of alimony, child support, or separate maintenance payments is not required. However, the bank may inquire about the liability of an applicant to make such payments.

Childbearing Intentions or Capability

Under no circumstances may the bank request information about the applicant's birth control practices or childbearing intentions or capability. The bank may inquire about the continued ability to repay the debt, such as the probability of continued employment. However, the request must be made of all applicants who are similarly qualified without regard to any prohibited basis. The number, ages and expenses of present dependents may also be requested.

Other Prohibited and Permitted Requests

Regulation B specifically prohibits banks from inquiring about the applicant's sex. Written applications must contain only terms which are neutral with regard to sex. For example, in the past, many applications contained the terms "husband" and "wife." Courtesy titles which indicate sex, i.e., Mr., Mrs., Ms., Miss, may be requested, but only if accompanied by a conspicuous statement that the designation of any such title is optional.

The regulation also prohibits inquiry about the applicant's race, color, religion or national origin, particularly in connection with the credit transaction. The bank may inquire about the applicant's permanent residence and immigration status in order to

determine creditworthiness but not to deny credit merely on the grounds of noncitizenship.

Sample application forms have been included in Regulation B for the following types of credit: open-end and unsecured credit, closed-end and secured credit, closed-end and either secured or unsecured credit, residential real estate credit, and credit extended in community property states.

The regulation does not require that banks use written applications. However, if a bank desires to use them, either the appropriate model application form in Appendix B of the regulation, or one which complies, may be employed. The model form may be modified by asking for additional nonprohibited information, by excluding any information not desired, or by changing the format if the required disclosures are made.

Banks may request a list of all accounts upon which the applicant is liable, the name and address in which the accounts are carried, and any other names used previously to obtain credit.

Evaluating the Application

A bank may evaluate creditworthiness using either a judgmental system or a credit scoring system. Any credit scoring system must be demonstrably and statistically sound and empirically derived.

In general, a bank may not consider an applicant's age (provided the applicant has the capacity to enter into a binding contract), or whether the applicant receives income from any public assistance program, to arbitrarily deny credit. The age of an elderly applicant may always be considered when used in the applicant's favor.

Judgmental Credit Evaluation Systems

In a judgmental credit evaluation system, the above factors always apply. However, there are certain exceptions:

- Age may be used in connection with occupation to determine amount of employment income and/or retirement income which will support the debt until maturity.
- Age may be considered to determine whether the security is adequate to cover the debt if the maturity of the extension exceeds the life expectancy of the applicant.
- Age may be considered to assess the significance of the applicant's length of employment or residence.
- The length of time the applicant has been receiving income derived from a public assistance program may be considered.

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- The bank may ascertain whether the applicant will continue to meet residency requirements for public assistance benefits.
- The status of dependents may be considered to ascertain the continuity of benefits received relating to such dependents.

Credit Scoring Systems

In a credit scoring system:

- A bank may use an applicant's age as a predictive factor, provided that the age of an elderly applicant is not assigned a negative factor or value. 202.6(b)(2)(ii)
- A bank may not consider a telephone listing in the name of the applicant, although a creditor may consider whether or not there is a phone in the applicant's residence. 202.6(b)(4)
- A bank may not consider aggregate statistics or assumptions relating to the likelihood of any group of persons bearing or rearing children, or for that reason receiving diminished or interrupted income in the future. 202.6(b)(3)

Prohibited Childbearing Considerations

In the past, many credit evaluation policies have considered the applicant's probability or capability of bearing or rearing children. Regulation B now absolutely prohibits those assumptions. Also, a bank may not consider the likelihood that the applicant's income will be interrupted by childbearing or question the applicant about such intentions. However, the bank is permitted to consider the number and ages of the applicant's dependents and any related expenditures. 202.6(b)(3)

Consideration of Income

The bank may not discount the income of an applicant or spouse on a prohibited basis or because it is part-time. The income of a spouse used in an application for credit must be considered equally with that of the applicant. In addition, income derived from annuity, pension or retirement benefits must not be discounted. The bank may, however, consider the amount and probable continuity of any income and must consider alimony, child support or separate maintenance income to the extent that those payments will be continuing. Methods for determining the likelihood of continuing payments may include, but are not limited to:

- Whether the payments were provided for by oral or written agreement, or by court decree.
- The length of time payments have been made.
- Whether the receipt of payments has been recent and regular.
- The ability to compel payment.

- The creditworthiness and credit history of the payor, when available to the bank, in accordance with the Fair Credit Reporting Act or other law.

Credit History

The bank may consider credit history in evaluating applications, particularly accounts for which the applicant was a user or contractually liable. Those accounts must be considered regardless of whether they were listed in the applicant's name. 202.6(b)(6)

At the applicant's request, the credit history must include any account reported in the name of the applicant's spouse or former spouse which accurately reflects the applicant's ability or willingness to repay. At the request of the applicant, the bank must also consider any information the applicant presents indicating that the credit history does not accurately reflect ability or willingness to repay. 202.6(b)(6)(ii) and (iii)

Other

The bank may consider the applicant's marital status, source of income, permanent U.S. residency or immigration status to ascertain the bank's rights and remedies with respect to payment. 202.6(b)(7) A 701(b)(1) Footnote 8

The Effects Test

In addition to the preceding rules for evaluating applications, all credit practices are subject to the "effects test." Under the effects test, a court might determine that a creditor is in violation of the act if a particular practice has a disproportionate adverse impact and is not reasonably related to creditworthiness. Thus, for example, a requirement that applicants have unreasonably extensive credit histories in order to receive credit may be illegal discrimination because of its unequal effect upon married women. 202.6(a) Footnote 7

Acting on the Application

Offering of Accounts 202.7(a)

The bank must not refuse, on the basis of sex, marital status, or any other prohibited basis, to grant an individual account to a creditworthy applicant. Any state law prohibiting separate accounts to married persons is pre-empted by the regulation, including laws which combine separate accounts for determining finance charges or loan ceilings. If the bank offers joint liability on accounts to married couples, it must also offer such accounts to unmarried persons. 202.11(b)(1)(ii) and (c) EC 0004 EC 0003

The bank must not refuse to allow the applicant to open or maintain an account in a birth given first name, a birth given surname, spouse's

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surname or combined surname. For example, Mary Smith, who is married to John Jones, may open an account in any of five different names: Mary Smith, Mary Jones, Mary Smith-Jones, Mary Jones-Smith or Mrs. John Jones. However, the bank may require that the applicant use one name consistently in doing business with the bank. In addition, the bank may inquire whether the applicant has obtained credit in another name, or is liable for accounts listed in another name, to determine the applicant's credit history.

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202.5(c)(3)

EC 0002

Actions on Existing Open-End Accounts

With respect to existing open-end accounts, the bank may not require a reapplication, change the terms of the account, or terminate the account on the basis of age or retirement or because of a change in the applicant's name or marital status, unless there is evidence of inability or unwillingness to repay. A denial of liability on the account by any account holder may be determined as an unfavorable change in creditworthiness because of unwillingness to repay. For example, upon divorce, one of the applicants may deny further liability on the account and the credit may not be supportable by the other applicant alone. When the account is based on the divorced spouse's income and the applicant's income at the time of the credit extension will not support the credit request, the bank may require a reapplication upon a change in the applicant's marital status.

202.7(c)(1)

L 1

202.7(c)(2)

Signature Requirements

Generally, the bank may not require the spouse or any other person who is not a joint applicant to cosign or guarantee the note if the applicant is creditworthy. There are some exceptions to this rule:

202.7(d)(1)

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- If the credit is to be unsecured and is supported by property, the bank may consider the effect of state law, how the property is owned, and other factors which may affect the applicant's interest in the property. If the applicant's interest in the property is insufficient to establish creditworthiness, the bank may require the spouse or other joint owner to sign any instrument necessary or reasonably believed to be necessary, under applicable state law, to allow the bank to gain control of sufficient property to satisfy the debt in the event of default.
- If the credit is to be unsecured and the applicant is married and resides in a community property state, or the property supporting the debt is located in such a state, the bank may require the spouse's signature on those instruments necessary, or reasonably believed to be necessary,

202.7(d)(2)

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202.7(d)(3)

to make the community property available to the bank in the event of default. The creditor may not require the spouse's signature if the applicant can manage or control sufficient community property to establish creditworthiness or if the applicant has sufficient separate property to qualify without utilizing community property.

- If the credit is to be secured, the bank may require the signature of the applicant's spouse or a joint owner of assets on any instrument necessary, or reasonably believed to be necessary, under applicable state law, to allow the bank to gain control of the applicant's interest in the assets in the event of default. Those instruments may include any instrument necessary to create a valid lien, pass clear title, waive inchoate rights or assign earnings.
- If the entire value of an asset is needed for an applicant to qualify for secured credit, the bank may require the signature of the applicant's spouse or other joint owner of assets on any instrument necessary to make that asset available to satisfy the debt in the event of default. Or, if the debt is secured by real property and state law requires that all owners sign the mortgage to create a valid lien, the bank may require the signature of a spouse or other joint owner. The examiner should contact his or her regional consumer specialist to determine whether any state laws in the region are applicable to the examples mentioned.

If the applicant qualifies for credit, without listing assets, the creditor may not request such a listing in order to obtain the spouse's signature.

The bank may always request a cosigner or guarantor on the extension of credit if the applicant does not meet the bank's creditworthiness standard for individual credit. However, the request must not be made as a result of discrimination on a prohibited basis and must be required of all similarly qualified applicants applying for the same type and amount of credit. Whenever a cosigner or guarantor is requested, the choice of such a second party must be left to the applicant, subject to the bank's approval, and the bank must not require that it be the applicant's spouse.

Insurance

When the bank offers casualty, credit life, health, accident or disability insurance in connection with extending credit, differences in cost, terms or availability of the insurance will not constitute violations of the regulation. However, the bank may not deny or terminate credit, but may vary the terms, merely because such insurance is unavailable on the basis of the applicant's age. When insurance is desired by the applicant, information regarding the applicant's age, sex

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or marital status may be requested for the purpose of offering insurance.

Notification

Notification of Action Taken 202.9(a)(1)

Notification of both favorable and adverse action is required. The bank must notify the applicant of action taken on an application within 30 days after receipt of the completed written application or completion of the oral application. If the bank and the applicant agree that the applicant will inquire about what action was taken, the bank may consider the application withdrawn if he or she fails to do so within 30 days. In that case, no notification is required. 202.9(d)

Notification requirements for favorable action may be satisfied by receipt by the applicant of a coupon book, credit card, etc. 202.9(a)(1)

Notification of Adverse Action

Adverse action may be defined as: 202.2(c)(1)
EC 0008

- Refusal to grant credit in substantially the amount or terms requested, unless an alternative offer is accepted by the applicant.
- Termination of an account or undesirable change in terms, if the same action is not taken on a substantial portion of similar accounts.
- Denial of an increase in the credit extension when requested in accordance with appropriate bank procedures.

Adverse action is defined to exclude: 202.2(c)(2)

- Any change in the terms of an account which is expressly agreed to by the applicant.
- Any action or inaction because of inactivity, delinquency or default on the account.
- Denial of a credit extension which would exceed an existing credit limit on the account.
- Denial of credit which is prohibited by applicable laws affecting the bank.
- Denial of credit because the bank does not offer the type of credit requested.

Notice of adverse action taken on an uncompleted application or on an existing account must be given within 30 days after the action is taken. An uncompleted application may be defined as one for which a bank has not received all the information that the creditor regularly obtains and considers for the type and amount of credit requested. Banks must attempt to obtain missing information and allow the applicant to complete the application. 202.9(a)(1)(ii) and (iii)

When the bank offers credit to the applicant, other than in substantially the amount or terms requested by the applicant, the bank must notify the applicant of the adverse action within 90 days, if the applicant has not accepted the terms. 202.9(a)(1)(iv)

Whenever adverse action is taken, the bank must furnish the applicant with: 202.9(a)(2)

- A written statement of the action taken.
- A written statement such as the following, or a substantially similar one:

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract), because all or part of the applicant's income derives from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this bank is the Comptroller of the Currency, Consumer Affairs Division, Washington, D.C. 20219. A 701(a)
202.9(b)(1)

A written statement of specific reasons for the action taken or disclosure of the applicant's right to such a statement within 30 days after the bank receives a request for the reasons and that the applicant must make the request within 60 days of the notice of action taken. The disclosure must include the name, address and telephone number of the person from whom or office from which the reasons may be obtained. When the bank chooses to disclose orally the reasons for denial, the applicant must also be informed of the right to receive written confirmation of those reasons within 30 days of the written request. 202.9(a)(2)(i) and (ii)

When the bank discloses the specific reasons for adverse action, the bank may: 202.9(b)(2)

- Formulate a checklist or letter providing the specific principal reasons for adverse action, or
- Use all or a portion of the sample form in Appendix A of this section in order to comply with Regulation B and the Fair Credit Reporting Act.

Other

In the case of two or more applicants, the notification need only be given to one of the primarily liable applicants. 202.9(a)(3)

When more than one creditor is involved in a transaction, and the applicant expressly 202.9(a)(4)

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accepts or uses credit offered by one of them, no notification need be delivered. However, if all deny credit or any counter offer is not accepted, each creditor must make the required notification. The notification may be provided by a creditor or indirectly through a third party if the identity of all creditors taking the action is given. The bank must see to it that all information is given accurately and in a timely manner to the party providing the notification.

Banks may meet the requirements of notification by delivering or mailing a written notice to the applicant's last known address or by oral communication (allowable only when the bank had 150 applications or less during the preceding calendar year). Inadvertent errors resulting in failure to comply with notification requirements will not be violations of the regulation if the bank takes corrective action and begins complying on discovery of the error. Inadvertent errors may be defined as either mechanical, electronic or clerical.

Furnishing of Credit Information

Banks are not required to report credit information on accounts. If the bank does so, it must meet the applicable requirements of the regulation. EC 0003

Accounts Established On or After June 1, 1977

For any credit account established on or after June 1, 1977, the bank, if it furnishes credit information, must determine whether the account may be used by the applicant's spouse or whether both applicant and spouse will be contractually liable. Contractual liability in this case would not include secondary parties to the account such as endorsers or guarantors. Any history of such an account shared by the applicant and spouse must be designated to reflect the participation of both spouses. Information on an account supplied in response to a request about a particular applicant must be furnished in the name of the spouse about whom information is requested. Routine information on credit accounts should be given to a Consumer Reporting Agency in a manner which will enable that agency to locate information on an account in the name of each spouse. The bank need not change the name in which the account is carried nor designate whether the spouse is a user or is contractually liable.

Accounts Established Prior to June 1, 1977

For any account established before and in existence on June 1, 1977, the bank must determine whether the account is one used by the applicant's spouse or an account on which both spouses are contractually liable. To make that determination, the bank has the following options:

- Examine every account to determine whether it is a joint account held by married applicants. This should be done not later than June 1, 1977.
- For any existing accounts which lack sufficient information to make such a determination, mail or deliver to all account holders or all account holders who are married, one copy of the Credit History for Married Persons Notice* in the form given in 12 CFR 202.10(b)(2).
- The bank may mail the required notice to all accounts, if desired.

The notice may be supplemented to identify the account and must be mailed by October 1, 1977. For any open-end credit account, one copy of the notice may be mailed in any billing statement prior to October 2, 1977 for those accounts which receive billing statements between June 1, 1977 and October 1, 1977. An open-end account which is inactive during this period need not receive the notice.

Once the determination has been made on existing accounts or within 90 days of receipt of the completed and signed request to add an additional name when reporting an account, the bank must designate the accounts as joint for reporting purposes. The bank must furnish general credit information to a Consumer Reporting Agency in a manner which will enable that agency to locate information about the account in the name of each spouse. When a bank is asked to furnish credit information about a specific person, it must furnish that information in the name of the spouse for which such information was requested.

Inadvertent errors resulting in failure to comply with requirements of furnishing credit information will not be violations of the regulation if the bank takes corrective action and begins complying immediately upon discovery of the error.

Retention of Records

All Accounts

The bank must retain the original or a copy of the following information for 25 months after the date it notified the applicant of action taken on the application:

- Any application, any information required to monitor compliance with the act, and all written or recorded information used in evaluating the application which has not been returned pursuant to the applicant's request.

* The references to "use" of an account may be deleted on the notice sent to the closed-end accounts.

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- A copy of written documents and any recorded notation of oral notification of action taken on the application, the statement of specific reasons for adverse action, and any written statement from the applicant alleging a violation of this regulation or the act.

Adverse Action

The bank must also retain the original or a copy of the following information for 25 months after the bank informs the applicant of adverse action regarding existing accounts:

- Any written or recorded information concerning such adverse action.
- Any written statement from the applicant alleging a violation of this regulation or the act.

If the bank has been notified that it is under investigation for any violation of the regulation, it must retain all the above required information until final disposition of the matter.

Inadvertent errors in record retention are violations of the regulation. Prohibited information found in the bank's files is also not a violation, if obtained prior to March 23, 1977 (or June 30, 1976 for sex and marital status information) or at any time from a Consumer Reporting Agency, or when voluntarily given without request from the bank. Neither is it a violation to obtain information required by the appropriate enforcement agency to monitor compliance. Although the bank may retain such information in its files, it must not be used to evaluate creditworthiness.

Special Purpose Credit Programs

The following types of credit programs meet the definition of special purpose credit programs:

- Any credit assistance program authorized by federal or state law for economically disadvantaged applicants. 202.8(a)(1) | 202.801
- Any credit assistance program offered by a non-profit organization for its members or for economically disadvantaged persons. 202.8(a)(2)
- Any special purpose credit program offered by a profit-making organization to meet special social needs. Such a program must meet the following requirements:
 - A written plan must be developed which designates eligible applicants and the procedures and standards for the extension of credit.
 - The program will extend credit to those applicants who probably would not be able to obtain such

credit in substantially similar terms as other applicants.

Any denial of credit to an applicant who did not qualify for a special purpose credit program is not a violation of the regulation. 202.8(a)

If the applicants in special purpose credit programs are required to have one or more common characteristics, such as race, color, religion, national origin, sex, marital status, age or receipt of income from a public assistance program, the bank may request and consider those characteristics in determining the eligibility of applicants. If financial need is to be used to determine eligibility, information concerning the applicant's marital status, income from alimony, child support, or separate maintenance payments, or financial information on the spouse may be requested and considered. In addition, the signature of a spouse or other person on the application or credit instrument may be obtained, if required by federal or state law, and will not be considered a violation of the regulation. 202.8(d)

Information for Monitoring

Credit Secured by Residential Real Property

To monitor compliance with the regulation, banks must (unless the OCC imposes a substitute program) request and maintain the following information regarding written applications for credit relating to the purchase of and secured by residential real property (residential real property means improved real property, including one-to-four family dwellings and individual units of condominiums and cooperatives used for residential purposes):

- Race/national origin, using these categories: American Indian or Alaskan Native, Asian or Pacific Islander, Black, White, Hispanic, Other (Specify).
- Sex.
- Marital status, using the categories: Married, Unmarried and Separated.
- Age.

The information may be requested on the application form or on a separate sheet of paper referring to the application. The applicant and joint applicant must be informed: (1) that the disclosure of such information is optional, and (2) that the information is requested by the federal government to monitor compliance with federal laws prohibiting discrimination on the basis of race/national origin, sex, marital status and age. Refusal by the applicant to supply the requested information must be noted on the form containing the request. 202.13(b)

Equal Credit Opportunity Act (ECOA) Introduction

Section 10.1

Specialized Credit

Dealer Paper

When a bank purchases indirect paper from a 202.2(l) dealer in the regular course of business and the bank participates in the decision to extend credit, it is the responsibility of the bank to maintain procedures to determine whether the dealer is complying with the ECOA in all aspects of the credit transaction.

If the applicant within 30 days accepts a 202.9(a)(4) credit offer from the bank, no further notification is required from either the bank or the dealer. If credit is not extended by the bank or the applicant does not accept the bank's offer of alternate terms, each creditor taking adverse action must notify the applicant. For example, if a dealer attempts unsuccessfully to obtain financing at several banks or the applicant does not accept any alternate terms offered, all the banks and any dealer acting as creditor in the transaction must give the notices required for adverse action. Banks may enter into contractual arrangements with dealers to provide all appropriate notices. If the dealer provides a joint notification, the bank will not be liable for actions or omissions resulting in violations if it: (1) provided the dealer with the information necessary to comply with notification requirements, and (2) was maintaining procedures to avoid any such violation. Any joint notification must identify each creditor.

All creditors involved in an indirect credit 202.12(b)(4) transaction must retain all written or recorded information in their possession for 25 months after notice of action, including any notice of adverse action taken.

Business Credit

All business credit, that is, credit extended for 202.3(e) business, commercial or agricultural purposes, is subject to the general rule (12 CFR 202.4) under Regulation B that: "a creditor shall not discriminate against any applicant on any prohibited basis with respect to any aspect of a credit transaction." Banks are also subject to the following provisions in connection with business credit:

- Marital status may always be asked in business credit but, under the revised regulation, sex may not.
- The provisions requiring banks to determine whether accounts are shared with spouses in order to furnish credit information are not applicable.

- The bank must provide the notifications relating to adverse action in business credit only when the applicant requests in writing the reasons for such action. The request must come within 30 days after oral or written notification that adverse action was taken.
- Any records relating to an application for business credit must be retained for 25 months after notice of action taken, only if the applicant requests in writing within 90 days after adverse action is taken that such records be retained.
- If credit is applied for in the name of a business firm, a bank may insist that the firm name be used.

The provisions regarding requirements of 202.7(d) spouses' signatures are applicable to business credit. Banks generally may not require that spouses of principals become liable on or guarantee the debt (unless the spouse is also a principal in the business and the bank has a general policy of requiring all principals to sign).

(In all other respects, Regulation B applies to business credit, and the discussions in the preceding paragraphs are applicable.)

Relationship to State Law

Regulation B alters, affects or preempts only those state laws that are inconsistent with the act or the regulation, and then only to the extent of the inconsistency. Whether a state law is inconsistent may be determined by reviewing Section 202.11(b)(1). In case of doubt, a formal Federal Reserve Board A 705 interpretation may be requested. Any person may apply for an interpretation pursuant to the requirements of 12 CFR 202.11(b)(2). The regulation does not alter any provision of state property laws or federal or state banking regulations which deal with the solvency of such institutions or law relating to disposition of decedent's property. National banks remain subject to the requirements of ECOA, unless the Federal Reserve Board applies state law upon application by a state.

Penalties and Liabilities

Regulation B provides for punitive damages of 202.1(c) up to \$10,000 in individual suits and the lesser A 706 of \$500,000 or 1 percent of the bank's net worth in class action suits, in addition to actual damages. Successful complainants will also be awarded court costs and attorney's fees.

Equal Credit Opportunity Act (ECOA)
Examination Objectives

Section 10.2

1. To determine the bank's knowledge of the provisions of Regulation B and whether that knowledge has led: to compliance with the regulation in the application process; to evaluation of applications; to action taken on applications or accounts; and to the furnishing of information and retention of records on accounts.
2. To further determine whether the bank has been engaged in actions which have the effect of treating one applicant less favorably than another on a prohibited basis.

Equal Credit Opportunity Act (ECOA) Examination Procedures

Section 10.3

1. Request the following for review:
 - a. Sample loan application forms, credit scoring sheets, financial statements or any other form the bank might use to secure personal information about the borrower. The sample should include all such material used by each loan department of the bank.
 - b. Written lending policy and procedural manuals for each lending department.
 - c. A list of bank personnel who:
 - Respond to written or oral inquiries from potential loan applicants concerning the bank's loan requirements.
 - Review loan applications for determination of approval or non-approval.
 - Set lending policy for the bank.
2. Test for compliance with written policies and internal controls while performing the examination procedures.
3. Review materials obtained in step 1a for violations of the regulation and complete Checklist EP-B-1.
4. Review materials obtained in step 1b for policies and practices which are inconsistent with the regulation or which may have the effect of discriminating against any applicant on a prohibited basis.
5. Determine whether there is a designated officer responsible for monitoring compliance with the regulation and disseminating information.
 - a. If so, interview that officer to determine his or her knowledge of the regulation and procedures employed to monitor compliance and disseminate information. (Complete Guideline EP-B-2 and retain for comparison with actual policies and practices noted during the examination.)
 - b. If the bank has no designated officer, perform verification procedure step 1.
 - c. If the bank's or designated officer's knowledge is inadequate, or the designated officer's procedures are not sufficient, perform verification procedure step 2.
6. Using appropriate sampling techniques, review individual open loan files in each loan department for violations of the regulation. Complete line sheets for each sample item by:
 - a. Reviewing all information in each file and officer's decisions to determine compliance with internal lending policies and procedures. (Use written policy or Guideline EP-B-3 if obtained in verification procedure step 2).
 - b. Determining whether the officer completes the written application form or, if no written applica-
tion is taken, conducts an oral application process. If so, perform verification procedure step 3.
 - c. Determining whether information recorded in the loan file concerning the spouse of the applicant was obtained only where permitted by the regulation. 202.5(c)
 - d. Determining whether the spouse of the applicant was requested or required to sign any instrument and, if so, whether the signature was obtained as permitted by the regulation, *i.e.*, joint credit application necessary to create a valid lien, etc. 202.7(d)
 - e. Determining whether any prohibited information appears in the file. 202.5(d)
 - f. Determining whether required credit records and information for monitoring purposes are maintained for 25 months. 202.12
202.13
 - g. Determining whether proper written notifications for adverse action were given to the applicant in the time required. 202.9
7. Using appropriate sampling techniques, review individual rejected loan files in each loan department for violations of the regulation. Complete line sheets for each file in the sample, and perform steps 6 a, b, c, e, f and g.
8. If the bank furnishes credit information to other parties, determine that such information is reported properly for joint accounts held by married persons (June 1, 1977 or within 90 days of receipt of request to change manner of reporting). 202.10(a) and (b)
9. Determine adequacy of the bank's internal controls.
10. Review completed procedures for any indications of actions which may have the effect of discrimination on a prohibited basis (including inadequate knowledge or unfamiliarity). If such indications are found, perform verification procedure step 4.
11. Review the following with appropriate management:
 - a. Adequacy of written or stated policy and any variance from that policy.
 - b. Deficiencies or discrepancies in loan application evaluation that may indicate discrimination.
 - c. Deficiencies in personnel's understanding of the regulation.
 - d. Violations of law in policy and practices.
 - e. Suggestions for correction of policies and practices.

Equal Credit Opportunity Act (ECOA)
Examination Procedures

Section 10.3

12. Prepare comments on any factors listed in step 11 for inclusion in the report of examination.
13. Prepare a memo and update work program with any information which will facilitate future examinations.

Equal Credit Opportunity Act (ECOA)

Verification Procedures

Section 10.4

1. Using the list of personnel obtained in examination procedure step 1c, interview bank personnel to determine knowledge of the prohibitions and requirements of the regulation (complete Guideline EP-B-2 and retain for comparison with actual policies and practices noted during the examination):
 - a. Determine if any pre-screening takes place during phone requests and initial contacts. 202.5(a)
 - b. Determine whether the appropriate lending officers are instructed in the proper procedures for offering and taking applications, evaluating applications, providing notifications, furnishing of credit information and retention of records.
2. If the bank has no written lending policy, interview appropriate officers using Guideline EP-B-3. Retain for use during sampling procedure.
3. Ascertain which lending officers complete the application form or conduct oral application procedures.
 - a. Determine whether those officers request any prohibited information. 202.5(c)(d)
 - b. If the reasons for adverse action are furnished orally, determine that a written disclosure of the applicant's right to have the reasons confirmed in writing is provided to the applicant as required by the regulation. 202.9(a)(2)
4. Review accepted and rejected loan files in detail for the following practices (detail pertinent information on appropriate line sheets or comment sheets):
 - a. Determine whether the bank appears to consider information on a prohibited basis in a manner that has no demonstrable relationship to the applicant's creditworthiness. 202.6(b)(1), (2) and (7)
 - b. In applications for individual credit, if the bank routinely considers credit history in evaluating applications, verify that the credit history concerning accounts listed by the applicant is considered in accordance with the regulation. 202.6(b)(6)
 - c. Verify that the bank does not discount income for any of the following reasons:
 - On a prohibited basis. 202.6(b)(5)
 - Because the income is derived from part-time employment.
 - Because the income is provided from an annuity, pension or other retirement benefit.
 - d. Further verify that all forms of income are considered to the extent that they are likely to continue. 202.6(b)(5)
 - e. Determine that childbearing intentions or capabilities are not considered. 202.5(d)(4)
 - f. Determine that applications for individual accounts are not refused because of the applicant's sex, marital status or any other prohibited basis. 202.7(a)
 - g. Determine whether applications for accounts in birth-given names are accepted. 202.7(b)
 - h. Where a cosigner, guarantor, endorser, etc., is required, verify that the choice of the second party was left up to the applicant. 202.7(d)(5)
 - i. Determine whether file comments by officers indicate personal bias or contain prohibited information obtained by oral questioning. 202.7(d)(5)

Equal Credit Opportunity Act (ECOA)

Appendix A—Form Letter

Section 10.5

STATEMENT OF CREDIT DENIAL, TERMINATION, OR CHANGE

DATE _____

Applicant's Name: _____

Applicant's Address: _____

Description of Account, Transaction or Requested Credit: _____

Description of Adverse Action Taken: _____

PRINCIPAL REASON(S) FOR ADVERSE ACTION CONCERNING CREDIT

- | | |
|---|---|
| <input type="checkbox"/> Credit application incomplete | <input type="checkbox"/> Too short a period of residence |
| <input type="checkbox"/> Insufficient credit references | <input type="checkbox"/> Temporary residence |
| <input type="checkbox"/> Unable to verify credit references | <input type="checkbox"/> Unable to verify residence |
| <input type="checkbox"/> Temporary or irregular employment | <input type="checkbox"/> No credit file |
| <input type="checkbox"/> Unable to verify employment | <input type="checkbox"/> Insufficient credit file |
| <input type="checkbox"/> Length of employment | <input type="checkbox"/> Delinquent credit obligations |
| <input type="checkbox"/> Insufficient income | <input type="checkbox"/> Garnishment, attachment, foreclosure, repossession or suit |
| <input type="checkbox"/> Excessive obligations | <input type="checkbox"/> Bankruptcy |
| <input type="checkbox"/> Unable to verify income | |
| <input type="checkbox"/> Inadequate collateral | |
| <input type="checkbox"/> We do not grant credit to any applicant on the terms and conditions you request. | |
| <input type="checkbox"/> Other, specify: _____ | |

DISCLOSURE OF USE OF INFORMATION OBTAINED FROM AN OUTSIDE SOURCE

- Disclosure inapplicable
- Information obtained in a report from a Consumer Reporting Agency
- Name: _____

Street Address: _____

Phone: _____

- Information obtained from an outside source other than a Consumer Reporting Agency. Under the Fair Credit Reporting Act, you have the right to make a written request, within 60 days of receipt of this notice, for disclosure of the nature of the adverse information.

(Continued on page 2)

Equal Credit Opportunity Act (ECOA)
Appendix A—Form Letter**Section 10.5**

(Continued from page 1)

Creditor's name: _____

Creditor's address: _____

Creditor's telephone number: _____

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this bank is the Comptroller of the Currency, Consumer Affairs Division, Washington, D.C. 20219.

Equal Credit Opportunity Act (ECOA)
Appendix B—Federal Reserve Staff Opinion Letters

Section 10.6**Unofficial Letters**

1. Permissibility of terminating joint accounts in certain situations—.7(c)
2. Whether creditor may require signature of non-applicant spouse on an instrument—.7(d)
3. Creditor may require a customer to use same name on all accounts with that creditor—.7(b)
4. Applicability of Act and Regulation B to guarantees, including "continuing" guarantees and guarantees executed in community property States—.7(d)
5. Requests for signature of co-owners of jointly owned property; exclusion of jointly owned property from consideration in evaluating creditworthiness—.7(d)
6. A telephone inquiry may or may not constitute an application—.2(f) and .9

Official Letters

- EC-0001 Official staff guidelines for creditors that printed or ordered printing of credit history notice for mailing between November 1, 1976 and February 1, 1977; effect of Board's deferral of sections effective date of June 1, 1977—.6
- EC-0002 Creditor may ask whether applicant has applied for credit in other name(s)—.5(b)(2)
- EC-0003 Effect on recordkeeping/billing procedures and on issuance of credit cards in one name—.7(b) and .10
- EC-0004 Effect of Equal Credit Opportunity Act and Regulation B on State law designed to prevent evasion of graduated rates and maximum loan ceilings—.11(c)
- EC-0005 Information for monitoring purposes—.13
- EC-0006 Credit scoring system; non-scoring component—.2(p)
- EC-0007 Prohibited bases; product or service related inquiries—.5(d)(5)
- EC-0008 Adverse action; refusal or failure to honor credit card—.2(c) and .9

Equal Credit Opportunity Act (ECOA)

Appendix B—Federal Reserve Staff Opinion Letters

Section 10.6

No. 1 (redesignated 3/11/77)

Sections

202.7(c)

(202.5(i) of

original Reg. B) Permissibility of terminating joint accounts in certain situations.

Note: This letter was originally issued as Public Information letter #36-A on January 12, 1976.

Your first inquiry raises several questions regarding the action a creditor may take upon a change in an applicant's name or marital status pursuant to §202.5(i). Each of the questions will be answered in the order presented in your letter.

1.1) QUESTION: What action may a creditor take on an account that was granted to a married couple on the strength of their aggregated incomes when the couple becomes separated and one spouse announces that he or she will no longer be responsible for the charges made on the card?

RESPONSE: Where one party to a joint obligation disclaims further liability for the obligation, the creditor may consider the account terminated and may offer the parties an opportunity to reapply individually. The fact that one of the joint obligors disclaimed liability because of change in marital status does not preclude the creditor from taking such action because it would be based on the loss of one of the joint obligors rather than the change in marital status.

1.2) QUESTION: Assuming a variation of the above situation, where there has been a divorce and each spouse wants to retain a separate account, what may the creditor do?

RESPONSE: Again, where the creditor was relying on the joint income as a basis for granting credit, the refusal of either obligor to be responsible for the entire obligation would justify the creditor's terminating the account. If the parties desire a separate account they could be invited to reapply and be evaluated on their individual merits.

1.3) QUESTION: Where both spouses are jointly liable for an account which was granted on the basis of the income earned by only one spouse and, after divorce, both spouses request that the account remain open with only the non wage-earning spouse as the sole obligor, must the creditor continue the account with the non wage-earning spouse as the sole obligor?

RESPONSE: No. Section 202.5(i)(2) would apply and permit the creditor to require a reapplication since the applicant would be relying on income earned solely by his or her spouse.

1.4) QUESTION: Assuming the same facts in number 3 above except that the applicants request the creditor to

split the account and establish two individual accounts for each spouse, may the creditor require a new application under §202.5(i)(2)?

RESPONSE: In this situation both parties have, in effect, asked that the existing credit agreement be terminated and that two new agreements be established in its place. The creditor is under no obligation to change a joint obligation into two individual ones without being satisfied that the individual applicants meet its standards of creditworthiness. A creditor's requirement that both spouses file new applications is permissible because it would be done not because of a change of marital status, but rather for the purpose of setting up a new account at the request of the applicant.

1.5) QUESTION: If a cardholder's change of marital status is accompanied by a loss of one cardholder's obligation on the account, may the card issuer consider income figures in the original application as evidence of the remaining cardholder's ability or inability to pay? May the issuer ask for updated information if the old figures suggest inability to pay or if they suggest adequate ability to pay?

RESPONSE: The basic rule of §202.5(i) is that a creditor may not, on the basis of a change of name or marital status, require a reapplication, i.e., a new request for credit, in the absence of evidence of inability or unwillingness to repay. If a creditor has information in its files indicating that the cardholder is unable to repay, the creditor may require a reapplication or take either of the other actions permitted under subparts (ii) and (iii) of that section. If the information in the creditor's files is not current, the creditor may request that the cardholder furnish updated information whether or not the existing information suggests an inability to repay. In other words, a creditor's request for current information about a cardholder is not necessarily tantamount to requiring a reapplication and may be done upon learning of a change of name or marital status.

No. 2 (redesignated 3/11/77)

Section

202.7(d)

(202.7 of original

Reg. B)

Whether creditor may require signature of non-applicant spouse on an instrument.

Note: This letter was originally issued as Public Information letter #67 on April 21, 1976.

We are responding to your letter of March 12, 1976, in which you ask whether creditors may require the signature of the applicant's spouse on an integrated truth in lending disclosure statement, note and security

Equal Credit Opportunity Act (ECOA)
Appendix B—Federal Reserve Staff Opinion Letters

Section 10.6

agreement without violating the provisions of section 202.7 of Regulation B.

It is our opinion that creditors may not as a matter of course require the signature of a non-applicant spouse on a note. There are certain circumstances in which the non-applicant spouse may be required to sign the note as well as other instruments, but such signature may not be required under a blanket rule. For example, the non-applicant spouse may be required to sign if that spouse's creditworthiness is necessary to support the amount and kind of credit sought. If the non-applicant spouse has income which is necessary to repay the debt, that spouse's signature could be required on the note. Of course, this determination would have to be made on a case by case basis.

Another example of a situation in which a non-applicant spouse can be required to sign the note occurs in certain jurisdictions where it is necessary for both spouses to sign not only security instruments, but also the instrument evidencing the indebtedness in order to create a valid and enforceable lien. In those states, the non-applicant spouse can be required to execute the note as well as the security instrument.

Although the non-applicant's signature may not be required on the note, it may be required on other instruments. If the creditor reasonably believes it is necessary to have the non-applicant spouse execute certain documents to create valid liens, pass clear title, waive inchoate rights to property, or assign earnings, the creditor may require the signature of the non-applicant spouse on the documents appropriate to accomplishing these ends. For example, a creditworthy married female seeking individual credit who offers a car which is owned jointly with her husband as security could be required to sign the integrated truth in lending disclosure statement, security agreement and note. The husband could not be required to sign the integrated instrument, but he could be required to sign a separate security agreement and other documents necessary to create an enforceable lien.

It should be pointed out, however, that a non-applicant spouse may wish to execute the debt instrument even though that spouse's signature could not and would not be required to support the credit being sought. For example, the spouse may want to be contractually liable in order to reap the benefits of a credit history that would reflect the note's having been paid according to its tenor. In situations where the offer to become liable on the debt is truly voluntary, creditors should permit those spouses to sign the note.

The views expressed above as well as those in the enclosed Public Information letters are those of the staff and are in no way binding upon the Board.

We hope this information will be of assistance to you.

Sincerely,

Nathaniel E. Butler
Chief, ECOA Section

No. 3 (redesignated 3/11/77)

Section

202.7(b)

(202.4(e) of

original Reg. B)

Creditor may require a customer to use same name on all accounts with that creditor.

Note: This letter was originally issued as Public Information letter #72 on May 10, 1976.

As you requested in your letter of April 30, I am writing to confirm the details of our telephone conversation regarding §202.4(e) or Regulation B.

Section 202.4(e) provides that a creditor may not prohibit an applicant from opening or maintaining an account in a birth-given first name and surname or a birth-given first name and combined surname. You ask whether a creditor may require that all accounts opened or maintained by a customer be carried in the same name. Bank proposes to adopt a policy of permitting a customer to choose to use a maiden name, married name or combined surname. Under this policy, a customer could change the name on his or her accounts at reasonable intervals but at any given time, all accounts must be carried in the same name. You also indicated that a customer would be permitted to maintain an account in a different name (a professional name or stage name, for example) if the customer filed an appropriate form with the bank. You believe that adoption of this policy is necessary to prevent confusion, reduce the risk of fraud and simplify recordkeeping.

The Board's staff is of the opinion that the policy described above is consistent with the Act and Regulation B. Section 202.4(e) was intended to correct a practice about which women had complained: refusing to open an account for a married woman in her own given name or surname. The inability to open an account in one's own name may prevent an individual from developing a credit history in that name, and thus may impede the individual's efforts to obtain credit. The staff feels that bank's proposed policy is reasonable and consistent with Regulation B.

Sincerely,

Anne J. Geary
Senior Attorney.

Equal Credit Opportunity Act (ECOA) Appendix B—Federal Reserve Staff Opinion Letters

Section 10.6

No. 4 (redesignated 3/11/77)

Section

202.7(d)

(202.7 of original Reg. B)

Applicability of Act and Regulation B to guarantors, including "continuing" guarantors and guarantors executed in community property States.

Note: This letter was originally issued as Public Information letter #73 on July 23, 1976.

We are writing in response to your letter regarding the application of the Equal Credit Opportunity Act (ECOA) and Regulation B (12 CFR 202) to certain creditor practices. Specifically, you ask whether a creditor may continue to require the signature of the spouse of a married guarantor.

Although the Act and Regulation B do not address this question directly, the ECOA and Regulation B apply to "every aspect of a credit transaction" (§701(a) of the Act; §202.2 of Regulation B). Inasmuch as a guarantee is an integral part of a credit transaction, the prohibition against discrimination on the basis of sex or marital status must be observed when a creditor requires that a loan be guaranteed. In general terms, this means that a creditor cannot automatically require the spouse of a guarantor to join in the execution of a guarantee.

Specifically, Regulation B precludes a lender from requiring an applicant's spouse to execute a note or guarantee if an equally creditworthy unmarried applicant would not be required to obtain a guarantor. In a situation involving a guarantor who is married, Regulation B precludes a creditor from requiring the guarantor's spouse to join in the execution of the guarantee if an equally creditworthy unmarried guarantor would not be required to obtain a second signature.

When a corporation makes application for credit, the officers or principal shareholders are sometimes required to guarantee the loan. The staff is of the opinion that in this situation, married guarantors may not be required to provide the signature of their spouses, where no additional signatures would be sought from unmarried guarantors. Similarly, where the applicant is a partnership, spouses of partners may not be required to guarantee an obligation where unmarried partners are not required to obtain a guarantor.

You also inquired about the effect of the ECOA on a "continuing" guarantee executed prior to the effective date of the Act (October 28, 1975) in which a non-applicant spouse was required to join. A continuing guarantee is one which guarantees a line of credit and is executed in contemplation of a series of transactions

between the creditor and the obligor. Such a guarantee may remain in effect for an indefinite period or for a given period. It is our view that a creditor may continue to rely upon such a guarantee provided the line of credit has not been renegotiated or the creditworthiness of the obligor reevaluated subsequent to October 28, 1975. If a renegotiation or reevaluation has occurred after October 28, the transaction would of course become subject to the ECOA, and the guidelines expressed above would apply.

Applying Regulation B to guarantees executed in community property States, creditors have voiced concern over the possibility that access to community assets will be lost after divorce, unless a guarantee is received from a non-applicant spouse. One of the purposes of the ECOA is to make separate credit more readily accessible to married women. In view of this purpose, §202.7(b) of Regulation B provides that in a community property State, a creditor may not require the signature of the non-applicant spouse if the applicant is empowered by State law to manage and commit community assets. The staff is of the opinion that permitting a creditor to obtain the signature of the non-applicant spouse in all cases would defeat the intent of Congress as expressed in the Act.

It should be noted, however, that where the separate assets or income of a spouse are pledged or used to establish creditworthiness, the spouse may be required to sign the note or execute a guarantee. Also, where a spouse's offer to guarantee the loan is truly voluntary, creditors should permit the spouse to undertake this obligation.

The opinions expressed above are those of the staff and are not binding upon the Board. We hope they will be of assistance to you.

Sincerely,

Anne J. Geary
Senior Attorney

No. 5

Section

202.7(d)

(202.7 of original Reg. B)

Requests for signature of co-owners of jointly owned property; exclusion of jointly owned property from consideration in evaluating creditworthiness.

March 1, 1977

We are writing in response to your request for an interpretation of section 202.7 or Regulation B. The issue raised in your letter, the restrictions under the Equal Credit Opportunity Act and Regulation B relating to requests for signatures, was addressed by the Board during the

Equal Credit Opportunity Act (ECOA)

Appendix B—Federal Reserve Staff Opinion Letters

Section 10.6

recently completed rule-making proceeding. Since the regulatory provisions relating to requests for signatures have been expanded and, we believe, clarified, a Board interpretation on the subject does not appear to be necessary. This letter will describe the application of the general regulatory provisions to the specific situations mentioned in your letter.

You asked whether a creditor may establish a blanket policy of either (1) requiring all co-owners of property that has been pledged to secure an obligation or relied upon in establishing creditworthiness to execute the note evidencing the obligation or (2) excluding jointly owned assets from consideration in evaluating applications. As explained more fully below, the staff believes that such blanket policies contravene the general rule set forth in both the existing and amended Regulation B.

Section 202.7 of the regulation is based upon subsections (a) and (b) of section 705 of the Equal Credit Opportunity Act which provide:

- (a) A request for the signature of both parties to a marriage for the purpose of creating a valid lien, passing clear title, waiving inchoate rights to property, or assigning earnings, shall not constitute discrimination under this title. *Provided*, however, that this provision shall not be construed to permit a creditor to take sex or marital status into account in connection with the evaluation of creditworthiness of any applicant.
- (b) Consideration or application of State property laws directly or indirectly affecting creditworthiness shall not constitute discrimination for purposes of this title.

The stated purpose of the Equal Credit Opportunity Act is to "make credit equally available to all creditworthy customers without regard to sex or marital status." With this purpose in mind, the Board has interpreted sections 705(a) and (b) to mean that a creditor may require the signature of a spouse only if the applicant fails to qualify for the credit without a second signature.

In applications for individual credit, the statute permits creditors to obtain the signature of a spouse in two situations. It may be obtained either "for the purpose of creating a valid lien, passing clear title, waiving inchoate rights to property or assigning earnings" or because the applicant does not satisfy the creditor's standards of creditworthiness.

Accordingly, creditors may request whatever signatures are necessary to realize upon the applicant's pledged or unpledged interest in jointly held property. For example, an applicant's spouse may be asked to sign an instrument necessary under State law to create a valid lien, pass clear title, waive inchoate rights to property or assign earnings.

In evaluating the applicant's interest in the property to be pledged or used to establish creditworthiness in an

unsecured transaction, creditors are free to consider the form of ownership, the property's susceptibility to attachment, execution, severance, partition, the cost of such action and other factors that may diminish the value of the applicant's interest. After having considered the applicant's interest in the property and having concluded that the individual applicant does not qualify for the amount and terms of credit sought, the creditor may give the applicant the option of providing additional support for the extension of credit which may include, but may not be limited to, the personal liability of the co-owners of the property. Requesting the signature of all co-owners of property or disregarding jointly held property without regard to its bearing on the creditworthiness of the individual applicant, however, is inconsistent with the stated purpose of the Act and violates Regulation B.

We hope this response will be helpful. If you have further questions, please do not hesitate to contact us.

Sincerely,

Griffith L. Garwood
Assistant Secretary to the Board

Sections

202.2(f)

202.9

A telephone inquiry may or may not constitute an application for Regulation B purposes, depending on creditor's application procedures and practices, but a general inquiry about interest rates, credit policies, and the like will not trigger notification requirements.

June 22, 1977

This is an unofficial staff reply to your letter ... regarding the definition of "application" in Regulation B ...

You ask whether a telephone inquiry is an "application" under Regulation B in the following circumstances. A real estate broker calls several lenders, providing some information about the property to be purchased and the prospective home buyer and asks the lenders whether they would be interested in making the loan. Such "shopping" is also done by applicants themselves.

You state that the lenders' policy is to consider an application only if it is in writing, but that accepted business practice is to give an informal oral indication whether submitting a written application would be worthwhile. You ask whether the broker's or applicant's telephone inquiry constitutes an application under §202.2(f).

The answer depends upon the application procedure established by the lender. As you know, Regulation B defines an application in general terms in recognition of

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the variety of practices used by the credit industry. Thus, one creditor may have a policy or practice of not accepting oral applications; that is, the creditor will not decide whether to grant or deny credit in the absence of a written application. If this creditor receives a telephone inquiry, that inquiry would not constitute an application according to that creditor's procedures and would not be an application under §202.2(f). Therefore, the creditor would not be required to supply any notices under §202.9.

Another creditor may have a practice or policy of making a credit decision without completion of a written application. If this creditor receives enough information on which to make a credit decision, an application has been received and the §202.9 requirements must be satisfied. This does not mean that a creditor that accepts oral applications must comply with §202.9 each time a telephone call is received. In our opinion, a general inquiry concerning availability of funds, prevailing interest rate or the lender's credit policies would not trigger the notification requirements since the creditor would not have received sufficient information on which to base a credit decision.

Of course, all creditors must take care not to violate §202.5(a) by discouraging applications on a prohibited basis over the telephone.

I hope you will find this information helpful.

Sincerely,
Anne Geary
Chief
Equal Credit Opportunity Section

EC-0001

Section

202.6

Official staff guidelines for creditors that printed or ordered printing of credit history notice for mailing between November 1, 1976 and February 1, 1977: effect of Board's deferral of section's effective date to June 1, 1977.

October 29, 1976

This is in response to your September 13 letter regarding the consequences of the Board's deferral of the effective date of section 202.6 of Regulation B (12 CFR 202) from November 1, 1976 to June 1, 1977. The Board's decision was announced on September 2 and notice of the action appeared in the *Federal Register* on September 13 (41 FR 38759). This is an official staff interpretation relating to section 202.6 of Regulation B, issued pursuant to sections 202.13(b) and (c).

In your letter, you explain that your firm represents a large creditor that offers several open-end credit plans. Prior to

the deferral of the effective date of section 202.6(b)(1)(ii), your client ordered the printing of the specified Credit History for Married Persons Notice and arranged with a data processing company to insert the notice in mailings to active accounts between November 1, 1976 and February 1, 1977. The notice contains a reference to November 1976, which renders it unusable between June 1 and October 1, 1977. You have asked whether your client may distribute these notices during the period November 1, 1976 through February 1, 1977 instead of during the period June 1 through October 1, 1977.

The answer to your inquiry is, yes. A creditor that has printed or ordered the printing of the notice specified in the previous version of section 202.6(b)(1)(ii) may mail or deliver that notice to all (or all married) holders of active accounts (for open-end accounts) or existing accounts (for closed-end accounts) between November 1, 1976 and February 1, 1977. This is not required, however, and a creditor may elect to postpone sending the notice or taking any other action regarding the furnishing of credit information under section 202.6 until June 1, 1977. The following comments apply only to those creditors that have had the notices printed or have ordered their printing and choose to distribute them between now and February 1, 1977.

Since the notice provided for in the previous version of section 202.6(b)(1)(ii) relates only to accounts established prior to November 1, if a creditor chooses to distribute copies of that notice now, the question arises concerning what action the creditor should take regarding new accounts that are established between November 1, 1976 and June 1, 1977. If a creditor provides the notice now, but does not record whether new accounts set up between November 1, 1976 and June 1, 1977 involve spouses who are both contractually liable or users, then, in June 1977, the creditor will have an information gap in its records. It will not be able to tell whether any of the accounts established between November and June involve contractually liable or user spouses and, therefore, will have to send notices to those account holders in order to obtain the necessary information to comply with section 202.6(b)(1).

To avoid having to provide any further notices, any creditor that has furnished or is in the process of furnishing credit history notices may elect to follow the designation procedures of section 202.6(a)(1) for each account established after November 1, 1976. If a creditor so elects, for each account established after that date, the creditor should determine whether the account is one that an applicant's spouse, if any, will be permitted to use or upon which both spouses will be contractually liable, if either of those types of accounts is offered by the creditor. If the account does involve a user spouse or if both spouses are contractually liable on the account, then the creditor should designate the account to reflect the fact of

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participation of both spouses; that is, the creditor should indicate on its records the names of both spouses and the fact of their joint participation, which entitles them to share the credit history relating to the account.

Two further questions arise if credit history notices are sent out between November 1, 1976 and February 1, 1977: (1) how to handle requests to change the manner of reporting credit history information relating to an account; and (2) how to furnish credit information relating to appropriately designated accounts.

Addressing the first question, if, after November 1, 1976, a creditor receives a properly completed request to change the manner in which credit information is furnished regarding a joint or user account, then, within 90 days after receipt of that request, the creditor should designate the account to reflect the participation of both spouses as provided in section 202.6(b)(2).

Regarding the second question, once an account has been appropriately designated, either as a new account pursuant to section 202.6(a)(1) or by virtue of a change request pursuant to section 202.6(b)(2), a creditor has an option regarding the manner of reporting credit information relating to that account prior to June 1, 1977. A creditor may immediately begin reporting the information as provided in sections 202.6(a)(2) and (b)(2), or a creditor may continue to furnish the information in the same format as it has in the past, deferring compliance with the reporting requirements of section 202.6 until June 1, 1977.

The following two examples illustrate the operation of the interpretations set forth in this letter. Assume that a person established an open-credit card account in 1975 and that the person's spouse is authorized to use the account, but the creditor's records do not reflect the spouse's use. If the creditor sends a Credit History for Married Persons Notice to the account holder by February 1, 1977, it will have complied with section 202.6(b)(1)(ii) and need not send another notice relating to that account between June 1 and October 1, 1977. If the account holder or the spouse submits a properly completed request to change the manner of reporting credit information relating to the account, then the creditor, within 90 days after receipt of the request, should indicate on its records the names of both parties and the fact that they want credit information relating to the account furnished in both their names. The creditor then has the option of either immediately beginning to report the information in both names or waiting until June 1, 1977 to do so.

The second example assumes that a creditor has sent the notice and a person establishes an open-end credit card account on December 1, 1976 under which the person's spouse will be permitted to use the account. In that situation, the creditor should indicate the names and

involvement of both spouses on its records at the time that the account is established. Once that has been done, then, as in the previous example, the creditor has the choice until June 1, 1977 of either reporting credit information relating to the account in the name of each spouse or continuing to report that information as it does presently.

Again, the procedures set forth in this letter are voluntary, but any creditor that follows all of the outline steps will be deemed to have complied fully with the requirements of the amended version of section 202.6(b)(1) as of June 1, 1977. Thereafter, such a creditor will only have to comply prospectively with the designation and reporting requirements of sections 202.6(a) and (b)(2).

We trust that this interpretation clarifies your client's responsibilities under section 202.6 and answers your questions. If we can be of further assistance, please let us know.

Sincerely,
 Janet Hart
 Director

12 CFR 202, EC-0002

Section

202.5(b)(2)

Creditor may ask whether applicant has applied for credit in other name(s).

December 6, 1976

This will respond to your letter of November 12, 1976. The following is an official staff interpretation of section 202.5(b)(2) of Regulation B.

Section 202.5(b)(2) allows creditors to "... request the name in which an account is carried, if the applicant discloses the account in applying for credit." You inquire whether, even if the applicant has not disclosed the existence of an account in another name, the creditor may ask if the applicant has applied for credit using a name other than that used on the application. While such an inquiry arguably could be interpreted as an indirect inquiry into marital status, to prohibit this inquiry could deny creditors access to information necessary to evaluate an applicant's creditworthiness. In our view, neither the Act nor the regulation is intended to have this result. Therefore, it is the opinion of the staff that such an inquiry is permissible.

If we may be of further assistance, please do not hesitate to contact us.

Sincerely,
 Janet Hart
 Director

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EC-0003

Sections

202.10

202.7(b)

Effect on recordkeeping/billing procedures and on issuance of credit cards in one name.

March 3, 1977

In your letter of February 1, 1977, you requested an official staff interpretation regarding the effect of sections 202.7(b) (designation of name) and 202.10 (furnishing of credit information) of revised Regulation B on your client's recordkeeping and billing procedures. Specifically, you asked whether these sections prohibit your client from following procedures described below when administering accounts on which a spouse is a user or contractually liable:

- 1) maintain all such accounts in the name of only one obligor;
- 2) address all statements and other account holder correspondence in the name of one obligor; and
- 3) emboss the name of one obligor on the credit card(s) issued pursuant to the account.

You further indicated that, notwithstanding these procedures, your client has devised a method of reporting credit information that meets the requirements of section 202.10. You suggested that one means of accomplishing this is to gain access to accounts by use of an account number, rather than the name of an account holder. The following is an official staff interpretation of Regulation B, issued in accordance with section 202.1(d) of the regulation.

Section 202.7(b) requires creditors to allow applicants to open or maintain an account in a birth-given first name and a surname that is the applicant's birth-given surname, the spouse's surname, or a combined surname. This provision was intended to correct the practice of requiring married women to use their husbands' names and to enable married women to establish credit histories in their own names. The section does not require creditors to allow the opening or maintenance of an account in two such names. Creditors may require joint account holders to choose one name in which the account will be maintained and billed and may require joint account holders to choose one name for use on a credit card, provided that the determination as to which name will be used is not made on a prohibited basis; for example, married applicants must be free to choose the name of either the husband or wife for use in billing statements.

As you know, section 202.10 requires the reporting of accounts on which a spouse will be a user or contractually liable in the name of each spouse. No particular type of designation or indexing is required by the regulation. A

creditor must have the capability to identify accounts on which a spouse is a user or contractually liable and to report information as required by section 202.10. Any system of designation or indexing that facilitates compliance with this section is permissible. Section 202.10 does not require the maintenance or billing of accounts or the issuance of credit cards in more than one name. Neither does the regulation require the creation of separate files in the name of each participant on a joint account.

We hope this response has been helpful. If we may be of further assistance, please do not hesitate to contact us.

Sincerely,
Janet Hart
Director

EC-0004

Section

202.8 (Original

Regulation B)

202.11(c) (amend-

ed regulation)

Effect of ECOA and Regulation B on State laws designed to prevent evasion of graduated rates and maximum loan ceilings.

Note: This letter was designated an official staff interpretation on March 11, 1977; it had originally been issued as Public Information letter #68 on April 16, 1976.

We understand that most state loan laws provide for graduated steps which impose limitations on interest charges. The rate of interest falls as the amount lent increases. Most loan laws also impose ceilings on the amount which may be lent. You have asked our staff to advise you concerning the effect of the Equal Credit Opportunity Act (ECOA) and Regulation B upon state law provisions designed to prevent evasion of the graduated rate ceiling and the ceiling on the amount which can be lent. The following is an official staff interpretation of Regulation B issued pursuant to section 202.1(d) of the regulation.

In formulating a response to your questions, we have classified the laws into three categories:

CLASS I. State laws which prohibit a creditor from making two separate extensions of credit to a husband and wife with the result that

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higher interest rates may be obtained than would otherwise be permitted under State law (New York, for example).¹

CLASS II. State laws which forbid two extensions of credit when the second is made for the purpose of obtaining higher interest rates. Class II laws are to be distinguished from Class I laws in that the purpose of the second extension of credit in Class I states is irrelevant; the second extension must not result in higher interest rates. It is permissible to make the second extension of credit in Class II states providing it is made to accommodate the debtor's voluntary request and not for the purpose of obtaining higher interest rates, even though higher rates may result (Wisconsin, for example).²

CLASS III. State laws which have flat prohibition against any person or husband and wife having more than one loan from a creditor (Illinois, for example).³

In staff's opinion, the following represents the correct application of Regulation B to the State laws classified above:

¹ *New York Small Loan Act, Sec. 352.* ". . . No licensee shall permit any loan to be split up or divided. No licensee shall induce or permit any person, nor any husband and wife jointly or severally, to become obligated, directly or contingently, or both, under more than one contract of loan at the same time, for the purpose or with the result of obtaining a higher rate of interest than would otherwise be permitted by this section."

² *Wisconsin Discount Loan Law, Sec. 138.09(j).* "No licensee may divide any loan or otherwise encourage any person or any husband and wife to become obligated to the licensee directly, under more than one contract of loan at the same time for the purpose of obtaining a higher rate of finance charge than would otherwise be permitted by this section."

³ *Illinois Consumer Finance Act, Sec. 13(d).* "No licensee may encourage, compel, or permit any borrower or borrowers to split up or divide any loan or loans. No licensee may encourage, compel or permit any person, nor any husband and wife, jointly or severally to become obligated, directly or contingently, or both, under more than one contract of loan at the same time, for the purpose or with the result of obtaining a higher rate of interest than would otherwise be permitted by this section. . . ." *Rule 22(c).* No licensee shall have outstanding at the same time more than one loan transacted according to this Act to any one obligor. A man and wife living together shall be considered as one borrower." *Illinois Consumer Installment Loan Act, Sec. 1.6a.* "Double indebtedness Restriction— A licensee shall not permit an obligor to be indebted for a loan transacted pursuant to this Act when such obligor is simultaneously indebted to such licensee or an affiliate (including a corporation owned or managed by the licensee) or agent of such licensee for a loan made pursuant to the "Consumer Finance Act." *Rule 22(d).* No licensee shall have outstanding at the same time more than one loan transacted according to this Act to any one obligor. A man and wife living together shall be considered as one borrower."

Class I. Regulation B will preempt laws in this class to the extent that they prohibit each spouse from obtaining credit separately. Two separate extensions of credit (one to a husband and one to a wife) are not to be combined to determine individual loan ceilings or finance charges.

Under these laws, a person may have a joint account with a spouse or other person or a separate account, but not both unless (pursuant to State law) the second extension of credit is made at a lower interest rate. In these states, when an extension of credit is made to a spouse or any other person when this person already has a joint obligation outstanding with the creditor, joint and separate accounts of the applicant must be combined to determine the permissible finance charges and applicable loan ceilings (see section 202.8(b) of Regulation B; section 202.11(c) of the amended regulation). Staff feels that there is no affirmative requirement that a creditor make a second loan in these states, providing second loans are not denied on any basis prohibited by ECOA.

CLASS II. States in this classification will be relatively unaffected by ECOA. Two separate extensions of credit (one to a husband and one to a wife) are not to be combined to determine individual loan ceilings or finance charges. Joint and separate loan extensions made to one debtor must be combined to determine loan ceilings but not finance charges. State law does not require creditors to offer lower interest rates which result from a second extension of credit. They forbid a second extension of credit made for the purpose of obtaining higher rates. There would be no reason to combine joint and separate loans to determine the appropriate finance charges.

Class III. In a state such as Illinois, no person (including husband or wife) may have a joint and separate loan from the same creditor. A husband and wife may each have separate loans because of ECOA preemption of state laws to the contrary. The existence of the type of laws in this classification eliminates the necessity of deciding whether joint and separate loans must be combined to determine finance charges or loan ceilings since this is only done when a creditor may extend joint and separate loans to the same person.

To illustrate these three classifications, assume the following facts:

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A and B are married; the applicable loan ceiling is \$300; a finance charge of 30% per annum may be imposed upon the unpaid balance of any loan up to \$100, and 24% per annum on the remaining balance to \$300.

After each example the following questions will be answered:

- (a) can the loan(s) be obtained?
- (b) what is the dollar limit on the separate loans?
- (c) what rate may be charged?

CLASS I.

- (1) A and B have no obligations.
A wishes to borrow \$100.
B wishes to borrow \$100.
(a) each may get a loan
(b) each may borrow up to \$300
(c) each may be charged 30%
- (2) A and B have a joint \$100 obligation.
A wants to borrow \$100.
B wants to borrow \$100.
(a) each may get a loan
(b) each may borrow up to \$200, separately
(c) each may be charged only 24% on the additional \$100.

CLASS II.

- (1) A and B have no obligations.
A wishes to borrow \$100.
B wishes to borrow \$100.
(a) each may get a loan
(b) each may borrow up to \$300
(c) each may be charged 30%
- (2) A and B have a \$100 joint obligation.
A wants to borrow \$200.
B wants to borrow \$200.
(a) each may get a loan (providing the purpose of the second loan is not to obtain higher interest rates)
(b) each may borrow up to \$200 separately
(c) each may be charged 30% on the first \$100 and 24% on the additional \$100.

CLASS III.

- (1) A and B have no obligations.
A wants to borrow \$100.
B wants to borrow \$100.
(a) each may get a loan

- (b) each may borrow up to \$300
- (c) each may be charged 30%
- (2) A and B have a \$100 joint obligation.

A wants to borrow \$100.
B wants to borrow \$100.

- (a) neither may obtain an additional, separate extension of credit until the joint obligation is satisfied

- (b) not applicable
- (c) not applicable

If we may be of further assistance, please do not hesitate to contact this office.

Sincerely,
Janet Hart
Director

EC-0005

Section

202.13

Mortgage lender should request data if applicant seeks both temporary financing to construct dwelling and permanent financing, but not if application is limited to construction financing; where separate form is used, lender should include questions about marital status and age.

April 8, 1977

This is in response to your February 17 letter regarding §202.13 of Regulation B. I apologize for the delay in answering. In accordance with your request, this is an official staff interpretation of the regulation, issued pursuant to §202.1(d).

Your first question is whether a mortgage lender must request the information required by §202.13 for monitoring purposes in connection with consumer credit applications relating to the construction of residential real property as well as in connection with applications relating to the purchase of such property. You point out that §202.13(a) uses only the word "purchase," while the model residential real estate mortgage loan application in Appendix B uses the phrase "purchase or construction."

In the opinion of the Board's staff, a creditor need not collect information pursuant to §202.13 when an applicant applies for consumer credit relating solely to the temporary financing of the construction of a residential dwelling. If, however, a consumer credit applicant applies

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for both a temporary loan to finance the construction of a residential dwelling and a permanent mortgage loan to take effect when the construction is successfully completed, then the lender has received an application covered by §202.13 and must comply with the requirements of that section.

In any event, if a mortgage lender uses an application form that contains a monitoring information section pursuant to §202.13 and an applicant inadvertently supplies the information in a situation not covered by §202.13, the creditor nevertheless may act on and retain the application without violating Regulation B. The creditor would be protected by §202.12(a)(3) since the information would not have been obtained in response to a specific request of the creditor.

Your second question is whether a creditor should include questions about marital status and age on a separate form that is used, pursuant to §202.13(b), for the purpose of collecting monitoring information. You note that the section of the model mortgage loan application relating to monitoring does not include questions about marital status or age; those questions appear on the front of the model form. You indicate, however, that you think that any creditor using a separate form should include questions on that form concerning an applicant's age and marital status.

If a transaction is subject to §202.13, a creditor must request information about an applicant's age and marital status either on an application form or on a separate monitoring form. If the information is requested on an application form for appropriate consideration under §202.6, then the creditor need not request the information again for monitoring purposes and need not inform the applicant under §202.13(c) that age and marital status information is being voluntarily requested for government monitoring purposes. If, however, age and marital status information is not sought for credit-related purposes on an application form, then the creditor must ask for that information either in a monitoring section on the application or on a separate monitoring form; and the creditor must provide the disclosures required by §202.13(c).

I trust that this official staff interpretation answers your questions. If we can be of further assistance, please let us know.

Sincerely,

Nathaniel E. Butler
Associate Director

EC-0006

Section

202.2(p)

System for evaluating creditworthiness may include both credit scoring and non-scoring components, provided each component complies with limitations imposed by regulation. Aspects of transaction need not be scored.

April 13, 1977

Thank you for your letter of March 14, 1977 pertaining to §202.2(p) of Regulation B. You describe a situation in which a creditor requires that an applicant receive a passing score in a credit scoring system and then, in addition, pass certain judgmental tests in order to receive credit. You inquire whether a credit scoring system which considers the applicant's age may be used in conjunction with other judgmental tests when analyzing an applicant's creditworthiness.

Section 202.2(p)(1) of Regulation B provides that an empirically derived credit system is a credit scoring system which evaluates creditworthiness primarily by scoring the attributes of the applicant. Other aspects of the transaction may, but need not, also be scored. The scoring portion of the demonstrably and statistically sound, empirically derived credit system may be combined with additional information about the applicant which is pertinent to creditworthiness.

Section 202.2(p), therefore, contemplates that a demonstrably and statistically sound, empirically derived credit system is composed of a scoring component and that it may also have a non-scoring component. The scoring component of the system is required to pass certain statistical standards, which are prescribed in detail in §202.2(p)(2) of Regulation B. If it passes those tests, then age may be used in the scoring system. If age is used as an attribute which is scored, elderly applicants may not receive a negative factor or value for their age.

The non-scoring component is optional. If the system does have a non-scoring component, that component must comply with the requirements imposed upon judgmental systems of evaluating applicants. In particular, the non-scoring component of the demonstrably and statistically sound, empirically derived credit system may not consider the applicant's age directly. The non-scoring component may consider "pertinent elements of creditworthiness" which may incidentally be correlated with or dependent upon age.

The non-scoring component of a demonstrably and statistically sound, empirically derived credit system may consist of one or more additional credit analysis factors. As we understand it, these factors might include obtaining

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a credit report, undertaking a cash flow analysis, consideration of events such as bankruptcy which occur too infrequently for development as a scored attribute but which are highly pertinent to creditworthiness, appraisal of collateral, and exercise of discretion by a credit officer. The components may interact in any way that the creditor finds useful in evaluating creditworthiness, so long as the scoring component conforms to the requirements of §202.2(p)(2) and the non-scoring component conforms to the rules for judgmental systems.

The entire system including the scoring and non-scoring components is, of course, subject to the general rule of §202.4, prohibiting discrimination, and to the full impact of the effects test.

We hope that the foregoing responds fully to your inquiry. This is an official staff interpretation of Regulation B.

Sincerely,

Nathaniel E. Butler
Associate Director

EC-0007

Section

202.5(d)(5)

Creditor may inquire about characteristic of applicant that is specifically and directly related to the product or service offered by creditor (e.g., religious bookseller may ask customer's religious affiliation), but assumes risk of having to demonstrate that information was not used in credit decision.

April 13, 1977

This is in response to your February 8 letter regarding §202.5(d)(5) of revised Regulation B, which became effective on March 23. This is an official staff interpretation of the regulation issued pursuant to §202.1(d).

You explain that your client is a seller of religious books, primarily operating through home solicitation sales made on open end credit. Your client's established practice is to ask a potential customer who is seeking to purchase books on credit to sign a credit agreement. The sales agent then orally requests information about the applicant and records that information on an "Applicant Information" form printed on the reverse side of a carbon copy of the credit agreement.

In addition to information about an applicant's age, address, employer, bank accounts, and credit references, the sales agent inquires about an applicant's religious affiliation. The applicant's response is recorded in a box labeled "Church (group)" located on the first line of the Applicant Information form. Although information about

an applicant's religious affiliation is included on the credit application, you state that your client does not consider that information in any manner in deciding whether to extend credit to an applicant. No applicant is denied or discouraged from seeking credit based upon religious affiliation.

Given the nature of your client's business, you state that information about a customer's religious affiliation is essential to selling your client's books in an effective, non-offensive way. You express concern, however, that asking information about a credit applicant's religious affiliation, even for non-credit purposes, might violate §202.5(d)(5) of Regulation B, which specifies in relevant part: "A creditor shall not request the . . . religion . . . of an applicant or any other person in connection with a credit transaction."

The purpose of the informational bars contained in §202.5 (the restriction on inquiries about religion being one of those bars) is two-fold. First, they are linked to the limitations in §202.6 concerning information that may not be considered in making a credit decision. Thus, they underscore that certain demographic information about an applicant is irrelevant in deciding whether to extend credit to that applicant. Second, by prohibiting the gathering of information that may not be considered in a credit decision, the information bars should reduce the possibility that a creditor will be accused of impermissibly discriminating against an applicant based upon information contained in the creditor's files.

If, however, a creditor does not consider prohibited information in making a credit decision and is willing to assume any risk attendant upon its having otherwise prohibited information in its files, then, in the staff's opinion, the creditor can inquire about any characteristic of an applicant that is specifically and directly related to the product or service offered by the creditor. Thus, the staff believes that your client, as a seller of religious books, can ask about a credit applicant's religious affiliation for non-credit-related purposes.

Your client may not inquire about the race, color, national origin, or sex of an applicant since those characteristics do not specifically and directly relate to the product offered—religious books. Also, in asking about an applicant's religious affiliation, your client assumes the risk of having to demonstrate that it did not discriminate against an applicant on the basis of religion even though it possessed information concerning religious affiliation. The decision whether to accept that risk, of course, lies with you and your client.

I trust that these comments answer your question. If we may be of further assistance, please let us know.

Sincerely,

Nathaniel E. Butler
Associate Director

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EC-0008

Section

202.2(c)

Card issuer's refusal or failure to honor or authorize use of card, when use would not exceed credit limit, is not "adverse action." As to open end accounts, "adverse action" can occur at initial refusal to grant an account, on termination or unfavorable change of terms, or on refusal to increase credit limit when account holder has followed creditor's established procedures for requesting increase.

April 19, 1977

This is in response to your February 23 letter regarding the definition of adverse action under §202.2(c) of Regulation B. In accordance with your request, this is an official staff interpretation of Regulation B, issued pursuant to §202.1(d).

Your letter raises a basic issue: is a credit card issuer's refusal or failure to honor or authorize the use of a card adverse action when its use would not exceed a previously established dollar credit limit on an account? In our opinion, such a refusal or failure is not adverse action, and, therefore, the notices required by §202.9 need not be sent.

You explain that issuers often establish limits on the number of transactions exceeding a specified dollar amount that can occur within a certain time period. When a person attempts to use the card and the transaction would exceed that limit, the issuer will refuse to authorize the transaction unless it can verify that the transaction involves an authorized card holder and is otherwise legitimate. This is done to protect both the account holder and the issuer from losses arising from the fraudulent use of a credit card.

Although the refusal or failure to honor a card can arise in a variety of circumstances, the staff believes that all such situations can be treated similarly for the purpose of analyzing whether adverse action has been taken under the terms of the Equal Credit Opportunity Act (ECOA) and Regulation B.

Section 202.2(f) of Regulation B excludes from the definition of application "the use of an account or line of credit to obtain an amount of credit that does not exceed a previously established credit limit." This exclusion is derived by implication from the statutory definition of applicant in §702(b), which provides, in part, that an applicant is a person who "applies to a creditor indirectly by use of an existing credit plan for an amount exceeding

a previously established credit limit." Thus, the use of a credit card account to obtain cash, goods, or services, where the amount of the charge does not exceed any previously established dollar limit on the account, is not an application for credit under Regulation B.

Since the use of an account where the amount to be charged does not exceed an overall dollar limit is not a credit application, a refusal or failure to honor or authorize the use of the account is not adverse action under §§202.2(c)(1)(i) and (iii), both of which relate to applications. Nor is such a refusal or failure adverse action under §202.2(c)(1)(ii) if the account, although temporarily unusable, remains in existence, subject to its original terms.

The *Federal Register* explanatory material relating to §202.2(c) of revised Regulation B (42 FR 1242) includes the statement: "However, a point of sale refusal of credit is adverse action if the refusal occurs for a reason other than exceeding the pre-established credit limit." The analysis presented in this letter supersedes the *Federal Register* statement.

Turning to a different situation, the attempted use of an existing account to obtain cash, goods, or services in an amount exceeding a previously established credit limit may be a credit application. A refusal to extend the credit requested in that situation is nonetheless not adverse action because it is excluded from the definition of adverse action in §202.2(c)(2)(iii), which is derived directly from §701(d)(6) of the ECOA.

To summarize the matter from a different perspective, there are only three instances in which adverse action may be taken regarding an open end credit account. First, a creditor may decline initially to offer such an account on terms acceptable to an applicant (§202.2(c)(1)(i)). Second a creditor may terminate or adversely change the terms of an existing account without affecting a substantial portion or classification of accounts, without the consent of the account holder, and not in connection with current inactivity, default, or delinquency relating to the account (§§202.2(c)(1)(ii), (2)(i), and (2)(ii)). Finally, a creditor may refuse to increase any credit limit on the account when the account holder has applied for an increase in accordance with procedures established by the creditor (§202.2(c)(1)(iii)). In those three situations, a creditor would have taken adverse action. Ordinarily, however, adverse action does not occur in connection with the use of an existing open end account.

I trust that these comments answer your questions. Please let us know if we can be of further assistance.

Sincerely,

Nathaniel E. Butler
Associate Director

Fair Housing Act
Table of Contents**Section 12.0**

12.1 Introduction

- Lending Practices
 - Sound Practices
 - Possible Discriminatory Practices
- Penalties and Liabilities

12.2 Examination Objectives

12.3 Examination Procedures

12.4 Verification Procedures

Fair Housing Act Introduction

Section 12.1

A section of Title VIII of the Civil Rights Act of 1968 (42 USC 3605) prohibits national banks from denying a mortgage or home improvement loan to anyone for reasons of race, color, religion, sex or national origin. This includes loans for the purpose of purchasing, constructing, improving, repairing or maintaining a dwelling. Discrimination in the fixing of the amount, interest rate, duration or other terms, such as application and collection procedures, is illegal. "Discrimination" is generally considered as treating one person or group less favorably than another.

Since there is no Fair Housing regulation, discriminatory patterns and individual instances of discrimination are often hard to find and even more difficult to prove. The examiner must realize that fair housing lending practices involve using objective criteria in an objective manner.

This portion of the examination is concerned primarily with a bank's internal controls. Has the bank established procedures to prevent discriminatory actions? Have policies been adopted that, if followed consistently, would achieve nondiscriminatory lending? Are those procedures and policies being consistently followed?

Lending Practices

Sound Practices

Nondiscriminatory lending does not require that applicants who appear to be similarly qualified according to an objective criterion will receive loans on identical terms. However, denying loans, or granting loans on more stringent terms and conditions, must be justified on the basis of such factors as the following, provided they are applied equally to all applicants:

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

- Other banking factors which also affect the availability and allocation of bank credit. For example, tight money conditions may dictate that only existing customers receive credit.

Possible Discriminatory Practices

Certain lending practices suggest unlawful discrimination. The following list of practices is not meant to be all inclusive but to provide guidelines for the examiner:

- Racial notation or code on appraisal forms or loan forms, except as required by regulatory agencies.
- Any of the following if imposed because of race, religion, color, sex or national origin:
 - Low appraisals.
 - More onerous interest rates, terms, conditions or requirements, e.g., FHA insurance.
 - Differing standards, procedures, penalties, foreclosures, reinstatements or other collection procedures.
 - Use of excessively stringent credit standards.
- Failure to make housing loans in certain neighborhoods in the bank's service area because of the race, color, religion or national origin of the residents.
- The making of loans to speculators, developers or other persons who are known to exploit minority groups through the sale or other transfer of real estate at inflated prices or on other unreasonable terms and conditions.
- The failure to display and maintain the Equal Housing Lending poster in the lobby of each office, in a prominent place readily apparent to all applicants seeking loans.

Penalties and Liabilities

Aggrieved parties may file a complaint with the Department of Housing and Urban Development (HUD) within 180 days after a discriminatory housing practice.

The party may file suit in U.S. district court for actual damages and up to \$1,000 in punitive damages, as well as court costs and attorney's fees (42 USC 3610).

The penalties and liabilities for violations of the Equal Credit Opportunity Act are available for violations of the Fair Housing Act, if the applicant files suit under the ECOA.

Fair Housing Act
Examination Objectives

Section 12.2

1. To determine that the bank is complying with nondiscriminatory lending statutes.
2. To verify that the bank's board of directors is aware of its responsibilities under the relevant provisions of the statutes and that it has adopted nondiscriminatory lending policies, procedures and loan underwriting standards.
3. To ensure that the board of directors has provided for the periodic review of policies, practices and loan underwriting standards and that the bank administers, without bias, application procedures, collection or enforcement procedures and all other lending practices.
4. To determine that decisions on rejected loan applications were based on economic factors and were uniformly applied to all applications.

Fair Housing Act
Examination Procedures

Section 12.3

1. Test for compliance and adequacy of written policy and internal controls while performing the examination procedures.
2. Perform appropriate verification procedures.
3. Ensure the bank displays the Equal Housing Lending poster where required under Banking Circular No. 13, Supplements 1 to 4 (24 CFR 110).
4. Perform applicable work programs and review home mortgage disclosure information for indications of discriminatory policies or practices.
5. Review the following with management:
 - a. Adequacy of written policy and internal controls.
 - b. Deficiencies or discrepancies in loan application criteria.
 - c. Deficiencies in personnel's knowledge of the act.
 - d. Violations of law in policy and practices.
 - e. Suggestions for correction of policies and practices.
6. Prepare comments on any factors as listed above for inclusion in the report of examination.
7. Update work program with any information which will facilitate future examinations.

Fair Housing Act Verification Procedures

Section 12.4

1. In reviewing the bank's lending policies, the examiner should concentrate on the following:
 - a. For overall lending criteria, review:
 - The bank's emphasis on mortgage and home improvement lending.
 - The bank's primary service area.
 - Indications of areas in which the bank prefers to lend and areas in which the bank prefers not to lend.
 - Minimum income standards, downpayment requirements and other objective criteria which must be met to qualify for a mortgage loan.
 - Basis for applying interest rates and terms.
 - b. For appraisal policies:
 - Determine whether appraisals are done by independent appraisers, bank personnel or a combination of both.
 - If appraisals are done by bank personnel, determine how the appraisers are trained, the adequacy of the training and indications of discriminatory policy in training material.
 - If done by outside appraisers, ensure that the bank is familiar with the appraiser's standards and review them for discriminatory policies.
 - Report as an internal controls exception instances where the bank is not familiar with the standards used by the appraiser.
 - c. For appraisal standards, review the following for discriminatory practices:
 - Assigning a lower value to a neighborhood because of a mix of races and national origins.
 - Equating a racially mixed neighborhood with a deteriorating neighborhood.
 - Incorporating the idea that deterioration of a neighborhood is inevitable.
 - Equating age of the property with the value of the property.
 - d. Ensure that bank policies are based on a knowledge of the requirements of the act.
2. Interview bank personnel to determine the objective criteria used in the evaluation of credit, and their knowledge of the prohibitions and requirements of the act and adherence to policy.
 - a. Verify that initial contact personnel do not "pre-screen" applicants.
 - b. Verify that lending officers apply the bank's objective criteria.
 - c. During interviews and discussions, be alert to the possibility of "unwritten" discriminatory lending policies.
3. Review open and declined loan files for indications of the following discriminatory policies and detail pertinent information on appropriate line sheets.

Note: For loans made after March 23, 1977 to purchase residential property of one-to-four family dwellings and secured by a lien on this property, Regulation B (12 CFR 202.13) requires the bank to request information on: race, national origin, sex, marital status and age. Where the customer has chosen to provide this information, it will be available in your sample to help in making this determination.

 - a. Check the application to determine that there are no racial or sexual codes, except as required by the enforcing agency.
 - b. Review appraisal for information relating to racial makeup of the neighborhood and for racial coding.
 - c. Examine documents for loan officer comments that indicate the applicant's race, sex, color, national origin or religion.
 - d. Once information is detailed, review for overall inconsistencies, such as:
 - Income of one group not given the same consideration as another group.
 - More onerous terms required of one group than another.
 - Variances in applying criteria, including minimum incomes, amount of loans, ratios, etc.

OR ---

Home Mortgage Disclosure Act of 1975
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Section 13.0

13.1 Introduction

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- Designation of Enforcement Agency
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- Additional Information
- Unintentional Errors
- Census Tract—ZIP Code Reporting
- Availability of Data
- Special Situations

Penalties and Liabilities

13.2 Examination Objectives

13.3 Examination Procedures

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Home Mortgage Disclosure Act of 1975

Introduction

Section 13.1

The Home Mortgage Disclosure Act of 1975 (12 USC 2801) is implemented by Regulation C (12 CFR 203), and became effective on June 28, 1976. The act grew out of public concern over credit shortages in certain urban neighborhoods. The denial or limitation of credit based upon neighborhood characteristics is known as "redlining," after the presumed practice of drawing a red line on a map around borders of a supposedly undesirable area and refusing to make housing loans there.

The purpose of the legislation is to make mortgage lending policies more visible through disclosure statements. It does not prohibit any activity, nor is its purpose to allocate credit or encourage unsound lending practices. As its name implies, it is merely a disclosure act, relying upon public scrutiny for its effect. The disclosures must be made available to the public at certain bank offices and are not sent to regulatory agencies.

The act will affect an estimated 3,500 national banks, as well as other kinds of depository institutions, which originate residential mortgage loans.

Institutions Covered

Requirements

A national bank is subject to the act if it meets all of the following requirements:

- Total assets of more than \$10 million as of the last day of the last full fiscal year (FY). 12 CFR 203.3(a)(1)
- The home office or any branch office is located in a currently designated Standard Metropolitan Statistical Area (SMSA). 12 CFR 203.3(a)(2)
- The bank makes first mortgage loans on one-to-four family residences. 12 CFR 203.2(d)

Compiling Data

Disclosure Deadlines

Disclosure statements must be made available within 90 days after the close of an institution's fiscal year. The first disclosure statement for the full fiscal year prior to July 1, 1976 was due September 30, 1976. After the disclosure statements are made available, they must be retained for 5 years. Disclosure statements for the prior fiscal year are also due 90 days after loss of an exemption.

Notification to Depositors

Banks are required to take affirmative action annually to notify their depositors of the availability of the mortgage loan disclosure statements. Such notification may take one of the following recommended forms:

- A notice inserted in a periodic statement or other correspondence to depositors.
- A notice posted for at least 1 month in the lobbies of the bank's home and all branch offices located in SMSA's.
- A notice published in a newspaper of general circulation in the SMSA's in which the bank's home and branch offices are located.

Designation of Enforcement Agency

The disclosure statements must also designate the name and address of the regulatory agency responsible for enforcement. All national banks shall designate as follows:

Comptroller of the Currency
Consumer Affairs Division
Washington, D. C. 20219

Format

The Federal Reserve Board has agreed to some flexibility in the format of the disclosure form HMDA-1, provided the required data is clearly and conspicuously disclosed. The data to be compiled consists of "residential mortgage loans" and "home improvement loans" made during the fiscal year. A "residential mortgage loan" is a loan secured by a first lien on residential real property, the proceeds of which are to be used to purchase, repair, rehabilitate or remodel the residential real property. "Residential real property" is improved property that is used or will be used for residential purposes. It includes single family homes, homes for two-to-four families, multi-family dwellings (more than four families) and cooperatives. A "home improvement loan" is a loan, unsecured or secured by collateral other than a first lien on residential real property, the proceeds of which are to be used for the repair, rehabilitation or remodeling of residential real property. (A first lien home improvement loan is considered a "residential mortgage loan.")

Breakdown of Information

As required by the act, the regulation requires the breakdown of the data into two main categories and several classes under each main category. The two main categories are:

- Loans originated by the bank.
- Loans originated elsewhere and purchased by the bank.

Within each of those categories, loan data are to be divided according to:

- Loans on property located within the relevant SMSA (i.e., the SMSA where the headquarters or a branch

Home Mortgage Disclosure Act of 1975

Introduction

Section 13.1

of the reporting bank is located) to be reported in terms of number and aggregate dollar amounts for each census tract in the area or, in certain cases, for each ZIP code.

- Loans on property located outside the relevant SMSA to be reported by the aggregate number of loans and dollar amounts, without itemization by census tracts or ZIP codes.

The six classifications under each category are: 12 CFR 203.4(a)(1)(i) to (vi)

- FHA, FmHA or VA loans, excluding those on multi-family dwellings (more than four units).
- Conventional residential mortgage loans, including individual condominium and cooperative units, excluding multi-family dwellings.
- Total residential mortgage loans, *i.e.*, the sum of above two classifications.
- Total residential home improvement loans (both secured and unsecured), except on multi-family dwellings.
- Total mortgage loans on multi-family dwellings, including purchase and rehabilitation loans.
- Total mortgage loans to non-occupants of the property, excluding multi-family dwellings.

(The first five categories include loans to both occupants and non-occupants, and the last category is merely an addendum item.)

Additional Information

If the required information is contained on the disclosure statement, the regulation permits an institution to furnish additional information. For example, a bank may desire to include such data in its statement as the number of applicants in order to illustrate its lending policies. This may be done by providing the data on separate schedules or in separate columns on the statement. The bank may also show its involvement in housing needs in other ways such as, by furnishing separate data on construction loans or on loans on mobile homes. It may also show deposit data to indicate that it is lending money in a community from which it has received deposits.

Unintentional Errors

An error in compiling or disclosing the required mortgage loan data shall not be a violation if the error was unintentional and resulted from a *bona fide* mistake, notwithstanding the maintenance of procedures reasonably adopted to avoid any such error. 12 CFR 203.6(b)

Census Tract—ZIP Code Reporting

Initially, the regulation permitted reporting by ZIP code for the period prior to July 1976, if compiled by September 30, 1976, and requires census tract reporting thereafter. The only occasion when ZIP codes will be used is when an area is included in a currently designated SMSA, but was not tracted for the 1970 census. 12 CFR 203.4(a)(2)

1976, if compiled by September 30, 1976, and requires census tract reporting thereafter. The only occasion when ZIP codes will be used is when an area is included in a currently designated SMSA, but was not tracted for the 1970 census. 12 CFR 203.4(a)(2)(iii)

The advantage of census tract as opposed to ZIP code reporting is that census tracts define more specifically the location of the property, in terms of both geographic and socio-economic characteristics.

Availability of Data

If an institution has offices in only one SMSA, the entire disclosure statement relating to that SMSA must be available at the institution's home office and at a branch office within the SMSA. If an institution has offices in more than one SMSA, all of the statements for all of the SMSA's in which the institution has offices must be available at the home office. Also, the disclosure statements relating to each relevant SMSA must be available at a branch office in that SMSA, except that data outside the relevant SMSA need not be itemized provided aggregate data is furnished. 12 CFR 203.5(b)(1)(i) and (ii)

Special Situations

- Loans that are both originated and either sold or paid in full during fiscal year 1975, or both purchased and either sold or paid in full during fiscal year 1975, may be omitted from the required data. The bank must apply that option consistently, *i.e.*, report every loan made or purchased and repaid or sold, and note in its statement that the option has been exercised. For fiscal year 1976 and later years, all loans made or purchased must be shown. 12 CFR 203.4(a)(4)(ii)(B)
- Loans that are originated or purchased by the bank in a fiduciary capacity must be omitted from the required data. 12 CFR 203.4(a)(4)(i)(B)
- Loans purchased and loans made jointly or cooperatively are reported only to the extent of the interest of the bank. 12 CFR 203.4(a)(3)
- The statement may be based on the SMSA definition at the beginning of the bank's fiscal year. If an area is added to the SMSA during that year, loans on properties in the added area would be included in the aggregate figures for loans "outside" the relevant SMSA (those in which the bank has offices). The statement for the following fiscal year would be based on the revised SMSA. 12 CFR 203.4(b)(1)
- Loans made prior to June 28, 1976, or purchased at any time, may be presumed to have been made to a borrower who 12 CFR 203.4(c)

Home Mortgage Disclosure Act of 1975

Introduction

Section 13.1

intends to reside in the property (one-to-four family dwelling) securing the mortgage, unless the bank's records contain information to the contrary.

- Amounts to be reported for purchased home improvement loans *may* include the unpaid finance charges. 12 CFR 203.4(a)(3)
- Additionally, other loans that *must* be omitted from the required data include: temporary financing; purchase of an interest in a pool of mortgage loans; any loan, regardless of security, that is not for the purpose of the purchase, repair, rehabilitation or remodeling of residential real property; a refinancing loan if no additional principal is advanced and if the bank which originated the loan and the borrower are the same parties to the loan and the refinancing; and loans on property located outside the U.S. and Puerto Rico. 12 CFR 203.4(a)(4)(i)(A) 12 CFR 203.2(j)
- The location of the property, not the location of the office initiating the loan, determines where the loan is to be reflected in the statement. 12 CFR 203.4(a)(1)
- Banks may have elected to compile and make available by September 30, 1976, a separate statement by ZIP 12 CFR 203.4(a)(2)

code for a part of the fiscal year ending June 30, 1976. Exercise of that one-time option results in two statements being made available by September 30, 1976, one for the preceding full fiscal year and another for the first-half of fiscal year 1976. A separate statement by census tract must thereafter be made available for the remaining part of 1976 (by March 30, 1977).

- Loans made or purchased after June 30, 1976, may be itemized by ZIP codes, in lieu of census tracts, only if the property is located in an area that is not in the PHC(1) series of census tract maps. 12 CFR 203.4(a)(2)(iii)
- ZIP code itemization need not be revised to reflect official changes after the ZIP code for a particular loan has been recorded. 12 CFR 203.4(b)(3)
- The disclosure statement will relate to loans originated or purchased during the particular fiscal year, and not to the outstanding portfolio of the bank. 12 CFR 203.4(a)(3)

Penalties and Liabilities

There are no specific penalties provided in the act or the regulation. Actions for violations may be taken under the general regulatory powers of the OCC.

Home Mortgage Disclosure Act of 1975
Examination Objectives

Section 13.2

1. To determine that home mortgage disclosure data is properly compiled and disclosed.
2. To determine, by testing, that the bank complies with fair lending laws.

Home Mortgage Disclosure Act of 1975
Examination Procedures

Section 13.3

1. Determine whether the home or branch offices are located in a SMSA.
2. Ascertain that the bank has more than \$10 million in assets at the end of its last full fiscal year.
3. Determine whether the bank makes first mortgage loans on one-to-four family residences.
4. If steps 1, 2 and 3 are applicable, perform the following steps.
5. Test for compliance with written policies and internal controls while performing the examination procedures.
6. Determine that the bank has compiled home mortgage disclosure information.
7. Verify that depositors have been notified annually of the availability of that information.
8. Review data with responsible bank officer(s) to determine that the correct procedures were used in the compilation.
9. If procedures appear inadequate, review data for accuracy and compliance.
10. Retain documents for Fair Housing Act work program.
11. Review with management violations of law and deficiencies in data.
12. Prepare comments for inclusion in the report of examination.
13. Update work program with any information which will facilitate future examinations.

Home Mortgage Disclosure Act of 1975
Verification Procedures

Section 13.4

1. Verify that the bank annually notifies depositors of the availability of mortgage loan data. 203.5(b)(3)
2. Verify that the bank makes loan disclosure statements available to anyone requesting them for inspection and copying. 203.5(c)
3. Determine that the loan disclosure statement is available in the home office and at least one branch office located in each SMSA. 203.5(b)(1)
4. Review the loan disclosure statement to determine that it is similar in format to form HMDA-1. 203.4(a)(1)
5. Verify that data is reported by census tract except where ZIP code is permissible. 203.4(a)(2)
6. Ensure that the bank is compiling the data properly. 203.4(a)

FAIR HOUSING

Case Studies

Section 12

Handout No. 2

FAIR HOUSING

Section 12

Case Study A

Attached are 10 mortgage loan files. Five were approved and five were rejected. Whether it is approved or rejected is indicated on the back of the application under "For Lender's Use Only". If rejected, the reason for the rejection is given.

Complete a set of line sheets for all files, recording what information you consider valuable. Also indicate on the line sheet which loans you wish to discuss with management and indicate under "Examiner's Comments" the questions you wish to ask management.

OBJECTIVE CRITERIA - First National Bank of Podunk

Limits loans to bank customers

Loan cannot exceed 95% of appraised value

Loans must not exceed 2 1/2 times annual income

Monthly payments must not exceed 20% of monthly income

Monthly payments for other debt must not exceed 20% of monthly income

Lending territory limited to Leon County

Duration cannot exceed 30 years

Interest rates - 30 years 8 - 8 3/4%

25 years 8 - 8 1/2%

20 years 7 3/4 - 8 1/2%

below 20 - 7 - 10%

Down payment - Min. 5%, new homes only

houses 1-5 years 10%

5-10 years 15%

over 10 years 20%

Minimum employment in same field - 2 years

Mortgage insurance required for loans until loan balance equals 80% appraised value

If employed at same part-time job over 1 year, part-time given full weight. Otherwise not considered.

CORPORATION

RESIDENTIAL LOAN APPLICATION

MORTGAGE APPLIED FOR: Conv. FHA VA Amount: \$ 60,000 Interest Rate: 8 3/4% No. of Months: 360 Monthly Payment: \$ 500 Escrow/Impounds (to be collected monthly): Taxes Hazard Ins. MI 30

Preparation Option: _____
 Property Street Address: 2607 Killarney Way City: Tallahassee County: Leon State: Fla. Zip: 32303 No. Units: 1
 Legal Description (Attach description if necessary): Lot 9 Block C Killlearn Estates Year Built: 1975 Property is: Fee Leasehold Condo PUD DeMinimis PUD

Purpose of Loan: Purchase Construction-Perm. Construction Refinance Other (Explain) _____
 Complete this line if Construction Perm. or Construction Loan: Lot Value Data Original Cost Present Value (a) Cost of Imp. (b) Total (a+b) ENTER TOTAL AS PURCHASE PRICE IN DETAILS OF PURCHASE
 Complete this line if a Refinance Loan: Year Acquired Original Cost Amt. Existing Liens Purpose of Refinance Describe Improvement made | to be made Cost: \$ _____

Title Will Vest In What Names? Marshall and Margaret Tooth How Will Title Be Held? (Tenancy) Joint
 Name Will Be Signed By? Marshall and Margaret Tooth Source of Down Payment and Settlement Charges? Sale of Home and Savings

BORROWERS				CO-BORROWER			
Name Marshall Tooth	Age 50	Sex M	School Y, 20	Name Margaret Tooth	Age 46	Sex F	School 16
Present Address 1403 Lafayette Street	No. Years 12	<input type="checkbox"/> Own <input type="checkbox"/> Rent		Present Address Same as borrower	No. Years 12	<input type="checkbox"/> Own <input type="checkbox"/> Rent	
City/State/Zip Tallahassee, Fla. 32304	Former address if less than 2 years at present address			City/State/Zip	Former address if less than 2 years at present address		
Street	City/State/Zip			Street	City/State/Zip		
Years at former address	<input type="checkbox"/> Own <input type="checkbox"/> Rent			Years at former address	<input type="checkbox"/> Own <input type="checkbox"/> Rent		
Marital Status <input checked="" type="checkbox"/> Married Yrs. 24 <input type="checkbox"/> Unmarried <input type="checkbox"/> Separated	(Check One)** <input checked="" type="checkbox"/> American Indian <input checked="" type="checkbox"/> Negro/Black <input type="checkbox"/> Oriental <input type="checkbox"/> Spanish American <input type="checkbox"/> Other Minority <input type="checkbox"/> White (Non-minority)			Marital Status <input type="checkbox"/> Married Yrs. 24 <input type="checkbox"/> Unmarried <input type="checkbox"/> Separated	(Check One)** <input type="checkbox"/> American Indian <input checked="" type="checkbox"/> Negro/Black <input type="checkbox"/> Oriental <input type="checkbox"/> Spanish American <input type="checkbox"/> Other Minority <input type="checkbox"/> White (Non-minority)		
Dependents other than Co-Borrower				Dependents other than listed by Borrower			
Number	Ages			Number	Ages		
1	19			0			
Name and Address of Employer Self-Employed				Name and Address of Employer Unemployed			
Years employed in this line of work or profession? 25 years Years on this job <input type="checkbox"/> Self Employed***				Years employed in this line of work or profession? ____ years Years on this job <input type="checkbox"/> Self Employed***			
Position/Title Dentist				Position/Title			
Type of Business				Type of Business			

GROSS MONTHLY INCOME				MONTHLY HOUSING EXPENSES				DETAILS OF PURCHASE	
Item	Borrower	Co-Borrower	Total	Rent	Previous	Proposed			
Base Income	\$ 6,250		\$	First Mortgage (P&I)	170	\$ 500	a. Purchase Price	\$ 100,000	
Overtime				Other Financing (P&I)			b. Total Closing Costs	4,000	
Bonuses				Hazard Insurance	15	15	c. Pre Paid Escrows	400	
Commissions				Taxes (Real Estate)	6	15	d. Total (a + b + c)	\$ 104,400	
Dividends/Interest	500			Assessments			e. Amt. This Mortgage	(60,000	
Net Rental Income				Mortgage Insurance			f. Other Financing	(
Other (SEE EXHIBIT)				Homeowner Assn. Dues			g. Present Equity in Lot	(
Total	\$ 6,750	\$	\$	Total Monthly Pmt	\$ 191	\$ 530	h. Amt. of Deposit	(1,000	
				Utilities	40	100	i. Closing costs paid by Seller	(2,000	
				Total	\$ 231	\$ 630	j. Cash required for closing	\$ 41,400	

DESCRIBE OTHER INCOME: _____
 B-Borrower C-Co-Borrower NOTE: ALIMONY/CHILD SUPPORT PAYMENTS NEED NOT BE LISTED UNLESS THEIR CONSIDERATION IS DESIRED Monthly Amt. \$ _____

IF EMPLOYED IN CURRENT POSITION FOR LESS THAN TWO YEARS COMPLETE THE FOLLOWING:

P.C.	Previous Employer/School	City/State	Type of Business	Position/Title	Dates From/To	Monthly Salary
						\$
						\$

QUESTIONS APPLICABLE TO BOTH BORROWERS:

Yes, explain on attached sheet	Borrower Yes or No	Co-Borrower Yes or No	Borrower Yes or No	Co-Borrower Yes or No
Have you any outstanding judgments, ever when bankruptcy, had property foreclosed upon, or given deed in lieu thereof?	No	No	Do you have health and accident insurance?	Yes No
Maker or endorser on any notes?	No	No	Do you have major medical coverage?	Yes No
Defendant/Participant in a Law Suit?	No	No	Do you intend to occupy property?	Yes Yes
Indicated for child support/alimony payments?	No	No	Will this property be your primary residence?	Yes Yes
Any portion of the down payment borrowed?	No	No	Have you previously owned a home?	Yes Yes
			Value of previously owned home	\$ 35,000 \$ 35,000

* Complete this section and all other co-borrower questions about spouse if the spouse will be jointly obligated with the borrower on the loan or if the borrower is relying on the spouse's income or on community property in obtaining the loan.
 ** This information is requested only for statistical purposes in accordance with the intent of fair housing law. Furnishing this information is voluntary. But borrowers are urged to do so. No lending decision will be made on the basis of this information or on whether or not it is furnished.
 *** FHLBC requires self employed to furnish signed copies of one or more most recent Federal Tax Returns or Audited Profit and Loss Statements. FHLBC requires business credit report, signed Federal Income Tax returns for last two years, and, if available, auditing P/L, plus balance sheet for same period.

This Statement and any applicable supporting schedules may be completed jointly by both married and unmarried borrowers if their assets and liabilities are sufficiently joined so that the Statement can be meaningfully and fairly presented on a combined basis, otherwise separate Statements and schedules are required (FHLMC 65A/FNMA 1003A). If the co-borrower section was completed a joint spouse, complete this Statement and supporting schedules about spouse also. Completed Jointly Not Completed Jointly

ASSETS		LIABILITIES AND PLEDGED ASSETS		
Description	Cash or Market Value	Owed To (Name, Address and Account Number)	Mo. Pmt and Mos. left to pay	Unit or Balance
Cash Toward Purchase held by Minority Realtors, Inc.	1,000	Indicate by (X) which will be satisfied upon sale or otherwise financing of subject property.		
Checking and Savings Accounts (Indicate names of Institutions/Acct. Nos.)		Installment Debt (include "revolving" charge accounts)	\$ Pmt/Mos.	\$
This bank 504 304 checking	5,000		/	
This bank 514 204 savings	5,000		/	
First Fed. 1128-9436	10,000		/	
CD 1st Federal 2093-7148	20,000		/	
Stocks and Bonds (No./description)	65,000	Automobile Loan		
Walgreen's 1000 s/s Union Carbide	16,000	This bank	/	6,000
Quaker State 1000s/s 1000s/s	17,000	Real Estate Loans (Itemize and Identify Lender)		
Life Insurance Net Cash Value		First Federal State		15,000
Face Amount \$ 100,000	25,000	First Bank of Wakulla		20,000
SUBTOTAL LIQUID ASSETS	164,000	This bank, personal loan secured by Union Carbide		15,000
Real Estate Owned (Enter Total Market Value from Real Estate Schedule)	65,000	Other Debt (Including Stock Pledges (Itemize))		
Vested Interest in Retirement Fund		Alimony and Child Support Payments		
Net Worth of Business Owned (ATTACH FINANCIAL STATEMENT) Prtc. Dental	400,000			
Auto (Make and Year)		TOTAL MONTHLY PAYMENTS	\$	
1976 Lincoln Mark IV	13,000			
1975 Mercury Cougar	4,000	TOTAL LIABILITIES	\$	\$56,000
Furniture and Personal Property	15,000			
Other Assets (Itemize)				
TOTAL ASSETS	A. \$661,000	NET WORTH (A - B) \$ 605,000		

SCHEDULE OF REAL ESTATE OWNED (If Additional Properties Owned Attach Separate Schedule)

Address of Property (Indicate S if Sold, PS if Pending Sale or R if Rental being held for income)	Type of Property	Present Market Value	Amount of Mortgages & Liens	Gross Rental Income	Mortgage Payments	Taxes, Ins. Maintenance and Misc.	Net Rental Income
1403 Lafayette Street	PS Res	35,000	15,000				
Beach House and Property	rec	30,000	20,000		300		
TOTALS							

LIST PREVIOUS CREDIT REFERENCES

B - Borrower	C - Co-Borrower	Owed To (Name and Address)	Account Number	Purpose	Highest Balance	Date Paid
					\$	

AGREEMENT: The undersigned hereby applies for the loan described herein to be secured by a first mortgage or trust deed on the property described herein and represents that no part of said premises will be used for any purpose forbidden by law or restriction and that all statements made in this application are true and made for the purpose of obtaining the loan. Verification may be obtained from any source named herein. The original or a copy of this application will be retained by the lender even if the loan is not granted.

I fully understand that it is a federal crime punishable by fine or imprisonment or both to knowingly make any false statements concerning any of the above facts, as applicable under the provisions of Title 18, United States Code, Section 1014.

Signature (Borrower) Marshall Tooth Date 8/2/76 Signature (Co-Borrower) Margaret Tooth Date 8/2/76

Home Phone 222-9600 Business Phone 224-1800 Home Phone 222-9600 Business Phone _____

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of sex or marital status. The Federal Agency which administers compliance with this law concerning this bank, Comptroller of the Currency (Type of lender) (regulatory agency and address) Washington, D.C. 20219

Additionally the Federal Fair Housing Act also prohibits discrimination on the basis of race, color, sex, age, sex or marital status.

FOR LENDERS USE ONLY

(FNMA REQUIREMENT ONLY) This application was taken by Thomas W. Taylor, a full time employee of First National Bank of Podunk Interviewer in a face to face interview with the prospective borrower.

(Name of Lender) Rejected 8/8/76 TWT

APPRAISAL

Date 8/3/76Owner Killearn PropertiesLocation of Property 2607 Killarny WayTallahassee, FLDescription House

Improvements _____

Other data _____

Value of Land.....\$ 5,000Recommended for loan of \$ 35,000Value of Buildings..\$ 35,000Other.....\$ ~~40,000~~Total Valuation.....\$ 40,000

I certify the foregoing to be true and correct to the best of my knowledge and belief.

Thomas W. Taylor
John J. Chipman

CORPORATION

RESIDENTIAL LOAN APPLICATION

MORTGAGE APPLIED FOR Conv. FHA VA Amount \$ 32,000 Interest Rate 8 3/4% No. of Months 360 Monthly Payment Principal & Interest \$ 250 Escrow/Impounds (to be collected monthly) Taxes Hazard Ins. MI 30 Prepayment Option

Property Street Address 740 Raintree Circle City Tallahassee County Leon State F Zip 30303 No Units 1

Legal Description (Attach description if necessary) Lot 7 Block B Year Built 1975 Property is: Fee Leasehold Condo PUD Other (Specify PUD)

Purpose of Loan: Purchase Construction-Perm. Construction Refinance Other (Explain) Complete this line if Construction Perm. or Construction Loan: Lot Value Data Original Cost Present Value (a) Cost of Imps. (b) Total (a+b) ENTER TOTAL AMOUNT PURCHASE PRICE IN DETAILS OF PURCHASE

Complete this line if a Refinance Loan: Year Acquired Original Cost Amt. Existing Liens Purpose of Refinance Describe Improvement: made | to be made Cost: \$

Title Will Vest in What Names? Marvin and Margaret Mead How Will Title Be Held? (Tenancy) Joint Note Will Be Signed By? Marvin and Margaret Mead Source of Down Payment and Settlement Charges? Sale of Home

BORROWERS Marvin Mead Margaret Mead

Name Marvin Mead Age 27 Sex M School Yrs 16 Margaret Mead Age 27 Sex F School Yrs 16 Present Address No. Years Own Rent Present Address No. Years Own Rent

Street 654 Harris Road Street Same as borrower City/State/Zip Marietta, Georgia 30060 City/State/Zip Former address if less than 2 years at present address

Street 4143 Akers Mill Road, Apt. 2-F Street Former address if less than 2 years at present address City/State/Zip Singrna, Ga. 30080 City/State/Zip

Years at former address Own Rent Own Rent Marital Status: Married Yrs. 5 Unmarried Separated (Check One)** American Indian

Dependents other than Co-Borrower: Number Ages Negro/Black Oriental Spanish American Other Minority

Name and Address of Employer: Social Security Administration Washington, D.C. Years employed in this line of work or profession? 3 years

Position/Title: Investigator Type of Business: Government

Name and Address of Employer: Housewife Years employed in this line of work or profession? Self Employed***

Position/Title: Housewife Type of Business: Self Employed***

GROSS MONTHLY INCOME			MONTHLY HOUSING EXPENSE		DETAILS OF PURCHASE		
Item	Borrower	Co-Borrower	Rent	PREVIOUS PERIODS			
Base Income	\$ 1100		First Mortgage (P&I)	180	250	a. Purchase Price	\$ 35,000
Overtime			Other Financing (P&I)			b. Total Closing Costs	1,200
Bonuses			Hazard Insurance	10	12	c. Pre Paid Escrows	300
Commissions			Taxes (Real Estate)	6	8	d. Total (a + b + c)	\$ 36,500
Dividends/Interest			Assessments			e. Amt. This Mortgage	3200
Net Rental Income			Mortgage Insurance		8	f. Other Financing	
Other (See Section 1)			Homeowner Assn. Dues			g. Present Equity in Lot	
Total	\$ 1100		Total Monthly Pmt	\$ 196	\$ 278	h. Amt. of Deposit	(1,000)
			Utilities	30	50	i. Closing costs paid by Seller	(800)
			Total	\$ 226	\$ 328	j. Cash required for closing	\$ 2700

DESCRIBE OTHER INCOME: B-Borrower C-Co-Borrower NOTE: ALIMONY/CHILD SUPPORT PAYMENTS NEED NOT BE LISTED UNLESS THEIR CONSIDERATION IS DESIRED Monthly Amt.

IF EMPLOYED IN CURRENT POSITION FOR LESS THAN TWO YEARS COMPLETE THE FOLLOWING

B/C	Previous Employer/School	City/State	Type of Business	Position/Title	Dates From/To	Monthly Salary
						\$

QUESTIONS APPLY TO BOTH BORROWERS

	Borrower Yes or No	Co-Borrower Yes or No		Borrower Yes or No	Co-Borrower Yes or No
Have you any outstanding judgments, ever taken bankruptcy, had property foreclosed upon, or given deed in lieu thereof?	No	No	Do you have health and accident insurance?	Yes	No
Co-Maker or endorser on any notes?	No	No	Do you have major medical coverage?	Yes	Yes
Defendant/Participant in a Law Suit?	No	No	Do you intend to occupy property?	Yes	Yes
Delegated for child support/alimony payments?	No	No	Will this property be your primary residence?	Yes	Yes
Any portion of the down payment borrowed?	No	No	Have you previously owned a home?	Yes	Yes
			Value of previously owned home	\$ 25,000	\$ 25,000

* Complete this section and all other co-borrower questions about spouse if the spouse will be jointly obligated with the borrower on the loan or if the borrower is relying on the spouse's income or on community property in obtaining the loan. ** This information is requested only for statistical purposes in accordance with the intent of fair housing law. Furnishing this information is voluntary, but borrowers are urged to do so. No lending decision will be made on the basis of this information or on whether or not it is furnished. *** FHLMC requires self employed to furnish signed copies of one or more most recent Federal Tax Returns or audited profit and loss statements. FNMA requires business credit report, signed Federal Income Tax returns for last two years, and, if available, audited P/L plus balance sheet for same period.

APPRAISAL

Date 8/9/76Owner Nelson Builders, Inc.Location of Property 740 Waintree Circle
Tallahassee, FLDescription 3 BR, 2 Bath, Brick Veneer, Fireplace,
1/2 acre lot - new subdivision
house 95% complete

Improvements _____

Other data _____

Value of Land.....\$	<u>5,000</u>	Recommended for loan of \$	<u>32,000</u>
Value of Buildings..\$	<u>32,000</u>		
Other.....\$	<u>5,000</u>		
Total Valuation.....\$	<u>37,000.</u>		

I certify the foregoing to be true and correct to the best of my knowledge and belief.

Thomas W Taylor
John J. Chipman

CORPORATION

RESIDENTIAL LOAN APPLICATION

MORTGAGE APPLIED FOR Type [X] Conv. [] FHA [] VA Amount \$ 20,000 Interest 7.99% No. of Months 240 Monthly Payment Principal & Interest \$ 160 Escrow/Impounds (to be collected monthly) [X] Taxes [] Hazard Ins. [] MI [] 16

Property Street Address 414 College Avenue City Tallahassee County Leon State Fla. Zip 32304 No. Units 1

Purpose of Loan [X] Purchase [] Construction-Perm. [] Construction [] Refinance [] Other (Explain) [] Condo [] PUD [] DeMinimis PUD

Title Will Vest in What Names? Lawrence and Alice Steinhauer How Will Title Be Held? (Tenancy) Fee Simple - Joint Tenancy

Name Lawrence Steinhauer Age 30 Sex M School Yrs 20 Name Alice Steinhauer Age 28 Sex F School Yrs 10

Present Address No. Years 1 Own [] Rent [X] Present Address No. Years Own [] Rent []

Marital Status [X] Married Yrs 1 (Check One) [] American Indian [] Negro/Black [] Oriental [] Spanish American [] Other Minority

Name and Address of Employer Florida State University Tallahassee, Fla. Name and Address of Employer Leon County School System Tallahassee, Florida

Position/Title Ass't Professor Type of Business University Position/Title Teacher Type of Business High School

Table with 3 main sections: GROSS MONTHLY INCOME, MONTHLY HOUSING EXPENSE, and DETAILS OF PURCHASE. Includes rows for Base Income, Overime, Bonuses, Commissions, Dividends/Interest, Net Rental Income, Publications, Total, Rent, First Mortgage (P&I), Other Financing (P&I), Hazard Insurance, Taxes (Real Estate), Assessments, Mortgage Insurance, Homeowner Assn. Dues, Total Monthly Pmt, Utilities, Total, Purchase Price, Total Closing Costs, Pre Paid Escrows, Total (a+b+c), Am. of This Mortgage, Other Financing, Present Equity in Lot, Am. of Deposit, Closing costs paid by Seller, Cash required for closing.

Table with 2 columns: B-Borrower, C-Co-Borrower. Row: Publications 2 a year - \$300 each Monthly Amt. \$ 30

Table with 6 columns: B/C, Previous Employer/School, City/State, Type of Business, Position/Title, Dates From/To, Monthly Salary. Rows: University of Chicago, City of Chicago.

QUESTIONS APPLICABLE TO BOTH BORROWERS

Form with 4 columns of questions and Yes/No/NA answers. Questions include: Have you any outstanding judgments, ever been bankrupt, had property foreclosed, open, or given deed in lieu thereof? Do you have health and accident insurance? Do you have major medical coverage? Do you intend to occupy property? Will this property be your primary residence? Have you previously owned a home? Value of previously owned home?

*Complete this section and all other co-borrower questions about spouse if the spouse will be jointly obligated with the borrower on the loan or if the borrower is relying on the spouse's income or on community property in obtaining the loan. **This information is requested only for statistical purposes in accordance with the intent of fair housing law. Furnishing this information is voluntary, but borrowers are urged to do so. No lending decision will be made on the basis of this information or on whether or not it is furnished. ***FHLMC requires self employed to furnish signed copies of one or more most recent Federal Tax Returns or audited Profit and Loss Statements if NMAA requires business credit report, signed Federal Income Tax returns for last two years, and, if available, audited P/L plus balance sheet for same period.

This Statement and any applicable supporting schedules may be completed jointly by both married and unmarried co-borrowers if their assets and liabilities are sufficiently joined to that the Statement can be intelligently and fairly prepared on a combined basis; otherwise separate Statements and Schedules are required (FHLMC 65A/FNMA 1003A). If the co-borrower section was completed about spouse, complete this Statement and supporting schedules about spouse also.

Completed Jointly Not Completed Jointly

ASSETS		LIABILITIES AND PLEDGED ASSETS		
Description	Cash or Market Value	Owed To (Name, Address and Account Number)	Mo. Pmt. and Mos. left to pay	Unpaid Balance
Cash Toward Purchase held by Southside Realty	1,000	Indicate type of which will be satisfied upon sale or upon refinancing of subject property. Installment Debt (include "revolving" charge accounts)		
Checking and Savings Accounts (Indicate names of institutions/Acct. Nos.)			\$ Pmt./Mos.	\$
This bank 141 208 Checking	600		/	
This bank 140 204 Checking	300		/	
This bank 654 201 Savings	5,000		/	
First Federal 1140 912 Savings	5,000		/	
Stocks and Bonds (No./description)			/	
Auto Train 100s/s	700		/	
Pugua Ind. 100s/s	800		/	
Life Insurance Net Cash Value			/	
Face Amount IS		Automobile Loan		
SUBTOTAL LIQUID ASSETS	13,400		/	
Real Estate Owned (Enter Total Market Value from Real Estate Schedule)		Real Estate Loans (Itemize and Identify Lender)		
Vested Interest in Retirement Fund				
Net Worth of Business Owned (ATTACH FINANCIAL STATEMENT)				
Auto (Make and Year)		Other Debt Including Stock Pledges (Itemize)		
1972 Pinto	1,000		/	
Furniture and Personal Property	8,000	Alimony and Child Support Payments		
Other Assets (Itemize)			/	
		TOTAL MONTHLY PAYMENTS	\$	
TOTAL ASSETS	A. \$22,600	NET WORTH (A.-B.) \$ 22,600	TOTAL LIABILITIES	B. \$ 0

SCHEDULE OF REAL ESTATE OWNED (If Additional Properties Owned Attach Separate Schedule)

Address of Property (Indicate S if Sold, PS if Pending Sale or R if Rental being held for income)	Type of Property	Present Market Value	Amount of Mortgages & Liens	Gross Rental Income	Mortgage Payments	Taxes, Ins. Maintenance and Misc.	Net Rental Income
TOTALS →							

LIST PREVIOUS CREDIT REFERENCES

	B-Borrower C-Co-Borrower	Owed to (Name and Address)	Account Number	Purpose	Highest Balance	Date Paid
BC	Rhodes, Inc. Tallahassee		914-314	Furniture	\$ 1,000	5/2/76
C	Ford Motor Credit		1489-64132-98	Auto	2,000	6/3/74
BC	First National Bank of Chicago		614 902	Personal	800	7/2/75

AGREEMENT. The undersigned hereby applies for the loan described herein to be secured by a first mortgage or trust deed on the property described herein and represents that no part of said premises will be used for any purpose forbidden by law or restriction and that all statements made in this application are true and made for the purpose of obtaining the loan. Verification may be obtained from any source named herein. The original or a copy of this application will be retained by the lender even if the loan is not granted.

I fully understand that it is a federal crime punishable by fine or imprisonment or both to knowingly make any false statements concerning any of the above facts, as applicable under the provisions of Title 18, United States Code, Section 1014.

Signature (Borrower) Lawrence Steinhauer Date 8/1/76 Signature (Co-Borrower) Alice Steinhauer Date 8/1/76

Home Phone 222-1781 Business Phone 244-1010 Home Phone 222-1781 Business Phone 385-6011

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of sex or marital status. The Federal Agency which administers compliance with this law concerning this bank (type of lender) is Comptroller of the Currency (regulatory agency and address)

Additionally the Federal Fair Housing Act also prohibits discrimination on the basis of race, color, religion, sex or national origin.

FOR LENDER'S USE ONLY

(FNMA REQUIREMENT ONLY) This application was taken by Thomas W. Taylor, a full time employee of First National Bank of Podunk, in a face to face interview with the prospective borrower. (Name of Lender)

Rejected 8/12/76

Appraisal

APPRAISAL

Date 8/5/76Owner Wilson PickettLocation of Property 414 College AvenueTallahassee, FLDescription 3 BR, Wood Frame house, 1 BathUniversity Neighborhood

Improvements _____

Other data _____

Value of Land.....\$ 500 Recommended for loan of \$10,000Value of Buildings..\$ 10,000Other.....\$ Total Valuation.....\$ 10,500.

I certify the foregoing to be true and correct to the best of my knowledge and belief.

Thomas W. TaylorJohn J. Chipman

CORPORATION

RESIDENTIAL LOAN APPLICATION

MORTGAGE APPLIED FOR: Conv. FHA VA Amount: \$ 32,000 Interest: 8 1/8 % No. of Months: 360 Monthly Payment Principal & Interest: \$ 220 Escrow/Impounds (to be collected monthly): Taxes Hazard Ins. MI 30

Property Street Address: 738 Raintree Circle City: Tallahassee County: Leon State: Fla. Zip: 30303 No. Units: 1

Legal Description (Attach description if necessary): Lot 8 Block A Eastgate Subdivision Year Built: 1975 Property is: Fee Leasehold Condo PUD DeMinimis PUD

Purpose of Loan: Purchase Construction-Perm. Construction Refinance Other (Explain) Complete this line if Construction-Perm. or Construction Loan: Lot Value Data, Original Cost, Present Value (a), Cost of Imps. (b), Total (a+b), ENTER TOTAL AS PURCHASE PRICE IN DETAILS OF PURCHASE

Title Will Vest in What Names? David and Linda Smith How Will Title Be Held? (Tenancy): Joint Tenancy Note Will Be Signed By? David and Linda Smith Source of Down Payment and Settlement Charges? Savings

BORROWER: Name: David Smith Age: 25 Sex: M School Yrs: 16 CO-BORROWER: Name: Linda Smith Age: 25 Sex: F School Yrs: 16

Present Address: 1201 Macomb Street, Apr. 20 Tallahassee, Fla. 32304 Present Address: Same as borrower

Former address if less than 2 years at present address: Street: City/State/Zip: Former address if less than 2 years at present address: Street: City/State/Zip:

Years at former address: Own Rent Marital: Married Yrs. 3 (Check One)** Status: Unmarried Separated American Indian Negro/Black Oriental Spanish American Other Minority

Dependents other than Co-Borrower: Number: 0 Ages: Name and Address of Employer: State of Florida Tallahassee, Florida

Years employed in this line of work or profession? 7 years Years on this job 7 years Self Employed***

Position/Title: Mechanic Type of Business: Automobile Government

DETAILED FINANCIAL STATEMENT

Item	GROSS MONTHLY INCOME			MONTHLY HOUSING EXPENSE			DETAILS OF PURCHASE		
	Borrower	Co-Borrower	Total	Rent	PREVIOUS	PRESENT			
Base Income	\$ 830	\$ 600	\$ 1430	First Mortgage (P&I)	150	\$ 220	a. Purchase Price		\$ 36,000
Overline	150			Other Financing (P&I)			b. Total Closing Costs		1,750
Bonuses				Hazard Insurance		12	c. Pre Paid Escrow		150
Commissions				Taxes (Real Estate)		10	d. Total (a + b + c)		\$ 37,900
Dividends/Interest				Assessments			e. Amt. This Mortgage		13,000
Net Rental Income				Mortgage Insurance		8	f. Other Financing		
Other (SEE REVERSE SIDE)				Homeowner Assn. Dues			g. Present Equity in Lot		
Total	\$ 980	\$ 600	\$ 1,580	Total Monthly Pmt	\$ 150	\$ 250	h. Amt. of Deposit		1,000
				Utilities	80	80	i. Closing costs paid by Seller		1,000
				Total	\$ 230	\$ 330	j. Cash required for closing		\$ 4,900

DESCRIBE OTHER INCOME: B - Borrower C - Co-Borrower NOTE: ALIMONY/CHILD SUPPORT PAYMENTS NEED NOT BE LISTED UNLESS THEIR CONSIDERATION IS DESIRED Monthly Amt. \$

IF EMPLOYED IN CURRENT POSITION FOR LESS THAN TWO YEARS COMPLETE THE FOLLOWING:

B/C	Previous Employer/School	City/State	Type of Business	Position/Title	Dates From/To	Monthly Salary
C	MHI, INC.	Tallahassee	Mobile Homes	Clerk Typist	8/71/6/74	\$ 500

QUESTIONS APPLY TO BOTH BORROWERS

1) Yes, explain on attached sheet

	Borrower Yes or No	Co-Borrower Yes or No	Borrower Yes or No	Co-Borrower Yes or No	
Have you any outstanding judgments, ever taken bankruptcy, had property foreclosed upon, or given deed in lieu thereof?	No	No	Do you have health and accident insurance?	Yes	Yes
Co-Maker or endorser on any notes?	No	No	Do you have major medical coverage?	Yes	Yes
Defendant/Participant in a Law Suit?	No	No	Do you intend to occupy property?	Yes	Yes
Obligated for child support/alimony payments?	No	No	Will this property be your primary residence?	Yes	Yes
Any portion of the down payment borrowed?	No	No	Have you previously owned a home?	No	No
			Value of previously owned home	\$ N/A	\$ N/A

*Complete this section and all other co-borrower questions about spouse if the spouse will be jointly obligated with the borrower on the loan or if the borrower is relying on the spouse's income or on community property in obtaining the loan. **This information is requested only for statistical purposes in accordance with the intent of fair housing law. Furnishing this information is voluntary, but borrowers are urged to do so. No lending decision will be made on the basis of this information or on whether or not it is furnished. ***FHLMC requires self employed to furnish signed copies of one or more most recent Federal Tax Returns or audited Profit and Loss Statements. F NMA requires business credit report, signed Federal income Tax returns for last two years, and, if available, audited P/L, plus balance sheet for same period.

This Statement and any applicable supporting schedules may be completed jointly by both married and unmarried co-borrowers if their assets and liabilities are sufficiently joined so that the Statement can be meaningfully and fairly presented on a combined basis; otherwise separate Statements and Schedules are required (FHLMC 83A/FNMA 1003A). If the co-borrower section was completed about spouse, complete this statement and supporting schedules about spouse also.

Completed Jointly Not Completed Jointly

ASSETS		LIABILITIES AND PLEDGED ASSETS		
Description	Cash or Market Value	Owed To (Name, Address and Account Number)	Mo. Pmt. and Max. left to pay	Unpaid Balance
Cash Toward Purchase held by Landmark Realty	1,000	<input type="checkbox"/> Indicate the 1's which will be satisfied upon sale or upon refinancing of subject property J.M. Fields	\$ Pmt./Mos. 20 / 5	\$ 100
Checking and Savings Accounts (Indicate names of institutions/ Acct. Nos.) This bank 102-287 This bank 508 591 savings Fla. Federal 1155-344-7	500 6,000 2,000		/	
Stocks and Bonds (No./description)			/	
Life Insurance Net Cash Value Face Amount \$ 20,000	1,000	Automobile Loan	/	
SUBTOTAL LIQUID ASSETS	10,500	GMAC	135 / 30	4050
Real Estate Owned (Enter Total Market Value from Real Estate Schedule)		Real Estate Loans (Itemize and Identify Lender)		
Vested Interest in Retirement Fund	5,000			
Net Worth of Business Owned (ATTACH FINANCIAL STATEMENT)				
Auto (Make and Year)		Other Debt Including Stock Pledges (Itemize)	/	
1969 Ford 1975 Camaro	250 3,000	Alimony and Child Support Payments	/	
Furniture and Personal Property				
Other Assets (Itemize)				
TOTAL ASSETS	A. \$ 26,750	NET WORTH (A-B) \$ 22,600	TOTAL MONTHLY PAYMENTS	TOTAL LIABILITIES
			\$	B. \$ 4,150

STATEMENT OF ASSETS AND LIABILITIES

SCHEDULE OF REAL ESTATE OWNED (If Additional Properties Owned Attach Separate Schedule)

Address of Property (Indicate S if Sold, PS if Pending Sale or R if Rental being held for income)	Type of Property	Present Market Value	Amount of Mortgages & Liens	Gross Rental Income	Mortgage Payments	Taxes, Ins. Maintenance and Misc.	Net Rental Income
TOTALS →							

LIST PREVIOUS CREDIT REFERENCES

<input type="checkbox"/> B-Borrower <input type="checkbox"/> C-Co-Borrower	Owed To (Name and Address)	Account Number	Purpose	Highest Balance	Date Paid
BC	Rhodes Furniture	None	Purchase	\$ 1,000	5/4/76

AGREEMENT: The undersigned hereby applies for the loan described herein to be secured by a first mortgage or trust deed on the property described herein and represents that no part of said premises will be used for any purpose forbidden by law or restriction and that all statements made in this application are true and made for the purpose of obtaining the loan. Verification may be obtained from any source named herein. The original or a copy of this application will be retained by the lender even if the loan is not granted.

I fully understand that it is a federal crime punishable by fine or imprisonment or both to knowingly make any false statements concerning any of the above facts, as applicable under the provisions of Title 18, United States Code, Section 1014.
 Signature (Borrower) Dave Smith Date 6/6/76 Signature (Co-Borrower) Linda Smith Date 6/6/76
 Home Phone 222-4714 Business Phone 224-1841 Home Phone same Business Phone 444-9980

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of sex or marital status. The Federal Agency which administers compliance with this law concerning this bank is Comptroller of the Currency (type of lender) Washington, D.C. 20219 (regulatory office address)

Additionally the Federal Fair Housing Act also prohibits discrimination on the basis of race, color, religion, sex or national origin.

FOR LENDER'S USE ONLY

(FNMA REQUIREMENT ONLY) This application was taken by Thomas W. Taylor Interviewer, a full time employee of First National Bank of Podunk (Name of Lender), in a face to face interview with the prospective borrower.

Rejected - Not enough income to support debt
 TWT
 6/8/76

APPRAISAL

Date 6/7/76Owner Nelson BuildersLocation of Property 738 Raintree CircleTallahassee, FLDescription 3 BR, 1 Bath, Wood veneer, 1 acre lot -new subdivision next to Killlearn

Improvements _____

Other data _____

Value of Land.....\$ 5,000Recommended for loan of \$ 25,000Value of Buildings..\$ 30,000Other.....\$ Total Valuation.....\$ 35,000.

I certify the foregoing to be true and correct to the best of my knowledge and belief.

Thomas W. TaylorJohn J. Chipman

CORPORATION

RESIDENTIAL LOAN APPLICATION

MORTGAGE APPLIED FOR Conv. FHA VA Amount \$35,000 Interest Rate 8% No. of Months 360 Monthly Payment Principal & Interest \$ 240 Escrow/Impounds (to be collected monthly) Taxes Hazard Ins. PMI 28 Prepayment Option

Property Street Address 108 Blair Road City Tallahassee County Leon State Fla. Zip 32303 No. Units 1
 Legal Description (Attach description if necessary) Lot 6 Block 8 Magnolia Estates Subdivision Year Built 1968 Property is: Fee Leasehold
 Purpose of Loan: Purchase Construction-Perm. Construction Refinance Other (Explain)

Complete this line if Construction-Perm. or Construction Loan: Lot Value Date Original Cost Present Value (a) Cost of Imps. (b) Total (a+b) ENTER TOTAL AS PURCHASE PRICE IN DETAILS OF PURCHASE
 Complete this line if a Refinance Loan: Purpose of Refinance Describe Improvement (I made I to be made) Year Acquired Original Cost Amt. Existing Liens Cost: \$

Title Will Vest in What Names? William and Emily Harris How Will Title Be Held? (Tenancy) Fee Simple - Joint Tenants
 Name Will Be Signed By? William and Emily Harris Source of Down Payment and Settlement Charges? Sale of old house and savings

BORROWER: Name William Harris Age 35 Sex M School Yrs 12 Present Address No. Years 10 Own Rent Street 178 South Street City/State/Zip Wakulla Springs, Fla. 32201 Former address if less than 2 years at present address

CO-BORROWER: Name Emily Harris Age 33 Sex F School Yrs 12 Present Address No. Years Same as Borrower Own Rent Street Same as Borrower City/State/Zip Same as Borrower Former address if less than 2 years at present address

Marital Married Yrs. 12 (Check One)** American Indian American Indian Status Unmarried Separated Negro/Black Oriental Spanish American Other Minority

Dependents other than Co-Borrower: Number 2 Ages 10 7 Name and Address of Employer Universal Printers N. Monroe, Tallahassee White (Non-minority) Years employed in this line of work or profession? 17 years Years on this job 8 Self Employed***

Position/Title Pressman Type of Business Printing Name and Address of Employer Housewife White (Non-minority) Years employed in this line of work or profession? Years on this job Self employed***

GROSS MONTHLY INCOME			MONTHLY HOUSING EXPENSE			DETAILS OF PURCHASE		
Item	Borrower	Co-Borrower	Total	Rent	Escrow	a. Purchase Price	b. Total Closing Costs	c. Pre Paid Escrow
Base Income	\$ 1,000		\$1,000	First Mortgage (P&I)	100	\$ 240	\$40,000	1,600
Overtime	100		100	Other Financing (P&I)				300
Bonus				Hazard Insurance	8	12		
Commissions				Taxes (Real Estate)	4	8		
Dividends/Interest				Assessments				
Net Rental Income				Mortgage Insurance		8		
Other (List Source)				Homeowner Assn. Dues				
Total	\$ 1,100		\$1,100	Total Monthly Pmt	\$ 112	\$ 268		
				Utilities	40	60		
				Total	\$ 152	\$ 328		

DESCRIBE OTHER INCOME: B-Borrower Co-C-Borrower NOTE: ALIMONY/CHILD SUPPORT PAYMENTS NEED NOT BE LISTED UNLESS THEIR CONSIDERATION IS DESIRED Monthly Amt. \$

IF EMPLOYED IN CURRENT POSITION FOR LESS THAN TWO YEARS COMPLETE THE FOLLOWING.

B/C	Previous Employer/School	City/State	Type of Business	Position/Title	Dates From/To	Monthly Salary
						\$

QUESTIONS APPLY TO BOTH BORROWERS.

If Yes, explain on attached sheet	Borrower Yes or No	Co-Borrower Yes or No	Borrower Yes or No	Co-Borrower Yes or No
Have you any outstanding judgments, ever taken bankruptcy, had property foreclosed upon, or given deed in lieu thereof?	No	No	Do you have health and accident insurance?	Yes No
Co-Maker or endorser on any notes?	No	No	Do you have major medical coverage?	Yes Yes
Defendant/Participant in a Law Suit?	No	No	Do you intend to occupy property?	Yes Yes
Obligated for child support/alimony payments?	No	No	Will this property be your primary residence?	Yes Yes
Any portion of the down payment borrowed?	No	No	Have you previously owned a home?	Yes Yes
			Value of previously owned home	\$25,000 \$ 25,000

*Complete this section and all other co-borrower questions about spouse if the spouse will be jointly obligated with the borrower on the loan or if the borrower is relying on the spouse's income or on community property in obtaining the loan.
 **This information is requested only for statistical purposes in accordance with the intent of fair housing law. Furnishing this information is voluntary, but borrowers are urged to do so. No lending decision will be made on the basis of this information or on whether or not it is furnished.
 ***FHLBC requires self-employed to furnish signed copies of one or more most recent Federal Tax Returns or audited Profit and Loss Statements. FNMA requires business credit report, signed Federal Income Tax returns for last two years, and, if available, audited P/L plus balance sheet for same period.

This Statement and any applicable supporting schedules may be completed jointly by both married and unmarried co-borrowers if their assets and liabilities are sufficiently joined so that the Statement can be meaningfully and fairly presented on a combined basis, otherwise separate Statements and Schedules are required (PHLMC 65A/PNMA 1003A). If the co-borrower section was completed about spouse, complete this statement and supporting schedules about spouse also
 Completed Jointly Not Completed Jointly

ASSETS		LIABILITIES AND PLEDGED ASSETS		
Description	Cash or Market Value	Owed To (Name, Address and Account Number)	Mo. Pmt. and Mos. left to pay	Unpaid Balance
Cash Toward Purchase held by Southside Realty	1,000	Indicate by (*) which will be satisfied upon sale or upon refinancing of subject property— Installment Debt (include "revolving" charge accounts)		
		Ford Motor Credit	\$ 120 / 12	\$ 1440
Checking and Savings Accounts (Indicate names of institutions/Acct. Nos.) This bank 145 842 This bank 656 942 First Federal 1111 968	600 5,000 5,000	Sears - revolving	/	100
		Montgomery Wards	50 / 6	300
Stocks and Bonds (No./description)			/	
Life Insurance Net Cash Value Face Amount \$ 25,000	4,000	Automobile Loan		
SUBTOTAL LIQUID ASSETS	15,600			
Real Estate Owned (Enter Total Market Value from Real Estate Schedule)	25,000	Real Estate Loans (Itemize and Identify Lender)		
Vested Interest in Retirement Fund	7,000	Commonwealth Corporation		15,000
Net Worth of Business Owned (ATTACH FINANCIAL STATEMENT)				
Auto (Make and Year) 1974 Ford 1972 Mercury	2500 2300	Other Debt Including Stock Pledges (Itemize)		
Furniture and Personal Property	12,000	Alimony and Child Support Payments		
Other Assets (Itemize) Fishing boat	800		/	
		TOTAL MONTHLY PAYMENTS	\$ 170	
TOTAL ASSETS	A. \$ 32,160	NET WORTH (A - B.) \$ 32,160	TOTAL LIABILITIES	B. \$ 33,040

SCHEDULE OF REAL ESTATE OWNED (If Additional Properties Owned Attach Separate Schedule)

Address of Property (Indicate S, if Sold, PS if Pending Sale or R if Rental being held for income)	Type of Property	Present Market Value	Amount of Mortgages & Liens	Gross Rental Income	Mortgage Payments	Taxes, Ins. Maintenance and Misc.	Net Rental Income
178 South Street Wakulla Springs	PS YES	23,000	15,000		100		
TOTALS →							

LIST PREVIOUS CREDIT REFERENCES

B - Borrower	C - Co-Borrower	Owed To (Name and Address)	Account Number	Purpose	Highest Balance	Date Paid
BC		Gayfers	4315 983	Dept. Store	300	6/4/76
BC		T. Byron	9433 7665	Dept. Store	100	7/30/76
BC		Tallahassee Motors	None	Auto	1200	6/1/74

AGREEMENT: The undersigned hereby applies for the loan described herein to be secured by a first mortgage or trust deed on the property described herein and represents that no part of said premises will be used for any purpose forbidden by law or restriction and that all statements made in this application are true and made for the purpose of obtaining the loan. Verification may be obtained from any source named herein. The original or a copy of this application will be retained by the lender even if the loan is not granted.

I fully understand that it is a federal crime punishable by fine or imprisonment or both to knowingly make any false statements concerning any of the above facts, as applicable under the provisions of Title 18, United States Code, Section 1014.

Signature (Borrower) William Harris Date 8/2/76 Signature (Co-Borrower) Emily Harris Date 8/2/76

Home Phone 222-9158 Business Phone 385-9247 Home Phone 222-9158 Business Phone _____

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of sex or marital status. The Federal Agency which administers compliance with this law concerning this bank is Comptroller of the Currency

(type of lender) (regulatory agency and address)

Additionally the Federal Fair Housing Act also prohibits discrimination on the basis of race, color, religion, sex or national origin.

FOR LENDER'S USE ONLY

(FNMA REQUIREMENT ONLY) This application was taken by Thomas W. Taylor, a full time employee of First National Bank of Podunk, in a face to face interview with the prospective borrower.

(Name of Lender)

Rejected 8/12/76
Income - TWI

APPRAISAL

Date August 10, 1976Owner John WiseLocation of Property 208 Blair RoadTallahassee, FloridaDescription 4 br, 2 bath, brick veneer, fireplaceadjoining garage, wall-to-wall carpeting, well-establishedneighborhood

Improvements _____

Other data House, 9 years oldValue of Land.....\$ 5,000Recommended for loan of \$ 32,000Value of Buildings..\$ 37,000

Other.....\$ _____

Total Valuation....\$ 42,000

I certify the foregoing to be true and correct to the best of my knowledge and belief.

Thomas W. TaylorJohn J. Chipouras

INCORPORATION

RESIDENTIAL LOAN APPLICATION

MORTGAGE APPLIED FOR Conv. FHA VA Amount \$40,000 Interest 8% 44 No. of Months 360 Monthly Payment Principal & Interest \$ 300 Escrow/Impounds (to be collected monthly) Taxes Hazard Ins. MI 20 Prepayment Option

Property Street Address 1206 Offaly Court City Tallahassee County Leon State Fla. Zip 32302 No Unit
 Legal Description (Attach description if necessary) Lot 2 Block A Killlearn Estates Year Built 1973 Property is: Fee Leasehold Condo PUD Other (Minimis) PUD
 Purpose of Loan: Purchase Construction-Perm. Construction Refinance Other (Explain)
 Complete this line if Construction-Perm. or Construction Loan: Lot Value Date Original Cost Present Value (a) Cost of Imps. (b) Total (a+b) ENTER TOTAL AS PURCHASE PRICE IN DETAILS OF PURCHASE
 Complete this line if a Refinance Loan: Year Acquired Original Cost Amt. Existing Liens Purpose of Refinance Describe Improvement () made () to be made Cost: \$

Title Will Vest in What Names? Robert Panoff How Will Title Be Held? (Tenancy) Fee Simple
 Name Will Be Signed By? Robert Panoff Source of Down Payment and Settlement Charges? Savings

BORROWER				CO-BORROWER*			
Name	Robert Panoff	Age	30	Sex**	M	School	Yr 6
Present Address	No. Years	<input type="checkbox"/> Own	<input type="checkbox"/> Rent	Present Address	No. Years	<input type="checkbox"/> Own	<input type="checkbox"/> Rent
Street	4104 Meridian Road, Apt. 4			Street			
City/State/Zip	Tallahassee, Fla.			City/State/Zip			
Former address	if less than 2 years at present address			Former address	if less than 2 years at present address		
Street				Street			
City/State/Zip				City/State/Zip			
Years at former address	<input type="checkbox"/> Own <input type="checkbox"/> Rent			Years at former address	<input type="checkbox"/> Own <input type="checkbox"/> Rent		
Marital Status	<input checked="" type="checkbox"/> Married Yr. <input type="checkbox"/> Unmarried <input type="checkbox"/> Separated			Marital Status	<input type="checkbox"/> Married Yr. <input type="checkbox"/> Unmarried <input type="checkbox"/> Separated		
Dependents other than Co-Borrower	<input type="checkbox"/> American Indian <input type="checkbox"/> Negro/Black <input type="checkbox"/> Oriental <input type="checkbox"/> Spanish American <input type="checkbox"/> Other Minority			Dependents other than listed by Borrower	<input type="checkbox"/> American Indian <input type="checkbox"/> Negro/Black <input type="checkbox"/> Oriental <input type="checkbox"/> Spanish American <input type="checkbox"/> Other Minority		
Name and Address of Employer	E. I. Dupont de Neumours, Inc. Wilmington, Del.			Name and Address of Employer			
Years employed in this line of work or profession?	3 years on this job <input type="checkbox"/> Self Employed***			Years employed in this line of work or profession?			
Position/Title	Salesman Type of Business Chemicals			Position/Title	Type of Business		

GROSS MONTHLY INCOME				MONTHLY HOUSING EXPENSES				DETAILS OF PURCHASE			
Item	Borrower	Co-Borrower	Total	Rent	First Mortgage (P&I)	Other Financing (P&I)	Taxes (Real Estate)	a. Purchase Price	b. Total Closing Costs	c. Pre Paid Escrows	d. Total (a + b + c)
Base Income	\$	\$	\$		\$ 220	\$ 300	8	\$ 50,000	2,000	300	\$ 52,300
Overtime								e. Amt. This Mortgage	f. Other Financing	g. Present Equity in Lot	
Bonuses	420							h. Amt. of Deposit	i. Closing costs paid by Seller	j. Cash required for closing	
Commissions	1700										
Dividends/Interest											
Net Rental Income											
Other (See reverse side sheet)											
Total	\$ 2120	\$	\$		\$ 220	\$ 320	\$ 50				

DESCRIBE OTHER INCOME
 B-Borrower C-Co-Borrower NOTE: ALIMONY/CHILD SUPPORT PAYMENTS NEED NOT BE LISTED UNLESS THEIR CONSIDERATION IS DESIRED Monthly Amt. \$

IF EMPLOYED IN CURRENT POSITION FOR LESS THAN TWO YEARS COMPLETE THE FOLLOWING:

B/C	Previous Employer/School	City/State	Type of Business	Position/Title	Dates From/To	Monthly Salary
						\$

QUESTIONS APPLY TO BOTH BORROWERS

If Yes, explain on attached sheet	Borrower Yes or No	Co-Borrower Yes or No	Borrower Yes or No	Co-Borrower Yes or No
Have you any outstanding judgments, ever taken bankruptcy, had property foreclosed or given deed in lieu thereof?	No		Do you have health and accident insurance?	No
Co-Maker or endorser on any notes?	No		Do you have major medical coverage?	Yes
Defendant/Participant in a Law Suit?	No		Do you intend to occupy property?	Yes
Obligated for child support/alimony payments?	No		Will this property be your primary residence?	Yes
Any portion of the down payment borrowed?	No		Have you previously owned a home?	No
			Value of previously owned home	\$ N/A \$

*Complete this section and all other co-borrower questions about spouse if the spouse will be jointly obligated with the borrower on the loan or if the borrower is relying on the spouse's income or on community property in obtaining the loan.
 **This information is requested only for statistical purposes in accordance with the intent of fair housing law. Furnishing this information is voluntary, but borrowers are urged to do so, no lending decision will be made on the basis of this information or on whether or not it is furnished.
 ***FHLMC requires self employed to furnish signed copies of one or more most recent Federal Tax Returns or audited Profit and Loss Statements. FNMA requires business credit report, signed Federal Income Tax returns for last two years, and, if available, audited P/L plus balance sheet for same period.

This Statement and any applicable supporting schedules may be completed jointly by both married and unmarried co-borrowers if their assets and liabilities are sufficiently joined so that the Statement can be meaningfully and fairly presented on a combined basis; otherwise separate Statements and Schedules are required (PHLMC 69A/PNMA 1003A). If the co-borrower section was completed about spouse, complete this statement and supporting schedules about spouse also.

Completed Jointly Not Completed Jointly

STATEMENT OF ASSETS AND LIABILITIES

ASSETS		LIABILITIES AND PLEDGED ASSETS		
Description	Cash or Market Value	Owed To (Name, Address and Account Number)	Mo. Pmt. and Mos. left to pay	Unpaid Balance
Cash Toward Purchase held by		* Indicate by (*) which will be satisfied upon sale or upon refinancing of subject property.		
Killearn Realty	1,000	Installment Debt (include "revolving" charge accounts)	\$ Pmt./Mos.	\$
Checking and Savings Accounts (Indicate names of Institutions/Acct. Nos.)			/	
This bank 206 715 checking	2,000		/	
This bank 614 308 CD	10,000		/	
Savings 515 515	2,000		/	
Stocks and Bonds (No./description)			/	
Dupont 100s/s	4,000		/	
Life Insurance Net Cash Value Face Amount (\$)		Automobile Loan		
SUBTOTAL LIQUID ASSETS	19,000			
Real Estate Owned (Enter Total Market Value from Real Estate Schedule)		Real Estate Loans (Itemize and Identify Lender)		
Vested Interest in Retirement Fund	2,500			
Net Worth of Business Owned (ATTACH FINANCIAL STATEMENT) Auto (Make and Year)				
1973 Corvette	5,000	Other Debt Including Stock Pledges (Itemize)		
Furniture and Personal Property	10,000	Alimony and Child Support Payments		
Other Assets (Itemize)				
		TOTAL MONTHLY PAYMENTS	\$	
TOTAL ASSETS	A. \$ 36,500	NET WORTH (A - B) \$	36,500	TOTAL LIABILITIES B. \$ 0

SCHEDULE OF REAL ESTATE OWNED (If Additional Properties Owned Attach Separate Schedule)								
Address of Property (Indicate S if Sold, PS if Pending Sale or R if Rental being held for income)	Type of Property	Present Market Value	Amount of Mortgages & Liens	Gross Rental Income	Mortgage Payments	Taxes, Ins. Maintenance and Misc.	Net Rental Income	
TOTALS →								

LIST PREVIOUS CREDIT REFERENCES

Borrower	Co-Borrower	Owed To (Name and Address)	Account Number	Purpose	Highest Balance	Date Paid
B		This bank	1120 500	Personal	\$ 1,000	6/30/76
B		Haverty's	6791 208	Furniture	800	4/8/76
B		GMAC	1438 929 6814	Auto	3,000	12/13/75

AGREEMENT. The undersigned hereby applies for the loan described herein to be secured by a first mortgage or trust deed on the property described herein and represents that no part of said premises will be used for any purpose forbidden by law or restriction and that all statements made in this application are true and made for the purpose of obtaining the loan. Verification may be obtained from any source named herein. The original or a copy of this application will be retained by the lender even if the loan is not granted.

I fully understand that it is a federal crime punishable by fine or imprisonment or both to knowingly make any false statements concerning any of the above facts, as applicable under the provisions of Title 18, United States Code, Section 1014.

Signature (Borrower) Robert Panoff Date 8/28/76 Signature (Lo-Borrower) _____ Date _____

Home Phone 385-1468 Business Phone 803-784-2200 Home Phone _____ Business Phone _____

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of sex or marital status. The Federal Agency which administers compliance with this law concerning this _____ bank is _____ Comptroller of the Currency (type of lender) _____ (regulatory agency and address)

Additionally the Federal Fair Housing Act also prohibits discrimination on the basis of race, color, religion, sex or national origin. _____ Washington, D.C.

FOR LENDER'S USE ONLY

(FNMA REQUIREMENT ONLY) This application was taken by Thomas W. Taylor, a full time employee of First National Bank of Podunk in a face to face interview with the prospective borrower. (Name of Lender)

Approved
TWT

APPRAISAL

Date 9/11/76Owner Killearn PropertiesLocation of Property 1206 Offaly Court
Tallahassee, FloridaDescription 4 Br, 2 bath, brick veneer
dining room, family room w/ fireplace
large living room located in KillearnImprovements Built 1973 acre lot

Other data _____

Value of Land.....\$ 10,000 Recommended for loan of \$ 40,000Value of Buildings..\$ 40,000

Other.....\$ _____

Total Valuation.....\$ 50,000

I certify the foregoing to be true and correct to the best of my knowledge and belief.

Thomas W. TaylorJohn J. Chipouras

This Statement and any applicable supporting schedules may be completed jointly by both married and unmarried co-borrowers if their assets and liabilities are sufficiently joined so that the Statement can be meaningfully and fairly presented on a combined basis; otherwise separate Statements and Schedules are required (PHLMC 63A/PNMA 1003A). If the co-borrower section was completed about spouse, complete this statement and supporting schedules about spouse also.

Completed Jointly Not Completed Jointly

ASSETS		LIABILITIES AND PLEDGED ASSETS		
Description	Cash or Market Value	Owed To (Name, Address and Account Number)	Mo. Pmt. and Mos. left to pay	Unpaid Balance
Cash Toward Purchase held by		Indicate by (*) which will be satisfied upon sale of upon liquidation of subject property.		
Landmark Realty	1,000	Installment Debt (include "revolving" charge accounts)	\$ Pmt./Mos.	\$
Checking and Savings Accounts (Indicate names of Institutions/Acct. Nos.)		Seare - Revolving	/	100
This bank 113 292 Checking	500	Gayfers - Revolving	/	120
This Bank 510 553 Savings	2,000	Havertry's	80 / 6	480
1st Federal 5317 959 Savings	5,000		/	
Stocks and Bonds (No./description)			/	
Life Insurance Net Cash Value		Automobile Loan	/	
Face Amount \$		GMAC	130 / 24	3,120
SUBTOTAL LIQUID ASSETS		Real Estate Loans (Itemize and Identify Lender)		
Real Estate Owned (Enter Total Market Value from Real Estate Schedule)				
Vested Interest in Retirement Fund				
Net Worth of Business Owned (ATTACH FINANCIAL STATEMENT)				
Auto (Make and Year)		Other Debt Including Stock Pledges (Itemize)	/	
Furniture and Personal Property		Alimony and Child Support Payments	/	
Other Assets (Itemize)			/	
		TOTAL MONTHLY PAYMENTS	\$ 210	
TOTAL ASSETS 25,180	A. \$ 29,000	NET WORTH (A. - B.) \$	TOTAL LIABILITIES	B. \$ 3,820

STATEMENT OF ASSETS AND LIABILITIES

SCHEDULE OF REAL ESTATE OWNED (If Additional Properties Owned Attach Separate Schedule)

Address of Property (Indicate S if Sold, PS if Pending Sale or R if Rental Being Held for Income)	Type of Property	Present Market Value	Amount of Mortgages & Liens	Gross Rental Income	Mortgage Payments	Taxes, Ins. Maintenance and Misc.	Net Rental Income
TOTALS →							

LIST PREVIOUS CREDIT REFERENCES

B - Borrower	C - Co-Borrower	Owed To (Name and Address)	Account Number	Purpose	Highest Balance	Date Paid
BC		Lafayette Electronics	7035 602	Stereo	\$ 500	7/2/75

AGREEMENT: The undersigned hereby applies for the loan described herein to be secured by a first mortgage or trust deed on the property described herein and represents that no part of said premises will be used for any purpose forbidden by law or restriction and that all statements made in this application are true and made for the purpose of obtaining the loan. Verification may be obtained from any source named herein. The original or a copy of this application will be retained by the lender even if the loan is not granted.

I fully understand that it is a federal crime punishable by fine or imprisonment or both to knowingly make any false statements concerning any of the above facts, as applicable under the provisions of Title 18, United States Code, Section 1014.

Signature (Borrower) Charles Richards Date 9/4/76 Signature (Co-Borrower) Kathy Richards Date 9/4/76
 Home Phone 222-1801 Business Phone 447-1880 Home Phone 222-1801 Business Phone 448-1900

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of sex or marital status. The Federal Agency which administers compliance with this law concerning this bank Washington, B.C. is Comptroller of the Currency (type of lender) (regulation agency address)
 Additionally the Federal Fair Housing Act also prohibits discrimination on the basis of race, color, religion, sex or national origin.

FOR LENDER'S USE ONLY

(FNMA REQUIREMENT ONLY) This application was taken by Thomas W. Taylor, a full time employee of First National Bank of Podunk Interviewer
First National Bank of Podunk, in a face to face interview with the prospective borrower.
 (Name of Lender)

Approved: TWT

CORPORATION

RESIDENTIAL LOAN APPLICATION

MORTGAGE APPLIED FOR Conv. FHA VA Amount \$ 30,000 Interest 8% 374 No. of Months 360 Monthly Payment Principal & Interest \$ 248 Escrow/Impounds (to be collected monthly) Taxes Hazard Ins. MI 28

Property Street Address 1760 Meridian Road City Tallahassee County Leon State Fla. Zip 32304 No. Units 1

Purpose of Loan: Purchase Construction-Perm. Construction Refinance Other (Explain) _____

Complete this line if a Refinance Loan Purpose of Refinance _____ Describe Improvement | made | to be made _____

Title Will Vest in What Names? Charles and Kathy Richards How Will Title Be Held? (Tenancy) Joint

Name BORROWER: Charles Richards Age 30 Sex M School Yrs 16 CO-BORROWER: Kathy Richards Age 28 Sex F School Yrs 16

Present Address: 4104 Meridian Road, Apt. 1 Tallahassee, Fla.

Marital Status: Married Unmarried Separated

Dependents other than Co-Borrower: 0

Name and Address of Employer: Florida State University Tallahassee, Florida

Position/Title: Computer Technical University

GROSS MONTHLY INCOME			MONTHLY HOUSING EXPENSE		DETAILS OF PURCHASE	
Item	Borrower	Co-Borrower	Total	Rent	Expenses	
Base Income	\$ 900	\$ 835	\$ 1,735		\$ 220**	a. Purchase Price \$ 35,000
Overtime	\$ 100		\$ 100		\$ 250	b. Total Closing Costs 1,400
Bonuses						c. Pre Paid Escrows 300
Commissions						d. Total (a + b + c) \$ 36,700
Dividends/Interest						e. Amt. This Mortgage (f 30,000)
Net Rental Income						f. Other Financing ()
Other (Specify)						g. Other Equity in Lot ()
Total	\$ 1,000	\$ 835	\$ 1,835	Total Monthly Pmt \$ 220 \$ 50	Utilities 50 328	h. Amt. of Deposit (f 1,000)
						i. Closing costs paid by Seller (f 700)
						j. Cash required for closing \$ 5,000

DESCRIBE OTHER INCOME

B/C	Previous Employer/School	City/State	Type of Business	Position/Title	Dates From/To	Monthly Salary
						\$

QUESTIONS APPLY TO BOTH BORROWERS

If Yes, explain on attached sheet.

Have you any outstanding judgments, ever taken bankruptcy, had property foreclosed upon, or given dead in lieu thereof?	No	No	Do you have health and accident insurance?	No	No
Co-Maker or endorser on any notes?	No	No	Do you have major medical coverage?	Yes	Yes
Defendant/Participant in a Law Suit?	No	No	Do you intend to occupy property?	Yes	Yes
Obligated for child support/alimony payments?	No	No	Will this property be your primary residence?	Yes	Yes
Any portion of the down payment borrowed?	No	No	Have you previously owned a home?	No	No
			Value of previously owned home	\$ N/A	\$ NA

* Complete this section and all other co-borrower questions about spouse if the spouse will be jointly obligated with the borrower on the loan or if the borrower is relying on the spouse's income or on community property in obtaining the loan.

** This information is requested only for statistical purposes in accordance with the intent of fair housing law. Furnishing this information is voluntary, but borrowers are urged to do so. No lending decision will be made on the basis of this information or on whether or not it is furnished.

*** FHLMC requires self employed to furnish signed copies of one or more most recent Federal Tax Returns or audited Profit and Loss Statements. FNMA requires business credit report, signed Federal Income Tax returns for last two years, and, if available, audited P/L plus balance sheet for same period.

APPRAISAL

Date 9/6/76Owner Meridian PropertiesLocation of Property 1760 Meridian RoadTallahassee, FloridaDescription 3 Br Brick Veneer, 2 bath
Great room fireplace1/2 acre lot

Improvements _____

Other data _____

Value of Land.....\$ 5,000Recommended for loan of \$ 30,000Value of Buildings..\$ 30,000

Other.....\$ _____

Total Valuation.....\$ 35,000I certify the foregoing to be true and correct to the best of my
knowledge and belief.Thomas W. TaylorJohn J. Chipouras

CORPORATION

RESIDENTIAL LOAN APPLICATION

MORTGAGE APPLIED FOR Type Conv. FHA VA Amount \$ 32,000 Interest 8¹/₄% No. of Months 300 Monthly Payment Principal & Interest \$ 250 Escrow/Impounds (to be collected monthly) Taxes Hazard Ins. MI 30 Prepayment Option

Property Street Address 736 Raintreee Circle City Tallahassee County Leon State Fla. Zip 30303 No. Units 1

Legal Description (Attach description if necessary) Lot 7 Block A Eastgate Subdivision Year Built 1975 Property is Fee Leasehold Condo PUD DeMinimis PUD

Purpose of Loan: Purchase Construction-Perm. Construction Refinance Other (Explain)

Complete this line if Construction-Perm. or Construction Loan Lot Value Data Original Cost Present Value (a) Cost of Imps. (b) Total (a+b) ENTER TOTAL AS PURCHASE PRICE IN DETAILS OF PURCHASE

Complete this line if a Refinance Loan Year Acquired Original Cost Amt. Existing Liens Purpose of Refinance Describe Improvement (| made |) to be made Cost: \$

Title Will Vest in What Names? Lucy A. Bell How Will Title Be Held? (Tenancy) Fee Simple

Note Will Be Signed By? Lucy A. Bell Source of Down Payment and Settlement Charges? Savings

BORROWER Name Lucy A. Bell Age 27 Sex F School Yrs 16 CO-BORROWER Name Age Sex Yrs

Present Address No. Years 15 Own Rent Street 282 Pat Nell Road City/State/Zip Marietta, Ga.

Former address if less than 2 years at present address Street City/State/Zip

Years at former address Own Rent Marital Status Married Yrs. Unmarried Separated (Check One)**

Dependents other than Co-Borrower Number 0 Ages

Name and Address of Employer Social Security Administration Washington, D.C. Years employed in this line of work or profession? 3 years

Position/Title Investigator Type of Business Government

Years on this job 3 Self Employed***

Position/Title Type of Business

Years on this job Self Employed***

Position/Title Type of Business

GROSS MONTHLY INCOME MONTHLY HOUSING EXPENSE DETAILS OF PURCHASE

Item	Borrower	Co-Borrower	Total	Rent	200 ⁺ 225 ⁺ 250 ⁺	1. Purchase Price
Base Income	\$ 1,000				\$ 250	\$ 35,000
Overtime						b. Total Closing Costs 1,200
Bonuses					12	c. Pre Paid Escrow 300
Commissions					8	d. Total (a + b + c) 36,500
Dividends/Interest						e. Amt. This Mortgage 32,000
Net Rental Income					8	f. Other Financing ()
Other (SEE SEPARATE SHEET)						g. Present Equity in Lot ()
Total	\$ 1,000				\$ 280 ⁺	h. Amt. of Deposit (1,000
					30	i. Closing costs paid by Seller (800
					\$ 310	j. Cash required for closing 2,700

DESCRIBE OTHER INCOME: B-Borrower C-Co-Borrower NOTE: ALIMONY/CHILD SUPPORT PAYMENTS NEED NOT BE LISTED UNLESS THEIR CONSIDERATION IS DESIRED Monthly Amt.

IF EMPLOYED IN CURRENT POSITION FOR LESS THAN TWO YEARS COMPLETE THE FOLLOWING:

B/C	Previous Employer/School	City/State	Type of Business	Position/Title	Dates From/To	Monthly Salary
						\$

QUESTIONS APPLY TO BOTH BORROWERS:

If Yes, explain on attached sheet. Borrower Yes or No Co-Borrower Yes or No

Have you any outstanding judgments, ever taken bankruptcy, had property foreclosed upon, or given deed in lieu thereof? No

Co-Maker or endorser on any notes? No

Defendant/Participant in a Law Suit? No

Obligated for child support/alimony payments? No

Any portion of the down payment borrowed? No

Do you have health and accident insurance? Yes

Do you have major medical coverage? Yes

Do you intend to occupy property? Yes

Will this property be your primary residence? Yes

Have you previously owned a home? No

Value of previously owned home \$ N/A \$

*Complete this section and all other co-borrower questions about spouse if the spouse will be jointly obligated with the borrower on the loan or if the borrower is relying on the spouse's income or on community property in obtaining the loan. **This information is requested only for statistical purposes in accordance with the intent of fair housing law. Furnishing this information is voluntary, but borrowers are urged to do so. No lending decision will be made on the basis of this information or on whether or not it is furnished. ***FHLMLC requires self-employed to furnish signed copies of one or more most recent Federal Tax Returns or Audited Profit and Loss Statements. FNMA requires business credit report, signed Federal Income Tax returns for last two years, and, if available, audited P/L plus balance sheet for same period.

This Statement and any applicable supporting schedules may be completed jointly by both married and unmarried co-borrowers if their assets and liabilities are sufficiently joined so that the Statement can be meaningfully and fairly presented on a combined basis. Otherwise separate Statements and Schedules are required (FHLMC 65A/FNMA 1003A). If the co-borrower section was completed about spouse, complete this statement and supporting schedules about spouse also.

Completed Jointly Not Completed Jointly

STATEMENT OF ASSETS AND LIABILITIES

ASSETS		LIABILITIES AND PLEDGED ASSETS		
Description	Cash or Market Value	Owed To (Name, Address and Account Number)	Mo. Pmt. and Max. left to pay	Unpaid Balance
Cash Toward Purchase held by		<i>(Indicate by "1" which will be satisfied upon sale or upon refinancing of subject property.)</i>		
Landmark Realty	1,000	Personal Loan This bank 9/2/76	\$ Pmt./Mos. /	\$ 400
Checking and Savings Accounts (Indicate names of institutions/ Acct. Nos.)		Rich's/Atlanta- pay balance	monthly/	80
This bank 102 171 Checking	1,200	Gayfer's/Tallahassee pay balance	monthly/	40
This bank 508 932 Savings	1,500	Student Loans, First State Bank	35 / 36	1,260
First Federal 1154 3426 Savings	4,000	of Cobb County	/	
Stocks and Bonds (No./description)		Automobile Loan	/	
E Bonds	900	GMAC	135 5	675
Life Insurance Net Cash Value				
Face Amount (\$)		Real Estate Loans (Itemize and Identify Lender)	/	
SUBTOTAL LIQUID ASSETS	8,600			
Real Estate Owned (Enter Total Market Value from Real Estate Schedule)		Real Estate Loans (Itemize and Identify Lender)		
Vested Interest in Retirement Fund	2,000			
Net Worth of Business Owned (ATTACH FINANCIAL STATEMENT)				
Auto (Make and Year)		Other Debt Including Stock Pledges (Itemize)		
1973 Chevelle	2,000			
Furniture and Personal Property		Alimony and Child Support Payments	/	
Coin Collection(face value)	500			
Other Assets (Itemize)				
		TOTAL MONTHLY PAYMENTS	\$ 170	
		TOTAL LIABILITIES	\$ 2,450	
TOTAL ASSETS	A. \$ 21,000	NET WORTH (A.-B.)	\$ 18,650	

SCHEDULE OF REAL ESTATE OWNED (If Additional Properties Owned Attach Separate Schedule)

Address of Property (Indicate S if Sold, PS if Pending Sale or R if Rental being held for income)	Type of Property	Present Market Value	Amount of Mortgage & Liens	Gross Rental Income	Mortgage Payments	Taxes, Ins. Maintenance and Misc.	Net Rental Income
TOTALS →							

LIST PREVIOUS CREDIT REFERENCES.

B- Borrower	C-Co-Borrower	Owed To (Name and Address)	Account Number	Purpose	Highest Balance	Date Paid
					\$	

AGREEMENT: The undersigned hereby applies for the loan described herein to be secured by a first mortgage or trust deed on the property described herein and represents that no part of said premises will be used for any purpose forbidden by law or restriction and that all statements made in this application are true and made for the purpose of obtaining the loan. Verification may be obtained from any source named herein. The original or a copy of this application will be retained by the lender even if the loan is not granted.

I fully understand that it is a federal crime punishable by fine or imprisonment or both to knowingly make any false statements concerning any of the above facts, as applicable under the provisions of Title 18, United States Code, Section 1014.

Signature (Borrower) Lucy A. Bell Date 7/1/76 Signature (Co-Borrower) _____ Date _____
 Home Phone 404/463-5464 Business Phone 404/526-4826 Home Phone _____ Business Phone _____

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of sex or marital status. The Federal Agency which administers compliance with this law concerning this bank is Comptroller of the Currency (type of lender) Washington, DC (city and address)

Additionally the Federal Fair Housing Act also prohibits discrimination on the basis of race, color, religion, sex or national origin. 20219

FOR LENDERS USE ONLY

(FNMA REQUIREMENT ONLY) This application was taken by Thomas W. Taylor, a full time employee of First National Bank of Podunk Interviewer
 _____, in a face to face interview with the prospective borrower.
 (Name of Lender)

Approved 7/10/76

TWT

APPRAISAL

Date 7/5/76Owner Nelson Builders, Inc.Location of Property 736 Raintree CircleTallahassee, FloridaDescription 3 Br, 2 bath, brick veneer, fireplace1/2 acre lot - new subdivisionHouse 75% complete

Improvements _____

Other data _____

Value of Land.....\$ 5,000Recommended for loan of \$ 32,000Value of Buildings..\$ 32,000

Other.....\$ _____

Total Valuation.....\$ 37,000

I certify the foregoing to be true and correct to the best of my knowledge and belief.

Thomas W. Taylor

John J. Chipcuras

CORPORATION

RESIDENTIAL LOAN APPLICATION

MORTGAGE APPLIED FOR <input checked="" type="checkbox"/> Conv <input type="checkbox"/> FHA <input type="checkbox"/> VA	Amount \$60,000	Interest 8 3/4%	No. of Months 360	Monthly Payment Principal & Interest \$300	Escrow/Impounds (to be collected monthly) Taxes <input checked="" type="checkbox"/> Hazard Ins <input type="checkbox"/> MI <input type="checkbox"/> 30
--	-----------------	-----------------	-------------------	--	--

Property Street Address: 2605 Killarney Way, City: Tallahassee, County: Leon, State: Fla., Zip: 32303, No. Units: _____

Legal Description (Attach description if necessary): Lot 8 Block C Killarney Estates, Year Built: 1975, Property is: Fee Leasehold Condo PUD DeMinimis PUD

Purpose of Loan: Purchase Construction Perm. Construction Refinance Other (Explain): _____

Complete this line if Construction Form or Construction Loan: Lot Value Date: _____ Original Cost: _____ Present Value (L): _____ Cost of Imps (b): _____ Total (a+b): _____ ENTER TOTAL AS PURCHASE PRICE IN DETAILS OF PURCHASE

Complete this line if a Refinance Loan: Purpose of Refinance: _____ Describe Improvement (I made) I to be made: _____ Year Acquired: _____ Original Cost: _____ Amt. Existing Liens: _____

Title Will Vest in What Names? John and Sherry Rich
 Note Will Be Signed By? John and Sherry Rich
 How Will Title Be Held? (Tenancy) Joint
 Source of Down Payment and Settlement Charges? Sale of Home and Savings

BORROWER				CO-BORROWER			
Name: John Rich	Age: 50	Sex: M	School: Yrs 16	Name: Sherry Rich	Age: 46	Sex: F	School: Yrs 16

Present Address: 4141 High Street, Tallahassee, Fla. 32303

Marital Status: Married Yrs 24 (Check One)**
 Unmarried Separated
 American Indian Negro/Black Oriental Spanish American Other Minority

Dependents other than Co-Borrower: Number 19, Ages: _____

Name and Address of Employer: Xerox, Inc., Tampa, Florida, Position: Salesman, Type of Business: Retail

Name and Address of Employer: Housewife, Position/Title: _____, Type of Business: _____

GROSS MONTHLY INCOME				MONTHLY HOUSING EXPENSE				DETAILS OF PURCHASE			
Item	Borrower	Co-Borrower	Total	Rent	First Mortgage (P&I)	Other Financing (P&I)	Total	a. Purchase Price			
Base Income	\$	\$	\$		170	500		\$100,000			
Overtime								4,000			
Bonuses	835				10	15		400			
Commissions	5400				8	15		104,400			
Dividends/Interest	500							60,000			
Net Rental Income											
Other (SEE SCHEDULE BELOW)											
Total	\$ 6,735	\$	\$		\$ 188	\$ 530	\$ 718				

DESCRIBE OTHER INCOME: B - Borrower C - Co-Borrower NOTE: ALIMONY/CHILD SUPPORT PAYMENTS NEED NOT BE LISTED UNLESS THEIR CONSIDERATION IS DESIRED

IF EMPLOYED IN CURRENT POSITION FOR LESS THAN TWO YEARS COMPLETE THE FOLLOWING:

B/C	Previous Employer/School	City/State	Type of Business	Position/Title	Dates From/To	Monthly Salary

QUESTIONS APPLY TO BOTH BORROWERS.

Yes, explain on attached sheet	Borrower Yes or No	Co-Borrower Yes or No	Borrower Yes or No	Co-Borrower Yes or No
Have you any outstanding judgments, ever taken bankruptcy, had property foreclosed upon, or given deed in lieu thereof?	No	No	Do you have health and accident insurance?	Yes
Co-Maker or endorser on any notes?	No	No	Do you have major medical coverage?	Yes
Defendant/Participant in a Law Suit?	No	No	Do you intend to occupy property?	Yes
Obligated for child support/alimony payments?	No	No	Will this property be your primary residence?	Yes
Any portion of the down payment borrowed?	No	No	Have you previously owned a home?	Yes
			Value of previously owned home	\$ 45,000

* Complete this section and all other co-borrower questions about spouse if the spouse will be jointly obligated with the borrower on the loan or if the borrower is relying on the spouse's income or on community property in obtaining the loan.
 ** This information is requested only for statistical purposes in accordance with the intent of fair housing law. Furnishing this information is voluntary, but borrowers are urged to do so. No lending decision will be made on the basis of this information or on whether or not it is furnished.
 *** FHL MC requires self-employed to furnish signed copies of one or more most recent Federal Tax Returns or Audited Profit and Loss Statements. FNMA requires business credit report, signed Federal income Tax returns for last two years, and, if available, audited P/L plus balance sheet for same period.

This Statement and any applicable supporting schedules may be completed jointly by both married and unmarried co-borrowers if their assets and liabilities are sufficiently joined so that the Statement can be meaningfully and fairly presented on a combined basis; otherwise separate Statements and Schedules are required (PHLMFC 65A/FNMA 1002A). If the co-borrower section was completed about spouse, complete this statement and supporting schedules about spouse also.

Completed Jointly Not Completed Jointly

STATEMENT OF ASSETS AND LIABILITIES

ASSETS		LIABILITIES AND PLEDGED ASSETS		
Description	Cash or Market Value	Owed To (Name, Address and Account Number)	Mo. Pmt. and Mos. left to pay	Unpaid Balance
Cash Toward Purchase held by		Indicate by / which will be satisfied from sale or lease of property		
Rich Folks Realty	1,000	Installment Debt (include "revolving" charge accounts)	\$ Pmt./Mos.	\$
Checking and Savings Accounts (Indicate names of Institutions/Acct. Nos.)			/	
This bank 603 603 Checking	5,000		/	
This bank Savings 514 208	12,000		/	
This bank CD 314 214	10,000		/	
Stocks and Bonds (No./description)			/	
Pizza Hut 1500	27,000		/	
Xerox 1500 s/s	97,500		/	
Life Insurance Net Cash Value			/	
Face Amount \$ 100,000	25,000	Automobile Loan		
SUBTOTAL LIQUID ASSETS	177,500	This bank		6,000
Real Estate Owned (Enter Total Market Value from Real Estate Schedule)	85,000	Real Estate Loans (Itemize and Identify Lender)		
Vested Interest in Retirement Fund	11,000	Commonwealth Corporation		15,000
		This bank		20,000
Net Worth of Business Owned (ATTACH FINANCIAL STATEMENT)		This bank, personal		
Auto (Make and Year)		Other Debt Including Stock Pledges (Itemize)		
1976 Lincoln Mark Iv	13,000	This bank, personal loan		
1975 Mercury Cougar	4,000	Secured by Xerox stock		10,000
Furniture and Personal Property	20,000	Alimony and Child Support Payments		
Other Assets (Itemize)			/	
		TOTAL MONTHLY PAYMENTS	\$	
TOTAL ASSETS	259,500	NET WORTH (A-B) \$		
	A \$ 310,500	TOTAL LIABILITIES		B \$ 51,000

SCHEDULE OF REAL ESTATE OWNED (If Additional Properties Owned Attach Separate Schedule)

Address of Property (Indicate S if Sold, PS if Pending Sale or R if Rental Being Held for Income)	Type of Property	Present Market Value	Amount of Mortgages & Liens	Gross Rental Income	Mortgage Payments	Taxes, Ins. Maintenance and Misc.	Net Rental Income
4141 High Street	PS rec	45,000	15,000		170		
Beach House & Property	rec	40,000	20,000		300		
TOTALS							

LIST PREVIOUS CREDIT REFERENCES

B-Borrower	C-Co-Borrower	Owed To (Name and Address)	Account Number	Purpose	Highest Balance	Date Paid
					\$	

AGREEMENT: The undersigned hereby applies for the loan described herein to be secured by a first mortgage or trust deed on the property described herein and represents that no part of said premises will be used for any purpose forbidden by law or restriction and that all statements made in this application are true and made for the purpose of obtaining the loan. Verification may be obtained from any source named herein. The original or a copy of this application will be retained by the lender even if the loan is not granted.

I fully understand that it is a federal crime punishable by fine or imprisonment or both to knowingly make any false statements concerning any of the above facts, as applicable under the provisions of Title 18, United States Code, Section 1014.

Signature (Borrower) John Rich Date 8/2/76 Signature (Co-Borrower) Sherry Rich Date 8/2/76
 Home Phone 385-1111 Business Phone 803-432-1812 Home Phone 385-1111 Business Phone _____

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of sex or marital status. The Federal Agency which administers compliance with this law concerning this bank is Comptroller of the Currency (type of lender) Washington, D.C. (address)
 Additionally the Federal Fair Housing Act also prohibits discrimination on the basis of race, color, religion, sex or national origin.

FOR LENDER'S USE ONLY

(FNMA REQUIREMENT ONLY) This application was taken by Thomas W. Taylor, a full time employee of First National Bank of Podunk Interviewer
 _____, in a face to face interview with the prospective borrower.
 (Name of Lender)

Approved
 8/10/76 TWT

APPRAISAL

Date August 3, 1976Owner Killearn PropertiesLocation of Property 2605 Killarny WayTallahassee, FloridaDescription Two story, 4 Br, 3 baths, brick veneer
colonial type. 2 fireplace family room, living room, acre lot.

Improvements _____

Other data _____

Value of Land.....\$ 10,000Recommended for loan of \$ 80,000Value of Buildings..\$ 95,000

Other.....\$ _____

Total Valuation.....\$ 105,000

I certify the foregoing to be true and correct to the best of my knowledge and belief.

Thomas W. TaylorJohn J. Chipouras

CORPORATION

RESIDENTIAL LOAN APPLICATION

MORTGAGE APPLIED FOR Conv. FHA VA Amount \$ 30,000 Interest Rate % No. of Months 360 Monthly Payment Principal & Interest \$ 240 Escrow/Impounds (to be collected monthly) Taxes Hazard Ins. MI 20 Prepayment Option

Property Street Address 206 Blair Road City Tallahassee County Leon State Fla. Zip 32304 No Units 1
 Legal Description (Attach description if necessary) Lot 4 Block 8 Magnolia Estates Subdivision Year Built 1967 Property is Fee Leasehold Condo PUD De Minimis PUD

Purpose of Loan: Purchase Construction-Perm. Construction Refinance Other (Explain) _____
 Complete this line if Construction-Perm. or Construction Loan: Lot Value Date Original Cost Present Value (a) Cost of Imp. (b) Total (a+b) ENTER TOTAL AS PURCHASE PRICE IN DETAILS OF PURCHASE
 Complete this line if a Refinance Loan: Year Acquired Original Cost Amt. Existing Liens Describe Improvement | | made | | to be made Cost: \$ _____

Title Will Vest in What Names? Norman and Mary White How Will Title Be Held? (Tenancy) Fee Simple, Joint Tenancy
 Who Will Be Signed By? Norman and Mary White Source of Down Payment and Settlement Charges? Sale of Old House and Savings

BORROWER: Norman White Age 35 Sex M School Yrs 12
 CO-BORROWER: Mary White Age 33 Sex F School Yrs 12

Present Address No. Years 10 Own Rent City/State/Zip Wakulla Springs, Fla. 32201
 Former address if less than 2 years at present address: Street City/State/Zip
 Years at former address Own Rent

Marital Status Married Yrs 12 (Check One)** American Indian Negro/Black Oriental Spanish American Other Minority
 Dependents other than Co-Borrower: Number 2 Ages 10 7
 Dependents other than listed by Borrower: Number 0

Name and Address of Employer: Universal Printers, N. Monroe, Tallahassee
 Name and Address of Employer: First State Bank of Tallahassee, Tallahassee, Fla.
 Years employed in this line of work or profession? 17 years
 Years on this job 8 years
 Self Employed***

Position/Title: Pressman Type of Business: Printing
 Position/Title: Teller Type of Business: Banking

GROSS MONTHLY INCOME			MONTHLY HOUSING EXPENSES		DETAILS OF PURCHASE			
Item	Borrower	Co-Borrower	Total	Rent	PREVIOUS MONTHS			
Base Income	\$ 1,000	\$ 600	\$ 1,600	First Mortgage (P&I)	100	\$ 240	a. Purchase Price	\$40,000
Overtime	100		100	Other Financing (P&I)			b. Total Closing Costs	1,600
Bonuses				Hazard Insurance	8	12	c. Pre Paid Escrows	250
Commissions				Taxes (Real Estate)	4	8	d. Total (a + b + c)	\$41,850
Dividends/Interest				Assessments			e. Amt. This Mortgage	\$30,000
Net Rental Income				Mortgage Insurance			f. Other Financing	
Other (SEE ESCROW SHEET)				Homeowner Assn. Dues			g. Present Equity in Lot	
Total	\$ 1,100	\$ 600	\$ 1,700	Total Monthly Pmt	\$ 112	\$ 260	h. Amt. of Deposit	1,000
				Utilities	40	60	i. Closing costs paid by Seller	1,000
				Total	\$ 152	\$ 320	j. Cash required for closing	\$ 9,850

DESCRIBE OTHER INCOME: B - Borrower C - Co-Borrower NOTE: ALIMONY/CHILD SUPPORT PAYMENTS NEED NOT BE LISTED UNLESS THEIR CONSIDERATION IS DESIRED Monthly Amt. \$ _____

IF EMPLOYED IN CURRENT POSITION FOR LESS THAN TWO YEARS COMPLETE THE FOLLOWING

R.C.	Previous Employer/School	City/State	Type of Business	Position/Title	Dates From/To	Monthly Salary
						\$ _____

QUESTIONS APPLY TO BOTH BORROWERS

	Borrower Yes or No	Co-Borrower Yes or No		Borrower Yes or No	Co-Borrower Yes or No
Have you any outstanding judgments, ever taken bankruptcy, had property foreclosed upon, or given deed in lieu thereof?	No	No	Do you have health and accident insurance?	Yes	Yes
Co-Maker or endorser on any notes?	No	No	Do you have major medical coverage?	Yes	Yes
Defendant/Participant in a Law Suit?	No	No	Do you intend to occupy property?	Yes	Yes
Litigated for child support/alimony payments?	No	No	Will this property be your primary residence?	Yes	Yes
Any portion of the down payment borrowed?	No	No	Have you previously owned a home?	Yes	Yes
			Value of previously owned home	\$ 25,000	\$ 20,000

* Complete this section and all other co-borrower questions about spouse if the spouse will be jointly obligated with the borrower on the loan or if the borrower is relying on the spouse's income or on community property in obtaining the loan.
 ** This information is required only for statistical purposes in accordance with the intent of fair housing law. Furnishing this information is voluntary, but borrowers are urged to do so. No lending decision will be made on the basis of this information or on whether or not it is furnished.
 *** F.H.L.M.C. requires self employed to furnish signed copies of one or more most recent Federal Tax Returns or audited Profit and Loss Statements. FNMA requires business credit report, signed Federal Income Tax returns for last two years, and, if available, audited FYL plus balance sheet for same period.

This Statement and any applicable supporting schedules may be completed jointly by both married and unmarried co-borrowers if their assets and liabilities are sufficiently joined so that the Statement can be meaningfully and fairly presented on a combined basis; otherwise, separate Statements and Schedules are required (FHA/NC 83A/FHMA 1003A). If the co-borrower section was completed a joint spouse, complete this statement and supporting schedules about yourself also.

Completed Jointly Not Completed Jointly

ASSETS		LIABILITIES AND PLEDGED ASSETS					
Description	Cash or Market Value	Owed To (Name, Address and Account Number)	Mo. Pmt. and Mos. left to pay	Unpaid Balance			
Cash Toward Purchase held by Southside Realty	1,000	(Indicate type of which will be satisfied upon sale or upon refinancing of subject property)					
Checking and Savings Accounts (Indicate names of Institutions/Acct. Nos.)		Ford Motor Credit	120 / 12	1,440			
This bank 144 942 Checking	600	Sears - Revolving	/	100			
First State bank 204 944 Checking	300	Montgomery Wards	50 / 6	300			
This bank 6 55 941 Savings	5,000		/				
First Fed. 1110 967 Savings	10,000		/				
Stocks and Bonds (No./description)			/				
Life Insurance Net Cash Value		Automobile Loan	/				
Face Amount \$ 35,000	5,000		/				
SUBTOTAL LIQUID ASSETS	21,900						
Real Estate Owned (Enter Total Market Value from Real Estate Schedule)	25,000	Real Estate Loans (Itemize and Identify Lender)					
Vested Interest in Retirement Fund	8,000	Common Wealth Corporation		15,000			
Net Worth of Business Owned (ATTACH FINANCIAL STATEMENT)							
Auto (Make and Year)		Other Debt Including Stock Pledges (Itemize)					
1974 Ford	2,500		/				
1972 Mercury	2,300		/				
Furniture and Personal Property	12,000	Alimony and Child Support Payments					
Other Assets (Itemize)			/				
Fishing Boat	800		/				
TOTAL ASSETS	A. \$ 72,500	TOTAL MONTHLY PAYMENTS	\$ 170	TOTAL LIABILITIES			
SCHEDULE OF REAL ESTATE OWNED (If Additional Properties Owned Attach Separate Schedule)		NET WORTH IA.-B.I.S 39,460		B. \$33,040			
Address of Property (Indicate S if Sold, PS if Pending Sale or R if Rental being held for income)	Type of Property	Present Market Value	Amount of Mortgages & Liens	Gross Rental Income	Mortgage Payments	Taxes, Ins. Maintenance and Misc.	Net Rental Income
176 South Street	PS res.	25,000	15,000		100		
Wakulla Springs							
TOTALS							

LIST PREVIOUS CREDIT REFERENCES

B - Borrower	C - Co-Borrower	Owed To (Name and Address)	Account Number	Purpose	Highest Balance	Date Paid
BC		Gayfers	4314 982	Dept. Store	300	5/4/76
BC		J. Byron	9432 765 4	Dept. Store	100	7/31/76
BC		Tallahassee Motors	None	Auto	1200	9/2/74

AGREEMENT. The undersigned hereby applies for the loan described herein to be secured by a first mortgage or trust deed on the property described herein and represents that no part of said premises will be used for any purpose forbidden by law or restriction and that all statements made in this application are true and made for the purpose of obtaining the loan. Verification may be obtained from any source named herein. The original or a copy of this application will be retained by the lender even if the loan is not granted.

I fully understand that it is a federal crime punishable by fine or imprisonment or both to knowingly make any false statements concerning any of the above facts, as applicable under the provisions of Title 18, United States Code, Section 1014.

Signature (Borrower) Norman White Date 8/2/76 Signature (Co-Borrower) Mary White Date 8/2/76

Home Phone 222-9148 Business Phone 385-9247 Home Phone 222-9148 Business Phone 242-8158

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of sex or marital status. The Federal Agency which administers compliance with this law concerning this bank (type of lender) is Comptroller of the Currency (regulatory agency and address) Washington, D.C.

Additionally the Federal Fair Housing Act also prohibits discrimination on the basis of race, color, religion, sex or national origin.

FOR LENDER'S USE ONLY

(FHMA REQUIREMENT ONLY) This application was taken by Thomas W. Taylor a full time employee of

First National Bank of Podunk (Name of Lender) in a face to face interview with the prospective borrower.

Approved 8-12-76

TWT

APPRAISAL

Date 8/10/76Owner George MaynardLocation of Property 206 Blair RoadTallahassee, FLDescription 4 BR, 2 Bath, Brick Veneer, fireplace, adjoining
garage, wall to wall carpeting - well established
neighborhood

Improvements _____

Other data house 10 years oldValue of Land.....\$ 5,000Recommended for loan of \$30,000Value of Buildings..\$ 37,000Other.....\$ Total Valuation.....\$ 42,000.I certify the foregoing to be true and correct to the best of my
knowledge and belief.Thomas W. TaylorJohn J. Chipman

Mortgage Discrimination
Case Study

You have just completed your regularly scheduled examination of Federal Savings Bank, the largest and most prestigious bank in the Southwest. Television advertisements are done for this Savings and Loan by Robert Young and Jane Wyman. Everything is in order and you are ready to prepare your report when you receive a memorandum from Washington conveying a sex discrimination complaint against Federal. The complaint was made by a 30 year old black female lawyer employed by the EEOC in Tucson, Arizona. She has just obtained this job and had worked previously in Washington for three years with the Civil Rights Commission. The memorandum from Washington advises you that the complaint made to the Board was endorsed by the Chairman of both the House and Senate Committees on Housing, Banking and Urban Affairs who have each requested an immediate report "as to the steps taken by the Federal Reserve Board to assure equal opportunity" in this instance. You are given only the following letter from the complainant, Ms. Mary Jones.

Chairman
Federal Reserve Board
Washington, D.C.

Dear Sir:

On Monday, May 5th, 1976 I applied for a loan at Federal Savings Bank to finance the purchase of a three bedroom condominium in Tucson, Arizona. After a very difficult time, I was rejected by this organization because of my race and sex. I wish to file a complaint, and if immediate steps are not taken to correct this outrageous situation, I will have taken no recourse but to go to Court against Federal, and possibly, against the FRB for non-enforcement of the law. The facts are as follows:

- 2 -

I am employed as an attorney at a salary of \$20,000 per year. My monthly gross income is \$1,666. I was divorced two years ago and I have a four year old daughter. I pay three hundred dollars a month for child care and receive three hundred and seventy five dollars a month in child support. My former husband is also an attorney.

I have always paid my bills on time, but have never owned real estate before.

I signed a contract to purchase a luxury condominium unit costing \$53,000, with twenty percent down. I applied for \$42,000. 7 3/4% "Fannie Mae Mortgage". I was told that the "PITI" on this property was \$390 per mo.

I filled in an application at Federal Savings. The loan officer who took the application, Mr. Pleasant, acted as though he was trying to be friendly, but was really giving me a cross-examination. He asked why a "little gal" like me needed such a "big ol' expensive place with three bedrooms". He asked if I "partied" a lot. He said he really "admired me" because not many mothers would ordinarily leave their children with a stranger. Of course, I was highly offended by this, but did not say anything because I didn't want to jeopardize the loan.

A week later I received a form letter from the bank saying they could not make a loan because the loan "did not conform to requirements established by Federal Savings". On May 13 I visited Mr. Pleasant and asked why I was rejected. He said he did not reject me, but it was the loan committee, and I would have to write to them. I did, and two weeks later I was sent a letter saying that I did not meet the "income requirements established by Federal".

I then tried to make an appointment with the head of the loan committee. He told me on the phone that he could not meet with me. He said that I did not meet the income requirement of a debt to income ratio of 22% and also, that they did not have "any more Fanne Mae Money".

At this point I was outraged. I wrote to the President of Federal Savings and demanded a meeting and a copy of my loan file. I was contacted by the bank's lawyer who met with me. He gave me only a copy of my application. I noticed that my race was noted in the box provided. The lawyer, Mr. Smiley told me that there was a terrible mix-up, but that it wasn't anything racially or sexually discriminatory. He said it was just a case of "bad customer relations". He said that Mr. Pleasant was severely admonished for asking me those personal questions and that the bank was truly sorry, and it would never happen again. However, Mr. Smiley explained that the bank had a policy of requiring that the ratio of PITI to income must be 22% in order to qualify for a loan. My monthly income was \$1,666. My monthly PITI would be \$390. The ratio is 23.7% and thus I did not qualify. Mr. Smiley said, however, that in order to show the bank's good faith, they

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would be willing to make me a \$35,000 loan at the going rate of 9 1/4%.

I told Mr. Smiley to keep his loan and I am writing to your office for assistance.

Sincerely,

Mary Jones, Esq.

Before calling the President of Federal, you check previous examiner reports and you find that in November of 1975 the bank's Board of Directors adopted a resolution requiring a debt to income ratio of 22%. There have been no other equal opportunity complaints involving this organization. You call the organization and speak with the President, Mr. Joyful who confirms that there is a 22% ratio and that it is "applied uniformly". He says that he remembers the Jones case well and that "that gal sure got excited over nothing". He tells you that she simply didn't meet the 22% criteria and that, at any rate, she applied for a type of loan which wasn't available: a FNMA 7 3/4% loan". You decide to call and speak with Mr. Pleasant, the loan officer. He gives you the same version and adds that he "got into a mess of hot water over her. Some people think everybody is out to discriminate". What do you do?

You re-read the part of the memo from Washington that tells about the interest expressed by Congress, and decide to schedule a special examination.

At the offices of the bank, you ask for the Jones file. You find that the worksheets and data confirm that the ratio was 23.7%. You also find the following memo:

Monthly income:	\$1,666
other income:	
(child support	375
minus child care)	- 300
	\$ 75
 Total monthly income	 \$1,741
 Ratio: 390/1741 - 22.4%	

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Monthly income	\$1,666
Minus child care	<u>- 300</u>
	\$1,366

Ratio: 28%

Go with this - - $390/1666 = 23.7\%$

This memorandum alerts you to the possibility that the bank may not be fully conversant with Equal Opportunity Laws.

You visit the President again and ask about the measures taken to acquaint employees with the law. He shows you a memorandum dated June 1976, which reads:

As a result of a recent unfortunate incident, it is necessary to inform all personnel who deal with the public that new changes in the Privacy Act forbid employees from inquiring into personal facts about applicants, particularly childbearing or child raising plans.

You ask about the 22% ratio rule and inquire as to why the institution does not use the general 25% rule. You are told that the Board of Directors felt it was "more prudent" to change to 22%. You ask for the minutes of the appropriate Board meeting. You are shown the following:

November 10, 1975

Be it resolved: Due to recent federal legislation which in certain circumstances may enhance the exposure and risk for lenders the Federal Savings Bank hereby changes from 25% to 22% the debt to income ratio necessary to qualify for a home mortgage loan.

You conduct a random sampling of file and find:

- a) Several loans to couples, in which only the husband is working, where the ratio is between 24 and 26%;
- b) Several loans to couples, in which both spouses work, where the ratio is 22% or less;

- c) Three loans to single men where the ratio is about 28%. One is to the President's wife's nephew. As for the other two, Mr. Pleasant explains that they are single and have "less responsibility";
- d) Six Fanne Mae $7\frac{3}{4}\%$ loans made between May 5th and May 20th, when the last such loan was made.

1. What findings do you report?
2. What steps do you recommend be taken?
3. Is there additional investigation to be done?

P. S. You have also found the following paragraph in the bank's manual

* No real estate loan will be made where the sum of the term of years of the loan, plus the borrower's age exceeds the number 70, unless the borrower can demonstrate sufficient expected income after age 62 to sustain loan payments.

4. Does this provision require attention?

Case Studies C

AGE

- 1.Q The Perpetual Corn Exchange and Cattlemen's Trust has a loan manual. It has the following two provisions:
- a. We will not make mortgage loans in circumstances where the age of the borrower and term of the loan exceed 60 years, unless the applicant can demonstrate the probability, amount and stability of income after age 65.
- and
- b. Loans to youthful borrowers are to be avoided unless a parent is available and willing as a co-signor.

Do these provisions violate ECOA and Regulation B?

BROKERS AND DEALERS

- 2.Q The First National Bank of Piggy (Piggy Bank) makes real estate loans and car loans. Make-a-Buck Realty regularly sends its clients to Piggy and Piggy, as an accommodation, sends a loan officer each month to Make-a-Buck's sales meeting, to familiarize salespeople with loan terms and requirements. Sales people are asked to send their "good clients" to the Bank, but to abstain from sending "likely turn-downs."

The Wheely-Dealy Used Car Emporium has a different relationship with the Piggy Bank. When a customer needs financing, Wheely-Dealy "shops" several banks and offers the paper to whomever will take the loan, on the best terms.

Harry and Martha NewRich just purchased a home from Make-a-Buck and a car from Wheely-Dealy. Harry works as a receptionist in a law office and Martha repairs trucks for the telephone company. They each make about \$12,000 per year.

The NewRich's asked the agent for Make-a-Buck if the company would send their loan application to the First National Bank of Piggy, where the NewRich's had an account. The agent said no, because it was his understanding that Piggy would discount a wife's income and this might jeopardize the deal. (Piggy had actually changed this policy but none of the speakers at the monthly sales meetings had mentioned this to Make-a-Buck's employees - the speakers assumed it was common knowledge.)

The NewRich's application for a car loan was "shopped" to Piggy and to the Carefree Trust Bank. Carefree said it would make the loan, but Piggy turned it down because they do not make loans on souped-up Edsels with racing stripes, double-wide tires, raised rear-end and spiked hubcaps.

Is Piggy liable for discrimination in either instance? Does Piggy have any adverse action notification obligations in either situation?

OBTAINING PROHIBITED INFORMATION THROUGH CREDIT REPORTS

- 3.Q Sally Sweet applied for a mortgage loan at Solid Rock Savings and Loan on April 1, 1977. She completed the information on the application form, listing income from her job as assistant general counsel at Miracle Manufacturers, and including information on her three children, aged 7, 7, and 5. She listed her marital status as single.

Ms. Sweet appeared qualified for the loan, but Thomas Doubling, the loan officer, called his best friend who worked at Ace Credit Reporters, and asked him to check on Ms. Sweet's "complete credit history." Two weeks later, Sally Sweet received a denial letter from Solid Rock, stating that her loan was denied for insufficient income. Not believing a word of it, she wrote to the Federal Home Loan Bank Board alleging discrimination based on her sex (female) and marital status (divorced).

- A comparison of loan files showed that Ms. Sweet's income and obligations compared favorably with the approved files. The examiner reported that the reason given for denial did not appear to be valid based on other applications which had been approved.
- Only one other file contained a report from Ace Credit Reporters; an application also from a divorced woman with two children, which had also been denied.
- The managing officer stated that the association used Second Best Credit Reporting Service and could not explain the presence of a report from Ace in Ms. Sweet's file.
- The Ace report stated that Sally Sweet was divorced.
- Second Best Reports appearing in other files contained no reference to marital status.

PRESCREENING

- 4.Q A sampling of files in Exclusive Federal Savings and Loan shows that approved loans and rejected applications are not representative of the population living in this community as reported by the U.S. Bureau of the Census. A statement made by the telephone receptionist, which was overheard by an examiner while searching for the Equal Housing Lender Poster in the lobby, appeared to indicate prescreening: "I'm sorry, Exclusive won't approve loans in that area."

An interview with the receptionist revealed the following:

1. She had been employed by Exclusive for four months;
2. She had been trained by her predecessor;
3. She had never heard of the Fair Housing Act or the Equal Credit Opportunity Act;
4. She had been instructed to refer all questions she was unsure of to the chief loan officer.

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The association advertises in one newspaper whose subscribers are above average in both education and income. They also advertise mortgage rates to all customers holding certificates of deposit. Several of these ads did not contain the Equal Housing logo.

The Equal Housing Lender Poster was found behind a file cabinet where it had allegedly "fallen" and has not been replaced.

RELIANCE ON APPRAISAL

- 5.Q Harmony Federal Savings & Loan has a branch in the Hotshot Hills section of a major eastern city. From 1970 to 1972 Hotshot Hills underwent some racial transition and became approximately 30% non-white. The non-white residents in the area were of a comparable economic level of the whites. Independent fee appraisers employed by Harmony reported that the area was undergoing "infiltration of inharmonious groups". While there was no uniform treatment of this factor by appraisers, the S & L's mortgage officers began to notice increased reports of "lack of pride of ownership" and "deferred maintenance" in the reports submitted in connection with loan applications. The senior mortgage officer, who drove through the area every day on his way to work, didn't think that the area was showing signs of physical deterioration, but deferred to the judgment of his appraisers, who were experts. He believed it would be improper to question their reports. Eventually, mortgage officers for Harmony began to reduce the loan-to-value ratio of loans they were willing to recommend from Hotshot Hills. (From 90% to 80% and 75%) The term of years also seemed to be reduced from 30 to 20, on loans made in this area. In 1976, the Association's Home Mortgage Disclosure Act Report showed almost no loans in this area for 1975. The S & L is charged with "redlining" in a lawsuit by a white couple who were told by a low level loan officer at Harmony that loans for property in Hotshot Hills were "almost impossible" to obtain. Can the association be liable on the basis of these facts?

OBVIOUSLY PREGNANT LOAN APPLICANT

- 6.Q Manny Meek began working for the Empathy National Bank on March 21, 1977. On March 24th, his first loan customers are a couple seeking a home improvement loan. They both work. She is visibly pregnant and is wearing a T-shirt with the word "Baby" on her chest and an embroidered arrow pointing south. He begins to conduct the loan interview. What can he ask the female about her "condition"?

CERTIFICATION OF INTENTIONS

- 7.Q In 1972 the Rigomortis Mutual Savings Bank revised its loan procedures. It was observed that increasing numbers of loan applications were received from couples in which the wife, as well as the husband was working, and in order to qualify for the loan, the couples had to rely on both incomes. The Bank, being progressive, desired to accommodate this modern trend. However, they were worried about including a wife's income in full, because women, particularly young wives, can become pregnant and leave their jobs, thus exposing the bank to greater risk.

In the past, the Bank had simply "discounted" the wife's income but if they continued to do so, it would disqualify too many potential customers. The Bank also at one time obtained a letter from the physician for female applicants, stating that they were using birth control, but this practice was abandoned after it came to the attention of NOW and of the local Archdiocese. Accordingly, from August of 1972 until November 1, 1975, the bank utilized a "compromise" device for dealing with working women loan applicants.

It required working women simply to sign a note stating that they do intend to continue working after the loan is made. The bank was sued by a woman loan applicant who was asked to provide such a letter on October 27, 1975. The bank claimed that the practice did not violate the Fair Housing Act. Is the Bank liable?

VARIATIONS IN DOWNPAYMENTS

- 8.0 Harry and Carrie Cash signed a purchase contract for a house in an urban neighborhood. The agreed sales price was \$68,750. They wished to obtain a 95% mortgage and made a down payment of \$3,400.

Having called several local mortgage lenders, they concluded that House Savings and Loan had the best terms. A person there had told them that House's lowest interest rate was 8.5%, that House did have 95% financing and the maximum term was 30 years. In an interview with Mr. Strickler, the loan officer, Mr. and Mrs. Cash requested a 95% loan at 8.5% for a 30 year term. Mr. Strickler explained that the most House Savings and Loan could approve would be \$55,000 loan. Mr Cash huffily stated that there was no need to increase the down payment because he and Mrs. Cash had already located a wealthy tenant for the house. Mr. Strickler continued to insist that the largest loan amount House could approve would be \$55,000, but that for investment properties the interest rate would be 9%.

Mr. Cash contacted the FHLBB stating that House and Mr. Strickler were discriminating against himself and his wife because the house was located in an urban neighborhood and because they would be landlords.

Findings:

- The neighborhood in question was all-white with a median income of \$18,723.
- The receptionist who took Mr. Cash's call asking for rates stated that interest rates could be as low as 8.5%, that 95% loans were available for 30 year terms but failed to explain that the 8.5% rate applied only to loans of 80% of value.
- Mr. Strickler had not explained the reasons for the \$55,000 limit or the change in the offered interest rate.

VARYING THE DEBT-TO-INCOME OR MONTHLY PAYMENT-TO-INCOME RATIO

- 9.0 On October 30, 1975, Bert and Betty Beyer, a Black couple, applied to Fifth Federal Savings and Loan Association for a mortgage on their new home. They completed the application form and gave information on both

of their incomes and job histories.

Mr. Fred Friendly, the loan officer taking their application, pointed out that their debt to income ratio was 33.7%, exceeding the association's policy to accept no applications where the debt to income ratio exceeded 33%. The Beyers questioned this policy, stating that their acquaintance, Mr. White, to their knowledge had obtained a mortgage loan from Fifth Federal although his debt to income ratio was 36%.

Mr. Friendly explained that exceptions were made under some special circumstances but Fifth Federal never waived its rule that the mortgage payment could not exceed 20% of monthly income. Mr. and Mrs. Beyer surprised at the strictness of this rule, regretfully left Fifth Federal, successfully obtained a mortgage from Sixth Federal, and filed a discrimination complaint against Fifth Federal with the FHLBB.

Findings:

- There were exceptions to the debt ratio rule, ranging from 34% to as high as 39%.
- These exceptions were always White families known to the personnel at Fifth Federal.
- The association had adopted a policy limiting the monthly mortgage payment to 20% of monthly income on October 27, 1975.
- Prior to October 27, 1975, Fifth Federal would consider only half of a wife's income.

FAIR HOUSING

Section 12

Handouts

Handout No. 3

- I. Supplement to Examination and Verification Procedures
- II. Procedural Guidelines

I. Supplement to Examination and Verification Procedures**Preface**

This handout is a supplement to be used in conjunction with the examination and verification procedures for determining compliance with the Fair Housing Act. It is designed to clarify procedures contained in the work program and to provide additional techniques for determining the propriety of previous lending practices. In addition, Part I, Section D, establishes minimum requirements to be performed during the course of each examination.

A. Objective

Insure that loan underwriting standards, appraisal policies and marketing practices are designed to promote nondiscriminatory lending.

B. Examination Procedures

I. Written Policies and Internal Controls

Insure that credit policies do not discriminate on a prohibited basis and that internal controls have been instituted to detect such practices. This can be determined by reviewing the bank's written loan policy, interviewing bank lending personnel using EPB-2 & 3 and analyzing submitted internal/external audit reports relative to this area.

II. Poster Display

The Equal Housing Lending Poster should be prominently displayed in accordance with Banking Circular No. 13, Supplements 1 to 4.

III. Regulation C

If the bank meets reporting requirements of Regulation C, review all information disclosed on the previous Home Mortgage Disclosure Statement in order to identify possible discriminatory policies/practices. At a minimum, this should include a comparison of those census tracts which comprise the bank's designated lending area with those which appear on the Home Mortgage Disclosure Statement. Any appearance of demographic credit concentrations/shortages should be thoroughly investigated by the examiner and justified by bank management.

In those instances in which the bank has failed to meet the reporting requirements imposed by Regulation C, a representative number of R/E/M's and home improvement loans should be plotted according to property address.

IV. Discuss with Management

(A) Written Loan Policy and Internal Controls

Loan policies should clearly define the bank's primary lending area and delineate credit standards for determining creditworthiness. If such a policy has not been formulated or does not specifically define credit standards employed, indicate this could induce the element of subjectivity on behalf of bank lending personnel. Should this element be introduced into the credit decision process, there can be no assurance that all credit extensions are based on a non-prohibited basis. Additionally, from an audit standpoint the lack of written articulated credit standards makes it virtually impossible to determine the propriety of previous credit decisions. Emphasize that internal control procedures are the primary means for monitoring lending practices of bank personnel. If procedures have not been instituted to insure lending decisions conform to established policy, make it apparent that their absence makes it exceedingly difficult for management to assess, on an ongoing basis, the conformance of daily lending to established policies.

Discuss adequacy of present training program to familiarize lending personnel in the R/E/M and home improvement loan departments with fair lending requirements.

(B) Deviations/Discrepancies

Credit extensions/denials which conflict with established credit standards should be fully discussed to ascertain their level of propriety. Management should be requested to explain and justify all loan exceptions noted during the examination.

(C) Violations of Law and Proposed Corrective Action**V. Report of Examination Comments**

All violations of law, internal control exceptions and questionable banking practices which appear to conflict with provisions of the Fair Housing Act should be fully described in the report of examination. Questionable bank practices that are fully documented in the work papers should be discussed in the open section of the report of examination. Practices/policies which infer discrimination but cannot be substantiated are to be described in the closed section of the report under Discriminatory Practices/Policies. If the bank appears to be in substantial compliance, indicate under the Discriminatory Practice/Policies section that subject bank does not prescreen or redline.

C. Verification Procedures

I. Lending Criteria

(A) R/E/M and Home Improvement Emphasis

Determine by review of lending policies, advertising, discussions with management, etc. the degree of emphasis placed upon these lending areas. Information obtained should provide a realistic indication of the bank's commitment to lend in these departments and should accordingly be reflected by the degree of competitiveness in credit terms offered and efforts exerted to solicit loan business. Particular attention should be focused upon promotional schemes designed to attract new loan customers. Insure method(s) used is contained in general circulation newspapers/magazines throughout the bank's trade area or distributed to all residents within the primary trade area. Exceptions should be fully justified by bank management. Insure that all advertisements for home improvement/REM loans contain a facsimile of the equal housing lending logotype.

(B) Trade Area

Primary trade area should be delineated in the bank's written lending policy or identified through interviews with bank personnel.

(C) Preferred Versus Non-preferred Lending Areas

Information disclosed on the Home Mortgage Disclosure Statement(s) and property location of loans granted/denied in loan files reviewed will aid in making this determination. Credit concentrations/shortages should be fully discussed and justified by bank management.

(D) Creditworthiness

Ascertain from a review of the bank's loan policy and/or interviews with bank management the criteria established for determining

- a. When the applicant is qualified;
- b. When the property is eligible;
- c. The specific terms and conditions of each loan.

To aid in making these determinations, review the following:

1. The institution's guidelines or standards with respect to sufficiency of income. What loan-to-income or debt-to-income ratios or formulas are used? Under what circumstances would these ratios be varied and a loan made even though the income does not meet the ratio.

2. Any guidelines or standards with respect to judging stability or reliability of income and income sources. Also consider if they vary according to the applicant's profession or social status. Determine if there are any types or sources of income which are discounted or not counted (e.g. part-time income, bonuses, commissions, income from jobs held less than two years).
3. Policy of giving preference to loans based on only one, as opposed to two incomes. Is the total qualified income calculated on the basis of one spouse's income or both spouse's incomes? If there are situations when only one income is used, determine which one and why.
4. Obtain a description of the institutions policy with respect to:
 - (a) The income of working women (are there any circumstances under which it might be discounted or disregarded?)
 - (b) Loans to single women with or without children.
 - (c) Inclusion of alimony or child support as income.
 - (d) The income of women in child bearing years.
 - (e) The ability of a woman to obtain a loan in her own name, whether married, single, separated or divorced. (Is a co-signor required?)
5. Obtain a description of those factors which go into the determination that a property is eligible or ineligible for a loan. Does the appraiser include comments on the future predictable value of a property, or of an area.
6. Determine what standards are used to set the loan-to-value ratio (LTV) if the LTV applied for by the customer is considered too high.
7. If a loan is determined to contain more than normal risk, will it be rejected or are there circumstances in which it will be made, but on terms which reflect higher risk? If so, who makes this determination and how is risk objectively measured. Determine what factors go into this decision. How is the LTV set? How is the loan term arrived at (on the basis of what standards)? How is the interest rate arrived at? How are points arrived at?
8. In a loan which is accepted which is not considered to contain greater than normal risk, how are rate, term, LTV and points arrived at? Who fixes them? What standards are followed (i.e. under what circumstances will the interest rate be raised or lowered on a particular loan as opposed to a change in the going rate)? What factors would require a term of less than 25 years?

(E) Credit Terms

Determine what factors influence credit terms offered to bank customers. This should consider a general description of the institution's policy with respect to the following:

- Maximum and minimum loan amounts and how these maximum and minimum amounts are arrived at (e.g. by federal law or regulation or by lender policy or both). Also determine what circumstances would justify a deviation from these limitations.
- Maximum and minimum loan terms (duration), how they are arrived at and what circumstances would justify a deviation from these limits.
- Maximum and minimum interest rates. (Note: interest rates vary according to market conditions. Determine how the institution arrives at its "going rate", what benchmarks it uses and how it uses them.)
- Determine which persons or group officially sets the maximum and minimum as described above, or the "going rate" for interest rates.

(F) Loan Application Procedures

Determine how an application is made, how it is processed and what records are maintained. This can be determined, in part, by considering the following:

- (1) Where can applications be picked up and where can they be submitted?
- (2) Is there an application fee or appraisal fee? How much is it? When is it paid? Is it always paid? Under what conditions is it refunded?
- (3) Is anyone authorized to go over the applicant's financial data or property characteristics prior to formally submitting an application, to determine eligibility. If so, how does this operate, who is so authorized and is any record kept of applications not ultimately submitted? Does this practice occur even though not formally authorized?
- (4) What information is available to applicants by phone? Is any prequalification or prescreening done by phone?
- (5) What information is an inquirer asked to give, if he/she calls on the telephone for information? Is the property address asked? Why? Determine if persons are ever told on the phone that loans are not being made in certain areas? Under what circumstances would this occur?

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- (6) After an application is submitted, where does it go (i.e. are they all forwarded to a central loan department or can the branch process them?)
 - (7) When is the appraisal ordered? Under what circumstances would an appraisal not be ordered?
 - (8) Determine what happens after all the verifications are made and the appraisal is returned? Who reviews the file at this point. If any information is unfavorable, or does not check, can the application be rejected at this stage. Is any record kept of this, if it happens. Who has authority to make such a rejection? Are rejected applicants notified in accordance with Section 202.9 of Regulation B, 12 CFR 202.
 - (9) If the information on the application is verified, and the appraisal supports the loan sought, how is it decided whether or not to make the loan? Who decides? Is there a loan committee? Loan officer? Board of Directors? What record is kept of decisions and reasons for decisions?
 - (10) If an application is rejected, is it retained? How long?
 - (11) Determine if the applicant fills out their own application or if the institution employee takes the information.
- (G) Delinquency and Foreclosure

This aspect of the examination is intended to ascertain the rate of delinquency (slow pay) and default in loans held by the institution, the predominant reasons for delinquencies, if known by the institution and where applicable, the procedures used in collection. Also determine if different collection procedures are used due to race, sex, etc. In addition, review the following:

- (1) Determine the borrower's name and property address of every home loan account which has been foreclosed upon or resulted in legal proceedings in the past year.
- (2) Determine the institution's policy with respect to collection, including all steps taken in the chain of collection. This should include:
 - (a) What actions by the borrower are considered "default" or delinquency requiring attention (e.g. one month nonpayment, two months nonpayment, etc.);
 - (b) What steps are initially taken in these circumstances;
 - (c) What follow up steps are taken, and when;
 - (d) Under what circumstances would foreclosure be instituted;

- (e) Under what circumstances would the institution refrain from foreclosure;
 - (f) What factors would cause the above schedule to be accelerated? Decelerated? Determine all factors which would cause a variation in the collection process (e.g. does it vary on the basis of the neighborhood where the home is located.)
- (3) Examine a representative sample of collection files and collection cards to determine if any of these bear a racial notation or code.
 - (4) Determine whether the race or sex or other prohibited basis of the borrower is ever a factor in determining what collection steps to undertake or whether to foreclose.

II. Appraisal Policies

- (A) Identify who conducts appraisals on behalf of the bank and the background and qualifications of the individual(s). This should include a determination of how the individual(s) was trained and what he/she considers to constitute viable factors affecting the appraisal decision process. These comments should be reviewed for discriminatory policies and compared to appraisal standards of the bank to insure they conform to established policy. Qualifications of outside appraisers should also be reviewed. Standards employed should be fully acknowledged by bank management and reflect their established policies.
- (B) Appraisal Standards

In order to insure the bank's appraisal standards meet the lending provisions of the Fair Housing Act, appraisals should be reviewed for the following discriminatory practices:

- Assigning a lower value to a neighborhood because it is integrated;
- Equating a racially mixed neighborhood with a deteriorating neighborhood;
- A prevailing attitude that deterioration of a neighborhood is inevitable;
- Equating age of property with value of property.

Techniques Available to Make These Determinations

- Comparison of credit terms granted on properties located in integrated areas versus those located in non-integrated areas during similar time periods;
- Real estate value determined by bank's appraisals versus seller's asking price as evidenced by multiple real estate listings. Although it is recognized that differences will exist when such comparisons are made, their magnitude should be proportional, given the same appraiser, to those in non-integrated areas;
- Results obtained by reviewing information contained on Home Mortgage Statements and property location of accepted/rejected sample loans versus the census tract composition of the bank's defined primary lending area;
- Information obtained from interviews with banking personnel which indicate they are not familiar with the requirements imposed by the Fair Housing Act.
- Tract data for Standard Metropolitan Statistical Areas provided by Urban Atlas and available through Regional Office.

Interviewing Techniques

- Determine from the interviewee whether the racial composition or ethnic or nationality composition of an area is ever a factor in:
 - (1) Determining fair market value;
 - (2) Future value of a parcel of property;
 - (3) Soundness of a loan.

If so, in any respect, obtain all details of the way in which these factors are affected by race or nationality.

- Determine whether the interviewee has ever had any discussions, correspondence, or instructions from superiors with respect to a particular appraisal or appraising generally in areas which are considered to be integrated. Obtain all details including what was said, by who, when and how any directives were implemented.
- Determine whether the interviewee is aware of any map or list presently used by the bank or by appraisers on behalf of the bank which demarcates geographical areas on any of the following bases:

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- (1) Racial, nationality or ethnic composition;
- (2) Income level of residents;
- (3) Rising or declining value levels;
- (4) Age range of properties;
- (5) Value range of properties;
- (6) Loan or no loan areas;
- (7) High or low risk;
- (8) Crime rate;
- (9) Other similar category.

If so, obtain all details, including how the map or list is used, who maintains it and how areas are determined to belong to one or the other category. Determine where the map or list is kept and a description of each area demarcated therein.

- Determine whether, in the interviewee's professional judgment, economic obsolescence can be caused by the infiltration of inharmonious groups. Determine what is meant by "inharmonious groups" and whether this includes racial groups. Determine how the economic obsolescence from such infiltration is measured or measurable. Determine whether the interviewee uses the concept of "infiltration" in his/her own appraisal practices, and if so, how.
- Determine whether, in the interviewee's professional judgment, the presence of black persons or Spanish persons, etc., is an "adverse influence" in a neighborhood. If so, obtain all details.

III. Interviews

Lending Personnel in both the instalment loan and real estate mortgage departments should be interviewed to determine the criteria considered in the credit decision process. The interview should be conducted in accordance with the questions outlined in EPB 2 & 3 and be structured to determine the individuals familiarity with the bank's established credit policy and prohibitions imposed by the Fair Housing Act. During the interview, be alert to comments which tend to indicate the individual may engage in unwritten discriminatory lending practices/policies. Should this occur, review a representative sample of loans made by this individual and ascertain their propriety in light of the requirements imposed by the Fair Housing Act. Special attention should be directed to property location, applicant creditworthiness and credit terms arranged by this individual. In addition, verify that:

- the initial contact person does not "prescreen" applicants; to aid in making this determination, the following questions should be asked this individual:
 - (1) Have you received any training in how to process applicants for housing loans?
 - (2) Must applicants complete an application before meeting with the loan officer?
 - (3) How is it determined which applicants see a loan officer?
 - (4) Are you instructed to ascertain any information before referring the applicant to a loan officer?
 - (5) How is it determined which officer sees the applicant?
 - (6) Are applicants referred to the bank by others, e.g., brokers, builders?
 - (7) Do walk-in applicants receive the same consideration as referrals?
- Lending officers apply the bank's objective criteria (i.e. lending officers determine applicant creditworthiness based upon established credit standards).

IV. Loan Review

Review accepted/rejected real estate mortgage loan files made in the three calendar months preceding the date of the examination. Outline the following information on the loan review sheets for both accepted/rejected R/E/M's.

- (a) Name, address, race and sex of applicants (and address of property if different from address of applicants);
- (b) Date of application;
- (c) Amount applied for, term and interest applied for, whether FHA, VA or conventional applied for;
- (d) Appraised value;
- (e) Purchase price;
- (f) Amount of loan made;
- (g) Amount of downpayment, term of loan in years, interest rate, points and whether FHA, VA or conventional;

- (h) Age of home;
- (i) Type of employment and salary.

Review loan review sheets for the following inconsistencies:

- (a) Income of one group not given the same consideration as another group;
- (b) More onerous terms required of one group than another, i.e., down payment requirements, interest rates, amount of prepaid finance charges imposed at loan closing, etc.
- (c) Variances in applying criteria, including minimum incomes, amount of loans, ratios, etc.

II. Procedural Guidelines

Whenever a Consumer Affairs Examination is conducted, results obtained from the following examination/verification procedures will determine if any subsequent courses of action are to be taken.

- (1) Review the bank's loan policy and determine if it conflicts with provisions established by the Fair Housing Act.
- (2) Determine what constitutes the bank's primary lending area. If the bank meets reporting requirements of Regulation C, 12 CFR 203, review all information disclosed on previous Home Mortgage Disclosure Statements in order to identify possible discriminatory policies/practices. At a minimum, this should include a comparison of those census tracts which comprise the bank's designated lending area with those which appear on the Home Mortgage Disclosure Statement. Any appearance of demographic credit concentrations/shortages should be thoroughly investigated by the examiner and justified by bank management.

In those instances in which the bank has failed to meet the reporting requirements imposed by the regulation, a representative number of R/E/M's and home improvement loans should be plotted according to property address.

- (3) Determine the articulated credit standards used to evaluate an applicant's creditworthiness. Compare individual creditworthiness exhibited by at least five accepted/rejected/R/E/M loan files. Deviations from the established credit standard and defined lending area should be explained by management. Property location for both accepted and rejected loans should be plotted on a census tract map.
- (4) Review the adequacy of present internal control procedures as they relate to insuring ongoing compliance with provisions of the Fair Housing Act. Qualifications/practices of appraisers should be reviewed to insure they do not discriminate on a prohibited basis.
- (5) Determine if the bank appears to prescreen credit applicants and also that the procedures to insure that all credit applicants that are denied credit are so notified in accordance with provisions of Section 202.9 of Regulation B, 12 CFR 202.

If the information obtained from these procedures indicates that the bank is in compliance, no additional requirements are necessary. If certain practices/policies are not adequately explained or justified by bank management, contact the Regional Consumer Specialist for additional procedures to be taken.

FAIR HOUSING
LECTURE No. 1

SECTION 12

TOPIC OUTLINE

- I. WHAT IS THE FAIR HOUSING ACT
- II. WHAT CONSTITUTES DISCRIMINATION
- III. REDLINING - POINTS OF VIEW
- IV. EXAMINERS ROLE
- V. EXAMINATION/VERIFICATION PROCEDURES
- VI. GUEST SPEAKER - BRIEF HISTORY OF FAIR HOUSING ACT AND ROLE
OF JUSTICE DEPARTMENT IN AREA.
- VII. SPECIALIZED PROCEDURES - EXAMINING CIRCULAR 158
- VIII. REVIEW SAMPLE FAIR HOUSING REPORTS OF EXAMINATION
- IX. CASE STUDIES (REVIEW TUESDAY)

FAIR HOUSING ACTI. WHAT IS THE FAIR HOUSING ACT

- (A) PART OF LARGE ACT - THE CIVIL RIGHTS ACT OF 1968
- (B) PURPOSE - PROHIBIT DISCRIMINATION ON THE BASIS OF RACE, COLOR, RELIGION, SEX AND NATIONAL ORIGIN IN THE MAKING OF LOANS FOR THE PURPOSE OF PURCHASING, CONSTRUCTING, IMPROVING, REPAIRING OR MAINTAINING A DWELLING.
- (C) DEFINITION OF DWELLING - DWELLING MEANS ANY BUILDING, STRUCTURE, OR PORTION THEREOF WHICH IS OCCUPIED AS, OR DESIGNED OR INTENDED FOR OCCUPANCY AS, A RESIDENCE BY ONE OR MORE FAMILIES, AND ANY VACANT LAND WHICH IS OFFERED FOR SALE OR LEASE FOR THE CONSTRUCTION OR LOCATION THEREON OF ANY SUCH BUILDING, STRUCTURE, OR PORTION THEREOF.
- (D) HISTORY AND LEGAL BACKGROUND TO BE COVERED BY QUEST SPEAKER

II. WHAT CONSTITUTES DISCRIMINATION

IT IS GENERALLY INTERPRETED AS TREATING ONE PERSON OR GROUP LESS FAVORABLY THAN ANOTHER, OR TREATING ONE PERSON OR GROUP MORE FAVORABLY THAN ANOTHER.

(A) EXAMPLES OF POSSIBLE DISCRIMINATION PRACTICES

ANY OF THE FOLLOWING IF IMPOSED BECAUSE OF RACE, RELIGION, COLOR, SEX OR NATIONAL ORIGIN:

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- (1) LOW APPRAISALS
 - (2) EXCESSIVE CREDIT TERMS
 - (3) DIFFERING STANDARDS, PROCEDURES, PENALTIES, FORECLOSURES OR OTHER COLLECTION PROCEDURES.
 - (4) FAILURE TO MAKE HOUSING LOANS IN CERTAIN NEIGHBORHOODS IN THE BANK'S SERVICE AREA BECAUSE OF RACE, COLOR, RELIGION, SEX OR NATIONAL ORIGIN.
- (B) EXAMPLES OF CREDIT DECISIONS THAT DO NOT DISCRIMINATE:
- (A) AN APPLICANT'S INCOME
 - (B) AN APPLICANT'S CREDIT HISTORY
 - (C) LENGTH OF EMPLOYMENT
 - (D) LENGTH OF LOCAL RESIDENCE
 - (E) OVERALL CONDITION OF COLLATERAL
 - (F) AVAILABILITY OF NEIGHBORHOOD AMENITIES OR CITY SERVICES
 - (G) NEED FOR BANK TO HOLD A BALANCED REAL ESTATE LOAN PORTFOLIO
 - (H) OTHER FACTOR WHICH MAY AFFECT CREDIT EXTENSION

III. REDLINING

(A) DEFINITION - POINTS OF VIEW

- (1) DISINVESTMENT MORTGAGE LENDERS IN NEIGHBORHOODS SHOWING PHYSICAL AND/OR SOCIO-ECONOMIC DECLINE;
- (2) GEOGRAPHIC, RACIAL AND ECONOMIC DISCRIMINATION;
- (3) JUDICIOUS CREDIT POLICY BY MORTGAGE LENDERS UNWILLING TO COMMIT DEPOSITOR'S FUNDS TO REAL ESTATE IN DECLINING NEIGHBORHOODS.

(B) LEGITIMATE REASONS FOR REDLINING

- (1) THE AREA MAY BE COMPOSED OF COMMERCIAL RATHER THAN RESIDENTIAL ZONES.
- (2) THE AREA IS COMPOSED OF SETTLED NEIGHBORHOODS WHERE THERE IS LITTLE BUYING AND SELLING ACTIVITY.
- (3) THE BANK HAS RECEIVED NO APPLICATIONS FROM INDIVIDUALS WISHING TO SETTLE IN THE AREA.
- (4) THE AREA MAY BE COMPOSED OF GRIMLY DETERIORATING NEIGHBORHOODS.
- (5) THERE IS A HIGH RATE OF VANDALISM AND OTHER CRIMES IN THE AREA, THUS MAKING IT DIFFICULT TO OBTAIN INSURANCE.
- (6) LACK OF NEIGHBORHOOD AMENITIES OR CITY SERVICES IN THE AREA, THUS ADVERSELY AFFECTING PROPERTY VALUE.

(C) ILLEGAL REASONS FOR REDLINING

- (1) PROHIBITED BASIS
- (2) LAUFMAN VS. OAKLEY BUILDING AND LOAN COMPANY

IV. EXAMINER'S ROLE

- (A) PROMOTE SOUNDNESS IN THE NATIONAL BANKING SYSTEM
- (B) INSURE THAT ALL APPLICANTS ARE NOT DENIED CREDIT BECAUSE OF FACTORS WHICH HAVE NOTHING TO DO WITH REPAYMENT ABILITY.
- (C) TOOLS AVAILABLE TO MAKE DETERMINATIONS.
 - (1) HMDS
 - (2) REGULATION B REQUIREMENTS
 - (3) EXAMINATION/VERIFICATION PROCEDURES
 - (4) REGIONAL OFFICE ASSISTANCE

- V. EXAMINATION/VERIFICATION PROCEDURES
- VI. GUEST SPEAKER - BRIEF HISTORY OF FAIR HOUSING ACT AND ROLE OF JUSTICE DEPARTMENT IN AREA
- VII. SPECIALIZED PROCEDURES - EXAMINING CIRCULAR 158
- VIII. REVIEW SAMPLE FAIR HOUSING REPORTS OF EXAMINATION
- XI. CASE STUDIES (REVIEW TUESDAY)

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LECTURE (3 HOURS)

THE PURPOSE OF THIS PRESENTATION IS THREE FOLD. FIRST TO PROVIDE A BRIEF BACKGROUND OF THE DEVELOPMENTS WHICH LED TO ENACTMENT OF THE FAIR HOUSING ACT. SECONDLY, TO OUTLINE CREDITOR PRACTICES/POLICIES WHICH CONFLICT WITH PREMIUM ESTABLISHED BY THE ACT, FINALLY TO DISCUSS VARIOUS EXAMINATION/VERIFICATION PROCEDURES AND TECHNIQUES AVAILABLE TO ASCERTAIN THE PROPERTY OF PREVIOUS LENDING PRACTICES.

URBAN DISCRIMINATION WAS FIRST VISIBLE AROUND THE EARLY 1900'S. CERTAIN CITIES ENACTED VARIOUS LAWS DESIGNED TO PREVENT BLACK PERSONS FROM OCCUPYING HOUSES IN BLOCKS IN WHICH THE GREATER NUMBER OF HOMES WERE OCCUPIED BY WHITES. OTHER LAWS SPECIFIED THAT IN ORDER FOR A NEGRO TO ESTABLISH RESIDENCE IN AN ALL WHITE COMMUNITY HE OR SHE WOULD HAVE TO HAVE THE WRITTEN CONSENT OF AREA RESIDENTS. ALTHOUGH ORDINANCES OF THIS TYPE WERE DECLARED UNCONSTITUTIONAL IN THE IMMEDIATE DECADES THAT FOLLOWED, VARIOUS UNWRITTEN "GENTLEMEN'S" AGREEMENTS WERE FORMED WHEREBY REAL ESTATE BROKERS PLEDGED NOT TO SELL TO BLACKS IN WHITE NEIGHBORHOODS. IT WAS NOT UNCOMMON, AS A DIRECT RESULT OF THESE PRACTICES, THAT SEVERAL LARGE URBAN CITIES HAD AS MUCH AS 80% OF THEIR ENCOMPASSED LAND RESTRICTED TO THE BLACK POPULACE.

DURING THE PRE AND POST DEPRESSION PERIODS, BLACK FAMILIES BEGAN THEIR NORTHERN MIGRATION TO THE LARGE URBAN INDUSTRIAL CITIES. AT THE SAME TIME THE REAL ESTATE PROFESSION BEGAN, FOR THE FIRST TIME, TO FORMALLY CODIFY PRACTICES AND PROCEDURES THAT WERE SPECIFICALLY DESIGNED TO DISCRIMINATE. FOR INSTANCE, IN 1955 THE ST. LOUIS COUNTY REAL ESTATE BOARD SENT A LETTER TO ALL ITS MEMBERS WHICH READ

IN PART AS FOLLOWS:

OUR BOARD OF DIRECTOR WISHES TO CALL TO YOUR ATTENTION TO OUR RULE THAT NO MEMBER OF OUR BOARD MAY, DIRECTLY OR INDIRECTLY, SELL TO NEGROES, OR BE A PARTY TO A SALE TO NEGROES, OR FINANCE PROPERTY FOR SALE TO OR PURCHASE BY NEGROES, IN ANY BLOCK, UNLESS THERE ARE THREE SEPARATE AND DISTINCT BUILDINGS IN ANY SUCH BLOCK ALREADY OCCUPIED BY NEGROES. BY A "BLOCK" IS MEANT, BOTH SIDES OF THE STREET OR WHICH THE PROPERTY FRONTS, BETWEEN INTERSECTING STREETS.

SIMILAR PRACTICES/POLICIES DESIGNED TO DISCRIMINATE AGAINST SPECIFIC NATIONALITIES AND RACES CONTINUED IN EXISTENCE INTO THE 1960'S.

UNLIKE PREVIOUS PERIODS, THE SIXTIES WERE MARKED BY VISIBLE SIGNS OF THE FRUSTRATION, ANGER, AND IMPATIENCE ASSOCIATED WITH THE PREVIOUS INDIFFERENCE TO RESIDENTIAL LENDING. THESE UNHAPPY REACTIONS WERE EVIDENCED BY THE URBAN UNREST DEPICTED BY THE RIOTS DURING THE PERIOD. THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDER WAS ASSIGNED TO INVESTIGATE THE FACTORS CONTRIBUTING TO THIS BEHAVIOR. AMONG THE COMMISSIONS'S RECOMMENDATIONS WAS THE "ENACTMENT OF A NATIONAL, COMPREHENSIVE, AND ENFORCEABLE OPEN-OCCUPANCY LAW."

THE FAIR HOUSING ACT, TITLE VIII OF THE CIVIL RIGHTS ACT OF 1968 (42 USC 3605) WAS PASSED AT LEAST IN PART, AS A DIRECT RESULT OF THE VOTING AND CIVIL DISTURBANCES THAT HAD ROCKED THE CENTRAL CORES OF MANY OF THE NATION'S MAJOR CITIES. THE ACT WAS INTENDED TO PROHIBIT DISCRIMINATION ON THE BASIS OF RACE, COLOR, RELIGION, SEX, AND NATIONAL ORIGIN IN THE MAKING OF LOANS FOR THE PURPOSE OF PURCHASING,

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CONSTRUCTING, IMPROVING, REPAIRING, OR MAINTAINING A DWELLING. THE ACT FURTHER DEFINED A DWELLING TO MEAN ANY BUILDING, STRUCTURE, OR PORTION THEREOF WHICH IS OCCUPIED AS, OR DESIGNED OR INTENDED FOR OCCUPANCY AS, RESIDENCE BY ONE OR MORE FAMILIES, ANY VACANT LAND WHICH IS OFFERED FOR SALE OR LEASE FOR THE CONSTRUCTION OR LOCATION THEREON OF ANY SUCH BUILDING, STRUCTURE, OR PORTION THEREOF.

YOU HAVE LEARNED FROM REGULATION B LECTURES WHAT IS CONSIDERED TO CONSTITUTE DISCRIMINATION. IT IS GENERALLY INTERPRETED AS TREATING ONE PERSON OR GROUP LESS FAVORABLY THAN ANOTHER, OR TREATING ONE PERSON OR GROUP MORE FAVORABLY THAN ANOTHER. DISCRIMINATION CAN BE EITHER "FOR" OR "AGAINST" AND CAN BE EVIDENT BY A VARIETY OF PRACTICES. IN THE LENDING AREA, AN OVERT FORM OF DISCRIMINATION MIGHT BE REFLECTED BY A POLICY, EITHER WRITTEN OR SIMPLY UNDERSTOOD BY EMPLOYEES, OF REFUSING TO LEND IN AN AREA BECAUSE OF RACIAL INTEGRATION WHICH MAY BE OCCURRING THERE. ANOTHER EXAMPLE OF OVERT PURPOSEFUL DISCRIMINATION WOULD BE A RULE OF DISCOUNTING A WIFE'S INCOME, OR REQUESTING A CO-SIGNER FOR A SINGLE WOMAN. THE FACT SUCH POLICIES ARE NOT WRITTEN DOWN DOES NOT MAKE IT LESS OF AN OVERTLY DISCRIMINATORY POLICY. ON THE OTHER HAND, THERE ARE CERTAIN CREDIT POLICIES/PRACTICES WHICH ARE SO UNDULY VAGUE AND SUBJECTIVE THAT IT IS DIFFICULT TO DETECT THEIR DISCRIMINATORY ASPECTS. WHEN THESE PRINCIPALS ARE APPLIED IT SEEMS APPARENT THAT VIOLATIONS OF THE ACT MAY IN FACT OCCUR BECAUSE JUDGEMENTS ARE BASED UPON A LACK OF OBJECTIVE, UNIFORM, WRITTEN CRITERIA. WITHOUT GUIDELINES THAT REDUCE TO WRITTEN FORM THE STANDARDS WHICH ARE TO BE USED, IT IS DIFFICULT TO SEE HOW A LENDER WOULD BE ABLE TO JUSTIFY CERTAIN DECISIONS IN THE FACE OF A CHALLENGE ON THE BASIS OF ALLEGED DISCRIMINATION. AS HELD IN UNITED STATES VS. YOGRITAN CONSTRUCTION CO., JUST AS VAGUE AND UNDEFINED

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EMPLOYMENT STANDARDS WHICH RESULT IN WHITES, BUT NOT BLACKS, BEING HIRED ARE UNLAWFULLY DISCRIMINATORY, SO TOO ARE ORBITRARY AND UNCONTROLLED APARTMENT RENTAL PROCEDURES WHICH PRODUCE OTHERWISE UNEXPLAINED RACIALLY DISCRIMINATORY RESULTS."

MY EXPERIENCE IN EXAMINING FOR COMPLIANCE WITH THE FAIR HOUSING ACT HAS SHOWN THIS FORM OF LENDING TO PREVAIL OVER OVERT DISCRIMINATION. ALTHOUGH IT IS RECOGNIZED THAT THIS PRACTICE MAY FOSTER DISCRIMINATORY LENDING, IT IS ALSO RECOGNIZED THAT PROOF TO SUBSTANTIATE THIS TYPE OF LENDING IS OFTEN MOST DIFFICULT TO PROVE. DESPITE THE INHERENT DIFFICULTIES ASSOCIATED WITH ASCERTAINING COMPLIANCE WITH THE ACT, THERE ARE CLUES CONTAINED IN THE BANK'S RECORD DOCUMENTATION. WHEN REVIEWING THESE RECORDS, SPECIAL ATTENTION SHOULD BE FOCUSED UPON THE FOLLOWING POLICIES/PRACTICES:

LOAN CHARACTERISTICS

1. HIGH DOWNPAYMENT
2. HIGHER INTEREST RATES
3. SHORTER TERM TO MATURITY
4. HIGHER CLOSING COSTS
5. CHARGING DIFFERENTIAL POINTS

UNDERWRITING CRITERIA

DIFFERENTIAL STRUCTURAL STANDARDS OR STANDARDS THAT ARE DISCRIMINATORY IN EFFECT (REFUSAL TO LEND ON HOMES WITH ASPHALT SIDING, ON HOMES ABOVE A MAXIMUM AGE ETC).

APPRAISAL

1. UNDOCUMENTED ALLEGATIONS OF ECONOMIC ABSOLESCENCE REGARDLESS OF PROPERTY CONDITION,

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2. STALLING ON APPRAISALS TO DISCOURAGE POTENTIAL BUYERS.
3. IMPROPERLY CONSTRUCTED APPRAISALS.

ANOTHER CLUE CONTAINED IN THE BANK'S RECORD DOCUMENTATION WHICH MAY INDICATE NONCOMPLIANCE WITH PROVISIONS OF THE FAIR HOUSING ACT IS THE LENDING PRACTICE KNOWN AS REDLINING. THIS TERM WAS "COINED" FROM PREVIOUS CREDITOR PRACTICES WHEREBY LENDERS WOULD LITERALLY DRAW A RED LINE ON A MAP TO INDICATE RESIDENTIAL AREAS WHERE CERTAIN ETHNIC GROUPS RESIDED FOR THE EXPRESSED PURPOSE OF DETERMINING WHERE TO REFRAIN FROM MAKING LOANS. PRESENT DAY DEFINITIONS OF REDLINING VARY DEPENDING UPON ONE'S POINT OF VIEW OF THE ROLE OF FINANCIAL INSTITUTIONS IN SERVING THE PUBLIC NEED. SOME LESS TEMPERATE DEFINITIONS IMPLY OUTRIGHT GEOGRAPHIC, RACIAL AND ECONOMIC DISCRIMINATION; OTHERS CONNOTE ONLY JUDICIOUS CREDIT POLICY BY MORTGAGE LENDERS UNWILLING TO COMMIT DEPOSITORS' FUNDS TO REAL ESTATE LOANS IN DECLINING NEIGHBORHOODS.

REGARDLESS OF YOUR POINT OF VIEW, HOWEVER, DISINVESTMENT BY MORTGAGES LENDERS IN DECAYING URBAN NEIGHBORHOODS IS NOT A MYTH. BUT, CLOSE EXAMINATION OF THE DECLINE PROCESS REVEALS THAT DISINVESTMENT IS ONLY ONE OF A SERIES OF FACTORS WHICH INFLUENCE DECAY AND, TYPICALLY, IT OCCURS LATE IN THE PROCESS.

AT THIS POINT IT IS IMPORTANT TO RECOGNIZE THAT "REDLINING" PER SE IS NOT ILLEGAL. THERE COULD BE SEVERAL LOGICAL AND LEGITIMATE REASONS AS TO WHY A BANK HAS NOT EXTENDED CREDIT TO CERTAIN DEMOGRAPHIC AREAS. THESE REASONS INCLUDE THE FOLLOWING:

1. THE AREA MAY BE COMPOSED OF COMMERCIAL RATHER THAN RESIDENTIAL ZONES.

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2. THE AREA IS COMPOSED OF SETTLED NEIGHBORHOODS WHERE THERE IS LITTLE BUYING AND SELLING ACTIVITY.
3. THE BANK HAS RECEIVED NO APPLICATION FROM INDIVIDUALS WISHING TO SETTLE IN THE AREA.

ON THE OTHER HAND, IF CREDIT IS DENIED TO SPECIFIC AREAS BECAUSE OF CERTAIN PROHIBITED BASIS AS DEFINED THE FAIR HOUSING ACT THEN IT IS CONSIDERED TO CONFLICT WITH THE PROVISION ESTABLISHED BY THE ACT AND IS ILLEGAL. THIS IS BEST ILLUSTRATED BY THE LAND MARK CASE OF LAUFMAN VS. OAKLEY BUILDING AND LOAN COMPANY. IN THIS PARTICULAR CASE ROBERT LAUFMAN, A CINCINNATI LAWYER, AND HIS WIFE, A PSYCHIATRIC SOCIAL WORKER, WERE DENIED A LOAN TO PURCHASE PROPERTY IN A RACIALLY TRANSITIONAL NEIGHBORHOOD. MR. LAUFMAN ALLEGED THAT "REDLINING" REGARDLESS OF BORROWER CREDITWORTHINESS OR CONDITION OF THE PROPERTY WAS IN VIOLATION OF THE FAIR HOUSING ACT. THE COURT RULED THAT REDLINING A NEIGHBORHOOD BECAUSE OF RACIAL COMPOSITION VIOLATES TITLE VIII OF THE CIVIL RIGHTS ACT.

IT IS IMPORTANT HE RECOGNIZE THAT THIS CASE DOES NOT FOSTER CREDIT ALLOCATION NOR DOES IT CONCLUDE THAT ALL BANKS MUST LEND MONEY TO ALL INDIVIDUALS. RATHER, IT SIMPLY STATES THAT CREDIT DECISIONS ARE TO BE MADE ON A NON PROHIBITED BASIS. IN ADDITION IT MUST BE UNDERSTOOD THAT A CREDITOR VIOLATES NO PUBLIC TRUST WHEN DECLINING A LOAN APPLICATION FROM A DECAYING URBAN NEIGHBORHOOD FOR REASONS OF INADEQUATE COLLATERAL OR AN ABSENCE OF APPLICANT CREDITWORTHINESS. IT CANNOT BE HELD RESPONSIBLE FOR THE MYRIAD OF ECONOMIC, SOCIAL OR OTHER FACTORS WHICH CREATED THE CIRCUMSTANCES ABOUT WHICH IT MUST RENDER A JUDGEMENT. NOR, IN FACT, CAN IT CONTRIBUTE TO THEIR SOLUTION THROUGH IMPRUDENT APPROVAL OF THE LOAN REQUEST.

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SO FAR IN THIS PRESENTATION, WE HAVE DISCUSSED SOME OF THE DEVELOPMENTS THAT CONTRIBUTED TO THE ENACTMENT OF THE FAIR HOUSING ACT, THE PURPOSE BEHIND THE ACT AND WHAT PRACTICES ARE CONSIDERED TO BE ILLEGAL UNDER THE ACT. I NOW WANT TO DIRECT THE REMAINDER OF THIS PRESENTATION TO YOUR ROLE IN THIS AREA AND THE EXAMINING TECHNIQUES AVAILABLE TO DETERMINE COMPLIANCE WITH PROVISIONS IMPOSED BY THE ACT.

AS EXAMINERS OUR JOB IS TWO-FOLD:

1. PROMOTE SOUNDNESS IN THE NATIONAL BANKING SYSTEM
2. INSURE THAT APPLICANTS ARE NOT DENIED CREDIT BECAUSE OF FACTORS WHICH HAVE NOTHING TO DO WITH REPAYMENT ABILITY.

BANKING PRACTICES WHICH CONFLICT WITH PROVISIONS OF THE FAIR HOUSING ACT ALSO CONFLICT WITH THE SAFETY AND SOUNDNESS PRINCIPALS OF BANKING. "REDLINING" AND ITS OPPOSITE "GREENLINING" WOULD HURT THE SOUNDNESS OF THE NATIONAL BANKING SYSTEM.

SPECIAL NOTE: THE PURPOSE OF THE EXAMINATION/VERIFICATION PROCEDURES IS TO MONITOR PAST LENDING PRACTICES BY REVIEWING THE BANK'S RECORDS. AS INDICATED IN THE TEXT, DISCRIMINATION IS A LEGAL QUESTION. YOUR JOB IS SIMPLY TO REVIEW POLICIES AND PRACTICES THAT APPEAR TO DISCRIMINATE AND FORWARD THE FACTS TO THE REGIONAL OFFICE.

REVIEW THE TEXT ALONG WITH THE EXAMINATION/VERIFICATION PROCEDURES AND SUPPLEMENTAL HANDOUT FOR TECHNIQUES TO ACCURATELY DETERMINE THE PROPRIETY OF PREVIOUS LENDING POLICIES AND PRACTICES. EMPHASIZE THE EXAMINER SHOULD PLAN STRATEGY BASED UPON RESULTS OBTAINED THROUGH EXAMINATION AND VERIFICATION PROCEDURES.

LECTURE No. 1

STUDENTS NEED:
REG B
HANDOUTS No. 1 & 3

ECOA - REG B
APPLICATION PROCESS

LAST HOUR WE PRESENTED A SHORT HISTORY AND INTRODUCTION TO THE ECOA. NOW WE WILL ACTUALLY REVIEW THE TECHNICAL REQUIREMENTS AND PRACTICAL APPLICATIONS OF THE ACT. I WILL EMPHASIZE THE MOST COMMON PROBLEMS YOU WILL ENCOUNTER IN THE EXAMINATION FOR COMPLIANCE WITH REGULATION B. LATER WE WILL EXAMINE CASE STUDIES WHICH WILL CONTAIN THESE COMMON VIOLATIONS. RESULTS THUS FAR HAVE SHOWN WIDESPREAD NONCOMPLIANCE WITH THIS REGULATION. HOWEVER, MOST NONCOMPLIANCE HAS BEEN A RESULT OF UNFAMILIARITY WITH THE REGULATION RATHER THAN AN INTENTIONAL DESIRE TO DISCRIMINATE AGAINST A PARTICULAR GROUP OF APPLICANTS. IT IS IMPORTANT TO REMEMBER THAT VIOLATIONS OF THIS REGULATION MAY BE COSTLY IN PUNITIVE DAMAGES AS WELL AS ADVERSE PUBLICITY, NO MATTER WHAT CAUSED THE VIOLATION. (202.1(c))

OUR EXAMINATION REVIEWS THE ACTIONS OF THE BANK EVEN BEFORE AN APPLICATION IS TAKEN. THE INTERVIEWING PROCESS (TO BE DISCUSSED MORE IN DETAIL LATER) IS DESIGNED TO DETERMINE THE BANK'S KNOWLEDGE OF THE REGULATION AS WELL AS WHETHER ANY PERSONNEL ENGAGE IN "PRESCREENING". "PRESCREENING" MAY OCCUR IN VARIOUS WAYS AND MAY RESULT IN TURNING AN APPLICANT DOWN WITHOUT ALLOWING THE INDIVIDUAL TO COMPLETE THE APPLICATION PROCESS. WHERE THIS ACTION RESULTS IN PREVENTING

AN APPLICANT FROM PURSUING AN APPLICATION ON A PROHIBITED BASIS A VIOLATION OCCURS (202.4). FOR EXAMPLE, THE RECEPTIONIST MAY INQUIRE WHETHER A PROSPECTIVE APPLICANT IS EMPLOYED, AND, IF THE ANSWER IS NO, THE INDIVIDUAL IS NOT GIVEN AN APPLICATION FORM AND TURNED AWAY. SECTION 202.6(B)(5) PROHIBITS A CREDITOR FROM EXCLUDING ANY INCOME ON A PROHIBITED BASIS, AND THE APPLICANT MAY BE RECEIVING SUFFICIENT RETIREMENT BENEFITS OR ALIMONY PAYMENTS TO QUALIFY FOR THE CREDIT REQUESTED. THE IMPORTANT THING TO REMEMBER IS THAT ALL APPLICANTS MUST BE TREATED EQUALLY AND MUST NOT BE PREVENTED FROM COMPLETING AN APPLICATION ON A PROHIBITED BASIS.

AN IMPORTANT DEFINITION UNDER REGULATION B IS THAT OF APPLICATION (202.2(E)). THE REGULATION STATES AN "APPLICATION MEANS AN ORAL OR WRITTEN REQUEST FOR AN EXTENSION OF CREDIT THAT IS MADE IN ACCORDANCE WITH PROCEDURES ESTABLISHED BY A CREDITOR FOR THE TYPE OF CREDIT REQUESTED," THIS DEFINITION IS IMPORTANT BECAUSE IT TELLS US THAT THE BANK MUST DEFINE ITS OWN APPLICATION PROCESS. IT IS UP TO THE CREDITOR TO DECIDE WHEN AN APPLICATION IS COMPLETE (I.E., WHEN ALL THE INFORMATION REGULARLY OBTAINED AND CONSIDERED IS RECEIVED). THIS INFORMATION WILL BE NECESSARY IN ORDER TO DETERMINE COMPLIANCE WITH TIME LIMITATIONS REGARDING THE REQUIREMENTS OF NOTIFICATION OF ACTION TAKEN ON THE APPLICATION. A BANK MAY NOT, HOWEVER, CONSIDER AN

APPLICATION INCOMPLETE IN ORDER TO CIRCUMVENT NOTIFICATION REQUIREMENTS. IN FACT, THE BANK MUST MAKE A REASONABLE EFFORT TO INFORM THE APPLICANT THAT AN APPLICATION IS INCOMPLETE AND MUST ALLOW THAT APPLICANT AN OPPORTUNITY TO PROVIDE THE INFORMATION NECESSARY TO COMPLETE THE APPLICATION. BANKS MAY OR MAY NOT ACCEPT ORAL OR TELEPHONE APPLICATIONS, WHAT-EVER THE APPLICATION PROCEDURES EMPLOYED BY THE BANK ARE, THEY SHOULD BE WELL-DEFINED AND COMMONLY KNOWN BY ALL LENDING PERSONNEL TO ENSURE CONSISTENCY.

INDIVIDUAL ACCOUNTS MUST BE OFFERED, REGARDLESS OF THE SEX OR MARITAL STATUS OF THE APPLICANT (202.7(A)). MANY BANKERS WILL STATE THAT THEY AUTOMATICALLY ASSUME THEIR MARRIED CUSTOMERS DESIRE JOINT CREDIT AND WILL SET UP THE LOAN IN THAT MANNER. THIS ASSUMPTION IS NO LONGER PERMISSIBLE. IN ADDITION, IF A BANK OFFERS JOINT ACCOUNTS TO MARRIED APPLICANTS, THIS TYPE OF ACCOUNT MUST ALSO BE OFFERED TO UNMARRIED INDIVIDUALS. MANY BANKS, PARTICULARLY IN OPEN END CREDIT DEPARTMENTS, WILL NOT SET UP JOINT ACCOUNTS FOR UNMARRIED APPLICANTS, BUT WILL OPEN TWO SEPARATE ACCOUNTS INSTEAD. THIS IS NOT IN COMPLIANCE BECAUSE THE REFUSAL TO OPEN A JOINT ACCOUNT IS BASED ON MARITAL STATUS, A PROHIBITED BASIS. OFTEN THE APPLICATION FORM WILL INDICATE SUCH A POLICY WHEN THE FORM ONLY REFERS TO A CO-APPLICANT USING THE TERM "SPOUSE". THIS IS A VIOLATION OF 202.5(A) BECAUSE THE TERMINOLOGY EFFECTIVELY DISCOURAGES UNMARRIED

INDIVIDUALS FROM APPLYING FOR JOINT CREDIT. WHEN THIS VIOLATION OCCURS YOU SHOULD INQUIRE AS TO WHETHER THE BANK HAS A POLICY WHICH WOULD RESTRICT APPLICATIONS ON A PROHIBITED BASIS IN VIOLATION OF 202.7(A).

ONE VERY FREQUENT VIOLATION OCCURS WHEN APPLICATION FORMS OR LENDING OFFICERS INQUIRE ABOUT THE MARITAL STATUS OF AN APPLICANT WITHOUT DETERMINING WHETHER THE REQUEST IS PERMISSIBLE (202.5(D)(1)). ALTHOUGH THERE IS ONLY ONE TYPE OF CREDIT FOR WHICH MARITAL STATUS MAY NOT BE ASKED, MANY BANKERS ARE CONFUSED ON THIS POINT. MARITAL STATUS MAY NOT BE REQUESTED IN APPLICATIONS FOR INDIVIDUAL UNSECURED CREDIT. (OVERHEAD MATRIX) TO ELIMINATE CONFUSION, I RECOMMEND THAT CREDITORS ASK 2 QUESTIONS AT THE BEGINNING OF THE APPLICATION PROCESS. WILL THE CREDIT BE INDIVIDUAL OR JOINT (?) AND IS THE REQUEST FOR SECURED OR UNSECURED CREDIT? ONCE THESE QUESTIONS ARE ANSWERED THE OFFICER CAN EASILY DETERMINE WHETHER THE REQUEST FOR MARITAL STATUS IS PERMISSIBLE. (REFER TO SAMPLE APPLICATION P. 32 AND NOTE REQUIRED TERMINOLOGY) THERE IS ONE EXCEPTION TO THE PROHIBITION OF THE REQUEST FOR MARITAL STATUS. WHERE THE APPLICANT RESIDES IN OR LISTS ASSETS TO SUPPORT THE CREDIT REQUEST WHICH ARE LOCATED IN A COMMUNITY PROPERTY STATE, THE BANK MAY ALWAYS INQUIRE ABOUT MARITAL STATUS. A COMMON ERROR TO BE AWARE OF IF YOU WILL EXAMINE IN SUCH A STATE (SEE HANDOUT No. 3, FIRST PAGE) OCCURS WHEN BANKERS ASK THE MARITAL STATUS OF ALL APPLICANTS SIMPLY BECAUSE THE BANK IS LOCATED IN A

COMMUNITY PROPERTY STATE. REMEMBER THAT THE COMMON PROPERTY EXCEPTION DEPENDS UPON THE RESIDENCE OF THE APPLICANT.

QUESTIONS CONCERNING ABILITY TO PAY MAY BE ASKED OF THE APPLICANT, IF SUCH QUESTIONS ARE ASKED WITHOUT REGARD TO ANY PROHIBITED BASIS. CREDITORS SHOULD BE ADVISED TO REFRAIN FROM ASKING QUESTIONS OF ONE APPLICANT OF A PARTICULAR SEX, MARITAL STATUS, RACE, ETC. WHICH THEY WOULD NOT ALSO ASK OF A SIMILARLY QUALIFIED APPLICANT OF ANOTHER SEX, MARITAL STATUS, RACE, ETC. (GIVE EXAMPLE OF THE PREGNANT WOMAN)

SOME OF THE MOST FREQUENT VIOLATIONS ENCOUNTERED CONCERN IMPROPER REQUESTS FOR INFORMATION ABOUT THE SPOUSE OF AN APPLICANT (202.5(c)). THE REGULATION PROHIBITS THE REQUEST AND CONSIDERATION OF INFORMATION ABOUT THE SPOUSE OF AN APPLICANT UNLESS CERTAIN CONDITIONS EXIST: (REFER TO F.C. #2)

- THE SPOUSE WILL BE PERMITTED TO USE THE ACCOUNT; OR
- THE SPOUSE WILL BE CONTRACTUALLY LIABLE UPON THE ACCOUNT; OR
- THE APPLICANT RESIDES IN OR IS RELYING ON PROPERTY LOCATED IN A COMMUNITY PROPERTY STATE; OR
- THE APPLICANT IS RELYING ON THE SPOUSE'S INCOME AS A BASIS FOR REPAYMENT; OR
- THE APPLICANT IS RELYING ON ALIMONY, CHILD SUPPORT OR SEPARATE MAINTENANCE INCOME AS A BASIS FOR REPAYMENT OF THE CREDIT.

BEFORE ANY QUESTIONS ON AN APPLICATION ARE ASKED ABOUT A SPOUSE OR FORMER SPOUSE A DISCLOSURE THAT THE INFORMATION IS ONLY NECESSARY IF ANY OF THE ABOVE CONDITIONS EXIST MUST APPEAR. APPLICATION FORMS OFTEN WILL CONTAIN REQUESTS FOR INFORMATION ON THE APPLICANT'S SPOUSE YET NO DETERMINATION AS TO THE TYPE OF CREDIT REQUEST INVOLVED IS MADE. ANOTHER COMMON PROBLEM RESULTS WHEN DEALERS SUBMIT APPLICATIONS OR TELEPHONE THEM TO THE BANK WHICH ARE CLEARLY FOR INDIVIDUAL CREDIT YET INFORMATION ON THE SPOUSE IS PROVIDED AS A RESULT OF NONCONFORMING APPLICATIONS OR INAPPROPRIATE REQUESTS FROM THE DEALER WHO TOOK THE APPLICATION. IF THE BANK IS AWARE OF THIS PRACTICE AND CONTINUES TO ACCEPT THE APPLICATIONS, IT IS LIABLE AS A CREDITOR FOR VIOLATIONS DUE TO PROHIBITED REQUESTS UNDER 202.2(L).

APPLICANTS MUST BE ALLOWED TO OPEN AND MAINTAIN ACCOUNTS IN A BIRTH-GIVEN FIRST NAME, BIRTH-GIVEN SURNAME, OR COMBINED SURNAME (202.7(B)). (GIVE EXAMPLE OF MRS. JOHN JONES AND 5 NAMES) BUT THE CREDITOR MAY REQUIRE THE APPLICANT TO CHOOSE ONE NAME TO BE USED CONSISTENTLY THROUGHOUT ALL DEALINGS WITH THE BANK. IN ORDER TO VERIFY PAST HISTORY FOR ACCOUNTS IN OTHER NAMES, CREDITORS MAY INQUIRE AS TO THE NAMES OF ACCOUNTS THE APPLICANT IS OR HAS BEEN RESPONSIBLE FOR. THE CREDITOR MUST ALSO CONSIDER THE HISTORY OF ACCOUNTS USED BY THE APPLICANT ALTHOUGH THESE ACCOUNTS MAY NOT BE LISTED IN THE APPLICANT'S NAME. AND INFORMATION WHICH THE APPLICANT GIVES THE CREDITOR INDICATING A PARTICULAR ACCOUNT DOES NOT ACCURATELY REFLECT THE APPLICANT'S ABILITY OR WILLINGNESS TO PAY MUST BE CONSIDERED. (202.6(B)(6)).

THE CREDITOR MAY ONLY ASK ABOUT INCOME FROM ALIMONY, CHILD SUPPORT OR SEPARATE MAINTENANCE PAYMENTS IF THE CREDITOR FIRST DISCLOSES TO THE APPLICANT THAT SUCH INFORMATION NEED NOT BE DISCLOSED UNLESS THE APPLICANT WISHES TO RELY ON SUCH INCOME TO ESTABLISH CREDITWORTHINESS (202.5(D)(2)). THIS DISCLOSURE MUST BE MADE FOR ORAL AS WELL AS WRITTEN REQUESTS. THIS IS PROBABLY THE MOST FREQUENT VIOLATION YOU WILL ENCOUNTER ON APPLICATION FORMS. THE FORM MAY BE AN OLD FINANCIAL STATEMENT WHICH REQUESTS "OTHER INCOME" OR THE DISCLOSURE MAY BE LOCATED INAPPROPRIATELY. (E.G., THE NOTICE WILL APPEAR AFTER THE REQUEST) A CREDITOR MAY ALWAYS ASK AND CONSIDER WHETHER THE APPLICANT IS OBLIGATED TO MAKE ALIMONY, CHILD SUPPORT OR SEPARATE MAINTENANCE PAYMENTS. THIS REQUEST IS NECESSARY TO DETERMINE WHAT AMOUNT OF INCOME IS NOT AVAILABLE FOR DEBT PAYMENTS, EVEN THOUGH THE MARITAL STATUS OF THE APPLICANT MAY BE REVEALED. (FOOTNOTE #5)

BANKS MAY REQUEST AND CONSIDER WHETHER THE APPLICANT HAS A TELEPHONE IN HIS/HER RESIDENCE, BUT MAY NOT CONSIDER WHETHER THE PHONE IS LISTED IN THE APPLICANT'S NAME.

ALTHOUGH A CREDITOR MAY NOT REQUEST THE RACE, COLOR, RELIGION OR NATIONAL ORIGIN OF AN APPLICANT, INQUIRY AND CONSIDERATION OF THE APPLICANT'S PERMANENT RESIDENCE AND IMMIGRATION STATUS MAY BE MADE IN ORDER TO DETERMINE THE BANK'S RIGHTS AND REMEDIES REGARDING REPAYMENT. A COMMON VIOLATION

OCCURS IN UNIVERSITY COMMUNITIES WHEN APPLICANTS WHO ARE NOT U.S. CITIZENS ARE AUTOMATICALLY DENIED CREDIT. ALTHOUGH THE TEMPORARY OR PERMANENT RESIDENCE OF THE INDIVIDUAL MAY BE CONSIDERED, IT IS NOT PERMISSIBLE TO DENY CREDIT ON THE BASIS OF NONCITIZENSHIP. (202.6(d)(7))

THE CREDITOR MUST NOT INQUIRE ABOUT BIRTH CONTROL PRACTICES OR CHILDBEARING INTENTIONS OF THE APPLICANT, (202.5(d)(4))

THE REGULATION ALSO PROHIBITS THE CONSIDERATION OF AGGREGATE STATISTICS OR ASSUMPTIONS RELATING TO THE LIKELIHOOD OF ANY GROUP OF PERSONS BEARING OR REARING CHILDREN (202.6(b)(3)). IN ADDITION, THE POSSIBILITY OF INTERRUPTED OR DIMINISHED INCOME DUE TO THESE ASSUMPTIONS MAY NOT BE CONSIDERED. MANY CREDITORS MAY BE RELUCTANT TO STOP CONSIDERING SUCH ASSUMPTIONS. BANKERS MUST BE INSTRUCTED THAT THE REGULATION IS VERY EXPLICIT AND ABSOLUTELY PROHIBITS THESE CONSIDERATIONS. IT IS UNLAWFUL TO ASSUME EVERY INDIVIDUAL OR MARRIED PERSON OF ONE AGE GROUP WHO IS CAPABLE OF BEARING CHILDREN WILL DO SO. FUTURE FAMILY PLANS MUST NOT BE REQUESTED OF APPLICANTS. VIOLATIONS DUE TO SUCH PROHIBITED REQUESTS WILL MOST LIKELY BE FOUND IN APPLICATIONS FOR RESIDENTIAL MORTGAGE LOANS.

THE CREDITOR MUST NOT DISCOUNT PART-TIME INCOME. THE CREDITOR ALSO MUST NOT DISCOUNT ANY INCOME LISTED ON THE APPLICATION ON A PROHIBITED BASIS. ALIMONY, CHILD SUPPORT AND SEPARATE MAINTENANCE INCOME MUST BE CONSIDERED TO THE EXTENT THEY ARE LIKELY TO BE CONTINUED (202.6(b)(5)).

(GIVE EXAMPLES OF VERIFICATION METHODS.)

CREDIT SYSTEMS MAY BE USED TO AID BANKS IN MAKING CREDIT DECISIONS. REGULATION B SEPARATES ALL CREDIT SYSTEMS INTO 2 CATEGORIES. ONE CATEGORY CONTAINS THE DEMONSTRABLY AND STATISTICALLY SOUND EMPIRICALLY DERIVED SYSTEMS. THIS CREDIT SCORING SYSTEM IS BASICALLY AN EVALUATION OF CREDITWORTHINESS BASED ON THE CHARACTERISTICS OF AN APPLICANT WHICH ARE ASSIGNED POINTS. THE SYSTEM IS DEVELOPED TO PREDICT CREDITWORTHINESS AND IS BASED ON A STATISTICAL SAMPLE OF THE BANK'S TOTAL POPULATION OF ALL APPLICANTS. ALL OTHER TYPES OF CREDIT SYSTEMS ARE CONSIDERED JUDGEMENTAL EVALUATION SYSTEMS. YOU WILL PROBABLY RARELY, IF EVER, ENCOUNTER ANY SYSTEM OTHER THAN JUDGEMENTAL. (FOR THOSE OF YOU WHO MAY SEE DSED SYSTEMS, WE WILL GIVE YOU FURTHER EXPLANATION OF THAT TYPE OF SYSTEM NEXT WEEK).

ANY PROHIBITED BASIS MUST NOT BE A CONSIDERATION OF EITHER TYPE OF CREDIT SYSTEM. EXPLICIT EXCEPTIONS TO THE RULE CONCERNING PROHIBITED CONSIDERATIONS ARE THAT CREDITORS MAY CONSIDER MARITAL STATUS AND SOURCE OF INCOME IN ORDER TO ASCERTAIN THE CREDITOR'S RIGHTS AND REMEDIES BUT NOT TO DISCRIMINATE IN DETERMINING CREDITWORTHINESS; AND THERE ARE ONLY CERTAIN FACTORS WHICH MAY BE USED IN CONSIDERATION OF AGE OR WHETHER AN APPLICANT'S INCOME DERIVES FROM ANY PUBLIC ASSISTANCE PROGRAM. (202.6(B))

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AGE MAY ONLY BE USED AS A PREDICTIVE VARIABLE IN A DEMONSTRABLY AND STATISTICALLY SOUND, EMPIRICALLY DERIVED CREDIT SYSTEM. HOWEVER, THE AGE OF ELDERLY APPLICANTS MAY NOT BE ASSIGNED A NEGATIVE OR LESS FAVORABLE VALUE. IN A JUDGMENTAL SYSTEM, AGE MAY ONLY BE CONSIDERED IN RELATION TO THE FOLLOWING: OCCUPATION AND LENGTH OF TIME TO RETIREMENT (THIS IS NECESSARY TO ASCERTAIN WHAT INCOME WILL BE AVAILABLE OVER THE LIFE OF THE LOAN TO REPAY THE DEBT); THE ADEQUACY OF THE SECURITY FOR THE DEBT IF THE LIFE OF LOAN EXCEEDS THE APPLICANT'S LIFE EXPECTANCY; LENGTH OF EMPLOYMENT OR RESIDENCE (A YOUNG APPLICANT MAY HAVE JUST ENTERED THE JOB MARKET WHILE AN ELDERLY APPLICANT MAY HAVE RECENTLY RETIRED AND MOVED FROM A LONG-TIME RESIDENCE). THE FOLLOWING PERTINENT ELEMENTS OF CREDITWORTHINESS MAY BE CONSIDERED CONCERNING INCOME DERIVED FROM A PUBLIC ASSISTANCE PROGRAM: THE LENGTH OF TIME SUCH INCOME HAS BEEN RECEIVED; WHETHER THE APPLICANT INTENDS TO CONTINUE TO RESIDE IN THE JURISDICTION WHERE BENEFITS ARE DERIVED; AND THE STATUS OF DEPENDENTS FOR WHICH SUCH INCOME IS RECEIVED (THIS IS NECESSARY TO DETERMINE HOW LONG THE PAYMENTS WILL CONTINUE). CREDIT EVALUATION SYSTEMS MUST NOT TAKE INTO ACCOUNT A TELEPHONE LISTING IN THE NAME OF AN APPLICANT. THE EXISTENCE OF A TELEPHONE IN THE RESIDENCE MAY BE CONSIDERED.

WE HAVE NOW COMPLETED OUR DISCUSSION OF THOSE ASPECTS OF THE CREDIT TRANSACTION CONCERNED WITH THE TAKING AND EVALUATING OF THE APPLICATION. NOW WE TURN TO THE MECHANICS OF SETTING UP THE LOAN.

ONCE AN APPLICATION HAS BEEN TAKEN AND EVALUATED, THE NEXT STEP FOR THE CREDITOR IS TO SET UP THE LOAN FOR ACCEPTED APPLICANTS OR TO REJECT THE LOAN FOR APPLICANTS WHO ARE TURNED DOWN. WE WILL FIRST COVER VARIOUS STEPS WHICH TAKE PLACE ONCE AN APPLICATION IS ACCEPTED.

SECTION 202.10 REQUIRES CREDITORS WHO REPORT CREDIT HISTORY ON ACCOUNTS TO CRA'S OR OTHER PARTIES TAKE CERTAIN STEPS TO ENSURE ACCURATE REPORTING OF CREDIT HISTORY FOR AMOUNTS HELD BY MARRIED INDIVIDUALS. FOR ACCOUNTS ESTABLISHED PRIOR TO JUNE 1, 1977, THE BANK SHOULD HAVE DETERMINED WHETHER THE AMOUNT WAS ONE WHICH THE APPLICANT'S SPOUSE IS PERMITTED TO USE (OPEN END) OR THE SPOUSE IS CONTRACTUALLY LIABLE ON. IF THE BANK WAS UNABLE TO MAKE SUCH A DETERMINATION FOR ALL ACCOUNTS, THE CREDIT HISTORY FOR MARRIED PERSONS NOTICE SHOULD HAVE BEEN MAILED TO THOSE LOAN ACCOUNT HOLDERS FOR WHICH THE DETERMINATION COULD NOT BE MADE. BASICALLY THE NOTICE ASKS FOR THE NAMES OF ACCOUNT HOLDERS WHICH WILL BE USED TO REPORT INFORMATION ON THE ACCOUNT. NOTICES SHOULD HAVE BEEN MADE PRIOR TO OCTOBER 1, 1977. IF A BANK HAS NOT MADE THIS DETERMINATION FOR EXISTING ACCOUNTS (BOTH PRIOR TO 6-1-77 AND TO DATE) A VIOLATION HAD OCCURRED AND THEY SHOULD BE INSTRUCTED TO SEND THE NOTICE AND/OR MAKE A DETERMINATION IMMEDIATELY. FOR ALL AMOUNTS ESTABLISHED ON OR AFTER JUNE 1, 1977, THE BANK SHOULD HAVE DETERMINED WHETHER THE AMOUNT WAS TO BE JOINTLY HELD BY MARRIED PERSONS AND REPORTED AS

SUCH. PROBABLY THE BEST WAY TO MAKE SUCH A DETERMINATION IS FOR THE APPLICATION OR OFFICER TO INQUIRE AS TO WHETHER AN ACCOUNT WILL BE JOINT (AS SUGGESTED EARLIER IN ORDER TO DETERMINE THE PERMISSIBILITY OF MARITAL STATUS REQUESTS), IF THE ANSWER IS YES MARITAL STATUS MAY THEN BE ASKED AND THE BANK CAN THEN DETERMINE WHETHER THE JOINT APPLICANT IS A SPOUSE IN ORDER TO REPORT INFORMATION CORRECTLY UNDER SECTION 202.10. THE HISTORY OF ALL JOINT ACCOUNTS HELD BY MARRIED PERSONS MUST BE REPORTED IN THE NAMES OF BOTH SPOUSES WHO USE OR ARE CONTRACTUALLY LIABLE ON THE ACCOUNTS. THIS PROVISION OF THE REGULATION SHOULD BE DISCUSSED IN DETAIL WITH MANAGEMENT. I HAVE FOUND THAT THIS PROVISION IS OFTEN MISUNDERSTOOD. MANAGEMENT MAY BE RELUCTANT TO ACCEPT THIS REQUIREMENT; HOWEVER, IT MUST BE RECOGNIZED AS A COST OF DOING BUSINESS INCIDENTAL TO EXTENDING CREDIT. IT IS IMPORTANT TO NOTE THAT BANKS WHICH HAVE SENT NOTICES AND IMPLEMENTED PROCEDURES IN ACCORDANCE WITH THE ORIGINAL REGULATION (10-28-75) WILL STILL BE IN COMPLIANCE WITH THE EXISTING REGULATION.

THE GREATEST AMOUNT OF CONFUSION AMONG BANKERS AND VIOLATIONS NOTED HAVE BEEN IN THE AREA OF SIGNATURE REQUIREMENTS UNDER REGULATION B. MY BEST ADVISE IS TO KEEP CALM, HOLD YOUR GROUND AND NOT BE SWAYED BY COMPLICATED LEGAL ARGUMENTS THROWN AT YOU BY BANKERS. IT IS VERY IMPORTANT TO REMEMBER

THAT REGULATION B ALLOWS THE BANK TO OBTAIN ALL SIGNATURES NECESSARY TO ENSURE THE AVAILABILITY OF COLLATERIAL OR PROPERTY OFFERED TO SUPPORT THE DEBT. THE REGULATION DOES, HOWEVER, PROHIBIT UNNECESSARY BLANKET SIGNATURE POLICIES WHICH, IN THE PAST, WERE CONSIDERED PROPER. BANKS ARE VERY RELUCTANT TO GIVE UP OLD PRACTICES WHICH THEY FELT PROTECTED THE BANK, AND WERE PREVIOUSLY CONSIDERED PRUDENT BANKING ACTIVITIES. IT IS IMPORTANT TO POINT OUT, HOWEVER, THAT SIGNATURES OBTAINED IN VIOLATION OF THE REGULATION MAY WELL BE CONSIDERED INVALID WHEN THE BANK BEGINS PROCEDURES TO REALIZE ON A DEFAULTED OBLIGATION.

IN KEEPING WITH THE INTENT OF THE REGULATIONS, TO EVALUATE EACH APPLICANT INDIVIDUALLY, ALL BLANKET SIGNATURE POLICIES ARE PROHIBITED. EXAMPLES OF SUCH POLICIES ARE: REQUIRING ALL SPOUSES TO GUARANTEE THE DEBT OF THEIR PARTNERS (INCLUDING BUSINESS DEBT) AND REQUIRING ALL JOINT OWNERS OF ASSETS TO SIGN THE DEBT INSTRUMENT.

THE REGULATION GIVES SPECIFIC GUIDELINES AS TO WHEN SIGNATURES MAY BE REQUIRED. IN GENERAL, THE BANK MAY NOT REQUIRE THE SPOUSE OR ANY OTHER PERSON WHO IS NOT A JOINT APPLICANT TO COSIGN OR GUARANTEE THE NOTE IF THE INDIVIDUAL APPLICANT IS CREDITWORTHY.

IF THE CREDIT IS TO BE UNSECURED AND IS SUPPORTED BY JOINTLY HELD PROPERTY, THE BANK MAY ONLY REQUIRE THE JOINT OWNER'S SIGNATURE ON THOSE INSTRUMENTS NECESSARY UNDER STATE LAW TO ALLOW THE BANK TO GAIN CONTROL OF SUFFICIENT PROPERTY TO SATISFY THE DEBT IN THE EVENT OF DEFAULT. IF THE APPLICANT HAS ENOUGH INTEREST IN THE PROPERTY TO SUPPORT THE DEBT AND CAN ALIENATE SUCH INTEREST WITH ONLY ONE SIGNATURE, THE BANK MAY NOT REQUIRE A SIGNATURE BY THE NON-APPLICANT SPOUSE OR OTHER JOINT OWNER. IF THE APPLICANT RESIDES IN OR THE ASSETS SUPPORTING THE DEBT ARE LOCATED IN A COMMUNITY PROPERTY STATE, THE BANK MAY ONLY REQUIRE A SPOUSE'S SIGNATURE ON THOSE INSTRUMENTS NECESSARY TO MAKE THE COMMUNITY PROPERTY AVAILABLE TO THE BANK IN THE EVENT OF DEFAULT. KEEP IN MIND THAT THE SPOUSE'S SIGNATURE MAY NOT BE REQUIRED IF THE APPLICANT OWNS SUFFICIENT SEPARATE PROPERTY TO SUPPORT THE DEBT OR CAN CONTROL SUFFICIENT COMMUNITY PROPERTY TO ESTABLISH CREDITWORTHINESS. (EXPLAIN THAT DETAILED QUESTIONS ON SPECIFIC STATES MAY BE ANSWERED IN THE EVENING.)

IF THE CREDIT IS TO BE SECURED, THE BANK MAY ONLY REQUIRE THE SIGNATURE OF THE APPLICANT'S SPOUSE OR OTHER JOINT OWNER ON THOSE INSTRUMENTS NECESSARY TO CREDIT A VALID LIEN, PASS CLEAR TITLE, WAIVE INCHOATE RIGHTS, OR ASSIGN EARNINGS. OFTEN THE CREDITOR FEELS IT NECESSARY TO OBTAIN BOTH SIGNATURES ON THE NOTE OR OTHER DEBT INSTRUMENT IN ORDER TO GAIN CONTROL OF THE ASSET IN THE EVENT OF DEFAULT, ALTHOUGH STATE LAW MAY ONLY REQUIRE BOTH SIGNATURES ON THE SECURITY

INSTRUMENT. AT THIS TIME, WE ARE MAINLY CONCERNED WITH UNNECESSARY SIGNATURES ON NOTES (IF YOU ARE UNCLEAR AS TO THE REQUIREMENTS IN A PARTICULAR STATE, CONTACT YOUR REGIONAL CONSUMER SPECIALIST).

YOU SHOULD NOTE THAT A BANK MAY ALWAYS REQUEST A COSIGNER OR GUARANTOR IF THE APPLICANT DOES NOT MEET THE BANK'S STANDARDS OF CREDITWORTHINESS. HOWEVER, THE CHOICE OF THE SECOND PARTY MUST BE LEFT UP TO THE APPLICANT.

FOLLOWING ARE SOME EXAMPLES OF VIOLATIONS IN POLICIES OR PRACTICES AND THEIR ACCOMPANYING WHICH YOU MAY ENCOUNTER FREQUENTLY:

- STATE LAWS GIVING DOWER RIGHTS OR REQUIRING CONSIDERATION
- BENEFITS TO SPOUSE - CREDIT HISTORY - SPECIFY COSIGNER - SPOUSE IS JOINT OWNER - FATHER IS ALREADY CREDITWORTHY
- AGRICULTURAL GUARANTEES
- CLOSELY HELD CORPORATIONS
- COMMUNITY PROPERTY STATES

WE HAVE NOW COVERED THE IMPORTANT PROVISIONS OF THE REGULATION RELATING TO THE APPLICATION PROCESS AND ACCEPTED LOAN PROCEDURES. WHEN APPLICATIONS ARE DENIED OR OTHER ADVERSE ACTION IS TAKEN, REGULATION B REQUIRES THAT A WRITTEN NOTIFICATION OF ADVERSE ACTION BE PROVIDED TO THE APPLICANT. IT IS IMPORTANT TO REMEMBER THAT THIS REQUIREMENT APPLIES TO ORAL AS WELL AS WRITTEN APPLICATIONS. TO KNOW WHEN A WRITTEN NOTIFICATION IS REQUIRED YOU MUST REVIEW THE DEFINITION OF ADVERSE ACTION UNDER SECTION 202.2(c)(1) AND (2).

THE CREDITOR MUST NOTIFY THE APPLICANT OF ACTION TAKEN UPON THE APPLICATION 30 DAYS OF RECEIPT OF A COMPLETED APPLICATION OR COMPLETION OF THE ORAL APPLICATION PROCESS. NOTIFICATION IS ALSO REQUIRED WITHIN 30 DAYS OF TAKING ADVERSE ACTION ON AN UNCOMPLETED APPLICATION OR AN EXISTING ACCOUNT. IN ADDITION, NOTIFICATION OF ACTION TAKEN ON AN APPLICATION MUST BE GIVEN WITHIN 90 DAYS AFTER A SUBSTANTIALLY SIMILAR ALTERNATIVE OFFER HAS BEEN GIVEN TO THE APPLICANT AND THE OFFER HAS NOT BEEN ACCEPTED. (E.G. CREDIT CARD LIMIT OF 1,500 INSTEAD OF 2,000).

ALTHOUGH APPROVAL OF AN APPLICATION MAY BE GIVEN ORALLY OR BY IMPLICATION (E.G. RECEIPT OF CREDIT CARD, MONEY, OR SERVICES), NOTIFICATION OF DENIAL OR ANY ADVERSE ACTION MUST BE IN WRITING AND MUST INCLUDE SPECIFIC DISCLOSURES. THERE IS ONLY ONE EXCEPTION. WHERE THE BANK CAN VERIFY THAT IT RECEIVED NO MORE THAN 150 APPLICATIONS DURING THE PRECEDING YEAR, THE NOTIFICATIONS MAY BE PROVIDED ORALLY.

THESE DISCLOSURES INCLUDE: (REFER TO FLIP CHART) A STATEMENT OF THE ACTION TAKEN; THE ECOA NOTICE (202.9(B)(1) OR A SUBSTANTIALLY SIMILAR STATEMENT; AND EITHER A STATEMENT OF THE SPECIFIC REASONS FOR THE ACTION TAKEN OR A DISCLOSURE OF THE APPLICANT'S RIGHT TO A STATEMENT OF THE REASONS IF REQUESTED WITHIN 60 DAYS AFTER RECEIPT OF NOTICE OF ACTION TAKEN. THE BANK MUST DISCLOSE THE NAME, ADDRESS, AND TELEPHONE NUMBER WHERE THE REASONS MAY BE OBTAINED. THE STATEMENT OF REASONS MUST BE GIVEN WITHIN 30 DAYS AFTER THE BANK RECEIVES A REQUEST AND, IF GIVEN ORALLY, MUST BE ACCOMPANIED BY A DISCLOSURE OF THE RIGHT TO RECEIVE WRITTEN CONFIRMATION WITHIN 30 DAYS FROM WRITTEN REQUEST.

THE REGULATION PROVIDES A SAMPLE FORM WHICH MAY BE USED (APPENDIX A OF THE ECOA SECTION OF THE HANDBOOK) TO COMPLY WITH BOTH REGULATION B AND THE FCRA WHEN NOTIFYING APPLICANTS OF ACTION TAKEN.

REQUIRED NOTIFICATIONS NEED ONLY BE GIVEN TO ONE OF THE PRIMARILY LIABLE APPLICANTS IN ANY TRANSACTION. IN THE CASE OF MULTIPLE CREDITORS (E.G. INDIRECT DEALER TRANSACTIONS) EACH CREDITOR TAKING ADVERSE ACTION MUST NOTIFY THE APPLICANT OF SUCH ACTION. ALL CREDITORS MAY ARRANGE TO PROVIDE ONE NOTIFICATION IF THE IDENTIFY OF ALL CREDITORS IS GIVEN. THE BANK, AS A CREDITOR, IS RESPONSIBLE FOR PROVIDING ACCURATE AND TIMELY INFORMATION TO THE PARTY PROVIDING THE NOTIFICATION.

COMMON PROBLEMS ENCOUNTERED IN THIS AREA INCLUDE THE FAILURE TO PROVIDE NOTICES FOR ORAL APPLICATIONS OR FOR INCOMPLETE APPLICATIONS; SLOPPY COMPLETION OF SAMPLE FORM; AND THE USE OF REASONS OTHER THAN THOSE PERMITTED BY THE REGULATION WHICH ARE DISCRIMINATORY (E.G. "UNEMPLOYED"). ALL OF THESE VIOLATIONS ARE CAUSED BY INADEQUATE INTERNAL CONTROLS TO ENSURE PROPER COMPLETION OF THE NOTIFICATION. BE CERTAIN TO COMPARE THE BANK'S NOTICE TO THE SAMPLE PROVIDED IN THE REGULATION EVEN IF IT APPEARS SIMILAR. ANY REASONS USED WHICH ARE NOT GIVEN IN THE SAMPLE NOTICE SHOULD BE REVIEWED FOR THE POSSIBILITY OF USE OF PROHIBITED CRITERIA. DISCUSS INADVERTANT ERROR IF CORRECTION ACHIEVE PROSPECTIVELY.

REGULATION B REQUIRES THE CREDITOR TO RETAIN FOR 25 MONTHS AFTER NOTICE OF ACTION IS GIVEN ON BOTH EXISTING ACCOUNTS AND NEW APPLICATIONS (ACCEPTED AND REJECTED) THE FOLLOWING INFORMATION: (202.12(b))

- THE ORIGINAL OR A COPY OF ANY WRITTEN OR RECORDED INFORMATION USED IN EVALUATION OF THE APPLICATION NOT RETURNED AT APPLICANT'S REQUEST;
- COPY, RECORDED NOTATION, OR MEMORANDUM OF NOTICE OF ADVERSE ACTION AND THE REASONS FOR SUCH ADVERSE ACTION, (NOTICES AND MEMORANDUMS OF ORAL NOTICES MUST ALSO BE RETAINED); AND

O COPY OF ANY WRITTEN STATEMENT ALLEGING DISCRIMINATION OR ANY VIOLATION SUBMITTED BY THE APPLICANT, BE CERTAIN THAT REJECTED AND ORAL APPLICATION RECORDS ARE MAINTAINED! DISCUSS EXCEPTION WHEN INADVERTENT ERROR.

WHEN REVIEWING DOCUMENTATION CONTAINED IN LOAN FILES YOU WILL OFTEN ENCOUNTER PROHIBITED INFORMATION (E.G. SEX, MARITAL STATUS, NATIONAL ORIGIN, INFORMATION ON SPCUSE WHEN INDIVIDUAL APPLICATION). THIS INFORMATION MAY ONLY BE IN THE FILE IF IT WAS OBTAINED IN THE FOLLOWING MANNERS:

- FROM A CRA
- PRIOR TO THE EFFECTIVE DATE
- IF VOLUNTEERED
- IF REQUESTED BY ENFORCEMENT AGENCY TO MONITOR COMPLIANCE

IT IS IMPORTANT, HOWEVER, TO VERIFY THAT SUCH PROHIBITED INFORMATION WAS NOT CONSIDERED.

REGULATION B REQUIRES THAT CERTAIN INFORMATION BE MAINTAINED BY THE CREDITOR IN RESIDENTIAL REAL PROPERTY TRANSACTIONS SUBSEQUENT TO 3-23-77. THE APPLICANT MUST BE ASKED, BUT DOES NOT HAVE TO SUPPLY, INFORMATION REGARDING THE APPLICANT'S

RACE, NATIONAL ORIGIN, SEX, MARITAL STATUS, AND AGE. REQUIRED TERMINOLOGY MAY BE FOUND IN SECTION 202.13(A)(1). THE APPLICANT MUST ALSO BE INFORMED THAT THIS INFORMATION IS OPTIONAL AND THAT THE INFORMATION IS REQUESTED BY THE FEDERAL GOVERNMENT TO MONITOR COMPLIANCE WITH ANTI-DISCRIMINATION STATUTES. THIS INFORMATION MUST BE RETAINED IN THE CREDITORS FILE FOR 25 MONTHS IN ADDITION TO OTHER CREDIT RECORDS.

THE REGULATION PROVIDES FOR CERTAIN SPECIAL PURPOSE CREDIT PROGRAMS WHICH OFFER CREDIT TO PERSONS OF A PROTECTED CLASS WHICH MAY NOT HAVE EQUAL ACCESS TO CREDIT WITH OTHER PERSONS. IF CREDIT IS DENIED TO AN APPLICANT BECAUSE THE APPLICANT DOES NOT QUALIFY FOR SUCH A PROGRAM BECAUSE OF A PROHIBITED FACTOR (E.G. RACE, NATIONAL ORIGIN, ETC.) THE BANK IS NOT IN VIOLATION. (CONTACT YOUR REGIONAL CONSUMER SPECIALIST TO SEE IF THE CREDIT PROGRAM IN QUESTION QUALIFIES UNDER THE REGULATION). (202.8)

REGULATION B ALSO DEALS WITH CERTAIN SPECIALIZED CREDIT SUCH AS BUSINESS AND AGRICULTURAL CREDIT. COMMERCIAL AND AGRICULTURAL CREDIT ARE DEFINED AS BUSINESS CREDIT FOR PURPOSES OF REGULATION B. ALL BUSINESS CREDIT, IS SUBJECT TO THE GENERAL RULE (SECTION 202.4) UNDER REGULATION B (A CREDITOR SHALL NOT DISCRIMINATE AGAINST ANY APPLICANT ON ANY PROHIBITED BASIS WITH RESPECT TO ANY ASPECTS OF A CREDIT TRANSACTION). BANKS ARE ALSO SUBJECT TO MANY OF THE OTHER

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REQUIREMENTS OF REGULATION B IN CONNECTION WITH BUSINESS CREDIT. THE FOLLOWING IS A LIST OF THE PROVISIONS OF THE REGULATION THAT ARE CONCERNED WITH BUSINESS CREDIT:

1. MARITAL STATUS MAY ALWAYS BE ASKED IN BUSINESS CREDIT, BUT SEX MAY NOT BE ASKED;
2. THE PROVISIONS REQUIRING BANKS TO DETERMINE WHETHER ACCOUNTS ARE SHARED WITH SPOUSES ARE NOT APPLICABLE TO BUSINESS CREDIT;
3. THE BANK MUST PROVIDE THE NOTIFICATION RELATING TO ADVERSE ACTION IN BUSINESS CREDIT ONLY WHEN THE APPLICANT REQUESTS IN WRITING THE REASONS FOR ANY ADVERSE ACTION. THE REQUEST MUST COME WITHIN 30 DAYS AFTER ORAL OR WRITTEN NOTIFICATION THAT ADVERSE ACTION WAS TAKEN;
4. ANY RECORDS RELATING TO AN APPLICATION FOR BUSINESS CREDIT MUST BE RETAINED FOR 25 MONTHS AFTER NOTICE OF ACTION TAKEN ONLY WHEN THE APPLICANT REQUESTS IN WRITING THAT WITHIN 90 DAYS AFTER ADVERSE ACTION IS TAKEN THAT SUCH RECORDS BE RETAINED;
5. IF CREDIT IS APPLIED FOR IN THE NAME OF A BUSINESS FIRM, A BANK MAY INSIST THAT THE FIRM NAME BE USED; AND

6. IF CREDIT IS EXTENDED IN THE NAME OF A BUSINESS FIRM, A TELEPHONE LISTING IN THE BUSINESS FIRM'S NAME MAY BE TAKEN INTO CONSIDERATION.

REMEMBER, REGULATION B APPLIED TO INDIRECT CREDIT TRANSACTIONS TOO. A BANK IS RESPONSIBLE FOR MAINTAINING PROCEDURES TO CHECK THEIR DEALERS' COMPLIANCE WITH THE REGULATION IN ALL ASPECTS OF THE CREDIT TRANSACTION, INCLUDING INITIAL CONTACT.

REGULATION B SETS FORTH CIVIL LIABILITIES AND PENALTIES FOR ACTUAL AND PUNITIVE DAMAGES WHERE THE CREDITOR HAS FAILED TO COMPLY WITH THE REGULATIONS. PUNITIVE DAMAGES OF \$10,000 IN INDIVIDUAL SUITS AND \$500,000 OR 1% OF THE CREDITOR'S NET WORTH, WHICHEVER IS LESS, IN CLASS ACTION SUITS ARE PROVIDED. IN ADDITION, THE EQUITABLE REMEDY OF A PERMANENT OR TEMPORARY INJUNCTION OR RESTRAINING ORDER IS AVAILABLE. SUCCESSFUL COMPLAINANTS WILL ALSO BE AWARDED COURT COSTS AND ATTORNEY'S FEES. THE APPLICANT MAY BRING SUIT WITHIN TWO YEARS OF THE DATE OF THE VIOLATION.

IT IS IMPORTANT FOR US TO CONSIDER OUR POSITION WITH RESPECT TO ENFORCEMENT OF REGULATION B IN NATIONAL BANKS. OUR ROLE AS EXAMINERS IS A SUPPORTIVE ONE. ALTHOUGH IT IS OUR RESPONSIBILITY TO INVESTIGATE ANY COMPLAINTS OF DISCRIMINATION BY APPLICANTS, WE ARE NOT THERE TO PROVE A BANK DISCRIMINATES IN ITS LENDING POLICY. OUR RESPONSIBILITY IS TO PRESENT THE FACTS AS WE SEE THEM. IT IS OUR JOB TO DETECT ATTITUDES AND

POLICIES WHICH MAY BE DISCRIMINATORY, INFORM MANAGEMENT OF OUR FINDINGS, AND SATISFY OURSELVES THAT PROPER INTERNAL CONTROL PROCEDURES ARE ESTABLISHED TO CORRECT AND PREVENT DEFICIENCIES WHICH COULD LEAD TO LEGAL LIABILITY UNDER CONSUMER STATUTES.

ECOA

LECTURE No. 3 (INCLUDES SEPARATE INTERVIEWING AND EFFECTS TEST LECTURES)

SECTION 10

NEED: H.O. #2

REGULATION B - PROCEDURAL LECTURE

OUR EXAMINATION FOR REGULATION B FOLLOWS THE LOGICAL SEQUENCE OF EVENTS IN A CREDIT TRANSACTION. EXAMINATION PROCEDURES FIRST CALL FOR A REVIEW OF BLANK FORMS USING EP-B-1 (SEE HANDOUT NO. 1 AND BRIEFLY EXPLAIN ITS USE). WE WILL COVER IN BREAK-OUT GROUPS TOMORROW, THE USE OF THIS FORM IN REVIEWING BLANK FORMS AS REQUIRED BY EP'S 1.A., AND 3. PLEASE USE A BLANK COPY OF THIS FORM AND COMPLETE IT BY REVIEWING THE SAMPLE APPLICATION FORMS IN HANDOUT NO. 3 SOMETIME BEFORE TOMORROW AFTERNOON.

THE SECOND PART OF OUR EXAMINATION REQUIRES A DETERMINATION OF THE BANK'S KNOWLEDGE OF REGULATION B AS WELL AS THE BANK'S POLICIES (WHETHER WRITTEN OR UNWRITTEN) CONCERNING THE EXTENSION OF CREDIT. TO MAKE SUCH A DETERMINATION WE MUST EMPLOY THE TECHNIQUE OF INTERVIEWING BANK PERSONNEL. RICH WILL EXPLAIN THE METHODS PRESCRIBED BY THE REGULATION B PROCEDURES AND THE GUIDELINES TO FOLLOW.

INTERVIEWING LECTURE

WE HAVE DISCUSSED THE MANNER IN WHICH YOU WILL DETERMINE BANK POLICIES, AND IT IS IMPLICIT THAT YOU WILL REVIEW THESE POLICIES FOR VIOLATIONS OF THE REGULATION, BUT WE HAVE NOT YET DISCUSSED THE FACT THAT A BANK POLICY WHICH IS IN COMPLIANCE ON ITS FACE MAY RESULT IN DISCRIMINATION ON A PROHIBITED BASIS. THIS PHENOMENON IS KNOWN AS THE EFFECTS TEST AND ALAN HAS SOME GUIDELINES TO OFFER IN ITS APPLICATION TO OUR EXAMINATION FOR REGULATION B.

EFFECTS TEST LECTURE

INTERVIEWING

AS PART OF THE EXAMINATION FOR COMPLIANCE WITH REGULATION B AND FAIR HOUSING IT IS NECESSARY TO ASK QUESTIONS OF BANK MANAGEMENT AND PERSONNEL TO DETERMINE THEIR KNOWLEDGE OF FAIR LENDING PRACTICES AND WHETHER THIS KNOWLEDGE HAS LED TO ELIMINATION OF THE USE OF OUTDATED DISCRIMINATORY CRITERIA IN CREDIT EVALUATION. THIS DETERMINATION IS MADE BY CONDUCTING INTERVIEWS WITH APPROPRIATE BANK PERSONNEL. THESE INTERVIEWS ARE ONE OF THE MOST IMPORTANT PARTS OF THE EXAMINATION PROCESS BECAUSE THEY PROVIDE VALUABLE INFORMATION FOR USE IN COMPARING ACTUAL PRACTICES WITH STATED POLICIES AND THE LOAN SAMPLING PORTION OF THE EXAM. EARLY IN THE EXAM YOU SHOULD DETERMINE WHETHER THE BANK HAS A DESIGNATED COMPLIANCE OFFICER RESPONSIBLE FOR THE BANK'S COMPLIANCE WITH CONSUMER LAWS AND REGULATIONS. IF THERE IS SUCH A DESIGNATED OFFICER, YOU SHOULD INTERVIEW THIS INDIVIDUAL TO DETERMINE THEIR KNOWLEDGE OF THE REQUIREMENTS OF REG B, EP B 2, GUIDELINES FOR INTERVIEW OF BANK PERSONNEL, SHOULD BE USED FOR THIS INTERVIEW, AS IT PROVIDES A CONVENIENT CHECKLIST OF PERTINENT QUESTIONS.

IN ADDITION TO DETERMINING THE EXTENT OF THE DESIGNATED OFFICER'S KNOWLEDGE YOU MUST MAKE A PRELIMINARY DETERMINATION OF THE ADEQUACY OF THIS OFFICER'S PROGRAM FOR MONITORING

COMPLIANCE AND ENSURING ALL PERSONNEL RECEIVE PROPER TRAINING. AT A MINIMUM, THE DESIGNATED OFFICER'S PROGRAM SHOULD CONTAIN THE FOLLOWING:

- COMPREHENSIVE TRAINING PROGRAM FOR ALL APPROPRIATE BANK PERSONNEL.
- INTERNAL CONTROL PROCEDURES TO MONITOR COMPLIANCE AND/OR AUDIT PROGRAMS.
- REGULAR REPORTS TO BOARD ON THE BANK'S COMPLIANCE.
- PROGRAM OF CONTINUING EDUCATION FOR THE DESIGNATED OFFICER AND APPROPRIATE EMPLOYEES.

IN FOLLOWING E.P. #5B, IF THE BANK HAS NO DESIGNATED OFFICER, YOU MUST PERFORM V.P. #1. THIS PROCEDURE SIMPLY CONSISTS OF AN INTERVIEW OF LENDING OFFICERS AND/OR DEPARTMENT HEADS, AND FIRST CONTACT PERSONNEL TO DETERMINE THE BANK'S KNOWLEDGE OF REG B. THIS V.P. SHOULD ALSO BE PERFORMED WHENEVER THE DESIGNATED OFFICER ^{APPEARS TO HAVE} CONTAINED AN INCOMPLETE KNOWLEDGE OF THE REGULATION. V.P. #1(A) MAY BE A SHORT, VERY INFORMAL, DISCUSSION WITH RECEPTIONISTS, OFFICER'S SECRETARIES OR OTHER INDIVIDUALS WHO ANSWER TELEPHONE REQUESTS AND HANDLE WALKINS.

THESE FIRST CONTACT PEOPLE SHOULD BE ASKED WHETHER MANAGEMENT OF LENDING OFFICERS RELY ON THEM TO MAKE ANY PREJUDGMENTS

AS TO CREDITWORTHINESS. ALSO, IT IS IMPORTANT TO DETERMINE WHETHER RECEPTIONISTS OR SECRETARIES HAVE INSTRUCTIONS TO STEER CERTAIN TYPES OF INDIVIDUALS TO A PARTICULAR LOAN OFFICER. INQUIRE ABOUT ANY EDUCATION THEY HAVE RECEIVED FROM MANAGEMENT ON HOW TO ACT TOWARD A PROSPECTIVE APPLICANT. IN SHORT, THE INFORMAL INTERVIEW SHOULD TRY TO DETERMINE IF THESE "FIRST CONTACT" PERSONNEL TREAT ANY GROUP OF APPLICANTS DIFFERENTLY THAN ANOTHER GROUP OF APPLICANTS.

V.P. #1(B) DETERMINES WHETHER THE APPROPRIATE LENDING OFFICERS KNOW THE PROPER PROCEDURES TO FOLLOW FOR OFFERING, TAKING AND EVALUATING APPLICATIONS, PROVIDING NOTIFICATIONS, FURNISHING OF CREDIT INFORMATION AND RETENTION OF RECORDS. AGAIN, EP B 2 SHOULD BE USED AS ^ATHE GUIDELINE~~S~~ FOR THE INTERVIEW OF THE LENDING OFFICERS. THIS INTERVIEW CAN BE DONE WITH A GROUP OR ON A SEPARATE BASIS DEPENDING ON SIZE OF THE BANK.

IF THE DESIGNATED OFFICER'S COMPLIANCE PROGRAM IS INADEQUATE OR IF THE DESIGNATED OFFICER'S OR BANK'S KNOWLEDGE OF REG B IS INADEQUATE, V.P. #2 MUST BE PERFORMED USING GUIDELINE EP B 3. HERE WE INTERVIEW THE INDIVIDUALS WHO SET LENDING POLICIES TO DETERMINE THE BASIS USED TO EVALUATE CREDITWORTHINESS. THIS INTERVIEW IS NECESSARY WHEN THE BANK DOES NOT HAVE A WRITTEN POLICY TO EXTRACT INFORMATION FROM. MAY LET BANK FILL OUR EP B 3 AND THEN DISCUSS IT WITH OFFICER.

DURING ALL INTERVIEWS IT IS IMPORTANT TO ALWAYS BE VERY OPEN WITH EMPLOYEES AND OFFICERS. WHEN ASKED FOR ADVICE AS TO HOW APPLICANTS SHOULD BE HANDLED, DISCUSS WITH THEM THE REQUIREMENTS OF FAIR LENDING LAWS. REMEMBER THAT YOUR EXAMINATION SHOULD BE AN EDUCATIONAL TOOL FOR BANKS AS WELL AS A FACT FINDING MISSION FOR YOU[†], THE REGULATOR.

THE EP B 2 FORM AND THE OTHERS MENTIONED SHOULD ACT AS GUIDES. IT IS IMPORTANT TO COVER ALL ASPECTS OF THE CREDIT TRANSACTION, AND QUESTIONS SHOULD BE ASKED OF OFFICERS ON ALL PARTS OF REGULATION B TO GET A "FEEL" FOR THEIR GENERAL KNOWLEDGE.

RESULTS FROM YOUR INTERVIEWS SHOULD BE RETAINED FOR REFERENCE THROUGHOUT THE EXAMINATION. ANY CONSIDERATIONS WHICH APPEAR TO BE DISCRIMINATORY OR ANY VIOLATIONS^{NOTED} SHOULD BE DISCUSSED WITH MANAGEMENT. IN ADDITION, ANY VARIANCE FROM BANK POLICIES, AS STATED DURING INTERVIEWS, AND/OR NOTED DURING THE EXAMINATION SHOULD BE BROUGHT TO MGMT'S ATTENTION.

THERE IS A FINAL INTERVIEW WHICH SHOULD BE HELD AT THE CONCLUSION OF THE EXAMINATION. THIS IS E.P. #11. THE DISCUSSION SHOULD COVER ANY AND ALL VIOLATIONS FOUND IN STATED AND WRITTEN POLICY, EVALUATION PROCEDURES, AND ALL OTHER SECTIONS OF THE EXAM. ALSO, CORRECTIVE ACTION SHOULD BE DISCUSSED, COVERING BOTH MANAGEMENT'S PLANNED ACTION AND YOUR RECOMMENDATIONS.

FINALLY, THOSE VIOLATIONS WHICH WILL BE EMPHASIZED IN THE LETTER TO THE BOARD OF DIRECTORS SHOULD BE EMPHASIZED STRONGLY TO MANAGEMENT, SO NO PART OF THE REPORT WILL BE UNFAMILIAR. THE REPORT MUST NOT BE RETURNED TO THE BANK CONTAINING ANY SURPRISES.

"EFFECTS TEST" SECTION 202.6(A) FOOTNOTE 7 (P.10)

A. ANY INFORMATION OBTAINED BY THE BANK MAY BE CONSIDERED IN EVALUATING AN APPLICATION UNLESS:

1. PROHIBITED BY THE ACT (ECOA) AND REGULATION B
2. THE INFORMATION IS USED TO DISCRIMINATE AGAINST AN APPLICANT ON A PROHIBITED BASIS.

A. "EFFECTS TEST" IS APPLICABLE TO CREDITOR'S DETERMINATION OF CREDITWORTHINESS.

B. ORIGIN OF EFFECTS TEST

1. GRIGGS v. DUKE POWER COMPANY (L971)

A. TITLE VII CIVIL RIGHTS ACT OF 1964

TITLE VII AUTHORIZES THE USE OF ANY PROFESSIONALLY DEVELOPED ABILITY TEST IF IT IS NOT DESIGNED, INTENDED, OR USED TO DISCRIMINATE. (AGAINST A CLASS)

SUPREME COURT STATED IF AN EMPLOYMENT PRACTICE THAT OPERATES TO EXCLUDE A PROTECTED GROUP CANNOT BE SHOWN TO BE JOB RELATED, IT IS PROHIBITED EVEN IF THE EMPLOYER LACKS DISCRIMINATORY INTENT. (JUDICIAL DOCTRINE) (NOT A RULD OF CONSTITUTIONAL LAW).

PRACTICES NEUTRAL ON THEIR FACE OR IN TERMS OF INTENT, EVEN IF IN TECHNICAL COMPLIANCE, ARE PROHIBITED IF THEY ARE DISCRIMINATORY IN OPERATION AND CANNOT BE SHOWN TO BE RELATED TO JOB PERFORMANCE. (STATISTICALLY SIGNIFICANT)

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BUSINESS NECESSITY - DEMONSTRABLE
 (CUSTOMARY PROCEDURE) RELATIONSHIP

C. THREE STEP RULE:

EXAMPLE - HIGH SCHOOL DIPLOMA NEED TO OBTAIN CREDIT.

1. MINORITY GROUPS DISPROPORTIONATELY AFFECTED
 (I.E., AMONG CREDITOR'S APPLICANTS)
2. MANIFEST RELATIONSHIP - EDUCATED PEOPLE HAVE A BETTER
 REPAYMENT HISTORY
3. REBUTTAL: CONSIDER INCOME INSTEAD (CRITERIA WITH
 A LESSER POSSIBLE DISCRIMINATORY EFFECT)

ADDITIONAL EXAMPLE THAT DID NOT MEET THE EFFECTS
 TEST:

CARROLL V. EXXON

CREDIT CARD - DEPENDENTS - MARITAL STATUS

- * A DEMONSTRABLY AND STATISTICALLY SOUND, EMPIRICALLY DERIVED
 CREDIT SYSTEM - MUST BE PREDICTIVE (STATISTICALLY SIGNIFICANT)

TITLE VII EFFECTIVE 7/2/65

CHALKBOARD

5 DEPARTMENTS

*

LABOR	COAL HANDLING	OPERATIONS	MAINTENANCE
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LABORATORY AND TEST

* ONLY BLACKS EMPLOYED

1965 BLACKS NOT RESTRICTED TO LABOR DEPARTMENT ANYMORE,
BUT NEED HIGH SCHOOL DIPLOMA TO GET INTO ANOTHER DEPARTMENT.

ON 7-2-65: TWO APPTITUDE TESTS AND HIGH SCHOOL DIPLOMA
REQUIRED IN ANY BUT THE LABOR DEPARTMENT.

SAMPLING AND USE OF THE LINE SHEETS

AS PART OF YOUR EXAMINATION PROCEDURE FOR REGULATION B, YOU WILL COMPLETE A CONSUMER LOAN REVIEW SHEET FOR AN APPROPRIATE SAMPLE OF ACCEPTED AND REJECTED LOANS MADE IN THE PREVIOUS THREE MONTHS AND CURRENT MONTH. THE SAMPLE WILL CONSIST OF A RANDOM STATISTICAL SAMPLING OF LOANS IN EVERY DEPARTMENT. ADDITIONAL ITEMS MAY BE SELECTED LATER TO ISOLATE CAUSE OF VIOLATIONS OR IDENTIFY SPECIAL SITUATIONS.

AT THIS TIME, TAKE OUT A LINE SHEET, AND REFER TO THE REGULATION B EXAMINATION AND VERIFICATION PROCEDURES (HANDBOOK) BEFORE WORKING FILES, IT IS IMPORTANT TO HAVE REVIEWED:

1. POLICY
2. REG B QUESTIONNAIRE
3. BLANK FORMS

THE REASON FOR THIS IS THAT THE PURPOSE OF YOUR FILE WORK WILL BE TO DETECT:

1. USE OF POLICIES THAT YOU HAVE DETERMINED NOT TO BE IN COMPLIANCE. ACTUAL PRACTICE VS. POLICY
2. INCONSISTENCIES WITH POLICY
3. USE OF BLANK FORMS THAT ARE NOT IN COMPLIANCE

4. IMPROPER USE OF BLANK FORMS.

WHEN WORKING FILES YOU WILL BE CONTINUALLY MAKING COMPARISONS. COMPARE ACCEPTED AND REJECTED FILES TO EACH OTHER. COMPARE ACTUAL PRACTICE TO ADOPTED POLICIES.

THE FIRST ITEM YOU WILL BE WORKING FROM THE LOAN FILE WILL BE AN APPLICATION FORM. WHAT KIND OF INFORMATION WILL WE NEED TO DETERMINE A BANK'S COMPLIANCE WITH REGULATION B? LOOK AT THE LOAN REVIEW SHEET.

- A. LOAN TYPE: DIRECT, INDIRECT, INSTAL, REM, COMMERCIAL
- B. OFFICER/BRANCH? THIS INFORMATION WILL SERVE TO ISOLATE THE CAUSES OF VIOLATIONS (DISCUSS)
- C. INDICATE DEALER: AGAIN, THIS WILL HELP IN ISOLATION OF CAUSES OF VIOLATIONS.
- D. LOAN NUMBER:
- E. APPLICANT(S): MAKE A DETERMINATION FROM THE APPLICATION WHO IS IN FACT APPLYING FOR THE CREDIT. BE CAREFUL TO OBTAIN THIS INFORMATION FROM THE APPLICATION AND NOT THE NOTE DOCUMENT! NOTE AGE AND RACE IF POSSIBLE. IF INDIRECT APPLICATIONS ARE PHONED IN, THE OFFICER ACCEPTING CALLS SHOULD REQUIRE THE DEALER TO STATE WHO

WHO THE APPLICANT IS. SUCH INFORMATION WOULD BE REQUIRED BY THE BANK TO MONITOR COMPLIANCE WITH THE REGULATIONS. IF THE BANK DOES NOT OBTAIN THIS INFORMATION, THERE COULD BE AN INTERNAL CONTROL DEFICIENCY.

- F. AMOUNT AND TERM: TRY TO GET THIS FROM THE APPLICATION, NOT THE NOTE. THIS INFORMATION IS THEN COMPARED TO THE INFORMATION ON THE NOTE. ANY SUBSTANTIAL VARIATIONS COULD BE AN INDICATION OF DISCRIMINATION. ALSO IF CREDIT HAS BEEN GRANTED IN DIFFERENT TERMS THAN REQUESTED, NOTIFICATIONS UNDER REG B AND FCRA COULD BE REQUIRED.
- G. SECURITY: NOTE PURCHASE PRICE, DOWNPAYMENT AND SOURCE, LOAN VALUE. NOTE IF THE REQUEST IS FOR SECURED OR UNSECURED CREDIT. CAN THEY ASK MARITAL STATUS. AGAIN IF THE REQUEST WAS FOR UNSECURED AND THE CREDIT GRANTED WAS SECURED, DETERMINE THE REASON WHY. COULD TRIGGER NOTIFICATION UNDER REG B, OR THE FCRA, SINCE THE CREDIT MAY HAVE BEEN GRANTED UNDER LESS FAVORABLE TERMS THAN REQUESTED. ALSO NOTE SIGNATURES ON THE TITLE OF GOODS OFFERED AS SECURITY.

- H. OCCUPATION: LENGTH OF TIME ON THE JOB IS OFTEN A BASIS FOR REJECTION. IF YOU ARE TO HAVE A BASIS FOR COMPARISON BETWEEN REJECTED AND ACCEPTED FILES, YOU MUST HAVE THIS INFORMATION.
- I. INCOME: REVIEW THE APPLICATION FOR DISCOUNTING OF INCOME OR CONSIDERATION OR ALIMONY OR CHILD SUPPORT PAYMENTS AS A SOURCE OF REPAYMENT. LOOK AT WORKSHEETS USED BY THE BANK FOR COMPARISONS OF INCOME TO PAYMENTS. THESE ARE COMMON ON REM REQUESTS. OFTEN THEY WILL SHOW INCOME THAT AN APPLICANT HAS NOT OFFERED BY THE BANK, BUT THE BANK HAS OBTAINED FROM AN OUTSIDE SOURCE OR INCOME TAX RETURN.
- J. DEBT LOAD: AGAIN THIS IS A COMMON REASON FOR REJECTION. IT IS IMPERATIVE THAT YOU NOTE THIS ON ACCEPTED FILES TO GIVE YOU A BASIS OF COMPARISON.
- K. CREDIT SCORE: IF A SCORING SYSTEM IS USED NOTE THE SCORE.
- L. CREDIT HISTORY: AGAIN LACK OF OR A POOR CREDIT HISTORY IS A BASIS FOR REJECTION. COMPLETE NOTATION OF THE NUMBER OF ACCOUNTS AND THE RATINGS REPORTED BY A CRA IS ESSENTIAL. NOTE HERE THE EXTENT AND QUALITY OF A CUSTOMER'S RELATIONSHIP WITH THE BANK IN THE PAST. OUTSIDE INFORMATION FROM OTHER SOURCES WOULD ALSO BE REPORTED HERE.

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- M. APPLICATION DATE: CHECK FOR TIMING OF NOTIFICATION OF ACCEPTANCE OR REJECTION. REG B REQUIRES NOTIFICATION IN 30 DAYS, OR 90 DAYS IF A COUNTER OFFER WAS MADE BY THE BANK. COMPARE THIS DATE WITH THE DATE ON THE GFE. (RESPA)
- N. SIGNATURES ON THE APPLICATION: WHO APPLIED.
- O. SIGNATURES ON NOTES: DO THE SIGNATURES ON THE NOTES COMPARE TO THE SIGNATURES ON THE APPLICATION?
- P. SIGNATURE ON THE SECURITY INSTRUMENT: AGAIN THE PURPOSE OF THIS IS TO DETECT SIGNATURE VIOLATIONS. IS IT NECESSARY TO SIGN THE SECURITY AGREEMENT? IF YOU SEE THAT ONLY ONE PARTY IS SIGNING THE NOTE AND BOTH THE HUSBAND AND THE WIFE SIGN THE SECURITY AGREEMENT, IT COULD INDICATE THAT THE BANK IS IN COMPLIANCE. ON THE OTHER HAND, IF BOTH SIGN THE NOTE AND SECURITY AGREEMENT, AND THE APPLICATION WAS SIGNED BY ONLY ONE, THIS COULD BE AN INDICATION OF NONCOMPLIANCE.
- Q. MARITAL STATUS: WAS BANK IN COMPLIANCE. CAN REQUEST IF JOINT OR SECURED CREDIT. IF REQUEST WAS FOR OTHER THAN JOINT OR SECURED CREDIT, THIS COULD BE A VIOLATION.

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- R. NUMBER OF DEPENDENTS:
- S. ADDRESS: BE ALERT FOR CONCENTRATIONS OF ADDRESSES IN CERTAIN AREAS. LENGTH OF TIME IN AREA IS IMPORTANT IN THAT IS OFTEN A BASIS FOR DENIAL.
- T. APPRAISAL PORTION: BE DETAILED, A DESCRIPTION OF ONE-STORY FRAME RS. IS NOT SUFFICIENT. COMMENT ON NEIGHBORHOODS, ETC. COMPLETE DESCRIPTIONS ARE NECESSARY FOR YOUR FAIR HOUSING PROCEDURES.

THE INFORMATION YOU HAVE ACCUMULATED SO FAR HAS COME FROM THE NOTE AND APPLICATION FORM. OTHER SOURCES INCLUDE OFFICER COMMENTS, FINANCIAL STATEMENTS, INCOME TO DEBT SHEETS OR OTHER INTERNAL WORKSHEETS APPRAISALS. OF COURSE, REJECTED FILES WILL NOT CONTAIN NOTES, BUT OTHER PERTINENT INFORMATION WILL BE IN THE FILE. COMPLETENESS OF FILE WORK IS IMPORTANT IF YOU ARE TO DO ACCURATE EVALUATION OF THE BANK'S APPLIED LENDING PRACTICES.

NOW LOOK AT YOUR EXAMINATION PROCEDURES FOR REGULATION B. WHAT TYPES OF THINGS WILL BE LOOKING FOR IN THE INFORMATION WE HAVE ACCUMULATED. LOOK AT EXAM PROCEDURES #6 AND #7. BE SURE WHEN YOU TRANSCRIBE INFORMATION FROM THE FILE, THAT YOU INCLUDE INFORMATION ON THE CO-APPLICANT, AND GUARANTOR. IF THERE IS A GUARANTEE IN THE FILE NOTE THE SIGNATURES ON THE GUARANTEE. THIS MAY BE RECORDED NEXT TO THE SIGNATURE ON THE NOTE OR ANYWHERE THERE IS ROOM.

TAKE A LOOK AT THE REGULATION B PORTION OF THE LINE SHEET.

A. CREDIT DECISION POLICY FOLLOWED?

- EP #6A 1. COMPARE APPLICANT INFORMATION TO THE CRITERIA
 VP #4A ESTABLISHED BY THE LOAN POLICY OR THE POLICY
 VP #4(I) YOU HAVE DEVELOPED FROM THE REGULATION B
 202.6(B)(1) GENERAL CHECKLISTS. INCONSISTENCIES MAY INDICATE
 (B)(2) AGE DISCRIMINATION. (EXPLAIN THE LEGEND AND HOW
 (B)(7) CITI- TO NOTE)
 ZENSHIP
- (A) THIS IS PARTICULARLY IMPORTANT FOR
 REJECTIONS
- (B) VARIANCES IN POLICY SHOULD BE DISCUSSED
 WITH MANAGEMENT
- (C) EXPLAIN DEVIATIONS FROM POLICY IN THE
 COMMENTS SECTION

B. WHO COMPLETES THE APPLICATION?

- EP 6(B) 1. IF THE OFFICER COMPLETES THE APPLICATION,
 PERFORM VERIFICATION PROCEDURE #3. (DOES
 OFFICER REQUEST INFORMATION PROHIBITED BY
 202.5(C) & (D) AND IS NOTIFICATION OF REJEC-
 TION PROPERLY HANDLED. (SECTION 202.9(A)(2)).

C. APPLICATION PROPERLY COMPLETED?

1. (DISCUSS THOROUGHLY)
2. INDICATION OF INTERNAL CONTROL WEAKNESS WHEN THE FORMAT DESIGNED TO INSURE COMPLIANCE IS NOT USED.
3. IF BANK HAS A FORM THAT COMPLIES, AND DOES NOT PROPERLY USE IT AND THEY DON'T HAVE PROCEDURES IN EFFECT TO DETECT IMPROPER USAGE, CAN THEY PROVE A "GOOD FAITH ATTEMPT" TO COMPLY WITH REGULATION B? No.

D. ACCOUNT OFFERED FOR INDIVIDUAL CREDIT?

VP 4 F

1. SECTION 202.7(A) REQUIRES INDIVIDUAL ACCOUNTS BE OFFERED REGARDLESS OF SEX, MARITAL STATUS OR ANY OTHER PROHIBITED BASIS.
2. IF CREDIT WAS DENIED A CREDITWORTHY APPLICANT BECAUSE THE SPOUSE COULDN'T SIGN OR BECAUSE OF AGE, THIS IS A VIOLATION AND WOULD BE NOTED AS SUCH (X) ON THE SHEET.

E. CHOICE OF COSIGNER ALLOWED?

VP 4(H)

1. SECTION 202.7(D)(5) REQUIRES THAT THE SPOUSE SHOULD NOT BE REQUIRED TO BE THE SECOND PARTY, EXCEPTION, IF THE APPLICANT IS RELYING ON SEPARATE INCOME OF ANOTHER PERSON.

2. LOOK AT THE APPLICATION INFORMATION YOU HAVE OBTAINED. HAS OFFICER MADE COMMENT THAT THE CO-SIGNER WILL BE THE WIFE? THE FATHER? SINGLE SIGNATURE ON APPLICATION AND BOTH SIGNATURES ON THE NOTE COULD INDICATE THAT THE CHOICE WAS NOT LEFT TO THE APPLICANT. IF YOU QUESTION PRIORITY OF THE DUAL SIGNATURES, QUESTION THE OFFICER AND RECORD HIS COMMENTS.

F. INFORMATION ON THE SPOUSE PERMITTED?

VP 3(A)

1. SECTION 202.5(c) OUTLINES WHEN INFORMATION ABOUT A SPOUSE OR FORMER SPOUSE MAY BE PERMITTED.
2. YOU MUST DETERMINE WHETHER ANY INFORMATION RECORDED ABOUT THE SPOUSE WAS REQUESTED IN VIOLATION OF 202.5(c). EXPLAIN WHY THE INFORMATION WAS NOT PERMITTED (E.G. THE SPOUSE INFORMATION WAS NOT NECESSARY SINCE SPOUSE WAS NOT SUPPORTING THE DEBT, LIABLE FOR IT OR COMMUNITY PROPERTY WAS NOT INVOLVED, BUT APPLICATION FORM REQUESTED INFORMATION AS A MATTER OF COURSE.) IF THE APPLICATION CONTAINED ONLY INFORMATION CONCERNING THE APPLICANT AND THE NOTE WAS SIGNED ONLY BY THE

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APPLICANT, BUT THE CREDIT FILE CONTAINED OFFICER'S COMMENTS CONCERNING THE MARITAL STATUS OF THE APPLICANT AND/OR INFORMATION CONCERNING THE SPOUSE, SUCH INFORMATION SHOULD BE LISTED UNDER COMMENTS AND INVESTIGATED TO DETERMINE WHETHER THE INFORMATION WAS OBTAINED BY THE OFFICER IN VIOLATION OF THE REGULATION THROUGH ORAL QUESTIONING.

3. DISCUSS PROBLEMS ENCOUNTERED IN INDIRECT APPLICATIONS. DEALERS TEND TO GET PROHIBITED INFORMATION IN THEIR ENDEAVOR TO OBTAIN COMPLETE INFORMATION ON THE APPLICANT FOR THE BANK.

6. SPOUSE SIGNATURE OBTAINED?

EP 6(D)

1. SECTION 202.7(D). GENERALLY, THE BANK MUST NOT REQUIRE THE SIGNATURE OF THE SPOUSE ON THE NOTE OR GUARANTEE.
2. IF BOTH SIGNATURES ARE NOTED, REVIEW THE MATERIAL GATHERED ON THE APPLICATION TO TRY AND MAKE A DETERMINATION IF THE SPOUSE'S SIGNATURE IS REQUIRED.
3. BE ALERT FOR CONCENTRATIONS OF DUAL SIGNATURES ON THE NOTES YOU REVIEW. SUCH A CONCENTRATION CAN INDICATE THAT THE SIGNATURES ARE REQUIRED.

H. PROHIBITED INFORMATION IN FILE?

- EP 6(E)
1. SECTION 202.12(A) OUTLINES CASES IN WHICH PROHIBITED INFORMATION MAY BE RETAINED IN THE FILE.
 - A. CRA
 - B. BEFORE EFFECTIVE DATE
 - C. VOLUNTEERED
 - D. MONITORING INFORMATION
 2. IF PROHIBITED INFORMATION IS IN THE FILE, YOU SHOULD DETERMINE IF SUCH INFORMATION WAS OBTAINED AS ALLOWED BY THIS SECTION, IF NOT, NOTE AS A VIOLATION.

I. PROHIBITED INFORMATION CONSIDERED?

1. BE ALERT FOR PROHIBITED INFORMATION IN THE FILE THAT WAS ALLOWED, BUT SHOULD NOT BE CONSIDERED. (INFORMATION OBTAINED IN H ABOVE; AGE, NATIONAL ORIGIN, OR INFORMATION RECEIVED FOR MONITORING PURPOSES. (SECTION 202.12)
2. FILE COMMENTS OR REASONS GIVEN FOR DENIAL MAY ALERT YOU AS TO CONSIDERATION OF THESE FACTORS.

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3. OLD LOAN APPLICATIONS MAY CONTAIN INFORMATION PROHIBITED BY REGULATION B AND THE NEW APPLICATION TAKEN, OR SUPPORTING WORK SHEETS MAY SHOW THAT SUCH INFORMATION WAS CONSIDERED, (SECTION 202.6(A)) RULES CONCERNING EVALUATION.
4. YOU SHOULD ASCERTAIN WHETHER INFORMATION IN THE FILE ON A PROHIBITED BASIS IS CONSIDERED IN VIOLATION OF 202.6(B)(1). THE INFORMATION MAY BE CONSIDERED IN VIOLATION ALTHOUGH NOT OBTAINED IN VIOLATION. WHENEVER AGE IS CONSIDERED, BE CERTAIN THAT THERE IS A DEMONSTRABLY AND STATISTICALLY SOUND, EMPIRICALLY DERIVED CREDIT SYSTEM USED AND THAT ELDERLY APPLICANTS ARE NOT ASSIGNED A NEGATIVE VALUE. (12 CFR 202.6(B)(2)(II)) IN A JUDGMENTAL SYSTEM, AGE AND RECEIPT FROM A PUBLIC ASSISTANCE PROGRAM MAY ONLY BE CONSIDERED IF FOR THE PURPOSE OF DETERMINING A PERTINENT ELEMENT OF CREDITWORTHINESS. (202.6(B)(2)(III)) FOOTNOTE #9

J. CREDIT HISTORY CONSIDERED AS REQUIRED?

1. SECTION 202.6(B)(6)(I), THE CREDIT HISTORY OF ACCOUNTS FOR WHICH THE APPLICANT IS A USER OR CONTRACTUALLY LIABLE, EVEN IF LISTED IN A SPOUSE'S NAME.

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- A. FOR EXAMPLE, BE ALERT FOR A REJECTION THAT MAY BE ACCOMPANIED BY A CREDIT REPORT THAT SHOWS CREDIT TO ONLY THE HUSBAND AND ON WHICH THE WIFE WAS REJECTED BECAUSE SHE HAD INSUFFICIENT CREDIT HISTORY. THIS COULD INDICATE THAT THE BANK DID NOT PROPERLY CONSIDER HER HISTORY. DISCUSS WITH MANAGEMENT AND MAKE COMMENTS.
 - B. ALSO APPLICATION FORMS MAY ONLY ASK FOR PREVIOUS ACCOUNTS HELD IN THE APPLICANT'S NAME.
2. SECTION 202.6(B)(6)(II) AND (III). ON THE APPLICANT'S REQUEST, ANY INFORMATION INDICATING THAT THE CREDIT HISTORY OF ANY ACCOUNT DOES OR DOES NOT ACCURATELY REFLECT THE APPLICANT'S ABILITY TO REPAY, EVEN IF LISTED IN SPOUSE'S NAME.
- A. AGAIN, THIS SITUATION MAY BE DISCOVERED IN A REJECTED APPLICATION PARTICULARLY IF A HUSBAND AND A WIFE ARE SEPARATED AND THE HUSBAND HAS A POOR RECORD. THIS SITUATION SHOULD BE DISCUSSED WITH THE BANK TO DETERMINE IF THE OFFICER GAVE HER A CHANCE (OR EVENT KNEW THAT HE SHOULD) TO OFFER EVIDENCE THAT THE REPORT DID NOT DEMONSTRATE HER CREDIT EXPERIENCE. BE ALERT FOR FILE COMMENTS THAT MAY INDICATE CONSIDERATIONS GIVEN.

K. ANY INCOME DISCOUNTED IN VIOLATION?

VP 4(D) 1. SECTION 202.6(B)(5) REQUIRES THAT INCOME OF
 VP 4(C) THE APPLICANT OR SPOUSE NOT BE DISCOUNTED ON
 A PROHIBITED BASIS, BECAUSE IT IS PART-TIME,
 OR BECAUSE IT IS DERIVED FROM AN ANNUITY,
 PENSION, OR OTHER RETIREMENT BENEFIT. ANY
 INCOME MAY BE CONSIDERED TO THE EXTENT IT
 IS LIKELY TO BE CONTINUED.

A. VIOLATIONS MAY BE DISCLOSED BY NOTING
 OFFICER COMMENTS, OR REVIEW OF INCOME
 TO DEBT SHEETS PREPARED BY THE BANK
 WHICH MIGHT SHOW THE DISCOUNTING OF
 INCOME. (GIVE EXAMPLE)

B. YOU MIGHT FIND A REJECTION BASED SOLELY
 ON THE FACT THAT THE APPLICANT'S ONLY
 SOURCE OF INCOME WAS PUBLIC ASSISTANCE
 INCOME, OR A REJECTION BECAUSE THE APPLI-
 CANT WAS UNEMPLOYED.

L. CHILDBEARING INTENTIONS CONSIDERED?

VP 4(E) 1. SECTION 202.6(B)(3). YOU SHOULD DETERMINE
 WHETHER ASSUMPTIONS OR STATISTICS RELATED TO
 THE LIKELIHOOD OF CHILDBEARING OR REARING ARE
 CONSIDERED. THIS SHOULD ALWAYS BE DETERMINED
 IF SUCH INFORMATION IS INDICATED ON THE LINE
 SHEET AS BEING REQUESTED OR OTHERWISE OBTAINED.

A. YOU MAY DISCLOSE VIOLATIONS OF THIS THROUGH COMMENTS MADE ON THE APPLICATION, OR DISCOUNTING OF INCOME DUE TO THE LIKELIHOOD OF THE APPLICANT HAVING A BABY.

M. DETERMINATION OF JOINT ACCOUNT FOR MARRIED APPLICANTS?

1. SECTION 202.10(A). THE BANK MUST HAVE THE ABILITY TO PROVIDE CREDIT HISTORIES IN THE NAME OF EACH PARTY TO THE CREDIT. IF SPECIFIC REQUESTS ARE MADE FOR ONE SPOUSE, THE BANK MUST BE ABLE TO FURNISH THE DATA IN THE NAMES OF THAT SPOUSE ONLY.

A. THUS, IF BOTH NAMES APPEAR ON THE APPLICATION AND THE NOTE, THE FILE MUST BE DESIGNED SO THAT EACH SPOUSE'S HISTORY COULD BE RETRIEVED FROM THE FILE.

N. CREDIT RECORDS MAINTAINED?

1. SECTION 202.12(B). YOU SHOULD ASCERTAIN WHETHER REQUIRED RECORDS, (APPLICATIONS, AND ANY WRITTEN OR RECORDED INFORMATION USED) ARE MAINTAINED FOR 25 MONTHS AFTER NOTIFICATION OF ACTION IS GIVEN. IN ADDITION, IN FILES FOR RESIDENTIAL REAL ESTATE LOANS, YOU SHOULD CHECK TO SEE IF INFORMATION REGARDING RACE, NATIONAL

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ORIGIN, SEX, MARITAL STATUS, AND AGE OF THE APPLICANT IS REQUESTED AND MAINTAINED WITH OTHER CREDIT RECORDS FOR 25 MONTHS.

- A. MAKE SURE THIS INFORMATION IS MAINTAINED ON REJECTIONS.
- B. MAKE SURE INFORMATION FOR MONITORING PURPOSES IS OBTAINED.
- C. IF INFORMATION FOR MONITORING PURPOSES IS NOT PROVIDED BY THE APPLICANT, THAT FACT IS NOTED ON THE APPLICATION. (202.13(c))

0. PROPER NOTIFICATION GIVEN (REASON AND ECOA)?

- 1. YOU SHOULD INDICATE WHETHER NOTIFICATION OF ACTION WAS GIVEN WITHIN 30 DAYS OF APPLICATIONS, 30 DAYS AFTER TAKING ADVERSE ACTION, OR 90 DAYS AFTER OFFER OF ALTERNATIVE CREDIT TERMS (SECTION 202.9(A)(1)).
- 2. ANY NOTIFICATION OF ADVERSE ACTION MUST CONTAIN THE ACTION TAKEN, ECOA NOTICE AND THE SPECIFIC REASONS FOR DENIAL (OR DISCLOSURE THAT THE REASONS ARE AVAILABLE BY REQUEST WITHIN 60 DAYS AS REQUIRED BY SECTIONS 202.9(A) AND (B)).

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- A. REMEMBER THAT ADVERSE ACTION NEED NOT BE REJECTION, LESS FAVORABLE TERMS CONSTITUTES ADVERSE ACTION. BE ALERT FOR DIFFERING FINAL TERMS ON THE NOTE AND THOSE REQUESTED ON THE APPLICATION. DIFFERENCES SHOULD BE FULLY DISCUSSED TO DETERMINE IF PROPER NOTIFICATION WAS REQUIRED.
- B. BE ALERT TO THE REASONS NOTED FOR REJECTION.
 - 1. ARE THEY COMPLETE?
 - 2. ARE THEY VALID IN LIGHT OF THE BANK'S POLICY? (DEVIATIONS FROM POLICY MAY INDICATE DISCRIMINATION.)
 - 3. ARE THEY DOCUMENTED AND THEREFORE SUPPORTED BY THE FILE?

ONCE YOU HAVE COMPILED ALL YOUR FILE WORK AND MADE SOME CONCLUSIONS, MAKE A COMPLETE REVIEW OF ALL YOUR LINE SHEETS. THE EXAMINER SHOULD BEGIN A CAREFUL REVIEW AND COMPARISON OF BOTH ACCEPTED AND REJECTED APPLICATIONS FOR EVIDENCE OF DISCRIMINATION AS TO SEX OR MARITAL STATUS, OR OTHER PROHIBITED BASIS. THE BANK'S WRITTEN LOAN POLICY SHOULD BE AVAILABLE AS A REFERENCE AT THIS POINT. NOTE HOW APPLICATION FORMS THAT YOU HAVE REVIEWED AS PART OF THE BLANK FORM REVIEW HAVE BEEN USED INCORRECTLY. FOLLOWING IS A LIST OF THINGS TO LOOK FOR WHEN REVIEWING THE LINE SHEETS WHICH MAY INDICATE DISCRIMINATION ON THE BASIS OF SEX OR MARITAL STATUS:

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- A. ALL LOANS TO MARRIED INDIVIDUALS HAVE A COSIGNER AND THE APPLICANT AND ANY SECURED PROPERTY, ARE NOTE LOCATED IN A COMMUNITY PROPERTY STATE.
- B. LOANS TO APPLICANTS OF A PARTICULAR SEX OR MARITAL STATUS MAY ONLY HAVE ONE SIGNATURE. SIMILARLY, THE LOAN MAY CONTAIN TWO SIGNATURES ALTHOUGH THE APPLICATION WAS FOR INDIVIDUAL CREDIT.
- C. TERMS OF THE LOANS TO MARRIED APPLICANTS ARE MORE FAVORABLE THAN TO UNMARRIED APPLICANTS, OR MORE STRICT CREDIT CRITERIA WAS APPLIED TO INDIVIDUALS WHO ARE UNMARRIED OR OF A PARTICULAR SEX.
- D. LOANS FOR BUSINESS PURPOSES WHICH ARE SIGNED BY PRINCIPALS AND GUARANTEED BY PRINCIPALS MAY ALSO BE GUARANTEED BY THEIR SPOUSES. FURTHER INVESTIGATION IS DESIRABLE TO DETERMINE WHETHER UNMARRIED PRINCIPALS MUST ALSO SUPPLY AN ADDITION GUARANTOR.
- E. THE REASONS FOR DENIAL OF CREDIT IN REJECTED LOAN FILES CANNOT BE SUBSTANTIATED BY THE APPLICATION OR OTHER CREDIT INFORMATION.
- F. SECURED LOANS MAY BE SIGNED BY MARRIED, JOINT OWNERS WHO DID NOT SIGN THE APPLICATION. TRY TO DETERMINE IF THE BANK HAS A POLICY OF REQUIRING JOINT OWNERS TO SIGN THE NOTE AS WELL AS SECURITY INSTRUMENTS.

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SUCH A POLICY IS PROHIBITED BY THE REGULATION UNLESS STATE LAW REQUIRES THAT BOTH SPOUSES MUST SIGN THE DEBT INSTRUMENT IN ORDER TO CREATE A VALID SECURITY INSTRUMENT. THE BANK MAY HAVE RECEIVED ADVICE FROM THEIR COUNSEL ON THIS MATTER. REGIONAL CONSUMER SPECIALIST CAN VERIFY THE EXISTENCE OF SUCH STATE LAWS IN YOUR AREA.

IT IS NOT UNCOMMON FOR LOAN OFFICERS TO HANDLE AN ENTIRE CREDIT APPLICATION ORALLY. OFFICERS SHOULD RETAIN MEMORANDUMS OR NOTATIONS OR ORAL CONVERSATIONS WITH THE APPLICANT REGARDING THE NOTIFICATION OF ACTION TAKEN AND THE REASONS FOR DENIAL IF REQUESTED AND GIVEN ORALLY. THE DATE OF THE NOTICE AND REASONS FOR DENIAL SHOULD BE LISTED UNDER THE "COMMENTS" SECTION OF THE LOAN REVIEW SHEET. ANY WRITTEN REMARKS ALLEGING DISCRIMINATION BY THE APPLICANT SHOULD ALSO BE RECORDED ON THE LINE SHEET. (BRIEFLY DISCUSS WHAT TO DO IN A BANK THAT HAS ORAL APPLICATION PROCESS)

- A. RELY ON THE SIGNATURES OF NOTES TO INDICATE VIOLATIONS.
- B. YOUR EMPHASIS WILL BE ON THE LENDING PRACTICES OF THE BANK.

IF, FROM YOUR FILE WORK YOU HAVE REASON TO SUSPECT DEFICIENCIES IN A PARTICULAR AREA, WORK FILES THAT WILL HELP YOU IN MAKING YOUR FINAL DETERMINATION ON THE

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PRIORITY OF THE BANK'S PRACTICE. FOR EXAMPLE, IF YOU SUSPECT THAT A BANK MAY BE GATHERING INFORMATION ON OR A SIGNATURE OF A SPOUSE, YOU MAY WORK FILES THAT MAY HIGHLIGHT SUCH PRACTICES. A GOOD SOURCE FOR THIS IS TO SELECT OR REVIEW UNSECURED LOANS. THIS IS A LESS COMPLICATED FILE TO REVIEW THAN ONE WITH SECURITY, SINCE YOU WILL NOT WONDER IF THE BANK OBTAINED SIGNATURES TO PERFECT SECURITY INTERESTS.

IF THE REGIONAL CONSUMER SPECIALIST HAS SUBMITTED TO THE EXAMINER CORRESPONDENCE REGARDING DISCRIMINATION COMPLAINTS, THESE COMPLAINTS SHOULD BE CAREFULLY INVESTIGATED. THE REJECTED LOAN FILE SHOULD BE PULLED AND SCRUTINIZED FOR INFORMATION WHICH MAY INDICATE A VIOLATION OF THE REGULATION. THE LENDING OFFICER SHOULD BE INTERVIEWED TO DETERMINE THE CRITERIA WHICH WAS USED IN EVALUATION OF THE APPLICATIONS. RESULTS OF THE INVESTIGATION SHOULD BE SUBMITTED TO THE REGIONAL CONSUMER SPECIALIST, AND ANY VIOLATIONS DISCOVERED SHOULD BE DISCUSSED WITH MANAGEMENT AND NOTED IN THE REPORT.

ANY INCONSISTENCIES AMONG SIMILAR EXTENSIONS OF CREDIT AND BETWEEN ACCEPTED AND REJECTED APPLICATIONS SHOULD BE DISCUSSED WITH THE OFFICER AND MANAGEMENT. INCONSISTENCIES BETWEEN WRITTEN AND ACTUAL POLICY SHOULD ALSO BE BROUGHT TO MANAGEMENT'S ATTENTION. THESE MAY BE INDICATIONS OF DISCRIMINATORY LENDING PRACTICES. THE EXAMINER SHOULD MAKE APPROPRIATE COMMENTS ON HIS

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FINDINGS AND MANAGEMENT'S CORRESPONDENCE RESPONSE IN THE REPORT OF EXAMINATION. IT IS NOT EXPECTED THAT FIELD EXAMINERS MUST MAKE DECISIONS AS TO WHETHER DISCRIMINATION HAS TAKEN PLACE. WE MUST SIMPLY PRESENT THE FACTS FOR REVIEW. IT IS OUR JOB TO PRESENT TO MANAGEMENT SPECIFIC EXAMPLES FOUND WHILE SAMPLING WHICH COULD LEAVE THE BANK OPEN FOR LIABILITY.

ANY VIOLATIONS INDICATED ON THE LINE SHEET SHOULD BE COMPILED FOR REVIEW WITH MANAGEMENT.

FCRA - SAMPLING

IF YOU HAVE DETERMINED (E.P. 2 AND 3) THAT THE BANK USES INFORMATION FROM AN OUTSIDE SOURCE, YOU MUST CHECK FOR REQUIRED DISCLOSURES IN REJECTED LOAN FILES. IF INFORMATION FROM A CRA LED TO A DENIAL OF CREDIT (OR ANY ADVERSE ACTION), SO INDICATED AND VERIFY (V.P.1.) THAT THIS WAS DISCLOSED TO THE CONSUMER INCLUDING THE NAME AND ADDRESS OF THE CRA AS REQUIRED BY 15 U.S.C. 1681M(A). IF INFORMATION FROM A THIRD PARTY OTHER THAN A CRA LED TO THE ADVERSE ACTION, INDICATE THIS ON THE LINE SHEET AND VERIFY (V.P.2.) THAT THE BANK DISCLOSED THE RIGHT TO FILE A WRITTEN REQUEST FOR THE NATURE OF THE INFORMATION WITHIN 60 DAYS OF THE NOTIFICATION. REVIEW REASONS FOR DENIAL GIVEN UNDER B TO DETERMINE WHETHER OUTSIDE INFORMATION WAS USED.

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IF YOU HAVE REJECTED INDIRECT APPLICATIONS IN YOUR SAMPLE (THE BANK MUST RETAIN ALL RECORDS RELATING TO INDIRECT CREDIT REQUESTS FOR 25 MONTHS WHETHER THE CREDIT WAS EXTENDED OR NOT), VERIFY (V.P.I.A. AND 2.A.) THAT PROPER DISCLOSURES WERE MADE AS ABOVE BY THE BANK AND THAT THE DEALER DISCLOSED TO THE CONSUMER THE NAME AND ADDRESS OF THE BANK IN ORDER FOR THE BANK TO AVOID ISSUING A CRA.

YOU MUST HAVE AN ANSWER FOR ALL REQUESTS ON THE LINE SHEET, ANY (0) ANSWER MUST BE FURTHER EXPLAINED UNDER COMMENTS, UNLESS UPON FURTHER CHECKING A VIOLATION (X) OR COMPLIANCE (✓) IS DETERMINED. BE CERTAIN THAT ALL EXAMINATION AND VERIFICATION PROCEDURES REGARDING THE SAMPLE, AS LISTED IN YOUR HANDBOOK, HAVE BEEN PERFORMED BEFORE INDICATING (✓) THAT ALL PROCEDURES WERE COMPLETED.

CREDIT SCORING

THE TWO INDIVIDUALS SHOWN ON THE CHART ARE FILLING OUT CAR LOAN APPLICATIONS. AS SHOWN, APPLICANT "A" IS A LAWYER, MARRIED, 35 YEARS OLD, WHO MAKES \$45M A YEAR AND OWNS A HOUSE. THIS PERSON BORROWS MONEY ACTIVELY AND USUALLY REPAYS ON TIME. APPLICANT "B" IS A MECHANIC, UNMARRIED, 25 YEARS OLD, WHO MAKES \$10M A YEAR AND LIVES IN AN APARTMENT. WHO GETS TURNED DOWN (PICK A COUPLE STUDENTS TO MAKE JUDGEMENT, GET CLASS VOTE, AND RECORD SCORE FOR LATER REFERRAL)?

BEFORE WE FIND OUT, LET'S LOOK AT CREDIT SYSTEMS USED TO MAKE THE DECISION. THERE ARE ESSENTIALLY TWO CREDIT SYSTEMS USED BY CREDITORS. (FLIP CHART - WITH TITLES OF BOTH SYSTEMS)

THE FIRST AND MOST FAMILIAR SYSTEM IS THE JUDGEMENTAL SYSTEM. A JUDGEMENTAL CREDIT EVALUATION SYSTEM IS BASED ON THE MORE OR LESS INTUITIVE JUDGMENT OF A CREDIT OFFICER. THE EVALUATION IS THEREFORE SUBJECTIVE, BEING BASED ON BRAIN WORK.

THE SECOND SYSTEM IS THE DEMONSTRABLY AND STATISTICALLY SOUND, EMPIRICALLY DERIVED CREDIT SCORING SYSTEM. CREDIT SCORING IS SCIENTIFIC, USING CAREFULLY CALCULATED SCORES TO EVALUATE APPLICATIONS. CONSEQUENTLY WE HAVE AN EVALUATION PROCESS THAT IS OBJECTIVE, BASED ON VALIDATED PREDICTIVE VARIABLES.

LET'S TAKE A CLOSER LOOK AT JUST WHAT A DSED CREDIT SCORING SYSTEM IS. THESE SYSTEMS UTILIZE A PREDETERMINED SET OF WEIGHTS, OR POINTS, WHICH ARE APPLIED TO VARIOUS CONSUMER ATTRIBUTES CONTAINED ON AN APPLICATION. THE NUMBER OF POINTS OBTAINED FROM EACH COMBINATION OF PRE-DETERMINED WEIGHTS AND CONSUMER ATTRIBUTES ARE THEN ADDED TOGETHER FOR A TOTAL SCORE. THE SCORE IS THEN RELATED TO A CUT-OFF LEVEL AND A CREDIT DECISION IS DETERMINED.

THERE ARE CERTAIN REQUIREMENTS THAT MUST BE MET BEFORE AN EVALUATION SYSTEM CAN BE A DSED CREDIT SCORING SYSTEM.

THE SYSTEM MUST:

- 1) ASSIGN POINTS OR WEIGHTS TO INFORMATION PERTAINING TO AN APPLICANT
- 2) BE STATISTICALLY DERIVED FROM A POPULATION CONSISTING OF ALL APPLICANTS (BOTH ACCEPTED AND REJECTED),
- 3) BE DEVELOPED USING APPROPRIATE SAMPLING PROCEDURES.
- 4) PREDICT CREDITWORTHINESS.
- 5) BE VALIDATED PRIOR TO USE.
- 6) REVALIDATED AND READJUSTED AS NECESSARY.

MANY CREDIT SCORING SYSTEMS ARE DEVELOPED AS PACKAGES FOR CREDITORS ON AN INDIVIDUAL BASIS. THERE ARE APPROXIMATELY

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5 CONSULTING FIRMS ACROSS THE UNITED STATES THAT DEVELOP THE MAJORITY OF ALL CREDIT SCORING SYSTEMS. HIGHLY TECHNICAL METHODS ARE USED BY STATISTICIANS IN DEVELOPING THESE SYSTEMS.

BECAUSE OF THE SOPHISTICATION AND INVOLVED PROCESS OF DEVELOPMENT, DSED CREDIT SCORING SYSTEMS ARE EXPENSIVE. DEPENDING UPON THE NUMBER OF SYSTEMS NEEDED AND OTHER FACTORS, THE COSTS RANGE ABOUT 50M - 100M. THIS MAY BE VERY BURDENSOME FOR A SMALL LENDING INSTITUTION. CREDIT SCORING SYSTEMS ARE USED BY A RELATIVELY SMALL NUMBER OF LENDERS, USUALLY WITH A LARGE VOLUME OF LOANS AND A LARGE NUMBER OF OFFICES. ALTHOUGH MANY OF YOU MAY NEVER ENCOUNTER A DSED CREDIT SCORING SYSTEM IT IS IMPORTANT FOR YOU TO UNDERSTAND THEIR OPERATION SHOULD YOU ENCOUNTER A BANKER WHO CLAIMS TO USE SUCH A SYSTEM.

THE FINAL PRODUCT LOOKS LIKE THAT FOUND IN HANDOUT 3. ("ILLUSTRATION OF HYPOTHETICAL CREDIT SCORING TABLE") THE LEFT HAND COLUMN LISTS THE CHARACTERISTICS. CHARACTERISTICS ARE THE PREDICTIVE ELEMENTS OF CREDITWORTHINESS. THE FINAL CHARACTERISTICS USED ARE DERIVED THROUGH A PROCESS OF ELIMINATION. ALL THE AVAILABLE CHARACTERISTICS ARE RATED FOR PREDICTIVE VALUE. FROM THIS, THE MOST PREDICTIVE CHARACTERISTICS ARE CHOSEN. IN MOST CASES, THE FINAL NUMBER WILL BE 6-12, WITH 8 BEING THE AVERAGE NUMBER OF CHARACTERISTICS USED. (EXAMPLE ___ HAS 9 AND ___ HAS 8).

NOTE: CHARACTERISTICS ARE NOT ALWAYS THE SAME FOR THE SAME BUSINESS IN DIFFERENT AREAS OR DIFFERENT BUSINESSES IN THE SAME AREA.

ACROSS THE TOP, LEFT TO RIGHT, ARE LISTED THE ATTRIBUTES. ATTRIBUTES ARE THE ANSWERS THAT DETERMINE THE PREDICTIVE VALUE OF EACH CHARACTERISTIC.

WITHIN EACH GRID IS FOUND A POINT SCORE WHICH WEIGHTS EACH CHARACTERISTIC/ATTRIBUTE COMBINATION.

USING THE TABLE, EACH APPLICANT IS SCORED FOR EACH CHARACTERISTIC AS THE ATTRIBUTES DICTATE AND A TOTAL SCORE IS REACHED BY ADDING EACH INDIVIDUAL POINT SCORE TOGETHER. THE TOTAL SCORE IS THE FINAL DETERMINATION OF CREDIT ACCEPTANCE OR DENIAL.

THE DETERMINATION OF ACCEPTANCE OR DENIAL IS MADE BY APPLYING THE TOTAL SCORE TO A CUT-OFF. THE CUTOFF IS THE MINIMUM SCORE AN APPLICANT CAN HAVE AND STILL RECEIVE APPROVAL FOR THE CREDIT REQUESTED. IT COULD BE CALLED A PASS-FAIL CONCEPT. A RANGE OF SCORES WITHIN WHICH THE CUTOFF IS CHOSEN IS PRESENTED ON THE FOLLOWING PAGE IN THE HANDOUT. SCORES RELATE TO PROBABILITY OF REPAYMENT.

TO ARRIVE AT THE CUTOFF, EACH CREDITOR MUST APPLY ITS BUSINESS JUDGMENT TO DEFINE WHAT CREDITWORTHINESS LEVEL IT MUST HAVE OR WANTS. IDEALLY, THE CUTOFF SCORE SHOULD BE WHERE MARGINALLY, ENOUGH CREDITWORTHY ACCOUNTS EXIST TO OFFSET THE EXPENSE OF ONE NON-CREDITWORTHY ACCOUNT. THIS IS SELDOMLY ACHIEVED SINCE IT IS A TOO COMPLEX MODEL AND

UNKNOWN PROCESS TO DETERMINE. THE ACCEPTABLE ALTERNATIVE IS TO ASSUME THAT AN IMPROVEMENT OVER THE CURRENT OPERATION, NOT USING CREDIT SCORING, WOULD BE A STEP IN THE RIGHT DIRECTION. THIS IMPROVEMENT IS ACHIEVED BY CHOOSING A CUT-OFF SCORE IN A RANGE WHERE THE NUMBER OF NON-CREDITWORTHY ACCOUNTS ACCEPTED IS REDUCED WHILE THE ACCEPTANCE RATE REMAINS THE SAME. (I.E., IF THE CREDITOR ACCEPTS 75% OF ALL APPLICATIONS, REDUCE NON-CREDITWORTHY ACCOUNTS ACCEPTED FROM 3 IN 10 TO 2 IN 10). ANOTHER VERSION WOULD BE TO MAINTAIN THE NUMBER OF NON-CREDITWORTHY ACCOUNTS WHILE INCREASING THE NUMBER OF ACCEPTED ACCOUNTS. (I.E., 3 IN 10 ACCOUNTS ARE NON-CREDITWORTHY WHILE 80% OF ALL APPLICATIONS ARE ACCEPTED.)

THE CUTOFF LEVEL WILL DEPEND ON THE BUSINESS AND THE BUSINESS OBJECTIVE. FOR EXAMPLE, AIRLINES HAVE LOW CUTOFF LEVELS IN GRANTING CREDIT FOR PASSENGERS. THE REASON FOR THIS IS, ITS BETTER TO GRANT CREDIT AND FILL SEATS ON THE FLIGHTS RATHER THAN FLY EMPTY SEATS. THE FLIP SIDE OF THIS OBJECTIVE WOULD BE TIFFANY'S. THIS BUSINESS CAN AFFORD TO BE VERY SELECTIVE IN WHO THEY WANT TO GRANT CREDIT TO. A NON-CREDITWORTHY ACCOUNT IS A GREATER LOSS THAN NOT MAKING A SALE.

THERE ARE ADVANTAGES TO THE CREDIT SCORING SYSTEM FOR THOSE CREDITORS THAT CHOOSE IT. CREDIT SCORING IS MUCH MORE DEPENDABLE THAN A JUDGMENTAL SYSTEM BECAUSE IT IS SCIENTIFIC.

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THIS SYSTEM IS A GOOD MANAGEMENT TOOL. MANAGEMENT CAN ADJUST THE CUTOFF SCORE AT ANY TIME TO FIT ITS NEEDS. FINALLY, IT IS CHEAP TO OPERATE ONCE IT IS IMPLEMENTED.

THE ADVANTAGES OF USING A DSED CREDIT SCORING SYSTEM IN RELATION TO REGULATION B ARE REALLY VERY SMALL. A DSED SYSTEM DOES NOT ALLOW A CREDITOR TO CONSIDER ANY PROHIBITED BASIS IN ANY MANNER WHICH IS DIFFERENT FROM JUDGMENTAL SYSTEMS, WITH ONE EXCEPTION. AGE MAY BE USED AS A PREDICTIVE VARIABLE ONLY IF THE AGE OF ELDERLY APPLICANTS (62 OR OLDER) IS GIVEN A SCORE AT LEAST AS GREAT AS THE HIGHEST SCORE GIVEN FOR ANY PARTICULAR AGE GROUP.

TO SUMMARIZE WHAT WE KNOW ABOUT CREDIT EVALUATION SYSTEMS LET'S REVIEW THE MATERIAL BRIEFLY. WE KNOW THERE ARE TWO SYSTEMS USED: 1) JUDGMENTAL AND 2) DEMONSTRABLY AND STATISTICALLY SOUND, EMPIRICALLY DERIVED (CREDIT SCORING). WE KNOW WHAT A DSED CREDIT SCORING SYSTEM MUST BE. WE COVERED THE 3 ELEMENTS OF A CREDIT SCORING TABLE: 1) CHARACTERISTICS 2) ATTRIBUTES 3) POINTS OR WEIGHTS. WE TALKED ABOUT THE PASS-FAIL CONCEPT OF THE CUTOFF SCORE THAT DETERMINES WHETHER CREDIT IS ACCEPTED OR DENIED. REMEMBER THE ADVANTAGES OF DSED CREDIT SCORING SYSTEMS AS BEING SCIENTIFICALLY DEPENDABLE, A GOOD MANAGEMENT TOOL, AND CHEAPER TO OPERATE. IN ADDITION, AGE MAY BE USED AS A PREDICTIVE VARIABLE.

USING WHAT WE KNOW, WHAT ABOUT THE 2 APPLICANTS WE OPENED WITH? REMEMBER THE PRESTIGIOUS LAWYER MAKING \$45M AND THE UNMARRIED GREASE MONKEY MAKING \$10M? (DOES HOW I JUST CATEGORIZED THE APPLICANTS SUGGEST ANYTHING IN RELATION TO JUDGMENTAL CONCEPTS?)

IN THE CASE OF THE LAWYER AND THE MECHANIC, IT COULD BE THAT THE CREDITOR HAS LEARNED THAT OCCUPATION HAS NO BEARING ON CREDITWORTHINESS, SO THE LAWYER GETS NO EXTRA POINTS FOR HIS OCCUPATION OVER THE MECHANIC. IN THIS CASE, THE \$45M INCOME VERSUS THE \$10M IS A BENEFIT TO THE LAWYER, BUT WHEN COUPLED WITH THE FACT THAT STUDIES SHOW A 35 YEAR OLD WITH A FAMILY AND A BIG INCOME IS LIKELY TO BE ON AN ACQUISITION BINGE, PILING UP POSSESSIONS AND DEBTS, THE LAWYER GETS A LOWER SCORE THAN THE MECHANIC. AS A FINAL POINT, THE YEARS ON THE JOB AND AT CURRENT RESIDENCE ARE A TURNING POINT. THE MECHANIC HAS BEEN AT THE SAME JOB AND RENTED THE SAME APARTMENT FOR THE PAST FIVE YEARS. THE LAWYER RECENTLY CHANGED BOTH JOBS AND HOUSE. STABILITY IS OFTEN GREATLY VALUED BY CREDITORS.

THE END RESULT MAY BE THE LAWYER IS TURNED DOWN AND THE MECHANIC DRIVES AWAY IN A NEW CAR.

FCRA LESSON PLAN 1 HR. MONDAY FOLLOWING
 FCRA LECTURE - DISCUSSION GROUP (WHOLE CLASS)

REVIEW TIC TAC TOE CHART IN ECOA HANDOUT No. 3
 HANDOUT - SECTION 11 FCRA AND ECOA HANDOUT No.3

REVIEW THE CASE STUDIES IN CLASS.

1. BAD EXAMPLE
2. GOOD EXAMPLE
3. BAD EXAMPLE - REVIEW INTERPRETATION No.3 OF FCRA BOOKLET AND P.5 OF APPENDIX

HANDOUT NO.5 - SECTION 10 - ECOA

REVIEW SAMPLE STATEMENT OF CREDIT DENIAL, TERMINATION OR CHANGE WHICH REFLECTS A COMMON VIOLATION OF REGULATION B. ASK STUDENTS TO NAME VIOLATIONS ACCORDING TO THE LETTER, A REASON FOR ADVERSE ACTION IS ONLY GIVEN WHEN THE DENIAL WAS BASED ON THE BANK'S RECORDS. THE FORM IS STRUCTURED SO THAT WHEN INFORMATION FROM AN OUTSIDE SOURCE LEADS TO THE DENIAL OF CREDIT, NO PRINCIPAL REASON IS GIVEN. FAILURE TO PROVIDE THE REASON FOR DENIAL, EVEN THOUGH DISCLOSURES ARE MADE IN ACCORDANCE WITH FCRA, RESULTS IN A VIOLATION OF 12 CFR 202.9(A)(2). THE NOTIFICATION REQUIREMENTS OF THESE LAWS ARE SEPARATE AND ONE WILL NOT TAKE THE PLACE OF THE OTHER.

IN ADDITION, THE ECOA NOTICE DOES NOT SPECIFY THE CONSUMER AFFAIRS DIVISION IN THE ADDRESS GIVEN FOR THE FEDERAL AGENCY. A VIOLATION OF 202.9(B)(1) APPENDIX A.

EQUAL CREDIT OPPORTUNITY ACT

EXHIBIT D

Section 10

Handout No. 1

202.5 Rules Concerning Applications

REQUIREMENTS

The Bank:

1. May request a listing of all accounts upon which the applicant is liable including the names and addresses in which the accounts are carried. 202.5(c)(3)

PROHIBITIONS

The Bank May Not:

1. Discourage prospective credit applicants on a prohibited basis by oral comments or written statements. 202.5(a)
2. Request information about the spouse or former spouse of an applicant. 202.5(c)(1)

EXCEPTIONS

Except:

- A. If the spouse will be permitted to use the account. 202.5(c)(2)(i)
- B. If the spouse will be contractually liable on the account. 202.5(c)(2)(ii)
- C. If applicant is relying on spouse's income to repay the debt. 202.5(c)(2)(iii)
- D. If the applicant resides in a community property State. 202.5(c)(2)(iv)
- E. If the applicant is using property located in a community property State as basis for repayment of the debt. 202.5(c)(2)(iv)
- F. If the applicant is relying on alimony, child support, or separate maintenance payments from a spouse or former spouse to repay the debt. 202.5(c)(2)(v)

202.5 Applications-Continued

REQUIREMENTS

The Bank:

2. May request marital status in cases of other than individual unsecured credit using only the terms "married", "unmarried", and "separated". 202.5(d)(1)

3. May request the applicant to designate a title on the application (Ms., Miss, Mrs. or Mr.). if it is accompanied by a statement explaining that such information is optional. 202.5(d)(3)

4. May request information about the number and ages of applicant's dependents or dependent related financial obligations if such inquiries are made without regard to any prohibited criteria. 202.5(d)(4)

5. May inquire about an applicant's immigration and permanent residence status. 202.5(d)(5)

PROHIBITIONS

The Bank May Not:

3. Request applicant's marital status if applicant applies for individual, unsecured credit. 202.5(d)(1)

4. Inquire whether any stated income is derived from alimony, child support, or separate maintenance payments unless prior disclosure is made to applicant that such income need not be revealed if applicant does not wish it to be considered in determining creditworthiness. 205.5(d)(2)

5. Request the sex of the applicant. 202.5(d)(3)

6. Request information about birth control practices, child-bearing or child rearing intentions or capabilities. 202.5(d)(4)

7. Request the race, color, religion, or national origin of a credit applicant. 202.5(d)(5)

EXCEPTIONS

Except:

A. If the applicant resides in a community property State, or if applicant is relying on property located in a community property State as a basis for repayment of the credit. 202.5(d)(1)

B. As indirectly revealed when asking pertinent questions about applicant's creditworthiness. 202.5(d)(1) (Footnote 5)

A. For purposes of monitoring housing loans. (See 202.13)

B. Special Purpose Credit Programs. (See 202.8)

202.6 Rules Concerning Evaluation of Applications

REQUIREMENTS

The Bank:

1. May consider any information that the creditor obtains in evaluation of credit if the information is not otherwise prohibited. 202.6(a)
2. May always inquire into the possible continuity of any income listed by the applicant to establish creditworthiness. 202.6(b)(2) (Footnote 9)
3. To the extent the creditor considers credit history: the bank must consider accounts that the applicant and spouse are permitted to use or for which both are contractually liable. 202.6(b)(6)(i)
4. Must consider any information that the applicant may present tending to indicate that the credit history being considered does not accurately reflect the applicant's creditworthiness 202.6(b)(6)(ii)
5. Must consider, on applicant's request, the credit history of any account reported in the name of the applicant's spouse or former spouse which can be shown to be demonstrative of the applicant's creditworthiness. 202.6(b)(6)(iii)

PROHIBITIONS

The Bank May Not:

1. Consider any prohibited basis in any system of evaluating applicants. 202.6(b)(1)
2. Consider age of applicant in the credit evaluation process, provided that the applicant has the capacity to enter into a binding contract. 202.6(b)(2)(i)
3. Take into consideration whether an applicant's income derives from any public assistance program. 202.6(b)(2)(i)

EXCEPTIONS

Except:

- A. In a demonstrably and statistically sound, empirically derived credit scoring system where the age of an elderly applicant is not assigned a negative factor or value. 202.6(b)(2)(ii)
- B. In a judgmental credit evaluation system, where consideration of age is only for the purpose of determining a pertinent element of creditworthiness. 202.6(b)(2)(iii) (Footnote 9)
- C. In any credit evaluation system where consideration of age of an elderly applicant is used to favor the applicant. 202.6(b)(2)(iv)
- A. In a judgmental credit evaluation system, where consideration of whether applicant's income is derived from any public assistance program is used only for purpose of determining a pertinent element of creditworthiness. 202.6(b)(2)(iii) (Footnote 9)

202.6 Evaluation of ApplicationsREQUIREMENTSThe Bank:

6. May consider the permanent residence or immigration status of applicant. 202.6(b)(7)
7. May consider State property laws directly or indirectly affecting creditworthiness. 202.6(c)
8. Must consider any income to the extent that it is likely to be continued. 202.6(b)(5)

PROHIBITIONSThe Bank May Not:

4. Consider assumptions or aggregate statistics relating to the likelihood that any group of persons will bear or rear children or for that reason will receive diminished or interrupted income, in evaluating creditworthiness. 202.6(b)(3)
5. Consider the existence of a telephone listing in the applicant's name for consumer credit. 202.6(b)(4)
6. Discount any income because it is: 202.6(b)(5)
 - (a) derived from part-time employment.
 - (b) derived from an annuity.
 - (c) derived from a pension or other retirement benefit.
 - (d) derived from alimony, child support, or separate maintenance payments.

EXCEPTIONSExcept:

- A. A creditor may take into consideration the existence of a telephone in applicant's residence. 202.6(b)(4)

202.7 Rules Concerning Extensions of Credit

REQUIREMENTS

The Bank:

1. May request information about age, sex, or marital status of an applicant in an application for insurance. 202.7(e)

PROHIBITIONS

The Bank May Not:

1. Refuse to grant an individual account to a creditworthy applicant on any prohibited basis. 202.7(a)
2. Prohibit an applicant from opening or maintaining an account in a birth given first name and birth given surname, the spouse's surname, or a combined surname. 202.7(b)
3. Require a reapplication or change the terms of an account, or terminate an account on the basis of an applicant's reaching a certain age or retiring or on the basis of a change in applicant's name or marital status. 202.7(c)(1)
4. Require the signature of qualified applicant's spouse or other person on any credit instrument. 202.7(d)(1)

EXCEPTIONS

Except:

- A. If credit granted was based on income earned by applicant's spouse and a change in marital status occurs, the bank may require reapplication, provided that the applicant's income alone was not sufficient to support the debt at the time of application. 202.7(c)(2)

If the applicant applies for unsecured credit and relies on property to establish creditworthiness, a creditor may consider state law, the form of ownership, and susceptibility to attachment of the property. If necessary under State law and to establish creditworthiness, the bank may require an additional signature to make the property relied upon available to satisfy the debt in the event of default. Joint owned property may not be considered if separate property is sufficient. 202.7(d)(2)

202.7 Rules Concerning Extensions of Credit

(Continued)

REQUIREMENTS

The Bank:

PROHIBITIONS

The Bank May Not:

EXCEPTIONS

Except:

- B. If the applicant is relying on community property or resides in a community property State and cannot encumber sufficient community property to qualify for unsecured debt or does not have sufficient separate property to qualify for unsecured credit. In such an instance signatures may be required on whatever instruments are believed to be necessary under State law to make the community property available in the event of default. 202.7(d)(3)
- C. If applicant applies for secured credit an additional signature may be required on any instrument reasonably believed by the creditor to be necessary to assure the availability of the property in event of default. 202.7(d)(4)
- A. A creditor has the option to reject an uncreditworthy cosigner or guarantor selected by the applicant. 202.7(d)(5)
- 5. Specify the cosigner or guarantor be the applicant's spouse or other person. 202.7(d)(5)
- 6. Refuse to extend credit or terminate an account because credit life, health, accident or disability insurance is not available on the basis of applicant's age. 202.7(e)

202.9 Notifications

REQUIREMENTS

The Bank:

1. Must notify the applicant of action taken within:
30 days of receipt of completed application,
30 days after taking adverse action on uncompleted application or existing account,
90 days after the creditor has notified the applicant of substantially similar offer if applicant has not expressly accepted such offer.
202.9(a)(1)
2. Notification of adverse action must be in writing and must contain the following: a statement of the action taken 202.9(a)(2), the ECOA Notice or substantially similar notice 202.9(b)(1), and a statement of specific reasons for the action taken (202.9(a)(2)(i)), or a disclosure of the applicant's right to a statement of reasons within 30 days after receipt of a request within 60 days of notification. (Disclosure must include name, address, and telephone number where reasons may be obtained. If reasons provided orally, a disclosure of right to obtain written confirmation within 30 days of written request (202.9(a)(2)(ii))

PROHIBITIONS

The Bank May Not:

EXCEPTIONS

Except:

- A. Notification of approval of an application may be by implication (i.e. credit card, money, property, or services).
202.9(a)(2)(i)
- A. Oral notifications may be provided only if the creditor did not receive more than 150 applications during the preceding calendar year.
202.9(c)

PROHIBITED BASES INFORMATION AND CONSIDERATIONS

202.9 Notifications - Continued

REQUIREMENTS

The Bank:

3. When multiple applicants are involved the notification need only be given to one of the primarily liable applicants.
202.9(a)(3)
4. When multiple creditors are involved and either no credit is offered or the applicant does not expressly accept an offer, each creditor taking adverse action must send the required notifications.
202.9(a)(4)

PROHIBITIONS

The Bank May Not:

EXCEPTIONS

Except:

- A. Notification of adverse action is not required if applicant accepts or uses credit offered by one of the creditors.
202.9(a)(4)
- B. The required notification by multiple creditors may be provided indirectly through a third party (i.e. one of the creditors) if the identity of each creditor is disclosed. 202.9(a)(4)

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202.10 Furnishing of Credit Information

REQUIREMENTS

The Bank:

1. Must determine for applicable accounts established on or after June 1, 1977 whether the applicant's spouse is permitted to use or if the spouse is contractually liable and designate such account to reflect the fact of participation of both spouses. 202.10(a)(1)
2. If it regularly furnishes credit information to a Consumer Reporting Agency (dumping), the bank must furnish the information in a manner that will enable the CRA to provide access to the information in the name of each spouse. 202.10(a)(2)
3. Must furnish requested credit information in the name of the particular spouse about which the information is requested. 202.10(a)(3)
4. For accounts established prior to June 1, 1977, the bank must either follow the same procedure described above for accounts established after June 1, 1977; 202.10(b)(1) or

Mail or deliver to all married applicants a copy of the Credit History for Married Persons Notice by October 1, 1977. 202.10(b)(2)

PROHIBITIONS

The Bank May Not:

EXCEPTIONS

Except:

- A. Business credit is exempt from the provisions of 202.10 relating to the furnishing of credit information. 202.3(e)(3)

202.10 Furnishing of Credit Information
(Continued)

REQUIREMENTS

PROHIBITIONS

EXCEPTIONS

The Bank:

The Bank May Not:

Except:

5. Must, within 90 days after receipt of a request, designate an account to reflect the fact of participation of both spouses.
202.10(c)

202.11 Relation to State Law

REQUIREMENTS

The Bank:

PROHIBITIONS

The Bank May Not:

1. Combine individual accounts of married applicants for purposes of determining permissible finance charges or loan ceilings under any Federal or State law. 202.11(c)

EXCEPTIONS

Except:

1. State property laws, estate laws, or Federal regulations insuring solvency are not affected. 202.11(d)

202.12 Record Retention

REQUIREMENTS

PROHIBITIONS

EXCEPTIONS

The Bank:

The Bank May Not:

Except:

1. May retain information prohibited by this Act or Regulation in its files where such information is obtained:
 - a. from any source prior to March 23, 1977; 202.12(a)(1)(June 30, 1976 for sex and marital status, Footnote 17) or
 - b. at anytime from a CRA, 202.12(a)(2) or
 - c. at any time from an applicant or others without the specific request of the creditor; 202.12(a)(3) or
 - d. at anytime as required for monitoring purposes 202.12(a)(4) and 202.13
2. Must, for 25 months after date of notification of action taken on application retain the following:
 - a. any written or recorded information used in evaluating the application 202.12(b)(1)(i)
 - b. copy of the notification of action taken 202.12(b)(1)(ii)(A)
 - c. copy of the statement of specific reasons for adverse action 202.12(b)(1)(ii)(B)
 - d. copy of any written statement submitted by applicant alleging a violation 202.12(b)(1)(iii)

202.12 Record Retention
(Continued)

REQUIREMENTS

PROHIBITIONS

EXCEPTIONS

The Bank:

The Bank May Not:

Except:

3. Must, for 25 months after date of notification of adverse action regarding an account, other than in connection with an application, retain the following:
 - a. copies of any written or recorded information concerning such adverse action; 202.12(b)(2)(i) and
 - b. copy of a written statement submitted by applicant alleging a violation. 202.12(b)(2)(ii)
4. If under investigation for an alleged violation, the bank must retain all pertinent information (see Section 202.12(b)(1 and 2) until final disposition of the matter. 202.12(b)(3)

202.13 Information for Monitoring Purposes

REQUIREMENTS

The Bank:

1. Must request information about race/national origin, sex, marital status (using the categories "married", "unmarried" or "separated") and age from an applicant applying for consumer credit relating to the purchase of residential real property, where the credit is to be secured by the property, for the purpose of monitoring compliance with the Act and Regulation. 202.13(a)
2. May obtain such information on the application form or on separate form relating to the application. 202.13(b)
3. Must disclose to the applicant and joint applicant (if any) that the information described in #1 above is being requested by the Federal Government to monitor compliance with anti-discrimination laws, and the information is not required to qualify for credit and that the information will not be considered in evaluating the credit. (202.13(c))

PROHIBITIONS

The Bank May Not:

1. Consider the race, sex, national origin, marital status, or age of the applicant in evaluating the application. 202.6(b)(1)

EXCEPTIONS

Except:

- A. Age may be considered if for the purpose of determining a pertinent element of creditworthiness in a judgmental system. 202.6(b)(2)(iii) (Footnote (9))

PROHIBITED BASES INFORMATION AND CONSIDERATIONS

Prohibited Bases	When the Creditor Can Ask	How the Creditor Can Ask	What Related Information The Creditor Can Ask	What The Creditor Can Consider/Require	Exceptions
<p>1. Sex & 2. Marital Status 202.2(z)</p>	<p>1. <u>Cannot</u> request the sex of an applicant 202.5(d)(3)</p> <p>2. <u>Cannot</u> request marital status on individual unsecured credit 202.5(d)(1)</p> <p><u>Can</u> request on secured credit applications 202.5(d)(1)</p> <p><u>Can</u> always request if applicant resides in a community property state or is relying upon property located in such a state - 202.5(d)(1)</p> <p><u>Can</u> always request on business credit - 202.3(e)(1)</p>	<p>1. & 2. <u>Cannot</u> make any oral/written statement to discourage a reasonable person from pursuing credit on these bases - 202.5(a)</p> <p>1. <u>Cannot</u> use other than neutral terminology on application forms - 202.5(d)(3)</p> <p><u>Cannot</u> request courtesy title designations without conspicuously disclosing that designation is optional - 202.5(d)(3)</p> <p>2. <u>Cannot</u> request marital status in terms other than married, unmarried or separated - 202.5(d)(1)</p> <p><u>Can</u> explain that unmarried includes single, widowed or divorced 202.5(d)(1)</p>	<p>1. & 2. <u>Cannot</u> request information about a spouse/former spouse - 202.5(c)(1) unless the:</p> <p>a. spouse will be permitted to use the account</p> <p>b. spouse will be contractually liable</p> <p>c. applicant is relying upon the income of a spouse</p> <p>d. applicant resides in a community property state or property relied upon is located in such a state</p> <p>e. applicant is relying upon alimony, child support or separate maintenance payments from a spouse/former spouse - 202.5(c)(2)</p> <p><u>Can</u> request the applicant to furnish the accounts upon which liable, to provide the name and address in which the accounts are carried, and to give the name in which an applicant has previously</p>	<p>1. & 2. <u>Cannot</u> discriminate with regard to any aspect of the credit transaction or use information to discriminate against an applicant 202.4 and 202.6(a)</p> <p><u>Can</u> consider marital status in relation to rights and remedies applicable to the particular credit request - 202.6(b)(7) and Footnote #8 and Act 701(b)(1)</p> <p><u>Can</u> consider credit history as applicable to the creditor's practice and as applicable to the particular credit or upon the applicant request to establish creditworthiness 202.6(b)(6)</p> <p><u>Cannot</u> require the signature of a spouse/other person solely on these prohibited bases 202.4 and 202.7(d)</p> <p><u>Can</u> generally request signature as it relates to the type of credit requested and as dictated by:</p>	<p>1. & 2. <u>Can</u> request for information purposes regarding:</p> <p>a. Insurance - 202.7(e)</p> <p>b. Monitoring Information 202.13(a)</p> <p><u>Can</u> request and consider as required regarding:</p> <p>a. Special Purpose Credit Programs - 202.8(c) and (d)</p>

Prohibited Bases	When the Creditor Can Ask	How The Creditor Can Ask	What Related Information The Creditor Can Ask	What The Creditor Can Consider/Require	Exceptions
			<p>received credit - 202.5(c)(3)</p> <p>Cannot inquire about "other income" sources, unless disclosure has first been made that alimony, child support or separate maintenance payments need not be revealed unless relied upon for repayment 202.5(d)(2)</p> <p>Can, if revealed, request information to establish the reliability of this income source 202.5(b)(5)</p> <p>Can request the applicant's obligation to pay alimony, child support or separate maintenance payments - 202.5(d)(1), Footnote #5</p> <p>Cannot request birth control practices or child bearing/rearing intentions 202.5(d)(4)</p> <p>Can request number and ages of dependents and related financial obligations if made without regard to applicant's sex or marital status - 202.5(d)(4)</p> <p>Cannot request if the applicant has a phone in his/her name 202.6(b)(4)</p>	<p>a. ownership of property relied upon</p> <p>b. state property laws</p> <p>c. disclosed income reliance - 202.7(d)(1) - (4)</p> <p>Cannot specify a co-signer guarantor when additional credit support is required - 202.7(d)(5)</p> <p>Cannot discount/exclude income on these bases or because it is derived from part-time employment - 202.6(b)(5)</p> <p>Cannot discount/exclude income derived from alimony, child support or separate maintenance payments without proper investigation to determine reliability - 202.6(b)(5)</p> <p>Can consider income with regard to adequacy and probable continuance 202.6(b)(5)</p> <p>Cannot consider birth control practices or child bearing/rearing intentions or statistics of child bearing likelihood 202.6(b)(3)</p>	

PROHIBITED BASES INFORMATION AND CONSIDERATIONS - page 3

Prohibited Bases	When the Creditor Can Ask	How the Creditor Can Ask	What Related Information the Creditor Can Ask	What the Creditor Can Consider/Require	Exceptions
				<p><u>Cannot</u> consider if telephone listing is in applicant's name 202.6(b)(4)</p> <p><u>Can</u> consider if there is a phone in applicant's residence 202.6(b)(4)</p> <p><u>Cannot</u> refuse to grant an individual account to a creditworthy applicant 202.7(a)</p> <p><u>Cannot</u> require specific name designations to open/maintain an account 202.7(b)</p> <p><u>Can</u> require an applicant to use one name on all accounts with the bank L3</p> <p><u>Can</u> require use of business name on business credit 202.3(e)</p> <p><u>Cannot</u> take action on an open-end account because of change in name/marital status 202.7(c)(1)</p> <p><u>Can</u> take action on an open-end account if:</p> <p>a. unwillingness/inability is evidenced</p>	

Prohibited Bases	When the Creditor Can Ask	How the Creditor Can Ask	What Related Information the Creditor Can Ask	What the Creditor Can Consider/Require	Exceptions
3. Age 202.2(z)	<p>3. <u>Can</u> ask to determine the applicant's capacity to enter into a binding contract 202.2(z) and 202.6(b)(2)(1)</p> <p><u>Can</u> ask to determine pertinent elements of creditworthiness 202.5(b)(1), 202.6(b)(5), Footnote #9 and Act 701(b)(2)</p>	3. Cannot make any oral/written statement to discourage a reasonable person from pursuing credit on this basis 202.5(a)	3. <u>Can</u> ask information to establish adequacy of amount and likelihood of continuance, i.e. length of time until retirement, etc. 202.6(b)(5) and Footnote #9	<p>b. income of one spouse is not sufficient to support the credit extended 202.7(c)(1) & (2)</p> <p>3. Cannot discriminate with regard to any aspect of the credit transaction or use information to discriminate against an applicant 202.4 and 202.6(a)</p> <p><u>Can</u> consider age in a demonstrably and statistically sound, empirically derived credit scoring system, but <u>Cannot</u> consider as a negative factor 202.6(b)(2)(ii)</p> <p><u>Cannot</u> consider in a judgmental system, unless it is used to determine a pertinent element of creditworthiness 202.6(b)(2)(iii) and Footnote #9</p> <p><u>Can</u> consider age of elderly applicant in any credit system if a favorable factor 202.6(b)(2)(iv)</p>	<p>3. <u>Can</u> request for informational purposes regarding:</p> <p>a. Insurance 202.7(e)</p> <p>b. Monitoring Information 202.13(a)</p> <p><u>Can</u> request and consider as required regarding:</p> <p>a. Special Purpose Credit Programs 202.8(c) and (d)</p>

PROHIBITED BASES INFORMATION AND CONSIDERATIONS - page 5

Prohibited Bases	When the Creditor Can Ask	How the Creditor Can Ask	What Related Information the Creditor Can Ask	What the Creditor Can Consider/Require	Exceptions
<p>4. Public Assistance Income 202.2(z) includes, but is not limited to: AID, food stamps, rent & mortgage supplemental assistance programs, social security and supplemental security income security income and unemployment compensation 202.2(z)(aa)</p>	<p>4. <u>Can</u> inquire whether the applicant's income is derived from a public assistance program Act 701(b)(2) and 202.5(b)(1)</p>	<p>4. <u>Cannot</u> make any oral/written statement to discourage a reasonable person from pursuing credit on this basis 202.5(a)</p>	<p>4. <u>Can</u> ask information related to type, amount and probable continuance 202.6(b)(5) and Footnote #9</p>	<p><u>Can</u> consider adequacy of income and probable continuance - 202.6(b)(5) and Footnote #9</p> <p><u>Cannot</u> refuse to grant an individual account to a creditworthy individual 202.7(a)</p> <p><u>Cannot</u> take action on an open-end account because an applicant has attained a certain age is retiring 202.7(c)(1)</p> <p><u>Cannot</u> refuse to grant credit because an applicant does not qualify for insurance 202.7(e)</p> <p>4. <u>Cannot</u> discriminate with regard to any aspect of the credit transaction or use information to discriminate against an applicant 202.4 and 202.6(a)</p> <p><u>Cannot</u> discount/exclude this income source in credit evaluation 202.6(b)(5)</p> <p><u>Can</u> consider this income as to amount, probable continuance and means to compel repayment 202.6(b)(5), Act 701(b) and 202.6(b)(7)</p>	<p>4. <u>Can</u> request and consider as required regarding:</p> <p>a. Special Purpose Credit Programs 202.8(c) and (d)</p>

PROHIBITED BASES INFORMATION AND CONSIDERATIONS - page 6

Prohibited Bases	When the Creditor Can Ask	How the Creditor Can Ask	What Related Information the Creditor Can Ask	What the Creditor Can Consider/Require	Exceptions
<p>5., 6., 7., and 8. Race, Color, Religion and National Origin</p> <p>9. Good Faith Exercise of Rights under the Consumer Credit Protection Act</p>	<p>5. - 8. <u>Cannot</u> request this information of an applicant 202.5(d)(5)</p>	<p>5. - 9. <u>Cannot</u> make any oral/written statement to discourage a reasonable person from pursuing credit on these bases 202.5(a)</p>	<p>5. - 8. <u>Can</u> request residency/immigration status 202.5(d)(5)</p>	<p><u>Cannot</u> refuse to grant individual account to a creditworthy applicant 202.7(a)</p> <p>5. - 9. <u>Cannot</u> discriminate with regard to any aspect of the credit transaction or use information to discriminate against the applicant 202.4 and 202.6(a)</p> <p>5. - 8. <u>Can</u> consider residency/immigration status to the extent it effects rights & remedies 202.6(b)(7) and specific legal restrictions 202.2(z), Footnote #3</p> <p>5. - 9. <u>Cannot</u> refuse to grant an individual account to a creditworthy applicant 202.7(a)</p>	<p>5. - 8. <u>Can</u> request for information purposes regarding:</p> <p>a. Monitoring Information 202.13(a)</p> <p><u>Can</u> request and consider as required regarding:</p> <p>a. Special Purpose Credit Programs 202.8(c) and (d)</p>

GUIDELINES FOR INTERVIEW OF BANK PERSONNEL

I. MEETING WITH DESIGNATED PERSONNEL

- A. Discuss procedures employed to disseminate information and monitor compliance.

II. APPLICATIONS (202.5)

- A. Determine whether all applicants complete an application. Bank's policy for offering separate accounts.
- B. Determine when bank asks marital status.
- C. Is other prohibited information requested?
- D. Are requests for information about the applicants spouse only made when permitted 202.4(c)(2)?
- E. Are requests for income specific? (i.e., salary, wages, etc.)
- F. If not, is the required disclosure made?
- G. Are titles requested?
- H. Is information requested concerning birth control or childbearing intentions?

III. EVALUATION OF APPLICATIONS (202.6)

- A. Determine whether bank policies regarding evaluation have been reviewed under the "effects test".
- B. Is age or whether an applicant's income is received from a public assistance program considered? Is the above only considered as permitted 202.6(b)(2)?
- C. Treatment of alimony, child support or separate maintenance payments? How verified?
- D. Treatment of part-time or public assistance income?
- E. Does bank consider assumptions or statistics regarding childbearing or rearing?
- F. If a pregnant woman applies, what questions does bank feel may be asked?

- G. Does bank use credit scoring system? Use of prohibited information?
- H. Telephone listing considered only in home?
- I. Types of accounts used in evaluation of credit history?
- J. Joint accounts, if not in applicant's name?
- K. To what extent is residency and immigration status considered?
- L. What is procedure when prohibited information is received from a Consumer Reporting Agency? What insures the information is not considered?

IV. ACTION ON ACCOUNTS (202.7)

- A. Are accounts offered in birth-given names?
- B. What action, if any, is taken on joint accounts when change in marital status occurs?
- C. Under what conditions is a co-signer, endorser, or guarantor required?
- D. Requirements for signature on security instrument?
- E. Is choice of second party left up to applicant?

V. NOTIFICATION (202.9)

- A. Determine policy for notification of action taken on application.
- B. How long after receipt of application is notice given?
- C. What is written form of reason for denial, termination, or any other adverse action?
- D. If reasons for denial are given orally, is required written disclosure made?

VI. FURNISHING OF CREDIT INFORMATION (202.10)

- A. What is policy for furnishing of credit information?
- B. Procedure for determining type of accounts-
 established before 6-1-77?
 established after 6-1-77?
- C. Credit History for Married Persons Notice mailed to which accounts?
- D. How soon is manner of reporting accounts change after receipt of notice?

VII. PRESERVATION OF RECORDS (202.12)

- A. What are internal controls procedures for retention of records in the files after notice of action taken?
- B. Which records retained?
- C. What is policy for records concerning adverse change in terms or conditions of credit?
- D. What action is taken when a complaint is received from an applicant?
- E. How long are records maintained?

VIII. INFORMATION FOR MONITORING PURPOSES (202.13)

- A. Is the required personal information requested and maintained?
- B. Are optional and other disclosures made?

IX. SPECIALIZED CREDIT (202.3)

- A. For business or agricultural credit are any policies as related above subject to change?
- B. Separate accounts?
- C. Co-signers or guarantors?

X. DEALER PAPER

- A. What are internal control procedures for insuring dealer compliance with the Regulation regarding submitting applications, evaluating applications, and providing notifications?

JOINT GUIDELINES FOR B AND FAIR HOUSING EXAMINATION

	<u>Housing related loans only</u>	<u>All other loans</u>
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1. Are loans limited to bank customers?
If yes, is a minimum deposit required.
Amount of deposit, if any.
2. Does the bank make unsecured loans?
Criteria?
3. Minimum income/loan ratio.
Maximum monthly payment/monthly income
ratio.
4. Maximum debt/worth ratio.
5. Minimum debt service/income ratio.
6. Lending territory - census tracts or
zip codes, if possible
7. Duration of loans - limits.
8. Interest rates
Maximum
Minimum

Relation to appraised value of security

Relation to duration of loan

Relation to rates of other financial
institutions.
9. Collateral requirements

Loan/appraised value of collateral
10. What weight is given to credit history?
11. What weight is given to part-time
employment?

<u>Housing related</u> <u>loans only</u>	<u>All other</u> <u>loans</u>
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12. What loans require:
 - 1) credit life insurance
 - 2) accident and health insurance
 - 3) mortgage credit insurance
13. Minimum time employed at present job?
14. When are financial statements required?
15. Does the bank have any other lending requirements?

HOUSING LOANS

<u>Housing related</u> <u>loans only</u>

16. Is source of equity a factor?
How important?
17. What weight is given to the appraisal in evaluating loans?
18. What is the bank's policy with regard to government guaranteed loans?
19. Are appraisals done by in-bank personnel or independent appraisers?
20. Brief appraisal standards?

INTRODUCTION

Examination OutlineSection 1

Handout No. 10

EXAMINATION OUTLINEI. Initial Contact

- A. Meet with highest executive officer.
 - 1. Explain purpose, scope, and goals of exam.
 - 2. Make appointments with department heads.
 - 3. Review request list. (This may be done with the Compliance Officer or other officer as requested by bank.)
- B. Meet with department heads as soon as possible.
 - 1. General introduction of procedures you will follow.
 - 2. Gather policies, forms, etc. from each department (unless you are having all requests gathered centrally.)
- C. During your initial contact, you should be familiar with the ICQ, so questions may be directed to completion of the general ICQ.

II. Sampling

- A. Be sure each department is providing the number of loans made so you may select your initial sample.
- B. From each department, you should get a list of each type of loan made. This is for completion of the Regulation Z portion of the Line Review Sheet.
- C. Select your sample as soon as possible.
 - 1. Request information you may have trouble obtaining.
 - a. Loan files from remote branches
 - b. Billing statements for open-end
 - c. Billing statements or account histories for simple interest instalment loans

III. Meet with auditor and/or compliance officer

- A. Discuss and review their consumer compliance audits.
- B. Review reports issued.
- C. Include in your review a discussion and review with loan review auditors.

IV. Other material that should be reviewed as an initial step to your exam

- A. Director minutes
- B. Loan committee minutes
- C. CCIS Data
- D. Bank's complaint file
- E. Litigation

V. There is a variety of things you may do if you are waiting for information, or bank personnel.

- A. Collect brochures, advertising, or loan applications from the lobby.
- B. Look for necessary signs in the lobby.
 - 1. FDIC
 - 2. Fair Housing
 - 3. HMDA Notification (not necessarily a requirement - see HMDA)
- C. Collect HMDA Statements
 - 1. Review HMDA Examination and Verification Procedures.
 - 2. Review data to determine if there appears to be areas where the bank is not making loans.
- D. Obtain advertising for review.
- E. Contact deposit personnel and obtain information relating to the various types of deposits available.
- F. Review any policies, forms or other manuals you have collected so far.

VI. Review Policies and Manuals

- A. Consistency with Regulations
- B. Detail contained in policy. (Is it too general to be effective?)
- C. Do policies provide for good internal controls?
- D. Are policies up to date and well organized?
- E. Examination and verification procedures specifically addressing policy:
 - 1. Advertising EP#1
 - 2. Deposits EP#2

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3. Regulation Z. There are no specific questions relating to policy; however, any specific reference to Regulation Z in the policy must be reviewed for consistency with the Regulation. A system of internal controls is essential for Regulation Z. The bank should have written controls for the Regulation.
4. RESPA EP #2: VP #1, #2, #3, #4
5. Regulation B. EP#1b. Compare policy to Regulation B check list. Be alert for policies that may have the "effect" of violating Regulation B.
6. Fair Credit Reporting EP#1
7. Fair Housing: Most of the examination and verification procedures should be reviewed when evaluating policies and manuals.
8. Fair Debt Collection Practices: Review for consistency with Act.

VII. Interview department heads to determine their knowledge of the regulations, consistency with written policies, and internal control procedures.

- A. All lending departments.
 1. Complete EPB-2 and EPB-3 checklists
 2. Determine methods of computing and charging interest
 - a. Collect rate tables
 3. Internal Controls
 - a. ICQ Questionnaire
 - b. Methods of insuring branch compliance
 - c. What other procedures have they adopted to insure compliance with all consumer regulations.
 4. Do they make RESPA applicable loans. (If so see REM's)
- B. Instalment Loans
 1. Dealer compliance (Regulation B and Regulation Z)
- C. REM's
 1. RESPA (Refer to Verification Procedures to determine questions that you will ask)
 2. Fair Housing (Refer to Verification Procedures)

D. Open End

1. Fair Credit Billing (Refer to Verification Procedures)
2. Initial disclosures and Billing Statements. (You will have several questions to ask in this area, refer to verification procedures).

VIII. Interview initial contact personnel and other officers as considered necessary.

- A. Regulation B VP#1
- B. Fair Housing VP#2 - All or portions of the check list (EPB-2) may be completed for certain personnel.

IX. Review Blank Forms

- A. EPB-1 (Regulation B Checklist)
 1. Complete for application forms, security agreements, rejection notices, financial statements, etc. (This step completes EP #1 a & b)
- B. Review RESPA forms and booklets
 1. This completes RESPA EP#4 and VP#2a.
- C. Review note and disclosure forms
 1. Closed end EP#2 and VP#1
 2. Open end EP#1 and VP#1
 3. Leasing VP#4
- X. By this point in time the examiner should have developed a general idea as to the degree of compliance in the bank. Potential problems are usually identified by lack of internal controls, improper forms, policies that are inconsistent with regulation (or no policies at all), management's knowledge of the regulations and their attitude. Review of the CCIS data, HMDA data, and the bank's own complaint file may also indicate other problem areas. The examination and verification procedures should be reviewed to determine if additional information should be obtained from management before beginning file work.

XI. Working Loan Files

- A. Work files for your original sample of 35 accepted and 18 rejected
- B. File Work
 1. Be sure each file is reviewed for compliance with any applicable Regulation. Before you become familiar with the regulations, this will be a step-by-step process using the verification procedures and the regulations. For example, working a real estate file:

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- a. Review the application, loan committee reports on the loan, financial statements and other internal work sheets to determine compliance with:
 1. Regulation B. EP#6, VP#4. Also refer to the back of the Consumer Loan Review Sheet.
 2. Fair Housing. VP#3. In this area, the appraisal should be reviewed to determine consistency with appraisal manuals or policies.
 3. In examination for Regulation B and Fair Housing, the examiner will also review the note for terms of credit and signatures that have been obtained.
 - b. Review of RESPA documentation.
 1. VP#2 through #8 (RESPA)
 - c. Notes and Disclosures
 1. Regulation Z Closed end. VP#2 (Also calculator instructions)
 2. For additional items selected to complete Regulation Z check list, use VP#2, #3, and #4.
 3. Compliance with usury law
 - d. For rejected REM's, the review will also include:
 1. Regulation B: Proper notification
 2. Fair Credit Reporting Act: All VP for FCRA
2. The above example should not be considered all-inclusive of the material the examiner should review in working files. Any information in the file should be reviewed. Internal work sheets and file comments may show you more about how the loan officer actually evaluates the credit than the application would. Comparison of documents and other work sheets in the file to Regulation Z disclosure forms may result in discovery of an undisclosed finance charge.

For example, a loan disclosure for Regulation Z might not show any points or origination fees, but review of the RESPA settlement statement may show the customer was charged points. Another way to find undisclosed charges is a review of income accounts. Some banks have separate income ledgers for "REM Origination Fees". If the bank shows such income, but there is no disclosure of such fees on REM's, the examiner should investigate further to determine the nature of the fees and further determine if such fees should have been disclosed on the Regulation Z disclosure form. The use of such ledgers may be of assistance to the examiner in determining the extent of noncompliance if a problem has been discovered.

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3. As mentioned in X above, the examiner has identified violations on forms and in policies as an initial step to the examination. During file work, the examiner should be alert for the use of such forms and policies that have resulted in violations in actual practice. Copies of forms or material which will show how the form and/or policy has resulted in violation would be kept to use in discussion and to support conclusions in the report.
 4. Once file work is completed, the examiner must make comparisons of how the bank has applied its policies in actual practice to those written and unwritten policies that have been reviewed as an initial step to the examination. Additionally, all rejected and accepted files should be compared to each other to determine if credit evaluation techniques used by lending officers, and the terms of the credit are consistent. If inconsistencies are discovered, the examiner will take further steps to determine the reasons for such inconsistencies.
- C. Refer to Handout on Minimum Statistical and Judgemental Sample Sizes and select additional items required.
- D. Conclude line work
1. Work as many additional files as considered necessary to properly isolate the cause of the violation and to assess the impact. Use discussion with management to facilitate these determinations.
 2. If your line work, review of policies, and review of the HMDA statements indicates that the bank may be redlining, or pre-screening, additional steps are necessary. Contact your Regional Consumer Specialist.
 3. Complete the "Line Review Sheet"
 4. Review the Examination and Verification Procedures to determine that all steps relating to loan work have been completed.
 - a. Review of the examination and verification procedures will perhaps show you that the bank, as a whole, or a particular department does not understand a particular regulation. For example, the EP and VP for Regulation B may show all departments have many problems with the Regulation. Thus your report, and discussion could be directed to increased compliance efforts by the bank on the Regulation.
 5. Discuss the department with the head of the department. (Unless otherwise requested by the bank)
 - a. Have the department head give you an indication of the corrective action that will be initiated.
 - b. Discuss each violation with the department head.
 1. Be sure he understands the violation and is aware of the sections of the regulation affected.

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2. Discuss impact with the officer.
 - a. Duration of noncompliance
 - b. Monetary impact and number of customers affected
 - c. Methods used to compute impact
6. Note and discuss all internal control deficiencies. These deficiencies will be written in the internal control section of the report.

E. The above (A to D) steps will be completed for each lending area of the bank. The exact approach to examination of the lending areas will depend on the set-up of the bank. For a large or departmentalized bank, the examiner may perform all steps relating to one department before proceeding to the next department, i.e., he would review all forms, manuals, policies, and lines and discuss the department before reviewing forms, etc. for the other departments.

F. At this point in the examination, the EP and VP for Usury, FCRA, Fair Housing, Regulation B, Regulation Z, and RESPA should be completed.

XII. If not completed in step XI, complete examination and verification procedures for the Fair Debt Collection Practices Act.

XIII. Complete the examination and verification procedures for the following:

- A. HMDA
- B. Advertising
- C. Interest on Deposits
- D. EFTS
- E. Refer to Handout on Minimum Statistical and Judgemental Sample Sizes to insure that you have selected the minimum number of items required for each area.
- F. If applicable, isolate violations and assess impact as discussed in the loan section of this handout.
- G. Discuss each area with the officer responsible for each area. Refer to XI D.5. of this handout.
- H. Note and discuss all internal control deficiencies. These deficiencies will be written in the internal control section of the report.

XIV. Concluding the Examination

- A. Review the request list to be sure you have obtained all items requested.
- B. Review Examination and Verification Procedures to insure all steps have been completed.
- C. Review your conclusions from all areas.

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1. From these conclusions, prepare your comments and presentation for the final review meeting on the banks system of internal controls.
 2. Review your violations
 - a. Are they well documented in the work papers? (Especially for overcharges or underpayment of interest)
 - b. Prepare them for final discussion.
- D. Final Review Meeting
1. Discuss all items in the Report of Examination. (Both open and confidential sections)
 2. Leave nothing in writing in the bank.
 3. Be organized and be sure you understand all violations or other deficiencies you plan to discuss.
 4. Prepare a memo on the meeting and retain in the work papers.
- E. Write the report of examination and send it to the Regional Office as soon as possible. Refer to the Handbook and your notes to aid you in writing the report of examination.
- F. If required in your region, send the workpapers to your office.

Statistical Sampling

Handout No. 3

STATISTICAL SAMPLING - CONSUMER EXAMINATION

Statistical sampling is a process whereby conclusions are drawn about an entire collection of data based upon an examination of a representative cross section of the data. If a problem does not appear in the sample, it is unlikely that it affects a large number of people given the guidelines established by the Office for the sampling plan. Thus, by carefully reviewing a statistical sample of loans, we can focus our energies on those situations which have the most significance.

Experience has indicated that certain systematic problems can be pinpointed and attacked directly. For example, we have found that use of mixture of the 365/360 day year frequently causes systematic understatement of the APR for consumer loans in the note department.

The Office's sample plans and selection techniques are explained in a chapter of the Comptroller's Handbook of Examination Procedures and in a related Statistical Sampling Training Course, both of which must be understood by the examiner in order to apply the procedures below. Our approach to sampling is pragmatic. We begin with a statistically valid sample of 35 items. These will be fully reviewed. This means that all procedures will be performed, where applicable, to every loan in the sample. The only exception to this rule is where items are not subject to variation in any relevant respects. Where five loans in the sample, say check-credit, use the same forms and computer programs, only one must be reviewed to establish that the form is properly prepared and that the computer program is correct. We will supplement the sample with additional items to spot systematic problems which we suspect may be present, based on our experience in the past.

In addition to reviewing accepted files, 18 rejected files will be selected for the purpose of determining compliance with Fair Credit Reporting, Equal Credit Opportunity and Fair Housing Laws.

APPLICATION OF CONCEPT

The TEST CHECK PORTION OF THE LINE REVIEW SHEET is designed to serve as an organizational tool. At the beginning of each exam, management responsible for each department originating consumer loans should be questioned as to the different types of loans made in their department. A 'type' of loan, for our purposes, is one which differs with respect to the areas of inquiry listed on the test check sheet. For example, if the Real Estate department uses two different programs or sets of tables to compute APR's, these are two different 'types' of loans. If three different late fees are imposed for three classes of loans, we have three more 'types'.

Having determined how many types of consumer loans are made by the bank, we select our sample of thirty-five loans from the population consisting of all loans, using sampling techniques described in the Statistical Sampling Training Course. All relevant procedures will be performed on the thirty-five sample loans. As each 'type' of loan is found in the sample and reviewed, results should be entered on the sheet. Following review of all thirty-five loans in the sample, randomly select additional items until all 'types' have been reviewed. Our objective in selecting the additional items not appearing in the sample is to determine that the bank's systems and procedures are effective

in assuring compliance with the particular law. For loans picked as a supplement to the thirty-five, only procedures relevant to the attribute which caused us to identify a loan as a distinct type need be performed. Thus, if we already have done all procedures with an indirect loan in our original sample, but have not seen an indirect auto loan which is special only in its method of rebating unearned finance charges, we will only do procedures relating to rebates for this additional loan. In this manner we can get a good feel for the bulk of the bank's loans through our original sample, and also check all other variations in procedures through our supplemental test checks. It should be noted that procedures for open-end credit obviously do not coincide with many operations listed on the sheet. Naturally, perform procedures detailed as appropriate to open end credit and use the sheet only as a tool to keep track of what has been reviewed and what problems have been found.

Once all procedures have been completed, randomly select an additional eighteen rejected loans. Again, all relevant procedures will be performed for each loan, unless forms and procedures are identical (e.g., computerized), in which case useless repetition may be omitted. Line sheets will serve as organizational tools for these procedures. As with the earlier sample, take supplemental sample loans in any area where the bank's procedures have not been tested in the sample of thirty-five, performing only those procedures deemed relevant to the supplemental sample. For example, if only two accepted and three rejected Real Estate loans appeared in the sample, you may pick more loans if it will make you feel more comfortable.

Advertising, Home Mortgage Disclosure, and Interest on Deposits (Savings) do not require statistical sampling, though random selection will be appropriate in choosing samples for the savings work program. Again, choose one of each 'type' to test the functioning of systems. Normally, all advertising in the last two years should be reviewed.

The above is intended as a guide to performing the examination. Work programs may be done in any order with which you feel comfortable. The order outlined above is illustrative of one possible approach.

UNSATISFACTORY RESULTS

The sample design described above does not have any allowance for error so that any one (1) error found in the sample is unaccepted and should be investigated.

Rather than attempting to enlarge the unsatisfactory sample, it is preferable to focus attention on the qualitative aspects of the observed errors. In some cases, an evaluation of the nature and cause of errors will permit the examiner to localize the errors by isolating the conditions that permitted or led to the errors. If the nature and cause of observed errors can be isolated, additional work may be directed to the affected areas. If the error cannot be localized or time constraints prevent the examiner from performing additional work, it may be possible to arrange for the bank's internal auditors or other employees' assistance.

NUMERICAL SAMPLING

CASE PROBLEM - REVISED

You have determined that numerical sampling will be used on 2,142 loan accounts as follows:

Commercial Loans	200
Real Estate Loans	157
Instalment Loans	132
Check Credit	215
Credit Card	<u>1,038</u>
	2,142

In the case problem the sample size was determined to be 35 and the computed interval was 61.2 ($2,142 \text{ accounts} \div 35$) which was rounded down to 60. Therefore, every 60th item after a random start was selected.

The first method of selection was counted intervals. This technique was applied as follows:

First-select a random number between 0 - and the interval containing the same number of digits as the interval.

Second-count the population items until you reach the random number - which will be the first item selected.

Third-restart the count and select the item that coincides with the interval - in this case 60.

The third procedure is continued until the entire population has been counted.

Using the random number of 35, the sample items selected from the first four pages were: 48859, 49681, 50054, 50372.

The second selection method used was specified positions. This method was said to be most appropriate when the population was in standard blocks and there were line numbers assigned consecutively to each item within a block.

The line numbers were used to make the sample selection in the following manner:

Select a random number between 0 and the interval (round down in this case).

The line number that corresponds to the random start was the first item selected and an item was selected each increment of 55 in the line number thereafter, in our example only one item is selected on each page. In the problem the item selected was associated with line number 35 (random start) 48859, 49650, 49985, 50296, etc.

The third method of selecting numerical samples demonstrated was terminal digits. This method is appropriate when identification numbers are assigned consecutively to each of the population items. In the problem this was the

- 2 -

account number. Missing numbers or extraneous material does not create a problem as long as they are not in a recurring pattern that coincides with the selection interval.

In order to use terminal digits as a selection technique, the sampling rate has to be computed and then a set of terminal digits must be selected that will yield that sampling rate. The sampling rate is the reciprocal of the sampling interval; therefore, the sampling rate is easily computed by dividing the sampling interval into 1. In the case problem, the sampling rate was .0167 or 1.67% ($1 \div 60$). Round up to .02 for ease of selection.

The rate yields of terminal digits are summarized below:

- Any one digit from 0 through 9 will appear but once in each ten items; therefore, one digit will yield a sampling rate of 10% or ($1 \div 10$).
- Either an odd or even characteristic of numbers appears in 5 out of the ten digits 0 through 9; therefore, a selection based on all odd digits would yield five items (1, 3, 5, 7 and 9) out of ten for sampling rate of 50% ($5 \div 10$).
- Three simple rules: (1) the sampling rate for more than one terminal digit is the sum of the sampling rates of the individual digits selected; for example, a selection based on each item that ended in either a 6, 1, or an 8 would result in a sampling rate of 30% ($.10 + .10 + .10$). Since each digit has a 10% rate alone, in total they yield 30%.

(2) However, when terminal digits are combined the yield of the combination is the product of the rate yields of each individual digit; for example, the combined three digit number of 618 would yield 1 item out of a 1,000 for a .001 sampling rate ($.1 \times .1 \times .1$).

(3) Preceding any set of terminal digits with an odd or even characteristic has the effect of cutting the sampling rate in half. For example, the number 29 will yield 1 item out of a hundred for a .01 sampling rate. Preceding 29 with an odd characteristic i.e., odd

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29 would yield 1 item out of 200 (129, 329, 529, 729, 929) for a sampling rate of .005.

In the case problem the desired sampling rate was 2%. Any two numbers out of 100 would yield that rate (.01 + .01). The randomly selected digits of 10, and 57 were used to select from the population in the problem.

This was accomplished by selecting every item whose account number ended in 10 or 57.

The selected items were:

Page 1 - 048610, 048857

Page 2 - 049510, 049810

Page 3 - 049857, 049910

Page 4 - 050157, 050310

Page 5 - 050457, 050510

Page 6 - 050857

Page 7 - 051210

Another method of selection discussed was called measured intervals. In this method, a strip of paper, adding machine tape, or group of cards is used to measure the selection interval. When the items are listed on a standard type of paper, a sheet of the standard paper may be the best choice as a measuring tool.

The case problem was not a good illustration of the application of this technique, simply because the interval was large in relation to the number of items on a page. The items selected would be the same as those selected in the counted intervals method.

INTRODUCTION

Consumer Affairs Examination

Minimum Statistical and Judgemental Sample Sizes

Section 1

Handout No. 9

MINIMUM STATISTICAL AND JUDGEMENTAL SAMPLE SIZES

A. INITIAL LOAN SAMPLE SELECTED STATISTICALLY.

- (1) 35 ACCEPTED LOANS SELECTED FROM A POPULATION OF ALL LOANS MADE DURING THE MONTH OF THE EXAMINATION AND THE PRECEDING THREE MONTHS. THIS WILL INCLUDE, IF APPLICABLE, CONSUMER LOANS ORIGINATED BY THE TRUST DEPARTMENT IF THE NUMBER OF LOANS MADE BY THE TRUST DEPARTMENT EXCEEDS 20% OF THE TOTAL LOANS OF THE OTHER DEPARTMENTS OF THE BANK.

EXAMPLE: TOTAL OF REM'S, COMM'L, INSTAL', ETC. 2,000
 CONSUMER LOANS ORIGINATED BY TRUST DEPT. 450
 $20\% \times 2,000 = 400$. SINCE 450 EXCEEDS 400. THE TRUST LOANS WILL BE INCLUDED. IF THE NUMBER OF TRUST LOANS DID NOT EXCEED 20% THEY WOULD NOT BE INCLUDED IN THE STATISTICAL SAMPLE. SEE INSTRUCTIONS UNDER C.(3).

- (2) 18 REJECTED LOANS SELECTED FROM ALL REJECTED APPLICATIONS RECEIVED DURING THE MONTH OF THE EXAM AND THE PRECEDING THREE MONTHS. THERE MAY BE CASES WHERE IT IS NOT POSSIBLE TO SELECT REJECTED ITEMS STATISTICALLY.

- B. FOR EXAMINATION FOR FAIR LENDING PRACTICES, AT LEAST FIVE ACCEPTED AND FIVE REJECTED REAL ESTATE MORTGAGES MUST BE REVIEWED. IF YOUR SAMPLE SELECTED IN "A" ABOVE YIELDED LESS THAN FIVE ACCEPTED AND REJECTED MORTGAGES, ADDITIONAL ITEMS WILL BE PULLED

-2-

JUDGEMENTALLY TO YIELD A TOTAL OF FIVE ACCEPTED AND REJECTED MORTGAGES.

EXAMPLE:	ORIGINAL SAMPLE OF REM'S	3 ACCEPTED	2 REJECTED
	TOTAL NEEDED	<u>5</u>	<u>5</u>
	JUDGEMENTALLY PULL	2 ACCEPTED	3 REJECTED MORTGAGE FILES

C. COMPLETION OF REGULATION Z TEST CHECK SHEET (SEE LINE REVIEW)

(1) YOU MUST SELECT AT LEAST ONE OF EACH TYPE OF LOAN MADE BY THE BANK TO TEST FOR COMPLIANCE WITH REGULATION Z AND USURY LAWS. (SEE INSTRUCTIONS FOR COMPLETION OF LINE REVIEW SHEET).

(2) REVIEW A FEW LOANS ORIGINATED PRIOR TO 1975 FOR COMPLIANCE WITH REGULATION Z. EMPHASIS SHOULD BE DIRECTED TO LOANS ON WHICH INCORRECT DISCLOSURE IS COMMON, SUCH AS LOANS WITH POINTS OR INSURED MORTGAGES.

(3) IF CONSUMER LOANS MADE BY THE TRUST DEPARTMENT WERE NOT SAMPLED, SELECT AT LEAST ONE OF EACH TYPE OF CONSUMER LOAN MADE BY THE TRUST DEPARTMENT. THE EXAMINER MAY GO BACK SIX TO TWELVE MONTHS TO FIND A SAMPLE OF EACH TYPE OF LOAN IF IT IS NECESSARY.

D. CREDIT LIFE PENETRATION

IF CREDIT LIFE PENETRATION FOR THE ITEMS SAMPLED EXCEEDS

1. 80% IN ANY DEPARTMENT OF THE BANK, OR
2. 80% IN ANY DEPARTMENT IN A BRANCH, OR
3. 80% FOR LOANS MADE BY ONE PERSON

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THEN SELECT ADDITIONAL ITEMS FOR REVIEW. THE TOTAL OF ITEMS REVIEWED FOR THE RESPECTIVE SITUATIONS DESCRIBED ABOVE, NOT NECESSARILY STATISTICALLY SELECTED, SHOULD BE:

1. 35

2. 10

3. 15 - IN ADDITION, INTERVIEW THE LOAN OFFICER

EXAMPLE: INSTAL' LOANS WORKED: 25 OF THAT NUMBER 21 HAD CREDIT LIFE. THE PENETRATION IS $21/25 = 84\%$. 10 MORE INSTAL' LOANS WOULD BE JUDGEMENTALLY SELECTED AND REVIEWED FOR CREDIT LIFE PENETRATION.

E. IF OVERCHARGES ARE DISCOVERED, A MINIMUM OF 10 OF EACH TYPE OF LOAN ON WHICH THERE ARE OVERCHARGES MUST BE WORKED.

F. IF ERRORS (VIOLATIONS) ARE FOUND ON ANY OF THE SAMPLE ITEMS OR ADDITIONAL ITEMS SELECTED, THE EXAMINER MUST WORK AS MANY ADDITIONAL ITEMS AS IS NECESSARY TO DISCOVER THE EXTENT OF THE PROBLEM.

G. ADVERTISING

REVIEW ALL ADVERTISING DONE IN THE LAST TWO YEARS. IF A CONSUMER EXAM HAS ALREADY BEEN DONE, LOOK AT ADVERTISING SINCE THE LAST EXAM.

H. DEPOSITS

COMPUTE INTEREST ON AT LEAST ONE OF EACH TYPE OF DEPOSIT ACCOUNT OFFERED BY THE BANK.

I. FAIR DEBT COLLECTION PRACTICES ACT

COLLECTION FILES OF AT LEAST FIVE COLLECTION ACCOUNTS MUST BE SELECTED BY THE EXAMINER AND REVIEWED. THE EXAMINER SHOULD WORK AS MANY ADDITIONAL FILES AS ARE CONSIDERED NECESSARY TO DETERMINE COMPLIANCE WITH THE ACT.

J. SPECIAL SITUATIONS

(1) BRANCHES AND OPERATING SUBSIDIARIES

GENERALLY, THE EXAMINER SHOULD INCLUDE THE LOANS GENERATED IN THE BRANCHES OR OPERATING SUBSIDIARIES IN THE STATISTICAL SAMPLE. IF THIS IS NOT POSSIBLE, THE EXAMINER MAY JUDGEMENTALLY SELECT SUCH LOANS TO DETERMINE THE DEGREE OF COMPLIANCE IN THE BRANCH. THE REGIONAL CONSUMER SPECIALIST MAY BE CONTACTED TO AID IN DETERMINATION OF THE EXTENT OF THE EXAMINATION OF BRANCHES OR OPERATING SUBSIDIARIES.

SAMPLING

LAST MONDAY WE TALKED ABOUT THE BASIC POINTS OF SELECTION OF ITEMS FOR REVIEW WITH CONSUMER COMPLIANCE LAWS. DURING THE LECTURES LAST WEEK, AND IN CASE STUDIES, YOU HAVE SEEN HOW THE ITEMS THAT HAVE BEEN SELECTED ARE REVIEWED FOR COMPLIANCE. NOW WE WILL DISCUSS THE ACTUAL SELECTION OF THE ITEMS AND HOW TO EVALUATE OUR SAMPLE RESULTS. LATER IN THE LECTURE, WE WILL REVIEW SOME COMMON PROBLEMS ENCOUNTERED IN SELECTION OF THE SAMPLE.

AS I MENTIONED IN MY PREVIOUS LECTURE, THE SAMPLE IS A NUMERICAL SAMPLE OF 35 ITEMS, WHICH IS ONLY $1/2$ THE SIZE OF THE MINIMUM USED IN THE COMMERCIAL LOANS. LET'S TAKE A BRIEF LOOK AT WHY WE USE ONLY 35 ITEMS.

FIRST, WE KNOW THAT THE MAKING AND PROCEDURAL BOOKING OF LOANS IS A REPETITIVE PROCESS FOR A BANK. THE BANKER NORMALLY HAS A SET MANNER IN WHICH HE ACCEPTS APPLICATIONS, EVALUATES APPLICATIONS, APPROVES AND DENIES CREDIT, FIGURES TERMS AND MAKES DISCLOSURE. FURTHER, THE BANK HAS BLANK FORMS IT USES AND THE USE OF THESE BLANK FORMS FURTHER STANDARDIZES PROCEDURAL CONSISTENCY. OF COURSE WHEN THE BLANK FORMS ARE WRONG, WE KNOW THAT ERRORS ARE GOING TO OCCUR. TABLES, DESK TOP CALCULATORS, CANNED PROGRAMS AND OTHER SUCH ITEMS INDICATE TO US THAT THE LIKELIHOOD FOR PROCEDURAL CONSISTENCY IS QUITE HIGH.

FOR THE MOST PART, THE BANKER WILL BE PROCEDURALLY CONSISTENT. HE MAY BE CONSISTENTLY RIGHT OR HE MAY BE CONSISTENTLY IN ERROR. THE POINT IS THAT HE IS PROCEDURALLY CONSISTENT. WHENEVER SCORING SYSTEMS OR COMPUTERS ARE INVOLVED IN THE EVALUATION OR DISCLOSURE PROCESS, CONSISTENCY IS

MAXIMIZED. THUS, WE KNOW THAT EXCEPT FOR INADVERTENT OR MECHANICAL FAILURE TYPE ERRORS, IF THE BANK IS CONSISTENTLY CORRECT, MOST LOANS WILL BE IN COMPLIANCE. IF THE BANK IS CONSISTENTLY IN ERROR, MOST LOANS OF A GIVEN TYPE OR THAT POSSESS SIMILAR CHARACTERISTICS WILL BE IN VIOLATION.

WHEN STATISTICAL SAMPLING IS APPLIED TO TEST COMPLIANCE WITH LAWS, RATES OR REGULATIONS, OCC POLICY REQUIRES THAT THE SAMPLE CONSIST OF 70 ITEMS AND THAT NO FINITE ADJUSTMENT FACTOR BE USED. SAMPLE RESULTS ARE CONSIDERED SATISFACTORY WITH 70 ITEMS IN THE SAMPLE WHEN NO MORE THAN TWO VIOLATIONS OF A GIVEN TYPE ARE OBSERVED. THREE OR MORE VIOLATIONS REPRESENT SERIOUS NONCOMPLIANCE. WELL, WE KNOW THAT WITH RESPECT TO CONSUMER PROTECTION LAWS EVEN ONE TECHNICAL VIOLATION OF LAW MAY EXPOSE THE BANK TO GREAT LIABILITY. THUS, THE PRESENCE OF ONE ERROR IS ENOUGH TO ALERT US TO POTENTIALLY SERIOUS NONCOMPLIANCE.

IN ADDITION, THE OCC DESIGN FOR COMPLIANCE TEST WITH SAMPLE SIZE MAY BE USED WELL TO TEST FOR THE BANK'S THOROUGHNESS OF COMPLIANCE, BUT NOT SO FOR TESTING THE ACCURACY OF THE DISCLOSURES. THAT IS, WE CAN VERIFY WITH 70 ITEMS THAT ALL REQUIRED INFORMATION IS DISCLOSED AND THAT ALL STEPS ARE FOLLOWED, BUT TO CERTIFY THAT COMPUTATIONS ARE CORRECT AND THAT INFORMATION ON THE APPLICATION WAS CORRECTLY EVALUATED, WE MUST BE MORE METICULOUS. HOWEVER, ASSESSING ACCURACY OF COMPLIANCE WILL REQUIRE TIME CONSUMING COMPUTATIONS AND INFORMATIONAL REVIEWS.

BUT GIVEN THAT WE KNOW THAT THE BANK IS NOT HAPHAZARD IN ITS ADMINISTRATIVE PROCEDURES AND FURTHER THAT A LARGE DEGREE OF CONSISTENCY IS OR SHOULD BE PRESENT, WE MAY LIMIT THE BURDEN OF ASSESSING

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ACCURACY AND TEST ONLY EVERY OTHER ONE OF THE 70 SAMPLE ITEMS FOR ACCURACY. THUS, OUR INITIAL SAMPLE WILL CONTAIN 35 ITEMS. HOWEVER, AS YOU MAY RECALL, THE REDUCED SAMPLE OF 35 ITEMS IS CONSIDERED SATISFACTORY ONLY IF NO INCACCURACIES ARE OBSERVED. THUS, IN YOUR SAMPLE 35 LOANS IF ANY ERRORS, INCORRECT COMPUTATIONS, OR VIOLATIONS ARE NOTED, IT IS AN INDICATION OF SERIOUS POTENTIAL FOR NONCOMPLIANCE WITH THE APPLICABLE LAW. THAT IS WHEN YOUR JOB STARTS--TO FIND OUT WHY!

NOW WE KNOW THAT WE WILL USE NUMERICAL SAMPLING BECAUSE WE ARE BASICALLY CONCERNED WITH THE PRESENCE OR ABSENCE OF VIOLATIONS. BUT FOR SUCH AN EVALUATION TO BE POSSIBLE, EACH ITEM IN THE POPULATION MUST HAVE THE EXACT SAME PROBABILITY OF BEING SELECTED AS ANY OTHER ITEM. SO LET'S DISCUSS THE SAMPLING PROCESS ITSELF. TO BE SURE THAT WE ARE ALL COMFORTABLE WITH SAMPLING, LET'S WALK THROUGH THE CASE PROBLEM YOU HAVE BEEN PROVIDED.

THE FIRST THING WE NEED TO KNOW IS OUR POPULATION SIZE. FOR THE CONSUMER EXAMS OUR POPULATION IS ALL LOANS MADE DURING THE MONTHS OF OUR EXAM PLUS THE THREE PRECEDING MONTHS. OUR POPULATION FOR THE SAMPLE PROBLEM IS 2,142 LOANS.

(CONTINUE THROUGH CASE PROBLEM & DISCUSS THE SELECTION TECHNIQUES)

ONCE WE HAVE OUR 35 ITEMS, WE NEED TO SELECT 18 REJECTED LOAN APPLICATIONS. YOU MAY NOT BE ABLE TO APPLY STATISTICAL SAMPLING TO SELECT YOUR 18 REJECTED LOANS. USUALLY THE BANKER WILL NOT BE ABLE TO TELL YOU WHAT THE POPULATION OF REJECTED LOANS OVER THE LAST THREE MONTHS IS. IF HE CAN, AND THE REJECTED LOAN APPLICATIONS ARE IN ORDER BY MONTH, YOU MAY BE ABLE TO USE A COUNTED, OR MEASURED INTERVAL SELECTION TECHNIQUE. IF IT IS IMPOSSIBLE TO DETERMINE THE POPULATION, OR

- 4 -

IF YOU FEEL IT WOULD BE TOO TIME CONSUMING TO USE STATISTICAL SAMPLING, SELECT YOUR 18 REJECTED ITEMS IN AS RANDOM A PROCESS AS IS POSSIBLE. REFER TO HANDOUT #9 FOR SECTION #1. DISCUSS MINIMUM SIZES.

ONCE YOU HAVE SELECTED AND ANALYZED THE ACCEPTED AND REJECTED FILES, YOU WILL SELECT ADDITIONAL ITEMS TO DETERMINE THEIR COMPLIANCE WITH THE VARIOUS CONSUMER REGULATIONS. YOU SHOULD REFER THE REGULATION Z TEST CHECK PORTION OF THE LINE REVIEW SHEET AND DETERMINE WHICH TYPES OF ADDITIONAL ITEMS MUST BE SELECTED TO DETERMINE THEIR COMPLIANCE WITH REGULATION Z. REMEMBER, YOU WILL WANT TO BE SURE THAT YOU HAVE TESTED THE ACCURACY OF EVERY MATHEMATICAL FORMULA USED BY THE BANK TO SEE IF COMPUTATIONS REFLECT THE DISCLOSURES GIVEN. YOU WILL WANT TO TEST EVERY COMPUTERIZED APPLICATION TO BE SURE THEY ARE CONSISTENT WITH DISCLOSURES. TO MAKE THE ABOVE TESTS, YOU SIMPLY JUDGEMENTALLY SELECT ANY LOAN THAT QUALIFIES AS HAVING THE EXTRA CHARACTERISTIC(S) FOR WHICH YOU ARE EXAMING AND TEST ONE OR TWO OF THEM. YOU NEED ONLY CHECK THOSE ITEMS FOR THE PARTICULAR ATTRIBUTE YOU ARE TESTING. FOR EXAMPLE, IF, IN YOUR SAMPLE, YOU HAVE REVIEWED SEVERAL DIRECT INSTALMENT CAR LOANS, BUT DID NOT HAVE ONE ON WHICH A LATE CHARGE WAS LEVIED, YOU WOULD SELECT A DIRECT INSTALMENT CAR LOAN AND TEST ONLY TO SEE IF THE LATE CHARGE HAD BEEN LEVIED IN ACCORDANCE WITH DISCLOSURES. MAKE SURE THAT IN COMPLETION OF THE CHECK LIST YOU HAVE EXAMINED ALL TYPES OF NOTES, AS CERTAIN TYPES OF LOANS ARE MORE SUSCEPTIBLE TO VIOLATIONS THAN OTHERS. FOR EXAMPLE:

2ND MORTGAGES - (EXAMINE FOR RESCISSION RIGHTS)

DEMAND MORTGAGES - (BALLOON PAYMENTS)

DEMAND NOTES - (APR BASED ON 6 MONTHS)

MGIC, FHA, VA MORTGAGES - (PROPER DISCLOSURE OF PREMIUMS)

- 5 -

ONCE YOU HAVE COMPLETED THE REGULATION Z TEST CHECK LIST, YOU MAY WANT TO SELECT OTHER TYPES OF CREDIT THAT ARE SUSCEPTIBLE TO VIOLATIONS IF YOU HAVE NONE IN YOUR SAMPLE.

- (1) UNSECURED LOANS (IDENTIFY SPECIFIC SITUATIONS WHERE A SPOUSES SIGNATURE IS REQUIRED)
- (2) 1ST LIEN MORTGAGES IN INSTALMENT OR COMMERCIAL DEPTS. (RESPA)
- (3) BRANCH OFFICES (DETERMINE BRANCH MANAGERS COMPLIANCE)

IN REVIEWING THESE ADDITIONAL ITEMS, THE EXAMINER MUST NOT SPEND AN UNDUE AMOUNT OF TIME. IF THESE ITEMS ARE SELECTED, REVIEW ONLY THE PORTION OF THE FILE YOU NEED TO DETERMINE IF THE ITEM IS IN COMPLIANCE. ONLY SELECT BRANCH ITEMS IF YOU FEEL THERE IS A REAL PROBLEM IN THE BRANCH. WE DO NOT HAVE TIME TO DETERMINE EACH BRANCHES COMPLIANCE WITH CONSUMER LAW.

NOW THAT WE HAVE REVIEWED ALL OUR ITEMS, THE SAMPLE MUST BE EVALUATED. IN OUR ORIGINAL SAMPLE OF 35 ACCEPTED AND 18 REJECTED FILES, ANY ONE ERROR FOUND IN THE SAMPLE IS UNACCEPTABLE AND SHOULD BE INVESTIGATED. RATHER THAN ATTEMPTING TO ENLARGE THE UNSATISFACTORY SAMPLE, IT IS PREFERABLE TO FOCUS ATTENTION TO THE QUALITATIVE ASPECT OF THE OBSERVED ERROR. BUT FIRST LET'S LOOK AT WHAT OUR SAMPLE ERROR INVOLVES. DO NOT LIMIT THE POSSIBLE IMPACT OF AN ERROR. FOR EXAMPLE, IF AN INSTALMENT LOAN OFFICER IS ALWAYS REQUIRING THE HUSBAND TO SIGN ON LOANS TO MARRIED WOMEN, WE HAVE A VIOLATION OF 202.7 IN THE INSTALMENT LOAN DEPARTMENT. BUT OUR SAMPLE IS DESIGNED TO DRAW CONCLUSIONS ON THE BANK'S COMPLIANCE ON A WHOLE. THIS ERROR IS MORE THAN A VIOLATION OF 202.7 IN THE INSTALMENT DEPARTMENT. SINCE REQUIRING A HUSBAND

TO SIGN FOR A WIFE IS DEFINED AS DISCRIMINATION, YOU HAVE FOUND A DISCRIMINATORY PRACTICE THAT MAY ALSO BE OCCURRING IN OTHER DEPARTMENTS OF THE BANK. DISCRIMINATION MAY TAKE PLACE IN OTHER DEPARTMENTS OF THE BANK ON DIFFERENT LEVELS; I.E. IT MAY BE RACIAL DISCRIMINATION IN HOUSING LOANS. FOR THIS REASON EACH ERROR MUST BE ISOLATED TO DETERMINE ITS IMPACT, HOWEVER DON'T EXCLUDE POSSIBILITIES BEFORE YOU BEGIN TO ISOLATE THE ERROR.

REMEMBER: I SAID WE WILL NOT EXPAND OUR SAMPLE TO ISOLATE THE ERROR. HERE ARE A FEW THINGS YOU LOOK AT IN ATTEMPTING TO ISOLATE THE ERROR.

- (1) LOAN TYPE
- (2) BRANCH
- (3) OFFICER
- (4) DEALER
- (5) SPECIFIC FORM

ONCE YOU HAVE ISOLATED THE ERROR YOU WILL BE READY TO:

- (1) DETERMINE IMPACT & DURATION (DISCUSS)
- (2) CORRECTIVE ACTION (DISCUSS)

QUESTIONS ??

NOW THAT WE UNDERSTAND THE BASIC CONCEPT OF SAMPLING, WE WILL DISCUSS HOW TO GO ABOUT TAKING A SAMPLE IN THE BANKS WE GO INTO. OUR FIRST STEP, AND PROBABLY THE STEP YOU WILL HAVE THE MOST TROUBLE WITH IS IN DETERMINATION OF THE POPULATION AND SEGREGATION OF THE POPULATION FOR SELECTION. THERE ARE SEVERAL SOURCES FROM WHICH THE POPULATION WILL BE DERIVED.

- (1) REQUEST LETTER (THE BANK COULD PROVIDE A LISTING)

- (2) BOARD MINUTES OR DIRECTOR'S MINUTE BOOK
- (3) LOAN COMMITTEE MINUTES
- (4) DEPARTMENTAL REPORTS
- (5) COMPUTER PRINTOUTS
 - (A) BANK COULD PROVIDE PRINTOUT OF ALL LOANS MADE IN THE LAST THREE MONTHS.
 - (B) BANK AUDIT PROGRAMS COULD SELECT SAMPLE. IF THIS METHOD IS USED, THE EXAMINER SHOULD PROVIDE THE RANDOM START OR TERMINAL DIGITS.
 - (C) IF LOANS ARE BOOKED ON THE COMPUTER IN DATE ORDER, FIND OUT WHICH LOAN WAS THE FIRST LOAN MADE ON THE DATE THAT CORRESPONDS TO THE BEGINNING OF THE THREE MONTHS PRECEEDING THE MONTH OF THE EXAM DATE.
- (6) MANAGEMENT ESTIMATES - IF AN ESTIMATE IS USED, USE A LOW ESTIMATE OF THE NUMBER OF LOANS MADE. THIS WILL INSURE THAT YOU WILL HAVE ENOUGH SAMPLE ITEMS. IF TOO MANY ITEMS ARE SELECTED, YOU CAN RANDOMLY ELIMINATE ITEMS; HOWEVER, IF 35 ITEMS ARE NOT SELECTED BECAUSE OF AN ERRONEOUS ESTIMATE, ANOTHER SAMPLE WOULD HAVE TO BE SELECTED.

EVEN WITHIN A BANK YOU MAY NEED TO USE A COMBINATION OF THE ABOVE RECORDS TO DETERMINE AND ISOLATE THE SAMPLE POPULATION. FOR EXAMPLE, INSTALMENT AND REAL ESTATE LOANS MAY BE COMPUTERIZED AND COMMERCIAL LOANS MAY BE ON LEDGER CARDS.

ONE OF THE COMMON PROBLEMS ENCOUNTERED IS THAT THE COMMERCIAL LOAN POPULATION CANNOT BE DETERMINED OR SEGREGATED. (DISCUSS WHAT TO DO)

- A. ESTIMATE OF NUMBER OF ACCOUNTS

- 8 -

- B. USE OF MEASURED INTERVALS
- C. UNDERTERMINABLE POPULATION OR SELECTION OF ITEMS IS NOT POSSIBLE.
 - (1) THIS PROBLEM MAY BE ENCOUNTERED IN OTHER DEPARTMENTS
 - (2) MUST STATISTICALLY SELECT 35 ITEMS FROM AREAS WHERE STATISTICAL SAMPLING IS POSSIBLE
 - (3) JUDGMENTALLY SELECT ITEMS FROM DEPARTMENT WHERE STATISTICAL SAMPLING SHOULD NOT BE USED.

ANOTHER PROBLEM YOU COULD ENCOUNTER WOULD BE A CONCENTRATION OF LOANS TO WHICH CONSUMER REGULATIONS ARE NOT APPLICABLE OR WOULD NOT AID YOU IN DETERMINATION OF A BANK'S COMPLIANCE. FOR EXAMPLE, IF THE BANK HAS MANY FLOOR PLAN NOTES, YOU WOULD NOT WANT TO END UP WITH 26 FLOOR PLAN NOTES FOR YOU REVIEW. THERE ARE TWO METHODS YOU CAN USE TO SELECT YOUR DATA.

- A. ELIMINATE FLOOR PLANS FROM THE POPULATION
- B. OVER SAMPLE AND ELIMINATE LOANS THAT ARE NOT APPLICABLE.

(GIVE EXAMPLE)

IF A PAID OUT LOAN IS SELECTED IN THE SAMPLE:

- A. REVIEW APPLICATION FOR COMPLIANCE WITH REGULATION B
- B. CHECK REBATES
- C. PREPAYMENT PENALTY

IF CREDIT LIFE PENETRATION IN THE ITEMS SAMPLED EXCEEDS 80% IN ANY DEPARTMENT, SELECT ADDITIONAL ITEMS SO A TOTAL OF 35 ITEMS ARE REVIEWED FOR CREDIT LIFE PENETRATION. THESE ADDITIONAL ITEMS NEED NOT BE SELECTED STATISTICALLY.

-3-

The Comptroller has not named a Deputy Comptroller for Research and Economic Programs. This position has responsibility for researching and analyzing trends in the financial industry, conducting economic and banking research, and examining changes in corporate activities of national banks. Specific programs include banking research and economic analysis, strategic analysis, bank organization and structure, and financial reports and statistics.

John E. Shockey, who was named Chief Counsel in 1977, will continue in that position. He is responsible for directing and coordinating the OCC's Law Department, which provides services on antitrust matters, enforcement and compliance with applicable laws, legislation, litigation, securities laws and other bank related issues.

####

EXHIBIT I

INSTRUCTIONS FOR WORKING PAPERS REVIEW - CONSUMER

The questionnaire for Working Papers Review - Consumer Examinations is designed to ensure that working papers developed during consumer compliance examinations include the following:

1. Minimum documentation as required by the Consumer Affairs Division, Washington, D.C.
2. Additional documentation as may be required by Region 14.
3. Proper cross-referencing of workpapers to ensure ready accessibility to necessary supportive documents.
4. Adequate comments and analyses on the bank's condition with respect to its ability to comply with consumer laws and regulations.
5. Sufficient support for comments included in the Report of Examination - Consumer Affairs.

In addition to the specific items in the questionnaire, the reviewer should be cognizant of and comment upon, if necessary, the following:

1. Do the working papers properly organize the material assembled during an examination to:
 - (a) facilitate review?
 - (b) facilitate future reference?
 - (c) determine the scope of the examination?
 - (d) reflect the bank's present condition?
 - (e) reflect the bank's future condition?
2. Do the working papers identify the examiner(s) performing the work?
3. Do the working papers always show the source of information?
4. Do the working papers always show the:
 - (a) name of bank and department?
 - (b) examination date?
 - (c) work performance date?
 - (d) examiner's name?
 - (e) proper numbering system?
 - (f) material is prepared in pencil, with red pencil used for designation of violations?
5. Are there any (if so, was an adequate explanation/reason provided?):
 - (a) open items?
 - (b) unanswered questions?
 - (c) improperly answered questions?
6. Are the working papers legible, concise, clear, neat and organized?

INSTRUCTIONS FOR WORKING PAPERS REVIEW - CONSUMER (Continued)

The reviewer is to provide in narrative form an overall conclusion as to the accuracy, quality, completeness, and relevancy of the working papers reviewed. Such items as adherence to professional standards, use of review and quality for future reference should be discussed. Suggestions for improvement should also be indicated. The reviewer must then rate the overall condition of the working papers as Excellent, Superior, Good, Fair, or Poor.

Charter No.: _____

WORKING PAPERS REVIEW - CONSUMER EXAMINATIONS

Name of Bank: _____ City: _____ State: _____

Examination Date: _____ Examiner: _____

Working Papers Reviewed By: _____

Date Reviewed: _____

Program #39

Flexibility is allowed in numbering within specific categories unless reference numbers have been assigned. The following is a checklist for the reviewer as to which items will be commonly included within each folder of the working papers.

A. GENERAL EXAMINATION PROCEDURES

	Yes	No	Comments
A- Is the name listed of the person to see for performing the exam (location of departments, phone numbers, etc.)?			
A- Are comments included regarding the Commercial Examination Report? Are they adequate?			
A- Are sampling procedures sufficiently documented?			
A- Are (written) policies satisfactorily summarized or documented?			
A- Is the EP-B-2 Questionnaire completely filled out correctly?			
A- Is the EP-B-3 Questionnaire completely filled out correctly?			
Note: If the bank has departmental policies and the examiner has included policies and questionnaires in their corresponding Loan Department Analysis folder, has a notation on folder A been made to reflect such inclusion?			

WORKING PAPERS REVIEW - CONSUMER EXAMINATIONS

B. INTERNAL CONTROLS	Yes	No	Comments
B-1 Has the Internal Controls Questionnaire been fully completed?			
B- Are name(s) of the compliance officer or committee members provided? Are comments included that adequately explain the compliance officer's or committee's policies, procedures, practices, etc.?			
B- Are memos included that adequately analyze the following: Internal Auditors? External Auditors? Loan Review Auditors/Examiners?			
B- Are there comments included from the Board of Directors Minutes or statements indicating why not?			
B- Evaluate any memos from other areas of the examination that pertain to internal controls - Are there any? Are they adequately written?			
B- Is there an adequate summary of internal controls? (Detail is not required - the summary is for aiding in writing the report and discussing internal controls with management)			
C. CCIS DATA AND LITIGATION			
C- Is there a copy of the CCIS Data?			
C- Are there adequate comments on/analysis of CCIS data or a comment on the reason why there is no data?			
C- Is there any documentation of litigation? Has the litigation, if any, been properly evaluated?			

WORKING PAPERS REVIEW - CONSUMER EXAMINATIONS

	Yes	No	Comments
D. BLANK FORMS			
D-1			Is the Regulation B Forms Check List (EP-B-1) completed properly?
D-2			Are blank forms included and are those with violations segregated or otherwise clearly identified?
D-3			Are comments on blank forms adequate/accurate?
E. EXAMINATION AND VERIFICATION PROCEDURES			
			Are each of the following procedures forms forms properly completed, including clear cross-referencing to working papers where applicable?
E-1			Usury
E-2			FCRA
E-3			Fair Housing
E-4			Regulation B
E-5			Regulation Z (Closed)
E-			Regulation Z (Open)
E-			Regulation Z (Leasing)
E-			RESPA
E-			Fair Debt Collection Practices Act
Note:			Specific Examination and Verification Procedures for State Laws (other than Usury) have not yet been developed. Comments and documentation regarding such laws may be included in other applicable sections of the working papers, where indicated. Remaining findings and documentation should be included in this section and reviewed for completeness, accuracy, and inclusion in the Report of Examination.
F. LOAN DEPARTMENT ANALYSIS			
Note:			For small banks, all Consumer Loan Review forms should be headed by one Line Review Sheet. In larger banks, separate folders should be maintained on each department as follows:

WORKING PAPERS REVIEW - CONSUMER EXAMINATIONS

F. LOAN DEPARTMENT ANALYSIS (Continued)	Yes	No	Comments
F-1 Instalment Department F-2 Real Estate Department F-3 Note Department F-4 Open End Credit Department F-5 Leasing Department			
Is each folder headed by a separate Line Review Sheet (CA-1)?			
Are the review sheets properly completed?			
Are applicable line sheets (Consumer Loan Review forms - CA-1&2) for sampled loans properly completed?			
Are the line sheets filed in the correct departmental folder?			
Are line sheets numbered #1 to #_ for sample items, #H-1 to #H-_ for additional items selected, and #R-1 to #R-_ for rejected loans selected?			
Are xerox copies of violations pertaining to a particular loan included with the applicable line sheet or as a separate working paper in this section?			
F- Are comments included for the review of line sheets, such as isolation of the problem to a particular branch or officer, reason for and duration of the violation, or indications of discrimination?			
F- Are computations of overcharges and their total impact documented?			
F- If any other workpapers pertaining to the lending area(s) of the bank used to support completion of the Examination and Verification Procedures in folder E are included, are they sufficiently clear, complete and meaningful?			

WORKING PAPERS REVIEW - CONSUMER EXAMINATIONS

	Yes	No	Comments
F. LOAN DEPARTMENT ANALYSIS (Continued)			
F-			Has a summary been prepared that contains the following: Comments on officer's knowledge? Noted variances from written procedures? General indications of discriminatory practices? Violations of law, including citation, reason for noncompliance, duration of noncompliance, proposed, effected, or recommended corrective action, and impact of noncompliance?
Note: This section should not be a copy or reiteration of the report. It is to serve as an organizational tool to discuss deficiencies with the bank and to write the report.			
G. HOME MORTGAGE DISCLOSURE ACT			
G-1			Are the Examination and Verification Procedures properly completed?
G-			Are copies of the HMDA Statements, or portions thereof, included?
G-			Are copies of census tract maps, if available, included?
G-			Is there an adequate summary, which should include comments on compliance with State laws and listings of any violations?
H. ADVERTISING			
H-1			Are the Examination and Verification Procedures properly completed?
H-			Do the work papers included here adequately support the required procedures?
H-			Are copies of ads in violation included?
H-			Is there an adequate summary, including noted violations of State laws?

WORKING PAPERS REVIEW - CONSUMER EXAMINATIONS

	Yes	No	Comments
I. INTEREST ON DEPOSITS			
I-1 Are the Examination and Verification Procedures properly completed?			
I- Do the work papers included here adequately support the required procedures?			
I- Are copies of documents in violation included?			
I- Is there an adequate summary?			
J. EFTS			
J-1 Are the Examination and Verification Procedures properly completed?			
J- Do the work papers included here adequately support the required procedures?			
J- Is there an adequate summary?			
K. CREDIT LIFE MEMO			
K- Does the memo include the penetration ratio of credit life insurance for each loan department and the bank as a whole?			
Does the memo state there is/is not any indication that credit life insurance is required by the bank, any branch, or any loan officer?			
L. SUMMARY OF EXAMINATION			
L- Does the summary list all violations, in numerical order, and other discussion material for the exit review?			
L- Are there comments on the exit review and are they adequate?			
L- Is there a correctly completed copy of the Consumer Examination Summary Sheet included?			
L- Is there a copy of the Report of Examination included which is sufficiently referenced to the working papers?			

MEMORANDUM

TO:

FROM: Workpaper Review Section - Consumer Affairs, 14th Region

DATE:

SUBJ: Comments on Your Working Papers for Your Review

Bank: _____

Date of Exam: _____

Ref. #	Comments	Examiner

Reviewer's Comments on General Condition of the Working Papers:

INTRODUCTION

Section 1

Working Papers Index

Handout No. 4

WORKING PAPERS INDEX FOR CONSUMER AFFAIRS
PROGRAM #39

- A. General Examination Procedures
- B. Internal Controls
 - B-1. ICQ
- C. CCIS Data and Litigation
- D. Blank Forms
 - D-1. Regulation B. Forms Check List (EPB-1)
- E. Examination and Verification Procedures
 - E-1. Usury
 - E-2. FCRA
 - E-3. Fair Housing
 - E-4. Regulation B
 - E-5. Regulation Z (Closed)
 - E-_. Regulation Z (Open)
 - E-_. Regulation Z (Leasing)
 - E-_. RESPA
- F. Loan Department Analysis
- G. Home Mortgage Disclosure Act
 - G-1. Examination and Verification Procedures
- H. Advertising
 - H-1. Examination and Verification Procedures
- I. Interest on Deposits
 - I-1. Examination and Verification Procedures
- J. EFTS
 - J-1. Examination and Verification Procedures
- K. Credit Life Memo
- L. Summary of Examination

CONTENT GUIDELINES FOR WORKING PAPERS
CONSUMER AFFAIRS EXAMINATIONS

Flexibility is allowed in numbering within specific categories unless reference numbers have been assigned. The following is a guide for the examiner as to which items will be commonly included within each folder.

A. GENERAL EXAMINATION PROCEDURES.

- A- Who to see to perform the exam. (Location of departments, etc.)
- A- Comments from the Commercial Examination Report.
- A- Sampling procedures.
- A- (Written) policies
- A- EPB -2 Questionnaire(s)
- A- EPB -3 Questionnaire

NOTE: If the bank has departmental policies, and the examiner wishes to include policies and questionnaires in their corresponding Loan Department Analysis folder, make a notation on this folder that this has been done.

B. INTERNAL CONTROLS

- B-1 Internal Controls Questionnaire.
- B- Name(s) of compliance officer or committee members and comments on the officer's or committee's policies, procedures, practices, etc.
- B- Memos and comments in Internal and External Auditors..
- B- Memos and comments on Loan Review Auditors.
- B- Applicable comments from Board of Directors Minutes.
- B- Memos from other areas of the examination that pertain to internal controls.
- B- Summary of internal controls. (Detail is not required, make notes or comments that will help you write the report, or discuss internal controls with management)

C. CCIS DATA AND LITIGATION

- C- Copy of CCIS Data
- C- Comments on CCIS data or comment on reason why there is no data.
- C- Litigation

D. BLANK FORMS

- D-1 Regulation B Forms Check List
- D- Blank forms (At the minimum include forms that are in violation)
- D- Comments on Blank Forms

E. EXAMINATION AND VERIFICATION PROCEDURES

- E-1 Usury
- E-2 FCRA
- E-3 Fair Housing

-2-

- E-4 Regulation B
- E-5 Regulation Z (Closed)
- E- Regulation Z (Open) (Indication will be made if not applicable to a bank.)
- E- Regulation Z (Leasing) (do)
- E- RESPA

F. LOAN DEPARTMENT ANALYSIS

This section will be tailored by the examiner to best coincide with the structure of the bank under examination. In a small bank with only one or two lending officers and no separate lending departments, there would be only one loan analysis folder. All lines would be headed by one review sheet called "All Lending Departments". In a larger bank that has separate lending departments, separate folders could be maintained on each department as follows:

- F-1 Instalment Department
- F-2 Real Estate Department
- F-3 Note Department
- F-4 Open End Credit Department
- F-5 Leasing

The lines (headed by a review sheet) for each department would be kept in their respective departmental folders.

The following information would be included in each loan department folder that has been included in the Loan Department Analysis.

- F- Lines (Headed by the Line Review Sheet)
The lines will be numbered #1 to #__ for sample items, #N-1 to #N-__ for additional items selected, and #R-1 to #R-__ for rejected loans selected. Xerox copies of violations pertaining to a particular loan could either be kept with the line or as a separate working paper in this section.
 - F- Comments on review of line sheets. This could include:
 - Isolation of the problem (i.e., to a particular Branch or Officer)
 - Reason for violation and duration of the violation.
 - Indications of discrimination
 - F- Computation of overcharges and their total impact.
 - F- All other workpapers that pertain to the lending area(s) of the bank used to support completion of the Examination and Verification Procedures in folder E.
 - F- Summary. This section would include the following:
 - Comments on officer's knowledge
 - Noted variances from written procedures
 - General indications of discriminatory practices
 - Violations of Law (It would be helpful to organize by violation in numerical order. This would facilitate writing of the report) Be sure to include violations of State Laws.
- For each violation of law:
- Citation and reason for noncompliance
 - Duration of noncompliance

-3-

Proposed, effected, or recommended corrective
action
Impact of noncompliance

NOTE: This section should not be a
reiteration of your report.
This is to serve as an organi-
zational tool to discuss with
the bank and to write your report.

- G. HOME MORTGAGE DISCLOSURE ACT
 - G-1 Examination and Verification Procedures
 - G- Completed HMDA Statements
 - G- Census tract maps (If available)
 - G- Summary. (Be sure to note any violations, or comments on compliance with State Laws)
- H. ADVERTISING
 - H-1 Examination and Verification Procedures
 - H- Work papers to support procedures
 - H- Copies of ads in violation
 - H- Summary (Include noted violations of State Laws)
- I. INTEREST ON DEPOSITS
 - I-1 Examination and Verification Procedures
 - I- Work papers to support procedures
 - I- Summary
- J. EFTS
 - J-1 Examination and Verification Procedures
 - J- Work papers to support procedures
 - J- Summary
- K. CREDIT LIFE MEMO
 - K- Memo noting: Penetration Ratio, Optional Nature, Income to the Bank for the Year, Where Income Goes, Officers Share, Insurance Co. Name, and Director, Officer or Employee Affiliation with the Insurance Company.
- L. SUMMARY OF EXAMINATION
 - L- Listing of all violations, in numerical order, and other discussion material for the exit review. (The detail of this section will depend on the needs of the examiner)
 - L- Comments on Exit Review.
 - L- Consumer Examination Summary Sheet.
 - L- Referenced Copy of the Report of Examination.

PRELIMINARY
DRAFT

CONSUMER AFFAIRS
-CONSUMER COMPLAINT INFORMATION SYSTEM (CCIS)
(excerpts)

Prepared By:

Jan Lubeley
Charles Shorter
Management Services Division
November 14, 1975

1.1 Scope

The Consumer Complaint Information System (CCIS) is a software system designed to provide the capabilities to identify consumers and banks in dispute, and the various consumer complaints. Within this capacity, the CCIS provides a collection center for information of bank and consumer disputes for all national banks, and a history of consumer complaints.

1.2 Manual Information System

The consumer complaint manual information system will compliment and facilitate the operation of the Consumer Complaint Information System (CCIS).

This manual system provides for the routing of the Consumer Complaint Notification (CCN) from the point of initial record to document completion i.e., resolution determination and final computer data entry. Also the manual system identifies the communication network among the four areas of co-operation-Consumer Affairs, Congressional Affairs, Legal Department, and Management Services.

The responsibilities of the four primary divisions are as follows:

Consumer Affairs

- Initiates the CCN when a complaint is received in the Washington office, or in the case where the complaint is filed and resolved in the region, the division is the recipient of the completed CCN.
- Distributes accumulated data to divisions as required.
- Maintains a comprehensive file consisting of actual complaint, CCN and various computer printouts resulting from the Consumer Complaint Data System.

Congressional Affairs

- Routes complaints received to Consumer Affairs.
- Responds to Congressional inquiries regarding the status of complaints based on current data provided by Management Services Division in the form of the resolution computer printout.

Legal Department

- Resolves complaints.
- Responds to inquiries regarding the status of complaints.

Management Services Division

- Captures, edits and stores complaint data.
- Produces periodic reports of complaint classification summaries by selected data elements.

Instructions for completion of the Consumer Complaint Notification and the change sheet, and procedures for CCN processing operations are described in the following sections.

1.2.5 Regional Office Procedures

Periodic management reports are produced by the Management Services Division for regional office use. The reports furnish the consumer affairs specialist with current data regarding the status of complaints being processed and provides a complete historical file. These reports are distributed as follows:

Monthly -

.Pending Complaints by Region and Attorney

.Complainant Alphabetical Listing

Quarterly -

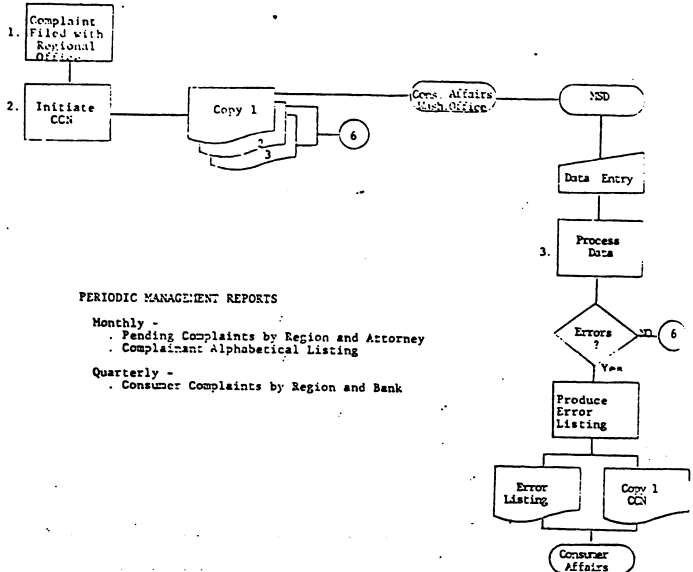
.Consumer Complaints by Region and Bank

- | <u>Step</u> | <u>Activity</u> |
|-------------|---|
| 1. | A complaint is filed with Regional Counsel or Consumer Affairs Specialist. The notification source may be an individual, a special interest group, a congressional office or another federal agency. |
| 2. | The Regional Counsel or the Consumer Affairs Specialist in the region initiates a Consumer Complaint Notification (CCN) completing all items except "Resolution Date" and "Resolution". |
| | Copy 1 of the CCN is sent to the Consumer Affairs Division of the Washington Office. Consumer Affairs scans the document for incorrect data fields and forwards it to the Management Services Division (MSD) where the data is entered into the computer file thereby 'opening' a case. |
| | Copies 2 and 3 are retained in the regional office files. (See Step 6). |
| 3. | The data is processed by MSD. When no errors are reported MSD returns the entry document to Consumer Affairs; proceed to Step 6. When errors are reported continue. |

<u>Step</u>	<u>Activity</u>
4.	MSD produces an error listing and forwards it, with copy 1 of the CCN to Consumer Affairs.
5.	Consumer Affairs makes corrections on a Consumer Complaint Notification Change Sheet. The change sheet is forwarded to MSD and the new data is entered into the computer file. <u>Steps 3 through 5</u> are repeated until no errors are reported.
6.	The complaint is resolved by the attorney.
7.	The resolution code is entered on copies 2 and 3 of the CCN.
8.	A Consumer Complaint Data Entry form is completed and forwarded to the Consumer Affairs Division of the Washington office. It is sent to MSD for data entry.
9.	MSD processes the data and returns the Data Entry form to Consumer Affairs.

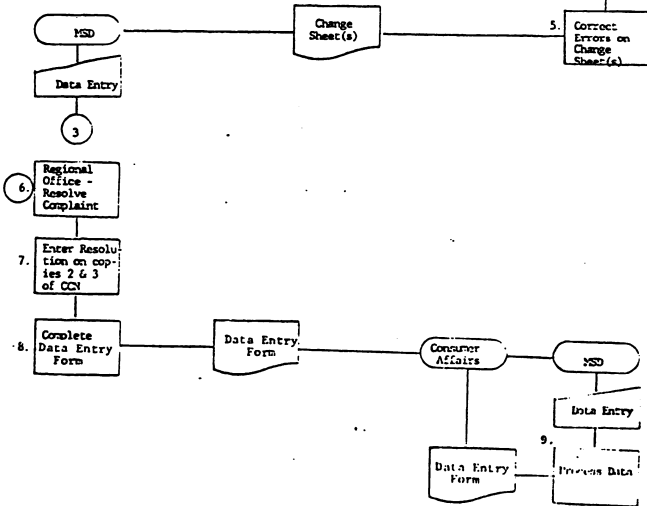
When the regional office receives a management report from the Washington office containing a complete case account (opened, closed and changes) copies 2 and 3 of the CCN may be discarded.

REGIONAL OFFICE PROCEDURES



PERIODIC MANAGEMENT REPORTS

- Monthly -
- . Pending Complaints by Region and Attorney
 - . Complainant Alphabetical Listing
- Quarterly -
- . Consumer Complaints by Region and Bank



1.2.6 Washington Office Procedures

Periodic management reports are produced by MSD for Consumer Affairs, Bank Operations Division of the Law Department and Congressional Affairs. The reports inform these divisions of the current status of complaints being processed within the Bureau in addition to providing a complete historical file. These reports are distributed as follows:

WEEKLY

Pending Complaints By Region and Attorney - Bank Operations Division of the Law Department

Complainant Alphabetical Listing - Consumer Affairs
Congressional Affairs
Bank Operations Division of the Law Department

MONTHLY

Consumer Complaints By Region and Bank - Bank Operations Division of the Law Department
Consumer Affairs

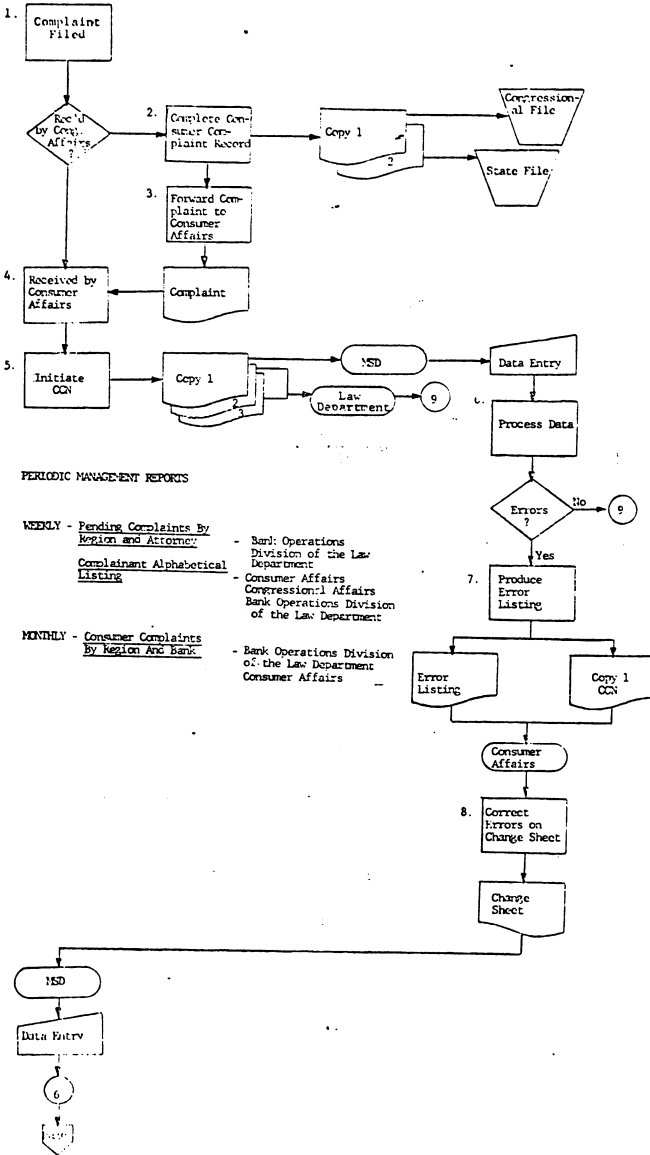
STEPACTIVITY

1. The complaint is filed. It may be filed directly with the Comptroller's office or indirectly through another federal agency, a special interest group or a Congressional office.
2. When the complaint reaches OCC via a Congressional office it is handled initially by the Office of the Special Assistant for Congressional Affairs.
3. The complaint then is forwarded to the Consumer Affairs Division.
4. The complaint is received by Consumer Affairs either directly or through Congressional Affairs.
5. Consumer Affairs initiates the Consumer Complaint Notification (CCN); completing all items except "Assigned Attorney," "Resolution Date," and "Resolution."

Copy 1 of the CCN is forwarded to Management Services Division (MSD) for entry into the computer file. Copies 2 and 3 are sent to Bank Operations Division of the Law Department (See Step 9).

- | <u>STEP</u> | <u>ACTIVITY</u> |
|-------------|--|
| 6. | The data is processed by MSD. |
| 7. | If there are no errors in the data then proceed to Step 9. If there are errors, an error listing is produced and with copy 1 of the CCN is forwarded to Consumer Affairs. |
| 8. | Consumer Affairs corrects the errors. A Consumer Complaint Notification Change Sheet is completed for each complaint. The change sheet(s) is sent to MSD and the new data is entered to the file. Steps 6 through 8 are repeated until no errors are reported. |
| 9. | An attorney is assigned by the Law Department. |
| 10. | A data entry form is completed indicating the name of the attorney assigned to the case. The data entry form is sent to MSD and the data is entered into the computer file. When it is determined that the complaint be referred to the region, resolution code '6' - "Referred" should be entered on the CCN. The numerical designation of the region handling the case also should be entered. |
| | When Congressional interest has been expressed, the Data Entry form is completed in duplicate indicating on the second copy in the upper right corner the name of the Congressman, date of the Congressional letter and last name of the complainant. |
| 11. | MSD processes the data. |
| 12. | If there are no errors in the data then proceed to Step 14. If there are errors, an error listing is produced and with the Data Entry Form is forwarded to the Consumer Affairs Division. |
| 13. | The errors are corrected on a change sheet by the Consumer Affairs Division. The Change Sheet is forwarded to MSD for data entry. The data is processed and the error correction procedures are repeated until no errors are reported. |
| 14. | The complaint is resolved by the assigned attorney. |
| 15. | A Change Sheet is completed indicating the resolution and resolution date. It is forwarded to MSD and entered into the computer file. |
| 16. | The data is processed by MSD. |

WASHINGTON OFFICE PROCEDURES



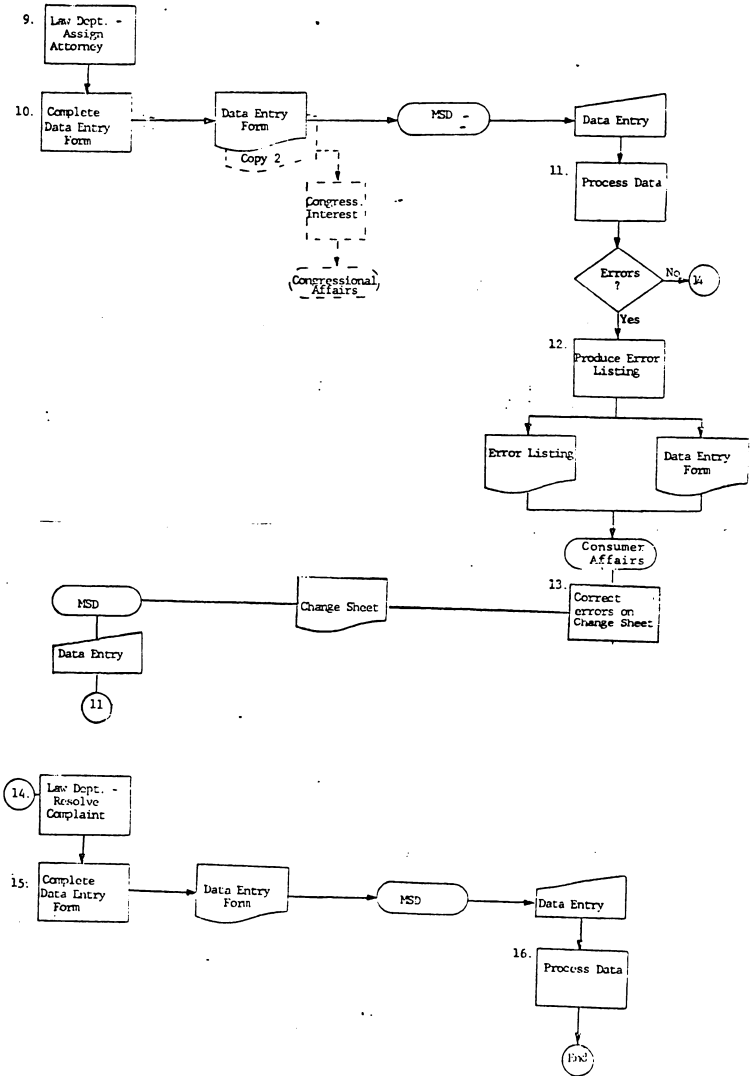
PERIODIC MANAGEMENT REPORTS

WEEKLY - Pending Complaints By Region and Atomic Complainant Alphabetical Listing

- Bank Operations Division of the Law Department
- Consumer Affairs Congressional Affairs Bank Operations Division of the Law Department

MONTHLY - Consumer Complaints By Region And Bank

- Bank Operations Division of the Law Department
- Consumer Affairs





Comptroller of the Currency
Administrator of National Banks

Washington, D. C. 20219

August 8, 1977

Examining Circular No. 158

To: All Regional Administrators and Examining Personnel

Subject: Procedure for processing complaints involving Title VIII (Fair Housing) of the Civil Rights Act of 1968 (42 U.S.C. 3605)

In order to standardize the procedure this Office has been using in varying forms to process complaints alleging discrimination in mortgage or home improvement financing under Title VIII of the Civil Rights Act of 1968, as amended, the following formal procedures have been adopted.

These procedures do not apply to the notification which HUD sends us concerning complaints received and being investigated by it. These procedures also do not apply, or should be discontinued, when the complaint is or becomes the subject matter of litigation, or when the complaint does not concern a national bank or banks.

These procedures, including the time limits indicated, should be followed in ordinary circumstances. However, the Regional Office may exercise its discretion to modify the procedures and/or extend the time limits in exceptional circumstances.

Receipt of Complaints

All complaints will be entered into the Consumer Complaint Information System and reviewed by the Regional Office to determine whether the alleged act of discrimination is covered by the Act. All such complaints received in the Washington Office will be forwarded to the appropriate Regional Office for processing.

The Regional Office should acknowledge receipt of a complaint within 3 business days of receipt, notify the complainant of his or her rights under the Act, and advise that an examiner, assigned to investigate the complaint, will be contacting the complainant regarding the complaint. A suggested form letter is attached.

The bank involved should be provided a copy of the complaint and requested to submit to the Regional Office, within 10 business days, a detailed and documented response to the complaint and an explanation for the actions or decisions in question. The bank should also be advised that an examiner, assigned to investigate the complaint, will contact the bank following receipt of its response. A suggested form letter is attached.

Assignment of Investigating Examiner

An examiner who has completed the Consumer Affairs Training School and conducted consumer examinations should be assigned for up to 10 days to investigate the complaint, commencing no later than 10 business days following receipt of the bank's response.

If the Consumer Affairs Examination has not been conducted at the bank involved, such an examination should be commenced and the complaint investigated simultaneously.

Prior to the investigation, the examiner and Regional Consumer Specialist should review the complaint, the bank's response to the complaint, the Consumer Affairs and Commercial Examination Reports and related workpapers, and decide how the below listed procedures should be expanded or modified in order to provide the optimum scope of investigation necessary to resolve the specific complaint.

Investigation Procedures

- A. Interview Complainant. Interview the complainant to determine the following, if relevant to the complaint.
 1. Basic Data: The complainant's name, address, telephone number, race, color, religion, national origin, sex, and marital status, plus any other information of which the bank had knowledge. This might include occupation, place and length of employment, educational background, military status, size of family, net income, and source of income.
 2. Financial Data: Determine whether complainant's financial data and application, submitted by the bank in response to the complaint, agrees with information provided by the complainant.

3. Dealings Between Complainant and Bank: Obtain full details of all the complainant's dealings with the bank or any of the bank's agents, including all oral or written communications (including loan applications) with these persons, the nature and date of the alleged discriminatory act, the amount of the loan sought, whether the use of a guarantor or co-signer was contemplated, whether the complainant had a VA certificate of eligibility or intended to obtain FHA or SBA Guarantee Insurance, and disclosed these facts to the bank, the names and addresses of the persons who dealt with the complainant, and the complainant's description of what was said or done. Determine what reason the bank gave for refusing to lend to the complainant or refusing the terms sought by the complainant. Ascertain the names and addresses of any witnesses to the alleged discrimination.
 4. Other Financial Arrangements. If the complainant has made or attempted to make other financial arrangements for the same purpose for which the original loan was sought since the date of the alleged discriminatory act, determine the terms of such financial arrangements and with whom they were made.
 5. Bank's Prior Dealings: Determine whether the complainant:
 - a. was a customer of the bank at the time the loan in question was sought. Also determine whether the complainant has ever had a loan or line of credit with the bank in the past, and if so, ascertain the purpose for which such loan was made, the date, amount and terms of such loan, and the current status.
 - b. knows of other persons who are alleged to have encountered similar discrimination, and obtain the names and addresses of such persons if they are known to complainant.
 6. Credit Rating: Obtain any information available on the complainant's creditworthiness.
- B. Interview Bank. Contact the appropriate senior officer of the bank involved in the alleged discriminatory act to explain the investigation procedures and arrange interviews of the bank personnel involved in the complaint and other personnel, as necessary, to obtain the following information:

1. Statement. The bank's explanation for, or interviewing officer's account of the incident which the complainant has alleged to be discriminatory, including the reasons for the denial of a loan, or for the imposition of particular terms and conditions on a loan involving the complainant, and the names of the persons involved in the decision on the application.
 2. Policy. Determine the bank's policy with regard to the making of loans, including all factors taken into account in determining whether a given applicant is eligible for a loan or other financial assistance, including consideration of the neighborhood. Ascertain whether any of these factors take into account, directly or indirectly, the applicant's race, color, religion, national origin, sex or marital status and whether inquiry is made about such in loan applications. Obtain copies of any available writings or documents pertaining to the bank's standards for the making of loans. In order to verify the lender's policy, other mortgage applications, both accepted and rejected, should be reviewed. The examiner should make use of available examination reports and workpapers in banks which have received a Consumer Affairs Examination.
 3. Dealings with Minorities. Determine whether the bank has made any loans to applicants who are of the same race, color, religion, national origin, sex or marital status, as the complainant (as appropriate to the allegation), and if so, the number of such loans and the time they were made. Review the name and residence of persons receiving such loans to determine whether the bank may have a policy of granting such loans only in certain neighborhoods.
 4. Federal Programs. Determine if the lender is a VA "supervised" lender or an "approved mortgagee" for FHA.
- C. Other Investigation Procedures. The examiner investigating the complaint should conduct such additional interviews with complainant, bank, or other parties involved, or initiate other legitimate investigatory procedures warranted by the facts or necessary to obtain information needed in determining whether the alleged discrimination has taken place.

Special Report of Examination - Consumer Affairs

The investigating examiner will prepare a "Special Report of Examination - Consumer Affairs" on the complaint investigation, which will be submitted within 10 business days following completion of the investigation. The report will be in letter form

and addressed to the Regional Administrator on report page CC 1430-OX. The findings of the investigation should be clearly set forth in the following format:

1. Summary of the Complaint
2. Statements and Information Provided by Complainant
3. Summary of Evidence and Information Supporting Complainant's Allegation of Discrimination.
4. Statements and Information Provided by Bank in Defense of the Allegation of Discrimination.
5. Summary of Evidence and Information Supporting the Bank's Defense
6. Detailed Narrative of the Investigator's Findings
7. Summary and Recommendations. (The examiner should state concisely whether there is just cause to believe that the bank discriminated against the complainant in the manner alleged, or in any other manner, or whether the bank's defenses appear valid. Comments should also be made on whether patterns or practices of discrimination are evident and recommendations made on any policies or practices which warrant corrective action or further investigation or examination.)
8. Documentation. (All documentation and investigation workpapers substantiating the findings should be submitted to the Regional Administrators with the Special Report of Examination.)

Processing of Special Report of Examination by Regional Administrator

The report of examination and related documents should be reviewed by the Regional Administrator and forwarded within 10 business days to the Consumer Affairs Division, with appropriate comments on the examiner's summary and recommendations.

Resolution of Complaint

The Consumer Affairs Division will review all reports of examination and initiate the appropriate resolution and response to the complainant and bank, with 30 days.


H. Joe Selby
First Deputy Comptroller
for Operations

SUGGESTED FORM LETTER TO COMPLAINANT

Dear:

We acknowledge receipt of your letter dated [] concerning possible discrimination in financing by [].

The Comptroller of the Currency enforces Section 805 of Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3605) in national banks, which prohibits a bank from denying a loan or other financial assistance to an applicant for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling, or from discriminating against an applicant in the terms of that loan or assistance because of the applicant's race, color, religion, national origin, or sex.

Independent of action taken by this Office on your complaint, we would like to advise you of your rights under the various fair housing laws, if you believe that you have been the victim of discrimination in housing. These include:

1. Your right to make a sworn complaint, in writing to the Secretary of Housing and Urban Development (HUD). This complaint must be made within 180 days of the act of alleged discrimination. Representatives of HUD will look into your complaint and, if appropriate, will attempt to resolve it by informal efforts of conciliation and persuasion. Complaints may be registered with HUD at the following address:

Department of Housing and Urban Development
451 Seventh Street, S.W.
Washington, D.C. 20410

You may also register your complaint with HUD by telephone, using the toll-free number (800) 424-8590 for long distance calls, and 755-5674 for local calls in the Washington, D.C. area.

2. If your state or locality has a fair housing law or ordinance which provides similar rights and remedies as those provided by the federal law, HUD will refer the case to your state or local agency to determine if that agency can promptly resolve the matter for you.
3. You may also bring a lawsuit in the appropriate federal district court for an injunction or for damages. The legal situation with regard to such suits is complex, since there are two different Acts of Congress under which fair housing cases can be brought. The complaint should be filed within 180 days of the act of alleged discrimination. To initiate a lawsuit of this nature,

- 2 -

you may have to retain an attorney; however, the Fair Housing Act of 1968 provides that in appropriate circumstances the court may appoint an attorney to represent you. If you win the case, the court may also award your attorney a fee.

An examiner has been assigned to investigate your complaint and will contact you within the near future. We hope that the information provided in this letter will assist you in effecting a just settlement of your complaint.

Sincerely,

Regional Administrator

SUGGESTED FORM LETTER TO BANK

Dear:

This Office is in receipt of a complaint alleging discrimination in mortgage financing by the bank. A copy of the complaint letter is enclosed for your information.

The Comptroller of the Currency enforces the provisions of Section 805 of Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3605), which prohibits a bank from denying a loan or other financial assistance to an applicant for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling, or from discriminating against an applicant in terms of that loan or assistance because of the applicant's race, color, religion, national origin, or sex.

It is hereby requested that you submit to this Office, within 10 business days, a detailed and fully documented response to this complaint and justification for the actions or decisions in question. Your response should include copies of the relevant loan application, financial data provided by the complainant, and any notification of adverse action given to the complainant pursuant to Section 202.9 of Regulation B (12 CFR 202).

Following receipt of your response, an examiner, assigned to investigate this complaint, will contact you for the purpose of discussing the complaint and conducting a review of the pertinent records and policies.

Should you have questions or require further information concerning this matter, please do not hesitate to contact (name of regional office contact) at (telephone number).

Sincerely,

Regional Administrator

Consumer Complaint Information System (CCIS)

Handout No. 8

CONSUMER COMPLAINT NOTIFICATION

Nº 106987

NAME: _____ DATE: _____

Last

First

Initial

M-D-Y

ADDRESS: _____

Street

City

State

Zip

COMPLAINT DATE: _____ COMPLAINT CODE: _____ NOTIFICATION SOURCE: _____

M-D-Y

BANK: _____ CHARTER NO: _____

Name

City

ASSIGNED ATTORNEY: _____

Name

REGION: _____ RESOLUTION DATE: _____ RESOLUTION: _____

M-D-Y

COMMENTS:

CC 0000-01

CONSUMER COMPLAINT CODES

0000	Correspondence received and referred to another agency or organization outside Office of the Comptroller of the Currency.
0001	Previous complaint same subject which is closed
1000	Deposit Function
1100	Certificate of Deposit
1200	Checking/Demand Account
1300	Christmas and Vacation Club Savings
1400	Escrow Accounts
1500	Savings Accounts
	1-01 Advertising
	1-02 Attachment and Claims Freezing
	1-03 Deposit Not Credited
	1-04 Deposit Not Credited on Day Made
	1-05 Disclosure of Account Service Charges & Terms
	1-06 Discrepancy in Account
	1-07 Forged Signature or Endorsement
	1-08 Offset or Set-Off
	1-09 Payment of Interest
	1-10 Processing Without Benefit of Endorsement
	1-11 Refusal to Cash or Pay Customer's Check
	1-12 Refusal to Cash Non-Customer's Check
	1-13 Release of Funds
	1-14 Renewal Automatic
	1-15 Service Charges
	1-16 Stop Payment Check Being Paid
	1-17 Untimely Dishonor of Instrument
	1-18 Possible Escheat or Inactive Account
	1-19 Account Regulations - Procedures
2000	Loan Function
2100	Bank Card
2200	Check Credit/Overdraft
2300	Commercial Business/Agricultural
2400	Installment Loans
2500	Real Estate
2600	Single Payment/Demand Loans

- 2 -

2-26	Acceleration Clauses
2-27	Amount of Interest Charged - Usury
2-28	Amount of Rebate Upon Prepayment 78's
2-29	Collateral
2-30	Collection Tactics
2-31	Collection Service & Attorneys
2-32	Credit and Disability Insurance - TIL
2-33	Discrimination by Age
2-34	Discrimination by Sex, Marital Status
2-35	Discrimination by Race, National Origin
2-36	Discrimination by Religion
2-37	Equal Lending Poster
2-38	Escalator Clauses
2-39	Fair Credit Reporting Act
2-40	Flood Disaster Act
2-41	Individual Credit Decision
2-42	Institutional Loan Policy
2-43	Late Payment Penalty Charges
2-44	Leasing
2-45	Real Estate Settlement Procedures (RESPA) Act
2-46	Redlining
2-47	Refusal to Renew
2-48	Repossession or Foreclosure
2-49	Restrictions on Security Interests
2-50	Regulation Z - Advertising
2-51	Regulation Z - Fair Credit Billing Act
2-52	Regulation Z - Disclosure
2-53	Regulation Z - Oral Disclosure
2-54	Regulation Z - Right of Rescission
2-55	Regulation Z - Unauthorized Mailing or Issuance
2-56	Regulation Z - General
2-57	Forgery
2-58	Credit Account

3000 Electronic Funds Transfer Systems

3064	Automatic Bill Payment
3065	Automatic Payroll Deposits
3066	CBCT Equipment
3067	CBCT Location
3068	Confidentiality
3069	Customer Identification Technique or Methods
3070	Error Correction Procedures
3071	Liability
3072	Monthly Statement
3073	Transaction Errors
3074	Transaction Receipt or Records of Reconciliation
3075	Wrongful or Fraudulent Use of Card

4000	Trust Services
4076	Excessive Charges
4077	Improper Disbursements
4078	Investments
4079	Prudent Handling of Estates/Trusts
4080	Too Long to Close and Disburse Estates
4081	Refusal to Respond for Information
5000	Foreign Operations
5082	Letters of Credit/Travelers' Checks
5083	Foreign Currency Transactions
5084	Foreign Draft Presentment
6000	Safety Deposit Box/Safekeeping
6085	Disappearance of Items
6086	Illegal Entry
6087	Service Charges
6088	Securities Redemption Transfer/Collection Items
7000	General Complaints
7089	Advertising
7090	Cashing U.S. Government Checks
7091	Information Available to Stockholders
7092	Lost or Stop Payment of Official Checks/Money Orders
7093	Promotions
7094	Service Charges
7095	Stock Manipulation by Bank Officials
7096	U.S. Savings Bond Redemption
7097	Wire Transfer
7098	Incompetent or Rude Personnel
7099	Bank Supervision
7100	Secrecy
7200	Travel Business
7300	Employee Hiring, Benefits, Firing
7400	Data Processing Services
7500	Conflict of Interest

NOTIFICATION SOURCE

- 10 Consumer
 20 Attorney
 30 Regulatory Agency
- Federal Deposit Insurance Corporation
 Federal Reserve Board or Banks
 Federal Home Loan Bank Board
 Securities and Exchange Commission
- 34 Federal Trade Commission
 40 Consumer Interest/Action Group
 50 Congressional
- Administrative Assistant
 Legislative Assistant
- 60 Examiner
 70 State Agency or Bank Supervisor
 80 Executive Branch
- Justice Department
 Housing and Urban Development
 Office of Consumer Affairs
 Treasury
 Consumer Protection Agency
- 90 Bank or Other Financial Institution

If a government agency, bank or other notification source originates a complaint a 1 should be substituted for 0 (i.e., 31, 51, 61, 71, 81).

RESOLUTION

0. No reply necessary - to files
1. Bank Error
2. Bank Legally Correct
3. Consumer Reimbursed - Bank Legally Correct
4. Consumer Reimbursed - Bank Error
5. Factual Dispute - Contestable- Refer Customer to Attorney
6. Referral
7. Information
8. Consumer Reimbursed - Communication Problem
9. Settled by mutual agreement

1.2.1 Instructions for Completion of
the Consumer Complaint Notification

Introduction

The Consumer Complaint Notification (CCN) is initiated when a complaint is filed with a Regional office or the Washington office. The information on CCN is entered into a computer file directly from copy 1 of the CCN. Henceforth, all data added to the file is entered via the Consumer Complaint Notification Change Sheet. Copies 2 & 3 of the CCN are used as working copies, posted with new data when necessary, and discarded upon resolution of the complaint and receipt of a management report (computer printout).

PLEASE TYPE or PRINT CLEARLY -

- *Name - Enter the name, (last, first, m.i.) of the complainant.
- Date - Enter the date this form is completed. (Six Digit numerical designation for month, day, year e.g., 06/01/75.)
- *Address - Enter the address of the complainant. (Use the U.S. Postal two letter abbreviation for the State.)
- *Complaint Date - Enter the date the complaint was filed i.e., date on the complainant's letter. (Six digit numerical designation for month, day, year e.g., 06/01/75.)
- Complaint Code - Enter the code identified with the complaint filed. See Consumer Complaint Codes. (All correspondence received and referred to another agency or organization outside the Office of the Comptroller of the Currency is coded '0000'.)

- Notification Source - Enter the code identified with the person or organization responsible for the routing of the complaint to this office. See Notification Source Codes. (A congressional notification source supersedes all succeeding channels.)
- ° Bank - Enter the name of the bank against whom the complaint is filed.
- Charter No. - Enter the charter number for a national bank. (See current National Bank Master List.) Enter '99999' for a former national bank. Enter '00000' for any other bank..
- ° Assigned Attorney - Enter the name of the attorney assigned to resolve the complaint.
- Region - Enter the numerical designation of the region where the complaint is handled.
- ° Resolution Date - Enter the date (Six digit numerical designation for month, day, year) complaint is resolved.
- Resolution - Enter the code identified with the final resolution. See Resolution Codes.
- ° Comments - Record pertinent additional information.

Note: A Consumer Complaint Notification must be completed for each complaint filed and each bank against whom a complaint is filed.

IMPORTANT:

The name must be the name of the complainant not the attorney or name of the individual signing the letter for a company or government agency. If in fact a complainant is a company or government agency, then it should be listed as such and not by the individual signing the letter.

CONSUMER COMPLAINT NOTIFICATION CHANGE

Identification		C	1 2 3 4 5 6 7	
Change Code	8 9			
0	1			Consumer's Name
0	2			Street Address
0	3			City
0	4			State
0	5			Zip Code
0	6			Complaint Date (MM DD YY)
0	7			Complaint Code
0	8			Notification Source
0	9			Bank Charter No.
1	0			Assigned Attorney
1	1			Complaint Region
1	2			Resolution Date (MM DD YY)
1	3			Resolution

CONSUMER AFFAIRS
 CONSUMER COMPLAINT DATA SYSTEM
 CONSUMER COMPLAINT
 SPECIAL ALPHABETIC LISTING
 FROM 01-01-01 TO 12-31-76

CONTRCL NUMBER	NAME OF CONSUMER	STREET ADDRESS	CITY	ZIP	BANK CHARTER	COMP CODE	COMPLAINT DATE	RC FM	DATE RESOLVED	R	CASE ATTORNEY	
161360	A C APARTMENTS	PC BOX 8939	PORTLAND	OR 97208		004514	1215	05-05-76	70	06-30-76	7	MCLAUGHLIN
033132	A CACARNED DEPOSITOR					015604	7098	07-10-73	10	08-13-73		NYSTRON
CC8837	A CCONSTITUTEN					000000	7090	10-03-74	50	10-29-74		BASS
CG1CC9	A CRECITOR					013732	2356	05-37-74	33	05-13-74		LIEBESMAN
1C5572	A CEPCISITCR					001327	1515	04-16-76	10	06-02-76	2	NATHAN
CG01C5	A WORRIED CEPOSITOR					015604	7098	06-04-73	10	06-04-73		FITZGERALD
136323	AEEAS YCLANDA	7350 KESTER AVE 211	VAN NUYS	CA 91405		013044	7097	07-24-76	10			REITMAN
1C1720	AEEAZIA JAN	19339 SPINCISA ST	TARZAMA	CA 91356		013044	1206	01-22-76	10	03-15-76	7	POGAR
1Q2646	ABROTT JCKA L	418 LAKE STREET	TOPEKA	KS 66637		314977	1399	06-31-76	17	06-25-76	7	WILKES
001949	ABROTT JOSEPH A					000329	6088	11-20-74	10	01-15-75		CONNELLY
001876	ABRUZZESE M J					012971	7003	06-24-75	13	07-38-75		LIEBESMAN
135556	ABE ROBERT Y	BOX 41 APC	SAN FRANCISCO	CA 96503		002370	1200	05-17-76	30			BOYLE
1C3707	ABELCH ABDEL C	47 FLCKEKE AVENUE	RYE	NY 10580		010525	1109	01-30-76	70	04-30-76	2	NATHAN
1C4582	ABELSEN WILLIAM	85 BCSTEN AVENUE	WORCESTER	MA		339885	1519	03-35-76	33	06-25-76	2	CUJ
112882	ABELSEN WILLIAM	85 BCSTEN AVE	WORCESTER	MA		009985	0001	04-23-76	10	06-25-76	2	CUJ
102623	ABERNATHY CERALD M	6699 MAPLE CRIVE	DUBLIN	CA 94566		015660	2151	07-32-76	13			POGAR
135450	ABEN CNELIA	87 86 172ND STREET	JAMAICA	NY 11432		007703	1003	06-24-76	70			RYLE
106704	ABERHAM JEAN	1001 14TH ST N W	WASHINGTON	DC 20005		000000	7097	07-21-76	10			CUV
112994	AERAPCHIK COREEN	228 W 23 STREET	NEW YORK	NY 10011		331461	2133	05-33-76	34	05-28-76	2	CUV
103727	AERAPCHITZ ISIDORE	2141 ALDRIN ROAD	OCEAN	NJ 07712		000000	0000	02-17-76	10			NATHAN
104621	AERAPS PERPAN D	102 MCNAMARA ROAD	SPRING VALLE	NY 10977		091461	1233	04-39-76	13	05-25-76	3	NATHAN
103815	ABRAVS JOHN	1075 CENTRAL PK	SCARSDALE	NY 10583		001461	2430	02-27-76	10	04-02-76	2	NATHAN
002CC9	ABRAVS SYDNEY					015569	1009	01-23-75	10	02-19-75		HANLEY
106152	ABSHIER LORSEY G	4910 ST ANDREWS CIR	BUENA PARK	CA 92621		332491	2542	05-24-76	10	06-24-76	5	POGAR
102CC9	ACKERMAN MYRON H	2691 S COLRSE CR	POPPANO BCH	FL 33060		014723	7098	04-26-76	10	06-04-76	7	SAXON
112889	ACCSTA CAVIO P	P C BOX 7043	RIVERSIDE	CA 92533		033333	3333	04-18-76	13	05-34-76	6	
101815	ADAMS CHESTER A	8223 LEWIS PLACE	ORLANDO	FL 32809		014464	1211	01-29-76	80	02-19-76	3	PANNELL
100190	ADAMS DIANNE C	523 S REESE PL	BURBANK	CA 91506		002491	5083	09-28-75	30	10-15-75	6	
J32220	ACAMS DCN					332349	7000	05-15-75	10	10-29-75		BYRD
0C1579	ACAPS H C					014406	1109	05-13-75	70	07-07-75		MCINTURFF
100600	ACAMS HENRY J	1378 GGRHAM STREET	LOWELL	MA 01852		315539	2428	03-17-76	73	03-18-76	2	WHITE
132117	ACAMS MARY E	3705 NAPLES N E	ALBUQUERQUE	NM		004944	1507	01-05-76	10	03-26-76	5	PANNELL
0C1581	ACAPS PETER					002370	2400	05-15-75	10	05-22-75		HANSEN
303848	ACAMS ROBERT L AND VIGLET					393313	7000	03-12-74	70	06-14-74		LEVIN
0C1603	ACAMS SELCHM					000336	7000	08-21-73	20	08-21-73		LIEBESMAN
104454	ACAPSCA BEANNIE	2265 S BEVERLY GLEN	LOS ANGELES	CA 90064		332491	1216	07-37-76	13	07-39-76	9	POGAR
0C1592	ACDY C J					002469	7000	04-09-74	20	07-29-74		BAPRETT
10C163	ADISCR HENRY J	1719 MCCALL DR	ANNISTON	AL 36201		033041	1518	10-09-75	30	02-05-76	2	SUNDRO
103971	ADLER SAMUEL	1610 KINGS HIGHWAY	BROOKLYN	NY 11229		032373	2157	02-17-76	10	05-05-76	5	NATHAN
1C1635	ADFFCTER JCHM	10210 147TH S E	RENTON	WA 98055		013044	6088	11-11-75	10	03-08-76	5	POGAR
103676	AGARE VERA	193 ALBANY AVENUE	BROOKLYN	NY		331461	2151	02-32-76	13	03-39-76	4	NATHAN
102750	AGGARWAL SARWAN K	2836 WEST WELLS ST	MILWAUKEE	WI 53208		005458	2200	12-31-75	10	01-27-76	4	WILLE
001975	AGLSE BERNARD					999999	2500	05-19-75	10	06-32-75		BASS
133603	AISCN EVERETT	1326 MACISON AVE 41	NEW YORK	NY 10028		002370	2251	12-22-75	70	03-05-76	1	NATHAN
00C636	AKIN SPENCER B					011569	7000	06-06-73	30	06-22-73		MILLER J
102195	AKIAYI ENTERPRISES					015447	3303	08-11-75	83	09-32-75		BARIS
103331	ALANTZ JR ROQUE	569 W LOVETT	EDINBURG	TX 78539		014383	2530	05-17-76	80	06-28-76	2	WHITLEY

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101018	PLOURD MICHAEL L	7 SOUTH JAY STREET	LAKEMOOD	CO 80215	015014	1215	02-21-76	10	03-15-76	2	VINTON
101019	ALTMAN JAMES W	14d23 DUNNEE COURT	WOODBRIDGE	VA 22913	014148	2500	03-15-76	10	04-01-76	2	VINTON
101021	GILLAND RONALD D	P O BOX 332	HAYDEN	CO 81630	009907	2500	03-16-76	10	04-27-76	2	VINTON
101022	NEAL DAVID	5826 HELENA STRAY	TUCSON	AZ 85706	003728	1206	03-03-76	10	03-22-76	5	VINTON
101022	ASKEW JEFF	7201 LUMAS BLVD N E	ALBUQUERQUE	NM 87111	032629	2331	03-15-76	13	04-07-76	2	VINTON
101023	EUMGND S H PAUL	7924 UEPEN STREET	ARVADA	CO 80003	015791	1206	03-23-76	10	04-07-76	5	VINTON
101024	LEONARD VALLY	1872 SOUTH DUNNING	DENVER	CO 80210	014384	1211	03-20-76	10	04-07-76	5	VINTON
101025	SLATS JAMES A	53 BROADWAY	DENVER	CO 80203	015786	2450	03-24-76	10	04-26-76	5	VINTON
101026	OLIVER FRANK	6922 E ILIFF PLACE	DENVER	CO 80224	001016	3070	03-18-76	10	04-14-76	2	VINTON
101027	BAKER WILLIAM K	PENAL DEL ESTADO	HERMOSILLO	MX	033728	1537	03-22-76	13	04-10-76	4	VINTON
101028	HEIN RICHARD F	P O BOX 1631	SALINAS	CA 93901	014324	1515	03-04-76	70	04-06-76	3	VINTON
101029	THOMPSON ELIZABETH M	P O BOX 2396	EVERGREEN	CO 80439	015786	1207	04-05-76	20	04-16-76	4	VINTON
101031	MANGUM WILLIAM	124 E NINTH STREET	DURANGO	CO 81301	006597	2300	03-15-76	20	04-09-76	5	VINTON
101031	CLARK FLAVIA S	32 CHURCHILL ROAD	SUDBURY	MA 01776	003269	1506	04-01-76	10	04-22-76	2	VINTON
101032	MARTINEZ NUKA G	2925 TREMONT ST B13	COLORADO SP	CO 80937	015358	1216	04-08-76	43	05-03-76	5	VINTON
101033	SCHUN GENE W	482 N HANLUCK AVE	COLORADO SP	CO 80903	008572	2430	04-08-76	10	04-27-76	5	VINTON
101034	FLYNN JUAN A	4349 CITADEL DRIVE	SIERRA VISTA	AZ 85635	014324	2134	03-30-76	10	06-01-76	2	VINTON
101035	PELLEMAN ELLEN	1769 CUCONADO PARKMA	THURNTON	CO 80229	015063	2134	04-09-76	10	04-26-76	2	VINTON
101036	CASEY KALPH	708 21TH AVENUE	GREELEY	CO 80631	003728	1017	04-14-76	70	04-28-76	2	VINTON
101037	JALOWSON JOAN T	228 N TULUM STREET	COLORADO SPG	CU 83932	034572	7392	04-16-76	13	04-27-76	3	VINTON
101038	MITCHELL MELVIN W	7510 W 57TH AVENUE	ARVADA	CO 80002	014662	1000	04-15-76	10	04-27-76	1	VINTON
101039	BLUE EARNEST R	827 NORTH CIRCLE DR	COLORADO SPG	CU 80909	015378	1215	04-20-76	13			VINTON
101040	FERNANDEZ KUDULPH	9414 NEWTON ST	WESTMINSTER	CO 80030	014947	1012	04-14-76	10	05-04-76	2	VINTON
101041	BUSH PAT	12504 E BATES CIRCLE	DENVER	CO 80232	016475	1212	04-18-76	10	04-27-76	2	VINTON
101042	LASKI VEKA P	PUST OFFICE BOX 144	ALLENSPARK	CO 80513	015332	7398	04-22-76	10	05-03-76	2	VINTON
101043	SLUMAH JUHA W	1259 SILER ROAD	SANTA FE	NM 87501	014943	2327	04-14-76	10	05-04-76	2	VINTON
101044	APUNTE MARTHA B				015126	2134	04-30-76	70	05-13-76	2	VINTON
101045	SPURCK ROBERT P	2253 CHESTRIDGE DR	LITTLETON	CO 80121	003269	7099	04-27-76	10	05-11-76	5	VINTON
101046	DEBBINS ROBERT A	6701 S FRANKLIN ST	LITTLETON	CO 80122	015433	1236	05-03-76	10	06-28-76	4	VINTON
101047	HEAVEN CARY G	2180 WYANDOT DRIVE	DENVER	CO 80121	014947		05-03-76		05-25-76	5	VINTON
101048	ENGLISH EDITH B	1145 WEST LYWOOD ST	PHOENIX	AZ 85007	003728	6985	05-10-76	10	05-26-76	5	VINTON
101049	VINCENT RICHARD D	538 S WATERVIE	RICHARDSON	TX 75040	014324	2043	05-17-76	10	06-01-76	5	VINTON
101050	ANUP WILLIAM W	3060 SU HILLCREST DR	DENVER	CO 82001	014889	7000	05-17-76	10	06-01-76	5	VINTON
101051	KAISER DONNA L	10101 N WASHINGTON	DENVER	CO 80234	015233	1539	05-12-76	13	06-28-76	2	VINTON
101052	HEXFORD THELMA	1095 WESTERN DR	COLORADO SPG	CU 80915	005381	7300	05-14-76	10	05-20-76	2	VINTON
101053	ENG LOUIS B	2542 S KITTREDGE WAY	AURORA	CO 80013	014384	1204	05-19-76	10	05-25-76	3	VINTON
101054	AURAND DEWITT H	2942 STRATFORD DRIVE	TUCSON	AZ 85716	014324	4081	05-14-76	10	06-15-76	7	VINTON
101055	DAVISUN DENISE P	33550 HIGHWAY 96E	PUBLICO	CO 81001	015048	1203	05-14-76	10	06-02-76	5	VINTON
101056	HAVENS WILLIAM	P O BOX 1438	DURANGO	CO 81331	039797	1236	05-19-76	23	06-15-76	5	VINTON
101057	SHANKS GUY W	2930 N SEVENTH ST	PHOENIX	AZ 85014	015199	2004	05-25-76	20	05-13-76	2	VINTON
101058	SNYDER ROBERT T	245 SOUTH JULIAN	DENVER	CU	015199	2004	05-10-76	10	06-25-76	5	VINTON
101059	TIETJEN STEVE	3925 E LAKE WAY	LITTLETON	CO 80121	015633	7083	05-24-76	10	07-14-76	2	VINTON
101060	DAVIS MAJOR	4310 W VERDE LANE	PHOENIX	AR 85031	014324	2032	06-01-76	10	06-23-76	5	VINTON
101061	SCHWARZ MICHAEL H	513 2ND N	ALBUQUERQUE	NM 87102	014486	7133	06-13-76	23	06-18-76	2	VINTON
101063	ANGEL CARLOS A	345 GREGORY DRIVE	GOLDEN	CO 80401	014384	2031	06-18-76	10	07-06-76	5	VINTON
101064	BUKURS JAMES A	P O BOX 430	DELRAY BEACH	FL	002355	7100	06-14-76	13	06-22-76	2	VINTON
101065	KIRKMAN JEFFREY	P O BOX 282	ANN ARBOR	MI 48106	001016	2000	06-21-76	70	06-21-76	2	VINTON

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				CODE	COMPLAINT DATE	DATE RESOLVED	
BANK OF MAINE, N. A. BANK OF NEW HAMPSHIRE, NATIONAL ASSOCIATION	000498	WHITE	CROWELL H C	1509	03-25-76	05-03-76	2
	J31259	WHITE	JINKS DANIEL	J3J1	33-29-76		
BAY STATE NATIONAL BANK	031059	WHITE	WARD M	1213	35-14-76	36-21-76	4
	001059	WHITE	JINKS DANIEL W	2027	02-15-76	05-03-76	2
	001059	DECARLO	GILL ABIGAIL S	2130	06-06-75	07-09-75	
	J31314	WHITE	STEERS GEUNGE	1133	33-25-76	35-11-76	2
BAYBANK HERRIMACK VALLEY, N. A.	001014	WHITE	CASTIGLIONE ANTHONY J	2427	06-28-76		
	091014	WHITE	WEBB ROBERT A	2439	33-13-76	34-32-76	5
	001014	ELDER	TRIMBLEY U RUDY JR	6038	08-23-74	04-01-75	
BAYBANK MIDDLESEX, N. A.	001129	WHITE	MILANU JOSEPH	1217	05-26-76	06-21-76	2
	J31129	WHITE	FERNALD H M	6305	37-36-76		
BAYBANK MIDDLESEX, N. A.	000614	WHITE	ANDERSON EDWARD A	1206	04-28-76		
	000614	WHITE	COVINO JANET M	1217	34-14-76	35-13-76	2
	000614	WHITE	SORDILLO ROBERT P	2439	02-18-76	03-19-76	7
	000614	WHITE	MARGOLIES MARVIN H	7302	32-02-76	02-18-76	1
BAYBANK UNITED, N. A. BLACKSTONE VALLEY NATIONAL BANK CANAL NATIONAL BANK	J35944	WHITE	BARBIERI TONY	1216	31-14-76	02-11-76	4
	001022	EAGLETON	MASS PIRG	2053	12-06-74	12-13-74	
CENTRAL NATIONAL BANK	J00941	WHITE	SMITH JAMES E	2439	33-33-76	33-25-76	5
	000941	MALLINGER	WILLIAMS FRANKLIN C	7000	05-30-74	06-24-74	
	015954	WHITE	LABBE HAROLD A	4081	02-02-76	06-08-76	2
COMMUNITY NATIONAL BANK CONCORD NATIONAL BANK	J15954	BUYLAN	LABBE HAROLD A	6000	02-02-76	06-08-76	7
	001368	LEVIN	VERMONT PIRG	2053	05-02-74	06-07-74	1
FIRST AGRICULTURAL NATIONAL BANK OF BERKSHIRE COUNTY	J03318	WHITE	HUGHES DEBRA	1216	35-33-76	36-33-76	2
	003318	LEVIN	BOSE II JOHN	2054	03-22-74	05-10-74	
	001362	WHITE	SAUNDERS JEREMIAH J	1202	01-09-76		
FIRST BRISTOL COUNTY NATIONAL BANK FIRST CITIZENS NATIONAL BANK FIRST NATIONAL BANK OF CAPE COD	001082	UBOLENSKY	MUSANTE STELLA	2500	01-31-75	04-08-75	
	J32232	WHITE	REGO GEHALD R	2448	32-16-76		
	000688	WHITE	MUJHY W SHERMAN	2432	12-12-75		
FIRST NATIONAL BANK OF MARLBORO	J33376	WHITE	THOMAS WILLIAM	1536	09-26-75	06-23-76	5
	J33376	MALLINGER	COYLE JOHN K	7033	09-27-74	11-08-74	
FIRST NATIONAL BANK OF MARLBORO FIRST SAFETY FUND NATIONAL BANK HARTFORD NATIONAL BANK AND TRUST COMPANY	002770	WHITE	LAFAYETTE PAUL R	2400	04-05-76	36-03-76	2
	J02153	WHITE	GARUNER DUDGE INC	1213	34-21-76	35-12-76	3
	001338	CUJ	ALUGNA MICHAEL P	0031	04-25-76	06-16-76	2
BANK OF MAINE, N. A. BANK OF NEW HAMPSHIRE, NATIONAL ASSOCIATION	J31338	CUJ	ALUGNA MICHAEL P	J001	06-03-76	06-16-76	2
	001338	NYSTROM	MANSFIELD GRACE	1033	04-13-73	06-25-73	
	001338	WHITE	PODULSKY RAPHAEL L	1131	31-22-76	32-35-76	7
	001338	WHITE	MUNN RICHARD R	1203	01-09-76	03-01-76	2
	001338	WHITE	DUPREY ANITA	1203	31-23-76	02-17-76	3
	J31338	WHITE	ALEXANDER ALBERT A	1206	04-22-76	06-21-76	
	001338	NYSTROM	GREENE EDITH C	1211	11-19-75	03-22-76	5
	001338	WHITE	MEIZ JOHN L	1216	11-16-75		
	001338	NYSTROM	MANSFIELD M G	1500	08-03-73	09-24-73	
	001338	NYSTROM	MANSFIELD M GNACE	1500	09-13-73	09-24-73	
	J31338	WHITE	DELLA CAMERA WINNIFRED	1502	02-04-76		

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				CODE	COMPLAINT DATE	DATE RESOLVED	
CITIBANK, N. A.	010258	MALLINGER	WALLACE JAMES T	7000	04-24-74	07-30-74	
	J01461	NATHAN	FABER ALBERT		03-19-76	05-04-76	4
	J31461	NATHAN	KRAVITT EDWARD		05-06-76	06-03-76	4
	001461	CUV	IRUWN STEPHEN	0001	05-27-76	07-01-76	7
	001461	CUJ	MANZO MARIA	J3J1	J6-16-76		
	J01461	MALLINGER	SHAH NARENDRA	1000	08-27-74	12-03-74	
	001461	BASS	MAHER FRANK R	1000	10-02-74	12-10-74	
	J31461	NATHAN	IRISH MILES J	1000	10-29-75	11-20-75	6
	001461	MCINTURFF	COURCEH HERMINE	1006	08-09-74	08-21-74	
	J01461	BOYLE	MATTHEWS MERVYN	1036	76-14-76		
	001461	MCINTURFF	KOHLER G W	1007	08-21-74	02-05-75	8
	J31461	BOYLE	ZISKIN SELMA	1309	76-15-76		
	001461	NATHAN	ALLEN WILLIAM U	1012	03-19-76	04-26-76	7
	J31461	NATHAN	TRAN THI HOAI TRAN	1013	08-11-75	09-04-75	
	001461	NATHAN	RUNDO MARY	1013	12-24-75	04-29-76	2
	J31461	NATHAN	CORCORAN DANIEL	1015	04-10-76	05-19-76	2
	001461	BOYLE	JAFFE MARK S	1015	76-14-76		
	J01461	NATHAN	HUGHEY CAROLYN J	1100	12-03-75	06-15-76	2
	001461	LEMARTINJ	GIANG TRAN N	1102	11-18-75	02-18-76	2
	J31461	NATHAN	ZICK GEORGE	1136	74-37-76	05-07-76	5
	001461	BARNARD	LOWENTHAL MARTIN	1109	01-15-76	02-12-76	8
	001461	CUV	NAYLOR EDWARD L	1139	04-32-76	76-18-76	2
	001461	NATHAN	WILLETT ROSLYN	1113	05-11-76	06-03-76	2
	001461	NATHAN	HIPPAN MAXINE D	1119	02-24-76	03-31-76	2
	J31461	CUJ	WEINER PHILIP	1119	73-19-76	05-21-76	4
	001461	NATHAN	SNOW WULFE	1119	04-06-76	05-07-76	1
	J01461	NATHAN	LEFKOWITZ JACK	1119	74-23-76	75-25-76	2
	001461	NATHAN	CHAPMAN RONALD I	1119	05-14-76	06-30-76	7
	J31461	NATHAN	PRUSLIN WILLIAM	1200	01-08-76	74-26-76	7
	001461	NATHAN	MARSH LILLIAN	1233	72-17-76	03-22-76	2
	J01461	NATHAN	SILBER IRVING	1200	03-24-76	74-27-76	2
	001461	NATHAN	VALENTINU MICHAEL	1233	75-19-76	76-14-76	7
	J31461	NATHAN	FISHBEIN MICHAEL	1201	01-26-76	02-26-76	7
	001461	MALLINGER	LUONG NGUYEN THAMH	1202	09-11-75	11-03-75	6
	J31461	NATHAN	PARRISH COXA	1202	05-11-76	06-03-76	8
	001461	NATHAN	CARNEY JOHY M	1202	06-04-76		
	J01461	STEPHENS	CASTILLO LINDA	1233	78-11-75	10-36-75	5
	001461	NATHAN	FINKEL DONALD G	1203	01-12-76	02-04-76	4
	J31461	NATHAN	SUTTON CHARLES	1203	01-22-76		
	J31461	BARNARD	WEISBERG SIMON E	1203	01-28-76	02-24-76	4
001461	NATHAN	PFEIFER VIRGINIA	1233	01-29-76	02-26-76	4	
J01461	NATHAN	BERNSTEIN STONEY	1233	72-17-76			
001461	NATHAN	EDWARDS JUAN	1203	02-20-76	04-27-76	4	
J31461	NATHAN	BEAGER ARTINK	1203	02-25-76	04-07-76	4	
001461	NATHAN	EGERT L K	1203	03-31-76	05-19-76	2	
001461	NATHAN	ABRAMS HERMAN D	1203	04-09-76	05-25-76	3	
001461	NATHAN	MYERS FRANK J	1233	74-19-76			

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NAME OF BANK	BANK CHARTER NUMBER	CASE ATTORNEY	NAME OF CONSUMER	***** COMPLAINT DATA *****			
				CODE	COMPLAINT DATE	DATE RESOLVED	RESOLUTION CODE
	001461	NATHAN	NEDELL AUJREY S	1203	05-10-76		
	JJ1461	NATHAN	EUSTIS HELEN	1203	05-17-76	06-14-76	4
	001461	BOYLE	DOHTY ARTHUR J	1203	06-15-76		
	001461	BOYLE	AMENDOLARA	1203	06-17-76		
	001461	BOYLE	ROSAEB MARY	1203	06-18-76		
	001461	BOYLE	GARCIA TANIA	1204	06-21-76		
	JJ1461	BOYLE	COHEN DAVID	1204	05-21-76	06-28-76	4
	001461	BOYLE	O HAGAN J	1206	12-05-75	06-28-76	4
	001461	NATHAN	TEMPLE AUGUSTUS C	1206	12-28-75	03-23-76	4
	001461	NELMAN	ELHAMER ROBERT	1206	01-28-76	05-27-76	4
	JJ1461	NATHAN	ERICKSON JOHN L	1206	01-31-76	03-01-76	2
	001461	NATHAN	NOONAN BRIDIE	1206	02-09-76		
	001461	NATHAN	HARDER MARJORIE M	1206	03-08-76		
	001461	NATHAN	MARSHALL T	1206	03-26-76	04-26-76	7
	001461	BOYLE	QUISM BASHEER	1206	03-26-76	07-01-76	7
	001461	NATHAN	SAFFRAN ROBERT M	1206	04-07-76	05-07-76	8
	001461	NATHAN	KARN SANDRA L	1206	04-13-76	05-19-76	1
	001461	BOYLE	VELEZ GLORIA	1206	04-14-76	06-25-76	7
	001461	NATHAN	BECKER JOSEPH W	1206	04-15-76	05-19-76	4
	001461	NATHAN	OUJERI DINNA A	1206	04-19-76	05-25-76	5
	001461	NATHAN	DOYLE ROBERT J	1206	05-07-76	06-03-76	2
	001461	BOYLE	HUBBARD JEANNETTE M	1206	05-13-76	07-05-76	7
	001461	BOYLE	SCHNEIDER LAURIE I	1206	05-19-76	07-09-76	7
	001461	BOYLE	MENDEZ JOSEFINA	1206	05-21-76	06-15-76	3
	001461	BOYLE	SIMON STEVEN M	1206	05-27-76	07-09-76	4
	JJ1461	NATHAN	THOMAS MARY M	1206	05-28-76		
	001461	BOYLE	VAUGHAN LAURA S	1206	06-09-76		
	001461	BOYLE	JILLSON DONALD	1206	06-29-76		
	001461	BOYLE	KUZAN EDWARD J	1206	06-30-76		
	001461	BOYLE	SCHULTZ DODI	1206	07-01-76		
	JJ1461	NATHAN	MONTALBU HENA	1207	03-08-76	05-07-76	7
	001461	NATHAN	MARTORELLA SARAH	1207	04-20-76	05-19-76	7
	001461	NATHAN	HUNTER CECIL E	1208	02-12-76	04-09-76	2
	JJ1461	NATHAN	JACKSON GLORIA	1208	03-16-76	05-24-76	1
	001461	NATHAN	PATE SYLVIA	1208	04-20-76	05-24-76	3
	JJ1461	NATHAN	MANDEL GERARD A	1211	02-13-76	03-12-76	4
	001461	BOYLE	FULLER GLEN F	1211	06-01-76	06-29-76	7
	001461	BARNARD	LOUGHLIN WILLIAM J	1215	01-05-76	02-12-76	4
	JJ1461	NATHAN	LAMPERT RHODA	1215	02-20-76	03-30-76	4
	001461	NATHAN	NILES DOROTHY	1215	04-05-76	04-20-76	7
	JJ1461	NATHAN	DICKERSON CURTIS E	1215	04-09-76	05-24-76	4
	001461	NATHAN	BECKER EVA	1215	04-27-76	06-03-76	7
	001461	BOYLE	SCHNABLE JACOB	1215	06-08-76		
	001461	NATHAN	ISRAEL LINDA	1216	01-28-76	03-31-76	2
	001461	NATHAN	PATH DONNA	1216	02-24-76	03-24-76	2
	JJ1461	NATHAN	VALLIN HARRY	1216	02-25-76		
	001461	BOYLE	MOSS RONALD J	1216	04-08-76	07-01-76	2

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NAME OF BANK	BANK CHARTER NUMBER	CASE ATTORNEY	NAME OF CONSUMER	***** COMPLAINT DATA *****			
				CODE	COMPLAINT DATE	RESOLUTION DATE	
	001461	NATHAN	HONOWITZ SHIRLEY	1216	05-07-76	06-03-76	5
	001461	BOYLE	LEFEBURE EILEEN M	1216	06-16-76		
	JJ1461	NATHAN	CANNON MICHAEL	1217	02-10-76	03-23-76	2
	001461	NATHAN	LIPSHIE HAROLD J	1219	02-16-76	03-23-76	2
	001461	NATHAN	HAM IRVING	1219	03-12-76	05-07-76	2
	001461	NATHAN	SHAPIRO SAMUEL	1219	04-06-76	05-04-76	7
	001461	NATHAN	TARNOFF N M	1219	04-13-76		
	JJ1461	BOYLE	WATSON C	1219	06-15-76		
	001461	BOYLE	NEKTAREDES NICHOLAS	1219	06-16-76		
	001461	BOYLE	LUDOW STANLEY	1219	06-17-76		
	JJ1461	BOYLE	SIMPSON FRANCIS R	1219	06-23-76		
	001461	LEVIN	MILLER JOHN	133J	11-26-73	J1-32-74	
	001461	NATHAN	GORDON ANNA	1309	05-20-76		
	001461	BARNARD	DESANTI ANTHONY P	1313	01-14-76	02-06-76	5
	JJ1461	NATHAN	SCHINDER KURT	1313	01-19-76		
	001461	BOYLE	THOMPSON JOSEPHINE	1313	05-24-76	07-09-76	7
	001461	POHN	CULI J	15JJ	03-07-73	03-07-73	
	001461	BASS	TREMBLE JOSEPH R	1500	10-02-74	12-04-74	
	JJ1461	NATHAN	CALI J	1500	02-04-76	03-02-76	7
	001461	NATHAN	GROSS DANIEL	1500	01-28-76	04-30-76	7
	001461	NATHAN	LOOMIS G L	1500	03-30-76	04-27-76	7
	001461	BOYLE	PLAZA ESTHER	1500	06-12-76		
	001461	BOYLE	VALLUNE CLARE	1500	06-16-76		
	001461	BASS	SCHREIBER WILLIAM J	1501	05-14-75	07-28-75	
	JJ1461	NATHAN	THOMSON JUANITA	1502	02-26-76	03-29-76	2
	001461	BARNARD	KAZAN EVE	1506	01-22-76		5
	001461	NATHAN	MARCANTONIO BARBARA	1506	02-26-76	03-31-76	3
	001461	NATHAN	MASHIN ELLIN A	1506	03-08-76	03-31-76	1
	001461	NATHAN	BRUCE JOHN	1506	04-01-76	05-04-76	8
	JJ1461	NATHAN	SILER ERIK	1506	04-03-76	06-07-76	5
	001461	NATHAN	POWELL ROLAND L	1506	04-18-76	06-01-76	3
	001461	NATHAN	PARKS DANIEL	1506	05-12-76	06-14-76	4
	001461	BASS	SCHREIBER WILLIAM J	1509	08-04-75	11-13-75	
	001461	NATHAN	LEAHY VINCENT C	1509	03-23-76	04-27-76	2
	JJ1461	BOYLE	SULOMAN HARRIET	1509	06-28-76		
	001461	LIEBESMAN	ISLA FERNANDEZ J	1513	09-25-74	10-01-74	
	001461	NATHAN	CAMERON JACK B	1513	03-09-76	03-31-76	4
	001461	NATHAN	BALINT BRUCE	1513	04-13-76	05-24-76	7
	JJ1461	BARNARD	NAGY THOMAS J	1515	01-07-76	02-10-76	3
	001461	NATHAN	EDFSTEIN JUDITH	1515	01-19-76	03-01-76	3
	001461	NATHAN	GREENBERG EVELYN	1515	01-28-76	03-23-76	3
	001461	NATHAN	KASOY JOSEPH	1518	12-23-75		
	001461	BARNARD	WOLFSOHN MILTON	1518	01-03-76	02-06-76	3
	001461	NATHAN	JACKSON RUSSIE	1518	02-24-76	03-29-76	3
	JJ1461	CUJ	MANZO MARIA	1518	04-19-76		
	001461	NATHAN	MARTIN EDNA	1518	04-27-76	06-03-76	2
	001461	NATHAN	NYC DEPT OF CONSUMER AFF	1519	01-09-76		

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NAME OF BANK	BANK CHARACTER NUMBER	CASE ATTORNEY	NAME OF CONSUMER	***** COMPLAINT DATA *****			***** RESOLUTION CODE *****
				CODE	COMPLAINT DATE	DATE RESOLVED	
	001461	NATHAN	GELLETT ARTHUR L	1519	02-12-76	03-24-76	2
	J11461	NATHAN	SPINNEY ESTELLE B	1519	J2-25-76	J5-19-76	2
	001461	NATHAN	GROSS DANIEL	1519	03-12-76	06-30-76	7
	001461	LIEBESMAN	CHALEK SUI	2000	06-05-75	J6-33-75	
	J11461	LIEBESMAN	ULLER MARVIN	2032	09-23-74	01-24-75	
	001461	BOYLE	KOPF RACHEL	2041	05-30-76		
	J11461	BOYLE	FREIS USLAK E	2041	J6-15-76		
	001461	BOYLE	MOUSA MUHAMED	2042	06-25-76		
	001461	BARRETT	KILBRIDE JOHN J	2056	04-10-73	05-01-73	
	J11461	LIEBESMAN	STENZEL WOLFRAM G	2056	09-13-73	10-24-73	
	001461	POGAR	FLEISCHERS LEONURE	2100	11-16-72	02-22-73	
	001461	POHN	GILHOOLEY MARGARET	2100	J1-23-73	J2-16-73	
	001461	LIEBESMAN	NEW YORK	2100	05-09-74	05-08-74	
	001461	NATHAN	BLEY EDGAR S	2100	12-30-75	01-19-76	7
	J11461	CUV	WEINBLATT STANLEY	2100	04-08-76	06-24-76	7
	001461	CUV	MUGAVERO SERAFINE E	2100	04-10-76	05-28-76	2
	J11461	CUJ	MARGOLIES LEONORE N	2100	04-11-76		
	001461	CUV	BRONARA JOSEPH C	2100	04-15-76	06-24-76	7
	J11461	CUV	KINGOFF BENJAMIN	2100	J4-24-76	J6-33-67	2
	001461	CUV	GULDMAN ALAN	2100	04-24-76	06-23-76	7
	J11461	CUV	BARKER CHARLES A	2100	04-29-76	06-15-76	7
	001461	CUV	MENTLIK LESLIE	2100	05-02-76	05-28-76	2
	J11461	CUV	PRAVDA JOEL A	2100	05-03-76	05-28-76	2
	001461	CUV	ADRAMCHIK JUREEN	2100	J5-33-76	J5-28-76	2
	J11461	CUV	GASPER STEVEN	2100	05-04-76	05-28-76	2
	001461	CUV	MURWITZ ENID	2100	05-05-76	05-28-76	2
	J11461	CUV	GOLDSMITH FREDERIC	2100	05-10-76	05-28-76	2
	001461	CUV	KINGOFF BENJAMIN	2100	05-12-76	06-03-76	2
	J11461	CUV	MAYER WALTER L	2100	05-14-76	05-28-76	2
	001461	BOYLE	YOUNG EDITH B	2100	06-01-76		
	J11461	OPPENHEIM	DUFF KEVIN F	2127	J4-25-75	J7-31-75	
	001461	NATHAN	GARFUNKEL PATRICIA	2127	J2-17-76	03-30-76	2
	J11461	NATHAN	KRIEGER LEWIS	2127	04-12-76		
	001461	NATHAN	BRUNARS JOSEPH	2127	04-13-76		
	J11461	NATHAN	NGAI JOHN	2127	04-14-76	07-01-76	2
	001461	BOYLE	WAGNER ALAN C	2127	J4-14-76	J7-01-76	2
	J11461	NATHAN	SITTENFELD ANN MARIE A	2127	04-15-76		
	001461	BOYLE	WOLF EDWARD J	2127	J4-15-76	07-31-76	2
	J11461	NATHAN	WAYSSE RICHARD S	2127	04-18-76		
	001461	NATHAN	ARTHUR HERMAN	2127	04-18-76		
	J11461	NATHAN	BLIGH DENNIS F	2127	04-19-76		
	001461	NATHAN	HERSHBERG JAY A	2127	04-19-76		
	J11461	NATHAN	CHARLEY JOHN N	2127	J4-23-76		
	001461	BOYLE	QUINTON KURT	2127	04-20-76	07-01-76	2
	J11461	BOYLE	BURCH A L	2127	04-21-76	07-01-76	2
	001461	NATHAN	RITZ ARTHUR H	2127	J6-21-76		
	J11461	BOYLE	HARRIS STEVEN A	2127	04-21-76	07-01-76	2

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				CCWE	COMPLAINT DATE RESOLVED		
	001461	BOYLE	BANIMO JIAYA L	2127	04-22-76	07-01-76	2
	001461	NATHAN	LONDON ROBERTA	2127	04-22-76		
	JJ1461	NATHAN	MYERS DONALD	2127	04-22-76		
	001461	NATHAN	VAH MEUSEY SUZANNE	2127	04-23-76		
	JJ1461	NATHAN	KINGUFF BENJAMIN	2127	04-24-76		
	JJ1461	BOYLE	WATCHER ROBERT	2127	04-25-76	07-21-76	2
	001461	BOYLE	BERAN MARTIN J	2127	04-26-76	07-21-76	2
	001461	NATHAN	GRAHAM GEORGE P	2127	04-27-76		
	001461	NATHAN	BOROFF ARTHUR L	2127	04-28-76		
	JJ1461	BOYLE	MURTEGANT ARTHUR J	2127	05-07-76	07-01-76	2
	JJ1461	NATHAN	KARLAN JUDNEY	2127	05-07-76		
	JJ1461	NATHAN	PRAVDA JOEL A	2127	05-08-76		
	001461	BOYLE	GALLIN MARTHA	2127	05-08-76	07-01-76	2
	001461	NATHAN	MILLIO VINCENT	2127	05-04-76		
	JJ1461	BOYLE	EKSTEIN LET AL K A	2127	05-07-76	07-01-76	2
	001461	BOYLE	MURPHY STEPHEN T	2127	05-10-76	07-01-76	2
	001461	BOYLE	NEWMUSE RICHARD	2127	05-13-76	07-01-76	2
	JJ1461	BOYLE	LITSMAN BECHARD	2127	05-16-76	07-01-76	2
	JJ1461	BOYLE	COHEN MARTIN H	2127	05-17-76	07-01-76	2
	JJ1461	NATHAN	ZOLES EMERITA	2127	05-20-76		
	JJ1461	BOYLE	BROWN STEPHEN	2127	05-27-76	07-01-76	2
	JJ1461	NATHAN	MARRETT JAMES J	2133	02-26-76	04-29-76	2
	001461	NATHAN	BERLAND DAN	2133	03-07-76	07-31-76	2
	JJ1461	BOYLE	BRAYD J M	2133	04-14-76	05-21-76	2
	JJ1461	BARHARD	JONES RICHIE M	2131	01-09-76	02-23-76	7
	001461	NATHAN	FUTIU	2131	03-21-76	04-07-76	2
	001461	NATHAN	CHANG LEONARD O	2139	03-11-76	05-07-76	1
	001461	CUJ	DESMOND MARTIN P	2139	04-19-76	05-29-76	7
	001461	BOYLE	DANKETO MERTIAN	2139	05-08-76	06-19-76	1
	JJ1461	CUV	MATARAZZO CARLA	2139	01-07-76		
	001461	STLHMLNS	HUGEL MILTJA DR	2141	04-09-76	06-07-76	9
	001461	NATHAN	MALYS MELANIE M	2141	04-20-76	06-17-76	7
	001461	BOYLE	CHATU ELAINE	2141	06-21-76		
	001461	BOYLE	FRIESEM ILSE	2141	06-26-76		
	JJ1461	NATHAN	ANTIN CLARISE	2142	03-03-76	03-31-76	2
	001461	CUJ	GILDSMITH FREDERICK	2142	04-17-76	05-07-76	9
	JJ1461	DE MARTIN J	STRONG RITA	2142	04-26-76	05-26-76	7
	001461	CUV	BOROFF ARTHUR L	2142	04-28-76		
	001461	CUV	CLMEN JOEL	2142	05-10-76	06-28-76	7
	JJ1461	CUV	CHEN JUEL A	2142	05-10-76	07-01-76	7
	001461	CUV	URMAN STEPHEN	2142	05-27-76		
	001461	CUV	RUSENFELD JIMMAN D	2142	05-31-76	06-23-76	7
	001461	BOYLE	SCHAUDE BEVERLY F	2143	06-08-76		
	JJ1461	BOYLE	HUCHBERG IRVING	2147	05-27-76	06-23-76	7
	JJ1461	BOYLE	ALFRED KENA E	2149	05-03-76	06-15-76	1
	001461	LILLESMAN	ALIEFF JAMES R	2151	03-12-75	04-18-75	
	001461	MCLEAN	ROMAINE JOHN	2151	11-03-75	02-03-76	4

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NAME OF BANK	BANK CHARTER NUMBER	CASE ATTORNEY	NAME OF CONSUMER	***** COMPLAINT DATA *****			
				CODE	COMPLAINT DATE	DATE RESOLVED	RESOLUTION CODE
	001461	NATHAN	DRYER JOY	2151	12-29-75	01-15-76	3
	JJ1461	BAKNARD	OESTERHELD DAVID A	2151	11-04-76	02-10-76	2
	001461	NATHAN	LUDWIG THOMAS	2151	01-06-76	03-02-76	8
	JJ1461	BAKNARD	NICOL H GILBERT	2151	11-38-76	12-13-76	4
	JJ1461	BAKNARD	SAWYER SAM	2151	01-10-76	03-03-76	7
	001461	KUDEKEK	REINBRECHT JR CHARLES H	2151	01-12-76	05-03-76	2
	JJ1461	BAKNARD	JABLON JUDY	2151	11-15-76	13-13-76	4
	001461	STEPHENS	WATTS MILDRED W	2151	01-16-76		
	001461	NATHAN	WITTER VELHA	2151	01-26-76	04-09-76	7
	JJ1461	NATHAN	PHYLLIS TUNICK	2151	01-27-76	03-15-76	2
	JJ1461	NATHAN	AGARD VERA	2151	02-02-76	03-09-76	4
	JJ1461	NATHAN	GARFUNKEL PATRICIA	2151	02-17-76	03-30-76	2
	001461	NATHAN	BROWN SARAH	2151	02-24-76	03-15-76	2
	JJ1461	NATHAN	MAKINO R	2151	02-24-76	06-07-76	7
	001461	NATHAN	MULLADY DON	2151	02-25-76	03-23-76	8
	001461	NATHAN	KRINSLEY NITA	2151	13-11-76	13-29-76	2
	001461	NATHAN	RUMBRO BETTIE B	2151	13-29-76	05-03-76	4
	JJ1461	NATHAN	LAVERGNE ALFREDO	2151	04-04-76	05-24-76	2
	JJ1461	STEPHENS	WOODWARD JIANN M	2151	04-05-76		
	001461	NATHAN	SCHWENFEL EILEEN	2151	04-05-76	05-03-76	4
	001461	NATHAN	LUNEAU ARTHUR C	2151	14-11-76	15-19-76	2
	001461	NATHAN	PINTER ANDRE A	2151	04-09-76	05-04-76	4
	JJ1461	NATHAN	BARTELS WILLIAM	2151	04-19-76	05-25-76	3
	JJ1461	NATHAN	WERBEL BERNARD G	2151	04-24-76		
	001461	NATHAN	RUTMAN DINAH	2151	04-27-76	06-03-76	2
	JJ1461	NATHAN	BERGEN ROBERT D	2151	14-20-76	15-25-76	3
	001461	BOYLE	MILLER BEA	2151	04-30-76	06-29-76	7
	001461	NATHAN	MARGIASSO PHYLLIS M	2151	04-30-76	06-15-76	7
	JJ1461	CUV	GOLDBERG BENJAMIN J	2151	05-03-76		
	001461	NATHAN	HYLES MONIE L	2151	05-04-76	06-07-76	1
	001461	BOYLE	GUSTIC EVELYN	2151	15-17-76	16-15-76	2
	001461	NATHAN	BERNKOPF MICHAEL	2151	05-10-76	06-15-76	7
	JJ1461	BOYLE	CARNES LINNEA B	2151	05-17-76	16-15-76	2
	001461	NATHAN	ROSEMAN GAIL A	2151	05-19-76		
	JJ1461	CUV	RISI RALPH	2151	05-27-76		
	001461	BAKNARD	MARCH XAVIER	2151	16-13-76		
	001461	NATHAN	BECK MYER P	2155	01-13-76		2
	JJ1461	NATHAN	HILLIS ELENA C	2157	02-26-76		
	JJ1461	NATHAN	BARRFOT HERMAN	2157	05-08-76		
	001461	BAKNARD	FRANCES QUAYTMAN	2158	01-06-76	01-27-76	4
	JJ1461	NATHAN	STEWART MYRTIS	2211	13-12-76	14-27-76	5
	001461	MCLEAN	KELLY MARY F	2214	02-11-75	03-27-75	
	001461	BAKNARD	KIRBY ELLEN	2214	01-21-76	03-23-76	4
	JJ1461	NATHAN	ORDUNEZ JOSE	2219	01-27-76	05-07-76	2
	001461	BOYLE	WEID LOUISA A	2241	06-19-76		
	JJ1461	BAKNARD	FINLEY BARRY	2241	01-14-76	02-23-76	7
	001461	NATHAN	MINGO ALFRED	2251	02-06-76	03-29-76	2

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NAME OF BANK	BANK CHARTER NUMBER	CASE ATTORNEY	NAME OF CONSUMER	***** COMPLAINT DATA *****			***** RESOLUTION CODE *****
				CODE	COMPLAINT DATE	RESOLUTION DATE	
	JJ1461	NE IMAN	ELHAMER RUMERT	2258	01-05-76	05-27-76	4
	001461	NATHAN	KURTZ VICTOR	2300	06-02-76		
	001461	NATHAN	CONTRADA JAMES J	2430	03-01-76	05-07-76	7
	001461	BARNARD	WILLIAMS DOROTHY L	2400	03-03-76	03-22-76	7
	JJ1461	NATHAN	FEINGOLD GEUNGE	2400	03-09-76	03-24-76	2
	JJ1461	NATHAN	SMITH JOHN L	2400	04-07-76	05-07-76	7
	001461	NATHAN	JORDAN JAMES E JR	2400	04-12-76	06-01-76	7
	001461	NATHAN	BRADLEY GREGORY R	2430	04-13-76	06-01-76	2
	001461	NATHAN	MIRANDA MARCUS A	2430	05-07-76	05-25-76	7
	001461	NATHAN	MCGUIRE BRUCE M	2400	05-12-76	06-07-76	1
	JJ1461	BOYLE	MCCREATH ILENE R	2400	06-30-76		
	001461	BOYLE	WILLIAMS PRESTON	2400	07-05-76		
	001461	NATHAN	STRUT MARY	2427	03-29-76	05-07-76	1
	001461	NATHAN	SKULNICK MALCOLM	2427	05-12-76	06-07-76	2
	001461	STEPHENS	FOUNTAIN EDWIN BYRD	2428	09-16-75	12-17-75	2
	JJ1461	BARNARD	LAWLOR JEREMIAH	2428	01-19-76	02-12-76	2
	001461	NATHAN	ROBINSON EVELYN	2428	02-21-76	05-25-76	2
	001461	NATHAN	CANDIDO SALVATURE M	2428	03-32-76	05-04-76	2
	001461	BOYLE	RUDIN JUEL	2428	05-08-76	06-30-76	7
	001461	NATHAN	GARCIA ROGELIO	2430	02-09-76	03-09-76	5
	JJ1461	NATHAN	ABRAMS JOHN	2430	02-27-76	04-02-76	2
	001461	NATHAN	FREIS OSCAR	2430	06-18-76		
	JJ1461	NATHAN	ALPER BARBARA P	2431	01-05-76	02-02-76	2
	001461	BARNARD	KATZMAN ROBERT	2431	01-22-76	02-24-76	8
	JJ1461	NATHAN	FRANCIS FLORENCE	2431	02-30-76	03-13-76	2
	001461	NATHAN	STANTON	2431	02-03-76	03-29-76	2
	001461	BARNARD	MCFADDEN ELIZABETH	2431	02-17-76	03-22-76	2
	JJ1461	NATHAN	COLON JOSE N	2431	02-24-76	03-24-76	3
	001461	NATHAN	OWENS JEANNE D	2431	03-09-76	04-26-76	2
	001461	NATHAN	PHIPPS MYRTIS S	2431	04-19-76	06-14-76	7
	001461	BOYLE	O GURMAN ELLEN M	2431	05-07-76	06-30-76	2
	001461	BOYLE	SANMEEZ ANGELO	2431	05-23-76	07-01-76	7
	JJ1461	CUY	SCHNEIDER PAULA	2439	05-19-76		
	001461	NATHAN	DUVERGLAS DOROTHY D	2439	12-31-75	01-22-76	2
	JJ1461	CUY	WHIBBEE JOHN A	2439	06-23-76		
	001461	BARNARD	VAN DERTHJLEN	2441	01-02-76	01-26-76	2
	001461	NATHAN	HUGLES MARTIN F	2441	04-07-76	05-19-76	2
	JJ1461	NATHAN	NOWICKI ROBERT E	2441	05-20-76	06-14-76	2
	001461	CUY	HUNT EDWARD J	2441	05-20-76		
	001461	BOYLE	SKEETER JEAN R	2441	06-16-76		
	001461	BOYLE	FIGUEROA MICHAEL A	2441	06-21-76		
	001461	NATHAN	KILLARY JAMID	2442	11-10-75	12-03-75	6
	JJ1461	NATHAN	LAFRANCE PIERRE	2442	01-11-76	03-12-76	1
	001461	NATHAN	ROTHFUSS ALAN R	2442	05-05-76	06-07-76	2
	JJ1461	NATHAN	SAUBON FRANCISCO B	2443	01-31-76	03-31-76	4
	001461	NATHAN	HUN SANDY	2443	01-19-76	03-16-76	1
	001461	NATHAN	GARAY LIDA	2443	01-29-76	03-15-76	3

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CONSUMER COMPLAINT DATA SYSTEM
CONSUMER COMPLAINTS BY REGION AND BANK
FROM 01-01-72 TO 12-31-76

NAME OF BANK	BANK CHARTER NUMBER	CASE ATTORNEY	NAME OF CONSUMER	***** COMPLAINT DATA *****			RESOLUTION CODE
				CODE	COMPLAINT DATE	DATE RESOLVED	
	001461	NATHAN	PUELL MARION	2443	04-09-76	05-04-76	
	001461	NATHAN	LUNEAU ARTHUR C	2451	03-09-76	05-19-76	2
	001461	BOYLE	CLARK THOMAS P	2451	05-14-76	06-21-76	2
	J01461	NATHAN	JENKINS CHARLES	25JJ	02-04-76	03-01-76	8
	001461	NATHAN	RINI JOHN	2542	03-05-76	05-25-76	7
	001461	NATHAN	ZEFF LAWRENCE S	2542	03-19-76	05-07-76	2
	001461	LIEBESMAN	WANEBO HAROLD J	2600	11-13-74	01-15-75	
	001461	K BARNARD	SINGER EDWARD H	4000	12-30-75	01-21-76	1
	001461	NATHAN	SZOSTAK JAN	4JJJ	07-09-76	02-18-76	5
	001461	NYSTROM	HEKIN RUTH K	4077	11-22-75	02-10-76	9
	001461	BOYLE	SULLIVAN BRUCE M	4377	02-20-76	06-21-76	7
	001461	NATHAN	SCHMUKLER SIDNEY	4080	03-16-76	04-30-76	2
	001461	NATHAN	TEIENBAUM LEONARD	4001	01-27-76	03-04-76	2
	J01461	BARNARD	GREENES JESSE	4081	02-18-76	03-23-76	1
	001461	NATHAN	BRUNJES ANNALIES	4081	05-11-76		
	001461	BOYLE	BROWN B FRANK	4081	05-19-76	07-06-76	2
	001461	MCINTURFF	DAVIDEIT H O	5000	11-11-75	01-09-76	2
	001461	BOYLAN	BECK ANATOLE	5082	03-14-73	03-28-73	
	J01461	MILLER J	GUETZ LIONEL	5082	06-06-73	06-06-73	
	001461	MCINTURFF	GIPSON F C	5082	02-04-75	12-23-75	
	001461	NATHAN	UNITED MERCANTILE AGENCIE	5082	03-04-76	05-07-76	5
	001461	NATHAN	HULEGAARD LEE	5082	03-28-76	05-07-76	8
	001461	NATHAN	CAMEXCO ITALARTS	5082	04-22-76	05-24-76	5
	J01461	NATHAN	RUNDOS NESTER	5083	09-19-73	06-03-76	8
	001461	NATHAN	KAUFMAN LARRY	5083	02-17-76	03-24-76	3
	001461	NATHAN	CAMPBELL WINNIFRED	5083	03-13-76	03-31-76	1
	001461	NATHAN	GREENES JESSE	5083	04-06-76	05-25-76	4
	001461	NATHAN	CAMP A LENNART	5083	05-03-76	06-03-76	2
	J01461	NATHAN	HAKLEY COLVILLE	5083	05-17-76		
	001461	BOYLE	ROBERTSON ALLAN M	5083	06-11-76		
	J01461	MCINTURFF	HUDDLESTON GURDON D	5084	03-28-74	01-07-75	4
	001461	BARNARD	RAMSAY CLIFFORD A	5084	01-12-76	02-04-76	4
	J01461	BOYLE	RUSSELL L T	5084	06-16-76		
	001461	LEVIN	KOWALSKI CHESTER	6088	10-09-73	12-14-73	
	001461	LEVIN	MORVITZ BERNARD G	6088	07-02-74	09-19-74	
	J01461	MCLEAN	BACON LEONARD L	6088	01-24-75	07-28-75	
	001461	NATHAN	EUBANK PERRY H	6088	09-11-75	10-01-75	6
	001461	NATHAN	PATHUND NICHOLAS	6088	01-26-76	05-25-76	4
	J01461	NATHAN	ROWLAND MARIE P	6088	02-16-76	03-31-76	1
	001461	NATHAN	ROWLAND MARIE P	6088	02-16-76		
	J01461	NATHAN	WEITZ CARL K	6088	03-01-76	04-09-76	4
	001461	BOYLE	FRIES PAUL S	6088	06-08-76		
	001461	BOYLE	LEWIT RUNA M	6088	06-15-76		
	J01461	CONNELLY	TAVERA A	7000	01-24-73	02-14-73	
	001461	BARRETT	SCHREIBER SAMUEL L	7000	06-14-73	06-19-73	
	001461	CONNELLY	DUMETZ ELBERT H	7000	07-31-73	08-07-73	
	001461	MILLER	NIN LUIS L	7000	07-31-73		

CONSUMER AFFAIRS
CONSUMER COMPLAINT DATA SYSTEM
CONSUMER COMPLAINTS BY REGION AND BANK
FROM 01-01-72 TO 12-31-76

NAME OF BANK	BANK CHARTER NUMBER	CASE ATTORNEY	NAME OF CONSUMER	***** COMPLAINT DATA *****			***** RESOLUTION CODE *****
				CODE	COMPLAINT DATE	DATE RESOLVED	
	JJ1461	DEMARTINO	CATHEY BRUCE	7333	12-13-73	33-14-74	6
	001461	FITZGERALD	MOORE KERANS S	7000	12-28-73	04-08-74	
	001461	DEMARTINO	FILIPOWICZ ROSE M	7333	11-21-74	31-23-74	
	001461	LEVIN	ZWICKEL MIRIAM	7000	05-09-74	05-30-74	
	001461	WILTE	WALLACE SAMUEL B	7000	05-24-74	28-16-74	
	001461	HANLEY	GONZALEZ JOSE	7333	37-33-74	07-08-75	
	001461	MCINTURFF	MUDI L K	7000	08-35-74	12-18-74	8
	001461	OPPENHEIME	RYAN JOHN P	7333	13-24-74	12-19-74	
	001461	HANSEN	JACOBS LEIS G	7000	07-08-75	08-08-75	2
	001461	KODERER	BAKER MARSHALL E	7333	11-33-75	34-38-76	2
	001461	NATHAN	KART ELEANJR	7000	12-26-75		
	001461	NATHAN	MANDELORN A H	7000	01-16-76	03-29-76	2
	JJ1461	NATHAN	GULLU ROSE	7000	02-05-76	04-27-76	5
	001461	NATHAN	FUNK MEYER B	7000	02-06-76	04-29-76	2
	JJ1461	NATHAN	MILLS GEUNGE W	7333	33-35-76	35-19-76	5
	001461	NATHAN	ZAIHER BARBARA	7000	03-08-76	05-03-76	1
	001461	BOYLE	THORPE R M	7300	03-11-76	36-15-76	1
	JJ1461	NATHAN	LUNETTA DOMNA J	7000	03-12-76	04-02-76	2
	001461	CUJ	BEFRAYED	7003	03-21-76	04-16-76	0
	JJ1461	NATHAN	HAUCK EDWARD J	7333	33-22-76	35-19-76	4
	001461	NATHAN	SOY ANTHONY L	7000	03-29-76	05-04-76	7
	001461	NATHAN	WASHINGTON BESSIE	7300	05-12-76		
	JJ1461	NATHAN	DARCUS ROBERT J	7000	05-25-76		
	001461	LEVIN	PKUTZMAN KOY	7089	11-02-73	11-13-73	
	JJ1461	BOYLE	FAZZINI EUGENE P	7389	34-13-76	36-21-76	7
	001461	NATHAN	WETREICH RUSS	7089	05-26-76		
	001461	MLEAN	DOYLE LAWRENCE A JR	7091	01-24-75	01-31-75	
	JJ1461	NATHAN	KEELING CHERYL	7092	01-27-76	03-01-76	4
	001461	BANKAKD	AMERICAN NATIONAL BANK	7092	02-24-76	03-19-76	8
	001461	NATHAN	FORD JAMES J	7392	32-24-76	33-24-76	7
	001461	NATHAN	ASKEL MELVIN	7092	04-22-76	06-07-76	5
	001461	NATHAN	RAFFONE ROBERT	7094	02-05-76	05-04-76	4
	JJ1461	NATHAN	WEISE EUGENE E	7094	03-08-76	04-27-76	2
	001461	BOYLE	BROWN GARY A	7095	06-17-76		
	JJ1461	FULLER	BUCZYNSHI D	7396	36-25-75	37-29-75	
	001461	NATHAN	HIBBERT DEHNIS	7097	03-02-76	05-04-76	8
	JJ1461	NATHAN	PERNANUEZ MIRTA MAZZA	7097	03-32-76	04-09-76	4
	001461	NATHAN	KAPLAN IRWIN R	7097	03-25-76		
	001461	NATHAN	SALAMUN OLGA	7097	04-27-76		
	001461	NATHAN	BURKETT DIANE	7098	12-22-75	05-25-76	4
	001461	NATHAN	GIESER RICHARD	7098	02-13-76	03-24-76	7
	JJ1461	NATHAN	FAUERBACH G	7098	02-16-76	03-29-76	2
	001461	NATHAN	PLOTKIN REITA	7098	02-18-76	03-24-76	7
	001461	NATHAN	LANE SAMUEL K	7398	33-32-76	33-29-76	2
	001461	NATHAN	BRODAX TONI	7098	03-15-76	04-09-76	7
	JJ1461	BOYLE	BRAVO J M	7098	34-14-76	06-21-76	2
	JJ1461	BOYLE	CUMEN FAYE	7098	03-13-76	06-15-76	4

NAME OF BANK	BANK CHARTER NUMBER	CASE ATTORNEY	NAME OF CONSUMER	***** COMPLAINT DATA *****			
				CODE	COMPLAINT DATE	DATE RESOLVED	***** RESOLUTION CODE *****
CITIZENS FIRST NATIONAL BANK OF NEW JERSEY	J01461	CONNELLY	WILLIAMS F R	7399	32-26-75	36-11-75	
	011759	CUV	ENGLISH ROBERT J	0001	03-11-76	05-06-76	4
	011759	NATHAN	ENGLISH ROBERT J	1538	31-27-76	32-18-76	2
	011759	LEVIN	GILROY N NICHOLAS	2130	05-07-75	09-17-75	
	011759	CUJ	MOUVIER JOSEPH V	2151	36-11-76		
	011759	NATHAN	HOOGS KEENETH E	2427	05-22-76		
	011759	NATHAN	COATES THOMAS J	2431	03-09-76		
	011759	NATHAN	COATES THOMAS J	2633	33-39-76	05-33-76	2
	011759	NATHAN	ONEILL GENVIEVE	6000	03-18-76	03-31-76	2
	011759	LEVIN	GILROY N NICHOLAS	7330	06-06-75	09-17-75	
CITIZENS UNITED BANK N. A.	J13125	BOYLE	MCELHANEY THELMA M	1206	05-08-76	06-15-76	3
	013125	NATHAN	MONAHAN JOHN C	2432	03-23-76	04-07-76	4
	013125	BARNARD	MILBOURNE WILLIAM E	2448	31-35-76	32-18-76	5
CITIZENS' BANK, NATIONAL ASSOCIATION COLONIAL FIRST NATIONAL BANK	010712	NATHAN	LUTZ JOHN A JR	1109	02-23-76	03-22-76	2
	002257	NATHAN	NUTTERMAN REBECCA	1109	01-12-76	33-29-76	5
	J22257	BARNARD	MOULDRIDGE CLARA	1509	02-18-76	03-31-76	2
	002257	BARNARD	WILLIAMS ARTHUR S	2539	31-12-76	32-13-76	5
	002257	NATHAN	MYSAK MICHAEL	4076	02-05-76	03-02-76	2
	002257	CUV	HUBSCHMAN ADULPH S	6088	02-37-76	03-15-76	5
COMMUNITY NATIONAL BANK AND TRUST COMPANY OF NEW YORK	015558	NATHAN	O CONNOR PATRICK	1139	35-33-76		
	J15558	NATHAN	FERRIS MARIE	1536	34-19-76	05-24-76	2
	015558	NATHAN	PACHECO PAUL	2500	02-13-76	03-23-76	4
	015558	BOYLE	CARTER GLADIOLA	2533	36-35-76	36-33-76	6
	015558	NATHAN	REY MANUAL	2527	05-06-76	05-25-76	2
	015558	BOYLE	BURKE BETTE M	2541	07-07-76		
	J15558	NATHAN	MERCURIO RUGLO	2547	33-33-76	33-24-76	5
	015558	NATHAN	FURUNATO PATRICK	7000	04-16-76		
	015558	DECARLO	ROCKSTROM RICHARD L	7394	35-23-76	38-16-76	
	012014	NATHAN	QUALIANO LAWRENCE A	1208	01-28-76	03-09-76	7
COUNTY TRUST COMPANY OF NORTH JERSEY NATIONAL ASSOCIATION	J88847	BASS	TOMVALDE NUEL	7092	11-27-74	12-11-74	
	015845	NATHAN	GULDSTEIN JOSEPH	1206	03-34-76	03-23-76	2
DEAK NATIONAL BANK EDISON/FIRST NATIONAL STATE BANK NATIONAL ASSOCIATION	015845	BOYLE	SCHWARTZMAN MILTON	1206	05-23-76		
	015845	NATHAN	LEES FABRIC SHOP	2327	02-13-76	05-19-76	4
	015845	NATHAN	BURNS BILL	2442	33-14-76	35-07-76	2
	014800	BARNARD	FEENEY EDWARD T	2631	02-05-76	02-24-76	7
	013950	NATHAN	RODMAN WILLIAM J	1202	32-39-76	03-35-76	2
	013950	NATHAN	MINTEL JUDITH K	1419	03-24-76	06-14-76	7
	013950	LEVIN	CHERECWICH PAUL	1503	11-26-73	01-25-74	
	J13950	NATHAN	STAHL KENNETH L	1518	34-23-76		
	013950	NATHAN	STAHL KENNETH L	1518	04-20-76		
	013956	CUJ	FEDOKKA LINDA	2339	35-13-76	37-01-76	7
ELLENVILLE NATIONAL BANK EMPIRE NATIONAL BANK	013956	CUV	SWAFFORD JOYCE	2041	05-17-76		
	013956	NATHAN	WIELUSZYNSKI RAYMOND	2127	01-05-76	02-18-76	2

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CASE ATTORNEY	COMPLAINT DATE	DATE COMPLAINT RESOLVED	NAME OF CONSUMER	COMPLAINT CODE	NAME OF BANK
WHITE	11-16-75		NETZ JOHN L	1216	HARTFORD NATIONAL BANK AND TRUST COMPANY
	12-12-75		MOODY W SHEHMAN	2432	FIRST CITIZENS NATIONAL BANK
	12-31-75		WEINSTEIN A	1208	THE FIRST NEW HAVEN NATIONAL BANK
	12-31-75		GELSTEIN ETHEL	1216	SHAMMUT BANK OF BOSTON, N. A.
	01-09-76		SAUNDERS JEREMIAH J	1202	FIRST AGRICULTURAL NATIONAL BANK OF BERKSHIRE COUNTY
	01-12-76		PERRAULT ROBERT J	2400	SHAMMUT BANK OF BOSTON, N. A.
	01-20-76		DOLINES JULIUS	2030	NEW ENGLAND MERCHANTS NATIONAL BANK
	01-22-76		DUNHAM DAY SPENCER	2000	NEW ENGLAND MERCHANTS NATIONAL BANK
	01-27-76		ILES VIRGINIA T	1019	THE STATE NATIONAL BANK OF CONNECTICUT
	01-28-76		OHEILLY ORAN T	2000	THE FIRST NATIONAL BANK OF BOSTON
	01-28-76		LAURANS PATRICIA W	2151	THE CONNECTICUT NATIONAL BANK
	02-03-76		FAGAN SHEILA K	2130	THE WFENE NATIONAL BANK
	02-04-76		DELLA CAMEPA WINNIFRED	1502	HARTFORD NATIONAL BANK AND TRUST COMPANY
	02-06-76		GIUDA HARRY W	4078	SHAMMUT MERCHANTS BANK, N. A.
	02-07-76		LEWIS MARGUERITE	1206	THE STATE NATIONAL BANK OF CONNECTICUT
	02-12-76		WILLIAMSON GERALD F	2130	THE FIRST NATIONAL BANK OF BOSTON
	02-16-76		REGO GERALD R	2448	FIRST BRISTOL COUNTY NATIONAL BANK
	02-20-76		DIBELLA RICHARD J	2000	SHAMMUT BANK OF BOSTON, N. A.
	02-23-76		SCORGIE AURELIA COELHO	1518	NATIONAL BANK OF FAIRHAVEN
	02-24-76		PRIZIO FRANK J	2052	THE FIRST NATIONAL BANK OF BOSTON
	03-05-76		PERENSON ROBERT	2500	VERNON NATIONAL BANK
	03-05-76		MOSKOWITZ MORRIS D	1217	THE CITY NATIONAL BANK OF

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CONSUMER AFFAIRS
 CONSUMER COMPLAINT DATA SYSTEM
 CONSUMER COMPLAINT
 SPECIAL ALPHABETIC LISTING
 FROM - - TO 12-31-76

CONTROL NUMBER	NAME OF CONSUMER	STREET ADDRESS	CITY	ST CODE	ZIP	BANK CHARTER NUMBER	COMP CODE	COMPLAINT DATE	RC	DATE RESOLVED	R	CASE C	ATTORNEY
109465	ANNEFRS WAYS	3121 RED HILL AVE	COSTA MESA	CA 92626		013064	7342	03-16-76	50				
109466	ALDOFRACO STEPH	28 WITCH WIND PLACE	WILMINGTON	DE		007703	1208	03-29-76	50				RODERER
117904	AMANDA ANNEFRS T	164 LEXINGTON AVF	PATERSON	NJ 07502		004274	7000	04-21-76	50				CUV
105770	GALNFISICH GILBERT F					002132	0001	02-26-76	50				HANSEN
117911	BIRU H W	360 13TH AVL NE 20	ST PETERSBURG	FL 33701		000000	1005	04-17-76	50				CUV
104740	FRANK DONNARAS M	4401 HILLCREST	MUONSTON	TX 77076		016040	2029	03-08-76	50				CUJ
105406	FRANK GILMILF M	7343 WILDEN HT 3	SKOKIE	IL 60076		005454	1200	03-14-76	50				CUJ
105909	COLLIER CAROLLEET	4524 YARLIN COMHT	ALEXANDRIA	VA 22310		040010	1505	04-14-76	50				CUJ
104933	CORBY MURMAN	211 ROCK HILL RD	BALA CYNWVD	PA 19004		000539	5046	03-10-76	50				CUJ
104932	COOPER FRANK	211 ROCK HILL RD	BALA CYNWVD	PA 19004		000539	0001	03-10-76	50				CUJ
104930	CRAMPTON JANE	5901 SEAMING RD	FALLS CHURCH	VA 22041		002370	1519	03-23-76	50				MCLEAN
104945	DI TONIA JOSEPH A	16 OXAMINGVINE ROAD	LAINSLIE SPNG NJ	08021		000344	2342	03-29-76	50				DEMARTINO
112040	DICKLINSIE MELTON					000000	1207	04-10-76	50				CUJ
105462	DUNFELL ANDREW S	8207 GREENHIA SW	INDIANAPOLIS	IN 46227		013759	1109	04-01-76	50				MCLEAN
112072	DUNFELL MARIS	8207 GREENHIA SW	INDIANAPOLIS	IN 46227		013759	1209	04-27-76	50				CUJ
105420	EDGER THOMAS	121 MANCROCK STREET	WHAINTREE	MA 02185		000000	2242	02-09-76	50				STEPHENS
105762	ELMER ERNEST L	114 WORTH AND WID	MILTON	MA 02186		000200	7094	02-17-76	50				CUJ
104421	HARLAN MARY T	21 HOLDFIELD COURT	WALNUT CREEK	CA 94599		001741	1205	01-12-76	50				NYSTROM
105006	HARRIS MELVIN M	1510 SAI MON BUNK DR	GASTROPHUNY	CA		001184	0001	04-04-76	50				CUV
112049	HERRIARY W HAMMEN	2040 7TH COURT S	LAKE WORTH	FL 33441		001111	7000	05-06-76	50				DEMARTINO
104975	HUGHES D S	1638 SAUNDRENS	ST PAUL	MN 55116		000203	1013	01-15-76	50				DEMARTINO
104925	JACOBS UELTHA		MENARD	MO		015485	1219	02-02-76	50				DEMARTINO
104924	JENNIFER CARL M	3134 TRAVIS COURT	COLUMBIA	SC 29204		999999	4079	02-20-76	50				STEPHENS
104768	JUNIOR LEBERT					006145	0001	03-08-76	50				CUV
100710	JONES FRANK		CHENKOFF	OK		005478	2042	10-31-75	50				ROSDEN
107176	JONES JIMMY E					009007	0001	03-08-76	50				CUJ
104004	LEAF ROBERT M	232 SOUTH MAINT ST	BIRMGHAM	CA 91505		013044	2150	12-27-75	50				ROGAR
104002	LEAF SIMPLY	619 HOLYWOOD AVENUE	CHERRY HILL	NJ 08034		015044	2329	02-27-76	50				MCLEAN
104991	LEWIS PAUL V	2308 MANCROCK T	NEWELLY	CA 94704		015440	1214	01-21-76	50				RODERER
104923	MCCORMICK DONALD D	P O BOX 414	WASHINGTON	PA 15301		005420	2378	03-27-76	50				RODERER
101775	MCCANNY JOSEPH	4105 MYRTLE AVENUE	MENCHANTVILL	NJ 08109		000000	1200	01-17-76	50				CUJ
112406	MEDWAD ROBERT E	759 GRAND AVE	ST PAUL	MN 55105		009409	0001	01-23-76	50				RODERER
104781	MORSE WILFRED L	KANSAS STATE UNIV	MANHATTAN	KS 66506		015485	0001	03-31-76	50				CUJ
112047	MURPHY FLOYD G	2149 V KNOXVILLE AVE	PERMIA	IL 61803		003296	7090	04-10-76	50				CUV
105754	NAPOLI PATRICIA	5203 ORRVILLE AVE	WOODLAND HIL	CA 91364		015180	2527	03-09-76	50				CUJ
104643	NATHAN EDWARD L	740 HOWE AVENUE	PEERSHILL	NY		001461	1109	04-02-76	50				CUV
104993	NICHOLS JOHN D	MINUMENT SQUARE	WARREN	ME 04846		013044	1215	03-02-76	50				CUV
104703	PARSONS JIMMIE	3006 MELISSA DRIVE	OXON HILL	MD 20822		014044	2428	01-13-76	50				MEINAN
105763	REAYING WILLIAM AND JIAN					015460	0001	02-26-76	50				CUV
104750	REAYING WILLIAM AND JIAN	2 URANDYVINE CENTER	CUMMERSLAND	MI 21502		000000	1114	04-21-76	50				MEINAN
104749	REAYING WILLIAM AND JIAN	2014 MENASHA AVENUE	MANITOWOC	WI 54220		015972	2329	01-03-76	50				MCLEAN
101010	RUSSELL DAVID M	3021 HUNTINGTON PL	HOUSTON	TX 77019		002370	0001	03-05-76	50				CUJ
100917	RUZZO THOMAS L	5410 TEMPLEM DRIVE	ALBANYBURG	IN 07109		002370	7037	02-03-76	50				STEPHENS
104700	RUSSELL DAVID M	131 V 4TH ST	NEW YORK	NY 10009		010374	0001	02-10-76	50				CUJ
105406	RUSSELL DAVID M	GRAN HOTEL CALLE 00	MERIDA	MX		010338	0001	04-14-76	50				CUJ
104701	RUSSELL DAVID M	404 14 4TH ST	AMANTILLI	TX 79187		014350	2031	03-01-76	50				STEPHENS
100710	RUSSELL DAVID M	CHINA GATE ROAD	DARTEN	CT 06420		013745	0001	02-20-76	50				STEPHENS

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CONSUMER COMPLAINT RESOLUTIONS

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RECEIVED AT WASHINGTON OFFICE

494	Closed; no resolution code
73	Open complaints
10	No reply necessary - TO FILES
68	Bank errors
229	Bank legally correct
22	Consumer reimbursed - Bank legally correct
38	Consumer reimbursed - Bank error
55	Factual dispute - contestable
114	Referral to other agency
124	Information
16	Consumer reimbursed - Communication problem
<u>13</u>	Settled by mutual agreement
1,256	

01-01-76 through 07-19-76

RECEIVED BY WASHINGTON AND REGIONAL OFFICES

9	Closed; no resolution code
801	Open complaints
43	No reply necessary - TO FILES
100	Bank error
825	Bank legally correct
106	Consumer reimbursed - Bank legally correct
158	Consumer reimbursed - Bank error
323	Factual dispute - Contestable
196	Referral to another agency
598	Information
80	Consumer reimbursed - Communication problem
<u>39</u>	Settled by mutual agreement
3,278	

The Office of the Comptroller of the Currency has the responsibility of enforcing compliance with State and Federal consumer laws and regulations as they apply to national banks. Administration of this obligation is accomplished through the bank examination process and through the review and resolution of complaints received from whatever source alleging violations of law. The Consumer Affairs Division has taken an increasingly active part in the administration of this responsibility with the development of evaluative criteria and measurement techniques designed for enforcing compliance.

The complaints against national banks cover a wide variety of consumer banking activities. The complaints received, either in Washington or the fourteen Regional Offices, cover the full spectrum of banking services. When a complaint is received, it is immediately referred to staff to investigate the fact situation and prepare as complete a response as possible for the complainant. Inquiry is made of the bank concerned through letter or, if necessary, the visit of an examiner. Depending on what is discovered, either the bank is asked to remedy its error or the complainant is informed that no basis has been found for the complaint. If there appears to be a factual dispute between the parties, the complainant is advised to seek legal counsel to further pursue the matter.

During 1975, the Consumer Affairs Division developed a Consumer Complaint Information Systems (CCIS) which became operational at the fourteen Regional Offices on January 1976. The establishment of the CCIS enables the Division to catalog complaints on a nationwide basis, and to determine which banks have an inordinate number of complaints filed against them. The information derived from the system is being used to determine legitimate customer concerns and to respond to statistical inquiries. Additionally, the CCIS gives us the ability to constantly monitor our operations and utilize consumer complaints in policy program development.

Data for 1976 are listed below by complaint category and significant subcategories.

	1st <u>QTR</u>	2nd <u>QTR</u>	3rd <u>QTR</u>	4th <u>QTR</u>	Cumulative <u>1976</u>	Total <u>%</u>
<u>Deposit Function</u>	546	587	616	590	2,339	38
Checking Account	317	375	360	380	1,432	23
Savings Account	137	127	160	168	592	9
Discrepancy in Account	99	106	95	124	424	7
Deposit not Credited	52	52	80	63	247	4
<u>Loan Function</u>	538	669	760	837	2,804	45

- 2 -

	1st <u>QTR</u>	2nd <u>QTR</u>	3rd <u>QTR</u>	4th <u>QTR</u>	<u>Cumulative</u> <u>1976</u>	<u>Total</u> <u>%</u>
Credit Card	169	293	337	395	1,194	19
Instalment Loans	194	183	222	236	835	13
Individual Credit Decision	37	76	105	86	304	5
Account Interest Charged	50	82	38	20	190	3
Discrimination by Sex/ Marital Status	22	31	134	166	353	6
Billing Dispute	55	71	64	84	274	4
<u>EFTS</u>	9	6	22	13	50	1
<u>Trust</u>	75	55	70	57	257	4
Prudent Handling	16	14	23	13	66	1
<u>Foreign Operations</u>	14	23	26	28	91	1
<u>Safety Deposit Box/ Safekeeping</u>	38	27	27	23	115	2
<u>General Complaints</u>	<u>131</u>	<u>132</u>	<u>142</u>	<u>173</u>	<u>578</u>	<u>9</u>
Total Complaints	1,351	1,499	1,663	1,723	6,234	100%

Through this preliminary data, certain trends and concentrations do emerge such as a growth in complaints received nationwide between quarters and that this Office receives more complaints concerning the loan function than deposit function in the national banking system. Further, correspondence received by this Office concerning services offered by national banks indicates that checking accounts, followed by bank credit cards, cause the most problems for a bank customer. Comparison of past years' volume of complaint correspondence within the Washington Office indicates a 46% increase of complaints the Washington Office is handling.

CONSUMER COMPLAINTS - DEPOSIT FUNCTION - WASHINGTON & REGIONAL OFFICES

FOR PERIOD 01-01-76 TO 12-31-76

Nature of Complaint	Time	Demand	Vacation/ Xmas Club	Escrow	Savings	Other	Total
Advertising	8	14			9	1	32
Attachment and Claims Freezing	2	20			5	1	28
Deposit Not Credited	1	202			38	6	247
Deposit Not Credited on Day Made		23			4	1	28
Disclosure of Account Service Charges & Terms	7	10		2	8	1	28
Discrepancy in Account	6	282	2	11	112	11	424
Forged Signature or Endorsement	6	114	1		28	5	154
Offset or Set-Off	5	55			18	4	82
Payment of Interest	51		8	3	98	6	166
Processing Without Benefit of Endorsement		29	1				30
Refusal to Cash or Pay Customer's Check		62		1	3		66
Refusal to Cash Non-Customer's Check		20				12	32
Release of Funds	8	53	5	4	63	13	146
Renewal Automatic	1				1		2
Service Charges	3	118		1	34	3	159
Stop Payment Check Being Paid	3	97		1		2	103
Untimely Dishonor of Instrument		69		1	1	2	73
Possible Escheat or Inactive Account	1	12			78	10	101
Account Regulations - Procedures	23	168	1	9	49	16	266
Other	13	84		14	43	18	172
Total	138	1,432	18	47	592	112	2,339

CONSUMER COMPLAINTS - LOAN FUNCTION - WASHINGTON AND REGIONAL OFFICES

01-17-77

FOR PERIOD 01-01-76 TO 12-31-76

Nature of Complaint	Credit/ Bank Card	Check Credit/ Overdraft	Commercial Agricultural	Instal- ment	Real Estate Mortgages	Single Payment Demand	Other	Total
Acceleration Clauses	2	2	1	2		1	1	9
Amount of Interest Charges - Usury	95	9	9	59		5	13	190
Amount of Rebate Upon Prepayments 78's			4	49	20		5	78
Collateral	1		11	35	3	4	6	60
Collection Tactics	58	11	3	79	11	5	10	177
Collection Service and Attorneys	7		1	25	4	1	5	43
Credit and Disability Insurancy - TIL	1		2	38	1	1	4	47
Discrimination by Age	8	1		3	6		4	22
Discrimination by Sex, Marital Status	279	10	2	42	1		19	353
Discrimination by Race, National Origin	7	2	4	9	6		2	30
Discrimination by Religion			1		5		1	7
Equal Lending Poster								
Escalator Clauses				1				1
Fair Credit Reporting Act	79	7	7	29	3		30	155
Flood Disaster Act								
Individual Credit Decision	157	15	14	68	23	1	26	304
Institutional Loan Policy	42	12	36	60	58	3	14	225
Late Payment Penalty Charges	19	3	1	50	6		5	84
Leasing				4	3		3	10
Real Estate Settlement Procedures (RESPA) Act					6		2	8
Redlining					4		3	9
Refusal to Renew	20	3	1	3	3	1		31
Repossession or Foreclosure	3		10	92	24	1	7	137
Restrictions on Security Interests				9	2		1	12
Regulation Z - Advertising	4			2	1			7
Regulation Z - Fair Credit Billing Act	243	16		12	1		2	274
Regulation Z - Disclosure	8	4		23	6	2	5	48
Regulation Z - Oral Disclosure				3				3
Regulation Z - Right of Rescission				1	1			2
Regulation Z - Unauthorized Mailing of Issuance	26	2					1	29
Regulation Z - General	9	1		9	2		2	23
Forgery	6		1	4	2	1		14
Credit Account	21	3	2	16	11		1	54
Other	99	11	14	108	84	1	41	358
Total	1,194	112	126	835	297	27	213	2,804

01-17-77

CONSUMER COMPLAINTS - OTHER FUNCTIONS
 FOR PERIOD 01-01-76 TO 12-31-76
 WASHINGTON AND REGIONAL OFFICES

<u>FUNCTION</u>	<u>TOTAL</u>
<u>Electronic Funds Transfer System</u>	6
Automatic Bill Payment	3
Automatic Payroll Deposit	14
CBCT Equipment	1
CBCT Location	
Confidentiality	2
Customer Identity Technique or Methods	1
Error Correction Procedures	5
Liability	4
Monthly Statement	2
Transaction Errors	4
Transaction Receipt or Record of Reconciliation	2
Wrongful or Fraudulent Use of card	6
TOTAL	50
<u>Trust Services</u>	61
Excessive Charges	11
Improper Disbursement	25
Investments	23
Prudent Handling of Estates/Trusts	66
Too long to Close and Disburse Estates	29
Refusal to Respond for Information	42
TOTAL	257
<u>Foreign Operations</u>	4
Letters of Credit/Travelers' Checks	22
Foreign Currency Transactions	44
Foreign Draft Presentment	21
TOTAL	91

CONSUMER COMPLAINTS - OTHER FUNCTIONS
 FOR PERIOD 01-01-76 TO 12-31-76
 WASHINGTON AND REGIONAL OFFICES

<u>FUNCTIONS</u>	<u>TOTAL</u>
<u>Safety Deposit Box/Safekeeping</u>	16
Disappearance of Items	24
Illegal Entry	8
Service Charges	8
Securities Redemption Transfer/Collection Items	<u>59</u>
TOTAL	115
<u>General Complaints</u>	214
Advertising	26
Cashing U.S. Government Checks	17
Information Available to Stockholders	14
Lost or Stop Payment of Official Checks/ Money Orders	81
Promotions	13
Service Charges	22
Stock Manipulation by Bank Officials	12
U.S. Savings Bond Redemption	15
Wire Transfer	31
Incompetent or Rude Personnel	73
Bank Supervision	13
Secrecy	17
Travel Business	17
Employee Hiring, Benefit, Firing	3
Data Processing Services	<u>10</u>
Conflict of Interest	<u>10</u>
TOTAL	578
Total Complaints Handled	6,234
Complaints Referred to Other Agencies	<u>359</u>
Total Complaints received	6,593

BENJAMIN S. ROSENTHAL, N.Y., CHAIRMAN
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 TOM CORCORAN, ILL.
 (202) 225-4407

NINETY-FIFTH CONGRESS
Congress of the United States
House of Representatives
 COMMERCE, CONSUMER, AND MONETARY AFFAIRS
 SUBCOMMITTEE
 OF THE
 COMMITTEE ON GOVERNMENT OPERATIONS
 RAYBURN HOUSE OFFICE BUILDING, ROOM B-377
 WASHINGTON, D.C. 20515

November 27, 1978

Mr. C. F. Muckenfuss III
 Deputy Comptroller for Policy Planning
 Office of Comptroller of the Currency
 490 L'Enfant Plaza
 Washington, D. C. 20219

Dear Mr. Muckenfuss:

In order to enable the Commerce, Consumer and Monetary Affairs Subcommittee to obtain a clearer picture of the Comptroller's enforcement of the Equal Credit Opportunity and Fair Housing Acts and Regulation B, I am writing to request further clarification on a number of points raised in August and September in my earlier correspondence and in your testimony on September 15. I would appreciate your response as promptly as possible for completion of our record on this hearing.

My questions in connection with your testimony and prepared statement are the following:

1. In your testimony you referred to uncertainty about the extent of the Comptroller's general rulemaking authority as a major reason for not issuing anti-redlining regulations at this time. You indicated that there was current litigation on this point and that the Comptroller had requested Congress to clarify the authority. Was this authority clarified in the Financial Institutions Regulatory Act of 1978 or has it yet been clarified in the courts? If not, will the lack of clarification on this matter affect the Comptroller's present or contemplated programs for fair housing and equal credit opportunity enforcement?
2. In your testimony you also referred to the establishment of a new computer-based data collection and analysis system designed to flag those institutions where there appear to be patterns of discrimination. Will this system be applicable to all credit subject to the Equal Credit Opportunity Act or only to housing credit? If only housing credit will be covered by this new system, then will you have some equally effective alternative method for detecting patterns of substantive discrimination in nonhousing credit?

3. It was established in testimony that there are no formal guidelines between the banking agencies and the Justice Department governing what kinds of discrimination situations will be referred by the banking agencies for possible Justice Department prosecution. What is the Comptroller's policy toward referral of equal credit and fair housing violations to the Justice Department for possible prosecution? Has the Comptroller referred any cases to Justice? Under what particular sets of circumstances would the Comptroller refer a case to the Justice Department in the future?
4. You testified that testing would be one of the techniques you would evaluate as a means of detecting preapplication discouragement. How will this evaluation of testing be conducted, and when do you expect your evaluation to be complete?

I would also appreciate further clarification of several of the answers submitted in advance in response to my written questions. The question numbers that head each paragraph below refer to the question numbers in my letter of August 16.

Questions 11 and 12: Your answer to question 11 states that the loan sample drawn for the compliance examination is the same size, 35 accepted loans and 18 rejected applications, at all banks, regardless of the bank's size or the extent of consumer or mortgage lending activity. How can a sample of this small size be just as satisfactory for checking compliance in a very large consumer-oriented bank with many branches and many lending officers as in a small single-office bank with a correspondingly small number of loan officers?

Question 12: Your initial answer says that the examiner supplements the basic loan sample, if necessary, with additional loans to ensure that all loan types are represented. Under each general category of loan (real estate, consumer open end, consumer installment, commercial, etc.), are applications from females treated as a separate "type" from applications from males? Are applications from protected minority applicants treated as a separate "type" from applications from whites?

- a. If not, why not? How can you screen for compliance without systematically comparing applications from women or from minorities with other applications?
- b. If so, what written examiner instructions have you on this point? Also, since four applicant classes (white male, white female, minority male, minority female) and four loan categories create 16 loan "types" for the purpose of the compliance examination, your sample of 35 accepted loans and 18 rejected applications can generally include only two accepted loans and one rejected application of each type. Do you regard two accepted loans and one rejected application of each loan type to be a sufficient sample, especially in a large institution?

Question 19: What is the reason for the very wide variation between the regions in the number of examiner hours devoted to compliance examinations per \$100,000 of home loans held? To what extent is the use of the uniform sample size regardless of bank size and lending activity responsible for this interregional variation? In your answer please discuss in particular why regions 2 (New York), 13 (Portland), and 14 (San Francisco) devoted less than half as many examiner hours per \$100,000 of home loans as did nine of the eleven other regional offices and only 10 percent as many examiner hours per \$100,000 of home loans as did region 10 (Kansas City). Why did the Kansas City region devote so much more proportional effort to compliance examinations than did the other regions?

Question 22: Why did examiners in regions 2 (New York) and 3 (Philadelphia) find such small numbers of substantive violations per 100 examiner hours, as compared with the examiners in the other regions?

Sincerely,

Benjamin S. Rosenthal
Chairman

BSR:tt

Comptroller of the Currency
Administrator of National Banks

Washington, D.C. 20219

January 22, 1979

The Honorable
Benjamin S. Rosenthal, Chairman
Commerce, Consumer, and Monetary Affairs
Subcommittee of the Committee on Government
Operations
House of Representatives
Rayburn House Office Building, Room B-377
Washington, D. C. 20515

Dear Mr. Chairman:

This letter is in response to your letter of November 27, 1978, in which you requested further clarification of points raised prior to and during my testimony on September 15. My response follows a repeat of each of your questions.

1. In your testimony you referred to uncertainty about the extent of the Comptroller's general rulemaking authority as a major reason for not issuing anti-redlining regulations at this time. You indicated that there was current litigation on this point and that the Comptroller had requested Congress to clarify the authority. Was this authority clarified in the Financial Institutions Regulatory Act of 1978 or has it yet been clarified in the courts? If not, will the lack of clarification on this matter affect the Comptroller's present or contemplated programs for fair housing and equal credit opportunity enforcement?

The general rulemaking authority of the Comptroller of the Currency was to be clarified in Title XIV of the Financial Institutions Regulatory Act (H.R. 13471). Unfortunately, the time allocated for floor debate last October did not allow consideration of Titles XIV and beyond. Consequently, the provision in question was tabled prior to passage of the Financial Institution's Regulatory and Interest Rate Control Act of 1978 (P.L. 95-630). Clarification has also been forthcoming in the courts.

This lack of clarification is one consideration in not issuing "anti-redlining regulations"; however, as stated in our testimony:

"We believe provisions of the Equal Credit Opportunity Act and Regulation B, taken together with the Community Reinvestment Act, provide the agencies with powerful tools for dealing with redlining which is either illegal or which indicates denial of credit for reasons which cannot be rationally justified. It is our current judgement that new regulations would add little to this framework. Moreover, given the need to implement our new Community Reinvestment Act regulations, to ensure that our implementation of the Community Reinvestment Act in the examination and applications processes is effective, to establish a new data collection and monitoring system to support our Fair Housing examinations and adopting regulations to effect it, and to upgrade our enforcement efforts generally, we do not believe that priority should be given to the development of such a regulation.

"We will, however, follow closely the Federal Home Loan Bank Board's experience and carefully consider our own experience under the Community Reinvestment Act in order to determine whether this judgement is correct. We do not preclude the possibility of issuing such regulations."

2. In your testimony you also referred to the establishment of a new computer-based data collection and analysis system designed to flag those institutions where there appears to be patterns of discrimination. Will this system be applicable to all credit subject to the Equal Credit Opportunity Act or only to housing credit? If only housing credit will be covered by this new system, then will you have some equally effective alternative method for detecting patterns of substantive discrimination in nonhousing credit?

The computer-based data collection and analysis system being developed will be applicable only to housing credit for two reasons. First, the use of computer analysis to flag potential instances of discrimination is experimental and its effectiveness and cost is unknown. Secondly, the necessary data for monitoring purposes are more readily available for real estate loans than for other types of loans. However, as we gain experience in our new experimental home loan data analysis system, new tools for detecting patterns of discrimination in other types of consumer loans may be suggested.

At present, patterns of substantive discrimination in nonhousing credit are being effectively detected, in part through the assistance of our computer-based complaint monitoring system. Examiners are required to review

complaints and their resolution prior to beginning an examination, and to expand their statistical selection of applications, accordingly.

3. It was established in testimony that there are no formal guidelines between the banking agencies and the Justice Department governing what kinds of discrimination situations will be referred by the banking agencies for possible Justice Department prosecution. What is the Comptroller's policy toward referral of equal credit and fair housing violations to the Justice Department for possible prosecution? Has the Comptroller referred any cases to Justice? Under what particular sets of circumstances would the Comptroller refer a case to the Justice Department in the future?

Questions dealing with violations of the Equal Credit Opportunity Act and the Fair Housing Act provision prohibiting discrimination in the financing of housing must be addressed separately, because criminal and civil sanctions differ with each statute. The Equal Credit Opportunity Act contains no criminal penalties for a violation of its provisions, whereas such sanctions do exist for Fair Housing Act violations which constitute acts or attempts of force with the exercise of one's rights under the Act. A successful prosecution of these crimes would require that criminal conduct, including the presence of intent, be established. Accordingly, this Office will refer violations of the criminal provisions of the Fair Housing Act to the Justice Department for possible prosecution where sufficient evidence has been collected in our initial investigation. To date we have uncovered no violations of the Fair Housing Act by national banks which have warranted criminal prosecution.

Non-criminal violations of the Equal Credit Opportunity Act and the Fair Housing Act will be addressed, in part, within the framework of "Regulation B Enforcement Guidelines," which have been proposed by the financial regulatory agencies and will be finalized in the near future. Additionally, the Comptroller's Office has a number of effective administrative remedies to correct Equal Credit Opportunity Act and Fair Housing Act violations. These administrative remedies range from consultation with bank management to issuance of a cease and desist order. To date, we have been able to obtain compliance without the need to initiate cease and desist proceedings. When we are otherwise unable to obtain compliance, we would turn the matter over to the Justice Department with a recommendation that an appropriate civil action be instituted. Because of the scope and efficacy of our cease and desist authority, referral to Justice for a civil action is seldom likely to be required.

4. You testified that testing would be one of the techniques you would evaluate as a means of detecting preapplication discouragement. How will this evaluation of testing be conducted, and when do you expect your evaluation to be complete?

Pre-application discouragement, which violates the civil rights laws, is one of the most difficult forms of discrimination to detect. "Testing" has been urged as a potentially efficient and effective means of discouraging pre-application discrimination. While we do not have specific plans for implementing "testing", we will consider its use along with other techniques as an adjunct to our enforcement program. We expect that our review of alternative strategies to detect and prevent illegal pre-application discouragement will be completed in 1979, and anticipate that it will proceed in close cooperation with the other agencies.

I would also appreciate further clarification of several of the answers submitted in advance in response to my written questions. The question numbers that head each paragraph below refer to the question numbers in my letter of August 16.

Question 11: Your answer to question 11 states that the loan sample drawn for the compliance examination is the same size, 35 accepted loans and 18 rejected applications, at all banks, regardless of the bank's size or the extent of consumer or mortgage lending activity. How can a sample of this small size be just as satisfactory for checking compliance in a very large consumer-oriented bank with many branches and many lending officers as in a small single-office bank with a correspondingly small number of loan officers?

We did not mean to imply that our examiners select a loan sample of the same size in all cases. On the contrary, examiners are instructed to double the sample size and select additional applications on a judgemental basis when dealing with large banks which have many branches and lending officers. In cases where branches are located in minority areas, the examiner may complete a separate sample for the branch or branches in that area, and may review additional accepted and rejected loans to the extent necessary.

Furthermore, for banks of all sizes, drawing of the basic loan sample is only the first step in the examination process. If the examiner finds that the randomly-selected sample does not provide a satisfactory cross-section of the institution's lending activity, he will supplement it as necessary. In addition, in any case where the examiner finds evidence of violations, he pursues a thorough review by looking at additional accepted and rejected loans.

The basic sampling plan, itself, is based on the "Poisson probability distribution," a test useful in measuring a large number of items. This probability distribution is used by many businesses in product quality control testing, and has also been successfully applied to tests on accounting records. We recognize that use of a larger sample might lead to a higher degree of reliability in some instances. We have found, however, that if the examiner finds no violations in the basic sample of 35 accepted and 18 rejected loans, we can assume with 95% accuracy that the bank is in compliance with consumer laws in general.

We believe, accordingly, that the general use of a 35/18-loan sample, supplemented to the extent necessary at the individual examiner's discretion, provides an efficient and effective approach to enforcement of consumer laws.

Question 12: Your initial answer says that the examiner supplements the basic loan sample, if necessary, with additional loans to ensure that all loan types are represented. Under each general category of loan (real estate, consumer open end, consumer installment, commercial, etc.), are applications from females treated as a separate "type" from applications from males? Are applications from protected minority applicants treated as a separate "type" from applications from whites?

- a. If not, why not? How can you screen for compliance without systematically comparing applications from women or from minorities with other applications?
- b. If so, what written examiner instructions have you on this point? Also, since four applicant classes (white male, white female, minority male, minority female) and four loan categories create 16 loan "types" for the purpose of the compliance examination, your sample of 35 accepted loans and 18 rejected applications can generally include only two accepted loans and one rejected application of each type. Do you regard two accepted loans and one rejected application of each loan type to be a sufficient sample, especially in a large institution?

Our examiners do not routinely and systematically structure the loan sample to assure that it contains loans from females, males, minorities, and whites in each loan category. As described above, we rely instead upon a random sampling technique, supplemented by a review of additional loans and applications when the examiner determines that it is necessary to secure a representative group of loans, or when there is any evidence of illegal discrimination. Our examiner training program places great emphasis on the need for this selective in-depth review in potential problem cases.

One obstacle to making the sampling approach more systematic is the lack of data on borrower characteristics for any given loan. The only type of loan where sex and racial data is commonly collected is for real estate loans, and even in these cases, collection of the data is only voluntary. For non-real estate loans, no notation is made at all regarding the characteristics of the borrower. Our examiners are instructed to try to compensate for this lack of data by drawing inferences from the loan files. For example, female applicants can usually be identified by the given name, where provided. In areas with significant Spanish-American or Chinese-American population, we try to identify these groups on the basis of surnames. To compensate for the lack of racial data, we often select additional applications from branches located in minority neighborhoods, as we described previously. Using these techniques, the examiner is able to focus a selective review on certain types of loans where it is believed there may be a problem.

In addition, we supplement the individual loan examination with a number of other techniques which help the examiner to identify potential problem areas. For instance, we provide the examiner with an abstract of our computerized complaint-monitoring data for the bank. We instruct the examiner to consider HMDA data, which may reveal geographical lending patterns which correlate with protected classes of borrowers. Our examiners also conduct extensive interviews with bank personnel, and review bank policy to determine whether actions taken on applications are consistent with written or oral policies, or whether the policies, themselves, may be discriminatory.

A copy of our examiner instructions on sampling is attached. Handouts No. 3 and No. 9 are given to students at the Consumer Affairs Training School. These handouts pertain to statistical sampling, primarily on a random sampling basis, and address the problem encountered with branch banking systems and banks with operating subsidiaries. These handouts, however, do not include new procedures, such as expansion of sample size and the increased use of selective sampling techniques, which were presented to students orally in the Fall of 1978 and which will be in writing for subsequent schools. Our training materials are revised every six months. New examiners are also encouraged to seek the advice of the consumer specialist in the regional office whenever they have questions on the adequacy of the sample.

Question 19: What is the reason for the very wide variation between the regions in the number of examiner hours devoted to compliance examinations per \$100,000 of home loans held? To what extent is the use of the uniform sample size regardless of bank size and lending activity responsible for this interregional variation? In your answer please discuss in particular why Regions

2 (New York), 13 (Portland) and 14 (San Francisco) devoted less than half as many examiner hours per \$100,000 of home loans as did nine of the eleven other regional offices and only 10 percent as many examiner hours per \$100,000 of home loans as did Region 10 (Kansas City). Why did the Kansas City region devote so much more proportional effort to compliance examinations than did the other regions?

As your question suggests, the regional variation in examination hours per \$100,000 of home loans is due largely to the fact that our compliance examination time in each bank does not vary proportionately to variations in volume of mortgage lending. Since there are significant differences among regions in the average home loan volume per bank, the use of relatively fixed examination procedures, when measured against \$100,000 of home loan activity, produces apparent inter-regional differences in examination effort.

However, several points should be made to qualify this answer. First, we uniformly use a minimum statistical sample size of 35 approved and 18 rejected loans. However, the examiner may increase this sample size considering the size of the bank, the need to review a representative cross-section of loans, and the need to follow up on any evidence of possible discrimination. These variations in our procedures for sampling loan files are explained more fully in our answer to questions 11 and 12.

Secondly, it should be remembered that the review of the sample loan files is only one part of our fair lending examination procedures. They also include (1) review of the bank's written home loan policies and procedures, other written statements, and a questionnaire prepared by the Comptroller; (2) interviewing of select bank personnel who accept home loan inquiries and applications, and of the officer in charge of the home loan section; and (3) verification for consistency between written policy statements and the information obtained through the interviews and observation. Like the process for reviewing sample loan files, the time devoted to these additional procedures may vary with the bank's home lending volume, but the variation will not be proportionate. Therefore, the use of these relatively fixed non-sampling procedures helps further to explain the regional differences in examination hours per \$100,000 of loans.

The reason for the disparity becomes clearer when one looks directly at the figures on average numbers of home loans per bank among the regions. These figures on actual home loan activity are now available for the first time as a by-product of a special, one-time survey conducted last summer to provide information we needed in developing our data collection and analysis system. An initial summary of that survey is attached. Region 10 (Kansas City), has an

extremely low rate of mortgage activity per bank, and therefore appears to have devoted a high proportional effort to home loan compliance examinations. In Region 10, the average number of home loans is only 36 loans per bank, while the national average is 90 loans per bank. However, the basic procedure is completed in each bank with mortgage loan activity. Thus, a substantial amount of examination time is spent in relation to a relatively small volume of loans.

On the other hand, Region 13 (Portland), and Region 14 (San Francisco), with very high rates of mortgage activity per bank, appear to devote less than half as many examiner hours per \$100,000 of home loans as did nine of the eleven other regional offices. In Region 13, there are 296 home loans per bank and in Region 14, 1,050 home loans per bank, both significantly above the national average of 93. Region 2 (New York), is also above the national average, with 101 home loans per bank, far above the average of 36 in Region 10.

Finally, it is worth noting that many of our procedures described above, and particularly our sampling procedures for home loans, are likely to change in late 1979 or early 1980, as we institute our new computerized fair housing data collection and analysis system.

We are initiating a pilot time utilization system in Region 1 (Boston) in which consumer examiners will be required to itemize the amount of time spent on each aspect of the consumer examination. When we are satisfied with the pilot system, it will be expanded to all 14 regions, possibly by the end of 1979.

Question 22: Why did examiners in Regions 2 (New York) and 3 (Philadelphia) find such small numbers of substantive violations per 100 examiner hours, as compared with the examiners in the other regions?

We do not know precisely why there are significant variations between regions on substantive violations per 100 examiner hours. One of the purposes of our new civil rights program is to evaluate the effectiveness of our compliance program, and we hope that effort will help to answer this question. We do believe that this interregional variation may be related to bank size. Another possible explanation is that Regions 2 and 3 initially assigned less-experienced examiners to participate in the consumer program.

We have learned that better results may be obtained through use of examiners who have greater examining experience. Such examiners are more productive as a whole and have greater insight into the operations of the banking function. Our proposed career path for consumer examiners recognizes this fact, and will require an entry level of GG 7/8. Thus, an examiner will have had two to three years experience before entering the consumer program.

Regions 2 and 3 are currently assigning individuals of higher experience levels to consumer compliance examinations and it is possible that more substantive violations per 100 examiner hours will be noted in these Regions.

Please contact us if we can be of further assistance.

Very truly yours,



C. F. Muckenfuss, III
Senior Deputy Comptroller for Policy

Attachments

OCC SURVEY OF NATIONAL BANKS MORTGAGE APPLICATIONS
January 1, 1978 - June 30, 1978

TABLE 1
PRIMARY PURCHASE MORTGAGE LOANS

<u>REGION</u>	<u># BANKS IN REGION</u>	<u># BANKS RESPONDED</u>	<u>% RESPONDED</u>	<u>FHA/VA APPROVED</u>	<u>FHA/VA REJECTED</u>	<u>FHA/VA TOTAL</u>	<u>FHA/VA % REJ.</u>	<u>CONV. APPROVED</u>	<u>CONV. REJECTED</u>	<u>CONV. TOTAL</u>	<u>CONV. % REJECTED</u>	<u>TOTAL APPLI-CATIONS</u>
1	170	135	79.4	1361	120	1481	8.1	8467	1336	9803	13.6	11284
2	228	188	82.5	83	16	99	16.2	15795	3110	18905	16.5	19004
3	238	206	86.6	1032	168	1200	14.0	24615	3289	27904	11.8	29104
4	421	366	86.9	3312	863	4175	20.7	34349	5986	40335	14.8	44510
5	288	228	79.2	1971	460	2431	18.9	19430	3619	23049	15.7	25480
6	346	260	75.1	2851	620	3471	17.9	12808	1691	14499	11.7	17970
7	546	463	84.8	3091	1012	4103	24.7	24884	4758	29642	16.1	33745
8	331	262	79.1	5477	918	6395	14.4	17904	3213	21117	15.2	27512
9	407	348	85.5	1842	286	2128	13.4	16607	2741	19348	14.2	21476
10	489	395	80.8	1520	333	1853	18.0	10135	2081	12216	17.0	14069
11	797	575	72.1	794	127	921	13.8	12345	2442	14787	16.5	15708
12	234	196	83.8	2451	422	2873	14.7	9223	1868	11091	16.8	13964
13	96	76	79.2	4529	1097	5626	19.5	13605	3347	16952	19.7	22578
14	64	50	78.1	9818	511	10329	4.9	39341	2864	42205	6.8	52534
TOTAL	4655	3748	80.5	40132	6953	47085	14.8	259508	42345	301853	14.03	348938

OCC SURVEY OF NATIONAL BANKS HOME IMPROVEMENT APPLICATIONS
January 1, 1978 - June 30, 1978

TABLE 2
HOME IMPROVEMENT LOANS

REGION	# BANKS IN REGION	# BANKS RESPONDED	% BANKS RESPONDED	TOTAL APPROVED	TOTAL REJECTED	TOTAL	% REJECTED	# UNSECURED APPROVED	# UNSECURED REJECTED	UNSECURED TOTAL	% UNSECURED REJECTED
1	170	135	79.4	6830	1117	7947	14.1	3772	711	4483	15.9
2	228	188	82.5	28327	6601	34928	18.9	9548	2796	12344	22.7
3	238	206	86.6	31983	7653	39636	19.3	15627	5482	21109	25.9
4	421	366	86.9	36270	9447	45717	20.7	14831	2886	17717	16.3
5	288	228	79.2	21214	6386	27600	23.1	7113	2286	9399	24.3
6	346	260	75.1	13757	3971	17728	22.4	1514	309	1823	16.9
7	546	463	84.8	24600	6563	31163	21.1	9158	1173	10331	11.3
8	331	262	79.1	16257	4044	20301	19.9	3822	1132	4954	22.9
9	407	348	85.5	11866	1332	13198	10.1	4895	495	5390	9.2
10	489	395	80.8	10916	2566	13482	19.0	3036	490	3526	13.9
11	797	575	72.1	13377	3933	17310	22.7	1921	546	2467	22.1
12	234	196	83.8	10289	1297	11586	11.2	1433	77	1510	5.1
13	96	76	79.2	11150	1423	12573	11.3	3876	376	4252	8.8
14	64	50	78.1	35152	2065	37217	5.5	4546	152	4698	3.2
TOTALS	4655	3748	80.5	271988	58398	330386	17.7	85092	18911	104003	18.2

[The Comptroller's examiner instructions on sampling are included in this volume as Exhibit F attached to the Comptroller's response to supplementary questions of August 16, 1978.]

APPENDIX 6.—FEDERAL DEPOSIT INSURANCE CORPORATION

BENJAMIN S. ROSENTHAL, N.Y., CHAIRMAN
CARDESS COLLINS, ILL.
ROBERT F. DRINAN, MASS.
ELLIOTT M. LEVITAS, GA.
DAVID W. EVANS, IND.
ANTHONY McFFEY, CONN.
FERNAND J. ST GERMAIN, R.I.
HENRY A. WAXMAN, CALIF.

GARRY BROWN, NEBR.
CLARENCE J. BROWN, OHIO
TOM CONCORAN, ILL.

(302) 325-6407

NINETY-FIFTH CONGRESS Congress of the United States

House of Representatives

COMMERCE, CONSUMER, AND MONETARY AFFAIRS SUBCOMMITTEE

OF THE COMMITTEE ON GOVERNMENT OPERATIONS

RAYBURN HOUSE OFFICE BUILDING, ROOM B-377
WASHINGTON, D.C. 20515

August 17, 1978

Hon. John G. Heimann
Acting Chairman
Federal Deposit Insurance Corporation
550 - 17th Street, N.W.
Washington, D. C. 20429

Dear Mr. Chairman:

This letter supplements my letter of August 3, concerning the hearings this subcommittee will hold in September on the financial regulatory agencies' enforcement of the Equal Credit Opportunity Act and the Fair Housing Act. The statement below of questions for testimony and of supplementary materials to be supplied in advance supersedes the statements of questions and requests in the earlier letter.

The specific questions on which the subcommittee requests the testimony of the Federal Deposit Insurance Corporation are the following:

1. Redlining Regulations:

- a. To what extent is there a problem of redlining discrimination in home lending by banks? To what extent is the problem of urban neighborhood decay the result of discriminatory practices in the handling of individual loan inquiries and applications by banks?
- b. Would banking agency promulgation and enforcement of nondiscrimination regulations to prohibit redlining discrimination contribute materially toward more equitable treatment of individuals and a reduction of the problem of neighborhood decay?
- c. Has the FDIC sufficient statutory authority to issue and enforce such nondiscrimination regulations, or does it plan to request legislation to convey this authority?
- d. Has the FDIC any plans to issue such nondiscrimination regulations addressed, at least in part, to redlining discrimination? If not,

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what enforcement steps will the FDIC be able to take, in the absence of specific regulations prohibiting redlining discrimination, to eliminate redlining practices that may be found?

2. Redlining Monitoring:

- a. How will the FDIC employ the monitoring information recorded by banks pursuant to its fair housing recordkeeping requirements to assist in its enforcement of bank compliance with the Fair Housing Act and the Equal Credit Opportunity Act? Will this monitoring information be examined for evidence of redlining discrimination?
- b. How do FDIC examiners employ Home Mortgage Disclosure Act (HMDA) data to examine the individual banks for evidence of redlining discrimination?
- c. Has the FDIC any suggestions for improvements of this Act or of its implementing regulation, Regulation C, to improve the usefulness of this data for regulatory purposes? For example, would it be helpful if the coverage of HMDA data were extended to include all home loan applications?

3. Recent Enforcement:

- a. How many and what types of violations of the Fair Housing Act, the Equal Credit Opportunity Act, or Regulation B have FDIC examiners found in insured state nonmember banks and mutual savings banks in 1977 and 1978? What portion of these violations were clear violations of the substance and spirit of the laws prohibiting discrimination? What remedial or enforcement actions has the FDIC taken to correct these violations?
- b. Were there any instances of repeat violations, in which banks were found to be continuing to engage in discriminatory practices after having previously been told to stop? What enforcement actions has the FDIC taken in these cases of repeat violations?

4. Future Enforcement: How will the FDIC deal in the future with cases of repeat violations of the Fair Housing Act, the Equal Credit Opportunity Act, or Regulation B, where a bank is found on the second or third examination to have failed to correct conditions found on a previous examination? In particular,

- a. In the case of repeat violations will you inform, or require a bank to inform, the victims of lending discrimination that unlawful discrimination has been found in the institution's handling of a previous application or inquiry from them?

- b. Under what circumstances will you release publicly the names of institutions that have refused or failed to eliminate discriminatory practices?
- c. Under what circumstances will you seek criminal prosecution of or other punitive action against banks or their officers who fail to eliminate discriminatory practices?

5. Civil Damages Litigation:

- a. What is the view of the FDIC about the effectiveness and proper role of civil damages litigation by private individuals in bringing about general compliance with the laws against credit discrimination?
- b. What steps does the FDIC take to inform consumers of their right to file civil damage suits under the Fair Housing Act and Equal Credit Opportunity Act, or to facilitate in other ways consumer use of the civil damage provisions of these acts?

6. Consumer Information: What other consumer information and education activities does the FDIC conduct to inform the general public about the laws against credit discrimination? Do you have any plans to expand these activities?

In addition to these questions to be addressed in testimony, the subcommittee requests that you provide in advance answers to certain specific questions and certain related materials, as follows:

- 1. What specific evidence have you that discriminatory redlining and appraisal practices are occurring or have recently occurred in home mortgage or home improvement lending by banks? Please provide to the subcommittee copies of any staff studies or other reports (including independent research or investigative studies) on which you rely as evidence. In the case of evidence arising from examinations, please report as fully as possible the nature of the findings, the types of communities or neighborhoods involved, the number of institutions involved, and all other information pertinent to a full description of your findings of redlining practices.
- 2. What information and statistics does the FDIC now have concerning the extent and consequences of fire insurance or mortgage insurance redlining?
- 2A. Do banks maintain in their files information that would identify individual home loan applications denied or withdrawn, or outstanding home loans foreclosed, for lack of acceptable fire, homeowners, or mortgage insurance? Has the FDIC utilized this information, or

would it be feasible for the FDIC to utilize this information, possibly in conjunction with the other financial regulatory agencies, to derive statistics on the extent and geographic distribution of insurance red-lining?

3. How do FDIC examination procedures and regulations deal with discrimination in real estate appraisals? Please supply to the subcommittee the text of any examiner instructions that address the detection of discrimination in appraisals. If there are no such instructions, please so state.
- 3A. Has the FDIC considered requiring, as a part of the adverse action notice required under Regulation B, that the bank include a copy of the appraisal with the adverse action notice sent to an applicant when his application for a home loan is denied on the basis of an inadequate appraised value? What factors have you considered or will you consider in reaching a decision on this matter?
4. How do FDIC examination procedures determine whether discriminatory "pre-screening" and discouragement of potential loan applicants are occurring? In particular:
 - a. Please explain how the examination procedures will determine whether the loan application files and monitoring records maintained by each bank are complete and have not had certain cases intentionally omitted.
 - b. What procedures will detect the discouragement of applicants by certain subtle devices such as (i) informing certain applicants whom the bank wishes to discourage that six to eight weeks will be required to process an application, when in fact only one week is required, or (ii) quoting a higher rate of interest to certain inquirers or applicants whom the bank wishes to discourage than to favored applicants?
 - c. Please supply to the subcommittee the text of all examiner instructions that address the problem of "pre-screening" and discouragement. If there are no such instructions, please so state.
5. Have you considered requiring each bank to have clearly written nondiscriminatory loan underwriting standards, available to the public in printed form at each office, as the Federal Home Loan Bank Board has done for savings and loan associations? What factors have you considered or will you consider in reaching a decision on this matter?

6. How do FDIC examiners evaluate whether formalized credit scoring systems are in compliance with the Fair Housing Act, the Equal Credit Opportunity Act, and Regulation B? Please supply to the subcommittee the text of any examiner instructions that address the evaluation of credit scoring systems. If there are no such instructions, please so state.
7. How do FDIC examiners evaluate the internal management controls and organized civil rights compliance program of each bank? Please supply to the subcommittee the text of any examiner instructions that address the evaluation of internal management civil rights compliance programs. If there are no such instructions, please so state.
8. In their examinations for compliance with the Fair Housing Act, the Equal Credit Opportunity Act, and Regulation B, what procedures or guidelines do FDIC examiners follow in determining what portion of their examination effort is to be devoted to each bank? How is the size determined for the loan sample that will be reviewed for compliance in each institution? In particular, is recognition given to the volume of loan originations, as distinct from loans held in the portfolio, in allocating examination effort to institutions that are active in originating loans for resale? Please supply to the subcommittee the text of any examiner instructions, policy guidelines, or other documents that address this question of the allocation of compliance examination effort among the different institutions to be examined.
9. In its examinations for compliance with the Fair Housing Act, the Equal Credit Opportunity Act, and Regulation B, what procedures or guidelines does the FDIC follow in determining what portion of its examination effort is to be devoted to each type of loan or credit? In particular, is recognition given to the volume of loan originations, as distinct from loans held in the portfolio, in allocating examination effort at institutions that are active in originating loans for resale? In your answer please distinguish between home loans on 1-4 family dwellings, other loans on residential property, other consumer loans or credit, other small business loans or credit, and all other credit (including loans or credit to large businesses). Please supply to the subcommittee the text of any examiner instructions, policy guidelines, or other documents that address this question of the allocation of compliance examination effort among the different types of loans or credit. If there are no such documents, please so state.
10. Please describe the organizational structure and responsibilities of the Washington headquarters and the regional offices of the FDIC as they apply to the fair housing and equal credit compliance examination

function. What are the relevant responsibilities and authorities associated with each position in this organizational structure, and what degree of autonomy is exercised by officials assigned to the regional offices in the performance of this function? What are the procedures followed for systematic oversight and review by the headquarters staff in Washington of the equal credit compliance examinations performed by the field examination staff?

- 10A. How does the FDIC's system of recognition and advancement for examiners convey an agency commitment to and provide personal reward for vigorous enforcement of the laws against credit discrimination? In particular,
- a. In giving recognition and advancement to examiners, what weight is given to performance in civil rights compliance work?
 - b. What are the standards by which examiner performance in civil rights compliance work is judged?
11. Please provide the following actual or estimated figures for the full gross costs of FDIC activities related to the enforcement of bank compliance with the Fair Housing Act, the Equal Credit Opportunity Act, and Regulation B. These cost figures should include an appropriate allowance for overhead, including clerical support, travel and per diem expenses, computer usage, rent or imputed rent, and utilities. Please state the method by which any estimates were derived.
- a. The full costs for all activities in the twelve-month period from July 1977 through June 1978, and the projected full costs for the twelve-month period from July 1978 through June 1979.
 - b. A percentage breakdown of each total to show the proportions spent on training, field examinations and associated supervision, consumer complaint handling, consumer education, creditor education, and any other appropriate categories.
 - c. A percentage breakdown of each total in part (a) to show separately the proportions applicable to home loans and to all other credit.
12. Please provide the following actual or estimated figures on numbers of banks and numbers and sizes of loans. In this request, "home loans" refers to real estate loans secured by 1-4 family residences and also consumer installment loans for repair and modernization of residential property. Please state the method by which any estimates were derived.
- a. The number of banks (including mutual savings banks) examined by the FDIC in the twelve-month period from July 1977 through June 1978 and the number that will be examined in the twelve-month period from July 1978 through June 1979.

- b. The numbers of home loan applications received and home loans granted, and the dollar volume of home loans granted, by the examined banks in the twelve months ending June 1978.
 - c. The projected numbers of home loan applications to be received and home loans to be granted, and the projected dollar volume of home loans to be granted in the year ending June 1979 by the banks to be examined in that year.
 - d. The dollar volume of home loans held by the examined banks in their portfolios as of the December 1977 call report date, and the corresponding dollar volume projected for December 1978.
 - e. The numbers of credit applications received and loans and credit lines granted, and the dollar volume of loans and credit lines granted, for other consumer or small business credit (excluding home loans) by the examined banks in the twelve months ending June 1978.
 - f. The projected numbers of credit applications to be received and loans and credit lines to be granted, and the projected dollar volume of loans and credit lines to be granted, for other consumer or small business credit (excluding home loans) in the year ending June 1979 by the banks to be examined in that year.
 - g. The dollar volume of consumer and small business credit outstanding (excluding home loans) in the portfolios of the examined banks as of December 1977 call report date, and the corresponding dollar volume projected for December 1978.
13. Please restate the cost figures given in answer to questions 11.a and 11.c to show:
- a. The total costs of the earlier period and the projected total costs of the later period restated as costs per bank examined (or to be examined).
 - b. The total costs of the earlier period and the projected total costs of the later period that are applicable to home loans restated as costs per bank examined (or to be examined), per home loan application received (or expected), per home loan granted (or expected to be granted), per \$1000 of home loan granted (or expected to be granted), and per \$1000 of home loans held (or expected to be held) in the banks' portfolios at the midpoint of the period.

- c. The total costs of the earlier period and the projected total costs of the later period that are applicable to all other credit (excluding home loans) restated as costs per bank examined (or to be examined), per application received (or expected) for other consumer or small business credit, per loan or credit line granted (or expected to be granted) for other consumer or small business credit, per \$1000 of loans or credit lines granted (or expected to be granted) for other consumer or small business credit, and per \$1000 of consumer and small business credit outstanding (or expected to be outstanding) from the examined banks at the midpoint of the period.
14. Please provide the following actual or estimated figures for the number of FDIC examiner hours spent in performing on-site examination for compliance with the Fair Housing Act, the Equal Credit Opportunity Act, and Regulation B. Please state the method by which any estimates were derived.
- a. Total examiner hours for the twelve-month period from July 1977 through June 1978, and projected total examiner hours for the twelve-month period from July 1978 through June 1979.
 - b. A percentage breakdown of each total to show separately the proportions applicable to home loans and to all other credit.
 - c. A disaggregation by FDIC region of the totals given in answer to part (a).
 - d. A percentage breakdown of each regional total to show separately the proportions applicable to home loans and to all other credit.
15. Please restate the figures given in answer to the previous question, as follows:
- a. The answers to parts (a) and (c) of the previous question restated to show examiner hours per bank examined (or to be examined).
 - b. From the answers to parts (b) and (d) of the previous question:
 - (i) examiner hours applicable to home loans restated as examiner hours per bank examined (or to be examined), per 100 home loan applications received (or expected), per 100 home loans granted (or expected to be granted), per \$100,000 of home loans granted (or expected to be granted), and per \$100,000 of home loans held (or expected to be held) in the banks' portfolios at the midpoint of the period.

- (ii) examiner hours applicable to all other credit (excluding home loans) restated as examiner hours per bank examined (or to be examined), per 100 applications received (or expected) for other consumer or small business credit, per 100 loans or credit lines granted (or expected to be granted) for other consumer or small business credit, per \$100,000 of loans or credit lines granted (or expected to be granted) for other consumer or small business credit, and per \$100,000 of consumer and small business credit outstanding (or expected to be outstanding) from the examined banks at the midpoint of the period.
16. Do you employ, for enforcement or any other purpose, a distinction between "technical" and "substantive" violations of law? If so, please explain in precise terms how this distinction is used and what it means, as applied to violations of the Fair Housing Act and the Equal Credit Opportunity Act. Please list the types of violations of these acts that fall into each class.
17. Please provide a detailed tabulation, by FDIC region and for all regions combined, of Fair Housing Act, Equal Credit Opportunity Act, and Regulation B violations found by FDIC examiners in the twelve-month period from July 1977 through June 1978. In this tabulation, please distinguish between violations related to home loans or applications and violations related to other credit. Within each of these two classes, please classify the violations by the specific nature of the violations, separating technical violations from substantive violations, and please indicate how many violations of each specific type were repeat violations that the institutions had previously been requested to correct. Where more than one type or class of violation was found at a single institution, please count each type of violation separately, as this request is for a tabulation of violations, not of institutions in violation.
- 17A. Please restate certain elements of the above tabulation of violations to show, by region and for all regions combined,
- a. Technical and substantive home loan violations per 100 examiner hours devoted to civil rights compliance examination of home loans, per 100 home loan applications received, per 100 home loans granted, and per \$100,000 of home loans held in the banks' portfolios at December 31, 1977.
 - b. Technical and substantive violations related to other credit per 100 examiner hours devoted to civil rights compliance examination of other credit, per 100 applications received for other consumer or small business credit, per 100 loans

or credit lines granted for other consumer or small business credit, and per \$100,000 of consumer and small business credit outstanding from the examined banks at December 31, 1977.

18. Please provide a tabulation, by FDIC region and for all regions combined, of institutions found to be in violation of the Fair Housing Act, the Equal Credit Opportunity Act, or Regulation B in the period from July 1977 through June 1978. If you distinguish between technical and substantive violations, please classify every institution in each region into one of three groups according to whether no violations were found, only technical violations were found, or one or more substantive violations were found. Then please subdivide each of the latter two classes according to whether the violations found at each institution were all first time violations or included one or more repeat violations that the institution had previously been requested to correct. Then please subdivide further according to whether the violations found were related only to home loans or applications, only to other credit, or to both home loans and other credit.
- 18A. Please restate the above tabulation of institutions in violation to show institutions in violation as a percentage of all examined institutions in the region.
19. What are the established procedures of the FDIC for investigating and/or responding to written consumer complaints alleging discrimination in some aspect of the credit granting process? Please supply to the subcommittee the text of all staff instructions, policy guidelines, or other documents that specify the procedures to be followed in investigating and/or responding to consumer complaints that allege discrimination in the credit granting process, whether relating to home loans or to other credit.
20. If the individual complaints are handled primarily in the regional FDIC offices, what are the procedures followed for systematic oversight and review of the complaint handling work by the headquarters staff in Washington?
21. Please provide figures giving the numbers of consumer complaints received by the FDIC in the twelve-month period from July 1977 through June 1978 alleging discrimination in some aspect of the lending process, as follows:
 - a. Total complaints related to home loans or home loan applications.
 - b. Total complaints related to other consumer or small business credit or credit applications.
 - c. A disaggregation by FDIC region of the total complaints related to home loans or home loan applications.

- d. A disaggregation by FDIC region of the total complaints related to other consumer or small business credit or credit applications.
22. Please provide a further tabular breakdown, as indicated below, of each of these figures of discrimination complaints received. For each region separately and for all regions combined, please provide the numbers of complaints in each category below for complaints related to home loans or applications and, separately, for other consumer or small business credit or credit applications.
- a. Complaints the investigation of which found one or more violations of law that substantiated the complainant's claim;
 - b. Complaint cases in which no violation was found but in which an adjustment or accommodation was offered by the bank and accepted by the complainant (including correction of bank errors);
 - c. Complaints based on a factual dispute, in which the complainant received no satisfaction;
 - d. All other complaints that received a thorough investigation but resulted in no violations related to the complaint and no satisfaction for the complainant; and
 - e. All other complaints (including information requests) in which no investigation, or only a cursory investigation, was deemed necessary.
23. Please provide further supplementary information, as indicated below, on each group of complaints identified in the answers to the previous question. For each group of complaints enumerated above, please specify
- a. What portion of these complaints were about banks in which a violation similar to the complaint had been found previously, at the most recent prior general compliance examination?
 - b. What portion of these complaints were about banks in which a violation similar to the complaint was found subsequently, at the next subsequent general compliance examination?
 - c. What portion of these complaints were about banks that have not been given a general compliance examination since the filing of the complaint?

24. How many private law suits for civil damages under the Fair Housing Act or the Equal Credit Opportunity Act have been filed against FDIC-supervised banks in 1977 and 1978? In how many of these instances had the plaintiff previously filed a complaint with the FDIC prior to filing the law suit?
25. In what ways does the FDIC inform loan applicants or potential applicants of the existence and possible usefulness to them of the civil damages provisions of the Fair Housing Act and the Equal Credit Opportunity Act? Please supply to the subcommittee examples of any letters, pamphlets, or other educational or informational materials in which these civil damages provisions are mentioned.
26. Approximately how many of each type of letter, pamphlet, or other educational or informational material mentioned in the answer to the previous question were sent out or distributed to the public in the twelve-month period from July 1977 through June 1978? Please indicate the method of distribution and types of groups or individuals to which these materials were distributed.
27. Why does the "equal housing lender" poster that each FDIC-supervised institution is required to display not mention the consumer's right to file suit for civil damages under either the Fair Housing Act or the Equal Credit Opportunity Act if he has been discriminated against?
28. When the FDIC relies on the examination performed by state bank examiners, how does the FDIC satisfy itself that these state bank examiners are adequately trained and motivated to do effective civil rights compliance examinations?
29. In the twelve-month period from July 1977 through June 1978, how many banks (including mutual savings banks) under FDIC jurisdiction underwent a state examination for civil rights compliance that the FDIC accepted as a substitute for its own examination? What portion of the total home loan assets of all FDIC-supervised banks were held by these institutions that received a state examination in lieu of an FDIC examination?
30. What portion of the total home loan assets of all FDIC-supervised banks were held by institutions outside SMSA's or with assets less than \$10 million, which the FDIC has made subject to abbreviated record-keeping requirements?
31. Have you any reliable and representative information concerning the costs incurred by banks to comply with Regulation B and the laws against credit discrimination? If so, what portion of these costs are associated with the initial training and other front end start-up costs of the banks' compliance programs, and what portion are

continuing expenses directly associated with processing of applications? Can the continuing expenses be stated as costs per loan application received or per \$100,000 of mortgage loan or other consumer credit assets held? Can they be stated in terms of fractions of a percentage point on the interest rate of a mortgage loan or other credit? What was the method by which these measurements were made?

32. Please identify and describe any major surveys, reports, or studies, either by outside experts or by FDIC staff, that have recently been completed, are currently in progress, or are planned for the near future on any aspect of the responsibilities of the FDIC under the Fair Housing Act or the Equal Credit Opportunity Act.

Please provide 75 copies of your prepared statement to the subcommittee at least 24 hours in advance of your appearance. The responses to the supplementary questions should be provided by Friday, September 8. If for any reason not all of these responses can be compiled by that time, then please deliver to the subcommittee on September 8 the answers and materials that are ready at that time, with the remaining answers and materials to be supplied as soon thereafter as possible. If you have any questions concerning this request, please contact Don Tucker of the subcommittee staff.

Sincerely,

Benjamin S. Rosenthal
Chairman

BSR:tt



FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, D.C. 20429

September 15, 1978

Honorable Benjamin S. Rosenthal
Chairman, Commerce, Consumer and
Monetary Affairs Subcommittee
Committee on Government Operations
House of Representatives
Rayburn House Office Building, Room B-377
Washington, DC 20515

Dear Mr. Chairman:

In response to your letter of August 17, 1978, I am pleased to submit information pertaining to 29 of the 32 supplemental questions requested in advance of the FDIC's testimony on enforcement of the Fair Housing Act and the Equal Credit Opportunity Act.

Responses to questions 21-23 should be forwarded to you no later than Friday, September 22, 1978.

Sincerely,

A handwritten signature in dark ink, appearing to read "Carmen J. Sullivan". The signature is fluid and cursive, written over the typed name.

Carmen J. Sullivan
Acting Director
Office of Consumer Affairs
and Civil Rights

Enclosures

1. What specific evidence have you that discriminatory redlining and appraisal practices are occurring or have recently occurred in home mortgage or home improvement lending by banks? Please provide to the Subcommittee copies of any staff studies or other reports (including independent research or investigative studies) on which you rely as evidence. In the case of evidence arising from examinations, please report as fully as possible the nature of the findings, the types of communities or neighborhoods involved, the number of institutions involved, and all other information pertinent to a full description of your findings of redlining practices.

Evidence alleging discriminatory redlining or appraisal practices in home mortgage or home improvement lending has been presented in Congressional hearings on the Home Mortgage Disclosure Act in May 1975, in hearings conducted by the financial regulatory agencies on the Community Reinvestment Act during March and April 1978, in a suit filed by the Department of Justice against the American Institute of Real Estate Appraisers and in protests of branch office and merger applications.

Judgments about the existence of redlining practices have proved difficult to date because of inadequate and insufficient information. In response to this difficulty, the FDIC recently initiated a pilot project in Brooklyn, New York to: (1) determine the cost of acquiring information useful in determining the extent to which financial institutions are meeting the credit needs of their communities; (2) identify underserved neighborhoods; and (3) evaluate supplementary data collection and analysis to assist examiners in their review of a bank's compliance with the Community Reinvestment Act.

Intermediate output has already been generated from this project in the form of a working paper (Exhibit 1). The paper* analyzed the determinants of the allocation of mortgage funds

among households and the credit terms which are associated with the mortgages. An approach was developed to help identify banks which are illegally discriminating in their mortgage lending because of the race, religion, sex, age, or marital status of the applicant. Further analysis will attempt to determine the extent to which minimal mortgage funding to certain communities versus others results from weak demand rather than redlining. In later stages of the analysis, and to the extent possible, the influence of the supply of mortgage credit upon the overall neighborhood will be addressed.

The FDIC does not condone either discriminatory redlining or discriminatory appraisal practices by banks under its supervision. Allegations of such practices brought to the Corporation's attention have been the subject of intensive investigation. In only one instance were we able to determine that the bank's lending policies had the effect of redlining a major portion of the bank's principal service area for access to housing-related credit. The redlining was based on age of housing stock, and the institution has since revised its lending policy.

2. What information and statistics does the FDIC now have concerning the extent and consequences of fire insurance or mortgage insurance redlining?

The FDIC has not compiled information or statistics on the extent of fire insurance or mortgage insurance redlining. However, the consequences of this type of redlining most assuredly would have a devastating effect on the availability of housing-related credit. Insurance redlining would affect the availability of credit because fire insurance is usually required to be maintained on the

property over the life of the loan. Likewise, if lenders require mortgage insurance as a condition of making the loan, unavailability of this insurance would adversely affect the applicant and the neighborhood.

- 2A. Do banks maintain in their files information that would identify individual home loan applications denied or withdrawn, or outstanding home loans foreclosed, for lack of acceptable fire, homeowner's, or mortgage insurance? Has the FDIC utilized this information, or would it be feasible for the FDIC to utilize this information, possibly in conjunction with the other financial regulatory agencies, to derive statistics on the extent and geographic distribution of insurance redlining?

Banks do maintain in their files information that would identify individual home loan applications denied or withdrawn for lack of acceptable fire, homeowner's, or mortgage insurance. For applications denied due to lack of insurance, this fact would be stated on the notice of adverse action required to be given the applicant under Section 202.9 of Regulation B. For applications withdrawn for this reason, notation would be made on the application itself. Lack of insurance as a reason for foreclosure would be included in foreclosure documents contained in the loan file.

Information on the extent and geographic distribution of insurance redlining will be essential, we believe, in effecting our responsibilities under the Community Reinvestment Act. While the FDIC has not utilized this information to date, it will be an essential element in our community reinvestment examination in evaluating whether insurance redlining discourages institutions from meeting the credit needs of their communities. We intend to work closely with Federal and State regulatory agencies in assessing affirmative compliance with the Community Reinvestment Act. Exchang-

ing information on insurance redlining will be a vital part of that interchange.

3. How do FDIC examination procedures and regulations deal with discrimination in real estate appraisals? Please supply to the Subcommittee the text of any examiner instructions that address the detection of discrimination in appraisals. If there are no such instructions, please so state.

Discrimination in real estate appraisals is addressed specifically in question (1)(c) on the Fair Housing compliance examination report page (Exhibit 2) and on pages 4 and 5 of a memorandum on fair housing examination instructions dated August 29, 1977 (Exhibit 3). (Incidentally, these instructions are being revised, expanded and updated in a comprehensive manual being developed for our entire compliance examination and enforcement program for consumer protection and civil rights laws and regulations.) In addition, appraisal practices are addressed on pages 15 through 17 of the FDIC Procedures for Investigating Fair Housing Complaints (Exhibit 4).

FDIC regulations on fair housing (Part 338) are essentially recordkeeping regulations, designed to enable the FDIC to monitor more effectively compliance with fair lending statutes (Exhibit 5). These regulations do not specifically address discrimination in real estate appraisals. However, covered institutions must retain information on the purchase price or approximate market value of the property as well as the property's location. These data together with other information developed during the examination will assist the examiner in detecting discrimination in real estate appraisals.

- 3A. Has the FDIC considered requiring, as a part of the adverse action notice required under Regulation B, that the bank include a copy of the appraisal with the adverse action notice sent to an applicant when his application for a home loan is denied on the basis of an inadequate appraised value? What factors have you considered or will you consider in reaching a decision on this matter?

We believe that applicants should receive full and complete disclosure of the reasons for adverse action, including an inadequate appraised value, on an application for a home loan. Further, applicants who have paid a separate fee for an appraisal should receive a copy of that appraisal, if they request it. We have not considered requiring banks to submit a copy of the appraisal to applicants because we have not been aware of any difficulties. If difficulties come to our attention, we will raise the matter with the Board of Governors which has responsibility for drafting Regulation B.

4. How do FDIC examination procedures determine whether discriminatory "prescreening" and discouragement of potential loan applicants are occurring? In particular:
- a. Please explain how the examination procedures will determine whether the loan application files and monitoring records maintained by each bank are complete and have not had certain cases intentionally omitted.

Bank procedures for prescreening of potential loan applications are reviewed during the examination for evidence of discriminatory practices. Through interviews with loan officers and those who come into contact with applicants prior to the submission of a written application, the examiner seeks to determine whether there is any prequalification or prescreening done by telephone or in any other manner. For example, bank personnel would be questioned on their usual responses to such questions as the availability of

conventional FHA or VA mortgages, current interest rates charged, and downpayments normally required. Aside from disclosure by bank personnel that certain cases were intentionally omitted from loan application files and monitoring records, this practice probably would be detected only through investigation of a complaint that had been filed with FDIC against the bank.

- b. What procedures will detect the discouragement of applicants by certain subtle devices such as (i) informing certain applicants whom the bank wishes to discourage that six to eight weeks will be required to process an application, when in fact only one week is required, or (ii) quoting a higher rate of interest to certain inquirers or applicants whom the bank wishes to discourage than to favored applicants?

The method presently utilized by our examiners to detect these subtle forms of prescreening is to inquire about the normal processing time for loan applications, credit terms quoted customers, and what circumstances would dictate exceptions to these policies. The bank's responses can be verified through the review of loan application files and informal observation of bank personnel who deal directly with loan inquiries, either in person or over the telephone.

The fair housing regulations, which became effective July 3, 1978, require certain information to be recorded for inquiries on home loans--namely, the name, address, race/national origin, sex, marital status, and age of the inquirer as well as the location of the property involved. If, when reviewing the bank's log of inquiries for home loans, our examiners note a disproportionate number of inquiries from certain classes of applicants in relation to applications received from those applicants, further investigation of possible discriminatory prescreening techniques will be conducted.

In addition, the use of testing as a tool for detecting discriminatory prescreening techniques is under review at this time. The FDIC has utilized testing methods previously in conjunction with its enforcement of the Truth in Lending Act. Specifically, examiners would determine if the bank was correctly quoting the annual percentage rate (APR) in responding to oral inquiries for credit by making a telephone call to the bank prior to an examination.

The use of testing in connection with a fair lending examination, of course, involves a more sophisticated process. As we indicated earlier, this examination tool is under preliminary study, but we are not yet in a position to determine if we will, in fact, utilize such a procedure. Factors to be considered include the resources necessary to develop and implement such a program, whether the costs would justify the benefits, and whether testing would be utilized in all examinations or only in those banks where we suspect discriminatory prescreening practices.

- c. Please supply to the Subcommittee the text of all examiner instructions that address the problem of "prescreening" and discouragement. If there are no such instructions, please do state.

The matter of prescreening is addressed specifically on page 5 of Exhibit 3 and on pages 2, 4, 10 and 20 of Exhibit 4.

5. Have you considered requiring each bank to have clearly written nondiscriminatory loan underwriting standards, available to the public in printed form at each office, as the Federal Home Loan Bank Board has done for savings and loan associations? What factors have you considered or will you consider in reaching a decision on this matter?

Written loan policies and underwriting standards are beneficial to bank management and personnel, the public, and to the FDIC as a regulatory agency. Up to the present we have encouraged, rather than required, FDIC-supervised banks to reduce these policies and procedures to writing as an effective management and business policy. Further, we encourage banks to fully inform their customers on the bank's credit policies to reduce misunderstanding and potential complaints.

Requiring banks to make written nondiscriminatory loan underwriting standards available to the public has been discussed from time to time. Benefits of such a requirement include the customer's ability to determine if he or she meets the bank's credit standards prior to submitting an application. The disadvantages of such a requirement include: (1) paperwork burden on the bank and associated costs which would most likely be passed on to the consumer; (2) the practicality of reducing credit standards to some precise formula that would be useful to prospective customers, given the large judgmental factor involved in every credit decision; (3) the public's use of other required bank disclosures (such as HMDA data) has been minimal; (4) alternative approaches, such as a voluntary effort by banks to make this information available or a program of consumer education to improve their awareness of the credit-granting process have not been thoroughly studied as a more efficient means of accomplishing the objectives.

6. How do FDIC examiners evaluate whether formalized credit scoring systems are in compliance with the Fair Housing Act, the Equal Credit Opportunity Act, and Regulation B? Please supply to the Subcommittee the text of any examiner instructions that address the evaluation of credit scoring systems. If there are no such instructions, please so state.

Those banks which use credit scoring systems are required under Regulation B to have demonstrably and statistically sound, empirically derived credit scoring systems. Examiners determine from discussions with bank management the methods used to develop the credit scoring method, the frequency and nature of management review of the bank's system, as well as periodic revisions to the system. Applications rejected on the basis of a credit scoring system also are reviewed.

Evaluation of credit scoring systems is discussed during training sessions for examiners through a review of the Regulation B requirements and the review process noted above. Written procedures for evaluating credit scoring systems will be included in revised examination instructions now under development for FDIC's entire compliance program, including Fair Housing and Equal Credit Opportunity.

7. How do FDIC examiners evaluate the internal management controls and organized civil rights compliance program of each bank? Please supply to the Subcommittee the text of any examiner instructions that address the evaluation of internal management civil rights compliance programs. If there are no such instructions, please so state.

Examiners evaluate the internal management controls and organized civil rights compliance program of each bank through discussions with bank personnel and review of bank policies and records. The training aspects of an organized civil rights compliance program in a bank are addressed on page 6 of Exhibit 3. In addition, the overall quality of a bank's internal procedures is addressed in question 7 on the Fair Housing compliance examination report (Exhibit 2).

8. In their examinations for compliance with the Fair Housing Act, the Equal Credit Opportunity Act, and Regulation B, what procedures or guidelines do FDIC examiners follow in determining what portion of their examination effort is to be devoted to each bank? How is the size determined for the loan sample that will be reviewed for compliance in each institution? In particular, is recognition given to the volume of loan originations, as distinct from loans held in the portfolio, in allocating examination effort to institutions that are active in originating loans for resale? Please supply to the Subcommittee the text of any examiner instructions, policy guidelines, or other documents that address this question of the allocation of compliance examination effort among the different institutions to be examined.

Broad guidelines for determining the frequency and scope of examinations, whether for safety and soundness purposes or for consumer protection/civil rights compliance, are contained in General Memorandum No. 1 (Exhibit 6). In addition, current policy requires that a compliance examination be scheduled at least once every 15 months for each FDIC-supervised bank (Exhibit 7).

It is within the compliance examination that examiners determine a bank's compliance with the Fair Housing Act, the Equal Credit Opportunity Act, and Regulation B. These examinations are conducted separately from the safety and soundness examination and, on the average, take 30 hours for completion. Because this separate compliance examination program is relatively new (it was instituted in May of 1977), emphasis has been placed on assuring a full and thorough review of each FDIC-supervised bank. Now that the first examination cycle is nearing completion, more attention will be given to allocating examiner resources to problem institutions.

Factors which have an impact on the nature of a compliance examination include: asset size, number of banking offices,

quality of management, internal controls, compliance history, and complexity of operations. While the volume of loan originations is an important factor in determining the extent of a bank's service to the community's credit needs, it is not considered in allocating examination resources. Only loans outstanding are included in the review process.

At the present time, determination of the size of the loan sample to be reviewed is based on a statistical sampling procedure, which is described in Exhibit 8. Using this procedure, the examiner can draw samples of loan files to be reviewed for compliance with both consumer protection and civil rights statutes. With the implementation of the fair housing data collection and analysis program, however, a different sampling scheme will be used that is weighted, rather than random, in selection criteria. This sampling procedure, now under development, will be used in reviewing compliance with the Fair Housing Act, the Equal Credit Opportunity Act, and Regulation B.

9. In its examinations for compliance with the Fair Housing Act, the Equal Credit Opportunity Act, and Regulation B, what procedures or guidelines does the FDIC follow in determining what portion of its examination effort is to be devoted to each type of loan or credit? In particular, is recognition given to the volume of loan originations, as distinct from loans held in the portfolio, in allocating examination efforts at institutions that are active in originating loans for resale? In your answer please distinguish between home loans on 1-4 family dwellings, other loans on residential property, other consumer loans or credit, other small business loans or credit, and all other credit (including loans or credit to large businesses). Please supply to the Subcommittee the text of any examiner instructions, policy guidelines, or other documents that address this question of the allocation of compliance examination effort among the different types of loans or credit. If there are no such documents, please so state.

In the fair housing compliance examination, the examiner concentrates on housing-related credit, e.g., mortgages and home improvement loans. The equal credit opportunity examination may cover the full spectrum of a bank's lending activity--commercial, consumer and real estate loans.

Expanding on our response to question 8, the sampling procedure for loans subject to examiner review depends to a large extent on the individual bank's system for maintaining loan files. For example, many of our banks are small institutions utilizing an alphabetical or chronological system for loan files. There is no departmentalizing for mortgages, installment credit, or commercial loans. In this case, therefore, the sample loans will include a variety of credits to be reviewed for compliance with either or both of these fair lending statutes. (An even more informal system generally holds true for rejected applications--perhaps a single file.) In the larger institutions, an effort is made to sample those loan categories representing the largest dollar commitments by the bank and to spot-check other portions of the loan portfolios.

There are no specific procedures or guidelines established for determining what portion of the compliance examination effort is to be devoted to each type of credit. Such an approach would appear to detract from our efforts to tailor the scope of the examination to the specific institution under examination. Our thinking may change as we gain more experience in the separate compliance examination program, but these comments represent our current posture. Finally, as also indicated in our response to question 8, the volume of loans originated and sold by an institution is not presently a factor in allocating examination effort in the institution.

10. Please describe the organizational structure and responsibilities of the Washington headquarters and the Regional Offices of the FDIC as they apply to the fair housing and equal credit compliance examination function. What are the relevant responsibilities and authorities associated with each position in this organizational structure, and what degree of autonomy is exercised by officials assigned to the Regional Offices in the performance of this function? What are the procedures followed for systematic oversight and review by the headquarters staff in Washington of the equal credit compliance examinations performed by the field examination staff?

Within the Washington headquarters, responsibility for the development, implementation, and evaluation of the fair housing and equal credit compliance examination function has been delegated by the Board of Directors to the Office of Consumer Affairs and Civil Rights (OCACR) and the Division of Bank Supervision. The Office of Consumer Affairs and Civil Rights, organizationally located within the Corporation's Executive Offices, has, as its major objective, the protection of the statutory rights of customers in FDIC supervised banks. In October 1977, a new operating section within OCACR--the Civil Rights Branch--was created to focus resources on the civil rights enforcement activities of FDIC. When fully staffed, the Civil Rights Branch is expected to take a leadership role in the fair housing data collection and analysis system, examiner training, and fair lending complaint and examination activities.

The Division of Bank Supervision, through its 14 Regional Offices and approximately 2,500 bank examiners, takes responsibility for the actual conduct of the fair housing and equal credit compliance examinations. In the Washington Office, the Division's Consumer Affairs Unit provides leadership in the

development of compliance examination reports and instructions and reviews the results of the examination effort. Banks considered to be in substantial noncompliance with consumer protection/civil rights statutes also have their examination reports reviewed by OCACR staff. Finally, recommendations for cease-and-desist action for noncompliance with fair housing or equal credit opportunity statutes may be submitted to the Board of Directors by either office.

In each of the 14 Regions, the Regional Director has overall responsibility for the fair housing and equal credit compliance examination effort. The Regional Directors exercise a great deal of autonomy in carrying out the functions assigned to the Region within broad policy guidelines furnished by the Board of Directors and the Director, Division of Bank Supervision. On the staff of each Regional Office is a Review Examiner (Consumer Affairs/Civil Rights) and a Regional Counsel, who provide advice and assistance to examiners conducting compliance examinations. The authority of these two staff members varies to some extent from Region to Region depending on the delegations from the individual Regional Directors.

Compliance examination reports are reviewed in the Regional Office by the Review Examiner (Consumer Affairs/Civil Rights), who prepares letters transmitting the compliance examination reports to the bank's board of directors for review and appropriate action. The reports and follow-up correspondence are transmitted to the Washington Office and reviewed in the Consumer Affairs Unit, Division of Bank Supervision.

10A. How does the FDIC's system of recognition and advancement for examiners convey an agency commitment to provide personal reward for vigorous enforcement of the laws against credit discrimination? In particular,

- a. In giving recognition and advancement to examiners, what weight is given to performance in civil rights compliance work?

Examiner recognition and advancement are based on such factors as competence, productivity, leadership, resourcefulness, educational and experience background, and potential for advancement. Equal weight is given to performance in the examination effort--whether that be in safety and soundness, compliance, trust, or automation.

- b. What are the standards by which examiner performance in civil rights compliance work is judged?

There are no explicit standards for the various types of work an examiner may engage in, such as civil rights, safety and soundness, financial analysis, etc. The Regional Director considers the performance of the examiner in more generalized terms in accordance with the criteria set forth in FDIC Form 2130/01 (5-77) (Exhibit 9).

11. Please provide the following actual or estimated figures for the full-gross costs of FDIC activities related to the enforcement of bank compliance with the Fair Housing Act, the Equal Credit Opportunity Act, and Regulation B. These cost figures should include an appropriate allowance for overhead, including clerical support, travel and per diem expenses, computer usage, rent or imputed rent, and utilities. Please state the method by which any estimates are derived.

Information provided in response to subparts (a), (b), and (c) are all estimates. Supporting information for the estimates accompanies each Chart.

- a. The full costs for all activities in the 12-month period from July 1977 through June 1978, and the projected full costs for the 12-month period from July 1978 through June 1979.
- b. A percentage breakdown of each total to show the proportions spent on training, field examinations and associated supervision, consumer complaint handling, consumer education, creditor education, and any other appropriate categories.

CHART I - July 1977 through June 1978

CHART II - July 1978 through June 1979

- c. A percentage breakdown of each total in part (a) to show separately the proportions applicable to home loans and to all other credit.

CHART III

12. Please provide the following actual or estimated figures on numbers of banks and numbers and sizes of loans. In this request, "home loans" refers to real estate loans secured by 1-4 family residences and also consumer installment loans for repair and modernization of residential property. Please state the method by which any estimates were derived.

FDIC has not, as a part of the examination process or otherwise, collected or estimated data for the year ending July 1978 concerning the number of applications received for home loans or other consumer or small business loans or credit lines, or for the number or average value of such loans or credit lines granted. FDIC also has made no projections of any such data for the year ending June 1979. Further, we have no efficient or effective means of retrieving information on other consumer or small business loans and credit lines.

With respect to possible means of estimating the number of home loan applications received and the number and dollar volume of home loans granted, we have some observations. The FDIC's Fair Housing Regulations (Part 338) will result in the generation of this information. However, the Regulation has been in effect only since

July 3 of this year, and the consensus is that insufficient time has elapsed to allow for a meaningful extrapolation to annual totals. Thus, information from this source will not be available for at least six months. Additionally, these data will not be collected on a regular basis in a form necessary to fulfill the requirements of this request.

If an estimate is desired before Part 338 data becomes available, it is felt that Home Mortgage Disclosure Act information, coupled with the Adverse Action notices retained pursuant to the provisions of Regulation B, collected from a sample of FDIC regulated banks would yield reasonably accurate results. The steps involved would be as follows:

(1) A sample of commercial and mutual savings banks subject to HMDA would be selected. Based on our current knowledge, we suggest that the sample be stratified according to asset size of bank, and the sample chosen randomly from within each stratum. We estimate that a sample of 100 commercial banks and 40 mutual savings banks would be sufficient for the purposes of this request.

(2) HMDA and adverse action information would be collected by FDIC examiner personnel. The consensus opinion is that telephone contact would be unduly burdensome to the banks and could introduce error into the estimates.

(3) The data obtained from the sample institutions would be expanded to a universe estimate (including an adjustment factor to account for non-HMDA institutions) and then adjusted downward to estimate the required figures for banks which were examined during

the relevant period. We suggest the use of total housing loans outstanding as the appropriate adjustment factor.

We estimate that the cost of this endeavor (including overhead and other expenses) would be approximately \$50,000 and would take about two months to complete. Accordingly, we are not prepared, based on the financial and time aspects of this request, to proceed without further discussion with the Subcommittee staff.

- a. The number of banks (including mutual savings banks) examined by the FDIC in the 12-month period from July 1977 through June 1978 and the number that will be examined in the 12-month period from July 1978 through June 1979.

There were approximately 6,275 compliance examinations in the 12 months ending June 30, 1978. Under the current policy of scheduling each bank for a compliance examination once every 15 months, approximately 6,800 examinations would be conducted in the 12-month period from July 1978 through June 1979.

- b. The numbers of home loan applications received and home loans granted, and the dollar volume of home loans granted, by the examined banks in the 12 months ending June 1978.

We have no information on the number of home loan applications received by the examined banks during the 12 months from July 1977 to June 1978.

We can obtain some data on the number and volume of home loans granted by those banks required to prepare Home Mortgage Loan Disclosure Statements. These Statements, however, are prepared on a fiscal year basis, generally a calendar year, and are available only with respect to institutions having an office in an SMSA and assets in excess of \$10 million. This information could be generated through the study suggested in our response to question 12, subject to the constraints previously mentioned.

- c. The projected numbers of home loan applications to be received and home loans to be granted, and the projected dollar volume of home loans to be granted in the year ending June 1979 by the banks to be examined in that year.

We have no way of projecting the numbers of home loan applications to be received or home loans to be granted in the year ending June 1979.

- d. The dollar volume of home loans held by the examined banks in their portfolios as of the December 1977 Call Report date, and the corresponding dollar volume projected for December 1978.

December 1977 figures are shown in Chart IV. Projected volume of home loans held by FDIC-supervised banks as of December 1978:

Mutual Savings Banks	\$52,141,816,000
Commercial Banks	<u>32,483,817,000</u>
Total	\$84,625,633,000

This estimate was derived by determining the average increase in the home loan portfolio outstanding during the period December 31, 1973 -- December 31, 1977.

- e. The numbers of credit applications received and loans and credit lines granted, and the dollar volume of loans and credit lines granted, for other consumer or small business credit (excluding home loans) by the examined banks in the 12 months ending June 1978.

For reasons stated earlier, we are unable to provide the requested data.

- f. The projected numbers of credit applications to be received and loans and credit lines to be granted, and the projected dollar volume of loans and credit lines to be granted, for other consumer or small business credit (excluding home loans) in the year ending June 1979 by the banks to be examined in that year.

We have no way of projecting the number and dollar volume of credit applications received and loans and credit lines to be received or granted in the year ending June 1979.

- g. The dollar volume of consumer and small business credit outstanding (excluding home loans) in the portfolios of the examined banks as of December 1977 Call Report date, and the corresponding dollar volume project for December 1978.

Refer to Chart IV. Projected volume of consumer and small business credit held by FDIC-supervised banks as of December 1978:

Mutual Savings Banks	\$ 3,180,400,000
Commercial Banks	<u>48,389,378,000</u>
Total	\$51,569,778,000

13. Please restate the cost figures given in answer to questions 11.a and 11.c to show:

- a. The total costs of the earlier period and the projected total costs of the later period restated as costs per bank examined (or to be examined).

Cost per bank examined, 1977-1978: \$265

Projected cost per bank examined, 1978-1979: \$575

For 1978, total costs of \$1,661,000 were divided by 6,275 examinations. For 1979 figures, total projected costs of \$3,910,000 were divided by an estimated 6,800 examinations.

- b. The total costs of the earlier period and the projected costs of the later period that are applicable to home loans restated as costs per bank examined (or to be examined), per home loan application received (or expected), per home loan granted (or expected to be granted) or per \$1,000 of home loans outstanding (or expected to be outstanding) from the examined banks at the midpoint of the period.

Costs applicable to home loans per bank examined,
1977-1978: \$112

Projected costs applicable to home loans per bank examined,
1978-1979: \$230

Projected costs per \$1,000 of home loans outstanding:
1977-1978: \$.009

Projected costs per \$1,000 of home loans outstanding
1978-1979: \$.018

For 1978, the total estimated costs of \$701,000 were divided by 6,275 examinations. For 1979, total projected costs of \$1,564,000 were divided by an estimated 6,800 examinations.

As noted in earlier responses, information on home loan applications and home loans granted is not available.

- c. The total costs of the earlier period and the projected total costs of the later period that are applicable to all other credit (excluding home loans) restated as costs per bank examined (or to be examined), per application received (or expected) for other consumer or small business credit, per loan or credit line granted (or expected to be granted) for other consumer or small business credit, and per \$1,000 of consumer and small business credit outstanding (or expected to be outstanding) from the examined banks at the midpoint of the period.

Costs applicable to all other loans per bank
examined: 1977-78: \$153

Projected costs applicable to all other loans per bank
examined: 1978-79: \$345

Projected costs per \$1,000 of consumer or small business
credit outstanding: 1977-78: \$.021

Projected costs per \$1,000 of consumer or small business
credit outstanding: 1978-79: \$.046

For 1978, total estimated costs of \$960,000 were divided by 6,275 examinations. For 1979, total projected costs of \$2,346,000 were divided by an estimated 6,800 examinations.

As noted in earlier responses, information on applications received or credit granted related to other consumer or small business credit is not available.

14. Please provide the following actual or estimated figures for the number of FDIC examiner hours spent in performing on-site examination for compliance with the Fair Housing Act, the Equal Credit Opportunity Act, and Regulation B. Please state the method by which any estimates were derived.

- a. Total examiner hours for the 12-month period from July 1977 through June 1978, and projected total examiner hours for the 12-month period from July 1978 through June 1979.

Refer to Chart V. Projected examiner hours for the 12-month period ending June 30, 1979 total 81,600 hours, based on an average estimate of 12 hours for the examination.

- b. A percentage breakdown of each total to show separately the proportions applicable to home loans and to all other credit.

For 1977-78 we estimate 6,077 examiner hours were devoted to home loans (22 percent) and 21,648 examiner hours (78 percent) were devoted to all other credit. We estimate a total of 40,800 hours each for ECOA and FHA examinations in the 12-month period from July 1978 through June 1979.

- c. A disaggregation by FDIC region of the totals given in answer to part (a).

Refer to Chart V for 1977-1978 information. We are unable to provide meaningful Regional projections for 1978-1979.

- d. A percentage breakdown of each Regional total to show separately the proportions applicable to home loans and to all other credit.

We are unable to provide a meaningful percentage breakdown showing the proportions applicable to home loans and all other credit.

15. Please restate the figures given in answer to the previous question, as follows:

- a. The answers to parts (a) and (c) of the previous question restated to show examiner hours per bank examined (or to be examined).

Refer to Chart V. We are unable to provide meaningful Regional projections for 1978-1979.

b. From the answers to parts (b) and (d) of the previous question:

- (i) examiner hours applicable to home loans restated as examiner hours per bank examined (or to be examined), per 100 home loan applications received (or expected), per 100 home loans granted (or expected to be granted), per \$100,000 of home loans granted (or expected to be granted), per \$100,000 of home loans held (or expected to be held) in the banks' portfolios at the midpoint of the period.
- (ii) examiner hours applicable to all other credit (excluding home loans) restated as examiner hours per bank examined (or to be examined), per 100 applications received (or expected) for other consumer or small business credit, per 100 loans or credit lines granted (or expected to be granted) for other consumer or small business credit, and per \$100,000 of consumer and small business credit outstanding (or expected to be outstanding) from the examined banks at the midpoint of the period.

Refer to Chart VI for information on examiner hours per \$100,000 of home and consumer loans combined.

16. Do you employ, for enforcement or any other purpose, a distinction between "technical" and "substantive" violations of law? If so, please explain in precise terms how this distinction is used and what it means, as applied to violations of the Fair Housing Act and the Equal Credit Opportunity Act. Please list the types of violations of these acts that fall into each class.

FDIC makes no distinction between "technical" and "substantive" violations of law in enforcing the Fair Housing Act and the Equal Credit Opportunity Act.

17. Please provide a detailed tabulation, by FDIC Region and for all Regions combined, of Fair Housing Act, Equal Credit Opportunity Act, and Regulation B violations found by FDIC examiners in the 12-month period from July 1977 through June 1978. In this tabulation, please distinguish between violations related to home loans or applications and violations related to other credit. Within each of these two classes, please classify the violations by the specific nature of the violations, separating technical violations from

substantive violations, and please indicate how many violations of each specific type were repeat violations that the institutions had previously been requested to correct. Where more than one type of class violation was found at a single institution, please count each type of violation separately, as this request is for a tabulation of violations, not of institutions in violation.

Refer to CHARTS VII and VIII.

17A. Please restate certain elements of the above tabulation of violations to show, by Region and for all Regions combined.

- a. Technical and substantive home loan violations per 100 examiner hours devoted to civil rights compliance examination of home loans, per 100 home loan applications received, per 100 home loans granted, and per \$100,000 of home loans held in the banks' portfolios at December 31, 1977.

Refer to Chart IX for total violations per 100 examiner hours and per \$100,000 of home and consumer loans as of December 31, 1977.

- b. Technical and substantive violations related to other credit per 100 examiner hours devoted to civil rights compliance examination of other credit, per 100 examiner hours devoted to civil rights compliance examination of other credit, per 100 applications received for other consumer or small business credit, and per \$100,000 of consumer and small business credit outstanding from the examined banks at December 31, 1977.

As indicated in the response to question 16, the FDIC has not distinguished between technical and substantive home loan violations.

18. Please provide a tabulation, by FDIC Region and for all Regions combined, of institutions found to be in violation of the Fair Housing Act, the Equal Credit Opportunity Act, or Regulation B in the period from July 1977 through June 1978. If you distinguish between technical and substantive violations, please classify every institution in each Region into one of three groups according to whether no violations were found, only technical violations were found, or one or more substantive violations were found. Then please subdivide each of the latter two classes according to whether the violations found at each institution were all first time violations or included one or more repeat violations that the institution had previously been requested to correct. Then please subdivide further according to whether the violations found were related only to home loans or applications, only to other credit, or to both home loans and other credit.

Refer to CHARTS VII and VIII. As noted earlier, no distinction is drawn by the FDIC between technical and substantive violations.

- 18A. Please restate the above tabulation of institutions in violation to show institutions in violation as a percentage of all examined institutions in the Region.

Refer to CHART X.

19. What are the established procedures of the FDIC for investigating and/or responding to written consumer complaints alleging discrimination in some aspect of the credit granting process? Please supply to the Subcommittee the text of all staff instructions, policy guidelines, or other documents that specify the procedures to be followed in investigating and/or responding to consumer complaints that allege discrimination in the credit granting process, whether relating to home loans or to other credit.

Each consumer complaint received, whether in the Washington Office or Regional Office, is initially reviewed to determine if sufficient information has been provided to substantiate an allegation of discrimination in some aspect of the credit granting process. If necessary, the complainant will be contacted at this stage to provide additional information in order to make this determination. The complaint is then scheduled for investigation. Procedures for investigating credit discrimination complaints are attached as Exhibit 4. (Although labeled for fair housing complaints, the procedures are adopted for use in all credit discrimination cases.)

The FDIC has established a policy for providing the consumer with a written response to his or her credit discrimination complaint within 45 days after receipt of the complaint.

20. If the individual complaints are handled primarily in the Regional FDIC Offices, what are the procedures followed for systematic oversight and review of the complaint handling work by the headquarter's staff in Washington?

All credit discrimination complaints handled primarily in the Regions are reviewed by staff of the Office of Consumer Affairs and Civil Rights. Copies of the original complaint, investigation report and correspondence with the consumer are forwarded to OCACR, which reviews the complaint case for timeliness and adequacy of response to the consumer and conformance with established procedures.

21 - 23. [Responses to these questions are in preparation and will be forwarded under separate cover at a later date.]

24. How many private lawsuits for civil damages under the Fair Housing Act or the Equal Credit Opportunity Act have been filed against FDIC-supervised banks in 1977 and 1978? In how many of these instances had the plaintiff previously filed a complaint with the FDIC prior to filing the lawsuit?

Information on litigation involving FDIC-supervised banks is routinely collected during the safety and soundness examinations. Lawsuits involving consumer protection and civil rights statutes have not been noted in the compliance examination. This matter is now under study. While litigation information is collected, it has never systematically been collated for FDIC-supervised banks. The time and cost constraints of reviewing approximately 11,000 examination reports for the 2-year period to obtain this information were considered too burdensome.

25. In what ways does the FDIC inform loan applicants or potential applicants of the existence and possible usefulness to them of the civil damages provisions of the Fair Housing Act and the Equal Credit Opportunity Act? Please supply to the Subcommittee examples of any letters, pamphlets, or other educational or informational materials in which these civil damages provisions are mentioned.

Individuals who allege credit discrimination in complaints directed to the FDIC are advised of the civil damages provisions of the Fair Housing Act and/or the Equal Credit Opportunity Act as a

matter of policy. Copies of notification examples are included in Exhibit 4. In addition, three consumer education pamphlets available from FDIC (refer to Exhibit 10) include reference to these damage provisions.

26. Approximately how many of each type of letter, pamphlet, or other educational or informational material mentioned in the answer to the previous question were sent out or distributed to the public in the 12-month period from July 1977 through June 1978. Please indicate the method of distribution and types of groups or individuals to which these materials were distributed.

During the period July 1977 through June 1978 the FDIC distributed over 6 million copies of the three pamphlets to FDIC-supervised banks, State and local consumer affairs offices, major consumer organizations, and consumers. In addition, letter notification of these rights was given to approximately 300 consumers who registered credit discrimination complaints during the 12-month period.

27. Why does the "equal housing lender" poster that each FDIC-supervised institution is required to display not mention the consumer's right to file suit damages under either the Fair Housing Act or the Equal Credit Opportunity Act if he has been discriminated against?

The FDIC "Equal Housing Lender" poster covers only the basic prohibited discriminatory factors cited in the Equal Credit Opportunity Act and the Fair Housing Act. While there are many significant aspects to these statutes, the notice is confined to the prohibited discriminatory factors because of the space limitations on the poster and the expected attention span of the reader. The poster, however, does advise the reader that complaints may be sent to either HUD or the FDIC.

28. When the FDIC relies on the examination performed by State bank examiners, how does the FDIC satisfy itself that these State bank examiners are adequately trained and motivated to do effective civil rights compliance examinations?

FDIC does not rely on State examiners to conduct civil rights compliance examinations. These examinations are conducted solely by FDIC personnel.

29. In the 12-month period from July 1977 through June 1978, how many banks (including mutual savings banks) under FDIC jurisdiction underwent a State examination for civil rights compliance that the FDIC accepted as a substitute for its own examination? What portion of the total home loan assets of all FDIC-supervised banks were held by these institutions that received a State examination in lieu of an FDIC examination?

Not applicable.

30. What portion of the total home loan assets of all FDIC-supervised banks were held by institutions outside SMSAs or with assets less than \$10 million, which the FDIC has made subject to abbreviated record-keeping requirements?

Eighteen percent of home loan assets of FDIC-supervised banks are held by banks subject to the abbreviated record-keeping requirements of Part 338.

31. Have you any reliable and representative information concerning the costs incurred by banks to comply with Regulation B and the laws against credit discrimination? If so, what portion of these costs are associated with the initial training and other front and start-up costs of the banks' compliance programs, and what portion are continuing expenses directly associated with processing of applications? Can the continuing expense be stated as costs per loan application received or per \$100,000 of mortgage loan or other consumer credit assets held? Can they be stated in terms of fractions or a percentage point on the interest rate of a mortgage loan or other credit? What was the method by which these measurements were made?

In 1977, James Smith, a Federal Reserve staff member, published a paper on a cost/benefit analysis of the Equal Credit Opportunity Act of 1974. He estimated that the recurring costs of compliance with Regulation B would be \$118.5 million per annum together with a total of \$174.8 million in nonrecurring costs. To our knowledge, this study has not been updated to include the Equal Credit Opportunity Act as amended.

In a paper titled, "Economies of Scale in the Cost of Compliance with Consumer Credit Protection Loans: The Case of the Implementation of the Equal Credit Opportunity Act of 1974," Professor Neil B. Murphy of the University of Maine included the results of an August 1976 survey of the costs of compliance with Regulation B conducted by the Consumer Bankers Association. The results of the survey covered 37 lenders, with consumer credit outstanding ranging from \$13-625 million. Two types of compliance costs were identified in this study: (1) legal costs, and (2) all other costs. The survey concluded that a 10 percent increase in consumer credit would lead to a 5.7 percent increase in legal expenses. Further, a 10 percent increase in consumer credit would lead to a 4.1 percent increase in other compliance costs. In addition, the survey found that, in relative terms, the cost of compliance with Regulation B falls more heavily on small banks than on large institutions.

Costs of compliance with the laws against credit discrimination were carefully considered in the FDIC's promulgation of Part 338. These costs were reduced by restricting the requirement for retention of financial information to banks with assets of \$10 million or more and offices located in Standard Metropolitan Statistical Areas. This affected approximately 6,200 out of 9,100 FDIC-supervised banks which did not meet either the asset size or location criteria. Further, most of the record-keeping information requested by this regulation was determined to be already retained by banks. The log sheet on applicant and inquirer information, which

did represent a new requirement for all banks, was designed in a form for easy reproduction by banks, thus eliminating a need for them to prepare and print their own forms. Part 338 has not been in effect for sufficient time to allow us to conduct a more detailed study of the costs of compliance.

32. Please identify and describe any major surveys, reports, or studies, either by outside experts or by FDIC staff, that have recently been completed, are currently in progress, or are planned for the near future on any aspect of the responsibilities of the FDIC under the Fair Housing Act or the Equal Credit Opportunity Act.

Information on a study in progress is contained in our response to question number 1.

CHART I

SUMMARY OF ECOA/FHA COSTS AND
 PERCENTAGE BREAKDOWN BY CATEGORY
 (for the period July 1977 - June 1978)

<u>Category</u>	<u>Cost</u>	<u>Percentage of Total Cost</u>
I. Training	\$ 145,000	8.7
II. Field Examinations	970,000	58.4
III. Consumer Complaint Handling	231,000	13.9
IV. Consumer Education	67,000	4.0
V. Creditor Education	-*	-*
VI. Legal Support & Enforcement	116,000	7.0
VII. Research & Studies	<u>132,000</u>	<u>8.0</u>
TOTAL	<u>\$1,661,000</u>	<u>100.0</u>

*Although a considerable portion of the hours spent in compliance examinations by the bank examiners could properly be classified as Creditor Education, the office reporting these hours was unable to come up with any definite breakdown (of the compliance examination hours) between the two categories ("Field Examinations" and "Creditor Education"). This is due to the fact that the compliance examination serves the purpose of educating the banks as to proper compliance procedures at the same time it serves the examination function. Thus, the two are synonymous and not readily divisible. However, it should be noted that the \$970,000 allocated to "Field Examinations" also serves the purpose of "Creditor Education" as well.

CHART II

EQUAL CREDIT OPPORTUNITY ACT/FAIR
HOUSING ACT COMPLIANCE COSTS
(Projection for the period July 1978 - June 1979)

<u>Category</u>	<u>Cost</u>	<u>Percentage of Total Cost</u>
I. Training	\$ 284,000	7.3
II. Field Examinations	2,862,000	73.2
III. Consumer Complaint Handling	324,000	8.3
IV. Consumer Education	93,000	2.4
V. Creditor Education	-*	-*
VI. Legal Support & Enforcement	162,000	4.1
VII. Research & Studies	<u>185,000</u>	<u>4.7</u>
TOTAL	\$3,910,000	100.0

*The costs allocated to "Field Examinations" also serve the function of "Creditor Education" as well.

NOTE: Above projections are based on an increased effort in the ECOA/FHA compliance areas of approximately one-third along with an inflation factor of 7%, except in the following areas:

1. Training - Projections based on the number of training hours, instructor expenses, student expenses, and administrative costs associated with Equal Opportunity/Fair Housing training.
2. Division of Bank Supervision Examinations - Total projected ECOA/FHA compliance hours were estimated at 81,888 (12 hours for each of 6,824 projected compliance examinations). This is 2.95 times the 27,725 ECOA/FHA compliance examination hours in 1977-1978; thus, field examination costs were projected at 2.95 times the 1977-1978 figure.

CHART III

BREAKDOWN OF ECOA/FHA COSTS BY HOME LOANS
AND ALL OTHER CREDIT
(for the period July 1977 - June 1978)*

<u>Costs Applicable to Home Loans</u>	<u>Costs Applicable to All Other Credit</u>
\$701,000	\$960,000
Percent of Total Costs: 42	Percent of Total Costs: 58

*Based on estimates provided by reporting offices.

BREAKDOWN OF ECOA/FHA COSTS BY HOME LOANS
AND ALL OTHER CREDIT
(Projection for the period July 1978 - June 1979)*

<u>Projected Costs Applicable to Home Loans</u>	<u>Projected Costs Applicable to All Other Credit</u>
\$1,564,000	\$2,346,000
Percent of Total Costs: 40	Percent of Total Costs: 60

*Estimates are predicated on the expected impact of the Community Reinvestment Act examination procedures and the Fair Housing Data Collection and Analysis System.

CHART IV (REVISED)

Dollar Volume of FHA, VA, and Conventional Home Loans Secured by 1-4 Family Residential Properties and Dollar Volume of Consumer Credit Loans to Individuals for Banks not members of the Federal Reserve System and Insured Mutual Savings Banks, as of December 31, 1977.

(Amounts in Thousands of Dollars)

Region	MUTUALS		COMMERCIALS	
	Total	Total	Total	Total
	Home Loans	Consumer Loans	Home Loans	Consumer Loans
ATLANTA			\$1,848,805	\$4,647,317
BOSTON	\$12,820,022	\$1,060,325	2,292,800	2,426,238
CHICAGO	116,834	12,971	3,855,235	4,278,075
COLUMBUS			2,016,943	2,643,310
DALLAS			1,173,271	5,122,872
KANSAS CITY			1,480,686	2,565,508
MADISON	40,225	2,337	3,218,170	2,236,499
MEMPHIS			1,904,742	4,114,888
MINNEAPOLIS	476,352	13,140	1,132,918	1,409,909
NEW YORK	29,354,207	1,336,879	1,707,145	2,045,329
OMAHA			912,101	1,296,356
PHILADELPHIA	5,319,565	279,388	3,593,768	3,915,042
RICHMOND			1,154,139	2,755,049
SAN FRANCISCO	1,925,437	187,194	3,156,794	4,721,212
Totals	\$50,052,642	\$2,892,234	\$29,447,517	\$44,177,604

Examination Hours
Devoted to the Evaluation of Bank Compliance with
the Requirements of Fair Housing and Equal Credit Opportunity
(Based on Compliance Reports Reviewed in the Consumer
Affairs Unit from July 1977 through June 1978)

Region	FAIR HOUSING			EQUAL CREDIT OPPORTUNITY		
	Total Reports Reviewed*	Total Examiner-Hours	Average Examiner-Hours Per Bank Examined	Total Reports Reviewed	Total Examiner-Hours	Average Examiner-Hours Per Bank Examined
ATLANTA	478	458	1.0	841	1744	2.1
BOSTON	200	859	4.3	283	2050	7.2
CHICAGO	470	749	1.6	803	2434	3.0
COLUMBUS	95	147	1.5	248	677	2.7
DALLAS	319	357	1.1	543	1343	2.5
KANSAS CITY	379	465	1.2	696	1684	2.4
MADISON	264	439	1.7	379	1504	4.0
MEMPHIS	337	440	1.3	599	1460	2.4
MINNEAPOLIS	347	492	1.4	601	1552	2.6
NEW YORK	72	385	5.3	155	1369	8.8
OMAHA	404	341	0.8	592	1059	1.8
PHILADELPHIA	100	370	3.7	167	1582	9.5
RICHMOND	81	223	2.8	140	1046	7.5
SAN FRANCISCO	144	352	2.4	228	2144	9.4
TOTALS	3,690	6,077	1.6	6,275	21,648	3.4

*Compliance Reports containing Fair Housing report page (FDIC Form 6500/68 (7-77))

CHART VI

Total Examiner Hours Per \$100,000 of
Home and Consumer Loans by Region*

Region	Total Examiner Hours	Total Home and Consumer Loans (000's)	Examiner Hours Per \$100,000 of Home and Consumer Loans
ATLANTA	2,202	6,496,122	.034
BOSTON	2,909	18,599,385	.016
CHICAGO	3,183	8,263,115	.039
COLUMBUS	824	4,660,253	.018
DALLAS	1,700	6,296,143	.027
KANSAS CITY	2,149	4,046,194	.053
MADISON	1,943	5,497,231	.035
MEMPHIS	1,900	6,019,630	.032
MINNEAPOLIS	2,044	3,032,319	.067
NEW YORK	1,754	34,443,560	.005
OMAHA	1,400	2,208,457	.063
PHILADELPHIA	1,952	13,107,763	.015
RICHMOND	1,269	3,909,188	.032
SAN FRANCISCO	<u>2,496</u>	<u>9,990,637</u>	<u>.025</u>
TOTAL	27,725	\$126,569,997	.022

*Examiners hours derived from compliance reports reviewed during the period July 1977 - June 1978. Total Home and Consumer Loans reported as of December 31, 1977.

Results of Compliance Examinations--Fair Housing
Mutual Savings Banks with Assets of \$50 Million or More
(Based on Compliance Reports Reviewed in the Consumer
Affairs Unit from July 1977 through June 1978)

Region	Number of Compliance Reports in Sample	Reports Containing the Fair Housing Compliance Report Page (FDIC 6500/68 (7-77))	Reports Citing at Least One Violation of the FDIC Policy State- ment on Fair Housing*	Specific Violation Cited** (See Fair Housing Key Attached)		
				1	2	3
BOSTON	86	61	36	28	34	4
CHICAGO	2	2	0	-	-	-
MINNEAPOLIS	1	1	1	1	1	0
NEW YORK	70	26	7	6	4	2
PHILADELPHIA	10	8	6	4	2	3
SAN FRANCISCO	8	7	3	2	3	0
TOTALS	177	105	53	41	44	9

*No violations of the Fair Housing Act were noted in the selected report sample. The recapitulation represents contraventions of the FDIC Board of Directors' Statement of Policy on Civil Rights Act Nondiscrimination Requirements in Real Estate Loan Activities, adopted April 24, 1972.

**None of the banks whose reports were included in this sample had been cited at the preceding compliance examination for a contravention of the same provision of the FDIC Fair Housing Policy Statement.

**Results of Compliance Examinations--Fair Housing
Commercial Banks with Assets of \$100 Million or More
(Based on Compliance Reports Reviewed in the Consumer
Affairs Unit from July 1977 through June 1978)**

Region*	Number of Compliance Reports in Sample	Reports Containing the Fair Housing Compliance Report Page (FDIC 6500/68 (7-77))	Reports Citing at Least One Violation of the FDIC Policy Statement on Fair Housing**	SPECIFIC VIOLATIONS CITED (Numbers of Reports Citing at Least One Violation of the Type Listed)			
				1	2	3	
ATLANTA	22	17	9	Current	6	8	2
				Prior	-	-	-
BOSTON	25	19	11	Current	9	9	4
				Prior	-	-	-
CHICAGO	34	22	4	Current	2	3	6
				Prior	-	-	-
COLUMBUS	10	3	1	Current	-	-	1
				Prior	-	-	-
DALLAS	18	14	9	Current	5	6	5
				Prior	-	-	-
KANSAS CITY	6	2	0	Current	-	-	-
				Prior	-	-	-
MADISON	18	17	9	Current	9	7	3
				Prior	-	-	-
MEMPHIS	16	9	3	Current	1	1	1
				Prior	-	-	-
NEW YORK	22	11	3	Current	2	1	1
				Prior	-	-	-
PHILADELPHIA	36	22	14	Current	13	11	6
				Prior	-	-	-
RICHMOND	11	4	2	Current	2	1	-
				Prior	-	-	-
SAN FRANCISCO	30	23	19	Current	13	10	12
				Prior	-	-	-
TOTALS	248	163	84	Current	62	57	41
				Prior	-	-	-

*The Minneapolis and Omaha Regions have no commercial banks of the requisite size which had a Compliance Report reviewed during the period referenced.

**No violations of the Fair Housing Act were noted in the selected report sample. The recapitulation represents contraventions of the FDIC Board of Directors' Statement of Policy on Civil Rights Act Nondiscrimination Requirements in Real Estate Loan Activities, adopted April 24, 1972.

Results of Compliance Examination--Fair Housing
 Mutual Savings Banks with Assets Under \$50 Million
 and Commercial Banks with Assets Under \$100 Million
 (Based on a 10% Random Sample of Reports Reviewed in the
 Consumer Affairs Unit from July 1977 through June 1978)

CHART VII-C

Regions	Number of Compliance Reports in Sample	Reports Containing the Fair Housing Compliance Report Page (FDIC 6500/68 (7-77))	Reports Citing at Least One Violation of the FDIC Policy Statement on Fair Housing*	SPECIFIC VIOLATIONS CITED (Numbers of Reports Citing at Least One Violation of the Type Listed)			
				1	2	3	
ATLANTA	82	46	5	Current	3	3	3
				Prior	-	-	1
BOSTON	17	9	5	Current	5	5	-
				Prior	1	-	-
CHICAGO	76	43	12	Current	6	7	6
				Prior	-	-	-
COLUMBUS	24	11	5	Current	3	3	2
				Prior	-	-	-
DALLAS	53	29	11	Current	2	2	8
				Prior	-	-	-
KANSAS CITY	69	46	16	Current	8	8	13
				Prior	-	-	-
MADISON	36	28	14	Current	11	10	4
				Prior	-	-	-
MEMPHIS	58	34	5	Current	1	1	4
				Prior	-	-	-
MINNEAPOLIS	60	36	14	Current	11	11	4
				Prior	-	-	-
NEW YORK	7	4	1	Current	-	-	1
				Prior	-	-	-
OMAHA	59	46	7	Current	5	6	1
				Prior	-	-	-
PHILADELPHIA	12	11	7	Current	7	7	3
				Prior	1	1	-
RICHMOND	13	7	2	Current	2	2	-
				Prior	-	-	-
SAN FRANCISCO	19	16	6	Current	2	3	4
				Prior	-	-	-
TOTALS	585	366	110	Current	66	68	53
				Prior	2	1	1

*No violations of the Fair Housing Act were noted in the selected report sample. The recapitulation represents contraventions of the FDIC Board of Directors' Statement of Policy on Civil Rights Act Nondiscrimination Requirements in Real Estate Loan Activities, adopted April 24, 1972.

KEY - FAIR HOUSING REGULATION

1. Failure to prominently indicate that loans for the purpose of purchasing, improving, repairing or maintaining a dwelling are made without regard to race, color, religion, national origin or sex.
2. Failure to employ a facsimile of the approved logotype in advertising for loans for the purpose of purchasing, improving, repairing or maintaining a dwelling.
3. Failure to display the fair housing lending poster in the lobby and public areas where deposits are received or housing loans made.

Results of Compliance Examinations—Equal Credit Opportunity
 Mutual Savings Banks with Assets of \$50 Million or More
 (Based on Compliance Reports Reviewed in the Consumer
 Affairs Unit from July 1977 through June 1978)

Region	BOSTON		CHICAGO		MINNEAPOLIS		NEW YORK		PHILADELPHIA		SAN FRANCISCO		TOTALS	
Number of Compliance Reports in Sample	86		2		1		70		10		8		177	
Reports Citing at Least One Violation of Federal Reserve Regulation B	34		1		0		24		7		4		70	
SPECIFIC VIOLATIONS CITED (Numbers of Reports Citing at Least One Violation of the Type Listed)	In Current Report	Repeat from Prior Report	In Current Report	Repeat from Prior Report	In Current Report	Repeat from Prior Report	In Current Report	Repeat from Prior Report	In Current Report	Repeat from Prior Report	In Current Report	Repeat from Prior Report	In Current Report	Repeat from Prior Report
1	1	-	-	-	-	-	1	-	1	-	-	-	3	-
2	4	-	-	-	-	-	5	1	-	-	-	-	9	1
3	4	-	-	-	-	-	2	-	2	-	-	-	8	-
4	17	1	-	-	-	-	7	-	3	-	-	-	27	1
5	2	-	-	-	-	-	1	-	2	-	-	-	5	-
6	2	-	-	-	-	-	-	-	-	-	-	-	2	-
7	2	-	-	-	-	-	-	-	-	-	-	-	2	-
8	2	-	-	-	-	-	-	-	-	-	-	-	2	-
9	3	-	-	-	-	-	-	-	-	-	-	-	3	-
10	1	-	-	-	-	-	-	-	-	-	-	-	1	-
11	-	-	-	-	-	-	-	-	-	-	1	-	1	-
12	1	-	-	-	-	-	-	-	-	-	-	-	1	-
15	1	-	-	-	-	-	2	-	-	-	-	-	3	-
16	-	-	-	-	-	-	-	-	-	-	3	-	3	-
18	2	1	-	-	-	-	4	-	-	-	2	-	8	1
19	9	-	-	-	-	-	3	-	-	-	1	-	13	-
20	14	-	-	-	-	-	9	-	2	-	-	-	25	-
21	10	-	1	-	-	-	-	-	-	-	-	-	11	-
22	23	-	-	-	-	-	4	-	2	-	1	-	30	-
23	1	-	-	-	-	-	-	-	-	-	-	-	1	-
26	1	-	-	-	-	-	-	-	-	-	-	-	1	-
27	1	-	-	-	-	-	-	-	-	-	-	-	1	-
28	7	-	-	-	-	-	2	-	1	-	-	-	10	-
29	3	-	-	-	-	-	-	-	-	-	-	-	3	-
31	21	-	-	-	-	-	2	-	3	-	-	-	26	-

VIOLATION AS LISTED ON ECO KEY ATTACHED

Results of Compliance Examinations--Equal Credit Opportunity
 Commercial Banks with Assets of \$100 Million or More
 (Based on Compliance Reports Reviewed in the Consumer
 Affairs Unit from July 1977 through June 1978)

Region*		ATLANTA		BOSTON		CHICAGO		COLUMBUS		DALLAS		KANSAS CITY	
Number of Compliance Reports in Sample		22		25		34		10		18		6	
Reports Citing at Least One Violation of Federal Reserve Regulation B		5		16		9		6		5		1	
SPECIFIC VIOLATIONS CITED (Numbers of Reports Citing at Least One Violation of the Type Listed)		In Current Report	Repeat from Prior Report	In Current Report	Repeat from Prior Report	In Current Report	Repeat from Prior Report	In Current Report	Repeat from Prior Report	In Current Report	Repeat from Prior Report	In Current Report	Repeat from Prior Report
VIOLATION AS LISTED ON ECO KEY	1	-	-	-	-	-	-	-	-	-	-	-	-
	2	1	-	1	-	2	-	1	-	1	-	-	-
	3	1	-	1	-	2	-	1	-	3	-	-	-
	4	1	-	8	-	4	-	1	-	1	-	-	-
	5	-	-	2	-	1	-	-	-	1	-	-	-
	6	-	-	2	-	1	-	-	-	1	-	-	-
	10	-	-	-	-	1	-	-	-	-	-	-	-
	11	-	-	-	-	1	-	-	-	-	-	-	-
	15	-	-	2	-	-	-	-	-	-	-	-	-
	16	-	-	2	-	1	-	-	-	-	-	-	-
	18	-	-	3	-	-	-	-	-	1	-	-	-
	19	1	-	4	-	3	-	1	-	-	-	1	-
	20	1	-	5	-	1	-	2	-	-	-	1	-
	21	2	-	4	-	-	-	3	1	2	-	1	-
	22	1	-	7	-	4	-	2	-	1	-	1	-
28	1	-	7	-	-	-	-	-	-	-	-	-	
29	1	-	2	-	-	-	-	-	-	-	-	-	
31	1	-	4	-	2	-	2	-	-	-	-	-	

*The Minneapolis and Omaha Regions have no commercial banks of the requisite size which had a Compliance Report reviewed during the period referenced.

Results of Compliance Examinations--Equal Credit Opportunity
 Commercial Banks with Assets of \$100 Million or More
 (Based on Compliance Reports Reviewed in the Consumer
 Affairs Unit from July 1977 through June 1978)

(PAGE 2)

Region	MADISON		MEMPHIS		NEW YORK		PHILADELPHIA		RICHMOND		SAN FRANCISCO		TOTAL	
Number of Compliance Reports in Sample	18		16		22		36		11		30		248	
Reports Citing at Least One Violation of Federal Reserve Regulation B	10		2		9		23		6		25		117	
SPECIFIC VIOLATIONS CITED (Numbers of Reports Citing at Least One Violation of the Type Listed)	In Current Report	Repeat from Prior Report	In Current Report	Repeat from Prior Report	In Current Report	Repeat from Prior Report	In Current Report	Repeat from Prior Report	In Current Report	Repeat from Prior Report	In Current Report	Repeat from Prior Report	In Current Report	Repeat from Prior Report
1	3	-	1	-	3	-	5	-	-	-	-	-	12	-
2	2	-	1	-	5	1	2	-	2	-	-	-	18	1
3	-	-	-	-	1	-	1	-	1	-	1	-	12	-
4	-	-	2	-	5	-	10	-	1	-	4	-	37	-
5	1	-	-	-	1	-	2	-	1	-	1	-	10	-
6	-	-	-	-	-	-	-	-	-	-	3	-	7	-
7	-	-	-	-	2	-	1	-	-	-	-	-	3	-
9	-	-	-	-	-	-	1	-	-	-	-	-	1	-
10	-	-	-	-	-	-	1	-	-	-	-	-	2	-
11	1	-	-	-	-	-	-	-	-	-	-	-	2	-
13	-	-	-	-	-	-	1	-	-	-	-	-	1	-
14	-	-	-	-	-	-	-	-	-	-	-	-	-	-
15	3	-	-	-	1	-	1	-	-	-	14	-	21	-
16	2	-	-	-	1	-	-	-	-	-	8	-	14	-
18	1	-	-	-	1	-	2	-	1	-	8	-	17	-
19	3	-	-	-	-	-	6	-	-	-	15	-	35	-
20	2	-	-	-	-	-	7	-	3	-	7	-	29	-
21	-	-	-	-	-	-	5	-	5	-	8	-	30	1
22	2	-	-	-	1	-	6	-	3	-	18	-	46	-
23	-	-	-	-	-	-	-	-	-	-	1	-	1	-
24	-	-	-	-	-	-	-	-	-	-	1	-	1	-
26	-	-	-	-	-	-	1	-	-	-	-	-	1	-
28	-	-	-	-	-	-	3	-	3	-	1	-	15	-
29	-	-	-	-	-	-	1	-	-	-	-	-	4	-
31	6	-	-	-	1	-	13	-	3	-	1	-	33	-

LISTED BY ECO SV NON

Results of Compliance Examinations--Equal Credit Opportunity
 Mutual Savings Banks with Assets Under \$50 Million
 and Commercial Banks with Assets Under \$100 Million
 (Based on a 10% Random Sample of Reports Reviewed in the
 Consumer Affairs Unit from July 1977 through June 1978)

CHART VIII-C

		ATLANTA		BOSTON		CHICAGO		COLUMBUS		DALLAS		MADISON	
Number of Compliance Reports in Sample		82		17		76		24		53		36	
Reports Citing at Least One Violation of Federal Reserve Regulation B		29		10		34		14		26		25	
SPECIFIC VIOLATIONS CITED (Numbers of Reports Citing at Least One Violation of the Type Listed)		In Current Report	Repeat from Prior Report	In Current Report	Repeat from Prior Report	In Current Report	Repeat from Prior Report	In Current Report	Repeat from Prior Report	In Current Report	Repeat from Prior Report	In Current Report	Repeat from Prior Report
1		3	-	-	-	4	-	-	-	-	-	3	-
2		4	-	-	-	4	-	1	-	-	-	4	-
3		5	-	-	-	3	-	1	-	1	-	-	-
4		3	-	4	1	5	-	2	-	4	-	4	-
5		2	-	-	-	2	-	-	-	-	-	-	-
6		2	-	1	-	2	-	2	-	1	-	3	1
7		2	-	-	-	2	-	-	-	1	-	-	-
8		1	-	-	-	-	-	-	-	-	-	-	-
9		1	-	-	-	-	-	-	-	-	-	-	-
10		-	-	-	-	-	-	-	-	1	-	-	-
11		-	-	-	-	1	-	-	-	-	-	-	-
13		-	-	-	-	-	-	-	-	-	-	-	-
14		-	-	-	-	-	-	-	-	-	-	-	-
15		1	-	-	-	2	-	-	-	-	-	9	-
16		-	-	-	-	-	-	-	-	-	-	8	-
17		-	-	-	-	-	-	-	-	-	-	-	-
18		3	-	-	-	4	-	4	-	15	1	7	-
19		16	-	-	-	15	-	4	1	18	1	7	1
20		15	-	-	-	9	2	4	1	16	3	7	1
21		8	-	1	-	7	1	7	1	19	1	9	2
22		21	-	4	-	15	-	5	2	20	1	8	1
23		4	-	-	-	6	-	-	-	10	-	-	-
24		3	-	1	-	1	-	-	-	3	-	-	-
25		-	-	-	-	-	-	-	-	-	-	-	-
26		-	-	1	-	-	-	4	1	3	-	1	-
27		-	-	-	-	-	-	-	-	-	-	-	-
28		6	-	-	-	2	-	2	-	10	-	1	-
29		4	-	-	-	-	-	1	-	4	-	-	-
30		-	-	-	-	-	-	-	-	-	-	-	-
31		9	-	2	-	11	-	3	-	1	-	14	-

VIOLATION AS LISTED ON ECO KEY

Results of Compliance Examinations--Equal Credit Opportunity
 Mutual Savings Banks with Assets Under \$50 Million
 and Commercial Banks with Assets Under \$100 Million
 (Based on a 10% Random Sample of Reports Reviewed in the
 Consumer Affairs Unit from July 1977 through June 1978)

		KANSAS CITY		MEMPHIS		MINNEAPOLIS		NEW YORK		OMAHA		PHILADELPHIA	
Number of Compliance Reports in Sample		69		58		60		7		59		12	
Reports Citing at Least One Violation of Federal Reserve Regulation B		26		15		37		4		20		9	
SPECIFIC VIOLATIONS CITED (Numbers of Reports Citing at Least One Violation of the Type Listed)		In Current Report	Repeat from Prior Report	In Current Report	Repeat from Prior Report	In Current Report	Repeat from Prior Report	In Current Report	Repeat from Prior Report	In Current Report	Repeat from Prior Report	In Current Report	Repeat from Prior Report
1		1	-	-	-	2	-	-	-	-	-	2	-
2		2	-	-	-	5	1	-	-	2	-	1	-
3		2	-	-	-	5	-	2	-	2	-	3	1
4		2	-	-	-	2	-	-	-	4	-	5	-
5		-	-	-	-	1	-	-	-	1	-	1	-
6		-	-	-	-	1	-	1	-	1	-	2	-
7		1	-	-	-	1	-	-	-	1	-	-	-
8		-	-	-	-	-	-	-	-	-	-	-	-
9		-	-	-	-	-	-	-	-	-	-	1	-
11		-	-	-	-	-	-	-	-	-	-	1	-
13		-	-	-	-	-	-	-	-	1	-	-	-
14		-	-	-	-	-	-	-	-	1	-	-	-
15		1	-	-	-	9	-	-	-	-	-	-	-
16		-	-	-	-	3	-	-	-	-	-	-	-
17		-	-	-	-	-	-	-	-	-	-	1	-
18		5	1	10	3	-	-	-	-	3	-	1	-
19		10	1	10	3	7	-	1	-	11	-	-	-
20		9	1	10	3	5	4	1	-	13	2	1	-
21		16	1	10	3	2	-	-	-	7	-	1	-
22		16	1	10	3	7	-	-	-	12	-	2	-
23		6	-	2	-	13	-	-	-	4	-	-	-
24		5	-	1	-	6	-	-	-	3	-	-	-
25		4	-	1	-	-	-	-	-	1	-	-	-
26		3	-	3	-	-	-	-	-	1	-	1	-
27		2	-	-	-	-	-	-	-	1	-	-	-
28		3	-	11	-	7	1	1	-	7	-	1	-
29		2	-	-	-	1	-	-	-	6	-	1	-
30		2	-	-	-	1	-	-	-	-	-	-	-
31		10	-	2	-	13	-	-	-	1	-	6	-

VIOLATIONS AS LISTED ON ECO KEY

Results of Compliance Examinations--Equal Credit Opportunity
 Mutual Savings Banks with Assets Under \$50 Million
 and Commercial Banks with Assets Under \$100 Million
 (Based on a 10% Random Sample of Reports Reviewed in the
 Consumer Affairs Unit from July 1977 through June 1978)

CHART VIII-C

(PAGE 3)

		RICHMOND		SAN FRANCISCO		TOTALS	
Number of Compliance Reports in Sample		13		19		585	
Reports Citing at Least One Violation of Federal Reserve Regulation B		5		13		267	
SPECIFIC VIOLATIONS CITED (Numbers of Reports Citing at Least One Violation of the Type Listed)		In Current Report	Repeat from Prior Report	In Current Report	Repeat from Prior Report	In Current Report	Repeat from Prior Report
VIOLATIONS AS LISTED ON ECO KEY	1	1	-	-	-	16	-
	2	-	-	1	-	24	1
	3	1	-	2	-	27	1
	4	1	-	3	-	39	1
	5	-	-	-	-	7	-
	6	-	-	-	-	16	1
	7	1	-	1	-	10	-
	8	-	-	-	-	1	-
	9	-	-	-	-	2	-
	10	-	-	-	-	1	-
	11	-	-	-	-	2	-
	13	-	-	-	-	1	-
	14	-	-	-	-	1	-
	15	-	-	6	-	28	-
	16	-	-	4	-	15	-
	17	-	-	-	-	1	-
	18	1	-	5	-	58	5
	19	2	1	5	-	106	8
	20	4	2	6	-	100	19
	21	3	2	6	1	96	12
	22	3	2	7	-	130	10
	23	-	-	1	-	46	-
	24	-	-	1	-	24	-
	25	-	-	-	-	6	-
	26	1	-	1	-	19	1
	27	-	-	-	-	3	-
	28	2	1	-	-	53	2
	29	-	-	-	-	19	-
	30	-	-	-	-	3	-
	31	2	-	2	-	76	-

1047

KEY - EQUAL CREDIT OPPORTUNITY, REGULATION B

1. Requested information concerning spouse or former spouse of an applicant in other than circumstances when permitted.
2. Requested marital status of an applicant for an individual, unsecured, nonbusiness account in other than circumstances when permitted.
3. Failure to use only the terms "married," "unmarried," and "separated" when requesting marital status in a permitted instance.
4. Failure to advise an applicant that disclosure of income derived from alimony, child support, or separate maintenance payments need not be revealed if the applicant does not wish it to be considered in determining the applicant's creditworthiness.
5. Requested the sex of an applicant, except as required or permitted.
6. Failure to use only terms that are neutral as to sex in application forms, except for a request to designate a courtesy title such as Ms., Miss, Mrs. or Mr.
7. Failure to disclose that the designation of a courtesy title is optional.
8. Requested information about birth control practices, intentions concerning the bearing or rearing of children, or capacity to bear children.
9. Requested race, color, religion or national origin of an applicant or other person in connection with a credit transaction in other than circumstances where required.
10. Taken a prohibited basis into account in evaluating the creditworthiness of an applicant, except as specifically permitted.
11. Taken into account in determining creditworthiness an applicant's age or whether income was derived from any public assistance program, except as permitted.
12. Taken into account assumptions or aggregate statistics relating to the likelihood that any group of persons will bear or rear children or, for that reason, will receive diminished or interrupted income in the future.
13. Discounted or excluded from consideration any income of an applicant or an applicant's spouse because of a prohibited basis or because the income was derived from part-time employment, or from an annuity, pension, or other retirement benefit.
14. Failure to consider alimony, child support, or separate maintenance payments as income to the extent they were likely to be made when applicant relied on the income in applying for the credit.
15. Required signature of applicant's spouse or other person when the applicant qualified under the bank's standards of creditworthiness for the amount and terms of the credit requested, in other than circumstances permitted.
16. When the personal liability of an additional party was necessary to support an extension of credit, the bank required that the additional party be the applicant's spouse.
17. Refused to extend credit because credit life, health, accident or disability insurance was not available because of applicant's age.
18. Failure to notify applicants of action taken on their applications or existing accounts within the time limits prescribed.

19. Failure to provide applicants with a written statement of action taken.
20. Failure to provide applicants the prescribed ECOA notice.
21. Failure to name the FDIC on the ECOA notice as the agency that administers compliance with respect to the bank.
22. Failure to provide applicants a statement of the specific reasons principally responsible for adverse action or failure to disclose the applicant's right to request such a statement within 60 days.
23. Failure by a bank that furnishes credit information to determine whether each account established on or after June 1, 1977 is one which the applicant's spouse is permitted to use or upon which both spouses are contractually liable, and if so, to designate every such account to reflect the participation of both spouses.
24. Failure to provide credit information on accounts with participation by both spouses in a manner that would permit a consumer reporting agency to access the information in the name of each spouse.
25. Failure to furnish credit information concerning an account designated to reflect participation by both spouses in the name of the spouse about whom the information was requested.
26. Failure by a bank that furnishes credit information to determine participation in joint accounts for accounts established prior to June 1, 1977 or failure to mail or deliver the prescribed notice regarding credit history for married persons.
27. Failure to designate accounts established prior to and in existence on June 1, 1977 to reflect the fact of participation by both spouses within 90 days after receipt of a properly completed request to change the manner in which information is reported.
28. Failure to maintain specific records of applications for nonbusiness accounts for 25 months after notifying applicants of action taken on their applications.
29. Failure to retain specified records for 25 months after the date applicants were notified of adverse action on business accounts, if requested to do so in writing by the applicants within 90 days.
30. For existing nonbusiness accounts, failure to retain specified records for 25 months after notifying applicants of adverse action.
31. Failure to request monitoring information of applicant.

CHART IX

Fair Housing and Equal Credit Violations Per 100 Examiner Hours and
Per \$100,000 of Home and Consumer Loans by Region*

Region	Total Violations				Total Violations Per 100 Examiner Hours	Total Violations Per \$100,000 of Home and Consumer Loans
	Mutual Savings Banks with Assets of \$50 Million and Over	Commercial Banks with Assets of \$100 Million and Over	All Other Banks**	Total		
ATLANTA	---	27	1,220	1,247	57	.019
BOSTON	198	74	240	512	18	.003
CHICAGO	1	34	1,140	1,175	37	.014
COLUMBUS	---	11	480	491	61	.011
DALLAS	---	27	1,390	1,417	83	.023
KANSAS CITY	---	4	1,310	1,314	63	.032
MADISON	---	45	1,100	1,145	60	.021
MEMPHIS	---	7	760	767	40	.013
MINNEAPOLIS	2	--	1,170	1,172	59	.039
NEW YORK	54	26	70	150	8	.000
OMAHA	---	--	950	950	68	.043
PHILADELPHIA	25	99	480	604	30	.005
RICHMOND	---	27	260	287	22	.007
SAN FRANCISCO	<u>13</u>	<u>126</u>	<u>600</u>	<u>739</u>	<u>30</u>	<u>.007</u>
TOTAL	293	507	11,170	11,970	43	.009

*Examiner hours derived from compliance reports reviewed during the period July 1977 - June 1978. Total Home and Consumer Loans reported as of December 31, 1977.

**Violations shown in 10 percent sample inflated by 10.

Reports Reflecting Violations of Fair Housing and
 Equal Credit Opportunity as a Percentage of all Reports Reviewed
 in the Consumer Affairs Unit from July 1977 through June 1978

	FAIR HOUSING			EQUAL CREDIT OPPORTUNITY		
	Total Reports Reviewed	Reports Citing a Contravention of FDIC Policy Statement		Total Reports Reviewed	Reports Citing a Violation of Federal Reserve Regulation B	
		Number	Percentage		Number	Percentage
ATLANTA	478	59	12.3	841	295	35.0
BOSTON	200	97	48.5	283	150	53.0
CHICAGO	470	124	26.4	803	350	43.6
COLUMBUS	95	51	53.7	248	146	58.9
DALLAS	319	119	37.3	548	265	48.4
KANSAS CITY	379	160	42.2	696	261	37.5
MADISON	264	149	56.4	378	260	68.8
MEMPHIS	337	53	15.7	596	152	25.5
MINNEAPOLIS	347	141	40.6	601	370	61.6
NEW YORK	72	20	27.8	162	73	45.1
OMAHA	404	70	17.3	590	200	33.9
PHILADELPHIA	100	90	90.0	166	120	72.3
RICHMOND	81	22	27.2	141	56	39.7
SAN FRANCISCO	144	82	56.9	228	159	69.7
TOTALS	3,690	1,237	33.5	6,275	2,857	45.5

QUESTION 21	HOME/SMALL BUSINESS	CONSUMER
ATLANTA	4	33
BOSTON	5	26
CHICAGO	4	9
COLUMBUS	1	17
DALLAS	8	25
KANSAS CITY	4	8
MADISON	2	11
MEMPHIS	2	13
MINNEAPOLIS	0	3
NEW YORK	17	29
OMAHA	1	1
PHILADELPHIA	5	47
RICHMOND	0	22
SAN FRANCISCO	8	56
TOTAL	61	300

Consumer complaints received by FDIC in twelve-month period from July 1977 through June 1978 alleging discrimination in some aspect of the lending process:

CODES - FOR QUESTIONS 22 and 23:

- a. Complaint investigated with one or more violations found.
- b. No violation found; adjustment or accommodation offered and accepted.
- c. Factual dispute; no satisfaction.
- d. Investigated but no violation or satisfaction.
- e. All other (including information requests); no investigation deemed necessary.
- f. No disposition noted.

Following is a tabular breakdown of discrimination complaints received for each Region separately and for all Regions combined:

	a	b	c	d	e	f	TOTAL
QUESTION 22:							
ATLANTA:							
HOME	0	0	0	2	2	0	4
CONSUMER/SMALL BUSINESS	2	2	0	5	24	0	33
BOSTON:							
HOME	0	1	0	1	3	0	5
CONSUMER/SMALL BUSINESS	4	5	0	2	15	0	26
CHICAGO:							
HOME	0	0	0	2	0	2	4
CONSUMER/SMALL BUSINESS	0	1	0	2	4	2	9
COLUMBUS:							
HOME	0	0	0	0	1	0	1
CONSUMER/SMALL BUSINESS	1	1	0	2	13	0	17
DALLAS:							
HOME	0	1	0	1	5	1	8
CONSUMER/SMALL BUSINESS	6	1	0	1	16	1	25
KANSAS CITY:							
HOME	2	0	0	2	0	0	4
CONSUMER/SMALL BUSINESS	3	0	0	2	3	0	8

	a	b	c	d	e	f	TOTAL
QUESTION 22 CONTINUED:							
MADISON:							
HOME	0	0	0	2	0	0	2
CONSUMER/SMALL BUSINESS	0	1	0	8	2	0	11
MEMPHIS:							
HOME	0	0	0	1	1	0	2
CONSUMER/SMALL BUSINESS	1	1	0	1	10	0	13
MINNEAPOLIS:							
HOME	0	0	0	0	0	0	0
CONSUMER/SMALL BUSINESS	0	0	0	1	2	0	3
NEW YORK:							
HOME	1	0	0	10	5	1	17
CONSUMER/SMALL BUSINESS	8	1	0	3	17	0	29
OMAHA:							
HOME	0	1	0	0	0	0	1
CONSUMER/SMALL BUSINESS	0	0	0	0	0	1	1
PHILADELPHIA:							
HOME	0	0	0	2	3	0	5
CONSUMER/SMALL BUSINESS	4	5	0	13	24	1	47

	a	b	c	d	e	f	TOTAL
QUESTION 22: CONTINUED:							
RICHMOND:							
HOME	ø	ø	ø	ø	ø	ø	ø
CONSUMER/SMALL BUSINESS	2	1	ø	6	13	ø	22
SAN FRANCISCO:							
HOME	1	ø	ø	2	4	1	8
CONSUMER/SMALL BUSINESS	7	10	ø	ø	37	2	56
TOTALS:							
HOME	4	3	ø	25	24	5	61
CONSUMER/SMALL BUSINESS	38	29	ø	46	180	7	300

Following is information relative to portions of complaints; (a) about Banks in which a violation similar to the complaint was found at the most recent compliance exam; (b) about Banks in which a violation similar to the complaint was found at the next compliance exam; (c) about Banks that have not been given a compliance exam since filing of the complaint:

	a	b	c	d	e	f
QUESTION - 23						
Violation Found Prior Exam. - a	45%	28%	Ø	32%	28%	50%
Violation Found Subsequent Exam. - b	14%	25%	Ø	20%	14%	Ø
No Compliance Exam. Since filing of						
Complaint - c	76%	75%	Ø	68%	72%	92%
NOTE: Percentages in the above table may be somewhat misleading due to the time lag between field examination and processing in the Washington Office.						

AMENDED

Question 23. The following is information relative to portions of complaints; (a) about Banks in which a violation similar to the complaint was found at the most recent compliance exam; (b) about Banks in which a violation similar to the complaint was found at the next compliance exam; (c) about Banks that have not been given a compliance exam since filing of the complaint:

		Atlanta	Boston	Chicago	Columbus	Dallas	Kansas City	Madison	Memphis	Minneapolis	New York	Omaha	Philadelphia	Richmond	San Francisco	Total
Question 23a	a	0	2	0	1	3	3	0	0	0	3	0	2	2	3	19
	b	0	2	1	0	0	0	0	0	0	0	0	3	0	3	9
	c	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	d	2	2	1	0	0	0	2	1	1	3	0	8	2	1	23
	e	3	7	0	6	2	0	1	1	0	5	0	12	5	15	57
	f	0	0	3	0	1	0	0	0	0	0	0	0	0	2	6
Total		5	13	5	7	6	3	3	2	1	11	0	25	9	24	114
Question 23b	a	0	1	0	0	0	0	0	0	0	2	0	1	0	2	6
	b	0	3	0	0	0	0	2	0	0	0	0	1	0	2	8
	c	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	d	2	1	0	0	0	0	4	0	0	1	0	5	0	1	14
	e	1	2	0	1	4	0	0	0	0	0	0	9	1	10	28
	f	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total		3	7	0	1	4	0	6	0	0	3	0	16	1	15	56
Question 23c	a	2	3	0	1	5	4	0	1	0	0	0	3	2	6	32
	b	2	3	1	1	1	0	0	1	0	0	1	5	1	8	24
	c	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	d	4	2	3	2	1	3	3	1	1	11	0	10	6	1	48
	e	19	14	4	11	15	1	2	8	2	17	0	15	11	27	146
	f	0	0	3	0	2	0	0	0	0	1	1	1	0	3	11
Total		27	22	11	15	24	8	5	11	3	34	2	34	20	45	261

Codes for Question 23

- a Complaint investigated with one or more violations found
- b No violation found; adjustment or accommodation offered and accepted
- c Factual dispute; no satisfaction
- d Investigated but no violation or satisfaction
- e All other (including information requests); no investigation deemed necessary
- f No disposition noted

EXHIBIT 1

ECONOMIC ISSUES FOR A MODEL OF MORTGAGE
LENDING TO DETECT DISCRIMINATION

by

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WORKING PAPER NO. 78-8

I. Introduction

Financial institutions operate with a relatively large set of governmentally imposed constraints on their activities. The Federal Reserve System, the FDIC, the Office of the Comptroller of the Currency, and the Federal Home Loan Bank Board are the government agencies largely responsible for such constraints. Traditionally, regulations have developed from a need to ensure safety, soundness and stability in the financial system. But in the past 10 years Congress has instituted a new set of rules which attempts to ensure the "social soundness" of the financial system. The Fair Housing Act, the Equal Credit Opportunity Act (ECOA) and, most recently, the Community Reinvestment Act of 1977 (CRA) are examples of this type of legislation which makes discriminatory lending practices of financial institutions illegal. These new rules involve many economic issues. This paper analyzes a few of these issues for mortgage lending and presents an approach to detecting discrimination in mortgage lending.

Illegal discrimination in mortgage lending can take many forms. It can be against individuals on the basis of sex, age, race, or marital status. It can be geographic, commonly called redlining. It can be in the form of arbitrary limits set for amount of loan granted or age of building used for collateral. It may have occurred for many years so it need not be apparent in the market (i.e., as turned-down applications). For example, realty brokers may know from experience that banks do not loan to blacks or in a particular area so the brokers do not make markets (seek out business) with blacks or in certain neighborhoods. It may occur through prescreening loan applicants prior to the formal loan process (i.e., turndowns of telephone

inquiries from certain neighborhoods). Or, it may occur either explicitly or implicitly in formal loan negotiations.

This study focuses on just one of the various forms of discrimination — the formal loan application process. The issues involved in this credit granting process are analyzed with a microeconomic, simultaneous equations model. The particular emphasis is on commercial banks and mutual savings banks, but the methodology employed has applications for all financial institutions. The simultaneous equations framework allows for modeling of both supply and demand behavior, and thus is capable of capturing interactions between demanders and suppliers. Discrimination in the model can be detected by outright rejection of the loan application or by variations in loan terms unjustified by economic characteristics of the borrower or property.

The system of equations approach is perhaps somewhat more cumbersome than other approaches to the problem, but it has many advantages. First, data are now available to test the approach, and other previously unavailable micro level data will result from the Fair Housing Act implementation. This approach will fully utilize these data. Second, it will generate more useful information than simply detecting discrimination. Third, it will allow for many extensions to analyze various aspects of how mortgage credit interfaces with the market for housing. And, since it is more detailed than many other approaches to this problem, it has the potential, with further refinement, to answer important questions about market demand for mortgages and for other broader applications. The development of the model in this paper focuses on how it can augment examiner evaluation of a financial institution's equity in lending. But, most importantly, this approach is developed because it is capable of accurately describing the mortgage lending process.

The organization of this study is as follows. The next section describes, in general terms, the complete model design and some alternative approaches to various types of discrimination. Section III discusses forthcoming data, how they will be processed and their deficiencies. Section IV discusses possible extensions of the model beyond detection of discrimination. Section V describes test estimations of a reduced form system using some sample data to detect individual discrimination.

II. Complete Model Description

This model design attempts to structure the determinants of the allocation of mortgage funds among mortgage loan applicants and the negotiated credit terms associated with those funds on an individual basis. The model is based on two central propositions. First, allocation of funds and the associated credit terms are determined by lenders and borrowers interacting in the loan negotiating process. This simultaneity requires development of separate supply and demand equations. Second, credit terms vary across both lenders and borrowers such that some portion of the credit terms associated with each transaction is endogenous to the particular transaction. This distinction requires that the model consist of a system of simultaneous demand and supply equations.

We can express this structural system of equations for each cross-section observations as:

$$By_s + \Gamma X_s = u_s$$

y_s = (G x 1) vector of endogenous, jointly determined variables

X_s = (K x 1) vector of predetermined variables

u_s = (G x 1) vector of random disturbances

B = (G x G) matrix of coefficients

Γ = (G x K) matrix of coefficients

with the accompanying reduced form:

$$y_s = -B^{-1}\Gamma X_s + B^{-1}u_s$$

For each loan application, s , y_s contains those variables determined in negotiating the loan (the endogenous variables). The reduced form for the system expresses the endogenous variables as a function of all the exogenous variables. Thus, it is this reduced form system which allows us to view how all the independent variables interact to produce the final loan terms.

Specifically for a model to detect discrimination the predetermined variables should be partitioned as:

$$\Gamma X_s = \left[\begin{array}{c|c} \Gamma_1 & 0 \\ \hline 0 & \Gamma_2 \end{array} \right] \left[\begin{array}{c|c} X1 & 0 \\ \hline 0 & X2 \end{array} \right]$$

such that the predetermined variables in $X1$ include all those nondiscriminatory variables which are significant in the loan decision. The $X2$ variables include those illegal, discriminatory variables which might potentially influence the loan granting decision. The system can now be represented as:

$$By_s + \Gamma_1 X1_s + \Gamma_2 X2_s = u_s$$

and the reduced form as:

$$Y_s = -B^{-1}\Gamma_1 X1_s - B^{-1}\Gamma_2 X2_s + B^{-1}u_s$$

Of particular interest are the set of structural coefficients Γ_2 and the set of reduced form coefficients $-B^{-1}\Gamma_2$. These coefficients and their significance levels will help determine if illegal discrimination occurs and, if so, its market impact. The $X2$ variables can be broken down further into those variables which are illegal to use to categorize individuals (e.g. sex, race) and those potentially illegal to use to categorize neighborhoods (e.g. average age of

real estate, racial composition). Define the former variables as X_2' and the latter variables as X_2'' with associated coefficients Γ_2' and Γ_2'' . The problem of detecting individual discrimination requires an analysis of the coefficients associated with the X_2' variables. If any of the estimated Γ_2' coefficients associated with individual characteristics are found significant, the possibility of illegal individual discrimination exists. However, the correlations of those variables with the economically rational X_1 variables must also be analyzed prior to a firm decision. The signs on the X_2' coefficients are also of interest. A positive and significant coefficient on an X_2' variable could indicate discrimination. A negative and significant coefficient for the same variable could indicate affirmative action to help a particular class of borrowers.

Redlining, in its subtle form of adversely altering contract terms for loans to particular neighborhoods, presents a more difficult detection problem. Illegal individual discrimination must be accounted for before geographic discrimination can be analyzed. One possible technique to use in the context of this model is to include binary or "dummy" variables for different neighborhoods.¹ This would reduce X_2'' to one binary variable. If the neighborhood indicator variable appeared significant, it would provide evidence that loan applicants from that neighborhood are subject to more stringent contract terms than applicants with similar economic characteristics financing real estate in other areas. This result would imply that lenders attach a risk premium to this neighborhood above that justified by their response to economic criteria of loan applications from other areas as indicated by the Γ_1 coefficients.²

Yet, potential for more detailed information on neighborhood redlining exists if we include other available information about each neighborhood. For example, if neighborhoods could be reasonably defined geographically, economically, and socially, the explicit neighborhood characteristics could be included in the system.³ Included in these variables might be average age of real estate, default rates on loans, an index of racial composition, an index of change in racial composition, an index of public services, real estate prices and their rate of change, population density, number of vacancies, and other potentially useful neighborhood characteristics. Detailing neighborhood characteristics to this extent will require more time and effort, but the potential to learn much more about lending behavior also exists. This approach would allow determination of which neighborhood characteristics specifically affect lending patterns adversely.

Although this model design has the potential to sort out variables used to classify neighborhoods, it will not indicate which neighborhood risk characteristics are valid or invalid, legal or illegal for loan evaluation. Individual characteristics (race, sex, age, and marital status) have been specifically listed as illegal to use in evaluation of a loan application. But Congress has not defined illegal geographic criteria. Until it does there will be no definitive way to detect illegal geographic discrimination. It is widely accepted that neighborhood characteristics (external economies or diseconomies) affect lenders decisions on individual loans, but the major question remaining is which of these community attributes are valid risk factors for the loan decision and which are based on imperfect or incorrect information.

The issue of legal versus illegal community characteristics for loan evaluation becomes more critical due to the mandates of the Community Re-

investment Act of 1977. If lending institutions are to be examined for evidence of redlining some objective criteria should be established. If these criteria are not established then the evaluations will be subjective, subject to substantial dispute and perhaps ineffective. Yet, one might argue that the incidence of redlining might decline substantially due to financial institutions' evaluation of expected costs of noncompliance with the new regulations, i.e. the regulation will change relative costs,⁴

This description of the model has implied that data from individual institutions will be analyzed. It will become feasible to do this very soon. FDIC-monitored institutions must begin recording detailed individual mortgage loan application information on July 3, 1978, with more detailed reporting requirements for banks in SMSAs and with assets exceeding \$10 million. These data will be collected by compliance examiners for further processing. This procedure will allow for analysis of each individual bank's lending practices. With this data base it will also be possible to segregate the observations into various subgroups such as type of loan (purchase of existing dwelling, construction loan), and type of insurance status (conventional, VA, FHA, privately insured).

Once data from all, or most, banks lending in a particular area have been collected, aggregating the observations and analyzing them with the model will allow some statements to be made about lending patterns. This aggregation could possibly occur at the census tract level, the market area level, SMSA level, state, regional and national level. A variety of investigations could be undertaken at each level of aggregation, including analysis of existing behavior and simulations based on altering policy variables.

Up to this point, discussion has focused on applications which have been approved and loans actually granted. This leaves an obvious gap. How do we incorporate those loan applications which were rejected outright by the lenders? With enactment of the ECOA, Fair Housing Act, and the CRA, this latter type of potential discrimination should become much less of a reality. Prescreening of loan applicants or conditioned market responses (such as realty brokers discouraging potential loan applicants) could continue, but that is another aspect of the problem to be considered at another time. The focus here remains on loan application activity. The lender's accept/reject decision can be analyzed with Probit analysis which estimates the implicit probability weights given the factors affecting the loan granting process. This analysis is a reduced form single equation approach. As such, it provides much less information about market behavior, but most likely, it will provide adequate information about outright rejection of loan applications.⁵

This description has outlined an approach to detecting discrimination in the mortgage loan application process. Once again, it analyzes only one potential area for discrimination. It does not attempt to identify mortgage demand nor to answer all questions about discrimination in mortgage lending. Also, the more descriptive model in Section IV applies to primary residential mortgages only. To be widely applied, other types of housing finance requirements such as home improvement loans, multifamily units, etc., must be included in the modeling.

III. The Data

Data available to test and implement the model will be collected by FDIC compliance examiners at regular compliance examinations from insured

state nonmember commercial banks and mutual savings banks.⁶ The data to be collected on each loan transaction will provide enough detail to statistically test the specifications of the model described above.

For each loan transaction there are several interrelated characteristics which could serve as jointly dependent variables in the vector y_s . These characteristics include: amount of loan, years to maturity, downpayment-to-value ratio, interest rate, and monthly payment of principal and interest. Of these, some are most likely negotiable and others set by bank policy. But by varying the negotiable terms the real price of the loan can be altered substantially, and it is with these items that a lender can subtly and illegally discriminate against individuals and neighborhoods.

The variables in X1 and X2 should influence the negotiable terms of the loan. Individual applicant characteristics are easily dichotomized into legal and illegal. The legal variables include: number of years in current occupation, self employed, years on present job, monthly salary, liquid assets, all other assets, total debt, monthly debt payments, customer of the bank, and number of dependents. The illegal individual characteristics include age, race, sex and marital status. Features of the property which have potential influence include age, number of residential units, taxes, hazard insurance, and address including census tract.

Location and age of property have not been designated as illegal to use to evaluate a loan application which makes it difficult to dichotomize property characteristics into legal and illegal. What can be done is to supplement these data with other data from census tract records. These additional data could help single out which property characteristics influence terms of the loan. Over time these property features could be compared to default rates

to determine if they accurately measure risk. If they do not, then they could become candidates for illegal variables to use in evaluating loans.

IV. Extensions of the Model

Since the model design specifies structural equations with the underlying behavioral assumptions, extensions of the basic model could make valuable contributions in other areas. Some possible extensions include the following:

- A. Determination of demand for mortgage credit. One deficiency of the model is that it now encompasses loan application activity only. To determine unconstrained free market demand for mortgage credit (what it actually is and what it could potentially be), much more information needs to be incorporated into the model. Extensions of the application demand functions into mortgage demand functions is a logical step. Further information on an area or neighborhood basis such as average income, unemployment, age of real estate, age of population, migration, family size and life cycle, market interest rates, and inflation rates, etc., must also be incorporated into the model.
- B. Evaluation of government intervention in the mortgage market. The local, state, and the federal governments all impose restrictions on the behavior of actors in the mortgage market. Federal regulations on interest rate ceilings (Reg Q, VA, and FHA loan rates) and tax incentives alter lenders' behavior. Various federal subsidy programs such as the block grant program and other direct subsidies affect demand in the market. State governments impose additional restrictions on mortgage lending, the primary example being usury laws.

Local governments have influence through zoning regulations and provision of public services. Through evaluation of the structural model and through reduced form simulations, impacts of these various rules, regulations and subsidies can be analyzed. Possible recommendations on how to alter certain policies to meet better program goals could be suggested also.

- C. Investigation of the impact of alternative mortgage instruments on the market. Several studies have been made which suggest benefits from altering the standard mortgage contract.⁷ The micro-economic model present here could supply valuable information on how various modifications in the contract could alter supply and demand for mortgage credit.
 - D. Determination of the impact of macroeconomic policy on the mortgage market. Questions about the impact of monetary and fiscal policy on the mortgage market continue to be topics of serious debate. This model could serve as a valuable link between macro model simulations of policy changes and the impact they have on the mortgage and housing markets.
 - E. Investigation of other topics such as the growing role of the secondary mortgage market, the GNMA futures market, and other market innovations could be incorporated into the model.
- V. Preliminary Reduced Form Estimations

The statistical model has a limited focus which needs explicit recognition. First, it appraises only accepted primary residence mortgage applications. Second, it does not statistically address the question of geographic discrimination, but it does use a framework which could include neighborhood

characteristics. Third, the data used are of questionable accuracy and no definitive conclusions should be made from the statistical results.

Definitions of variables used in the estimation appear below. The data were generated in a 1976-1977 pilot survey conducted by the FDIC and the Office of the Comptroller of the Currency designed to aid in developing a system for monitoring the mortgage lending practices of banks. The data required substantial editing and in the process many observations of questionable quality were deleted. As a result the data no longer have their random sample characteristics. In addition, the sample is biased because the application forms were completed and returned on a voluntary basis. This feature makes the sample poor for analyzing discrimination since banks volunteering this information would most likely be very careful with their loan evaluations. Yet, the analysis of these data provide interesting results and demonstrate the advantages of a simultaneous equations system.

VARIABLE LIST

AAD	age of property
AGE	age of applicant
AINS	insurance status: 0 = noninsured 1 = privately insured 2 = FHA or VA
ALOF	loan origination fee
AMAS	marital status: 0 = married 1 = otherwise
AOLR	amount of loan/1000
APR	annual rate of interest in basis points
COAP	coapplicant code: 0 = no coapplicant 1 = coapplicant
DEP	depositor at bank: 0 = no 1 = yes
DDP	downpayment amount
DRAT	(downpayment/price of property) X 100
DTM	monthly debt payment
PPD	price of property = AOL + DDP
RNO	race/national origin: 0 = white 1 = all other
SEM	self employed: 0 = no 1 = yes

SEX	sex of applicant: 0 = male 1 = female
TMY	total monthly income
TOAR	total assets/1000
YPJ	years on present job
TYM	years to maturity of loan

Since some questions exist as to the ability of the data to identify supply and demand equations these initial estimates are for a reduced form system. This system contains three equations with amount of loan (AOLR), downpayment to price of property (DRAT), and years to maturity (YTM) as dependent variables.⁸ Four sets of equations are specified: (1) a set for all loans in the sample, (2) a set with noninsured loans, (3) one with privately insured loans, and (4) one with VA and FHA loans.

The a priori signs and magnitudes of the relationships between the dependent and independent variables are not altogether clear in every case since the specified relationships account for both supply and demand responses. A summary of expected interactions appears in the table below. Blanks in the table indicate that the impact of these interactions cannot be determined a priori. A positive or negative indicates that both supply and demand factors are reinforcing in the same direction.

The table does not indicate differences due to insurance status but the statistical results indicate that it is a major factor in determining the terms of the loans granted. These differences in terms probably result from lenders perception of how various insurance plans affects the expected value of the loan, the characteristics of borrowers seeking loans with various insurance plans, and the administrative rules associated with various forms of insurance. But it would be difficult to predict the extent of these differences.

EXPECTED A PRIORI RELATIONSHIPS

	<u>AOLR</u>	<u>DRAT</u>	<u>YTM</u>
AINS	+	-	+
SEM			
YPJ			
DEP	+	-	+
COAP	+	-	+
TMY	+		
TOAR	+	+	
AAD	-		
DTM			
ALOF	+	-	+
RNO			
AMAS			
AGE			
SEX			
AOLR		+	+
DRAT	+		+
YTM	+	+	
APR	+	-	-

Loan amount (AOLR) and years to maturity (YTM) should increase and the downpayment ratio (DRAT) should decrease as insurance status changes from non-insured to VA and FHA status. Both borrowers and lenders should project the risk of the loan to be less with more insurance. The same directions of influence should hold between DEP and loan term AOLR, DRAT, YTM. A depositor at the institution granting him a loan should expect better terms, and the lender should offer better terms than to a nondepositor since the credit history of the depositor should be easier to check. COAP should generate similar responses in loan terms. Loan organization fee (ALOF) should also cause AOLR and YTM to increase and the DRAT to decline, implying borrowers are willing to pay and lenders are willing to accept more AOLF in exchange for a larger AOLR, longer YTM and a smaller DRAT. As total monthly income (TMY) increases AOLR should increase but the net impact on DRAT and YTM is uncertain. Total assets should cause AOLR and DRAT to increase, but the impact on YTM is

again uncertain. Age of property could have a negative influence on AOLR, since older property should sell for less than new, but the impact of AAD on DRAT and YTM is unclear in this model.

The jointly determined variables should interact in predictable patterns. AOLR should respond positively to DRAT, YTM, and APR. Lenders could require a higher APR for a higher AOLR, but for borrowers the tradeoff is uncertain since a higher APR and AOLR increase the financial burden on the borrowers so the positive influence might not be too strong here. DRAT is expected to respond positively to AOLR and YTM but negatively to APR. YTM should increase with AOLR and DRAT and respond negatively to APR.

Estimates from the three-state least-squares regressions appear below. The results indicate some interesting tentative implications for monitoring mortgage lending activity. The most striking features of these results are the differences between insurance categories and the substantial variation in significance levels for individual coefficients between different sets of regressions. These differences imply that insurance options have created submarkets for mortgage credit and these submarkets should therefore be analyzed separately. Yet, some results of interest do appear in the regressions using the entire sample.

The coefficients for DEP are significant in all regressions using the entire sample (and for privately insured loans at the 10% level), but in each the sign of the coefficient is opposite from what was initially expected. Apparently, depositors at lending institutions receive smaller loans, make relatively higher downpayments, and have fewer years to repay. This phenomenon appears to be concentrated in the privately insured category but depositors also pay higher DRATs when accepting an uninsured loan. An explanation might be that

APPLICATION ACTIVITY MODEL
THREE-STAGE LEAST-SQUARES STATISTICAL RESULTS

	ALL APPLICATIONS			NONINSURED			PRIVATELY INSURED			VA AND FHA		
	AOLR	DRAT	YTM	AOLR	DRAT	YTM	AOLR	DRAT	YTM	AOLR	DRAT	YTM
AIRS	39.36 (1.62)*	-15.16 (13.77)*	15.53 (1.36)									
SEN	1.46 (0.42)	-0.46 (0.43)	0.41 (0.28)	2.11 (0.73)	-2.66 (1.92)*	0.58 (0.48)	0.37 (0.02)	-0.09 (0.02)	0.09 (0.02)	-20.03 (2.55)*	-13.70 (2.92)*	-5.20 (2.42)*
VPJ	-0.05 (1.53)	0.19 (4.21)*	-0.18 (1.20)	-0.14 (0.59)	0.24 (4.14)*	-0.07 (0.83)	0.008 (0.01)	-0.002 (0.01)	0.002 (0.01)	-0.24 (1.27)	-0.16 (1.15)	-0.06 (1.40)
DEP	-9.56 (1.99)*	3.67 (5.85)*	-3.67 (1.66)*	-0.24 (0.10)	2.35 (2.50)*	-1.05 (1.29)	-15.91 (1.88)*	3.75 (1.91)*	-3.95 (1.91)*	2.07 (1.23)	1.38 (1.02)	0.52 (1.03)
COAP	3.63 (1.13)	-1.38 (1.49)	1.38 (1.03)	-0.38 (0.19)	-1.29 (0.96)	0.73 (0.82)	23.36 (1.75)*	-5.50 (1.77)*	5.80 (1.77)*	-0.07 (0.02)	-0.10 (0.04)	-0.03 (0.03)
TNY	0.002 (5.29)*	-0.0007 (3.39)*	0.0005 (1.66)*	-0.002 (7.82)*	-0.0003 (0.54)	-0.0005 (2.16)*	-0.002 (0.78)	0.0004 (0.78)	-0.0005 (0.78)	0.001 (1.56)	0.001 (1.55)	0.0004 (1.50)
TDAR	0.02 (1.67)*	-0.007 (1.97)*	0.004 (0.53)	0.03 (3.99)*	0.004 (0.46)	-0.01 (2.41)*	-0.03 (0.61)	0.007 (0.62)	-0.007 (0.61)	0.23 (2.76)*	0.16 (6.23)*	-0.06 (1.91)*
AAD	-0.06 (1.01)	0.03 (1.71)*	-0.03 (1.08)	0.09 (0.84)	-0.02 (0.59)	-0.004 (0.27)	-0.16 (1.03)	0.04 (1.03)	-0.04 (1.03)	-0.24 (3.55)*	-0.16 (3.98)*	-0.06 (2.48)*
DEM	-0.003 (1.69)*	0.001 (1.55)	-0.0007 (1.18)	-0.0002 (0.09)	-0.001 (0.48)	0.0004 (0.41)	-0.01 (1.33)	0.002 (1.34)	-0.002 (1.34)	-0.01 (1.16)	-0.008 (1.44)	-0.003 (0.89)
ALOF	0.05 (4.37)*	-0.02 (7.46)*	0.02 (2.72)*	0.02 (1.86)*	-0.01 (1.68)*	-0.0003 (0.09)	0.09 (5.96)*	-0.02 (6.20)*	0.02 (6.38)*	0.03 (3.13)*	0.02 (1.87)*	0.008 (2.01)*
RNO	1.98 (0.45)	-0.56 (0.50)	0.42 (0.22)	3.06 (1.25)	0.212 (0.11)	-1.11 (1.00)	-0.73 (0.06)	0.17 (0.06)	-0.18 (0.06)	-7.36 (2.76)*	-5.01 (2.17)*	-1.84 (1.86)
AMAS	0.30 (0.07)	-0.15 (0.14)	0.38 (0.19)	-2.07 (0.70)	-2.02 (1.12)	1.61 (1.22)	28.35 (1.75)*	-4.68 (1.79)*	7.05 (1.78)*	-3.35 (0.92)	-2.32 (0.91)	-0.91 (1.00)
AGE	-1.04 (1.70)*	0.40 (12.15)*	-0.40 (1.38)	-0.05 (0.16)	0.34 (6.22)*	-0.14 (1.36)	-1.38 (2.78)*	0.33 (2.88)*	-0.34 (2.88)*	0.24 (1.77)*	0.16 (2.15)*	0.06 (1.41)
SEX	-6.65 (1.34)	2.34 (2.17)*	-2.11 (0.93)	-2.36 (0.65)	3.40 (2.08)*	-0.85 (0.58)	-5.91 (0.43)	1.39 (0.43)	-1.47 (0.43)	3.74 (0.88)	2.58 (0.81)	1.03 (1.14)
ALOR		0.33 (4.94)*	-0.23 (1.86)*		0.05 (0.26)	0.03 (2.97)*		0.24 (9.35)*	-0.25 (12.26)*		-0.67 (2.83)*	-0.25 (2.41)*
DRAT	2.68 (1.45)		0.99 (1.12)	0.48 (0.50)		0.32 (0.96)	4.24 (0.92)		1.06 (24.26)*	-1.45 (2.24)*		-0.37 (1.66)*
YTM	-1.72 (2.11)*	0.82 (3.91)*		2.41 (2.97)*	0.45 (0.75)		-4.02 (11.77)*	0.95 (24.80)*		-3.71 (1.94)*	-2.54 (1.64)*	
APR	0.66 (1.84)	-0.26 (4.53)*	0.26 (1.59)	-0.17 (0.55)	-0.31 (2.53)*	0.20 (2.09)*	-1.49 (1.88)*	0.35 (3.93)*	-0.37 (3.92)*	-0.10 (0.83)	-0.07 (0.73)	-0.03 (1.14)
Intercept	-360.72 (1.64)*	213.40 (4.45)*	-213.89 (1.35)	102.85 (0.38)	278.55 (2.80)*	-166.23 (1.89)*	1395.80 (2.03)*	-328.82 (2.07)*	346.92 (2.07)	217.53 (1.51)	148.58 (1.27)	58.92 (3.01)*

t-values in parentheses
* = significant at 10%
‡ = significant at 5%

people in this category do not spend resources searching for the best loan terms but instead rely on their bank to provide equitable terms. The banks, on the other hand, might know these people generally do not shop around for better terms so they can exercise some monopoly power and charge more for the mortgage.

Also, in these equations using all applicants, SEM, COAP, RNO and DRAT (DRAT only for the AOLR and YTM equations) are not significant. YPJ and AAD appear to only influence DRAT. There is no apparent reason why YPJ should have a positive impact on DRAT, but it would appear that the positive impact of AAD on DRAT reflects lenders' desire to have borrowers provide more equity for older structures. TMY and TOAR have predictable influences; both tend to increase AOLR and decrease DRAT, while TMY is inversely related to YTM (higher TMY can support higher monthly payments and thus decrease YTM). The strong relation between ALOF and the dependent variables indicates that these fees cause adjustments in AOLR, DRAT and YTM. It appears that ALOF changes so that the terms of the loan adjust to maintain a fairly constant equity/risk character to the transaction. YTM as an explanatory term has a meaningful impact on DRAT which increases as YTM increases, but why YTM and AOLR are inversely related is not clear. APR variations cause expected responses for AOLR and DRAT.

The remaining discussion will be facilitated by comparing results from the separately estimated sets of equations for different insurance categories. Major differences should exist between VA or FHA and other mortgages due to restrictions on terms of the loan and guarantees associated with them. But what is surprising is that there are also many distinct differences between noninsured and privately insured mortgages.

As expected, APR is insignificant in the VA/FHA equations since the APR limits for these loans are set below free market rates. But APR does play a role in altering terms for the noninsured and privately insured submarkets. For each basis point change in APR, YTM decreases by about 4 months for privately insured loans and increases by about 2 months for noninsured loans. Yet a unit increase in APR causes DRAT to decline for noninsured loans and causes an almost equal increase in DRAT for privately insured loans. Thus, there appears to be some complex tradeoffs involving changes in APR. Surprisingly, AOLR does not appear to be strongly influenced by APR.

YTM interacts with AOLR and DRAT to produce expected results in only a few cases. Increases in YTM cause increases in AOLR for noninsured loans and decreases in AOLR for privately insured and VA/FHA loans. The reason for the differences is not clear since YTM does not seem to affect DRAT for noninsured loans (implying no tradeoff in terms) but increases in YTM cause DRAT to increase for privately insured loans (as would be expected) and decrease for VA/FHA loans.

DRAT, as an explanatory variable, has different impacts in each of these three submarkets. For noninsured loans it has no impact on AOLR or YTM, for privately insured loans it has a highly significant, a priori correct influence on AOLR and YTM, and for VA/FHA loans it has significant impacts of opposite sign. The unexpected results in the VA/FHA category could once again reflect the administered terms of these contracts (e.g. no downpayment required for VA loans). The significance of ALOF in the VA/FHA equations indicates that this is where the terms are adjustable.

With AOLR as an explanatory variable we again have widely different results. For noninsured loans AOLR only affects YTM but does so in the expected direction. AOLR has an inverse impact on YTM in the privately

insured and VA/FHA categories. Increases in AOLR cause increases in DRAT for privately insured loans (the expected response) and decreases in DRAT for VA/FHA loans. These interactions should again be discounted for the VA/FHA category.

Focusing now on the personal financial characteristics more variations appear. Self employed borrowers pay higher downpayments relative to value than others in the noninsured submarket, but SEM does not influence interactions in the privately insured market. If the applicant is self employed and receives a VA or FHA loan, AOLR and YTM are likely to be less, but DRAT should also be less. DTM appears insignificant everywhere, and YPJ only influences DRAT in the uninsured category.

The impacts of DEP and COAP significantly influence loan terms in the privately insured category. For DEP the coefficients are of the same sign as those in the entire sample estimates. The influence of COAP appears significant only in privately insured submarket and it indicates that having a coapplicant significantly improves the terms of the loan for the borrower.

TMY and TOAR have the same direction of influence for AOLR and YTM in the noninsured loan category. But a very striking result is that neither TMY nor TOAR appear significant for the privately insured category. In the VA/FHA estimates TMY appears insignificant and TOAR significantly affects all three loan terms in the direction indicating the predominance of demand factors.

Two other variables also influence the loan granting process. Age of property, AAD, and loan origination fees, ALOF, are influential for VA/FHA loans. It is of interest that AAD is significant for VA/FHA loans, but not for other types. YTM, DRAT and AOLR are all inversely related to AAD. If AAD were a variable used to systematically discriminate against older buildings

(or redlining older urban areas) we would expect increases in AAD to decrease AOLR and YTM while increasing DRAT. Thus, the results are unclear. This same type of argument could apply to ALOF, i.e. ALOF could adjust to compensate for lenders' risk evaluations. The same ambiguous results for ALOF apply for FHA/VA loans. But for the other two insurance categories ALOF enters significantly (except for YTM in the noninsured category) and with the signs which indicate this is a lender determined interaction and is used to adjust for risk associated with larger, longer loans with relatively lower downpayments.

The remaining variables (RNO, AMAS, AGE, and SEX) are the explicitly illegal characteristics of applicants which should not influence lenders' decisions. If we assume that these characteristics do not influence demand for loan terms (i.e. these terms are determined by TMY, TOAR, etc. for the borrower) but influence the supply response, the evidence here suggests some possible areas to monitor carefully. AGE has a significant influence on all loan terms for privately insured loans; as age increases AOLR and YTM decrease and DRAT increases, all of which increase the cost of mortgage.⁹ The AGE coefficient is significant and positive for DRAT in the other insurance categories also. Females, if trying to acquire a non-insured mortgage, face paying a higher DRAT, and it is of interest that this is the only term where sex is significant. RNO influences only VA/FHA loans. Nonwhite applicants apparently acquire smaller loans but have lower DRATs.¹⁰ AMAS appears significant, but only at the 10% level, for all loan terms in the privately insured equations and is not significant for the other loan types.

With caution, we can now make a few broad generalizations from these regressions about the mortgage loan application process; (1) Different insurance categories for mortgages segment this market; (2) The terms of noninsured loans are influenced by a small subset of all variables considered in these regressions; (3) Privately insured mortgages appear to be most sensitive to economic and noneconomic factors which could influence risks of default; and (4) For FHA/VA loans it appears, as a result of the relatively large amount of unexpected results, that terms of these loans are strictly administered by the Veterans Administration and the Federal Housing Administration, or that they are influenced by other factors not included here.

VI. Summary

This paper has outlined an approach to detect discrimination in mortgage lending which provides more detailed information than other approaches. It also has the advantages of being adaptable for analysis of many other issues of concern in the mortgage market, and it is designed for implementation with forthcoming data sources.

The statistical estimation of the model using test data provides promising results. More accurate and complete data should enable the model to work as an effective policy instrument.

FOOTNOTES

¹The very difficult problem of how to define a neighborhood in terms of all potential characteristics is not addressed here. For practical purposes neighborhoods will probably be defined in terms of census tracts. All we can hope for is that adequate information is gathered so that after some time has elapsed we can meaningfully delineate which factors do and which factors do not accurately determine neighborhood risk.

²For this procedure to work when analyzing a particular institution, it will be necessary for examiners to collect a large number of applications for each neighborhood that has potential for being redlined.

³The Fair Housing Act recordkeeping requirements will substantially increase the amount of neighborhood information financial institutions collect. The Fair Housing Act Regulations of the FDIC require census tract information on each application.

⁴As with most empirical model omitted variables could cause a problem. If lenders evaluate geographic risk of loans by using some variable which is not included in a regression and that omitted variables is highly correlated with an included variable, the included variable could be identified as significant in the loan decision.

⁵An alternative approach which would attack the problem from a different point of view is to treat discrimination as a latent, unobserved variable. Estimation of discrimination using multiple indicators and multiple causes (MIMIC) could then be done. For example, see Karl G. Joreskog and Arthur S. Goldberger, "Estimation of a Model with Multiple Indicators and Multiple Causes of a Single Latent Variable," Journal of the American Statistical Association (September 1975), pp. 631-639.

⁶See FDIC Bank Letter 25-78 Fair Housing Regulations (Part 338) and Enforcement Program, April 5, 1978.

⁷For example see: Federal Home Loan Bank Board, Alternative Mortgage Instruments Research Study, Volume I-III, Washington, D.C. (November, 1977), and Modigliani and Lessard eds., New Mortgage Design for Stable Housing in an Inflationary Environment, Proceedings of a Conference Held at Cambridge, Massachusetts, January, 1975, Sponsored by The Federal Reserve Bank of Boston, HUD and the Federal Home Loan Bank Board.

⁸Some previous estimates using APR as a dependent variable indicated the APR was not significantly responsive to the exogenous variables.

⁹This result should be reviewed with extra caution since there is a good chance loan terms are nonlinearly related to AGE reflecting the life cycle of households.

¹⁰In [2, May 1978] an attempt is made to detect individual discrimination with a Probit model. But these results are suspect due to incorrect model specification and inadequate data.

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EXHIBIT 2

Date of Examination _____

Number _____

FAIR HOUSING

The following questions focus on various Fair Housing lending requirements and practices. Where a question deals generally with possible discriminatory conduct, it includes within its scope conduct having the effect of discriminating on a prohibited basis as well as any deliberately discriminatory conduct. Where a possible violation of law or regulation or a deficiency is indicated, full details are provided.

ITEM	YES	NO
1. (a) Is there any evidence the bank has engaged in any discriminatory practice in prescreening applicants for mortgage or home improvement loans?		
(b) Is there any evidence the bank has engaged in any discriminatory practice in developing credit information on applicants for mortgage or home improvement loans?		
(c) Is there any evidence the bank has engaged in any discriminatory appraisal practice?		
(d) Is there any evidence the bank has employed any discriminatory underwriting standard in deciding applications for mortgage or home improvement loans?		
(e) Is there any evidence the bank has engaged in any discriminatory practice in servicing and collecting existing mortgage or home improvement loans?		
(f) Is there any evidence the bank has otherwise discriminated against any applicant or borrower in connection with an application for or an existing mortgage or home improvement loan?		
2. In reviewing a sample of accepted and rejected mortgage and home improvement loan applications received since the date of the last compliance examination, is there any evidence that any applicant was accorded disparate treatment on a prohibited basis or that a prohibited basis influenced or affected a credit decision in any way?		
3. Is there any evidence the bank has engaged in "redlining," that is, arbitrarily refused to extend mortgage or home improvement credit in a given area regardless of the merits of an individual loan application?		
4. Has the bank been requesting and maintaining the information required under the FDIC's Fair Housing regulations? (Section 338.4)		
5. Has the bank been displaying the Fair Housing Lender Poster in all public areas where deposits are received or home loans are made? (Section 338.3)		
6. (a) Has the bank in all its advertisements for home loans prominently indicated, in a manner appropriate to the medium and format utilized, that it makes such loans without regard to race, color, religion, sex or national origin? (Section 338.2(a))		
(b) Have any of the bank's advertisements contained any words, symbols, models or other forms of communication which expressed, implied or suggested a discriminatory preference or policy of exclusion in violation of the Fair Housing law or the Equal Credit Opportunity Act? (Section 338.2(b))		
7. Has the bank taken the necessary internal steps to ensure compliance with Fair Housing lending requirements and prescriptions, e.g., by issuing appropriate instructions, training personnel and establishing procedures to facilitate compliance?		

COMMENTS:

Date of Examination _____

Number _____

EQUAL CREDIT OPPORTUNITY

The following questions focus on the various requirements and proscriptions of Regulation B. Where a violation is indicated, details are provided on a separate Violations page.

ITEM	YES	NO
1. Has the bank or any of its officers or employees made any oral or written statement, in advertising or otherwise, to any applicant or prospective applicant that would, on a prohibited basis, discourage a reasonable person from making or pursuing an application? (Section 202.5(a))		
2. Has the bank requested information concerning the spouse or former spouse of an applicant in any circumstances other than those specific circumstances in which such requests are permitted? (Section 202.5(c))		
3. (a) Except as required under section 338.4 of the FDIC's Fair Housing regulations or the previously applicable provisions of section 202.13 (or as otherwise permitted under section 202.7(e) in connection with an application for insurance), has the bank requested the marital status of any applicant for an individual, unsecured, nonbusiness account where the applicant neither resided in nor relied for repayment of the account on property located in a community property State? (Section 202.5(d)(1))		
(b) Where an inquiry into marital status is permitted, has the bank used only the terms "married," "unmarried," and "separated"? (Section 202.5(d)(1))		
(c) Has the bank inquired whether any income stated in an application was derived from alimony, child support, or separate maintenance payments without disclosing to the applicant that such income need not be revealed if the applicant did not wish to have it considered in determining the applicant's creditworthiness? (Section 202.5(d)(2))		
(d) Except as required under section 338.4 of the FDIC's Fair Housing regulations or the previously applicable provisions of section 202.13 (or as otherwise permitted under section 202.7(e) in connection with an application for insurance), has the bank requested the sex of an applicant? (Section 202.5(d)(3))		
(e) Are all terms in every application form used by the bank neutral as to sex except for a request to designate a courtesy title such as Ms., Miss, Mr. or Mrs.? (Section 202.5(d)(3))		
(f) Where an application form requests the designation of a courtesy title, does it appropriately disclose that the designation of such title is optional? (Section 202.5(d)(3))		
(g) Has the bank requested information about birth control practices, intentions concerning the bearing or rearing of children, or capability to bear children? (Section 202.5(d)(4))		
(h) Except as required under section 338.4 of the FDIC's Fair Housing regulations or the previously applicable provisions of section 202.13, has the bank requested the race, color, religion or national origin of an applicant or any other person in connection with a credit transaction? (Section 202.5(d)(5))		
4. (a) Except as otherwise specifically permitted under Regulation B, has the bank taken a prohibited basis into account in evaluating the creditworthiness of an applicant? (Section 202.6(b)(1))		
(b) Except as permitted under subsection 202.6(b), has the bank taken into account an applicant's age (provided the applicant had the capacity to enter into a binding contract) or whether an applicant's income was derived from any public assistance program? (Section 202.6(b)(2)(i))		
(c) In evaluating the creditworthiness of an applicant, has the bank used assumptions or aggregate statistics relating to the likelihood that any group of persons will bear or rear children or, for that reason, will receive diminished or interrupted income in the future? (Section 202.6(b)(3))		
(d) Has the bank taken into account the existence of a telephone listing in the name of an applicant for consumer credit? (Section 202.6(b)(4))		
(e) Has the bank discounted or excluded from consideration any income of an applicant or the spouse of an applicant because of a prohibited basis or because the income was derived from part-time employment, or from an annuity, pension, or other retirement benefit? (Section 202.6(b)(5))		
(f) Where an applicant relied on alimony, child support, or separate maintenance payments in applying for credit, did the bank consider such payments as income to the extent they were likely to be consistently made? (Section 202.6(b)(5))		
(g) To the extent the bank has considered credit history when evaluating applicants for a similar type and amount of credit, has it considered:		
(i) when available, the credit history of any account designated as one which an applicant and the applicant's spouse were permitted to use or for which both were contractually liable;		
(ii) at the request of an applicant, any information the applicant presented tending to indicate that the credit history being considered by the bank did not accurately reflect the applicant's creditworthiness; and		
(iii) at the request of an applicant, the credit history, when available, of any account reported in the name of the applicant's spouse or former spouse which the applicant could demonstrate accurately reflected the applicant's creditworthiness? (Section 202.6(b)(6))		
5. Has the bank refused to grant an individual account to a creditworthy applicant on the basis of sex, marital status, or any other prohibited basis? (Section 202.7(a))		
6. Has the bank prevented any applicant from opening or maintaining an account in a birth-given first name and surname, a spouse's surname, or a combined surname? (Section 202.7(b))		
7. In the absence of evidence of inability or unwillingness to repay, has the bank terminated or changed the terms of an existing open end account or required a reapplication on the basis of an applicant who was contractually liable on the account reaching a certain age or retiring or because of a change in the applicant's name or marital status? (Section 202.7(c)(1))		
8. (a) Except as otherwise specifically permitted under section 202.7(d), has the bank required the signature of an applicant's spouse or any other person (other than a joint applicant) on any credit instrument (note, security agreement, etc.) where the applicant qualified under the bank's standards of creditworthiness for the amount and terms of the credit requested? (Section 202.7(d)(1))		
(b) Where, under the bank's standards of creditworthiness, the personal liability of an additional party was necessary to support an extension of credit requested by an applicant, did the bank ever require that the additional party be the applicant's spouse? (Section 202.7(d)(5))		
9. Has the bank refused to extend credit or terminated an account because credit life, health, accident or disability insurance was not available because of an applicant's age? (Section 202.7(e))		

Date of Examination _____

Number _____

EQUAL CREDIT OPPORTUNITY
(Continued)


ITEM	YES	NO
10. (a) Has the bank notified applicants of action taken on their applications or existing accounts within the time limits prescribed? (Section 202.9(a)(1))		
(b) Whenever adverse action was taken, did the bank provide the applicants with a written statement of:		
(i) the action taken;		
(ii) the provisions of section 701(a) of the Equal Credit Opportunity Act (the ECOA notice prescribed in section 202.9(b)(1));		
(iii) the name and address (preferably Regional Office) of the FDIC as the agency that administers compliance with respect to the bank; and		
(iv) a statement of the specific reasons principally responsible for the adverse action or disclosure of the applicant's right to request such a statement of reasons within 60 days. (In the latter case, the notification should have included the name, address and telephone number of the person or office from which the statement of reasons could be obtained and, if the bank expected to provide the statement orally, disclosure of the applicant's right to have any such oral statement confirmed in writing within 30 days after receipt of a written request from the applicant to do so.) (Section 202.9(a)(2))		
11. (a) If the bank furnishes credit information, has it determined, for every account established on or after June 1, 1977, whether the account is one that the applicant's spouse is permitted to use or upon which both spouses are contractually liable and, if so, designated every such account to reflect the fact of participation of both spouses? (Section 202.10(a)(1))		
(b) Whenever the bank has furnished credit information to a consumer reporting agency on accounts designated to reflect the fact of participation by both spouses, has it done so in a manner that would enable the agency to provide access to the information in the name of each spouse? (Section 202.10(a)(2))		
(c) Whenever the bank has received an inquiry concerning a particular applicant and furnished credit information concerning an account designated to reflect the fact of participation by both spouses, did it furnish the information in the name of the spouse about whom the information was requested? (Section 202.10(a)(3))		
12. If the bank furnishes credit information, has it, for every account established prior to and in existence on June 1, 1977, either determined that the account was one an applicant's spouse (if any) was permitted to use or upon which both spouses were contractually liable and, if so, designated the account to reflect the fact of participation by both spouses or mailed or delivered to all applicants (or to all married applicants) in whose name any such account was carried a copy of the prescribed notice regarding credit history for married persons? (Section 202.10(b))		
13. Whenever the bank has received a properly completed request to change the manner in which information is reported concerning an account established prior to and in existence on June 1, 1977, has it, within 90 days of receipt of the request, designated the account to reflect the fact of participation by both spouses? (Section 202.10(c))		
14. If any married applicants voluntarily applied for and obtained individual accounts, did the bank aggregate their accounts for purposes of determining permissible finance charges or permissible loan ceilings under Federal or State law? (Section 202.11(c))		
15. (a) In connection with applications for nonbusiness accounts, has the bank retained the original or a copy of the various specified records for 25 months after notifying the applicants of the action taken on their applications? (Sections 202.3(e)(4) and 202.12(b)(1))		
(b) In connection with applications for business accounts on which adverse action was taken, has the bank retained the original or a copy of the various specified records for 25 months after the date it notified the applicants of the adverse action if the applicants so requested in writing within 90 days of that date? (Sections 202.3(e)(4) and 202.12(b)(1))		
(c) In connection with adverse action taken on existing nonbusiness accounts, has the bank retained the original or a copy of the various specified records for 25 months after notifying the applicants of the adverse action? (Sections 202.3(e)(4) and 202.12(b)(2))		
16. Has the bank violated any other specific requirement or proscription of Regulation B not otherwise covered by any of the foregoing questions? If so, cite the provision violated and describe the act or omission constituting the violation.		
17. Is there any evidence that the bank has discriminated against an applicant on a prohibited basis in connection with any aspect of a credit transaction? If so, provide full details. (Section 202.4)		

COMMENTS:

EXHIBIT 3

EK-5-77 (8-29-77)

MEMORANDUM TO: Examiners and Assistant Examiners

FROM: John J. Early, Director 
Division of Bank Supervision

SUBJECT: Fair Housing Compliance Report
Form 6500/68 (7-77)

Through federal statutes and Presidential orders and proclamations, fair housing and equal opportunity in residential home financing are established policies of the United States. The FDIC enforces the provisions of Title VIII of the Civil Rights Act of 1968 (Public Law 90-284, the "Fair Housing Act"), for insured state nonmember banks. Specifically, Section 805 (42 U.S.C. 3605) prohibits banks from denying a loan or other financial assistance (e.g., deferment or forbearance) for the purchase, construction, improvement, repair or maintenance of a dwelling (including a mobile home), or from discriminating in the fixing of the amount, rate, duration, or other terms or conditions of such a loan, because of the race, color, religion, sex, or national origin of the:

1. Applicant;
2. Person associated with an applicant in connection with the loan or assistance, or the purposes thereof (i.e., actively assisting in obtaining credit as principal or agent, or seeking to influence the granting of credit, such as broker, builder, developer, surety or guarantor); or
3. Present or prospective owners, lessees, tenants, or occupants of the property, or other property in its vicinity, in relation to which the loan or assistance is to be made or given.

Amendments to the Equal Credit Opportunity Act, effective March 23, 1977, and the regulations implementing that Act issued by the Federal Reserve Board (Regulation B) prohibit discrimination in any aspect of a credit transaction, including housing-related loans, on the basis of race, color, religion, national origin, age (provided the applicant has the capacity to contract), receipt of public assistance, or the good faith exercise of rights under the Consumer Credit Protection Act. These prohibited bases are in addition to sex or marital status discrimination prohibited in the original Act, which became effective October 28, 1975. Accordingly, the fair housing examination will assess a bank's compliance with both statutes as they relate to the financing of housing.

The fair housing compliance examination has two primary objectives:

1. To review and analyze the bank's loan policies and practices with respect to credit standards and appraisal policies for real estate mortgage (including construction loans) and home improvement loans.
2. To ascertain the nondiscriminatory intent and effect of those policies and procedures and the manner in which they are implemented through a review of accepted and rejected mortgage and home improvement loan applications and discussions with bank personnel.

The following four elements are generally present in most cases involving discrimination in home financing:

1. That the applicant is one whose rights are protected (e.g., female, minority group member, one seeking a loan to purchase a residence in a racially mixed or minority neighborhood, etc.);

2. That the applicant applied and was qualified for credit which the bank offered;
3. That, despite the applicant's qualifications, adverse action was taken by the bank on the application; and
4. That the bank accepted similarly qualified individuals.

If these four elements are found in one or more cases while reviewing accepted and rejected applications, complete details for each incident in the sample of files reviewed should be reported under the Comments section of the Compliance Report. In addition, the examiner should proceed in the examination to ascertain whether the bank is engaging in a pattern or practice of discrimination. Evidence to support a pattern or practice of discrimination may include the probability of additional incidences of discrimination in the loan portfolio, based on the results of the examiner's sampling, policy statements or admissions by bank officers or employees, or disproportionate statistics (based on the race, sex, etc. of applicants) for approval and rejection of home mortgage or home improvement loan applications.

The legislative history of the Equal Credit Opportunity Act indicates that Congress intended that a so-called "effects test" concept, as set forth in certain Supreme Court cases, should be applied to a creditor's determination of creditworthiness, and the Federal Reserve Board has made reference to that legislative history and concept in a footnote to Section 202.6 of Regulation B. It is far from clear, however, how and in what manner the effects test will be applied to the area of credit discrimination generally and discrimination in home financing in particular.

The examiner should, nevertheless, be aware of the implications of the discriminatory effects test while conducting the fair housing compliance examination. Under the effects test, the use of a lending criterion that results in the rejection of a disproportionate number of minority applicants may be illegal even though the criterion is objective and neutral on its face. Its legality will depend on whether the bank can establish that the criterion has a manifest relationship to creditworthiness and, if necessary, that an alternative criterion, which would have a lesser adverse impact on a protected group, would not serve equally well in predicting creditworthiness.

LOAN POLICIES

Before any fair housing lending analysis can begin, the examiner logically should have a good understanding of the bank's mortgage and home improvement loan policies. Gaining a familiarity with these loan policies might involve a review of written policy statements, memoranda to employees explaining fair lending policies, training manuals in use, maps used, and other written instructive material generated by bank personnel pertaining to such loans. The documentation should provide the examiner with an understanding of the standards used by bank personnel involved in the decision to grant or deny a mortgage or home improvement loan application.

In the event there is no or limited documentation describing the loan standards and guidelines used by the bank, the examiner should determine through discussions with senior management and other loan officials what policies (unwritten) are in fact employed. A brief comment should be made in the Comments section of the Compliance Report as to whether the bank has written or unwritten policies and guidelines and, if unwritten in whole or part, a brief summary of the policies and guidelines should be included in the examiner's workpapers. To the extent written statements of loan policies and guidelines are available, copies should be obtained and included in the workpapers. In general, loan guidelines and policies utilized by a bank in connection with home improvement or mortgage loans might include, but not be limited to, the following:

Economic Characteristics of Applicant(s)

1. Occupation (professional, skilled, etc.)
2. Years in present occupation

3. Years employed by present employer
4. Gross annual income
 - a. full-time employment
 - b. part-time employment
5. Gross outstanding debt (including and excluding mortgage on present residence)
6. Monthly debt payments (including and excluding mortgage on present residence)
7. Total assets
8. Relation to bank (present depositor, borrower, etc.)

Characteristics of Loan

1. Amount requested
2. Insurance/Guarantee status (VA, FHA, Conventional, other)
3. Appraised value of property
4. Purpose of loan (refinance, purchase of new home, purchase of existing home, construction of new home, home improvement, purchase of mobile home, etc.)
5. Source of downpayment
6. Existence and amount of prior liens

Characteristics of Property

1. Location and availability of public services (transportation, schools, etc.)
2. Age of dwelling
3. Type of construction
4. Selling price
5. Type of dwelling (single family-detached, single family-connected, multiple family, etc.)
6. Use of property (primary home, vacation home, rental unit, etc.)

The following information should also be obtained with respect to the bank's loan terms:

1. Maximum and minimum loan amounts and how these ranges are determined (e.g., by federal law, regulation, internal policy, or a combination).
2. Maximum and minimum loan maturities and how these are determined.
3. Maximum and minimum interest rates.
4. Which person or group in the bank officially sets the above limitations.
5. Circumstances that may justify a deviation from the above limitations.

If the bank does not have written loan policies, determine how employees, such as branch managers, know what information to give applicants about present bank policy and what standards to apply to applications. If this information is communicated orally in meetings, the examiner should determine whether minutes are kept and, if so, review those minutes.

In reviewing the bank's policies and procedures, the examiner should be alert for statements or instructions that are discriminatory on their face or have the effect of discriminating against an applicant on one of the prohibited bases. Considerable care and discretion should be exercised by the examiner when making a determination, as the line between a reasonable criterion or procedure and one which is unreasonable with a disproportionate adverse impact on a minority group is not always easy to define. Examples of loan policies that may have the effect of discrimination are as follows:

Discrimination on the Basis of Race

1. Policies that result in improperly low appraisals in relation to purchase prices, which force minority loan applicants to make larger downpayments.
2. Policies that impose more onerous interest rates or other terms, conditions, or requirements on minority loan applicants.
3. Differing standards, procedures, or practices in administering late charges, penalties, foreclosures, reinstatements, or other collection procedures applied to minority borrowers.
4. Policies improperly deflating property appraisals, or providing for different terms, conditions, or standards based on the racial or ethnic composition of the neighborhood where the securing property is located.

Discrimination on the Basis of Sex

1. Policies that implicitly or explicitly distinguish between the economic characteristics of men and women.
2. Policies that discount or disregard the income of a working wife or unmarried woman because she is of childbearing age.
3. Policies that subject a female applicant to a different or more extensive credit check than is usually required for a male applicant.
4. Policies that treat unmarried working mothers differently from unmarried working fathers.
5. Policies that require female, but not male, applicants to obtain a co-signer.

Ratios Utilized in Evaluating Applications

The examiner should determine if ratios used as lending criteria (e.g., payments-to-income, value of property-to-purchase price, or amount of loan-to-value and/or purchase price) may have a disproportionate adverse impact or other discriminatory effect on members of a protected group. The bank should be able to support the validity of any ratios used based on its business experience.

OTHER CREDIT EVALUATION POLICIES

"Credit evaluation" connotes the selection, or the rating, of the acceptability of risks to be solicited in the loan process. In regard to real estate mortgage loans, credit evaluation policies also include standards for appraisals, collection and foreclosure procedures, and broker relationships.

Appraisals

Each loan application should be considered on the basis of all relevant criteria, not simply the location of the securing property. The use of appraisal forms that call for racial information regarding the neighborhood clearly violates the legal prohibitions against consideration of racial factors or trends in real estate transactions.

For banks located in metropolitan areas, the examiner should pay particular attention to bank appraisal policies that may have the effect of racial discrimination by excluding mortgage or home improvement loans in entire neighborhoods inhabited solely or predominantly by minorities or which are racially transitional in character. These policies might include limits on the age, type or value of property eligible as collateral, crime or vandalism rate of the neighborhood, availability of mortgage insurance, or the economic level of residents in the neighborhood. (Evidence of such policies should be noted by the examiner since these practices may be evidence of possible illegal discrimination.)

Collection and Foreclosure Procedures

The bank's policy with respect to collection and foreclosure procedures should also be nondiscriminatory. Review of a representative sample of files should corroborate the bank's stated policy, including the following:

1. Circumstances constituting nonperformance by the borrower, which places the loan in a delinquent status or in default.
2. Initial steps taken.
3. Follow-up steps taken.
4. Circumstances leading to foreclosure.
5. Circumstances leading to forbearance.
6. Conditions for reinstatement.

Broker Relationships

Applications for mortgage loans are referred to banks in many cases by real estate brokers. The examiner should attempt to identify those brokers who deal with the bank and seek to determine the general referral procedure and the nature of any "understandings" concerning standards or preferences expressed by bank management. This is particularly important in those banks dealing only with white brokers, although minority brokers serve the community also. Any written material prepared for the use and information of brokers who refer applicants to the bank should be reviewed.

PRE-SCREENING

Procedures for pre-screening of potential loan applicants should also be reviewed for evidence of discriminatory practices. Through interviews with loan officers, and those who come into contact with applicants prior to the submission of a written application, as well as personnel designated to answer telephone calls or make routine contact with potential applicants, the examiner should seek to determine whether there is any prequalification or pre-screening done by telephone or in any other manner. Some of the areas of inquiry could include the usual responses of bank personnel to such questions as the availability of conventional, FHA, or VA mortgages, current interest rates charged and downpayments normally required.

MORTGAGE LOAN APPLICATIONS

Effective March 23, 1977, applicants for loans to purchase residential real property (as defined in Regulation B) must be asked to identify voluntarily the following personal characteristics either on their loan application or on a separate form that refers to the application: race/national origin, sex, marital status and age. Hopefully, most applicants will provide this information. This will enable the examiner to select for review a sample of applications representative of the applicant population. Statistical sampling procedures are being developed to assist the examiner in this regard. Until receipt of these procedures and other relevant instructions, the examiner should attempt to review a random sample of accepted and rejected mortgage loan applications for compliance with the bank's nondiscriminatory loan policies. If any evidence of

disparate treatment is noted, the reasons for such treatment should be explored to determine if the action taken by the bank on the application was based on legitimate economic considerations or if the race or sex of the applicant played any part in the credit decision.

EMPLOYEE TRAINING

Another important area for review is employee training in fair lending practices. The examiner should inquire into the manner in which employees involved in the extension of housing credit are educated with respect to fair lending requirements. A brief comment on the nature and extent of any such training should be included in the Comments section of the Compliance Report.

GENERAL BACKGROUND INFORMATION

Past or Pending Fair Housing Complaints

Prior to or at the outset of the fair housing compliance examination, the examiner should review any past or pending fair housing complaints received by the FDIC since the date of the last examination. The examiner should also ascertain whether the bank has been the subject of any fair housing complaint not reported to the FDIC. The examiner should include in the Comments section of the Compliance Report the pertinent details of any such complaint, the governmental agency or authority that handled it and the manner in which it was resolved.

Equal Credit Opportunity Act

In conducting the fair housing compliance examination, the examiner should also review those provisions of Regulation B applicable to home mortgage and home improvement financing. Apparent violations of the Civil Rights Act of 1968 discovered during the course of an examination will more than likely also involve a violation of Regulation B. All apparent fair housing violations should be detailed on a Violations page accompanying the Fair Housing Compliance Report. Notation of any apparent violations of Regulation B that relate to fair housing should be cross-referenced in the Comments section of the Equal Credit Opportunity Compliance Report, rather than duplicated on a Violations page accompanying that report.

MEMORANDUM TO: Examiners and Assistant Examiners

SUBJECT: Form 6500/65 (4-76), Equal Credit Opportunity
Compliance Report

Upon receipt, the new captioned report should be utilized at all subsequent compliance examinations. The Equal Credit Opportunity Act (ECOA), Title V of P.L. 93-495, amends the Consumer Credit Protection Act by adding a new Title VII, and Regulation B has been prescribed by the Board of Governors of the Federal Reserve System to implement the purposes of the Act. Both the Act and Regulation became effective October 28, 1975. Administrative enforcement is divided among twelve federal agencies including the FDIC.

The basic purpose of the law is that credit should be made available to all creditworthy customers without regard to sex or marital status. This general rule is stated in Section 202.2 of Regulation B. The law, in general, covers all creditors, all types of credit, and all aspects of a credit transaction. However, exceptions to specific requirements of Regulation B are provided under Section 202.10 for incidental credit, business credit, securities credit, and public utilities credit.

Initially, the field force should become familiar with the new definitions, the stipulated transition periods before certain requirements become effective, the relationship between the federal law and any state law, and the civil liability provisions. The new Compliance Report contains eleven questions which are broad in scope and reference should be made to the pertinent sections involved.

The following comments briefly highlight the provisions of the law as these relate to the questions. The effective dates of the various provisions are parenthetically noted. Examiners will either designate the specific questions as not applicable because of the transition periods or provide this information in the comments section.

Question 1

There are several practices related to the application process which are affected by Section 202.4.

- A banker may not make any statements which would discourage a reasonable person from applying for credit because of sex or marital status. (Effective October 28, 1975)
- A bank may not refuse to grant a separate account to a creditworthy applicant on the basis of sex or marital status. (Effective November 30, 1975)
- A bank may not prohibit the use of birth given names or combined surnames. (Effective November 30, 1975)
- A bank may not inquire into the marital status of an applicant for an unsecured separate extension of credit except in a community property state or to comply with state law regarding permissible finance charges or loan limits. (Effective June 30, 1976)
- Permissible inquiries into marital status are restricted to the terms "married," "unmarried," or "separated." (Effective June 30, 1976)

- Requests for titles such as Mr., Mrs., Ms. or Miss must conspicuously state that this designation is optional, and other terms in an application must be neutral as to sex. (Effective June 30, 1976)

Question 2

With two exceptions, a bank is to provide each applicant with the Equal Credit Opportunity Act notice in a form which the applicant may retain. The notice may be printed on the application and a copy given to the applicant or on a separate paper which is delivered at the time of the application or mailed or delivered as soon as practicable thereafter. The notice should include the following information: Office of Bank Customer Affairs, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429. (Effective June 30, 1976)

Question 3

Section 202.5 contains a number of provisions regarding information which may be requested, considered, and retained relating to the process of evaluating applications.

- A bank may inquire into and consider an applicant's obligations to make alimony, child support and maintenance payments. (Effective October 28, 1975)
- A bank may not use any prohibited information in evaluating applications. Prohibited information might be received voluntarily from the applicant or from a third party even if not requested by the bank. (Effective October 28, 1975)
- A bank may not inquire into birth control practices or childbearing intentions or capability and may not consider in evaluating creditworthiness statistics or assumptions concerning the probability that the applicant or spouse of applicant will have a certain number of children or cease employment to bear or rear children. (Effective October 28, 1975)
- If a bank makes inquiry into whether income stated in an application is derived from alimony, child support, or maintenance payments, the bank must first disclose that such information is voluntary. Based on interpretation by the staff of the Federal Reserve Board, this disclosure should be located on the application in such a manner that the warning that such information is optional should precede the request for such information. A bank may only discount such income based on factors indicating that the payments will not be constantly made. (Effective November 30, 1975)
- A bank may not discount income on the basis of sex or marital status. (Effective November 30, 1975)
- A bank may not discount income solely because it is from part-time employment. (Effective November 30, 1975)
- A bank may not use sex or marital status as a factor in credit scoring or in any other method of credit evaluation. (Effective November 30, 1975)
- A bank may not consider a telephone listing in an applicant's name. (Effective November 30, 1975)
- A bank may only request and consider information regarding an applicant's spouse if the spouse will be permitted to use the account or will be contractually liable on the account or if the applicant is relying on community property, spouse's income, alimony, child support, or maintenance payments as a basis for repayment. A bank may only request and consider information regarding an applicant's former spouse if the

applicant is relying on alimony, child support, or maintenance payments from a former spouse as a basis for repayment. (If an account is disclosed by an applicant, a bank may request the name in which it is carried.) (Effective June 30, 1976)

- A bank may not retain any prohibited information received after June 29, 1976, which has been specifically requested by the creditor from anyone other than a consumer reporting agency.

Except as specifically prohibited and without regard to sex or marital status, a bank may request and consider any information regarding the probable continuity of an applicant's ability to repay. The bank may also consider the application of state property laws which may affect the creditworthiness of an applicant.

Question 4

In the event of a change of name or marital status of a person contractually liable on an open end account, a bank is prohibited from requiring a new application, requiring new terms, or terminating the credit unless there is evidence of inability or unwillingness to repay. As an exception, the bank may require a reapplication on the basis of a change in marital status if the spouse's income was the sole basis for the extension of credit. (Effective January 31, 1976)

Question 5

A bank must consider a credit history of an applicant if the bank considers the credit histories of similarly situated applicants. When a bank utilizes credit histories, it must include the credit history of accounts as designated by Section 202.6 which are shared by an applicant with a spouse. In addition, if requested by the applicant, the bank must consider information which indicates that the credit history of a shared account does not reflect on the applicant's creditworthiness, and if requested by the applicant the bank must consider credit history of accounts, if available, carried in the name of a spouse only which reflects accurately on the applicant's creditworthiness. (Effective October 28, 1975)

Question 6

The bank, under Section 202.5(m), is required to notify an applicant of action taken regarding the application within a reasonable period of time. This section further requires that the bank, if requested by the applicant, provide, either orally or in writing, the reasons for denial or termination of credit. An example of a suggested written denial form is included in this section. (Effective January 31, 1976)

Question 7

For accounts established on or after November 1, 1976, the bank must determine which accounts involve both spouses, designate such accounts to reflect this participation, and include this designation in reporting information to consumer reporting agencies or others as required under Section 202.6(a)(2).

For accounts established prior to and in existence on November 1, 1976, there are two methods of compliance.

- The bank must, no later than November 1, 1976, determine which accounts involve both spouses, designate such accounts to reflect this participation, and include this designation in reporting information to consumer reporting agencies or others as required under Section 202.6(a)(2)
- OR
- The bank must mail or deliver to all appropriate applicants by February 1, 1977, the notice regarding "Credit History For Married Persons." After November 1, 1976, the bank must within 90 days after receipt of a request for change in reporting procedures designate the account to reflect

participation by both spouses and include this designation in reporting information to consumer reporting agencies or others as required under Section 202.6(b)(2).

Question 8

In general, the bank may not request the signature of a spouse or other person unless this is required of all other similarly qualified applicants (effective January 31, 1976). There are two exceptions. In the case of unsecured credit, a bank may require the signature of a nonapplicant spouse, under certain conditions, in community property states (effective January 31, 1976). The staff of the Federal Reserve Board has stated that if a bank is relying on certain assets as a basis for creditworthiness, it may require the signature of a spouse or other person who holds joint title to such assets with the applicant if such joint ownership would prevent the creditor from realizing on these assets in the event of default. In the case of secured credit, the bank may require the signature of the applicant's spouse on certain documents if it is necessary or appears so to create a valid lien, pass clear title, waive inchoate rights to property, or assign earnings (effective October 28, 1975).

Question 9

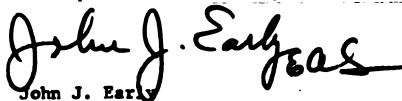
Any state law prohibiting extensions of consumer credit to each spouse is preempted by the Equal Credit Opportunity law. A bank may not combine any separate accounts of spouses for the purpose of determining permissible finance charges of permissible loan ceiling under a state law or other federal law. Section 202.8(b) details the method of handling joint and separate lines of credit under state loan limits. (Effective October 28, 1975)

Question 10

For 15 months after an applicant is notified of action taken on an application, the bank must retain the original or a copy of the application, any other pertinent recorded information utilized, and any written statement by the applicant alleging prohibited discrimination. For 15 months after adversely changing the terms or conditions of credit, the bank must retain the original or a copy of any written or recorded information regarding the change as well as any written statement by the applicant alleging prohibited discrimination (effective November 30, 1975). In addition, any bank which has received actual notice that it is under investigation for violation of this Part by the appropriate enforcement agency or which has been served with notice of an action under Section 202.13 must keep such records until final disposition of the matter or such time as specified by the investigating agency or court. Section 202.9 is applicable to business credit only if the amount of credit applied for is \$100,000 or less and the applicant requests in writing that such records be retained (effective October 28, 1975).

Question 11

This question is included because of the general rule stated in Section 202.2 that a bank may not discriminate against any applicant on the basis of sex or marital status with respect to any aspect of a credit transaction. It is conceivable that a bank may discriminate on the basis of sex or marital status in some aspect of its credit operation which is not covered by the first ten questions. Examiners should be aware of this possibility and answer this question accordingly.



John J. Early
Director
Division of Bank Supervision

EXHIBIT 4

**PROCEDURES FOR INVESTIGATION
OF FAIR HOUSING COMPLAINTS***

FEDERAL DEPCISIT INSURANCE CORPORATION

* Adapted substantially from guidelines prepared by the Department of Justice.

- b. Ascertain when the application was filed and with whom the complainant dealt. Determine whether the complainant had a personal interview with a bank representative and, if so, the identity of that representative.
- c. If the loan was approved, declined, offered on other terms or withdrawn, obtain all details, including why withdrawn, other terms offered or all reasons given, in writing or orally, for denying the loan.
- d. If the complainant tried to obtain additional information or had other contact with the bank after one of the above actions, obtain all details.
- e. Obtain copies of all correspondence and documents relating to the loan application, which the complainant can provide.
- f. Determine whether the complainant believes that the reason given by the bank for rejecting the application was the actual reason, and, if not, what he or she believes the actual reason was, and why.
- g. Obtain the following information if the bank's rejection was based on insufficient income or credit reasons:
 - 1) Full income at time of application (both spouses);
 - 2) Sources of income (including child support and alimony, part-time jobs, etc.);
 - 3) Total amounts of other debts (including child support and alimony);
 - 4) Total monthly payments;
 - 5) Bankruptcies, delinquencies, or other adverse credit history which might have been cause for decline.
 - 6) Marital status of applicants, age of applicants, number of children and their ages.
- h. Obtain the following information if the complainant believes the bank's rejection was based on sex discrimination.
 - 1) If the application was a joint one, were both spouses present at the time of application and/or did both participate in providing information to the bank?

- 2) Who filled out the application form?
- 3) Was it assumed by the bank that the husband was to be the "borrower" and the wife the "co-borrower"?
- 4) Was there any difference between the bank's questions concerning the employment of the husband and those concerning the employment of the wife? What were the bank's questions concerning this difference?
- 5) Did either spouse have any plans to change employment in the future? Was the husband asked about his plans for future employment? Was the wife asked about her plans for future employment? Was more information requested concerning the wife's plans than the husband's? Was it suggested that the wife would be likely to stop working in the future?
- 6) Did the complainants have children at the time of the application? If so, how many and what were their ages? Did the bank ask any questions about their plans to have children in the future? Did the bank ask whether they were practicing birth control or what kind of birth control they practiced? If so, exactly what questions were asked? What, if any, reason did the bank give for requesting this information? Did the bank require assurances that the complainants were not planning to have children as a prerequisite to counting the wife's income? If so, what assurances were required?
- 7) Did the bank indicate to the complainants that there was a possibility that not all of the wife's income would be counted in determining their eligibility for the loan? If so, what was said and who said it? Was there any indication that the husband's income would be considered first, and the wife's would be considered only if his was insufficient to qualify alone? If so, obtain details.
- 8) To the complainants' knowledge, did the bank contact both the husband's and the wife's employers to verify their employment? When were these contacts made?
- 9) When were the complainants notified of the bank's action on their application? How was the notification made?

I. INTRCDUCTION

The following instructions and guidelines pertain to investigation of complaints alleging discrimination in mortgage lending practices by an insured state nonmember bank. The purpose of the investigation is to determine the validity of the individual complaint, document the practice or act that caused the complaint, and determine whether the practice or act represented an isolated case or a general policy that must be corrected.

At the present time, three federal statutes relate directly or indirectly to discriminatory lending practices by financial institutions.

Title VIII of the Civil Rights Act of 1968

Section 805 prohibits a bank from denying a loan or other financial assistance to a person for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling, or to discriminate against that person in the fixing of the amount, interest rate, duration, or other terms of the loan or financial assistance because of race, color, religion, sex or national origin.

"Person" includes: the applicant for the loan; individuals associated with the applicant; individuals associated with the purpose of the loan; present or future occupants of the dwelling for which the loan is sought; or present or future occupants of the neighborhood where the dwelling is located.

Equal Credit Opportunity Act

Regulation B, implementing the ECO Act, prohibits a bank from discriminating against an applicant in any aspect of a credit transaction on the basis of sex or marital status. Effective March 23, 1977, Regulation B will also include discrimination on the basis of race, color, religion, national origin and age.

Home Mortgage Disclosure Act

Regulation C, implementing this statute, requires banks, which have assets of \$10 million or more and offices located in SMSAs, to disclose mortgage lending by geographic areas.

What is discrimination? The word generally connotes the arbitrary exclusion of an individual from some activity on the basis of one or more presumed or stereotyped attributes possessed by that individual. The investigating examiner should recognize that discrimination in lending practices can assume many subtle forms, and the merits of an individual complaint should only be judged after all the facts have been gathered and reviewed.

Bank practices that may suggest unlawful discrimination in lending include, but are not limited to, the following:

1. Discouraging a prospective borrower at an initial or early stage of negotiation;
2. Discounting or disregarding the income of a working wife or unmarried woman so that no formal application is filed;
3. Subjecting a female applicant to a different or more extensive credit check than that which is usually required for a male applicant;
4. Treating unmarried working mothers differently than unmarried working fathers;
5. Requiring female applicants, but not male applicants, to obtain a co-signer;
6. Basing any aspect of a lending decision in whole or in part on the racial or ethnic composition of the area where the property for which the loan sought is located;
7. Accepting a loan application, but only with terms sufficiently unfavorable to cause the applicant to effectively withdraw the application.

II. INVESTIGATIVE PROCEDURES

Since no two complaints are alike, investigative procedures will vary both as to scope and sequence of the steps performed. When oral statements given by individuals are pertinent to the complaint under investigation, the examiner should, unless it is inappropriate under the circumstances, take notes of these statements for inclusion in the workpapers and investigation report. If it is inappropriate to take notes when the statement is made, the examiner should record his or her recollection of these oral remarks as soon as practicable. Where

written statements are available and/or specific documentation pertinent to the investigation is found, copies should be included in the workpapers. If this documentation is voluminous and appears to be reasonably safe from destruction, a description of the nature of the documentation, sample copies, and a reference to its location in the bank should be included in the workpapers.

Prior to or concurrent with the start of a field investigation, the examiner should review the complaint, the most recent Bank and Compliance Examination Reports, and the bank's correspondence file. The examiner may also find it appropriate to review other materials that may be of assistance in the investigation (i. e., maps, census data, local trade and consumer association reference materials, etc.).

Unless specific instructions are otherwise given by the Regional Office, the examiner is free to develop information through one or more of the following sources, depending on the nature of the complaint and the examiner's judgment.

A. COMPLAINANT

With rare exception, the examiner will have available for review and use a written statement from the complainant. In many instances, however, this statement will not be complete and an interview with the complainant will be necessary. The examiner should recognize that the complainant may not be fully cognizant of the fair lending statutes and their provisions, or, for that matter, banking procedures. Indeed, the complaint may have been predicated on a "feeling" of being unjustly treated by the bank.

In any contact with the complainant, the examiner should refrain from discussing the merits of the complaint or status of the investigation. The complainant should be informed that all information requested, including that of a personal nature, is necessary to determine whether the bank's actions were discriminatory.

Where applicable and depending on the nature of the complaint, the following information should be obtained either from the written complaint or contact with the complainant:

1. Initial contact with bank

- a. Why did the complainant contact subject bank?
- b. What was the approximate date of the initial contact and the method of contact (telephone, mail, in person)?

- c. Whom did the complainant contact at the bank? If the person's identity is not known, ascertain his or her title and a description if possible.
- d. What information was initially requested by the bank (location of property, age, employment characteristics, etc.)?
- e. What information was provided by the complainant, either voluntarily or as a result of a specific request? Determine all details of the subject's response. Were additional questions asked? Were there any indications that not all of the wife's income would be considered, or that the wife's income would be considered only in certain circumstances? If so, what were the indications?
- f. Obtain details on the nature of the complainant's loan request, including:
 - 1) Location of the property;
 - 2) Purchase price;
 - 3) Down-payment available;
 - 4) Loan amount;
 - 5) Interest rate;
 - 6) Duration;
 - 7) Type of loan (conventional, FHA, or VA).
- g. Does the complainant believe that he or she was discouraged by the bank in: (1) filing an application, (2) obtaining a loan on the terms required, or (3) obtaining a loan in the area where the property is located? Obtain all details. If there were witnesses to any of the dealings with the bank, obtain their names, addresses and phone numbers, if possible.

2. Submission of written application

Ascertain whether the complainant ultimately submitted a formal application to the bank. If not, ascertain the reason; determine if an application was subsequently submitted to another institution and its disposition; and full details of any subsequent dealings with the bank.

If the complainant did submit a written loan application to the bank, obtain the following information:

- a. Details of the type, amount and duration requested, if different from the complainant's initial request.

- b. Ascertain when the application was filed and with whom the complainant dealt. Determine whether the complainant had a personal interview with a bank representative and, if so, the identity of that representative.
- c. If the loan was approved, declined, offered on other terms or withdrawn, obtain all details, including why withdrawn, other terms offered or all reasons given, in writing or orally, for denying the loan.
- d. If the complainant tried to obtain additional information or had other contact with the bank after one of the above actions, obtain all details.
- e. Obtain copies of all correspondence and documents relating to the loan application, which the complainant can provide.
- f. Determine whether the complainant believes that the reason given by the bank for rejecting the application was the actual reason, and, if not, what he or she believes the actual reason was, and why.
- g. Obtain the following information if the bank's rejection was based on insufficient income or credit reasons:
 - 1) Full income at time of application (both spouses);
 - 2) Sources of income (including child support and alimony, part-time jobs, etc.);
 - 3) Total amounts of other debts (including child support and alimony);
 - 4) Total monthly payments;
 - 5) Bankruptcies, delinquencies, or other adverse credit history which might have been cause for decline.
 - 6) Marital status of applicants, age of applicants, number of children and their ages.
- h. Obtain the following information if the complainant believes the bank's rejection was based on sex discrimination:
 - 1) If the application was a joint one, were both spouses present at the time of application and/or did both participate in providing information to the bank?

- 2) Who filled out the application form?
- 3) Was it assumed by the bank that the husband was to be the "borrower" and the wife the "co-borrower"?
- 4) Was there any difference between the bank's questions concerning the employment of the husband and those concerning the employment of the wife? What were the bank's questions concerning this difference?
- 5) Did either spouse have any plans to change employment in the future? Was the husband asked about his plans for future employment? Was the wife asked about her plans for future employment? Was more information requested concerning the wife's plans than the husband's? Was it suggested that the wife would be likely to stop working in the future?
- 6) Did the complainants have children at the time of the application? If so, how many and what were their ages? Did the bank ask any questions about their plans to have children in the future? Did the bank ask whether they were practicing birth control or what kind of birth control they practiced? If so, exactly what questions were asked? What, if any, reason did the bank give for requesting this information? Did the bank require assurances that the complainants were not planning to have children as a prerequisite to counting the wife's income? If so, what assurances were required?
- 7) Did the bank indicate to the complainants that there was a possibility that not all of the wife's income would be counted in determining their eligibility for the loan? If so, what was said and who said it? Was there any indication that the husband's income would be considered first, and the wife's would be considered only if his was insufficient to qualify alone? If so, obtain details.
- 8) To the complainants' knowledge, did the bank contact both the husband's and the wife's employers to verify their employment? When were these contacts made?
- 9) When were the complainants notified of the bank's action on their application? How was the notification made?

B. BANK VISITATION

The examiner should obtain a clear and specific statement of the bank's lending policy for the type of loan requested by the complainant and for the time period of that loan request. The accuracy of this information is particularly important when the bank's loan policies are not in writing.

Initially, the bank should be provided with a copy of the written complaint. In addition, all individuals contacted at the bank and referred to either in the examiner's workpapers or investigation report should be identified by name, title, race and sex.

Depending on the nature of the complaint, one or more of the following subject areas should be researched:

1. Documentation

Obtain copies of any manual, book or compilation of memoranda or minutes (including memos to employees) describing or containing the bank's loan policy in whole or in part. These might include underwriting criteria, standards on evaluating income, directions as to current interest rates, loan-to-value ratios, etc. If there have been changes in the past two years, obtain a copy of the previous version.

If the bank states that no such compilation exists, determine how employees, such as branch managers, know what information to give applicants about present policy or what standards to apply to applications. If the bank states that this information is communicated orally in meetings, determine if minutes were taken. Obtain copies of all written instructions to employees with respect to lending policies, practices, and procedures.

Obtain copies of the following forms presently used or in use at the time of the complainant's loan request:

- a. All loan application forms;
- b. Appraisal forms for single-family dwellings;
- c. All worksheets for computing and evaluating credit information;
- d. Bank memoranda concerning current mortgage terms available, e.g., interest rates, loan-to-value ratios, etc. If not available, ascertain if the information can be abstracted from other sources such as Board of Director minutes.
- e. Written material prepared for the use and information of builders or brokers who refer applicants to the lender, if available.

2. General loan policies

- a. Obtain the following information for terms:

- 1) Maximum and minimum loan amounts and how these ranges are determined (e. g. , by federal law, regulation, internal policy, or a combination). Also determine what circumstances would justify a deviation from these limits.
 - 2) Maximum and minimum durations, how these are arrived at and what circumstances would justify a deviation from these limits.
 - 3) Maximum and minimum interest rates. What circumstances would justify a deviation from these limits?
 - 4) Which person or group officially sets the maximum and minimum limitations described above?
- b. Obtain a description of all limitations regarding the property and its location which are presently observed or which were observed at the time of the complainant's loan request, and the relationship of such limitations to the loan terms and conditions. These can include:
- 1) The age of the property. Is there a limit on the age of property that will qualify for a conventional loan? Is this chronological age, effective age, or remaining economic life? Are there any circumstances under which the age limits would not be observed? Does the age of the property dictate the duration of the loan? If so, on what scale? Are there any exceptions to this? Obtain a complete description of all circumstances in which age of property affects a loan application.
 - 2) Style or size of property.
 - 3) Crime rate or vandalism rate in an area. (How are these measured or determined?)
 - 4) Economic level of resident in an area. (How is this measured or determined?)
 - 5) The age or age range of other properties in the neighborhood where the property is located.
 - 6) The value range of other properties in the neighborhood where the property is located.
 - 7) The predominant racial or ethnic composition in the neighborhood where the property is located. Is this composition changing?

- 8) The percentage of the neighborhood that is developed.
- c. Obtain a complete description of all factors affecting the neighborhood where a property is located that can have a bearing on the approval of a loan or its terms. Is racial or ethnic composition ever a factor? If so, how is this taken into account?
 - d. Obtain a list of any specific areas where the bank prefers to make loans or has made the majority of loans in the past three years. Obtain a description of these areas (housing and population characteristics, e.g., new communities rather than older ones).
 - e. If there are areas, streets, communities, or neighborhoods where the bank will not make loans, obtain a description of the boundaries of such areas and determine why no loans are made there. If exceptions have been made, how many, when, and whether there is a high delinquency or default rate on such loans. Also determine the bank's estimate of the number of applications, per month, from such areas. If the number is low, determine why the bank believes more applications do not come from these areas.
 - f. If there are any areas, streets, communities, or neighborhoods where the bank will only make FHA or VA loans, obtain a description of the boundaries of such areas and the bank's reasons for making only FHA or VA loans. Also determine whether the bank has ever made conventional loans in the area and, if so, how many, when, and whether there was a higher delinquency or default rate on such loans. Have the bank estimate the number of applications for conventional loans per month from such areas. If the number is low, determine why the bank believes it to be low.
 - g. If there are areas, streets, communities or neighborhoods which, for any reason, the lender considers to be high risk areas for lending, but will make conventional loans on a high down-payment, low loan-to-value ratio basis, higher market rates or shorter duration, obtain a complete description of the boundaries of such areas and why the area is considered high risk, how that risk is measured, and how terms are fixed for loans in such areas. Also determine the bank's estimate of the number of applications for loans per month from such areas. If the number is low, determine the bank's opinion as to why it is low.
 - h. Does the bank have a policy against originating or processing FHA loans or VA loans. If so, why? Was there ever a time during which such loans were made? If so, when was this and why did the policy change?
 - i. Are there any areas where the bank will not originate FHA loans? If so, obtain complete details.

- j. Determine whether at any time during the past five years the bank was "out of the market" for home mortgage loans. If so, determine the dates of such a condition and the reason for it. Were any home loans being made at that time? If so, to whom.
- k. Does the bank give or has it given any preference to depositors in granting loans? If so, how does this operate?
- l. Does or has the bank maintained any ongoing relationship with builders or brokers who refer single-family home loan applicants to the institution? If so, obtain a description of the relationship, the name and address of each broker or builder and the name of the contact person in such organization. How are salespeople in these organizations advised of the bank's requirements or terms? Again, if any material is in writing, obtain copies.
- m. Determine the bank's estimate of the number of single-family home loans which are the result of "walk-ins", the percentage referred by brokers, the percentage referred by builders, and the percentage referred by other sources.
- n. Determine if the bank has ever been the subject of a complaint of discrimination in lending or employment, on the basis of race, color, religion, sex or national origin. If so, obtain all details of such complaint, the agency which handled it, identity of complainant and resolution. Obtain a copy of all documents and correspondence in the bank's possession with respect to such matter, if not already available in the Regional Office files.

3. Application procedures

Obtain the following information with respect to loan applications:

- a. Where can applications be picked up and where can they be submitted?
- b. Are there application and/or appraisal fees? How much are they? When are they paid? Are they always paid?
- c. Is anyone authorized to review an individual's financial data or property characteristics to determine eligibility prior to an application being submitted? If so, how does this procedure operate, who is so authorized and is any record kept of applications not ultimately submitted? Does this practice occur even though not formally authorized?
- d. What information is given prospective applicants by phone? Is any prequalification or pre-screening done by phone?
- e. What information is requested of an inquirer who telephones for

information? Is the property address asked? Why? Are persons ever told on the phone that loans are not being made in certain areas? Under what circumstances would this occur?

- f. After an application is submitted, where does it go (i.e., are applications all forwarded to a central loan department or do branches process them)?
- g. What checks and verifications are performed on information reported on the application?
- h. When is the appraisal ordered? Under what circumstances would an appraisal not be ordered?
- i. After all information is verified and the appraisal returned, who then reviews the file? If any information cannot be verified or is unfavorable, can the application be rejected at this stage? Who has authority to make such a rejection and are records kept?
- j. If information on the application is verified, and the appraisal supports the loan request, who is authorized to accept or reject the application (a loan committee, loan officer, Board of Directors)? What records are kept of these decisions?
- k. If an application is rejected, is it retained and for how long? How is the file organized (alphabetically, chronologically etc.)?
- l. Determine how information on approved loans is retrievable.
- m. Determine how loan jackets are organized and filed.
- n. If a separate file of appraisals is kept, describe its organization.
- o. Do applicants fill out their own applications, or is this done by the bank?
- p. Are applicants asked to sign a blank application, so that information may be typed in later?

4. Underwriting policies

Please obtain a description of all factors which go into the decision that: the applicant is qualified; the property is eligible; and the specific terms and conditions of each loan. These factors may include the following:

- a. Sufficiency of income. What loan-to-income or debt-to-income ratios or formulae are used? Why were these ratios adopted?

Under what circumstances would these ratios be varied and a loan made even though the income does not meet the test?

- b. Viability, stability, or reliability of income and income sources. How is this measured? What factors are looked for? Does it vary according to the applicant's profession or social status? Are there any types or sources of income that are discounted or not counted (e.g. part-time income, bonuses, commissions, income from jobs held less than two years)?
- c. Total qualified income. Is this income calculated on the basis of one spouse's income or both spouses' incomes? If any one income is used, which one and why? When would the other spouse's income be included? Is any preference given to loans based on only one, as opposed to two incomes?

Obtain a description of the bank's policy with respect to:

- a. The income of working women (are there any circumstances under which it might be discounted or disregarded?);
- b. Loans to unmarried women with or without children;
- c. Inclusion of alimony or child support as viable income;
- d. Viability of income for women in childbearing years;
- e. The ability of a woman to obtain a loan in her own name; Is a co-signer required?
- f. Is a husband's signature required for a female applicant who is separated or divorced? If so, why? Is a wife's signature required for a male applicant who is separated or divorced?

Determine if the policy with respect to any of the above six items was different from present policy at any time within the past three years. If so, obtain full details of prior policy, why a change was made, when a change was made and how this change was communicated to employees.

- g. Credit scoring devices. If used, obtain a complete description and a copy of any written guidelines.
- h. Credit history. Are there any factors which would disqualify an applicant, i. e., bankruptcy, prior foreclosure?
- i. Property characteristics. What factors go into the determination that a property is eligible or ineligible for a loan? Does the

appraiser include comments on the future predictable value of a property or of an area?

- j. **Loan-to-value ratio.** What standards does the bank set if the LTV applied for by the customer is considered too high? Obtain full details.
- k. **Risk.** If a loan is believed to contain more than normal risk, will it be rejected or are there circumstances under which it will be made, but on terms which reflect high risk? If so, who makes this determination and how is risk objectively measured? What factors go into this decision? How is the LTV set? How is the duration arrived at (on the basis of what standards)? How is the interest rate arrived at? How are "points" arrived at? For a loan that is accepted and not considered to contain greater than normal risk, how are rate, term, LTV and points arrived at? Who fixes them? What standards are followed?

Have employees ever been given any instruction in the areas of civil rights or non-discrimination in lending practices? If so, obtain all details including copies of any written material.

5. Lending patterns

- a. For those banks not subject to the Home Mortgage Disclosure Act, determine whether the bank can provide either by computer print-out or otherwise, a list of mortgage loans, either by address or by total number, broken down by census tract or zip code. Obtain this breakdown for mortgages made in the past two years, if possible. (With respect to larger institutions this request may be modified to obtain at least a six-month sample.)
- b. Determine the bank's estimate (if more precise data is not available) of the racial and ethnic composition of its depositors and its mortgage loan customers.
- c. Obtain the following information with respect to each home mortgage made in the three calendar months preceding the date of this request. (In lieu of obtaining the information outlined below, review and take notes on the following documents from the files of such loans: application, appraisal, worksheets, and any documents that list the amount of the loan made, interest rate, duration, points, and date of approval.)
 - 1) Name, address, phone number, race or ethnic origin, and sex of applicants (and address of property if different from address of applicant);

- 2) Date of application;
 - 3) Amount, term, interest rate, and type of loan, as reported on application;
 - 4) Appraised value;
 - 5) Purchase price;
 - 6) Amount of loan;
 - 7) Amount of down-payment, duration, interest rate, points, and whether FHA, VA or conventional;
 - 8) Age of property;
 - 9) Place of employment and salary (of each borrower where two or more persons apply for one loan.)
- d. Obtain the following information with respect to each loan rejected and each loan withdrawn by an applicant for the same period of time.
- 1) Name, address, phone number, race or ethnic origin, and sex of applicant (and address of property if different from that of applicant);
 - 2) Applicant's employer and phone number, and salary at time of application. (Obtain this for each borrower, if two or more persons apply for one loan.)
 - 3) Date of application;
 - 4) Amount, term, interest rate, and type of loan as reported on application;
 - 5) Appraised value;
 - 6) Purchase price;
 - 7) Age of property;
 - 8) If applicable, date and reason for rejection;
 - 9) If applicable, date and reason for withdrawal;
 - 10) If counter-offer made by lender, terms of this offer;
 - 11) If rejection was based on credit reasons, obtain all details.

- e. If available, obtain the name, address, race or ethnic origin, and sex of each person who, in the three months prior to the date of this request, was turned down prior to submitting a written application on the basis of information provided. Also determine the reason turned down.
 - f. If copies of documents are not obtained under "c" and "d" above, examine a representative number of files for accepted and rejected home loans. Review the application, appraisal, worksheet, and letters or memos in the file to determine:
 - 1) Whether any racial notation or code is used (in the appraisal form, look under "neighborhood data").
(Note: certain applications used by FHA, VA, FNMA and FHLMC require racial identification for record-keeping purposes. If any racial notation or code other than these is observed, ascertain why it is kept and how it is used.)
 - 2) Whether any worksheet indicates that the income of a working wife was discounted or not included. (Compare figures with entry on application form and on employment verification forms.)
 - g. Determine the percentage (or approximate percentage or dollar volume) of home loans made in the past year which have been sold to other investors or in the secondary market. Identify the buyers and determine how loans are selected to be included in packages to be sold, e.g., are only FHA loans sold, or loans in certain areas, or with certain characteristics? Determine if this is a greater or lesser amount than sold in previous years, and if either, the reason for the change.
 - h. Determine the percentage (or approximate percentage or dollar volume) of home loans made in the past year which, rather than being originated by the bank, were purchased from other sources. Determine the identity of the other sources and the general location of the loans. Determine if this is a greater or lesser amount than purchased in previous years, and if either, the reason for the change.
 - i. Determine whether, at any time in the past two years, the institution has had more funds available than required by qualified applicants and identify such time periods. If so, determine how these funds were invested.
6. Collection procedures
- a. Determine the number of foreclosed home loans in each year for the past five years, and what percentage this is of the total mortgage portfolio.

- b. Determine the number of delinquent home loans in each year in the past five years and what percentage this is for the total mortgage portfolio.
- c. Determine whether the bank has ever analyzed its delinquencies or foreclosures to determine those factors that may have caused or contributed to the delinquency or foreclosure. If so, obtain all details, including copies of any written analysis.
- d. Determine the name, address, and location of every home loan which has been foreclosed or litigated in the past year.
- e. Determine the bank's policy with respect to collection, including all steps taken in the collection, including:
 - 1) Actions by the borrower which place the loan in a delinquent status or in default, e. g. , one-month in arrears, two months in arrears, etc.
 - 2) Steps initially taken in these circumstances;
 - 3) Follow-up steps taken, and when;
 - 4) Circumstances under which foreclosure is instituted;
 - 5) Circumstances under which forbearance is exercised;
 - 6) What factors would cause the above schedule to be accelerated or decelerated? Determine all factors which would cause a variation in the collection process, e. g. , does it vary on the basis of the property's location.
- f. Obtain sample copies of collection letters used and an indication of when they are used.
- g. Examine a representative sample of collection files or cards to determine if any bear a racial or ethnic notation or code.
- h. Determine whether the race, or ethnic origin, or sex of the borrower is ever a factor in determining what collection steps will be undertaken. If so, obtain all details.

III. OTHER SOURCES OF INFORMATION

Appraisers, real estate brokers, consumer groups, and other complainants represent additional sources of information the examiner may wish to pursue in the investigation, depending on the nature of the complaint and Regional Office concurrence.

A. Appraisers

Appraisers may be bank employees or work independently on a contract basis. If the bank uses independent appraisers, contact the appraisal company and interview those persons who conduct appraisals or did appraisals for the bank at the time of the complainant's loan request. If the appraisers are bank employees, interview all appraisers who were employed in that capacity at the time of the complainant's loan request. Obtain the following information:

1. Name, address, race or ethnic origin, sex, employer's name and dates of employment;
2. Nature of the appraiser's training, professional designation or affiliation, and years of experience;
3. Approximate number of single-family homes appraised by the individual per year (or per month or week). If the appraiser works for an independent fee company, determine the approximate number done by the company; also determine the name and address of every lender for which single-family home appraisals were done in the past year;
4. Obtain a sample copy of report forms presently in use or used within the past three years for the appraisal of single-family dwellings and determine which forms are or were used by or for the bank;
5. Determine whether the racial or ethnic composition of an area is ever a factor in determining fair market value, neighborhood analysis, future value, or loan risk. If so, obtain all details of the way in which these factors are affected by race or ethnic origin;
6. Determine the way in which the racial or ethnic composition of an area is reflected on the appraisal report or is reported to the bank and why it is reported;
7. Determine whether any person associated with the bank has ever inquired about the racial composition of an area. If so, obtain all details including who, when, and why.
8. Determine whether the appraiser has ever had any discussions, correspondence, or instructions from his superiors or from the

bank with respect to a particular appraisal or appraising in general for an area which is integrated, integrating, or predominantly nonwhite. Obtain all details including what was said, by whom, when, and in what manner directives were implemented.

9. Determine whether the appraiser is aware of any map or list used presently, or within the last three years, or by appraisers on behalf of the bank which demarcates geographic areas on any of the following bases:

- a. Racial or ethnic composition;
- b. Income level of residents;
- c. Changing value levels;
- d. Age range of properties;
- e. Value range of properties;
- f. Loan or no loan areas;
- g. High or low risk;
- h. Crime rate;
- i. Other similar category;

If so, obtain all details, including how the map or list is used, why it is no longer used (if that is the case), who maintains it, and how areas are determined to belong in one or more categories. Determine where the map or list is kept and a description of each area demarcated thereon. If possible, obtain a copy of the list or map and all documents related to its use.

10. Determine the appraiser's operational definition of economic obsolescence and how this is measured. (Note: standard appraisal texts cite the presence of "inharmonious racial groups" as a case of economic obsolescence, which leads to depreciation--on the basis of race.)
11. Determine whether, in the appraiser's professional judgment, economic obsolescence can be caused by the infiltration of inharmonious groups. Determine what is meant by "inharmonious groups" and whether this includes racial groups. Determine how the economic obsolescence from such infiltration is measured or measurable. Determine whether the appraiser applies the concept of "infiltration", and if so, how.
12. Determine whether, in the appraiser's judgment, values are higher in homogeneous areas than non-homogeneous areas. Determine what the appraiser construes "homogeneous" to mean and whether this definition includes racial or ethnic homogeneity. Determine what specific areas the appraiser believes have declined in value due to the presence of non-homogeneous people.

13. If, in the appraiser's judgment, the presence of black or Spanish persons is an "adverse influence" in a neighborhood, obtain all details.
14. If the appraiser ever includes comments about the values or future of a neighborhood in an appraisal report to the bank, why is this done?

B. Real estate brokers

A large number of applications for loans are forwarded to banks by real estate brokers. Accordingly, local area brokers are often aware of the general loan policy of lenders and whether these policies are nondiscriminatory. For "racial redlining" complaints, the brokers most likely to have relevant information are those who deal in racially integrated or predominantly black areas. In some respects, nonwhite brokers and agents may be the most helpful.

To conduct this part of the investigation, the examiner will need to identify those brokers who deal with the bank. If a listing is not provided by the bank, the examiner should refer to telephone or broker association directories for the names of several brokers in the general vicinity of the bank's main office and/or its branches. (Note: the National Association of Real Estate Brokers is a predominantly black organization.)

Obtain the following information from the owner of the company or the registered broker, who may be informed of the purpose of the interview:

1. Name, address, sex, race, and company name:
2. Determine whether the broker has ever referred prospective loan applicants to the bank. If so, approximately how many per month? If not, determine the reason, and what institution the broker does use and why;
3. Obtain the names and addresses of other real estate companies that may send or have sent prospective applicants to the bank (specifically nonwhite brokers);
4. Determine the broker's understanding of the bank's loan policies with respect to minorities, including women, and integrated areas.
5. Determine the basis for the broker's understanding of the bank's policies. Included therein would be any aspects of the bank's

reputation or any incident or experience that the broker may have had with the bank, even if the incident took place some time ago.

6. If any employee of the bank or other person associated with the bank has ever instructed the broker (or any other broker or agent) not to refer certain types of applicants or applicants from a particular area, obtain all details.
7. Obtain the name, race, sex, last known address, and place of employment of every person known to the broker to have been rejected as a loan applicant by the bank in the past two years, and the reason, if known. This information should also be obtained for each person discouraged by the bank from applying or pursuing an application for a mortgage.

C. Consumer groups

From time to time various civic groups conduct campaigns designed to combat "redlining" or other forms of discrimination. These groups are often aware of persons who applied for loans at various institutions. In some cases, a study may have been done or a complaint filed with a local, state, or federal agency. If such groups exist in the area where the bank is located, they should be contacted as a valuable source of information.

Obtain the following information from the director or chairperson of each group:

1. Name, address, race, and sex of the person interviewed, and the name and phone number of the consumer group;
2. Information the groups may have concerning the bank's lending policy, including:
 - a. Where loans will not be made and why;
 - b. Where only FHA loans will be made;
 - c. Whether FHA loans will not be made in certain areas;
 - d. Where loans will be made at higher rates, shorter duration, etc;
 - e. Areas considered by the bank as high risk areas;

Determine the basis of the group's information.

3. Information concerning other state nonmember banks believed to be engaging in racial redlining.
4. Name, last known address, race, and sex of any person known to the group to have been rejected for a loan by the bank or any other nonmember bank within the past two years. Determine whether the organization can provide the names of such individuals to the Regional Office.
5. Copies of any studies, analyses, position papers, or other documents produced by the group pertaining to allegations of discrimination in lending.
6. Name and address of any other person or group that the organization believes may have additional information in this regard.

IV. INVESTIGATION REPORT

The investigating examiner will submit a written narrative report detailing facts and other information obtained in the investigation, together with an opinion on the merits of the complaint and, if applicable, recommendations for corrective action. The examiner's workpapers, in complete and legible form, should be forwarded with the investigation report.

V. SUBSTANTIAL NONCOMPLIANCE

Reviewing and testing general compliance with fair lending statutes are part of the regular Bank or Compliance Examination and are expected to be performed at that time. The field investigation of a fair lending complaint should focus on the complaint that has been filed. This is not to say, however, that should the investigating examiner suspect or uncover evidence of substantial noncompliance that no action be taken. If this situation occurs, the Regional Office should be contacted immediately for instructions as to whether additional facts should be gathered or a team of examiners assigned to commence a special compliance examination.

This is in response to your letter of April 25, 1978 in which you allege that _____ discriminated against you by requiring you to obtain a cosigner for your loan and by refusing your request for credit life insurance.

On your behalf, we contacted the above bank and spoke to Senior Vice President _____ concerning your allegations. Pertinent bank records were requested from the bank and reviewed in detail. Based on this review, we do not find that the bank discriminated against you. Banks have the right to require that an applicant obtain a cosigner if in accordance with their credit standards it is felt necessary to do so in order to support the extension of credit. According to _____, the bank felt that a cosigner was necessary because of your lack of a previous credit history. If this fact is correct, then the bank acted properly in requesting a cosigner for your loan.

In regard to your request for credit life insurance, which was denied, we do not have the authority to make a determination in this matter. Our authority pertaining to credit life insurance is limited to making sure that credit is not denied or terminated as a result of a denial of credit life insurance.

Although it does not appear that the bank has violated any law or regulation enforced by the Corporation, if you still feel that you have been discriminated against, you may seek redress under the law as explained under Section 706, Civil Liability, which is to be found on pages 23-24 of the enclosure.

Please feel free to contact us if further information or assistance is needed.

Sincerely,

Enclosure

EXHIBIT 5

The FDIC Fair Housing Regulations and Enforcement Program are included in Appendix 1 of this volume.

EXHIBIT 6

FEDERAL DEPOSIT INSURANCE CORPORATION
 DIVISION OF BANK SUPERVISION
 WASHINGTON

General Memorandum No. 1

Revised July 1977

SUBJECT: PRIORITIES, FREQUENCY AND SCOPE OF EXAMINATIONSIntroduction

The rapid growth in number, size, and complexity of the banks falling under the Corporation's direct supervision mandates periodic reappraisals of the approach to the examination function in order to deploy resources most effectively, marshal efforts in the appropriate areas, and maintain technical competency in the face of increasing sophistication in operating and management systems and ever changing economic and banking environments.

The purpose of this memorandum is to set forth the policies of the Division with respect to examination priorities, frequency, and scope; to clarify those areas allowing Regional Director discretion; and, at the same time, to provide for some uniformity of approach.

Banks Presenting Supervisory or Financial Problems

The first priority has been, and will continue to be, effective surveillance and supervision of those institutions which present either supervisory or financial problems.

Henceforth, it will be the Division's policy to conduct at least one full-scope examination every twelve months of each state nonmember insured bank presenting supervisory or financial problems other than those arising from the specialized compliance examination program. Additional examinations or visitations in such banks are encouraged to the extent believed necessary by the Regional Director. Further, the scope of any follow-up examinations or visitations, as well as the format of the report which will be prepared, will be at the discretion of the Regional Director. However, in this respect, it is felt that follow-up examinations and/or visitations should focus on the particular problem area (e.g., loans, liquidity, violations, etc.).

Banks not Presenting Supervisory or Financial Problems

An examination, either full or modified (modified examinations are defined in the following paragraph), of each state nonmember insured bank which does not present supervisory or financial problems will be conducted at least once in each 18-month period with no more than 24 months between examinations. (Note: Specialized compliance examinations are to be conducted in accordance with the instructions on page 2 of this memorandum.) At the discretion of the Regional Director, and under the criteria set forth below, alternate examinations of banks which do not present supervisory or financial problems may be conducted on a modified basis.

Modified Examinations

A modified examination approach and format may be used only in those banks satisfying the following criteria:

- a. total assets of less than \$100 million if a commercial bank or total assets of less than \$500 million if a mutual savings bank;
- b. in operation for three full years;
- c. management rating of Satisfactory or better at the last examination and no subsequent change in control as defined in Section 7(j) of the FDI Act or in the chief executive officer;
- d. adjusted capital and reserves ratio of at least 6.5% at the last examination (mutual savings banks must have had an adjusted surplus and reserves ratio of at least 5.5%) and

available information indicates that this ratio has not fallen below 6.5% (5.5% for mutual savings banks) because of growth, insufficient earnings, or other developments;

- e. record of acceptable internal routine and controls, and an effective internal audit program or an annual outside audit which is considered adequate in scope and is performed by a qualified public accountant, correspondent bank, or other qualified firm;
- f. suggested blanket bond and excess fidelity coverages are carried;
- g. acceptable earnings record; and
- h. not an exception on the most recent edition of any computer generated monitoring systems utilized by DBS unless the reason for such exception (i) is known to the regional office, (ii) does not require a full examination, and (iii) is recorded in the bank's file.

At examinations of banks meeting the above criteria, pages 1 through 4, the Officer's Questionnaire, pages A and D-2, and the Summary Analysis of Examination Reports should be completed. (Note: An entry must be made for each item of information requested on the Summary Analysis; however, the entry should be a "zero" in those instances in which the item of information is not applicable as a result of the underlying schedule not being included in the examination report.) In those banks which frequently file branch applications, or if an application is expected to be filed in the near future, page 8 should be prepared. Further, the scope of the examination may be curtailed. Full use should be made of the bank's EDP and management reports, sampling should be utilized wherever possible, and proof and verification procedures may be eliminated or substantially limited unless circumstances indicate additional effort is needed in these areas. Additionally, the volume of loans subjected to analysis may be reduced, and less important branches need not be examined. Emphasis at these modified examinations should be placed on management policies and performance; the evaluation of asset quality, alignment, and liquidity; capital adequacy; and compliance with applicable laws and regulations.

Where adverse trends or other justifications appear, appropriate revisions in the conduct of the examination should be made and report schedules added.

Larger Banks

In commercial banks with total assets of \$100 million or more and mutual savings banks with total assets of \$500 million or more, all report schedules which are currently in use and are applicable to the given bank will continue to be included in the examination report. Where the fixed asset investment is moderate in relation to capital, there are no statutory violations with respect to fixed assets, and other problems of significance are absent, fixed assets schedules may be omitted from these examination reports. Further, examiners are instructed to assess the quality of management systems and reports as well as audit and control functions, and where it is permissible to do so without compromising the integrity of the examination, utilize the output of those systems. Cash counts and proof and verification procedures may be omitted in those banks where it is appropriate to do so, and branch offices which do not have a significant volume of important assets need not be examined; however, in the latter instance, conditions at these offices should be reviewed with management prior to the conclusion of the examination.

Related Banks

If believed desirable in the opinion of the Regional Director, simultaneous examinations may be arranged of all closely related banks or subsidiaries of bank holding companies, requiring coordination with other bank regulatory agencies. The type of examination employed in each bank at simultaneous examinations will be at the discretion of the Regional Director unless precluded by the criteria for modified examinations.

Specialized Compliance Examinations

Examinations for this purpose will be conducted by specialists and generally will be independent of the safety and soundness examinations. Each bank should receive a specialized compliance examination once every 15

months, or more often as necessary in the case of banks presenting problems in the specialized compliance area.

Automation and Sampling Techniques

It is expected that the Corporation's automated bank examination programs and monitoring systems will be used wherever possible in an effort to provide increased efficiency and conserve manpower. This use should include the scheduling of examinations as well as their conduct. Further, sampling techniques should be used wherever possible.

Visitations

It is expected that visitations will be used frequently as an investigatory and supervisory tool for those banks which show adverse trends, either at examinations or through a monitoring system, and to gauge compliance with provisions of cease and desist orders. Further, visitations subsequent to management or ownership changes should be used to assess the attitudes and abilities of the new management/ownership if the principals are not already known to the regional office.

New Banks

In addition to the required periodic examinations, it will be the policy to conduct a visitation at each new bank quarterly during the first two years of operation (visitations need not be held during the quarter in which an examination, either by the Corporation or the state authority, is conducted). The purpose of these visitations is to gain some measure of the performance of management and the direction in which the bank is headed. At the discretion of the Regional Director, findings of the visitation may be reported in either memorandum form or examination-report format.

Data Facilities

Evaluation of data facilities operated by state nonmember insured banks should be performed concurrently with the regular examination unless the Regional Director instructs otherwise. Whenever possible, the Regional Director should arrange with other supervisory agencies for concurrent evaluations of independent data centers, except that they may be evaluated on a rotating basis with other interested Federal agencies at the election of the Regional Director. The Regional Director may join in control evaluations of national and state member bank data centers, or their affiliated organizations, which provide services for state nonmember insured banks, when the respective supervisory agency invites FDIC participation. Guidelines and rules for examination of automated centers can be found in Appendix C of the Manual of Examination Policies.

Trust Departments

Separate examinations of larger trust departments are encouraged, relying upon management and control systems to reduce audit-type functions where the integrity of these systems has been validated.

Coordination with State Authorities

Scheduling of all examinations, particularly follow-ups, and visitations should be coordinated with state authorities to minimize duplication and the burden imposed on banks.

Examinations of Nonbanking Affiliates, Holding Companies, National Banks, and State Member Banks

Examinations of nonbank affiliates may be conducted at the discretion of the Regional Director, but examinations of holding companies, national banks, and member banks may not be conducted without the prior approval of the Washington Office.



John V. Early
Director

EXHIBIT 7



FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, D. C. 20429

OFFICE OF DIRECTOR - DIVISION OF BANK SUPERVISION

BL-36-77
June 3, 1977

TO THE CHIEF EXECUTIVE OFFICERS OF ALL INSURED STATE NONMEMBER BANKS:

Subject: Separate Compliance Examinations

The FDIC's Division of Bank Supervision is beginning a program of examining insured nonmember banks for compliance with various laws and regulations at times other than during the usual safety and soundness examination as is currently our practice. These separate compliance examinations will review a bank's compliance with the following consumer protection laws and regulations: Truth in Lending (FRB Regulation Z), the Fair Credit Reporting Act, Equal Credit Opportunity (FRB Regulation B), Real Estate Settlement Procedures (HUD Regulation X), Home Mortgage Disclosure (FRB Regulation C), Advertising of Interest or Dividends on Deposits (FDIC Part 329) and the Fair Housing law. Certain other laws and regulations will be covered as well, namely, Security and Controls Against External Crimes (FDIC Part 326), Financial Recordkeeping and Reporting of Currency and Foreign Transactions (Treasury Department Part 103) and Emergency Preparedness Measures.

The separate compliance examinations will be conducted by examiners working exclusively in the compliance area for a period of six months. Under the program, an effort will be made to examine each insured nonmember bank for compliance with laws and regulations at least once every fifteen months. Additional examinations or visitations of particular banks will be made as the circumstances warrant. With the implementation of this program, FDIC examiners conducting the usual safety and soundness examinations will no longer be responsible for reviewing compliance with the various laws and regulations indicated.

Examiners assigned to the program and conducting the separate compliance examinations will be available to bank management during the course of the examinations for advice and guidance as to the requirements of the various laws and regulations and the implementation of procedures to assure compliance. They will be supported in this regard as necessary by the Regional Consumer Affairs Specialists and Regional Counsels. It should be emphasized, however, that the primary responsibility for instituting appropriate procedures, practices and forms in conformity with the various laws and regulations rests with bank management. It is therefore essential that bank management make the necessary commitment of time and effort to study the requirements of the various laws and regulations, train personnel as necessary and institute its own compliance program, monitoring its effectiveness and making appropriate adjustments as necessary. With the cooperation of your bank, we are confident that a very high level of overall compliance on the part of insured nonmember banks can be achieved so that the purposes of these various laws and regulations can be accomplished and the protections they afford consumers assured.

Since the program is new and will be evaluated over a period of time, we would welcome any expressions of opinion or comments you may have regarding it.

A handwritten signature in dark ink, appearing to read 'John J. Early', is written over a faint, larger version of the same signature.

John J. Early
Director
Division of Bank Supervision

DIVISION OF BANK SUPERVISION

**STATISTICAL SAMPLING
FOR REGULATION Z
(Truth in Lending)**



REGULATION Z SAMPLING PROCEDURE

Procedure herein described is designed to document the compliance or noncompliance of banks to the requirements of Regulation Z in making consumer loans. Banks have been arbitrarily divided into two categories: (A) up to 25,000,000 in total assets (Category A Banks) and (B) 25,000,000 or more in total assets (Category B Banks). A random sample of either 25 or 50 disclosures for "Category A Banks" and for "Category B Banks," a random sample of either 50, 75, or 100, disclosures will be reviewed; the sample size is dependent upon the results of the original sample as described by the DECISION RULES listed on page 2.

The procedure will be used in all banks where consumer loans are subject to Regulation Z, and, at the discretion of the examiner-in-charge, in those instances where a majority of loans in the commercial and/or real estate loan departments are subject to the regulation and a random sampling method is deemed to be more advantageous than individual review. In banks where inadequate recordkeeping practices render the random sampling procedure inappropriate, a minimum of 50 or all new loans since last examination currently outstanding, whichever is less, should be examined for compliance.

To report the results of the sampling method, transcribe the appropriate Statement of Findings to the comment section of the Compliance Report page "Regulation Z - Truth In Lending." The Statement of Findings requires the identification of the loan department(s) or category (categories) where the sampling method was used. As review procedures might involve a combination of the random sample and individual review methods, responses to the questions on the Compliance Report page will reflect the composite of circumstances found in the bank as a whole, regardless of the review method used or the loan department/category involved. In instances where the use of the sampling method results in the transcription of Statement of Findings "B," responses to applicable questions will indicate satisfactory compliance for the loan department/category. If the examiner-in-charge believes a more explicit explanation in addition to the Statement of Findings is necessary, he or she should quote the Statement

and add his or her own brief, concise comment(s) concerning the specific problems.

RANDOM SAMPLING PROCEDURES

1. Estimate the number of *new loans* since last examination currently outstanding for each department (i.e., consumer and at the discretion of the examiner-in-charge commercial and/or real estate). The estimated number of notes (for each department) should then be divided by "25" for the Category A Banks and "50" for Category B Banks. The resultant number is the interval between loans to be selected for review.

EXAMPLES

(Category A Bank)
Total assets of \$20,000,000 as of date of examination
Estimated number of new consumer loans since last examination currently outstanding = 1,100

$$1,100 \div 25 = 44 \text{ (interval between loans)}$$

(Category B Bank)
Total assets of \$40,000,000 as of date of examination
Estimated number of new consumer loans since last examination currently outstanding = 2,600

$$2,600 \div 50 = 52 \text{ (interval between loans)}$$

2. From the bank's new loan register or EDP trial balance, select a loan at random from the universe of new loans since last examination currently outstanding. After the initial random selection, take every "n"th loan as determined by the computation in step number 1 above. This procedure is necessary in order for every new note to have approximately an equal chance of being selected for review. If the note selected for review should not be subject to the regulation, go to the next consumer note in the file. (The interval count will return to the initial loan chosen.)
3. Review the disclosure for each of the loans selected. Should additional notes be required, based on the Decision Rules listed below, repeat the procedure outlined in Paragraph Number 2 above, first selecting a note from the trial balance, being certain that the note is not one previously selected for review.

For Category B Banks (i.e., total assets of 25,000,000 or more), if the Decision Rule is "Sample an additional 25 disclosures," *double* the previously determined interval.

EXAMPLE

(Category B Bank) Decision Rule - Sample an additional 25 disclosures Previously determined interval = 52

$$52 \times 2 = 104 \text{ (new interval between loans)}$$

NOTE:

In those instances where review indicates noncompliance may be willful in nature, or in the opinion of the examiner, the level of compliance is unacceptable, Decision Rule Number 2 may be chosen, regardless of the number of consecutive examinations in which Statement of Findings "C" has been reflected.

DECISION RULES

1. Sample Size	Number of Disclosures with Apparent Exceptions	Action
CATEGORY A BANKS		
25	None	Select Statement of Findings "A"
	One, two, or three	Sample an additional 25 disclosures
50	One, two, or three	Select Statement of Findings "B"
	Four or more	Select Statement of Findings "C"
CATEGORY B BANKS		
50	None	Select Statement of Findings "A"
	One	Sample an additional 25 disclosures
	Two, three, four, or five	Sample an additional 50 disclosures
75	Six or more	Select Statement of Findings "C"
	One	Select Statement of Findings "B"
100	Two, three, four, or five	Sample an additional 25 disclosures
	Six or more	Select Statement of Findings "C"
100	Two, three, four, or five	Select Statement of Findings "B"
	Six or more	Select Statement of Findings "C"

2. Where Statement of Findings "C" has been reflected in three consecutive prior examinations, the random sampling procedure should be utilized to select an expanded sample. (It is recommended the initial expanded sample consist of at least 100 disclosures, or the entire universe, whichever is less.) The results of the review should be transcribed to the compliance report in a format similar to Statement of Findings "B" or "C," whichever is more appropriate.

Based on the expanded sample, the examiner will, where appropriate, also report his findings to the U.S. Attorney and, in the supervisory section, make a recommendation for Section 8 actions, taking into account, among other things, the nature of the deficiencies, the degree of compliance reflected in the most recent disclosures, and management's attitude.

Where noncompliance is reported to the U.S. Attorney, it is recommended that the examiner document a minimum of 25 apparent exceptions or 10 percent of the universe of new loans since last examination currently outstanding, whichever is less.

STATEMENT OF FINDINGS -

Transcribe appropriate statement (A, B, or C), together with explanatory remarks and comments to the compliance report.

- A. From a random sample of _____ disclosures for new loans since the last examination currently outstanding from the _____ loan department, no exceptions were noted; and the bank appears to be in substantial compliance with the regulation.
- B. From a random sample of _____ disclosures for new loans since the last examination currently outstanding from the _____ loan department, _____ exception(s) was (were) noted and discussed with management and subject bank is considered to be in substantial compliance with the regulation. However, a review of the bank's procedure is believed appropriate. (NOTE: The *last sentence* of this Statement of Findings may be omitted or modified as deemed appropriate.)
- C. From a random sample of _____ disclosures for new loans since the last examination currently outstanding from the _____ loan department, _____ exceptions were noted resulting in the apparent violations detailed on the following page. It is recommended that management review the requirements of the regulation and formulate procedures to assure satisfactory compliance.

TOTAL ASSETS – 25 MM OR MORE

Region _____

Certificate Number ← Number of Errors →

0-2

3

4

5

6 or more

TOTAL ASSETS - 25 MM OR MORE

Region _____

Certificate Number ← Number of Errors →

0-2

3

4

5

6 or more

Indicate (✓) the general method utilized by the bank for calculating APR, Finance Charge and Terms for disclosure purposes.

- _____ 1. Federal Reserve Tables
- _____ 2. Rate Tables
- _____ 3. Calculators _____ Manufacturer and Model
- _____ 4. Mini Computer w/Tape _____ Manufacturer and Model
- _____ 5. Other _____ Describe

Instalment or consumer loans _____
 Real estate mortgage loans _____ Check one only
 Commercial loans _____

Complete only for Loans with Apparent Violations

List Note Number	Loan Officer Initials	Description of Note	Describe Apparent Violation(s)
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			
11.			
12.			
13.			
14.			
15.			
16.			
17.			
18.			
19.			
20.			
21.			
22.			
23.			
24.			
25.			

Complete only for Loans with Apparent Violations

List Note Number	Loan Officer Initials	Description of Note	Describe Apparent Violation(s)
26.			
27.			
28.			
29.			
30.			
31.			
32.			
33.			
34.			
35.			
36.			
37.			
38.			
39.			
40.			
41.			
42.			
43.			
44.			
45.			
46.			
47.			
48.			
49.			
50.			

Note: When summarizing results, reflect the number of disclosures with one or more apparent exceptions.

EXHIBIT 9

FEDERAL DEPOSIT INSURANCE CORPORATION		TYPE OF RATING	
REPORT OF EMPLOYEE PERFORMANCE EVALUATION		<input type="checkbox"/> Official <input type="checkbox"/> Unofficial <input type="checkbox"/> Warning notice of unsatisfactory performance	
NAME OF EMPLOYEE		TITLE AND GRADE	
ORGANIZATION (Division, Section, Unit, and Field Station)		PERIOD OF EVALUATION	
		FROM	TO

SECTION A - INSTRUCTIONS

1. Select the elements to be rated, and in left-hand column check each element pertinent to the work of the employee as being of primary or secondary importance.
2. Add any elements which you consider important and not covered by the first 9 elements, and indicate if they are of primary or secondary importance. Explain the basis for selection of the added elements in Section E.
3. Rate the employee on each pertinent element by placing an (X) in the appropriate block.
4. Comments may be entered in Section E on the reverse side of the form.
5. The basis of an unsatisfactory or outstanding rating is to be explained in Section E on the reverse side.

SECTION B - ELEMENTS

Job Importance		Items	Out-standing	Satis-factory	Unsatis-factory
PRIMARY	SECONDARY				
		1. Competence or Skillfulness - performing tasks with a minimum of waste effort, using one's knowledge effectively, adeptness, dexterity and accuracy in execution or performance, technical proficiency.			
		2. Productivity - amount of work or things turned out by any process or operation involving labor or effort, effectiveness in bringing forth or forward, yielding or furnishing results.			
		3. Industry - habitual diligence in performing duties, steady attention to work.			
		4. Dependability - meriting confidence or trust, can be counted upon to do competently what is expected, to give or tell the exact truth, to give support or assistance required in time of need or emergency.			
		5. Cooperativeness - furnishing another person with what is needed, as for the accomplishment of work or the attainment of an objective, cordial, gracious, helpful, aiding, assisting.			
		6. Resourcefulness - meeting situations or rising to an occasion, finding or making necessary adjustments to accomplish a difficult end or to meet a need when the usual course of action, instrument, source of supply, or the like, fail, are not at hand, or are unknown to one.			
		7. Planning - devising methods of action or procedure, prearranging details, laying out in clearly distinguished sections, with attention to relationships and proportions, imaginative scope or vision.			
		8. Leadership - instructing, guiding, directing in action, thought or opinion, managing other people.			
		9. EEO Performance - equality in treatment of employees, including minority group and female employees, fairness in making selections, encouragement and recognition of employees achievements, sensitivity to the developmental needs of all employees.			
		10. Level of Competence - (See reverse for definition)			

SECTION C - CONVERSION FORMULA

1. Outstanding - an outstanding rating on all elements rated.
2. Satisfactory - an outstanding or satisfactory rating on all elements of primary importance to the job and any unsatisfactory rating on any elements of secondary importance overcompensated by outstanding rating of other elements.
3. Unsatisfactory - an unsatisfactory rating on any element of primary importance or unsatisfactory ratings on any elements of secondary importance not overcompensated by outstanding ratings on other elements.

SECTION D - APPROVALS

ADJECTIVE RATING	SIGNATURE OF RATING OFFICIAL	TITLE	DATE
ADJECTIVE RATING	SIGNATURE OF REVIEWING OFFICIAL	TITLE	DATE
REPORT TO EMPLOYEE			
ADJECTIVE RATING	DATE OF NOTIFICATION		

FDIC 2130/01 (5-77)

CONTINUE ON REVERSE

EQUAL CREDIT OPPORTUNITY and WOMEN

your rights



You and your husband apply for a loan. The application is denied because of "insufficient income." You think this means that your salary was not counted. What do you do?

You are single and want to buy a home. The bank turns you down for a mortgage loan, even though you feel sure that you meet its standards. What do you do?

Your charge account is closed when you get married. You are told to reapply in your husband's name. What do you do?

You may have a complaint under the Equal Credit Opportunity Act, a Federal law which prohibits discrimination against an applicant for credit on the basis of sex, marital status, race, color, religion, national origin, age and other factors. This pamphlet describes the provisions of the Act (and the regulation issued by the Federal Reserve to carry it out) that apply to sex and marital status and that affect you as a woman who wants credit.

The Equal Credit Opportunity Act does not give anyone an automatic right to credit. It does require that a creditor apply the same standard of "creditworthiness" equally to all applicants.

What Is Creditworthiness?

Creditors choose various criteria to rate you as a credit risk. They may ask about your finances: how much you earn, what kinds of savings and investments you have, what your other sources of income are. They may look for signs of reliability: your occupation, how long you've been employed, how long you've lived at the same address, whether you own or rent your home. They may also examine your credit record: how much you owe, how often you've borrowed, and how you've managed past debts.

The creditor wants to be assured of two things: your ability to repay debt and your willingness to do so. The Equal Credit Opportunity Act does not change this standard of creditworthiness.

What Is Equal Credit Opportunity?

The law says that a creditor may not discriminate against you—treat you less favorably than another applicant for credit—because of your sex or marital status.

Just because you are a woman, or single, or married, a creditor may not turn you down for a loan.

The rules that follow are designed to stop specific abuses that have limited women's ability to get credit.

Applying for Credit: Questions About Your Sex or Marital Status

A creditor may not discourage you from applying for credit just because you are a woman, or single, or married. When you fill out a credit application, you should know that there are only certain questions a creditor may ask about your sex or marital status.

- You **may not** be asked your sex on a credit application—with one exception. If you apply for a loan to buy or build a home, a creditor is **required** to ask your sex to provide the Federal Government with information to monitor compliance with the Act. You do not have to answer the question.

- You **do not** have to choose a courtesy title (Miss, Ms., Mrs.) on a credit form.
- A creditor **may not** request your marital status on an application for an individual, unsecured account (a bank credit card or an overdraft checking account, for example), where no community property is involved.*
- A creditor **may** request your marital status in all other cases. But, you can only be asked whether you are married, unmarried, or separated (unmarried includes single, divorced or widowed).

Rating You as a Credit Risk

To make sure that your application is treated fairly, there are certain other things that a creditor may not do in deciding whether you are creditworthy.

Specifically, a creditor **may not**:

- refuse to consider your income because you are a married woman, even if your income is from part-time employment.
- ask about your birth control practices or your plans to have children. A creditor may not assume that you will have children or that your income will be interrupted to do so.
- refuse to consider reliable alimony, child support, or separate maintenance payments. However, you don't have to disclose such income unless you want to in order to improve your chances of getting credit.
- consider whether you have a telephone listing in your own name, because this would discriminate against married women.
- consider your sex as a factor in deciding whether you are a good credit risk.
- use your marital status to discriminate against you.

However, there are some closely related questions that are permitted. In order to estimate your expenses, a creditor may ask how many children you have, their ages, and the cost of caring for them, as well as about your obligations to pay alimony, child support, or maintenance. A creditor may ask how regularly you receive your alimony payments, or whether they are made under court order, in order to determine whether these payments are a dependable source of income. You may be asked whether there is a telephone in your home.

And finally, a creditor may consider your marital status because, under the laws of your State, there may be differences in the property rights of married and unmarried people. Such differences may affect the creditor's ability to collect if you default.

Extending Credit: Your Own Account

The law says that a woman has a right to her own credit if she is creditworthy. If you are getting married, remember that you can keep your own credit accounts and credit record.

*Community property States are: Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, and Washington.

Specifically, a creditor **may not**:

- refuse to grant you an individual account just because of your sex or marital status.
- refuse to open or maintain an account in your first name and maiden name, or your first name and your husband's surname, or a combined surname.
- ask for information about your husband or ex-husband, unless:
 - you're relying on his income
 - he'll use the account or be liable for it
 - you're relying on income from alimony or on community property to support your application
- require a co-signer or the signature of your spouse just because you are a woman or married (with certain exceptions when property rights are involved).

If your **marital status changes**, a creditor **may not** require you to reapply for credit, change the terms of your account, or close your account, unless there is some indication that you are no longer willing or able to repay your debt. A creditor **may** ask you to reapply if your ex-husband's income was counted to support your credit.

Establishing a Credit History

Married women often have had trouble establishing credit records because all debts were listed in their husbands' names. A new rule will help women build up their own credit records.

The rule applies to information that creditors furnish to credit bureaus or other creditors about any account used by both husband and wife or on which both are liable. Such information must be reported in the names of each spouse.

Notice and Penalties

A creditor may not stall you on an application. You must be notified within 30 days of any action taken on your application. If credit is denied, the notice must be in writing and it must either give specific reasons for the denial or tell you that you can request such an explanation. You have the same right if a credit account is closed.

If you are denied credit, first find out why. Try to solve the problem with the creditor, and show you know about your right to equal credit opportunity. If the problem can't be solved and you think that you've been discriminated against, you can sue for actual damages plus a penalty if the violation was intentional. The court will also award you reasonable attorney's fees if there's been a violation.

To Find Out More

If you have any questions about Equal Credit Opportunity, please contact one of the FDIC's 14 Regional Offices or the Office of Bank Customer Affairs. Other federal agencies which enforce Equal Credit Opportunity for particular creditors are also listed in this brochure.

Other consumer brochures available from any FDIC office are: Fair Credit Billing, Consumer Information, Truth in Lending, and Equal Credit Opportunity and age.

FDIC OFFICES

Director
Office of Bank Customer Affairs
Federal Deposit Insurance Corporation
Washington, D.C. 20429

ATLANTA REGION

Regional Director
Federal Deposit Insurance Corporation
2 Peachtree Street, N.W., Suite 3030
Atlanta, Georgia 30303

Alabama
Florida
Georgia

BOSTON REGION

Regional Director
Federal Deposit Insurance Corporation
60 State Street, 17th Floor
Boston, Massachusetts 02109

Connecticut
Maine
Massachusetts
New Hampshire
Rhode Island
Vermont

CHICAGO REGION

Regional Director
Federal Deposit Insurance Corporation
233 S. Wacker Drive, Suite 6116
Chicago, Illinois 60606

Illinois
Indiana

COLUMBUS REGION

Regional Director
Federal Deposit Insurance Corporation
37 West Broad Street, Suite 600
Columbus, Ohio 43215

Kentucky
Ohio
West Virginia

DALLAS REGION

Regional Director
Federal Deposit Insurance Corporation
300 North Ervay Street, Suite 3300
Dallas, Texas 75201

Colorado
New Mexico
Oklahoma
Texas

KANSAS CITY REGION

Regional Director
Federal Deposit Insurance Corporation
2345 Grand Avenue, Suite 1500
Kansas City, Missouri 64108

Kansas
Missouri

MADISON REGION

Regional Director
Federal Deposit Insurance Corporation
1 South Pinckney Street, Room 813
Madison, Wisconsin 53703

Michigan
Wisconsin

MEMPHIS REGION

Regional Director
Federal Deposit Insurance Corporation
1 Commerce Square, Suite 1800
Memphis, Tennessee 38103

Arkansas
Louisiana
Mississippi
Tennessee

MINNEAPOLIS REGION

Regional Director
Federal Deposit Insurance Corporation
730 Second Avenue South, Suite 266
Minneapolis, Minnesota 55402

Minnesota
Montana
North Dakota
South Dakota
Wyoming

NEW YORK REGION

Regional Director
Federal Deposit Insurance Corporation
345 Park Avenue, 21st Floor
New York, New York 10022

New Jersey
New York
Puerto Rico
Virgin Islands

OMAHA REGION

Regional Director
Federal Deposit Insurance Corporation
1700 Farnam Street, Suite 1200
Omaha, Nebraska 68102

Iowa
Nebraska

PHILADELPHIA REGION

Regional Director
Federal Deposit Insurance Corporation
5 Penn Center Plaza, Suite 2901
Philadelphia, Pennsylvania 19103

Delaware
Maryland
Pennsylvania

RICHMOND REGION

Regional Director
Federal Deposit Insurance Corporation
908 E. Main Street, Suite 435
Richmond, Virginia 23219

District of
Columbia
North Carolina
South Carolina
Virginia

SAN FRANCISCO REGION

Regional Director
Federal Deposit Insurance Corporation
44 Montgomery Street, Suite 3600
San Francisco, California 94104

Alaska, Arizona
California, Guam
Hawaii, Idaho
Nevada, Oregon
Utah, Washington

FEDERAL ENFORCEMENT AGENCIES**National Banks**

Comptroller of the Currency
Consumer Affairs Division
Washington, D.C. 20219

State Member Banks

Federal Reserve Bank serving the area in which the State member bank is located.

Nonmember Insured Banks

FDIC Regional Director for the Region in which the nonmember insured bank is located or the Office of Bank Customer Affairs in Washington, D.C. The addresses of these offices are listed in this brochure.

Savings Institutions Insured by the FSLIC and Members of the FHLB System (except for Savings Banks insured by FDIC)

The FHLBB's Supervisory Agent in the Federal Home Loan Bank District in which the institution is located.

Federal Credit Unions

Regional Office of the National Credit Union Administration, serving the area in which the Federal Credit Union is located.

Creditors Subject to Civil Aeronautics Board

Director, Bureau of Enforcement
Civil Aeronautics Board
1825 Connecticut Avenue, N.W.
Washington, D.C. 20428

Creditors Subject to Packers and Stockyards Act

Nearest Packers and Stockyards Administration area supervisor.

Federal Land Banks, Federal Land Bank Associations, Federal Intermediate Credit Banks, and Production Credit Associations

Farm Credit Administration
490 L'Enfant Plaza West
Washington, D.C. 20578

Retail Department Stores, Consumer Finance Companies, All Other Creditors, and All Nonbank Credit Card Issuers
Truth in Lending

Federal Trade Commission
Washington, D.C. 20580

Text prepared by staff members of the Federal Reserve Board

FEDERAL DEPOSIT INSURANCE CORPORATION
550 17th Street, N. W., Washington, D. C. 20429

P-1400-008-77

7-30-77

EQUAL CREDIT OPPORTUNITY and AGE

your rights



You retire this year at age 63, planning to fulfill a lifetime dream of sailing on the seas. But, despite a good credit history and a comfortable income, you find that the money you can borrow would barely buy a rowboat. What do you do?

On your 65th birthday you receive a notice to reapply for your credit card at a local department store. Your financial situation is unchanged from last year. What do you do?

You may have a complaint under the Equal Credit Opportunity Act. This Act prohibits discrimination against an applicant for credit on the basis of age, sex, marital status, race, color, religion, national origin, and other factors.

This pamphlet describes the provisions of the Act (and the regulation issued by the Federal Reserve to carry it out) that prevent your age from being used against you when you need credit.

Rating You as a Credit Risk: The General Rules

Creditors use various criteria in determining the types of loans they will make and the creditworthiness of the people to whom they will lend. They want to be assured that you are both able and willing to repay debt. They will therefore ask questions about your income, your expenses, your debts, and your reliability. Do you have savings and investments? Do you own your own home? How long have you lived at your current address? What is your credit history?

The Equal Credit Opportunity Act does not prohibit a creditor from using such criteria. It does not give anyone an automatic right to credit or require that loans be made to people who are not good credit risks.

Under the law, a creditor may also ask how old you are. However, the use of this information is restricted. The law says that **your age may not be the basis for an arbitrary decision to deny or decrease credit if you otherwise qualify.** You may not be turned down for credit just because you are over a certain age.

A creditor also may not:

- refuse to consider your retirement income in rating your credit application.
- require you to reapply, change the terms of your account, or close your account just because you reach a certain age or retire.
- deny you credit or close an account because credit life insurance or other credit-related insurance is not available to persons your age.

Some creditors rely on a system of credit-scoring to rate you as a credit risk. Based on the creditor's experience, a certain number of points is given to each characteristic which has proved to be an accurate predictor of credit-worthiness. The Equal Credit Opportunity Act permits a creditor who uses such a system to score your age. But:

- if you are 62 or older you must be given at least as many points for age as any person under 62.

Special Considerations

Age has economic consequences. If you are young and just entering the labor force, your earnings are likely to grow over the years. On the other hand, your expenses are probably rising too, and you may not have built up much of a credit record to rely on. As you near retirement age, you are likely to face a loss in income over the next few years. On the other hand, your expenses are probably decreasing too, and you may have a solid credit history to support your application.

All of this information could have an important effect on your creditworthiness, but not all of it will show up on a credit form.

The law therefore permits a creditor to consider information related to age that has a clear bearing on a person's ability and willingness to repay debt. Consider the following example:

- Jones applies for a mortgage loan for 30 years with a 5% downpayment. Jones is 63 years old and his income will be reduced when he retires in two years. The loan is denied.

Jones might meet the bank's standards if the downpayment were larger, if the loan had a

shorter term with higher monthly payments, or if savings and investments—or other assets easily converted to cash—could be offered as security for the loan.

If you think there may be a connection between your age and the factors used to determine creditworthiness, you should go to your credit interview armed with alternatives and ready to supply whatever information will help your chances for credit.

If Credit Is Denied

A creditor may not stall you on an application. The law requires that you be notified within 30 days of any action taken on your application. If credit is denied, this notice must be in writing, and it must either give specific reasons for the denial or tell you of your right to request such an explanation. You have the same rights if a credit account is closed.

If you are denied credit, first find out why. Remember that you might try to renegotiate credit terms—such as the length of the loan or the size of your downpayment—if some aspect of creditworthiness connected with your age puts you at a disadvantage. Try to solve the problem with the creditor, and show you know about your right to equal credit opportunity.

If the problem can't be solved and you believe that you have been discriminated against, you may sue for actual damages plus a penalty fee if the violation was intentional. The court will also award you reasonable attorney's fees if there's been a violation.

To Find Out More

If you have any questions about Equal Credit Opportunity, please contact one of the FDIC's 14 Regional Offices or the Office of Bank Customer Affairs. Other federal agencies which enforce Equal Credit Opportunity for particular creditors are also listed in this brochure.

Other Consumer Brochures available from any FDIC office are: Fair Credit Billing, Consumer Information, Truth in Lending, and Equal Credit Opportunity and Women.

FDIC OFFICES

Director
Office of Bank Customer Affairs
Federal Deposit Insurance Corporation
Washington, D.C. 20429

ATLANTA REGION
Regional Director
Federal Deposit Insurance Corporation
2 Peachtree Street, N.W., Suite 3030
Atlanta, Georgia 30303

BOSTON REGION
Regional Director
Federal Deposit Insurance Corporation
60 State Street, 17th Floor
Boston, Massachusetts 02109

CHICAGO REGION
Regional Director
Federal Deposit Insurance Corporation
233 S. Wacker Drive, Suite 6116
Chicago, Illinois 60606

COLUMBUS REGION
Regional Director
Federal Deposit Insurance Corporation
37 West Broad Street, Suite 600
Columbus, Ohio 43215

DALLAS REGION
Regional Director
Federal Deposit Insurance Corporation
300 North Ervay Street, Suite 3300
Dallas, Texas 75201

KANSAS CITY REGION
Regional Director
Federal Deposit Insurance Corporation
2345 Grand Avenue, Suite 1500
Kansas City, Missouri 64108

MADISON REGION
Regional Director
Federal Deposit Insurance Corporation
1 South Pinckney Street, Room 813
Madison, Wisconsin 53703

MEMPHIS REGION
Regional Director
Federal Deposit Insurance Corporation
1 Commerce Square, Suite 1800
Memphis, Tennessee 38103

MINNEAPOLIS REGION
Regional Director
Federal Deposit Insurance Corporation
730 Second Avenue South, Suite 266
Minneapolis, Minnesota 55402

NEW YORK REGION
Regional Director
Federal Deposit Insurance Corporation
345 Park Avenue, 21st Floor
New York, New York 10022

OMAHA REGION
Regional Director
Federal Deposit Insurance Corporation
1700 Farnam Street, Suite 1200
Omaha, Nebraska 68102

Alabama
Florida
Georgia

Connecticut
Maine
Massachusetts
New Hampshire
Rhode Island
Vermont

Illinois
Indiana

Kentucky
Ohio
West Virginia

Colorado
New Mexico
Oklahoma
Texas

Kansas
Missouri

Michigan
Wisconsin

Arkansas
Louisiana
Mississippi
Tennessee

Minnesota
Montana
North Dakota
South Dakota
Wyoming

New Jersey
New York
Puerto Rico
Virgin Islands

Iowa
Nebraska

PHILADELPHIA REGION

Regional Director
Federal Deposit Insurance Corporation
5 Penn Center Plaza, Suite 2901
Philadelphia, Pennsylvania 19103

Delaware
Maryland
Pennsylvania

RICHMOND REGION

Regional Director
Federal Deposit Insurance Corporation
908 E. Main Street, Suite 435
Richmond, Virginia 23219

District of
Columbia
North Carolina
South Carolina
Virginia

SAN FRANCISCO REGION

Regional Director
Federal Deposit Insurance Corporation
44 Montgomery Street, Suite 3600
San Francisco, California 94104

Alaska, Arizona
California, Guam
Hawaii, Idaho
Nevada, Oregon
Utah, Washington

FEDERAL ENFORCEMENT AGENCIES**National Banks**

Comptroller of the Currency
Consumer Affairs Division
Washington, D.C. 20219

State Member Banks

Federal Reserve Bank serving the area in which the State member bank is located.

Nonmember Insured Banks

FDIC Regional Director for the Region in which the non-member insured bank is located or the Office of Bank Customer Affairs in Washington, D.C. The addresses of these offices are listed in this brochure.

Savings Institutions Insured by the FSLIC and Members of the FHLB System (except for Savings Banks insured by FDIC)

The FHLBB's Supervisory Agent in the Federal Home Loan Bank District in which the institution is located.

Federal Credit Unions

Regional Office of the National Credit Union Administration, serving the area in which the Federal Credit Union is located.

Creditors Subject to Civil Aeronautics Board

Director, Bureau of Enforcement
Civil Aeronautics Board
1825 Connecticut Avenue, N.W.
Washington, D.C. 20428

Creditors Subject to Packers and Stockyards Act

Nearest Packers and Stockyards Administration area supervisor.

Federal Land Banks, Federal Land Bank Associations, Federal Intermediate Credit Banks, and Production Credit Associations

Farm Credit Administration
490 L'Enfant Plaza West
Washington, D.C. 20578

Retail Department Stores, Consumer Finance Companies, All Other Creditors, and All Nonbank Credit Card Issuers

Truth in Lending
Federal Trade Commission
Washington, D.C. 20580

Text prepared by staff members of the Federal Reserve Board

FEDERAL DEPOSIT INSURANCE CORPORATION
550 17th Street, N. W., Washington, D. C. 20429

P-1400-007-77

7-30-77

CONSUMER INFORMATION

for your
protection



As directed by the Congress, the Federal Deposit Insurance Corporation has established a division of consumer affairs (known as the Office of Bank Customer Affairs) to receive and take appropriate action upon complaints with respect to unfair and deceptive practices by banks. This Office has jurisdiction over state-chartered banks which are not members of the Federal Reserve System and will enforce compliance with regulations defining such unfair or deceptive acts or practices.

If you have a complaint arising under any of the consumer protection acts listed in this pamphlet and have been unable to resolve the problem directly with the bank involved, please advise the Office of Bank Customer Affairs at the address shown in this pamphlet or apply to one of the Regional Offices listed for assistance.

For your convenience, a form is attached to this pamphlet which you may use to explain your complaint. This Bank Customer Statement form should be mailed to the Office covering the state where the bank is located. The addresses of the FDIC's Offices and the states covered by these Offices are shown in this pamphlet.

Sometimes the FDIC cannot be of assistance to bank customers. A problem with a bank may involve a personal dispute that the FDIC has no authority to resolve. If the Corporation finds that your complaint or inquiry pertains to a matter outside its jurisdiction, it will refer your communication to the authority that can be helpful or it may suggest to you an alternative course of action. In any event, you will hear from us.

Some of the important consumer laws protecting bank customers include the following:

Civil Rights Act of 1968

Prohibits discrimination because of race, color, religion, national origin, or sex when you try to obtain financing for your home.

Equal Credit Opportunity Act

Prohibits discrimination in any aspect of your credit transaction because of race, color, religion, national origin, sex, marital status, age (provided you have the capacity to contract), or receipt of public assistance.

Fair Credit Billing Act

Requires prompt correction of billing errors involving your credit or charge account.

Fair Credit Reporting Act

Requires procedures for keeping your credit information accurate, relevant, and confidential.

**Real Estate Settlement
Procedures Act**

Provides that certain information on the nature and cost of your residential real estate settlement be given to you in a timely manner.

Truth in Lending Act

Requires that certain disclosures of the terms of consumer loans be given to you so that you may compare the cost of credit among different financial institutions.

• • •

Further information on any of these or other banking laws, including your rights under them, is available from the FDIC Offices listed in this pamphlet.

FDIC OFFICES

Director
Office of Bank Customer Affairs
Federal Deposit Insurance Corporation
Washington, D.C. 20429

ATLANTA REGION

Regional Director
Federal Deposit Insurance Corporation
2 Peachtree Street, N.W., Suite 3030
Atlanta, Georgia 30303

Alabama
Florida
Georgia

BOSTON REGION

Regional Director
Federal Deposit Insurance Corporation
2 Center Plaza, Room 810
Boston, Massachusetts 02108

Connecticut
Maine
Massachusetts
New Hampshire
Rhode Island
Vermont

CHICAGO REGION

Regional Director
Federal Deposit Insurance Corporation
233 S. Wacker Drive, Suite 6116
Chicago, Illinois 60606

Illinois
Indiana

COLUMBUS REGION

Regional Director
Federal Deposit Insurance Corporation
37 West Broad Street, Suite 600
Columbus, Ohio 43215

Kentucky
Ohio
West Virginia

DALLAS REGION

Regional Director
Federal Deposit Insurance Corporation
300 North Ervay Street, Suite 3300
Dallas, Texas 75201

Colorado
New Mexico
Oklahoma
Texas

MADISON REGION

Regional Director
Federal Deposit Insurance Corporation
1 South Pinckney Street, Room 813
Madison, Wisconsin 53703

Michigan
Wisconsin

MEMPHIS REGION

Regional Director
Federal Deposit Insurance Corporation
165 Madison Avenue, Suite 1010
Memphis, Tennessee 38103

Arkansas
Louisiana
Mississippi
Tennessee

MINNEAPOLIS REGION

Regional Director
Federal Deposit Insurance Corporation
730 Second Avenue South, Suite 266
Minneapolis, Minnesota 55402

Minnesota
Montana
North Dakota
South Dakota
Wyoming

NEW YORK REGION

Regional Director
Federal Deposit Insurance Corporation
345 Park Avenue, 21st Floor
New York, New York 10022

New Jersey
New York
Puerto Rico
Virgin Islands

FDIC OFFICES**OMAHA REGION**

Regional Director
Federal Deposit Insurance Corporation
1700 Farnam Street, Suite 1200
Omaha, Nebraska 68102

Iowa
Nebraska

PHILADELPHIA REGION

Regional Director
Federal Deposit Insurance Corporation
5 Penn Center Plaza, Suite 2901
Philadelphia, Pennsylvania 19103

Delaware
Maryland
Pennsylvania

RICHMOND REGION

Regional Director
Federal Deposit Insurance Corporation
908 E. Main Street, Suite 435
Richmond, Virginia 23219

District of
Columbia
North Carolina
South Carolina
Virginia

ST. LOUIS REGION

Regional Director
Federal Deposit Insurance Corporation
720 Olive Street, Suite 2909
St. Louis, Missouri 63101

Kansas
Missouri

SAN FRANCISCO REGION

Regional Director
Federal Deposit Insurance Corporation
44 Montgomery Street, Suite 3600
San Francisco, California 94104

Alaska, Arizona
California, Guam
Hawaii, Idaho
Nevada, Oregon
Utah, Washington

**OTHER FEDERAL ENFORCEMENT
AGENCIES FOR FINANCIAL
INSTITUTIONS****NATIONAL BANKS**

Comptroller of the Currency
Consumer Affairs Division
Washington, D.C. 20219

STATE MEMBER BANKS

Federal Reserve Bank serving the district in which the State member bank is located.

SAVINGS AND LOAN ASSOCIATIONS

Supervisory Agent in the Federal Home Loan Bank district in which the association is located.

FEDERAL CREDIT UNIONS

Regional Office of the National Credit Union Administration serving the area in which the Federal credit union is located.

FEDERAL DEPOSIT INSURANCE CORPORATION
BANK CUSTOMER STATEMENT

TYPE OF STATEMENT <i>(Check one)</i> <input type="checkbox"/> Complaint <input type="checkbox"/> Question <input type="checkbox"/> Suggestion		SERVICE <i>(Check appropriate boxes)</i> <input type="checkbox"/> Checking <input type="checkbox"/> Loan <input type="checkbox"/> Savings <input type="checkbox"/> Other <i>(Specify):</i>
NAME OF CUSTOMER <i>(Print or Type)</i>		ACCOUNT NO. <i>(If applicable)</i> NAME OF BANK
ADDRESS <i>(No., Street, City, State, and ZIP Code)</i>		ADDRESS <i>(No., Street, City, State, and ZIP Code)</i>
HOME TEL. NO. <i>(Include Area Code)</i>	OFFICE TEL. NO. <i>(Include Area Code)</i>	

DESCRIBE YOUR INQUIRY OR SUGGESTION BELOW. IF THIS IS A COMPLAINT, HAVE YOU TRIED TO RESOLVE IT WITH YOUR BANK? YES NO. IF "YES," DESCRIBE THE MANNER AND RESULTS OF YOUR ATTEMPT. DESCRIBE ANY COMPLAINT NOT YET RESOLVED AND INCLUDE COPIES OF PERTINENT DOCUMENTS, DATE OF OCCURRENCE, AND NAME OF BANKER CONTACTED. *(Continue on reverse, if necessary.)* SIGN AND DATE STATEMENT ON REVERSE.

BENJAMIN S. ROSENTHAL, N.Y., CHAIRMAN
 CARDIS COLLINS, ILL.
 ROBERT F. DRINAN, MASS.
 ELLIOTT H. LEVITAS, GA.
 DAVID W. EVANS, IND.
 ANTHONY MOFFETT, CONN.
 FERNAND J. ST GERMAIN, R.I.
 HENRY A. WAXMAN, CALIF.

GARRY BROWN, MICH.
 CLARENCE J. BROWN, OHIO
 TOM CONCHRAIN, ILL.

(202) 225-6407

NINETY-FIFTH CONGRESS
Congress of the United States
House of Representatives
 COMMERCE, CONSUMER, AND MONETARY AFFAIRS
 SUBCOMMITTEE
 OF THE
 COMMITTEE ON GOVERNMENT OPERATIONS
 RAYBURN HOUSE OFFICE BUILDING, ROOM B-377
 WASHINGTON, D.C. 20515

December 12, 1978

Ms. Carmen J. Sullivan
 Acting Director
 Office of Consumer Affairs and
 Civil Rights
 Federal Deposit Insurance Corporation
 Washington, D. C. 20429

Dear Ms. Sullivan:

In order to enable the Commerce, Consumer and Monetary Affairs Subcommittee to obtain a clearer picture of the Federal Deposit Insurance Corporation's enforcement of the Equal Credit Opportunity and Fair Housing Acts and Regulation B, I am writing to request further clarification on a number of points raised in August and September in my earlier correspondence and in your testimony on September 15. I would appreciate your response as promptly as possible for completion of our record on this hearing.

My questions in connection with your testimony and prepared statement are the following:

1. In your testimony you indicated that the Brooklyn pilot study currently being conducted will help you to decide whether there is a need for the FDIC to issue specific anti-redlining regulations. Would you explain more fully the nature of this study and how you will use its results to evaluate the need for anti-redlining regulations? What would the findings of this study have to show in order for you to recommend FDIC promulgation of anti-redlining regulations? When do you expect the results of this study to be available?
2. You stated in your testimony that there are no formal guidelines between the banking agencies and the Justice Department governing what kinds of discrimination situations will be referred by the banking agencies for possible Justice Department prosecution. What is the FDIC's policy toward referral of equal credit and fair housing violations to the Justice Department for possible prosecution? Has the FDIC ever referred any cases to Justice? Under what particular sets of circumstances would the FDIC refer a case to the Justice Department in the future?

3. You testified that testing would be one of the techniques you would evaluate as a means of detecting preapplication discouragement. How will this evaluation of testing be conducted, and when do you expect your evaluation to be complete?
4. Does the FDIC have any plans to establish a separate career track for consumer compliance examiners? Are there any plans for any other modification of the present arrangement in which the compliance examinations are performed by commercial examiners on temporary assignment to the compliance area?
5. In response to a question about the FDIC's and Comptroller's use of a temporary rotating corps of compliance examiners, Mr. Dennis expressed the view in his testimony that the civil rights portion of each examination should be conducted under the direct supervision of senior examination personnel having permanent responsibility in the civil rights area and special training for this role. Does the FDIC have supervisory examination personnel in its regional offices with the civil rights expertise that Mr. Dennis was speaking of?
6. Commissioner Greenwald testified that the Massachusetts examiners found three times as many procedural violations in the 21 FDIC supervised banks they looked at as the FDIC had found. How do you explain this discrepancy, and what is being done about it?
7. In your statement you referred to your new data collection and analysis program for screening banks for statistical evidence of possible discriminatory practices concerning home loan inquiries and applications. Have you any plans to expand this program to cover nonhousing credit also? If not, will you have some equally effective alternative method for detecting patterns of substantive discrimination in nonhousing credit?

I would also appreciate further clarification of certain of the answers submitted in advance in response to my written questions. The question numbers that head each paragraph below refer to the question numbers in my letter of August 17.

Question 10: Could you be more specific about the details of the review procedures followed by the Washington headquarters staff when they review the individual equal credit and fair housing examination reports? How is each report evaluated, or alternatively, how are the reports from any one regional office evaluated as a group, for thoroughness, to determine that they are not overlooking violations actually present?

Question 15b: What is the reason for the very wide variation between the regions in the number of examiner hours devoted to compliance examinations per \$100,000 of home and consumer loans held? Why does the New York region

Ms. Carmen J. Sullivan

3

December 12, 1978

spend only 5 examiner hours per \$100 million of home and consumer loans, while the average throughout the other FDIC regional offices is 28 examiner hours per \$100 million of home and consumer loans?

Question 17A: Why did examiners in the New York regional office find only 8 violations per 100 examiner hours as compared with an average of 46 found by examiners in all the other FDIC regional offices? Why did the New York regional examiners find less than one violation per \$100 million of home and consumer loans when the average found by FDIC examiners in all other regions was 13 violations per \$100 million of home and consumer loans?

Sincerely,

Benjamin S. Rosenthal
Chairman

BSR:tt



FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, D.C. 20429

OFFICE OF CONSUMER AFFAIRS AND CIVIL RIGHTS

January 12, 1979

Honorable Benjamin S. Rosenthal
 Chairman, Commerce, Consumer and
 Monetary Affairs Subcommittee
 Committee on Government Operations
 House of Representatives
 Rayburn House Office Building, Room B-377
 Washington, D.C. 20515

Dear Chairman Rosenthal:

This responds to your December 12th letter requesting further clarification on FDIC's enforcement of fair housing and equal credit opportunity laws.

Your questions and our responses are as follows:

Question 1

In your testimony you indicated that the Brooklyn pilot study currently being conducted will help you to decide whether there is a need for the FDIC to issue specific anti-redlining regulations. Would you explain more fully the nature of this study and how you will use its results to evaluate the need for anti-redlining regulations? What would the findings of this study have to show in order for you to recommend FDIC promulgation of anti-redlining regulations? When do you expect the results of this study to be available?

The Brooklyn pilot study will describe and analyze the flow of mortgage credit from March 1969 to March 1978 in that Borough. Various publicly available data sources will be combined to analyze this market on a census tract and health area (aggregated census tract) level.

The data come from three major sources: the 1970 census, the New York City Planning Commission, and the Brooklyn Real Estate Register. The 1970 census data contain population, income and housing stock information by census tract. Updated estimates on income and population have been made by the New York City Planning Commission. Also available through the Planning Commission are vacant building inventories by census tract from 1969 to 1976, and the New York State mortgage disclosure data (the State G-107 Report) prepared by state-chartered banks. The most time consuming and costly data are being taken from the Brooklyn Real Estate Register. This Register lists all property transactions involving title transfers or mortgage liens, and includes the name and address of mortgagee, address of property, type of property, date of transaction, tax stamp fee, amount of mortgage, and frequently the interest rate. Once the Real Estate Register information is transferred to computer tape and geocoded to census tracts, it can be matched with other information on the census tract level.

The data set for this study will allow analysis of mortgage credit flows both over time and across census tracts by type of lenders and volume of credit extended. The data for the eight years covered will be analyzed to determine if any market trends can be detected. Since the data will be geocoded to census tracts and health areas, a cross section analysis should detect any variations in the composition of the credit market over areas of Brooklyn.

The descriptive statistics will be augmented with correlation and regression analysis which will attempt to describe and measure the influences affecting mortgage credit in Brooklyn. Beyond standard explanatory variables of mortgage flows such as median income, median family size, and age of head of household, possible discriminatory influences also will be analyzed. These influences include racial composition of an area, rate of change in racial composition, and age of housing stock. If the analysis determine that FDIC supervised institutions appear to discriminate in their lending practices against some areas of Brooklyn for other than rational economic reasons, a stronger case for anti-redlining regulations can be made.

Once the data are analyzed, they will be presented in tables, charts and/or graphs for use by examiners when making CRA examinations. This information should allow examiners to make more informed judgments concerning CRA issues for financial institutions located in Brooklyn.

A preliminary report from the Brooklyn study should be completed near the end of February 1979.

Question 2

You stated in your testimony that there are no formal guidelines between the banking agencies and the Justice Department governing what kinds of discrimination situations will be referred by the banking agencies for possible Justice Department prosecution. What is the FDIC's policy toward referral of equal credit and fair housing violations to the Justice Department for possible prosecution? Has the FDIC ever referred any cases to Justice? Under what particular sets of circumstances would the FDIC refer a case to the Justice Department in the future?

FDIC's policy is to seek Justice Department assistance when we are unable to enforce compliance with the requirements of the equal credit opportunity and fair housing laws by means of our existing legal authority. This authority, it should be noted, includes the power to issue cease-and-desist orders and, if necessary, to have those orders enforced by a Federal court. To date the FDIC has not referred any cases to the Justice Department and, in the future, will likely not refer any cases without exhausting all efforts to obtain compliance and appropriate corrective action by means of our existing legal authority.

Question 3

You testified that testing would be one of the techniques you would evaluate as a means of detecting preapplication discouragement. How will this evaluation of testing be conducted, and when do you expect your evaluation to be completed?

The evaluation of testing as a means of detecting discriminatory prescreening practices remains under preliminary consideration. Interest has been expressed in an interagency evaluation effort, but as of yet the nature and duration of such a study have not been determined.

Question 4

Does the FDIC have any plans to establish a separate career track for consumer compliance examiners? Are there any plans for any other modification of the present arrangement in which the compliance examinations are performed by commercial examiners on temporary assignment to the compliance area?

A proposal to establish a separate career track for compliance examiners is under consideration. The proposal in essence calls for the establishment in each of our regions of several field examiner positions for consumer protection/civil rights compliance work. These positions would be filled by commissioned examiners opting for a career in compliance work. Under the current proposal, the efforts of these compliance specialists would continue to be supplemented by commercial examiners assigned periodically to conduct compliance examinations. At the present time, there are no other plans for any significant modification of the present arrangement for conducting compliance examinations.

Question 5

In response to a question about the FDIC's and Comptroller's use of a temporary rotating corps of compliance examiners, Mr. Dennis expressed the view in his testimony that the civil rights portion of each examination should be conducted under the direct supervision of senior examination personnel having permanent responsibility in the civil rights area and special training for this role. Does the FDIC have supervisory examination personnel in its regional offices with the civil rights expertise that Mr. Dennis was speaking of?

Each of our 14 Regional Offices has a review examiner position with permanent responsibility for supervision of the civil rights compliance examination. These individuals all have received approximately 40 hours of intensive civil rights training. In addition, the Chief of the Civil Rights Branch in our Washington headquarters is available for consultation on highly sensitive or complex issues. Parenthetically, we might note that Mr. Dennis has been retained by FDIC to assist in revamping our field examiner training program in civil rights.

Question 6

Commissioner Greenwald testified that the Massachusetts examiners found three times as many procedural violations in the 21 FDIC supervised banks they looked at as the FDIC had found. How do you explain this discrepancy, and what is being done about it?

We have asked our Boston Regional Office to inquire into the matter and will take their findings into account in further developing our compliance examination and enforcement program. Unfortunately, the 21 reports of the Massachusetts examiners were not routinely made available to the FDIC for comparison purposes. Our Boston Regional Office is endeavoring to obtain copies of these reports at the present time and is hopeful they will be made available when the new banking commissioner is appointed in Massachusetts.

Question 7

In your statement you referred to your new data collection and analysis program for screening banks for statistical evidence of possible discriminatory practices concerning home loan inquiries and applications. Have you any plans to expand this program to cover nonhousing credit also? If not, will you have some equally effective alternative method for detecting patterns of substantive discrimination in nonhousing credit?

At the present time we have no plans to expand our fair housing data collection and analysis program to cover nonhousing credit. Such an expansion would require, at the minimum, amendments to Regulation B and/or Part 338 of FDIC's Regulations to require retention of race, sex and financial information on nonhousing credit applications. With the exception of the racial recordkeeping requirements and computer analysis system, the procedural scheme of the civil rights examination is identical for housing and nonhousing credit.

Question 10

Could you be more specific about the details of the review procedures followed by the Washington Headquarters staff when they review the individual equal credit and fair housing examination reports? How is each report evaluated, or alternatively, how are the reports from any one regional office evaluated as a group, for thoroughness, to determine that they are not overlooking violations actually present?

The individual equal credit and fair housing examination reports are reviewed by the Washington Headquarters staff for correctness of the cited violations, internal consistency, completeness and the appropriateness of the follow-up action taken or planned by the Regional Office. In addition, statistics are developed in the process on the types and frequency of reported violations. As a general rule, it is not possible to tell from the reports themselves whether any violations that may actually have been present were overlooked by the examiner.

Questions 15(b) and 17(a)

- 15(b) What is the reason for the very wide variation between the regions in the number of examiner hours devoted to compliance examinations per \$100,000 of home and consumer loans held? Why does the New York region spend only 5 examiner hours per \$100 million of home and consumer loans, while the average throughout the other FDIC regional offices is 28 examiner hours per \$100 million of home and consumer loans?
- 17(a) Why did examiners in the New York regional office find only 8 violations per 100 examiner hours as compared with an average of 46 found by examiners in all the other FDIC regional offices? Why did the New York regional examiners find less than one violation per \$100 million of home and consumer loans when the average found by FDIC examiners in all other regions was 13 violations per \$100 million of home and consumer loans?

Our compliance examination procedures are not geared directly to the volume or types of loans held by a bank. Fixed examination routines are followed to determine that a bank has established appropriate compliance procedures without regard necessarily to the volume or types of loans held. As a result, regions such as New York, with concentrations of relatively large banks, particularly mutual savings banks, will tend to show fewer examiner hours per a given volume of home and consumer loans held. Moreover, in the case of our New York Region, in particular, a sizable portion of the home loan portfolios of the mutual savings banks located there have been purchased from other institutions. This fact tends to further inflate the disparity between examiner hours and home and consumer loans since purchased home loans generally require less examiner attention than home loans which a bank itself originates. This fact also accounts in part for the relatively fewer violations discovered by our examiners in the New York Region since there is less opportunity for a bank to violate an anti-credit discrimination requirement in connection with purchased home loans. In addition, of course, the presence in the New York Region of relatively large banks with more sophisticated staffs and greater resources permits these banks to promptly establish appropriate compliance procedures to avoid many of the procedural-type violations often found in smaller banks with limited staffs and resources. As a result, there are probably fewer of these patent procedural violations to be found in the New York Region per a given volume of

Chairman Rosenthal

-6-

January 12, 1979

home and consumer loans held. The presence of appropriate compliance procedures also serves to facilitate the compliance examination and thereby tends to reduce the examiner time required.

I hope this additional information is responsive to your inquiry.

Sincerely,

A handwritten signature in black ink, appearing to read "Carmen J. Sullivan". The signature is stylized and written in a cursive-like font.

Carmen J. Sullivan
Acting Director

APPENDIX 7.—FEDERAL HOME LOAN BANK BOARD

FEDERAL HOME LOAN BANK BOARD
Office of Examinations and Supervision

M E M O R A N D U M

SP- 12

To: Supervisory Agents and
District Directors

June 28, 1977

From: William Sprague

RECEIVED
AUG 4 1977

Consumer and
Nondiscrimination
Complaints

SYNOPSIS: PROCEDURES FOR HANDLING CONSUMER AND
NONDISCRIMINATION COMPLAINTS

Introduction

It has been and continues to be the Board's policy that complaints, inquiries and requests for assistance received from the public are accorded prompt and responsive attention. While the Board believes that its record in this regard has been good, the rise of consumerism, increased public awareness and sophistication, and the passage of various pieces of non-discrimination and consumer protection legislation require more formal procedures to properly deal with them. The monitoring and control system described herein is believed to be the least complicated that our present needs and objectives permit. However, the recordkeeping aspect of this system will lend itself to upgrading in sophistication which may become necessary to meet the demands of either increased volume of consumer complaints or increased information needs. All such complaints are to be pursued to the extent necessary to determine whether any violations of pertinent laws and regulations have occurred and, if indicated, that effective corrective measures have been taken by the offending institution.

The term "consumer complaint" as used herein is a generic term for a variety of written public requests for assistance by the Board, unless otherwise specified or indicated by the context in which it is used. References to the "Supervisory Agent" as the party responding to complaints is indicative that the Supervisory Agent will normally fill that role; however, other Board personnel may be called upon to respond to given complaints in certain circumstances, and such alternative respondents shall carry out the obligations of the Supervisory Agent under the processing system described herein.

(1165)

Control Records

The heart of the monitoring and control aspects of these new procedures is a 5" by 8" five-copy carbonized form entitled "Consumer Complaint Registration" (CCR), FHLBB Form 1131. A sample copy of this form is attached. It is vital to the success of this system that the CCR be carefully completed by each responsible party in accordance with the instructions that follow. As stated, the CCR will have five copies, distinguished as follows:

- (1) Original (blue) - OHUA's temporary copy.
- (2) Follow-up (green) - OES's control copy.
- (3) District Director (pink) - Examination file.
- (4) Completion Report (white) - When completed by the Supervisory Agent, becomes OHUA's permanent copy.
- (5) Response Record (yellow) - Retained by the party (most often the S/A) who investigates and responds to the complaint.

All entries on the CCR will be initiated by OHUA or the Supervisory Agent, depending on whether the complaint letter is received in Washington or at a District Office. The person completing the CCR should enter a case number in the upper right hand corner. The case number will include a prefix of "0" for complaints and CCR's originating in the Washington Office and "1" through "12" for those originating in the respective FHLB Districts. The numbers should be consecutive beginning with 0001. For example, the first complaint recorded at the Des Moines Bank will be numbered 8-0001. The date the initial information is entered on the CCR should also be entered in the space provided in the upper right corner. In addition, there are provisions for eleven essential items of information (some numerically coded) plus space for explanatory comments relative to any of the eleven items or any other significant or unique aspects of the complaint. Instructions as to routing of the CCR will be discussed later.

Consumer Complaint Registration Form (CCR)

This part encompasses a basic discussion of each item of information to be included on the CCR. (See Exhibit II for appropriate codes.)

- Item (1) - Name and address: The complainant's name and address.

Item (2) - Source Code: A three-digit code identifying the party who brought the complaint to the Board's attention. This is often the complainant himself, who writes directly to us. Indirect sources of complaints might include White House and Congressional referrals, other Federal or State agencies, consumer groups, etc. See "Complaint Source Code" (Exhibit II) for specific codes to be used.

Item (3) - Association: The name and location of the association (if any) involved. If more than one association is involved in the complaint, a CCR should be completed for each, and the case numbers cross-referenced in the "Comments" section.

Item (4) - FHLB District No.: The location of the institution which is the subject of the complaint letter, or if no specific institution is named or involved, the address of the complainant is determinant.

Item (5) - Docket No.: The Board's docket number for the association (if any) involved.

Item (6) - Date Received: The date the complaint letter and/or CCR is received in the respective offices of OHUA, the Regional Director and the Supervisory Agent.

Item (7) - Case Assigned to: Name of individual who is conducting the inquiry into the complaint.

Item (8) - Date Assigned: The date the inquiry process is initiated.

Item (9) - Complaint Code: A four-digit code associated with the primary issue, grievance, etc., which is the subject of the complaint letter. Occasionally, a complaint/inquiry deals with more than one major topic, and in such cases, more than one complaint code should be recorded on the CCR. See "Complaint Category Code" (Exhibit II) for specific codes to be used.

Item (10) - Disposition Code: A two-digit code indicating the results of the inquiry and the nature and manner of any supervisory action taken. These codes are intentionally general in nature, and the person processing the complaint should give a concise summary statement of his findings and action taken to resolve the matter in question in the "Comments" section of the completion report. Special attention should be given to the clarity of the presentation of findings and action taken pertaining to discrimination complaints. (See Exhibit II.)

Item (11) - Disposition Date: The date on which the Supervisory Agent (or other party responsible for investigating the complaint) advises the complainant (or submits a draft reply to the Regional Director) of his findings and of any remedial action taken or to be taken, if indicated.

Item (12) - Comments: In addition to disposition information, the party responding to the complaint should enter in this section any significant or unique aspects of the complaint which otherwise is not denoted by the information given on the CCR. However, it is not intended that a complete synopsis of the complaint and its handling be given in the "Comments" section.

CCR Routing

As previously mentioned, the CCR is a five-copy document. The routing of the individual copies will vary depending upon the point where the complaint is received and the CCR initiated. Complaints received in Washington are to be directed immediately to OHUA. OHUA will complete items 1 through 6 of the CCR and will record the CCR case number on the incoming complaint letter in the upper right-hand corner. The original (blue) copy of the CCR will be retained by OHUA and filed in its CCR master file by date and case number. (OHUA will not retain a copy of the complaint letter unless extraordinary circumstances suggest otherwise.) Within 48 hours of receipt, OHUA will forward the complaint correspondence and the four remaining copies of the CCR to the appropriate OES Regional Director.

The Regional Director will record the date he received the CCR and correspondence on the CCR (Item 6). The second (green) copy of the CCR will be retained by the Regional Director as his record of the complaint and for follow-up purposes, and the third (pink) copy will be forwarded to the appropriate District Director.

Within 48 hours of receipt, the Regional Director will transmit the complaint correspondence and the two remaining copies of the CCR to the appropriate Supervisory Agent for investigation and response. The referral will be made on a standard transmittal form, FHLBB Form 1132 (see Exhibit III) which contains information as to actions needed, acknowledgment arrangements and special instructions, if any, as to response procedures. Upon receipt, the Supervisory Agent will record the date received (Item 6) on the CCR and complete Items 7, 8 and 9.

Within 48 hours of receipt by the S/A, he will acknowledge receipt of the complaint to the complainant, and initiate the inquiry into the matter, usually by letter to the association involved. When the S/A has completed his inquiry, he will complete items 10 and 11 and enter a summary of his findings and action taken in the "Comments" section. He will then send the fourth (white) copy, designated "Completion Report," to the Regional Director. The S/A should also send a photocopy of the completion report to the District Director.

The Regional Director will note receipt of the Completion Report on the OES (green) copy of the CCR already in the Regional Director's files. The Completion Report will then be sent to OHUA, which will extract the original (blue) copy from the master file and replace it with the Completion Report (white copy). The original copy may then be destroyed. The fifth (yellow) copy of the CCR and the complaint correspondence will be retained among the permanent records of the S/A or other office assigned to respond to the complaint/inquiry.

Complaint Letters Received in the Field are to be turned over to the Supervisory Agent. Within 48 hours of receipt, the S/A will complete CCR Items 1 through 9, enter the CCR case number on the correspondence, acknowledge receipt to the complainant and forward the first two copies of the CCR to the Regional Director. (The Regional Director will send the original (blue) to OHUA for insertion in the Master File and retain the follow-up (green) copy in his files). The third copy (pink) will be forwarded to the District Director. When the Supervisory Agent

has completed his investigation/inquiry into the matter, he will complete CCR Items 10 and 11, and enter a summary of his findings and action taken in the "Comments" section. He will then send the Completion Report (white) to the Regional Director (photocopy to the District Director) for notation and forwarding to OHUA.

As with complaints received in Washington, the Completion Report replaces the original (blue) in OHUA's master file, and the Supervisory Agent or other respondent retains the "Response Record" (yellow) in his files.

CCR Master File

OHUA will keep a single file containing the CCR's. They will be filed chronologically by date and numerically within each date by District prefix and case number, as will be found in the upper right corner of the CCR. Upon receipt, the "Completion Report" will be substituted in the file for the "Original", and the "Original" will be discarded. By chronological filing and color-coding of the CCR copies, complaints outstanding beyond reasonable time frames can be readily identified. For statistical purposes, manual tabulations of the CCR's in the Master File could disclose:

1. How many complaints are handled within any given period of time.
2. The types of complaints.
3. The sources of complaints.
4. What associations are most frequently the object of complaints.
5. What districts are most frequently involved.
6. How long it takes to process complaints generally or by type or district.
7. A breakdown of how various complaints are resolved.
8. The complaint workload of any given respondent.

Computerization of this system could increase the statistical and management information possibilities, but the need for this has not been demonstrated at this time.

Congressional and White House Referrals

Complaints referred by members of Congress or the White House will continue to be received by the Assistant to the Board. Such referred complaints will be forwarded by the Assistant to OHUA for preparation of a CCR, and OHUA will then forward these complaints to the Regional Director. Responses to such referrals will normally be made over the signature of the Assistant to the Board.

After receipt from OHUA, the Regional Director will forward the correspondence to the appropriate Supervisory Agent for action using a standard transmittal form (Exhibit III). An acknowledgment of receipt and referral will be prepared for the signature of the Assistant to the Board by the Regional Director.

If appropriate, the Supervisory Agent will request the association to comment upon the complaint. Such communication normally will be in writing. If necessary, the Supervisory Agent will request that an examiner investigate the matter.

After completing his review of the matter, the Supervisory Agent will prepare a draft response to the Congressional/White House referral and forward it to the Regional Director. This should be accomplished within 15 working days of receipt of the complaint. The Regional Director will review the draft response, make any necessary revisions, and forward it within two days to the Assistant to the Board for signature and transmittal to the referring party.

If the complaint does not concern a specific institution, the Regional Director will prepare within five days an appropriate response for the signature of the Assistant to the Board.

Supervisory Agent's Quarterly Report

Within 10 days after the close of each calendar quarter, a "Supervisory Agent's Quarterly Report of Written Complaints Open Beyond 45 Days" (at the date of that report) shall be filed by each District Bank with its respective Regional Director. A copy of that report, FHLBB Form No. 1133, is attached as Exhibit IV. The instructions for its preparation appear on the reverse side of the report.

Ordering of Responsibilities

All complaints, whether received in Washington or in one of the Board's 12 FHLBank Districts, will be recorded immediately upon receipt on the control form known internally as a "CCR", an acronym for "Consumer Complaint Registration". The Office of Housing and Urban Affairs (OHUA) will be responsible for maintaining the CCR master file from which periodic reports may be derived concerning the number, nature and ultimate resolution of complaints received. The specifics of these procedures are discussed above under the heading, "Control Records."

The Office of Examinations and Supervision in Washington (OES) will have responsibility for the effective administration of consumer and nondiscrimination complaint procedures. Acting as liaison among Supervisory Agents, District Directors, the Office of General Counsel and OHUA, the OES Regional Directors will facilitate and coordinate efforts to resolve consumer and nondiscrimination complaints.

The Office of General Counsel (OGC) will be available for consultation and interpretation as to technical aspects of consumer and nondiscrimination law and regulation compliance. As in cases of other kinds of violations, OGC will be called upon to assist OES in formal investigations and, where necessary, preparation of cease-and-desist orders to obtain correction of noncompliance.

The Board's Supervisory Agents in each of the twelve Federal Home Loan Bank Districts will be responsible for seeing that all avenues of information reasonably necessary to draw valid conclusions are exhausted before making a determination as to corroboration of complaints. The Supervisory Agents are expected to call upon any resources of the Board which are needed to satisfactorily review such complaints and to obtain correction and assure compliance, when indicated.

Overview of Investigation Procedures

Complaints received in Washington will be recorded for control purposes by OHUA on the CCR system, and the complaint correspondence will be forwarded within 48 hours of receipt by the Regional Director to the appropriate Supervisory Agent for investigation.

Complaints received by the District Director, either at his district office or at an area office, will be directed to the Supervisory Agent for handling.

Complaints received by the Supervisory Agent will also be recorded on the CCR form, which is sent immediately to Washington for entry into the master file. The Supervisory Agent will acknowledge receipt of the complaint to the complainant within 48 hours of receipt and will simultaneously initiate the inquiry into the matter.

The Supervisory Agent will request all relevant information and documents from the association, the complainant and other parties involved. In addition, the Supervisory Agent will review the examination files, the records of any previous complaints against the association, and any available statistical data regarding the credit application experience of protected groups at the association. A response date, usually within ten business days, will be set. If the initial response and supporting documents prove adequate to formulate conclusions, the Supervisory Agent will promptly proceed on that basis and inform the complainant of his findings. Indicated corrective measures will be required of the association.

Inadequate initial responses will be dealt with by follow-up requests for other specific data or, if mutually deemed advisable by the Supervisory Agent and the District Director, the dispatch of Board examiners to obtain needed information and observe association policies and procedures in the area of nondiscrimination in lending and consumer protection programs.

However, uncooperative or recalcitrant management or the very serious nature of the allegations may lead the Supervisory Agent and/or the District Director to recommend Board authorization for formal investigatory procedures, including the issuance of subpoenas and the taking of sworn testimony. The OES Regional Director will arrange for such authorization by the Board through OGC, and an attorney will be assigned to assist the examiners in the investigation.

Disposition of Complaints

After taking whatever measures prove necessary to acquire all relevant facts, the Supervisory Agent will weigh his findings and determine whether a violation has occurred. The guidance of OGC and OES (Washington) may be requested in cases when equivocal findings result.

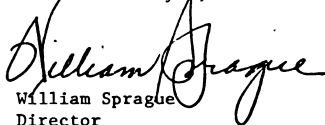
If the complaint is not substantiated by the Supervisory Agent's review of the entire record, he will so advise the complainant, providing a concise statement of the basis for such a conclusion.

-10-

When the complaint is found to be valid and violations of consumer protection or nondiscrimination laws and regulations appear to be present, the Supervisory Agent will advise the complainant that his/her allegation appears to be supported by the record, citing the laws and/or regulations which appear to have been violated. The Supervisory Agent will direct that appropriate remedies be taken with respect to (1) the individual complainant, (2) other persons or classes of persons similarly situated as the complainant, and (3) policies and procedures which would tend to perpetuate the violative practices. When specific remedies are formulated in cases dealing with a class of victims, such proposed remedies shall be submitted to the Regional Director in Washington, who will arrange for review of the proposal, prior to implementation, by senior members of the Board's staff.

Information as to the resolution of the complaint will be entered as a permanent record to the CCR master file. It is anticipated that complaints can be resolved, barring unusual circumstances which require extraordinary investigative procedures, within 30 to 45 days after receipt by the Supervisory Agent.

These procedures shall become effective July 1, 1977.


William Sprague
Director

FEDERAL HOME LOAN BANK BOARD
OFFICE OF EXAMINATIONS AND SUPERVISION

M E M O R A N D U M

#SP-12-1

To : Supervisory Agents and
District Directors

April 21, 1978

From: William Sprague

Consumer and
Nondiscrimination
Complaints

SYNOPSIS: SUPPLEMENTAL INSTRUCTIONS FOR HANDLING
CONSUMER AND NONDISCRIMINATION COMPLAINTS

Introduction

These supplemental instructions are to be used in conjunction with Memorandum SP-12, issued June 28, 1977. They are intended to accommodate certain organizational changes within the Board, to involve the OES Civil Rights Specialist in the process of handling complaints related to nondiscrimination laws and regulations, and to incorporate in the instructions basic guidelines as to time-frames and procedures for investigating discrimination complaints.

Office of Community Investment

Because the Office of Housing and Urban Affairs (OHUA) was abolished on December 21, 1977, the Office of Community Investment (OCI) should be substituted wherever reference is made to OHUA in Memorandum SP-12. The Consumer Affairs Division of OCI will have specific responsibility for fulfilling OHUA's former role in the complaint processing system.

Discrimination Complaints

With respect to complaints determined to involve allegations of discrimination, the following procedures will be employed in addition to the routing and processing steps prescribed by Memorandum SP-12.

In connection with complaints received in Washington, the Regional Director will have the additional responsibility to provide xeroxed copies of the complaint letter, CCR (Form 1131) and Transmittal Sheet (Form 1132) to the OES Civil Rights Specialist if the Regional Director believes that the complaint involves discrimination. When complaints received in the field are determined by the Supervisory Agent to involve discrimination,

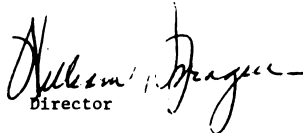
Memorandum SP-
Page 2

the Supervisory Agent will have the additional responsibility to send xeroxed copies of the complaint letter and CCR to the OES Civil Rights Specialist in Washington. The Civil Rights Specialist will review all discrimination complaints, and will be available to discuss the merits of the complaints and/or make suggestions as to investigation or examination procedures.

In addition to the written acknowledgement of receipt of discrimination complaints required by SP-12, the complainant should be interviewed either by phone or in person in order to obtain as much additional information as possible. Normally, such an interview will be conducted by the examiner in connection with a Special Limited Examination which should be commenced within two weeks of the Supervisory Agent's acknowledgement, unless sufficient information is on hand to properly conclude the complaint. However, the Supervisory Agent may determine that it would be desirable that he/she interview the complainant before an examination is commenced.

Where an investigation has been made and no violation appears to have occurred, a letter so stating should be sent to the complainant and a copy sent to the association involved. Where it is determined that the association has engaged in a prohibited discriminatory practice, the complainant will be informed of our findings and appropriate supervisory action will be taken. Enforcement guidelines are in preparation and will follow, by separate memorandum, as soon as possible. Where it remains uncertain whether what has occurred constitutes a violation, a request for guidance, e.g., legal opinion, should be forwarded to the Regional Director. Regardless of the outcome of the investigation, copies of all correspondence (and pertinent documents) subsequent to receipt of the complaint should be forwarded to the OES Civil Rights Specialist in Washington for monitoring of the thoroughness, effectiveness and consistency of discrimination complaint procedures.

If in the course of investigation of a discrimination complaint, policies or practices conducive to violations of nondiscrimination laws or regulations are discovered, remedial action should be taken whether or not the instant complaint is sustained. Also, if we believe the instant complaint is not proven by the record, the complainant should be advised of his/her rights to pursue the matter externally, and that our inability to substantiate the charges would not necessarily foreclose the complainant's right to pursue other courses of remedy of discrimination perceived by the complainant.


Director

No. 78-303

Date: May 18, 1978

[12 CFR 528]

FEDERAL HOME LOAN BANK SYSTEM
Nondiscrimination Requirements

AGENCY: Federal Home Loan Bank Board ("Bank Board")

ACTION: Proposed amendment

SUMMARY: This amendment would require member institutions to send loan applicants a copy of the property appraisal with the Regulation B adverse action notice when an application is rejected or otherwise adversely acted on because the property's appraised value is too low to secure the loan requested. Presently, institutions may simply state that there is inadequate collateral. The Bank Board believes that a copy of the appraisal would better explain the reason for the loan decision.

Readers may also be interested in the Bank Board's final nondiscrimination-in-lending regulations (Bank Board Resolution No. 78-302), published concurrently with this proposal, which provide, among other things, that lending decisions may not be based on discriminatory appraisals.

COMMENTS MUST BE RECEIVED ON OR BEFORE: July 28, 1978.

ADDRESS: Send comments to the Office of the Secretary, Federal Home Loan Bank Board, 1700 G Street, N.W., Washington, D. C. 20552. Comments available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Harry W. Quillian, Associate General Counsel, Federal Home Loan Bank Board, 1700 G Street, N. W., Washington, D. C. 20552. Telephone number: (202) 377-6440.

SUPPLEMENTARY INFORMATION: The Bank Board proposes to amend 12 CFR § 528.2a of the Rules and Regulations for the Federal Home Loan Bank System by adding thereto a new subparagraph (a)(2), as summarized above. This would provide applicants with information not usually available to them, but just as important as reasons for a loan denial

or other adverse action based upon individual creditworthiness. When a loan is denied, or is offered on less favorable terms than generally available because of any reason related to applicants' employment history, income, length of residence in the area, etc., the information can be verified by applicants from personal knowledge. However, a loan decision based upon inadequate collateral can be verified by applicants only if the institution provides a copy of the appraisal, or if the applicants order another appraisal.

In addition to comments on this proposal, the Bank Board invites suggestions of alternative methods dissatisfied applicants could use to confirm the fairness of an appraisal.

Accordingly, the Board proposes to amend 12 CFR § 528.2a by redesignating paragraph (a) thereof as (a)(1) and adding new subparagraph (a)(2) to read as follows:

§ 528.2a Nondiscriminatory appraisal and underwriting.

(See also, § 531.8(b), (c)(6), and (c)(7).)

(a) (1) Appraisal. * * *

(2) When an institution denies or takes other adverse action on a loan application because the appraised value of the property is inadequate to secure the loan amount requested, a copy of the appraisal shall accompany the adverse action notice required by 12 CFR 202.9.

(Title VIII, Pub. L. 95-128 91 Stat. 1147 (12 U.S.C. 2901); Title VII, Pub. L. 93-495 (15 U.S.C. 1691); Title VIII, Pub. L. 90-284, 82 Stat. 81 (42 U.S.C. 3601-3619), 16 Stat. 144, 14 Stat. 27 (42 U.S.C. 1981); EO 11063, 27 FR 11527; sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); secs. 402, 403, 407, 48 Stat. 1256, 1257, 1260, as amended (12 U.S.C. 1725, 1726, 1730); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR 1943-48 Comp. 1071)

By the Federal Home Loan Bank Board


J. U. Finn
Secretary

Analysis of Comments on Board Resolution No. 78-303Summary

A total of 540 written comments were received on the proposal. Eleven FHLBanks (all but Seattle) sent comments. Two of the Banks (New York and Des Moines) and thirteen other respondents favored the proposal. All other respondents opposed the proposal, some in strong terms.

Respondents may be categorized as follows:

Federal associations	284
State-chartered associations	120
Appraisers/Realtors	75
Trade associations and others	26
Congressionals	22
FHLBanks	11
Department of Housing and Urban Development	1
Department of Justice (Civil Rights Division)	1
	<u>540</u>

Favorable Comments

The Department of Justice's comments were submitted by Walter Gorman, Deputy Chief of the Civil Rights Division's Housing and Credit Section. He endorsed the proposal as consistent with the purpose of the Equal Credit Opportunity Act in that having to furnish a copy of the appraisal to refused applicants would inhibit creditors from using improper appraisal standards. He also noted that racially discriminatory appraisal practices have been held to be illegal (U.S. v. American Institute of Real Estate Appraisers, 442 F. Supp. 1072 (N.D. Ill. 1977)) and that access to appraisals would enable applicants to determine whether discriminatory factors played any role in the valuation process. He also noted that such access would enable applicants to correct any inaccurate information relied on by the lender, which would aid both lender and applicant.

On behalf of the League of Women Voters, President Ruth J. Hinerfeld and Human Resources Chair Dot Ridings supported the proposal, but urged that it be extended to require member institutions to maintain written nondiscriminatory appraisal standards. They also recommended that disclosure of the appraisal be required whenever a loan is offered on less favorable terms than requested.

On behalf of the organizations comprising the Center for National Policy Review, William L. Taylor supported the objectives of the proposal and recommended that it be extended to require written nondiscriminatory appraisal standards, a requirement which he argued is "an essential safeguard for the borrowing public." He also argued that the proposal should be extended to apply to all instances where a loan is denied or offered on less favorable terms than requested, arguing that whether an applicant eventually accepts or rejects an offer should not affect his or her ability to verify the appraisal on which it is based ("adverse action" under Regulation B includes only loan denials and counteroffers rejected by the applicant).

HUD Secretary Patricia Roberts Harris favored the proposal on the ground that without a copy of the appraisal it is "very difficult for an applicant to verify the reported information and to effectively challenge the validity of the appraiser's conclusion." She also recommended that the proposal be extended to "require clear documentation of any adjustments to market value and [to] state that, without proof, certain reasons for adjustments (e.g., racial or economic transition) are not valid and should not be used to reflect value."

Rev. Daniel J. Ring of the Office of Community Relations, Diocese of Toledo, expressed enthusiastic support for the proposal and suggested that it be extended to require that a copy of the appraisal be given to applicants denied a loan regardless of the reason for the refusal, because "It would be expected that other reasons for the loan denial would be offered to the novice applicant, and he/she would become discouraged. The applicant needs some evidence of the actual appraised value."

Chris Walker, Staff Director of the San Diego City/County Reinvestment Task Force, expressed support of the amendment as proposed, because it "parallels directly the results of our research on appraisal practice."

FDIC Regional Counsel Ronald Goldstein favored the proposal because "[i]t is unfair to a customer of a bank to be denied a copy of the appraisal which he has paid for and upon which the bank is making its credit determination." He urged that the proposal be extended to require that a copy of the appraisal be given to every applicant. He argued that the more information a customer has available to him the more likely the customer will be able to decide whether discrimination has occurred.

For the Des Moines Bank, Supervisory Agent Harlan G. Halsne expressed support for the proposal stating "The Bank Board's reasoning in proposing the amendment appears very valid, although we perceive of some problems involving disputes relative to values estimated by the association, by the loan applicant and/or the seller of the property."

New York Bank President Bryce Curry supported the proposal as "reasonable" and noted that "in most instances, loan applicants have paid for an appraisal report so that there may be some argument made that the appraisal report belongs to the loan applicant anyway."

Unfavorable Comments

The FHLBanks of Chicago, San Francisco, Indianapolis, Cincinnati, Boston, Topeka, Pittsburgh, Little Rock, and Atlanta opposed the proposal on one or more of the following grounds: 1) appraising is not a science, 2) appraisers will charge more if required to defend their appraisals, 3) disclosure of appraisals will spark costly and fruitless disputes as to the validity of the appraisals, 4) appraisals should at most only be made available on request rather than handed out indiscriminately, 5) applicants should have a right only to an explanation of the appraisal, not to the appraisal itself, 6) most applicants would not understand an appraisal, 7) there is no demonstrated need for the proposal.

Many of the public comments opposing the proposal paralleled the FHLBank comments noted above. The principal arguments made against the proposal were as follows:

Appraisals done for lender

Many responding associations either said or implied that they do not charge separately for appraisals and/or do not charge for them at all unless the loan is made. Some simply stood on the argument that since they pay for the appraisal the applicant has no right to it. Others argued that if they were forced to give copies to applicants they would have to impose a substantial charge to defray increased appraisal expense and guard against "sophisticated" persons getting a free appraisal by applying for a loan for an amount known to greatly exceed the value of the property.

Increased costs

Many respondents stated that their appraisals were done on a simplified or mass production basis by staff appraisers or by fee appraisers. They argued that such appraisals answer their need at modest cost (frequently less than \$100) but that appraisals done to satisfy public scrutiny and possible challenge by sellers, buyers, and brokers would have to be much more detailed and much more costly (up to \$200 or more), which cost would have to be passed along to applicants.

Disputes and litigation

Many responding associations argued that adoption of the proposal would involve them in disputes and possibly litigation with sellers, brokers, and buyers. They noted that the price a particular buyer is willing to pay for a property frequently differs from its appraised market value. They argued that where the appraised value was lower than the agreed purchase/sale price giving a copy of the appraisal to the applicant could thrust them into the role of arbiter of value, and that if the sale fell through disgruntled sellers and brokers might take their business elsewhere and/or sue the association, especially if some flaw were discovered in the appraisal. Appraisers noted that to do appraisals known to be subject to public disclosure and challenge by interested parties would require much more work and much higher prices than do the appraisals now done solely for use by the client/lenders.

Borrowers would not understand appraisal

Many associations and appraisers argued that most applicants would not understand appraisals and would dispute them based on their subjective valuation of the property. These respondents argued that defending appraisals to such customers would be tedious and costly with the cost necessarily passed on to applicants in the form of higher appraisal and service charges.

Abuse by applicants

A number of associations argued that adoption of the proposal would force them to impose a charge for appraisals to protect themselves against "sophisticated" persons who could obtain a "free" appraisal by applying for a loan in excess of the known value of the property. Some such associations said

that they presently keep their costs down by refusing an application on the basis of a preliminary inspection where such inspection convinces them that the property would not support the loan applied for. They argued that if they needed to defend their decision in detail they would need to do a full appraisal in all cases at greatly increased cost.

Lack of demonstrated need or benefit

Many respondents, including the FHLBanks of Chicago, Boston, and Atlanta argued that there is little or no evidence of need for the amendment or likely benefit which would flow from it. On behalf of the FHLBank of Atlanta, Supervisory Agent Erwin Allen advised that "The number of complaints that have been received from prospective borrowers because of loans being rejected or otherwise adversely acted upon because the property's appraisal value is too low to secure the loan requested, is minimal. The isolated instances that we have seen do not in our opinion warrant a requirement such as the one proposed in Resolution No. 78-303."

Threat to insured institutions

Many respondents argued that appraisers subject to challenge for their appraisals would strain toward meeting the purchase price, rather than have to justify a lower appraisal. They noted that this could result in overlending by associations with attendant increased risk.

Suggested Alternatives

The most frequent alternative suggested by respondents opposing the proposal was simply that it be withdrawn.

More positively, some respondents suggested that the requirement be only to provide copies of appraisals at the request of refused applicants. It was argued that this would save the expense of sending appraisals to numerous applicants not interested in them or able to understand them. A variation on this alternative was suggestion that member institutions be required to advise refused applicants that a copy of the appraisal would be provided on request.

Another suggested alternative was that member institutions be required only to disclose the appraised value and discuss the appraisal with a refused applicant. A variation

of this alternative was the suggestion that refused applicants be able to review and discuss the appraisal with an officer of the lender, but not get a copy of the appraisal.

A number of respondents suggested that instead of the proposed regulation member institutions be encouraged to participate in a mortgage application review program. Such programs, which apparently are in operation in Chicago, New York and elsewhere, provide refused applicants an opportunity to have their applications reviewed by a committee not controlled by the lender in question. The New York program, for example, involves, according to the Savings and Loan League of New York State, a committee "comprised of industry and public members for an impartial examination and review."

A number of respondents suggested that if the Bank Board adopts the proposal or any variation of it that it should be made applicable only to home mortgage loans.

BENJAMIN S. ROSENTHAL, N.Y., CHAIRMAN
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GABRY BROWN, MICH.
 CLARENCE J. BROWN, OHIO
 TOM CONCORAN, ILL.

(202) 225-4407

NINETY-FIFTH CONGRESS

Congress of the United States

House of Representatives

COMMERCE, CONSUMER, AND MONETARY AFFAIRS
 SUBCOMMITTEE

OF THE
 COMMITTEE ON GOVERNMENT OPERATIONS

RAYBURN HOUSE OFFICE BUILDING, ROOM B-377
 WASHINGTON, D.C. 20515

August 18, 1978

Hon. Robert H. McKinney, Chairman
 Federal Home Loan Bank Board
 1700 G Street, N.W.
 Washington, D. C. 20552

Dear Mr. Chairman:

This letter supplements my letter of July 28, concerning the hearings this subcommittee will hold in September on the financial regulatory agencies' enforcement of the Equal Credit Opportunity Act and the Fair Housing Act. The statement below of questions for testimony and of supplementary materials to be supplied in advance supersedes the statements of questions and requests in the earlier letter.

The specific questions on which the subcommittee requests the testimony of the Federal Home Loan Bank Board are the following:

1. Redlining:

- a. To what extent are the problems of urban neighborhood decay and redlining the result of discriminatory practices in the handling of individual loan inquiries and applications? In what ways and to what extent will the Federal Home Loan Bank Board's new non-discrimination regulations address these problems of neighborhood decay and redlining?
- b. How will the Federal Home Loan Bank Board detect redlining discrimination at individual associations, and how will you enforce compliance with the nondiscrimination regulations, especially the anti-redlining provisions of these regulations? What role will the monitoring information specified in section 528.6 have in this program of detection and enforcement?
- c. What is your expectation about the date by which you can reasonably expect to achieve full compliance with these regulations throughout the industry?

2. Recent Enforcement:

- a. How many and what types of violations of the Fair Housing Act, the Equal Credit Opportunity Act, or Regulation B have the Bank Board's examiners found in insured savings and loan associations in 1977 and 1978? What portion of these violations were clear violations of the substance and spirit of the laws prohibiting discrimination? What remedial or enforcement actions has the Bank Board taken to correct these violations?
- b. Were there any instances of repeat violations, in which associations were found to be continuing to engage in discriminatory practices after having previously been told to stop? What enforcement actions has the Bank Board taken in these cases of repeat violations?

3. Future Enforcement: How will the Federal Home Loan Bank Board deal in the future with cases of repeat violations of the Fair Housing Act, the Equal Credit Opportunity Act, or Regulation B, where an association is found on the second or third examination to have failed to correct conditions found on a previous examination? In particular,

- a. In the case of repeat violations will you inform, or require the association to inform, the victims of lending discrimination that unlawful discrimination has been found in the institution's handling of a previous application or inquiry from them?
- b. Under what circumstances will you release publicly the names of institutions that have refused or failed to eliminate discriminatory practices?
- c. Under what circumstances will you seek criminal prosecution of or other punitive action against associations or their officers who fail to eliminate discriminatory practices?

4. Civil Damages Litigation:

- a. What is the view of the Federal Home Loan Bank Board about the effectiveness and proper role of civil damages litigation by private individuals in bringing about general compliance with the laws against credit discrimination?
- b. What steps does the FHLBB take to inform consumers of their right to file civil damage suits under the Fair Housing Act and the Equal Credit Opportunity Act, or to facilitate in other ways consumer use of the civil damages provisions of these acts?

5. Consumer Information: What other consumer information and education activities does the FHLBB conduct to inform the general public about the laws against credit discrimination? Do you have any plans to expand these activities?

In addition to these questions to be addressed in testimony, the subcommittee requests that you provide in advance answers to certain specific questions and certain related materials, as follows:

1. What provisions of law and what court decisions comprise the legal basis for the Federal Home Loan Bank Board's new nondiscrimination regulations and for the enforcement program that will be followed to ensure compliance with these regulations?
2. Do you anticipate any legal challenge of the agency's authority to issue or enforce these regulations?
3. What specific evidence have you that redlining practices and discriminatory appraisal practices of the sort prohibited in the new regulations are occurring or have recently occurred? Please provide to the subcommittee copies of any staff studies or other reports (including independent research or investigative studies) on which you rely as evidence. In the case of evidence arising from examinations, please report as fully as possible the nature of the findings, the types of communities or neighborhoods involved, the number of institutions involved, and all other information pertinent to a full description of your findings of redlining practices.
4. How will the Federal Home Loan Bank Board's examination procedures enforce the prohibitions against "pre-screening" and discouragement of potential loan applicants?
 - a. Please explain how the examination procedures will determine whether the loan application register maintained by each association is complete and has not had certain cases intentionally omitted, especially in-person inquiries that fall within the technical definition of "application" but in which no written application was submitted?
 - b. What procedures will detect the discouragement of applicants by a loan officer who, upon being asked the current interest rate his association charges on home loans, quotes one rate to applicants he wishes to encourage and another higher rate to applicants he wishes to discourage? What procedures will detect the discouragement of applicants by a loan officer who informs certain applicants whom he wishes to discourage that six to eight weeks will be required to process an application, when in fact only one week is required?

- c. Please supply to the subcommittee the text of all examiner instructions that address the problem of "pre-screening" and discouragement. If there are no such instructions, please so state.
5. How will the Federal Home Loan Bank Board examiners evaluate whether formalized credit scoring systems are in compliance with the Fair Housing Act, the Equal Credit Opportunity Act, and Regulation B? Please supply to the subcommittee the text of any examiner instructions that address the evaluation of credit scoring systems. If there are no such instructions, please so state.
6. How will the Federal Home Loan Bank Board examiners detect discrimination in appraisals? Please supply to the subcommittee the text of any examiner instructions that address the detection of discrimination in appraisals. If there are no such instructions, please so state.
7. Will the Federal Home Loan Bank Board issue in final form its proposed amendment requiring that a copy of the appraisal must accompany the adverse action notice sent to an applicant when an application is denied on the basis of an inadequate appraised value? If not, or if there is a serious possibility that this proposed amendment may not be made final, please state the considerations that lead the Bank Board to consider withdrawing this proposal.
8. How do the Federal Home Loan Bank Board examiners evaluate the internal management controls and organized civil rights compliance program of each association? Please supply to the subcommittee the text of any examiner instructions that address the evaluation of internal management civil rights compliance programs. If there are no such instructions, please so state.
9. In the twelve-month period July 1977 through June 1978, what was the full gross cost of Federal Home Loan Bank Board activities related to enforcement of the Fair Housing Act, the Equal Credit Opportunity Act, and Regulation B? This figure should include an appropriate allowance for overhead, including clerical support, travel expenses, computer usage, rent or imputed rent, and utilities. Please give a percentage breakdown of this figure to show the proportions spent on training, field examinations and associated supervision, consumer complaint handling, consumer education, creditor education, and any other appropriate categories. Please state the method by which any estimates were derived.
10. What do you project will be the full gross cost of these same enforcement activities for the twelve months from July 1978 through June 1979, stated so as to represent coverage comparable or identical to the figures

presented in the answer to the previous question? What will be the percentage distribution of this total among the categories used in the answer to the previous question? Please state the method by which estimates were derived.

11. What are the total numbers of associations that were and will be examined in these two twelve-month periods? How many loan applications were received and how many new loans were closed by the examined associations in the earlier twelve-month period? Approximately how many applications will be received and approximately how many loans will be closed by the associations that will be examined in the later twelve-month period? What was the average loan size in the earlier period, and what do you project as an estimate of the average loan size in the later period? What was the dollar volume of loans held by the examined associations in their portfolios on December 31, 1977, and what do you project will be the corresponding dollar volume on December 31, 1978?
12. Please restate the costs of the earlier period and the projected costs of the later period as costs per association examined, per loan application received, per loan granted, per \$1000 of loan granted, and per \$1000 of loans held in association portfolios at the midpoint of the period.
13. In the twelve-month period from July 1977 through June 1978, how many examiner hours of work were spent in each of the twelve Federal Home Loan Bank districts and in all districts combined in performing on-site examination for savings and loan association compliance with the Fair Housing Act, the Equal Credit Opportunity Act, and Regulation B?
14. How many examiner hours of work do you project will be spent in each of the twelve Federal Home Loan Bank districts and in all districts combined in the period from July 1978 through June 1979 in performing on-site examination for savings and loan association compliance with the Fair Housing Act, the Equal Credit Opportunity Act, and Regulation B?
15. For each district and for all districts combined, please restate the examination effort of the earlier period and the projected examination effort of the later period in terms of examiner-hours per 100 loans granted (or loans expected to be granted), per 100 applications (or expected applications), per \$100,000 of new loans granted (or anticipated to be granted) in the respective twelve-month periods, and per \$100,000 of loans held in association portfolios at the midpoint of the period.

16. Do you employ, for enforcement or any other purpose, a distinction between "technical" and "substantive" violations of law? If so, please explain in precise terms how this distinction is used, what it means, and what types of violations fall into each class.
17. Please provide a detailed tabulation, by district and for all districts combined, of Fair Housing Act, Equal Credit Opportunity Act, and Regulation B violations found by Federal Home Loan Bank Board examiners in the twelve-month period from July 1977 through June 1978. If such a distinction is used, please distinguish clearly between violations viewed as merely "technical" and those viewed as involving a clear deviation from the substance and spirit of these acts. Within each of these two classes, please classify the violations by the specific nature of the violations. Where more than one type or class of violation was found at a single institution, please count each type of violation separately, as this request is for a tabulation of violations, not of institutions in violation.
- 17A. Please restate certain elements of the above tabulation of violations to show, by district and for all districts combined, technical and substantive violations per 100 examiner hours devoted to civil rights compliance examination, per 100 loan applications received, per 100 loans granted, and per \$100,000 of loans held in association portfolios at December 31, 1977.
18. Please provide a tabulation, by district, of institutions found to be in violation of the Fair Housing Act, the Equal Credit Opportunity Act, or Regulation B in the period from July 1977 through June 1978. If you distinguish between technical and substantive violations, please classify every institution in each district into one of three groups according to whether no violations were found, only technical violations were found, or one or more substantive violations were found.
- 18A. Please restate the above tabulation of institutions in violation to show institutions in violation as a percentage of all examined institutions in the district.
19. In the twelve-month period from July 1977 through June 1978, how many consumer complaints were received directly by the Federal Home Loan Bank Board in Washington alleging discrimination in some aspect of the lending process? How many of these complaints received in Washington originated from each of the Home Loan Bank districts? How many such complaints were received directly in each of the district Home Loan Banks?

20. Please provide a further tabular breakdown, as indicated below, of each of these figures of discrimination complaints received. For each district, please provide the numbers of complaints in each category below separately for complaints originally received in Washington and for complaints originally received in the district Home Loan Bank:
- a. Complaints the investigation of which found one or more violations of law that substantiated the complainant's claim;
 - b. Complaint cases in which no violation was found but in which an adjustment or accommodation was offered by the association and accepted by the complainant (including correction of bank errors);
 - c. Complaints based on a factual dispute, in which the complainant received no satisfaction;
 - d. All other complaints that received a thorough investigation but resulted in no violations related to the complaint and no satisfaction for the complainant; and
 - e. All other complaints (including information requests) in which no investigation, or only a cursory investigation, was deemed necessary.
21. Please provide further supplementary information, as indicated below, on each group of complaints identified in the answers to the previous question. For each group of complaints enumerated above, please specify
- a. What portion of these complaints were about associations in which a violation similar to the complaint had been found previously, at the most recent prior general compliance examination?
 - b. What portion of these complaints were about associations in which a violation similar to the complaint was found subsequently, at the next subsequent general compliance examination?
 - c. What portion of these complaints were about associations that have not been given a general compliance examination since the filing of the complaint?
22. How many private law suits for civil damages under the Fair Housing Act or the Equal Credit Opportunity Act have been filed against savings and loan associations in 1977 and 1978? In how many of these instances had the plaintiff previously filed a complaint with the Federal Home Loan Bank Board or a district Home Loan Bank, prior to filing the law suit?

23. In what ways does the Federal Home Loan Bank Board inform loan applicants or potential applicants of the existence and possible usefulness to them of the civil damages provisions of the Fair Housing Act and the Equal Credit Opportunity Act? Please supply to the subcommittee examples of any letters, pamphlets, or other educational or informational materials in which these civil damages provisions are mentioned.
24. How many of each type of letter, pamphlet, or other educational or informational material mentioned in the answer to the previous question were sent out or distributed to the public in the twelve-month period from July 1977 through June 1978? Please indicate the method of distribution and types of groups or individuals to which these materials were distributed.
25. Please report, with available statistics, whatever information the Federal Home Loan Bank Board now has concerning the extent and consequences of fire insurance redlining.
26. Do savings and loan associations maintain in their files information that would identify individual home loan applications denied or withdrawn, or outstanding home loans foreclosed, for lack of acceptable fire, homeowners, or mortgage insurance? Has the FHLBB utilized this information, or would it be feasible for the FHLBB to utilize this information, possibly in conjunction with the other financial regulatory agencies, to derive statistics on the extent and geographic distribution of insurance redlining?
27. In their examinations for compliance with the Fair Housing Act, the Equal Credit Opportunity Act, and Regulation B, what procedures or guidelines do FHLBB examiners follow in determining what portion of their examination effort is to be devoted to each association? How is the size determined for the loan sample that will be reviewed for compliance in each institution? In particular, is recognition given to the volume of loan originations, as distinct from loans held in the portfolio, in allocating examination effort to institutions that are active in originating loans for resale? Please supply to the subcommittee the text of any examiner instructions, policy guidelines, or other documents that address this question of the allocation of compliance examination effort among the different institutions to be examined.
28. Please describe the organizational structure and responsibilities of the Washington headquarters and the district Federal Home Loan Banks as they apply to the fair housing and equal credit compliance examination function. What are the relevant responsibilities and authorities associated with each position in this organizational structure,

- and what degree of autonomy is exercised by officials assigned to the district Banks in the performance of this function? What are the procedures followed for systematic oversight and review by the headquarters staff in Washington of the equal credit and fair housing compliance examinations performed by the field examination staff?
29. How does the Federal Home Loan Bank Board's system of recognition and advancement for examiners convey an agency commitment to and provide personal reward for vigorous enforcement of the laws against credit discrimination? In particular,
- a. In giving recognition and advancement to examiners, what weight is given to performance in civil rights compliance work?
 - b. What are the standards by which examiner performance in civil rights compliance work is judged?
30. Have you any reliable and representative information concerning the costs incurred by savings and loan associations to comply with Regulation B and the laws against credit discrimination? If so, what portion of these costs is associated with the initial training and other front end start-up costs of their compliance programs, and what portion is continuing expenses directly associated with the processing of applications? Can the continuing expenses be stated as costs per loan application received or per \$100,000 of mortgage loan assets held? Can they be stated in terms of fractions of a percentage point on the interest rate of a mortgage loan? What was the method by which these measurements were made?
31. How are associations' records of fair housing and equal credit compliance being taken into consideration in deciding which associations will receive special advances under the Bank Board's new Community Investment Fund program? Please supply to the subcommittee a copy of any instructions or policy memoranda that specify the consideration to be given to associations' compliance records in allocating these community investment advances among associations. If there are no such documents, please so state.
32. How many associations in each Federal Home Loan Bank district and in all districts combined have received special community investment advances under this program as of August 18, 1978? What portion of these associations in each district and in all districts combined were found at the most recent prior compliance examination to be in violation of the Fair Housing Act, the Equal Credit Opportunity Act, or Regulation B? Please specify what portion showed one or more non-trivial substantive violations and what portion showed only technical violations.

Hon. Robert H. McKinney


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August 18, 1978

33. Will FHLBB examiners evaluate in any way the written statements of loan underwriting standards that associations must make available to the public, or will they merely verify the existence and availability of these statements of underwriting standards? If they evaluate these statements, what criteria of judgment will they apply? Please supply to the subcommittee the text of any examiner instructions that deal with evaluation of association statements of loan underwriting standards. If there are no such instructions, please so state.
34. How do FHLBB examiners employ Home Mortgage Disclosure Act data in evaluating association compliance with the Fair Housing Act and the nondiscrimination regulations? Please supply to the subcommittee the text of any examiner instructions concerning the use of Home Mortgage Disclosure Act data. If there are no such instructions, please so state.
35. Please identify and describe any major surveys, reports, or studies, either by outside experts or by Federal Home Loan Bank Board staff, that have recently been completed, are currently in progress, or are planned for the near future on any aspect of the responsibilities of the FHLBB under the Fair Housing Act or the Equal Credit Opportunity Act.

Please provide 75 copies of your prepared statement to the subcommittee at least 24 hours in advance of your appearance. The responses to the supplementary questions should be provided by Friday, September 8. If for any reason not all of these responses can be compiled by that time, then please deliver to the subcommittee on September 8 the answers and materials that are ready at that time, with the remaining answers and materials to be supplied as soon thereafter as possible. If you have any questions concerning this request, please contact Don Tucker of the subcommittee staff.

Sincerely,



Benjamin S. Rosenthal
Chairman

BSR:tt

Fact Sheet on the Bank Board's Fair Housing Enforcement Effort

The Bank Board has the following tools to use in ensuring fair housing enforcement:

1. Status as a regulatory agency:

The Bank Board has general supervisory powers over members of the Federal Home Loan Bank System, Federally chartered savings and loan associations, and State chartered associations which are insured by the Federal Savings and Loan Insurance Corporation (FSLIC). To effectively exercise these supervisory powers the Bank Board has developed:

a. An extensive and comprehensive examination system:

(1) The Bank Board employs approximately 800 examiners who examine, approximately every 14-15 months, the operations of - including compliance with the Fair Housing Act, ECOA, and related consumer protection and civil rights laws - the over 4000 S&Ls within its jurisdiction.

(2) Examiners are specialists in S&L operations and by going through all aspects of an S&L's operations can detect discriminatory practices which might be missed by someone unfamiliar with the industry who was concentrating on only one aspect of S&L operations.

(3) Examiners are specially trained in detecting discriminatory practices. From October 1976 to May 1977, all examiners and supervisory personnel received special training in nondiscrimination and equal employment practices. The second round of examiner training, which will focus on our new nondiscrimination regulation, redlining, CRA, HMDA, and ECOA, begins next month.

b. Extensive enforcement powers to ensure fair housing and nondiscrimination in lending, including the power to issue cease and desist orders against an association, if necessary. The Financial Institutions Regulatory Act which is now pending before Congress will increase these enforcement powers by authorizing the issuance of cease and desist orders against individual officers and directors where appropriate and by authorizing the imposition of fines against violators of the Bank Board's final orders. See c.(2) below.

c. A comprehensive regulatory scheme which is already in place:

(1) The Bank Board's revised nondiscrimination regulations went into effect July 1, 1978. They comprehensively address the problems of discrimination in lending, with emphasis on redlining, pre-screening, and establishing a new monitoring system to be used by our examiners to detect discriminatory practices. These loan application registers are now being tested and will be kept by all S&Ls regulated by the Bank Board beginning September 1, 1978.

(2) The Bank Board also has adopted a new enforcement policy, which was developed by our Supervisory Agents from their experience in fair housing enforcement applying the remedies developed by the most progressive districts to the entire bank system. Emphasis is placed on taking action to correct the violation and ensure that it is not repeated; on informing the public that the unlawful practice has been discontinued; and on taking affirmative action to assist identifiable individuals or classes who were adversely affected by the unlawful practice.

(3) Our regulations to implement the Community Reinvestment Act (CRA), which will go into effect later this fall, require the Bank Board to take an S&L's record on fair housing and nondiscrimination into account when deciding whether their application for a new deposit facility, relocation, merger, etc. should be approved. During the first six months of 1978, the Bank Board received over 1,600 applications of this type. The fact that S&Ls need our approval in connection with major phases of their operations gives us additional leverage to ensure that they comply with the Fair Housing Act.

(4) Our regulations require very broad disclosure to the public of many aspects of an S&L's operations, for example:

(a) Our nondiscrimination regulations require S&Ls to publish their underwriting standards and to give them to applicants upon request.

(b) In addition, our nondiscrimination regulations require conspicuous posting of a revised fair lending poster describing the consumer's rights under the Fair Housing Act and ECOA and the procedure for complaining if one believes he or she has been discriminated against.

(c) Pursuant to the ECOA, we require S&Ls to provide applicants with a written statement of why they were denied a loan or offered one on less favorable terms than requested.

(d) We also have proposed a regulation which would require S&Ls to make the appraisal report relied upon to deny a loan available to the applicant.

(e) Under HMDA, we require S&Ls to tabulate and make available to the public information on where they have made loans.

(f) Under our proposed CRA regulations, S&Ls will have to make available to the public, and accept public comment on, their delineation of the communities they serve and the types of credit they offer in those communities.

This information can be, and is used, by interested persons and community groups to aid in ensuring that fair housing goals are achieved.

2. The Bank Board has also developed a number of tools to encourage S&Ls to lend affirmatively. Among them are:

a. The Community Investment Fund (CIF) which is administered by the Federal Home Loan Bank System which, using funds generated entirely by the bank system, provides low priced advances to institutions which are found to be making specially creative efforts to encourage community revitalization and to direct mortgage lending into mature communities.

b. The Bank Board has established an Office of Community Investment which offers technical assistance to S&Ls in implementing affirmative lending practices and which coordinates the Bank board's consumer complaint process. The Bank Board has developed very strict guidelines on how consumer and fair housing complaints are to be handled and has set very strict time limits (approximately 48 hours of processing allowed at each stage except the investigative one) for resolving them. The actual decision on the appropriate method to handle the complaints is made by the Supervisory Agent in each district who can call upon our examining staff to make a special examination if the situation warrants it. If this is required, depending on scheduling problems, the examiner is usually sent in within a week to 10 days of the request.

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c. Community Investment Officers have been appointed in each of the Federal Home Loan Banks to offer technical assistance to system members in community revitalization.

d. In addition, there is a Civil Rights Specialist who is a special advisor to the Bank Board's Examinations Division in Washington. She is assisted by the civil rights specialists who are attached to each district's examination staff and who are available to assist examiners with the nondiscrimination parts of the examination process and to aid in investigating civil rights complaints.

Using these various tools, the Bank Board has developed a good record in discovering and expeditiously handling fair housing and civil rights problems. The following chart shows the number of possible violations of our nondiscrimination regulations and the ECOA which were found by our examiners over the past two years. As can be seen from the chart, the number of possible violations noted by our examiners increased dramatically after the first round of examiner training. A good number were technical violations, such as not having posted the proper fair lending poster or not doing the proper recordkeeping. As our examiners have become more expert in these areas, they are picking up more subtle violations such as discriminatory underwriting policies. Correspondingly, as the associations become better versed in the laws' requirements, fewer of the more technical violations are occurring.

Period Covered	No. of Possible Violations Uncovered by Our Examiners	Percent Change Over Previous Period
8/1/76 - 1/31/77 (first round of examiner training began in October, 1976)	581	not applicable
1/1/77 - 12/31/77	2,804	241%
1/1/78 - 6/30/78 (second round of examiner training in nondiscrimination to begin in September 1978)	2,857	204%

In contrast to the violations uncovered by our examiners, in the twelve month period between July 1, 1977 and June 30, 1978, the Bank Board's Washington and district offices (i.e., the Supervisory Agents in the District Federal Home Loan Banks) received a total of 228 complaints alleging discrimination in lending of which 181 have been closed. In contrast to the violations uncovered by our examiners, very few of the alleged violations brought to our attention through the complaint process are sustained. Of these 181 complaints, which have been closed the complainants claim was substantiated upon investigation in only 12 cases.

Federal Home Loan Bank Board



1700 G Street, N.W.
Washington, D.C. 20552

Federal Home Loan Bank System
Federal Home Loan Mortgage Corporation
Federal Savings and Loan Insurance Corporation

ANITA MILLER
Board Member

September 8, 1978

The Honorable Benjamin S. Rosenthal
Chairman
Commerce, Consumer and Monetary
Affairs Subcommittee
Committee on Government Operations
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

I am pleased to respond to your letter of August 18, 1978 and have attached our responses to your thirty five questions concerning the Bank Board's enforcement of the Equal Credit Opportunity Act and Fair Housing Act. If there is any additional information you need or further explanation of any of the material presented, please let us know.

I look forward to the hearing on September 14, 1978.

Sincerely,

Anita Miller

Question No. 1

What provisions of law and what court decisions comprise the legal basis for the Federal Home Loan Bank Board's new nondiscrimination regulations and for the enforcement program that will be followed to ensure compliance with these regulations?

ANSWER

The legal authority relied upon by the Bank Board in adopting the new nondiscrimination regulations was that cited in Board Resolution 78-302:

The Community Reinvestment Act, Title VIII, Pub. L. 95-128, 91 Stat. 1147 (12 U.S.C. 2901); Equal Credit Opportunity Act Amendments of 1976, Title VII, Pub. L. 93-495 (15 U.S.C. 1691); the Civil Rights Act of 1968, Title VIII (Fair Housing), Pub. L. 90-284, 82 Stat. 81 (42 U.S.C. 3601-3619), Act of May 31, 1870, 16 Stat. 144, 14 Stat. 27 (42 U.S.C. 1981); E.O. 11063 - Equal Opportunity in Housing, 27 F.R. 11527; Federal Home Loan Bank Act, sec. 17, 47 Stat. 736 (12 U.S.C. 1437); Title IV (Insurance of Savings and Loan Accounts) of the National Housing Act, secs. 402, 403, 407, 48 Stat. 1256, 1257, 1260, as amended (12 U.S.C. 1725, 1726, 1730); Home Owners Loan Act of 1933, sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); Reorg. Plan No. 3 of 1947, 12 F.R. 4981, 3 C.F.R. 1943-48 Comp. 1071.

In Laufman v. Oakley Bldg. & Loan Co., 408 F. Supp. 489, 495 (S.D. Ohio, 1976), the court upheld the Bank Board's authority to issue its original nondiscrimination regulations which our new nondiscrimination regulations amended.

Question No. 2

Do you anticipate any legal challenge of the agency's authority to issue or enforce these regulations?

ANSWER

We recognize that there is always a possibility that there may be a legal challenge to a new regulation or regulatory amendment. We have no particular reason to believe that these regulations will be challenged. However, if they are, we believe that they will be upheld and found to be within the Bank Board's authority.

In the only case in which the court has considered the question of the Bank Board's authority to promulgate nondiscrimination regulations, Laufman v. Oakley Bldg & Loan Co., 408 F.Supp. 489, 495 (S.D. Ohio, 1976), the court upheld the Bank Board's authority.

Question No. 3

What specific evidence have you that redlining practices and discriminatory appraisal practices of the sort prohibited in the new regulations are occurring or have recently occurred? Please provide to the subcommittee copies of any staff studies or other reports (including independent research or investigative studies) on which you rely as evidence. In the case of evidence arising from examinations, please report as fully as possible the nature of the findings, the types of communities or neighborhoods involved, the number of institutions involved, and all other information pertinent to a full description of your findings of redlining practices.

ANSWEREvidence from Research

The Bank Board has recently hired A. Thomas King to investigate redlining and other forms of housing discrimination. Mr. King holds a Ph.D in economics from Yale University and was formerly a faculty member in economics at the University of Maryland. He has previously studied discrimination in the pricing of rental housing and has published several papers on this and other aspects of urban housing. At the Bank Board, Mr. King is responsible for the analysis of the Loan Application Registers (see answer to question number 35) to determine what information must be collected to detect discrimination and redlining. In preparation for this study, Mr. King has completed a review of representative studies of redlining, assessing the evidence and proposing an appropriate framework for analysis.

Prior to Mr. King's arrival, the Bank Board contracted for the following papers on various aspects of redlining and neighborhood decline:

Kerry D. Vandell, Barbara Silbert Hodas, and Rachel Bratt, "Financial Institutions and Neighborhood Decline: A Review of the Literature", 1974.

Jack M. Guttentag and Susan M. Wachter, "Redlining and Public Policy."

Fair Housing Information Survey, 1975, jointly conducted by the Bank Board, the Comptroller of Currency, the Federal Deposit Insurance Corporation, and the Federal Reserve Board.

Since these studies and the ones reviewed by Mr. King are fairly voluminous, please let us know of which ones you would like a copy and we will promptly send it to you.

Question No. 3

Page Two

Evidence from Examinations

Our examiners are detecting fair housing violations which indicate "patterns and practices" which tend to discriminate against certain classes of borrowers and certain neighborhoods.

Among the kinds of violations they are finding are:

- Refusals to make loans at less than a certain dollar amount, which in some areas means that minorities are effectively precluded from purchasing a house since those within their means and in the neighborhoods where they live are often below the minimum dollar amount.
 - Refusals to lend in certain areas solely because of the age of the houses. This kind of policy (which is forbidden by our new Nondiscrimination Regulations) tends to discriminate against certain neighborhoods since the houses in an area are often built about the same time. This practice tends most often to penalize older inner city neighborhoods.
 - Refusals to lend in certain areas due to the income level of the neighborhood, which tend to hurt poorer, often minority, areas.
-
- Refusals to lend in certain areas due to the racial composition of the neighborhood.
 - Loan applications rejected because of the physical condition of the property, although the files contained no appraisal reports to back up this contention.
 - Older houses are penalized by requiring less favorable terms to get a loan (for example, higher rates, shorter terms, higher downpayments).

Our examiners are also uncovering appraisals containing potentially discriminatory information such as:

- Notation of the predominant nationalities in an area.
- Notation that the neighborhood is changing to _____ (the implication being for the worse, usually because minorities are moving in).

Question 3
Page Three

- . Notation of the "typical" resident's gross income (which tends to stereotype an area and leads to the possibility that the applicant's individual creditworthiness is not weighed).
- . Words such as "deteriorating" and "declining" used to describe neighborhoods.
- . Forms which ask if there is "any actual or threatened racial encroachments."
- . Comments on the economics of the neighborhood.
- . Comments on a "typical" resident's occupation (which again tends to stereotype the applicant and the area to the applicant's detriment)

The following examples were extracted from examination reports and detail some of the practices which are described, in a general way, above.

Association No. 1

In the instance of one association, the review of rejected loan applications noted three such rejections as based upon the security property being located adjacent to or near commercial real estate. (These rejections were all prior to the July 1, 1978 effective date of Section 528.3(a) of the our Nondiscrimination Regulations prohibiting discrimination based upon location of the security property.)

As stated by an association representative, it was the association policy to reject loan applications where the security property was residential-type and located near adverse influences such as commercial real estate. The representative further stated that the State and City statutes pertaining to nondiscrimination in lending appear to allow consideration of property location for underwriting purposes. He then stated that the association intends to comply with the above regulation and will consider all loan applications based on factors other than those solely limited to the location of the property.

This examination was completed very recently. The supervisory agent has not received the report of examination, therefore no supervisory action has yet been taken.

Question No. 3

Page Four

Association No. 2

In response to the Nondiscrimination Questionnaire, the managing officer indicated that the association is more restrictive on loan applications in certain areas in which the association currently has or has had excessive real estate owned.*

The managing officer stated that no specific geographic boundaries for the areas involved have been set. However, he acknowledged that the general areas involved are mainly older central city neighborhoods where the association has or has had real estate owned. He further stated that each loan application is reviewed on its own merits regardless of its location.

A review of the association's latest Home Mortgage Disclosure Act Statement verified management's statements. Few loans were granted in the central city while a considerable number were made in the suburbs and in adjoining counties.

The association's lending policy also includes provisions that loan terms on older properties will be more restrictive than those on newer properties. For example, the maximum term on a house under 20 years old is 30 years, while the maximum term on house between 20 and 25 years of age is limited to 75% of the remaining economic life of the property.

It appears that the practice of refusing to lend or lending only on more restrictive terms on older central city properties may in effect discriminate, because a significant proportion of the county's minority residents live in central city areas.

Discussion with management, the review of loans made, and rejected loan applications indicate that the association gets relatively few applications for loans on central city properties. Whether this is a function of simple lack of loan demand in these areas or of some form of pre-application screening could not be determined. There is no evidence of any pre-screening by association personnel, real estate sales people, or others.

The managing officer stated that the association is aware of regulations prohibiting discrimination and is in compliance. He feels that management's obligation to the savers and economic conditions beyond association control justify greater lending restrictions in areas where the association has had real estate owned problems.

* This means that the association has foreclosed on certain properties and has acquired title to them.

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The supervisory agent has pointed out that this association is very active in the Neighborhood Housing Services, an inner-city community program, partly sponsored by the District FHLBank.

The supervisory agent discussed the examiner's comment with the association's board of directors and asked that they thoroughly reivew the regulations regarding nondiscrimination in lending.

As a result, the managing officer informed the supervisory agent that corrective action has been taken. The board of directors has reviewed our Nondiscrimination Regulations and has informed the supervisory agent that they have reemphasized the fact that it is association policy to fully comply with these regulations.

Association No. 3

Application Discouraged. The complainant alleged that the loan officer, who was a vice president of the association, discouraged him from filing an application during late March 1978, to purchase a house in the Wells Street area.

The complainant attributes the following conversation with the loan officer, who's first words were:

"If this concerns the house on Wells Street, I can save you a trip down. Our bank does not make loans on that kind of house in that kind of neighborhood."

As a result of this applicant's complaint, a special examination was conducted by the District Civil Rights Specialist. He found that the association did not appear to be redlining. As regards to the allegation that loan applications were being discouraged, this could neither be proven or disproven.

However, during this examination this matter was settled amicably between the association and the complainant. The complainant was invited to return to the association and submit his application, which he did. The loan officer involved admitted he had been less than diplomatic in his handling of this loan inquiry, for which he apologized.

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Association No. 4

During the month of January 1977, the United States Justice Department conducted an investigation of the association's lending practices. However, as of the date of this examination, the results of this investigation have not been received by the association.

A review of mortgage loans granted from January 1, 1976, to September 30, 1977, disclosed seven census tract areas in which no mortgage loans had been granted. Four of these census tracts are in commercial or rural areas; while the remaining three are heavily populated by minority groups. A review of 30 rejected mortgage loan applications, 106 outstanding and/or expired loan commitments, and a test check of 46 other rejected loan applications disclosed that only two applications have been submitted from these seven census tract areas.

The association's procedure for approving mortgage loans permits the loan interviewer to issue an adverse action to the prospective borrower based on underwriting standards established by the association. This practice is a violation of Section 12 of the association's bylaws which states that the Executive Committee has the first opportunity to approve or reject an application.

The president stated that the association has only received two loan applications for three of these census tracts. He also stated that future applications will be submitted to the Executive Committee for their action.

In response to the supervisory letter, the association assured that action would be taken as follows:

1. Attempt to locate rejected loan applicants.
2. To include additional Regulation B material in its personnel training program.
3. The board of directors adopted a resolution incorporating nondiscrimination in lending policies as required by the Fair Housing Act, Regulation B and the Bank Board's regulations.

A subsequent examination (1977) again indicated that no loans were granted in certain census tracts, which are heavily populated by minority groups. According to the examination report, only two applications were received from these areas.

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The examiner found no indication that the association was pre-screening applicants or that the applications which were received were treated in a discriminatory manner.

During January 1977, the Department of Justice conducted an investigation of this association's lending practices. The Department of Justice has not taken any action as a result of their investigation.

Association No. 5

When real estate appraisers noted the remaining economic life of properties in "declining" or older neighborhoods to be 25 years or less, the terms of loan approvals were usually at least five years less than the economic life. As noted in the attached copy of the report comment, this resulted in loan terms ranging from five to 20 years whereas loan terms ranged from 25 to 30 years in newer areas. In 14 of 20 instances reviewed, the borrowers with shorter term loans were members of a protected class under ECOA.

The supervisory agent advised the association that it would be necessary for real estate appraisers to fully document their estimates of the remaining economic life of each property appraised. The association has agreed to do this.

Association No. 6

Nondiscrimination

1. Policies

On March 16, 1972 twelve corporate policies were adopted which management believes adequately meet regulatory requirements and guidelines concerning nondiscrimination. These policies appear to be more in the form of general principles which, in implementation could be interpreted in different ways, and which do not address themselves to the specific areas contained in Section 531.8 guidelines for comparison. The president said this one policy is specific.

2. Effective Lending Territory and Loan Procurement

The effective lending territory for this centrally-located institution is the entire city area. This market is now serviced by outlying suburban branches in the northwest, west and southwest. Management has indicated in the

Question No. 3

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in the Nondiscrimination Questionnaire that the association does not make dwelling loans in "areas like unto that which we define as 'Juneway Terrace' ... therein being multiunit apartments and wherein we have sustained substantial loss by virtue of nonpayment and subsequent building demolition. Such areas preclude the possibility of a borrower being able to maintain the property and subsequently little possibility that we can protect our investment."

Furthermore, in the Lending Questionnaire, management estimates that 62% of mortgage loans are obtained through real estate brokers. Our review of loans granted revealed that, of the 1,432 loans granted during the 15-month review period, only ten were secured by properties on the south side of the city, and another 28 on south suburban properties. During the first six months of 1977, 736 loan applications were received, however only 16 applications or 2.2% of the applications received were on properties located on the south side of the city and south suburbs.

The vice president in charge of lending stated that the association's lending area historically has been the city's near north side plus the northern and western suburbs. He said that loan demand from the south side is minimal and the association does not work through south side real estate brokers. A new branch in the southwest suburbs is being constructed, and one employee is presently working in a temporary trailer office, soliciting loan applications from brokers and builders in the vicinity of this southwestern suburb of the city.

He further stated there were other situations where the association had sustained losses and cited examples.

From this experience, he stated that the association would not make a loan where it was evident to the association that the borrower would be unable to pay the indebtedness in full. While he cited specific losses, he made the point that the concern of the association was to protect its assets and its refusal to make a loan would be based on the belief that the borrower would be unable to repay indebtedness, rather than on the geographic location of the property.

In response to the supervisory letter, the association furnished supervision with copies of its revised lending policy. This revised policy included an affirmative lending program for the south side of the city, which was furnished to local real estate brokers. The supervisory agent considered this response acceptable.

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Association No. 7

Nondiscrimination

Our examination of loan files, rejected applications and related records, and subsequent discussions with management and staff members indicated that the association's executive management has very little knowledge of or concern for Federal Home Loan Bank Board regulations concerning nondiscrimination, Regulation B - Equal Credit Opportunity Act, and Regulation C - Home Mortgage Disclosure Act. The association's failure to comply with the applicable regulations made it impossible to obtain conclusive evidence of actual discriminatory practices on individual applicants in the scope of our examination; however, the management attitude reflected in the following comments are an indication that actual or potential discriminatory lending policies may exist.

1. Lending Policy

The examination report as of March 22, 1977, noted that the association's board of directors had not adopted formal written policies relating to nondiscrimination in lending. The minutes of the May 16, 1977 meeting include the following statements:

"The Secretary advised the Board that Regulation B, amending the Equal Credit Opportunity Act (ECOA) was revised, as we were advised by the FHLBB on March 7, 1977. Director ... moved that we adopt the following resolution: 'The Equal Credit Opportunity Act of 1974 prohibits discrimination in the extension of credit on the basis of sex or marital status. The 1976 amendment to the Equal Credit Opportunity Act and revised Regulation B will, as of March 23, 1977, prohibit discrimination in credit transactions on the basis of race, color, religion, national origin, age, receipt of income from public assistance programs, and good faith exercise of rights under the Consumer Credit Protection Act of 1968.' Motion seconded by Director ..., and carried."

The board action notes the provisions of Regulation B, but does not establish an association policy. This exception was brought to the attention of management during the course of the examination. Subsequently on July 17, 1978 the board clarified that resolution, as stated in the unapproved copy of the minutes for that meeting:

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"We agree with the ideas in the Equal Credit Opportunity Act of 1974 and we will not discriminate in the extension of credit on the basis of sex or marital status. The 1976 amendment to the Equal Credit Opportunity Act and revised Regulation B will, as of March 23, 1977, prohibit discrimination in credit transactions on the basis of race, color, religion, national origin, age, receipt of income from public assistance programs, and good faith exercise of rights under the Consumer Credit Protection Act of 1968. Motion seconded by Director ..., and carried."

The statement adopted still does not constitute a formal written policy. (§ 531.8) Discussions with employees who are authorized to accept loan applications indicated that executive management has not kept them abreast of the requirements and prohibitions of the various nondiscrimination regulations. We brought to the attention of the president and chief executive officer (managing officer), that Bank Regulation 528.2a(b) required that by September 1, 1978, each association shall have clearly written, nondiscriminatory loan underwriting standards, available to the public upon request.

The managing officer indicated that complying with the September 1 requirement would be difficult and he did not regard this regulation as necessary, since his main concern is to make good mortgages that will enable the association to continue to be a safe place for its depositors. He admitted that the recently enacted regulations affecting Section 528 and 531 had probably been thrown in the wastebasket by him. We made a copy of the regulation for him and he said he may or may not comply with these requirements.

In a discussion of lending policies with the managing officer, he made the statement that the association makes loans to blacks in West ..., but wouldn't make loans in a black neighborhood. He described the association's effective lending area as certain cities in the vicinity of the association. According to the managing officer, all loan applications are subject to a property inspection by members of the appraisal committee who evaluate the property and the area in which it is located. The association will lend to persons in a minority group if the property meets the appraisal committee standards. He said that the association will not make a loan to a person when the property is located in an area which is heavily populated by members of the black race

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and the appraisal committee will not be sent out to evaluate this property. This policy is followed because he believes that (1) areas heavily populated with blacks are not in the association's effective lending or savings area; (2) these areas are served by numerous other associations; and (3) the areas are subject to declining property values and unstable characteristics. He does not consider loans in these areas to be a safe and sound investment. The managing officer indicated that he was aware of the term "redlining" but believed that it is within the association's authority to reject loans they do not believe to be sound investments.

This is a recent examination and the completed examination report has not yet reached the supervisory agent or the Washington office. However, based on preliminary information furnished him, the supervisory agent, together with the State authorities, has called for a meeting of the association's board of directors, to be held September 18, 1978. At that time, the supervisory agent will require that the association take action as set forth in the Bank Board's enforcement policy - i.e., to develop and disseminate written loan policies and procedures, including an affirmative lending program for its minority communities; to train association personnel in nondiscrimination in lending; and to take corrective action regarding identifiable victims. A follow-up examination will be conducted in order to ascertain the association's degree of compliance. Should this association fail to take prompt corrective action, the supervisory agent will recommend that a cease and desist order be issued.

As the above general and specific data shows, some institutions are refusing to make loans in communities or neighborhoods based on racial, ethnic, income and age of property considerations.

We cannot at this time inform you as to the number of institutions involved in these practices, since our information was gathered from a field sample for purposes of answering the inquiry as to evidence.

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109. Williams, Alex; Beranek, William; Byrne, Robert; Kenkel, James; and Pentico, David. A Study of the Factors Associated with, or Contributing to Risk in Urban Mortgage Lending. A study conducted for the Federal Savings and Loan Insurance Corporation, 1973.
110. Williams, Alex O.; Beranek, William; and Kenkel, James. "Factors Affecting Mortgage Credit Risk in Urban Areas - A Pittsburgh Prototype Analysis," Presented at the American Real Estate and Urban Economics Association Meeting, December 29, 1973.

F. RECENT ECONOMETRIC STUDIES OF MORTGAGE
LENDING DISCRIMINATION

111. Benston, George J. and Horsky, Dan. Redlining and the Demand for Mortgages in the Central City and Suburb (Unpublished paper presented to the American Finance Association annual meeting, 1977).
112. Black, Harold; Schweitzer, Robert; and Mendell, Lewis. Discrimination in Mortgage Lending (Unpublished paper presented to the American Finance Association annual meeting, 1977).
113. Guttentag, Jack M. and Wachter, Susan M. Redlining and Public Policy (Unpublished paper presented to the American Finance Association annual meeting, 1977).
114. Werner, Frances; Frej, William; and Madway, David. "Redlining and Disinvestment: Causes, Consequences and Proposed Remedies." Clearing House Review, Volume 10, November 7 (October, 1976 Supplement)

Question No. 4,

How will the Federal Home Loan Bank Board's examination procedures enforce the prohibitions against "pre-screening" and discouragement of potential loan applicants?

- (a) Please explain how the examination procedures will determine whether the loan application register maintained by each association is complete and has not had certain cases intentionally omitted, especially in-person inquiries that fall within the technical definition of "application" but in which no written application was submitted?
- (b) What procedures will detect the discouragement of applicants by a loan officer who, upon being asked the current interest rate his association charges on home loans, quotes one rate to applicants he wishes to encourage and another higher rate to applicants he wishes to discourage? What procedures will detect the discouragement of applicants by a loan officer who informs certain applicants whom he wishes to discourage that six to eight weeks will be required to process an application, when in fact only one week is required?
- (c) Please supply to the subcommittee the text of all examiner instructions that address the problem of "pre-screening" and discouragement. If there are no such instructions, please so state.

ANSWER

4. (a) We are in the process of distributing information to all examiners showing examples of in-person inquiries that fall within the technical definition of "application". The lender's actual practices rather than its stated practices should govern each phase of the application process. (See attached memorandum on "Applications").

Examiners will review each association's nondiscrimination policies in order to ascertain, among other things, that personnel processing applications are aware of what constitutes a credit decision based on an "application". Examiners will review application processing procedures, interview processing personnel and conduct on-site observations of the application process.

The loan application register will be examined for completeness. In instances where the application register shows that only written applications are listed on the register the examiner will extend his inquiry in order to ascertain the association's actual practice as regards to other inquiries which could be considered "applications".

Such expansion would include reviews of written instructions to loan applications officers as well as interviews with such officers and association management to determine what actual procedures are and whether they are appropriate.

Question No. 4
Page 2

- (b) The Bank Board has recently revised its regulations relevant to nondiscrimination. These regulations (Part 528) require, in part, that:
- (1) Each member institution shall have clearly written, nondiscriminatory loan underwriting standards, available to the public upon request, at each of its offices.
 - (2) A member institution shall inform each inquirer of his or her right to file a written loan application and to receive a copy of the institution's underwriting standards.

Examiners will closely monitor compliance with this regulation and supervisory agents will take action against associations found to be in violation. We feel that timely and effective enforcement of this regulation will do much to eliminate such practices.

In addition to the procedures discussed in the answer to question 4(a), we intend to have our examiners review the instructions and training material given to loan application officers and to interview, in appropriate cases, such officers to determine whether the association's procedures are in compliance. We are also considering using direct observation of in-person loan application interviews.

As part of our new round of examiner training which will begin in October, we have engaged a specialist in pre-screening, recommended by Civil Rights groups, to conduct this part of the course. A copy of the course outline is attached. Take particular note of sections IIA, IIB, IID, IIH, VA and VB.

- (c) The examiner instructions on this subject are found in:
- G-1, General Questionnaire - Nondiscrimination (nos. 1, 2, 9, and 10)
 - G-2 General Questionnaire - Regulation B (nos. 1, 18b, 24 and 29).
- Copies of these questionnaires are attached.

FEDERAL HOME LOAN BANK BOARD
OFFICE OF EXAMINATIONS AND SUPERVISION

MEMORANDUM

#T 60-4

To: OES Professional Staff and
Supervisory Agents

August 10, 1978

From: James W. McBride

Regulation B

SYNOPSIS: FEDERAL RESERVE BOARD UNOFFICIAL STAFF INTER-
PRETATION REGARDING "APPLICATIONS"

The Federal Reserve Board has issued an unofficial staff interpretation of the definition of application (particularly the phrase "made in accordance with procedures established by a creditor...") in section 202.2 (f) of Regulation B. The interpretation states in part:

"The Equal Credit Opportunity act and Regulation B prohibit discrimination against credit applicants on nine specific bases. Unless a lender's policies or procedures discriminate against an applicant on a prohibited basis or have that effect, the lender may adopt any policies or procedures that it wishes (consistent with any other applicable laws). For that reason section 202.2 (f) defines an application as a request 'made in accordance with procedures established by a creditor for the type of credit requested.'

"The focus, however, is on a lender's actual practices, not its stated policies, governing each phase of the application process. For example, even though a real estate lender's stated policy is to require all applications to be in writing, if the lender makes a credit decision based on an oral request, then an application has been 'made in accordance with procedures established by (that) creditor....' The question of whether a credit decision has been made is one of fact and turns, in the staff's opinion, on whether the lender has received sufficient information about the applicant or the collateral on which to base a credit decision (again, considering its actual practices) and whether the lender takes any action to reject the request or to discourage its further pursuit.

"The following examples illustrate the staff's views on when an application has been received for Regulation B purposes in the context of residential real estate financing. Each example assumes that the lender has a stated policy of considering applications only when they are in writing.

"Example A: Shopping Inquiry

A woman telephones or meets with a loan officer and states that she is purchasing a home in the area and needs a loan. She asks about the lender's loan terms. The loan officer quotes the lender's current finance charge, maximum loan-to-value ratio, maximum maturity, and

maximum loan amount. Since the finance charge may vary with the amount of the downpayment or mortgage insurance may be required, the loan officer asks the purchase price of the house and the amount of the contemplated downpayment in order to provide the correct loan term information. The woman supplies the requested information, writes down the loan terms, and concludes the conversation. Has an 'application' come into being? No. Although the lender has received some information regarding the woman (the amount of the downpayment that she has available) and the property (the purchase price), it has not made any decision based upon that information.

"Example B: Application is Made

Assume the same facts as in example A, except the woman, after learning the loan terms, asks for a 95% loan or states her income and asks whether she qualifies for a loan from the lender. The loan officer, for whatever reason, says no or indicates that there is little point in the woman's applying for a loan. Has an 'application' for credit been made? Yes. The loan officer's willingness to reject or discourage the woman's loan request indicates that the request was made in accordance with the application process used by the lender.

"Note that, although an application has been received, the lender may not have taken adverse action as defined in section 202.2 (c) of Regulation B if applicable law prohibits the lender from making the requested loan or the lender does not extend residential mortgage credit. Otherwise, adverse action has been taken, and the notification and record retention provisions of the regulation apply. If the application is conveyed via telephone and adverse action is taken, then the lender must request the applicant's name and address. If the applicant refuses to provide that information, then the lender, of course, has no further notification obligation.

"Example C: No Application Made

Assume the same facts as in example B, except the loan officer, pursuant to the lender's uniform policy, tells the potential applicant (and all potential applicants, without exception) that applications can be considered only if they are in writing. The loan officer gives the potential applicant an application form (or, in a telephone conversation, perhaps offers to mail an application) and invites her to apply. The loan officer may provide general information about the lender's loan policies, but does not evaluate any information given voluntarily by the potential applicant. Has an application been made?

"No, because the loan request was not made in 'accordance with procedures established by the creditor for the type of credit requested.' The lender insists uniformly on written applications before making any judgments. No evaluation has been made at this point, and the lender's procedure for taking a 'request for an extension of credit' has been fully

Page Three

disclosed to the potential applicant. If the loan officer had made even a preliminary judgment and communicated it to the potential applicant (as in example B), then the request would have to be treated as an application since, by that action, the lender would be using an application process that involves an evaluation of oral requests for credit.

"Example D: Application is Made"

A woman telephones a financial institution and asks about obtaining a loan. The person answering the phone asks about the woman's income and the loan amount sought. The lender's employee determines that the woman's income is insufficient to handle the debt and tells the inquirer that submitting a written application would be a waste of time. Has an 'application' been submitted? Yes. The employee's willingness to make a credit decision based on the information provided indicates that the request was made in accordance with the application process used by this particular lender.

"Example E: No Application Made"

A woman visits a financial institution and asks about obtaining a loan. The interviewing loan officer does not ask the woman about her income, but she volunteers the information anyway. The loan officer, instead of calculating the loan payment-to-income ratio, provides the woman with a simple explanation of the lender's policy on housing expense-to-income and debt-to-income ratios and invites the woman to submit an application if she wishes. No 'application' has been submitted up to this point. Although a request for credit has been made, the application process used by the lender requires applications to be in writing. This fact has been communicated to the potential applicant, who has been invited to submit an application in the manner required of all applicants.

"Example F: Application is Made"

A real estate broker telephones a loan officer at a financial institution and asks if the lender will make a loan to a couple to finance the purchase of a particular piece of property. The broker outlines the couple's financial situation and the terms of the sale's contract. The lender has maintained a relationship with the broker for a number of years and regularly gives a preliminary indication as to whether it will make loans to the broker's clients. Has an 'application' been made? Yes, the couple's request for credit was communicated to the lender by the broker. The fact that the lender was willing to evaluate the information provided and made a preliminary credit decision at that point is evidence that the request is an application for purposes of Regulation B.

Page Four

"As the examples above illustrate, the 'procedures established by a creditor for the type of credit requested' are those procedures that are, in fact, employed. Lenders may not avoid their responsibilities under the Equal Credit Opportunity Act and Regulation B by invoking formal standards not consistently applied to all requests for credit."

Office of Examinations and
Supervision

By: James W. McBride

Distribution to State supervisory authorities to be made by District Directors-Examinations.

Second Round of Examiner Training
Nondiscrimination in Lending

Outline of Course Content

- I. Introduction to Nondiscrimination in Lending
 - A. Definitions and Brief Historical Overview of Various Forms of Discrimination
 1. Influences of slavery and reconstruction
 2. Discrimination by law
 3. Housing discrimination
 - a. Racial steering
 - b. Blockbusting
 - c. Pre-screening
 - B. Civil Rights Precedents
 1. Civil Rights Acts - 1866, 1964, & 1968
 2. Court decisions
 - C. Current Developments
 1. Settlement agreement
 2. Regulatory responsibilities
 3. Responsibilities of lenders
 4. Concerted regulatory actions
 - D. FHLBB's Authority
 1. Regulatory Obligations
 - a. Background and considerations
 - b. Regulations
 - c. Guidelines
 2. Legal opinions
 - E. Review of Major Legal Mandates
 1. Civil Rights Act of 1964
 2. Fair Housing - Title VIII of Civil Rights Act of 1968 & 1974 Amendments
 - a. Provisions
 - b. Interpretations of the Act
 - c. Joint agency approaches to enforcement
 - d. Current Developments and Proposed Amendments
 1. NCDH/HUD Fair Housing Study
 2. Proposed Amendments
 - a. Edward-Drinan
 - b. Spellman
 - F. Home Mortgage Disclosure Act
 1. Purpose and provisions
 2. Regulation C
 - a. Coverage
 - b. Disclosure statement
 - G. Equal Credit Opportunity Act
 1. Special rules under ECOA
 2. Regulation B
 - a. Requirements
 - b. Prohibitions

H. FHLBB's Nondiscrimination Regulations

1. Policy Statement
2. Provisions and requirements
3. Nondiscrimination in lending and other services
4. Nondiscrimination in applications
5. Nondiscrimination in advertising
6. Equal housing lender poster
7. Monitoring information
8. Loan application register
 - a. Short form
 - b. Long form

I. Community Reinvestment Act

- Transparencies and handouts will show the correlation between all major legal mandates and how they apply to the lending process.

II. Procedural Requirements - Nondiscrimination in Lending

✓ A. Applications

1. Definition
2. Form
3. Content
4. Prescreening
 - a. How can it be detected
 - b. How can it be eliminated

- Sample applications will be provided all trainees.

- Case studies and illustrations will be developed for trainees to determine when and if an application has been made.

✓ B. Evaluation of Applications

1. Information and considerations
2. Prohibited bases
 - a. What the lender can ask
 - b. When the lender can ask
 - c. How the lender can ask
 - d. Related information the lender can ask
 - e. What the lender can consider/require
 - f. Exceptions
3. Examination procedures

- Samples of completed applications will be reviewed and evaluated for violations.

C. Extensions of Credit

1. Credit worthiness
2. Age
3. Income and source of income
4. Joint and individual credit
5. Secured and unsecured credit
6. Signatures
7. Credit history

8. Credit scoring
9. Accepted and rejected files
 - a. Profiling and analyzing data
 - b. Comparisons
10. Economic justifications
11. Examination procedures

- Sample accepted and rejected loan files will be reviewed and evaluated to detect violations.

D. Notifications and Adverse Actions

- ✓ 1. Prescreening
2. Definition of adverse action
3. Rules on adverse action
4. Interpretation of adverse action rules
5. Content of adverse action notices
6. Examination procedure

- Transparencies and handouts will show detailed procedure for adverse actions.

E. Furnishing Credit Information

1. Regulation B
 - a. Requirements
 - b. Prohibitions
2. Examination procedure

F. Relation to State Laws

1. Requirements
2. Community property states
3. Tenancy by the entirety
4. Examination procedures

G. Record Retention

1. Requirements
2. Pertinent information to be retained
3. Responsibility of lender
4. Examination procedure

✓ **H. Information for Monitoring Purposes**

1. Information to be requested
2. Disclosure notice
3. FHLBB's loan application register
 - a. Short form
 - b. Long form
4. Examination procedure

I. Business Credit

J. Special Purpose Credit Programs

- K. The Effects Test
 - 1. Definition
 - 2. Possible application of the effects test
 - 3. How it applies to lenders
 - 4. Guidelines for applying the effects test criteria
 - 5. Evaluating the effects of nondiscrimination violations in the examination process
 - 6. Examination procedure

III. Analyzing Neighborhoods

- A. Home Mortgage Disclosure Act
 - 1. Technical requirements to implement HMDA
 - 2. Census Bureau description of geo-coding material
 - 3. Analysis of HMDA data
 - 4. Verification of data
 - 5. Use of census tract maps and information
 - 6. Visits to neighborhood
 - 7. FHLEBB's HMDA study
 - 8. Examination procedure

- Census tract maps will be used in the examination procedure.

- B. Role of the Appraiser
 - 1. Discriminatory practices in the appraisal process
 - 2. Assessing market value
 - 3. Influence on underwriting standards

- C. Evaluating Appraisal Reports for Discriminating Practices in the Examination Process

- Sample appraisal reports will be used to detect violations.

- D. Redlining
 - 1. Definition
 - 2. The legal background, regulatory powers and authority relating to redlining
 - a. Federal laws and redlining
 - b. Regulatory agencies and redlining
 - c. Lender obligations and responsibilities
 - d. Regulatory intervention
 - 3. The evidence of redlining
 - a. Mortgage risks in older, racially mixed and minority neighborhoods
 - b. Assumptions about neighborhood conditions and risk
 - c. Property values and race
 - 4. Factors relating to economic justifications

- IV. FHLEBB's Guidelines Relating to Nondiscrimination in Lending
- A. Loan Underwriting Standards
 - 1. General policy regarding types of loans provided
 - 2. Rates, terms and conditions
 - 3. Geographic considerations
 - a. Primary service area
 - b. Effective lending territory
 - 4. Administration of lending operations
 - a. Loan authorities
 - b. Departmental responsibilities
 - 5. Loan documentation requirements
 - 6. Specific application procedures
 - 7. Collection and foreclosure practices
 - 8. Relationships with brokers, appraisers, and community organizations
 - 9. Complaint procedures
 - B. Discriminatory Practices
 - 1. Sex or marital status
 - 2. Language
 - 3. Income of husbands and wives
 - 4. Supplementary income
 - 5. Applicant's prior credit history
 - 6. Income level or racial composition of area
 - 7. Age and location of dwelling
 - C. Evaluating written and unwritten loan policies and standards
 - 1. Borrower qualifications
 - a. Debt to income ratio
 - b. Income stability
 - c. Repayment history
 - d. Evaluation standards
 - e. Verifications
 - f. Net Worth
 - g. Customer/noncustomer
 - 2. Property qualifications
 - a. Types of properties
 - b. Physical conditions
 - c. Appraisals
 - d. Loan to value ratio
 - e. Neighborhood conditions
 - 3. Examination Procedure
- Written loan policies will be reviewed and compared with accepted and rejected files for violations.
- D. Marketing Practices
 - 1. Business relationships
 - a. Developers
 - b. Real estate brokers
 - 2. Advertising
 - 3. Evaluating marketing programs and practices

4. Examination procedure

- Printed and audio visual advertising and marketing information will be distributed and viewed for evaluation.

E. Enforcement Guidelines

V. Review of the Examination Process

✓ A. Analyzing and Evaluating Accepted and Rejected Applications and Files

✓ B. Evaluating Written Loan Policies and Underwriting Standards.

C. Evaluating the Associations' Marketing Programs

D. Evaluating the Associations' Auditing Programs for Compliance

E. Evaluating the Associations' Employee Training Programs

F. Evaluating the Associations' Complaint Procedures

G. Evaluating the "Effects" of Nondiscrimination Violations

H. Procedures and Programs

VI. The Complaint Process and the Special Limited Examination

VII. Interviewing as an Enforcement Tool

A. Techniques of Interviewing

B. Interviewing the Personnel of an Association

1. Management
2. Other employees
3. Who do you select to interview

C. Interviewing Sources Outside an Association

1. When is it necessary
2. What can be learned
3. Dealing with applicants, rejected applicants, former employees, brokers, complainants, and community organizations

D. Guidelines for Interviewing

VIII. Role of the Civil Rights Specialist

A. District Responsibilities

B. Relationship to Washington Civil Rights Specialist

C. Relationship to Supervisory Agent

D. Relationship to Community Investment Officer

IX. The Community Reinvestment Act and its Implications

X. The Community Investment Fund

FEDERAL HOME LOAN BANK BOARD
OFFICE OF EXAMINATIONS AND SUPERVISION

GENERAL QUESTIONNAIRE

NONDISCRIMINATION
(BOP 123)

	<u>Yes</u>	<u>No</u>
1. Have policies, procedures and general underwriting standards concerning nondiscrimination in lending been adopted by the board of directors? (If so, establish or update written memoranda for the CEF with respect to important aspects of continuing interest. If not, refer to Memo AB 19.)	—	—
2. Is executive management and appropriate personnel knowledgeable of the relevant provisions of the various statutes and regulations pertinent to nondiscrimination in lending?	—	—
3. Does it appear from the association's practices, records and reports (Regulation C, if applicable) that the association prohibits granting of housing-related loans in certain areas within the association's effective lending territory? (If yes, determine the areas and reasons for not making such loans.) (Effective lending territory is those areas in which the institution makes a substantial majority of its loans and all other areas which are as close to the association's offices as such areas.)	—	—
a. Are the reasons for not making loans in these areas solely of a documented economic nature?	—	—
b. Does the review of rejected mortgage loan applications indicate rejection for solely economic reasons?	—	—
4. Does it appear from the association's practices, records and reports that it sets more stringent standards for housing-related loans in certain geographic areas (down payments, interest rates, terms, fees, loan amounts, etc.)? If yes, determine the areas and reasons for such standards.	—	—
a. Does the review of loans in these areas indicate that the use of more stringent standards were solely for documented economic reasons?	—	—
5. Does it appear that the association discriminates on the basis of age or language?	—	—
6. Does the association require the applicant to have owned a home previously, be employed for a particular length of time, or have lived in the community where the property is located?	—	—
7. Does the association prohibit lending to applicants because of an isolated credit difficulty or arrest record?	—	—
8. Does the association prohibit loans of less than an arbitrary amount, or to persons with income of less than an arbitrary amount?	—	—
9. Does it appear that the association's loan application procedures include a screening process which is discriminatory in nature?	—	—
10. Does the review of approved and rejected loan applications indicate that economic factors such as the following were applied uniformly to all applicants: income/debt ratios, credit history, security property, neighborhood amenities, portfolio balance?	—	—
11. Based upon a review of appropriate loan records, does it appear that the association administers the following without bias: loan modifications, loan assumptions, additional collateral requirements, late charges, reinstatement fees, and collections?	—	—

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G-1
GO
(1 of 2 Pages)

FEDERAL HOME LOAN BANK BOARD
OFFICES OF EXAMINATIONS AND SUPERVISION

Yes No

- | | | | |
|-----|--|-------|-------|
| 12. | Based upon a review of loan files and related records, does the association | | |
| | a. grant loans to speculators, developers, or other persons who, to the association's knowledge, sell to persons belonging to minority or other groups at inflated prices or on other unreasonable terms and conditions? | _____ | _____ |
| | b. make loans to builders, speculators or developers who, to the association's knowledge, follow a policy of discrimination with respect to housing financed by such loans? | _____ | _____ |
| 13. | Is an Equal Housing Lender Poster located in a conspicuous place in all of the association's offices and other facilities? | _____ | _____ |
| 14. | Is the size and content of each Equal Housing Lender Poster in accord with the requirements of Sections 528.4 and 528.3? | _____ | _____ |
| 15. | Does the association's advertising comply with the requirements of Section 528.4 and the guidelines contained in OES Memorandum R-30a? | _____ | _____ |
| 16. | From the review of real estate owned sales and rentals, does it appear that such sales and rentals were made on a nondiscriminatory basis? | _____ | _____ |

Work Done by _____
Date _____

Reviewed by EIC or designee _____
Reviewed by FM or designee _____

FEDERAL HOME LOAN BANK BOARD
OFFICE OF EXAMINATIONS AND SUPERVISION

GENERAL QUESTIONNAIRE

REGULATION B
(Memorandum T-60a)
and
REGULATION C
(Memorandum T-62)

Yes No

- 1. Does the association prohibit its employees from making statements that would discourage, on a prohibited basis, applicants from making or pursuing an application? (202.5(a)) _____
- 2. Does the association refrain from requesting information concerning the applicant's spouse or former spouse unless such person will be contractually liable or the applicant is relying on community property, the spouse's income, alimony, child support or maintenance payments for repayment of the debt? (202.5(c)(2)) _____
- 3. Regarding applications for unsecured separate loans, does the association refrain from inquiring as to the marital status of the loan applicant (unless community property is involved)? (202.5(d)(1)) _____
- 4. For secured loans, are inquiries into marital status limited only to the terms "married", "unmarried", or "separated"? (202.5(d)(1)) _____
- 5. When income derived from alimony, child support or maintenance payments is disclosed, is there evidence that the association properly informed the applicant that such income need not be revealed? (202.5(d)(2)) _____
- 6. a. When a title (such as Ms., Miss, Mr., or Mrs.) is shown on the application form, does the form appropriately disclose that such designation is optional? (202.5(d)(3)) _____
- b. Is the form otherwise neutral as to sex? (202.5(d)(3)) _____
- 7. Are requests for information relative to birth control or child bearing or rearing intentions of applicants prohibited? (202.5(d)(4)) _____
- 8. If the association considers age or the fact that an applicant's income derives from a public assistance program in its system of evaluating creditworthiness does it do so only to determine a pertinent element of creditworthiness? (202.6(b)(2)(iii)) _____
- 9. If the age of elderly applicants is considered in the association's system for evaluating creditworthiness, is such age used only to favor the elderly applicant? (202.6(b)(2)(iv)) _____
- 10. When evaluating the applicant's creditworthiness, does the association refrain from considering aggregate statistics or assumptions relative to the likelihood of bearing or rearing of children? (202.6(b)(3)) _____
- 11. Does the association refrain from discounting or excluding income on a prohibited basis or because the income is derived from part-time employment, or a retirement benefit? (202.6(b)(5)) _____
- 12. Does the association consider income from alimony, child support, or maintenance payments to the extent it is likely to be consistently received? (202.6(b)(5)) _____
- 13. At the applicant's request, does the association consider:
 - a. Any information the applicant may present regarding past credit performance which indicates that such performance does not accurately reflect the applicant's willingness or ability to repay? (202.6(b)(6)(i)) _____

FEDERAL HOME LOAN BANK BOARD
OFFICE OF EXAMINATIONS AND SUPERVISION

Yes No

- b. Any credit information in the name of the applicant's spouse or former spouse which demonstrates the applicant's willingness or ability to pay? (202.6(b)(6)(iii)) ___ ___
- 14. Does the association grant individual separate loans to creditworthy applicants regardless of sex, marital status or membership in any other protected group? (202.7(a)) ___ ___
- 15. Does the association allow the granting of loans in maiden names or combinations of maiden and married names? (202.7(b)) ___ ___
- 16. In those instances when the association requires co-signers, is the requirement based on factors other than the applicant's sex, marital status or membership in any other protected group? (State law may be considered when determining the necessity for co-signers.) (202.7(d)) ___ ___
- 17. Does the association refrain from refusing credit because credit life, health, accident or disability insurance is not available due to the applicant's age? (202.7(e)) ___ ___
- 18. Does the association notify applicants of action taken within
 - a. 30 days of receipt of a completed application? (202.9(a)(i)(i)) ___ ___
 - b. 30 days after taking adverse action on an uncompleted application? (202.9(a)(i)(ii)) ___ ___
 - c. 90 days after offering a loan which substantially differs from that requested if the applicant has not accepted such alternative loan? (202.9(a)(i)(v)) ___ ___
- 19. a. Are notices of adverse action in writing? (202.9(a)(2)) ___ ___
 - b. Do they contain a statement of action taken? (202.9(a)(2)) ___ ___
 - c. Do they contain a statement of the provisions of Section 701(a) of the ECO Act in a form substantially similar to that contained in Section 202.9(b)(1) of the regulation? ___ ___
 - d. Do they contain a statement of specific reasons for the action taken or disclosure of the applicant's right to such a statement as specified in Section 202.9(a)(2)? ___ ___
- 20. Do statements of specific reasons for adverse action contain the principal, specific reasons for such actions? (202.9(b)(2)) ___ ___
- 21. Has the association established procedures for the identification, and designation as such, of existing and future loans upon which both spouses are or will be contractually liable, as required by Section 202.10(a) and (b)? ___ ___
- 22. When furnishing credit information on designated accounts to a consumer reporting agency, does the association report the designation and furnish the information in a manner that provides access to such information in the name of each spouse? (202.10(a)(2)) ___ ___
- 23. When furnishing credit information regarding a designated account in response to an inquiry regarding a particular applicant, is the information furnished in the name of such applicant? (202.10(a)(3)) ___ ___
- 24. Does the association retain for 25 months after notice of action taken (202.12(b))
 - a. the application and all supporting material? ___ ___
 - b. all information obtained for monitoring purposes under Section 202.13? ___ ___
 - c. the notification of action taken? ___ ___
 - d. the statement of specific reasons for adverse action? ___ ___
 - e. discrimination complaints under Regulation B? ___ ___

FEDERAL HOME LOAN BANK BOARD
OFFICE OF EXAMINATION AND SUPERVISION

Yes No

- 25. Is all information relative to an investigative action retained until final disposition of the matter? (202.12(b)(3)) ___ ___
- 26. Regarding any written application for a loan to purchase a 1-4 family dwelling, does the association request the applicant(s) to supply the following information (202.13)
 - a. race/national origin (using the categories specified in 202.13(a)(1)(i))? ___ ___
 - b. sex? ___ ___
 - c. marital status, using the categories married, unmarried, and separated? ___ ___
 - d. age? ___ ___
- 27. Are applicants properly informed as to the purpose of the above information? (202.13(c)) ___ ___
- 28. If applicants choose not to supply the information, is that fact noted on the form requesting the information? (202.13(c)) (State the percent of applicants who did not choose to complete the form _____%) ___ ___
- 29. Does your review of the information obtained for monitoring purposes indicate evidence of discriminatory practices or patterns? ___ ___
- 30. If the association engages in a special purpose credit program designed to meet special social needs is it in compliance with Section 202.8 of Regulation B? ___ ___

HOME MORTGAGE DISCLOSURE ACT (Regulation C)

- 1. Is the association subject to Regulation C? (203.3) ___ ___
- 2. If "yes", was applicable lending properly classified and reported? (Form HMDA-1, Mortgage Loan Disclosure Statement and 203.4) ___ ___
- 3. Are disclosure statements made available on a timely basis and in the manner required by Section 203.5? ___ ___
- 4. Are depositors notified annually of the availability of disclosure statements? (203.5(b)) ___ ___
- 5. Does your review of the disclosure statements, in conjunction with the lending review, indicate discriminatory practices? ___ ___

Work Done by _____
Date _____

Reviewed by EIC or designee _____
Reviewed by FM or designee _____

Question No. 5

How will the Federal Home Lona Bank Examiners evaluate whether formalized credit scoring systems are in compliance with the Fair Housing Act, the Equal Credit Opportunity Act, and Regulation B? Please supply to the subcommittee the text of any examiner instructions that address the evaluation of credit scoring systems. If there are no such instructions, please so state.

ANSWER

Most associations do not use formalized credit scoring systems, rather they rely upon a loan committee which evaluates applications in accordance with the association's underwriting policies. It is important to note that our new nondiscrimination regulations require associations to base their decisions on written underwriting policies which they must make available to the public upon request.

If an association uses an empirically derived credit system (formalized credit scoring system), our examiners will complete the minimum procedures outlined in the General Questionnaire on Nondiscrimination (see nos. 5, 6, 7, 8, and 10) and Regulation B (see nos. 7, 8, 9, 10, 11, 12, 13a and b and 14), which were attached to the answer to question 4, to determine if the association uses any of the prohibited bases to deny credit. Our examiners do not have the means to determine if an empirically derived credit scoring system is demonstrably and statistically sound. However, because our new nondiscrimination regulations require all associations to have written underwriting standards which they must make public upon request, those associations which use such systems will have to make them public. In addition, our regulations require the association to annually review these underwriting standards and our examiners will also review them for compliance with our nondiscrimination policies as part of their regular examination procedure. (See the answer to question number 33).

Credit scoring systems will also be covered by our new round of examiner training which begins next month. This topic is included as a part of a comprehensive treatment of extensions of credit. (See section IIC of the course outline which is attached to the answer to question 4).

Question No. 6

How will the Federal Home Loan Bank Board examiners detect discrimination in appraisals? Please supply to the subcommittee the text of any examiner instructions that address the detection of discrimination in appraisals. If there are no such instructions, please so state.

ANSWER

Examiners were given instruction in this area during the nondiscrimination seminar which was held in 1976. This introductory study consisted primarily of teaching examiners to recognize derogatory information and code words which are used in some appraisals. Our Staff Appraisers, Senior Field Examiners and Washington Staff are currently working on the draft of more sophisticated procedures, to reflect the new prohibition against the use of discriminatory appraisals.

Our new round of examiner training which begins this October will devote a session to this topic. Among the items which will be covered are:

The Role of the Appraiser

1. In the appraisal process
2. In assessing market value
3. Influence on underwriting standards

Evaluating appraisal reports for discriminatory practices in the examination process (sample reports will be used to show how to detect violations).

Examiners are already detecting discriminatory appraisal practices. For example, they are reporting as violations appraisals which include the following types of information:

Predominant nationalities of the neighborhood

Neighborhood is changing to _____ (implication being for the worse and the cause implied is often a change in the racial makeup of the neighborhood)

Typical resident's gross income (which stereotypes the area; where this means it is a low income area a loan may be denied even though the applicant has adequate income to support it).

Words such as "deteriorating" and "declining" are used to describe the neighborhood.

The appraisal form asks if there are any "actual or threatened racial encroachments."

Question No. 6
Page 2

The general economic characteristics of the neighborhood are cited (usually to the detriment of poorer areas of town).

Typical resident's occupation is requested (which again stereotypes the area despite what the applicant's occupation and income are).

Question No. 7

Will the Federal Home Loan Bank Board issue in final form its proposed amendment requiring that a copy of the appraisal must accompany the adverse action notice sent to an applicant when an application is denied on the basis of an inadequate appraised value? If not, or if there is a serious possibility that this proposed amendment may not be made final, please state the considerations that lead the Bank Board to consider withdrawing this proposal.

ANSWER

The comment period on this proposed regulation recently ended and the staff have not yet fully reviewed the 533 comment letters we received on this proposal. Once this is done, the regulation must be scheduled for Bank Board action at a formal meeting. Until this meeting occurs and a formal decision is made, there is no way to predict what the final decision will be.

Question No. 8

How do the Federal Home Loan Bank Board examiners evaluate the internal management controls and organized civil rights compliance program of each association? Please supply to the Subcommittee the text of any examiner's instructions that address the evaluations of internal management civil rights compliance programs. If there are no such instructions, please so state.

ANSWER

Prior to the examination, the association is sent an advance package of materials to complete which includes, among other things, a nondiscrimination questionnaire. (Copy attached to answer to question 27). In addition, information on the association's nondiscrimination lending compliance, consumer lending compliance, and policies on nondiscrimination in employment are part of the Continuing Examination File which the examiner reviews prior to commencing the examination. These materials, plus information from previous examination reports and correspondence with the association, are reviewed by examiner to determine where the association has had problems in this area in the past and if there are any particular things he/she should be on the lookout for.

When the examiner arrives at the association to begin the examination, he/she conducts an initial interview with the association's managing officer to determine if there have been any policy or procedural changes or any particular problems that he/she should be aware of.

As for the examination itself, the examiner will follow the minimum scope procedures outlined in the General Questionnaire - Nondiscrimination, General Questionnaire - Regulation B and C, and Personnel Analysis Program (items 8, 9, and 10). (Copies are attached). If the advance materials or the examination itself uncover some problems which should be investigated further, the examiner will expand his/her examination to the extent necessary, as approved by the Examiner in Charge.

These procedures, which are found in the programs and questionnaires mentioned above, are currently being re-written to encompass the recent changes in the Bank Board's nondiscrimination regulations. A copy of the preliminary draft of these new procedures is attached.

In addition, the new round of examiner training in nondiscrimination which begins this October will include several sessions on this topic. Among the topics which will be covered are:

- Evaluating Written Loan Policies and Underwriting Standards
- Evaluating the Association's Auditing Programs for Compliance
- Evaluating the Association's Employee Training Programs
- Evaluating the Association's Complaint Procedures

For more detail on this course, consult the course outline attached to the answer to question 4.

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OFFICES OF EXAMINATIONS AND SUPERVISION

Yes No

12. Based upon a review of loan files and related records, does the associations
- a. grant loans to speculators, developers, or other persons who, to the association's knowledge, sell to persons belonging to minority or other groups at inflated prices or on other unreasonable terms and conditions? _____
 - b. make loans to builders, speculators or developers who, to the association's knowledge, follow a policy of discrimination with respect to housing financed by such loans? _____
13. Is an Equal Housing Lender Poster located in a conspicuous place in all of the association's offices and other facilities? _____
14. Is the size and content of each Equal Housing Lender Poster in accord with the requirements of Sections 528.4 and 528.5? _____
15. Does the association's advertising comply with the requirements of Section 528.4 and the guidelines contained in OES Memorandum R-30a? _____
16. From the review of real estate owned sales and rentals, does it appear that such sales and rentals were made on a nondiscriminatory basis? _____

Work Done by _____ Reviewed by EIC or designee _____
Date _____ Reviewed by FM or designee _____

FEDERAL HOME LOAN BANK BOARD
OFFICE OF EXAMINATIONS AND SUPERVISION

GENERAL QUESTIONNAIRE

REGULATION B
(Memorandum T-60a)

and

REGULATION C
(Memorandum T-62)

	<u>Yes</u>	<u>No</u>
1. Does the association prohibit its employees from making statements that would discourage, on a prohibited basis, applicants from making or pursuing an application? (202.5(a))	_____	_____
2. Does the association refrain from requesting information concerning the applicant's spouse or former spouse unless such person will be contractually liable or the applicant is relying on community property, the spouse's income, alimony, child support or maintenance payments for repayment of the debt? (202.5(c)(2))	_____	_____
3. Regarding applications for unsecured separate loans, does the association refrain from inquiring as to the marital status of the loan applicant (unless community property is involved)? (202.5(d)(1))	_____	_____
4. For secured loans, are inquiries into marital status limited only to the terms "married", "unmarried", or "separated"? (202.5(d)(1))	_____	_____
5. When income derived from alimony, child support or maintenance payments is disclosed, is there evidence that the association properly informed the applicant that such income need not be revealed? (202.5(d)(2))	_____	_____
6. a. When a title (such as Ms., Miss, Mr., or Mrs.) is shown on the application form, does the form appropriately disclose that such designation is optional? (202.5(d)(3))	_____	_____
b. Is the form otherwise neutral as to sex? (202.5(d)(3))	_____	_____
7. Are requests for information relative to birth control or child bearing or rearing intentions of applicants prohibited? (202.5(d)(4))	_____	_____
8. If the association considers age or the fact that an applicant's income derives from a public assistance program in its system of evaluating creditworthiness does it do so only to determine a pertinent element of creditworthiness? (202.6(b)(2)(iii))	_____	_____
9. If the age of elderly applicants is considered in the association's system for evaluating creditworthiness, is such age used only to favor the elderly applicant? (202.6(b)(2)(iv))	_____	_____
10. When evaluating the applicant's creditworthiness, does the association refrain from considering aggregate statistics or assumptions relative to the likelihood of bearing or rearing of children? (202.6(b)(3))	_____	_____
11. Does the association refrain from discounting or excluding income on a prohibited basis or because the income is derived from part-time employment, or a retirement benefit? (202.6(b)(5))	_____	_____
12. Does the association consider income from alimony, child support, or maintenance payments to the extent it is likely to be consistently received? (202.6(b)(5))	_____	_____
13. At the applicant's request, does the association consider:		
a. Any information the applicant may present regarding past credit performance which indicates that such performance does not accurately reflect the applicant's willingness or ability to repay? (202.6(b)(6)(ii))	_____	_____

FEDERAL HOME LOAN BANK BOARD
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Yes No

- b. Any credit information in the name of the applicant's spouse or former spouse which demonstrates the applicant's willingness or ability to pay? (202.6(b)(6)(iii)) ___ ___
- 14. Does the association grant individual separate loans to creditworthy applicants regardless of sex, marital status or membership in any other protected group? (202.7(a)) ___ ___
- 15. Does the association allow the granting of loans in maiden names or combinations of maiden and married names? (202.7(b)) ___ ___
- 16. In those instances when the association requires co-signers, is the requirement based on factors other than the applicant's sex, marital status or membership in any other protected group? (State law may be considered when determining the necessity for co-signers.) (202.7(d)) ___ ___
- 17. Does the association refrain from refusing credit because credit life, health, accident or disability insurance is not available due to the applicant's age? (202.7(e)) ___ ___
- 18. Does the association notify applicants of action taken within:
 - a. 30 days of receipt of a completed application? (202.9(a)(i)(i)) ___ ___
 - b. 30 days after taking adverse action on an uncompleted application? (202.9(a)(i)(ii)) ___ ___
 - c. 90 days after offering a loan which substantially differs from that requested if the applicant has not accepted such alternative loan? (202.9(a)(i)(iv)) ___ ___
- 19. a. Are notices of adverse action in writing? (202.9(a)(2)) ___ ___
 - b. Do they contain a statement of action taken? (202.9(a)(2)) ___ ___
 - c. Do they contain a statement of the provisions of Section 701(a) of the ECO Act in a form substantially similar to that contained in Section 202.9(b)(1) of the regulation? ___ ___
 - d. Do they contain a statement of specific reasons for the action taken or disclosure of the applicant's right to such a statement as specified in Section 202.9(a)(2)? ___ ___
- 20. Do statements of specific reasons for adverse action contain the principal, specific reasons for such actions? (202.9(b)(2)) ___ ___
- 21. Has the association established procedures for the identification, and designation as such, of existing and future loans upon which both spouses are or will be contractually liable, as required by Section 202.10(a) and (b)? ___ ___
- 22. When furnishing credit information on designated accounts to a consumer reporting agency, does the association report the designation and furnish the information in a manner that provides access to such information in the name of each spouse? (202.10(a)(2)) ___ ___
- 23. When furnishing credit information regarding a designated account in response to an inquiry regarding a particular applicant, is the information furnished in the name of such applicant? (202.10(a)(3)) ___ ___
- 24. Does the association retain for 25 months after notice of action taken (202.12(b))
 - a. the application and all supporting material? ___ ___
 - b. all information obtained for monitoring purposes under Section 202.13? ___ ___
 - c. the notification of action taken? ___ ___
 - d. the statement of specific reasons for adverse action? ___ ___
 - e. discrimination complaints under Regulation B? ___ ___

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Yes No

- 25. Is all information relative to an investigative action retained until final disposition of the matter? (202.12(b)(3)) ____
- 26. Regarding any written application for a loan to purchase a 1-4 family dwelling, does the association request the applicant(s) to supply the following information? (202.13)
 - a. race/national origin (using the categories specified in 202.13(a)(1)(i))? ____
 - b. sex? ____
 - c. marital status, using the categories married, unmarried, and separated? ____
 - d. age? ____
- 27. Are applicants properly informed as to the purpose of the above information? (202.13(c)) ____
- 28. If applicants choose not to supply the information, is that fact noted on the form requesting the information? (202.13(c)) (State the percent of applicants who did not choose to complete the form _____%) ____
- 29. Does your review of the information obtained for monitoring purposes indicate evidence of discriminatory practices or patterns? ____
- 30. If the association engages in a special purpose credit program designed to meet special social needs is it in compliance with Section 202.8 of Regulation B? ____

HOME MORTGAGE DISCLOSURE ACT (Regulation C)

- 1. Is the association subject to Regulation C? (203.3) ____
- 2. If "yes", was applicable lending properly classified and reported? (Form HMDA-1, Mortgage Loan Disclosure Statement and 203.4) ____
- 3. Are disclosure statements made available on a timely basis and in the manner required by Section 203.5? ____
- 4. Are depositors notified annually of the availability of disclosure statements? (203.5(b)) ____
- 5. Does your review of the disclosure statements, in conjunction with the lending review, indicate discriminatory practices? ____

Work Done by _____
Date _____

Reviewed by EIC or designee _____
Reviewed by FM or designee _____

FEDERAL HOME LOAN BANK BOARD
OFFICE OF EXAMINATIONS AND SUPERVISION

EXAMINATION PROGRAM

PERSONNEL ANALYSIS
(EOP 119 and 123)

EXAMINATION OBJECTIVES

- o to determine the adequacy of the staff.
- o to ascertain whether policies have been established to ensure continuing development of association personnel.
- o to determine whether positions are clearly defined according to function, responsibility, and authority.

EXAMINATION PROCEDURES

Minimum Procedures:

The following procedures must be completed on each examination.

<u>Wkp.</u> <u>Ref.</u>		<u>Work Done</u>	
		<u>By</u>	<u>Date</u>
___	1. Determine association policies through review of policy statements, interviews with management, review of minutes, etc., as appropriate. Determine whether objectives and related policies are reviewed periodically and changes are communicated to the appropriate association personnel. Establish or update written memoranda for the CEF with respect to important aspects of continuing interest.	___	___
___	2. Determine if employee turnover is adversely affecting the operating efficiency of the association.	___	___
___	3. Determine whether management performs an adequate analysis of the employees' integrity, background, and qualifications.	___	___
___	4. Review the association-prepared schedule of salary, fees and bonuses paid to each employee and determine whether compensation is generally commensurate with responsibilities.	___	___
___	5. Determine if the lines of authority are clearly defined.	___	___
___	6. Determine if adequate procedures are in effect to ensure personnel development and training.	___	___
___	7. Review fidelity bond for adequate coverage. Determine that bond carriers are notified of all losses.	___	___
___	8. If the association is required to have its Affirmative Action Compliance Program in writing, obtain a copy, or update existing copy, for the CEF. Determine if the plan has been properly filed in accordance with regulation.	___	___
___	9. Determine if a notice relating to equal opportunity in employment is posted in a conspicuous place visible to employees as required by Section 563.36(b)(3).	___	___
___	10. Determine whether solicitations or advertisements for employment, placed by or on behalf of the association, contain the information required by Section 563.36(b)(4).	___	___

FEDERAL HOME LOAN BANK BOARD
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CONCLUSIONS: Were minimum procedures adequate to support the examiner's findings on this phase of the examination? If no, state here the reasons for expanding the scope of procedures performed and describe the expansion. Complete **EXAMINER'S FINDINGS**.

Yes _____ No _____ Examiner

EXAMINER'S FINDINGS:

A. Is the association's staff adequate?

Yes _____ No _____ Examiner See W/P _____

B. Have policies been established to ensure continuing development of association personnel?

Yes _____ No _____ Examiner See W/P _____

C. Are positions clearly defined according to functions, responsibility, and authority?

Yes _____ No _____ Examiner See W/P _____

D. Were any other matters of concern disclosed by your review?

Yes _____ No _____ Examiner See W/P _____

Reviewed by EIC or designee _____
Reviewed by FM or designee _____

Initial Rough Draft 8-20-78

EXAMINATION PROGRAM

NONDISCRIMINATION
(EOP 123)

EXAMINATION OBJECTIVES

- determine the extent of management's familiarity with/laws, regulations and policy statements dealing with nondiscrimination in lending, housing and employment.
- determine whether the association has established and implemented nondiscrimination lending, housing and employment policies, and to evaluate the effectiveness of such policies.
- determine whether the association is complying with the various laws, regulations, and policies concerning nondiscrimination in lending, housing and employment.
- determine whether the association is utilizing governmental or private programs designed to aid minority, low- and moderate-income groups in meeting their housing needs.

EXAMINATION PROCEDURES

<u>Wkp.</u> <u>Ref.</u>	<u>Minimum Procedures</u>	<u>Work Done</u> <u>By</u> <u>Date</u>
	<p>1. Determine association policies through review of policy statements, interviews with management, review of minutes, etc., as appropriate. Determine whether objectives and related policies are reviewed periodically and changes are communicated to the appropriate association personnel. Obtain a copy or update the existing copy of the association's nondiscrimination loan underwriting standards for the CEF. (Refer to Bank Board Regulations 528.2a, 531.8(a) and 801)</p> <p>2. Complete the CRA program () and questionnaire in conjunction with this nondiscrimination program. All relevant information must be properly cross-indexed between the two programs.</p> <p>3. Determine whether the Board of Directors has provided for the periodic review of policies, practices and loan underwriting standards.</p> <p>4. Determine if the board of directors' policies, practices and loan underwriting standards, as ^{written,} adapted result in discrimination in effect. <i>Compare with Section 531.8 of</i></p>	
	<p>Program (1 of <u> </u> Pages)</p>	

- From review of
loan application registers
and from other review.*
- 5 Determine whether executive management and other lending personnel are knowledgeable of the relevant provisions of various statutes and regulations pertinent to nondiscrimination in lending, housing and employment.
 - 6 Test check the records of new loans granted and also rejected loan applications to determine if the association is complying with stated policies.
 - 7 Evaluate the reasons for rejection of loan applications to determine whether rejections appear to have been based on economic factors and were uniformly applied to all ~~applicants~~ applicants.
 - 8 Determine whether the association administers without bias, application procedures, collection or enforcement procedures or other lending conditions.
 - 9 Determine whether the association grants loans to speculators, developers, builders and others who in turn sell to persons belonging to minority groups at inflated prices or on other unreasonable terms and conditions and/or follow a policy of discrimination with respect to housing financed by such loans.
 - 10 Determine whether the association is actively participating in Federal Housing Assistance programs to aid minority or low-income groups to satisfy their housing needs.
- Retain:**
- 11 Review the institution's current lending pattern to determine whether these policies or procedures may be causing discrimination in effect.
 - 12 Complete the nondiscrimination questionnaires.
 - 13 Review any complaints filed against the association and ascertain their disposition.

CONCLUSIONS: Were minimum procedures adequate to support the examiner's findings on this phase of the examination? If no, state the reasons for expanding scope of procedures performed and complete the EXAMINER'S FINDINGS after completion of expanded procedures. If answer is yes, complete EXAMINER'S FINDINGS at the end of this program.

Yes _____ No _____
Examiner

EXAMINER'S FINDINGS

A. Is management familiar with respect to laws, regulations and policy statements dealing with nondiscrimination in lending, housing and employment?

Yes _____ No _____ Examiner See W/P _____

B. Has the association established and implemented nondiscrimination lending, housing and employment policies?

Yes _____ (etc)

C. Is the association in compliance with the various laws, regulations and policies concerning nondiscrimination?

Yes _____ .etc.

D. Has the association utilized governmental or private programs designed to aid minority low-and moderate-income groups in meeting their housing needs?

Yes _____ (etc)

E. Were any other matters of concern disclosed by your review?

Yes _____ No. ----- (etc)

Work Done by _____

Reviewed by EIC or designee _____

Date _____

Reviewed by FM or designee _____

FEDERAL HOME LOAN BANK BOARD
OFFICE OF EXAMINATIONS AND SUPERVISION

Draft

GENERAL QUESTIONNAIRE

NONDISCRIMINATION
(EOP 123)

	<u>Yes</u>	<u>No</u>
1. Have policies, procedures and general underwriting standards concerning nondiscrimination in lending been adopted by the board of directors?	_____	_____
2. Are the standards and business practices reviewed annually?	_____	_____
3. Are the nondiscriminatory loan underwriting standards clearly written and available to the public upon request, at each of its offices? (BR 528.2a(b))	_____	_____
Amount of charge, if any? \$ _____		
Is the charge considered reasonable?	_____	_____
4. Is executive management and appropriate personnel knowledgeable of the relevant provisions of the various statutes and regulations pertinent to nondiscrimination in lending?	_____	_____
5. Does it appear from the association's practices, records and reports (Regulation C, if applicable) that the association prohibits granting of housing-related loans in certain areas within the association's effective lending territory? (If yes, determine the areas and reasons for not making such loans.) (Effective lending territory is those areas in which the institution makes a substantial majority of its loans and all other areas which are as close to the association's offices as such areas.)	_____	_____
a. Are the reasons for not making loans in these areas solely of a documented economic nature?	_____	_____
b. Does the review of rejected mortgage loan applications indicate rejection for solely economic reasons?	_____	_____
6. Does it appear from the association's practices, records and reports that it sets more stringent standards for housing-related loans in certain geographic areas (down payments, interest rates, terms, fees, loan amounts, etc.)? If yes, determine the areas and reasons for such standards.	_____	_____
a. Does the review of loans in these areas indicate that the use of more stringent standards were solely for documented economic reasons?	_____	_____
7. Does it appear that the association discriminates on the basis of age or language of the applicant or age or location of the property?	_____	_____
8. Does the association require the applicant to have owned a home previously, be employed for a particular length of time, or have lived in the community where the property is located?	_____	_____
9. Does the association prohibit lending to applicants because of an isolated credit difficulty or arrest record?	_____	_____
10. Does the association prohibit loans of less than an arbitrary amount, or to persons with income of less than an arbitrary amount?	_____	_____
11. Does it appear that the association's loan application procedures include a screening process which is discriminatory in nature?	_____	_____
12. Does the association refrain from using appraisals which are discriminatory?	_____	_____

13. Does the review of approved and rejected loan applications indicate that economic factors such as the following were applied uniformly to all applicants: income/debt ratios, credit history, security property, neighborhood amenities, portfolio balance? _____
14. Based upon a review of appropriate loan records, does it appear that the association administers the following without bias: loan modifications, loan assumptions, additional collateral requirements, late charges, reinstatement fees, and collections? _____
16. Based upon a review of loan files and related records, does the association:
- a. grant loans to speculators, developers, or other persons who, to the association's knowledge, sell to persons belonging to minority or other groups at inflated prices or on other unreasonable terms and conditions? _____
 - b. make loans to builders, speculators or developers who, to the association's knowledge, follow a policy of discrimination with respect to housing financed by such loans? _____
16. Does the association refrain not only from discrimination in lending but in all other services? _____

Does the association prohibit its employees from making statements that would discourage the receipt of or consideration of any application for a loan or other service?

(BR 528.3(a))

17. Does the association inform each inquirer of the right to file a written loan application? And to receive a copy of the institution's underwriting standards?

(BR 528.3(b))

19. Regarding any application from a natural person for a loan related to a dwelling does the association request, but not require, the following information:

(i) race/national origin, using the categories American Indian or Alaskan Native; Asian or Pacific Islander; Black; White; Hispanic; Other (specify):

(ii) sex;

(iii) marital status, using the categories married, unmarried, and separated; and

(iv) age.

(BR 528.6(a))

- 20. Does the form used to collect monitoring information contain a written notice that it is for Federal government monitoring purposes and that the institution is required to note race and sex, on the basis of sight and/or surname, if the applicant(s) choose not to do so? _____
(BR 528.6(c))
- 21. If the applicant chooses not to disclose the monitoring information does the association note that fact on the monitoring form? _____
BR 528.6(b)
- 22. Does the association, to the extent possible, on the basis of sight and/or surname, designate race and sex of each applicant? _____
(BR 528.6(b))
- 23. Does the association maintain a current, readily accesible loan application register in with, at a minimum, the information required by the Bank Board? _____
(BR 528.6(d))
- 24. Does your review of the information obtained for monitoring purposes indicate that the association's practices and patterns are nondiscriminatory? _____
- 25. From the review of real estate owned sales and rentals, does it appear that such sales and rentals were made on a nondiscriminatory basis? _____
- 26. Is an Equal Housing Lender Poster located in a conspicuous place in all of the association's offices and other facilities? _____
- 27. Is the size and content of each Equal Housing Lender Poster in accord with the requirements of Sections 528.4 and 528.5? _____
- 28. Does the association's advertising comply with the requirements of Section 528.4 and the guidelines contained in OES Memorandum R-30a? _____
- 29. Does the association's marketing practices and business relationships with developers and real estate brokers insure that its services are available without discrimination to the community it serves? _____
BR 531.8(d)

Work Done by _____ Reviewed by EIC or designee _____
Date _____ Reviewed by FM or designee _____

FEDERAL HOME LOAN BANK BOARD
OFFICE OF EXAMINATIONS AND SUPERVISION

GENERAL QUESTIONNAIRE

REGULATION B
(Memorandum T-60a)
and
REGULATION C
(Memorandum T-62)

	<u>Yes</u>	<u>No</u>
1. Does the association prohibit its employees from making statements that would discourage, on a prohibited basis, applicants from making or pursuing an application? (202.5(a))	—	—
2. Does the association refrain from requesting information concerning the applicant's spouse or former spouse unless such person will be contractually liable or the applicant is relying on community property, the spouse's income, alimony, child support or maintenance payments for repayment of the debt? (202.5(c)(2))	—	—
3. Regarding applications for unsecured separate loans, does the association refrain from inquiring as to the marital status of the loan applicant (unless community property is involved)? (202.5(d)(1))	—	—
4. For secured loans, are inquiries into marital status limited only to the terms "married", "unmarried", or "separated"? (202.5(d)(1))	—	—
5. When income derived from alimony, child support or maintenance payments is disclosed, is there evidence that the association properly informed the applicant that such income need not be revealed? (202.5(d)(2))	—	—
6. a. When a title (such as Ms., Miss, Mr., or Mrs.) is shown on the application form, does the form appropriately disclose that such designation is optional? (202.5(d)(3))	—	—
b. Is the form otherwise neutral as to sex? (202.5(d)(3))	—	—
7. Are requests for information relative to birth control or child bearing or rearing intentions of applicants prohibited? (202.5(d)(4))	—	—
If the association considers age or the fact that an applicant's income is derived from a public assistance program in its system of evaluating creditworthiness does it do so only to determine a pertinent element of creditworthiness? (202.6(b)(2)(iii))	—	—
9. If the age of elderly applicants is considered in the association's system for evaluating creditworthiness, is such age used only to favor the elderly applicant? (202.6(b)(2)(iv))	—	—
10. When evaluating the applicant's creditworthiness, does the association refrain from considering aggregate statistics or assumptions relative to the likelihood of bearing or rearing of children? (202.6(b)(3))	—	—
11. Does the association refrain from discounting or excluding income on a prohibited basis or because the income is derived from part-time employment, or a retirement benefit? (202.6(b)(5))	—	—
12. Does the association consider income from alimony, child support, or maintenance payments to the extent it is likely to be consistently received? (202.6(b)(5))	—	—
13. At the applicant's request, does the association consider:		
a. Any information the applicant may present regarding past credit performance which indicates that such performance does not accurately reflect the applicant's willingness or ability to repay? (202.6(b)(6)(i))	—	—

FEDERAL HOME LOAN BANK BOARD
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	Yes	No
b. Any credit information in the name of the applicant's spouse or former spouse which demonstrates the applicant's willingness or ability to pay? (202.6(b)(6)(iii))	_____	_____
14. Does the association grant individual separate loans to creditworthy applicants regardless of sex, marital status or membership in any other protected group? (202.7(a))	_____	_____
15. Does the association allow the granting of loans in maiden names or combinations of maiden and married names? (202.7(b))	_____	_____
16. In those instances when the association requires co-signers, is the requirement based on factors other than the applicant's sex, marital status or membership in any other protected group? (State law may be considered when determining the necessity for co-signers.) (202.7(d))	_____	_____
17. Does the association refrain from refusing credit because credit life, health, accident or disability insurance is not available due to the applicant's age? (202.7(e))	_____	_____
18. Does the association notify applicants of action taken within:		
a. 30 days of receipt of a completed application? (202.9(a)(1)(i))	_____	_____
b. 30 days after taking adverse action on an uncompleted application? (202.9(a)(1)(ii))	_____	_____
c. 90 days after offering a loan which substantially differs from that requested if the applicant has not accepted such alternative loan? (202.9(a)(1)(iv))	_____	_____
19. a. Are notices of adverse action in writing? (202.9(a)(2))	_____	_____
b. Do they contain a statement of action taken? (202.9(a)(2))	_____	_____
c. Do they contain a statement of the provisions of Section 701(a) of the ECO Act in a form substantially similar to that contained in Section 202.9(b)(1) of the regulation?	_____	_____
d. Do they contain a statement of specific reasons for the action taken or disclosure of the applicant's right to such a statement as specified in Section 202.9(a)(2)?	_____	_____
20. Do statements of specific reasons for adverse action contain the principal, specific reasons for such actions? (202.9(b)(2))	_____	_____
21. Has the association established procedures for the identification, and designation as such, of existing and future loans upon which both spouses are or will be contractually liable, as required by Section 202.10(a) and (b)?	_____	_____
22. When furnishing credit information on designated accounts to a consumer reporting agency, does the association report the designation and furnish the information in a manner that provides access to such information in the name of each spouse? (202.10(a)(2))	_____	_____
23. When furnishing credit information regarding a designated account in response to an inquiry regarding a particular applicant, is the information furnished in the name of such applicant? (202.10(a)(3))	_____	_____
24. Does the association retain for 25 months after notice of action taken: (202.12(b))		
a. the application and all supporting material?	_____	_____
b. all information obtained for monitoring purposes under Section 202.13?	_____	_____
c. the notification of action taken?	_____	_____
d. the statement of specific reasons for adverse action?	_____	_____
e. discrimination complaints under Regulation B?	_____	_____

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Yes No

25. Is all information relative to an investigative action retained until final disposition of the matter? (202.12(b)(3)) _____
- If the association engages in a special purpose credit program designed to meet special social needs is it in compliance with Section 202.8 of Regulation B? _____
- HOME MORTGAGE DISCLOSURE ACT (Regulation C)**
1. Is the association subject to Regulation C? (203.3) _____
2. If "yes", was applicable lending properly classified and reported? (Form HMDA-1, Mortgage Loan Disclosure Statement and 203.4) _____
3. Are disclosure statements made available on a timely basis and in the manner required by Section 203.5? _____
4. Are depositors notified annually of the availability of disclosure statements? (203.5(b)) _____
5. Does your review of the disclosure statements, in conjunction with the lending review, indicate discriminatory practices? _____

Work Done by _____
Date _____

Reviewed by EIC or designee _____
Reviewed by FM or designee _____

Question No. 9, Page No. 4

In the twelve-month period July 1977 through June 1978, what was the full gross cost of Federal Home Loan Bank Board activities related to enforcement of the Fair Housing Act, the Equal Credit Opportunity Act, and Regulation B? This figure should include an appropriate allowance for overhead, including clerical support, travel expenses, computer usage, rent or imputed rent, and utilities. Please give a percentage breakdown of this figure to show the proportions spent on training, field examinations and associated supervision, consumer complaint handling, consumer education, creditor education, and any other appropriate categories. Please state the method by which any estimates were derived.

ANSWERDivision of Examinations:

Our answer to this question is necessarily based on a number of subjective assumptions, and extrapolations from monthly budget reports. The routine accounting procedures utilized by the Federal Home Loan Bank Board are not geared to the extraction of data as specific as this question demands. However, we have been able to subjectively determine that on regular examinations our field examiners probably spent an average of 1.9 staff-days on activities directly related to nondiscrimination enforcement. This reflects an estimated average of two days on each Federal-only examination and 1.75 days on each examination conducted jointly with state examiners, and constitutes about 5.5 percent of the average 34.6 staff-days expended on each regular examination in total. Assuming 3,250 regular examinations completed, 1.9 days each equals 6,175 staff-days attributable to regular examination time spent on nondiscrimination. To this must be added an estimated 750 staff-days expended by field examiners conducting special examinations* or follow-up examinations,* 978 staff-days for the overhead of district civil rights specialists, and 3,700 staff-days (5.5% of total) attributable to district office professional staff support. Total estimated professional staff-days at the district level thus equals 11,603 days, or approximately six percent of total professional staff-days in the field.

Applying the six percent figure subjectively derived above, total field expenditures of approximately \$26,364,500 provides a theoretical gross field expenditure of about \$1,580,000 for nondiscrimination examination activities including overhead and training. To this figure must be added expenditures at the Washington headquarters office for support activities related to nondiscrimination compliance and complaint handling. In aggregate, these expenditures are estimated to represent four years of staff effort at an all-inclusive average of \$25,000 per year, plus about \$25,000 for travel, for a total of \$125,000. Adding this to the field expenditure of \$1,580,000 equals a total estimated gross expenditure for

*Special examinations are conducted to investigate the allegations made in complaints and follow-up examinations are conducted when the supervisory agent feels more investigation is needed regarding a violation uncovered in a regular examination or when he determines it is necessary to see if corrective action has been taken.

Question No. 9
Page 2

nondiscrimination examination activities of \$1,705,000. This final amount represents primarily the examination function costs and does not include supervisory costs incurred and paid by the twelve independently financed and administered Federal Home Loan Banks of which the district Supervisory Agents are employees.

As requested, a percentage breakdown of the total estimated gross expenditure is presented below. All allocations are approximate, based upon our best judgment and available data. Expenditures for training appear minimal primarily because the agency completed a comprehensive training program for all examination and supervisory personnel just prior to the period covered by this report.

See attached chart for cost estimates.

Question No. 9
Page 3

Division of Examinations (continued)

	Percent	Dollars
Field Examinations -----	80.4%	\$1,565,000
Washington Office Staff		
a. General support -----	4.2%	82,000
b. Complaint handling-----	2.0%	43,000
Training-----	.8%	15,000
Consumer and Creditor Education-----	*	*
TOTAL-----	<u>87.6%</u>	<u>\$1,705,000</u>

*No formally recorded expenditures in this category.

Office of Community Investment (Consumer Division)

Washington Office Staff -----		
a. Consumer education and complaint handling ---	2.9%	\$ 56,000
b. Training -----	1.0%	\$ 20,000
c. Creditor education -----	3.6%	\$ 70,000
TOTAL -----	<u>7.5%</u>	<u>\$ 146,000</u>

*OCI was created in December 1977 to replace the Office of Housing and Urban Affairs. Thus, although this amount was budgeted, it has not been fully expended since the Division was not fully staffed until late in this period. The consumer division has a similarly sized staff and does related work to the division it replaced so the budget figures for the second half of 1977 and the first half of 1978 are approximately the same.

Office of the General Counsel **

Compliance Division -----	.8%	15, 670
Opinions Division -----	.5%	9,122
Regulations Division-----	3.5%	69,267
TOTAL-----	<u>4.8%</u>	<u>94,059</u>

**All figures are based on estimates of the amount of time spent by staff attorneys, supervisors and secretarial staff. Compliance division figures also include travel expenses.

TOTAL (Bank Board)-----	<u>100.0%</u>	<u>1,945,059</u>
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Question No. 10, Page Nos. 4 and 5

What do you project will be the full gross cost of these same enforcement activities for the twelve months from July 1978 through June 1979, stated so as to represent coverage comparable or identical to the figures presented in the answer to the previous question? What will be the percentage distribution of this total among the categories used in the answer to the previous question? Please state the method by which estimates are derived.

ANSWERDivision of Examinations:

Using the estimated expenditures derived in response to question No. 9 above as a benchmark, we predict substantial increases in all categories for the 12 months ending June 1979. This will result primarily from the addition of the Community Reinvestment Act compliance requirements, changes in Bank Board regulations and review of loan application registers. Our best estimate, based upon past experience and some preliminary results with application register reviews, is that total time spent in nondiscrimination related examination procedures will be increased by an average of at least two staffdays per regular examination. Projecting an ability, given current staff levels, of completing approximately 3,050 regular examinations, an average of 3.9 (1.9 as computed in the previous answer plus 2) staffdays spent on nondiscrimination would yield an annual total of 11,895 staffdays contributed by district examiners. This would constitute approximately 9.8 percent of total regular examination time projected for the year. Estimated additional district staff requirements are 800 staffdays for special examinations, 1,500 days (260 days x 12 districts x 50% time) for the overhead of district civil rights specialists, and 6,780 staffdays (9.8% of total) attributable to district office professional staff support. Total estimated professional staffdays at the district level thus equals 20,975, or approximately 10 percent of total projected field time.

Applying the ten percent figure derived above to total projected field expenditures for the year of approximately \$30,290,000 results in a potential gross field expenditure of approximately \$3,029,000 attributable to nondiscrimination examinations. To this figure must be added projected expenditures at the Washington headquarters office. Based upon previous expenditures, and factoring in anticipated cost increases, we would expect aggregate Washington support to cost \$167,500. Adding this to the projected field expenditures results in a total projected gross expenditure for nondiscrimination examination activities of \$3,196,500.

Question No. 10
Page 2

As with the percentage breakdown shown in response to question No. 9, the breakdown below shows allocations based on our best judgment and not on hard data. Due to the large expenditure for training projected for the period (approximately 2,400 staff-days devoted to nondiscrimination), the percentage allocated to examinations is less than the previous year despite an increase in field time per examination.

	<u>Percent</u>	<u>Dollars</u>
Field Examinations	79%	\$2,704,000
Washington Office Staff		
a. General support	3%	\$ 101,250
b. Complaint handling	2%	\$ 66,250
Training	9%	\$ 325,000
Consumer and Creditor Education	<u>0%</u>	<u>\$ 1,400</u>
Total	<u>93%</u>	<u>\$3,197,900</u>
 <u>Office of Community Investment (Consumer Division)</u>		
Washington Office Staff		
Consumer education and complaint handling	1.6%	\$ 56,000
Training	0.8%	\$ 26,000
Creditor Education	<u>2.0%</u>	<u>\$ 70,000</u>
Total	<u>4.4%</u>	<u>\$ 152,000</u>
 <u>Office of the General Counsel</u>		
Compliance Division	1.1%	\$ 37,340
Opinions Division	1.1%	\$ 37,100
Regulations Division	<u>.5%</u>	<u>\$ 15,920</u>
As of July 1978, the duty of advising the Division of Examiners and the Division of Supervision was shifted from the Compliance Division to the Opinions Division. However, because of the increased emphasis being placed on this area, our new examiner training session, our new nondiscrimination regulations and CRA regulations, we expect to receive more referrals for investigation, opinion, and enforcement action.		
Total	<u>2.6%</u>	<u>\$ 90,360</u>
Total (Bank Board)	100%	\$3,440,260

Question No. 11

What are the total numbers of associations that were and will be examined in these two twelve-month periods? How many loan applications were received and how many new loans were closed by the examined associations in the earlier twelve-month period? Approximately how many applications will be received and approximately how many loans will be closed by the associations that will be examined in the later twelve-month period? What was the average loan size in the earlier period, and what do you project as an estimate of the average loan size in the later period? What was the dollar volume of loans held by the examined associations in their portfolios on December 31, 1977, and what do you project will be the corresponding dollar volume on December 31, 1978?

ANSWER

1. Number of associations examined from July 1, 1977 through June 30, 1978 was 3,291.
2. Number of associations projected to be examined from July 1, 1978 through June 30, 1979 is 3,284.
3. We currently have no data relating to the number of applications received by associations. However, our new nondiscrimination regulations require each association to begin keeping a loan application register as of September 1, 1978. Thus, from this time on, we will have a better idea about application volume.
4. We do not maintain statistics relative to the number of loans closed by associations. However, we do have statistics available on all the loans secured by 1-4 family homes which we have used to answer your question as best as is possible with the data available to us. We believe that these figures may be more meaningful since they do not include large commercial and tract development loans which would have a disproportionate influence on the averages. Loans on 1-4 family homes constituted 76% of all loans made during the period.

Total dollar volume of loans on 1-4 family homes during the period July 1, 1977 through June 30, 1978 was \$83.7 billion.

Average loan size during the above period was \$43,200.

Using the above figure, the approximate number of loans granted during the period was 1,937,638.
5. Based on the above, we project approximately 2,000,000 loans will be closed during the period July 1, 1978 through June 30, 1979. We project that the average loan size during this period will be \$47,500.
6. As of December 31, 1977, the total dollar volume of all mortgage loans outstanding for all insured savings and loan associations was \$374 billion.

As of December 31, 1978, we project that there will be total dollar volume of \$430 billion in mortgage loans outstanding.

Question No. 12.

Please restate the costs of the earlier period and the projected costs of the later period as costs per association examiner, per loan application received, per loan granted, per \$1000 of the loan granted, and per \$1000 of loans held in association portfolios at the midpoint of the period.*

ANSWER

The reader is referred to the answers to Questions No. 9 and 10 and the assumptions made therein. The reader is also referred to the answer to Question No. 11, since the answer to costs per loan granted will be based on the estimated number of loans granted which were secured by 1-4 family homes. Other costs (per \$1,000) will be based on total loans. As stated in answer to Question No. 11, we have no data on the number of applications.

From the answers to Questions No. 9 and 10

Estimated costs of Federal Home Loan Bank Board activities related to enforcement of the Fair Housing Act, the Equal Credit Opportunity Act and Regulation B for the periods:

July 1, 1977 through June 30, 1978	<u>\$1,945,054</u>
July 1, 1978 through June 30, 1979	<u>\$3,440,260</u>

Costs per association examined:

July 1977 through June 1978	<u>\$ 591</u>
July 1978 through June 1979	<u>\$ 1048</u>

Costs per mortgage loan granted (1-4 family home loans only):

July 1977 through June 1978	<u>\$ 1.00</u>
July 1978 through June 1979	<u>\$ 1.55</u>

Costs per \$1,000 of all mortgage loans granted:

July 1977 through June 1978	<u>\$.0177</u>
July 1977 through June 1979	<u>\$.0272</u>

Costs per \$1,000 of mortgage loans held:

December 31, 1977	<u>\$.0052</u>
December 31, 1978	<u>\$.0080</u>

Question No. 13

In the twelve month period from July 1977 through June 1978, how many examiner hours of work were spent in each of the twelve Federal Home Loan Bank districts and in all districts combined in performing on-site examination for savings and loan association compliance with the Fair Housing Act, the Equal Credit Opportunity Act, and Regulation B?

ANSWER

Since much of the examination work done in these areas is done in conjunction with the examiner's review of overall lending activities, it is difficult to segregate the exact number of hours devoted to these areas. It should also be noted that examiners do not look at all loans made. They examine a representative sampling of each type of loan. However, we have used the most precise figures available for on-site examination time attributable to examining for compliance with the Fair Housing Act, the Equal Credit Opportunity Act and Regulation B. The individual districts reported as follows:

<u>District</u>	<u>Examiner Time</u> <u>(Hours)</u>
Boston	1
New York	2
Pittsburgh	3
Atlanta	4
Cincinnati	5
Indianapolis	6
Chicago	7
Des Moines	8
Little Rock	9
Topeka	10
San Francisco	11
Seattle	12
TOTAL	<u>58,182</u>

Please note that the above relates to on-site examiner time only. It does not include the time spent by the civil rights specialists nor any support time. This time was reported relevant to the Fair Housing Act, Equal Credit Opportunity Act and Regulation B only. It does not include time spent on similar areas -- i.e., Home Mortgage Disclosure Act, Regulation C and other consumer-oriented regulations.

Question No. 14

How many examiner hours of work do you project will be spent in each of the twelve Federal Home Loan Bank districts and in all districts combined in the period from July 1978 through June 1979 in performing on-site examination for savings and loan association compliance with the Fair Housing Act, the Equal Credit Opportunity Act, and Regulation B.

ANSWER

The same qualifying statements which are contained in the answer to Question No. 13 are applicable to the projection presented below.

Each district furnished its projection as follows:

<u>District</u>	<u>Projected Examiner Time (Hours)</u>
Boston	1
New York	2
Pittsburgh	3
Atlanta	4
Cincinnati	5
Indianapolis	6
Chicago	7
Des Moines	8
Little Rock	9
Topeka	10
San Francisco	11
Seattle	12
TOTAL	<u>97,158</u>

Question No. 15

For each district and for all districts combined, please restate the examination effort of the earlier period and the projected examination effort of the later period in terms of examiner-hours per 100 loans granted (or loans expected to be granted), per 100 applications (or expected applications), per \$100,000 of new loans granted (or anticipated to be granted) in the respective twelve-month periods, and per \$100,000 of loans held in association portfolios at the midpoint of the period.

ANSWER

As stated in answer to previous questions, we have no data relevant to the number of applications received by associations.

We can furnish the data relevant to the number of loans only on a combined district basis. We do not have this data available for each district. As stated in answer to Question No. 11, the data pertaining to the number of loans is based on loans secured by 1-4 family homes only. This data must be extracted from statistics showing the total 1-4 family home loans made during the period and the average amount per loan.

The data showing examiner time per \$100,000 increments will be shown on an individual district basis.

As requested, the data presented below relates to the time attributable to on-site examinations for compliance with the Fair Housing Act, the Equal Credit Opportunity Act and Regulation B.

Examiner hours per 100 loans granted (for all districts combined - 1-4 family home loans only):

July 1, 1977 through June 30, 1978	3 hrs. 44 min.
July 1, 1978 through June 30, 1979	4 hrs. 33 min.

Please note that the examiner time attributable to Fair Housing, Equal Credit Opportunity and Regulation B, based on \$100,000 in loans made will have to be expressed in minutes. This is due to the large loan volume being related to a comparatively small time frame. Data follows:

Question No. 15
Page 2

<u>Period</u>	
<u>7/1/77-6/30/78</u>	<u>7/1/78-6/30/78</u>
<u>Examiner Time</u>	<u>Examiner Time</u>
per	per
\$100,000	\$100,000
<u>Loans Granted</u>	<u>Loans Granted</u>

For All Districts

3.2 minutes 4.6 minutes

For Each District

<u>District</u>	<u>No.</u>	<u>Minutes</u>	<u>Minutes</u>
Boston	1	9.2	13.4
New York	2	6.6	9.6
Pittsburgh	3	5.1	7.4
Atlanta	4	2.9	4.3
Cincinnati	5	3.6	5.2
Indianapolis	6	3.8	5.5
Chicago	7	3.2	4.7
Des Moines	8	3.0	4.4
Little Rock	9	4.1	5.9
Topeka	10	2.9	4.2
San Francisco	11	1.6	2.3
Seattle	12	2.7	3.9

Examiner time for each \$100,000 increment of total loans held in association portfolios as of December 31, 1977 follows:

<u>Midpoint Period</u>	
<u>12/31/77</u>	
<u>Examiner Time</u>	
per	
\$100,000	
<u>Total Loans Held</u>	
<u>All Districts</u>	<u>0.9 minutes</u>
<u>District No.</u>	<u>Minutes</u>
Boston	1
New York	2
Pittsburgh	3
Atlanta	4
Cincinnati	5
Indianapolis	6
Chicago	7
Des Moines	8
Little Rock	9
Topeka	10
San Francisco	11
Seattle	12

Question No. 16

Do you employ, for enforcement or any other purpose, a distinction between "technical" and "substantive" violations of law? If so, please explain in precise terms how this distinction is used, what it means, and what types of violations fall into each class.

ANSWER

In the area of nondiscrimination laws and regulations, our examiners make no distinction between "technical" and "substantive" violations because we feel that even an unintentional violation of a technical nature could have a substantive effect upon an individual applicant or class or applicants. In addition, such violations as not keeping the proper records or sending out the proper notices may seem minor in themselves, but they also mean that the data is not available for the examiner to review to determine if substantive violations have in fact taken place.

For these reasons, examiners are instructed to note and comment upon all violations of these laws and regulations which come to their attention during the course of an examination. (See attached instructions from the Examination Objectives and Procedures Manual). Also, our Supervisory Agents are instructed to take appropriate supervisory action on all such violations.

When an examiner detects the possibility of violations of a serious nature, the scope of the work being done in this potential problem area will be expanded so that the examiner will conduct a more in-depth investigation into the particular problem area uncovered. Should the problem develop into a serious one, then this will be reflected in the comment section of the examination report. The Supervisory Agent will then act in accordance with the severity of the problem disclosed by the examiner's comments. At any point in the process of conducting the examination, the examiner may call upon the District Civil Rights Specialist for advice and assistance.

It is only at the point when the Supervisory Agent decides what is the appropriate corrective action to take, that a distinction between "technical" and "substantive" violations may be made. Since "technical" violations are often the kind that are easiest to correct, the association often may have taken the appropriate corrective action by the time the report is referred to the Supervisory Agent for action. At the conclusion of the examination, the examiner will have an exit interview with the association's managing officer in which he/she discusses the violations noted in the comment section to the report. At that time, the examiner asks the managing officer what action the association proposes to take (or, possibly has taken by the time the examination is completed) and notes this in the report.

MEMORANDUM**EOP**

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TO: OES PROFESSIONAL STAFF**FROM: Robert J. Moore**

SECTION: NONDISCRIMINATION
SUBJECT: SAME
DATE: August 20, 1976

The purpose of this memorandum is to bring into focus the importance of the less evident types of discrimination in lending that the examiner may encounter, and to issue additional instructions and guidelines for examining in the area of discrimination and in reporting the resultant findings.

A good example of the "less evident" type of discrimination is the presence of a printed formula for the discounting of a wife's income in a mortgage loan application. In the opinion of the Department of Justice (based on related court decisions) such a formula, regardless of whether it is used in the loan underwriting process, is violative of nondiscriminatory lending statutes. This is because the presence of the formula may be prejudicial to the loan underwriting analysis, in that it suggests that a woman's income is not of equal importance to that of a man.

Similarly, but clearly expressed in the appropriate regulation (Regulation B), is the fact that the use of an application form that incorporates terms that are not neutral as to sex, (with certain exceptions specified in the regulation) is violative of the regulation.

There are numerous other examples of discriminatory loan processing forms that the examiner must be aware of and watchful for, not only to ensure that the association is in compliance with the various statutes and regulations, but also in order to protect the association from costly legal proceedings and settlements, resulting from the use of discriminatory forms.

During the course of the nondiscrimination examination the examiner must review the loan processing forms used by the association during the review period. If a form is encountered which is clearly violative of a nondiscrimination statute or regulation, or that the examiner feels may be discriminatory in effect (as in the first example above), the examiner should inform the association's management and prepare a comment for Section I of the examination report, including at a minimum:

1. A description of the pertinent portion of the form, and the date upon which use of the form began;
2. Reference to the statute or regulation which it violates or may be violative of;
3. The date the statute or regulation became effective;
4. The date on which management discontinued the use of the form, if applicable;

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SUBJECT: NONDISCRIMINATION**PAGE:** Two

5. The date or estimated date on which management intends to discontinue use of the form, if applicable;
6. Management's stated reasons for an intention to continue the use of the form, if applicable.

In addition to an awareness of the possibly discriminatory nature of loan processing forms, the examiner needs also to be aware of association lending policies and procedures that may be discriminatory in effect, if not clearly violative of the provisions of the various statutes and regulations. It is of great importance to remember that association practices and procedures may be discriminatory in effect and therefore subject to legal challenge even if the association's intent is perfectly innocent. In this light, it is strongly suggested that the examiner refresh his memory in regard to policies and practices that are or may be discriminatory by re-reading the EOP memo 123 sections dealing with this topic (pages 15-16 and 19-22). It is also suggested that the examiner refamiliarize himself with the provisions of Regulation B.

Examinations in this area must be extensive enough to reach a sound conclusion as to the existence of all types of discrimination, including the subtle "discrimination in effect", but should not be taken to the extreme of reviewing an overwhelmingly large number of association documents with the intent of finding, at all costs, some evidence of discrimination. The review must include a comparison of rejected and accepted loan applications from males and females, and from non-minority and minority applicants, as well as a similar comparison of the terms and conditions of loans granted, processing procedures, application of stated underwriting rules, area comparisons, etc..

In instances where evidence of discrimination of any type is found, a comment must be included in Section I of the comments section. It should fully describe the nature of the discrimination and should be soundly documented in the examination workpapers. The information supplied in the comment and supporting workpapers should be in sufficient detail to allow the Supervisory Agent to fully understand the nature and extent of the discrimination so that appropriate supervisory action can be taken as quickly as possible.

Robert Moore
Deputy Director

SECTION: EXAMINATION REPORTS**SUBJECT: INSTRUCTIONS FOR PREPARATION OF REGULAR EXAMINATION
REPORT**

R. Page 18 - Comments

The Comments Section should begin with an index if the comments are numerous. Comments are to be presented under one of the following captions.

- I. Deficiencies Requiring the Board of Directors' Attention,
- II. Deficiencies Corrected or to be Corrected by Management, and
- III. Other Matters Considered to be of Supervisory Interest.

Where there are no comments pertaining to a particular caption, it should be omitted entirely and the remaining captions re-numbered if necessary. If there are comments pertaining only to caption "III" then change the caption to read "I. Matters Considered to be of Supervisory Interest."

It is not necessary to repeat a comment which has been made on another page of the report; however, a cross-reference must be made in this section to the appropriate page number.

SECTION: EXAMINATION REPORTS**OBJECT: INSTRUCTIONS FOR PREPARATION OF REGULAR EXAMINATION REPORT**

COMMENTS PRESENTED IN THIS REPORT MUST BE OBJECTIVE AND BASED UPON DOCUMENTED FACT.

Conclusions should be complete and clear as to meaning. When ratios or percentages are cited, they should be in support of a conclusion or recommendation and their import should be made understandable to the reader.

I. Deficiencies Requiring the Board of Directors' Attention

Material deficiencies and other adverse or potentially adverse matters which require supervisory attention are to be reported in this section of the examination report. The determination of which specific matters should be included in this portion of the report is judgmental. Therefore, written guidelines might tend to restrict rather than assist in this judgment.

Comments should usually be arranged in the order of their significance. Occasionally, this generalization may be ignored when, for example, relatively minor comments relate to ones of significant substance.

The specific format to be used in the presentation of a comment must be based on the particular circumstances. In general, the opening sentence (or opening paragraph) should summarize the problem and its effect and be followed by the supporting details and the Managing Officer's responses and reactions to the problem.

A distinction should be made between those violations and deficiencies occurring prior to and those occurring subsequent to a promise by the board of directors in response to a supervisory request to correct such violation or deficiency.

The most important test to be made of a comment is that it must contain sufficient information and supportive documentation to permit the supervisory authorities to request and obtain the necessary corrective action.

II. Deficiencies Corrected or to be Corrected by Management

Timely supervision of deficiencies within the authority of association management to correct is essential to the successful accomplishment of the OES mission.

Performance of this function should not be viewed as being optional since Board policy vests in the Examiner-In-Charge such authority and responsibility. Experience and judgment must be

SECTION: EXAMINATION REPORTS**SUBJECT: INSTRUCTIONS FOR PREPARATION OF REGULAR EXAMINATION REPORT**

used to determine the materiality of weaknesses and areas of deficiency which are within the scope of management to correct. The most common examples are weaknesses in internal control and violations of regulatory requirements. Competent management can certainly be expected to initiate corrective action when deficiencies in such areas are pointed out to it by the Examiner-In-Charge. Remedial recommendations in such areas are generally obvious to both parties.

It is also essential to the supervisory process that matters resolved by remedial supervision be recorded in the examination report for future reference. Accordingly, the examiner should briefly describe the deficiency, record management's position on the Examiner-In-Charge's conclusions and recommendations, and describe the corrective action that will be taken.

Corrective action should be initiated immediately, or if that is not feasible under the circumstances, the time frame for action should be shown in the report comment so that follow-up at the subsequent examination can be effected. The comments must clearly show the extent to which corrective action has been taken and the extent to which it has been promised.

III. Other Matters Considered to be of Supervisory Interest

This section will cover matters the examiner feels he should report, but which are not considered actual deficiencies to be reported under Comment Sections I and II. These comments generally will not involve regulations, but will involve matters that could have an impact on the viability and/or financial condition of the association, either presently or in the future. Since a wide range of subjects may be included under this section, what is reported will be left primarily to the examiner's judgment.

In reporting under this section the examiner should be careful not to inject this agency into management specifics. Matters reported should have a direct bearing on the association's operation to a degree which may be of supervisory interest and/or concern.

Items reported should be complete. Facts and specifics which led to the inclusion of the comment are essential. The comment should also include the examiner's conclusion as to the effect the practice or condition is having or will have on the association, if appropriate. Management's reaction should be presented.

S. Page 101 - Service Corporations

Question No. 17

Please provide a detailed tabulation, by district and for all districts combined, of Fair Housing Act, Equal Credit Opportunity Act, and Regulation B violations found by Federal Home Loan Bank Board examiners in the twelve-month period from July 1977 through June 1978. If such a distinction is used, please distinguish clearly between violations viewed as merely "technical" and those viewed as involving a clear deviation from the substance and spirit of these acts. Within each of these two classes, please classify the violations by the specific nature of the violations. Where more than one type or class of violation was found at a single institution, please count each type of violation separately, as this request is for a tabulation of violations, not of institutions in violation.

ANSWER

As noted in the answer to Question No. 16, Bank Board examiners make no distinction between "technical" and substantive violations in their examination reports.

There follows a detailed tabulation by district and for all districts combined of violations found by Bank Board examiners in the twelve-month period from July 1, 1977 through June 30, 1978.

The table shows that there were 1427 violations of the Bank Board's Nondiscrimination Regulations reported by examiners during the period. These violations were found in approximately 13% of the institutions which we regulate. By far the largest number of violations fell in the category of "Failure to establish formal nondiscrimination in lending policies." This is probably due to the fact that the regulations did not explicitly require formal adoption of a nondiscrimination in lending policy. It was our interpretation of the regulations that required associations to adopt a formal policy so that our examiners could determine whether or not the association was in compliance with the regulations. Nevertheless, many associations did not realize that formal adoption of a nondiscrimination in lending policy was implied in the regulations. Our new nondiscrimination regulations explicitly require the adoption of written nondiscriminatory loan underwriting standards.

The table also indicates considerably more Equal Credit Opportunity Act violations than Nondiscrimination Regulation violations. This is principally because Regulation B was amended in March of 1977, just prior to the beginning of the examination period reported on, and many of the new requirements in the revised regulations were not known or fully understood by the industry when the examinations analyzed here took place. Thus, you will see the largest number of violations involving adverse action notification and monitoring data, both new requirements under the March 1977 revised Regulation B.

Schedule for Question No. 17

FEDERAL HOME LOAN BANK SYSTEM REGULATIONS

SECTION	TYPE OF VIOLATION	NUMBER OF VIOLATIONS												TOTAL
		DISTRICT												
		#1	#2	#3	#4	#5	#6	#7	#8	#9	#10	#11	#12	
528.2(a)	Lending Discrimination (General)	0	0	4	3	5	6	0	3	3	2	0	2	28
528.2(a)(4)	Neighborhood Discrimination	0	0	0	1	0	0	0	1	17	2	0	1	22
528.4	Failure to include Equal Housing Logo in advertisements for loans	8	10	1	7	11	3	25	23	8	0	4	0	100
528.5(a)	Failure to exhibit Equal Housing Lender Poster	7	13	21	32	15	7	45	13	20	4	7	0	184
528.5(b)	Erroneous text contained in Equal Housing Lender Poster	7	3	11	22	5	19	56	5	20	0	17	1	166
531.8(a)	Failure to establish formal non-discrimination in lending policies	34	17	43	129	77	42	183	42	92	36	72	47	814
531.8(c)(1)	Sex discrimination	0	0	0	1	1	0	0	0	0	0	1	0	3
531.8(c)(2)	Marital Status discrimination	0	0	0	0	0	0	0	1	2	0	0	0	3
531.8(c)(4)	Discounting of wife's income	0	0	0	2	0	0	0	0	0	0	0	1	3
531.8(c)(5)	Discounting supplemental income	0	0	0	0	1	0	0	0	0	0	0	0	1
531.8(c)(6)	Discrimination based on age, income level or social composition of neighborhood	0	0	0	1	19	33	0	0	8	3	34	0	98
531.8(c)(7)	Discrimination based on applicant's prior history	0	0	0	0	0	0	0	1	0	2	2	0	5
SUBTOTAL (FHLBB)		<u>56</u>	<u>43</u>	<u>80</u>	<u>198</u>	<u>134</u>	<u>110</u>	<u>309</u>	<u>89</u>	<u>170</u>	<u>49</u>	<u>137</u>	<u>52</u>	<u>1,427</u>

EQUAL CREDIT OPPORTUNITY ACT

SECTION	TYPE OF VIOLATION	NUMBER OF VIOLATIONS												TOTAL
		DISTRICT												
		#1	#2	#3	#4	#5	#6	#7	#8	#9	#10	#11	#12	
202.5(a)	Discouraging applications on a prohibited basis	1	2	2	5	17	1	6	2	1	0	3	0	40
202.5(c)(1)	Erroneous request for information concerning spouse	1	0	0	2	0	0	9	0	1	0	0	0	13
202.5(d)(1)	Improper request for marital status	16	11	8	201	86	34	83	13	26	6	2	1	487
202.5(d)(2)	Improper request for source of income -- alimony, etc.	0	1	0	52	0	10	21	1	13	0	0	0	98
202.5(d)(3)	Improper request for sex of applicant	0	1	0	52	0	21	37	4	32	0	0	0	147
202.6(a)	Credit information used in a discriminatory manner	0	1	0	0	0	0	0	3	1	0	0	0	5
202.6(b)(1)	Taking a prohibited basis as a minus factor in a credit evaluation system	2	2	0	14	75	0	3	0	1	0	0	0	97
202.6(b)(2)	Income from public assistance penalized	0	0	0	0	0	2	0	1	1	0	0	0	4
202.6(b)(3)	Income penalized due to likelihood of childbearing	0	0	0	1	0	0	0	0	1	0	0	0	2
202.6(b)(5)	Steady supplemental income discounted	0	0	1	1	0	2	4	3	2	0	0	0	13
202.7(b)	Applicant not permitted to use other than married name	0	0	0	0	0	0	1	0	0	0	0	0	1
202.9(a)(1)	Failure to properly notify applicant of adverse action	16	39	9	190	95	21	31	15	31	22	24	17	510
202.9(a)(2)	Content of notice of adverse action does not conform	0	10	7	117	273	27	50	31	43	6	1	0	565
202.9(b)(1)	ECOA notice not in conformance with section 701(a) of the Act	3	11	10	101	9	25	40	11	15	15	14	5	259

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Schedule for Question No. 17

EQUAL CREDIT OPPORTUNITY ACT (continued)

SECTION	TYPE OF VIOLATION	NUMBER OF VIOLATIONS												TOTAL
		DISTRICT												
		#1	#2	#3	#4	#5	#6	#7	#8	#9	#10	#11	#12	
202.9(b)(2)	Statement of reasons for adverse action was not specific and did not indicate principal reason	0	1	2	13	69	5	7	10	5	6	39	0	157
202.10(a)(1)	Failed to determine and designate participation of both spouses	0	0	0	39	33	0	4	0	7	0	2	1	86
202.10(b)(1)	Failed to determine, designate and notify as to participation of both spouses (pre-June 1, 1977)	0	0	0	7	2	0	2	5	4	0	1	1	22
202.12(a)	Retained prohibited information in applicant's file	0	0	0	0	0	0	0	8	0	0	0	4	12
202.12(b)	Failed to preserve records	14	10	5	62	187	13	21	1	9	15	8	0	345
202.13(a)(1)	Failure to obtain monitoring information	16	14	18	511	173	54	54	20	46	9	13	8	936
202.13(c)	When applicant chose not to furnish monitoring data, this was not noted on application	0	0	4	156	56	6	13	18	11	22	5	1	292
SUBTOTAL (FRB)		<u>69</u>	<u>103</u>	<u>66</u>	<u>1,524</u>	<u>1,075</u>	<u>221</u>	<u>386</u>	<u>146</u>	<u>250</u>	<u>101</u>	<u>112</u>	<u>38</u>	<u>4,091</u>
TOTAL ALL VIOLATIONS		<u>125</u>	<u>146</u>	<u>146</u>	<u>1,722</u>	<u>1,209</u>	<u>331</u>	<u>695</u>	<u>235</u>	<u>420</u>	<u>150</u>	<u>249</u>	<u>90</u>	<u>5,518</u>

Question No. 17A

Please restate certain elements of the above tabulation of violations to show, by district and for all districts combined, technical and substantive violations per 100 examiner hours devoted to civil rights compliance examination, per 100 loan applications received, per 100 loans granted, and per \$100,000 of loans held in association portfolios at December 31, 1977.

ANSWER

As stated in answer to previous questions, we have no data pertaining to the number of applications received by associations. At the examination level, we make no distinction between technical and substantive violations. (See answer to Question No. 16.)

Also, as previously, we will have to limit our reply, relevant to each 100 loans granted, to loans on 1-4 family homes, on a district-wide basis.

Data follows:

Violations per 100 loans granted:	<u>0.28</u>
(1-4 family home loans only- all districts)	

The following shows the number of violations for each 100 hours of on-site examination time attributable to examining for compliance with the Fair Housing Act, the Equal Credit Opportunity Act and Regulation B. Also, the number of violations for each \$100,000 in loans held in association portfolios as of December 31, 1977. In regards to the total loan portfolio, it should be noted that examiners do not review every loan. Their loan examination procedures include a review of a representative sampling of each type of loan made.

Data follows:

Question No. 17A
Page 2

<u>Number of Violations</u>			
	<u>Per</u>	<u>Per</u>	
	<u>100 Hours of</u>	<u>\$100,000 of</u>	
	<u>Examiner Time</u>	<u>Loans Held</u>	
	<u>7/1/77-6/30/78</u>	<u>As of 12/31/77</u>	
<u>All Districts</u>	<u>9.5</u>	<u>0.0014</u>	
<u>District</u>			
<u>No.</u>			
Boston	1	5.4	0.0017
New York	2	3.0	0.0005
Pittsburgh	3	4.1	0.0008
Atlanta	4	20.7	0.0026
Cincinnati	5	20.3	0.0037
Indianapolis	6	10.4	0.0018
Chicago	7	11.6	0.0019
Des Moines	8	7.5	0.0010
Little Rock	9	5.3	0.0014
Topeka	10	5.2	0.0009
San Francisco	11	3.6	0.0003
Seattle	12	2.8	0.0005

Question No. 18

Please provide a tabulation, by district, of institutions found to be in violation of the Fair Housing Act, the Equal Credit Opportunity Act, or Regulation B in the period from July 1977 through June 1978. If you distinguish between technical and substantive violations, please classify every institution in each district into one of three groups according to whether no violations were found, only technical violations were found, or one or more substantive violations were found.

Question No. 18a

Please restate the above tabulation of institutions in violation to show institutions in violation as a percentage of all examined institutions in the district.

ANSWER

Our method of monitoring violations of the above precludes our answering your question exactly as it is presented. Our reports from the districts are broken down to show the number of institutions and the number of violations in each category - i.e., Fair Housing Act, Regulation B, Regulation C, etc. Therefore, in order to avoid double-counting we will, with your indulgence, report as follows:

1. Violations of the Fair Housing Act
2. Violations of the Equal Credit Opportunity Act or Regulation B.

As noted in answer to question No. 16 we make no distinction between technical and substantive violations.

A tabular presentation, which includes the answer to Question No. 18a, follows:

Schedule for Question No. 18 & 18a

FAIR HOUSING ACT VIOLATIONS

	District No.	Total No. of Assn's	Total Associations Examined 7/1/77 - 6/30/78			Percent With Violations
			Number Examined	Number of Assn's With:		
			No Violations	Violations		
Boston	1	118	98	75	23	23.5%
New York	2	313	270	245	25	9.3%
Pittsburgh	3	300	238	199	39	16.4%
Atlanta	4	677	535	451	84	15.7%
Cincinnati	5	503	408	373	35	8.6%
Indianapolis	6	216	208	171	37	17.8%
Chicago	7	506	427	297	130	30.4%
Des Moines	8	265	205	160	45	21.9%
Little Rock	9	604	450	380	70	15.6%
Topeka	10	223	183	174	9	4.9%
San Fran- cisco	11	191	162	137	25	15.4%
Seattle	12	141	107	103	4	3.7%
		<u>4057</u>	<u>3291</u>	<u>2765</u>	<u>526</u>	<u>19.0%</u>

Schedule for Question No. 18 & 18a
Page 2

EQUAL CREDIT OPPORTUNITY ACT AND REGULATION B VIOLATIONS

District No.	Total No. of Assn's	Total Associations Examined 7/1/77 - 6/30/78			Percent With Violations	
		Number Examined	Number of Assn's With: No Violations	Violations		
Boston	1	118	98	33	65	66.3%
New York	2	313	270	149	121	44.8%
Pittsburgh	3	300	238	169	69	29.0%
Atlanta	4	677	535	170	365	68.2%
Cincinnati	5	503	408	231	177	43.4%
Indianapolis	6	216	208	112	96	46.2%
Chicago	7	506	427	145	282	66.0%
Des Moines	8	265	205	114	91	44.4%
Little Rock	9	604	450	180	270	60.0%
Topeka	10	223	183	78	105	57.4%
San Fran- cisco	11	191	162	105	57	35.2%
Seattle	12	141	107	67	40	37.4%
		<u>4057</u>	<u>3291</u>	<u>1553</u>	<u>1738</u>	<u>52.8%</u>

Question No. 19

In the twelve-month period from July 1977 through June 1978, how many consumer complaints were received directly by the Federal Home Loan Bank Board in Washington alleging discrimination in some aspect of the lending process? How many of these complaints received in Washington originated from each of the Home Loan Bank districts? How many such complaints were received directly in each of the district Home Loan Banks?

ANSWER

During the period July 1, 1977 through June 30, 1978 there were 54 complaints received by the Bank Board in Washington alleging such discrimination. As of June 30, 1978, 37 of the investigations relevant to these complaints had been closed and 17 complaints were open and still being investigated. A breakdown by each district follows:

<u>Number of Complaints</u>				
	<u>District No.</u>	<u>Closed</u>	<u>Open</u>	<u>Total</u>
Boston	1	1	None	1
New York	2	4	2	6
Pittsburgh	3	None	None	None
Atlanta	4	10	11	21
Cincinnati	5	8	None	8
Indianapolis	6	None	None	None
Chicago	7	2	3	5
Des Moines	8	3	None	3
Little Rock	9	1	None	1
Topeka	10	1	1	2
San Francisco	11	6	None	6
Seattle	12	<u>1</u>	<u>None</u>	<u>1</u>
	Totals	<u>37</u>	<u>17</u>	<u>54</u>

Question No. 19
Page 2

During this same period there were 174 such complaints received directly in the district Home Loan Banks. As of June 30, 1978, 144 of the investigations relevant to these complaints had been closed and 30 complaints were open and still being investigated. A breakdown by each district follows:

<u>District No.</u>	<u>Number of Complaints</u>		<u>Total</u>
	<u>Closed</u>	<u>Open</u>	
1	5	None	5
2	9	2	11
3	3	3	6
4	11	5	16
5	12	2	14
6	3	None	3
7	10	2	12
8	6	None	6
9	7	10	17
10	1	1	2
11	70	5	75
12	<u>7</u>	<u>None</u>	<u>7</u>
Totals	<u>144</u>	<u>30</u>	<u>174</u>

Question No. 20

Please provide a further tabular breakdown, as indicated below, of each of these figures of discrimination complaints received. For each district, please provide the numbers of complaints in each category below separately for complaints originally received in Washington and for complaints originally received in the district Home Loan Bank:

- a. Complaints the investigation of which found one or more violations of law that substantiated the complainant's claim;
- b. Complaint cases in which no violation was found but in which an adjustment or accommodation was offered by the association and accepted by the complainant (including correction of bank errors);
- c. Complaints based on a factual dispute, in which the complainant received no satisfaction;
- d. All other complaints that received a thorough investigation but resulted in no violations related to the complaint and no satisfaction for the complainant; and
- e. All other complaints (including information requests) in which no investigation, or only a cursory investigation, was deemed necessary.

ANSWER

As shown in the answer to Question No. 19, there were 181 complaints, alleging discrimination in lending, which were received, investigated and closed during the period from July 1, 1977 through June 30, 1978. Of these 181 complaints, 37 originated in the Washington office and 144 originated in the district banks.

In answer to a, b, c, d and e above, the tabular breakdown is presented:

Schedule for Question No. 20

District No.	a.		b.		c.		d.		e.	
	Washington	District Banks	Washington	District Banks	Washington	District Banks	Washington	District Banks	Washington	District Banks
1	None	None	None	1	None	None	1	3	None	1
2	None	None	1	None	None	None	2	9	1	None
3	None	None	None	None	None	None	None	3	None	None
4	None	1	1	None	None	1	7	9	2	None
5	None	None	1	None	None	None	5	10	2	2
6	None	None	None	1	None	None	None	2	None	None
7	None	1	None	None	None	1	None	8	2	None
8	None	1	None	1	None	None	3	4	None	None
9	None	None	None	2	None	1	1	4	None	None
10	None	None	None	None	None	None	1	1	None	None
11	1	8	1	9	None	2	4	49	None	2
12	None	None	None	2	None	None	None	1	1	4
TOTALS	<u>1</u>	<u>11</u>	<u>4</u>	<u>16</u>	<u>None</u>	<u>5</u>	<u>24</u>	<u>103</u>	<u>8</u>	<u>9</u>

Question No. 21

Please provide further supplementary information, as indicated below, on each group of complaints identified in the answers to the previous question. For each group of complaints enumerated above, please specify:

- a. What portion of these complaints were about associations in which a violation similar to the complaint had been found previously, at the most recent prior general compliance examination?
- b. What portion of these complaints were about associations in which a violation similar to the complaint was found subsequently, at the next subsequent general compliance examination?
- c. What portion of these complaints were about associations that have not been given a general compliance examination since the filing of the complaint?

ANSWER

The supplemental information requested above is presented, by district, in the following tabular breakdown. Each item of supplemental information is tabulated under the five main categories included in Question No. 20 as follows:

Major Categories from Question No. 20

District No.	Supplemental Information to Question No.21	a.		b.		c.		d.		e.	
		Washington	District Banks	Washington	District Banks	Washington	District Banks	Washington	District Banks	Washington	District Banks
1	a	None	None	None	None	None	None	None	None	None	None
	b	None	None	None	None	None	None	None	None	None	None
	c	None	None	None	None	None	None	None	None	None	None
2	a	None	None	None	None	None	None	None	1	None	None
	b	None	None	None	None	None	None	None	None	None	None
	c	None	None	None	None	None	None	1	6	None	None
3	a	None	None	None	None	None	None	None	None	None	None
	b	None	None	None	None	None	None	None	None	None	None
	c	None	None	None	None	None	None	None	None	None	None
4	a	None	None	None	None	None	None	None	None	None	None
	b	None	None	None	None	None	None	None	None	None	None
	c	None	None	None	None	None	1	5	6	2	None
5	a	None	None	None	None	None	None	None	None	None	None
	b	None	None	None	None	None	None	None	None	None	None
	c	None	None	1	None	None	None	5	8	1	1
6	a	None	None	None	None	None	None	None	None	None	None
	b	None	None	None	None	None	None	None	None	None	None
	c	None	None	None	None	None	None	None	1	None	None
7	a	None	1	None	None	None	None	None	None	None	None
	b	None	None	None	None	None	None	None	None	None	None
	c	None	None	None	None	None	1	None	1	2	None
8	a	None	1	None	None	None	None	None	None	None	None
	b	None	None	None	None	None	None	None	None	None	None
	c	None	1	None	1	None	None	None	1	None	None
9	a	None	None	None	None	None	None	None	None	None	None
	b	None	None	None	None	None	None	None	None	None	None
	c	None	None	None	None	None	1	1	3	None	None

Major Categories from Question No. 20

District No.	Supplemental Information to Question No. 21	a.		b.		c.		d.		e.	
		Washington	District Banks	Washington	District Banks	Washington	District Banks	Washington	District Banks	Washington	District Banks
		10	a	None	None	None	None	None	None	1	None
	b	None	None	None	None	None	None	None	None	None	None
	c	None	None	None	None	None	None	None	None	None	None
11	a	None	3	None	5	None	None	None	15	None	None
	b	None	2	None	None	None	1	1	6	None	None
	c	1	4	1	9	None	None	None	34	None	1
12	a	None	None	None	None	None	None	None	None	None	None
	b	None	None	None	None	None	None	None	None	None	None
	c	None	None	None	None	None	None	None	None	None	None
TOTALS	a	<u>None</u>	<u>5</u>	<u>None</u>	<u>5</u>	<u>None</u>	<u>None</u>	<u>1</u>	<u>16</u>	<u>None</u>	<u>None</u>
	b	<u>None</u>	<u>2</u>	<u>None</u>	<u>None</u>	<u>None</u>	<u>1</u>	<u>1</u>	<u>6</u>	<u>None</u>	<u>None</u>
	c	<u>1</u>	<u>5</u>	<u>2</u>	<u>10</u>	<u>None</u>	<u>3</u>	<u>12</u>	<u>60</u>	<u>5</u>	<u>2</u>

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Question No. 22

How many private law suits for civil damages under the Fair Housing Act or the Equal Credit Opportunity Act have been filed against savings and loan associations in 1977 and 1978? In how many of these instances had the plaintiff previously filed a complaint with the Federal Home Loan Bank Board or a district Home Loan Bank, prior to filing the law suit?

ANSWER

The Bank Board's twelve Districts advised us that they are aware of at least five private law suits filed against savings and loan associations during 1977 and 1978. Of these law suits, one was filed subsequent to a complaint being filed with the Bank Board. In that case, the law suit was filed after the Bank Board notified (copy attached) the complainant that her rights under the Equal Credit Opportunity Act had been violated and that she might want to seek the remedies available to her under the Act. This is in accord with our supervisory agents' practice of notifying applicants of their option to bring a law suit against the association where it appears that possible discriminatory action has taken place.

Federal Home Loan Bank Board

PEACHTREE CENTER STATION P. O. BOX 56327 240 PEACHTREE STREET N.W.
ATLANTA GEORGIA 30343 404 522-2450

OFFICE OF
SUPERVISORY AGENT

September 21, 1976

Ms. Joann Morton
1543 Brockwall Drive
Columbia, South Carolina 29206

Dear Ms. Morton:

Reference is made to your complaint regarding the Equal Credit Opportunity Act and Standard Savings and Loan Association ("Standard"), Columbia, South Carolina.

The Federal Home Loan Bank Board's Office of General Counsel has reviewed the matter. Based solely upon the written material furnished, it appears that Standard has violated the Equal Credit Opportunity Act (see 15 U.S.C. 1691 et seq.). We have so advised Standard and have requested that they implement appropriate measures so that a future violation of the Act will not occur.

Should you desire to pursue this matter further, you may wish to review those provisions of the Act which set forth certain remedies that may be available to you in this regard.

If we can be of further assistance, please contact us.

Sincerely yours,

Nicholas J. Romano
Supervisory Agent

JWA:bh

cc: Ms. Kathleen G. Smith
Mr. Edward J. O'Connell, III
Mr. Howard Caffrey
Standard Savings and Loan Association, Columbia, South Carolina

COPY

Question No. 23

In what ways does the Federal Home Loan Bank Board inform loan applicants or potential applicants of the existence and possible usefulness to them of the civil damages provisions of the Fair Housing Act and the Equal Credit Opportunity Act? Please supply to the subcommittee examples of any letters, pamphlets, or other educational or informational materials in which these civil damages provisions are mentioned.

ANSWER

The Bank Board's nondiscrimination regulations require all savings and loan associations to prominently display in their lobby the Equal Housing Lender Poster. This poster informs borrowers of their rights under the Fair Housing Act and the Equal Credit Opportunity Act and instructs them on the three ways in which they may seek corrective action if they feel they may have been discriminated against. These three means are:

- (1) to complain to the association's management;
- (2) to complain to the Bank Board or HUD; or
- (3) to bring a civil law suit.

Because the Bank Board feels that this poster alone is not sufficient to inform consumers of their rights, we are currently preparing a series of pamphlets on consumer rights. These pamphlets will be distributed by savings and loan associations and through local consumer groups. The first pamphlet series to be prepared will outline borrowers' rights under the pertinent consumer credit protection statutes, the Fair Housing Act, and the Bank Board's regulations. (A draft of the first pamphlet in this series is attached). The second series of pamphlets will give consumers tips on how to shop for home mortgages.

The Bank Board is also working with HUD on HUD's Women in Credit program which will help us determine the effect of a more extensive public information campaign on consumers. The Bank Board also plans to provide materials and perhaps to conduct training for consumers on aspects of home finance and credit rights.

FEDERAL HOME LOAN BANK BOARD

Section 528.5 of the Bank Board's new Nondiscrimination Regulations require the following Equal Housing Lender Poster to be posted in the lobby of each association. No. 78-302

WE DO BUSINESS IN ACCORDANCE WITH THE FEDERAL

FAIR HOUSING LAW AND THE EQUAL CREDIT OPPORTUNITY ACT

IT IS ILLEGAL TO:

DISCOURAGE a loan inquiry or refuse to accept a written loan application;

DISCRIMINATE in fixing the amount, interest rate, duration, application procedures, or other terms or conditions of a loan; or

DENY a loan for the purpose of purchasing, constructing, improving, repairing or maintaining a dwelling

**ON THE BASIS OF
RACE, COLOR, NATIONAL ORIGIN, RELIGION, SEX,
MARITAL STATUS OR AGE;**

OR BECAUSE

**A PERSON RECEIVES INCOME FROM A PUBLIC ASSISTANCE PROGRAM,
OR HAS IN GOOD FAITH EXERCISED ANY RIGHT UNDER THE
CONSUMER CREDIT PROTECTION ACT.**

* * * * *

**IF YOU BELIEVE YOU HAVE BEEN DISCRIMINATED AGAINST,
YOU MAY:**

SPEAK with the management of this institution;

COMPLAIN TO The Office of Community Investment, Federal Home Loan Bank Board, Washington, D. C. 20552, or the Assistant Secretary for Fair Housing and Equal Opportunity, Department of Housing and Urban Development, Washington, D.C. 20010; or

CONSIDER filing a civil suit under Federal laws.

IF YOU HAVE A PROBLEM WITH A SAVINGS AND LOAN ASSOCIATION...

the Federal Home Loan Bank Board would like to see it solved. We regulate most of the savings and loans in this country and it is our responsibility to see that they meet the savings and home-financing needs of the nation.

We want to help you learn about your rights. We feel that if you are a knowledgeable consumer, it helps both you and the savings and loan.

FOR ASSISTANCE...

- 1 Read this pamphlet to learn your rights.
- 2 Try to resolve the problem directly with the savings and loan.
- 3 If you are not satisfied, use the attached form to contact us.

I KNOW YOUR RIGHTS.

Savings

- Know how the interest is computed on your savings deposit.
- Know the interest rate, term of deposit and what "interest penalty for early withdrawal" means for your savings certificates.

Loans

- Savings and loans must have a written loan policy that you can see.
- You have a right to know how much your loan costs and what the interest rate is.
- If you've been denied credit, you must be notified in writing.

- You have the right to ask and be told why you've been turned down for credit.
- Your credit report must be kept confidential and mistakes must be corrected.
- You may not be discriminated against when you apply for credit because of your age, sex, marital status, race, color, religion, national origin, or because you receive income from Social Security or welfare programs.
- You may not be discriminated against in borrowing because you previously complained that you thought you were being treated unfairly.
- You may not be denied a mortgage or home improvement loan solely because of the age of the house or where it is located.
- You have the right to be given information about the services and costs involved at "settlement," that is, when property is passed from the seller to you.
- You have the right to know where in a metropolitan area savings and loans have made their loans. A statement, the Home Mortgage Disclosure Statement, is available to you if you ask. There may be a small charge for the document.
- Savings and loans are required to meet the credit needs of their communities, including the needs of people living in low and moderate income neighborhoods. If you feel that a savings and loan is not meeting the needs of your community, tell us and we will look into the matter.

2 GO DIRECTLY TO THE MANAGEMENT OF
THE SAVINGS AND LOAN...

You don't have to be an account holder to do this. Tell them your problem and let them try to resolve it for you. Be sure you are completely satisfied with the solution they suggest.

3 IF YOU ARE NOT SATISFIED...

with the help you receive, we will assist you. Please fill out the form attached to this pamphlet and mail it to us. We will act promptly and keep you informed of the status of your complaint.

COMPLAINANT FORM

FEDERAL HOME LOAN BANK BOARD
Office of Community Investment
Washington, D.C. 20552

Name _____ Name of Savings and Loan _____

Address _____
Street City State Zip Code

Daytime Telephone _____ Account Number (if applicable) _____

The complaint involves the following service: Savings Account Home Improvement Loan
Mortgage

Other: Please specify _____

I have attempted to resolve this complaint directly with the savings and loan: No Yes

If "No" an attempt should be made to contact the association and resolve the complaint.

If "Yes", name of person or department contacted is _____
Date

MY COMPLAINT IS AS FOLLOWS (Briefly describe the events in the order in which they happened, including specific dates and the actions to which you object. Enclose copies of any pertinent information or correspondence that may be helpful. Do not send us your only copy of any document.):

This information is solicited under the Federal Trade Commission Improvement Act. Providing the information is voluntary; complete information is necessary to expedite investigation of your complaint. Routine use of the information may include disclosure of it to savings and loans or others involved or to other government agencies as deemed appropriate. Further, please understand that the Federal Home Loan Bank Board does not have the authority to act as a judge in factual disputes.

Question No. 24

How many of each type of letter, pamphlet, or other educational or informational material mentioned in the answer to the previous question were sent out or distributed to the public in the twelve-month period from July 1977 through June 1978? Please indicate the method of distribution and types of groups or individuals to which these materials were distributed.

ANSWER

Because the pamphlets have not yet been printed and distributed, there are no figures for the period July 1977 through June 1978. Most communication with consumers was through the complaint process and responses to complaints make every effort to inform them of alternative rights, particularly in situations where we cannot assist them in solving a problem. A copy of a letter responding to a complaint was attached to the answer to question number 22.

Question No. 25

Please report, with available statistics, whatever information the Federal Home Loan Bank Board now has concerning the extent and consequences of fire insurance redlining.

ANSWER

Although our examiners have encountered cases where the absence of fire insurance was given as a reason for denying a loan, the Bank Board has not compiled any statistics on the extent and consequences of fire insurance redlining.

However, the Bank Board's Office of Community Investment (OCI) recently sponsored a Forum on Community Investment and Revitalization at which the problem of potential homeowners in acquiring casualty insurance emerged as one of the key issues.

OCI, as the host of the Forum, agreed to follow through on this issue and has been working closely with Leo J. Jordan of the State Farm Insurance Companies to obtain the full participation of the insurance industry in developing innovative approaches to increasing the availability of casualty insurance. Mr. Jordan, who was a key insurance official at the Forum, initially felt that the industry would best be represented at subsequent working sessions by the National Committee on Property Insurance. However, the issues of homeowners insurance availability was seen as so important that most of the insurance trade associations indicated that they would prefer to work directly with the Bank Board on this issue. (See attached letter).

As a result of these efforts, OCI plans to act as a facilitator for further meetings to discuss the problems which may make homeowners insurance unavailable and to identify potential solutions. Participants at these meetings would include representatives of the casualty insurance industry, state regulatory insurance offices, thrift institutions, affected community groups, etc. The initial meeting of these groups will focus on allowing the participants to explore their mutual self interests and to determine what kinds of support each could provide to increase the availability of casualty insurance. For example, "arson watch" programs currently exist in some communities. These discussions, which are currently in the planning stage, are scheduled for November - December 1978.

It is anticipated that, as a result of this meeting, a task force of interested representatives from the various groups will be formed. This task force will continue to meet and, ideally, draft workable plans to make homeowners insurance available to all potential mortgagors. Various tasks could potentially emerge for further exploration, including improving the data base on insurance underwriting risks in mature communities. The follow through task force would have to identify and collect that data it considers essential for a sound insurance program. In addition, various insurance options, including the FAIR plan, high risk insurance for small businesses in perceived high crime areas, and existing efforts would be explored to see if they are adaptable to this problem.

State Farm Insurance Companies

ONE STATE FARM PLAZA
BLOOMINGTON, ILLINOIS 61701

August 23, 1978

LEO J. JORDAN
ASSOCIATE GENERAL COUNSEL
(309) 682-2379Federal Home Loan Bank Board
Office of Community Investment
1700 G Street, N.W.
Washington, D. C. 20552ATTENTION: Alvin Hirshen, Esq.
DirectorRE: Reform on Community
Investment and Revitalization

Dear Al,

I have not been successful in my attempt to have the insurance industry represented in our subsequent working sessions by the National Committee on Property Insurance. The issue of homeowners insurance availability is so important that most of the insurance trade associations would prefer to continue working directly with the Bank Board on this subject.

In a recent discussion with you or Peggy Spohn, the suggestion was offered that insurance representatives and appraiser representatives should meet as a small committee interested in following up on the insurance and appraisal issues raised during the Forum. We at State Farm are prepared to follow through and I know that others are as well. Perhaps you would want to invite all insurer representatives attending the Forum to meet in Washington with Dexter McBride and some of the other appraisal persons. If you feel also that this is a proper course to follow, would you please let us know.

Sincerely,



Leo J. Jordan

LJJ:es

cc: C. R. Hall
D. L. Jordan
M. McCabe
E. L. Stowell

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY

STATE FARM LIFE INSURANCE COMPANY

STATE FARM FIRE AND CASUALTY COMPA

FEDERAL HOME LOAN BANK BOARD
Office of Community Investment

FORUM ON COMMUNITY INVESTMENT AND REVITALIZATION

June 21-22, 1978

Participants

Robert H. McKinney, Chairman
Anita Miller, Board Member
Owen B. Melton, Jr., Assistant to the Chairman
Stephen M. Ege, Assistant to the Chairman

Alvin Hirshen, Director, Office of Community Investment
Richard Tucker, Assistant Director, CCI
Peggy Spohn, Director-Program Division, CCI
Marcia Janow, Research Assistant, Program Division, CCI

Guest Speaker

Stuart Eizenstat, Assistant to the President,
Domestic Policy & Urban Affairs

The White House

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Little Rock	Clifton Giles
Topeka	
San Francisco	
Seattle	Addis Chapman

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Barry Tate, Director of Urban Affairs
Tom Westropp, Chairman, Urban Affairs
Lee Holmes, Staff Vice President

Question No. 26

Do savings and loan associations maintain in their files information that would identify individual home loan applications denied or withdrawn, or outstanding home loans foreclosed, for lack of acceptable fire, homeowners or mortgage insurance? Has the FHLBB utilized this information, or would it be feasible for the FHLBB to utilize this information, possibly in conjunction with the other financial regulatory agencies, to derive statistics on the extent and geographic distribution of insurance redlining?

Answer

Regulation B requires that creditors notify applicants of the action taken on their application within a certain period after the application is made. This notification must contain a statement of the specific reasons for any adverse action taken or must inform the applicant of his/her right to such a statement upon request. Creditors are required to retain the application and these notification forms for at least 25 months from the date the creditor notifies the applicant of the action taken on his/her application. Thus, if the lack of acceptable fire, homeowners, or mortgage insurance is the reason for the denial of the application, this information should appear in the Reg. B notification of adverse action and be found in the association's files as required by this regulation.

The Bank Board has not used this information to compile statistics on insurance redlining. Our first efforts to collect any data on insurance redlining began recently as a corollary to the institution of the monitoring requirements of our new Nondiscrimination Regulations. As of September 1, 1978, all associations began keeping a loan application register. Although this register does collect information on the disposition of an application, it does not require the association to indicate the reason why an application was denied. However, the Bank Board is experimenting with several other formats for the loan application register.

In December 1978 in three SMSA's (Miami, Toledo, and San Antonio), our examiners will conduct a special examination in which they will review the applications received by associations from September through November 1978 and, using this data, will fill out a much more extensive loan application register. This special longer register will require the examiners to note the reason for any adverse action taken on an application. (See attached coding form.) Thus, for all the FSLIC insured associations in these three SMSAs, we will have data from this 90 day test period on loan denials based on lack of mortgage, flood, and hazard insurance. However, because the register only provides space for one reason for denial, if the application is denied for a combination of reasons,

- 2 -

the examiners might enter only the first reason, for example "inadequate down payment", and leave out additional reasons such as "inability to obtain _____ insurance." Consequently, any data on insurance problems gathered from this register would be incomplete.

The Bank Board has not undertaken a specific study of insurance redlining per se because we have found that just examining associations' records produces a very incomplete picture of what particular insurance vendors are doing. We decided that it was best to concentrate our limited resources on determining whether the associations' actions were in compliance with our nondiscrimination regulations and to limit ourselves to studying those areas which are within our regulatory control. Although we will pick up some information on insurance denials as a by-product of this effort, we have no way of knowing how many insurance vendors a particular applicant approached, why a particular request for insurance was denied, how many requests for insurance a particular vendor received which were denied, and what the pattern of a particular vendor's denials or approvals of insurance is in a specific area. Thus, we really have no basis for judging the context in which a denial was made and whether an area really was "redlined." All that we can pick up from the associations' records is some incomplete data on mortgage applications denied by one type of lender (S&Ls) for lack of insurance within a limited time frame within a small geographic area.

Thus, although we will be obtaining this information to a limited extent from the loan application registers, we do not have a system set up which would give us comprehensive view of the extent and geographic distribution of insurance redlining.

CODES FOR FORM 1154

Line 58 - Reason for Adverse Action

<u>Applicant</u>		
<u>Not</u>	<u>Notified</u>	
<u>Notified</u>	<u>Notified</u>	
31	01	Debt-to-income ratio unacceptable
32	02	Unacceptable credit information
33	03	Inadequate down payment
34	04	Excessive existing debts - income insufficient to cover loan and other debt payments
35	05	Property does not meet minimum standards
36	06	Appraised value does not support amount of loan requested
37	07	Cannot obtain private mortgage insurance
38	08	Cannot obtain clear title to security property
39	09	Cannot obtain flood insurance
40	10	Cannot obtain hazard insurance
41	11	Institution not making this type of loan at this time
42	12	Proposed loan does not meet established underwriting standards
43	13	Institution not permitted to make this type of loan
44	14	Information on application not factual
45	15	Applicant unable to provide sufficient information to permit processing
46	16	Applicant lacked fund to close loan
47	17	Commitment expired - applicabt unable to close loan
58	28	Other
59	29	Loan denied - no reason provided or available in records

Question No. 27

In their examinations for compliance with the Fair Housing Act, the Equal Credit Opportunity Act, and Regulation B, what procedures or guidelines do FHLBB examiners follow in determining what portion of their examination effort is to be devoted to each association? How is the size determined for the loan sample that will be reviewed for compliance in each institution? In particular, is recognition given to the volume of loan originations, as distinct from loans held in the portfolio, in allocating examination effort to institutions that are active in originating loans for resale? Please supply to the subcommittee the text of any examiner instructions, policy guidelines, or other documents that address this question of the allocation of compliance examination efforts among the different institutions to be examined.

ANSWER

Examinations of associations under our supervision are completed on a regular basis with each association being examined once every 14.6 months on the average. During the course of each examination the examiners are required to determine whether the association is in compliance with the Fair Housing Act, Equal Credit Opportunity Act and Regulation B. The examiner spends whatever time is required to make the necessary review following the procedures specified in the examination programs and questionnaires dealing with nondiscrimination and Regulation B. There is no specific association by association allocation of time to be expended for this purpose. In addition, there is no specific amount of examination time allocated to any given association.

In the initial allocation of manpower and time and in choosing the size of the loan sample to be examined, the examiner has various aids at his/her disposal. The examiner's assignment letter will outline problems which have been revealed by recent examination and independent audit reports. The association also receives an advance package of materials to complete which includes, among other things, a nondiscrimination questionnaire, a schedule of all loans made since the last examination and a questionnaire relating to present lending and underwriting practices. The examiner will also be furnished with all the relevant correspondence relating to the association. The Continuing Examination File contains write-ups of the association's operating policies, practices and procedures. The examiner will review all this material before he/she commences the actual examination.

In addition, the examiner will also conduct an initial interview with the association's managing officer in order to ascertain any particular problems that the association may currently be experiencing and to determine any changes in activities, policies, and procedures which would indicate the need for additional review work.

Due to the judgmental factors involved, there are no examiner instructions, policy guidelines, or other documents that address the allocation of examination effort among different institutions. As noted in the answer to question number 16, the scope of the examination is expanded beyond the minimum procedures as the case requires. If in the review of the materials mentioned above or in the actual examination of the association the examiner finds something that he/she feels deserves further investigation then he/she will go into greater depth in looking at that particular aspect of the

Question No. 27

Page 2

examination and, if expert assistance is needed, will consult the District Civil Rights Specialist for advice and assistance. Similarly, when determining how much examiner time is to be spent on a particular association or in reviewing loan files, the Examiner in Charge and his/her superiors will look at the complexity of the problems, if any, which the examination and pre-examination materials reveal and allocate their resources accordingly.

The decision as to the size of the sample of loans to be reviewed is left up to the examiner on the job. The sample size would vary depending upon a number of factors, such as those outlined above, but the fact that the association was selling a portion of its loan originations would not be a factor that would influence the sample size decision.

Copies of the Continuing Examination File index and the advance package materials referred to above are attached.

FEDERAL HOME LOAN BANK BOARD
OFFICE OF EXAMINATIONS AND SUPERVISION

Attachment III-C

ASSOCIATION CONTINUING EXAMINATION FILE INDEX

<u>Section</u>	<u>Index Reference</u>	<u>Check As Filed</u>
Control of Association	CEF-1	_____
Organizational Chart	CEF-2	_____
Officers and Directors	CEF-3	_____
Key Personnel and Duties	CEF-4	_____
Association's Appraisers' Qualifications	CEF-5	_____
Copy of Charter and By-Laws	CEF-6	_____
Copy of Conditions for Insurance (in force)	CEF-7	_____
Copy of Agreements with FHLBB/PSLIC	CEF-8	_____
Summary of Contracts	CEF-9	_____
Reevaluation Reserves	CEF-10	_____
List of Stockholders Owning More Than 10%	CEF-11	_____
Association Offices' Security Review Control	CEF-12	_____
Service Corporations - Type A	CEF-13	_____
Service Corporations - Type B	CEF-14	_____
Affiliates	CEF-15	_____
Holding Company	CEF-16	_____
_____	CEF-17	_____
_____	CEF-18	_____
_____	CEF-19	_____
_____	CEF-20	_____
OPERATING POLICIES, PRACTICES AND PROCEDURES:		
o Liquid Assets, Advances/Borrowed Money	CEF-C	_____
o First Mortgage Loans	CEF-G	_____
- Nondiscrimination Lending Compliance	CEF-G/1	_____
- Consumer Lending Compliance	CEF-G/2	_____
o Other Loans	CEF-H	_____
o Substandard Assets and Collections	CEF-I	_____
o Real Estate Owned	CEF-J	_____
o Savings	CEF-AA	_____
o Financial Operations	CEF-BB	_____
o Net Worth	CEF-SS	_____
o Personnel Policies (inclusive of management)	CEF-100	_____
- Nondiscrimination in Employment	CEF-100/1	_____
o Corporate Opportunity	CEF-400	_____
o Electronic Data Processing	CEF-	_____
o _____	CEF-	_____
o _____	CEF-	_____
o _____	CEF-	_____

Advance Package to be completed by the association prior to the examination.

Federal Home Loan Bank Board



330 First Street, N.W.
Washington, D.C. 20002

Federal Home Loan Bank System
Federal Home Loan Mortgage Corporation
Federal Savings and Loan Insurance Corporation

We have scheduled your association for an examination commencing on or about _____ . Approximately _____ examiners will be on the assignment. We will appreciate your providing adequate working space and a typewriter. Key officers and employees should be apprised of our examination so they will be present during the examination, if possible.

We are enclosing the following schedules and questionnaires. Please have them completed prior to our arrival. All information should be as of _____, unless otherwise indicated. Where appropriate, we have attached instructions for completion of the documents. In lieu of the enclosed schedules, if you have schedules prepared that contain basically the requested information, please substitute them. We would appreciate your designating one or more of your responsible officers to review the schedules after completion to assure they are properly done.

Your cooperation is anticipated as we will base our initial examination scope on these data.

1. Trial Balance worksheets.
2. Operating worksheets.
3. Management Questionnaire.
- ✓ 4. Nondiscrimination Questionnaire.
5. Certification of Compliance with Bank Protection Act.
6. Salary Schedule and Schedule of Loans to Association Personnel.
7. Attorney's Letter.
8. Service Corporation Questionnaire (Type "A" and "B"). Included with the Type "B" questionnaire are Trial Balance/Operations worksheets and an attorney's letter.
9. Savings Solicitation Questionnaire.
- ✓ 10. Lending Questionnaire.
- ✓ 11. Summary (by month) of New Loans. Total all columns.
12. Loans in Process schedule.
13. Asset Limitation Workpaper (FHLBB Form 863). Federally-chartered associations will complete pages 1 through 8; state-chartered associations complete only pages 6 and 7.

- 2 -

14. Procedural and Internal Control Questionnaires. Please have the officers or department heads complete the questionnaires in pencil and sign their names in the spaces provided so the Examiner-in-Charge will know who to contact if questions arise.

In addition to the foregoing, please have the following available:

15. Schedules of delinquent loans and loans to facilitate sale of real estate owned.
16. List of loans with mechanics' liens or stop notices.
17. Summary of loans purchased or sold, including participation interests, since the previous examination. Show dates purchased or sold, number of loans, vendor or vendee, total unpaid balances, and total discounts and premiums.
18. Participation agreements entered into since the previous examination. (Do not make copies for the examination; your copy will suffice.)
19. Minutes of meetings of stockholders/members, directors and committees since the date of the previous examination. (Do not make copies for the examination; your up-to-date minutes will suffice.)
20. If the association has made loans, excluding those secured by savings accounts, to the association's designated independent auditor or employees, please provide a schedule showing the loan number, borrower, and the date, amount and type of loan made to such persons.
21. Lists of all loan modifications and advances made since the previous examination date unless such are clearly identified in the minutes of directorate or committee meetings or a loan register.

Please feel free to call if you have any questions concerning the completion of these data.

Yours truly,

Assistant District Director
Phone No. :

Enclosures

January, 1978

**FEDERAL HOME LOAN BANK BOARD
OFFICE OF EXAMINATIONS AND SUPERVISION
NONDISCRIMINATION QUESTIONNAIRE**

Name of Association

Docket Number

Date of Examination

Date of Previous Examination

Dear

In an effort to determine the extent of the association's compliance with the applicable laws and regulations dealing with discrimination in lending and employment, the managing officer is requested to provide answers to questions listed below. If additional space is needed, attach supplemental pages and present the completed questionnaire to the examiner-in-charge.

For the purpose of the questionnaire, the term "minority group members" means American Indian, Alaskan Native, Asian, Pacific Islander, Black, Hispanic, or other minorities.

Assistant District Director - Operations

Note: As used herein, "effective lending territory" of an institution means the geographical territory in which the institution makes a substantial majority of its loans, and all other areas which are as close to the institution's offices as such areas.

1. Has the Board of Directors delegated the responsibility for the implementation and periodic review of nondiscrimination lending policies and procedures and loan underwriting standards? _____.

If so, to whom? _____

Name

Title

2. If deviations from the association's underwriting standards are permitted, who has the authority to approve such variations?

Name

Title

3. Are there neighborhoods or areas within the association's effective lending territory in which the association makes dwelling loans on more restrictive terms? _____. If so, specify the areas and reasons for such restrictions.

4. Are there neighborhoods or areas within the association's effective lending territory in which the association does not make dwelling loans? _____. If so, specify the areas and the reasons for such inactivity.
5. What is management's estimate of the total population in the association's effective lending territory? _____. (If the association operates in more than one "effective lending territory" due to location of its branch offices or for other reasons, then questions 5 and 6 should be answered separately for each such territory.)
6. What is the estimated minority group population of the association's effective lending territory? _____.
7. Within management's knowledge, have any complaints of alleged discrimination in lending or employment been filed against the association? _____. If yes, obtain from the association's attorney a letter setting forth all pertinent facts and any potential liability of the association.
8. Do the employees of the association generally reflect the minority composition of the areas in which the association's offices are located? _____. If no, state reasons.

The information given above is correct to the best of my knowledge and belief.

Signature

Title

Date

January, 1978

FEDERAL HOME LOAN BANK BOARD
OFFICE OF EXAMINATIONS AND SUPERVISION
LENDING QUESTIONNAIRE

Name of Association

Date of Examination

Date of Previous Examination

It will assist us materially in completing our examination if you will furnish the information requested below. If the space provided is not sufficient, please use reverse side or additional sheets. Your early completion of this questionnaire will be appreciated.

- ✓ 1. Have any changes been made in your lending policies and procedures since the last examination? _____. If so, please describe.
2. Please attach a list of persons making appraisals and inspections for the association, indicating whether directors, officers, employees of association, or independent appraisers. Give their specialized education and experience qualifying them as appraisers. If there has been no change since the preceding examination in either appraisal personnel or their specialized education, please so state and omit the listing.
3. Who decides when an independent appraiser is to be used and what is the basis for selection?
4. What fees or salaries are paid to appraisers and inspectors?
5. Is the appraisal fee paid whether or not the loan is made?
6. To whom in the association are the following responsible?
- a. Staff appraisers?
- b. Independent appraisers?

7. List the names of the loan committee members and fees paid for such service.

a. At what directors' meeting was this committee selected? _____. Do the minutes reflect this action? _____.

b. How many committee members are required to approve a loan? _____. (If the level of approval required varies with the loan amount and/or type of security, please explain.)

c. Is this approval required before a loan commitment is made or any loan funds disbursed? _____. (If not, explain.)

8. Please show the percentage estimate for the major sources of association loans: Personal contact with association _____; real estate brokers _____; builders _____; loan agents _____; loans purchased _____; other (describe) _____.

✓ 9. How is the credit ability and financial position determined for:

a. Individual borrowers (owner/occupant)?

b. Major borrowers?

c. Multiple borrowers?

d. Persons assuming loans?

To what extent is the information obtained verified?

10. Describe or list current interest rate(s) and loan charges.

11. What is the number and total amount of present loan commitments (when applicant has been notified of the loan approval) not entered in the loans in process account?

Number _____ Amount \$ _____

Are commitments written? _____ oral? _____ (show how long each is binding.)

Are commitments issued contingent upon receipt of certain information (credit reports, financial information, appraisals, etc.)? _____. If so, please state who has the authority to accept or reject such information when received:

12. Has the association paid any fees to third parties for the acquisition or sale of loans? _____. If so, please list the names of the persons or firms receiving the fees, the total fees paid to each and the loans for which a fee was paid.

13. Have there been any changes in your note or mortgage forms since the date of the previous examination? _____. If so, please state the changes made.

14. Construction loans:

- a. What means are employed to determine that the owner and/or contractor is sufficiently financially sound and competent to furnish the necessary funds and the technical ability required for the successful completion of the improvements.
- b. Are plans and specifications obtained in all instances? _____.
- c. Describe procedures followed which prevent the possibility of mechanics' liens, or other liens, being filed which will be superior to the association's lien.
- d. Are regular inspections of the progress of the work made during construction and at least prior to making disbursements?
- e. Are signed reports of such inspections filed with the association? _____.
- f. Has the association encountered any difficulty with any construction loans made within the past two years? _____. If so, please give details:

15. Has the percentage or volume of delinquent loans increased since the last examination? _____. If so, to what do you attribute the increase?
16. What is your collection policy when:
- a. A loan is one month delinquent?
 - b. A loan is two months delinquent?
 - c. Three months delinquent?
 - d. Four or more months delinquent?
 - e. If no set policy has been established, describe your collection policy in general.
 - f. Were these procedures established by the Board of Directors?
 - g. At what period of delinquency are loans reported to the Board of Directors?
 - h. Are delinquent loans reported to the VA and FHA as required?
17. Through what year have all taxes been paid? _____.
- If a detailed record is not kept on each loan, state the method used to ascertain delinquent taxes.

18. Flood insurance: (Regulations 523.29, 545.8-4, and 563.9-6)

a. What is the association's method of determining whether or not loans made or purchased required flood insurance?

b. How does the association bind the borrower to provide coverage in the proper amount for the term of the loan?

The information given above is correct to the best of my knowledge and belief.

Signature

Title

SUMMARY OF THE LIABILITIES - BY MONTH

(Give one line for each month - data from FINAL Monthly Report)

Year	1921
Month	12

Month	CONTRACTS		DUTY OF RESERVE		INFLUENCE		TOTAL LIABILITIES	
	No.	Amount	No.	Amount	No.	Amount	No.	Amount
1921								
1								
2								
3								
4								
5								
6								
7								
8								
9								
10								
11								
12								
1922								
1								
2								
3								
4								
5								
6								
7								
8								
9								
10								
11								
12								

Question No. 28

Please describe the organizational structure and responsibilities of the Washington headquarters and the District Federal Home Loan Banks as they apply to the fair housing and equal credit compliance examination function. What are the relevant responsibilities and authorities associated with each position in this organizational structure, and what degree of autonomy is exercised by officials assigned to the District Banks in the performance of this function? What are the procedures followed for systematic oversight and review by the headquarter's staff in Washington of the equal credit and fair housing compliance examinations performed by the field examination staff?

AnswerDepartment of Examinations

The examination function is designed to detect actual and potential violations of applicable laws and regulations, including ECOA and fair housing. This fact-finding function is accomplished by the Bank Board's examiners during the on-site inspection and analysis of the association's policies, procedures and practices.

The examiner is accountable to the District Director-Examinations. The 12 District Directors, who are located in the 12 Bank Districts, are accountable to the Deputy Director for Examinations, Federal Savings and Loan Insurance Corporation. The Deputy Director for Examinations and his support group are part of the Washington headquarters and are responsible for developing and monitoring the effectiveness of examination policies and programs used nationwide for determining compliance with ECOA and fair housing legislation.

At the field level, the initial review of the examination report is conducted by the examiner-in-charge (EIC) who has the basic responsibility for the completed examination report. While the examination is in progress, the EIC will review all the examiners' workpapers, programs, and completed reports to assure that they are accurate and complete. At this time, the EIC will ascertain that all violations of equal credit and fair housing regulations are included in the examiners' written reports. During the last two or three days of the examination, if possible, the Field Manager will come to the examination site and review the entire written report, workpapers and programs to make sure that all relevant matters have been accurately and completely included in the final report. Since the Field Manager's review is usually conducted at the examination site, he will have access to the association's records, if needed, in conducting his review. After the Field Manager completes his review of the final examination report, it is typed in final and sent to the District Office.

Question No. 28

Page Two .

At the District level, the Assistant District Director who is in charge of the area office which conducted the examination will review the completed report. This serves to keep him informed of any problems in his area and provides an additional check that all matters are being properly reported. After the Assistant District Director completes his review, the District Director, in conjunction with the District Civil Rights Specialist, will review all examination reports which indicate the presence of equal credit or fair housing violations. The Civil Rights Specialist is also available for on-site consultation with the examiner and Field Manager when the report is initially prepared. Several times a year, as often as the staffing level permits, the District Assistant District Director-Staff Functions, a Field Manager and the District Civil Rights Specialist, will visit each area office. They will select a representative number of examination reports for in-depth review. Examination reports, workpapers and programs will be reviewed at this time.

At the headquarters level, the Deputy Director-Examinations' Special Assistant reviews the examination product, including a representative number of examination reports, at each District Office. The Deputy Director for Examinations is advised by the Civil Rights Specialist who also is responsible for the special training given examiners on fair housing and equal credit enforcement. She is preparing the new training program which will be given to all examiners and supervisory personnel beginning in October, 1978.

Following each review - i.e., Field Manager review, District Office review and Washington Office review, a report summarizing the findings and recommendations is prepared. These reports are forwarded to the proper management personnel for corrective action, if needed, and follow-up.

Department of Supervision

The Supervisory Agents, who are officers or employees of the District Banks, are responsible for obtaining correction of violations noted in examination reports or otherwise brought to their attention. Within guidelines established by the Washington headquarters by the Department of Supervision, Office of District Banks (ODB), the Supervisory Agents have a certain degree of flexibility in their approach to achieving correction of the violations. However, actions taken by the Supervisory Agents are subject to review by the Department of Supervision in Washington for compliance with national policy. Where appropriate, follow-up action is initiated.

Question No. 28

Page Three

In connection with their examinations of associations, the examiners fill out a rating sheet covering a number of operating characteristics including compliance with non-discrimination matters. All forms are filed with the Department of Supervision in Washington and any form on which an association has been downgraded on nondiscrimination is logged for review and monitoring. Subsequently, a financial analyst reviews the report to determine the severity of the noncompliance. All serious cases are monitored through monthly progress reports until evidence that the problem has been corrected is received.

The Department of Supervision in headquarters will normally discuss serious violations and cases-of-first impression with the Bank Board's General Counsel, and with the members of the Bank Board at their monthly problem book meetings.

Procedures are in place whereby the examining personnel have an input into the supervisory process and the supervisory personnel have an input into the examining function. For example, the Supervisory Agent can request that an examiner make a special examination to determine an association's compliance with nondiscrimination requirements and the District Director may recommend the type and scope of enforcement action he considers appropriate.

Office of Community Investment

The Director of the Office of Community Investment (OCI) is responsible for developing and advising the Bank Board on civil rights policies and programs. The Consumer Division of OCI monitors complaint processing, identifies special problems and recommends appropriate action, policy formation or regulatory changes. The Consumer Division also provides training in civil rights for examiners, the industry, and consumers.

Office of the General Counsel

The Opinions Division of the Office of the General Counsel ("Opinions") is consulted by the Office of District Banks (which includes the Department of Supervision) and the Office of the Federal Savings and Loan Insurance Corporation (which includes the Department of Examination) about consumer lending and discrimination complaints (which are also referred to OGC by OCI's Consumer Division) and examination reports noting apparent violations of the Bank Board's equal credit and fair housing regulations.

Question No. 28
Page Four

The normal procedure is for Opinions to review the relevant facts to determine whether further information is necessary to explain the allegation. Any additional data is requested by a staff attorney from OFSLIC and ODB personnel, or often by telephoning field personnel of the Bank Board, or, where a complaint is involved, by contacting the complainant. Opinions then applies the pertinent laws and regulations to the specific factual pattern and advises the inquiring Bank Board element whether or not a violation exists.

If there is an apparent violation and no voluntary remedy can be achieved by the supervisory staff, the matter is then referred to OGC's Compliance Division for appropriate action. This will include gathering the necessary documentary information and testimony, possibly through the use of the subpoena power as authorized under §407(m)(2) of the National Housing Act, and thereafter proceeding to seek the issuance of a cease and desist order by the Bank Board. Normally offending institutions consent to the issuance of such orders but when they don't, an APA hearing is required.

Because of its experience in conducting investigations, the Compliance Division is also becoming increasingly involved in cases where no decision has yet been made as to the need for cease-and-desist relief. Here its role is basically one of rendering advice and assistance to FSLIC examining personnel as to the development of the facts surrounding possible violations.

Question No. 29

How does the Federal Home Loan Bank Board's system of recognition and advancement for examiners convey an agency commitment to and provide personal reward for vigorous enforcement of the laws against credit discrimination? In particular,

- a. In giving recognition and advancement to examiners, what weight is given to performance in civil rights compliance work?
- b. What are the standards by which examiner performance in civil rights compliance work is judged?

ANSWER

Outstanding individual work in the detection and enforcement of these laws will be recognized and incorporated into the examiner's overall performance rating.

- a. Examiners are expected to be proficient in all areas of examination work. No single facet of the overall examination process is weighted so as to indicate a priority of importance.
- b. Examiners are judged on the overall quality of their knowledge and skills commensurate with their experience level. All examiners are expected to be thoroughly familiar with the laws, rules and regulations relevant to insured savings and loan associations, including those which relate to civil rights compliance.

Question No. 30

Have you any reliable and representative information concerning the costs incurred by savings and loan associations to comply with Regulation B and the laws against credit discrimination? If so, what portion of these costs is associated with the initial training and other front end start-up costs of their compliance programs, and what portion is continuing expenses directly associated with the processing of applications? Can the continuing expenses be stated as costs per loan application received or per \$100,000 of mortgage loan assets held? Can they be stated in terms of fractions of a percentage point on the interest rate of a mortgage loan? What was the method by which these measurements were made?

ANSWER

We have no data pertaining to the costs incurred by savings and loan associations in this area.

Question No. 31

How are associations' records of fair housing and equal credit compliance being taken into consideration in deciding which associations will receive special advances under the Bank Board's new Community Investment Fund program? Please supply to the subcommittee a copy of any instructions or policy memoranda that specify the consideration to be given to associations' compliance records in allocating these community investment fund advances among associations. If there are no such documents, please so state.

ANSWER

The Community Investment Fund (CIF) is a Bank Board-directed, Bank-administered program designed to institutionalize the process of making mortgage credit available to mature communities. Under this program, the Federal Home Loan Banks will make special low priced loans to member institutions which are making a special effort to participate in programs aimed at community preservation or revitalization. The program will be entirely supported by funds raised in the private financial markets using the existing facilities of the Federal Home Loan Banks.

by
The general guidelines to be applied/the various Banks in implementing this program are contained in the April 27, 1978 memorandum written by Marshall A. Kaplan to the Presidents of the various Federal Home Loan Banks. (A copy of this memorandum is attached). Because the program is dependent upon the voluntary participation of member associations and because it was designed to encompass a wide variety of programs, the guidelines for determining eligibility to participate in the program and the terms of the advances to be offered under it are fairly broad.

The section of this memorandum dealing with "Standards of Eligibility" spells out how the Banks are to determine which associations are making the kind of creative lending efforts designed to revitalize their communities which the program was designed to encourage. Among the factors which the Banks should consider in making this determination is the association's "past record with respect to community lending and lending on a non-discriminatory basis." Because the program is administered by the various Banks, they have each developed their own procedures, consistent with the guidelines spelled out in this memorandum, to implement the program in their district. All the Banks do provide, though, that the Supervisory Agent does participate when a decision is made upon an application.

Each Bank has appointed a Community Investment Officer (CIO) who will provide advice and guidance to the associations participating in the program. The CIO's are senior officials, appointed at the vice presidential level, who, in addition to assisting in developing and monitoring a Bank's participation in the CIF program, closely coordinate their efforts in assisting the Bank and the associations in the district in developing community investment projects with the Bank Board's Office of Community Investment.

Since this original memorandum was sent out in April, the Bank Board has notified the Banks that in evaluating the eligibility of associations to participate in the program, the Banks should give "special emphasis ... to member institutions participating in local partnerships (with local

Question No. 31

Page 2

and state governments and community organizations), as well as (to) those undertaking efforts aimed at assisting existing residents in neighborhoods experiencing reinvestment."

In addition, the Bank board has also notified the Banks about the special procedures which can be followed to assist small associations to participate in this program. Copies of the letters regarding these two items are attached.

Federal
Home Loan
Bank
Board



Memo

OFFICE OF ECONOMIC RESEARCH

INTER-OFFICE COMMUNICATION

FROM: Marshall A. Kaplan
TO: Presidents, Federal Home Loan
Banks

DATE: April 27, 1978
SUBJECT: Specially Priced
Advances Program for
Mature Communities
(final name yet to
be resolved)

General Nature of Program

This is to be a five year program with an annual review by the Board. The purpose of the specially priced (SP) advances program is to reward member institutions that make special, creative efforts to direct mortgage lending into mature communities and to stimulate lending designed to preserve or revitalize mature communities. There will be an annual goal of \$2 billion in Bank System commitments each year. Each Bank will space its commitments under this program over the course of each year, offering such commitments on a periodic basis.

Relationship to Regular Advances Program

The Board contemplates that funds available for SP advances will constitute a supplement to funds available for regular advances and will, thus, not reduce the volume of funds under the regular advances program. The regular advances program will continue to be guided by the counter-cyclical objective of reducing instability in the flow of mortgage credit. In contrast, the SP advances program is expected to maintain a reasonably stable volume of activity without regard to counter-cyclical considerations.

Standards of Eligibility

Lending/Investment Strategies. Eligibility under the SP advances program for a member institution will be evaluated upon the degree to which it pursues the following lending/investment strategies: having a qualified urban or community lending specialist or team devoting a substantial amount of time to innovative programs; an active loan marketing program targeted to mature communities with reasonable emphasis on low to moderate cost housing; a financial counseling program

for assisting low to moderate income home buyers; and a demonstrated commitment to participate in Government or privately sponsored programs aimed at community preservation or revitalization. These latter would involve targeting funds for delineated neighborhoods using the areas under HUD's community development block grants and urban action grants, the Urban Reinvestment Task Force programs, or privately initiated programs where there is a reasonably coordinated effort involving local Governments, community groups, lending institutions, local businesses and other pertinent groups. Eligibility under the SP advances program would require that there be a reasonable emphasis upon at least a number of the above strategies, taking account of the size of the financial institution and the resources available to it. In the case of small member institutions, the above strategies may be financially practicable only through the pooling of resources with other financial institutions and/or involvement in a consortium of financial institutions pursuing the above strategies. Eligibility of a member institution under the program would also be judged by projected impact on lending in mature communities and disbursement of funds of an SP advance could be conditioned on evidence that lending commitments by the applicant in such mature communities are increasing.

Other Criteria. In judging the eligibility of a member institution for an SP advance, such other factors would be taken into account as management capability, financial soundness, and past record with respect to community lending and lending on a non-discriminatory basis.

Geographic Scope. - Even though the program has an emphasis on the preservation or revitalization of mature city areas, member institutions can utilize this program for suburban and rural communities that have the same type of housing problems and meet the same guidelines as mature city areas. It needs to be emphasized that this special program is in no way meant to divert funds from the normal mortgage lending activities that member institutions have an obligation to finance but rather to provide supplementary resources for the objectives of this program.

Terms of Specially Priced Advances

Line of Credit. Each member institution would be permitted to have a special line of credit of 5 percent of total savings for SP advances. This would be separate from the regular maximum line of credit imposed by the Bank. However, there would be no obligation on the part of a Bank to approve specially priced

advances unless they met eligible requirements nor any obligation to provide such advances up to the maximum 5 percent line of credit for an applicant.

No Circumvention of Regular Line of Credit or Other Bank Requirements. In determining the degree to which an institution could utilize its 5 percent line of credit, the Bank would have to assure itself that an application for an SP advance is not an attempt to circumvent the limitations of any regular line of credit but clearly commits the applicant to pursue a lending/investment strategy consistent with that stated above. The Bank would also have to satisfy itself that the granting of SP advances is not meant to circumvent any normal Bank requirements that new advances not be granted to repay funds from other borrowed money or jumbo CDs and that the granting of an SP advance does not reduce the incentive of the applicant to continue to seek out private sources of funds, such as savings and time accounts at competitive rates, mortgage backed bonds, and sales of loans or loan participations.

Administered Basis. Advances would be granted on an administered rather than an auction basis. To the extent that funds available for the program were insufficient to meet the demand, each Bank would have to carefully rank each application in terms of the degree to which it meets standards of eligibility and fosters the objectives of the program. Where an application clearly qualifies but financial resources are inadequate to approve the full amount of the application, the Bank would have the option of approving a smaller volume of SP advances.

Commitment Fee. Each Bank would have the option of whether or not to charge a commitment fee. Some Banks may choose to require a commitment fee because of the interest rate risk involved in a program not tied to specific consolidated obligations. If so, the fee could be refundable if the funds are taken down within the prescribed period. Banks would issue a forward commitment with a guaranteed interest rate to cover lending activities under the program for a member institution for a period of up to three months.

Interest Rate. All SP advances would be initially priced at 1/2 of 1 percent under the estimated cost of a newly issued consolidated obligation of comparable maturity at the time of commitment. The Office of Finance would post a schedule indicating the relevant interest rates by maturity, and this would be utilized by each Bank in pricing SP advances. This schedule would be changed from time to time when open market interest rates have changed sufficiently to warrant such a revision.

Range of Maturities. Each Bank would be required to offer maturities under the SP advances program from one up to five years regardless of the maximum maturity offered under the regular advances program. The dollar weighted maturity of SP advances made by each Bank will average three years. Each Bank would have the discretion to judge whether the maturity of the SP advance requested is appropriate to the lending/investment strategy being pursued by the member institution.

Annual Renewable Subsidy. The subsidy for each SP advances would be guaranteed for one year at a time. On each annual anniversary from the date of disbursement of funds under an SP advance, the Bank would determine whether the results of the advance merit the continuation of the subsidy. If not, the advance would be rolled over into a regular advance at the interest rate that would have been charged by the Bank at the time the advance was originally committed.....

Prepayment Penalty. The prepayment penalty on SP advances would be optional with the Banks. However, the prepayment penalty on an SP advance would not be higher than on regular advances. In the case of SP advances for which the subsidy is not renewed, each Bank will want to consider whether any prepayment penalty normally required should be waived.

Role of Federal Home Loan Banks

Applying General Guidelines. The responsibility for applying the general guidelines above to specific applications would rest with the Banks. Each Bank would circulate to member-institutions a comprehensive description of the eligibility standards and terms of the SP advances program. Each Bank would have an obligation to make a maximum effort to encourage member institutions to participate in the program and to provide reasonable guidance and advice through its community lending officer and other personnel to assist member institutions in participating.

Monitoring and Auditing Results. Each Bank would monitor and audit the results of each SP advance to ensure that the member institution is carrying out the lending/investment strategy stated in its application or contributing to lending in mature communities. Each Bank would monitor the results of SP advances through an appropriate combination of written reports by member institutions, periodic discussions or meetings with association officers, and on-site inspections of activities being undertaken or financed by the associations.

Reporting Responsibilities of Banks to the Board. The Banks will periodically report to the Board the progress of the SP advances program. Such reports will indicate the scope of the efforts being made by each Bank in promoting the program and ensuring that its objectives are being met. Each Bank will indicate to what extent demand for SP advances by its members exceed or fall short of the volume target of SP advances assigned to that Bank. To the extent that the demand for such advances fall short of the desired target, each Bank will indicate the reasons and any suggestions that it may have for modifying the program and making it more attractive. In its reports to the Board, the Banks will utilize the results of its monitoring and auditing of individual advances.

Allocation of SP Advances Among Banks

Net Worth as Basis of Allocation. There would be a mechanism to ensure that each Bank carries an equitable share of the subsidy of the Bank System under the SP advances program. SP advances would be apportioned to each Bank so that the total subsidy incurred by each Bank over the life of the program would be related to the average net worth of that Bank relative to the Bank System as a whole. In monitoring whether each Bank is incurring a projected subsidy under the SP advances program proportionate to its net worth over the five year period of the program, the Board will review each Bank's activity under the SP advances program at least once each year and take into account the maturities of advances being made.

Special Allocation. It is recognized that net worth does not necessarily represent the need for SP advances in a Bank district. Upon special application to the Board, a Bank can request a special allocation of funds to be used for the purposes of the SP advances program but for advances that do not carry a subsidy. In considering any such application, the Board would base its decision on a demonstrated need for such funds in the relevant district.

Federal Home Loan Bank Board



1700 G Street, N.W.
 Washington, D.C. 20562
 Federal Home Loan Bank System
 Federal Home Loan Mortgage Corporation
 Federal Savings and Loan Insurance Corporation

ROBERT H. MCKINNEY
 Chairman

July 14, 1978

Mr. Raymond H. Elliott, President
 Federal Home Loan Bank of Boston
 P. O. Box 2196
 Boston, Massachusetts 02106

Dear Ray:

Subject: CIF Program -
 Displacement Issue

Reference is made to the Chairman's discussion of the displacement issue as reported in the enclosed copy of page 5 of the Minutes of the Bank Presidents' Conference held June 27, 1978.

In keeping with the agreement that a displacement criterion would be blended into the investment fund program, it is suggested that in future bulletins regarding the CIF Program the following sentence be added after the statement of the four criteria established by the Bank Board for participants in the CIF:

"Consistent with the purposes of the Fund, special emphasis will be given to member institutions participating in local partnerships, as well as those undertaking efforts aimed at assisting existing residents in neighborhoods experiencing reinvestment."

You may note that the quoted sentence expands the final sentence in paragraph 2 of the enclosed page 3 of the Fact Sheet issued June 8, 1978, regarding the Community Investment Fund.

Sincerely,


 James W. McBride, Director
 Office of the Federal Home Loan Banks

Enclosures

cc: Chairman McKinney
 Board Member Miller
 Board Member Marston

(Letter to each Bank President)

August 17, 1978

Mr. Raymond H. Elliott, President
Federal Home Loan Bank of Boston
P. O. Box 2196
Boston, Massachusetts 02106

Dear Ray:

Attached is a copy of correspondence between the American Savings and Loan League and the Office of Community Investment regarding the Community Investment Fund.

As indicated in the second paragraph of Al Hirshen's letter, the Bank Board is willing to permit the Federal Home Loan Banks to allow all associations with less than \$40 million in savings deposits to borrow up to 5% of savings, as needed, within the first year so that smaller associations with a substantial percentage of assets already invested in mature communities may be brought up to the 5% limitation more rapidly. Associations with less than \$40 million in savings number more than half of all insured associations and hold approximately 10% of the savings deposits of associations in the Bank System.

I would appreciate your cooperation in assuring those associations with less than \$40 million in savings which qualify under the Community Investment program that the full 5% is available to them as needed within the first year of the program. This assurance should enable these associations to participate in the Community Investment Fund in a meaningful way.

Sincerely,

James W. McBride, Director
Office of District Banks

Attachments

cc: Chairman McKinney

Same letter sent to all Bank Presidents

COMMUNITY INVESTMENT OFFICERS

The Community Investment Officers (CIO's) are senior personnel, occupying a vice-presidential position, in the Federal Home Loan Banks. Their basic task is to coordinate and assist savings and loan associations in community investment activities throughout their respective Districts. They are to act as a catalyst in developing public/private community investment projects in their Districts. They will assist in the monitoring of the Community Investment Fund, Community Reinvestment Act regulations and the Bank Board's non-discrimination regulations. They will provide a local mechanism to keep the Office of Community Investment informed of local issues and problems as well as implementing the overall policies of the Bank Board. These officers report directly to the District Bank Presidents and closely coordinate their efforts with the Office of Community Investment which will give them backup assistance.

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(TO BE APPOINTED)

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(TO BE APPOINTED)

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MS. ADDIS CHAPMAN

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Question No. 32

How many associations in each Federal Home Loan Bank district and in all districts combined have received special community investment advances under this program as of August 18, 1978? What portion of these associations in each district and in all districts combined were found at the most recent prior compliance examination to be in violation of the Fair Housing Act, the Equal Credit Opportunity Act, or Regulation B? Please specify what portion showed one or more non-trivial substantive violations and what portion showed only technical violations.

ANSWER

<u>District</u>	<u>No. of Associations Which Have Drwn Down Advances as of 8/18/78</u>	<u>No. Additional Associations Holding Commitments as of 8/18/78</u>	<u>No. Showing Substantive Violations As of Last Exam</u>	<u>No. Showing Technical Violations As of Last Exam</u>	<u>No. Violations Outstanding</u>
Boston	8	3	0	0	0
New York	5	3	0	4	0
Pittsburgh	6	2	0	1	0
Atlanta	9	22	0	19	0
Cincinnati	16	4	0	7	0
Indianapolis	3	2	0	4	0
Chicago	1	16	0	11	0
Des Moines	0	12	0	11	0
Little Rock	0	0	*	*	*
Topeka	8	27	0	12	0
San Francisco	0	0	**	**	**
Seattle	<u>4</u>	<u>1</u>	<u>0</u>	<u>2</u>	<u>0</u>
System	60	92	0	71	0

Data current as of August 18, 1978.

* Application deadline was August 15. No commitments have been issued as yet.
 ** Offering date September 1, funding will occur 10 business days following offering (September 18).

Question No. 33

Will FHLBB examiners evaluate in any way the written statements of loan underwriting standards that associations must make available to the public, or will they merely verify the existence and availability of these statements of underwriting standards? If they evaluate these statements, what criteria of judgment will they apply? Please supply to the subcommittee the text of any examiner instructions that deal with evaluation of association statements of loan underwriting standards. If there are no such instructions, please so state.

ANSWER

The Bank Board's examiners will evaluate each association's written loan underwriting standards to determine whether there is evidence of policies or practices that are discriminatory or which could be discriminatory in effect. This evaluation will be based upon the Bank Board's Statement of Policy which is a part of our new Nondiscrimination Regulations. (See attached copy). Our Division of Examinations is currently working on drafting a section to our Examination and Procedures Manual (EOP) which update our current examiner instructions to include the material added by our new Nondiscrimination Regulations. These revised instructions, however, are only in the early stages of development. We have, though, attached a copy of our current examiner instructions which will be superseded by these revised instructions when they are completed.

This subject will also be covered in our new round of examiner training which begins this October. See section IV of the course outline which is attached to the answer to question 4 for more detail on this subject.

Bank Board's Nondiscrimination Regulations

Effective July 1, 1978:

New § 528.2a is added to read as follows:

§ 528.2a Nondiscriminatory appraisal and underwriting.
(See also, § 531.8(b), (c)(6), and (c)(7).)

(a) Appraisal. No member institution may use or rely upon an appraisal of a dwelling which the institution knows, or reasonably should know, is discriminatory on the basis of the age or location of the dwelling, or is discriminatory per se or in effect under the Fair Housing Act of 1968 or the Equal Credit Opportunity Act.

(b) Underwriting. Each member institution shall have clearly written, nondiscriminatory loan underwriting standards, available to the public upon request, at each of its offices. Each institution shall, at least annually, review its standards, and business practices implementing them, to ensure equal opportunity in lending.

PART 531 - STATEMENTS OF POLICY

1. In § 531.8, paragraph (a) is revised to read as follows:

(a) General. Fair housing and equal opportunity in home financing is a policy of the United States established by Federal Statutes and Presidential orders and proclamations. In furtherance of the Federal civil rights laws and the economical home financing purposes of the statutes administered by the Board, the Board has adopted, in Parts 528 and 529 of this subchapter, nondiscrimination regulations which, among other things, prohibit arbitrary refusals to consider loan applications on the basis of the age or location of a dwelling, and prohibit discrimination based on race, color, religion, sex, or national origin in fixing the amount, interest rate, duration, application procedures, collection or enforcement procedures, or other terms or conditions of housing related loans. This section provides supplementary guidelines to aid member institutions in developing and implementing nondiscriminatory lending policies. Each member institution should re-examine its underwriting standards at least annually in order to ensure equal opportunity.

2. In § 531.8, subparagraph (c)(1) is revised to read as follows:

(c) Discriminatory practices. (1) Discrimination on the basis of sex or marital status. The Civil Rights Act of 1968 and the National Housing Act prohibit discrimination in lending on the basis of sex. The Equal Credit Opportunity Act, in addition to this prohibition, forbids discrimination

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on the basis of marital status. Refusing to lend to, requiring higher standards of creditworthiness of, or imposing different requirements on, members of one sex or individuals of one marital status, is discrimination based on sex or marital status. Loan underwriting decisions must be based on an applicant's credit history and present and reasonably foreseeable economic prospects, rather than on the basis of assumptions regarding comparative differences in creditworthiness between married and unmarried individuals, or between men and women.

3. In § 531.8, subparagraph (c)(2) is revoked and present (c)(3) is redesignated as (c)(2).
4. In § 531.8, subparagraph (c)(4) is redesignated as (c)(3) and revised to read as follows:

(3) Income of husbands and wives. A practice of discounting all or part of either spouse's income where spouses apply jointly is a violation of Section 527 of the National Housing Act. As with other income, when spouses apply jointly for a loan, the determination as to whether a spouse's income qualifies for credit purposes should depend upon a reasonable evaluation of his or her past, present, and reasonably foreseeable economic circumstances. Information relating to child-bearing intentions of a couple or an individual may not be requested.

5. In § 531.8, subparagraph (c)(5) is redesignated as (c)(4) and a new paragraph (c)(5) is added to read as follows:

(5) Applicant's prior history. Loan decisions should be based upon a realistic evaluation of all pertinent factors respecting an individual's creditworthiness, without giving undue weight to any one factor. The member institution should, among other things, take into consideration that: (a) in some instances, past credit difficulties may have resulted

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from discriminatory practices; (b) a policy favoring applicants who previously owned homes may perpetuate prior discrimination; (c) a current, stable earnings record may be the most reliable indicator of credit-worthiness, and entitled to more weight than factors such as educational level attained; (d) job or residential changes may indicate upward mobility; and (e) preferring applicants who have done business with the lender can perpetuate previous discriminatory policies.

6. In § 531.8, subparagraphs (c)(6) and (c)(7) are revised to read as follows:

(6) Income level or racial composition of area. Refusing to lend or lending on less favorable terms in particular areas because of their racial composition is unlawful. Refusing to lend, or offering less favorable terms (such as interest rate, downpayment, or maturity) to applicants because of the income level in an area can discriminate against minority group persons.

(7) Age and location factors. Sections 528.2, 528.2a, and 528.3 prohibit loan denials based upon the age or location of a dwelling. These restrictions are intended to prohibit use of unfounded or unsubstantiated assumptions regarding the effect upon loan risk of the age of a dwelling or the physical or economic characteristics of an area.

Loan decisions should be based on the present market value of the property offered as security (including consideration of specific improvements to be made by the borrower) and the likelihood that the property will retain an adequate value over the term of the loan. Specific factors which may negatively affect its short-range future value (up to 3-5 years) should be clearly documented. Factors which in some cases may cause the market value of a property to decline are recent zoning changes or a significant number of abandoned homes in the immediate vicinity

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of the property. However, not all zoning changes will cause a decline in property values, and proximity to abandoned buildings may not affect the market value of a property because of rehabilitation programs or affirmative lending programs, or because the cause of abandonment is unrelated to high risk.

Proper underwriting considerations include the condition and utility of the improvements, and various physical factors such as street conditions, amenities such as parks and recreation areas, availability of public utilities and municipal services, and exposure to flooding and land faults. However, arbitrary decisions based on age or location are prohibited, since many older, soundly constructed homes provide housing opportunities which may be precluded by an arbitrary lending policy.

7. In § 531.8, a new paragraph (d) is added to read as follows:

(d) Marketing practices. Member institutions should review their advertising and marketing practices to ensure that their services are available without discrimination to the community they serve. Discrimination in lending is not limited to loan decisions and underwriting standards; an institution does not meet its obligations to the community or implement its equal lending responsibility if its marketing practices and business relationships with developers and real estate brokers improperly restrict its clientele to segments of the community.

A review of marketing practices could begin with an examination of an institution's loan portfolio and applications to ascertain whether, in view of the demographic characteristics and credit demands of the community in which the institution is located, it is adequately serving the community on a nondiscriminatory

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basis. The Board will systematically review marketing practices where evidence of discrimination in lending is discovered.

(Title VIII, Pub. L. 95-128, 91 Stat. 1147 (12 U.S.C. 2901); Title VII, Pub. L. 93-495 (15 U.S.C. 1691); Title VIII, Pub. L. 90-284, 82 Stat. 81 (42 U.S.C. 3601-3619), 16 Stat. 144, 14 Stat. 27 (42 U.S.C. 1981); EO 11063, 27 FR 11527; sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); secs. 402, 403, 407, 48 Stat. 1256, 1257, 1260, as amended (12 U.S.C. 1725, 1726, 1730); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR 1943-48 Comp. 1071)

By the Federal Home Loan Bank Board

SECTION: NONDISCRIMINATION

SUBJECT: SAME

5. instruction manuals that set forth lending restrictions as well as general loan policies and guidelines,
6. loan registers and other related reports, such as computer printouts disclosing security property, concentrations, property types, loan amounts and related loan terms,
7. maps denoting subdivisions, fringe and outlying areas and inner-city locations,
8. printed advertising media used in procurement of loans and otherwise attracting customers, and
9. title information and attorney's opinions showing ordinances, restrictions and other relevant property data.

C. Employment

1. personnel and employment records and policy guidelines that evidence hiring, training and promotion practices for association employees. Such records include applications, periodic performance evaluations, payroll records and training records.

VIII. DISCUSSION OF SOME UNDERWRITING PRACTICES THAT MAY BE DISCRIMINATORY IN EFFECT (Section 531.8 of the Bank Regulations)

Associations engaging in underwriting practices which have no economic justification, and which result in discrimination of any sort, undermine the Board's purpose of economical home financing by unnecessarily restricting the number of persons who may obtain home loans. The Federal Home Loan Bank Board has the responsibility to prohibit such practices as being contrary to national policy of equal opportunity established by the Constitution and various Federal statutes.

It is irrational and uneconomical for an association to treat all women, all divorcees, all older people, all wives or all members of a racial or ethnic group in the same manner. The use of a "rule of thumb", despite individual case differences, will result in denying loans to persons who do not have the characteristics ascribed to a stereotype of a group. For example, an association's rule of thumb might automatically discount a working wife's income by 50 percent for the reason that she might quit her job to raise a family. This rule would apply regardless of whether the woman was young and newly married or older with children in school or whether she had returned to work shortly after having a child, regardless of any stated intentions. These factors require "exceptions" to the underwriting "rule."

Similarly, there is no economic justification for a hard and fast rule that no loans will be made on property over a certain age. Each home should

SECTION: NONDISCRIMINATION

SUBJECT: SAME

be evaluated on a case basis. The racial composition and the average income level of a neighborhood are inappropriate criteria for approving or denying a loan.

Use of low payments-to-income or installment-debt-to-income ratios may be discriminatory in effect because many low- and moderate-income persons are members of minority groups. Some loan applicants may be able to afford higher ratios than others and may have a history of allocating a relatively large proportion of their income to housing expense. Such ratios should be re-examined by member institutions from time to time with a view to increasing equal opportunity.

Refusal to consider stable income from over-time or part-time employment may be discriminatory in effect since low-income and minority group members more often rely on such income. Bonuses and pay for over-time and part-time work should normally be considered in calculating the borrower's income for monthly payment purposes if such income is likely to be stable during the early period of the mortgage risk.

It is a discriminatory practice to discount automatically all or part of the income of a working wife on the basis that she is of childbearing age. It is a violation of the Board's policy statement to require, as a basis for counting a wife's income, affidavits or promises relating to the birth control plans of the family. The determination as to whether the income of a working wife qualifies as effective income, depends upon an analysis of circumstances indicating that such income may reasonably be expected to continue through the early period of the mortgage risk. The increasing trend in wife employment as a characteristic of family life seems attributable to the willingness of both husband and wife to work for a better standard of living than would otherwise be possible. In low-income groups, the wife's employment is often a necessity for maintenance of an acceptable standard of living. The principal element of mortgage risk in allowing the income of working wives as effective income is the possibility of its interruption by maternity leave. Most employers recognize this possibility and provide for maternity leave, with job retention, as an inducement to employment. When the wife's income is established by length of employment and/or placement in a particular position for which she has had special training, then all of her income should be allowed as effective income. This will also be true of wives who have established patterns of employment in the unskilled labor markets. However, the allowance of the wife's salaried income must be based upon a confirmation of employment indicating good possibilities for continued employment. This may be evidenced by factors such as length of service in a particular job or type of work; a confirmed position in a field which requires specialized training, such as teaching, nursing, technical assistance, or a profession; and for which there is a stable demand.

SECTION: NONDISCRIMINATION**SUBJECT: SAME**

To apply a standard based on a person's marital status (e.g., single, divorced, widowed, or separated), without regard to the stability of that person's income and to his or her credit status, may be discriminatory. Studies have not been able to demonstrate that marital status per se bears any relationship to likelihood of delinquency or foreclosure.

Use of a rule concerning isolated credit difficulties and credit problems in the distant past to bar approval of a loan may be discriminatory in its effect. More recent credit history and explanations for isolated problems may provide a better measure of credit worthiness. Past financial difficulties do not necessarily make the risk unacceptable if subsequent thereto the applicant has maintained a good payment record.

It is a discriminatory lending practice to treat loan applicants differently on a basis of general assumptions of differences in the characteristics of men or women.

The use of a rule that no loan will be made to an applicant who is over a certain age, or whose age plus the mortgage term exceeds a certain number, regardless of individual factors, may be a discriminatory practice insofar as it lessens equal opportunity. Studies indicate that older borrowers are somewhat less likely than younger borrowers to allow their loans to become delinquent. The income of older borrowers who are not expected to retire during the early period of the mortgage risk should be considered as effective income if it may reasonably be expected to continue through the early period of the mortgage risk. Older borrowers who have retired or who may be expected to retire during early period of the mortgage risk should be favorably considered when there are circumstances indicating sufficient financial resources, including cash and savings, investments, life insurance benefits, and retirement benefits, to reasonably assure payment of the loan during the early period of the mortgage risk.

Use of a rule concerning an arrest, especially an arrest which did not lead to a conviction or which occurred in the distant past, to bar approval of a loan may be discriminatory in its effect.

A policy which favors loan applicants who have a prior history of home ownership over other applicants is contrary to the furtherance of economical home financing and may be discriminatory in effect insofar as it perpetuates prior discrimination.

Use of a rule that requires a certain length of residency in the community as a prerequisite for obtaining a loan may be discriminatory in effect and contrary to economical home financing. Studies indicate that the length of time a borrower has resided in the area bears no relationship to potential

SECTION: NONDISCRIMINATION**SUBJECT: SAME**

loan delinquency. Use of a rule that requires a certain length of employment in the applicant's present job may also be discriminatory in effect. A history of job instability may justify denial of a loan, but the fact alone that an applicant has recently changed his or her job should not be a disqualifying factor. A recent change in job or residency may be evidence of upward mobility. In addition, certain employment categories, such as sales and construction, frequently entail higher than average mobility.

A policy of refusing to make government subsidized loans or of refusing to make loans to applicants whose income is less than an arbitrary minimum or of refusing to make loans smaller than an arbitrary amount may result in depriving low- or moderate-income persons of the opportunity to purchase houses which they can afford. Since many minority group members are low- or moderate-income persons, such policies may be discriminatory in effect.

IX. EXAMINATION PROCEDURES

- A. determine whether the association is complying with the various statutes, regulations and policy statements dealing with lending, housing and employment,
- B. determine whether the association's board of directors is aware of its responsibilities under the relevant provisions of the various statutes and regulations and whether the board has adopted nondiscrimination lending policies, procedures and loan underwriting standards. Determine whether the board of directors has provided for the periodic review of these policies, practices and loan underwriting standards.
- C. determine if such lending measures as stated result in or produce a discriminatory effect in those areas discussed above and listed on the Examination Program and the Nondiscrimination Questionnaire,
- D. if the association's stated lending policies, practices and loan underwriting standards are not discriminatory, test check the records of new loans granted and also rejected loan applications to determine if the association is complying with stated policies,
- E. determine whether the association administers without bias, application procedures, collection or enforcement procedures or other lending conditions,
- F. determine whether the association grants loans to speculators, developers, builders and others who in turn sell to persons belonging to minority groups at inflated prices or on other unreasonable terms and conditions and/or follow a policy of discrimination with respect to housing financed by such loans,

SECTION: NONDISCRIMINATION**SUBJECT: SAME**

- G. evaluate the reasons for rejection of loan applications to determine whether rejections appear to have been based on economic factors and were uniformly applied to all applicants,
- H. determine whether the association is actively participating in Federal Housing Assistance programs to aid minority or low-income groups to satisfy their housing needs,
- I. review the policies, procedures and loan underwriting standards under which the association is currently lending to determine whether they are discriminatory in effect. The examiner will answer the questions in the work program based on this review and, if it is determined that such policies or any aspect or feature of it are discriminatory, a comment to this effect, supported with management's written response, will be included in the examination report. The examiner need not make a detailed comparison of each phase or aspect of the policies and standards with loans granted or rejected, but if loans were denied or rejected due to a discriminatory aspect of the policy, or if loans were granted under less favorable terms because of the discriminatory policies in effect, then the examiner's comment should contain this information.
- J. if it is determined that the association's lending policies, practices and loan underwriting standards are not discriminatory in effect, the examiner will then compare the terms and conditions of a selected sampling of new housing-related loans with stated policies. Also review a sampling of rejected loans to determine if these applications were declined or refused contrary to stated policies. If any exceptions are noted, discuss each one with management and obtain in writing the reasons for deviations from stated policies.
- K. if management's reply to certain questions on the Nondiscrimination Questionnaire indicates or implies that nondiscrimination measures as such have not been adopted or established because it is the association's policy to grant loans to anyone who qualifies and to lend in any area (which means, in effect, that the association doesn't practice discrimination in lending and housing), then the examiner should answer the questions in the program based on a review of reports, loan files and other lending records of loans granted or rejected. The depth and nature of this review should be to the extent necessary to fully answer the questions in this part and will be accomplished while performing other lending phases of the examination.

SECTION: NONDISCRIMINATION**BJECT: SAME**

- L. examiners are responsible for performing the procedures and obtaining the answers to the questions listed on the Combination Work Program/Questionnaire and for reviewing the replies by management to the questions on the Nondiscrimination Questionnaire on each regular supervisory examination. If it is determined that a comment is to be made in the examination report regarding discriminatory policies or practices, it should be handled in a manner similar to other actual or possible regulatory violations. Comments in the examination report must be supported with workpapers that clearly and completely describe the type and extent of each discrimination. The findings must be discussed with management and responses obtained in writing. If the discrimination is an isolated incident or occurred as a result of discontinued policies or practices, it should be brought to management's attention and no comment need be made in the examination report.

In regards to policies and practices concerning nondiscrimination in employment the examiner must only determine if the association, when required, has developed and is maintaining a written Affirmative Action Compliance Program, and is filing EEO-1 Reports with the proper agencies on a timely basis. In addition, determine if the association is complying with the requirements of Section 563.36(b)(3) and (4). If the association has failed to perform or comply with any one of these requirements, then a comment with management's response will be included in the examination report.

Question No. 34

How do FHLBB examiners employ Home Mortgage Disclosure Act data in evaluating association compliance with the Fair Housing Act and the nondiscrimination regulations? Please supply to the subcommittee the text of any examiner instructions concerning the use of Home Mortgage Disclosure Act data. If there are no such instructions, please so state.

ANSWER

Examiners use the Home Mortgage Disclosure Act data to show them where the association has been lending, or not lending as the case may be. This information can help them determine if a particular part of the association's normal lending area has not been receiving loans from the association.

With the data which will now be available from the loan application registers (which all associations are required to keep as of September 1, 1978), our examiners will be able to compare application volume with lending volume and see if there is in fact any loan demand in those areas which the Home Mortgage Disclosure Act data indicates aren't receiving many loans.

When the Community Reinvestment Act (CRA) regulations go into effect in November, our examiners will have another tool in the CRA Statement which, with the Home Mortgage Disclosure Act data and the loan application registers, will help them determine what an association's lending patterns and practices are. To be truly useful, the examiner needs to use all three of these tools together:

1. the CRA Statement to tell him what the association's lending area is and what services it will offer there;
2. the loan application register to tell him what the loan demand is in the various parts of the association's lending area; and
3. the Home Mortgage Disclosure Act data, along with the loan application register, to tell him where loans have actually been made.

Thus, using all three of these tools, the examiner can better pinpoint possible patterns of discriminatory lending which he/she can investigate in more depth by actually reviewing the loan files on the areas these three tools lead him/her to believe might be problem areas. Our second round of examiner training which begins in October 1978 will have a section which focuses on how the examiner can use these tools to detect discriminatory lending patterns. See the course outline which is attached to the answer to question 4 for more detail on this subject.

The current examiner instructions are found in the General Questionnaire - Nondiscrimination (questions 3 and 4) and in the General Questionnaire - Regulation B and C (questions 1 through 5 under Regulation C) and in the memorandum (T-62) which accompanies the questionnaire on Regulation C. These materials are attached.

FEDERAL HOME LOAN BANK BOARD
OFFICE OF EXAMINATIONS AND SUPERVISION

GENERAL QUESTIONNAIRE

NONDISCRIMINATION
(EOP 123)

Yes No

- | | | | |
|-------|--|-----|-----|
| 1. | Have policies, procedures and general underwriting standards concerning nondiscrimination in lending been adopted by the board of directors? (If so, establish or update written memoranda for the CEF with respect to important aspects of continuing interest. If not, refer to Memo AB 19.) | ___ | ___ |
| 2. | Is executive management and appropriate personnel knowledgeable of the relevant provisions of the various statutes and regulations pertinent to nondiscrimination in lending? | ___ | ___ |
| —7 3. | Does it appear from the association's practices, records and reports (Regulation C, if applicable) that the association prohibits granting of housing-related loans in certain areas within the association's effective lending territory? (If yes, determine the areas and reasons for not making such loans.) (Effective lending territory is those areas in which the institution makes a substantial majority of its loans and all other areas which are as close to the association's offices as such areas.) | ___ | ___ |
| | a. Are the reasons for not making loans in these areas solely of a documented economic nature? | ___ | ___ |
| | b. Does the review of rejected mortgage loan applications indicate rejection for solely economic reasons? | ___ | ___ |
| —7 4. | Does it appear from the association's practices, records and reports that it sets more stringent standards for housing-related loans in certain geographic areas (down payments, interest rates, terms, fees, loan amounts, etc.)? If yes, determine the areas and reasons for such standards. | ___ | ___ |
| | a. Does the review of loans in these areas indicate that the use of more stringent standards were solely for documented economic reasons? | ___ | ___ |
| 5. | Does it appear that the association discriminates on the basis of age or language? | ___ | ___ |
| 6. | Does the association require the applicant to have owned a home previously, be employed for a particular length of time, or have lived in the community where the property is located? | ___ | ___ |
| 7. | Does the association prohibit lending to applicants because of an isolated credit difficulty or arrest record? | ___ | ___ |
| 8. | Does the association prohibit loans of less than an arbitrary amount, or to persons with income of less than an arbitrary amount? | ___ | ___ |
| 9. | Does it appear that the association's loan application procedures include a screening process which is discriminatory in nature? | ___ | ___ |
| 10. | Does the review of approved and rejected loan applications indicate that economic factors such as the following were applied uniformly to all applicants: income/debt ratios, credit history, security property, neighborhood amenities, portfolio balance? | ___ | ___ |
| 11. | Based upon a review of appropriate loan records, does it appear that the association administers the following without bias: loan modifications, loan assumptions, additional collateral requirements, late charges, reinstatement fees, and collections? | ___ | ___ |

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(1 of 2 Pages)

FEDERAL HOME LOAN BANK BOARD
OFFICES OF EXAMINATIONS AND SUPERVISION

	<u>Yes</u>	<u>No</u>
12. Based upon a review of loan files and related records, does the association		
a. grant loans to speculators, developers, or other persons who, to the association's knowledge, sell to persons belonging to minority or other groups at inflated prices or on other unreasonable terms and conditions?	___	___
b. make loans to builders, speculators or developers who, to the association's knowledge, follow a policy of discrimination with respect to housing financed by such loans?	___	___
13. Is an Equal Housing Lender Poster located in a conspicuous place in all of the association's offices and other facilities?	___	___
14. Is the size and content of each Equal Housing Lender Poster in accord with the requirements of Sections 528.4 and 523.3?	___	___
15. Does the association's advertising comply with the requirements of Section 528.4 and the guidelines contained in OES Memorandum R-30a?	___	___
16. From the review of real estate owned sales and rentals, does it appear that such sales and rentals were made on a nondiscriminatory basis?	___	___

Work Done by _____
Date _____

Reviewed by EIC or designee _____
Reviewed by FM or designee _____

4/77

G-1
GQ
(2 of 2 Pages)

FEDERAL HOME LOAN BANK BOARD
OFFICE OF EXAMINATIONS AND SUPERVISION

GENERAL QUESTIONNAIRE

REGULATION B
(Memorandum T-60a)
and
REGULATION C
(Memorandum T-62)

Yes No

→ HOME MORTGAGE DISCLOSURE ACT (Regulation C)

- | | | | | | | | | | | | |
|---|---|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| <ol style="list-style-type: none"> 1. Is the association subject to Regulation C? (203.3) 2. If "yes", was applicable lending properly classified and reported? (Form HMDA-1, Mortgage Loan Disclosure Statement and 203.4) 3. Are disclosure statements made available on a timely basis and in the manner required by Section 203.3? 4. Are depositors notified annually of the availability of disclosure statements? (203.3(b)) 5. Does your review of the disclosure statements, in conjunction with the lending review, indicate discriminatory practices? | <table border="0"> <tr><td>_____</td><td>_____</td></tr> <tr><td>_____</td><td>_____</td></tr> <tr><td>_____</td><td>_____</td></tr> <tr><td>_____</td><td>_____</td></tr> <tr><td>_____</td><td>_____</td></tr> </table> | _____ | _____ | _____ | _____ | _____ | _____ | _____ | _____ | _____ | _____ |
| _____ | _____ | | | | | | | | | | |
| _____ | _____ | | | | | | | | | | |
| _____ | _____ | | | | | | | | | | |
| _____ | _____ | | | | | | | | | | |
| _____ | _____ | | | | | | | | | | |

Work Done by _____
Date _____

Reviewed by EIC or designee _____
Reviewed by FM or designee _____

#T 62 HOME MORTGAGE DISCLOSURE

The Home Mortgage Disclosure Act, as well as the implementing regulation (Regulation C), became effective on June 28, 1976. Regulation C requires institutions subject to the Act to publicly disclose the areas in which they lend. This information is also to be used by examiners as an additional tool in evaluating association compliance with non-discrimination lending regulations. Institutions subject to the Act are those that have assets of \$10 million or more, and that have main offices or branch offices in Standard Metropolitan Statistical Areas (SMSAs).

The Act requires the following information to be disclosed:

- a. First mortgage loans for the purpose of purchasing residential property.
- b. Secured and unsecured home improvement loans.

Temporary financing such as construction loans is not to be disclosed. The regulation requires the breakdown of the disclosed loan information into two main categories and several classes within each main category. The main categories are:

- a. Loans originated by the institution.
- b. Loans purchased by the institution from others.

Loan data is to be shown in original principal amounts by the originating institution regardless of later sales of the loans or participation interests therein. Loans or participations purchased are to be shown by the unpaid balance to the extent of the purchaser's interest. Loans originated jointly or co-operatively, i.e., both lenders appearing on the loan instruments as obligees, should be shown only as to the reporting institution's interest therein. At the institution's option it may, however, omit from the disclosure statement loans that were:

- a. both originated and either sold or paid in full during a full fiscal year ending prior to July 1, 1976, or
- b. both purchased and either sold or paid in full during a full fiscal year ending prior to July 1, 1976,

provided the institution consistently applies this option to all such loans and clearly states in the disclosure statement that such data has been omitted.

Within each of the main categories, loan data are to be divided according to loans relating to property located within an SMSA where an office of the

association is located and loans outside such SMSAs. (Listings of SMSAs as of June 28, 1976 have been distributed to each of the Federal Home Loan Banks.) In each case the following itemizations of information are to be made for loans relating to one-to-four-family residences:

- a. Loans insured or guaranteed by FHA, VA, or the Farmers Home Administration.
- b. Conventional mortgage loans.
- c. Home improvement loans.

Loans relating to over-four-family dwellings are to be reported separately, but are not required to be broken down by the categories a, b, and c above.

When the property is located in an SMSA where the lender has offices, the lender is also required to indicate loans relating to one-to-four-family residences, made to borrowers who did not intend, at the time of the loan, to live in the residence. These need not be broken down by categories a, b, and c above.

The regulation permits the use of zip code itemization of loan data in initial disclosure statements for full fiscal years ending before July 1, 1976. In most SMSAs, loans originated or purchased after that date, relating to property in those SMSAs where the association has offices, must be reported by census tracts. Loans relating to areas where the association does not have offices (regardless of location in an SMSA) will be reported and itemized according to a, b, and c above, but not itemized by census tract or zip code.

For fiscal years ending before July 1, 1976, loan disclosure statements are due by September 30, 1976. Later year statements are due within 90 days after the end of the fiscal year. For fiscal years straddling June 30, 1976, e.g., a fiscal year ending November 30, 1976, reporting dates differ according to whether reporting is done by zip code or by census tract.

Assuming, for example, the association has a fiscal year ending November 30, 1976, the association may either:

- a. itemize by zip code and report by September 30, 1976 the disclosure data relating to that part of the fiscal year ending June 30, 1976 and report the remainder of the fiscal year within 90 days after November 30, 1976, by census tract, or;
- b. itemize the data for the entire fiscal year by census tract and disclose the data within 90 days after November 30, 1976.

Complete mortgage loan data are to be made available at the home office of each institution subject to the Act. In addition, at least one branch office in each SMSA in which the association has an office (even if the main office is also located in that SMSA) is required to make available mortgage loan data on properties located in that SMSA.

State-chartered institutions, or a state may apply to the Federal Reserve Board for an exemption from Regulation C where state laws are substantially similar to Federal requirements.

The Federal Home Loan Bank Board has statutory responsibility to enforce Regulation C for FSLIC-insured institutions and members of the Federal

Home Loan Bank System (except for FDIC-insured Savings Banks).

Copies of the Federal Register notice of the regulation and the regulation itself are attached for your guidance in determining association compliance with Regulation C, and in using the reported data in determining association compliance with nondiscriminatory lending regulations. (7/27/76)

Question No. 35

Please identify and describe any major surveys, reports, or studies, either by outside experts or by Federal Home Loan Bank Board staff, that have recently been completed, are currently in progress, or are planned for the near future on any aspect of the responsibilities of the FHLBB under the Fair Housing Act or the Equal Credit Opportunity Act.

ANSWER

The Bank Board is cooperating with the Federal Deposit Insurance Corporation (FDIC) on a study of the Home Mortgage Disclosure Act (HMDA). This study will compare mortgage lending volume in older central city areas with other city, suburban and non SMSA areas. The purpose of the study is to determine whether HMDA data is accurate and, if not, why not; whether HMDA data reflects total mortgage credit flow; the cost of periodic accurate HMDA data collection; what reporting requirements are necessary and sufficient; how to maximize HMDA data collection cost efficiency; and ways in which HMDA record-keeping might be improved. This study will also result in recommendations on how the Federal regulatory agencies can better enforce HMDA.

The Bank Board is also conducting another study on what kind of loan application register is most useful to our examiners and most effective in revealing the existence of discriminatory lending practices. Our examiners are currently testing three different formats for the register to see which is the most useful and cost effective. The completion date for this study is targeted for May 1979.

BENJAMIN S. ROSENTHAL, N.Y., CHAIRMAN
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GARRY BROWN, MICH.
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 TOM CONCORAN, ILL.
 (102) 225-4407

NINETY-FIFTH CONGRESS

Congress of the United States

House of Representatives

COMMERCE, CONSUMER, AND MONETARY AFFAIRS
 SUBCOMMITTEE

OF THE

COMMITTEE ON GOVERNMENT OPERATIONS

RAYBURN HOUSE OFFICE BUILDING, ROOM B-377
 WASHINGTON, D.C. 20518

December 1, 1978

Hon. Anita Miller
 Member
 Federal Home Loan Bank Board
 Washington, D. C. 20552

Dear Ms. Miller:

In order to enable the Commerce, Consumer and Monetary Affairs Subcommittee to obtain a clearer picture of Federal Home Loan Bank Board enforcement of the Equal Credit Opportunity and Fair Housing Acts and Regulation B, I am writing to request further clarification on a number of points raised in August and September in my earlier correspondence and in your testimony on September 14. I would appreciate your response as promptly as possible for completion of our record on this hearing.

My questions in connection with the testimony at the hearing are the following:

1. What are the Federal Home Loan Bank Board's reasons for implementing its own anti-redlining regulations as a regulatory effort distinct from its enforcement of the Community Reinvestment Act? For example, what possible redlining abuses will you be able to deal with under the anti-redlining regulations that may not be controllable under your Community Reinvestment Act authority?
2. It was established in testimony that there are no formal guidelines between the three banking agencies and the Justice Department governing what kinds of discrimination situations will be referred by the banking agencies for possible Justice Department prosecution. Is this also true of the Federal Home Loan Bank Board? What is the Bank Board's policy toward referral of equal credit and fair housing violations to the Justice Department for possible prosecution? Has the Bank Board ever referred any cases to Justice? Under what particular sets of circumstances would the Bank Board refer a case to the Justice Department in the future?

3. We heard testimony from Commissioner Greenwald and Mr. Dennis that the only effective method to confirm the existence of preapplication discouragement is through the use of testers. Has the Bank Board any plans to use testers for detecting preapplication discouragement?

I would also appreciate further clarification of certain of the answers submitted in advance in response to my written questions. The question numbers that head each paragraph below refer to the question numbers in my letter of August 18.

Question 15: Why is there such a wide variation among the regions in the examiner time spent per \$100,000 of loans granted? Why does the San Francisco region devote less than half as much time per \$100,000 of loans as the national average and less than one fourth as much time as the Boston and New York regions? Why do the Boston and New York regions devote so much time per \$100,000 of loans?

Question 17A: How do you explain the wide variation among the regions in the number of violations found per 100 hours of examiners' time? Why do examiners in the New York, Pittsburgh, San Francisco, and Seattle regions find violations less than half as often as the national average and less than one fifth as often as the examiners in the Atlanta and Cincinnati regions?

Question 23: When do you expect to release the pamphlets on consumer rights to which your answer refers?

Sincerely,

Benjamin S. Rosenthal
Chairman

BSR:tv

Federal Home Loan Bank Board

1700 G Street, N.W.
Washington, D.C. 20562

Federal Home Loan Bank System
Federal Home Loan Mortgage Corporation
Federal Savings and Loan Insurance Corporation

ANITA MILLER
Board Member

December 14, 1978

The Honorable Benjamin S. Rosenthal
Chairman
Commerce, Consumer and Monetary
Affairs Subcommittee
Committee on Government Operations
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

I am pleased to respond to your request for additional information on the Bank Board's enforcement of the Fair Housing Act and the Equal Credit Opportunity Act. Attached are our answers to the questions contained in your letter of December 1, 1978 on my testimony at the hearing before your Subcommittee and to your requests for further clarification to several of our answers to your original set of questions.

We hope the attached answers clear up the questions you have on the Bank Board's fair housing and equal credit enforcement efforts.

Sincerely,

Anita Miller

Enclosures

Question No. 1

What are the Federal Home Loan Bank Board's reasons for implementing its own anti-redlining regulations as a regulatory effort distinct from its enforcement of the Community Reinvestment Act? For example, what possible redlining abuses will you be able to deal with under the anti-redlining regulations that may not be controllable under your Community Reinvestment Act authority?

ANSWER

The Bank Board's Nondiscrimination Regulations, of which our anti-redlining provisions are a part, were developed primarily to carry out our administrative enforcement obligations under Title VIII to the Civil Rights Act of 1968 and the Equal Credit Opportunity Act (§§808(d) and 704(a)(2) respectively). We have had nondiscrimination regulations in effect since 1972 and have revised them several times since then, most recently this past year, to take into account changes in the law, court interpretations of the statutes and regulations, and our own experience in implementing them.

Both of these statutes contain very specific prohibitions against a variety of discriminatory acts which we enforce through our general supervisory and enforcement powers as set out in our enabling legislation. In addition, these two acts explicitly establish substantial remedies for individuals or groups of individuals whose rights under these statutes have been violated. Our Nondiscrimination Regulations have tried to embody these specific statutory prohibitions in a regulatory form.

The Community Reinvestment Act, although related in intent and complimentary to these two acts, is structured very differently. Under the CRA, the Bank Board is charged with assessing, in connection with our examinations, a financial institution's record in meeting its community's credit needs and with taking the institution's record in meeting these needs into account when evaluating an application for a deposit facility (which includes applications for charters, deposit insurance, branches, relocation, mergers or consolidations, etc.) by such institution. Thus, unlike Title VIII of the Civil Rights Act of 1968 or the ECOA, the CRA is not structured in terms of setting out specific violations of law for which specific civil liability, which may be enforced by an aggrieved individual or the Department of Justice upon referral by the designated administrative enforcement agencies, is set out in the statute. Instead, the CRA directs the financial regulatory agencies to take certain concerns, which Congress has only broadly sketched,

Question No. 1
Page Two

into account when exercising their general supervisory authority. In addition, we are given explicit authority "to take (these concerns) into account" only when the financial institution applies to us for permission to do something (i.e., merge, branch, consolidate, etc.) or to receive something (i.e., a charter, deposit insurance, etc.) which is within our power to grant. Thus, our enforcement power under this act is much more limited than it is under the ECOA and Title VIII of the Civil Rights Act of 1968.

In our broad enforcement scheme, though, we look upon these three acts as complimentary tools to aid us in ensuring that no financial institution we regulate redlines or discriminates in any other fashion.

Question No. 2

It was established in testimony that there are no formal guidelines between the three banking agencies and the Justice Department governing what kinds of discrimination situations will be referred by the banking agencies for possible Justice Department prosecution. Is this also true of the Federal Home Loan Bank Board? What is the Bank Board's policy toward referral of equal credit and fair housing violations to the Justice Department for possible prosecution? Has the Bank Board ever referred any cases to Justice? Under what particular sets of circumstances would the Bank Board refer a case to the Justice Department in the future?

Answer

(a) The Federal Home Loan Bank Board has not entered into any agreement with the Department of Justice setting guidelines for the referral of possible violations of nondiscrimination statutes. We do cooperate with them on investigations, though. In the past, at their request, the Bank Board has aided the Justice Department's Civil Rights Division in identifying possible pattern and practice cases involving discriminatory actions by the financial institutions we regulate.

(b) Our policy toward referral of equal credit and fair housing violations to the Department of Justice is that we would only do so if satisfactory compliance and corrective action could not be accomplished through the exercise of the Bank Board's own supervisory authority. However, as is stated in SP-15, our "General Enforcement Policy for Handling Violations of the Nondiscrimination Regulations," enforcement action taken under the Bank Board's own supervisory authority will not preclude the Bank Board from referring cases involving a pattern or practice of discrimination to the Attorney General.

(c) Although we have assisted them in cases which they have developed from complaints, the Bank Board has not directly referred any cases involving equal credit or fair housing violations to the Department of Justice for civil prosecution.

(d) Our policy toward future referrals is as stated in (b) regarding past referrals and cooperation with the Department of Justice.

Question No. 3

we heard testimony from Commissioner Greenwald and Mr. Dennis that the only effective method to confirm the existence of preapplication discouragement is through the use of testers. Has the Bank Board any plans to use testers for detecting preapplication discouragement?

ANSWER

At this time, the Bank Board has no plans to use testers to detect preapplication discouragement.

Question No. 15

Why is there such a wide variation among the regions in the examiner time spent per \$100,000 of loans granted? Why does the San Francisco region devote less than half as much time per \$100,000 of loans as the national average and less than one fourth as much time as the Boston and New York regions? Why do the Boston and New York regions devote so much time per \$100,000 of loans?

Answer

The basic cause of these variations lies in the wide disparity in the dollar amount of loans closed. Boston and San Francisco provide an excellent example: During this 12 month period associations in the Boston District closed only \$1.5 billion dollars in mortgage loans, while associations in the San Francisco District closed \$25.9 billion in mortgage loans.

The answer to the question contained in your last sentence is basically the same. The time spent per \$100,000 in loans granted appears disproportionately large due to the lack of lending activity in these two districts.

It must be borne in mind that examiners can not and do not review all loans granted. Therefore, any indices based on total loans granted will reflect the differences in lending activity among Districts.

Question No. 17A

How do you explain the wide variation among the regions in the number of violations found per 100 hours of examiners' time? How do examiners in the New York, Pittsburgh, San Francisco, and Seattle regions find violations less than half as often as the national average and less than one fifth as often as the examiners in the Atlanta and Cincinnati regions?

Answer

To a great extent this variation is the result of local attitudes with regard to nondiscrimination in general. These communal attitudes will often be reflected in the attitudes of the business community. A good example of this local effect is found in the San Francisco District. The State of California has long had effective nondiscrimination regulations in place. This has instilled an enlightened awareness among lenders in the state, which is reflected in the small number of violations attributable to this District. On the other hand, a few recalcitrant institutions within one District can cause a significant increase in the number of violations detected.

The above is buttressed by a line-by-line reading of the answer to question No. 17, which details violations by District. With few exceptions, the Atlanta and Cincinnati Districts show the greatest number of violations in each category. The Atlanta and Cincinnati Districts account for 53.1% of the 5,518 violations reported, while San Francisco accounts for only 4.5% of these violations.

The Federal Home Loan Bank Board has a strong commitment to enforcing the laws and regulations relevant to nondiscrimination. The prescribed examination procedures are thorough and uniform throughout all Districts. Variations, such as those contained in your question should diminish as examining and supervisory personnel continue to exhibit the Bank Board's commitment to eliminate these violations.

Question No. 23

When do you expect to release the pamphlets on consumer rights to which your answer refers?

ANSWER

We expect that the brochure on consumer rights will be available shortly. We will provide you with a copy as soon as it is ready.

FEDERAL HOME LOAN BANK BOARD
 FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION
 DEPARTMENT OF EXAMINATIONS

EXAMINATION PROGRAM

NONDISCRIMINATION
 (EOP 123)

EXAMINATION OBJECTIVES

- o to determine the extent of management's familiarity with respect to laws, regulations and policy statements dealing with nondiscrimination in lending and housing,
- o to determine whether the association has established and implemented nondiscriminatory lending and housing policies as well as loan underwriting standards, and to evaluate the effectiveness of such policies and standards,
- o to determine whether the association is complying with the various laws, regulations, and policy statements concerning nondiscrimination in lending and housing,
- o to determine whether the association has considered utilizing governmental or private programs designed to aid minority, low- and moderate-income groups in meeting their housing needs.

EXAMINATION PROCEDURES

Note: Various Federal laws and regulations prohibit discrimination on the following bases: race, color, religion, national origin, sex, marital status, age, receipt of public assistance, and exercise of consumer rights. Please keep these protected groups in mind when completing the nondiscrimination review.

<u>Wkp.</u> <u>Ref.</u>	<u>Minimum Procedures:</u>	<u>Work Done</u> <u>By Date</u>
	The following procedures must be completed on each examination.	
___	1. Determine association policies through review of policy statements, interviews with management, review of minutes, etc., as appropriate. Determine whether objectives and related policies are reviewed periodically and changes are communicated to the appropriate association personnel. Obtain a current copy of the association's nondiscrimination loan underwriting standards for the CEF. (Refer to Bank Board Regulations 528.2a, 531.8(a) and AB 19)	___ ___
___	2. Complete the CRA program and questionnaire in conjunction with this nondiscrimination program. All relevant information must be properly cross-indexed between the two programs.	___ ___
___	3. Determine whether the Board of Directors has provided for the periodic review of policies, practices and loan underwriting standards.	___ ___
___	4. Determine if the Board of Directors' policies, practices and loan underwriting standards, as written, could result in discrimination in effect. Refer to the applicable sections of the regulations and the EOP manual.	___ ___
___	5. Determine whether the association's management and lending personnel are knowledgeable of the provisions of the various statutes and regulations pertinent to nondiscrimination in lending and housing.	___ ___
___	6. Review the loan application register, new loans granted, and rejected applications to determine if the association is complying with stated policies.	___ ___

FEDERAL HOME LOAN BANK BOARD
 FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION
 DEPARTMENT OF EXAMINATIONS

<u>Wkp.</u> <u>Ref.</u>		<u>Work Done</u> <u>By</u> <u>Date</u>
___	7. Evaluate the reasons for rejection of loan applications to determine whether rejections have been based solely on economic factors.	___ ___
___	8. Determine whether the association uniformly administers application, collection, and enforcement procedures as well as other lending conditions.	___ ___
___	9. Determine whether the association grants loans to speculators, developers, builders and others who in turn sell to persons belonging to minority groups at inflated prices or on other unreasonable terms and conditions and/or follow a policy of discrimination with respect to housing financed by such loans.	___ ___
___	10. Determine whether the association is actively participating in Federal Housing Assistance programs to aid minority or low-income groups to satisfy their housing needs.	___ ___
___	11. Review the institution's current lending patterns and practices to determine if there is evidence of discrimination in effect.	___ ___
___	12. Complete the nondiscrimination questionnaires.	___ ___
___	13. Review any complaints filed against the association and ascertain their disposition.	___ ___

CONCLUSIONS: Were minimum procedures adequate to support the examiner's findings on this phase of the examination? If no, state the reasons for expanding scope of procedures performed and complete the EXAMINER'S FINDINGS after completion of expanded procedures. If answer is yes, complete EXAMINER'S FINDINGS at the end of this program.

Yes ___ No ___ Examiner

DERAL HOME LOAN BANK BOARD
DERAL SAVINGS AND LOAN INSURANCE CORPORATION
PARTMENT OF EXAMINATIONS

AMINER'S FINDINGS

Is management familiar with the laws, regulations and policy statements dealing with nondiscrimination in lending and housing?

Yes No _____ See W/P _____
Examiner

Has the association established and implemented effective nondiscrimination lending and housing policies as well as loan underwriting standards?

Yes No _____ See W/P _____
Examiner

Is the association in compliance with the various laws, regulations and policy statements concerning nondiscrimination in lending and housing?

Yes No _____ See W/P _____
Examiner

Has the association utilized governmental or private programs designed to aid minority and low- and moderate-income groups in meeting their housing needs?

Yes No _____ See W/P _____
Examiner

Were any other matters of concern disclosed by your review?

Yes No _____ See W/P _____
Examiner

Reviewed by EIC or designee _____
Reviewed by FM or designee _____

FEDERAL HOME LOAN BANK BOARD
 FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION
 DEPARTMENT OF EXAMINATIONS

GENERAL QUESTIONNAIRE

NONDISCRIMINATION
 (EOP 123)

- | | <u>Yes</u> | <u>No</u> |
|---|------------|-----------|
| 1. Have policies, procedures and general underwriting standards concerning nondiscrimination in lending been adopted by the board of directors? | _____ | _____ |
| 2. Are the loan underwriting standards and related business practices reviewed annually? | _____ | _____ |
| 3. Are clearly written loan underwriting standards available to the public upon request, at each of the association's offices? | _____ | _____ |
| 4. Does it appear from the association's practices, records and reports (Regulation C, if applicable) that the association prohibits granting of housing-related loans in certain areas within the association's effective lending territory? (If yes, determine the areas and reasons for not making such loans.) (Effective lending territory is those areas in which the institution makes a substantial majority of its loans and all other areas which are as close to the association's offices as such areas.) | _____ | _____ |
| a. Are the reasons for not making loans in these areas of a documented economic nature? | _____ | _____ |
| b. Does the review of rejected mortgage loan applications indicate rejection for economic reasons? | _____ | _____ |
| 5. Does it appear from the association's practices, records and reports that it sets more stringent standards for housing-related loans in certain geographic areas (down payments, interest rates, terms, fees, loan amounts, etc.)? If yes, determine the areas and reasons for such standards. | _____ | _____ |
| a. Does the review of loans in these areas indicate that the use of more stringent standards were for documented economic reasons? | _____ | _____ |
| 6. Does the association discriminate on the basis of the age or location of properties? | _____ | _____ |
| 7. Does the association discriminate on the basis of the racial composition or the income level of an area? | _____ | _____ |
| 8. Does the association discriminate on the basis of the language of applicants? | _____ | _____ |
| 9. Does the association require the applicant to have owned a home previously, to have been employed for a particular length of time, or to have lived in the community where the property is located? | _____ | _____ |
| 10. Does the association require applicants to have been previous customers of the association? | _____ | _____ |
| 11. Does the association prohibit lending to applicants because of an isolated credit difficulty or arrest record? | _____ | _____ |
| 12. Does the association prohibit loans of less than an arbitrary amount, or to persons with income of less than an arbitrary amount? | _____ | _____ |

FEDERAL HOME LOAN BANK BOARD
 FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION
 DEPARTMENT OF EXAMINATIONS

- | | <u>Yes</u> | <u>No</u> |
|--|------------|-----------|
| 13. Does the association refrain from using appraisals which are discriminatory? | ___ | ___ |
| 14. Does the review of approved and rejected loan applications indicate that economic factors such as the following were applied uniformly to all applicants: income/debt ratios, credit history, security property, neighborhood amenities, portfolio balance? | ___ | ___ |
| 15. Based upon a review of appropriate loan records, does it appear that the association administers the following without bias: loan modifications, loan assumptions, additional collateral requirements, late charges, reinstatement fees, and collections? | ___ | ___ |
| 16. Based upon a review of loan files and related records, does the association: | | |
| a. grant loans to speculators, developers, or other persons who, to the association's knowledge, sell to persons belonging to minority or other groups at inflated prices or on other unreasonable terms and conditions? | ___ | ___ |
| b. make loans to builders, speculators or developers who, to the association's knowledge, follow a policy of discrimination with respect to housing financed by such loans? | ___ | ___ |
| 17. Does the association refrain not only from discrimination in lending but in all other services? | ___ | ___ |
| 18. Does the association prohibit its employees from making statements that would discourage the receipt of or consideration of any application for a loan or other service? | ___ | ___ |
| 19. Does the association inform each inquirer of the right to file a written loan application and to receive a copy of the association's loan underwriting standards? | ___ | ___ |
| 20. Regarding any application from a natural person for a loan related to a dwelling, does the association request the following monitoring information: | | |
| (i) race/national origin, using the categories American Indian or Alaskan Native; Asian or Pacific Islander; Black; White; Hispanic; Other (specify); | ___ | ___ |
| (ii) sex; | ___ | ___ |
| (iii) marital status, using the categories married, unmarried, and separated; and | ___ | ___ |
| (iv) age. | ___ | ___ |
| (Please note that the Bank Board's monitoring requirements contained in Section 328.6, supersede the monitoring requirements of Regulation B.) | | |
| 21. Does the form used to collect monitoring information contain a written notice that it is for Federal government monitoring purposes and that the institution is required to note race and sex, on the basis of sight and/or surname, if the applicant(s) chooses not to do so? (Section 328.6 (c)) | ___ | ___ |

FEDERAL HOME LOAN BANK BOARD
 FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION
 DEPARTMENT OF EXAMINATIONS

- | | <u>Yes</u> | <u>No</u> |
|--|------------|-----------|
| 22. If the applicant chooses not to disclose the monitoring information, does the association note that fact on the monitoring form? (Section 528.6 (b)) | _____ | _____ |
| 23. Does the association, to the extent possible, on the basis of sight and/or surname, designate the race and sex of each applicant? (Section 528.6 (b)) | _____ | _____ |
| 24. Does the association maintain a current, accurate, loan application register with, at the minimum, the information required by the Bank Board? (Section 528.6 (d)) | _____ | _____ |
| 25. Does your review of the information included in the Loan application register indicate that the association's practices and patterns are nondiscriminatory? | _____ | _____ |
| 26. From the review of real estate owned sales and rentals, does it appear that such sales and rentals were made on a nondiscriminatory basis? | _____ | _____ |
| 27. Is an Equal Housing Lender Poster located in a conspicuous place in all of the association's offices and other facilities? | _____ | _____ |
| 28. Is the size and content of each Equal Housing Lender Poster in accord with the requirements of Section 528.5? | _____ | _____ |
| 29. Does the association's advertising comply with the requirements of Section 528.4 and the guidelines contained in Memorandum R-30a? | _____ | _____ |
| 30. Does the association's marketing practices and business relationships with developers and real estate brokers insure that its services are available without discrimination to the community it serves? (Section 531.8(d)) | _____ | _____ |

Work Done by _____ Reviewed by EIC or designee _____
 Date _____ Reviewed by FM or designee _____

FEDERAL HOME LOAN BANK BOARD
 FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION
 DEPARTMENT OF EXAMINATIONS

GENERAL QUESTIONNAIRE

REGULATION B
 (Memorandum T-60a)
 and
 REGULATION C
 (Memorandum T-62)

- | | <u>Yes</u> | <u>No</u> |
|--|------------|-----------|
| 1. Does the association prohibit its employees from making statements that would discourage, on a prohibited basis, applicants from making or pursuing an application? (202.5(a)) | _____ | _____ |
| 2. Does the association refrain from requesting information concerning the applicant's spouse or former spouse unless such person will be contractually liable or the applicant is relying on community property, the spouse's income, alimony, child support or maintenance payments for repayment of the debt? (202.5(c)(2)) | _____ | _____ |
| 3. Regarding applications for unsecured separate loans, does the association refrain from inquiring as to the marital status of the loan applicant (unless community property is involved, except as required for monitoring purposes by Section 528.6 of the Bank System regulations)? (202.5(d)(1)) | _____ | _____ |
| 4. For secured loans, are inquiries into marital status limited only to the terms "married", "unmarried", or "separated"? (202.5(d)(1)) | _____ | _____ |
| 5. When income derived from alimony, child support or maintenance payments is disclosed, is there evidence that the association properly informed the applicant that such income need not be revealed? (202.5(d)(2)) | _____ | _____ |
| 6. a. When a title (such as Ms., Miss, Mr., or Mrs.) is shown on the application form, does the form appropriately disclose that such designation is optional? (202.5(d)(3)) | _____ | _____ |
| b. Is the form otherwise neutral as to sex? (202.5(d)(3)) | _____ | _____ |
| 7. Are requests for information relative to birth control or childbearing or rearing intentions of applicants prohibited? (202.5(d)(4)) | _____ | _____ |
| 8. If the association considers age or the fact that an applicant's income derives from a public assistance program in its system of evaluating creditworthiness does it do so only to determine a pertinent element of creditworthiness? (202.6(b)(2)(iii)) | _____ | _____ |
| 9. If the age of elderly applicants is considered in the association's system for evaluating creditworthiness, is such age used only to favor the elderly applicant? (202.6(b)(2)(iv)) | _____ | _____ |
| 10. When evaluating the applicant's creditworthiness, does the association refrain from considering aggregate statistics or assumptions relative to the likelihood of bearing or rearing of children? (202.6(b)(3)) | _____ | _____ |
| 11. Does the association refrain from discounting or excluding income on a prohibited basis or because the income is derived from part-time employment, or a retirement benefit? (202.6(b)(5)) | _____ | _____ |

FEDERAL HOME LOAN BANK BOARD
 FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION
 DEPARTMENT OF EXAMINATIONS

	<u>Yes</u>	<u>No</u>
12. Does the association consider income from alimony, child support, or maintenance payments to the extent it is likely to be consistently received? (202.6(b)(5))	_____	_____
13. At the applicant's request, does the association consider:		
a. Any information the applicant may present regarding past credit performance which indicates that such performance does not accurately reflect the applicant's willingness or ability to repay? (202.6(b)(6)(ii))	_____	_____
b. Any credit information in the name of the applicant's spouse or former spouse which demonstrates the applicant's willingness or ability to pay? (202.6(b)(6)(iii))	_____	_____
14. Does the association grant individual separate loans to creditworthy applicants regardless of sex, marital status or membership in any other protected group? (202.7(a))	_____	_____
15. Does the association allow the granting of loans in maiden names or combinations of maiden and married names? (202.7(b))	_____	_____
16. In those instances when the association requires co-signers, is the requirement based on factors other than the applicant's sex, marital status or membership in any other protected group? (State law may be considered when determining the necessity for co-signers.) (202.7(d))	_____	_____
17. Does the association refrain from refusing credit because credit life, health, accident or disability insurance is not available due to the applicant's age. (202.7(e))	_____	_____
18. Does the association notify applicants of action taken within:		
a. 30 days of receipt of a completed application? (202.9(a)(1)(i))	_____	_____
b. 30 days after taking adverse action on an uncompleted application? (202.9(a)(1)(ii))	_____	_____
c. 90 days after offering a loan which substantially differs from that requested if the applicant has not accepted such alternative loan? (202.9(a)(1)(iv))	_____	_____
19. a. Are notices of adverse action in writing? (202.9(a)(2))	_____	_____
b. Do they contain a statement of action taken? (202.9(a)(2))	_____	_____
c. Do they contain a statement of the provisions of Section 701(a) of the ECO Act in a form substantially similar to that contained in Section 202.9(b)(1) of the regulation?	_____	_____
d. Do they contain a statement of specific reasons for the action taken or disclosure of the applicant's right to such a statement as specified in Section 202.9(a)(2)?	_____	_____
20. Do statements of specific reasons for adverse action contain the principal, specific reasons for such actions? (202.9(b)(2))	_____	_____
21. Has the association established procedures for the identification, and designation as such, of existing and future loans upon which both spouses are or will be contractually liable, as required by Section 202.10(a) and (b)?	_____	_____

FEDERAL HOME LOAN BANK BOARD
 FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION
 DEPARTMENT OF EXAMINATIONS

- | | Yes | No |
|---|-------|-------|
| 22. When furnishing credit information on designated accounts to a consumer reporting agency, does the association report the designation and furnish the information in a manner that provides access to such information in the name of each spouse? (202.10(a)(2)) | _____ | _____ |
| 23. When furnishing credit information regarding a designated account in response to an inquiry regarding a particular applicant, is the information furnished in the name of such applicant? (202.10(a)(3)) | _____ | _____ |
| 24. Does the association retain for 25 months after notice of action taken: (202.12(b)) | | |
| a. the application and all supporting material? | _____ | _____ |
| b. all information obtained for monitoring purposes? | _____ | _____ |
| c. the notification of action taken? | _____ | _____ |
| d. the statement of specific reasons for adverse action? | _____ | _____ |
| e. discrimination complaints under Regulation B? | _____ | _____ |
| 25. Is all information relative to an investigative action retained until final disposition of the matter? (202.12(b)(3)) | _____ | _____ |
| 26. If the association engages in a special purpose credit program designed to meet special social needs is it in compliance with Section 202.8 of Regulation B? | _____ | _____ |
| <u>HOME MORTGAGE DISCLOSURE ACT (Regulation C)</u> | | |
| 1. Is the association subject to Regulation C? (203.3) | _____ | _____ |
| 2. If "yes", was applicable lending properly classified and reported? (Form HMDA-1, Mortgage Loan Disclosure Statement and 203.4) | _____ | _____ |
| 3. Are disclosure statements made available on a timely basis and in the manner required by Section 203.5? | _____ | _____ |
| 4. Are depositors notified annually of the availability of disclosure statements? (203.5(b)) | _____ | _____ |
| 5. Does your review of the disclosure statements, in conjunction with the lending review, indicate discriminatory practices? | _____ | _____ |

Work Done by _____ Reviewed by EIC or designee _____
 Date _____ Reviewed by FM or Designee _____

APPENDIX 8.—FEDERAL RESERVE BOARD

BENJAMIN B. ROSENTHAL, N.Y., CHAIRMAN
 CAROLIS COLLINS, ILL.
 ROBERT F. DRINAN, MASS.
 ELLEOTT H. LEVYAN, GA.
 DAVID W. EVANS, IND.
 ANTHONY MOFFETT, CONN.
 FERNANDO J. ST GERMAIN, N.J.
 HENRY A. WALKMAN, CALIF.

GARRY BRIDEN, MICH.
 CLARENCE J. BROWN, OHIO
 TOM CONCORAN, ILL.
 (202) 225-4427

NINETY-FIFTH CONGRESS

Congress of the United States**House of Representatives**

COMMERCE, CONSUMER, AND MONETARY AFFAIRS
 SUBCOMMITTEE

OF THE
COMMITTEE ON GOVERNMENT OPERATIONS

RAYBURN HOUSE OFFICE BUILDING, ROOM B-377
 WASHINGTON, D.C. 20518

August 17, 1978

Hon. G. William Miller
 Chairman
 Federal Reserve Board
 Washington, D. C. 20551

Dear Mr. Chairman:

This letter supplements my letter of August 9, concerning the hearings this subcommittee will hold in September on the financial regulatory agencies' enforcement of the Equal Credit Opportunity Act and the Fair Housing Act. The statement below of questions for testimony and of supplementary materials to be supplied in advance supersedes the statements of questions and requests in the earlier letter.

The topics and specific questions on which the subcommittee requests the testimony of the Federal Reserve Board are the following:

1. Redlining Regulations: To what extent is there a problem of redlining discrimination in home lending by banks, and what is the Federal Reserve's regulatory approach to redlining? More specifically,
 - a. Is the problem of urban neighborhood decay due in any way to discriminatory practices in the handling of individual loan inquiries and applications by banks?
 - b. Would banking agency promulgation and enforcement of nondiscrimination regulations explicitly prohibiting redlining discrimination contribute materially toward more equitable treatment of individuals and a reduction of the problem of neighborhood decay?
 - c. Has the Federal Reserve sufficient statutory authority to issue and enforce such nondiscrimination regulations, or does it plan to request legislation to convey this authority?

- d. Has the Federal Reserve any plans to issue such nondiscrimination regulations addressed, at least in part, to redlining discrimination? If not, what is the Federal Reserve's present approach to the regulatory control of redlining discrimination?
2. Redlining Monitoring: What is the Federal Reserve's approach to the detection of redlining discrimination by individual banks? In particular,
- a. Has the Federal Reserve any plans to modify Regulation B to require the recording of monitoring information on home loan applications and inquiries more detailed or covering more types of transactions than is now required? Will you require monitoring information similar in detail and coverage to the information now required by the FDIC and the Federal Home Loan Bank Board? Will monitoring information be required on applications for home improvement loans or mortgage refinancings? Will it be required on inquiries for home loans? If not, why not?
 - b. How is the present monitoring information employed to examine individual banks for evidence of redlining discrimination? How will you use any future more extensive monitoring information for this purpose?
 - c. How do you employ Home Mortgage Disclosure Act (HMDA) data to examine individual banks for evidence of redlining discrimination?
 - d. Have you any suggestions for improvements of this Act or any plans to modify its implementing regulation, Regulation C, to improve the usefulness of this data for regulatory purposes? For example, would its value be enhanced if all applications rather than just loans granted were covered?
3. Recent Enforcement:
- a. How many and what types of violations of the Fair Housing Act, the Equal Credit Opportunity Act, or Regulation B have Federal Reserve examiners found in state member banks in 1977 and 1978? What portion of these violations were clear violations of the substance and spirit of the laws prohibiting discrimination? What remedial or enforcement action has the Federal Reserve taken to correct these violations?
 - b. Were there any instances of repeat violations, in which banks were found to be continuing to engage in discriminatory practices after having previously been told to stop? What enforcement actions has the Federal Reserve taken in these cases of repeat violations?

4. **Future Enforcement:** How will the Federal Reserve deal in the future with cases of repeat violations of the Fair Housing Act, the Equal Credit Opportunity Act, or Regulation B, where a bank is found on the second or third examination to have failed to correct conditions found on a previous examination? In particular,
 - a. In the case of repeat violations will you inform, or require a bank to inform, the victims of lending discrimination that unlawful discrimination has been found in the institution's handling of a previous application or inquiry from them?
 - b. Under what circumstances will you release publicly the names of institutions that have refused or failed to eliminate discriminatory practices?
 - c. Under what circumstances will you seek criminal prosecution of or other punitive action against banks or their officers who fail to eliminate discriminatory practices?
5. **Civil Damages Litigation:**
 - a. What is the view of the Federal Reserve about the effectiveness and proper role of civil damages litigation by private individuals in bringing about general compliance with the laws against credit discrimination?
 - b. What steps does the Federal Reserve take to inform consumers of their right to file civil damage suits under the Fair Housing Act and Equal Credit Opportunity Act, or to facilitate in other ways consumer use of the civil damage provisions of these acts?
6. **Consumer Information:** What other consumer information and education activities does the Federal Reserve conduct to inform the general public about the laws against credit discrimination? Do you have any plans to expand these activities?

In addition to these questions to be addressed in testimony, the subcommittee requests that you provide in advance answers to certain specific questions and certain related materials, as follows:

1. What specific evidence have you that discriminatory redlining and appraisal practices are occurring or have recently occurred in home mortgage or home improvement lending by banks? Please provide to the subcommittee copies of any staff studies or other reports, or citations of any independent research or investigative studies, on which you rely as evidence. In the case of evidence arising from examinations, please report as fully as possible the nature of the findings, the types of communities or neighborhoods involved, the number of institutions involved, and all other information pertinent to a full description of your findings of redlining practices.

2. Do banks maintain in their home loan files information that would identify individual applications denied or withdrawn, or outstanding loans foreclosed, for lack of acceptable fire, homeowners, or mortgage insurance? Has the Federal Reserve utilized this information, or would it be feasible for the Federal Reserve to utilize this information, possibly in conjunction with the other financial regulatory agencies, to derive statistics on the extent and geographical distribution of insurance redlining?
3. In connection with Regulation B monitoring information,
 - a. What were the findings and recommendations of the Survey Research Center and of Mr. Dennis concerning the possible ways that the Board might use the monitoring information that banks now include in their loan application files, pursuant to section 202.13 of Regulation B?
 - b. Did those two consultants address the question of the possible value of additional monitoring information, either more information about each application than is now recorded, or monitoring information about inquiries that are not currently covered by section 202.13? If so, what were their findings and recommendations on this question?
4. How do Federal Reserve examination procedures and regulations deal with discrimination in real estate appraisals? Please supply to the subcommittee the text of any examiner instructions that address the detection of discrimination in appraisals. If there are no such instructions, please so state.
5. Has the Federal Reserve considered requiring, as a part of the adverse action notice required under Regulation B, that the bank include a copy of the appraisal with the adverse action notice sent to an applicant when his application for a home loan is denied on the basis of an inadequate appraised value? What factors have you considered or will you consider in reaching a decision on this matter?
6. Has the Federal Reserve considered requiring each bank to have clearly written nondiscriminatory loan underwriting standards, available to the public in printed form at each office, as the Federal Home Loan Bank Board has done for savings and loan associations? What factors have you considered or will you consider in reaching a decision on this matter?
7. How do Federal Reserve examination procedures determine whether discriminatory "pre-screening" and discouragement of potential loan applicants are occurring: In particular:

- a. Please explain how the examination procedures will determine whether the loan application files and monitoring records maintained by each bank are complete and have not had certain cases intentionally omitted.
 - b. What procedures will detect the discouragement of applicants by certain subtle devices such as (i) informing certain applicants whom the bank wishes to discourage that six to eight weeks will be required to process an application, when in fact only one week is required, or (ii) quoting a higher rate of interest to certain inquirers or applicants whom the bank wishes to discourage than to favored applicants?
 - c. Please supply to the subcommittee the text of all examiner instructions that address the problem of "pre-screening" and discouragement. If there are no such instructions, please so state.
8. How does the Federal Reserve currently employ the race, age, sex, and marital status monitoring information gathered on home mortgage applications by banks, as required by Regulation B, for the detection of discrimination other than redlining discrimination? Please supply to the subcommittee the text of any examiner instructions that address the detection of lending discrimination other than redlining discrimination.
 9. How do Federal Reserve examiners evaluate whether formalized credit scoring systems are in compliance with the Fair Housing Act, the Equal Credit Opportunity Act, and Regulation B? Please supply to the subcommittee the text of any examiner instructions that address the evaluation of credit scoring systems. If there are no such instructions, please so state.
 10. How do Federal Reserve examiners evaluate the internal fair housing and equal credit opportunity compliance program of each bank? Please supply to the subcommittee the text of any examiner instructions that address the evaluation of internal bank programs for compliance in these areas. If there are no such instructions, please so state.
 11. In their examinations for compliance with the Fair Housing Act, the Equal Credit Opportunity Act, and Regulation B, what procedures or guidelines do Federal Reserve examiners follow in determining what portion of their examination effort is to be devoted to each bank? How is the size determined for the loan sample that will be reviewed for compliance in each institution? In particular, is recognition given to the volume of loan originations, as distinct from loans held in the portfolio, in allocating examination effort to institutions that are active in originating loans for resale? Please supply to the subcommittee the text of any examiner instructions, policy guidelines, or other documents that address this question of the allocation of com-

- pliance examination effort among the different institutions to be examined. If there are no such documents, please so state.
12. In their examinations for compliance with the Fair Housing Act, the Equal Credit Opportunity Act, and Regulation B, what procedures or guidelines do Federal Reserve examiners follow in determining what portion of their examination effort is to be devoted to each type of loan or credit? In particular, is recognition given to the volume of loan originations, as distinct from loans held in the portfolio, in allocating examination effort at institutions that are active in originating loans for resale? In your answer please distinguish between home loans on 1-4 family dwellings, other loans on residential property, other consumer loans or credit, other small business loans or credit, and all other credit (including loans or credit to large businesses). Please supply to the subcommittee the text of any examiner instructions, policy guidelines, or other documents that address this question of the allocation of compliance examination effort among the different types of loans or credit. If there are no such documents, please so state.
 13. Please describe the organizational structure and responsibilities of the Board of Governors and the individual Federal Reserve Banks as they apply to the fair housing and equal credit compliance examination function. What are the relevant responsibilities and authorities associated with each position in this organizational structure, and what degree of autonomy is exercised by officials assigned to the Reserve Banks in the performance of this function? What are the procedures followed for systematic oversight and review by the Board staff in Washington of the fair housing and equal credit compliance examinations performed by the field examination staff?
 14. How does the Federal Reserve's system of recognition and advancement for examiners convey an agency commitment to and provide personal reward for vigorous enforcement of the laws against credit discrimination? In particular,
 - a. In giving recognition and advancement to examiners, what weight is given to performance in civil rights compliance work?
 - b. What are the standards by which examiner performance in civil rights compliance work is judged?
 15. Please provide the following actual or estimated figures for the full gross cost of Federal Reserve activities related to the enforcement of bank compliance with the Fair Housing Act, the Equal Credit Opportunity Act, and Regulation B. These cost figures should include an appropriate allowance for overhead, including clerical support, travel and per diem expenses, computer usage, rent or imputed rent, and utilities. Please state the method by which any estimates were derived.

- a. The full costs for all activities in the twelve-month period from July 1977 through June 1978, and the projected full costs for the twelve-month period from July 1978 through June 1979.
 - b. A percentage breakdown of each total to show the proportions spent on training, field examinations and associated supervision, consumer complaint handling, consumer education, creditor education, and any other appropriate categories.
 - c. A percentage breakdown of each total in part (a) to show separately the proportions applicable to home loans and to all other credit.
16. Please provide the following actual or estimated figures on numbers of banks and numbers and sizes of loans. Please state the method by which any estimates were derived. In this request, "home loans" refers to real estate loans secured by 1-4 family residences and also consumer installment loans for repair and modernization of residential property.
- a. The number of banks examined by the Federal Reserve in the twelve-month period from July 1977 through June 1978 and the number that will be examined in the twelve-month period from July 1978 through June 1979.
 - b. The numbers of home loan applications received and home loans granted, and the dollar volume of home loans granted, by the examined banks in the twelve months ending June 1978.
 - c. The projected numbers of home loan applications to be received and home loans to be granted, and the projected dollar volume of home loans to be granted in the year ending June 1979 by the banks to be examined in that year.
 - d. The dollar volume of home loans held by the examined banks in their portfolios as of the December 1977 call report date, and the corresponding dollar volume projected for December 1978.
 - e. The numbers of credit applications received and loans and credit lines granted, and the dollar volume of loans and credit lines granted, for other consumer or small business credit (excluding home loans) by the examined banks in the twelve months ending June 1978.
 - f. The projected numbers of credit applications to be received and loans and credit lines to be granted, and the projected dollar volume of loans and credit lines to be granted, for other consumer or small business credit (excluding home loans) in the year ending June 1979 by the banks to be examined in that year.

- g. The dollar volume of consumer and small business credit outstanding (excluding home loans) in the portfolios of the examined banks as of the December 1977 call report date, and the corresponding dollar volume projected for December 1978.
17. Please restate the cost figures given in answer to questions 15.a and 15.c to show:
- a. The total costs of the earlier period and the projected total costs of the later period restated as costs per bank examined (or to be examined).
- b. The total costs of the earlier period and the projected total costs of the later period that are applicable to home loans restated as costs per bank examined (or to be examined), per home loan application received (or expected), per home loan granted (or expected to be granted), per \$1000 of home loan granted (or expected to be granted), and per \$1000 of home loans held (or expected to be held) in the banks' portfolios at the midpoint of the period.
- c. The total costs of the earlier period and the projected total costs of the later period that are applicable to all other credit (excluding home loans) restated as costs per bank examined (or to be examined), per application received (or expected) for other consumer or small business credit, per loan or credit line granted (or expected to be granted) for other consumer or small business credit, per \$1000 of loans or credit lines granted (or expected to be granted) for other consumer or small business credit, and per \$1000 of consumer and small business credit outstanding (or expected to be outstanding) from the examined banks at the midpoint of the period.
18. Please provide the following actual or estimated figures for the number of Federal Reserve examiner hours spent in performing on-site examination for compliance with the Fair Housing Act, the Equal Credit Opportunity Act, and Regulation B. Please state the method by which any estimates were derived.
- a. Total examiner hours for the twelve-month period from July 1977 through June 1978, and projected total examiner hours for the twelve-month period from July 1978 through June 1979.
- b. A percentage breakdown of each total to show separately the proportions applicable to home loans and to all other credit.
- c. A disaggregation by Federal Reserve district of the totals given in answer to part (a).

- d. A percentage breakdown of each district total to show separately the proportions applicable to home loans and to all other credit.
19. Please restate the figures given in answer to the previous question, as follows:
- a. The answers to parts (a) and (c) of the previous question restated to show examiner hours per bank examined (or to be examined).
- b. From the answers to parts (b) and (d) of the previous question:
- (i) examiner hours applicable to home loans restated as examiner hours per bank examined (or to be examined), per 100 home loan applications received (or expected), per 100 home loans granted (or expected to be granted), per \$100,000 of home loans granted (or expected to be granted), and per \$100,000 of home loans held (or expected to be held) in the banks' portfolios at the midpoint of the period.
- (ii) examiner hours applicable to all other credit (excluding home loans) restated as examiner hours per bank examined (or to be examined), per 100 applications received (or expected) for other consumer or small business credit, per 100 loans or credit lines granted (or expected to be granted) for other consumer or small business credit, per \$100,000 of loans or credit lines granted (or expected to be granted) for other consumer or small business credit, and per \$100,000 of consumer and small business credit outstanding (or expected to be outstanding) from the examined banks at the midpoint of the period.
20. Do you employ, for enforcement or any other purpose, a distinction between "technical" and "substantive" violations of law? If so, please explain in precise terms how this distinction is used and what it means, as applied to violations of the Fair Housing Act and the Equal Credit Opportunity Act. Please list the types of violations of these acts that fall into each class.
21. Please provide a detailed tabulation, by district and for all districts combined, of Fair Housing Act, Equal Credit Opportunity Act, and Regulation B violations found by Federal Reserve examiners in the twelve-month period from July 1977 through June 1978. In this tabulation, please distinguish between violations related to home loans or applications and violations related to other credit. Within each of these two classes, please classify the violations by the specific nature of the violations, separating technical violations from substantive

violations, and please indicate how many violations of each specific type were repeat violations that the institutions had previously been requested to correct. Where more than one type or class of violation was found at a single institution, please count each type of violation separately, as this request is for a tabulation of violations, not of institutions in violation.

22. Please restate certain elements of the above tabulation of violations to show, by district and for all districts combined,
 - a. Technical and substantive home loan violations per 100 examiner hours devoted to civil rights compliance examination of home loans, per 100 home loan applications received, per 100 home loans granted, and per \$100,000 of home loans held in the banks' portfolios at December 31, 1977.
 - b. Technical and substantive violations related to other credit per 100 examiner hours devoted to civil rights compliance examination of other credit, per 100 applications received for other consumer or small business credit, per 100 loans or credit lines granted for other consumer or small business credit, and per \$100,000 of consumer and small business credit outstanding from the examined banks at December 31, 1977.
23. Please provide a tabulation, by district and for all districts combined, of institutions found to be in violation of the Fair Housing Act, the Equal Credit Opportunity Act, or Regulation B in the period from July 1977 through June 1978. If you distinguish between technical and substantive violations, please classify every institution in each district into one of three groups according to whether no violations were found, only technical violations were found, or one or more substantive violations were found. Then please subdivide each of the latter two classes according to whether the violations found at each institution were all first time violations or included one or more repeat violations that the institution had previously been requested to correct. Then please subdivide further according to whether the violations found were related only to home loans or applications, only to other credit, or to both home loans and other credit.
24. Please restate the above tabulation of institutions in violation to show institutions in violation as a percentage of all examined institutions in the district.
25. What are the established procedures of the Federal Reserve for investigating and/or responding to written consumer complaints alleging discrimination in some aspect of the credit granting process? Please supply to the subcommittee the text of all staff instructions, policy guidelines, or other documents that specify the procedures to be followed

- in investigating and/or responding to consumer complaints that allege discrimination in the credit granting process, whether relating to home loans or to other credit.
26. If the individual complaints are handled primarily in the district Federal Reserve Banks, what are the procedures followed for systematic oversight and review of the complaint handling work by the Board in Washington?
 27. Please provide figures giving the numbers of consumer complaints received by the Federal Reserve in the twelve-month period from July 1977 through June 1978 alleging discrimination in some aspect of the lending process, as follows:
 - a. Total complaints related to home loans or home loan applications.
 - b. Total complaints related to other consumer or small business credit or credit applications.
 - c. A disaggregation by Federal Reserve district of the total complaints related to home loans or home loan applications.
 - d. A disaggregation by Federal Reserve district of the total complaints related to other consumer or small business credit or credit applications.
 28. Please provide a further tabular breakdown, as indicated below, of each of these figures of discrimination complaints received. For each district separately and for all districts combined, please provide the numbers of complaints in each category below for complaints related to home loans or applications and, separately, for other consumer or small business credit or credit applications.
 - a. Complaints the investigation of which found one or more violations of law that substantiated the complainant's claim;
 - b. Complaint cases in which no violation was found but in which an adjustment or accommodation was offered by the bank and accepted by the complainant (including correction of bank errors);
 - c. Complaints based on a factual dispute, in which the complainant received no satisfaction;
 - d. All other complaints that received a thorough investigation but resulted in no violations related to the complaint and no satisfaction for the complainant; and

- e. All other complaints (including information requests) in which no investigation, or only a cursory investigation, was deemed necessary.
29. Please provide further supplementary information, as indicated below, on each group of complaints identified in the answers to the previous question. For each group of complaints enumerated above, please specify
- What portion of these complaints were about banks in which a violation similar to the complaint had been found previously, at the most recent prior general compliance examination?
 - What portion of these complaints were about banks in which a violation similar to the complaint was found subsequently, at the next subsequent general compliance examination?
 - What portion of these complaints were about banks that have not been given a general compliance examination since the filing of the complaint?
30. How many private law suits for civil damages under the Fair Housing Act or the Equal Credit Opportunity Act have been filed against state member banks in 1977 and 1978? In how many of these instances had the plaintiff previously filed a complaint with the Federal Reserve, prior to filing the law suit?
31. In what ways does the Federal Reserve inform loan applicants or potential applicants of the existence and possible usefulness to them of the civil damages provisions of the Fair Housing Act and the Equal Credit Opportunity Act? Please supply to the subcommittee examples of any letters, pamphlets, or other educational or informational materials in which these civil damages provisions are mentioned.
32. Approximately how many of each type of letter, pamphlet, or other educational or informational material mentioned in the answer to the previous question were sent out or distributed to the public in the twelve-month period from July 1977 through June 1978? Please indicate the method of distribution and types of groups or individuals to which these materials were distributed.
33. Have you any reliable and representative information concerning the costs incurred by banks to comply with Regulation B and the laws against credit discrimination? If so, what portion of these costs are associated with the initial training and other front end start-up costs of the banks' compliance programs, and what portion are continuing expenses directly associated with processing of applications? Can the continuing expenses be stated as costs per loan application received or per \$100,000 of mortgage loan or other consumer credit assets held? Can they be stated in terms of fractions of

a percentage point on the interest rate of a mortgage loan or other credit? What was the method by which these measurements were made?

34. Please provide to the subcommittee a copy of the staff summary of the comments received on the proposed uniform enforcement guidelines for Regulation B.
35. Please report as fully as possible those findings and analysis of the Federal Reserve's summer 1977 Study of Consumer Credit that are applicable to equal credit opportunity. Please include in this report detailed information about the responses to questions B1 through B5, C18, and C19 of the questionnaire, as well as your interpretation of these responses.
36. What other major surveys, reports, or studies, either by outside experts or by Federal Reserve staff, have recently been completed, are currently in progress, or are planned for the near future on any aspect of Federal Reserve responsibilities under the Fair Housing Act or the Equal Credit Opportunity Act?
37. Please supply to the subcommittee the text of any examiner instructions that address the use of Home Mortgage Disclosure Act information and other home loan data for the detection of redlining discrimination.

Please provide 75 copies of your prepared statement to the subcommittee at least 24 hours in advance of your appearance. The answers to the supplementary information should be provided by Friday, September 8. If for any reason not all of this material can be compiled by that time, then please deliver to the subcommittee on September 8 the answers and material that is ready at that time, with the remaining answers and material to be supplied as soon thereafter as possible. If you have any questions concerning this request, please contact Don Tucker of the subcommittee staff.

Sincerely,

Benjamin S. Rosenthal
Chairman

BSR:tv



BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON

PHILIP C. JACKSON, JR.
MEMBER OF THE BOARD

August 30, 1978

The Honorable Benjamin S. Rosenthal
Chairman
Subcommittee on Commerce, Consumer
and Monetary Affairs
Committee on Government Operations
House of Representatives
Washington, D. C. 20515

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SEP 1 1978

Benjamin S. Rosenthal, M.C.

Dear Chairman Rosenthal:

This is in further response to your letters of August 9 and 17, 1978, concerning hearings on enforcement of the Equal Credit Opportunity Act and the Fair Housing Act by the financial regulatory agencies. We believe that a number of the questions raised in your August 17 letter can be answered without undue difficulty. Information currently available should allow us to provide responses by September 9 to questions 1-14, 15(a) & (b), 20, 25-26, 30-32, 34, and 36-37.

Several major concerns, however, arise relating to the questions requesting statistical and other information. First, neither the Board or any consumer statute presently enforced by the Board imposes a requirement that State member banks report information concerning the number of home loan applications received or home loans granted and their corresponding dollar volume. Thus, information, if available at all, could only be obtained by surveying the State member banks. Second, Board staff generally does not make projections of home loan applications and approvals or their corresponding dollar volume, as such projections would be purely speculative in light of changing mortgage loan market conditions.

Third, present Board examination procedures utilize a unitary approach whereby an examiner reviews each loan file for compliance with all consumer statutes and regulations. Current Board reporting systems do not itemize the time spent on any particular type of loan and the number

of home loans examined would depend on the volume within the bank and the institutions' level of compliance.

It should also be pointed out that projections of total examiners' hours for any future period would be speculative now as Board staff is currently re-writing examination procedures in light of recommendations contained in the Warren Dennis report. Projected examination time is also dependent upon the over-all performance of the State member banks in complying with the regulations after an initial examination -- and the greater the compliance the more efficiently an examination may be conducted.

Finally, the Board's Consumer Affairs data processing report system generates tabulations by regulation section of apparent violations either of a substantive or technical nature by Federal Reserve district for Regulation B. We currently maintain tabulations which identify violations of the Fair Housing Act without a further breakdown. Statistics on consumer complaints in the manner specified in your request cannot be provided under the Board's current reporting requirements.

As a result of the above concerns, we cannot answer questions 15(c), 16-19, 21-24, 27-29, 33, and 35, either in whole or in part due to an unavailability of statistical or other information or because obtaining such data would impose a very large burden upon the Federal Reserve System and the member banks it supervises. However, the Board can provide information concerning:

- . Estimated figures on the number of banks examined from April 1977 through June 1978. Actual figures may be higher because banks are only considered examined when the examination report is received and reviewed by Board staff. A higher figure may result from a time lag in the Reserve Banks preparing the reports.
- . Total examiner hours for period of April 1, 1977 through July 31, 1978 by Federal Reserve district.
- . Estimated average cost to examine each State member bank.
- . Estimated apparent violations by regulation section but not by type of loan for the Board's initial round of examinations.

- . Basic statistics on the number of Regulation B and Title VIII complaints received concerning State member banks and the resolutions of them.
- . Call reports on outstanding real estate loans secured by 1-4 family residential properties which are either conventional loans, insured by FHA or guaranteed by VA for the period ending June 1977. Updated figures are due by October 1978 for the period ending December 1977.
- . Call report aggregate figures on all commercial and industrial loans outstanding. Loan activity to small businesses is not currently segregated for call report purposes.
- . Loans to individuals for consumer credit other than home loans can be provided in aggregate for period ending June 1977 for the following categories.
 1. To purchase private passenger automobiles on instalment basis.
 2. For credit card and related plans.
 3. To purchase other retail consumer goods on instalment basis.
 4. For instalment loans to repair and modernize residential property.
 5. Other instalment loans and single payment loans for household, family and other personal expenditures.

We will also provide information requested in Question 35 concerning the 1977 Consumer Credit Survey, however, the report on the Survey is still being prepared by staff thus not allowing us to present copies at this time.

Although present Board information systems do not allow us to compile all the material requested in your correspondence, we invite your staff to contact us if any other information we may have available will be useful in


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this matter. Please contact Alonzo Sibert of our Consumer Affairs staff on 452-3946 if we can be of assistance.

I look forward to testifying on the Board's efforts in this area.

Sincerely,

A handwritten signature in cursive script, appearing to read "P. Jackson, Jr.", written in dark ink.

Philip C. Jackson, Jr.

1401



BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON

PHILIP C. JACKSON, JR.
MEMBER OF THE BOARD

September 12, 1978

The Honorable Benjamin S. Rosenthal
Chairman
Subcommittee on Commerce, Consumer
and Monetary Affairs
Committee on Government Operations
House of Representatives
Washington, D.C. 20515

Dear Chairman Rosenthal:

Responses prepared by the Board's staff to the supplementary questions presented in your letter of August 17 are enclosed. Other items will be sent to you when they become available, as noted in the attached material.

As indicated in my letter of August 30, certain information could not be compiled in the form that was specified by your letter. We have submitted other data that we hope will be as useful to you.

Sincerely,

A handwritten signature in cursive script, appearing to read "P. Jackson, Jr.", written in dark ink.

Philip C. Jackson, Jr.

Enclosures

ANSWERS TO QUESTIONS IN CHAIRMAN ROSENTHAL'S LETTER OF AUGUST 17, 1978, WHICH SUPERSEDED LETTER OF AUGUST 9, 1978. (As indicated in our letter of August 30, the Board's staff is unable to provide information requested in some of the questions; these items are noted below.)

* * * * *

(1) The Board has not received any complaints of discriminatory redlining or appraisal practices, nor have Federal Reserve examiners uncovered evidence of such discrimination in the course of examinations or through investigation of complaints.

With regard to other information generally available, we attach a bibliography. (See Attachment 1.)

(2) In the case of rejected applications, creditors are required by § 202.12(b) of Regulation B to retain any written information used in evaluating the application, as well as a copy of the notification of adverse action and the statement of specific reasons for the denial. Thus, where a loan is denied because of the unavailability of acceptable fire, homeowners, or mortgage insurance, this information will be available to an examiner.

The Federal Reserve does not currently utilize this information to derive statistics on the geographical distribution of insurance redlining.

(3) (a) In January, the Board's staff requested the opinion of the Institute for Social Research of the University of Michigan (not the Survey Research Center, as the question indicates) regarding the feasibility of using statistical measures to detect unlawful discrimination. Copies of our request (dated January 19, 1978) and of the Institute's response, which was generally not optimistic, are attached. (See Attachment 2.)

The findings and recommendations of Mr. Dennis suggest, as a preliminary matter, that maintaining the § 202.13 data with each loan file makes use of the data impracticable because comparisons cannot be made easily. At the same time, complex data collection or centralized collection in Washington is not necessarily recommended. The report does recommend the following:

- . Maintaining the ability to retrieve loans by category for easy comparison.
- . Promoting use of the data by both the bank and examiners to monitor compliance. In particular, instructing examiners in the use of these statistics to investigate particular problems.

(b) The Dennis findings and recommendations are based on the assumption, as stated in his report, that § 202.13 of Regulation B will remain applicable only to residential real property loans. In addition, he states that he will not address any of the issues, such as monitoring loans not currently covered by § 202.13, that were originally considered when § 202.13 was proposed. Mr. Dennis addresses only the

"optimal" use of the current data available pursuant to § 202.13, but points out that statistical information is generally unavailable for other than real estate loans. Mr. Dennis does recommend keeping a tabulation of inquiries, applicants, and borrowers by § 202.13 categories and, where appropriate, identifying two-income loans to monitor discounting.

As you will note, the uses of additional monitoring data are discussed extensively in the memorandum from the Institute for Social Research, and the Institute's conclusions regarding the value of such data are not encouraging.

(4) Current Board examination instructions or training lectures require that, in reviewing a bank's lending policies, an examiner focus on the following appraisal policies and standards:

- . Determine whether appraisals are done by independent appraisers, bank personnel, or a combination of both.
- . If appraisals are done by bank personnel, determine how the appraisers are trained, the adequacy of the training, and indications of discriminatory policies in training material.
- . If appraisals are done by outside appraisers, ensure that the bank is familiar with the appraiser's standards and review them for discriminatory policies.
- . Report as an internal controls exception those instances where the bank is not familiar with the standards used by the appraiser.

As to appraisal standards, examiners are instructed to review the following for discriminatory practices:

- . Assigning a lower value to a neighborhood that is deteriorating.
- . Incorporating the idea that deterioration of a neighborhood is inevitable.
- . Equating age of the property with the value of the property.

Attached are copies of a lecture outline and of examiner instructions currently being distributed at the Board's consumer affairs training schools. (See Attachment 3.) The Board's staff is making extensive revisions to examination procedures and training programs in light of experience derived from the first year of compliance examinations and of recommendations contained in the Warren Dennis report. Copies of the revised examination procedures will be provided as soon as they are available.

(5) The Board has no present plans for requiring the inclusion of a copy of the real estate appraisal with the adverse action notice required by Regulation B where the home loan application is denied because of inadequate appraisal value. Factors to be considered if the imposition of such a requirement were suggested would include the benefit to the rejected applicant and the burden to creditors, in addition to other considerations that might surface in public comments on such a proposal.

(6) Proposed regulations under the Community Reinvestment Act, although not mandating written loan underwriting standards, would encourage adoption of written loan policies for public inspection. The Board has no present plans to impose mandatory adoption of written standards by all State member banks.

Under the proposed equal credit enforcement guidelines, whenever substantive violations are discovered the creditor will be required to adopt a written loan policy if it has not previously adopted one. The proposed guidelines specify the factors (character of violation, etc.) that will be considered in deciding the suitability of this and other corrective requirements. (See Attachment 4.)

(7) Consumer affairs training school lectures include a discussion on methods of interviewing bank personnel to determine whether initial contact personnel (e.g., receptionists, tellers) are prescreening applicants. Bank personnel are interviewed to ascertain their knowledge of the prohibitions and requirements of the ECOA and Fair Housing Act, and to ascertain whether in practice the bank is adhering to these acts. Bank personnel are also interviewed to determine whether their instructions permit or encourage the use of methods that discourage applicants, intentionally or as the result of apparently innocuous practices.

Finally, open and declined loan application files are reviewed for indications of discriminatory policies. The Board necessarily relies on the consumer complaint process for indications that member institutions are utilizing subtle devices for discouraging applicants.

Current written examiner instructions do not address prescreening. Such material is, however, being incorporated into revisions now in preparation.

(8) The raw data collected pursuant to Regulation B's notation requirements is reviewed as part of the examination process of each bank's records for evidence of unlawful discrimination, both as to loan applications approved and as to those disapproved. State member banks, however, have in recent years accounted for less than 2 per cent, by dollar volume, of the total residential real estate mortgages in the United States, and many State member banks make few, if any, mortgages. The extent to which use is made of the data thus varies, depending on the level of activity by the bank in the mortgage market.

See also our response to questions 10-12.

(9) The examiner asks the bank whether it considers its credit scoring system to be a "demonstrably and statistically sound, empirically derived credit system," and observes whether it has used age as a scored characteristic. The examiner checks the system's documentation for compliance with all applicable requirements of Regulation B:

- . Does the system evaluate creditworthiness by assigning points to characteristics of the applicant and the credit requested?
- . Was the system developed from an empirical comparison of the creditor's creditworthy and noncreditworthy applicants?
- . Did the creditor validate the system's predictive ability and does the creditor periodically revalidate the system?

- . Does the system ever assign a "negative factor or value" to the age of elderly applicants?
- . Does the system score any prohibited characteristics?
- . Does the system score whether an applicant's income derives from any public assistance program?
- . Does the system score the listing of a telephone in the applicant's name?
- . Does the system discount part-time, alimony, or pension income?

The examiner does not attempt to verify the creditor's validation of the system because this would consume an unreasonable quantity of examiner and computer resources in relation to any benefit conferred. Accordingly, the examiner instructions discuss in detail Regulation B's various rules concerning evaluation of applications, but do not make any special reference to evaluation of scoring systems. Lectures delivered at the regular consumer affairs training schools do cover system evaluation.

(10-12) Attached are copies of the current Examiner Instructions and Checklist for consumer compliance examinations, which are used by examiners for the Federal Reserve Banks in consumer affairs examinations of State member institutions. Included also are copies of Examiner Manuals covering the Equal Credit Opportunity Act, Home Mortgage Disclosure Act, and the Fair Housing Act. (See Attachment 5.) The Board's staff is currently rewriting examination procedures

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in light of experience derived from the first year of compliance examinations and recommendations contained in the Warren Dennis report. Copies will be provided when these procedures are finalized.

Present examination procedures utilize a unitary approach whereby an examiner reviews each loan file in the loan sample for compliance with all consumer statutes and regulations. Current Board reporting systems do not itemize the time spent on any particular loan line; the times will vary depending on the volume of loan originations and the institution's level of compliance. It is estimated, however, that 40% of the consumer affairs examination is devoted to examining for unlawful credit discrimination.

An on-site examination consists of a review of all relevant forms, policy statements, internal controls and other administrative procedures, to assure that the bank is complying with the credit discrimination laws and that procedures established for this purpose are actually being carried out by bank personnel. Through reading bank materials, interviewing bank personnel and performing prescribed examination procedures, the examiner will (1) determine the bank's loan policies and the objective criteria it uses in making credit decisions, (2) determine if any policies appear to be unlawfully discriminatory, and (3) determine if the bank's loan policies and objective criteria are being consistently applied. Sampling of applications, loans, and associated records is performed in order to test the quality of the bank's operating performance in complying with credit discrimination laws.

When evidence of unlawful discrimination is discovered in lending policies, the examiner is directed to investigate thoroughly all pertinent facts surrounding the policies and their application. The examiner's findings are to be described in a memorandum summarizing the facts, possible violations, and applicable sections of the regulation or statute. This memorandum is to be made a part of the workpapers and a copy forwarded to the Board along with the examination report.

When the Board established its consumer affairs enforcement program in March 1977, the Board indicated that the program would be reviewed within two years to evaluate its effectiveness and to determine the form in which it should be continued. In initiating this review earlier this year, the Board's staff was concerned that the examination program revealed frequent procedural types of violations by banks but did not show any serious indications that banks were engaging in unlawful discriminatory practices. Consequently, staff questioned whether the existing procedures and training were adequate to enable examiners to readily detect unlawful discrimination. The Board engaged the services of Warren Dennis to review the Board's examination and investigation procedures and training programs and to make recommendations for changes. Mr. Dennis, a former member of the Division of Civil Rights of the Department of Justice has had extensive experience in detecting illegal discrimination in financing. Mr. Dennis has completed this study and has made recommendations for improvement in the procedures and for a more extensive examiner training program.

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The Board and Board staff are currently engaged in a review of the entire consumer affairs enforcement program, including the Dennis recommendations.

(13) The attached organization chart provides a current representation of the structure and responsibilities of the various offices and divisions within the Board of Governors. In addition, Chart 2 at page 18 of The Federal Reserve System, Purposes and Functions provides a representation of the organization of the Federal Reserve System. (See Attachment 6.)

The Board of Governors has overall responsibility for assuring compliance with various statutory and regulatory requirements applicable to State member banks. The staff of the Division of Consumer Affairs, the Legal Division, and the Division of Banking Supervision and Regulation share principal responsibility for enforcing regulatory requirements. Each of these divisions reports directly to the Board of Governors in carrying out its respective responsibilities.

Primary responsibility for enforcing credit nondiscrimination rests with the Board's Division of Consumer Affairs. The Division processes inquiries and complaints and drafts proposed regulations. It also coordinates and monitors the civil rights enforcement efforts of System examiners, as well as the efforts of Reserve Banks to educate member banks in the requirements of the various laws prohibiting discrimination in home mortgage lending. The Division reviews examination reports, prepares and updates examiner manuals and instructions, and

participates on occasion in on-site examinations of State member banks as part of the monitoring function. The resources of the Board's Division of Data Processing are utilized to compile information gathered, while the Division of Research and Statistics assists in providing economic analyses.

The System's examiner force investigates allegations of discrimination by State member banks and monitors their compliance with the provisions of law prohibiting discrimination in home mortgage lending. These examiners work out of the 12 Federal Reserve Banks and are under the immediate control of senior examination personnel in each Reserve Bank. Each Federal Reserve Bank has established a separate consumer affairs unit, under the direction of a senior officer in charge of examination or member bank supervision, to coordinate the civil rights enforcement effort in each Federal Reserve District. These units receive guidance from the Board's Division of Consumer Affairs.

(14) The System's examiner force has developed a cadre of well-trained consumer examiners to investigate allegations of discrimination by State member banks and to monitor compliance with the various anti-discrimination laws. Consumer examiners are given recognition within the overall examination process, and their performance evaluated based on their competence and knowledge of the subject matter. Promotional opportunities also depend on the

size of the consumer examination program and on when it was established.

(15) Since April 1, 1977, which marked the beginning of a new consumer affairs enforcement program, the Board has incurred the costs shown below in implementing its compliance examination program. It is estimated that approximately 40% of this cost is related to the enforcement of compliance with the Fair Housing Act, the Equal Credit Opportunity Act, and Regulation B.

Compliance Examination Program

Reserve Bank Costs

	<u>Salaries (including fringe benefits)</u>	<u>Travel</u>	<u>Postage, Space, etc.</u>	<u>Total</u>
Examination	\$1,356,582	\$341,261	\$473,981	\$2,171,824
Educational/advisory services (creditors)	339,769	89,120	128,109	556,998
Consumer public education	80,434	13,595	13,258	113,287
Consumer complaints (separate break- down not available)	-	-	-	-
	\$1,776,785	\$443,976	\$621,348	\$2,842,109

Board Costs

Compliance Section 1978 budget	\$ 204,690	\$ 7,050	-	\$ 211,740
Totals	\$1,981,475	\$451,026	\$621,348	\$3,053,849

As stated in our letter of August 30, 1978, the Board is unable to provide certain other figures requested under question 15, as current Board reporting systems do not itemize the time spent by particular loan lines. Similarly, because of the extensive revisions being made to the enforcement program, projected costs are not available.

(16-17) From April 1977 through July 1978, examination reports on 861 State member bank consumer examinations were transmitted to the Board. This figure relates only to examination reports received by the Board. Since there is a time lag in the Reserve Banks' preparation of the reports, the number of banks actually examined was higher.

As stated in our letter of August 30, the Board does not currently require the reporting of the number of home loan applications, home loans granted, or their dollar volume. A State member bank that is subject to the Home Mortgage Disclosure Act is required to maintain records (for public disclosure) of the number and total dollar amount of mortgage loans originated or purchased by that institution during each fiscal year. The Home Mortgage Disclosure Act does not, however, impose a reporting requirement on the banks.

Current Board call reports disclose only outstanding real estate loans secured by 1-4 family residential properties which are either conventional loans or insured by FHA or guaranteed by VA. (See Attachment 7 for a tabulation of the call reports for the period ending June 30, 1978.) The Board's staff generally refrains from making projections of the kind specified in the question, as such projections would be purely speculative in light of changing mortgage loan market conditions.

(18-19) We attach data showing that approximately 50,565 hours were spent in examining 861 State member banks for the period from April 1, 1977, through July 31, 1978. Also see our letter of August 30 as to why other requested information is not available. (See Attachment 8.)

(20) For informational purposes, a distinction between "substantive" and "technical" violations is employed to classify data. The Board maintains a computer program and accompanying data bank which includes, among other items, a tally of alleged violations. Such statistics provide data for reports and are used to monitor the nature of violations in order to determine what areas require extra examiner time or special emphasis to achieve compliance.

Violations are considered "substantive" if they may result in significant harm to the customer and/or bank, if they form a pattern, or if they are knowing or willful. For example, intentional discrimination against a customer on a prohibited basis is a "substantive" violation. Violations are considered "technical" if they have no potential for significant monetary or other harm to the bank or customer, are minor forms deficiencies or are not intentional. For example, an isolated instance of failure to check the reason for adverse action on the form sent to the customer is a "technical" violation.

(21-24) As noted in our letter of August 30, the Board's present information systems do not classify information in the

form requested in questions 21-24. Attached is a summary of possible violations of the ECOA and the Fair Housing Act, reported by Federal Reserve Districts. (See Attachment 9-A.) Statistics on hours spent examining particular types or numbers of loans are not available. Such figures will vary, depending upon the loan volume within the bank and the institution's level of compliance. Also attached are figures, by Federal Reserve Districts, for the numbers of banks reexamined and the number that had repeat violations. (See Attachment 9-B.)

(25-26) In order to discharge the Board's obligation under the Federal Trade Commission Improvement Act for complaint handling and compliance activities generally, the Division of Consumer Affairs developed a method for the identification and recordkeeping of consumer complaints. This standardized, but entirely manual, system was formalized and implemented in January 1976. In September 1976, the Board published its procedures in Regulation AA for handling complaints by consumers alleging unfair or deceptive acts or practices by banks. The regulation mirrors the Board's intent to encourage consumers to submit complaints regarding an unfair or deceptive practice by a bank, or a violation of a law or regulation, and offers guidance on the basic information a complaint should contain.

A computerized consumer complaint information system was established on January 1, 1977, to provide the Board with a substantially broader data base that would serve as a mechanism for identifying recurrent consumer problems, as well as for reporting and accountability for all consumer complaints. The system is designed to provide an individual history of all complaints which are received and handled

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by the Federal Reserve System. It also provides summaries of complaints by type and concentration and helps the Board monitor State member bank compliance with consumer protection laws.

Consumer complaints may be directed to the Board or any Federal Reserve Bank. Within the Board, the Division of Consumer Affairs is responsible for processing consumer complaints. Each Federal Reserve Bank has established a separate consumer affairs unit under the direction of the senior officer in charge of examinations or supervision of State member banks.

Complaints received by the Board's staff or by a Reserve Bank are recorded on a Consumer Complaint Control Form, FR 1182. This form and the Consumer Complaint Control Change Sheet, FR 1182a, comprise the basic components used to enter and change data in the computer file. The complete text of the System's procedures and instructions is attached. (See Attachment 10.) The consumer complaint handling procedures encompass requests for information on or clarification of consumer protection laws and regulations, as well as the lodging of informal or formal complaints, by or on behalf of an individual.

When a complaint or request is received that is not within the jurisdiction of the System, the consumer is informed and suggestions are offered as to what person or organization may be better able to resolve the problem. Complaints that are within the enforcement or supervisory authority of another regulatory agency are forwarded to that agency for resolution. Staff advises the complainant in writing of the referral and the reason therefor.

Should the complaint involve a State member bank, an investigation is conducted by staff of the appropriate Reserve Bank. The investigation includes gathering any necessary additional information, either from the consumer or from the commercial bank involved, determining whether the complaint is valid, and taking appropriate action.

If the correspondent does not mention a particular institution, but describes a factual occurrence or inquires generally about the law, the staff provides an informational response or in some cases requests further details.

When complaints are referred to a Reserve Bank, the procedures require the Bank to report its findings and final complaint resolution to the Board. The Board's staff also receives selected reports on follow-up of complaints made directly to Reserve Banks.

Additionally, to assess the effectiveness of our efforts to be responsive to consumers, the Board's staff sends a follow-up letter to those consumers who contacted the Board concerning a problem with a State member bank. (See Attachment 11.) For the period from April 1977 through August 1978, 156 consumers were sent follow-up letters. Fifty-four (approximately 35 per cent) returned the questionnaire, and of those respondents 48 per cent indicated that the resolution was acceptable.

To evaluate the overall efficiency of the complaint handling system, the Division staff reviews reports and statistical summaries generated by the consumer complaint information system. Changes now being implemented will provide more streamlined and detailed reports and statistical information concerning consumer complaint histories.

(27) While the Board can provide statistical information on complaints alleging discrimination in the credit lending process, the present consumer complaint information system does not accommodate the segregation of complaints relating to home loans or home loan applications from other consumer or small business credit applications. Combined figures for the information requested in questions 27 a/b and 27 c/d for the period from July 1977 through June 1978 are attached. (See Attachment 12.)

(28) See response to question 27. The attachment referred to above also provides combined figures in response to question 28.

(29) Although the Board's current consumer affairs information system does not generate tabulations in the manner specified in the question, an examiner does review the State member bank's consumer complaint and correspondence files in the Reserve Bank before each consumer affairs compliance examination. This review encompasses all complaints received since the previous compliance examination. The most recent commercial examination report, the previous compliance examination report (including workpapers) and reports

from the consumer complaint information system (which discloses concentrations of complaints by State member banks) are also reviewed. This preliminary work is intended to alert the examiner to those areas in which the bank may have problems.

(30) Based on a survey of the Federal Reserve Banks, as of June 1, 1978, no State member bank had been named as a defendant in a private civil action under the ECOA, and we are not aware of any actions filed under the Fair Housing Act.

(31) The Board informs applicants or potential applicants of the existence and possible usefulness to them of the civil liability provisions of the Fair Housing Act and the Equal Credit Opportunity Act, mainly through the distribution of educational pamphlets (See Attachment 13 for samples) and occasionally during telephone inquiries. Most of the inquiries concerning Fair Housing and ECOA complaints require only clarification of the regulations. (This is evidenced by the figures in Attachment 13, which show that of 261 complaints received involving State member banks, 12 involved possible violations of Regulation B.) Thus, responses to these letters generally do not necessitate a discussion of the civil liability provisions. However, the educational materials discussed above are enclosed with almost all responses. In addition, a substantial number of the complaints involve other than State member banks and are subsequently referred to the appropriate regulatory agency for response.

(32) The Board believes that consumer education is an effective aid towards enforcement of the rights of consumers. As indicated above, the primary thrust of the educational effort regarding a consumer's private right of action is through informational materials. Based upon inventory figures available as of September 1, 1978, the following numbers of pamphlets have been distributed:

The Equal Credit Opportunity Act and ... Women	3,150,700
The Equal Credit Opportunity Act and ... Age	3,051,000
The Equal Credit Opportunity Act and ... Incidental Credit	1,183,500
The Equal Credit Opportunity Act and ... Credit Rights in Housing	2,105,000
How the New Equal Credit Opportunity Act Affects You (distributed by Philadelphia Reserve Bank)	100,500

As indicated in a press release dated March 7, 1978 (see Attachment 14), consumer information pamphlets are available individually or in bulk free of charge from the Board or from any of the 12 Federal Reserve Banks. The Board distributes pamphlets in bulk to the Reserve Banks for further dissemination to State member banks, consumer groups and other interested organizations, and to consumers pursuant to their requests. Multiple copies are also furnished to other Federal enforcement agencies. In addition, each person on the Board's general consumer affairs mailing list (totalling 1,014 as of July 11, 1978) automatically receives a copy.

As a result of combined efforts and methods of distribution, the publications are sent to financial institutions, retailers, other creditors, State and local agencies, consumer organizations, schools, libraries, and attorneys, as well as individual consumers.

(33) In November 1977 the staff surveyed a nonrandom sample of eight large creditors (including three banks) to determine the extent to which consumers were exercising their rights under the Equal Credit Opportunity Act and the Fair Credit Billing Act. The survey was also designed to determine the cost to creditors of complying with these laws. The results of this survey are described in the attached article from the Federal Reserve Bulletin of May 1978. (See Attachment 15.)

(34) The comment period for the proposed uniform enforcement guidelines for Regulation B ended September 1, 1978. A summary of comments will be completed later this month and will be forwarded to the Subcommittee at that time.

(35) Because of technical difficulties, the University of Michigan's Survey Research Center (which conducted the fieldwork for the 1977 Consumer Credit Survey) delivered the computer tape containing the raw data several months behind schedule. As a result, analysis of that data by the Board's outside contractor also fell behind schedule. The review will be completed later this year and will be sent to the Subcommittee when it is completed.

In the interim, the staff can supply only preliminary totals with regard to the survey. (See Attachment 16.) The staff strongly emphasizes that the figures shown in the attachment are preliminary in nature and that it presently draws no conclusions from them.

(36) See response to question 33.

(37) See responses to questions 8 and 10-12.

ATTACHMENTS

1. Bibliography on Housing Discrimination
2. Letter dated January 19, 1978, to Institute for Social Research, The University of Michigan re: Research on mortgage lending discrimination and Institute's response
3. Lecture Outline and Examiner Instructions
4. June 27, 1978 Press Release re: Proposed Equal Credit and Fair Housing Enforcement Guidelines
- 5 A. Examiner Checklist for Consumer Affairs Compliance Examination
 - B. Equal Credit Opportunity Manual
 - C. Fair Housing Examination
 - D. Home Mortgage Disclosure Act Examination
- 6 A. Board of Governors Organizational Chart
 - B. The Federal Reserve System, Purposes and Functions
7. Assets and Liabilities, pages 10-17
8. Examination Hours by Reserve Districts
- 9 A. Summary of Possible Regulation B Violations: March 1977 - July 1978
 - B. Second Examinations by Reserve Districts
10. Consumer Complaint Control Procedure
11. Follow-up Letter to Consumers
12. Tabulation of Consumer Complaints
13. Pamphlets
 - a) How the Equal Credit Opportunity Act Affects You
 - b) The Equal Credit Opportunity Act and . . . Women
 - c) The Equal Credit Opportunity Act . . . and Age
 - d) The Equal Credit Opportunity Act and . . . Incidental Credit
 - e) The Equal Credit Opportunity Act and . . . Credit Rights in Housing
14. March 7, 1978 Press Release
15. "Exercise of Consumer Rights Under the Equal Credit Opportunity and Fair Credit Billing Acts," Federal Reserve Bulletin, May 1978, Pages 363-366.
16. Preliminary Data on Consumer Survey

Bibliography

Attachment 1

Board of Governors of the Federal Reserve System, "Civil Rights Questionnaire," FR 858.

_____, Fair Housing Survey (Form B Approach), 1975.

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BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON, D. C. 20551



January 19, 1978

Dr. F. Thomas Juster, Director
Institute for Social Research
The University of Michigan
P.O. Box 1248
Ann Arbor, Michigan 48104

COPY

Dear Dr. Juster:

This is to confirm our telephone conversation of Monday, January 16. We discussed the possibility of your arranging for a group of people from the private sector who specialize in the measurements of attitudes and opinion to meet with us here at the Board in order to discuss the feasibility of using statistical measures as part of the supervisory process to indicate possible improper credit discrimination. I think we would all agree with you about the difficulty of developing any measures of this kind to a stage where they are operational. But I am troubled by the present atmosphere in which consumer groups and Congress insist that it can be done, while the regulators seem as firmly convinced that it cannot. I would like to find out what experts in the field who do not have an emotional commitment to one conclusion or the other think can be done. If any promising approaches emerged from the meeting, we would then attempt--with appropriate consultation--to work out a proposal for a formal project that could be submitted to the Board so that it could decide whether to make an independent effort to find a usable method.

There are a number of questions that have occurred to us. Undoubtedly, you will be aware of others. Among our questions are: Is it necessary to accumulate detailed information about large universes of applicants and to analyze that data centrally (in Washington)? Should efforts to detect indications of credit discrimination be confined to housing credit, or is it feasible to go beyond? If so, into what areas? How can pre-application discouragement, or 'steering,' be handled? What is the relevance of a lending institution's 'image'? What is the relevance, in the housing credit market, of the sector that is served by creditors other than federally supervised financial institutions?

I suppose one would begin from the information that is already available, or which the Board would have the authority to collect. You are already familiar with them, I am sure, but for

Dr. F. Thomas Juster

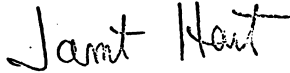
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your convenience, I enclose copies of Regulation C (Home Mortgage Disclosure) and Regulation B (Equal Credit Opportunity). Section 202.13 of Regulation B contains the present Federal regulatory authority for collecting information 'for monitoring purposes,' and the sample Residential Loan Application at the back of the B pamphlet is, I believe, substantially the same as that used by FNMA, so that the information contained on it is widely available in uniform format.

We will look forward to hearing from you about a suggested date, and the names of the people who you feel should be invited to the meeting and who would like to attend so that we can make arrangements for reimbursing travel expenses.

Thank you again for your interest in helping us.

Sincerely,



Janet Hart
Director

Enclosures

m e m o r a n d u m

March 20, 1978

To: Janet Hart, Federal Reserve Board
From: F. Thomas Juster, James Morgan, Thomas Cies
Subj: Research on discrimination in mortgage lending

Introduction

The Federal Reserve Board, as the custodian of the Equal Credit Opportunity Legislation, needs to be concerned with identifying the incidence of (and remedies for) two types of discrimination in mortgage lending: first, discrimination on the basis of borrower characteristics which are unrelated to risk, like race or sex; second, discrimination on the basis of location which is unrelated to risks.

Some general observation by way of background may be useful. To begin with, discrimination on the basis of race or sex can be said to exist if minority or female borrowers pay higher rates, are offered shorter maturities, or are required to make larger downpayments than majority or male borrowers, given characteristics of the borrower or of the loan that are associated with legitimate differences in default risk. With that definition, proving the existence of discriminatory lending practices is extremely difficult, since it is necessary to adjust any differences found in loan terms and availability for all borrower-related as well as other characteristics of the loan that can be associated with differentials in default risk.

Analysis of "red-lining" is more difficult than straightforward analysis of discriminatory practices related to race or sex. The reason is that characteristics of neighborhoods can have an impact on default risk for borrowers with given objective characteristics. To see that, note that risk as viewed by the lender consists of two elements: first, the probability that a borrower with given characteristics will be forced to default on the loan; second, the loss associated with foreclosure, which is a function, among other things, of the borrower's equity in the property and thus of the rate at which a given property appreciates in value. For that reason, expected loss rates are higher, given borrower characteristics, on property that is anticipated to appreciate less rapidly (or to depreciate). Moreover, the probability of default is itself likely to be associated with the rate of price appreciation on mortgages property: the incentives of mortgage borrowers not to default may well depend on the size of the borrowers' equity. While equity may not effect the borrower's ability to repay, it may affect his/her willingness to repay: if a given piece of residential property is depreciating because of general characteristics of the neighborhood, borrowers have less incentive to

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avoid default and foreclosure than if the same property is rising in price.

From our discussion with you and your colleagues last week, the FRB seems to have two separate but related problems in this area. First, existing legislation may well require the elimination of mortgage lending practices which are in fact associated with differential expected loss rates. As the legislation is drafted, it appears that lending decisions based on expectations of changing neighborhood values are not a valid criterion for refusal to make loans. Hence, existing legislation seems not to recognize the possible interaction between the effects of borrower characteristics like income on the probability of default and the rate of change in property values in a given neighborhood. Second, and quite independently of existing legislation, the FRB is interested in discovering the extent of discriminatory practices on the assumption that discrimination is properly defined to mean differential treatment given expected loss rates, since sound public policy has to be based on good analysis. This memo is addressed more to the latter than to the former issue, although appropriate modification would make it applicable to either.

Research Agenda

A number of possible ways to approach the problem of analyzing discrimination in mortgage lending were discussed, and four distinct types of studies emerged.

A. Analysis of Existing Loan Contracts

It was generally agreed that analysis of existing mortgage contracts, drawn from files supplied by lending institutions under the jurisdiction of the FRB, could be used to answer certain very limited questions regarding the existence of discriminatory lending practices. The recommended approach would include the following:

1. Of the universe of mortgage lending contracts available in the files of banks (some five million, covering a 25-month period of time), extract a randomly selected sample of several thousand. One would presumably draw a sample of banks, request each bank to select at random a number of contracts (the number would be related to lending volume), then ask that the relevant information on borrower characteristics, mortgage loan characteristics, etc., be forwarded to the FRB for analysis.
2. It would be possible, but not judged useful, to request that banks pass along a sample of loan applications that were refused. If there were a large proportion of refusals to total applications, one would reconsider #2. Or if one could trust that refused applicants were like others discouraged from borrowing, one would oversample the refused applications.

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3. Subject the successful loans to an analysis which would relate borrower characteristics, location characteristics and mortgage terms to each other, looking for evidence that minority or female borrowers were able to obtain less advantageous mortgage terms, given the borrower characteristics and locational characteristics.
4. If the overall analysis suggested that there was evidence of discriminatory lending practices, examine the data more carefully (by region, e.g.), to see whether or not the discriminatory practices seem to be more prevalent in particular locations.
5. If so, select a larger sample from the region or other location (central cities) where discriminatory lending practices seem to exist, and narrow down to specification of the types of areas or types of lending institutions in which analysis of existing mortgage contracts suggested the existence of discriminatory practices.

This analysis was not viewed as a way to identify lenders who had engaged in discriminatory lending practices, with an eye toward using the analysis for enforcement. Rather, it was viewed as a way to map the universe of possible discriminatory practices to see where they appeared to be most important. On the whole, the group viewed such an analysis as unlikely to yield evidence of discriminatory lending practices, on the grounds that most lending discrimination, if it exists at all, is unlikely to be found in analysis of differences among actual contracts. Rather, it was thought that discrimination was more likely to take the form of discouraging borrowers, by one device or another, from even applying for mortgage funds, and that the files of either actual mortgages placed or applications refused would be unlikely to shed much light on that issue. Nonetheless, such an analysis is probably worth doing, since: a) it might yield some insights into the nature, prevalence and location of discriminatory lending practices; b) it would exploit an available set of data that needs to be examined; and c) more subtle forms of lending discrimination might well show up in the characteristics of actual loans placed as well as in the (unobservable) distributions of deterred borrowers and successful borrowers.

The Michigan group indicated a willingness to provide some help on analysis of these data, if requested, and to provide information on analysis programs that would be useful in carrying out such a study (MCA, AID). It was not thought that this analysis would shed any light at all on red-lining practices, since by definition red-lined areas would not produce observations in the universe under discussion.

B. Survey of Deterred Borrowers

To get at the impact of mortgage lending practices which might be discriminatory and which would result in discouraged borrowers rather than refusals, it was proposed that a nationwide probability sample of telephone-owning households be conducted by the Survey Research Center at The University of Michigan. The basic idea was to screen a large number of randomly selected households with a few simple questions to determine whether or not these households present

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owned a home, presently had a mortgage, had acquired the house and the mortgage within the last five years, or had thought about buying a house within the last five years. For households who had either purchased a house or had thought about purchasing houses within the last five years, a much more detailed set of questions would then be asked.

For households who had either purchased houses or thought about buying them within the five-year period, the interview sequence would be:

1. A few demographic questions (who lives here, and how are they related to each other).
2. Questions on home ownership, recent home purchases, or recent interest in buying a home.
3. For those with recent purchases or recent interest, a set of questions on basic financial characteristics of the household unit--income history, employment history, debt, assets, etc. (In principal, this section would try to operationalize all the elements that would normally go into a borrower credit rating evaluation).
4. Detailed data on recent house purchase and mortgage activity for houses purchased within the past five years (house value, size of mortgage, search for a mortgage, institution holding mortgage, mortgage terms, etc.).
5. For those interested in buying a house but not buying, a detailed set of questions designed to find out what deterred them--they couldn't really afford it, they were discouraged by a mortgage lender, etc.

For households who had neither purchased houses within the past five years nor indicated that they were interested in doing so, the interview would be basically sections 1 and 2 above. For owners, however, questions on new mortgage borrowing for renovations might be asked.

Several questions need to be answered as a preliminary to costing and serious consideration of this project:

1. What proportion of households in a random selection of U.S. households would be eligible for inclusion in the more detailed (non-screening) part of the study?
2. How far back in time is it reasonable to go in terms of recall questions about house purchases, mortgage characteristics, searching for houses or mortgages without success, etc.?

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3. What kind of questions can be asked that would provide reliable measures of possible discriminatory practice in mortgage lending that take the form of discouraging prospective borrowers?
4. To what extent could a survey of this sort be used to shed light on red-lining practices? One possibility is to identify locations where people actually bought houses and obtained mortgages, as well as locations where people had looked unsuccessfully for houses and mortgages.
5. Should the sample be selected so that every household has an equal probability of selection, or should it be more heavily concentrated in areas where discriminatory practices and/or red-lining are more likely to occur, e.g. central cities, SMSAs, etc.

The cost of carrying out a survey of this sort depends in significant part on the proportions of households with recent experience either in obtaining mortgages or looking for them. One would like to have a sample of "live" cases of reasonable size, and to have enough minority respondents to enable separate analysis of discriminatory lending practices. If it takes ten interviews to produce one live case, one has to screen 10,000 households to get 1,000 units in the sample. If the relevant house purchase or search behavior is limited to one out of 20, one has to screen 20,000 to get 1,000 live cases, and so forth. The suggestion is to do a small scale exploratory study of several hundred cases to find out what that proportion is, how it varies depending on how the time span is varied, then use results of that pilot test to estimate how much it would cost to do a study of this sort with enough sample size to permit serious quantitative analysis.

Several characteristics of the proposed study should be clearly understood:

1. The data on actual mortgage transactions and mortgage search would be soft relative to data from the files of mortgage lenders. One could of course go to lending institution files (with permission) for sample cases with recent mortgage lending activity, but that would add appreciably to the cost and might not gain that much in reliability.
2. Responses from people who have searched unsuccessfully for houses or mortgages would be subject to the charge that they represented biased recollections of people who had been disappointed.
3. Without a good deal of oversampling in central cities or SMSAs, the likelihood of uncovering much evidence of red-lining activity might not be very great. There might not be enough cases to do more than identify characteristics of areas (region, city size) where unsuccessful mortgage activity or the characteristics of mortgages actually obtained seemed to imply red-lining.

The survey procedure just described could also be used to examine a question that is of interest to economists at the FRB, although not to the credit group.

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In recent years, there have been a number of quarters in which aggregate increases in mortgage debt have substantially exceeded aggregate new construction, leading to one of several hypotheses:

1. People are refinancing existing mortgages, pulling equity out of increased housing values, and using the proceeds for consumer spending of various sorts.
2. The level of housing turnover in existing homes is higher than usual relative to new housing construction, hence there is a substantial increase in the level of mortgage debt outstanding on the existing housing stock (because of differences in the mortgage balances of sellers compared to the mortgages balances of new buyers). But there is no "spillover" into consumer spending.
3. There is an explosion of mortgage-financed renovation or additions to existing houses.
4. Something else is going on in the mortgage market that we don't fully understand.

For macro policy purposes, it is important to find out which of these explanations is the correct one. Obtaining data from a sample of households on recent mortgage transactions would provide the opportunity to examine the mortgage renegotiation issue (increases in mortgages resulting from renegotiation, the uses to which those funds have been put), and in general, to discover the reasons why the behavior of mortgage debt is so different than the behavior of new construction activity. A project of this sort would be highly complementary to the discouraged borrower study that is of interest to the credit regulatory group.

C. Special Study of Real Estate Brokers and Mortgage Lenders

If the outcome of the study just described is that borrowers have been steered away from mortgage loans either by advice from real estate brokers or mortgage loan officers, it is suggested that a study to look at the other side of the coin--how real estate brokers and bankers see the problem--might illuminate some of the processes by which discrimination and/or red-lining takes place. Such a study might select a sample of communities, designed to represent different types of mortgage lending markets, select a set of real estate brokers and mortgage lenders within those communities, and conduct interviews with them to try to piece together a coherent picture of why they or others steered people away, and whether such practice seems consistent with a nondiscriminatory explanation of actual practice.

Such a study might turn up a variety of explanations for actual discriminatory practice which might yield different applications for remedial policies. For example:

1. Real estate agents might direct buyers away from low-cost institutions because they misperceive the practices of mortgage lending

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institutions (as judged by what mortgage lenders in the same community report).

2. Mortgage lenders might discourage loan applications by minorities, or applications in areas with heavy minority populations, because they know that certain combinations of loans cannot be rolled over to a secondary buyer, or because they misperceive the reactions of secondary buyers.
3. Real estate brokers may steer minority customers away from certain areas because the owners of those properties have instructed them to do so.
4. Red-lining may be a consequence of clearly visible deterioration that is objectively observable and measurable.
5. Red-lining may be a consequence of collusion between land developers, city officials and mortgage lenders, in which properties in certain areas are pushed down in price so that they can be packaged together for redevelopment and resold at substantial profits.

The object of the proposed survey of real estate brokers and mortgage lenders is not to develop hard data that might form the basis for regulatory policies. Rather, it is to help the FRB in getting a better understanding of some of the processes by which discriminatory lending practices and red-lining come into being. One would expect to find significant differences among regions, among and within central cities, and in markets with different degrees of competitiveness in the mortgage lending business.

D. A Study of Red-Lining Practices

None of the studies discussed above provides a way to measure the incidence and importance of red-lining as a mortgage lending practice. One way to do that is to study the structure of mortgage lending in a representative number of sample areas, selected so as to represent locations where red-lining is alleged to be practiced, areas where it is not thought to be a problem, and areas where the situation is ambiguous. The basic idea is that the existence of red-lining will show up in the distribution of types of mortgages held by the owners of residential properties. Where red-lining is being practiced one would expect to find few conventional bank mortgages, and much more intensive use of mortgage bankers, secondary mortgage lenders like family and friends, etc. Thus a study which focuses on the characteristics on mortgage loans by date when the loan was incurred, ought to show up areas in which red-lining currently exists.

Procedures for selecting sample points are obviously crucial for this study. Ideally, one would like to divide the country into geographic areas where red-lining practices are suspected, those where they are not thought to exist, and other. One would then select a sample from each type of area, and within each of these area samples, a large cluster of residential structures. Data

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would then be obtained on the characteristics of mortgages for each of the structures in each of the sample areas, with the distribution of mortgage loan providing a measure of the presence or absence or red-lining.

Although the basic structure of the study seems clear enough, it is not evident just how the data would be collected. It is possible that the information about individual structures selected in the sample could all come from some kind of administrative record--transfers of deeds, title insurance, property tax data from local communities, etc.

E. SMSAs--Non SMSAs Project

The basic idea is that the FRB now obtains data from local governments and local community groups in SMSAs about lending practices and community development programs (?). The issue is, should such reporting be extended to non-SMSAs?

The proposed methodology is to rely on the SRC sample of local government units, drawn for the Revenue Sharing Study, and obtain enough data from all local government units so that comparisons between local units in SMSAs and outside of SMSAs could be made.

Of these various possibilities, some should and perhaps could be done by the Federal Reserve Board research staff. Others should and could be done in collaboration with others. Of those latter, the one where the Survey Research Center, University of Michigan, would be of the greatest potential use would be the one that screened a national sample of households to find out about people's experience in seeking and getting mortgage credit. Such a study would be expensive, several hundred thousand dollars, because collecting new data is always expensive, but it would provide unbiased samples of those most able to report experiences and most aspects of the loan. By knowing the locations of the properties on which loans were sought and/or obtained, and by oversampling the large urban areas, the study could provide pilot evidence on patterns by area. More important it would provide information on what people were told about availability of credit, and by whom, whether they actually applied, and about whether there would be substantial bias in looking at applications, leaving out these discouraged from applying.

In areas where such data provides evidence of systematic patterns by location, race or sex, there might be reason for mounting more extensive studies of various sorts.

For a much smaller sum, we could use one or more of our monthly waves of interviews of about 600-700 interviews, to find out what fraction of a representative sample would have each of various kinds of experience to report: seeking mortgage credit, buying a house with a mortgage, taking out a new mortgage on an already-owned house.

TITLE VIII CIVIL RIGHTS SPEECH

THE CIVIL RIGHTS ACT OF 1968 DECLARED THAT IT IS THE POLICY OF THE UNITED STATES "TO PROVIDE WITHIN CONSTITUTIONAL LIMITS FAIR HOUSING THROUGHOUT THE UNITED STATES. THE CONGRESSIONAL LANGUAGE IS SWEEPING AND REFLECTS AN INTENTION THAT THIS ACT, LIKE OTHER CIVIL RIGHTS LAWS, BE LIBERALLY CONSTRUED SO THAT THE UNFAIRNESS AND HUMILIATION OF RACIAL DISCRIMINATION BE EFFECTIVELY ELIMINATED. THE ACT WAS INTENDED TO HAVE THE BROADEST OBJECTIVES AND SCOPE AND TO PROHIBIT NOT ONLY OPEN DIRECT DISCRIMINATION BUT ALSO ALL PRACTICES WHICH HAVE A RACIALLY DISCOURAGING EFFECT.

TITLE VIII OF THE CIVIL RIGHTS ACT PROHIBITS STATE MEMBER BANKS FROM DENYING A MORTGAGE OR HOME IMPROVEMENT LOAN TO ANYONE FOR REASONS OF RACE, COLOR, RELIGION, SEX, OR NATIONAL ORIGIN. THIS INCLUDES LOANS FOR THE PURPOSE OF PURCHASING, CONSTRUCTING, IMPROVING, REPAIRING OR MAINTAINING A DWELLING. DISCRIMINATING IN THE FIXING OF THE AMOUNT, INTEREST RATE, DURATION, OR OTHER TERMS COULD BE HELD ILLEGAL. FROM AN HISTORICAL PROSPECTIVE THERE WERE VARIOUS CIVIL RIGHTS ACTS WHICH PRECEDED THE 1968 CIVIL RIGHTS ACT. THE CIVIL RIGHTS ACT OF 1866 PROVIDED THAT ALL CITIZENS SHALL HAVE THE SAME RIGHT AS WHITE PERSONS TO PURCHASE AND LEASE REAL AND PERSONAL PROPERTY. THIS ACT LIE DORMANT FOR 100 YEARS AS IT HAD BEEN CONSTRUED TO APPLY ONLY IN CASES WHERE STATE ACTION WAS INVOLVED. ON JUNE 17, 1968 IN THE CASE OF JONES V. MAYER CO. 392 U.S 409 (1968) THE U.S. SUPREME COURT HELD THAT A RACIALLY MOTIVATED REFUSAL OF A PRIVATE RESIDENTIAL

DEVELOPER TO SELL A HOUSE TO A MIXED COUPLE VIOLATED THE 1866 STATUTE. THE COURT UPHELD THE CONSTITUTIONALITY OF THIS LAW STATING THAT IT WAS A VALID EXERCISE OF THE POWER OF CONGRESS TO ENFORCE THE THIRTEENTH AMENDMENT, THE ANTISLAVERY AMENDMENT.

THE COURT STATED "AT THE VERY LEAST, THE FREEDOM THAT CONGRESS IS EMPOWERED TO SECURE UNDER THE THIRTEENTH AMENDMENT INCLUDES THE FREEDOM TO BUY WHATEVER A WHITE MAN CAN BUY, THE RIGHT TO LIVE WHEREVER A WHITE MAN CAN LIVE. . ." AND WHEN RACIAL DISCRIMINATION HEREDS MEN INTO GHETTOS AND MAKES THEIR ABILITY TO BUY PROPERTY TURN ON THE COLOR OF THEIR SKIN, THEN IT TOO IS A RELIC OF SLAVERY.

WHEREAS THE CONSTITUTIONALITY OF THE 1866 LAW WAS BASED ON THE 13TH AMENDMENT TO THE UNITED STATES CONSTITUTION, THE CONSTITUTIONALITY OF TITLE VIII IS PRIMARILY BASED ON THE COMMERCE CLAUSE AND THE 14TH AMENDMENT. THIS WAS THE POSITION TAKEN BY THE ATTORNEY GENERAL IN RECOMMENDING THE ENACTMENT OF THE FAIR HOUSING LAW. HE CONTENTED THAT THE COMMERCE CLAUSE WAS APPLICABLE BECAUSE THE MATERIALS USED IN THE CONSTRUCTION OF HOUSING ARE IN INTERSTATE COMMERCE, THE FINANCING OF HOUSING IS PROVIDED BY FINANCIAL INSTITUTIONS INVOLVED IN INTERSTATE DEALINGS AND THE PEOPLE WHO PURCHASE, RENT AND OCCUPY HOUSING FREQUENTLY MOVE FROM STATE TO STATE. HE URGED FURTHER THAT THE 14TH AMENDMENT WAS APPLICABLE BECAUSE CONGRESS IS EMPOWERED UNDER THE AMENDMENT TO REMOVE OBSTACLES IN THE WAY OF PERSONS SECURING THE EQUAL BENEFITS OF GOVERNMENT AND TO CORRECT THE EVIL EFFECTS OF POST UNCONSTITUTIONALLY DISCRIMINATORY GOVERNMENT ACTION.

THE COURT IN JONES V. MAYER CO. HELD THAT THE CIVIL RIGHTS ACT OF 1866, 42 U.S.C. 1982, AND TITLE VIII OF THE CIVIL RIGHTS ACT OF 1968 STAND INDEPENDENTLY AND DO NOT LIMIT OR IMPINGE ON EACH OTHER.

ENDING PRACTICES

. SOUND PRACTICES

NONDISCRIMINATORY LENDING DOES NOT REQUIRE THAT APPLICANTS

WHO APPEAR TO BE SIMILARLY QUALIFIED ACCORDING TO AN OBJECTIVE CRITERION WILL RECEIVE LOANS ON IDENTICAL TERMS. DENYING LOANS, OR GRANTING LOANS ON MORE STRINGENT TERMS AND CONDITIONS, HOWEVER, MUST BE JUSTIFIED ON THE BASIS OF SUCH FACTORS AS THE FOLLOWING, PROVIDED SUCH FACTORS ARE APPLIED EQUALLY TO ALL APPLICANTS:

-- AN APPLICANT'S INCOME;

-- AN APPLICANT'S CREDIT HISTORY;

-- LENGTH OF EMPLOYMENT;

-- LENGTH OF LOCAL RESIDENCE;

-- THE CONDITIONS OR DESIGN OF THE PROPOSED SECURITY PROPERTY

(OR OF NEARBY PROPERTIES WHICH CLEARLY AFFECT THE VALUE OF THE PROPOSED SECURITY PROPERTY) PROVIDED SUCH DETERMINANTS ARE STRICTLY ECONOMIC OR PHYSICAL IN NATURE;

-- THE AVAILABILITY OF NEIGHBORHOOD AMENITIES OR CITY SERVICES;

-- THE NEED OF THE BANK TO HOLD A BALANCED REAL ESTATE LOAN

PORTFOLIO, WITH A REASONABLE DISTRIBUTION OF LOANS IN VARIOUS NEIGHBORHOODS, TYPES OF PROPERTY, AND LOAN AMOUNTS; OR

-- OTHER BANKING FACTORS WILL ALSO AFFECT THE AVAILABILITY

AND ALLOCATION OF BANK CREDIT, FOR EXAMPLE TIGHT MONEY CONDITIONS MAY DICTATE THAT ONLY EXISTING CUSTOMERS ARE RECEIVING CREDIT.

. POSSIBLE DISCRIMINATORY PRACTICES

THERE ARE CERTAIN LENDING PRACTICES WHICH SUGGEST UNLAWFUL

DISCRIMINATION. THE FOLLOWING LIST IS NOT MEANT TO BE ALL INCLUSIVE BUT IT DOES PROVIDE GUIDELINES FOR THE EXAMINER:

-- RACIAL NOTATION OR CODE ON APPRAISAL FORMS OR LOAN FORMS, EXCEPT AS REQUIRED BY REGULATORY AGENCIES;

-- ANY OF THE FOLLOWING IF IMPOSED BECAUSE OF RACE, RELIGION, COLOR, SEX OR NATIONAL ORIGIN

A. LOW APPRAISALS

B. MORE ONEROUS INTEREST RATES, TERMS, CONDITIONS, OR REQUIREMENTS (E.G. FHA INSURANCE, ETC.)

C. DIFFERING STANDARDS, PROCEDURES, PENALTIES, FORECLOSURES, REINSTATEMENTS, OR OTHER COLLECTION PROCEDURES

D. USE OF EXCESSIVELY STRINGENT CREDIT STANDARDS;

-- FAILURE TO MAKE HOUSING LOANS IN CERTAIN PORTIONS OF THE BANK'S SERVICE AREA BECAUSE OF THE RACE, COLOR, RELIGION, OR NATIONAL ORIGIN OF THE RESIDENTS;

-- THE MAKING OF LOANS TO SPECULATORS, DEVELOPERS, OR OTHER PERSONS WHO ARE KNOWN TO EXPLOIT MINORITY GROUPS THROUGH THE SALE OR OTHER TRANSFER OF REAL ESTATE AT INFLATED PRICES OR ON OTHER UNREASONABLE TERMS AND CONDITIONS; AND

-- THE FAILURE TO DISPLAY AND MAINTAIN THE EQUAL HOUSING LENDING POSTER IN THE LOBBY OF EACH OFFICE IN A PROMINENT PLACE READILY APPARENT TO ALL APPLICANTS SEEKING LOANS.

DISCRIMINATORY PATTERNS AND INDIVIDUAL INSTANCES OF DISCRIMINATION ARE OFTEN DIFFICULT TO FIND AND EVEN MORE DIFFICULT TO PROVE. THE EXAMINER MUST REALIZE THAT FAIR HOUSING LENDING PRACTICES INVOLVE USING OBJECTIVE CRITERIA IN AN OBJECTIVE MANNER. THE JUDGMENT OF

ETHER OR NOT DISCRIMINATION OCCURRED IN AN INDIVIDUAL CASE IS A LEGAL QUESTION TO BE DECIDED IN A COURT OF LAW. THE EXAMINER SHOULD BE CONCERNED WITH WHETHER OR NOT THE BANK'S PRACTICES APPEAR TO BE DISCRIMINATORY AND, IF SO, WHICH PRACTICES AND THE EXTENT OF THE PRACTICES.

THE BEST EXAMINATION APPROACHED IS FROM AN INTERNAL CONTROLS POINT OF VIEW. HAS THE BANK ESTABLISHED PROCEDURES TO PREVENT DISCRIMINATORY ACTIONS? HAVE POLICIES BEEN ADOPTED THAT, IF FOLLOWED CONSISTENTLY, WOULD ACHIEVE NONDISCRIMINATORY LENDING? ARE THESE PROCEDURES AND POLICIES BEING CONSISTENTLY FOLLOWED?

AIR HOUSING ACT

EXAMINATION OBJECTIVES

1. TO DETERMINE THAT THE BANK IS COMPLYING WITH THE VARIOUS NONDISCRIMINATION LENDING STATUTES.
2. TO VERIFY THAT THE BANK'S BOARD OF DIRECTORS IS AWARE OF ITS RESPONSIBILITIES UNDER THE RELEVANT PROVISIONS OF THE VARIOUS STATUTES AND THAT THE BANK'S BOARD HAS ADOPTED NONDISCRIMINATORY LENDING POLICIES, PROCEDURES, AND LOAN UNDERWRITING STANDARDS.
3. TO INSURE THAT THE BOARD OF DIRECTORS HAS PROVIDED FOR THE PERIODIC REVIEW OF POLICIES, PRACTICES, LOAN UNDERWRITING STANDARDS, AND THAT THE BANK ADMINISTERS, WITHOUT BIAS, APPLICATION PROCEDURES, COLLECTION OR ENFORCEMENT PROCEDURES, AND ALL OTHER LENDING CONDITIONS.
4. TO DETERMINE THAT DECISIONS AS TO REJECTED LOAN APPLICATIONS APPEAR TO HAVE BEEN BASED ON ECONOMIC FACTORS AND WERE UNIFORMLY APPLIED TO ALL APPLICATIONS.

VERIFICATION PROCEDURES

1. IN REVIEWING THE BANK'S LENDING POLICIES, THE SPECIFIC AREAS OF CONCERN ARE THE FOLLOWING:

A. OVERALL LENDING CRITERIA:

- . BANK'S EMPHASIS ON MORTGAGE AND HOME IMPROVEMENT LENDING;
- . BANK'S PRIMARY SERVICE AREA;
- . INDICATIONS OF AREAS IN WHICH THE BANK PREFERS TO LEND AND AREAS IN WHICH THE BANK PREFERS NOT TO LEND;
- . MINIMUM INCOME STANDARDS, DOWNPAYMENT REQUIREMENTS, AND OTHER OBJECTIVE CRITERIA WHICH MUST BE MET TO QUALIFY FOR A MORTGAGE LOAN; AND
- . BASIS FOR APPLYING INTEREST RATES AND TERMS.

B. APPRAISAL POLICIES:

- . DETERMINE WHETHER APPRAISALS ARE DONE BY INDEPENDENT APPRAISERS, BANK PERSONNEL, OR A COMBINATION OF BOTH;
- . IF APPRAISALS ARE DONE BY BANK PERSONNE, DETERMINE HOW THE APPRAISERS ARE TRAINED, THE ADEQUACY OF THE TRAINING, AND INDICATIONS OF DISCRIMINATORY POLICY IN TRAINING MATERIAL;
- . IF DONE BY OUTSIDE APPRAISERS, INSURE THAT THE BANK IS FAMILIAR WITH THE APPRAISER'S STANDARDS AND REVIEW THEM FOR DISCRIMINATORY POLICIES; AND
- . IN CASES WHERE THE BANK IS NOT FAMILIAR WITH THE STANDARDS USED BY THE APPRAISER, REPORT THIS AS AN INTERNAL CONTROLS EXCEPTION.

C. APPRAISAL STANDARDS:

(REVIEW FOR THE FOLLOWING DISCRIMINATORY APPRAISAL POLICIES)

- ASSIGNING A LOWER VALUE TO A NEIGHBORHOOD BECAUSE OF MIX OF RACES AND NATIONAL ORIGIN; AND
- EQUATING A RACIALLY MIXED NEIGHBORHOOD WITH A DETERIORATING NEIGHBORHOOD.

(REVIEW FOR THE FOLLOWING POLICIES THAT MAY RESULT IN DISCRIMINATORY LENDING)

- POLICIES THAT INCORPORATE THE IDEA THAT DETERIORATION OF A NEIGHBORHOOD IS INEVITABLE.

D. INSURE THAT THE BANK POLICIES ARE BASED ON AN AWARENESS OF THE REQUIREMENTS OF THE ACT.

2. INTERVIEW BANK PERSONNEL TO DETERMINE THE OBJECTIVE CRITERIA

USED IN EVALUATION OF CREDIT. ALSO, INTERVIEW TO DETERMINE PERSONNEL'S KNOWLEDGE OF THE PROHIBITION AND REQUIREMENTS OF THE ACT AND ADHERENCE TO POLICY.

- A. VERIFY THAT INITIAL CONTACT PERSONNEL DO NOT "PRE-SCREEN" APPLICANTS;**
- B. VERIFY THAT LENDING OFFICERS APPLY THE BANK'S OBJECTIVE CRITERIA; AND**
- C. BE AWARE OF THE POSSIBILITY OF "UNWRITTEN" DISCRIMINATORY LENDING POLICIES DURING INTERVIEWS AND CASUAL DISCUSSIONS.**

3. REVIEW OPEN AND DECLINED LOAN FILES FOR INDICATIONS OF THE FOLLOWING DISCRIMINATORY POLICIES. [FOR LOANS MADE AFTER MARCH 23, 1977, TO PURCHASE RESIDENTIAL PROPERTY OF ONE-TO-FOUR FAMILY DWELLINGS AND SECURED BY A LIEN ON THIS PROPERTY, REGULATION B (12 CFR 202.13) REQUIRES THE BANK TO REQUEST INFORMATION ON THE FOLLOWING: RACE, NATIONAL ORIGIN, SEX, MARITAL STATUS, AND AGE. WHERE THE CUSTOMER HAS CHOSEN TO PROVIDE THIS INFORMATION, IT WILL BE AVAILABLE IN YOUR SAMPLE TO HELP IN MAKING THIS DETERMINATION.] DETAIL PERTINENT INFORMATION ON APPROPRIATE LINE SHEETS.

- A. CHECK THE APPLICATION TO DETERMINE THAT THERE ARE NO RACIAL OR SEXUAL CODES, EXCEPT AS REQUIRED BY THE ENFORCING AGENCY;
 - B. REVIEW APPRAISAL FOR INFORMATION RELATING TO RACIAL MAKEUP OF THE NEIGHBORHOOD AND FOR RACIAL CODING;
 - C. EXAMINE DOCUMENTS FOR LOAN OFFICER COMMENTS THAT INDICATE THE APPLICANT'S RACE, SEX, NATIONAL ORIGIN OR RELIGION; AND
 - D. ONCE INFORMATION IS DETAILED, REVIEW FOR OVERALL INCONSISTENC SUCH AS:
 - . INCOME OF ONE GROUP NOT GIVEN THE SAME CONSIDERATION AS ANOTHER GROUP,
 - . MORE ONEROUS TERM REQUIRED OF ONE GROUP OVER ANOTHER, AND
 - . VARIANCES IN APPLYING CRITERIA, INCLUDING MINIMUM INCOMES,
- AMOUNT OF LOANS, RATIOS, ETC.

ACTIONS UNDERTAKEN BY THE BOARD SINCE 1968 TO IMPLEMENT THE GOALS OF THE 1968 CIVIL RIGHTS ACT INCLUDE (1) THE INTRODUCTION IN 1971 OF A SPECIAL COURSE OF STUDY FOR THE SYSTEM'S BANK EXAMINERS ON THE REQUIREMENTS OF THE CIVIL RIGHTS ACT AND THE EXAMINER'S ROLE IN FURTHERING COMPLIANCE WITH THE ACT; (2) INITIATION, ALSO IN 1971, OF THE USE OF A BANK EXAMINER QUESTIONNAIRE ON WHICH EXAMINERS EVALUATE AND REPORT ON MEMBER BANK COMPLIANCE WITH THE 1968 ACT; (3) ISSUANCE OF A STATEMENT IN DECEMBER 1971 RECITING THE PROVISIONS OF SECTION 805 OF TITLE VIII AND RECOGNIZING THE NECESSITY FOR INCREASED PUBLIC AWARENESS OF THE NONDISCRIMINATION REQUIREMENTS AND THE AVAILABILITY OF COMPLIANT PROCEDURES.

THE BOARD'S STATEMENT CALLED UPON MEMBER BANKS TO DISPLAY EQUAL HOUSING LENDER POSTERS IN THEIR HOBBIES AND TO INCLUDE IN ALL ADVERTISING OF REAL ESTATE LOAN SERVICES, PROMINENT NOTICE OF THE BANK'S EQUAL HOUSING LENDER POLICY OF NONDISCRIMINATION AND A FACSIMILE OF THE EQUAL HOUSING LENDER LOGOTYPE. MEMBER BANKS WERE DIRECTED TO EXCLUDE FROM ANY SUCH ADVERTISING WORDS, PHRASES, SYMBOLS, MODELS, ETC. THAT MIGHT SUGGEST A DISCRIMINATORY PREFERENCE OR POLICY OF EXCLUSION IN VIOLATION OF THE PROVISIONS OF TITLE VIII OF THE ACT; AND (4) DEVELOPMENT AND DEPLOYMENT WITH THE OTHER FEDERAL FINANCIAL REGULATORY AGENCIES OF A JOINT PILOT RACIAL DATA COLLECTION PROGRAM INITIATED IN APRIL 1974 IN 18 SMSAs AROUND THE COUNTRY TO DETERMINE THE FEASIBILITY AND VALUE OF VARIOUS APPROACHES FOR THE COLLECTION OF RACIAL, ETHNIC AND PROPERTY LOCATION DATA ON ALL APPLICANTS FOR REAL ESTATE LOANS. THE RESULTS OF THE BOARD'S REVIEW OF THE INFORMATION COLLECTED DURING THIS PILOT EFFORT WERE RELEASED TO THE PUBLIC IN MAY 1975.

(5) RECENTLY THE BOARD ENTERED INTO A MEMORANDUM OF UNDERSTANDING REGARDING THE EXCHANGE OF INFORMATION CONCERNING COMPLAINTS ALLEGING DISCRIMINATION IN MORTGAGE LENDING.

COLLECTION OF RACIAL DATA

IT HAS ALWAYS BEEN RECOGNIZED THAT IT WOULD BE EXTREMELY DIFFICULT TO EFFECTIVELY ENFORCE CIVIL RIGHTS LOANS WITHOUT THE COLLECTION OF RACIAL DATA. FOR MANY YEARS, HOWEVER, CIVIL RIGHTS ORGANIZATIONS STRONGLY OPPOSED THE COLLECTION OF SUCH DATA PARTICULARLY FROM APPLICANTS FOR BENEFITS OF FEDERALLY ASSISTED PROGRAMS, SUCH AS APPLICANTS FOR EMPLOYMENT ON THE GROUND THAT SUCH DATA COULD BE USED FOR DISCRIMINATORY PURPOSES. ALSO IN A NUMBER OF STATES THE COLLECTION OF SUCH DATA UNDER DIFFERENT SITUATIONS HAS BEEN PROHIBITED BY STATE LAW. CIVIL RIGHTS GROUPS, HOWEVER, IN RECENT YEARS RECOGNIZED THE NEED FOR COLLECTION OF SUCH DATA AND HAVE WITHDRAWN, FOR THE MOST PART, THEIR OBJECTIONS AND NOW URGE THE COLLECTION OF SUCH DATA.

EXAMINER INSTRUCTIONS FOR
CONSUMER COMPLIANCE EXAMINATIONS

BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM

May, 1978

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This instructional section of the manual is designed to explain to Federal Reserve System personnel the procedures to be used when violations of consumer affairs statutes or regulations are found. These instructions apply to all consumer affairs compliance examinations conducted by Federal Reserve System examiners and supplement the consumer affairs examination checklist and compliance report.

I. PREPARATION FOR EXAMINATION

Prior to beginning a consumer affairs compliance examination, the examiner should review the State member bank's consumer complaint and correspondence files in the Reserve Bank. This review should encompass all complaints received following the latest compliance examination. Additionally, the most recent commercial examination report, the prior year's compliance examination report, and the workpapers for that report should be reviewed. This preliminary work is intended to enhance the subsequent examination by alerting the examiner to those areas in which the bank may have problems.

It is appropriate at this time to determine whether the State member bank has been granted a specific exemption from the provisions of any Federal consumer regulations. In the event of an exemption, the examiner should obtain a copy of the State's examination report (or a summary of the report) dealing with the exempted consumer rule provisions and become familiar with the contents.

II. ARRIVAL PROCEDURES

Upon arrival at the bank, the examiner should provide management with a copy of the Officer's Questionnaire and the Forms Request. Management should be asked to return the necessary information as soon as possible. The examiner should discuss the scope and nature of the examination with management and obtain a listing of the officers in charge of the various consumer affairs departments.

III. CHECKLIST AND MODEL WORKPAPERS

The checklist should serve as the essential workpaper for the compliance examiner, as an aid to review examiners, and as part of the preparation for subsequent examinations.

For the most part, the checklist poses questions to the examiner that require "yes" or "no" answers. Generally, a negative response indicates a violative practice, therefore, any "no" answer must be explained in detail in either the checklist or accompanying workpapers. While the checklist is designed for use in any size bank, examiners have the discretion of deleting those sections of the checklist that do not apply to the particular bank being examined.

Following an examination, the checklist shall be retained at the Federal Reserve Bank until the next compliance examination. The State member bank will not be provided with a copy of the completed checklist, but information contained in the checklist should be discussed with bank management.

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Model workpapers have been developed and should be used in conducting each examination, as needed. While some flexibility is intended, the workpapers should at least identify specific records reviewed. In the review of credit applications, the workpaper may be expanded to include data on monthly income and obligations, length of residency and employment, and age. If potential violations exist, complete details should be entered on the workpapers. In some cases, the examiner may wish to have copies made of specific documents as an alternative means of transcribing data on the workpapers. An exception to the foregoing involves the "Overcharge Details" workpaper, which usually should be completed in its entirety.

IV. FORMS REVIEW

Properly designed forms serve many important purposes in credit analysis and provide a convenient means of delivering to the consumer the various notices and disclosures required by law. As banks grow and become departmentalized, forms necessarily become more complex and numerous. Application forms in larger banks may be specially designed for use in several types of credit transactions, while the smaller banks may be more likely to use a single, less formal utility application for all accounts.

Forms may be grouped into four basic types: (1) those seeking information from the consumer, (2) those disclosing data concerning a specific transaction, (3) notices of rights and responsibilities, and (5-78)

(4) the legal documents which evidence the transaction. The consolidation of these basic types of forms often enables banks to satisfy all requirements through the use of fewer forms. However, special attention must be given to reviewing these combinations of forms to insure their compliance with all of the Federal requirements they have been designed to satisfy, as well as to insure that no inconsistencies exist among the disclosures on the various documents. Increased complexity may result in increased sources of error. If all aspects of a form, except for an improperly worded notice, fully comply with the requirements, the entire form would be criticized and may require reprinting or alteration.

The importance of forms review and the seriousness of forms violations cannot be overemphasized. Should improper forms be used, all related transactions will contain violations. Classes of violations may expose the bank to class action liability. An additional consideration involves the possibility that a particular form, while technically correct on its face, may not be adequately flexible to accommodate all relevant transactions without incurring violations. Since forms are usually expensive for a bank to replace, a distinction by the examiner should be made between forms with violations that can be prevented only through printing of new forms and forms than can be "patched up" for legal use until supplies are exhausted.

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V. SAMPLING PROCEDURES

In addition to the review of all relevant forms, policies, statements, audits, internal controls, and other administrative procedures, an analysis of a sample of loans and associated records is necessary to test the quality of the bank's operating performance in complying with the regulations. Even if the document and procedure checks provide no significant indication of noncompliance, violations may have occurred because of the failure of individual loan officers or other personnel to understand or properly apply the regulations, or as a result of clerical errors. Even when the document and procedure reviews have demonstrated that major violations exist, which might suggest that an analysis of a sample of loans would be redundant, the additional analysis nevertheless is warranted because it may reveal further sources of violations that should be corrected as well.

Since the purpose of the sampling of loans and other records is to determine within a reasonable degree of certainty whether violations exist, or whether there are possible sources of violations in addition to those already discovered in the review of documents and procedures, a modest sized sample generally will suffice. Sampling should include certain transactions that will enable the examiner to determine whether the bank is computing prepayments and late charges in accordance with the terms disclosed and that appropriate notices, such as adverse action notices, are given. Procedures for selecting an appropriate sample of loan records are outlined below:

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A. Item to be sampled

For a statistical sample to provide a satisfactory basis for analysis, the universe from which the sample is drawn must consist of units that are essentially uniform in their basic characteristics. This would require that widely differing types of loans and related documents (for example, consumer loans and real estate mortgages) would need to be sampled separately. Otherwise, the sampling procedures may not provide an adequate basis that will enable the examiner to determine the presence or absence of significant violations for each type of record included in the sample.

B. Breadth of operations to be sampled

For the average bank, especially unit banks, the breadth of the universe to be sampled will be predetermined. In some cases, however, documents of a given type might be distributed among several processing centers. Ordinarily, the basis for the sample should be the largest administrative unit for which an integrated set of records is maintained. Special care should be taken to assure that the particular collection of records to be sampled is complete and includes, for example, any batches of documents that, because of some unique characteristic (problem loans), might be kept in a separate file or on a loan officer's desk. A further example would include loans processed in a bank's trust department.

It may take longer for the lending institution to compile full documentation for real estate loans than for auto loans. This

extended length of processing time should be taken into account and the examiner should determine that a full sample of fully processed loans for a particular category are included in the sample period.

C. Nature of the universe; sample period

Since the basic purpose of the examination is to determine the extent of current compliance with existing regulations, the major focus should be on the bank's current procedures. Therefore, the universe shall consist of all fully processed loans for a 30-day period as recent as possible to the date of the examination.

It should be emphasized that each particular category of loans will have a separate universe from which a sample group is chosen. This is necessary in view of the variable processing times for different types of loans. Preparation of the final page of the examiner checklist should be used to compile loan sampling data.

D. Size of the sample

The examiner should observe, as a minimum, the sample sizes prescribed in these procedures. Generally, it may not be possible to determine whether violations exist or are emanating from sources not already known to the examiner merely from an analysis of forms, policy statements, and procedures.

The "number in universe" refers to the total volume of loans granted, applications received, or records generated in the 30-day sample period. If the bank does not have records that show exact numbers, estimates may be used.

This schedule is designed to assure with 90 per cent certainty that, if no violations are found in the sample, violations in the universe probably would be nonexistent or minimal. This sampling is meant to be applied to each category of consumer loans (including real estate loans), with the exception of open end credit and rejected applications. Procedures for sampling loans in these categories are detailed later.

<u>Number in Universe</u>		<u>Size of Sample</u>				<u>Maximum</u>
		<u>Minimum</u>				
Under	99	20	or total universe if smaller			20
100 -	299	20	plus 10% of number above 100			40
300 -	499	40	"	7%	" "	54
500 -	749	54	"	6%	" "	69
750 -	999	69	"	5%	" "	82
1,000 -	1,999	82	"	4%	" "	1,000
2,000 -	2,999	122	"	3%	" "	2,000
3,000 -	4,999	152	"	2%	" "	3,000
5,000 -	9,999	192	"	1 1/2%	" "	5,000
10,000 -	or more	267	"	1%	" "	10,000

Time and demand consumer loans

Consumer loans written on a time or demand basis are not considered to be uniform with instalment loans when basic characteristics are compared. To provide a consistent data base for statistical sampling purposes, it is necessary to segregate time and demand consumer loans from instalment loans when compiling sample data. Consequently, this category calls for a separate universe from which a sample size is to be chosen.

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Open end credit

In the case of open end credit, which generally is a computerized operation, any major compliance problems that might exist would be discovered in the course of the form and procedure reviews. Thus, a check of two or three accounts in this category should be sufficient to determine whether the computer has been programmed correctly. In certain instances, the computer program itself may be available for analytical purposes.

Dealer paper

As loans originated by dealers provide additional sources of error, it is essential that sampling techniques include representative disclosures from as many dealers as possible. While it is not necessary to segregate dealer paper as a separate sampling group, care should be exercised to distribute as evenly as possible the sampling of dealer loans. If exceptions are noted, the sample should be expanded as deemed necessary for the purpose of identifying particular dealers who may be the source of violations noted.

Rejected applications

Since the analyses of rejected applications require careful consideration of many complex issues, random sampling procedures in this area generally will not be warranted. In some instances, only a few, if any, recently rejected applications may be available. If this is the case, a review of all available rejected applications, as well as an evaluation of prescreening, credit scoring, and other lending

procedures, is of special importance. Existing rejections also must be examined carefully.

When a significant volume of rejected applications is available, those rejections for a recent period (30 to 60 days) should be screened. Any application exhibiting characteristics that would suggest discrimination should be analyzed in detail. Additional attention should be given to rejected applications in determining their degree of consistency with the bank's overall lending policies. If discrepancies exist, the examiner's findings shall be detailed in the workpapers, and to the extent possible, in the report of examination.

E. Method of selection to assure randomness

Care should be exercised to assure that the method by which any probability sample is selected will assure a random selection of units. Thus, the manner in which the bank's records are organized should be investigated to avoid any risk that the sample would be unduly concentrated in loans originated at a single branch, or processed by one or a few loan officers.

If the records are arranged alphabetically, a group sample (say, all records with names beginning with a particular letter or range of letters in the alphabet) may be suitable. If numerically arranged, the best method may be to select all records having numbers ending with the same digit (for a 10 per cent sample), or every record with the same last two digits (for a 1 per cent sample). The examiner may take slightly larger samples where deemed necessary, but not smaller samples.

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Whatever the sampling method selected, it should be applied strictly. The examiner should avoid judgmental selection in cases where it may appear that a particular origin of loans is being either under or over represented in the sample. When this occurs, the questionable sample should be discarded and a new one selected.

F. Investigative sampling

In the event that some violations are found in the sample of records selected for analysis, there would be reason to expect that a significant number of violations may exist in the overall portfolio. Accordingly, the nature of the violations should be scrutinized to see if they reveal any pattern or suggestion as to the nature or source of the violations.

Generally, a distinction should be made between substantive errors and clerical errors (for example, a transposition of digits) with major attention directed to the former. The nature of violations may suggest that they are attributable to a particular dealer, loan officer, branch, bookkeeper, or processing procedure. If so, the examiner may wish to select for further analysis additional loans having that specific characteristic. The number of loans selected should be sufficient to determine the validity of a preliminary hypothesis. In some cases, it may not be possible for the examiner to determine or identify common sources of recurrent violations. If so, the examiner should call to the attention of management all violations that have

been discovered and request management to investigate the bank operations and procedures with a view toward finding and eliminating the causes of the violations.

G. Branch systems

Branch systems pose special sampling problems. The nature of the operational arrangements employed by the bank in administering the particular category of loans under investigation will determine the procedures to be followed. The principal types of operational arrangements and their respective procedural considerations follow:

1. When all branch operations for the relevant lending function are closely regulated by the head office and when all loan records and files for the entire bank and branch system are centralized at that location, the appropriate universe for drawing the sample of individual loans would be the head office files. The sample should be selected by a method that will assure a random selection and avoid the risk that the sample is unduly concentrated in loans originating in only a few branches. An on-site investigation at selected branches would focus mainly on ascertaining the level of branch understanding and compliance with head office policies and procedures, the nature of the branch's prescreening procedures, the attitudes of branch personnel, and any other indicators of compliance with the regulations. Such investigation normally should be conducted at all major branches (for example, those accounting for 25 per cent or more of a bank's total volume of the

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particular category of loans, as measured either by amount outstanding or volume of new loans made) plus one-tenth of all smaller branches selected on a rotating basis.

2. When the branch operations for the relevant loan category are administered through regional processing centers, each such center should be examined in the same manner as an individual bank. This generally will include a streamlined "basic examination" and an analysis of a sample of individual loans. Loans at that center would constitute the universe for drawing the sample. Similarly, a spot-check of branches, along the lines indicated above, should be made to check on branch procedures and on general performance of branch personnel.

3. When the branch system has a decentralized loan administration, with each branch processing its own loans and retaining all its own records, the examination procedure should focus more extensively on the operations of individual branches. The nature and extent of individual branch coverage, however, will depend upon the degree of head office control over branch policies and procedures.

Under normal circumstances, examiners need not complete a separate checklist for branches. However, certain branches, for reasons of their size or their degree of noncompliance, should be singled out and discussed in detail in the open section of the examination report. The results of the examiner's findings for each branch, at the least, should be summarized in the checklist and workpapers.

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In situations in which branches operate with a considerable degree of head office control over branch policies and procedures, investigations normally should be conducted to the same extent as centralized branch operations, that is, all major branches, plus one-tenth of all smaller branches selected on a rotating basis.

However, if the analysis of the branch operations indicates that branches operate with considerable independence and that standardization of forms and procedures does not exist, each branch examined should be treated about the same as an independent bank. This would involve a thorough basic examination, an observation of branch personnel performance, and an analysis of a sample of loans. Separate checklists and workpapers usually should be completed. Initially, the examination of branches should include all major branches, plus one-fifth of all remaining branches, and should be extended further if necessary.

VI. VIOLATIONS

A. General (technical and substantive)

All violations discovered by the examiner, whether technical or substantive, will be noted on the checklist or accompanying workpapers. Information should include, when available, names of customers, dates of transactions, names of dealers or merchants, the sections of the statutes or regulations violated, the total amount of any overcharges, and any other information deemed important in evaluating

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compliance by the bank. The listing of potential violations in the workpapers will aid the examiner in the preparation of Form 1195.

In addition, the examiner should classify violations as either technical or substantive. Generally, technical violations are those that do not form a pattern and result in little or no monetary harm to the customer. The possibility of liability to the bank is usually small. Examples of technical violations include minor forms deficiencies and non-recurring typographical errors on disclosure forms. Substantive violations may (but not necessarily) form a pattern, result in monetary harm to the customer, or result in significant liability to the bank. Examples of substantive violations include overcharges (as defined in uniform interagency enforcement guidelines), apparent unexpired rescission rights, and possible unlawful discrimination. Violations defined as "technical" should be classed as "substantive" when the bank wilfully or knowingly causes the violations to occur. This would occur when the same kind of technical violation previously cited has not been corrected. When this condition is found, the Reserve Bank should consider and recommend to the Board, as appropriate, stringent enforcement, particularly cease and desist actions, where such action is deemed necessary to enforce compliance.

In some instances, the examiner may not be able to determine whether violations of the consumer statutes or regulations have occurred, as in the instance of incomplete bank files. In such cases the checklist

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should include an explanation of the situation as found, and the examiner should seek guidance from the Reserve Bank.

B. Overcharges

Overcharge violations may appear in a number of different forms. Overcharges most frequently occur when (1) the annual percentage rate is understated, or (2) the finance charge is understated.

When the examiner has determined that overcharge violations have or may have occurred, the examiner should (1) immediately contact the Reserve Bank supervisor in charge of the compliance examination function and (2) explain the nature of the alleged violation(s), the estimated total amount of the overcharge, and the potential financial impact a reimbursement requirement could have on the bank. In addition, a workpaper (Overcharge Details) should be prepared detailing the specifics of the overcharge situation including the total amount of estimated overcharges, the estimated number of customers overcharged, and the average overcharge per customer. Information should include the number of violations, an explanation of their causes, and the steps bank management plans to take to review its files, if patterns of violations exist, and to correct violations and prevent recurrences. Copies of the workpaper should be submitted with FR 1195. If the estimated total overcharge is \$100,000 or more, or is deemed to be significant in relation to the bank's capital, the Reserve Bank should immediately consult with staff of the Compliance Section in the Board's Division

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of Consumer Affairs. The examiner should refer to policy enforcement guidelines (as available) in determining the extent of potential overcharges and the corrective measures that should be taken.

Whenever overcharges are found, the examiner should notify senior management of the civil liability provisions of § 130(b) of the Truth in Lending Act. Management should be advised to consult with legal counsel.

C. Unlawful Discrimination

It may be difficult for the examiner to determine positively through the compliance examination that the bank is unlawfully discriminating in the granting of credit. For checklist purposes, the examiner should note any fact situations that may appear to point toward possible bank discrimination (for instance, the requirement of double signatures for all auto loans) and provide a general assessment as to whether the bank may be unlawfully discriminating. The examiner should indicate on the checklist as well whether the bank warrants further investigation.

In examining for compliance with regulations and statutes that prohibit discrimination in credit granting on various bases, it should be emphasized that the examiner should avoid dictating loan policy. Through reading bank materials, interviewing bank personnel and performing prescribed examination procedures, the examiner should (1) determine the bank's loan policies and the objective criteria it uses in making credit decisions, (2) determine if any policies appear

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to be unlawfully discriminatory, and (3) determine if the bank's loan policies and objective criteria are being consistently applied.

When evidence of unlawful discrimination is discovered in the lending policies, the examiner should investigate thoroughly all pertinent facts surrounding the policies and their application. The examiner's findings should be described in a narrative type memorandum summarizing the facts, possible violations, and applicable sections of the regulation or statute violated. This memorandum should be made a part of the workpapers and a copy should be forwarded to the Board along with the report of examination.

VII. FINAL DISCUSSION

The examiner should discuss the findings of the examination with management and, to the extent appropriate, personnel involved in consumer affairs activities. The discussion should include violations discovered, both technical and substantive, and any patterns of violations. This might isolate apparent violative practices with which the bank may disagree, either as to the facts or the law.

The examiner should never indicate, regardless of the findings, that the bank is unlawfully discriminating in the granting of credit. If the possibility exists that the bank is discriminating, the facts should be reviewed with Reserve Bank staff. Occasionally, the examiner or Reserve Bank staff may have questions of a statutory, regulatory or interpretive nature. If so, Reserve Bank staff should

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discuss the issues with staff of the Compliance Section in the Board's Division of Consumer Affairs. When guidance is sought from the Reserve Bank and a response may be delayed, the examiner should indicate tactfully to bank management that additional research is needed to determine proper compliance in a specific area.

Usually, the examiner should not require the bank to correct technical violations found. However, the bank should be required to correct its procedures and forms to prevent future violations of a similar nature.

The examiner should point out to management the civil and administrative liability that may be present if (1) the bank does not correct existing violations and (2) the bank does not correct its procedures to prevent future violations. It is important to gain a positive attitude from management by discussing the benefits of regulation compliance in relation to the bank's overall financial soundness. The examiner may well be able to provide sound advisory assistance, especially to management of small banks, by explaining procedures designed to attain compliance.

The final discussion should focus additionally on the steps the bank will take to correct violations. The bank should be informed that the Reserve Bank will follow up to ensure compliance and correction. In meeting with management at the close of the examination, it is extremely important that the time made available by bank staff be utilized effectively. Senior management should not be expected to be

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familiar with all the intricacies of regulatory compliance. Therefore, only matters of significance and matters requiring corrective action that should be resolved solely by management should be presented in the final discussion. Technical deficiencies should have been discussed at the appropriate staff levels earlier.

In completing the checklist and reviewing loans, the examiner should be as cooperative as possible with bank personnel and still conduct an effective examination. The examiner should be a factfinder rather than a bank policy maker. The examiner should note whether bank policies and procedures are being followed. (The same general instructions apply when the examiner is reviewing the internal or external auditing function at the bank.)

VIII. CONSUMER AFFAIRS EXAMINATION REPORT

The Consumer Affairs Report of Examination will be used for all consumer compliance examinations. Questions in the report should be answered if they apply in any way. Report pages covering statutes or regulations to which the bank is not subject may be disregarded but should not be omitted from the report package. Additions or deletions to the examination report in connection with new regulations, amendments, or refinements will be made only by the Division of Consumer Affairs at the Board, after consultation with the Reserve Banks as needed. Report pages covering other regulations should not be added to the report.

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The Consumer Affairs Report of Examination replaces the commercial report pages dealing with consumer regulations. Therefore, it should be necessary to include in the commercial report of examination only comments on significant consumer regulation violations. The Consumer Affairs Report of Examination should include, however, any comments on findings dealing with consumer statutes or regulations that may have been developed during commercial or other examinations.

The Consumer Affairs Report of Examination should summarize the findings of the examiner as shown on the checklist and other workpapers. The report's function is to document findings for the State member banks, the Federal Reserve Banks, and the Board of Governors with an overall evaluation of the bank's compliance with consumer statutes and regulations.

A. Page 1 - Examiner's Comments

The first page of the report contains identification information about the State member bank, the date of the previous examination and the amount of time spent on the examination. The name of the Federal Reserve Bank Examiner in charge should be typed at the end of the comment section on page 1, and the examiner should sign the report.

The examiner's comments on page 1 should communicate to the bank's board of directors and management, in such a way as to promote corrective action, the significant examination findings and relevant conclusions as to necessary corrective action and agreements reached.

Specifically, the comments should include (1) nature of violations discovered, (2) causes of violations, such as deficiencies in bank management policies or procedures or errors in forms or notices, and (3) corrective measures already taken or to be taken to correct the violations and eliminate their causes. Corrective measures should refer to significant actions taken by management prior to the closing of the examination, and agreements reached to make corrections in the future, setting target dates by which such actions will be completed.

The examination report should describe violations with specificity. For example, when identifying a violation involving an understated annual percentage rate or finance charge, the report should explain clearly what caused the understatement. Was it an error in the computation? Or did the error result because the bank omitted a particular type of charge in determining the amount of the finance charge? Usually, the specific section of the regulation that has been violated should be cited in the report. By doing so, the report will avoid the danger of misstating a violative practice or procedure and will be helpful in determining that the proper corrective actions are being taken or will be taken.

The importance of a careful preparation of page 1 cannot be overemphasized. Its effectiveness depends on the logic, accuracy, brevity and clarity of the presentation. Critical comments of a personal nature should be used only in rare instances. Harsh and caustic

comments should be avoided regardless of the seriousness of the violations. Persuasion, through a clear presentation of relevant facts, can be accomplished generally without lengthy comment. There should be no opportunity for management to misunderstand or give the remarks other meanings. Statements should be factual.

Prior to the preparation of Page 1, the examiner should give ample thought to an analysis of all the favorable and unfavorable features revealed by other completed pages of the examination report. By combining this analysis with an overall impression gained during the examination, the examiner should be able to summarize findings concisely. Routine matters brought to the attention of management and wholly corrected during the examination should not require further emphasis on page 1, nor should page 1 serve as an index to location of violations summarized within the report. Commendatory comments on the progress being made in resolving a current problem are acceptable, but they should be used sparingly and without emphasis. Topics included on page 1 should have been discussed with management prior to the closing of the examination, and the remarks should convey the results of the discussion.

There is no general rule as to the order in which matters should be presented on page 1, and the order of Regulation pages within the report has little, if any, significance in the preparation of page 1. Generally, the major problems and most important matters should be

presented first, followed by those of less importance and in the order of their relative significance. When page 1 comments are very brief and limited to a few paragraphs, it is not necessary to assign subject captions. However, when lengthy remarks are required and matters to be discussed are numerous, it may be preferable for reference purposes to use descriptive captions.

There may be occasion when a separate report page has not been developed in connection with a consumer statute or related rule. An example includes the FTC "seller's" holder rule. When this situation exists, page 1 should be utilized by the examiner to record pertinent findings of related exceptions or violations.

The examiner's comment section is intended as a summary for the examination and may refer to patterns, trends, or any other specific items of significance. General suggestions, such as recommended audit coverage of compliance with consumer regulations or the designation of a compliance officer, may be appropriate. The examiner's comments should highlight the most important findings, such as violations that affect consumers adversely, internal control deficiencies, and a general assessment of the bank's degree of compliance with consumer laws and regulations.

B. Regulation pages

The separate pages covering the different statutes or regulations should be used to summarize the examiner's findings based upon the preparation of the checklist and workpapers. Questions resulting

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in "no" answers usually require detailed explanations and notations of management's response or plans to correct problems. Any other comments the examiner believes will enhance the effectiveness of the report should be included in the comment section on each regulation page.

The report pages are designed for "yes" or "no" answers. Each question should be answered by either of these terms or "n/a". Any "no" answer requires examiner's comments. If a question cannot be answered with a yes, no, or n/a, it may be appropriate for the examiner to briefly describe the circumstances and leave the question unanswered. Answers to the questions appearing on the report pages are based on (1) observation by the examiner and (2) statements made by bank management and staff regarding procedures and policies.

The names of individual customers or bank personnel should not be noted in the open section of the report. The section of the statutes or regulations violated, the quantity of violations (but not dollar amounts), and an explanation of the type of violations should be noted.

IX. Preparation and Distribution of the Report

The Consumer Affairs Report of Examination should be reviewed by the person (or designee) in charge of the Consumer Affairs Unit at the Reserve Bank. An attempt should be made to resolve any questions or issues that were not resolved during the on-site examination.

The Consumer Affairs Report of Examination should be mailed to the State member bank no later than one month following completion

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of the examination. A transmittal letter should set forth a time limit of usually 30 days within which the bank must detail and forward to the Reserve Bank an explanation of the actions it plans to take, or has taken, to bring itself into compliance if violations were noted. A copy of the report and cover letter should be retained at the Reserve Bank.

A copy of the report may be forwarded to the State banking department upon request, as is the usual practice for other types of examination reports. A copy of the report, as well as a copy of all pertinent correspondence concerning banks rated 3 or 4 or banks with potential overcharge or unlawful discrimination violations, should be sent to the Board's Director of the Division of Consumer Affairs.

A. Confidential Section

This section provides a means by which the examiner may communicate sensitive matters regarding the examination to the Reserve Bank and the Board. Its confidential nature permits the presentation of subjective views and conclusions on management's knowledge of, and compliance with, consumer regulations. In this section, the examiner may note the impact that noncompliance may have on a bank's assets, earnings and capital.

Adequate justification and comments should be given to support each response that indicates an unsatisfactory situation. Repetition of basic details and information regarding a matter already amply covered in the open section is unnecessary, and where possible, references to relevant information contained elsewhere may be used.

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The confidential section should be, to the extent possible, a self-contained analysis and summary of the examiner's findings. Brevity is desirable. However, the comments should be adequate to reveal clearly the conditions discussed.

This section should include comments concerning statutory and regulatory compliance that the examiner does not deem advisable to include in the open section. It should include, for example, examiner comments on possible overcharge situations and unlawful discriminatory practices. In addition, in the event of a State exemption, the section should include comments as to the extent of the bank's compliance under the exemption.

If additional space is required, a separate page should be added. The examiner should include a recommendation whether there is need for (a) special training in consumer regulations, (b) use of the System's educational and advisory service, (c) a follow-up examination to insure correction of violations disclosed, and (d) cease and desist action to obtain correction.

Rating System

The following criteria are to be used in evaluating attitudes of management, knowledge, and compliance with respect to the consumer laws and regulations. The ratings relate only to the bank's level of compliance and should not be affected by other considerations. The criteria are not intended to limit the examiner in rating various aspects of the bank, but rather are intended as general guidelines.

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ManagementSatisfactory

- o Effective director and management supervision noted.
- o Personnel charged with regulatory compliance have capability to implement effective procedures.
- o Positive attitude projected toward regulatory compliance.
- o No significant volume of criticism found.

Fair

- o Some administrative or operational deficiencies noted.
- o No significant volume of criticism noted but overall disinterest evidenced.
- o Management has not recognized the necessity for implementation of compliance procedures.

Poor

- o Little or no supervision provided by management or directors.
- o Obvious disregard for regulatory requirements noted.
- o Lack of ability to correct violations or assure future compliance found.
- o Significant volume of criticism noted or numerous substantive violations found.

ComplianceSatisfactory

- o Good internal policies and procedures are in effect.

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- o Only technical violations are evident.
- o Violations are inadvertent.

Fair

- o Significant number of technical violations found.
- o Operating policies and procedures are not compliance oriented.
- o Disinterest in compliance is evident.
- o Few violations of a substantive nature noted.

Poor

- o A number of substantive violations are evident.
- o Potential significant liability exists.
- o The extent of noncompliance is significant.

Knowledge of Regulations

Satisfactory

- o All personnel involved in consumer lending activities are familiar with the regulations.
- o Educational efforts appear satisfactory.
- o Procedures provide for dissemination of information at appropriate levels.
- o Intentions to remain abreast of changes in the consumer regulations and statutes are evident.

Fair

- o Little emphasis has been placed on training staff in the various requirements of the consumer statutes and regulations.

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- o Manuals or policy statements outlining procedures intended to insure compliance are absent.

Poor

- o Staff training procedures are nil.
- o Unfamiliarity with the regulations is apparent.
- o Inability to keep current with changes in the regulations is evident.

Other Matters

This section should include a description of matters the examiner believes are relevant to compliance, but are not detailed in other sections of the report. An example may be the significance of overcharges in relation to total capital.

Composite or Group Rating

Rating No. 1

- o Volume of criticism is negligible.
- o All ratings are satisfactory.
- o Management appears competent and knowledgeable.
- o Sufficient motivation is apparent at all staff levels for continuance of compliance.

Rating No. 2

- o There are no poor ratings.
- o Management has extended a significant effort to comply but some technical violations exist.

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- o There are no substantive violations, or the potential liability from substantive violations is insignificant in relation to capital.

Rating No. 3

- o An inordinate number of technical violations exist.
- o The liability for substantive violations is significant in relation to capital.
- o Efforts towards achieving compliance are considered inadequate.

Rating No. 4

- o Management's attitude indicates no effort will be made to institute a compliance program.
- o A follow-up examination is recommended.
- o Violations, technical or substantive, are regarded as flagrant.
- o The liability from violations is likely to impair capital.
- o All ratings are poor.
- o Administrative enforcement such as a cease and desist action may be warranted and a recommendation for such should be considered.

Additional Comments

Comments may include subjects that are not detailed specifically elsewhere in the confidential section. An example may be in connection with an anticipated change in certain management positions or ownership of the bank.

B. FR 1195

FR 1195 is intended to provide the Board of Governors and its staff with a detailed summary of the findings of each consumer affairs compliance examination. Data submitted on FR 1195 will provide the basis for a continuing appraisal by the System of its examination procedures and for taking any necessary measures to improve or change the emphasis on existing procedures.

Two copies of FR 1195, including copies of the overcharge worksheet if applicable, should be forwarded to the Division of Consumer Affairs, Board of Governors, along with the Consumer Affairs Report of Examination. The FR 1195 is designed to facilitate computerization of data.

Page 1

1. The District-State-Bank-Branch (DSBB) number should always be 12 digits. The first eight numbers are identical to those identifying numbers used on the Consumer Affairs Report of Examination.

The last four digits must be "0000."

xx	xx	xxxx	xxxx
(District)	(State)	(Bank ID Number)	0000

2. The designation to determine whether the examination was conducted concurrently (c) with the regular commercial examination or separately (s) should be circled.
3. The number of bank branches should include the main office and the total number of the bank's U.S. branches where credit decisions or credit extensions are made.

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4. The number of branches visited should reflect the number of offices actually examined. If only the bank's main office was examined, "1" should be entered.
5. Total Employee Hours, In Bank Hours, and In Reserve Bank Hours must be followed by a fraction of ".0" or ".5." Travel time should not be included in these figures. Time devoted to report review and clerical procedures should not be included.
6. The total number of violations in the universe may be an estimate if the actual number is indeterminable.
7. If no overcharges were noted during the examination, a "zero" should appear on the appropriate lines on page 1. If potential overcharges exist, the estimated amount for the universe should be rounded to the nearest dollar.
8. Commas, dollar signs, or percentage signs should not appear on FR 1195.
9. The numbers entered in the matrix should represent loan files in violation and must be classified as "technical" or "substantive" (as defined in the Examiner Instructions under "Violations"). Because the page 1 matrix reflects the number of loan files in violation, and the detailed violations on pages 3 and 4 represent number of violations of each section, the numbers on these pages may not coincide. For example, if 15 purchase money mortgage loans were sampled and each file contained a violation of 2 sections of RESPA,

the number of loan files in violation will be "15" on page 1, whereas the total number of violations shown on page 4 will be "30."

10. Only whole numbers should be used in the Total Number of Violations matrix.
11. The per cent of the sample affected should reflect only the percentage of the relevant sample taken. For example, if a real estate loan sample (purchase money first mortgage) of 20 is taken, and 15 of these files are in violation of RESPA, the amount entered under "% of Sample Affected" would be 75.

Page 2

Any situation that may warrant additional explanation, such as a violation noted in the bank's blank forms where the number of violations is indeterminable, may be described on page 2.

Pages 3-4

1. The number of violations of each section should be entered in the appropriate blocks. In these instances, A four digit number must correspond to each section. If 5 violations of one section are noted, "0005" should be disclosed in the appropriate space.
2. If a section was not violated, no figure should appear in the corresponding block.

ATTACHMENT 4

The proposed uniform enforcement guidelines for Regulation B are included as Appendix 2 of this volume.

EXAMINER CHECKLIST

CONSUMER AFFAIRS COMPLIANCE EXAMINATION

— **BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM**

(Excerpts applicable to fair housing,
equal credit opportunity, and home
mortgage disclosure.)

District-State-Bank-Branch Number _____

Name of Bank

Location

Examiner

Date of Examination

Number of Offices

Number of Offices Visited

Latest Call Report Data

Total Loans Exclusive of Federal Funds _____

Undivided Profits _____

Total Capital _____

Total Assets _____

General Information - Officers in Charge

Commercial Loans _____

Real Estate Loans _____

Instalment Loans _____

Credit Card Plan _____

Check-credit Plan _____

Branch Administration _____

Marketing _____

Auditor _____

Operations _____

Compliance _____

Is bank located in a state that is exempt from any consumer credit regulation?

Yes No

Is bank exempt from Regulation C because of its size?

Yes No

Is bank in an SMSA?

Yes No

Are any communities located within trade areas that are participants in the National Flood Insurance Program?

Yes No

Final discussion held with: _____

To: Bank Officer in charge of Consumer Affairs Activities:

Please provide copies of the following documents, blank forms and other information, as available, as soon as possible.

1. Written affirmative action program regarding compliance with consumer laws and regulations.
2. formal loan policy established by the Board of Directors or its appointed committee.
3. Minutes of the Board of Directors' meetings.
4. Audit reports by internal auditors and outside accountants.
5. Training manuals for lending officers and staff.
6. Appraisal manuals used by internal appraisers.
7. Most recent call report.
8. Copies of recent bank advertising, for both loans and deposits, including newspaper ads, leaflets, and radio or television transcripts.
9. Loan guaranty form.
10. All loan application forms.
11. Borrower's financial statement forms.
12. Note forms for all loans.
13. Security agreement forms.
14. Sample of dealer agreements.
15. Truth in Lending disclosure forms (e.g., finance charge and annual percentage rate).
16. Rate books used to calculate loan disclosures.
17. Notice of Right or Rescission.
18. Deferral or extension disclosure form.
19. Fair Credit Billing notices - Borrower's notice of rights (long form and, if applicable, short form).
20. Open end credit billing statement.
21. Credit card merchant - lender agreements.
22. Credit card, check-credit applications.
23. Written debt collection procedures.
24. Forms used in the process of debt collection.
25. Copies of scripts used by collection personnel.
26. Form HUD-1 (Uniform Settlement Statement).
27. Good faith estimate form.
28. RESPA booklet (Uniform Settlement Statement).
29. Credit scoring and interanal credit evaluation forms.
30. Credit denial, adverse action notification forms, and ECOA notice.
31. Home Mortgage Disclosure Statements (Regulation C).
32. PHC (1) census tract maps or suitable alternatives.
33. Official flood maps.
34. Certificates of deposit, savings passbooks, deposit open account contracts, notice to customer of early withdrawal penalty.

Examiner-in-charge

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FORMS REVIEW
WORKSHEET

<u>DIRECT LOANS</u>	Credit Application	Financial Statement	TIL Disclosure	Note	Collateral Instrument
Instalment: Unsecured					
Automobile					
Mobile home					
Stocks, bonds & deposit accounts					
Junior mortgages					
Other _____					
Single payment and demand: Unsecured					
Secured					
Credit card					
Check credit					
Real estate					
Government Guaranteed: Student					
SBA					
VA, FHA & other housing loans					
<u>INDIRECT LOANS</u>					
Automobile					
Home improvement					
Other _____					
Unsecured					
<u>OTHER SPECIAL PURPOSE</u>					

In each column, indicate form number and date of latest revision if applicable.
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INTERNAL TRAINING, AUDIT AND REVIEW ACTIVITIES

A. Is there an audit program? Yes No

If yes, describe the program and answer the following questions:

- | | | |
|---|-----|----|
| 1. Does the scope include an adequate review of compliance with consumer regulations? | Yes | No |
| 2. Is the audit department adequately staffed and are personnel knowledgeable of consumer regulations and legal responsibilities? | Yes | No |
| 3. Do policies and procedures require sufficient documentation of transactions to provide an effective audit trail? | Yes | No |
| 4. Does a review of audit reports indicate sufficient sampling of customer files? | Yes | No |
| 5. Do audits determine that no outdated forms and advertisements are in use? | Yes | No |
| 6. Do audits determine that staff are aware of and adhering to bank policy regarding consumer regulations? | Yes | No |
| B. Do internal review procedures provide for verification of the following: | | |
| 1. TIL disclosures for all types of credit transactions, direct and dealer originated? | Yes | No |
| 2. Compliance with other consumer statutes and regulations? | Yes | No |

If yes, identify the statutes or regulations provided for and indicate whether the review procedures are adequate.

C. Staff Training

- | | | |
|---|-----|----|
| 1. Are staff training manuals and procedures designed to result in adequate level of understanding of credit regulations? | Yes | No |
| 2. Are appropriate officers and employees familiar with the legal requirements? | Yes | No |

ADVERTISING

- | | | |
|--|-----|----|
| A. Do procedures clearly prohibit quoting "add-on" or "discount" rates in response to consumer inquiries or in advertisements? | Yes | No |
| B. Do procedures prohibit advertising terms the bank does not usually and customarily arrange? | Yes | No |
| C. If an advertisement carries "triggering" terms are all other required terms advertised? | Yes | No |
| D. Are all terms required to be disclosed in an advertisement clear and conspicuous? | Yes | No |
| E. Does all home mortgage advertising disclose that the bank is a fair housing lender? | Yes | No |
| F. Would advertising not discourage loan applications by protected classes? | Yes | No |
| G. Do deposit advertisements comply with Regulation Q? | Yes | No |
| H. Do statement supplements, leaflets and other lobby advertisements comply with all of the foregoing? | Yes | No |

CONSUMER COMPLAINTS

- | | | |
|--|-----|----|
| Are the bank's own consumer complaint procedures (including files) satisfactory as to content, disposition and compliance? | Yes | No |
|--|-----|----|

REGULATION B**A. Pre-screening applicants**

- | | | |
|--|-----|----|
| 1. Do personnel other than the loan officer conduct a pre-interview? (A "no" answer does not necessarily indicate a potential violation.) | Yes | No |
| 2. If yes, do interviewers have a script or other material to work from? | Yes | No |
| 3. Do pre-arranged questions result in special treatment of certain classes of applicants or referral of applicant to certain loan officers? | Yes | No |
| 4. If yes, is the objective a legitimate one? | Yes | No |

B. Loan Interviews

- | | | |
|---|-----|----|
| 1. Do officers request customers to complete application forms rather than using forms to record interviews? | Yes | No |
| 2. When customers are interviewed, are questions read from an approved form without additional inquiries? | Yes | No |
| 3. Is alimony income notification given during interview? | Yes | No |
| 4. When interviews are held, does the creditor limit the discussion of spouse or former spouse to situations where: (1) the spouse will be permitted to use the account, (2) the spouse will be contractually liable on the account, (3) the applicant resides or the property is located in a community property state, or (5) the applicant is relying on alimony, child support, or separate maintenance payments from the spouse? | Yes | No |
| 5. If a credit scorecard is used, is prohibited information excluded and other information evaluated without regard to a prohibited basis? | Yes | No |

C. Adverse Action Notifications

- | | | |
|---|-----|----|
| 1. Are rejected applicants so advised in writing? | Yes | No |
|---|-----|----|

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2. Do rejected applicants receive copy of the ECOA notice? Yes No

3. Does the bank disclose either the specific reasons for adverse action taken or disclose to the customer the right to obtain such a statement? Yes No

D. Signature Policy

1. Would the signature of spouses not be required on the debt instrument? Yes No

2. If jointly held property (auto, securities, household goods) will secure the loan, will joint owners be required to sign only the collateral instruments? Yes No

3. If loan can be approved only with a co-signer, could applicant volunteer any other person and not be limited to spouse? Yes No

4. Are single signature loans available to borrowers whose real estate is owned and pledged in joint names (provided State law holds such a contract to be valid)? Yes No

5. Is business credit separately available to principals of corporations, partners, and proprietors without requiring spouses' signatures? Yes No

E. Credit Reporting

1. For those joint accounts where credit information is reported, is a determination made whether the spouse has authorization to use the account or is contractually liable? Yes No

2. Are credit files indexed to allow for reporting credit histories in the name of each spouse? Yes No

3. Is credit information furnished to credit reporting agencies in a manner that would enable the agencies to report information in the requested name? Yes No

- F. In connection with an application for consumer credit relating to the purchase of residential real property, when the credit is to be secured by a lien on such property, does the creditor request as part of any written application the information required by §202.13(a)?
- | | | |
|--|-----|----|
| | Yes | No |
|--|-----|----|
- G. Record Retention
1. Is any application form, financial statement, credit worksheet, or written or recorded material used in evaluating an application retained for at least 25 months after the credit decision is made?
- | | | |
|--|-----|----|
| | Yes | No |
|--|-----|----|
2. Is a copy of notice of adverse action, reasons for adverse action and any written statement submitted by the applicant alleging discrimination retained for at least 25 months?
- | | | |
|--|-----|----|
| | Yes | No |
|--|-----|----|

REGULATION C

- | | | |
|--|-----|----|
| A. Is mortgage lending data properly compiled and disclosed? | Yes | No |
| B. Is one of the three methods suggested by Regulation C employed to notify customers of availability of H M D statement? | Yes | No |
| C. Was latest disclosure statement available to the public within 90 days after the close of the fiscal year? | Yes | No |
| D. Is the H M D statement available at the home office and at least one branch office, if any, located in each SMSA? Indicate which offices. | Yes | No |
| E. Will H M D statements be retained for 5 years as required? | Yes | No |

Sampling

Type of loan	Number Sampled	Number in Universe	Number Sampled as Percent of Universe
Instalment			
Time and demand			
Overdraft			
Other open end accounts			
Real estate			
Rejected applications			

EQUAL CREDIT OPPORTUNITY
REGULATION B

Purpose of this Manual

Reference

Regulation B covers all individuals and institutions who regularly participate in the decision to extend credit. Many of the Equal Credit Opportunity rules are subjective, and the examiner may encounter many difficulties in translating and applying the requirements in fact situations.

The purpose of this manual is to acquaint examiners with the general requirements of Equal Credit Opportunity and to highlight provisions of Regulation B that most likely may be encountered in performing bank examinations. Of course, the text cannot deal with all types of situations that may come to light during an examination. Consequently, the Manual is intended only as a supplement to the regulation and not as a substitute for it. Where questions are not resolved by the Manual, examiners will need to refer to the applicable provisions of the regulation for guidance.

Administration and Enforcement

The Act gave responsibility to the Board for writing and implementing Regulation B. In addition to the initial preparation preparation of the regulation, the Board is responsible for

A-703

administering the rule, which is done through amendments, interpretations, and explanatory letters from both the Board and its staff.

A-704

General Enforcement

Administrative enforcement of the Act is distributed among twelve Federal agencies and the Department of Justice. For the most part, those Federal agencies with general supervisory authority over a particular group of creditors are given Equal Credit Opportunity enforcement responsibility over those creditors. For example, the Comptroller of the Currency is responsible for enforcing Equal Credit Opportunity among national banks, and the National Credit Union Administration is responsible for Federally chartered credit unions. Enforcement for all remaining creditors who are not under the supervision of another Government agency is the responsibility of the Federal Trade Commission. A-704

Board Enforcement - Examiner Responsibility

The Board is responsible for enforcement among State member banks, and this responsibility is delegated to the Federal Reserve Banks. Enforcement is carried out largely through the examination program. Each State member bank's compliance with Regulation B should be determined during each A-704(b)

examination. Violations should be noted and agreements with management for prompt correction of violations should be obtained wherever possible. However, it should be noted by an examiner that a creditor is not liable for an alleged violation if it is the result of a "good-faith" attempt to comply with a rule, regulation, or interpretation of the Federal Reserve Board. This includes a "good faith" attempt to comply with Regulation B.

General Provisions of Regulation B

The Board of Governors issued Regulation B as amended pursuant to § 703 of the Equal Credit Opportunity Act. As amended the Regulation prohibits discrimination with respect to any credit transaction on the basis of race, color, religion, national origin, sex, marital status, age, (provided that the applicant has capacity to contract), receipt of income from public assistance programs, and good faith exercise of any rights under the Consumer Credit Protection Act. Regulation B applies to all persons who in the ordinary course of business, regularly participate in the decision of whether or not to extend credit whatsoever and in any amount.

A-701(a)

202.4

202.(1)

Regulation B has been structured to cover the requirements imposed upon a creditor before, during, and following the application and evaluation process of credit granting. Both the Equal Credit Opportunity Act and Regulation B set out a basic rule for credit grantors: "a creditor shall not discriminate

against any applicant on a prohibited basis with respect to any aspect of a credit transaction." In addition, discrimination is unlawful against an applicant on a prohibited basis if an application is declined because of that applicant's business associates or persons who will be somehow related to the extension of credit (e.g. race of persons residing in the neighborhood where collateral is located).

202.4

202.2(z)
Footnote 3

Discrimination may be defined as the treating of one applicant or group of applicants less favorably than another group for any of the reasons discussed above. Regulation B sets forth certain acts and practices of banks which are specifically prohibited or permitted. To prevent discrimination, Regulation B imposes a delicate balance on the credit system. The Regulation recognizes both the bank's need to know as much as possible about a prospective borrower and the borrower's right not to disclose information inapplicable to the transaction. The regulation deals with the taking of the application, the evaluating of an application, the acting on the application, and the furnishing and maintenance of credit information. One should remember that Regulation B does not prevent a creditor from determining any pertinent information necessary to evaluate the creditworthiness of an applicant.

202.2(n)

Taking the Application

Prescreening and advertising. Regulation B concern
with the application process starts before the application
is even taken. Lending officers and employees must be aware 202.5(a)
of the provisions of the regulation and must take no action
that would, on a prohibited basis, discourage anyone from
applying for a loan. Therefore, advertising and other preappli-
cation practices and interviews must conform to the basic
rule of the regulation. This prohibition against discouraging
applicants applies even to oral or telephone inquiries.

Regulation B does not distinguish between oral and
written applications in its prohibition of discriminatory action.
Therefore, in the pre-interview and during the taking of a
written application, lending officers must be careful to refrain
from asking for prohibited information. Questions must be neutral
in nature and asked of any applicant desiring the same type and
amount of credit.

Inquiries Concerning Marital Status

Individual credit. Generally, when an applicant applies 202.5(d)(1)
for individual credit, the bank may not ask the applicant's
marital status. There are two exceptions to this rule:

(1) If the credit transaction is to be secured, the
bank may ask the applicant's marital status. (This information
may be necessary to determine what would be required to gain
access to the asset in the event of default.)

(2) If the applicant resides in, or lists assets that are located in a community property State to support the debt or resedes in such a State the bank may ask the applicant's marital status. (In community property States assets owned by a married individual may also be owned by the spouse, thus complicating the accessibility of the asset in the event of default.)

Joint credit. Whenever a request for credit is joint (made by 2 or more individuals who will be primarily liable) the bank may always ask the applicant's marital status whether the credit is to be secured or unsecured. 202.5(d)(1)

Terminology. If the bank is permitted to request marital status, only the terms "married," "unmarried," and "separated" may be used. This is true for oral as well as written requests for marital status information. "Unmarried" may be defined to include divorced, widowed, or never married, but the application must not be structured in such a way as to encourage the applicant to distinguish among these categories. 202.5(d)(1)

The bank may always ask questions concerning the applicant's income or assets that support the credit request. However, any such question must not be structured so as to force the applicant to indicate marital status. The bank may ask questions to obtain relevant information that indirectly discloses marital status. Concerning inquiries about debt payments, a bank may always inquire whether the applicant is obligated to pay alimony, child support or separate maintenance payments. 202.5(d)(1)
Footnote 5

In addition, questions may be asked concerning the source of income or ownership of assets supporting the debt, and whether the debt obligations of the applicant have a co-obligor.

Request For Information Concerning Spouse or Former Spouse

Regulation B requires that certain conditions have to be met before lenders can seek information about an applicant's spouse, which they had previously requested as a matter of course. As a general rule, the bank may not request information about an applicant's spouse. However, the bank may request information on the spouse or former spouse if:

- *
- (1) The non-applicant spouse will be a user or joint obligor on the account; or
 - (2) the applicant is relying on the spouse's income, at least in part, as a source of repayment; or
 - (3) the applicant is relying on alimony, child support, or separate maintenance income as a basis for obtaining the credit, or
 - (4) the applicant resides in a community property State or property upon which the applicant is relying as a basis for repayment of the credit requested is located in such a State.

Unless the need is apparent from an affirmative answer to one of the above, no bank may request information on an applicant's spouse. If the bank requests information about the

*The term user applies only to open end accounts.

applicant's spouse on the written application, it must be preceded by a statement that the applicant need not provide information about the spouse unless one of the above conditions is present.

On the written application all terms must be neutral as to sex. "Husband" and "wife" and any other terms indicating sex must be deleted. Courtesy titles indicating sex such as Mr., Mrs., Ms., and Miss may be used, but only if accompanied by a conspicuous statement that the designation of any such title is optional. 202.5(d)

Alimony, Child Support, and Separate Maintenance Income 202.5(d)(2)

A bank may only ask if the applicant is relying on alimony, child support or separate maintenance payments only if the bank first advises the applicant that such income need not be revealed if the applicant is not relying on that source of income for repayment of the debt. On a printed application, a conspicuous notice to the effect that such income need not be revealed unless the applicant chooses to rely on it must precede any general request concerning income and the source of income. Therefore, a creditor must either ask questions designed to solicit only specific information about income (i.e., salary, wages, employment income, etc.) or must state that disclosure of alimony, child support, or separate maintenance payments is not required as stated above. However, the bank may always inquire about the liability of an applicant to make such payments.

Other Prohibited Inquiries

Under no circumstance may a bank request information 202.6(b)(3)
 about an applicant's birth control practices or child bearing
 intentions or capability. However, as a general rule, a creditor
 may request and consider any information regarding the applicant's
 continued ability to repay, such as the probability of continuing
 employment, so long as it is made of all applicants who are
 similarly qualified without regard to any prohibited basis.
 Making an assumption that childbearing is always associated
 with a discontinuity in ability to repay is prohibited in an
 evaluation of creditworthiness. The number, ages, and expenses
 of present dependents may also be requested.

The regulation prohibits inquiring about the applicant's 202.5(d)(5)
 race, color, religion, or national origin. These inquiries are
 also prohibited when asked of any person in connection with the
 credit transaction. The bank may inquire about the applicant's
 permanent residence and immigration status in order to determine
 creditworthiness but not to deny credit arbitrarily, merely on the
 grounds of noncitizenship.

Forms

Banks may request a list of all accounts upon which the applicant is liable, the name and address in which the accounts are carried, and any other names used previously to obtain credit. 202.5(c)(3)

The Regulation does not require that banks use written applications. If the bank desires to use a written form, it may use either an appropriate model application form in Appendix B of the regulation or another form which complies. 202.5(e)

Evaluating the Application

Rules governing the use of information. In evaluating the application, the bank may not consider any information prohibited under Regulation B. The regulation is designed to cause creditors to reflect on the need for certain information.

Prohibited considerations.

(1) The bank must not consider the applicant's age (provided the applicant has the capacity to contract) unless used for the purpose of determining a pertinent element of creditworthiness or in an appropriate credit scoring system. The age of an elderly (62 years or older) applicant may be considered if used favorably.

(2) The bank must not consider whether the applicant receives income from a public assistance program. This means that a creditor cannot deny credit solely because some or all of the applicant's income is derived from public assistance. However, a creditor may consider probable continuity of such income. Regulation B defines public assistance as unemployment compensation, social security, and aid to families with dependent children.

(3) The bank may not refuse to consider ("discount") 202.6(b)(5)
the income of an applicant or spouse on a prohibited basis or because it is part-time. The income of a spouse used in an application for credit must be considered equally with that of the applicant. In addition, income derived from annuity, pension or retirement benefits must not be discounted. The bank may, however, consider the amount and probable continuity of any income in evaluating the application. The bank must consider alimony, child support or separate maintenance income to the extent that payments will be likely to continue. Methods for determining the likelihood of the continuity of payments may include, but are not limited to, the following:

- (a) Whether the payments are provided for by oral or written agreement, or by court decree; 202.6(b)(5)
- (b) The length of time payments have been made;

(c) Whether the receipt of payments has been recent and regular;

(d) The ability to compel payment; and

(e) The creditworthiness and credit history of the payor, where available to the bank, in accordance with the Fair Credit Reporting Act or other law.

(4) Regulation B forbids asking about an applicant's plans or expectations to have children or an applicant's physical capability for childbearing. Furthermore, a creditor is prohibited from considering statistics or assumptions concerning the probability that a person like the applicant or the applicant's spouse will have a certain number of children or will cease employment to bear or raise children.

(5) To the extent a creditor uses credit history in 202.6(b)(6) evaluating accounts, it must include in evaluating creditworthiness any account reported in the name of both spouses, and on the applicant's request, any account reported in the name of the applicant's spouse which the applicant can demonstrate reflects a willingness or ability to repay. Upon the applicant's request, the bank must also consider any information the applicant may present tending to indicate that the credit history of an account reported in both names does not accurately reflect the applicant's ability or willingness to repay. To facilitate this inquiry Regulation B allows a bank to request the name in which an account is carried if the applicant discloses the account in applying for credit.

(6) The bank may not ask and consider an applicant's permanent residence and U.S. immigration status unless this information is necessary to ascertain the bank's rights and remedies with respect to repayment.

Prohibited Factors in a Credit Scoring System

The bank may use a credit scoring system or judgmental system to evaluate the application. Such a scoring system or judgmental system must not consider the following factors in evaluating applications:

- | | |
|--|-------------|
| (1) Age, except as set forth above or unless such a scoring system is a demonstrably and statistically sound, empirically derived system as defined by the Regulation; | 202.6(b)(2) |
| (2) Sex; | 202.6(a) |
| (3) Marital status; | 202.6(a) |
| (4) Race, color, religion, national origin, receipt of public assistance or exercise of rights under Consumer Credit Protection Act; | |
| (5) A telephone listing in the name of the applicant (the bank may consider whether or not the applicant has a telephone in the home); and | 202.6(b)(4) |
| (6) Aggregate statistics or assumptions relating to the likelihood of any group of persons bearing or rearing children, or for that reason, receiving diminished income or interrupted income in the future. | 202.6(b)(3) |

The Effects Test

In addition to the preceding specific rules for evaluating applications, all credit practices are subject to a precept known as the "effects test." Basically, the effects test provides that a creditor may be guilty of discriminatory credit practices even when it does not intend to discriminate against a protected class of applicants. If a practice has the effect of discriminating, then a violation of the Act may have occurred. Thus, for example, a policy of never extending credit to persons with criminal records or without high school diplomas might be deemed to discriminate against black applicants because it would affect them more frequently than white applicants. Similarly, a requirement that applicants have unreasonably extensive credit histories in order to receive credit may be illegal discrimination because of its unequal effect upon married women.

202.6(a)
Footnote 7

However, certain credit practices which have the effect of discriminating may not be illegal, if they are closely related to determining an applicant's creditworthiness. The Reserve Bank should be contacted for assistance when a possible violation involving the effects test is detected.

Separate account. No bank may refuse, on the basis of sex or marital status or any other prohibited basis, to grant a separate account to a creditworthy applicant. If a creditor offers separate accounts to unmarried applicants, it must offer separate accounts to creditworthy married applicants, regardless of sex.

202.7(a)

Laws preventing the separate extensions of consumer credit to each spouse are preempted if the spouse voluntarily applies for separate credit. If the spouses apply for separate extensions of credit, the accounts must not be aggregated to determine finance charges or loan ceilings under State law or laws of the United States.

Name on the Account

202.7(b)

No bank may refuse to allow an applicant to open or maintain an account in a birth-given first name and surname, the spouse's surname or birth-given first name or a combined surname. However, the bank may require that the applicant use one name consistently in doing business with the bank. In addition, the bank may inquire whether the applicant has obtained credit in another name or is liable for accounts listed in another name in order to determine the entire credit history of the applicant.

Actions on Account Following Extension of Credit

Change in name or marital status. A creditor may not take the following actions on an existing open-end account solely on the basis of age, retirement or a change in the applicant's marital status:

- (1) require a reapplication;
- (2) change the terms of the account;
- (3) terminate the account.

There must be evidence of inability or unwillingness to repay before a bank can take any of the above actions. If the account applies only to open-end accounts) was granted to the applicant based in part on the income of the spouse, a creditor may require a reapplication because of a change in marital status if the applicant's income, alone, does not support the extension of credit.

Signatures

General rule. As a general rule a bank may not require a signature other than the applicant's or joint applicant's if, under the bank's standards of creditworthiness, an applicant qualifies for the amount and terms of credit requested. There are some exceptions to this rule:

(1) If the credit is to be secured, the bank may obtain the signature of a spouse or any other person on document(s) necessary or reasonably believed by the creditor to be necessary under applicable State law to make property available in the event of default (e.g. to create a valid lien, pass clear title, etc.)

If on the other hand an applicant does not qualify under a creditor's standards of creditworthiness, the creditor may require a co-signer or guarantor; but may not require that co-signer or guarantor be the applicant's spouse.

(2) If the credit is to be unsecured and the applicant's creditworthiness is supported by property, the bank may consider the effect of State law, how the property is owned, and other factors which may affect the value to the creditor of the applicant's interest in the property. If it is determined that the applicant's interest in the property is insufficient to establish creditworthiness, the bank may require the spouse or other joint owner to sign any document(s) necessary, under applicable State law, to allow the bank to gain control of sufficient property to satisfy the debt in the event of default. 202.7(d)(2)

(3) If the credit is to be unsecured and the applicant is married and resides in a community property State or the property supporting the debt is located in such a State, the bank may require the spouse's signature on those documents necessary to make the community property available to the bank in the event of default. The creditor may not require the spouse's signature if the applicant can manage or control sufficient community property to establish creditworthiness, or if the applicant has sufficient separate property to qualify without utilizing community property. 202.7(d)(3)

(4) If the credit is to be secured, the bank may require the signature of the applicant's spouse or other joint owner of assets on any document necessary, or reasonably believed to be necessary, under applicable State law to allow the bank to 202.7(d)(3)

gain control of the applicant's interest in the assets in the event of default. These instruments may include any instrument necessary to create a valid lien, pass clear title, waive inchoate rights, or assign earnings.

Co-signers and Guarantors

For purposes of the signature provisions, the same 202.7(d)(5)
rules regarding permissible signatures that apply to applicants also apply to co-signers and guarantors.

Insurance

When the bank offers casualty, credit life, health, 202.7(e)
accident, or disability insurance in connection with extending credit, differences in cost, terms, or availability of the insurance will not constitute violations of the Regulation. However, the bank may not deny or terminate credit merely because of the unavailability of such insurance. When insurance is desired by the applicant, information regarding the applicant's age, sex, or marital status may be requested for the purpose of offering insurance.

Notification

Notification of action taken. The bank must notify 202.9(a)(1)
the applicant of action taken on an application within 30 days Act 701(d)
after receipt of the completed written application or completion of the oral application interview. There are two exceptions:

(1) The bank must notify an applicant, to whom a counteroffer has been made, of the adverse action taken 90 days after the offer was made unless the applicant accepts or uses the credit during that time. (2) The bank need not provide the required notification of approval when the bank and the applicant agree that the applicant will inquire about what action was taken, and the bank may consider the application withdrawn if the applicant fails to inquire within 30 days from application. 202.9(d)

Notification of both favorable and adverse action is required. Notification requirements for favorable action may be satisfied by receipt of a coupon book, credit card, etc., by the applicant. 202.9(a)(1)

Notification of adverse action. Adverse action may be defined as the following: 202.2(c)

(1) Refusal to grant credit in substantially the amount or terms requested unless an alternative offer is accepted by the applicant;

(2) Termination of an account or change in terms which is undesirable if the same action is not taken on a substantial portion of similar accounts; or,

(3) Denial of an increase in the credit extension when requested in accordance with appropriate bank procedures.

Adverse action does not occur in any of the following:

(1) Any change in the terms of an account which is expressly agreed to by the applicant;

(2) Any action taken (or inaction) due to inactivity, delinquency or default on the account;

(3) Denial of a credit extension which would exceed an existing credit limit on the account;

(4) Denial of credit which is prohibited due to applicable laws affecting the bank; or,

(5) Denial of credit because the bank does not offer the type of credit requested.

Notice of adverse action taken on an uncompleted application or on an existing account must be given within 30 days after the action is taken. 202.9(a)(1)(ii) and

Whenever adverse action is taken, the bank must notify the applicant in writing of the following: 202.9(a)(2)

(1) A statement of the action taken.

(2) The ECOA notice as described in the regulation. 202.9(b)(1).

(3) A statement of specific reasons for the action taken or disclosure of the applicant's right to a statement of the reasons within 30 days after the bank receives a request for the reasons. The applicant must make the request within 60 days of the notice of action taken. The disclosure must include the name, address, and telephone number of the individual or office where the reasons may be obtained. When the bank chooses to disclose the reasons for denial orally, the applicant must also be informed of the right to receive written confirmation of the reasons within 30 days from written request. 202.9(a)(2)(i) and (iii)

If the bank chooses to disclose the specific reasons for adverse action, the bank has two options: 202.9(b)(2)

(1) The bank may formulate a checklist providing the specific principal reasons for adverse action, or

(2) The bank may use the sample form in Regulation B.

Multiple applicants. In the case of two or more applicants, the notification need only be given to one of the primarily liable applicants. 202.9(a)(3)

When more than one creditor is involved in the transaction, and the credit is denied or the counter offer is not accepted by the applicant, each creditor who takes such adverse action must make the required notification. This notification may be provided by a creditor or indirectly through a third party (e.g., by agreement, through a retailer who offers the consumer loan to the bank for discounting) if the identity of all creditors taking the action is given. The bank must determine that all information is given accurately and timely to the party providing the notification. 202.9(a)(4)

Banks may meet the requirements of notification by delivering or mailing a written notice to the applicant's last known address or by communicating orally with the applicant. 202.9(f)

Inadvertent errors resulting in failure to comply with 202.9(e) notification requirements will not be violations of the regulation if the bank takes corrective action for past violations and begins complying on discovering the error. Inadvertent errors may be defined as either mechanical, electronic, or clerical.

Furnishing of Credit Information

Banks are not required to report credit information on accounts. However, the bank reports information on its accounts, it must meet the requirements of the regulation regarding the furnishing of such information.

Accounts established on or after June 1, 1977. For any 202.10(a) credit account established on or after June 1, 1977, the bank, if it furnishes credit information, must determine whether the account is one which the applicant's spouse will be permitted to use or for which both applicant and spouse will be contractually liable. Contractual liability in this case would not include secondary parties to the account such as endorsers or guarantors. Any history of such an account shared by the applicant and spouse must be designated and reported to a consumer reporting agency so as to reflect the participation of both spouses. If information on an account is supplied to a reporting agency or another creditor pursuant to a request on a specific individual, the information must be furnished in the name of the spouse about whom information is requested. When information is supplied routinely to a consumer

reporting agency, the information concerning credit accounts should be given in a manner which will enable the consumer reporting agency to supply information on designated accounts in the name of each spouse. The bank need not change the name in which the account is carried nor designate whether the spouse is a user or is contractually liable.

Accounts established prior to June 1, 1977. For any 202.10(b)
 account established before and in existence on June 1, 1977, the bank must determine whether the account is one which the applicant's spouse is permitted to use, or an account on which both spouses are contractually liable. To make this determination the bank has the following two options:

(1) The bank must examine every account to determine whether it is a joint account held by married applicants and commerce reporting information as required by § 202.10(a). This should be done not later than June 1, 1977; or

(2) For any existing accounts which lack sufficient information to make such a determination, the bank must mail or deliver to such accounts or all such accounts for married applicants one copy of the Credit History for Married Persons Notice^{*} in the form given in the regulation. The notice may be 202.10(b)(2)
 supplemented to identify the account and must be mailed by October 1, 1977. With respect to any open-end credit account, this requirement may be satisfied by mailing one copy of the

* The references to "use of an account may be deleted on notice sent to the closed-end accounts.

notice at any time prior to October 2, 1977 for those accounts that receive billing statements between June 1, 1977 and October 1, 1977. An open-end account that is inactive during this period need not receive the notice. When furnishing information on all or a portion of its accounts the bank must provide it in a manner that will enable the agency to provide access to the information about the account in the name of each spouse. When credit information is furnished in response to an inquiry about a specific individual, the bank must furnish only the credit information in the name of the spouse for which such information was requested. To facilitate this process a bank, within 90 days after receipt of a properly completed request to change the manner in which information is reported to consumer reporting agencies and others, must designate the account to reflect the fact of participation of both spouses.

202.10(a)
202.10(c)

Inadvertent errors resulting in failure to comply with requirements of furnishing credit information will not be considered violations of the regulation if the bank takes corrective action and begins complying immediately on discovery of the error.

202.10(d)

Retention of Records

All accounts. The bank must retain the original or copy of the following information for 25 months after the date the bank informs the applicant of notice of action taken on the application:

202.12(b)

(1) Any application, any information required to monitor compliance with the Act, and all written or recorded information used in evaluating the application which has not been returned pursuant to the applicant's request.

(2) A copy of written documents and any recorded notation or memorandum of oral communication of the notification of action taken on the application, the statement of specific reasons for adverse action, and any written statement from the applicant alleging a violation of this regulation or the Act.

Adverse action. The bank must also retain the original 202.12(b)(2) or copy of the following information for 25 months after the bank informs the applicant of adverse action regarding existent accounts:

(1) Any written or recorded information concerning such adverse action.

(2) Any written statement from the applicant alleging a violation of this regulation or the Act.

If the bank has received notice that it is under investi- 202.12(b)(3) gation for violation of the regulation, the bank must retain all the above required information relating to the account or application under investigation until there has been a final disposition of the matter.

Inadvertent errors in record retention are not viola- 202.12(c) tions of the regulation. Prohibited information found in the 202.12(a) bank's files is not a violation of the Regulation if obtained

prior to March 23, 1977 (June 30, 1976 for sex and marital status information), or at any time from a consumer reporting agency, or when voluntarily given without request from the bank. Neither is it a violation to obtain information required by the appropriate enforcement agency to monitor compliance. While the bank may retain such information in its files, care must be taken to ensure that it will not be considered in evaluating creditworthiness.

Special Purpose Credit Programs

The following types of credit programs meet the definition of special purpose credit programs: Act 701(c)

(1) Any credit assistance program authorized by Federal or State law for the benefit of economically disadvantaged applicants. 202.8(a)(1)

(2) Any credit assistance program offered by a non-profit organization for the benefit of its members or for the benefit of an economically disadvantaged class of persons. 202.8(a)(2)

(3) Any special purpose credit program offered to meet special social needs by a profit making organization. Such a program must meet the following requirements: 202.8(a)(3)

(a) A written plan must be developed which designates those classes of applicants eligible and the procedures and standards for the extension of credit.

(b) The program will extend credit to those applicants who probably would not be able to obtain such credit in substantially similar terms as other applicants.

Any denial of credit to an applicant who did not qualify under a special purpose credit program is not a violation of the regulation. 202.8(a)

If the applicants in special purpose credit programs are required to have one or more common characteristics such as race, color, religion, national origin, sex, marital status, age, or receipt of income from a public assistance program, then the bank may request and consider these characteristics in determining the eligibility of applicants for such a program without violating the regulation. If financial need is to be used as a determining factor under a special purpose credit program, information concerning the applicant's marital status, income from alimony, child support, or separate maintenance payments, or financial information on the spouse may be requested and considered to determine the applicant's eligibility for such a program. In addition, the signature of a spouse or other person on the application or credit 202.8(c)

202.8(d)

instrument may be obtained, if required for eligibility under Federal or State law. The consideration of this information and requiring of a signature will not be a violation of the regulation if used to determine eligibility for the program.

Information for Monitoring Purposes

Credit secured by residential real property. In order 202.13(a)
to monitor compliance with the regulation, banks must request and maintain the following information regarding written applications for credit secured by residential real property (residential real property means improved real property, including 1-4 family dwellings and individual units of condominiums and cooperatives used for residential purposes):

- (1) Race/national origin, using these categories:
American Indian or Alaskan Native; Asian or Pacific Islander;
Black; White; Hispanic; Other (Specify);
- (2) Sex;
- (3) Marital status, using the categories: Married;
Unmarried; and Separated; and
- (4) Age

The information may be requested on the application form 202.13(b)
or on a separate sheet of paper referring to the application. The applicant and joint applicant must be informed that the disclosure of such information is optional and that the information is

requested by the Federal Government for monitoring compliance with Federal law prohibiting discrimination on the basis of race/national origin, sex, marital status, and age. If the applicant refuses to supply the requested information, that fact must be noted on the form containing the request. Some forms may not ask marital status and age if it was asked as part of the application process (see model residential application form in Appendix B).

Specialized Credit

Dealer paper. When a bank purchases indirect paper from a dealer in the regular course of business, it is the responsibility of the bank to maintain procedures to determine whether the dealer is complying with the ECOA in all aspects of the credit transaction. 202.2(1)

If the applicant within 30 days accepts a credit offer from the bank, no other notification is required from either the bank or the dealer. If credit is not extended by the bank or the applicant does not accept the bank's offer of alternate terms, each creditor taking adverse action must make notification to the applicant. For example, if a dealer attempts to obtain financing at several banks and none of the banks agree to extend credit or the applicant does not accept any alternate terms offered, all the banks and any dealer acting as creditor involved in the transaction must give the notices required for adverse action. Banks may enter into contractual arrangements with 202.9)(a)(4)

dealers to provide all appropriate notices. When the dealer provides a joint notification, the bank will not be liable for actions or omissions resulting in violations, if the bank provided the dealer with the information necessary to comply with notification requirements and the bank was maintaining procedures to avoid any such violation. Any joint notification must identify each creditor.

All creditors involved in an indirect credit transaction must retain all written or recorded information in their possession for 25 months after notice of action, including any notice of adverse action taken.

202.12(b)
(4)

Business credit. All business credit, that is, credit extended for business, commercial or agricultural purposes, is subject to the general rule under Regulation B (a creditor shall not discriminate against any applicant on any prohibited basis with respect to any aspect of a credit transaction). Banks are also subject to many of the other requirements of Regulation B in connection with business credit. The following is a list of the provisions of the Regulation that affect business credit:

202.3(e)

202.4

(1) Marital status may always be asked in business credit, but sex may not;

(2) The provisions requiring banks to determine whether accounts are shared with spouses in order to furnish credit information are not applicable to business credit;

(3) The bank must provide the notifications relating to adverse action in business credit only when the applicant requests in writing the reasons for any adverse action. The request must come within 30 days after oral or written notification that adverse action was taken;

(4) Any records relating to an application for business credit must be retained for 25 months after notice of action taken only when the applicant requests in writing within 90 days after adverse is taken that such records be retained;

(5) If credit is applied for in the name of a business firm, a bank may insist that the firm name be used; and

(6) The provisions regarding requirements of spouse's signatures are applicable to business credit. Specifically, banks generally may not require that spouses of principals become liable on or guarantee the debt (unless the spouse is also a principal in the business). In all other respects Regulation B applies to business credit and the discussions in the preceding paragraphs are applicable. 202.7(d)

Relation to State Law

Regulation B alters, affects, or preempts only those State laws that are inconsistent with the Act or Regulation B and then only to the extent of the inconsistency. A determination as to whether a State law is inconsistent may be made if a formal Board interpretation is requested. Any person may apply for an interpretation. The regulation does not alter any provision of State property laws or Federal or State banking regulations which deal with the solvency of such institutions or laws relating to disposition of decedent's property. State member banks remain subject to the requirements of the ECOA and administrative enforcement by the System, unless the State obtains approval from the Board.

Act 705
202.11(b)

Penalties and Liabilities

Regulation B provides for punitive damages of up to \$10,000 in individual suits and the lesser of \$500,000 or one per cent of the bank's net worth in class action suits, in addition to actual damages. Successful complainants will also be awarded court costs and attorney's fees.

202.1(c)
Act 706

FAIR HOUSING EXAMINATION

Introduction

The purpose of this section is to provide basic information and describe examination procedures concerning discrimination in real estate lending. Discriminatory patterns and individual instances of discrimination are often difficult to find and even more difficult to prove. The examiner must realize that fair housing lending practices involve using objective criteria in an objective manner. The judgment of whether or not discrimination occurred is a legal question to be decided in a court of law. The examiner should concern himself with whether or not the bank's practices appear to be discriminatory and, if so, which practices and the extent of the practices.

Title VIII of the Civil Rights Act of 1968, as amended (42 U.S.C. 3605), makes it unlawful for any real estate lender to discriminate in its lending activities against any person because of race, color, religion, national origin, or sex. The Equal Credit Opportunity Act of 1974, as amended, prohibits discrimination with respect to any aspect of a credit transaction on the basis of sex, race, color, religion, national origin, or marital status. Therefore, a real estate lender is prohibited from discriminating in its real estate lending activities because of race, color, religion, national origin, sex, or marital status.

Under these Acts, State member banks are under a legal obligation to provide real estate and other services to qualified individuals regardless of race, color, religion, national origin, sex, or marital status.

Financial requirements will vary from time to time and from transaction to transaction, however, it is unlawful to impose requirements different from those applied to other applicants for any person based on the applicant's race, color, religion, national origin, sex, or marital status rather than economic reasons.

Summary of Laws and Regulations Concerning Non-Discrimination in Lending.

Title VIII, Civil Rights Act of 1968 -- Section 801 states that, "It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States."

Section 805 of the Fair Housing Act provides that it is unlawful for a bank to deny a loan or other financial assistance for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling because of the race, color, religion, national origin, or sex of (1) the loan applicant, (2) any person associated with the loan applicant, (3) any present or prospective owner of the dwelling, (4) any lessees, (5) any tenants or occupants.

Section 801 of the Fair Housing Act provides that a person who claims to have been discriminated against may complain to HUD. HUD will investigate the complaint and it may attempt to resolve the grievance by means of conference, conciliation, and persuasion.

Sections 810 and 812 of the Fair Housing Act provide that an aggrieved person may sue any person who he or she alleges had discriminated against him or her. He or she may do so whether or not he or she has complained to HUD.

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Section 813 of the Fair Housing Act provides that the Attorney General may sue for an injunction against any pattern or practice of resistance to the full enjoyment of the civil rights granted by Title VIII.

Section 804 prohibiting the following if based on race, color, religion, sex, or national origin is also relevant:

- 1) refusal to sell or rent, or to negotiate to sell or rent a dwelling;
- 2) discrimination with respect to terms of sale or rental;
- 3) the making of any statement with respect to sale or rental which indicates racial or religious preference or intent to discriminate;
- 4) representing falsely that a dwelling is not available;
and
- 5) inducing or attempting to induce for profit the sale or rental of property through representations regarding the entry or prospective entry into the neighborhood of a certain person or persons.

It is also unlawful to discriminate in the fixing of (a) amount, (b) interest rates, (c) duration, or (d) other terms because of race, color, religion, national origin, or sex.

Equal Credit Opportunity Act 701(a), as amended -- It shall be unlawful for any creditor to discriminate against any applicant, with respect to any aspect of a credit transaction.

- 1) on the basis of race, color, religion, national origin, sex, marital status, or age (provided the applicant has the capacity to contract), or
- 2) because all or part of the applicant's income derives from any public assistance program, or
- 3) because the applicant has in good faith exercised any right under the Consumer Credit Protection Act.

Regulation B's general anti-discrimination rule covers all types of credit extended by any person or organization that regularly extends or arranges for the extension of credit. It covers all aspects of credit activity. The prohibition against discrimination means that a lender may not treat any applicant less favorably than other applicants on the basis of race, color, religion, national origin, sex, marital status or age.

The Home Mortgage Disclosure Act requires institutions to disclose publicly where their mortgage loans are made. The Act grew out of allegations that there are mortgage credit shortages in some parts of large urban areas. The Act and Regulation C specify that nothing in them is meant to encourage unsound lending practices or the allocation of credit.

Therefore, Congress enacted the Home Mortgage Disclosure Act to provide the citizens and public officials with sufficient information to enable them to determine whether depository institutions are fulfilling their obligations to serve the housing needs of the communities and neighborhoods in which they are located. In a recent U.S. District Court decision, Laufman v. Oakley Building and Loan Company, it was ruled that "redlining" violates both the Fair Housing

Act of 1968 (Title VIII) and the Civil Rights Act of 1964. Redlining is the practice of arbitrarily denying loans for housing in neighborhoods of heavy minority-group concentration, even though individual loan applicants may be otherwise eligible for credit assistance. The term redlining refers to red lines drawn on a map by mortgage lenders to indicate disfavored neighborhoods.

Redlining may occur for example by denying financial assistance because of the race of the applicant, a prohibition against lending in a particular area, or the practice of setting more stringent standards for members of a particular group.

This does not mean that a lending institution is expected to approve all real estate loan applications or that it must make all loans on identical terms. Denying loans, or granting loans on more stringent terms and conditions, however, must be justified on the basis of such factors as the following, provided such factors are applied to all applicants equally:

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

5) the fact the the applicant is or is not a bank customer.

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

Possible Unlawful Discriminatory Lending Procedures

Practices that suggest unlawful discrimination in lending include the following:

- 1) the making of improperly low appraisals in relation to purchase prices, which force minority loan applicants to make larger down payments;
- 2) the imposition on minority loan applicants of onerous interest rates or other terms, conditions or requirements, or other collection procedures;
- 3) the application to minority borrowers of differing standards, procedures, or practices in administering late charges, penalties, foreclosures, reinstatements, or other collection procedures;
- 4) the use of excessively stringent credit standards and other loan underwriting standards and procedures for the purpose of, or which have the effect of, denying loans to minority applicants;
- 5) the making of loans to speculators, developers, or other persons who are known to exploit minority groups through the sale or other transfer of real estate at inflated prices or on other unreasonable terms and conditions;

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- 6) the making of loans to builders or developers, who, to a bank's knowledge, will follow a policy of discrimination with respect to the housing financed by such loans;
- 7) the failure to post and maintain Equal Housing Lending Poster(s) in the lobby of each office in a prominent place(s) readily apparent to all applicants seeking loans;
- 8) the employment of a policy of discrimination or exclusion in any advertising placed directly or through third parties.

Other possible discriminatory lending practices might include:

- 1) racial notation or code on appraisal forms or loan forms;
- 2) use of scripts by initial interview personnel to discourage applications;

The following factors may be evidence of sex discrimination:

- 1) discounting or disregarding the income of a working wife or single woman;
- 2) refusal to make a loan or to make a loan on different terms and conditions because of sex;
- 3) requiring more or different information from a woman applicant than a man (e.g., birth control arrangements or family plan);
- 4) subjecting a woman applicant to a different or more extensive credit check than that which is usually required for men;

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- 5) refusal to include alimony or child support as viable income where evidence is provided of a history of consistent prior payment and payments are likely to continue;
- 6) basing any aspect of a lending decision on presumptions about women (e.g., women in the child bearing age are poor risks);
- 7) treating single working parents differently from married working parents;
- 8) requiring a co-signer of women but not of men.

It should be emphasized that banks are not expected to make unsound real estate loans or render services on more favorable terms to minority group applicants solely because of their minority status. But to use such a status as a basis for denying a loan or other services is illegal. What is intended by Congress is that loans cannot and should not be denied solely on the basis of an applicant's minority group status.

Examination Objectives

The purpose of the examination procedures is to determine:

- 1) whether the bank is complying with the various non-discrimination lending statutes;
- 2) whether the bank's board of directors is aware of its responsibilities under the relevant provisions of the various statutes and whether the bank's board has adopted non-discrimination lending policies, procedures and loan underwriting standards;

- 3) whether the board of directors has provided for the periodic review of policies, practices and loan underwriting standards;
- 4) whether the bank administers without bias application procedures, collection or enforcement procedures or other lending conditions;
- 5) whether rejections appear to have been based on economic factors uniformly applied to all applicants.

It is hoped, of course, that this examination procedure will reveal individual cases of discrimination where they do exist. However, detection of individual cases of discrimination is not the goal. The Fair Housing Portion of the examination is approached from an internal control point of view. Has the bank established procedures to prevent discriminatory actions? Have policies been adopted that, if followed consistently, would achieve non-discriminatory lending?

HOME MORTGAGE DISCLOSURE ACT EXAMINATION

The Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2801 et seq.) became effective on June 28, 1976. The Act is a product of the increased public attention that has been focused on the continuing decline in the quality of housing available in many urban areas. One area of public concern relating to this problem is the apprehension that financial institutions may be contributing to the decline of older neighborhoods through unduly restrictive lending practices and unnecessary geographic discrimination. The denial or limitation of credit based upon neighborhood characteristics has come to be known as "redlining," after the presumed practice of drawing a red line on a map around borders of a supposedly undesirable area.

The stated purpose of the legislation is to provide loan information to depositors, public officials, and citizens in general in order to enable them to make informed decisions concerning which institutions to patronize and which areas of the community are lacking needed housing funds. The Act is not an anti-redlining measure. It does not prohibit any activity, nor is its purpose to allocate credit or encourage unsound lending practices. As its name implies, it is simply a disclosure act, relying upon public scrutiny for its effect.

The Act, which expires in June 1980, is a four-year experiment to determine if mortgage and home improvement loan disclosure by geographic area identifies redlining practices and provides sufficient data for concerned public officials and

citizens to undertake steps to combat the problem. Our task is to ensure that the required information is compiled and furnished in the proper form.

Institutions Covered

An institution is subject to the Act if it meets the

following four criteria:

(1) It is a depository institution -- 203.2(c); 203.3(a)(1)

(2) Having \$10 million in assets at close of fiscal year --
202.3(a)(1)

(3) With an office in an OMB-designated current SMSA --
202.3(a)(2)

(4) Making Federally-related mortgage loans -- 203.1(a);
203.2(d)

(a) First lien on 1-4 residential real property --
203.3(d) and (i); and

(b) Federal involvement

1. Deposits insured or institution regulated by Federal agency; or
2. Loan Federally insured, guaranteed, or otherwise assisted; or
3. Loan instrument intended to be sold to Federal National Mortgage Association, Government National Mortgage Association, or Federal Home Loan Mortgage Corporation.

Regulation C sets forth the data required to be compiled in the mortgage loan disclosure statement. Form HMDA-1 is proposed for use as a guideline and the Board has agreed to permit flexibility in the format, provided the required data is clearly and conspicuously disclosed. The data required to be compiled consists of "residential mortgage loans" and "home improvement loans" made during the fiscal year. A "residential mortgage loan" is a loan, secured by a first lien on residential real property, the proceeds of which are to be used to purchase, repair, rehabilitate or remodel the residential real property -- 203.3(h). "Residential real property" is improved property that is used or is to be used for residential purposes -- 203.2(i). It includes single family homes, homes for two-to-four families, multi-family dwellings (more than four families) and cooperatives. A "home improvement loan" is any loan the proceeds of which are to be used for the repair, rehabilitation, or remodeling of residential real property, except those loans secured by first liens -- 203.2(f). (A first lien home improvement loan is considered to be a "residential mortgage loan.")

As mandated by the Act, the Regulation requires the breakdown of the data into two main categories and several classes under each main category.

The two main categories are:

- (1) Loans originated by the bank, i.e., loans that the institution itself makes -- 203.4(a)(1)
- (2) Loans originated elsewhere and purchased by the bank, i.e., loans that are acquired by the institution from other lenders -- 203.4(a)(1)

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. Within each of these categories, loan data is to be divided according to:

- (1) Loans on property located within each SMSA where the headquarters or a branch of the reporting bank is located (these loans in terms of number and aggregate dollar amounts are to be shown for each census tract in the area or, in certain cases, for each ZIP code) -- 203.4(a)(1); and
- (2) Loans outside the SMSA in which the bank has an office (to be reported by number of loans and dollar amount without itemization by census tracts or ZIP codes) -- 203.4(b)(1).

NOTE:

- (1) An institution's relevant SMSA is defined as that metropolitan area in which it has an office.
- (2) The dollar amount is the balance due at the time of origination or purchase, not the current balance at the time that the report is compiled.

. The six classifications under each category for which various types of loans have to be reported include by column:

Column (1) - Identifying the geographic area in which the property is located either by census tract or ZIP code.

The next five columns relate to the categories of loans that Regulation C requires to be disclosed. Purchase money loans are to be reported in the second, third, and fourth columns.

Column (2) - Relates specifically to FHA, FmHA, or VA loans on one-to-four family dwellings -- 203.2(e); 203.4(a)(1)(i). NOTE: this column should only contain information concerning purchase money loans, not Title I, FHA home improvement loans.

Column (3) - Relates to conventional residential mortgage loans on one-to-four family dwellings, including individual condominium and cooperative units.

Column (4) - Total residential mortgage loans. A composite total of the second and third columns.

Column (5) - Total home improvement loans on one to four family dwellings, whether conventional or governmentally insured or guaranteed, or secured or unsecured.

Column (6) - Total multi-family dwelling loans, including purchase and rehabilitation loans. This column should contain information relating to purchase money and home improvement loans on dwellings designed for use by five or more families, whether conventional or governmentally insured or guaranteed.

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Column (7) - Total mortgage loans on one-to-four family dwellings made to non-occupants of the property. This is an addendum item relating to purchase money and home improvement loans where the borrower indicated at the time of the loan an intent not to occupy the property.

If the required information is contained on the disclosure statement, the regulation permits an institution to add additional information. A bank may desire to furnish additional data in its statement (e.g., number of applications) in order to illustrate its lending policies. This may be done by providing such data on separate schedules or in separate columns of the statement. It may also show its involvement in housing needs in other ways, for example, by furnishing separate data on construction loans, loans on mobile homes, etc. It may also show deposit data to indicate that it is lending as much money into a particular community as it has received in deposits from the community.

An error in compiling or disclosing the required mortgage loan data shall not be deemed to be a violation if the error was unintentional and resulted from a bona fide mistake, notwithstanding the maintenance of procedures reasonably adopted to avoid any such error -- 203.6(b).

Census Tract - Zip Code Reporting

Essentially, the regulation permits reporting by Zip code for the period prior to July 1, 1976 and requires census tract reporting thereafter. Since Zip coded reports were due by September 30, 1976, you will generally not be concerned with Zip code reporting.

Before discussing reporting further, however, something more should be said about those strange creatures -- SMSAs and census tracts.

SMSAs are initially established by the Census Bureau around population centers of 50,000 or more people and may be periodically expanded by OMB. Currently, there are 276 SMSAs in 48 States and Puerto Rico. Vermont and Wyoming are the only two States without SMSAs. While the mention of an SMSA may produce the image of a large metropolitan area, SMSAs actually vary considerably in size. For example, the towns of Bryan and College Station in Texas constitute the smallest SMSA, with a 1970 population of about 58,000. At the other extreme is the New York City metropolitan area, with a 1970 population of approximately 9,974,000. Each SMSA is divided into census tracts, comprising areas within the SMSA having a homogeneous ethnic and economic population of about 4,000 persons. Thus, Bryan-College Station, Texas is divided into sixteen tracts and the New York City SMSA is divided into 2,571 tracts.

The advantage of census tract as opposed to Zip code reporting is that census tracts more specifically define the location of the property, both in terms of geographic and socio-economic characteristics. For example, the District of Columbia is divided into 23 Zip code areas, 3 of which stretch into adjacent areas in Maryland. By way of contrast, the Census Bureau has divided D.C. into approximately 150 census tracts.

In the future, the only occasion when Zip codes will be used is when an area is included in a currently designated SMSA but was not tracted for the 1970 census. For example, in 1970, the Atlanta SMSA comprised five counties, which were divided into tracts. Subsequently, the Office of Management and Budget added 10 additional counties to the Atlanta SMSA, most of which have not yet been tracted. In those non-tracted areas, an Atlanta depository institution would have to use Zip codes.

Disclosure

Disclosure statements must be made available within 90 days after the close of an institution's fiscal year. The first disclosure statement for the full fiscal year prior to July 1, 1976 was due September 30, 1976. After the disclosure statements are completed, they must be retained for five years. Disclosure statements for the prior fiscal year are also due 90 days after loss of an exemption -- 203.5(a)(1)(i)-(iii) and 203.5(a)(3).

If an institution has offices in only one SMSA, then the entire disclosure statement relating to that SMSA must be available at the institution's home office and at a branch office within the SMSA. If an institution has offices in more than one SMSA, then the public availability requirements become slightly more complicated. Essentially, however, all of the statements for all of the SMSAs in which the institution has offices must be available at the home office; and the disclosure statements relating to each particular SMSA must be available at a branch office in that SMSA -- 203.5(b)(1)(i) and (ii).

Customer Notification

Regulation C also requires that an institution notify its depositors of the availability of the disclosure statements. The regulation suggests, but does not mandate, three alternate ways of providing the notice. It may be distributed to depositors along with any periodic statement regarding their accounts; a notice may be posted for one month in the lobbies of the institution's offices; or a notice may be published

in a local newspaper. The regulation does not specify the form or content of the notice to the depositors; any common sense approach is acceptable. In addition, while the regulation does not require an institution to make copies or copying facilities available, if it does, then it may charge a reasonable fee for the cost of copying the disclosure statement -- 203.5(b)(3); 203.5(c).

Enforcement

The Act delegated to the Board responsibility for the preparation of the implementing regulation. In addition to the initial preparation of the regulation, the Board is responsible for administering it, which is done through amendments, interpretations, and explanatory letters from both the Board and its staff.

Administrative enforcement of the Act is distributed among five Federal agencies: the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Board of Directors of the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board (acting directly or through the Federal Savings and Loan Insurance Corporation), and the Administrator of the National Credit Union Administration.

The Board is responsible for enforcement among State-member banks, and this responsibility has been delegated to the Federal Reserve Banks. Enforcement is carried out through the consumer affairs examination conducted concurrently with the commercial examination. Each member bank's compliance with Regulation C should be determined during each examination. Violations should be noted and agreements with management for prompt correction of violations should be obtained wherever possible.

Exemption

The Act permits the exemption of State-chartered institutions when a State has adopted a law substantially similar to the Federal law and has provided adequate provisions for enforcement of its law -- 203.3(a)(3).

The following special situations are called to your attention:

- . Loans that are both originated and either sold or paid in full during FY 1975, or both purchased and either sold or paid in full during FY 1975, may be omitted from the required data. The bank must consistently apply this option (i.e., consistently include or exclude such loans) so that an appropriate evaluation may be made of the entire portfolio of loans; the disclosure must note which option has been exercised. For FY 1976 and later years, all loans made or purchased must be shown -- 203.4(a)(4)(ii)(B).
- . Loans that are originated or purchased by the bank in a fiduciary capacity must be omitted from the required data -- 203.4(a)(4)(i)(B).
- . Loans purchased and loans made jointly or cooperatively are reported only to the extent of the interest of the bank -- 203.4(a)(3).
- . The report may be based on the SMSA definition at the beginning of the bank's FY -- 203.4(b)(1). If an area is added to the SMSA during that year, loans on properties in the added area would be included in the aggregate figures for loans "outside" the relevant SMSA (those

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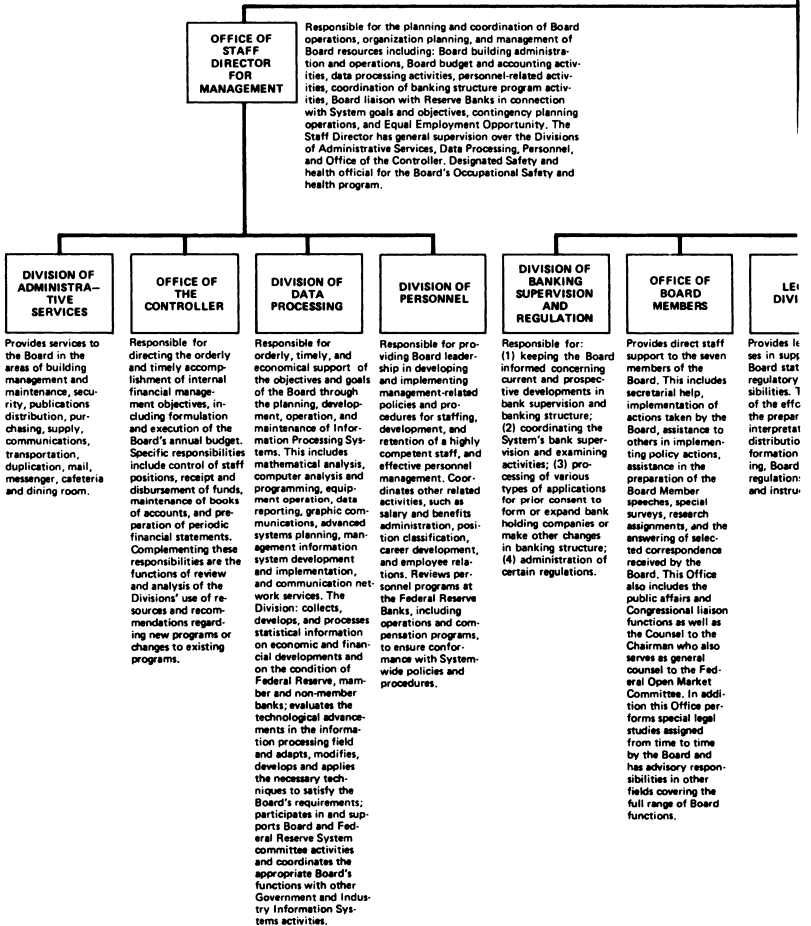
- in which the bank has offices). Of course, the statement for the following FY would be based on the revised SHSA.
- . Loans made prior to July 1, 1976, or purchased at any time, may be presumed to have been made to a mortgagor who intends to reside in the property securing the mortgage, unless the bank's records contain information to the contrary -- 203.4(c).
 - . Amounts to be reported for purchased home improvement loans may include the unpaid finance charges -- 203.4(a)(3).
 - . Additionally, some other loans that must be omitted from the required data include: temporary financing; purchase of an interest in a pool of mortgage loans; any loan, regardless of security, that is not for the purpose of the purchase, repair, rehabilitation or remodeling of residential real property; a refinancing loan if no additional principal is advanced and if the bank which originated the loan and the borrower are the same parties to the loan and the refinancing; and loans on property located outside the U.S. and Puerto Rico 203.2(h); 203.4(a)(4)(i)(A).
 - . The location of the property, not the location of the office initiating the loan, determines where the loan is to be reflected in the statement -- 203.4(a)(1).
 - . Loans made or purchased after June 30, 1976, may be itemized by Zip codes, in lieu of census tracts, only if the property is located in an area that is not tracted in the PHC(1) series -- 203.4(a)(2)(iii); 203.4(b)(2).

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- . Zip code itemization need not be revised to reflect official changes after the Zip code for a particular loan has been recorded -- 203.4(b)(3).
- . The disclosure statement will relate to loans originated or purchased during that particular FY, and not to the outstanding portfolio of the bank -- 203.4(a)(1).
- . A bank may desire to furnish additional data in its statement (e.g., number of applications) in order to illustrate its lending policies. This may be done by providing such data on separate schedules or in separate columns of the statement. It may also show its involvement in housing needs in other ways, for example, by furnishing separate data on construction loans, loans on mobile homes, etc. It may also show deposit data to indicate that it is lending as much money into a particular community as it has received in deposits from the community.

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

January 1964

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FEDERAL RESERVE SYSTEM

Attachment 6A

1978

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The Board of Governors consists of seven members appointed by the President of the United States for 14-year terms. Board Members' responsibilities include formulation of monetary and credit policy for the domestic economy; coordination with the international economy; system-wide coordination of the administration of monetary policy through the operations of the Federal Open Market Committee; supervision of the Federal Reserve Banks and member banks; regulation of margin requirements; bank holding company regulation; and regulation of foreign banking activities by American banks.

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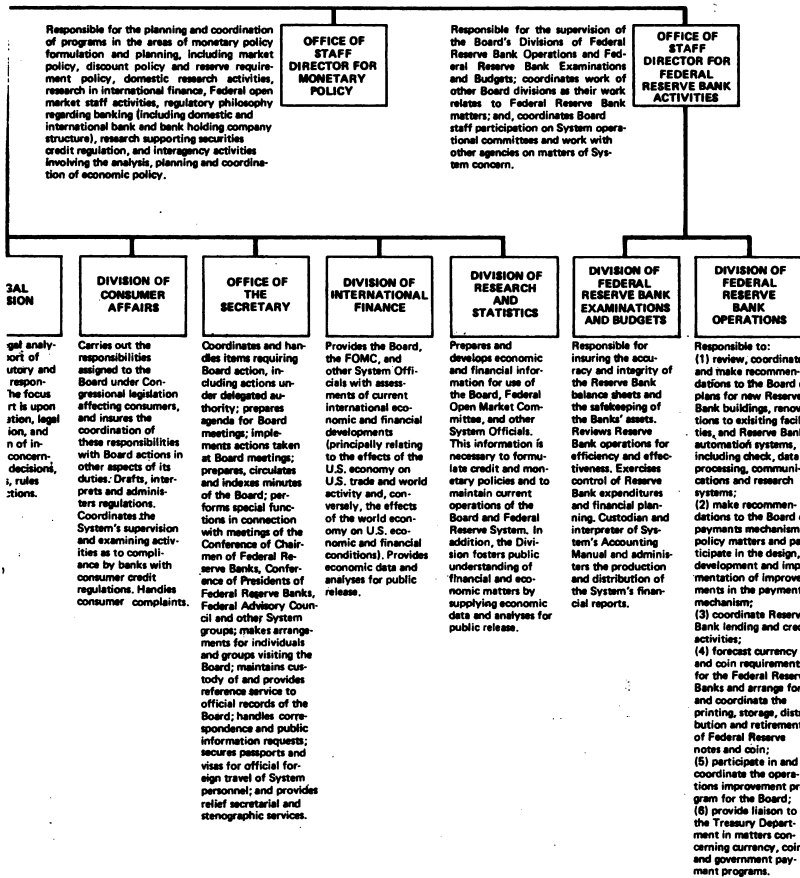
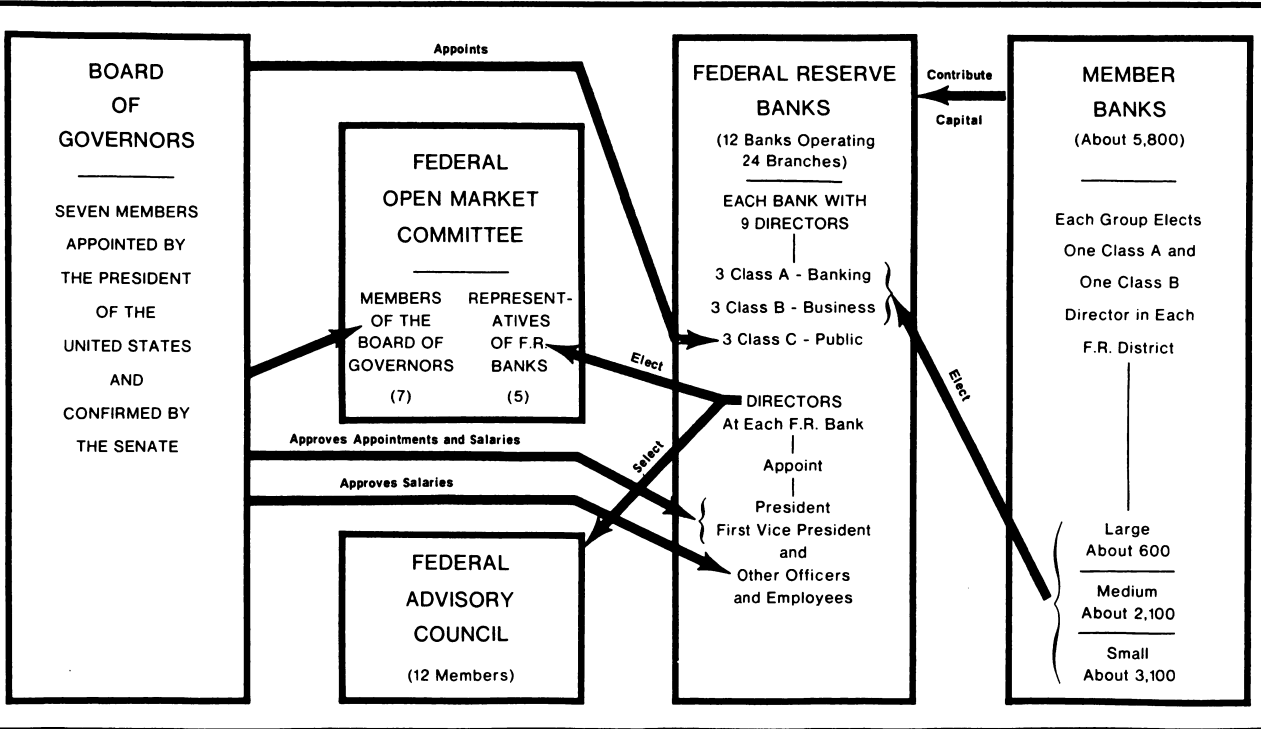


CHART 2
THE FEDERAL RESERVE SYSTEM – Organization



Purposes and Functions

Attachment 6B

TABLES
ASSETS OF INSURED COMMERCIAL BANKS, BY CLASS OF BANK, UNITED STATES AND OTHER AREAS:
JUNE 30, 1976, DECEMBER 31, 1976, AND JUNE 30, 1977
(Amounts in thousands of dollars)

ASSETS	ALL INSURED COMMERCIAL BANKS			NATIONAL BANKS MEMBERS FEDERAL RESERVE SYSTEM		
	JUNE 30 1976	DECEMBER 31 1976	JUNE 30 1977	JUNE 30 1976	DECEMBER 31 1976	JUNE 30 1977
	CASH AND DUE FROM BANKS - TOTAL.....	124,808,261	130,221,094	131,686,565	75,695,179	76,153,027	74,991,307
Cash items in process of collection.....	45,659,879	48,366,005	53,348,966	28,841,893	30,120,105	31,072,671
Resend balances with banks in the United States.....	28,927,646	31,022,738	30,474,830	12,175,900	13,039,643	12,756,045
Other balances with banks in the United States.....	6,173,208	5,876,969	5,162,407	3,416,052	3,199,407	2,642,126
Including interest-bearing balances.....	5,837,576	5,550,150	4,946,356	3,221,802	3,073,814	2,569,828
Balance with banks in foreign countries.....	3,793,024	4,796,214	4,173,992	1,927,338	2,261,870	1,967,498
Including interest-bearing balances.....	3,317,090	4,409,150	3,636,074	1,685,201	2,056,869	1,870,280
Currency and coin.....	12,040,678	12,882,210	12,783,045	6,930,790	7,056,236	7,248,188
Reserve with Federal Reserve Bank.....	28,213,586	25,968,980	25,537,379	12,802,897	10,485,764	10,794,581
SECURITIES - TOTAL.....	235,206,450	249,976,105	254,443,100	128,357,992	136,062,717	137,167,408
INVESTMENT SECURITIES - TOTAL.....	228,045,581	240,552,476	246,013,917	123,609,479	130,121,619	131,853,698
U.S. Treasury securities.....	87,699,469	96,883,068	97,186,039	87,810,419	92,612,836	91,262,790
Natality - 1 year and less.....	33,762,284	37,118,370	35,188,518	19,007,800	21,232,337	19,038,278
Over 1 through 5 years.....	46,642,651	50,476,214	51,982,414	24,756,636	26,880,111	27,391,633
Over 5 through 10 years.....	6,286,978	6,608,072	7,232,216	3,080,704	4,109,200	4,391,628
Over 10 years.....	761,877	761,877	772,890	367,101	390,066	435,214
Obligations of other U.S. government agencies and corporations.....	33,136,256	34,326,811	34,346,366	16,506,342	17,005,880	16,760,737
Natality - 1 year and less.....	9,827,271	10,711,513	9,827,271	4,759,659	4,945,291	4,504,814
Over 1 through 5 years.....	16,888,410	15,756,455	15,249,200	8,374,410	7,642,513	7,346,233
Over 5 through 10 years.....	3,031,795	3,428,183	4,082,339	1,803,378	2,198,076	2,427,471
Over 10 years.....	2,678,006	2,228,380	2,227,291	1,588,694	2,598,785	3,089,319
Obligations of states and political subdivisions.....	101,885,788	101,565,788	102,599,219	56,915,322	57,991,291	58,038,839
Natality - 1 year and less.....	17,361,759	16,795,606	18,396,656	10,152,522	10,932,169	11,546,787
Over 1 through 5 years.....	28,643,672	29,797,839	30,992,389	15,828,000	15,911,985	16,491,676
Over 5 through 10 years.....	29,512,123	30,847,464	32,176,076	15,881,543	16,645,610	17,320,386
Over 10 years.....	26,372,310	24,105,255	27,034,334	15,349,315	14,941,352	15,390,580
Other bonds, notes and debentures.....	5,339,992	5,836,833	5,882,203	2,788,086	3,031,807	3,071,822
Natality - 1 year and less.....	1,066,625	1,166,355	1,166,355	475,356	577,721	463,489
Over 1 through 5 years.....	1,890,593	2,227,649	2,425,341	1,073,365	1,247,088	1,359,441
Over 5 through 10 years.....	1,946,884	1,119,423	1,182,644	517,770	573,000	601,871
Over 10 years.....	1,321,950	1,491,180	1,257,966	711,545	802,544	831,209
Corporate stock.....	1,495,536	1,541,489	1,580,832	923,577	967,319	952,903
TRADING ACCOUNT SECURITIES.....	5,745,333	7,682,140	7,048,751	3,024,936	4,973,779	4,920,307
FEDERAL FUNDS HELD AND SECURITIES PURCHASED UNDER AGREEMENT TO RESELL - TOTAL.....	34,281,373	45,869,493	40,845,487	21,701,747	30,164,710	27,525,392
With domestic commercial banks.....	29,487,855	37,907,597	34,121,696	18,030,587	23,872,446	22,317,779
With brokers and dealers in securities and funds.....	2,460,671	5,705,082	4,310,828	2,082,119	3,746,845	3,375,547
With others.....	2,332,847	2,257,258	2,412,963	1,589,041	1,917,767	1,831,966
LOANS, NET.....	491,142,844	518,731,657	545,079,124	268,109,442	302,339,065	315,166,535
Plan: Reserve for possible loan losses.....	6,149,901	6,186,775	6,403,970	3,563,964	3,589,367	3,724,720
Loans, Total.....	487,292,745	512,918,432	551,263,094	269,673,646	305,928,432	318,925,255
Plan: Unearned income on loans.....	12,018,031	12,617,065	13,555,404	6,805,205	7,147,538	7,624,116
Loans, Gross.....	509,310,776	537,535,497	565,222,574	276,478,611	313,076,970	326,549,371
Real estate loans - total.....	163,369,428	165,948,938	162,658,312	81,315,012	83,946,200	90,171,863
Construction and land development.....	17,214,773	17,273,179	18,955,554	10,528,128	10,306,238	11,317,741
Secured by farmland.....	6,351,163	6,716,465	7,341,433	2,209,615	2,332,884	2,551,262
Secured by 1-1 family residential properties.....	8,535,611	9,198,789	8,005,588	4,033,227	5,772,751	5,535,922
Insured by FHA and guaranteed by VA.....	47,941,884	72,081,477	79,588,362	36,829,376	41,000,811	44,778,198
Secured by multi-family (5 or more) residential properties.....	429,076	423,194	399,552	184,412	218,997	160,029
Conventional.....	3,991,369	4,158,982	4,180,549	2,114,875	2,152,008	2,191,785
Secured by nonfarm nonresidential properties.....	38,906,048	41,252,532	44,217,289	20,815,379	22,085,257	23,542,408
Loans to financial institutions - total.....	36,743,193	35,900,747	33,532,945	22,966,290	22,746,961	21,496,051
To real estate investment trusts and mortgage companies.....	10,576,435	9,939,141	9,293,234	6,899,748	6,581,106	6,327,219
To domestic commercial banks.....	3,207,793	2,782,815	2,475,639	1,914,997	1,570,528	1,836,817
To banks in foreign countries.....	6,076,000	6,620,910	6,166,289	3,373,198	3,981,765	3,620,399
To other depository institutions.....	1,399,352	1,388,516	1,283,654	1,201,897	869,360	904,332
To other financial institutions.....	15,329,473	15,209,365	14,354,139	9,573,323	9,767,203	9,207,004
Loans for purchasing or carrying securities - total.....	11,539,769	15,089,724	15,125,911	6,022,136	8,637,269	8,911,991
To brokers and dealers in securities.....	7,521,406	10,074,708	10,480,167	3,248,357	4,000,767	4,263,226
Other loans for purchasing or carrying securities.....	4,018,163	4,914,976	4,135,744	2,677,779	2,635,522	2,748,765
Loans to farmers.....	22,156,350	23,268,314	25,632,828	10,825,193	11,334,334	12,346,028
Commercial and industrial loans.....	171,035,263	176,751,008	185,329,613	105,366,390	110,358,836	113,245,251
Loans to individuals - total.....	110,833,008	116,905,722	126,548,841	62,610,185	67,056,049	71,663,992
To purchase private passenger automobiles.....	36,882,538	39,006,519	44,971,525	20,006,085	21,308,028	23,858,876
on installment basis.....	9,569,734	11,373,566	11,653,110	6,870,574	8,249,951	8,811,134
Credit cards and related plans.....	2,494,294	3,054,209	3,373,193	1,434,651	1,645,597	1,870,078
To purchase other retail consumer goods.....	8,727,532	8,743,103	8,837,186	4,538,544	5,333,832	5,812,820
Other retail consumer goods.....	6,658,824	7,248,252	7,816,252	3,760,387	4,001,540	4,287,064
Installment loans to repair and modernize residential property.....	6,146,562	6,567,706	6,685,665	3,504,307	3,718,471	3,604,673
Other installment loans for household, family, and other personal expenditures.....	17,034,293	17,792,293	18,557,895	8,697,803	9,809,246	9,896,895
Single-payment loans for household, family, and other personal expenditures.....	22,926,207	24,322,078	26,254,015	12,629,034	13,357,018	14,289,289
all other loans.....	13,593,293	14,715,044	15,204,107	8,373,397	8,990,231	9,647,985
TOTAL LOANS AND SECURITIES.....	726,429,294	768,707,762	799,722,224	414,467,434	436,801,782	452,333,943
Direct loans financing.....	4,683,072	5,116,065	5,173,117	3,488,528	3,615,367	3,952,410
Bank premises, furniture and fixtures, and other assets representing bank premises.....	16,426,250	16,694,773	17,336,894	8,609,742	9,902,857	10,249,565
Real estate owned other than bank premises.....	1,846,255	2,098,530	3,058,811	1,580,664	1,749,520	1,850,836
Investments in unconsolidated subsidiaries and associated companies.....	2,104,856	2,303,965	2,594,050	1,609,514	1,797,380	1,932,726
Customers' liability on acceptance outstanding.....	10,327,422	9,153,857	11,816,181	6,222,337	5,000,236	7,396,300
Other assets.....	28,282,231	30,365,162	36,607,015	18,322,181	19,933,955	23,567,137
TOTAL ASSETS.....	949,527,514	1,011,329,205	1,048,910,610	552,476,068	586,989,332	603,999,516

STATE BANKS MEMBERS FEDERAL RESERVE SYSTEM			BANKS NOT MEMBERS FEDERAL RESERVE SYSTEM		
JUNE 30 1976	DECEMBER 31 1976	JUNE 30 1977	JUNE 30 1976	DECEMBER 31 1976	JUNE 30 1977
7,422,447	32,859,618	35,918,698	10,690,635	21,208,449	20,776,560
15,162,103	16,447,770	20,291,856	1,635,883	1,798,128	1,980,338
5,692,597	6,877,855	5,899,853	11,059,189	13,305,238	12,508,938
407,791	438,659	371,785	2,349,405	2,245,803	2,146,538
378,384	400,549	340,176	2,137,390	2,093,787	2,036,252
1,268,620	1,785,856	1,499,068	806,766	748,888	707,230
1,058,468	1,687,406	1,267,789	577,421	708,881	676,394
2,070,647	2,025,262	2,113,382	3,039,432	3,110,712	3,431,475
5,810,689	5,483,216	5,742,798	0	0	0
18,026,183	41,722,674	42,453,296	68,902,275	72,190,714	75,022,396
35,876,689	38,700,457	39,519,628	68,558,413	73,720,400	74,641,195
15,086,602	17,106,109	17,713,271	25,192,448	27,144,123	28,210,016
5,811,821	5,557,095	5,742,543	8,942,525	10,323,804	10,367,966
8,318,736	9,996,004	10,307,874	13,565,279	13,542,359	14,242,906
844,763	1,420,577	1,561,068	2,461,249	3,074,287	3,363,524
101,282	132,433	101,786	219,395	223,673	235,890
3,542,783	4,170,808	4,170,615	13,087,131	13,150,122	13,446,768
986,999	1,209,253	1,122,642	4,183,387	4,486,659	4,189,815
1,873,480	1,899,387	1,883,029	6,705,300	6,114,556	6,015,942
389,723	392,705	552,967	1,410,693	1,442,467	1,701,956
252,581	16,433,167	601,197	792,731	1,106,432	1,536,292
16,450,938	16,433,167	16,821,964	28,426,294	29,401,273	31,236,284
3,310,643	2,911,182	2,957,538	3,897,350	3,912,275	3,892,170
4,055,999	4,290,352	4,212,444	9,119,665	9,595,062	10,168,029
4,308,614	4,514,962	4,498,159	9,221,966	9,666,892	10,357,534
4,835,682	4,916,861	5,053,623	6,187,373	6,227,082	6,590,131
686,166	780,143	813,174	1,851,540	2,014,883	1,957,367
88,751	128,589	132,884	496,515	584,069	369,782
203,444	311,357	343,563	615,540	668,402	721,737
169,852	168,799	162,990	354,189	376,992	413,248
224,115	181,396	174,237	386,256	385,420	452,440
329,752	345,497	339,470	251,207	228,673	248,059
1,828,742	2,676,720	2,594,802	91,655	231,641	133,142
5,118,729	6,242,910	5,519,029	7,460,857	9,462,273	7,801,166
4,140,959	4,911,909	4,188,938	7,316,309	9,123,220	7,614,975
1,293,636	1,284,183	843,440	86,916	205,719	91,641
684,134	206,123	886,651	59,632	123,334	94,346
90,917,966	93,232,165	93,681,096	114,115,436	123,160,427	136,231,493
1,354,130	1,310,430	1,360,992	1,221,807	1,286,978	1,364,858
92,272,096	94,542,595	95,041,488	115,347,243	124,447,405	137,596,351
1,498,980	1,492,588	1,594,106	3,713,846	3,976,939	4,451,262
83,771,076	86,035,183	86,625,594	119,061,088	124,424,348	142,047,613
21,272,567	21,797,547	22,312,049	41,782,345	45,161,101	50,172,940
3,548,334	3,146,154	3,231,330	3,136,311	3,622,787	4,406,485
507,710	535,075	578,038	3,633,838	3,844,866	4,212,136
1,173,513	1,145,122	1,129,412	1,324,471	1,240,914	1,239,854
9,267,147	9,639,640	10,076,841	20,245,361	22,161,756	24,737,323
136,701	124,133	122,082	107,963	80,064	87,442
788,934	832,964	758,902	1,107,556	1,173,890	1,189,862
5,870,226	6,174,459	6,375,043	12,220,443	12,992,802	14,299,838
11,776,180	11,066,931	10,021,149	2,040,703	2,068,855	2,015,745
3,277,302	2,953,067	2,565,171	398,348	404,966	400,834
614,274	628,528	477,095	677,521	583,759	561,727
2,534,238	2,508,801	2,359,177	168,644	134,304	152,573
239,468	317,581	222,307	149,937	166,595	117,315
5,199,897	4,662,954	4,363,799	646,253	779,171	782,286
4,741,541	5,484,748	5,355,964	776,092	967,707	947,956
4,045,740	4,791,566	4,679,392	131,509	281,435	237,547
694,891	693,182	676,572	444,583	686,272	710,409
1,554,788	1,647,130	1,814,519	9,776,169	10,296,850	11,476,282
35,651,721	36,387,068	36,910,345	30,017,344	32,005,104	35,773,317
15,267,216	16,131,808	16,875,885	32,955,600	35,719,865	40,045,934
4,225,826	4,516,422	4,998,799	12,649,627	13,982,069	16,113,888
1,701,632	1,955,697	1,953,809	997,528	1,167,918	1,288,167
769,492	857,414	897,418	885,151	550,448	604,657
883,040	853,822	812,143	2,482,948	2,525,449	2,612,214
733,406	755,556	796,847	2,365,031	2,489,156	2,732,359
831,733	890,036	867,805	1,810,542	1,959,199	2,212,987
2,377,879	2,381,249	2,482,023	5,608,411	6,001,739	6,578,997
3,744,211	3,921,132	4,047,061	6,552,962	7,043,888	7,897,665
3,577,260	3,519,951	3,335,683	1,712,636	2,204,862	2,220,439
128,944,149	134,954,839	136,134,392	183,017,711	195,351,141	211,253,889
974,444	1,056,142	897,007	220,100	246,556	323,700
2,323,197	2,377,701	2,347,259	4,191,311	4,414,215	4,700,700
647,576	637,356	656,324	479,813	507,654	551,657
453,221	495,106	624,596	42,121	31,375	36,728
3,774,500	3,671,080	3,842,071	330,585	392,251	428,070
6,986,444	7,279,212	9,456,156	2,973,606	3,151,995	3,583,722
179,644,707	189,573,964	195,455,532	217,406,739	234,765,909	249,455,562

TABLE 4
ASSETS OF ALL MUTUAL SAVINGS BANKS, SELECTED CALL DATES,
UNITED STATES AND OTHER AREAS, JUNE 30, 1973 TO JUNE 30, 1977
(Amounts in Thousands of Dollars)

	JUN. 30 1973	JUN. 30 1974	JUN. 30 1975	JUN. 30 1976	DEC. 31 1976	JUN. 30 1977
ASSETS						
CASH, BALANCES WITH BANKS, AND COLLECTION ITEMS - TOTAL.....	1,786,039	1,701,867	2,127,297	1,572,901	2,370,167	2,099,459
Currency and coins.....	246,178	246,998	265,808	336,558	385,273	418,528
Demand balances with banks in the United States.....	621,259	565,152	592,426	585,559	1,022,366	783,246
Other balances with banks in the United States.....	759,662	789,056	1,132,841	550,635	816,010	752,656
Cash items in process of collection.....	126,900	106,713	136,222	100,759	136,518	165,033
SECURITIES - TOTAL.....	26,968,850	25,946,953	31,336,907	39,404,525	41,976,649	48,903,677
UNITED STATES GOVERNMENT AND AGENCY SECURITIES - TOTAL.....	7,760,724	6,937,039	9,215,658	13,361,719	14,764,846	16,392,491
Securities maturing in 1 year or less.....	3,363,236	3,284,508	1,051,030	1,890,595	2,278,082	2,358,517
Securities maturing in 1 to 5 years.....	2,875,457	1,940,486	2,926,287	3,991,288	3,783,778	3,970,881
Securities maturing in 5 to 10 years.....	1,225,105	676,382	1,229,852	1,787,492	1,659,589	2,202,965
Securities maturing after 10 years.....	2,977,866	3,197,667	4,008,419	5,702,368	7,050,637	7,466,328
CORPORATE BONDS.....	12,268,526	11,623,561	13,771,152	15,993,542	16,600,069	17,454,053
STATE, COUNTY, AND MUNICIPAL OBLIGATIONS.....	1,374,827	892,967	1,277,611	2,243,174	2,407,061	2,551,273
OTHER BONDS, NOTES, AND DEBITURES.....	1,904,693	2,244,571	2,786,126	3,361,651	3,540,653	3,943,208
CORPORATE STOCK - TOTAL.....	3,877,922	4,038,795	4,286,400	4,344,438	4,359,800	4,562,252
Bank.....	567,252	399,684	526,189	543,679	548,733	566,520
Other.....	3,310,670	3,639,111	3,760,211	3,800,759	3,811,107	3,995,732
FEDERAL FUNDS SOLD AND SECURITIES PURCHASED UNDER AGREEMENTS TO RESUME.....	1,632,484	1,985,898	1,730,266	1,870,504	1,535,036	2,957,327
REAL ESTATE LOANS AND DISCOUNTS - TOTAL.....	78,012,193	76,405,857	76,601,183	82,121,307	85,299,638	88,023,210
Real estate loans - total.....	70,633,636	74,225,163	75,795,578	78,836,767	81,639,570	84,076,139
Construction loans.....	1,903,605	1,239,501	892,838	934,712	955,379	1,024,683
Secured by farmland.....	58,977	51,296	51,598	57,288	60,016	51,658
Secured by residential properties:						
Secured by 1- to 4-family residential properties:						
Insured by Federal Housing Administration.....	14,329,761	13,322,583	12,823,316	12,159,588	11,846,517	11,603,033
Not insured by Federal Housing Administration.....	12,914,912	12,808,873	12,548,306	12,284,679	12,185,076	12,117,755
Not insured by Veterans Administration.....	20,269,665	22,541,333	23,963,313	26,279,969	28,697,780	30,838,494
Secured by multifamily (5 or more) residential properties:						
Insured by Federal Housing Administration.....	1,512,478	1,754,756	1,831,892	2,267,553	2,444,114	2,578,376
Not insured by FHA.....	9,409,413	10,289,604	10,396,681	11,245,405	11,483,577	11,745,724
Secured by other properties.....	10,838,225	12,219,217	12,797,638	13,617,563	14,077,120	14,105,816
Loans to domestic commercial and foreign banks.....	30,628	35,520	38,198	39,712	28,442	20,280
Loans to other financial institutions.....	41,443	48,746	48,240	45,190	57,346	87,718
Loans to brokers and dealers in securities.....	445	581	3	0	0	20,720
Other loans for purchasing or carrying securities.....	3,310	1,267	1,836	1,608	1,758	1,470
Loans to farmers (excluding loans on real estate).....	1,267	1,263	1,336	990	918	1,390
Commercial and industrial loans.....	299,863	322,518	312,139	481,413	609,393	637,716
Loans to individuals for personal expenditures.....	1,896,612	2,066,363	2,297,786	2,607,892	2,862,800	3,082,314
All other loans (including overdrafts).....	108,789	111,539	116,067	111,535	96,811	96,403
TOTAL LOANS AND SECURITIES.....	101,613,527	100,398,708	111,668,436	123,400,336	128,806,323	135,804,214
Bank premises, furniture and fixtures, and other assets representing bank premises.....	791,484	897,602	1,031,679	1,139,411	1,190,297	1,236,668
Real estate owned other than bank premises.....	186,766	226,175	355,536	535,638	539,884	550,315
Investments in subsidiaries not consolidated.....	76,532	82,499	88,645	113,633	122,338	126,282
Other assets.....	1,207,426	1,268,699	1,492,957	1,776,417	1,791,265	1,903,662
TOTAL ASSETS.....	105,671,736	108,576,630	116,778,352	128,657,216	134,620,223	141,801,400

CONSUMER AFFAIRS COMPLIANCE EXAMINATION DATA

CURRENT DATE: 03/21/78

PAGE: 1

EMPLOYEE HOURS SPENT ON EXAMINATIONS

BY
DISTRICT
(SIZE OF BANK DISTRIBUTION)

PERIOD: 77/01 TO 78/08

DISTRICT	TOTAL BANKS			SMALL BANKS			MEDIUM BANKS			LARGE BANKS				
	NO. OF BANKS	AVG HRS PER BANK	PERCENT OF (IN BANK) HRS TO TOTAL	NO. OF BANKS	AVG HRS PER BANK	PERCENT OF (IN BANK) HRS TO TOTAL	NO. OF BANKS	AVG HRS PER BANK	PERCENT OF (IN BANK) HRS TO TOTAL	NO. OF BANKS	AVG HRS PER BANK	PERCENT OF (IN BANK) HRS TO TOTAL		
BOSTON	15	1,341	80	74	83.05	3	157	52	10	646	70	2	468	244
NEW YORK	61	4,096	67	44	82.20	12	389	31	20	1,624	56	20	2,040	105
PHILA	11	827	81	66	92.40	4	188	47	5	290	59	2	402	201
CLEVE	89	11,164	125	91	72.55	49	5,575	114	39	5,164	132	1	424	424
RICHMOND	78	4,062	52	48	91.20	34	1,520	45	35	1,455	42	9	1,106	123
ATLANTA	77	5,453	71	51	72.29	45	2,376	53	26	2,254	81	4	822	206
CHICAGO	188	4,601	24	20	83.05	104	2,157	21	76	2,057	27	8	366	48
ST. LOUIS	75	2,743	37	33	90.56	36	1,091	30	38	1,535	40	2	137	75
MINN	112	4,374	39	32	81.93	93	3,490	38	19	885	47	0	0	0
KAN CITY	85	4,924	54	45	77.33	64	1,926	30	23	2,760	138	1	227	227
DALLAS	46	3,119	68	45	65.88	25	1,165	47	20	1,704	85	1	229	229
SAN FRAN	23	3,743	163	141	86.37	11	567	52	7	1,304	167	5	1,866	373
TOTAL	861	50,565	59	46	77.73	480	20,614	43	326	21,252	67	55	4,197	149

	Boston	New York	Philadelphia	Cleveland	Richmond	Atlanta	Chicago	St. Louis	Minneapolis	Kansas City	Dallas	San Francisco	Totals
202.4	0	0	3	23	189	0	1	0	4	180	0	3	403
202.5 (forms)	720	178	63	499	646	1,020	817	166	343	2,938	300	40	7,730
202.6 (evaluation)	33	3	1	1	81	0	1	0	36	150	0	1	275
202.7(a)-(c)&(e) granting	0	1	0	0	102	0	0	0	0	90	0	27	220
202.7(d) (signatures)	0	40	0	324	59	2	741	18	17	739	1	30	1,971
202.9 (notifications)	283	257	33	314	217	225	633	115	332	1,036	239	301	3,985
202.10 (credit report)	0	1	0	152	29	23	57	0	0	110	49	1	422
202.12 (recordkeeping)	0	9	0	79	44	36	44	27	5	327	114	2	687
202.13 (monitoring)	55	22	30	746	127	65	227	94	156	181	82	47	1,832
Title VIII	1	15	13	16	5	26	134	4	28	17	17	16	292
Totals	1,090	526	143	2,154	1,469	1,397	2,655	424	921	5,768	802	468	17,817
No. of Banks Examined													861
No. of Banks Examined w/ Violations													824

REGULATION B VIOLATIONS: MARCH 1977 - JULY 1978

	<u>No. Second Bank Examinations</u>	<u>No. Banks with Repeat Violations</u>
San Francisco	8	5
Boston	2	0
Philadelphia	1	0
Cleveland	9	2
Atlanta	20	16
Chicago	27	16
St. Louis	21	4
Minneapolis	6	2
Kansas City	10	4
Dallas	1	1
Richmond	0	0
New York	0	0
	<u>105</u>	<u>50</u>

Repeat Violations Found on Second Bank Examinations by Reserve District

Attachment 9B

CONSUMER COMPLAINT CONTROL PROCEDURE

January 1, 1977

(Excerpts applicable to fair housing,
equal credit opportunity, and home
mortgage disclosure.)

CONSUMER COMPLAINT CONTROL PROCEDURE

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CONSUMER COMPLAINT CONTROL PROCEDURE

Introduction

The Consumer Complaint Control Procedure has been designed to assist the Board in carrying out its responsibilities under the consumer protection statutes it administers.

It will:

Assist in the prompt and effective resolution of complaints.

Serve as a tool in the determination that State member banks are complying with consumer protection laws and regulations, are responding to consumer complaints, and are acting to avoid the recurrence of complaints.

Gather information as a basis for determining the need for corrective regulation or legislation.

Enable the Board to be effectively responsive to requests for data from Congress.

Definition of Consumer Complaint

For purposes of the Consumer Complaint Control Procedure, the definition of consumer complaint is substantially broader than that provided for in Regulation AA. In particular, the definition has been expanded to include all complaints received, not simply those directed against State member banks. A guideline definition is as follows:

A specific complaint by or for an individual consumer (borrower, saver, or investor) or consumer group, a business person or other creditor, against a financial institution or other creditor directed or referred to the Federal Reserve Board or any Federal Reserve Bank or Branch regarding Regulations B, C, G, Q, T, U, X, and Z; other consumer and investor protection provisions, such as the Fair Credit Reporting Act and Title VIII of the Civil Rights Act of 1968 (Discrimination in Mortgage Lending), including "redlining," municipal securities and transfer agent regulations; bank services and procedures, or any other action or practice not covered by existing rules and regulations but which could be considered as an unfair or deceptive act or practice.* This definition includes specific complaints and also inquiries, framed in the form of a complaint, concerning acts or practices which may be authorized under existing Federal or State laws. Typical examples follow:

Rule of 78's rebate method

Computation of finance charge, e.g., using "average daily method"

Interest on savings account

Penalty for early withdrawal of CD

Credit denial based on creditor's legally authorized policy

Nondisclosure of credit standards

Legally authorized or permissible practices in clearing checks

Excluded are requests for printed matter and general information and complaints about such things as monetary policy, statistical data, fiscal agency functions, and Treasury issues. Also excluded are general complaints by an institution regarding an existing or proposed regulation.

*An unfair or deceptive practice is an act, a policy, a procedure, or a practice, or lack thereof, by a bank which the complainant alleges is unfair or deceptive and which cannot be identified as a violation of any of the regulations and statutes specifically classified in the Consumer Complaint Control Procedure.

Procedure

The Consumer Complaint Control (CCC), Form FR 1182, and the Consumer Complaint Control Change Sheet (CS), Form FR 1182a, are the two basic forms which will be used to enter and change data in the computer file.

A CCC will be prepared in triplicate when a consumer complaint is received. The original will be sent to the Division of Data Processing (DDP) by the Board or to the Division of Consumer Affairs (DCA) by the Federal Reserve Banks for transmittal to DDP for entry into the computer file. The duplicate and triplicate copies will be retained by the originating office or sent to the Federal Reserve Bank to which referred by the Board; one should accompany the correspondence assigned for handling, while the other may be used for control and follow-up purposes. They may be discarded when the complaint is closed and appears as such on a printed report. When the original is returned to DCA by DDP, it will be retained and may be used as a control or cross-reference.

If a letter, call, or walk-in involves more than one major type of complaint, or more than one creditor, separate CCCs will be prepared for each. When there are one major and one or more minor or incidental types of complaints, only one CCC will be prepared and the major complaint coded.

All additions to and changes and corrections of information in the computer file will be accomplished through the use of a CS. This will include the closing of a complaint. A CS will not, of course, be needed if the change or closing occurs the same month the complaint is received. In these cases, the appropriate information will be recorded on the CCC before it is submitted.

If a complainant who has written is asked to submit additional information, a CCC will be prepared and a 60-day follow-up set. The date of the letter requesting the information will be entered as the date acknowledged on the CCC. Should a month-end(s) intervene, the open CCC will be retained and not sent to the Board (or not forwarded to DDP if the complaint was received by the Board). If a reply comes in, its date of receipt will be substituted on the CCC for the previously entered date and the old acknowledged date deleted. Should an answer not be received within 60 days, the complaint will be closed using action taken code 0100, No Reply Necessary--File.

The same procedure will apply where a complainant telephones regarding a State member bank and is asked to submit documentation for further consideration or investigation. The date of the call will be entered as the date acknowledged on the CCC.

If a congressional inquiry is received on a complaint already in the computer file, a CCC will be prepared and assigned complaint code E 00 00 00. This will prevent it from being counted twice statistically. When the complaint is closed, two CSs should be prepared unless the original complaint has already been closed or a month-end has not intervened since the receipt of the inquiry. The total action time will be entered on the congressional CCC or CS.

Each Bank should send its accumulated CCCs and CSs for a month to DCA on the last working day of every month, except as discussed above. DCA will forward these and its own forms to DDP during the first week of each month. A Bank should submit a negative report if no complaints were received.

Instructions for the Completion of the
Consumer Complaint Control, Form FR 1182

- Name -- Enter the name of the complainant. If anonymous, enter "Anonymous."
- Date Received -- Enter the date the letter, call, or visit is received by the Federal Reserve Bank, Branch, or the Board. Use six-digit numerical designation, e.g., 01-03-77.
- Address -- Enter the address of the complainant. Use the U.S. Postal Service two-letter abbreviation for the State.
- Source of Complaint -- Enter the Source of Complaint Code. If a U.S. congressional, add "Sen." or "Rep." and the surname.
- State Member Bank -- Enter the bank name, branch name, if any, and city.
- District State Bank and Branch Numbers -- Enter the eight-digit number of the State member bank and the additional four digits of the branch if involved. (These numbers can be obtained from the Structure Coordinators in the Federal Reserve Banks who maintain a listing of all banks by a District State Bank Number assigned by the FDIC.) Enter 00 00 00 00 if the creditor is not a State member bank.
- Complaint Form -- Circle the complaint form code letter for written, telephone, or walk-in.
- Creditor Code -- Circle the creditor code letters for State member bank, other bank, or other creditor.
- Complaint Code -- Enter the appropriate code. If the code is D 08 00 00, Unfair or Deceptive Practices, Other, briefly describe the nature of the complaint in the box provided therefor in the comments section.
- Assigned To:
- Board -- Enter the surname of the staff member in the Division of Consumer Affairs to whom the complaint is assigned. If the complaint is assigned to another division, enter the division's initials, e.g., LD.

- Federal Reserve Bank -- Enter the city of the Federal Reserve Bank receiving the complaint or to which referred by the Board.
- Date Acknowledged -- Enter the date of the letter acknowledging the complaint, if an interim acknowledgement. Use six-digit numerical designation.
- Date Promised -- Enter the date by which a substantive reply is promised in the acknowledgement letter. Use six-digit numerical designation.
- Date Closed -- Enter the date the complaint is closed. Use six-digit numerical designation.
- Action Taken Code -- Enter the appropriate code.
- Action Time -- Enter the total of clerical and professional time spent in handling the complaint to the nearest quarter hour, in decimals. Use four-digit numerical designation. For example, one hour and thirty minutes would be 0150.
- Comments -- Use this space for additional pertinent information. Examples would be the complainant's telephone number and the name of the creditor if not a State member bank. If the complaint code is D 08 00 00, Unfair or Deceptive Practices, Other, enter a brief description of the complaint in the box in this section of the form.

Instructions for the Completion of the
Consumer Complaint Control Change Sheet, Form FR 1182a

The CS will be used to add to, change, or correct information in the computer file.

The five-digit control number must be entered in character positions 1 - 5 on the first line of the form.

Always use the same number of digits called for by the CCC. Dates, for example, will therefore always involve six digits.

Fill in only the applicable items and leave all others blank. This applies also to those change codes which provide for more than one data item on the same line, separated by a slash. For example, if you wish to add the zip code in change code 5, leave the two positions for the State blank.

As in the case of the CCC, information regarding complaint code D 08 00 00 must be confined to the space provided at the bottom of the form. Whatever is typed or printed in that space will entirely erase what was originally entered from the corresponding space on the CCC. It must therefore be a complete statement regarding the complaint

Consumer Complaint Codes

Transfer Agents

A 01 00 00 Transfer Agents

Consumer Complaint CodesRegulation B**B 01 00 00 Application Discouraged or Delayed****Credit Denied or Adverse Action Taken**

B 02 01 00 Age
 B 02 02 00 Cosignor or guarantor rejected
 B 02 03 00 Credit history
 B 02 04 00 Exercise of rights under Consumer Credit
 Protection Act
 B 02 05 00 Length of employment
 B 02 06 00 Length of residency
 B 02 07 00 Level of income
 B 02 08 00 Marital status
 B 02 09 00 Race, color, national origin
 B 02 10 00 Religion
 B 02 11 00 Sex
 B 02 12 00 Source of income
 B 02 13 00 Special purpose credit program
 B 02 14 00 Other

Information Requested

B 03 01 00 Alimony, child support, or maintenance
 income
 B 03 02 00 Alimony, child support, or maintenance
 payments
 B 03 03 00 Assets
 B 03 04 00 Childbirth capability or intentions
 B 03 05 00 Dependents
 B 03 06 00 Exercise of rights under Consumer Credit
 Protection Act
 B 03 07 00 Marital status
 B 03 08 00 Race, color, national origin
 B 03 09 00 Religion
 B 03 10 00 Sex
 B 03 11 00 Spouse or former spouse
 B 03 12 00 Other

Notification Not Given

B 04 01 00 Action taken
 B 04 02 00 ECOA notice
 B 04 03 00 Specific reason for adverse action

Consumer Complaint CodesRegulation B cont.

Prohibited Action Taken

B 05 01 00 Account denied in birth-given first
name or surname
B 05 02 00 Basis used in evaluating creditworthiness
B 05 03 00 Change in name or marital status
B 05 04 00 Attaining a particular age
B 05 05 00 Retirement
B 05 06 00 Separate account denied because of sex or
or marital status
Signature

B 05 07 01 Spousal

B 05 07 02 Other

B 05 08 00 Other

B 06 00 00 Records Retention and Reporting

B 07 00 00 Other

Consumer Complaint CodesRegulation C

C 01 00 00 Denied Access to Mortgage Loan Information

Mortgage Loan Information

C 02 01 00 Not available in branch office

C 02 02 00 Not available in home office

C 02 03 00 Not compiled

C 03 00 00 Mortgage Loans Not Available (or Insufficient) in a
Given Census Tract or Zip Code

C 04 00 00 Unreasonable Charge for Mortgage Loan Information

C 05 00 00 Other

Consumer Complaint Codes

Title VIII, Civil Rights Act of 1968

Discrimination in Mortgage or Home Improvement Loans

- V 01 01 00 Race, color, national origin
- V 01 02 00 Religion
- V 01 03 00 Sex

V 02 00 00 Failure to Display Equal Lender Poster

V 03 00 00 Other

Source of Consumer Complaint Codes

- 01 Consumer
- 02 Consumer Interest/Action Group
- 03 White House
- 04 Congressional Plus "Sen." or "Rep." and Surname
- 05 Federal Agency
- 06 State or Local Agency
- 07 Bank
- 08 Other

Form of Consumer Complaint Codes

- L Written
- T Telephone
- W Walk-in

Creditor Codes

SM State Member Bank

OB Other Bank

OC Other Creditor

Action Taken Codes

0100 No Reply Necessary--File

Referred to Another Agency

- 0201 Comptroller of the Currency
- 0202 Federal Deposit Insurance Corporation
- 0203 Federal Trade Commission
- 0204 Federal Home Loan Bank Board
- 0205 National Credit Union Administration
- 0206 Other

0300 Explanation or Information Given

Investigation Made

- 0401 Bank legally correct--no accommodation
- 0402 Bank legally correct--accommodation made
- 0403 Bank error--corrected
- 0404 Factual dispute--consumer referred to attorney
- 0405 Possible bank violation--resolved
- 0406 Possible bank violation--unresolved

Consumer Complaint Control Procedure Reports1. Consumer Complaints by Complainant

An alphabetical listing of complainants showing the following:

Control number

Complainant name

Complainant address

Source of complaint code (if congressional,
"Sen." or "Rep." and surname)

Complaint code

State member bank district State bank and branch
numbers

Assigned to

Date received

Date acknowledged

Date closed

Action taken code

Monthly, complete from first of year, with copy to each
Federal Reserve Bank for its district.

Consumer Complaint Control Procedure Reports

2. Consumer Complaints by Control Number

A numerical listing by control number showing the same information reflected by report 1.

Monthly, complete from first of year, with copy to each Federal Reserve Bank for its district.

Consumer Complaint Control Procedure Reports3. Consumer Complaints by Federal Reserve District and State Member Bank

A numerical listing by Federal Reserve districts by name of State member bank, alphabetically showing:

District number

Control number

State member bank name, branch, and city

State member bank district State bank and branch numbers

Complainant name

Complaint code

Assigned to

Date received

Date acknowledged

Date closed

Action taken code

Monthly, complete from first of year, with copy to each Federal Reserve Bank for its district.

Consumer Complaint Control Procedure Reports4. Outstanding Consumer Complaints by Assignee

A listing of outstanding consumer complaints by assigned Consumer Affairs Division staff members and assigned Board divisions, alphabetically, and by assigned Federal Reserve Banks, alphabetically, showing:

Control number
Assigned to
Date received
Date acknowledged
Date promised
Complainant name
Complaint code
State member bank and branch names
"Sen." or "Rep." and surname

Monthly with a copy to each Federal Reserve Bank for its district.

Consumer Complaint Control Procedure Reports5. Outstanding Consumer Complaints by Federal Reserve District and State Member Bank

A numerical listing by Federal Reserve districts by State member banks, alphabetically, of outstanding consumer complaints showing:

District number

Control number

State member bank and branch names

Assigned to

Date received

Date acknowledged

Date promised

Complainant name

Complaint code

"Sen." or "Rep." and surname

Monthly with a copy to each Federal Reserve Bank for its district.

Consumer Complaint Control Procedure Reports

6. Outstanding Congressional Referrals of Consumer Complaints by Complainant

An alphabetical listing by name of complainant showing:

Control number

"Sen." or "Rep." and surname

Date received

Date acknowledged

Date promised

Complainant name

Assigned to

Complaint code

State member bank and branch names

Monthly with a copy to each Federal Reserve Bank for its district.

Consumer Complaint Control Procedure Reports7. Statistical Reports

(1) A table showing the number of complaints received at the Board and each Federal Reserve Bank, by regulation and statute.

(2) A listing of the total number of consumer complaints at the Board and the Federal Reserve Banks by regulation and statute by consumer complaint code.

(3) The total number of complaints closed at the Board by action taken code.

(4) The total number of complaints closed at the Federal Reserve Banks by action taken code.

(5) Total of 3 and 4.

(6) A table of the total number of complaints received by regulation and statute showing form of complaint, source of complaint, and action taken.

(7) Time spent by Board and each Federal Reserve Bank in closing complaints.

Each of these reports will be prepared monthly and accumulative quarterly.

BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON, D. C. 20551

Attachment 11

DIVISION OF
CONSUMER AFFAIRS

July 7, 1977

TO THE OFFICERS IN CHARGE OF BANK EXAMINATIONS AND CONSUMER AFFAIRS SECTIONS:

Enclosed with my letter of May 6, 1977, you received a draft follow-up letter that would be sent to consumers who had contacted the Board concerning a problem with a State member bank with a request for your comments and suggestions. Your responses expressed support as well as enthusiasm for the idea.

The enclosed follow-up letter has incorporated some of the changes which were suggested. All of the comments were carefully considered; however, for various reasons, not all were adopted. Several of the responses suggested that the letter be sent to all consumers who had a problem with a State member bank, not just the ones who had contacted the Board. This seems an excellent idea and we, therefore, would encourage each Reserve Bank to consider sending a similar follow-up letter to consumers who have contacted the Reserve Banks directly about a problem with a State member bank.

To assist in describing the circumstances under which we will be sending the follow-up letter, an explanation of how we handle underlying complaints may be helpful. When we receive a consumer complaint at the Board involving a State member bank and an investigation seems to be required, that letter is sent to the appropriate Reserve Bank for action. In our transmittal letter to the consumer, a copy of which is sent to the Reserve Bank, we indicate that the Reserve Bank will be communicating directly with the consumer. We also indicate that Reserve Bank personnel will furnish us with a copy of the final correspondence sent to the consumer. In the case of congressional inquiries, we generally ask Reserve Bank personnel to respond to the Board and the Board then responds to the member of Congress.

It is our plan to send the follow-up letter to those non-congressional consumer inquiries after we receive a copy of the final correspondence that the Reserve Bank sends to the consumer. In other words, we intend to communicate with the consumer once you have taken action responding to the consumer's complaint. We will send this letter very shortly after having received the copy of the Reserve Bank response to the consumer. We intend to send the letter to all consumers whose complaint we refer to the Reserve Bank, except in some rare instances

-2-

where the issuance of such a letter may be expected to irritate the consumer. We will use complaints received subsequent to April 1, 1977, as the starting point.

When a response from a consumer is received, a copy will be sent to the Consumer Liaison Officer in the appropriate Reserve Bank so that this information can be utilized at the Reserve Banks as well as at the Board. Responses received from consumers for each week will be mailed on Friday to the Reserve Banks.

The entire procedure as well as the follow-up letter will be reviewed during January 1978. Six months should give us enough time to determine if changes should be made and, if so, what specific changes are needed. I encourage all of you to send comments in whenever you like. Of course, your opinions will be requested in January, but it is certainly not necessary to wait until then to express your views.

These procedures will be initiated immediately, and we will begin sending the follow-up letter on July 11.

Sincerely,



Janet Hart
Director

Enclosure

BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON, D. C. 20551



DIVISION OF
CONSUMER AFFAIRS

Recently, you wrote about a problem you encountered with a bank. You should have received by now an explanation from the Federal Reserve. One of the ways we can assess the effectiveness of our efforts is by asking consumers such as yourself to answer the following questions. You do not have to answer any of the questions. However, your candid responses will help us to improve the services we offer to consumers.

- | | | |
|--|-----|----|
| 1. Was the resolution of the matter acceptable to you? | Yes | No |
| 2. Was the explanation you received clear and understandable? | Yes | No |
| 3. Were you satisfied with the amount of time in which your complaint was handled? | Yes | No |
| 4. Do you feel that you were treated courteously in your dealings with the Federal Reserve staff by letter or phone? | Yes | No |
| 5. Do you feel that you would contact the Federal Reserve again if you had another problem with that bank or another bank? | Yes | No |

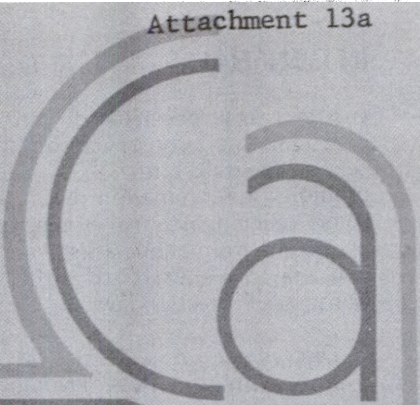
Please use the reverse side of this letter to explain any "No" responses or to include any comments or suggestions which you feel are appropriate. Please return the letter in the enclosed self-addressed envelope. You may keep the extra copy. I want to thank you in advance for your assistance.

Sincerely,
Janet Hart
Janet Hart
Director

Enclosure

	Total Complaints	Total Complaints Involving State Member Banks	Violation(s) Found-- (28.a)	No. Violation(s) Found-- Accommodation Made (28.b)	Factual Dispute (28.c)	Violation(s) Found No Accommodation Made (28.d)	Explanation or Information Given (28.e)
Board	150	9	0	0	0	0	55
Boston	6	2	0	1	0	1	0
New York	98	45	0	24	0	47	4
Philadelphia	215	52	6	11	0	21	150
Cleveland	26	20	0	1	0	12	7
Richmond	26	21	0	0	0	0	22
Atlanta	34	27	1	6	0	18	3
Chicago	33	21	1	4	0	5	13
St. Louis	33	14	2	3	0	1	8
Minneapolis	46	3	0	0	0	2	14
Kansas City	16	2	1	1	0	1	3
Dallas	36	18	1	0	0	1	17
San Francisco	63	27	0	17	0	6	8
Total	782	261	12	68	0	115	304

Tabulation of Consumer Complaints and there Resolutions by Reserve District July 1977 - June 1978



HOW
THE NEW
EQUAL
CREDIT
OPPORTUNITY
ACT
AFFECTS
YOU

DEPARTMENT OF
CONSUMER AFFAIRS
FEDERAL RESERVE BANK
OF PHILADELPHIA

IN GENERAL

At first the Equal Credit Opportunity Act prohibited creditors from discriminating against you on the basis of sex or marital status. Now the law also prohibits discrimination because of race, color, religion, national origin, age, reliance on income from public assistance, or because you may have exercised rights under the Consumer Protection laws.

Discrimination is defined as treating one applicant less favorably than others.

WHO IS SUBJECT

All banks, savings and loans, credit unions, finance companies, department stores, credit card issuers, car and appliance dealers and others who regularly participate in credit decisions must comply with the Act.

WHEN YOU WANT TO BORROW

The Act does not entitle you to credit whenever you want it. You must still pass the creditor's tests which indicate your ability and willingness to repay debt.



**THE
EQUAL CREDIT
OPPORTUNITY
ACT**

What the Act does say is that a creditor must apply these tests without discrimination and should not discourage you from applying for credit on the basis of the prohibited factors.

THE CREDIT APPLICATION

When he takes your application, the creditor normally may not ask for your sex, race, color, religion, or national origin.

Exception:

However, the creditor *must* ask about these characteristics in applications for residential real estate credit, although you are not required to answer. The idea is to build a history of facts that will help enforce the law against discrimination in mortgage loans. The information cannot be used in evaluating your application.

MARRIED, UNMARRIED, SEPARATED

On an application for separate credit, a creditor may not ask about your marital status except when the credit is to be secured by property in which your spouse has a legal interest. Then he may use only the terms "married," "unmarried," or "separated."

If you are a married woman, you may use your birth-given first and surnames in applying for credit.

In the case of a couple, either member may get separate credit provided he or she is

creditworthy. When this happens, finance charges and loan ceilings are to be determined individually, not on the combined credit outstanding.

Information about your spouse may be requested and used only when . . .

your spouse will be permitted to use the credit; or

your spouse will be liable for repayment; or

your spouse's income or alimony, support, or maintenance payments will be relied on for repayment; or

your spouse has a legal interest in property involved.

A creditor may not ask about your birth control practices or childbearing capabilities or intentions. He may not assume because of a woman's age that she may stop work to have a baby.

INCOME

A creditor may ask and consider to what extent your income is affected by obligations to pay alimony, child support, or maintenance.

A creditor may ask to what extent you are relying on alimony, child support, or maintenance to repay credit provided he first informs you that it is not necessary to list such income if you won't use it to make repayment.

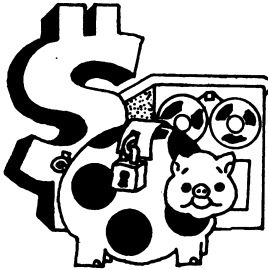
A creditor must consider part-time or public assistance income in his evaluation, but he may look into the probability that this income will continue.

CHANGED CIRCUMSTANCES

A creditor may not require you to reapply, alter the terms, or terminate an open-end account solely because you change your name, change your marital status, reach a certain age, or retire.

CREDIT REPORTING

After June 1, 1977, when a creditor reports to credit bureaus he must identify any accounts used by both spouses or on which both are liable. This is so that a credit history can be prepared for each spouse individually.



You are entitled to have your credit history reported in your individual name, even for joint accounts.

AGE

A creditor may ask your age to be sure you have reached the legal age to enter into contracts.

A creditor who uses a credit-scoring system may include your age if you are 62 or over only to favor your score, and the system used must meet specific standards of reliability.

A creditor who relies on judgment to evaluate your application may consider age to determine how long you probably will continue to work and at what level of income.

A creditor may not refuse or terminate credit when credit insurance is not available because of your age.

**APPROVED
OR DENIED**

Within 30 days after your application is completed, the creditor must notify you whether or not it has been approved.

If your application is denied, the creditor must give you, in writing . . .

a statement of the action he has taken;

a statement of your rights under the Act;

the name and address of the Federal agency enforcing compliance; and

the reason for the action he has taken or notice of your right to request the reason within 60 days. If you want the reason in writing, your request must be in writing.

**SPECIAL
PURPOSE
CREDIT**

It is not a violation of the Act if a creditor refuses to extend credit to you solely because you don't qualify for a special program designed to meet the needs of a particular group or class.

ERRORS

A creditor has not committed a violation if he clearly has established and is

maintaining suitable procedures, but fails to comply with a provision of the Act because of a mechanical, electronic, or clerical error.

CONSUMER REMEDIES

If you have questions about the creditor's compliance with the Act, get in touch with the Federal agency whose name he has given you.

If you think you have been discriminated against under the Act, you may file suit in court against the creditor, who can be held liable for actual damages you have suffered and for punitive damages up to \$10,000.

Our purpose here is to inform you in a general way of some of your important Equal Credit Opportunity rights. This pamphlet is not a complete or official summary of the Act or regulations.

Other pamphlets in the Consumer Affairs series are:

**What You Should Know about the Fair
Credit Billing Act**

How to Establish and Use Credit

If you need further information or want a copy of the Equal Credit Opportunity regulations or copies of pamphlets, you may write or call:

**Department of Consumer Affairs
Federal Reserve Bank of Philadelphia
P. O. Box 66
Philadelphia, Pennsylvania 19105**

Telephone (215) 574-6116

1/78

**The
Equal
Credit
Opportunity
Act
and . . .**

WOMEN

You and your husband apply for a loan. The application is denied because of "insufficient income." You think this means that your salary was not counted. What do you do?

You are single and want to buy a home. The bank turns you down for a mortgage loan, even though you feel sure that you meet its standards. What do you do?

Your charge account is closed when you get married. You are told to reapply in your husband's name. What do you do?

You may have a complaint under the Equal Credit Opportunity Act, a Federal law which prohibits discrimination against an applicant for credit on the basis of sex, marital status, race, color, religion, national origin, age and other factors. This pamphlet describes the provisions of the Act (and the regulation issued by the Federal Reserve to carry it out) that apply to sex and marital status and that affect you as a woman who wants credit.*

The Equal Credit Opportunity Act does not give anyone an automatic right to credit. It does require that a creditor apply the same standard of "creditworthiness" equally to all applicants.

What Is Creditworthiness?

Creditors choose various criteria to rate you as a credit risk. They may ask about your finances: how much you earn, what kinds of savings and investments you have, what your other sources of income are. They may look for signs of reliability: your occupation, how long you've been employed, how long you've lived at the same address, whether you own or rent your home. They may also examine your credit record: how much you owe, how often you've borrowed, and how you've managed past debts.

The creditor wants to be assured of two things: your ability to repay debt and your willingness to do so. The Equal Credit Opportunity Act does not change this standard of creditworthiness.

*Both men and women are protected by the ban against discrimination because of sex or marital status.

What Is Equal Credit Opportunity?

The law says that a creditor may not discriminate against you — treat you less favorably than another applicant for credit — because of your sex or marital status.

Just because you are a woman, or single, or married, a creditor may not turn you down for a loan.

The rules that follow are designed to stop specific abuses that have limited women's ability to get credit.

Applying for Credit — Questions About Your Sex or Marital Status

A creditor may not discourage you from applying for credit just because you are a woman, or single, or married. When you fill out a credit application, you should know that there are only certain questions a creditor may ask about your sex or marital status.

- You **may not** be asked your sex on a credit application — with one exception. If you apply for a loan to buy or build a home, a creditor is **required** to ask your sex to provide the Federal Government with information to monitor compliance with the Act. You do not have to answer the question.
- You **do not** have to choose a courtesy title (Miss, Ms., Mrs.) on a credit form.
- A creditor **may not** request your marital status on an application for an individual, unsecured account (a bank credit card or an overdraft checking account, for example), where no community property is involved.*
- A creditor **may** request your marital status in all other cases. But, you can only be asked whether you are married, unmarried, or separated (unmarried includes single, divorced or widowed).

* Community property States are: Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, and Washington.

Rating You As A Credit Risk

To make sure that your application is treated fairly, there are certain other things that a creditor may not do in deciding whether you are creditworthy.

Specifically, a creditor **may not**:

- refuse to consider your income because you are a married woman, even if your income is from part-time employment.
- ask about your birth control practices or your plans to have children. A creditor may not assume that you will have children or that your income will be interrupted to do so.
- refuse to consider reliable alimony, child support, or separate maintenance payments. However, you don't have to disclose such income unless you want to in order to improve your chances of getting credit.
- consider whether you have a telephone listing in your own name, because this would discriminate against married women.
- consider your sex as a factor in deciding whether you are a good credit risk.
- use your marital status to discriminate against you.

However, there are some closely related questions that are permitted. In order to estimate your expenses, a creditor may ask how many children you have, their ages, and the cost of caring for them, as well as about your obligations to pay alimony, child support, or maintenance. A creditor may ask how regularly you receive your alimony payments, or whether they are made under court order, in order to determine whether these payments are a dependable source of income. You may be asked whether there is a telephone in your home.

And finally, a creditor may consider your marital status because, under the laws of your State, there may be differences in the property rights of married and unmarried people. Such differences may affect the creditor's ability to collect if you default.

Extending Credit — Your Own Account

The law says that a woman has a right to her own credit if she is creditworthy. If you are getting married, remember that you can keep your own credit accounts and credit record.

Specifically, a creditor **may not**:

- refuse to grant you an individual account just because of your sex or marital status.
- refuse to open or maintain an account in your first name and maiden name, or your first name and your husband's surname, or a combined surname.
- ask for information about your husband or ex-husband, unless:
 - you're relying on his income
 - he'll use the account or be liable for it
 - you're relying on income from alimony or on community property to support your application.
- require a co-signer or the signature of your spouse just because you are a woman or married (with certain exceptions when property rights are involved).

If your **marital status changes**, a creditor **may not** require you to reapply for credit, change the terms of your account, or close your account, unless there is some indication that you are no longer willing or able to repay your debt. A creditor **may** ask you to reapply if your ex-husband's income was counted to support your credit.

Establishing a Credit History

Married women often have had trouble establishing credit records because all debts were listed in their husbands' names. A new rule will help women build up their own credit records.

The rule applies to information that creditors furnish to credit bureaus or other creditors about any account used by both husband and wife or on which both are liable. Such information must be reported in the names of each spouse.

The law also provides new guidelines for considering credit histories. It says that if credit history is used in rating your application, a creditor **must**:

- consider the available credit history on any account you hold or use jointly with your husband.
- consider any information that you can offer to show that a **favorable** credit history on any account in your husband's name reflects your own credit history accurately.

Some women have been denied credit simply because an ex-spouse was a poor credit risk. The law also says that a creditor **must**:

- consider any information that you can offer to show that an **unfavorable** credit history on any account you shared with your spouse does not reflect your own credit history accurately.

Another Federal law, the Fair Credit Reporting Act, gives you the right to get a copy of your credit history from a credit reporting agency and to correct any inaccurate information in it.

Notice and Penalties

A creditor may not stall you on an application. You must be notified within 30 days of any action taken on your application. If credit is denied, the notice must be in writing and it must either give specific reasons for the denial or tell you that you can request such an explanation. You have the same right if a credit account is closed.

If you are denied credit, first find out why. Try to solve the problem with the creditor, and show you know about your right to equal credit opportunity. If the problem can't be solved and you think that you've been discriminated against, you can sue for actual damages plus a penalty if the violation was intentional. The court will also award you reasonable attorney's fees if there's been a violation.

The Most Important Rules

- **You can't be refused credit just because you're a woman.**
- **You can't be refused credit just because you're single, married, separated, divorced, or widowed.**
- **You can't be refused credit because a creditor decides you're of child-bearing age and, as a consequence, won't count your income.**
- **You can't be refused credit because a creditor won't count income you receive regularly from alimony or child support.**
- **You can have credit in your own name if you're creditworthy.**
- **When you apply for your own credit and rely on your own income, information about your spouse or his co-signature can be required only under certain circumstances.**
- **You can keep your own accounts and your own credit history if your marital status changes.**
- **You can build up your own credit record because new accounts must be carried in the names of husband and wife if both use the account or are liable on it.**
- **If you are denied credit, you can find out why.**

To Find Out More

If you think you have been the victim of discrimination in connection with credit, you may want to contact the appropriate Federal enforcement agency for advice and help. These agencies and the types of creditors regulated by each are listed on the back of this pamphlet.

Federal Enforcement Agencies

National Banks

Comptroller of the Currency
Consumer Affairs Division
Washington, D.C. 20219

State Member Banks

Federal Reserve Bank serving the district in which the State member bank is located.

Nonmember Insured Banks

Federal Deposit Insurance Corporation Regional Director for the region in which the nonmember insured bank is located.

Savings Institutions Insured by the FSLIC and Members of the FHLB System (except for Savings Banks insured by FDIC)

The Federal Home Loan Bank Board Supervisory Agent in the district in which the institution is located.

Federal Credit Unions

Regional office of the National Credit Union Administration serving the area in which the Federal credit union is located.

Creditors Subject to Civil Aeronautics Board

Director, Bureau of Enforcement
Civil Aeronautics Board
1825 Connecticut Avenue, N.W.
Washington, D.C. 20428

Creditors Subject to Interstate Commerce Commission

Office of Proceedings
Interstate Commerce Commission
Washington, D.C. 20523

Creditors Subject to Packers and Stockyards Act

Nearest Packers and Stockyards Administration area supervisor.

Small Business Investment Companies

U.S. Small Business Administration
1441 L Street, N.W.
Washington, D.C. 20416

Brokers and Dealers

Securities and Exchange Commission
Washington, D.C. 20549

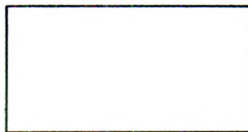
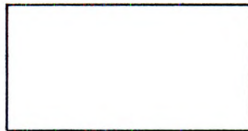
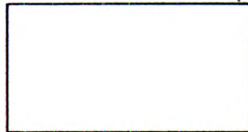
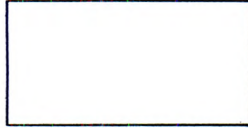
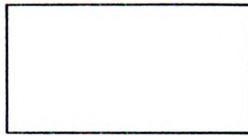
Federal Land Banks, Federal Land Bank Associations, Federal Intermediate Credit Banks and Production Credit Associations

Farm Credit Administration
490 L'Enfant Plaza, S.W.
Washington, D.C. 20578

Retail, Department Stores, Consumer Finance Companies, All other Creditors, and All Nonbank Credit Card Issuers (Lenders operating on a local or regional basis should use the address of the F.T.C. Regional Office in which they operate)

Federal Trade Commission
Equal Credit Opportunity
Washington, D.C. 20580

The Equal Credit Opportunity Act



...and

AGE

The Equal Credit Opportunity Act ...and Age

You retire this year at age 63, planning to fulfill a lifetime dream of sailing on the seas. But, despite a good credit history and a comfortable income, you find that the money you can borrow would barely buy a rowboat. What do you do?

On your 65th birthday you receive a notice to reapply for your credit card at a local department store. Your financial situation is unchanged from last year. What do you do?

You may have a complaint under the Equal Credit Opportunity Act. This Act prohibits discrimination against an applicant for credit on the basis of age, sex, marital status, race, color, religion, national origin, and other factors.

This pamphlet describes the provisions of the Act (and the regulation issued by the Federal Reserve to carry it out) that prevent your age from being used against you when you need credit.

Rating You As A Credit Risk — The General Rules

Creditors use various criteria in determining the types of loans they will make and the creditworthiness of the people to whom they will lend. They want to be assured that you are both able and willing to repay debt. They will therefore ask questions about your income, your expenses, your debts, and your reliability. Do you have savings and investments? Do you own your own home? How long have you lived at your current address? What is your credit history?

The Equal Credit Opportunity Act does not prohibit a creditor from using such criteria. It does not give anyone an automatic right to credit or require that loans be made to people who are not good credit risks.

Under the law, a creditor may also ask how old you are. However, the use of this information **is** restricted. The law says that **your age may not be the basis for an arbitrary decision to deny or decrease credit if you otherwise qualify**. You may not be turned down for credit just because you are over a certain age.

A creditor also may not:

- refuse to consider your retirement income in rating your credit application.
- require you to reapply, change the terms of your account, or close your account just because you reach a certain age or retire.
- deny you credit or close an account because credit life insurance or other credit-related insurance is not available to persons your age.

Some creditors rely on a system of credit-scoring to rate you as a credit risk. Based on the creditor's experience, a certain number of points is given to each characteristic which has proved to be an accurate predictor of credit-worthiness. The Equal Credit Opportunity Act permits a creditor who uses such a system to score your age. But:

- if you are 62 or older you must be given at least as many points for age as any person under 62.

Special Considerations

Age has economic consequences. If you are young and just entering the labor force, your earnings are likely to grow over the years. On the other hand, your expenses

are probably rising too, and you may not have built up much of a credit record to rely on. As you near retirement age, you are likely to face a loss in income over the next few years. On the other hand, your expenses are probably decreasing too, and you may have a solid credit history to support your application.

All of this information could have an important effect on your creditworthiness, but not all of it will show up on a credit form.

The law therefore permits a creditor to consider information related to age that has a clear bearing on a person's ability and willingness to repay debt. Consider the following example:

- Jones applies for a mortgage loan for 30 years with a 5% downpayment. Jones is 63 years old and his income will be reduced when he retires in two years. The loan is denied.

Jones might meet the bank's standards if the downpayment were larger, if the loan had a shorter term with higher monthly payments, or if savings and investments — or other assets easily converted to cash — could be offered as security for the loan.

If you think there may be a connection between your age and the factors used to determine creditworthiness, you should go to your credit interview armed with alternatives and ready to supply whatever information will help your chances for credit.

If Credit Is Denied

A creditor may not stall you on an application. The law requires that you be notified within 30 days of any action taken on your application. If credit is denied, this notice must be in writing, and it must either give specific reasons for the denial or tell you of your right to request such an explanation. You have the same rights if a credit account is closed.

If you are denied credit, first find out why. Remember that you might try to renegotiate credit terms — such as the length of the loan or the size of your downpayment — if some aspect of creditworthiness connected with your age puts you at a disadvantage. Try to solve the problem with the creditor, and show you know about your right to equal credit opportunity.

If the problem can't be solved and you believe that you have been discriminated against, you may sue for actual damages plus a penalty fee if the violation was intentional. The court will also award you reasonable attorney's fees if there's been a violation.

To Find Out More

If you think you have been the victim of discrimination in connection with credit, you may want to ask the appropriate Federal enforcement agency for advice and help. These agencies and the types of creditors regulated by each are listed on the back of this pamphlet.

If you need help in locating sources of credit in your community, you may want to contact a local consumer education group or association of retired persons.

Federal Enforcement Agencies

National Banks

Comptroller of the Currency
Consumer Affairs Division
Washington, D.C. 20219

State Member Banks

Federal Reserve Bank serving the district in which the State member bank is located.

Nonmember Insured Banks

Federal Deposit Insurance Corporation Regional Director for the region in which the nonmember insured bank is located.

Savings Institutions Insured by the FSLIC and Members of the FHLB System (except for Savings Banks insured by FDIC)

The Federal Home Loan Bank Board Supervisory Agent in the district in which the institution is located.

Federal Credit Unions

Regional office of the National Credit Union Administration serving the area in which the Federal credit union is located.

Creditors Subject to Civil Aeronautics Board

Director, Bureau of Enforcement
Civil Aeronautics Board
1825 Connecticut Avenue, N.W.
Washington, D.C. 20428

Creditors Subject to Interstate Commerce Commission

Office of Proceedings
Interstate Commerce Commission
Washington, D.C. 20523

Creditors Subject to Packers and Stockyards Act

Nearest Packers and Stockyards Administration area supervisor.

Small Business Investment Companies

U.S. Small Business Administration
1441 L Street, N.W.
Washington, D.C. 20416

Brokers and Dealers

Securities and Exchange Commission
Washington, D.C. 20549

Federal Land Banks, Federal Land Bank Associations, Federal Intermediate Credit Banks and Production Credit Associations

Farm Credit Administration
490 L'Enfant Plaza, S.W.
Washington, D.C. 20578

Retail, Department Stores, Consumer Finance Companies, All other Creditors, and All Nonbank Credit Card Issuers (Lenders operating on a local or regional basis should use the address of the F.T.C. Regional Office in which they operate)

Federal Trade Commission
Equal Credit Opportunity
Washington, D.C. 20580

**THE
EQUAL
CREDIT
OPPORTUNITY
ACT** and . . .

**DOCTORS
LAWYERS
SMALL RETAILERS
AND OTHERS
WHO MAY PROVIDE
INCIDENTAL CREDIT**

There's a new Federal law, the Equal Credit Opportunity Act, that bars discrimination in all areas of credit. As a professional or small businessman you may be subject to this law. You should determine promptly whether you are a creditor under the Act and, if so, what you must do and not do to be in compliance with it.

Are You a Creditor?

You are a creditor if you regularly and in the ordinary course of business grant to your customers the right to defer payment for goods or services they purchase from you. Merely honoring a credit card issued by someone else does not make you a creditor for purposes of the Equal Credit Opportunity Act.

Do You Grant Only "Incidental Credit"?

Incidental credit is credit that:

- (1) is primarily for personal, family, or household purposes;
- (2) is not granted under the terms of a credit card account;
- (3) is not subject to any finance charges or interest; and
- (4) is not granted under an agreement allowing the debtor to repay in more than four instalments.

All creditors are subject to the Equal Credit Opportunity Act. If you grant only incidental credit, you are subject only to the rules described in this pamphlet. If you grant other kinds of credit, you should refer to Regulation B, a copy of which may be obtained from the Federal Trade Commission, Legal and Public Records, Room 130, Washington, D.C. 20580.

Rules About Incidental Credit

General rule. The purpose of the Equal Credit Opportunity Act is to ensure that credit is made available fairly and impartially. The law prohibits discrimination against any applicant for credit because of race, color, religion, national origin, sex, marital status, or age, or because the customer receives income from any public assistance program, or because the customer has exercised rights under consumer credit laws. These are the “prohibited bases” under the law.

Creditors may continue to evaluate credit applicants on the basis of their willingness and ability to repay. However, the law does impose certain restrictions on the questions you may ask and the way you consider information. You should review your application forms and your procedures for taking and evaluating credit applications, to make sure you are complying with the following specific rules and that, in general, you apply your standards of creditworthiness evenly.*

Rules on obtaining information. When a customer applies for credit, you may **not**:

- ask the applicant’s sex, race, color, religion, or national origin.
- ask about birth control practices or plans to have children.

You may collect this information when it is needed for a specific purpose not related to credit—for example, when it is part of a medical history.

Rules on considering information. In deciding to grant credit, you may **not**:

- consider any of the prohibited bases. There are certain exceptions: for example, you may consider age and receipt of public assistance to the extent these factors may affect continuity of income, or other aspects of creditworthiness.

*The law does **not** impose on incidental creditors (as it does on other creditors) any recordkeeping or notice requirements.

- use assumptions or statistics about childbearing or family size.
- discount or exclude income of the customer or the customer's spouse because of sex or marital status or any other prohibited basis.
- discount or exclude income from part-time employment, retirement benefits, or alimony, child support, or separate maintenance payments. However, you may consider the probable continuity of any income.
- take into account whether a telephone is listed in the customer's name. However, you may consider whether there is a phone in the customer's home.

If you consider a customer's credit history, you must include accounts which the customer holds or uses jointly with a spouse. You should also consider any information a customer can offer to show that a reported credit history is unfair, inaccurate, or incomplete.

Other rules on extending credit. You also may **not:**

- discourage a customer from making a request or application for credit because of a prohibited basis.
- refuse to grant a creditworthy married person an individual account.
- refuse to keep an account in a maiden name or a combined surname if the customer requests it.
- close or change the terms of a standing credit arrangement merely because your customer's marital status has changed or because the customer reaches a particular age or retires.

Penalties

Penalties. The law allows persons who have been discriminated against in connection with credit to sue for actual damages and punitive damages. Liability for punitive damages is limited to \$10,000 in an individual action, and to \$500,000 or 1% of the creditor's net worth, whichever is less, in class actions.



The
Equal
Credit
Opportunity
Act
and . . .

Credit
Rights
In Housing

The Equal Credit Opportunity Act and Credit Rights In Housing

If you're in the market for a housing loan, you should know about a new Federal law that protects your credit rights.

The Equal Credit Opportunity Act prohibits discrimination because of your **race, color, religion, national origin, sex, marital status, or age** when you apply for a mortgage or home improvement loan. It also prohibits discrimination because of the **race** or **national origin** of the people who live in the neighborhood where you live or want to buy your home. And, it prohibits discrimination because you receive income from a **public assistance** program, such as Aid to Families with Dependent Children or Social Security.

This pamphlet describes the most important provisions of the Act and the regulation issued by the Federal Reserve Board to carry it out.

THE GENERAL RULE. The law does not guarantee that you will get credit. Lenders may continue to consider your income, expenses, debts, credit record, and reliability to determine whether you're credit-worthy. But, they must apply those tests fairly and without discrimination.

This means that because of your race, sex, or marital status—or because of any other factor prohibited by the Act—a lender **may not**:

- discourage you in any way from applying for a loan.
- refuse to make a loan if you qualify, and if the lender offers the type of loan you seek.
- lend you money on terms different from those granted another person with similar income, expenses, credit history, and collateral.

SOME IMPORTANT SPECIFICS. Certain practices that kept **women** and **minority groups** out

of the housing loan market in the past are now prohibited. For example, a creditor **may not**:

- rely on a property appraisal that considers the racial makeup of the neighborhood.
- ask about your birth control practices or child-bearing plans. A creditor may not assume that you will have children or discount your income for that reason.
- discount or refuse to consider reliable alimony, child support, or separate maintenance payments—although you do not have to disclose such income unless you want to do so to support your application.
- discount or refuse to consider reliable income from part-time employment or public assistance.
- if you're creditworthy, require another signature on the loan—although a lender may need a spouse's or co-owner's signature, for example, on other mortgage papers.

A creditor also may not deny you credit **just because you reach a certain age or retire** — or refuse to count retirement benefits. But, your age may be considered in connection with such factors as the length of the loan, the downpayment, and the security you offer.

IF A LOAN IS DENIED. A lender may not stall your loan application. You must be notified whether your loan has been approved within 30 days after your application and any necessary appraisals, credit checks, or government approvals are completed. If your loan is denied, the notice must be in writing, and the lender must either tell you the specific reasons for the denial or tell you of your right to request the reasons.

If you think that you have been discriminated against, you may sue for actual damages, plus a penalty fee in some cases. You may also be awarded reasonable attorney's fees and court costs in a successful lawsuit.

**HOUSING
CREDIT DISCLOSURE.** You may also be interested in the Home Mortgage Disclosure Act, which requires most lending institutions in metropolitan areas to let the public know once a year where they make their mortgage and home improvement loans. You can ask to see the information at any time at your bank, savings and loan, or credit union.

This disclosure statement will not tell you where loans were denied or why. But, it can help customers, community groups, and local officials work with lenders to meet neighborhood needs for housing credit.

FOR ADVICE AND HELP. For more information about the Equal Credit Opportunity Act or the Home Mortgage Disclosure Act—or for advice or help with complaints—write to any Federal Reserve Bank* or to the Division of Consumer Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

Another Federal law, the Fair Housing Act, prohibits discrimination in the sale, rental, or financing of housing because of your race, color, religion, sex, or national origin. For more information, write to the Assistant Secretary for Fair Housing and Equal Credit Opportunity, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410.

If you are interested in local cooperative efforts to increase mortgage lending and improve housing in urban areas, write to the Urban Reinvestment Task Force, 1120 19th Street, N.W., Washington, D.C. 20036.

* Located in Boston, New York, Philadelphia, Cleveland, Richmond, Atlanta, Chicago, St. Louis, Minneapolis, Kansas City, Dallas, and San Francisco.

Federal Enforcement Agencies Equal Credit Opportunity Act

National Banks

Comptroller of the Currency
Consumer Affairs Division
Washington, D.C. 20219

State Member Banks

Federal Reserve Bank serving the district in which the State member bank is located.

Nonmember Insured Banks

Federal Deposit Insurance Corporation Regional Director for the region in which the nonmember insured bank is located.

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The Federal Home Loan Bank Board Supervisory Agent in the district in which the institution is located.

Federal Credit Unions

Regional office of the National Credit Union Administration serving the area in which the Federal credit union is located.

Creditors Subject to Civil Aeronautics Board

Director, Bureau of Enforcement
Civil Aeronautics Board
1825 Connecticut Avenue, N.W.
Washington, D.C. 20428

Creditors Subject to Interstate Commerce Commission

Office of Proceedings
Interstate Commerce Commission
Washington, D.C. 20523

Creditors Subject to Packers and Stockyards Act

Nearest Packers and Stockyards Administration area supervisor.

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U.S. Small Business Administration
1441 L Street, N.W.
Washington, D.C. 20416

Brokers and Dealers

Securities and Exchange Commission
Washington, D.C. 20549

Federal Land Banks, Federal Land Bank Associations, Federal Intermediate Credit Banks and Production Credit Associations

Farm Credit Administration
490 L'Enfant Plaza, S.W.
Washington, D.C. 20578

Mortgage Bankers, Consumer Finance Companies and All Other Creditors

FTC Regional Office for region in which the creditor operates or
Federal Trade Commission
Equal Credit Opportunity
Washington, D.C. 20580

Any complaints may also be referred to the Civil Rights Division of the Department of Justice, Washington, D.C. 20530



FEDERAL RESERVE

press release

Attachment 14

For immediate release

March 7, 1978

A new consumer pamphlet explaining credit rights in housing is now available for public distribution, the Board of Governors of the Federal Reserve System announced today.

The pamphlet is entitled: "The Equal Credit Opportunity Act and ... Credit Rights in Housing." It seeks to educate consumers and lenders about major provisions of the Equal Credit Opportunity Act as it affects housing. That Act forbids discrimination in credit transactions on the basis of sex or marital status, race, color, religion, national origin, age, receipt of income from public assistance programs and good faith exercise of rights under the Consumer Credit Protection Act.

The housing pamphlet also explains the Home Mortgage Disclosure Act, which requires most lenders in metropolitan areas to inform the public once a year where they make their mortgage and home improvement loans.

Other consumer pamphlets which the Board has published include:

- The Equal Credit Opportunity Act and Age
- The Equal Credit Opportunity Act and Incidental Creditors
- The Equal Credit Opportunity Act and Women
- Fair Credit Billing
- If you Borrow to Buy Stock
- What Truth in Lending Means to you.

(OVER)

-2-

Copies of the consumer information pamphlets may be obtained singly or in bulk free of charge from the Board of Governors in Washington or from any of the 12 Federal Reserve Banks. Request should be addressed to the Board's Publications Services or to Publications Departments at the Federal Reserve Banks of Boston, New York, Philadelphia, Cleveland, Richmond, Atlanta, Chicago, St. Louis, Minneapolis, Kansas City, Dallas, or San Francisco.

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Exercise of Consumer Rights Under the Equal Credit Opportunity and Fair Credit Billing Acts

In November 1977 the Board of Governors initiated a survey of selected large creditors to determine to what extent consumers were exercising their rights under the Equal Credit Opportunity Act and the Fair Credit Billing Act. The survey was also designed to determine the cost to creditors of complying with these laws.

An inquiry requesting information in connection with credit-card and other types of revolving-credit operations was sent to a group of nine creditors. Areas covered in the inquiry were the right to a separate credit history for married persons, notification by creditors of specific reasons for denial of credit, and customers' use of their rights under the law regarding the resolution of billing disputes.

The initial notices regarding the right to a separate credit history for married persons were enclosed with billing statements rather than mailed separately in order to hold down the cost. About 11 per cent of the customers requested that separate credit histories be maintained. The average cost to the creditors of printing and processing the notices was less than 1 cent per notice, and the average cost of processing the return requests and providing the necessary credit information was about 9 cents per request.

The survey showed that a substantial proportion of the applicants who were rejected for revolving credit accounts requested the reasons for the denial if such reasons had not been stated at the time of rejection; many of these applicants then provided sufficient additional information to warrant the granting of credit.

Although a large number of credit customers raised questions concerning their billing statements each month, relatively few followed the formal procedures provided by Regulation Z. Most of the companies, however, indicated that

they had treated the informal questions the same as the formal ones.

In order to obtain information from a national cross-section of consumers with a minimum burden on the consumer credit industry, the Board selected nine large creditors that were believed to have readily available records. This group included four major retailers (Alden's, Inc.; Federated Department Stores, Inc.; J. C. Penney and Co., Inc.; and Sears, Roebuck and Co.); three banks (Bank of America, First National Bank of Chicago, and Maryland National Bank); one travel and entertainment card issuer (American Express Co.); and one oil company (Shell Oil Co.). Information was gathered from all companies except Alden's; the data reported by Federated Department Stores represent the combined answers of 13 of its 16 department and specialty store divisions.

SEPARATE CREDIT HISTORY

Under Regulation B married persons have the right to a separate credit history. All creditors with open-end credit contracts were required to send a notice advising their married customers of this right by June 1, 1977, unless the company already had arranged to maintain access to the account records for each person entitled to use the account. American Express had such an arrangement for each person who had been issued a card on an account. The other seven reporting creditors, however, sent notices to each of their married customers informing them of their right to separate credit histories.

The total initial mailing of somewhat less than 48.5 million notices by the seven companies yielded more than 5 million returns (about 11

1. Separate credit history

Creditor	Notices					
	Number sent	Number of return requests	Percentage resulting in requests	Total cost (dollars)	Average cost per notice sent (dollars)	
Federated Department Stores	5,600,536	471,875	8.4	64,880	.012	
J. C. Penney	10,252,692	818,659	8.0	64,556	.006	
Sears	23,000,000	3,000,000	13.0	68,095	.003	
Bank of America	3,130,529	326,783	10.4	88,697	.028	
First National Bank of Chicago	861,453	82,561	9.6	5,000	.006	
Maryland National Bank	1,056,365	77,501	7.3	23,940	.023	
Shell Oil	4,500,000	430,000	9.6	45,000	.010	
American Express ¹ .....	.....	.....	.....	.....	.....
Cost of dual reporting of credit records, in dollars						
	Processing initial requests	Reporting new information	Total for initial returns	Average initial cost per account	Cost of reporting new accounts per account	Annual maintenance cost of dual reporting per account
Federated Department Stores	31,575	*62,466	94,041	.20	.00 to 1.50	339,825
J. C. Penney	12,061	31,614	43,675	.05	Negligible	Negligible
Sears	*94,134	55,555	149,689	.05	.01	88,667
Bank of America	55,543	36,744	92,287	.28	.10	3,600
First National Bank of Chicago	6,571	13,571	20,142	.24	.14	23,880
Maryland National Bank	22,392	5,470	27,862	.36	.12	13,600
Shell Oil	19,700	9,900	29,600	.07	Negligible	3,000
American Express ¹

¹American Express provides separate access to its credit records for each credit-card holder and, therefore, was not required to send a special notice.

²Excludes two divisions that maintain manual operations and report to credit-reporting agencies only on demand.

³Represents estimates from only five divisions.

⁴Reported an additional cost, estimated at \$900,000, of annotating history record cards to reflect the requested changes.

per cent) from customers who requested the maintenance of separate credit histories. The difference in the rate of return among the reporting companies was relatively small, ranging from about 7.3 per cent for Maryland National Bank to 13 per cent for Sears (Table 1).

Direct cost estimates for the nearly 50 million notices sent totaled \$360,168; however, since some companies were unable to identify and include all administrative costs, this figure accounted for only a portion of the total cost. Furthermore, Penney's noted that the inclusion of the required notice with the billing statement displaced advertising inserts, which resulted in a loss of sales estimated at \$665,000. Federated Department Stores also noted a loss of revenue due to the displacement of advertising inserts but did not estimate the amount. Although all of the reporting companies enclosed the required notice with the monthly billing statement, Bank of America noted that it had spent \$68,000 to mail the notice separately to inactive BankAmericard accounts.

The identifiable costs of printing, processing, and mailing each notice averaged slightly less than 1 cent. There was considerable variation among the companies, however, with the average identifiable cost per notice ranging from a low of 0.3 cent to a high of 2.8 cents.

Processing the more than 5 million returns and initially reporting the new information to the credit-reporting agencies cost a little more than \$450,000 for the seven companies, or an average of about 9 cents per request. Again the costs reported by the different companies varied sharply—from about 5 cents per request to 36 cents per request (Table 1).

Once the reporting of credit records on a dual basis for existing accounts had been completed, the cost of reporting new accounts on that basis ranged from "negligible" or "nominal" to about 14 cents per account. Federated Department Stores reported a range from "negligible" to \$1.50 for its divisions. The cost of maintaining dual reporting varied widely, from "negligible" to nearly \$89,000 a year. If the 3 million

requests received by Sears had resulted in about the same number of dual-reporting accounts, the annual total cost would have amounted to 3 cents per account. The same calculation for the other companies suggests an average annual maintenance cost per account of about 1 cent for Bank of America and Shell, 9 cents for Federated Department Stores, 18 cents for Maryland National Bank, and 29 cents for First National Bank of Chicago. Each of the last two companies had less than 100,000 dual-reporting accounts, which suggests that maintaining any dual reporting system may involve a significant element of fixed cost or that the wide variation in reporting maintenance costs may be the result of the different approaches used in estimating costs.

ADVERSE ACTION NOTICES

The revisions in Regulation B that became effective June 1, 1977, required creditors to inform rejected credit applicants of the reasons for the denial either initially or upon request. Sears, First National Bank of Chicago, Bank of America, and 1 of the 13 divisional respondents of Federated Department Stores furnished all rejected credit applicants with the reasons

for the adverse action at the time of the denial. The other companies provided reasons for denial only upon request. Maryland National Bank received such requests from 12 per cent of rejected applicants; Federated Department Stores, from 20 per cent; and American Express, from 23 per cent. Shell stated that each month about 4,600 rejected applicants requested the specific reasons for the denial.

Many of the rejected credit applicants who were initially given reasons for credit denial supplied additional information, and a high proportion of these were then granted credit. Sears, which initially sent reasons for the credit denial to all rejected applicants, received additional credit information from 4 per cent of these, and in half of the cases the information was sufficient to warrant the granting of credit. These proportions were even larger for Bank of America, which received additional information from 8 per cent of its rejected applicants and which was then able to grant credit to three-fourths of them. First National Bank of Chicago, the third company that provided reasons initially to all rejected applicants, received requests for reconsideration from about 35 per cent of such applicants, and of those who provided additional information one-third were granted credit.

2. Adverse action on applications for credit

Creditor	Applicants rejected for credit who			Average cost per account of providing reasons for credit denial (dollars)	
	Requested reasons for denial (per cent)	Were given reason, then provided more information (per cent of col. 1)	Provided more information and were given credit (per cent of col. 2)	Initially	Upon request
	(1)	(2)	(3)	(4)	(5)
Federated Department Stores	20	34	26	1.43	.22 to 5.25
J. C. Penney	(¹)	n.a.	n.a.	. . .	.56
Sears	² 100	4	50	.59	. . .
Bank of America	³ 100	8	75	1.07	2.20
First National Bank of Chicago	⁴ 100	(⁵)	33	.60	. . .
Maryland National Bank	12	45	35	. . .	4.14
Shell Oil	(⁶)	70	72	.55	.38
American Express	23	30	60	1.75	3.00 to 5.25

¹Represents an estimate by one division only.

²Approximately 13.3 per cent wrote to J.C. Penney regarding their rejection, but it is not known how many asked for specific reasons.

³All rejected credit applicants were given the reasons initially.

⁴Approximately 3,000 of the 8,600 rejected applicants per month requested reconsideration, and some provided additional information.

⁵Approximately 4,600 rejected applicants per month requested specific reasons for denial.

n.a.—Not available.

3. Experience with fair credit billing

Creditor	Average number of active accounts billed monthly	Average number of billing statement inquiries	Billing statement inquiries (per cent)	Number of formal inquiries asserted monthly	Annual cost of billing error statements (dollars)
Federated Department Stores	3,366,000	86,000	2.55	4,400	147,447
J. C. Penney	12,082,395	113,575	.94	n.a.	77,308
Sears	18,600,000	n.a.	n.a.	9,167	(²)
Bank of America	2,464,469	119,164	4.84	3,047	(²)
First National Bank of Chicago	901,000	57,000	6.33	5,000	(²)
Maryland National Bank	301,000	2,606	.87	134	(²)
Shell Oil	3,500,000	37,000	1.06	1,150	467,300
American Express	3,800,000	86,000	2.26	n.a.	25,760

¹Represents estimate of printing costs only for monthly mailing.

²The billing-error statement is printed on the back of the billing statement and the costs reported are those for printing the full billing statement provided to those persons who raise billing inquiries.

³The billing-error statement is printed on the back of the billing statement and no specific costs were reported.

⁴Mails the statement semiannually but estimates that mailing the shorter monthly statement would cost \$247,600 per year.

⁵Represents estimate of printing costs only for mailing semiannual statements.

n.a.—Not available.

A similar pattern existed for those specifically requesting reasons for the denial of credit in that the additional information was often adequate to warrant the granting of credit. Federated Department Stores estimated that about one-third of those requesting reasons for credit denial during the first 7 months after the revised Regulation B went into effect provided additional information, and in one-fourth of these cases credit was granted. The highest proportions were shown by Shell; almost 70 per cent of those requesting specific reasons supplied additional information, and in three-fourths of those cases credit was granted (Table 2).

The cost of providing reasons for the denial of credit to the rejected applicants varied widely. For the three companies that provided reasons initially, the average cost per rejected account ranged from 59 cents to \$1.07. For the other companies the average cost of responding to specific requests for reasons for credit denial varied from 22 cents to \$5.25.

BILLING INQUIRIES

A considerable number of credit customers raised questions concerning their billing state-

ments each month (Table 3). The extent of the increase in the number of customer inquiries since the billing-error sections were incorporated into Regulation Z is not known, but the figures reported by the eight creditors for recent months showed that the proportion of monthly billing statements questioned ranged from about 1 per cent for Penney's, Maryland National Bank, and Shell to about 5 per cent for Bank of America and 6 per cent for the First National Bank of Chicago. Only a small proportion of these questions were submitted according to the formal procedures provided by Regulation Z, but most of the companies indicated that they had treated all questions alike, whether presented in a formal or informal manner.

Creditors are permitted to use either a semi-annual billing-error statement, informing customers of their rights and the appropriate procedures, or a shorter monthly statement. Only Shell, American Express, and one division of Federated Department Stores used the semi-annual statement. The other companies found the monthly statement, which in some cases could be printed on the back of the billing statement, to be less costly than a semiannual statement. Precise cost figures, however, could not be provided by most companies. □

PRELIMINARY DATA ON CONSUMER RESPONSES TO CONSUMER CREDIT SURVEY

The Board's staff strongly emphasizes the preliminary nature of these figures; the staff presently draws no conclusion from them.

B1. In your opinion have you ever been treated unfairly in your credit transactions?

Yes -- 622 (reporting a total of 947 problems)

No -- 1941

B1a. What was the problem?

Credit refusals, limits	172
Reason for refusal not given	1
High rates, charges	128
Other terms poor, short maturities, etc.	54
Contract sale to other creditor	27
Prepayment penalty	21
Insufficient information about credit terms	35
Dunning, garnishment, embarrassment over bills	94
Repossession	25
Problem with handling of defective merchandise	54
Billing errors	70
Improper identification (another's purchase, former spouse, stolen credit card)	10
Other mistakes, incorrect information, incompetence	66
Rudeness, unfriendliness	8
Family background or size and credit	2
Sex, marital status, and credit	26
Age and credit	8
Race and credit	3
Other personal characteristics and credit	6
Lack of: assets, security, savings account, downpayment	13
Insufficient credit history	17

Credit-rating problem	33
Requirement of certain financial characteristics, residence, or job requirement	33
All other mentions	25
Do not know or not ascertained	<u>16</u>
Total	947

B1b. Did you try to do anything about this?

Yes -- 388 (reporting a total of 535 actions)

No -- 234

B1c. What did you do?

Complained to creditor	331
Used alternative credit source	27
Contacted credit bureau	28
Contacted attorney	37
Contacted Legal Aid Society	1
Contacted American Civil Liberties Union	1
Brought matter to court or small claims court	6
Contacted Better Business Bureau or Chamber of Commerce	15
Contacted media or "Action Line" services	1
Contacted local government or police	2
Contacted State government	4
Contacted local or State consumer protection agency (specific mention)	2
Wrote to President of the United States	1
Wrote to congressman	1
Wrote to Federal Consumer Protection Agency (non-existent)	2

Paid off debt	37
Complained to seller or manufacturer (non creditor)	6
Refused to pay or tried to cancel contract	7
Contacted miscellaneous friends or associates	1
All other	12
Do not know or not ascertained	<u>13</u>
Total	535

B1d. Was the problem corrected to your satisfaction?

Yes -- 168

No -- 454

B2. Are there any (other) practices of creditors or lenders that you think are unfair and would like to see changed?

Yes -- 936

No -- 1554

Not ascertained -- 73

B3. In the past few years, have you complained about some credit experience you had -- say to a lawyer, a government official, the creditor, or someone other than a friend or relative?

Yes -- 299

No -- 2243

Not ascertained -- 21

B4. Suppose a friend or relative had a disagreement with a creditor and asked your advice about what to do. If you felt this person was right and the creditor was wrong, where do you think would be the best place to complain?

Creditor	408
Different creditor	9
Credit bureau	48
Manufacturer	2

Lawyer	551
Legal aid	15
ACLU	3
Court	69
Better Business Bureau	645
Consumer group	31
Media	36
Government	48
Local government	20
State government	41
Federal government (generally)	11
State agency (specific mention)	60
Congress	5
Justice Department	3
FBI	1
FTC	2
FRB	1
FDIC	1
SBA	3
CPSC	1
Consumer Protection Agency (nonexistent)	205
Other federal agencies (specific motion)	11
Other, general	21

None	7
Don't know	272
Not ascertained	34

B5. Are there any (other) agencies of the Federal Government where a person might get help on disagreements with creditors?

Yes -- 831
 No -- 335
 Don't Know -- 1397

C18. (Males only) Before you were married, did your wife have any credit cards?

Yes -- 231
 No -- 1280
 Don't know, not ascertained 68
 Inappropriate 984

C19. (Females only) Before you were (first) married, did you have any credit cards?

Yes -- 76	)	The Board's staff believes
No -- 619	)	these figures to be slightly
Don't know, not ascertained 28	)	inaccurate and intends to
Inappropriate 1864	)	further revise them.

36. In November 1977, the staff surveyed a nonrandom sample of eight large creditors to determine their costs of complying with certain aspects of the Equal Credit Opportunity and the Fair Credit Billing Act. The results of this survey appear on page 363 of the Federal Reserve Bulletin of May 1978. Reprints are enclosed for your convenience.

TO: Interagency Coordinating Committee

DATE: November 9, 1978

FROM: Division of Consumer Affairs
Board of Governors of the
Federal Reserve SystemSUBJECT: Summary of comments on
proposed uniform guidelines for
enforcement of the Equal Credit
Opportunity Act, Regulation B,
and the Fair Housing ActSUMMARY

On July 6, 1978, the five Federal agencies responsible for regulating banks, thrift institutions, and credit unions published for comment (43 FR 29256) proposed uniform guidelines for enforcement of the Equal Credit Opportunity Act, its implementing Regulation B, and the Fair Housing Act.

The proposed guidelines, drafted by a committee of representatives from the five agencies and intended to promote uniform enforcement of the Acts and regulation with regard to the financial institutions supervised by the agencies, elicited 156 comments, broken down according to source as follows:

Banks and Banking Associations	109
Savings and Loans and Associations	12
Credit Unions and Associations	7
Credit Card Issuers and Associations	2
Other Creditors	3
Consumers and Consumer Representatives	9
Federal Reserve Banks	11
Federal Agency	1
State Agencies	<u>2</u>
Total	156

DISCUSSIONA. General Comments

Many commenters, in lieu of or in addition to addressing specific provisions of the proposed guidelines, expressed opinions on the concept of uniform enforcement guidelines in general.

A uniform enforcement policy was viewed by most commenters, both creditor and consumer, as being desirable. Several commenters, primarily creditors and their representatives, however, saw the guidelines as simply another layer of Federal regulation which would increase the time and expense necessary to comply with the law and ultimately increase the cost of credit to consumers. It was also suggested by some creditors subject to the supervision of the five Federal agencies that the guidelines would place them at a disadvantage since other creditors would not be subject to the guidelines.

Commenters from the credit industry expressed the view that the profit motive alone is an adequate incentive to extend as much credit as possible and, therefore, is a deterrent to discrimination. Some financial institutions voiced concern, however, because they feel pressured by the regulation and the guidelines to make unsecured loans in order to insure that they are not found to discriminate. These institutions anticipated conflicts between commercial and consumer examiners regarding what constitutes safe and sound lending practices. One of the individual consumers who commented also believed that the guidelines would encourage unsound lending practices.

Many industry commenters were concerned about the broad discretion given to each agency and its examiners in determining violations and applying the guidelines. They viewed this flexibility as undesirable because it would provide no guidance and would, in fact, result in a lack of uniformity among the agencies. They felt that

agencies might differ not only in their determination of what constitutes a violation but also in when and how to apply the specific guidelines. Both financial institutions and consumer groups felt that certainty in the application of the guidelines is essential because ambiguity makes compliance difficult for the institutions and is of no benefit to the consumer. Several commenters also noted that problems may arise because existing policies and practices of the agencies are different. They believed that without a major restructuring of the methods and goals of each agency to achieve uniformity regarding examination techniques, uniformity in implementation of the guidelines may be in possible.

Many commenters suggested a need for definite time periods in all of the guidelines in which time limits are relevant. They also called for a general "statute of limitations" applicable to any corrective action taken pursuant to the guidelines to insure certainty and uniformity.

One commenter suggested that any action taken because required by the Federal Housing Authority, Veterans Administration, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, or other government entity be specifically exempted from application of the guidelines.

Some commenters, principally consumer groups, emphasized that the goal of the guidelines is to make the consumer whole. They noted that the guidelines, as currently written, go no further than

what is already required by the law. Consumer groups made several specific suggestions for strengthening individual guidelines, in addition to suggesting that at least three other violations should be subject to the guidelines. The additional violations are (1) improper solicitation of information about a spouse or former spouse, (2) improper requests for marital status information, and (3) failure to provide a notice that disclosure is not required concerning income from alimony, child support and separate maintenance payments unless the applicant chooses to rely on such income to establish creditworthiness.

The Minneapolis Federal Reserve Bank also suggested that the guidelines should specifically cover three additional violations. They are: (1) any improper requests for information under § 202.5 of Regulation B, (2) improper aggregation of married applicants' accounts as prohibited by § 202.11(c), and (3) failure to retain records as required by § 202.12(b).

The San Francisco Federal Reserve Bank suggested clarifying the statement in the guidelines that all errors, including those on application forms, will be required to be corrected. The bank believed that such a requirement concerning forms is independent of the proposed guidelines and should only be applied prospectively unless the improper forms were substantively discriminatory and did not involve merely technical violations.

B. Comments regarding the General Enforcement Policy

The proposed guidelines set forth a general enforcement policy

to require corrective action for violations of the Acts and Regulation B and to assure future compliance. Although voluntary correction of violations will be encouraged, adoption of a written loan policy consistent with the law and formulation of a compliance plan to implement that policy will be required whenever substantive violations are found. The guidelines would not preclude the use of other authority possessed by the enforcing agencies nor limit the agencies' discretion to take other action to correct violations and to consider the suitability of the prescribed remedy under the circumstances of each case. The guidelines would not preclude the enforcing agencies from referring to the Attorney General cases involving a pattern or practice of discrimination. Neither will a customer's right to bring a civil action under the Acts be foreclosed by application of the guidelines.

Most creditors requested a definition of the term "substantive violation" (the existence of which would necessitate adoption of a written loan policy). They believed that the flexibility permitted the agencies by the guidelines will result in a lack of uniformity in determining what constitutes a substantive violation that triggers application of the guidelines. Industry commenters also requested additional specificity regarding the method by which particular instances of discrimination will be determined. Many expressed grave concern that no opportunity for administrative review and hearings is specifically provided.

Several consumer representatives stated that written loan policies should always be required irrespective of any finding of a substantive violation. One State agency believed that such written

loan policies should be publicized so that the community in which a financial institution does business would be aware of the institution's position from the outset. Other commenters questioned whether a "written loan policy" means a statement of the goals and procedures of the institution or a list of the institution's standards of creditworthiness. They pointed out that a list of creditworthiness standards would not be feasible because of the wide variety of possible credit terms and conditions coupled with the individual factual situations that are involved in a determination of creditworthiness.

Consumer groups argued that the financial condition of the creditor should not be considered when the agency determines the remedy for a violation because it is contrary to the public interest to protect or preserve an institution that is discriminating, regardless of that institution's financial circumstances.

While some consumer groups felt that all violations should be referred to the Attorney General, some creditors and their representatives suggested that no corrective action occur at all unless willful wrongdoing is found. One commenter suggested that institutions with less than 50 million dollars in assets be exempt from the guidelines in the absence of willful discrimination.

The greatest concern voiced in the industry comments had to do with the fact that administrative enforcement and corrective action does not eliminate the possibility that civil liability will also be imposed. The commenters stated that refunds of monies pursuant to the guidelines, when added to an award of damages by a court would

constitute double jeopardy for the creditor and a windfall to the consumer, in that the consumer would be placed in an even better position than if the original transaction had been completed in a non-discriminatory manner. In addition, the commenters viewed such double recoveries for the consumer as having possible effects on the safety and soundness of financial institutions. They also noted that an administrative enforcement agency may determine that a violation has occurred and require corrective action. A court may then determine otherwise, or vice versa. Such a result, they claimed, would lead to a high degree of uncertainty and to a lack of uniformity. The commenters believed that remedial actions such as those in the guidelines are traditionally the province of the courts, and that judicially created violations, such as effects test violations, should only be determined by the courts.

As a possible answer to this concern, several industry commenters suggested a provision similar to § 130(b) of the Truth in Lending Act, pursuant to which no civil liability attaches for a violation if corrective action is taken by the creditor within a specified time period.

Consumer representatives, on the other hand, stated that although some injuries to the consumer would be remedied by administrative action, access to the courts is also essential so that individual consumers could obtain court awards of punitive damages in appropriate cases. They felt that the threat of such additional court action was the strongest incentive to creditor compliance.

As a technical matter, several commenters noted that while the general enforcement policy indicates specifically that the guidelines

do not cut off individuals' rights under the civil liability provisions of the Equal Credit Opportunity Act, there is no such reference to the civil liability provisions of the Fair Housing Act. It was suggested that such a reference be added to avoid any implication that individual rights under the Fair Housing Act would be limited by application of the guidelines.

C. Specific Violations

I. Discouraging Applications on a Prohibited Basis in Violation of § 202.5(a) of Regulation B.

Guideline I provides that where a creditor is found to have discouraged credit applications on a prohibited basis, the creditor will be required to solicit applications from the discouraged class through affirmative advertising which will be subject to review by the enforcing agency. Under this guideline, the content and the medium of the advertising are to relate to the discouraged class, and the creditor may also be required to advise agents, dealers, community groups, and brokers that it pursues a nondiscriminatory lending policy.

This guideline elicited the largest number of comments. Several industry commenters and members of the Board of Governors' Consumer Advisory Council expressed strong opposition to this proposal. One consumer who commented was also opposed to affirmative advertising, suggesting as an alternative that the government remove any deposit of its funds from a financial institution which discriminates.

Creditors felt that this guideline would interfere with the marketing of credit and would impose a requirement not now a part of

ECOA or FHA. These commenters focused on the distinction between (1) a failure to solicit applications and (2) actively discouraging applications on a prohibited basis. They did not believe that the former is a violation of the statutes and, therefore, its converse cannot be required by the guidelines to correct a violation. A number of commenters questioned whether the remedy of affirmative advertising was itself discriminatory particularly in light of the Supreme Court's recent "reverse discrimination" decision.^{*/} They argued that, even if such advertising could be classed as a special purpose credit program pursuant to § 202.8 of Regulation B, no comparable provision existed under the FHA. Therefore, in their view, the corrective action itself may violate at least one of the laws.

A major concern of industry commenters with respect to affirmative advertising was that such advertising would amount to a public announcement of civil liability, could invite lawsuits, and would be detrimental to an institution's image in the community. The Department of Justice, however, stated that in its experience under the Fair Housing Act consumers did not rush to file suit when informed of violations and of their rights. Consumer groups supported notifying individual consumers of specific violations and supported affirmative advertising, including notifying community groups, brokers, and others. One State agency recommended requiring affirmative advertising as a matter of course and not merely as corrective action.

*/ Regents of the University of California v. Baake, 98 S. Ct. 2733 (1978).

Creditor comments suggested consumer education as an alternative to affirmative advertising. Consumer group comments suggested that consumer education efforts be undertaken in addition to affirmative advertising.

Several practical and technical concerns were raised by commenters. Commenters requested definitions of the terms "content" and "affirmative advertising" as used in the guideline. Others pointed out the costliness of advertising and asked whether creditors who do not now advertise at all will be required to do so if found to have discouraged applications on a prohibited basis.

Industry commenters expressed confusion over whether all advertising, or only affirmative advertising, will be subject to review by the agencies. Some believe that advertising should be subject to review only if advertising was the original means of discouraging applicants. It was also asked what form affirmative advertising would take where the discouraged class consisted of persons who had, in good faith, exercised their rights under the Consumer Credit Protection Act.

Several commenters questioned whether mass media advertising would effectively reach minority groups. They also asked how a national creditor would be required to advertise. One commenter suggested that the content of any affirmative advertising should be directed to all applicants but that the media chosen should be geared to the "discouraged" class.

One creditor commenter considered this guideline to be unconstitutional because it constitutes censorship of the press. Another characterized this remedy as being credit allocation.

On the other hand, consumer groups suggested that additional corrective action should be required for the violation addressed by this guideline. In order to make the customer whole, these commenters felt that the customer should be reimbursed for the difference between the cost of the credit sought and discouraged and the cost of alternative credit obtained.

II. Using Discriminatory Elements in Credit Evaluation Systems in Violation of the Fair Housing Act and §§ 202.6(a) and 202.7 of Regulation B.

Under Guideline II, creditors using discriminatory elements in a credit evaluation system would be required to reevaluate, under a non-discriminatory written loan policy, all applications rejected during a period of time determined by the supervisory agency. Letters soliciting new applications from individuals discriminatorily rejected would be required as would refunds of any fees paid by such individuals. Any such individuals who make new applications could not be required to pay any fee prior to acceptance of an offer of credit from the creditor. If a discriminatorily rejected applicant accepts an offer of credit, any penalty incurred for prepayment of an existing loan secured in lieu of the discriminatorily denied credit must be reimbursed to the applicant by the creditor.

Several industry commenters questioned whether the standards of creditworthiness in effect at the time of the rejection (absent the discriminatory elements) or the standards in effect at the time of a new application should be the appropriate standards. Creditors stated that the fluctuation in the cost of money alters the standards and that, if the cost of money had risen at the time of the new application, more stringent standards should be applied. Financial institutions maintained that granting credit without reflecting the current cost of money in their creditworthiness standards would cause them to be cited during a commercial examination. A corollary question presented was whether the terms that would have been available originally must always be offered the customer upon a new application.

Many creditors voiced the need for a specific time period for which reevaluation of rejected applications would be required. Preferably, in their view, the length of this period should be the same as or less than the length of the record retention required by Regulation B. One creditor suggested solicitation only for loans discriminatorily rejected in the preceeding 30 days, because earlier applicants would probably have already obtained substitute credit.

Comments from creditors asserted that an applicant whose original application fees were refunded and who was not charged any new fees would not only be made whole but would be in a better position than had the original credit been granted.

Some creditor commenters specifically questioned the agencies' authority to order reimbursement under § 8 of the FDIA.

Consumer groups, on the other hand, suggested that fees assessed after acceptance of credit also be waived. One consumer group wished to notify all stockholders and depositors of the institution of these violations and corrections. They believed, in addition, that the appropriate measure of damages to be reimbursed to the consumer would be the difference between the cost of the credit originally requested and the cost of credit actually obtained as a substitute.

Creditors argued that they should not be liable for prepayment penalties imposed in connection with existing loans obtained in lieu of discriminatorily denied credit, because such penalties do not accrue to the creditor that originally denied the credit and because it would be difficult to determine whether credit was obtained "in lieu of" other credit. Creditors also questioned whether all costs which might be characterized as "prepayment penalties" would be reimbursed (for example, the additional finance charges retained by application of the Rule of 78's to calculate unearned finance charges upon early payment of a loan) or only penalties imposed for prepayment of simple interest (e.g., real estate) loans.

As a practical matter, creditors stated that this guideline would result in additional costs to them and that such costs would be passed on to all consumers.

It was suggested by creditor commenters that the agencies approve written loan policies in advance of their use, especially

since it was argued that the determinative factors in a credit decision are impossible to separate at a later date.

Consumer groups wanted customers notified that any credit rejections that occurred after the original discriminatory rejection may have been based on incorrect information given to a consumer reporting agency by the original creditor. They also wanted discriminatorily rejected consumers to be notified that they should reapply for the subsequently rejected credit because the incorrect information in the credit files must be corrected by the original creditor.

One commenter suggested that "discriminatorily" be changed to "on a prohibited basis" to more properly reflect the wording of the law.

Other industry commenters wanted the guidelines to make it clear that solicitation letters need only be sent to the last known address of the rejected applicant and that actual contact with the applicant need not be made.

The San Francisco Federal Reserve Bank offered several technical comments. The bank suggested including additional remedies for violations of §§ 202.4, 202.5(c) and (d), 202.6(b) and 202.7 of Regulation B in this guideline because these provisions also pertain to forms of discrimination. The bank also suggested that it be made clear that a violation of either the Fair Housing Act or Regulation B is adequate to trigger the application of the guideline. (The caption

of the guideline presently refers to violations of the Fair Housing Act and Regulation B and could be interpreted as requiring a violation of both in order for the guideline to apply.) The bank wanted clarification regarding whether or not the term "individuals" as used in the guideline includes corporate and other borrowers consistent with the scope of Regulation B. They also questioned whether applicants who were discriminatorily rejected but who would have been rejected even absent discrimination, need to be solicited again. (They presume not.) Lastly, the bank wanted it specified that the burden of proof is on the creditor to show that discrimination has not occurred. Attached is a copy of the language suggested by the San Francisco Reserve Bank as a substitute for Guideline II (see Attachment A).

III. Imposing More Onerous Terms on a Prohibited Basis
in Violation of the Fair Housing Act and § 202.6(b)
of Regulation B.

Where a creditor has charged a higher rate or required insurance in violation of the statutes, Guideline III would require corrective action in the form of reimbursement or adjustment. Where other more onerous terms were imposed, the creditor would be required to notify applicants that they may renegotiate the extension of credit on terms for which they qualified at the time the credit was granted. Additionally, the creditor would be required to release the applicant from any other term illegally required and to reimburse the applicant for any other money illegally required.

Several creditors questioned the agencies' authority to require reimbursement. Industry commenters also requested a list of "substantive" discriminatory terms which would trigger the application of this guideline. They requested clarification as to whether they could renegotiate with the customer based on the customer's present financial situation, in the event that it had deteriorated since the credit was first requested. The Minneapolis Federal Reserve Bank recommended requiring a refund of any higher downpayment and reimbursement of any additional interest charged. However, creditors noted that a refund of downpayment and renegotiation would lengthen the term of the loan and result in more interest being charged to the customer. They also pointed out that renegotiation may cause problems with lien priorities.

If the guideline is adopted, some creditor commenters would limit its applicability to credit still outstanding and not in default or the subject of legal collection action. Creditors also claimed that resolicitation would be very confusing to customers. They suggested that any excess charges imposed exceed a minimum dollar amount before this guideline would apply.

Consumer groups, on the other hand, suggested that all offers to discriminatorily rejected applicants be in writing. They also suggested that there be no renegotiation but, rather, automatic adjustment to eliminate the more onerous terms with interest paid on any reimbursements and no prepayment penalties imposed.

IV. Requiring Cosigners on a Prohibited Basis in
Violation of the Fair Housing Act and § 202.7(b)
of Regulation B.

Pursuant to Guideline IV, if a cosigner is illegally required, the creditor would have to offer to release the cosigner. Where a cosigner is necessary to support an extension of credit but the creditor has restricted the applicant's choice of cosigner on a prohibited basis, the creditor would be required to notify the applicant that another financially responsible cosigner may be substituted.

One creditor asked what the guideline requires or allows if no other financially responsible cosigner can be found. For example, must the credit be granted without a cosignor? Another creditor noted that, in some states, release of one cosigner releases all and suggested that the guideline should not result in such an occurrence.

On the other hand, several comenterers offered suggestions for strengthening this guideline. The Minneapolis Federal Reserve Bank felt that notice of the cosigner provisions of the regulation should be required to be provided to all future applicants once a violation has occurred, because the current guideline does no more than require compliance with the law. The San Francisco Federal Reserve Bank suggested including in the guideline's remedies similar protection for guarantors and any others required to sign any documents in connection with the credit extension. They also suggested that if an applicant has been denied credit because of an inability to provide a discriminatorily requested cosigner, the guideline should be held to apply.

Some consumer groups suggested requiring reimbursement of any monies paid by discriminatorily obtained cosigners. Others suggested that all discriminatorily obtained cosigners be automatically released.

V. Failing to Collect Monitoring Information in Violation of § 202.13 of Regulation B.

Guideline V provides that if a creditor has failed to collect and maintain required monitoring information, the creditor would be required to solicit such information from all applicants for real estate loans since March 23, 1977, or the previous examination, whichever is later.

Several creditors requested that emphasis be placed on the requirement to "request" or "solicit" the information and not necessarily to "obtain" it. They expressed the view that consumers would be generally uncooperative in providing such information, especially so long after a credit transaction. The New York Federal Reserve Bank, however, wished to eliminate this guideline because it merely requires "requesting" the information and not "requiring" it.

The Consumer Advisory Council suggested checking back only to the previous examination in each instance as evidenced by their suggestion for the wording of this guideline (see Attachment B). Consumer groups, however, supported always checking back to March 23, 1977, for the sake of uniformity and a more complete data base.

VI. Failing to Provide Notices of Adverse Action in Violation of § 202.9 of Regulation B.

Under Guideline VI, a creditor that has failed to provide notices of adverse action would be required to send appropriate notices to all applicants denied credit within 25 months of the date of the examination.

Many industry commenters suggested that the guideline require sending notices only to those applicants who did not originally receive a notice or who received an improperly completed notice rather than to "all" applicants denied credit within the specified time period. In addition, creditors argued that it was confusing to require notices to be sent so long after the rejection, in part, because a customer's position will probably have changed, thereby rendering the educational purpose of the notice useless. Therefore, several commenters suggested that the period be shortened from 25 months to one year. The Federal Reserve Bank of New York suggested six months. Others requested that this guideline apply only if a pattern of failing to provide proper notices is found. Consumer groups, on the other hand, requested that all applicants who were not given proper notice be told of the violation and of their rights under ECOA.

VII. Failing to Maintain and Report Separate Credit Histories for Married Persons in Violation of § 202.10 of Regulation B.

Guideline VII provides that if a creditor has failed to obtain sufficient information to report credit information as required by Regulation B for accounts held by married persons, the creditor will be

required to obtain the information it lacks and, thereafter, properly report the credit information. If a creditor has failed to report credit information on married persons' accounts in accordance with Regulation B but has sufficient information to do so, the creditor will be required to designate joint accounts to reflect the participation of both spouses and, thereafter, properly report the credit information. Additionally, if a creditor has failed to report separate credit histories for spouses as required by the regulation, each such account must receive a statement advising the account holders that if either spouse has been refused credit since January 1, 1978, on the basis of insufficient credit history, he or she may want to reapply since the denial may have resulted from the creditor's failure to properly report credit information.

Industry commenters believed that the guideline should make clear that no violation occurs when a creditor has relied upon and acted in conformity with § 202.10(b)(2) of Regulation B. (That section allows creditors to rely on the fact that they sent form notices one time to married account holders notifying them of their right to redesignate their credit histories.)

The San Francisco Federal Reserve Bank suggested that the guideline only require a creditor to "make a good faith effort to" obtain sufficient information to properly report credit information for accounts held by married persons.

Other creditors asked to whom the notice regarding subsequent credit history must be sent, one or both spouses, and whether there will be a time limit for sending the notice.

Consumer groups believed that applicants should be compensated for direct and indirect injuries resulting from denials of subsequent requests for credit caused by the improper maintenance and reporting of their credit histories.

VIII. Terminating or Changing the Terms of Existing Open End Accounts on a Prohibited Basis in Violation of § 202.7(c) of Regulation B.

Where a creditor has illegally terminated an account or changed the terms in a manner less favorable to the borrower, Guideline VIII will require the creditor to restore the account to its "previous condition, unless an evaluation of the creditworthiness of the affected parties justifies other action."

Several creditors requested a definition of the term "previous condition."

The San Francisco Federal Reserve Bank requested clarification of the phrase "unless an evaluation of the creditworthiness of the affected parties justifies other action." The bank also suggested including this guideline within Guideline II in order to require a creditor to solicit a new request for credit from those persons affected by a violation of § 202.7(c).

San Francisco Federal Reserve Bank Draft of Guideline II

II. REJECTING APPLICATIONS FOR CREDIT IN VIOLATION OF THE FAIR HOUSING ACT OR REGULATION B

(a) When an applicant has been refused credit because of inability or unwillingness to comply with a condition improperly imposed by the creditor, the creditor shall send a letter to the applicant's last known address, soliciting a new application. The creditor shall also refund any fees or costs paid by the applicant in connection with the original application, and shall waive any application, appraisal, credit check, or other fee which it might otherwise impose prior to the applicant's acceptance of an offer of credit. If the application is approved and the applicant accepts the credit, the creditor shall reimburse the applicant for any penalty incurred in connection with the prepayment of any existing credit which the applicant obtained in lieu of the credit improperly denied by the creditor.

(b) Where a creditor has used a credit evaluation system which contains an improper element, the creditor shall reevaluate all applications for credit in accordance with a written loan policy which contains no improper elements. The creditor shall send letters soliciting new applications to all persons previously rejected, except for persons whom the creditor can show would have been rejected even under a proper credit evaluation system. The creditor shall refund fees, waive fees, and reimburse prepayment penalties as indicated in paragraph (a).

COMMENT: Paragraph (a) applies, for example, where the applicant has refused to provide information which the creditor should not, under Section 202.5(c) or (d), have requested. It would also apply where the creditor has insisted on a signature on a note or other instrument in violation of Section 202.7(d), and the applicant was unable or unwilling to obtain the signature. Paragraph (a) would also apply when a creditor has terminated or changed the terms of an existing open end account in violation of Section 202.7(c).

Paragraph (b) applies where a credit evaluation system, (judgmental or "demonstrably and statistically sound, empirically derived") has included an improper element, such as discounting of income from part-time employment in violation of Section 202.6(b)(5). If the creditor can show that the application would have been rejected even if the part-time income had not been discounted, the creditor need not solicit a new application from the rejected applicant.

The period of time for which a creditor will be required to reevaluate applications and solicit new ones will be determined by the enforcing agency; the period will depend on the nature of the violation and on the type of credit involved. The standards of creditworthiness used to reevaluate applications shall not be more stringent than those in effect at the time the applicant was originally denied credit.

Consumer Advisory Council Draft of Guideline V

If a creditor has failed to collect and retain required monitoring information subsequent to the first examination at which such failure is brought to the attention of the creditor, it must solicit such information from all who have applied for real estate loans since the date such examination report is submitted to the creditor, or the previous examination, whichever is later.

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NINETY-FIFTH CONGRESS

Congress of the United States

House of Representatives

**COMMERCE, CONSUMER, AND MONETARY AFFAIRS
 SUBCOMMITTEE**

**OF THE
 COMMITTEE ON GOVERNMENT OPERATIONS**

**RAYBURN HOUSE OFFICE BUILDING, ROOM B-377
 WASHINGTON, D.C. 20515**

November 17, 1978

Hon. G. William Miller
 Chairman
 Federal Reserve Board
 Washington, D. C. 20551

Dear Mr. Chairman:

In order to enable the Commerce, Consumer and Monetary Affairs Subcommittee to obtain a clearer picture of Federal Reserve enforcement of the Equal Credit Opportunity and Fair Housing Acts and Regulation B, I am writing to request further clarification on a number of points raised in August and September in my earlier correspondence and in Governor Jackson's testimony on September 15. I would appreciate your response as promptly as possible for completion of our record on this hearing.

My questions in connection with Governor Jackson's testimony and prepared statement are the following:

1. How does the Federal Reserve detect racial redlining violations of Regulation B? For example, how is the present monitoring information required under section 202.13 of Regulation B employed to examine individual banks for evidence of redlining discrimination? Also, how do you employ Home Mortgage Disclosure Act data to examine individual banks for evidence of redlining discrimination?
2. It was established in testimony that there are no formal guidelines between the banking agencies and the Justice Department governing what kinds of discrimination situations will be referred by the banking agencies for possible Justice Department prosecution. What is the Federal Reserve's policy toward referral of equal credit and fair housing violations to the Justice Department for possible prosecution? Has the Federal Reserve referred any cases to Justice? Under what particular sets of circumstances would the Federal Reserve refer a case to the Justice Department in the future?
3. Governor Jackson's prepared statement indicated that, as of the date of his statement, not all banks found to have continuing violations even after a second examination had been brought into compliance.

what has been the nature of the remaining problems in each of these apparently recalcitrant cases, and what steps have the Federal Reserve Banks taken in each case to secure compliance?

4. When do you expect the Board to complete its review and revision of its ECOA and Fair Housing examination and enforcement program, the details of which Governor Jackson offered to furnish to the subcommittee upon their completion?
5. Will the revision of your examination and enforcement program include any modification in your consumer complaint handling procedures to implement the suggestions of the Board's consultant, Mr. Dennis? For example will you establish a written set of complaint handling instructions, including instructions for complaint examiners to interview the complainants as well as the banks where appropriate? Will you establish a capability for the Board staff to oversee and review the substance of the complaint handling work performed in the individual Federal Reserve Banks?
6. Governor Jackson testified that testing would be one of the techniques the Board would evaluate as a means of detecting preapplication discouragement. How will this evaluation of testing be conducted, and when do you expect your evaluation to be complete?

I would also appreciate further clarification of several of the answers submitted in advance in response to my written questions. The question numbers that head each paragraph below refer to the question numbers in my letter of August 17.

Questions 10-12: May we have more explicit and separate answers to these three questions, which were treated as one question in the initial response? For example, please provide exact references to the paragraphs of your Attachment 5 that constitute answers to each of these questions.

Question 13: The initial answer to this question refers to the separate consumer affairs unit in each district Federal Reserve Bank. What rank, title, salary range, and authority are given to the senior personnel in each of these consumer affairs units? What qualifications in civil rights matters do the current incumbents possess? Do these people have any direct responsibility for consumer examinations, or is their role advisory only? If there is any significant variation among the Reserve Banks in these respects, please give the information by individual Reserve Banks.

Question 13 (continued): May we have some more specific detail about the procedures followed for systematic oversight and review by the Board staff in Washington of the fair housing and equal credit compliance examinations performed by the field examination staff? Is occasional participation by Board personnel in on-site examinations the only review mechanism?

Question 15: While I realize that exact figures are not available, I would appreciate your best estimates of (a) the portion of total costs devoted to complaint handling, and (b) the portion of total costs applicable to home loans.

Question 15 (continued): What specific time period do the cost figures given in answer to this question cover?

Question 16: What is the final figure for the number of banks examined in the first round of Federal Reserve consumer compliance examinations?

Question 18: The answer given previously to questions 16 and 17 suggests that the tabulation given in Attachment 8 was preliminary only and subject to revision. Please send a revised tabulation of examiner hours covering the first round of consumer compliance examinations.

Question 20: I would appreciate further clarification of the distinction between substantive and technical violations, as follows:

- a. What is the significance for follow-up enforcement of having a violation classified as technical rather than substantive? Are technical violations given different handling in terms of enforcement?
- b. Is every unintentional violation treated as technical? For example, would a systematic recordkeeping violation (e.g., discarding records after six months or failure to collect monitoring information) be considered technical if it was due to unintentional error?
- c. Is the classification of violations as substantive or technical done judgmentally by the examiners, using only the general rules of thumb given in the previous answer to this question? If there are any more specific written guidelines for this classification, please supply them to the subcommittee.

Question 21: Please prepare revised tabulations of violations based on your latest available information, as follows:

- a. Technical and (separately) substantive violations found in the first round of examinations, tabulated by violation type and district, in the same format as the previous Attachment 9-A.
- b. Repeat violations found to date, tabulated by violation type and district.

Question 23: Please provide a tabulation, by district and for all districts combined, of the numbers of banks in which one or more Regulation B violations were found in the first round of examinations. In this tabulation, please show the number of banks examined, the number in which no violations were found, the number in which only technical violations were found, and the number in which one or more substantive violations were found.

Question 24: Please also provide in percentage form the information given in answer to the previous question, showing the number of banks in each group as a percent of all banks examined in that district.

Question 26: In the case of complaints handled at the Reserve Bank level, what are the procedures followed by Board staff to review the adequacy and thoroughness of the complaint investigations done by Reserve Bank personnel and the validity of the conclusions reached?

Question 29: The material requested in this question was requested as a potentially informative indication of the adequacy of the complaint handling at the district level. Consequently, even though a manual search of examination reports will be required, I must request at least a partial response, as follows: Your tabulation of consumer complaints by district (Attachment 12) shows that 115 of the 261 complaints received involving state member banks fell into the category of "no violation found and no accommodation made". Of this 115, 98 arose in four districts, New York, Philadelphia, Cleveland, and Atlanta. For each of these four districts, please determine what portion of these no violation/no accommodation complaints were about

- a. banks for which the report from a subsequent general compliance examination is available and in which one or more violations similar to the complaint were found at this subsequent examination;
- b. banks for which the report from a subsequent examination is available and in which no similar violations were found at this subsequent examination;
- c. banks for which no subsequent examination has been conducted (or if conducted, the report is not yet available) and in which one or more violations similar to the complaint were found at a previously conducted examination, and
- d. banks for which no subsequent examination has been conducted (or if conducted, the report is not yet available) and in which no similar violations were found at any previous examination.

Sincerely,

Benjamin S. Rosenthal
Chairman

BSR:tt



BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON, D. C. 20551

G. WILLIAM MILLER
CHAIRMAN

January 12, 1979

The Honorable Benjamin S. Rosenthal
Chairman
Subcommittee on Commerce, Consumer
and Monetary Affairs
Committee on Government Operations
House of Representatives
Washington, D. C. 20515

Dear Chairman Rosenthal:

This is in further response to your letter of November 17 requesting additional information in connection with the Board's enforcement of the Equal Credit Opportunity Act and Regulation B.

Responses prepared by the Board's staff to the questions in your letter are enclosed.

I trust these replies will be helpful to the work of your Subcommittee.

Sincerely,

Bill

Enclosures

RECEIVED

JAN 15 1979

ASST. DIR.

RESPONSES TO CONGRESSMEN ROSENTHAL'S REQUEST DATED
NOVEMBER 17, 1978, IN CONNECTION WITH THE BOARD'S
ENFORCEMENT OF THE EQUAL CREDIT OPPORTUNITY ACT AND REGULATION B

As indicated during Governor Jackson's testimony on September 15, 1978, and further discussed in our earlier response of September 12, 1978, Board staff has been conducting an extensive review and revision of civil rights examination and enforcement procedures. The Board will consider very shortly policy questions in connection with the expanded procedures. Accordingly, the responses furnished below refer to both the expanded enforcement effort and the draft procedures that have been in place for the past two years.

1) Detection of racial discrimination in lending is covered by examination procedures to determine compliance with Equal Credit Opportunity and Fair Housing Acts. Procedures include analysis of appraisal practices for consistency and reasonableness, as well as possible effects test problems. Also, a comparison of the bank's applied lending policies between various classes of borrowers is useful. In this regard, analysis of treatment of protected classes involves utilizing the section 202.13 monitoring data to identify protected classes.

Under the expanded enforcement procedures examination for redlining practices will be detailed in the analysis of appraisal policies to determine consistency of application among different neighborhoods. Any discrepancies that may exist in applied appraisal

techniques based on geographic location, should be noted during the examiner's sample of mortgage loans and rejected applications.

Perhaps more significantly, however, the Home Mortgage Disclosure Act data is used to assess the geographic distribution of an institution's mortgage lending activity for the purpose of assessing a bank's performance under the Community Reinvestment Act. Under recently developed interagency examination procedures, analysis of lending activity will focus on the institution's lending patterns within low- to moderate-income census tracts. Census data will be analyzed in conjunction with HMDA data in order to determine the demographic characteristics of the population constituting an institution's community. To the extent that high concentrations of individuals within protected classes reside in geographic areas where an institution curtails its lending activity, the examination procedures are designed to detect "racial redlining."

- (2) The Federal Reserve's policy of referring cases of violation of equal credit opportunity and fair housing statutes to the Justice Department for prosecution does not differ from the referral policy for other enforcement matters. The Board would first seek to exercise its cease and desist authority to enforce compliance. Should this procedure prove to be ineffective, the case would then

be referred to the Department of Justice. The Federal Reserve has not referred any cases involving violations of equal credit opportunity and fair housing to the Justice Department.

While there are no formal guidelines governing referrals for prosecution, an interagency memorandum of understanding regarding interchange of information concerning complaints of discrimination in financing does exist between the four financial agencies, HUD, and the Department of Justice. This agreement constitutes an informal guideline and has been in effect since September 2, 1976.

(See attachment A.) Referrals to the Justice Department by the financial supervisory agencies are to be made at the discretion of said agencies and would include any violation involving apparent willfulness or criminal intent.

- (3) Repeat violations are generally of a technical or procedural nature. The degree and extent of Reserve Bank enforcement procedures will depend on the nature of the violation. When verification is necessary to ensure that an institution has corrected a violative practice, the Reserve Bank will schedule a follow-up examination, generally within six to nine months. Should an institution refuse to change a discriminatory practice, the Board will exercise its cease and desist authority. As noted on Attachment E, of the 296 banks reexamined, 84 (or 28 per cent) were found to have repeat violations. (See responses to questions 13, 20, and 21.)

- (4) Draft credit discrimination examination procedures have undergone a series of nine field tests. These field tests, as well as recommendations from a representative of the Center for National Policy Review and various members of the Consumer Advisory Council, indicate that substantive revision of the draft is necessary. It is anticipated that the final procedures will be adopted and ready for distribution by the end of January 1979, as part of a System Compliance Handbook, a copy of which will be furnished to the Subcommittee.
- (5) The revised enforcement procedures for complaint investigation will incorporate a substantial portion of Mr. Dennis' suggestions. The procedures will instruct complaint investigators to interview complainants whenever allegations of credit discrimination are present. As explained in the response to question 26, the procedures will provide for extended review by Board staff. The investigation procedures will be included in the Compliance Handbook referred to in response (4).
- (6) Experience with testing in financial transactions has been very limited. Although the practice is used by the Armed Services in connection with possible discrimination in housing, to our knowledge, only the Massachusetts Banking Department has significant experience with testing in connection with credit. That department is preparing a report on its experience. The Board will review and study the report

Developing appropriate guidelines for the use of testers may better be accomplished on an interagency basis (by the new Financial Institution Examination Council, for example) rather than by one agency alone.

- (10) In Attachment 5A, Examiner Checklist--Consumer Affairs Compliance Examination (submitted in September), the steps taken by examiners in the evaluation of the internal fair housing and equal credit opportunity compliance program of each bank are as follows:

<u>Page No.</u>	<u>Section</u>	<u>Question(s) No.</u>
2	Forms Review	A, B, F, K
2	Policy/Procedure Review	A - E
8	Internal Training, Audit and Review Activities	A 1-6; B 2(b)
9	"	C 1-3
9	Advertising	5, 6, 8
10	Examination Procedures	A 1-4, B 1-4
11	"	C 1-2
12	"	C 3(a), D 3-4
13	"	D 5-6
14	"	E 8, 11, 12

<u>Page No.</u>	<u>Section</u>	<u>Question(s) No.</u>
15	Examination Procedures	E 13-14, F 3, G 1-2
16	"	G 3, H 1
20	Sampling	A - D
21	"	F 3, G, H

The steps will be revised and further strengthened and included in the Compliance Handbook.

Attachment 5B, Equal Credit Opportunity Manual (submitted in September), provides the examiner with a summary and a narrative of the requirements and prohibitions of the Equal Credit Opportunity Act and Regulation B. The citations of the applicable sections or paragraphs are provided to facilitate examiner reference, as this manual is a supplement and not a substitute for the Equal Credit Opportunity Act or Regulation B.

Attachment 5C, Fair Housing Examination (submitted in September), serves as a manual for conducting the Fair Housing Section of the examination. It presents background information on the Fair Housing Act and also summarizes and highlights other regulations that enhance and contribute to overall compliance with the Fair Housing Act.

Attachment 5D, Home Mortgage Disclosure Act Examination (submitted in September), explains the purpose and technical requirements of Regulation C. While this regulation is a

disclosure type regulation, the data generated can be used by examiners, depositors, public officials and citizens to determine the pattern and trends of real estate lending.

- (11) No specific hours or percentages of time are allocated in the examinations for checking compliance with the Fair Housing Act and Regulation B. Certain minimum procedures, as noted in the response to question 10, are performed. These procedures include sampling both accepted and rejected loans. If conclusions cannot be drawn from the original loan sample, or if substantive violations are found, additional sampling is conducted to determine the cause of the violation and the extent of noncompliance.

The original sample size is dependent on recent loan volume but is expanded whenever considered necessary. (Please refer to Attachment 3 of the September response -- Examiner Instructions, Section II F 1-8, pages 18 through 28, for the specific details.)

Increased emphasis is placed on loans originated and sold if the sample results or other procedures indicate a need for additional review. This would be accomplished by the examiner performing another sample or extending the procedures as necessary.

- (12) A sample of each type of credit extended by the institution is reviewed for compliance with all applicable statutes and regulations, including the Fair Housing Act, Equal Credit Opportunity Act, and Regulation B. The breakdown by type serves to isolate causes

of noncompliance to specific departments, dealers, branches, and the like, while maintaining statistical validity needed to evaluate technical violations.

Additional emphasis is given to loans intended for resale by the institution when the sample or other examination procedures indicate increased emphasis is needed. As noted in the response to question 11, the examiner will expand the loan sampling process as necessary.

All loan files are compared to the institution's loan policy and to other accepted and rejected loans of the same type. The sample size of rejected loans is judgmental and is relative to the institution's level of activity and documentation.

As to the types of credit specifically inquired about, all accepted loans in the sample would be reviewed for compliance as applicable. The sampling procedures (Attachment 3, Examiner Instructions, Section II F, pages 18-28, submitted in September), refer to instalment loans, single payment loans, home improvement loans, home mortgage loans, and other types of credit such as open-end credit and student loans. Cross comparisons are utilized except as to business credit, which is exempt from the notification and record retention requirements in Regulation B. Thus, unlawful treatment for business loans can only be detected in accepted loans made on less favorable terms.

(13) A special consumer affairs section has been established within the examination department of each Reserve Bank. The examination department is administered by a vice president or senior vice president, and the consumer affairs section is supervised by a vice president. The consumer affairs section is staffed by senior examiners, review examiners, and field examiners (sometimes referred to as consumer affairs specialists). The salary range for those in charge of the consumer affairs sections varies widely and precise data is not readily available.

The staff of the consumer affairs sections conduct examinations, provide educational/advisory services to bankers and process and respond to consumer complaints. Each Reserve Bank has designated one or more civil rights specialists who receive extensive training in the civil rights area.

Organizational variations among the Reserve Banks are minimal. In two Reserve Banks (Philadelphia and Richmond) the consumer complaint program is housed within the Bank's Legal Department, on an experimental basis.

At the Board, examination reports are reviewed in depth on a selective basis. The review examiner's function is to analyze the field examiner's findings based upon the examination procedures that were implemented and the lending activity sampled during the examination.

The examination report is reviewed further to determine the level of compliance achieved by the institution. The review examiner is responsible for initiating correspondence with the Reserve Banks to ensure that appropriate enforcement action is taken, particularly if an institution has an inadequate level of compliance, has substantive violations, or has engaged in unlawful discriminatory practices. Vehicles for corrective action may include written responses, special advisory visits, follow-up examinations within six to nine months, and cease and desist proceedings.

In addition, Board staff's periodic participation in on-site examinations supplements the examination review process. Further, the Compliance Section is responsible for conducting operational reviews of Reserve Bank activities related to consumer affairs and civil rights matters.

The figures displayed as repeated violations (Attachment E) sometimes represent institutions in the process of follow-up examinations. Relatively few repeat violations, however, represent willful noncompliance. Some banks initiate requests for follow-up visits or examinations. Corrective action is frequently an educational process consisting of advisory visits and correspondence.

- (15) The Federal Reserve System does not compile detailed statistics on the total program costs related to the handling of consumer complaints. We do, however, maintain information on the amount of time involved in processing complaints. Based on the time figures and the System's total compliance program costs, as provided in our September response, we estimate that the portion of total costs devoted to System-wide complaint handling was \$420,000 during the period July 1977 through June 1978. Also based on the amount of time involved, we estimate that the cost of handling alleged unlawful credit discrimination complaints was \$21,000, or 5 per cent of the total complaint program costs. The present system does not accommodate the segregation of (or cost of handling) complaints relating to home loans from other consumer or business credit.
- (16) As to the 1,013 State-chartered banks which were members of the System as of October 1978, 978 reports of examination have been received by the Board. The difference represents reports in process. All State member banks have been examined at least once.
- (18) See attachment B.
- (20) (a, b, & c) Generally, a technical violation can be corrected while the examiner is in the bank and will require little or no follow-up verification. Substantive violations, however, frequently require follow-up visits to ensure that violative practices have been completely eliminated.

Although technical in nature a violation is classified substantive in subsequent examinations where it is found to be repeated. Repeat violations may be an indication that management does not take consumer regulations seriously. If this is the case, the examiner may extend the loan review sample to confirm or deny the existence of more subtle forms of prohibited practices. Should the continuing practice be the result of a lack of understanding, a systematic effort is made by the examiner to educate the bank as to the proper procedures necessary to gain compliance.

Regardless of the underlying cause of repeat violations, they are an important indication that serious problems exist in the institution. The institution would then be scheduled for a follow-up examination or special advisory visit, depending on the nature and seriousness of the violations. If full compliance cannot be achieved by intermediate enforcement measures, the Board will exercise its cease and desist authority.

Examples of technical violations of Regulation B include disclosure of the incorrect enforcement agency on the ECOA notice (section 202.9(b)(1)), or failure to send an ECOA notice within the prescribed 30-day period (section 202.9(a)(1)). Corrective action for the disclosure violation may be a matter of ordering new

forms, which is easy to verify. Correction of noncompliance with the 30-day notice requirements of Regulation B frequently involves an explanatory discussion with loan personnel.

Technical violations of Fair Housing include a failure to display the "Equal Housing Lender" poster in accordance with the Board's order of May 25, 1978 (43 FR 22444) or failure to include the Equal Housing logotype on written advertising for housing related credits. A poster violation may be corrected when the examiner returns to the Reserve Bank and mails the proper poster to the bank, or an advertising violation may require merely an explanation.

Substantive violations are more serious by nature and require verification that corrective action is being taken. Often this involves retraining loan officers, as in the case of a signature policy violation (section 202.7(d)). Although the policy may be rewritten quickly, it often requires extensive retraining of loan officers in the permissible methods of requesting necessary cosigners.

In the case of prohibited appraisal practices (Title VIII, section 804, 817), a substantial amount of retraining is required to teach appraisers to fairly and impartially appraise real estate based on conditions other than racial or geographic characteristics. Depending on the size of the institution and the amount of inside versus outside appraisal activity, varying amounts of time will be needed to effectively retrain all appropriate personnel. Occasionally,

a significant length of time will elapse before a shift in policy is felt at all levels of an organization. For this reason, scheduling of a follow-up examination may depend on the length of time needed to retrain bank staff.

Generally, an unintentional violation would be considered technical. However, if a violation occurs systematically, it could be considered a substantive violation. This would be the case, for example, when an institution discards or destroys records in violation of the record retention requirements (section 202.12(b)).

Should an institution fail to request monitoring information (section 202.13) only in isolated cases, it would be considered a technical violation. If the failure to request monitoring information occurs frequently, or forms a pattern or practice, it would be considered a substantive violation. As it is difficult to establish specific guidelines for every situation regarding the delineation between technical and substantive violations, reliance is placed on examiner judgment with consultations with Reserve Bank and Board staff, to the extent appropriate.

The Board recognizes the need for greater clarification regarding the difference between technical and substantive violations. Attachment C contains the revised examiner instructions that will be included in the Compliance Handbook.

It should be noted that the subject of enforcing the Equal Credit Opportunity Act and Regulation B is a matter of interagency concern. The five Federal financial institution regulators are nearing final consideration of proposed interagency enforcement guidelines.

(21) Attachments D and E are similar in format but do not lend themselves to comparisons for the following reasons:

Attachment D Represents the total of all violations for the first round of examinations based on computerized data by Reserve Bank District.

Attachment E Represents the total of all Banks with repeat violations on the second round examinations. These figures were developed manually.

(23) See Attachment F.

(24) See Attachment G.

(26) Consumer complaints involving State member banks are handled at the Reserve Banks, a procedure which has the advantage of creating on-going, personal contact between Reserve Bank staff and State member banks. This arrangement facilitates the resolution of complaints at the local level. At the same time, additional complaints on

the same subject or about the same bank serve as a clue to Reserve Bank staff that a State member bank's policies and procedures require more careful scrutiny during the examination process. Reserve Bank examiners conduct the on-site investigations in connection with complaints.

A consumer complaint referred to a Reserve Bank by the Board remains in the active file until staff of the Reserve Bank and the Board are satisfied that the problem has been resolved or that the consumer has been given a full explanation of the investigation and its results. Staff of the Consumer Affairs Division reviews the correspondence between the Reserve Bank and the consumer, as well as all related investigation documents. If deficiencies are noted in the review process, Division staff follows up with Reserve Bank personnel as necessary.

Each Reserve Bank has designated an officer in charge of consumer affairs and a civil rights specialist to monitor the Bank's effectiveness in handling consumer complaints. The expanded enforcement program due for consideration by the Board includes detailed procedures for investigating consumer complaints. The examiner will contact the consumer directly unless the nature of the complaint makes it clear that this would not be useful. These procedures apply to both possible credit discrimination complaints and complaints involving other than credit discrimination. These procedures will provide the Reserve Banks with specific guidelines to ensure that the System's complaint resolution process will be uniform, efficient, and responsive to consumers.

In addition, the Division of Consumer Affairs will provide more extensive review of the complaint handling efforts of the Reserve Banks. The program will include a periodic evaluation of each Reserve Bank's complaint handling efforts to assess and improve, where necessary, the effectiveness and overall efficiency of the complaint resolution process. Resolved complaints periodically submitted by the Reserve Banks to the Board will be evaluated by Division staff on several bases:

(a) Timeliness. Did the Reserve Bank meet the time requirements of Regulation AA and System Investigation procedures?

(b) Thoroughness. Did the Reserve Bank do all that was necessary in an attempt to resolve the complaint and did it address all the issues?

(c) Responsiveness to consumer. Did the Reserve Bank provide a clear and meaningful response to the consumer? Did the response include information about the consumer's rights if a violation of law existed? Did the Reserve Bank keep the consumer informed of the progress of the investigation?

(d) Procedures. Did the Reserve Bank observe all other established investigation procedures?

The new procedures also provide that the follow-up questionnaire (as discussed in our September response), which is currently sent to consumers whose complaints are referred from the Board to

the Reserve Banks for handling, be sent to all consumers whose complaints are reviewed by the Board.

- (29) Consumer complaints assist the System in detecting areas in which further investigation may reveal violations or deficiencies in a State member bank's policies and procedures. Not all complaints, however, are indicative of violation of any law or regulation. Therefore, it is sometimes not possible to resolve a complaint to the complete satisfaction of the consumer.

Our September tabulation of consumer complaints by district shows 98 "no violation found and no accommodation made" complaints (or 85 per cent of the total) were handled in four Federal Reserve districts -- New York, Philadelphia, Cleveland, and Atlanta. The information about the nature of the 98 complaints was compared with the examination reports, as necessary. Attachment H includes tabular information regarding the similarity of violations noted during bank examinations, either previous to or subsequent to receipt of the 98 complaints.

SUMMARY OF ATTACHMENTS

- A. HUD - Justice Referral Agreement
- B. Revised Figures of Hours Spent on First Round Examinations
- C. Examiner Instructions for Definition of Substantive and Technical Violations
- D. Total Regulation B and Fair Housing Violations (1st Round, by Type and District)
- E. Total Institutions with Repeat Violations of Regulation B and Fair Housing (2nd Round, by Type and District)
- F. Number of Banks with One or More Regulation B Violations
- G. Per Cent of Institutions with Technical and Substantive Violations
- H. Complaint Data Compared to Examination Findings

Attachment A



BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON, D. C. 20551

holbert
2 cc
9/11/76
F. Allison
ADDRESS OFFICIAL CORRESPONDENCE
TO THE BOARD

September 2, 1976

Mr. Kenneth F. Holbert
Director
Office of Fair Housing Enforcement
and Contract Compliance
Department of Housing and
Urban Development
Washington, D.C. 20410

Dear Mr. Holbert:

The Board of Governors has approved the inter-agency memorandum of understanding regarding interchange of information concerning complaints of discrimination in financing. The memorandum relates only to complaints regarding discrimination in the financing of residential real property.

Enclosed are the six original copies of the signature page which I have executed.

Very truly yours,

Theodore E. Allison
Secretary of the Board

enclosure

MEMORANDUM OF UNDERSTANDING REGARDING
INTERCHANGE OF INFORMATION CONCERNING COMPLAINTS
INVOLVING DISCRIMINATION IN FINANCING

The Department of Housing and Urban Development, the Department of Justice, and the four principal Federal Financial Regulatory Agencies (the Comptroller of the Currency, the Federal Home Loan Bank Board, the Federal Reserve Board and the Federal Deposit Insurance Corporation) agree to the following exchange of information concerning complaints of discrimination in financing.

I. The Department of Housing and Urban Development

- A. HUD will provide the appropriate Federal Financial Regulatory Agency with a copy of all complaints received pertaining to discrimination in financing that have been accepted for investigation.
- B. HUD will provide a copy of the notice to resolve or not to resolve served on the respondent to the appropriate Federal Financial Regulatory Agency.
- C. The Department of HUD will provide the Department of Justice a monthly listing of financial institutions against whom complaints have been filed.
- D. In appropriate instances, where there is a failure to conciliate, the Department of HUD will refer such cases to the Department of Justice for its consideration for action under Section 805.
- E. HUD will provide a copy to the appropriate Federal Financial Regulatory Agency of the notification to Justice when HUD's attempts to conciliate a complaint have failed.

II. The Federal Financial Regulatory Agencies

- A. Each Federal Financial Regulatory Agency will provide HUD with a copy of all complaints received by the Agency pertaining to discrimination in financing together with an indication of action taken or contemplated by the Agency on the complaint.

2

- B. Each Federal Financial Regulatory Agency will provide HUD with a periodic report of the status of complaints referred by HUD to the Agency.
- C. At the discretion of each Federal Financial Regulatory Agency, cases reflecting possible discrimination in lending will be referred to the Justice Department.

III. The Department of Justice

- A. At the discretion of the Justice Department, cases reflecting discrimination in lending by financial institutions will be referred to the appropriate Federal Financial Regulatory Agency. Justice will furnish notice when it is decided to institute suit against a financial institution.
- B. Department of Justice will provide a monthly list of financing investigations to HUD.

5001

Fair Housing
Act

NOV 8 1976

TO: CONSUMER AFFAIRS LIAISON OFFICERS AT THE FEDERAL RESERVE
BANKS

As part of its Fair Housing enforcement effort, the Board of Governors recently signed an agreement to exchange information regarding complaints of discrimination in the financing of residential real property. The signatories of the agreement, in addition to the Board, are the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, the Department of Housing and Urban Development and the Department of Justice. A copy of the agreement is attached.

You will note that under the agreement, the Board must provide the Department of Housing and Urban Development with a copy of all complaints received by the agency pertaining to discrimination in residential real property financing, together with an indication of the action taken or contemplated by the agency.

In order to carry out the Board's responsibilities under this agreement, we ask for your cooperation. When a complaint of discrimination in the financing of residential real property on the basis of race, color, religion, national origin or sex against a State member bank is received by letter, we ask that after appropriate action by the Reserve Bank, you send to Miss Kathryn Casey in the Division of Consumer Affairs two copies of the incoming letter together with the results of the action taken by the Reserve Bank. Similarly, if a complaint is received over the telephone or by walk-in, please send us two copies of completed FR Form 1116 and any related correspondence. One copy will be retained by the Board and one will be sent to HUD. If complaints are received against lenders other than State member banks, you should follow your usual procedure of referring the complaint to the appropriate enforcement agency. You need not make copies of these complaints or forward them to us.

Complaints are occasionally received directly by the Board, and under our usual procedures are referred to the appropriate Reserve Bank for action. Complaints received here will be forwarded to RUD directly from this Office.

Thank you for your cooperation.

Sincerely,

Janet Hart
Director

Attachment

AG:njw
11-4-76

ag
JH

Attachment B

CONSUMER AFFAIRS COMPLIANCE EXAMINATION DATA

CURRENT DATE: 12/27/78

PAGE: 1

 EMPLOYEE HOURS SPENT ON EXAMINATIONS
 BY
 DISTRICT
 (SIZE OF BANK DISTRIBUTION)

PERIOD 77/01 TO 78/12

DISTRICT	TOTAL BANKS				SMALL BANKS			MEDIUM BANKS			LARGE BANKS			
	NO. OF BANKS	AVG HRS PER BANK	AVERAGE (IN BANK) HOURS PER BANK	PERCENT OF (IN BANK) HRS TO TOTAL	NO. OF BANKS	AVG HRS PER BANK	NO. OF BANKS	AVG HRS PER BANK	NO. OF BANKS	AVG HRS PER BANK	NO. OF BANKS	AVG HRS PER BANK		
BOSTON	16	1,397	87	73	4	213	53	10	696	70	2	488	244	
NEW YORK	62	4,953	65	42	14	375	27	32	1,885	59	22	2,192	100	
PHILA	13	1,223	94	80	4	188	47	6	343	57	3	691	231	
CLEVE	114	14,570	128	95	56	6,177	110	51	6,324	124	7	2,068	295	
RICHMOND	104	6,536	63	54	47	2,398	51	46	2,693	59	11	1,494	136	
ATLANTA	79	5,576	71	51	47	2,499	53	28	2,254	81	4	822	206	
CHICAGO	222	5,420	24	20	115	2,371	21	94	2,507	27	13	541	42	
ST. LOUIS	79	2,865	37	33	36	1,091	30	40	1,616	40	2	157	79	
MINN	124	5,198	42	34	101	3,905	39	23	1,292	56	0	0	0	
KAN CITY	37	4,971	57	44	65	1,954	30	21	2,789	133	1	227	227	
DALLAS	46	3,119	68	45	25	1,185	47	20	1,704	85	1	229	229	
SAN FRAN	27	5,794	215	176	11	567	52	10	1,947	195	6	3,279	547	
TOTAL	978	61,170	63	49	77.68	525	22,926	44	381	26,054	68	72	12,188	169

1682

VI. VIOLATIONS

A. General (technical and substantive)

All violations discovered by the examiner, whether technical or substantive, will be noted on the checklist or accompanying workpapers. Information should include, when available, names of customers, dates of transactions, names of dealers or merchants, the sections of the statutes or regulations violated, the total amount of any overcharges, and any other information deemed important in evaluating compliance by the bank. The listing of potential violations in the workpapers will aid the examiner in the preparation of Form 1195.

In addition, the examiner should classify violations as either technical or substantive. Generally, technical violations are those that do not form a pattern and result in little or no monetary harm to the customer. The possibility of liability to the bank is usually small. Examples of technical violations include minor forms deficiencies and non-recurring typographical errors on disclosure forms. Substantive violations may (but will not necessarily) form a pattern, result in monetary harm to the customer, or result in significant liability to the bank. Examples of substantive violations include overcharges (as defined in uniform interagency enforcement guidelines), apparent unexpired rescission rights, and possible unlawful discrimination. Violations defined as "technical" should be classed as "substantive" when the bank willfully or knowingly causes the violations to occur. This would occur when the same kind of technical violation previously

cited has not been corrected. When this condition is found, the Reserve Bank should consider and recommend to the Board, as appropriate, stringent enforcement (particularly cease and desist actions) where such action is deemed necessary to enforce compliance.

In some instances, the examiner may not be able to determine whether violations of the consumer statutes or regulations have occurred, as in the instance of incomplete bank files. In such cases the checklist would include an explanation of the situation as found, and the examiner should seek guidance from the Reserve Bank.

Regulation B Violations March 1977 - December 1978

	Boston	New York	Philadelphia	Cleveland	Richmond	Atlanta	Chicago	St. Louis	Minneapolis	Kansas City	Dallas	San Francisco	Totals
202.4	0	0	3	23	189	0	1	0	4	180	0	3	403
202.5 (forms)	720	186	97	500	683	1020	908	166	260	2938	300	463	8241
202.6 (evaluation)	31	3	1	1	51	0	1	0	36	150	0	1	275
202.7(a)-(c)&(e) granting	0	1	0	0	102	0	0	0	0	90	0	27	220
202.7(d) (Signatures)	0	39	0	324	68	2	771	18	19	739	1	83	2063
202.9 (Notifications)	317	259	56	428	346	229	735	309	392	1036	239	516	4862
202.10 (Credit report)	0	1	0	153	35	23	59	0	1	110	49	1	432
202.12 (recordkeeping)	11	9	7	83	45	36	44	27	5	327	114	2	710
202.13 (monitoring)	62	22	44	868	163	67	272	94	179	181	82	47	2081
Title VIII	1	18	19	31	17	26	174	4	28	17	17	53	405
Totals	1142	538	227	2411	1699	1403	2965	619	923	5768	302	1196	19,692

No. of Banks Examined 978

No. of Banks w/violations 934

REPEAT VIOLATIONS - SECOND ROUND EXAMINATIONS

ATTACHMENT E

	Boston	New York	Philadelphia	Cleveland	Richmond	Atlanta	Chicago	St. Louis	Minneapolis	Kansas City	Dallas	San Francisco	Totals
202.4									1				1
202.5 Forms	1			3		18	10		1	1	1	5	40
202.6 Evaluations									1				1
202.7(a)(c)(e) Granting									1				1
202.7(d) Signatures						2	19			2		1	24
202.9 Notifications	1			3		5	10		3	2			24
202.10 Reporting						1						1	2
202.12 Recordkeeping						1	3		1	1			6
202.13 Monitoring				13		7	2	2	3	2			29
Title VIII Fair Housing			1			1	9						11
Total Violations (Type)	2	0	1	19	0	35	53	2	11	8	1	7	139
Total Banks Examined	9	3	3	45	4	45	80	37	23	30	5	11	296
Total Banks Examined with Repeat Violations	1	0	1	15	0	22	25	2	5	5	1	7	84

Number of banks with violations (includes non-repeat violations) 232

ATTACHMENT F

No. of Banks with One or More Regulation B Violations

	Banks Examined	No. Banks w/Tech- nical Violations	No. Banks w/Sub- stantive Violations
Boston	16	11	2
New York	68	13	4
Philadelphia	13	5	2
Cleveland	114	93	5
Richmond	104	56	8
Atlanta	79	36	6
Chicago	222	97	23
St. Louis	78	28	5
Minneapolis	124	55	7
Kansas City	87	33	35
Dallas	46	13	9
San Francisco	<u>27</u>	<u>13</u>	<u>9</u>
Total	978	453	115

978 Banks examined

525 with no technical violations - 863 with no substantive violations.

The Board's Computer Program does not identify institutions with only technical violations and only substantive violations. Therefore, some banks listed above may have both technical and/or substantive violations.

ATTACHMENT G

	% w/Technical Violations	% w/Substantive Violations
Boston	68.7	1.25
New York	19.1	.59
Philadelphia	38.5	1.54
Cleveland	81.6	4.4
Richmond	53.9	7.7
Atlanta	45.6	7.6
Chicago	43.7	1.04
St. Louis	35.9	.64
Minneapolis	44.4	.56
Kansas City	37.9	40.2
Dallas	28.3	1.96
San Francisco	48.1	3.3

APPENDIX 9.—NATIONAL CREDIT UNION ADMINISTRATION

HJAMIN S. ROSENTHAL, N.Y., CHAIRMAN
INDISE COLLINS, FL.
BERT P. DRINAN, MASS.
LIOTT N. LLEVITAS, GA.
LUD W. EVANS, IND.
TIMMY HOFFETT, CONN.
RINDO J. ST GERMAIN, R.I.
IMRY A. WAZMAN, CALIF.

GARRY BROWN, MICH.
CLARENCE J. BROWN, OHIO
TOM CONCORAN, ILL.

(202) 225-4497

NINETY-FIFTH CONGRESS
Congress of the United States
House of Representatives
COMMERCE, CONSUMER, AND MONETARY AFFAIRS
SUBCOMMITTEE
OF THE
COMMITTEE ON GOVERNMENT OPERATIONS
RAYBURN HOUSE OFFICE BUILDING, ROOM B-377
WASHINGTON, D. C. 20515

August 10, 1978

Hon. Lawrence Connell, Jr.
Administrator
National Credit Union Administration
2025 M Street N.W.
Washington, D. C. 20456

Dear Mr. Connell:

In connection with its general oversight responsibilities over the federal financial regulatory agencies, the Commerce, Consumer and Monetary Affairs Subcommittee has scheduled oversight hearings in September on the financial regulatory agencies' enforcement of the Equal Credit Opportunity Act and the Fair Housing Act. I am writing to request your testimony, or the testimony of your designate who can speak for the National Credit Union Administration on these matters, on the morning of September 14 at 10 A. M.

The hearings will address the topics of nondiscrimination regulations to implement the purposes of the Fair Housing Act, the proposed uniform enforcement guidelines for Regulation B, and other aspects of the financial regulatory agencies' policies and activities for securing financial institution compliance with the Equal Credit Opportunity Act and the Fair Housing Act. These other aspects will include the collection and use of monitoring information, examiner training for and the organization of the civil rights compliance examination work, the handling of consumer discrimination complaints, and actual enforcement activities to date.

The topics and specific questions on which the subcommittee requests the testimony of the National Credit Union Administration are the following:

1. Redlining Regulations:

- a. Is there a problem of redlining discrimination in home lending by financial institutions, and is the problem of urban neighborhood decay due in any way to discriminatory practices in the handling of individual loan inquiries and applications by financial institutions?

(1689)

- b. Would NCUA promulgation and enforcement of nondiscrimination regulations explicitly prohibiting redlining discrimination be justified from the point of view of ensuring equitable treatment of individuals and helping to reduce the problem of neighborhood decay? Does the NCUA plan to issue such regulations?
 - c. Has the NCUA sufficient statutory authority to issue and enforce such nondiscrimination regulations, or does it plan to request legislation to convey this authority?
 - d. What will be the regulatory approach of the NCUA toward redlining discrimination as credit unions begin to make significant numbers of mortgage and home improvement loans?
2. Redlining Monitoring:
- a. Has the NCUA any plans to collect monitoring information on home loan applications and inquiries more detailed or covering more types of transactions than is now required under the monitoring provisions of Regulation B? Will the required monitoring information be similar in detail to the information to be collected by the FDIC, the Comptroller of the Currency, and the Federal Home Loan Bank Board? Will monitoring information be required on applications for home improvement loans or mortgage refinancings? Will it be required on inquiries for home loans?
 - b. If so, how will this information be used? Will it be examined for evidence of redlining discrimination?
 - c. If not, what will be the NCUA's approach to the detection of redlining discrimination by individual credit unions?
3. Recent Enforcement:
- a. How many and what types of violations of the Fair Housing Act, the Equal Credit Opportunity Act, or Regulation B have NCUA examiners found in credit unions in 1977 and 1978? What portion of these violations were clear violations of the substance and spirit of the laws prohibiting discrimination? What remedial or enforcement action has the NCUA taken to correct these violations?
 - b. Were there any instances of repeat violations, in which credit unions were found to be continuing to engage in discriminatory practices after having previously been told to stop? What enforcement actions has the NCUA taken in these cases of repeat violations?

4. Future Enforcement: How will the NCUA deal in the future with cases of repeat violations of the Fair Housing Act, the Equal Credit Opportunity Act, or Regulation B, where a credit union is found on the second or third examination to have failed to correct conditions found on a previous examination? In particular,
 - a. Under what circumstances will the NCUA seek criminal prosecution of or other punitive action against credit unions or their officers who fail to eliminate discriminatory practices?
 - b. Under what circumstances will the NCUA inform, or require the credit unions to inform, the victims of lending discrimination that unlawful discrimination has been found in the institution's handling of a previous application or inquiry from them?
 - c. Under what circumstances will the NCUA release publicly the names of institutions that have refused or failed to eliminate discriminatory practices?
5. Consumer Information:
 - a. What consumer information and education activities does the NCUA conduct to inform the general public about the laws against credit discrimination? Does the NCUA have any plans to expand these activities?
 - b. What is the view of the NCUA about the effectiveness and proper role of civil damages litigation by private individuals in bringing about general compliance with the laws against credit discrimination?
 - c. Under what circumstances would it advance the objective of general financial institution compliance for the regulators to inform consumers explicitly of their right to file civil damage suits under the Fair Housing Act and Equal Credit Opportunity Act?

In addition to these questions to be addressed in testimony, the subcommittee requests that you provide in advance answers to certain specific questions and certain related materials, as follows:

1. How do the NCUA's examination procedures determine whether discriminatory "pre-screening" and discouragement of potential loan applicants are occurring? In particular:
 - a. Please explain how the examination procedures will determine whether the loan application files maintained by each credit union are complete and have not had certain cases intentionally omitted.

- b. What procedures will detect the discouragement of applicants by certain subtle devices such as the (i) informing certain applicants whom the credit union wishes to discourage that six to eight weeks will be required to process an application, when in fact only one week is required, or (ii) quoting a higher rate of interest to certain inquirers or applicants whom the credit union wishes to discourage than to favored applicants?
 - c. Please supply to the subcommittee the text of all examiner instructions that address the problem of "pre-screening" and discouragement. If there are no such instructions, please so state.
 2. How do NCUA examiners evaluate whether formalized credit scoring systems are in compliance with the Fair Housing Act, the Equal Credit Opportunity Act, and Regulation B? Please supply to the subcommittee the text of any examiner instructions that address the evaluation of credit scoring systems. If there are no such instructions, please so state.
 3. How will NCUA examination procedures and regulations deal with discrimination in real estate appraisals? Please supply to the subcommittee the text of any examiner instructions that address the detection of discrimination in appraisals. If there are no such instructions, please so state.
 4. Has the NCUA considered requiring, as a part of the adverse action notice required under Regulation B, that credit unions include a copy of the appraisal with the adverse action notice sent to an applicant when his application for a home loan is denied on the basis of an inadequate appraised value? What factors will the NCUA consider in reaching a decision on this matter?
 5. How do NCUA examiners evaluate the internal management controls and organized civil rights compliance program of each credit union? Please supply to the subcommittee the text of any examiner instructions that address the evaluation of internal management civil rights compliance programs. If there are no such instructions, please so state.
 6. In its examinations for compliance with the Fair Housing Act, the Equal Credit Opportunity Act, and Regulation B, what procedures or guidelines does the NCUA follow in determining what portion of its examination effort is to be devoted to each credit union? How is the size determined for the loan sample that will be reviewed for compliance in each institutions? Please supply to the subcommittee the text of any examiner instructions, policy guidelines, or other documents that address this question of the allocation of compliance examination effort among the different institutions to be examined.

7. Please describe the organizational structure and responsibilities of the Washington headquarters and the regional offices of the NCUA as they apply to the fair housing and equal credit compliance examination function. What are the relevant responsibilities and authorities associated with each position in this organizational structure, and what degree of autonomy is exercised by officials assigned to the regional offices in the performance of this function? What are the procedures followed for systematic oversight and review by the staff in Washington of the equal credit compliance examinations performed by the field examination staff?
8. Please provide the following actual or estimated figures for the full gross costs of NCUA activities related to enforcement of credit union compliance with the Fair Housing Act, the Equal Credit Opportunity Act, and Regulation B. These cost figures should include an appropriate allowance for overhead, including clerical support, travel and per diem expenses, computer usage, rent or imputed rent, and utilities. Please state the method by which any estimates were derived.
 - a. The full costs for all activities in the twelve-month period from July 1977 through June 1978, and the projected full costs for the twelve-month period from July 1978 through June 1979.
 - b. A percentage breakdown of each total to show the proportions spent on training, field examinations and associated supervision, consumer complaint handling, consumer education, creditor education, and any other appropriate categories.
9. Please provide the following actual or estimated figures on numbers of credit unions and numbers and sizes of loans. Please state the method by which any estimates were derived.
 - a. The number of credit unions examined by the NCUA in the twelve-month period from July 1977 through June 1978 and the number that will be examined by the NCUA in the twelve-month period from July 1978 through June 1979.
 - b. The numbers of credit applications received and loans or credit lines granted, and the average dollar size of each loan or credit line granted, by the examined credit unions in the twelve months ending June 1978.
 - c. The projected numbers of credit applications to be received and loans or credit lines to be granted, and the projected average dollar size of each loan or credit line to be granted, in the year ending June 1979 by the credit unions to be examined in that year.

- d. The numbers of loan applications received and loans granted, and the average dollar size of each loan granted, for home improvement purposes.
10. Please restate the cost figures given in answer to question 8.a to show the total costs of the earlier period and the projected total costs of the later period restated as costs per credit union examined (or to be examined), per application received (or expected), per loan or credit line granted (or expected to be granted), and per \$1000 of loans or credit lines granted (or expected to be granted).
11. Please provide the following actual or estimated figures for the number of NCUA examiner hours spent in performing on-site examination for compliance with the Fair Housing Act, the Equal Credit Opportunity Act, and Regulation B. Please state the method by which any estimates were derived.
 - a. Total examiner hours for the twelve-month period from July 1977 through June 1978, and projected total examiner hours for the twelve-month period from July 1978 through June 1979.
 - b. A disaggregation by NCUA region of the totals given in answer to part (a).
12. Please restate the figures given in answer to the previous question to show examiner hours per credit union examined (or to be examined), per 100 applications received (or expected), per 100 loans or credit lines granted (or expected to be granted), and per \$100,000 of loans or credit lines granted (or expected to be granted).
13. Do you employ, for enforcement or any other purpose, a distinction between "technical" and "substantive" violations of law? If so, please explain in precise terms how this distinction is used and what it means, as applied to violations of the Fair Housing Act and the Equal Credit Opportunity Act. Please list the types of violations of these acts that fall into each class.
14. Please provide a detailed tabulation, by NCUA region, of Fair Housing Act, Equal Credit Opportunity Act, and Regulation B violations found by NCUA examiners in the twelve-month period from July 1977 through June 1978. If such a distinction is used, please distinguish clearly between violations viewed as merely "technical" and those viewed as involving a clear deviation from the substance and spirit of these acts. Within each of these two classes, please classify the violations by the specific nature of the violations and indicate how many violations of each specific type were repeat violations that the institution had previously been requested to correct. In giving this classification, please distinguish, if possible, between violations related to home improvement loans and violations related to other credit. Where more

than one type or class of violation was found at a single institution, please count each type of violation separately, as this request is for a tabulation of violations, not of institutions in violation (see next question).

15. Please provide a tabulation, by NCUA region, of institutions found to be in violation of the Fair Housing Act, the Equal Credit Opportunity Act, or Regulation B in the period from July 1977 through June 1978. If you distinguish between technical and substantive violations, please classify every institution in each region into one of three groups according to whether no violations were found, only technical violations were found, or one or more substantive violations were found. Then please subdivide each of the latter two classes according to whether the violations found at each institution were all first time violations or included one or more repeat violations that the institution had previously been requested to correct.
16. What are the established procedures of the NCUA for investigating and/or responding to written consumer complaints alleging discrimination in some aspect of the credit granting process? Please supply to the subcommittee the text of all staff instructions, policy guidelines, or other documents that specify the procedures to be followed in investigating and/or responding to consumer complaints that allege discrimination in the credit granting process.
17. If the individual complaints are handled primarily in the regional offices, what are the procedures followed for systematic oversight and review of the complaint handling work by the headquarters staff in Washington?
18. Please provide figures giving the numbers of consumer complaints received by the NCUA in each region and in total in the twelve-month period from July 1977 through June 1978 alleging discrimination in some aspect of the lending process.
19. Please provide a further tabular breakdown, as indicated below, of each of these figures of discrimination complaints received. For each region separately and for all regions combined, please provide the numbers of complaints in each category below:
 - a. Complaints the investigation of which found one or more violations of law that substantiated the complainant's claim;
 - b. Complaint cases in which no violation was found but in which an adjustment or accommodation was offered by the credit union and accepted by the complainant (including correction of credit union errors);

- c. Complaints based on a factual dispute, in which the complainant received no satisfaction;
 - d. All other complaints that received a thorough investigation but resulted in no violations related to the complaint and no satisfaction for the complainant; and
 - e. All other complaints (including information requests) in which no investigation, or only a cursory investigation, was deemed necessary.
20. Please provide further supplementary information, as indicated below, on each group of complaints identified in the answers to the previous question. For each group of complaints enumerated above, please specify
 - a. What portion of these complaints were about credit unions in which a violation similar to the complaint had been found previously, at the most recent prior general compliance examination?
 - b. What portion of these complaints were about credit unions in which a violation similar to the complaint was found subsequently, at the next subsequent general compliance examination?
 - c. What portion of these complaints were about credit unions that have not been given a general compliance examination since the filing of the complaint?
21. How many private law suits for civil damages under the Fair Housing Act or the Equal Credit Opportunity Act have been filed against credit unions in 1977 and 1978?
22. In what ways does the NCUA inform loan applicants or potential applicants of the existence and possible usefulness to them of civil damages provisions of the Fair Housing Act and the Equal Credit Opportunity Act? Please supply to the subcommittee examples of any letters, pamphlets, or other educational or informational materials in which these civil damages provisions are mentioned.
23. Approximately how many of each type of letter, pamphlet, or other educational or informational material mentioned in the answer to the previous question were sent out or distributed to the public in the twelve-month period from July 1977 through June 1978? Please indicate the method of distribution and types of groups or individuals to which these materials were distributed.

Hon. Lawrence Connell, Jr.

9

August 10, 1978

24. Please identify and describe any major surveys, reports, or studies, either by outside experts or by NCUA staff, that have recently been completed, are currently in progress, or are planned for the near future on any aspect of NCUA responsibilities under the Fair Housing Act or the Equal Credit Opportunity Act.

Please provide 75 copies of your prepared statement to the subcommittee at least 24 hours in advance of your appearance. The answers to the supplementary information should be provided by Friday, September 8. If for any reason not all of this material can be compiled by that time, then please deliver to the subcommittee on September 8 the answers and material that is ready at that time, with the remaining answers and material to be supplied as soon thereafter as possible. If you have any questions concerning this request, please contact Don Tucker of the subcommittee staff.

Sincerely,

Benjamin S. Rosenthal
Chairman

BSR:tv



NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

Office of the Administrator

September 8, 1978

Honorable Benjamin S. Rosenthal
Chairman
Commerce, Consumer, and Monetary
Affairs Subcommittee
Committee on Government Operations
House of Representatives
Rayburn House Office Building
Room B-377
Washington, D. C. 20515

Dear Mr. Rosenthal:

This is in response to your letter dated August 10, 1978. The enclosed materials are in answer to the questions you raised.

The answers reflect NCUA's current policy and procedure. A major expansion of our consumer compliance program is in process. Where relevant, we noted some of the ways in which our program is expected to expand.

We have attempted to provide as much information as we have available. If I can be of any further assistance, please let me know.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Lawrence Connell', is written in black ink.

LAWRENCE CONNELL
Administrator

Enclosures

- 1a. "Pre-screening" or discouraging applications has not been an identifiable problem in Federally chartered credit unions. NCUA, through its standard bylaws and regulations, requires compliance with certain internal control procedures which effectively eliminate the possibility of pre-screening. Thus, when our examiners verify that a credit union complies with these basic required criteria, we are virtually assured of the absence of pre-screening.

Specifically, Article IX, Section 4, of the bylaws states: "All applications or requests not approved by a loan officer shall be acted upon by committee." (emphasis added) Thus, no one other than the credit committee has authority to discourage or disapprove any request for credit. In addition, the action taken on every request, regardless of disposition, must be put in writing, and complete minutes of the meetings must be kept. The credit committee minutes, in other words, are the principal control point, and these minutes are carefully reviewed on a test basis as part of each examination, thus precluding intentional omission of any application.

It is possible, of course, for one individual to unilaterally attempt, through his/her own prejudices to discourage applicants. However, the cooperative/membership concept on which credit unions are based creates its own set of checks and balances since officials are elected by the membership and are therefore responsive to member complaints whether received formally or through the "grapevine."

We wish to note the distinction between "discouraging applicants" and "discouraging applicants on a prohibited basis." Obviously, applicants must be discouraged on a prohibited basis before a violation of Regulation B occurs. Discouraging applicants in a credit union however, whether or not on a prohibited basis, would be a violation of the bylaws. Thus, we would require immediate corrective action.

- 1b. Credit unions are relatively small institutions that have limited staff and few rejected loans. Most, in fact, look for ways to approve loans. In most cases, therefore, the examiner during the course of the examination is able to observe everything going on in the credit union, including the loan application process. This has proven to be an effective pre-screening detection technique. However, a few credit unions are too large for the examiner to rely exclusively on this observation technique. In such cases, special examination procedures will be used.

These may include a review of the training in Regulation B and Fair Housing Act given loan personnel and interviews with management and loan personnel to determine their familiarity with the laws and to learn how applications are processed. In addition, all complaints are investigated and those that allege a refusal to accept an application or a long delay in acting on an application are given special attention. Again, such complaints would quickly reach officials because of the structure of credit unions.

Finally, NCUA regulations require credit unions to have written loan policies, and the majority of credit unions publish these policies for member information and to encourage loan activity. As well, a credit union is not permitted to vary its interest rate at will within any given classification of loans (Section 701.21-(c)).

- 1c. Although Exhibit A may be of interest, at present NCUA does not specifically address the subject of pre-screening detection in its examiner instructions. NCUA, however, has requested OMS authorization for a staffing increase to permit the hiring of special consumer affairs examiners. We are as well committed to providing these examiners with specialized training in discrimination investigation and detection.
2. Our examiners have been provided detailed instruction on what factors credit unions are prohibited from considering in the evaluation of creditworthiness. The concept of demonstrably and statistically sound empirically derived credit systems has also been explained. However, such credit systems are expensive and rarely used by credit unions. Reference the checklist in Exhibit A.
3. Real estate loans comprise a very small part of the loan portfolios in the credit union industry. Only recently have credit unions obtained the ability to make long term real estate mortgages. Thus, our enforcement of the Fair Housing Act has centered on home improvement loans. These loans rarely require an appraisal. When appraisals are encountered, our examiners are required to review them for discriminatory bias (see attached checklist, appendix B) although no specific instructions concerned with appraisals have been given.

NCUA is participating in the American Institute of Real Estate Appraisers seminar sponsored by HUD later this month. Shortly thereafter, utilizing the input we receive at the seminar, we plan to design and implement examination procedures specifically dealing with the review of appraisals.

4. As stated previously, NCUA and the credit union industry have had limited experience with real estate lending. However, we are in the process of drafting an anti-redlining regulation. In drafting our regulation we are studying the regulations (and proposed amendments) of the FDIC, the Comptroller and the FHLBB and will undoubtedly incorporate some features of these agencies' regulations into our own. We are aware that at least one agency is considering revising its regulations to require that institutions include a copy of the appraisal with adverse action notices sent to home loan applicants when the application is denied on the basis of an inadequate appraised value. In considering whether to incorporate such a requirement into our regulation, our major consideration will be to assure that the consumer receives adequate disclosure of the content of the appraisal.

5. While NCUA examiners do evaluate internal management controls and compliance with principal requirements of ECOA and the Fair Housing Act in each FCU, they do not evaluate civil rights compliance programs per se unless such programs are developed under a plan for corrective action during a prior supervisory contact.
6. The consumer law compliance portion of NCUA's examinations is completed with no time restrictions on examiners. Examiners have been instructed to take the time necessary to perform the related procedures properly. NCUA Instruction No. 5000.1 (See Exhibit A) prescribes an in-depth review of a minimum of two recent loans in each category of security selected from a random statistical sampling. The extent of the loan sample and amount of time spent varies with the size of the credit union and the conditions encountered.

A separate consumer compliance examination program is being developed, however, for larger FCUs and those with identified compliance programs. This program, which will also be without time restrictions, will include expanded sampling and related examination techniques.

7. The organizational structure of NCUA, its Washington Consumer Affairs Division and its Regional Offices may be found in Exhibit B. Authority and responsibilities for the ECOA/FH compliance/examination function at the various levels are as follows:

Administrator - Final approval authority and ultimate responsibility for policy and program.

Assistant Administrator for Examination and Insurance - Authority and responsibility for direction of compliance examination function in conjunction with agency's over-all financial regulatory and enforcement programs.

Associate Assistant Administrator for Consumer Affairs - Authority and responsibility for policy development and recommendation.

Director, Division of Consumer Affairs - Responsibility for policy implementation and compliance program development and oversight review.

Analyst/Specialists, DCA - Development and review of compliance examination and related enforcement programs.

Regional Director - Full authority and responsibility for effective implementation of NCUA policy and total examination program for all FCUs in Region.

Regional Consumer Affairs Analyst - Responsibility for coordinating implementation of NCUA consumer enforcement policy and program directives, including review of examination reports for uniformity in enforcement.

Supervisory Examiner - Responsibility for supervising examination function.

Examiner - Responsibility for carrying out compliance examination functions in accordance with NCUA policy directives. This includes making determinations that compliance requirements are met and prescribing (subject to Regional Office approval) and securing agreements for corrective actions for all violations.

As indicated above, Regional Directors exercise full autonomy in implementing NCUA consumer enforcement policy and related compliance examination functions, and examiners have full responsibility for detecting violations and developing plans for corrective action. The Division of Consumer Affairs, on the other hand, through its review of detailed EDP reports on violations and test checking of examination reports, carries out the oversight and review function.

8. See Exhibit C.
9. See Exhibit D. Note that only data available is for calendar years and that no data was available for loan applications received or lines of credit.
10. See Exhibit E.
11. See Exhibit F.
12. See Exhibit G and note on question 9 above.
13. NCUA does not distinguish between violations of consumer laws on the basis of "technical" and "substantive" classifications. We believe that such classifications are largely arbitrary and do not reflect the extent to which the consumer may be harmed by a violation of law. For example, a form violation may be a "technical" violation in one sense but may have the serious impact of discouraging a potential loan applicant from applying for the loan. Our data gathering system is designed to indicate primarily the extent of compliance with major requirements of the law as reflected in checklist questions. Accordingly, the following codes are assigned by the examiner to each checklist question, including those relating to ECOA and Fair Housing:
 1. in compliance
 2. non-compliance - exceptions corrected prior to completion of examination.
 3. non-compliance - agreements reached to correct all exceptions.
 4. non-compliance - minor areas of concern not corrected.
 5. non-compliance - major areas of concern not corrected

In determining between codes 4 and 5, the examiner is presently guided by a consideration of whether the violation could involve restitution or civil penalties. Any type of violation which could involve restitution or civil penalties would be classified as a code 5. A code 6 is being added, however, to reflect instances where NCUA will actually require restitution.

- 4. NCUA does not collect data concerning the number of violations. Our data indicates only numbers of credit unions in varying states of compliance with principal ECOA and FH requirements.
- 15. See Exhibit H. NCUA does not classify violations as "substantive" and "technical," but by codes as indicated in Question 1. Likewise, the information provided is derived from raw, unverified data. Verification and updating are in process. The data is broken out by the numbered questions in the checklist attached to this Exhibit.
- 16. NCUA acknowledges and investigates all written consumer complaints. The regional offices are responsible for investigating and resolving the complaints. At present, most complaints are investigated by field examiners although some less serious complaints are investigated by committees. When a supervisory committee is used, its report is scrutinized by the regional office and the complainant is advised that additional investigation will be made if he/she desires. The Regional Director makes the final determination on the disposition of all complaints.

A copy of NCUA Instruction 4000.5 is provided as Exhibit I. This instruction is in the process of being revised and expanded.

- 17. Copies of all correspondence on complaints are routed to the Washington office. The Consumer Affairs Division reviews all correspondence to assure proper handling and disposition of complaints.
- 18. ECOA/FH Discrimination complaints received July 1, 1977 - June 30, 1978:

Region:	<u>I</u>	<u>II</u>	<u>III</u>	<u>IV</u>	<u>V</u>	<u>VI</u>	<u>Washington</u>	<u>Total</u>
	2	10	12	4	10	22	2	62

- 19. Of the 62 discrimination complaints received, 11 are still under investigation. The determinations made on the 51 complaints that are closed are shown below. We are taking the liberty of presenting this data according to the resolution categories we use in our complaint monitoring system. We believe this breakdown corresponds to most of the categories listed in your letter. See Exhibit J.

20. Our data systems are not presently geared toward providing the information you requested without undertaking an extensive manual review of individual credit union files. It is our observation, however, that multiple complaints of the same violation are indeed rare. Likewise, resolution of areas of non-compliance noted during compliance examinations has generally been quite prompt.
21. NCUA does not itself collect such data, since the Credit Union National Association (CUNA) does. It furnished the following information in answer to our inquiry: in 1977 two private actions were brought under the ECOA; thus far in 1978, six actions have been brought under ECOA. They were unable to tell us whether these actions were filed against state or federally chartered credit unions. CUNA is not aware of any suits brought against credit unions under the Fair Housing Act.
22. NCUA distributes ECOA brochures prepared by the FTC (copy enclosed) to people who write in requesting information on the Act. These brochures mention the availability of a private remedy and the civil damages provisions of the Act.

In answering specific complaint letters our regional staff first conducts an in-depth investigation into the allegations. If NCUA concludes that no violation of FHA or ECOA has occurred, we notify the complainant that although we found no evidence of discrimination, if they wish to pursue the matter a private remedy is available. We advise them to see an attorney of their choice if they do desire to take further action.

23. We utilize the 13,000 FCUs as part of a voluntary distribution network in disseminating educational materials to credit union members. During the period of July 1977 through June 1978, NCUA distributed to each FCU three sets of pamphlets on the Fair Housing Act and the Equal Credit Opportunity Act. (See Exhibit K).

NCUA also prepared and makes available to the Federal Credit Unions a slide presentation on the ECOA. This slide presentation is used in the training of examiners and credit union officials and in educating credit union members.

24. In addition to obtaining valuable compliance reports from our own recently developed EDP systems, NCUA has had outside compliance studies conducted by Arthur Young and Brookings Institution. We have also made related studies and reports for the White House, HUD, FRB and Civil Rights Commission. These reports have provided detailed summaries of violations and compliance with various consumer laws (including ECOA and Fair Housing) as well as NCUA's enforcement policies and programs.

Exhibit A

EXPLANATIONS RELATING TO
CONSUMER REGULATIONS
COMPLIANCE CHECKLIST

NCUA 2523 (Rev. 2/78)

NCUA 2523A (Rev. 2/78)

**EXPLANATIONS—TRUTH IN LENDING ACT
— REGULATION Z**

Credit Other Than Open End:

1. Determination of Finance Charge—Section 226.4. The general rule is that the finance charge is the sum of all charges payable directly or indirectly by a borrower as an incident to, or condition of, the extension of credit. If there is more than one item in the finance charge, each must be separately identified. In most credit unions interest is the only item in the finance charge. The Manual of Laws, however, lists additional items which must be included when applicable. One of these is credit disability or loan protection insurance which, when charged to the borrower, must be included in the finance charge unless:

- (a) insurance coverage is optional and this fact is clearly and conspicuously disclosed in writing and
- (b) the member gives a dated and signed statement stating that he wants the insurance after the FCU discloses the cost in writing.

In addition, certain costs (other than interest), if itemized and disclosed, need not be included in the finance charge. See Sections 226.4 (b) & (a) of the regulation and the Manual of Laws.

2. Determination of Annual Percentage Rate—Section 226.5. The APR may be computed using Volume I of the Federal Reserve's Annual Percentage Rate Tables. However, commercially prepared tables are available as an aid for FCUs that charge interest only. If a required deposit balance, required payroll deduction or any other costs are included in the APR, adjustments in the APR may be necessary. See Questions 4 and 5 and Manual of Laws.

3. Disclosure for credit other than open end - Sections 226.6 & 226.8(a). Where the terms "FINANCE CHARGE" or "ANNUAL PERCENTAGE RATE" are used, they must be printed more conspicuously than other terminology, and all numerical amounts must be shown as elite typewritten numerals or equivalent size. In addition, to the extent applicable, the FCU must include the following information on the disclosure form:

- (a) The amount of credit being extended
- (b) The total dollar amount of the finance charge.
- (c) The date on which the finance charge begins to accrue, if this is different from the date of the transaction
- (d) Any required deposit balance
- (e) The Annual Percentage Rate
- (f) The number, amount and frequency of payments to be made by the borrower
- (g) The total of all payments, including interest and principal
- (h) Any late charge that a credit union may impose
- (i) Any acceleration clause or other provisions that may be exercised by the FCU. (This is strongly recommended, but not required by Regulation Z.)
- (j) A description of any security interest held for the loan, including a clear identification of the property to which it relates. Included in Reg Z definition of "security interest" is any statutory lien. Thus, the lien on shares created by Section 107(13) of the FCU Act should be disclosed as a "security interest" in shares. Any pledge of (or other interest in) shares created by the loan contract must also be disclosed as a security interest in shares.

(k) The name of the Credit Union

Required terms that must be used are: "Amount Financed," "Finance Charge," "Annual Percentage Rate," "Total of Payments," and "Required Deposit Balance." In addition, "ANNUAL PERCENTAGE RATE" and "FINANCE CHARGE" must be more conspicuous. Also note that if a credit union sells repossessed or other property and finances the sale, the slightly different provisions of Section 226.8(c) will apply in addition to the general provisions of 226.8(a).

4. According to Section 226.8(a)(2) a required deposit balance (RDB) is any share deposit or similar payment which a credit union requires the applicant to make as a condition of the extension of credit except:

- (a) an escrow account
- (b) an estate loan
- (c) a share or similar balance which was in existence prior to the extension of credit and which is offered by the member as security for that extension of credit, and
- (d) any voluntary addition to savings made during the term of the loan which is not required by the credit union.

The key to determining whether a pledged share account is an RDB is in the word "offered." If the credit union requires a certain amount to be placed in shares, an RDB is created. However, if the amount was already in the account (and was not specifically placed there to meet the credit union's requirement) or if the amount was otherwise offered by the member as security, no RDB is created. An RDB is also created if a deposit to shares is required with each loan payment.

When an RDB is created, it must be deducted from the proceeds to arrive at the "Amount Financed." The APR is then computed using either Volume II of the Annual Percentage Rate Tables or Supplement I to Regulation Z. Volume I cannot readily be used to compute the APR in any RDB situation. See Manual of Laws for further discussion.

5. No adjustment is necessary if payroll deduction plan one is used, or if (a) payroll deductions are not required and (b) the payroll deduction funds held by the credit union (as under payroll plan 2) are accessible by the member prior to loan transfer (& the member is advised of these facts). Adjustment to the APR is necessary, however, if these conditions are not met. Volume II can be used to compute the APR in these instances provided that the illustration in the Manual of Laws is followed. Also, under payroll deduction plans 2 or 3, if payroll deductions are required and the total of required payroll deductions over the term of the loan exceeds the total of loan payments, an RDB is created unless the member has access to any excess payroll deductions. Volume I cannot be used to compute the APR if a required deposit balance exists. Volume II or Supplement I must be used. In addition, if conditions (a) & (b) above are not met, the schedule of payments on the disclosure statement would have to reflect the actual schedule of payroll deductions to be used for loan payments. See Manual of Laws for further discussion.

6. Volume I may be used to compute APR on transactions involving odd first period or one odd payment, but other irregular transactions require the use of Volume II. Examples follow for monthly payments with odd first period. (If weekly, bi-weekly or semi-monthly payments are scheduled refer to Manual of Laws.) If the date of final payment is 12 months or more from the date interest begins to accrue (date of loan), no adjustment to the disclosed APR or Finance charge is necessary if the first payment is due in not less than 20 nor more than 50 days.

An example: \$1000 loan for 12 months @ \$88.85. Finance Charge is \$86.20. Total of payments would equal \$1,086.20. Interest begins to accrue 6/1/77. Date of first payment 6/30/77. The following would be provided under 226.8(b)(3):

Number of Payments	Amounts of Payments	Date of 1st Payment	Frequency	Total Payment
12	\$88.85	6/30/77	Monthly	\$1,086.20

If the date of first payment is 7/15/77 (that is, 45 days), the following would comply with Regulation Z, although alternatively the correct payment of \$89.27 could be shown.

Number of Payments	Amounts of Payments	Date of 1st Payment	Frequency	Total Payment
12	\$88.85	7/15/77	Monthly	\$1,086.20

While the above disclosure would comply with Section 226.5(d) of Reg Z, state contract law might prevent the FCU from collecting the additional interest of \$5 if the payment amount of \$89.27 is not reflected in the payment schedule in the note. Accordingly, an FCU is well advised to use contractually correct figures in the disclosure and the note. (See Manual of Laws for disclosures where first payment is outside the above parameters.)

**EXPLANATIONS – TRUTH IN LENDING
–REGULATION Z – CONT'D.**

7. Self Explanatory

8. It is a disclosure violation (and a violation of the FCU Act if 1% per month is being charged) if the credit union when computing interest on payments applies a daily interest factor based on a 360-day year but uses the actual number of days between payments. (The amount collected would exceed 12% APR as well as 1% per month on the unpaid balance.) Errors because of leap year are exempt. If the FCU charges interest on a 365-day year and charges 1% per month on the unpaid balance, the daily factor would be .00032877. The daily factor for the 360-day method would be .00033333. (See Accounting Manual for additional discussion.)

9. If a combined form is used, the credit union should be encouraged to obtain and keep in file an attorney's opinion as to its compliance with these provisions, particularly if there is any question regarding compliance.

10. For open end provisions, see Section 226.7. For closed end provisions see 226.8. (The determination of which applies can be made by reviewing the special loan plan in use.) If closed end provisions are used, a full Z-1 type disclosure must be provided with each disbursement. If open end provisions are used, a disclosure must be made when the account is opened and on all periodic statements for that account. (See questions 11 through 17.)

Open End Credit:

11. Section 226.7 – Open End Loan Accounts – Specific Disclosure. To qualify as open end, the loan or line of credit must be made pursuant to a plan under which:

- (1) The credit union would permit the member to obtain credit from time to time (with or without the approval of each advance),
- (2) The member can pay off the loan any time or in installments, and
- (3) A finance charge is imposed.

If the above is applicable to the credit union, the disclosure requirements of section 226.7 are applicable. No exception will be taken, however, if closed end disclosures are provided with each disbursement and all other requirements of 226.8 are met in lieu of those in 226.7.

12. Section 226.7(a). Prior to the first transaction, the applicant must receive the following information on the disclosure statement or Master agreement.

- (a) Conditions under which a finance charge will be imposed
- (b) Method of determining the balance upon which a finance charge may be imposed
- (c) Method of determining the FINANCE CHARGE.*
- (d) Periodic and ANNUAL PERCENTAGE RATES.*
- (e) Conditions and methods under which other charges may be imposed.
- (f) Conditions under which a security interest may arise
- (g) Minimum periodic payment required
- (h) Long form notice if not given separately.

*These terms must be shown more conspicuously than other information in the disclosure.

13. Section 226.7(b). Credit unions using an open end plan must distribute periodic statements at least quarterly. If billing statements are sent on these accounts, they, too, must include proper disclosure. In addition, the following must be disclosed on each statement:

- (a) The unpaid loan balance using the term "previous balance"
- (b) The identification of the transaction unless an actual copy of the document is included with the statement (Section 226.7(k)).
- (c) The amount and date of each loan payment using the term "payments" and if any adjustments are necessary, use the term "credit."
- (d) The interest charged using the term "FINANCE CHARGE:"

(e) The interest rate using the term "Periodic Rate" and the corresponding APR which is determined by multiplying the "periodic rate" by the number of periods in the year using the term "Annual Percentage Rate". Note four different terms can be used for APR. See Section 226.7(b)(5).

(f) When a finance charge is shown on the periodic statement the APR must be shown using the term "ANNUAL PERCENTAGE RATE:"

(g) The balance on which the finance charge was computed and a statement of how that balance was determined.

(h) The closing date of the periodic statement and the unpaid balance using the term "New Balance"

(i) The address where the FCU wants billing inquiries sent preceded by the term, "Send Inquiries to" or other similar language. This information must be clear and conspicuous. See discussion in Manual of Laws regarding possible conflict with supervisory committee verification requirements.

14. Section 226.7(d) - The long form notice must be sent semi-annually unless short form is sent with each periodic statement. If the short form is used, the FCU must also provide a long form (a) if a billing error is received from a member or (b) upon request.

15. Section 226.7(a)(9) - To handle billing errors, a FCU must:

- (a) acknowledge disputes within 30 days, if not resolved
- (b) Resolve all disputes within 90 days
- (c) Suspend any collection activity on the disputed amount and do not report the amount in dispute as delinquent to any outside source.
- (d) Send an explanation of resolution of billing error. Member has 10 days to notify credit union in writing, if they do not agree with the resolution.
- (e) Not charge interest on the disputed amount

16. Section 226.7(g) – If an FCU requires a member to repay his loan via payroll deduction, only PRD plan 1 can be used. If an FCU offers payroll deductions as one method of repayment, and plan 2 is used, any accumulated (non transferred) payroll deductions received to repay the loan must be available for withdrawal by the member, if requested.

If an FCU offers payroll deductions and plan 3 is used, the members must be told that they will not have access to their shares since the funds and breakdown are not provided by the sponsor during the interim period. If the funds are advanced to the credit union, however, and it makes open end loans, payroll plans 1 or 2 must be used. See Manual of Laws for further discussion.

If a member is not on payroll deductions, payments must be credited to the loan as of the receipt date. There are four exceptions to this statement, and they can be found in Section 227.7(g).

17. The periodic statement must identify each advance by disclosing:

- (a) the amount of the loan,
- (b) the date of the advance,
- (c) a brief identification of the transaction, or
- (d) an identifying number or symbol.

The above can be disclosed either on or with the periodic statement.

Miscellaneous:

18. Section 226.9 – The Notice of Recision gives a borrower the right to cancel a credit transaction within 3 business days after receipt of the Notice. The Notice must be given whenever the credit union acquires or retains a security interest in the borrower's principal residence. No such cancellation right is afforded for first mortgages to finance purchase of a dwelling itself, but the right of recision does apply when a residence is otherwise used as collateral for a consumer loan. The regulation specifies the type of notice the creditor must give a consumer when the right of recision can be exercised. It is essential that the notice be given promptly when the loan is granted. The right of recision can be given prior to the disbursement of the loan, if the FCU also gives the member all other applicable Regulation Z disclosures.

**EXPLANATIONS – TRUTH IN LENDING
–REGULATION Z – CONT'D.**

19. "Advertising credit terms" is discussed in Section 226.10. Certain terms "trigger" full disclosure requirements for advertising credit. (Examples for closed end loans include: 10% down, 24 months to pay or 100% financing available. Open end triggers include: 3 years to repay, minimum pay \$30 or 12% APR. See Manual of Laws for an expanded list of trigger terms."

20. Full disclosure must be made for anything other than a temporary interruption involving 1 or 2 payments where no change in the existing monthly payments are made. Any other extension or refinancing would require a new disclosure.

**EXPLANATIONS—EQUAL CREDIT OPPORTUNITY
ACT – REGULATION B**

1. Creditors may not on a prohibited basis prohibit or discourage any individual from applying for credit. (see Section 202.5(a)) The nine prohibited bases are: race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract), receipt of income from any public assistance program or good faith exercise of any right under the Consumer Credit Protection Act (i.e. filing a complaint or suit against the credit union alleging a violation under TIL, ECOA or FCRA). The latter means that the credit union may not discriminate against an applicant who it considers to be a "troublemaker" because of having filed a complaint under one of the consumer acts.

If, however, a credit union has a field of membership which is confined to persons in one of these categories (against which discrimination is prohibited, such as a religious group), it is not a violation to deny membership to persons outside that field of membership. Likewise, it is not a violation to refuse to accept a loan application from a nonmember (nor would this be considered an adverse action) since membership is not a prohibited basis of discrimination under ECOA. Within a credit union's field of membership, however, no person or group of persons may be rejected or discouraged on a prohibited basis.

In addition, legislative history of the ECOA indicates that loan policies which have the effect of discriminating on a prohibited basis may violate that act regardless of the creditor's intent. For example, if payroll deduction is required as a condition for obtaining a loan and, as a result, spouses of primary members are not able to obtain credit, this may be challenged under ECOA. (E.g., if most of the employees of the sponsor are middle-aged men and other members are wives and children of the men, requiring payroll deduction may prevent the wives and children from obtaining loans, which may subject the credit union to sex or age discrimination charges.) See footnote 7 of Regulation B (Section 202.5(a)) and the Manual of Laws.

The general rule, however, is that no member or group of members may be treated differently than others (any aspect of credit) due to age, race, etc. Therefore, unless an applicant is not a member or within the field of membership, a credit union must accept his/her loan application even though the credit union's minimum eligibility requirements are not met. However, it has full latitude in approving or rejecting the application within its established policies, assuming those policies are non-discriminatory.

2. Marital status can be requested only for collateral secured or joint loans, only the terms "married, unmarried, or separated" can be used if marital status is permitted to be requested. Note, that the existence of a cosigner or guarantor does not make a loan "secured" within the meaning of regulation B. In other words, the existence for a second signature is not a basis for asking marital status unless the two signing parties have requested a joint loan (see section 202.5(b)(1)). If the application calls for a source of other income or, more particularly, specifically asks if any of the income is from alimony, child support or similar sources, it must disclose that such income does not need to be revealed if the applicant does not desire the creditor to consider it when determining creditworthiness.

3. Regardless of whether the loan is secured or unsecured, a creditor may request any information concerning an applicant's spouse (or former spouse that may be requested about the applicant) only if:

- (a) The spouse will be permitted to use the loan account; or
- (b) The spouse will be contractually liable upon the loan account; or
- (c) The applicant is relying on the spouse's income as a basis for repayment of the credit requested; or
- (d) The applicant resides in a community property state or property (on which the applicant is relying as a basis for repayment of the credit requested) is located in such a state; or
- (e) The applicant is relying on alimony, child support or separate maintenance payments from the spouse or former spouse as a basis for repayment of the credit requested.

A credit union may, however, request an applicant (i) to list any account upon which he/she is liable and to provide the name and address in which such account is carried and (ii) the names in which he/she has previously received credit.

4. Except as indicated under question 19, the credit union may not ask an applicant's race, color, religion, national origin or sex in any aspect of a credit transaction. In addition the FCU may not:

- (a) Request information about birth control practices.
- (b) Request intentions concerning bearing or rearing children.

The FCU may:

- (a) Ask the number and age of all dependents.
- (b) Ask about dependent-related expenses or obligations.

The above may only be asked to determine an element of creditworthiness. Each member must be asked identical questions. These questions must be asked of all applicants, however, if they are asked of any applicants.

5. The credit union must not discount or exclude from consideration, the income listed by an applicant or his/her spouse for prohibited reasons or because it is derived from part-time employment, public assistance or pension or similar benefits. It may, however, consider the amount and probable continuance of such income in evaluating an applicant's creditworthiness. Also, regarding receipt of public assistance, it may consider the length of receipt of such income and the applicant's intent to remain eligible for those benefits. Regarding alimony, child support or separate maintenance payments, if the applicant has chosen to disclose such income, the credit union must consider payments as income to the extent that they are likely to be consistently made. (see Section 202.5(b)(5)).

6. The term "Credit History" is not defined in Reg B, but it is intended to include all credit information received from a credit reporting agency as well as any other payment records developed or submitted by an applicant. Since nearly all credit unions consider credit histories of their members, the credit union must be receptive to considering all credit information in a credit report as well as that information submitted by a member (including information that the credit history being considered does not accurately reflect the member's creditworthiness). A liberal interpretation of "credit history" in this context should prevent any problems from arising.

7. A credit union may not consider an applicant's race, national origin, religion, color or sex in any aspect of a credit transaction. In addition it may not take into account the existence (or lack thereof) of a telephone listing in the name of an applicant, nor may it use (when evaluating creditworthiness) assumptions or statistics regarding the likelihood of bearing/rearing children or diminished income resulting therefrom (but see explanation 4). It may not consider the fact that an applicant receives public assistance (but see explanation 5), nor may it consider age per se as a negative factor. Except as otherwise provided in ECOA however, a credit union may consider in evaluating an application any information that it obtains, so long as the information is not used to discriminate against an applicant on a prohibited basis.

8. Age can always be requested, but age can only be considered to determine a pertinent element of creditworthiness. For example an

**EXPLANATION — EQUAL CREDIT OPPORTUNITY ACT
—REGULATION B — CONT'D.**

FCU can consider the effect of a member's expected retirement on income to ascertain whether the member will be able to make payments until the loan is paid in full. As an exception to the general rule, the age of an elderly person (62 or older as defined in Regulation B) can be considered directly if this fact is used in the favor of the elderly applicant. Direct consideration of age is also allowed in certain sophisticated, tested credit scoring systems. Otherwise, the direct consideration of age is prohibited. For example routinely refusing to grant loans or routinely requiring extra collateral for a person over 62 is not allowed. (See section 202.5(b)(2).)

9. If the credit union uses a credit scoring system which includes age, that system must be demonstrably and statistically sound and empirically derived as defined in section 202.2(g). Even then, however, the age of an elderly applicant may not be assigned a negative factor or value. It might also be noted that a credit scoring system which meets these standards would normally offer excellent protection to a credit union in the event of a lawsuit based on the effects tests.

10. If a member does not qualify for loan protection or disability insurance because of age, the credit union may not refuse to grant credit on that basis, although different insurance premiums rates may be charged. It might also be noted that a credit union can request age, sex and marital status in an application for insurance but these items cannot be considered when evaluating the credit application itself.

11. If a credit union requires the signature of a cosigner on a note, the credit union must do so for all similarly situated applicants apply for a similar type and amount of credit without regard to sex or marital status. When an applicant is married, the credit union cannot specifically require or prohibit the applicant's spouse as cosigner. (See section 202.7(d) for exceptions where signature of the spouse or some other specific person may be required.) Similarly, policies may not uniformly require comakers for single applicants without regard to creditworthiness. Furthermore, as provided in section 202.7(d), a credit union cannot require the signature of an applicant's spouse or other person (other than a joint applicant) on any credit instrument if the applicant qualifies under the credit union standards of creditworthiness for the amount and terms of the credit requested without such additional signature.

12. If an applicant requests unsecured credit and relies in part upon property to establish creditworthiness or if the applicant resides in (or the property is located in) a community property state, the credit union may require the signature of a spouse on any instrument reasonably believed to be necessary under applicable state law to make that property available to satisfy the debt in the event of default. (See section 202.7(d)(3).) If an applicant requests secured credit, the credit union may require signature of the applicant's spouse (or other person) on any instrument reasonably believed to be necessary under state law to make the property being offered as security available to satisfy the debt in the event of default. The credit union cannot, however, require a spouse to sign the note in addition to the lien instrument if under state law the signature of the spouse on the note would not be necessary for creating a valid lien, passing clear title, waiving inchoate rights or assigning earnings.

13. A credit union may not require a reapplication, change the terms of the account or terminate the account because of a change in marital status unless there is evidence that the member is unable or unwilling to pay. This evidence might include a missed payment. In addition, if the applicant's income alone at the time of the initial application did not support the amount of credit for an open and account, a reapplication may be required in the event of a change in marital status. See section 202.7(c).

14. Section 202.9(a)(1) requires the credit union to take action to approve or reject the credit application within 30 days of receipt and to so notify the applicant. In addition, since section 202.2(c) indicates that refusal to grant credit in substantially the amount or terms requested by the applicant constitutes an adverse action, it is important for credit unions to resolve all applications promptly including those

applications which do not meet the credit union's standards for completion.

15. If an adverse action (as defined in section 202.2(c)) is taken by the credit union it must give the member written notification of this fact. It must also provide an ECOA notice which includes NCUA's address as well as a statement of the specific reasons for the actions taken or the members right to receive these specific reasons. Accordingly, NCUA has suggested that credit unions use the sample form provided in section 202.9(b)(2), since this will assure compliance with section 202.9(a)(2) if it is properly completed. Note: If adverse information is used from any outside source the requirements of the fair credit reporting act must also be complied with.

16. If a credit union does not furnish credit information to any outside source, no action is required under section 202.10. However, if information is furnished to anyone, the credit union must designate the loan files to reflect participating spouses (i.e. spouses who are contractually obligated, other than as a guarantor, or who are authorized to use an open end account). In this event the credit union must set up a cross index file or some appropriate method for providing the information required under this section.

17. The credit union must do one of the following: (1) determine the spouse is an authorized user (open end) or is contractually obligated on the loan and designate the loan file to reflect participation of both spouses or (2) mail the notice "Credit Histories for Married Persons" prior to October 2, 1977 and comply with section 202.10(b)(2) and (b)(3).

18. The general preservation period under ECOA is 25 months after the date the applicant is notified of action taken on the application.

19. While the credit union must request this information of the applicant and joint applicant for a loan to purchase residential real property, the latter are not required to supply the information. If they chose not to, however, that fact must be noted on the form. A model loan application for loans of this type is shown on page 36 of Regulation B. Alternatively, if the credit union desires this information can be obtained on a separate form that refers to the application. This information should not be requested for a home improvement loan or a real estate secured loan that is not a purchase money loan. The purpose of requesting this information is to monitor compliance. See section 202.13.

20. A credit union may not use information prohibited by this act, but it may retain in its files information on the applicant's sex, marital status, or other prohibited areas. If the information was received: (a) from any source prior to 3/23/77, (except that applicable date for retention of information relating to sex or marital status is 6/30/76, (b) at any time from a consumer reporting agency, (c) at any time from the applicant if the credit union has not requested the information, or (d) at any time if required by section 202.13. (See section 202.12(a).)

EXPLANATIONS—FLOOD INSURANCE

1. Loans subject to flood insurance may be made for any purpose as long as they are secured by a security interest in improved real estate (residence or other walled and roofed structure) or a mobile home on a fixed foundation.

2. Under HUD's guidelines, determinations made by a credit union acting in "Good Faith" (concerning the location of a property with respect to a special flood area) are final, provided that the credit union or its qualified agent relied on the current FIA Flood Hazard Boundary Map or Flood Insurance Rate Map for the area in question. (A credit union can be certain that the map is current by calling 800-424-8872 or 8873. Credit unions in the 202 area code may call 426-1891.)

3 & 4. If loans of this type are secured by property in a special flood hazard area, the community must be participating in an approved flood program, the FCU must require official flood insurance on the property and a copy of the insurance policy should be on file. If the community is not participating in an approved flood program, official flood insurance would not be available.

5. The recommended forms for these notices are set out in Part 760 of the NCUA Rules and Regulations.

EXPLANATIONS—HOME MORTGAGE DISCLOSURE ACT—REGULATION C

1. Self Explanatory.
2. A complete list of all SMSA's was enclosed with the Administrator's letter of July 13, 1976, to the board of directors of all FCUs. If a FCU reaches \$10 million in assets as of December 31st it must report loan data for that full calendar year. If it loses its reporting exemption under sections 203.3(a)(2) or (3) it must report loan data for the year in which the change takes place and the prior year. See FRB Interpretation 203.002.
3. Reports must be:
 - a) prepared for all calendar years in which FCU met the requirements in items 1 and 2.
 - b) completed by the required deadlines, which are 9/30/76 for 1975 and 3/31 for each calendar year thereafter (other than possible exception in 203.4(a)(2)(99)), and
 - c) made available (for 5 years) for inspection by interested parties at FCU's main office (or other alternatives permitted under Section 203.5(b)).
4. Self explanatory except to note that:
 - a) unless census tracts are not shown on the official 1970 Census Tract maps, ZIP codes may be used only for 1975 and (if separate semiannual reports are made) the first half of 1976, and these must be preceded by a Z on the report.
 - b) instructions for completing the report may be found on page 2 of the HMDA-1 form (also, if the various columns were numbered numerically, column 4 would always be the total of columns 2 and 3, and items in column 7 would also be included in columns 4, 5, and 6).
 - c) home improvement loans required to be reported are only those (secured or not) which clearly result in increasing the value of the applicant's home.
 - d) data is required to be broken out of census tract/ZIP code only for the SMSA in which the FCU's main office is located (i.e., the relevant SMSA).
5. This is a subjective question, the answer to which will in part be dependent upon the examiner's familiarity with the FOM and the locality. Knowledge of rejection patterns, of course, is needed for a more conclusive evaluation.
6. Appropriate efforts include any one of the following:
 - a) insert a notice with the quarterly statements, or
 - b) post a notice in the credit union office for at least one month, or
 - c) publish a notice in a local newspaper of general circulation.

EXPLANATIONS—REAL ESTATE SETTLEMENT PROCEDURES ACT—HUD REGULATION X

1. A Federally related loan covered under RESPA (per the Administrator's letter of 6/29/76 to the board of directors of all FCUs) is any loan made by an FCU to finance the purchase or construction of residential real estate and secured by a first lien on that real estate, etc.
2. A sample is included in the enclosure to the above letter.
3. The form should be clear and concise. It must include the credit union's name, Section 3500.7(d)(1) also requires the following notice: "This form does not cover all items you will be required to pay in cash at settlement. . ."
4. This question can be answered by reviewing the good faith estimates and the related Uniform Settlement Statements.
5. Section 3500.7(e) requires the following: (a) the name, address and telephone number of each provider designated by the credit union, the services which would be rendered by such provider and the fact that the credit union's estimate is based upon the charges of the designated provider, and (b) statement whether or not each such provider has a business relationship with the credit union.

6. Exemptions are confined to (a) transactions in which the borrower is not required to pay any settlement charges or adjustments and (b) transactions in which the borrower is required to pay a fixed amount for all charges imposed at settlement and the time of loan application (Section 3500.8(d)(1)(2)). In addition Section 3500.10(c) indicates that the borrower may waive his/her rights to receive the USS up to the time of settlement. If these rights are waived, the credit union must mail or deliver the settlement as soon as practical after settlement. In the event that settlement is conducted by an agent of the credit union, this requirement may be met by that agent.
7. Such fees are prohibited by Section 12 of RESPA.
8. Self Explanatory.
9. Required use of a specific title company would be a violation of Section 9 of RESPA (a) if the sale were being financed by the FCU or (b) if the funds for the purchase of the property were the proceeds of a Federally related mortgage loan made by another lender.
10. The permitted maximums are detailed in Section 10 of RESPA.
11. Self Explanatory.
12. Self Explanatory.

EXPLANATIONS—HOLDER IN DUE COURSE

1. Sale may be to a member or a non-member.
2. If an FCU sells and finances repossessed or credit union owned property it becomes a seller subject to the seller requirements of this Rule, and it must include the Section 433.2(a). Notice in the related note or lien instrument if the sale is financed. This Notice: "Any holder of this consumer credit contract is subject to all claims and defenses which the debtor could assert against the seller of goods or services obtained pursuant hereto or with the proceeds hereof. Recovery hereunder by the debtor shall not exceed the amounts paid by the debtor hereunder."
3. Self Explanatory. (See Manual of Laws.)
4. Section 433.2(b) Notice is: "Any holder of this consumer credit contract is subject to all claims and defenses which the debtor could assert against the seller of goods or services obtained with the proceeds hereof. Recovery hereunder by the debtor shall not exceed amounts paid by the debtor hereunder." The use of this Notice (or that in Section 433.2(a) on a loan document could in effect prevent the credit union from collecting on the loan, etc.
5. Where a credit union has been requested and has agreed to use the notice, it should use the notice only on those loans which will provide purchase money to the seller with whom a qualifying arrangement has been made. If it has agreed to include the Notice, but has not done so, the FCU may be nonetheless liable. Proper terminology includes the notice in item three.
6. Definitive measures would include a thorough investigation of the seller's financial condition and business reputation as it relates to the prompt honoring of warranties and other sales agreements.

EXPLANATIONS—FAIR CREDIT REPORTING ACT

1. If a credit union passes any information other than information solely as to its own transactions or experiences with a member, it may be considered a consumer reporting agency with regard to that "report." See Section 603(f) of FCRA.
2. Outside source could include information from the sponsor organization: (Examples include information from the personnel files or information from the front office for associational groups.) As well, it would include other creditors or consumer/credit reporting agencies.
3. A consumer report is any report (written or oral) issued by a consumer/credit reporting agency (a) which has a bearing on a consumer's credit worthiness, character, etc. and (b) which is expected to be used to determine the consumer's eligibility for consumer credit. The nature of the information in the credit report does not have to be disclosed by the FCU.

EXPLANATIONS – FAIR CREDIT REPORTING ACT – CONT'D

4. Nature of the information would include: income is not what it was represented to be, debts are greater than represented, debts are not as current as represented, etc. The nature of the information should be given with enough detail to enable a member to question the accuracy of the information if he believes it is wrong. The source of the information does not have to be disclosed. However, it may be impossible to identify the "nature" of certain information without also revealing the source (i.e., you will be fired tomorrow!)
5. Many times the board will be unaware that the FCU is functioning as a Credit Reporting Agency (CRA) under FCRA. When the FCU is found to be functioning as one, the FCU must provide for compliance with requirements listed in (a) thru (g) of the question. If any portion is "no", the FCU is in non-compliance. It should be noted that the FCU is a CRA only for those transactions where more than the FCU's own experiences or transactions were relayed. See Manual of Laws for additional information regarding CRA requirements.
6. An investigative consumer report is one which contains personal information (character, reputation, living habits, etc.) developed as a result of an investigation and based primarily on observations or opinions (as opposed to a factual consumer report).

EXPLANATIONS—FAIR HOUSING ACT

1. The loan must be related to the structure. Loans for the purpose of purchasing appliances or paying taxes on the dwelling would not be covered under fair housing.
2. & 3. Required by Fair Housing Act and NCUA's Rules and Regulations, Section 701.31. In the event of a complaint of discrimination by a borrower, failure to have met these requirements would be deemed prima facie evidence of such practice.
4. Self Explanatory.
5. Self Explanatory.

EXPLANATIONS—SHARE DISCLOSURES (PART 701.35)

1. Certain terms "trigger" full disclosure requirements on any advertisement, announcement or solicitation for share accounts (all types) as well as (where applicable) share certificate accounts.
 - (a) When a dividend rate is specified or contracted for the FCU must also: (i) state any terms and conditions required to earn the dividend rate, (ii) provide for a clear and conspicuous notice (such as "Federal Regulations prohibit payment of dividends in excess of available earnings") that the indicated rate will not be paid if available earnings are not sufficient, (iii) indicate the basis upon which dividends are calculated (share par value or actual balance).
 - (b) When a penalty will be imposed, the FCU must provide for a clear and conspicuous notice such as "a substantial penalty is required for failure to comply with these requirements."
 - (c) When a compounded yield is stated, the FCU must: (i) state the annual rate of dividends without the effects of compounding with equal prominence, and (ii) state the basis for calculating dividend (share par value or actual balance). (iii) refrain from including the effect of grace periods.
2. At the time an FCU opens each new regular share account the FCU must provide the member with a written statement setting forth the following disclosures (to the extent applicable):
 - (a) The basis of compounding (day, week, month, quarter, etc.).
 - (b) The basis upon which dividends will be paid (full shares vs actual balance, grace periods, etc.)
 - (c) The effect of withdrawal prior to the close of a dividend period,

(d) A statement that Federal Regulations prohibit payment of dividends in excess of available earnings, and

(e) The terms and conditions upon which the funds may be withdrawn without penalty.

3. FCUs must give written disclosures to all regular share account holders if there is any change in policy covered under (a), (b), (c) or (e) which applies to those accounts. (The change in a dividend rate, however, would not require a written disclosure.)

4. Self Explanatory.

5. In addition to the disclosure requirements for regular share accounts, the FCU must also make written disclosures of the following (to the extent applicable) when it makes available other types of share accounts:

(f) Any minimum balance requirement, any notice requirement, any time requirements, or any additional terms or conditions which must be met to earn dividend at a particular rate, and

(g) Any penalty imposed for the failure to comply with any balance, notice, time requirement or any additional terms and conditions.

6. FCUs must give written disclosures to persons with share accounts (other than regular share accounts) for any change in any policy covered under (a), (b), (c), (e), (f) or (g) which applies to those accounts. (This would not include a change in dividend rate.)

7. In addition to the disclosure required under questions (2) and (5), the following written disclosures must also be made by the credit union (to the extent applicable) when it opens share certificate accounts:

(h) Any provisions relating to automatic renewal.

(i) A statement regarding the disposition of a share certificate account if it is not renewed, and

(j) The fact that membership in the Federal credit union will terminate upon maturity of a share certificate account, unless renewed, if the holder does not have, establish, or otherwise make provision for a share account or share certificate account in addition to the share certificate account which is maturing.

8. Self Explanatory. (See Section 701.35(k)(3) and explanations 2, 5 and 7.)

9. Section 745.13 of NCUA Rules and Regulations requires that this information be made available.

EXPLANATIONS—FAIR DEBT COLLECTION PRACTICES ACT

1. If the credit union in its efforts to collect loans uses a name other than its own (and thus infers that a third party is attempting to collect such debts) it will be considered a "debt collector" under the Fair Debt Collection Practices Act and subject to the provisions in explanation 3.
2. If the CU regularly collects or attempts to collect debts owed to another credit union (or other organization) under a reciprocal agreement, it would be considered a "debt collector" under this act and subject to the provisions in explanation 3.
3. A yes answer to either 1 or 2 makes a FCU a "debt collector" under the Fair Debt Collection Practices Act. The term "debtor," in turn, includes borrowers/comakers, their spouses, guardians, etc. Therefore, effective March 20, 1978, such FCU must comply with the provisions of that Act which include:
 - (a) When contracting third persons to establish a debtor's whereabouts, a debt collector may not: (i) state that the debtor owes a debt, (ii) contact the third person more than once unless reasonably necessary, (iii) communicate with the third person by postcard or otherwise indicate that mail pertains to debt collection, or (iv) if he knows the debtor is represented by an attorney, contact anyone other than that attorney (unless the latter fails to respond).
 - (b) Without the expressed permission of the debtor or the court, a debt collector when contacting a debtor may not make such contact:

**EXPLANATIONS – FAIR DEBT COLLECTION
PRACTICES ACT – CONT'D**

(i) at any unusual or inconvenient time or place (8 AM to 9 PM is considered convenient), (ii) at debtor's place of employment if his/her employer prohibits such contacts, or (iii) at all if he knows the debtor is represented by an attorney (unless the latter fails to respond).

(c) The only third parties a debt collector may contact are the attorneys for the debtor or the creditor or (if permitted by law) a credit reporting agency unless (i) the contact is for purpose of obtaining information concerning the debtor's whereabouts, (ii) there is expressed permission from the debtor or the court, or (iii) the contact is necessary in order to carry out a judgment.

(d) If a debtor notifies a debt collector in writing that he refuses to pay a debt or wishes the debt collector to cease further contacts, the debt collector must cease communications except to notify the debtor of possible remedial actions.

(e) A debt collector may not act in any way which would harass, oppress or abuse anyone in connection with the collection of a debt. Prohibited practices include threats of violence, use of profane or obscene language, publishing "shame lists" and repeated telephone calls intended to annoy or harass.

(f) A debt collector may not use any false or deceptive representations including, misrepresenting that a debt collector is a govern-

ment official or attorney, misrepresenting the amount or nature of a debt, misrepresenting that a debtor will be arrested or his property seized, misrepresenting a debtor's legal rights, deliberately communicating false credit information, using bogus legal documents and misrepresenting a collection agency as a credit bureau. (See Section 807 for a complete list of prohibited practices.)

(g) A debt collector is barred from using any unfair or unconscionable means to collect debts, including collecting amounts in excess of the debt and interest owed (plus collection charges expressly authorized by the note) or causing charges for communications to be billed to a debtor. (See Sections 806 & 812 of the Act for other prohibited practices.)

(h) Within 5 days after contacting a debtor, the debt collector must notify the debtor in writing of the amount of the debt and the name of the creditor and advise the debtor of the debt collector's duty to verify any disputed debt. If a debtor disputes a debt within 30 days, collection must stop until verification is sent to the debtor.

(i) Where a single payment is received on multiple loans, a debt collector may not apply payments to disputed debts and, where applicable, must apply payments in accordance with the debtor's directions.

(j) Actions on real property may only be brought in the judicial district in which the property is located. In other actions, suits must be brought either where the contract was signed or where the debtor resides.



CONSUMER REGULATION COMPLIANCE CHECKLIST

CHARTER NO. _____

INDICATE ✓ IN APPROPRIATE COLUMN	YES	NO	N/A	INDICATE ✓ IN APPROPRIATE COLUMN	YES	NO	N/A
TRUTH IN LENDING ACT – REGULATION Z							
Credit Other Than Open End:				19. Does the FCU provide required disclosure if a "trigger" term such as 12% APR is used?			
1. Does the FCU compute and disclose the finance charge correctly?				20. Does the FCU provide proper disclosure for extension agreements?			
2. Does the FCU compute the Annual Percentage Rate Correctly?				COMMENTS: _____			
3. Does the FCU make proper disclosure of all required information in a clear/conspicuous manner and in meaningful sequence?				_____			
4. If applicable, does the FCU make proper disclosure for required deposit balances?				_____			
5. If applicable, does the FCU adjust the APR when payroll deduction plans 2 or 3 are required?				_____			
6. If applicable, does the FCU provide proper disclosure for minor irregularities?				_____			
7. Does the FCU provide the borrower with a copy of the disclosure statement prior to or (in case of a combined note and disclosure form) in conjunction with each transaction, and does the FCU retain a copy for two years? (If the answer to either question is No, mark No.)				EQUAL CREDIT OPPORTUNITY ACT – REGULATION B 1. Does the credit union on a prohibited basis refuse or discourage any members from applying for a loan? 2. Do the credit union's loan application forms meet all of the following requirements to the extent applicable: (a) Courtesy titles such as Ms., Mrs., or Miss are requested only if designated as optional? (b) All other terms used are neutral as to sex? (c) Proper terms are used to designate marital status? (d) Marital status is not requested for individual unsecured credit unless community property exception is met? (e) Sources of other income are asked only if required notice is included on the loan application? 3. If the credit union requests information on a spouse or former spouse, does it comply with section 202.5(c)(2)? 4. Does the credit union request any other information prohibited by ECOA? 5. Does the credit union take income into consideration as required by ECOA? 6. If the credit union considers credit histories, does it do so in accordance with Section 202.6(b)(6)? 7. Does the credit union consider any other information prohibited by ECOA? 8. If the credit union requests the age of the member, does it consider age only to determine a pertinent element of creditworthiness? 9. If the credit union uses a credit scoring system which includes age, is the system empirically derived and demonstrably and statistically sound? 10. Does the credit union reject loans because applicants do not qualify for loan protection or other insurance due to their age? 11. If the credit union routinely requires the signature of a cosigner on a note, does its policy require cosigners for all similarly situated applicants applying for a similar amount and type of credit without regard to sex or marital status? 12. If spouses' signatures are required, are they permitted by ECOA? 13. Does the credit union require a reapplication of members on open end loans when they have a change in marital status?			
8. Does the FCU use a factor which is consistent with its payment method when computing the interest charged on a loan payment?							
9. Where combined Note and Disclosure statements are used, are all required elements (including the FCU's name) in the disclosure portion, or does the credit union have an attorney's opinion on file that the combined form meets the requirements of Regulation Z? (If the answer to either alternative is Yes, mark Yes.)							
10. If the credit union is using a special loan plan, does it make all disclosures required either under the open end provisions or the closed end provisions? (If disclosures required for the type of credit involved are not made as prescribed for that type of credit, mark No.)							
Open End Credit:							
11. Does the FCU provide lines of credit or other credit requiring open end disclosure to its members? (If the answer is No, mark questions 12 through 17 N/A.)							
12. Does the FCU provide proper initial disclosure for open end requirements prior to the first transaction on that account?							
13. Does the FCU provide proper disclosure on all periodic statements?							
14. Does the FCU provide the Billing Error Notice with periodic statements as required?							
15. Does the FCU follow the billing error procedure correctly?							
16. Does the FCU promptly credit payroll deductions and other payments on open end or lines of credit accounts?							
17. Does the FCU properly identify transactions on the periodic statement?							
Miscellaneous:							
18. Does the FCU promptly provide each member with a right of rescission notice if a second mortgage or non-purchase first lien is used as collateral?							

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NCUA 2523 (Rev. 2/78)

Page 1 of 4



CONSUMER REGULATION COMPLIANCE CHECKLIST

CHARTER NO. _____

INDICATE ✓ IN APPROPRIATE COLUMN	YES	NO	N/A	INDICATE ✓ IN APPROPRIATE COLUMN	YES	NO	N/A
EQUAL CREDIT OPPORTUNITY ACT — REGULATION B — CONT'D.				HOME MORTGAGE DISCLOSURE ACT— REGULATION C			
14. Does the credit union take action to approve or reject credit applications within 30 days of receipt and so notify the applicant?				1. Did the credit union make or purchase one or more first mortgage residential real estate loans in the preceding calendar year? (If No, STOP. Use Compliance Code 9 on Summary.)			
15. When a loan application is rejected or other adverse action is taken, does the credit union notify the member by written notice which contains (a) a statement of the action taken, (b) the ECOA notice with NCUA name and address and (c) a statement of the specific reasons for the adverse action or the member's right to receive the specific reasons?				2. Was the credit union over \$10 million in assets, and did it maintain its main office in a standard Metropolitan Statistical Area as of the end of the preceding calendar year or this calendar year? (Mark "No" if the answer to either part is No. If No, STOP. Use Compliance Code 9 on Summary.)			
16. If the credit union furnishes credit information to any outside source, does it, for each loan granted after 6/1/77: (a) determine if a spouse will be contractually liable or a user of the account and (b) designate the file to reflect participation of the spouse?				3. Has the credit union prepared and (in accordance with Section 203.5(b)), made available for inspection by interested parties copies of the HMDA-1 Mortgage Loan Disclosure Statements for each calendar year in which it met the above requirements beginning with 1976? (Mark "No" if the answer to either part is No.)			
17. If the credit union furnishes credit information to any outside source, did it, for each active loan granted prior to 6/1/77, determine and designate the participation of each spouse or send the required notice "Credit History for Married Person"?				4. Has the data on these statements been broken down by census tracts or (when applicable) by ZIP codes, and are the numbers and amounts of loans granted or purchased properly reported? (Mark "No" if the answer to any part is No.)			
18. Does the credit union retain all required records in accordance with Section 202.12?				5. Does the data reported on the statements indicate the possible existence of the practice of redlining?			
19. Does the credit union request the race, national origin sex, marital status and age of all loan applicants when the purpose of the loan is to purchase residential real property?				6. Has the credit union made an "appropriate effort" (as defined in Section 203.5(b)(3)) at least annually to notify shareholders of the existence of these reports?			
20. Does the credit union have prohibited information in its loan files?				COMMENTS: _____ _____ _____			
COMMENTS: _____ _____ _____				REAL ESTATE SETTLEMENT PROCEDURES—HUD REGULATION X (RESPA)			
FLOOD INSURANCE (PART 760)				1. Does the credit union make any loans which are secured by improved real estate or mobile homes? (If No, STOP. Use Compliance Code 9 on Summary.)			
1. Does the credit union make any loans which are secured by improved real estate or mobile homes? (If No, STOP. Use Compliance Code 9 on Summary.)				2. Does the credit union provide each applicant for a RESPA-related loan with a copy of the Special Information Booklet free of charge within 3 business days after receiving the loan application?			
2. When making these loans does the credit union make a "good faith" determination whether the property securing them is located within a special flood hazard area?				3. Is a written good faith estimate of settlement costs containing the statement required by Section 3500.7(d)(1) given to each applicant within 3 business days after receiving the loan application? (If Yes, did it provide <input type="checkbox"/> range estimates, <input type="checkbox"/> specific amount estimates or <input type="checkbox"/> combination of the two.)			
3. Does the credit union require official flood insurance on the property and its contents in each case where the property is found to be located within a special flood hazard area in a community participating in the National Flood Insurance Program?				4. Does the credit union routinely relate each good faith estimate to the specific property being considered by the applicant (i.e., is the good faith estimate realistic)?			
4. If so, is a copy of the flood insurance policy in the loan file?				5. If the credit union requires the borrower to use a particular firm for any settlement service, does it provide the applicant with the statements required by 3500.7(e)?			
5. Have the required notices been given in connection with all loans secured by improved real estate or a mobile home which is (or will be) located in a special flood hazard area?				COMMENTS: _____ _____ _____			
COMMENTS: _____ _____ _____				_____ _____ _____			

REASURER'S COPY

NCUA 2523 (Rev. 2/78)

Page 2 of 4

CONSUMER REGULATION COMPLIANCE CHECKLIST

CHARTER NO. _____

INDICATE ✓ IN APPROPRIATE COLUMN	YES	NO	N/A	INDICATE ✓ IN APPROPRIATE COLUMN	YES	NO	N/A
REAL ESTATE SETTLEMENT PROCEDURES—HUD REGULATION X (RESPA)—CONT'D.				6. Has the board taken definitive measures to protect itself from unnecessary losses resulting from exercise of the NOTICE?			
6. Unless the credit union qualifies for exemption, does it provide the borrower with the Uniform Settlement Statement (HUD-1) at the time of settlement or 1 day prior to settlement if requested by the borrower? (Mark "Yes" if FCU is exempt or provides Statement or "No" if it is in non-compliance.)				COMMENTS: _____ _____			
7. Does the credit union charge a fee in connection with the preparation or distribution of any disclosures required by RESPA?				FAIR CREDIT REPORTING ACT			
8. Has the credit union arranged to retain a copy of HUD-1 for two years?				1. Does the FCU ever report (verbally, in writing or otherwise) more than its own experiences or transactions with a member? (If Yes, question #5 must be completed)			
9. If a credit union sells residential real estate which it owns through foreclosure or otherwise, does it require use of a specific title company?				2. Does the FCU request/use credit-related information from any outside source? (If both answers are No, STOP. Use Compliance Code 9 on Summary.)			
10. If the credit union requires escrow amounts, does it keep the escrow requirements within the permitted maximums?				3. If the credit union denies credit or requires additional collateral, based upon information obtained from a consumer report, is the member routinely advised (orally or in writing) at the time of the rejection that			
11. Is there evidence that credit union or its staff gives or receives kickbacks in conjunction with RESPA covered loans?				a) the report contributed to the denial or credit, and b) the name and address of the consumer or credit reporting agency?			
12. Does the credit union have written policies or checklists for its staff to follow with regard to RESPA compliance?				4. If the credit union denies credit based on information obtained from a source other than a consumer or credit reporting agency, is the member routinely informed at the time of the rejection that he has the right to know "the nature of the information" and that this information will be provided to him if a written request from him is received by the credit union within 60 days?			
COMMENTS: _____ _____ _____				5. Where the credit union reports more than its own experiences with members, does it (with regard to those reports):			
HOLDER IN DUE COURSE				a) make required disclosures to members upon request and proper identification?			
1. Does the credit union sell and finance repossessed or credit union-owned property?				b) remove obsolete information from its files?			
2. If the answer to question 1 is Yes, does the note or lien instrument contain the NOTICE required by Section 433.2 (a)?				c) resolve accuracy disputes with members?			
3. Does the credit union have an arrangement with a vendor wherein (a) the vendor on a cooperative and continuing basis refers members to the credit union for purchase money loans or (b) the credit union and the vendor are affiliated by a formal or informal ongoing business arrangement related to financing sales or (c) the credit union is actively participating in a sales program or a joint advertising program?				d) provide reports only for legitimate purposes?			
(If No, STOP. If Yes, answer the remaining questions in this section.)				e) keep a dated record of each recipient of information about a member even when inquiry is oral?			
4. If the vendor has requested the credit union to place the Section 433.2(b) NOTICE in the note or lien instrument and if the board has agreed to include this NOTICE, has it carefully considered the resultant potential liability and available alternatives?				f) as a provider of consumer credit reports, require and retain certifications as prescribed in Section 607 of the Fair Credit Reporting Act?			
5. If applicable, has the proper terminology been used and has it been confined to required loans only?				g) have proper internal control procedures in the safeguarding and disclosure of information? (If the answer to any of these questions is No, mark No.)			
				6. If the FCU ever obtains Investigative Consumer Reports or causes them to be prepared, does it notify the member in writing within 3 days after ordering the report that (a) an investigative report may be made and (b) the member has a right to request a written disclosure of the nature and scope of the report?			
				COMMENTS: _____ _____			

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NCUA 2523 (Rev. 2/78)

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CONSUMER REGULATION COMPLIANCE CHECKLIST

CHARTER NO. _____

INDICATE <input type="checkbox"/> IN APPROPRIATE COLUMN	YES	NO	N/A	INDICATE <input type="checkbox"/> IN APPROPRIATE COLUMN	YES	NO	N/A
FAIR HOUSING							
1. Does the FCU make loans for the purpose of purchasing, improving or repairing a dwelling? (If No, STOP. Use Compliance Code 9 on Summary)				5. Does the FCU provide all required disclosures when a minimum balance, split-rate or notice account is opened?			
2. Does the FCU conspicuously display the logotype and notice of nondiscrimination in the public area of each office?				6. Does the FCU provide the holders of other types of share accounts with all required disclosures when policies change for those accounts?			
3. Does the FCU state in its loan advertising that loans made for the purposes noted in one (1) above are considered without regard to race, color, religion, sex or national origin?				7. Does the FCU provide all required disclosures when a share certificate account is opened?			
4. Does there appear to be any evidence that the credit union's lending policies or practices in loans of this type result in any member being treated less favorably than other similarly credit worthy members due to race, color, religion, sex or national origin?				8. When the FCU offers share certificates and/or share accounts (other than regular share accounts) does it prominently display a listing of all share and share certificate accounts which it has available and the fact that a copy of a standard disclosure for each type of account is available upon request?			
5. Do the credit union's appraisal and loan collection policies appear to be free from such discriminatory bias on loans of this type?				9. Are copies of NCUA publication "Your Insured Funds" or its equivalent made available to members wherever share payments are received or new accounts opened?			
COMMENTS: _____ _____ _____				COMMENTS: _____ _____ _____			
SHARE DISCLOSURES (PART 701.35)				FAIR DEBT COLLECTION PRACTICES ACT			
1. Does the FCU provide required "disclosures" if a "trigger" is used in any advertisement, announcement or solicitation relating to a share account or share certificate account?				1. Does the FCU attempt to collect its delinquent loans using a name other than its official FCU name?			
2. Does the FCU provide members with all required disclosures when they open regular share accounts?				2. Does the FCU collect or attempt to collect debts for any other credit union under a reciprocal agreement?			
3. Does the FCU provide regular share account holders with all required disclosures when regular share account policies change?				3. Does the FCU comply with the provisions of the "Fair Debt Collection Practices Act?" (Mark N/A if 1 and 2 are answered "No".)			
4. Does the FCU offer any other type of share or share certificate account? (If the answer is No, mark questions 5, 6, 7, and 8 N/A.)				COMMENTS: _____ _____ _____			

A check mark in the shaded space after any question indicates a possible violation.

Disclaimer:

This Consumer Regulation Compliance Checklist has been developed by the National Credit Union Administration for use in fulfilling its administrative enforcement responsibilities under the laws and regulations which are covered by the checklist. The checklist is completed in part on the basis of information provided by credit union staff and officials and in part on the basis of observations made by the examiner while reviewing selected loan files and related records and activities.

A copy of the completed checklist is provided to credit union officials for informational purposes only. While the checklist may provide useful guidance to officials, an indication in the checklist of satisfactory findings does not ensure full compliance with the laws and regulations covered, nor does such an indication afford any protection against civil liability as provided by such laws.

NCUA

INSTRUCTIONNational Credit Union Administration
Washington, D.C.

Date: January 3, 1977 No. 5000.1

Subject: Consumer Regulation Compliance

To: DISTRIBUTION LIST

ENCL: (1) Consumer Regulation Compliance Checklist - NCUA Form 2523
(2) Consumer Regulation Compliance Summary - NCUA Form 2524REF: (a) NCUA Instruction No. 3211 et seq. - Truth-In-Lending Act (Regulation Z) of 1968
(b) NCUA Instruction No. 3216 et seq. - Flood Disaster Protection Act of 1968
(c) NCUA Instruction No. 3228 et seq. - Equal Credit Opportunity Act (Regulation B)
(d) NCUA Instruction No. 3229 et seq. - Real Estate Settlement Procedures (Regulation X)
(e) NCUA Instruction No. 3234 et seq. - Preservation of Consumers' Claims and Defenses (Holder in Due Course)
(f) NCUA Instruction No. 3233 et seq. - Home Mortgage Disclosure Act (Regulation C)
(g) Manual of Statutes Affecting Credit Unions

1. PURPOSE. To provide necessary instructions for implementing examination procedures concerning consumer regulations compliance.

2. EXAMINATION APPROACH.

a. Consumer regulations were developed based on a need to protect all consumers and/or a specific class of consumers against certain injustices or to provide uniform information to the consumer. NCUA is the agency with the responsibility for enforcing the letter and intent of these regulations among FCUs. Accordingly it is essential that these enforcement responsibilities be approached in a firm, but sympathetic manner during each examination. Each FCU must be helped to realize that the examiner is not undertaking these examination procedures to find it in violation, but to help it achieve a state of full compliance with consumer laws and regulations -- an objective which is in the best interest of the credit union and its members.

b. Enclosures (1) and (2) have been developed to assist examiners in carrying out their enforcement responsibilities concerning consumer regulations. Detailed explanations are provided on the reverse side of both enclosures, and references (a) through (g) provide additional information regarding compliance requirements. If, after consulting this material, an examiner has a question concerning compliance requirements or is uncertain whether compliance has been achieved in a certain situation, he or she should consult his/her SE.

3. GENERAL INSTRUCTIONS.

a. Scope of Review.

(1) The examination procedures for determining compliance with consumer regulations will consist of an in-depth compliance review of all supporting documents for at least two loans in each of the following categories, as applicable: unsecured, comaker secured, 1st & 2nd mortgage real estate secured and chattel secured loans. To the extent possible the loans selected should be from the random statistical sampling and where possible should be recent loans (granted within the 3 preceding months). The review may be expanded where necessary to validate a compliance problem. Those loans which are reviewed for consumer regulation compliance will be reflected as such in the comments column of NCUA 2231. Specific exceptions will be reflected in Examiner Findings.

(2) The objectives of this facet of the examination will also be kept in mind when completing the remainder of the loan review and the review of the board and credit committee minutes. Likewise rejected loans for the preceding 2 months (with a maximum of 10 if findings do not indicate any unfavorable patterns) should be scanned for compliance with the disclosure and non-discrimination requirements of FCRA, ECOA (Reg B) and the Fair Housing Act. In addition lending policies should be analyzed with consumer regulation compliance in mind, and, where feasible, procedures should be discussed with interviewers or credit committee members to be certain that interviewing and other loan practices are also in compliance. Finally, samples of recent members' statements and samples of recent educational/advertising material will be reviewed for compliance.

b. Completion of Checklist.

(1) Before beginning the loan review and completion of the checklist, the examiner should briefly review the entire checklist with an appropriate credit union official or the manager to help limit or direct the scope of this examination procedure.

(2) The purpose of the Consumer Regulation Compliance Checklist (Encl (1)) is to provide each examiner with a convenient tool for determining compliance with each applicable consumer regulation. By completing the checklist, the examiner can assure himself that the FCU is meeting the basic requirements of these regulations. Where this activity indicates a possible violation (shaded answer box), however, the examiner should request appropriate corrective actions by the credit union, including immediate correction where possible. Information concerning such findings should be properly correlated with other workpapers. When completed, the original of the checklist itself will be given to the treasurer, the first carbon will be retained by the Regional Office with other examination workpapers, and the second carbon will remain with the examination workpapers.

c. Handling and Reporting on Areas of Non-Compliance.

(1) In most instances the existence of non-compliance should be reasonably clear cut (versus being "substantially" or "almost" in compliance). The checklist has been set up to aid in making this determination. Responses which result in a check mark in a shaded blank will, except in unusual circumstances (which should be well documented), indicate a violation requiring corrective action. Such violations (or non-compliance) are to be treated in a positive manner so that officials will understand why the credit union is in violation and what they must do to achieve compliance. Where possible, correction should be sought prior to completion of the examination. In all other cases the examiner will develop plans of action and secure the agreement of officials to carry out the plan. In these cases the subject will also be covered in the closed section if necessary to clarify the nature of the problem.

(2) If a compliance code "2" is assigned to any item on the Summary (Encl (2)), the subject will be covered in the Examiners Findings or Supplementary Facts at the discretion of the examiner, depending on the circumstances. A plan of action will be developed and included in the open section, however, if compliance codes 3, 4 or 5 are assigned to any item on the Summary. Developing an effective plan of action to correct these violations is of major importance. Where applicable, interim measures necessary to comply will be recorded along with plans for correcting the violations. Likewise, the surety will be notified in all cases where a bond claim could result from the violations. Compliance must be achieved, or the FCU will be subject to civil suits by members and/or administrative remedies by NCUA.

(3) Certain violations of Regulation Z may call for restitution to a borrower or a group of borrowers, and failure to make restitution could subject the credit union to the civil penalties of Section 130 of the TIL Act. Where the violation clearly subjects the FCU to restitution the examiner should encourage it to make voluntary restitution where applicable within 15 days and thus protect itself against possible penalty suits. Situations involving restitution are those wherein the APR or Finance Charge disclosed is less than the rate actually charged. Thus, if an FCU failed to properly disclose a "required deposit balance" and charged "1% per month on the unpaid balance," the actual APR might be 14%, but the FCU would be limited to collecting at the disclosed APR. The amount in excess would be subject to restitution under the TIL Act. Such instances must be clearly reported on Encl (2).

(4) Where an FCU is found to be using a loan application or other form which does not appear to be in compliance with one or more of the consumer regulations, the examiner should check with his/her SE for instructions. If necessary, copies of the form should be sent to the Regional Office for evaluation along with the examination report, particularly if it is a league-distributed form or one in use by more than one FCU, so that such forms will be uniformly evaluated. In these instances a memo should also accompany the

forms to clarify the questions that have been raised. The Regional Office will then cover the matter in a transmittal letter and/or directly with the distributor. In the event that a unique situation is involved the Regional Office may wish to review the matter with the Office of Examination and Insurance.

d. Coding and Summary of Violations.

(1) Instructions for assigning compliance codes are provided on the Summary itself (Encl 2). These codes are not to be confused with the overall EWS code. In addition, problem code S, Consumer Related Regulations and Procedures, has been provided on NCUA 2010 for entry into the EWS system. If the Problem Code is used, the regulation which has been violated should be specified in the closed section under the "PC elimination" heading. No mandatory EWS code 4 is provided for this area of consumer regulations. However, an EWS code 3 will be given if the FCU does not agree to corrective action in any area that involves a major violation of Regulation B or Z. In these situations an ROA should be developed and asterisked as provided for in Sec. 63.2 of the Guide, and follow up should be scheduled after discussion with the SE. A major violation as used above is one that involves potential restitution or civil penalties. The examiner, however, has the option of assigning EWS Codes 2, 3 or 4 where any uncorrected violation is encountered, depending upon the severity of the area of concern. ROA's will be developed accordingly. Code 1 will be assigned if non-compliance is fully corrected prior to the completion of the exam or for full compliance with all regulations.

(2) The comments section of the Summary will be completed in all cases where clarification of a violation is desirable or general questions or problems are encountered. EI-DCA will take appropriate action when the forms and Instruction are next revised. The original copy of the Summary will be sent to the Washington Office (Attn: EI-DCA) by the Regional Office. The Regional Office will retain the first carbon, and the second carbon will remain with the examination workpapers.

4. SPECIFIC INSTRUCTIONS. Examiners will complete Enclosures (1) and (2) for each examination begun on or after January 3, 1977. The examiner's copies will be filed immediately behind NCUA 2150 (Credit Committee and Loan Officer). The Regional Office and Central Office copies will be attached by paper clip to the top of the report for easy removal by the Regional Office.

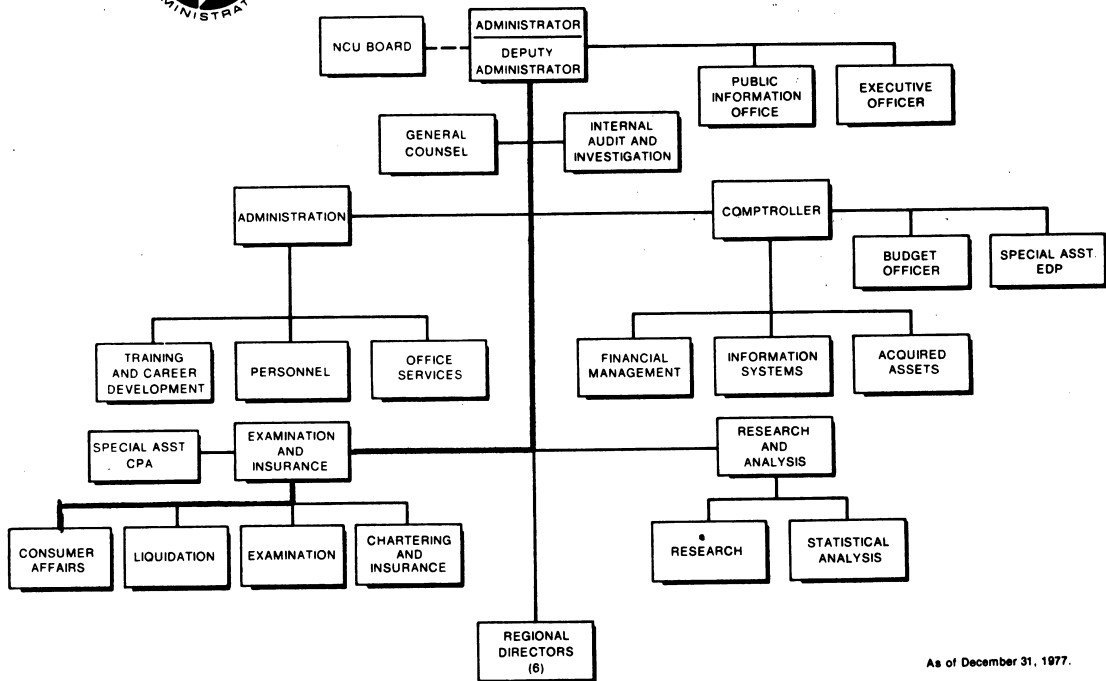
5. EFFECTIVE DATE. This instruction is effective immediately and will remain in effect until superseded by a related Examiner's Guide revision.


C. AUSTIN MONTGOMERY

DISTRIBUTION: C and H

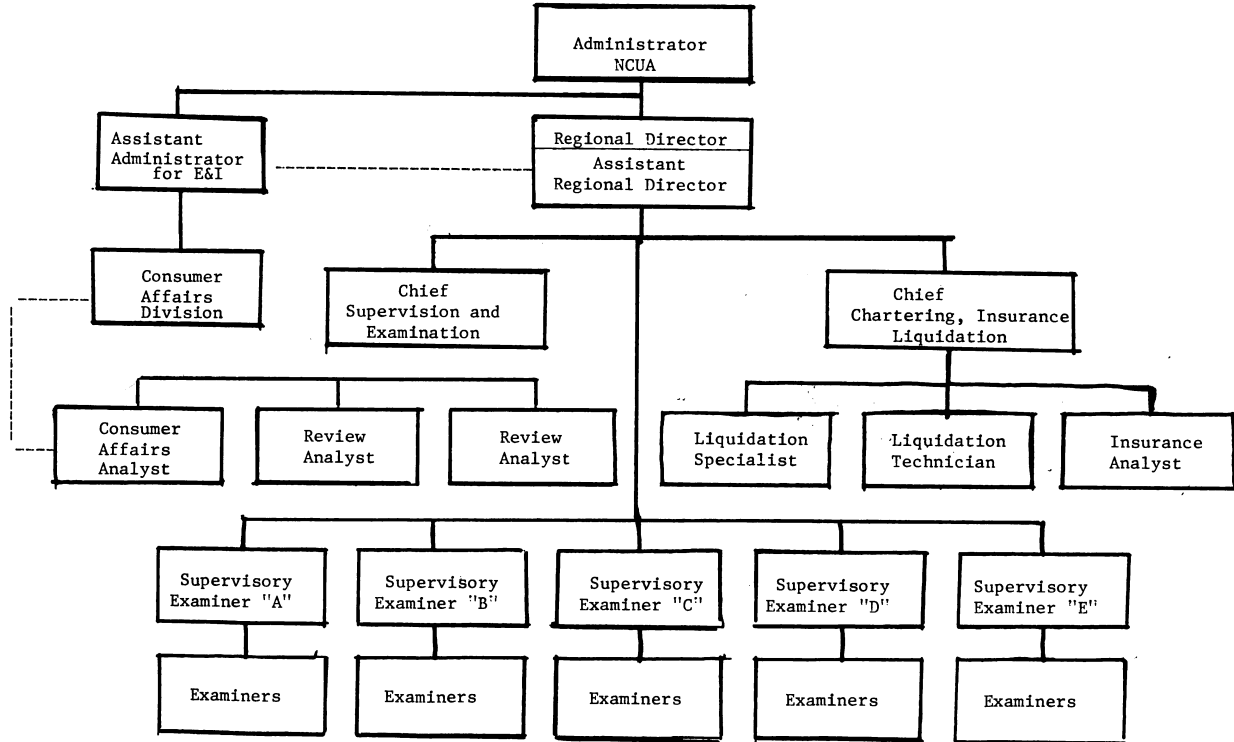


NATIONAL CREDIT UNION ADMINISTRATION



As of December 31, 1977.

REGIONAL OFFICE



Washington Office
Consumer Affairs
Division

Associate
Asst Admin
for E & I -
Consumer Affairs

Director
Division of
Consumer
Affairs

Consumer
Affairs
Analyst

Consumer
Affairs
Analyst

Consumer
Affairs
Specialist

Secretary
Steno

Consumer
Affairs
Specialist

Consumer
Affairs
Specialist

Clerk
Typist

(1980 Only)
Consumer
Affairs
Specialist

EXHIBIT C (rev.)
 Answer to question 8.

Average Cost per Examiner Hour Computation

GS-11	\$18,258
Benefits (10%)	1,825
Per diem, travel, misc.	4,500
Regional support staff	2,400
Supplies	200
Cost per year	<u>27,183</u>

75% of an examiner's total time is spent on examinations. Therefore 75% of available work days = 166.5 days times 8 hours = 1,332 examination hours per year. Therefore, \$27,183 divided by 1,332 hours = \$20.40 cost per hour of examination time.

ALLOCATION FOR EXAMINATION ACTIVITIES:

Examiner time during examinations for ECOA and FH times the number of examinations times average cost per hour.

2 hrs. X 11854 examinations X \$20.40 = \$483,643 [1]

Regional office consumer affairs analyst salary (\$21,500) times 6 regions times 10% time allocation.	
Allocation equals 21,500 x 10% x 6 =	12,900
Central office allocation of 26,000 x 2 staff persons =	52,000

(A) \$548,543

CRIS development	5,000
CRIS data input (card punching)	6,500
CRIS supplies	10,000

(B) 5,375

Allocation: 25% X 21,500 =	
Examiner Training (Regional Conferences) ..	32,500
New Examiner Training	2,754

(C) 35,254

Cost of Examination Program for ECOA & FH (A+B+C) = 589,172

ALLOCATION FOR COMPLAINT ACTIVITIES:

Complaint Handling Information Program (CHIP) development.....	6,200
Data usage cost for CO and Regions	4,400
Examiner time on investigations	16,000
Regional and central office costs	51,000

Total cost for complaint activity (D) 77,600

LOCATION FOR EDUCATIONAL ACTIVITIES:

Editor Information		
Annual of Laws	17,500	
COA slide show & distribution	7,200	
Educational Information	18,000	
Regional & Central office presentations ...	10,000	
Consumer/member Education		
Educational Information	12,000	
Sec. mailings	1,000	
Cost for Educational Activities	(E)	65,700

LOCATION FOR IMPUTED COSTS [2]

Space:		
Central office:		
922 sq. ft. @ \$9.02 a sq. ft. x 10% =	832	
Regional offices:		
800 sq. ft. @ \$9.02 a sq. ft. x 10% =	722	
Utilities:		
Central & Regional Office. =	1,000	
Total imputed costs	(F)	2,554
Total Estimate for 7-77 to 6-78.		<u>\$735,026</u>

Changes

- [1] Actual number of examinations completed during 1977 used. Average time spent by an examiner was 2 hours.
- [2] Imputed rental and utilities added.

Question 8.

EXHIBIT C (Rev.) SUMMARY

	<u>7-77 to 6-78</u>		<u>7-78 to 6-79</u>	
Examination Activities	\$589,172	80%	\$648,089	80%
Complaint Activities	77,600	11%	85,360	11%
Educational Activities	65,700	9%	72,270	9%
Imputed Costs	[1] 2,554	0%	2,809	0%
Totals	<u>\$735,026</u>	<u>100%</u>	<u>\$808,528</u>	<u>100%</u>
	-----	---	-----	---

Changes:

[1] Allowance made for Imputed Costs.

*

Exhibit D

Answers to Question 9

- a. The number of Federal credit unions examined from January 1, 1977 to DECEMBER 31, 1977 was..... 12,183
THE NUMBER EXPECTED TO BE EXAMINED DURING 1978 was..... 12,200
- B. NO DATA ON THE NUMBER OF LOAN APPLICATIONS RECEIVED.
THE TOTAL AMOUNT OF LOANS GRANTED FOR 1977 was..... \$23,007,403,000
THE TOTAL NUMBER OF LOANS GRANTED FOR 1977 was..... 12,119,245
THE AVERAGE AMOUNT GRANTED IS..... \$1,898
NO DATA AVAILABLE ON LINES OF CREDIT.
- C. THE PROJECT AMOUNT OF LOANS FOR 1978 IS \$28,000,000,000
THE PROJECTED NUMBER OF LOANS FOR 1978 IS 13,200,000
THE RESULTANT AVERAGE IS \$2,121
- D. THE AMOUNT OF LOANS GRANTED FOR HOME IMPROVEMENT IN 1977 WAS..... 11,166,000
THE NUMBER OF LOANS GRANTED FOR HOME IMPROVEMENT IN 1977 WAS..... 5,149
THE RESULTANT AVERAGE IS..... \$2,169

*list

Question 9

EXHIBIT D (rev. part a.)

Federal Credit unions examined from 1-1-77 to 12-31-77. [1]

Region I (Boston)	1,943
Region II (Harrisburg)	2,279
Region III (Atlanta)	1,770
Region IV (Toledo)	2,026
Region V (Austin)	2,031
Region VI (San Francisco)	1,803

Total.	<u>11,852</u>

Federal Credit Unions expected to be examined from 1-1-78 to 12-31-78

12,200

[1] Actual figures used.

*

Question 10

EXHIBIT E (Rev.) [1]

1. Cost per FCU examined for period ending 6-78 was	\$62
2. Projected cost for period ending 6-79 is	\$66
3. Estimated cost per loan granted for period ending 6-78	\$.06
4. Projected cost per loan granted for period ending 6-79	\$.06
5. Estimated cost per \$1,000 of loans granted. 6-78	\$.03
5. Projected cost per \$1,000 of loans granted. 6-79	\$.03

[1] Revised figures used from Exhibit C.

Footnote:

Calendar year dollar amounts were used to compute the yearly cost even though a different 12 month loan period was used.

Exhibit F

ANSWERS TO QUESTION 11

1. TOTAL ESTIMATE NUMBER OF EXAMINER HOURS
PERFORMING ON-SITE EXAMINATIONS FOR ECOA
AND FH FOR PERIOD ENDING 6-78.....24,366
2. PROJECTED FOR PERIOD ENDING 6-79.....24,400
- 3 APPROXIMATELY ONE-SIXTH PER REGION..... 4,061

*

Federal Credit unions examined from 1-1-77 to 12-31-77.

	EXAMS	HRS	TOTAL	%
REGION I (BOSTON)	1,943	X 2 =	3,886	16%
REGION II (HARRISBURG)	2,279	X 2 =	4,558	19%
REGION III (ATLANTA)	1,770	X 2 =	3,540	15%
REGION IV (TOLEDO)	2,026	X 2 =	4,052	17%
REGION V (AUSTIN)	2,031	X 2 =	4,062	17%
REGION VI (SAN FRANCISCO)	1,803	X 2 =	3,606	16%
TOTAL ESTIMATE HOURS *	<u>11,852</u>		* <u>23,704</u>	100%
	*****		*****	

Federal Credit Unions expected to be examined from
-1-78 to 12-31-7812,200

Changes.

Actual examination figures by region.

*

Exhibit G

ANSWERS TO QUESTION 12

1. EXAMINER HOURS PER FCU EXAMINED IS.....2.00
2. EXAMINER HOURS PER FCU EXAMINED PER 100
LOANS GRANTED IS.....4.97
3. EXAMINER HOURS PER FCU EXAMINED PER 100,000
OF LOANS GRANTED IS.....9.44

★

Question 15

EXHIBIT H (Rev.)

FCUs found in violation of Regulation B by Examiner's between 1-1-77 & 9-77

		Checklist Questions														
		1	2	3	4	5	6	7	8	9	10	11	12	15		
		-	-	-	-	-	-	-	-	-	-	-	-	-		
Region 1	cd3	2	64	89	82	50	13	0	43	3	58	3	6	0		
	cd4	0	4	1	3	2	1	1	3	0	1	0	0	0		
	cd5	0	4	6	3	3	2	0	2	1	5	1	1	0		
Region 2	cd3	1	85	120	144	126	56	3	51	9	28	22	19	3		
	cd4	0	0	2	2	1	0	0	0	0	0	0	1	0		
	cd5	0	7	11	8	8	1	1	2	1	2	1	0	0		
Region 3	cd3	4	83	103	131	117	35	1	71	15	68	20	16	6		
	cd4	0	4	2	3	3	1	0	2	0	1	0	1	0		
	cd5	0	5	9	5	5	4	0	3	4	7	0	1	0		
Region 4	cd3	1	48	76	63	50	19	2	30	9	64	17	11	4		
	cd4	0	0	6	1	1	0	0	0	0	2	0	1	0		
	cd5	0	5	9	5	5	4	0	3	4	7	0	1	0		
Region 5	cd3	2	72	106	128	103	33	1	43	10	40	10	7	5		
	cd4	0	3	3	2	3	0	0	1	0	1	0	0	0		
	cd5	0	4	10	3	3	1	0	0	0	4	0	0	0		
Region 6	cd3	2	54	54	84	69	16	2	20	2	21	8	1	3		
	cd4	0	0	0	0	0	0	0	3	0	0	0	0	0		
	cd5	0	0	1	1	1	2	1	1	1	1	1	0	0		

Total	cd3	12	409	549	633	516	172	9	259	48	279	80	60	21		
	cd4	0	7	12	8	7	1	1	7	0	4	0	2	0		
	cd5	0	24	40	23	23	11	2	10	7	20	3	3	0		

COMPLIANCE CODES:

3. Non-compliance. Agreements reached to correct all exceptions.
4. Non-compliance. Minor areas of concern not corrected.
5. Non-compliance. Major areas of concern not corrected.

Compliance code definitions:

3. This code reflects violations which officials agreed to correct and are reflected either in the Examiner's Findings or the Record of Action (depending on the examiner's judgement as to the materiality of the violation).
4. Where no agreement is reached with officials to correct a violation, but the FCU's failure to comply will not involve restitution or civil penalties, compliance code 4 should be used. There should be a related item in the Examiner's Findings or Record of Action.
5. Where no agreement is reached with officials to correct a violation and the FCU's failure to comply may involve restitution or civil penalties, compliance code 5 should be used. There will be a related item in the Record of Action.

*

EXHIBIT H (Rev.)

FCUs found in violation of Fair Housing by Examiner's between 1-1-77 & 9-30-77.

		Checklist questions		
		2	3	4
		-	-	-
Region 1	code3	43	6	0
	code4	0	9	0
Region 2	code3	62	15	2
	code4	4	0	0
	code5	2	2	1
Region 3	code3	88	12	2
	code4	5	1	0
Region 4	code3	95	7	0
	code4	16	4	0
Region 5	code3	75	7	0
	code4	4	0	0
Region 6	code3	39	9	0
	code4	1	0	0
Totals	code3	402	56	4
	code4	30	14	0
	code5	2	2	1
		---	--	--

COMPLIANCE CODES:

3. Non-compliance. Agreements reached to correct all exceptions.
4. Non-compliance. Minor areas of concern not corrected.
5. Non-compliance. Major areas of concern not corrected.

Compliance code definitions:

3. This code reflects violations which officials agreed to correct and are reflected either in the Examiner's Findings or the Record of Action (depending on the examiner's judgement as to the materiality of the violation).
4. Where no agreement is reached with officials to correct a violation, but the FCU's failure to comply will not involve restitution or civil penalties, compliance code 4 should be used. There should be a related item in the Examiner's Findings or Record of Action.
5. Where no agreement is reached with officials to correct a violation and the FCU's failure to comply may involve restitution or civil penalties, compliance code 5 should be used. There will be a related item in the Record of Action.

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NATIONAL CREDIT UNION ADMINISTRATION
Washington, D. C. 20456

EI/HJB:dal

February 2, 1977

Office of the Administrator

TO THE BOARD OF DIRECTORS OF THE FEDERAL CREDIT UNION ADDRESSED:

RE: NCUA's Consumer Regulation Compliance Checklist

Compliance with applicable consumer credit protection statutes is a responsibility placed on creditors by the Congress. NCUA was at the same time charged with a related enforcement responsibility where these statutes and their regulations apply to credit unions.

Because of the continued increase in the number and complexity of these regulations, NCUA has found it desirable to restructure its examination procedures to provide greater assurance that credit union officials understand and are complying with these regulatory requirements. We developed a checklist to assist in this process. It covers all of the major requirements of the various consumer regulations as they apply to credit unions.

I decided that it was important for you to receive the attached sample copy of this checklist so that you will be able to review your credit union's operations for compliance with these regulatory requirements where they are applicable. You yourself will then be able to make any changes that you might find necessary, and you will be in a good position to discuss any questions on the subject with your examiner.

In reviewing your operations your examiner will be looking to find you in compliance with the various consumer regulations or to help you achieve compliance. This will help you avoid or minimize civil penalties available to borrowers under these regulations. It will also place you in a better position to police your own operations and thus avoid violations in the future.

I sincerely hope that positive efforts of this type will be taken in all credit unions and by all creditors so that some day the need for these requirements will no longer exist. In the meantime you will have the opportunity to show your members that you understand and support their consumer rights. I believe that this is credit union philosophy in its purest form.

Sincerely,


C. AUSTIN MONTGOMERY
Administrator

CONSUMER REGULATION COMPLIANCE CHECKLIST

INDICATE ✓ IN APPROPRIATE COLUMN	INDICATE ✓ IN APPROPRIATE COLUMN			INDICATE ✓ IN APPROPRIATE COLUMN	INDICATE ✓ IN APPROPRIATE COLUMN		
	YES	NO	N/A		YES	NO	N/A
TRUTH IN LENDING ACT — REGULATION Z				<p>16. Has the credit union issued any type of plastic, paper or other identifying card to its members? (If no, <i>Step 1</i> If yes, will the card enable or entitle that member to receive some type of credit through its use without further action on the part of the member? (If no, <i>Step 1</i> If yes, does the credit union comply with all provisions of Section 226.13 and specifically Section 226.13(b) of Regulation Z?</p> <p>17. Does the credit union retain a copy of the disclosure statement for two years?</p> <p>18. Are the two terms FINANCE CHARGE and ANNUAL PERCENTAGE RATE more conspicuous than the other terms on the credit union's disclosure?</p> <p>19. Where the date of the first scheduled payment is more or less than the number of days in a regular payment period, does the credit union adjust the disclosed finance charge and amount of regular/irregular payments accordingly?</p>			
1. In addition to disclosing the finance charge, APR and related information in a clear/conspicuous manner and in a meaningful sequence (for closed-end loans), or the information required under Section 226.11(a) (for open-end loans), does the credit union make adequate disclosure of all other required information (when applicable) such as assessment of late charges, irregular payments, etc?				<p>EQUAL CREDIT OPPORTUNITY ACT — REGULATION B</p> <p>1. Is there any indication that the credit union is discouraging applicants or prospective applicants from applying for a loan on the basis of sex or marital status or that interviewing techniques contain a discriminatory bias?</p> <p>2. Does a review of sample loan applications indicate that proper terminology is being used (examples, (a) married, unmarried, separated, and (b) application forms neutral as to sex)?</p> <p>3. Does the credit union provide each applicant with the Equal Credit Opportunity Notice at the time an application is received, and is NCUA's name and address included in the notice?</p> <p>4. Is all optional information clearly labeled or explained on the loan application?</p> <p>5. Are the four provisions necessary to request spouse's information clearly labeled on the loan application?</p> <p>6. Do interviewing or questioning techniques concerning policies and procedures used by the Credit Committee, Loan Officer and interviewers indicate proper understanding of what information may be asked and when it may be asked?</p> <p>7. Does the credit union use a credit scoring system to evaluate loan applications? (If no, <i>Step 1</i> If yes, is sex or marital status taken into account?)</p> <p>8. Does the credit union have information in its loan files concerning applicants' sex or marital status? (If no, <i>Step 1</i> If yes, was the information received prior to 6/30/76, or from a credit reporting agency (at any time) or from the applicant without the specific request of the credit union?</p> <p>9. Does the credit union understand that it may not use the prohibited information when it is considering the application?</p> <p>10. Is proper notification given to a member if credit is denied, and, if requested, is the reason for denial given in writing or orally per Section 202.5(m)(2) of the Regulation?</p>			
2. Does the credit union compute the finance charge correctly?							
3. Does the credit union compute the annual percentage rate properly?							
4. Does the FCU require a member to make, maintain or increase his present share account in a specific amount or proportion as a condition of a loan or does it require payroll deductions under plans 2 or 3 for repayment of the loan?							
5. Does the credit union provide a copy of the disclosure statement prior to (or in conjunction with) the disbursement of each closed end loan and for each refinance thereafter?							
6. Does the credit union have any special loan plans? (If no, do not answer questions 7, 8, 9, and 10)							
7. Does the credit union using a special loan plan disclose properly either under the open-end provisions or the closed end provisions?							
8. Does the credit union provide proper disclosure for open-end provisions when the account is opened and on all periodic (members) statements?							
9. Does the credit union provide the long NOTICE "In case of Errors or Inquiries About Your Bill" at the time the member is given an open end application?							
10. Does the credit union provide either the semi-annual statement regarding the members' rights or the shorter form of statement on or with each periodic statement?							
11. Does the credit union provide the member with a Right of Rescission notice if a second mortgage or non purchase money first lien will be used as collateral?							
12. Does the credit union provide disclosure in advertising if a "Trigger" term such as 12% annual percentage rate is used?							
13. Does the credit union correctly follow the billing error resolution procedure (that is, after proper written notice has been received does the credit union: a) acknowledge within 30 days? b) not charge interest on the disputed amount in question until resolved? c) respond within 90 days to the member informing him of action taken by the credit union in resolving the error?							
14. Does the credit union use a factor which is consistent with the duty period when determining the interest charged on a loan payment?							
15. Where combined Note and Disclosure statements are used, are all required elements in the disclosure portion, or does the credit union have an attorney's opinion on file that the combined form meets the requirements of Regulation Z?							

EXPLANATIONS — REGULATION Z

1. Where the terms "finance charge" or "annual percentage rate" are used, they must be printed more conspicuously than other terminology, and all numerical amounts must be shown as elite typewritten numerals or equivalent size. In addition, to the extent applicable, the FCU must include the following information on the disclosure form:
 - a. The amount of credit being extended.
 - b. The total dollar amount of the finance charge.
 - c. The date on which the finance charge begins to accrue, if this is different from the date of the transactions.
 - d. Required share deposits.
 - e. The annual percentage rate.
 - f. The number, amount, and frequency of payments to be made by the borrower.
 - g. The total of all payments, including interest and principal.
 - h. Any late charges that a credit union may impose under its bylaws.
 - i. Any acceleration clause or other provisions that may be exercised by the FCU, including attachment of after-acquired shares.
 - j. A description of any security interest held for the loan, including a clear identification of the property to which it relates.
2. Determination of Finance Charge—Section 226.4. The general rule is that the finance charge is the sum of all charges payable directly or indirectly by a creditor as an incident to, or condition of, the extension of credit. If there is more than one item in the finance charge, each must be separately identified. In most credit unions, however, interest is the only item in the finance charge. Required share deposits must also be disclosed and excluded from the proceeds to arrive at amount financed. See explanation under question 4.
3. Using the information developed in the first two questions, the APR will be checked using the APR tables, volume 1 which was provided to you. Note: an APR in excess of 12% would not necessarily violate the FCU Act. Under Regulation Z, it is possible to charge 1% per month on the unpaid balance and still have a higher APR due to required deposit balances or unusual items in the finance charge.
4. "Required share deposit" is defined (Section 226.8(e)(2)) as any deposit balance which the creditor requires the customer to make, maintain, or increase in a specified amount or proportion as a condition to the extension of credit except:
 - (i) an escrow account
 - (ii) an estate loan
 - (iii) a deposit balance which was in existence prior to the extension of credit and which is offered by the customer as security for that extension of credit, and
 - (iv) any voluntary addition to savings made during the term of the loan which is not required by the credit union.
 The key to determining whether a pledged share account is a "required deposit balance" is in the word "offered."
 "Required deposit balance" includes any payment required by the credit union as a condition of the loan. If payroll deductions are required in order to repay the loan under plans 2 or 3, a required deposit balance may be created; if payments are received semi-monthly disclosure must be made to reflect this fact. The number, amount, and due dates would have to reflect the required payment schedule based on the payroll deductions if the deductions are not voluntary. See FRB staff opinion letters #299 and 667.
 Finally, any additional required deposits made to shares in addition to principal and interest would create a required share deposit. An example would be a required deposit of \$5 a month in addition to the required loan payment.
5. Self Explanatory.
6. Self Explanatory.
7. For open end provisions see Section 226.7. For closed end provisions see Section 226.8. This determination can be made by reviewing the special loan plan in use. If open end provisions are used, a disclosure must be made when the account is opened and on all periodic statements for that account. If closed end provisions are used, a full Z-1 type disclosure must be provided with each disbursement.
8. Proper disclosure includes: (a) the conditions under which interest charges may be imposed (b) the method of determining the balance upon which interest may be imposed (c) the conditions under which any other charges may be imposed, and the method by which they will be determined (d) the minimum periodic payment required.
 Periodic statements must be sent at least quarterly. Required terms that must appear on the periodic statement are: previous balance, payments, finance charge, annual percentage rate, new balance and "send inquiries to."
 Also all transactions must be properly identified on each statement. This would include the amount, date, and identifying number or symbol.

9. Per Section 226.7(a)(9), the notice "In case of errors or inquiries about your bill" must appear either on the front or the back (or it must be referenced as provided) and must be given at the time the transactions within and before the first transaction on the account.
10. The FCU has a choice to either send the semi-annual notice required by Section 226.7(a)(9) or to send the shorter notice on each statement required by Section 226.7(d)(5). If the shorter notice is used, the FCU must send the semi-annual notice if requested by the member or upon receipt of a billing error notice.
11. The right to rescind certain transactions is discussed in Section 226.9. This provision gives the borrower the right to rescind the transactions within 3 business days. Does not apply to first mortgages to finance purchase of the borrower's dwelling.
12. "Advertising credit terms" is discussed in Section 226.10. Certain terms "trigger" full disclosure requirements for advertising credit. Examples for closed end loans include: 10% down, 24 months to pay, 100% financing available. Open end triggers include: 3 years to repay, minimum pay \$30.
13. To comply with the billing error and resolution procedures, the credit union must follow the provisions of the NOTICE in Section 226.7(a)(9) exactly.
14. It is a disclosure violation if the credit union applies a daily interest factor based on a 360-day year but computes interest on the actual number of days between payments. Errors because of leap year are exempt.
15. If a combined form is used, the credit union should be encouraged to obtain and keep in file an attorney's opinion as to its compliance with these provisions.
16. If the credit union has issued any type of member identification card to its members, it must determine if that card could be considered a credit card for the purpose of regulation Z.
17. Self Explanatory.
18. Self Explanatory. Reference explanation for Question 1.
19. The interest disclosed must be the same as that actually charged.

EXPLANATIONS — REGULATION B

1. (A) Creditors may not refuse to grant separate accounts on the basis of sex or marital status. (B) Generally, a creditor may not ask marital status when an applicant applies for separate unsecured credit. Exception, Community Property State.
2. (A) Only "married, unmarried or separated" may be used on the loan application. (B) Creditor may ask if applicant is obligated to make alimony or child support payments. (C) "Mr., Ms.", etc. must state that these titles are optional. (D) The loan application must be neutral as to sex.
3. An "EQUAL CREDIT OPPORTUNITY ACT NOTICE" with NCUA's complete address must be given to each applicant to keep. It is recommended that FCUs be able to substantiate that it has provided these copies.
- 4, 5, 6. (A) A creditor may inquire as to and consider an applicant's continued ability to repay. (B) A credit union may only request information about the applicant's spouse in the following situations where: (1) the spouse will be permitted to use the account (the term "use an account" applies to open end credit); (2) the spouse will be contractually liable upon the account; (3) the applicant is relying on community property or the spouse's income as a basis for repayment of the credit requested; and (4) the applicant is relying on alimony, child support or maintenance payments from a spouse or former spouse as a basis for repayment of the loan requested. (C) A credit union may ask if any of the income comes from alimony or child support after the applicant is informed that he or she need not reveal such income in applying for credit. A credit union must consider such payments as income to the extent that they are deemed reliable. (D) Discounting of income is not allowed if it is considered as reliable. (E) Inquiries as to birth control or child bearing intentions cannot be made.
7. The credit union cannot consider sex or marital status in a credit scoring system.
- 8, 9. A credit union may not use information prohibited by the ACT, but may retain it in the files if it was received in any of the following ways: (1) from any source prior to June 30, 1976, (2) from a credit reporting agency at any time and (3) from the applicant without the specific request of the credit union.
10. (A) A credit union shall, within a reasonable period of time, (30 days effective 3/23/77) notify the member of action taken upon the loan application. (B) The credit union must furnish reasons, either oral or written, for a denial of credit. (NOTE: Another amendment to Regulation B provides that a credit union must furnish the reasons for adverse action. This requirement may be satisfied by either automatically providing written reasons to each applicant or by providing a notice which states that the applicant is entitled to receive written reasons. The reason given must be specific. A credit union which acted on less than 150 applications in the preceding year may provide notification and reasons orally. Effective 3/23/77).

CONSUMER REGULATION COMPLIANCE CHECKLIST

INDICATE ✓ IN APPROPRIATE COLUMN	YES NO N/A			INDICATE ✓ IN APPROPRIATE COLUMN	YES NO N/A		
	YES	NO	N/A		YES	NO	N/A
REGULATION B (Contd.)				6. Has the credit union made an "appropriate effort" (as defined in Section 203.5(b)(3) at least annually to notify shareholders of the existence of these reports?			
11. If the credit union routinely requires the signature of a co-signer on a Note, does this policy require co-signers for all similarly situated applicants applying for a similar type and amount of credit without regard to sex or marital status? (If no, Stop) If yes, (a) is this permitted under Section 202.4(c)(1) and (b) does it specify that the applicant's spouse need not be the comaker?				REAL ESTATE SETTLEMENT PROCEDURES — HUD REGULATION X (RESPA)			
12. Does the credit union keep in the file (for 15 months after the date that action is taken on the application) (a) the loan application plus any written information used to evaluate the application and (b) any written statement by the applicant alleging discrimination prohibited by the Act or regulation?				1. Does the credit union make Federally related first mortgage residential real estate loans covered under RESPA (Reg. X)? (If no, Stop) If yes, answer all remaining questions			
13. Is the credit union aware that civil action may be brought by an applicant for a violation of Regulation B at any time within two years?				2. Does the credit union provide each applicant for a RESPA-related loan with a copy of the Special Information Booklet free of charge within 3 business days after receiving the loan application?			
14. Does the credit union have written loan policies and procedures that indicate that all applicants are treated without discriminatory bias with respect to sex or marital status? (NOT required but suggested)				3. Is a written good faith estimate of settlement costs containing the statement required by Section 3500.7(d)(1) given to each applicant within 3 business days after receiving the loan application?			
15. Do the credit union's written policies, if any, indicate any type of discriminatory bias with respect to sex or marital status?				If yes, did it provide range estimates, specific amount estimates or combination of the two			
16. Is the credit union aware, and is it making necessary preparation for the implementation of Section 202.5 of Regulation B, Furnishing of Credit Information?				4. Does the credit union routinely relate each good faith estimate to the specific property being considered by the applicant (i.e., is the good faith estimate realistic)?			
17. Is the credit union aware that State laws preventing the separate extension of consumer credit to each spouse are preempted if the spouse voluntarily applies for separate credit per section 202.8(a) of the regulation?				5. If the credit union requires the borrower to use a particular firm for any settlement service, does it provide the applicant with the statements required by 3500.7(e)?			
FLOOD INSURANCE				6. Does the credit union provide the borrower with the Uniform Settlement Statement (HUD-1) at the time of settlement or 1 day prior to settlement if requested by the borrower?			
1. Does the credit union make any loans which are secured by improved real estate or mobile homes on fixed foundations?				If not, does the credit union qualify for exemption under Section 3500.7(i), 3500.8(d), or 3500.10(c)?			
2. When making these loans does the credit union make a "good faith" determination whether the property securing them is located within a special flood hazard area?				7. Does the credit union charge a fee in connection with the preparation or distribution of any disclosures required by RESPA?			
3. Does the credit union require official flood insurance on the property and its contents in each case where the property is found to be located within a special flood hazard area, and is the flood insurance policy in the loan file?				8. Has the credit union arranged to retain a copy of HUD-1 for two years?			
HOME MORTGAGE DISCLOSURE ACT — REGULATION C				9. If a credit union sells residential real estate which it owns through foreclosure or otherwise, does it require use of a specific title company?			
1. Did the credit union make or purchase one or more first mortgage residential real estate loans in the preceding calendar year? (If no, Stop)				10. If the credit union requires escrow amounts, does it keep the escrow requirements within the permitted maximums?			
2. Was the credit union over \$10 million in assets, and did it maintain its main office in a standard Metropolitan Statistical Area as of the end of the preceding calendar year or this calendar year? (If no, Stop)				11. Is there evidence that credit union or its staff gives or receives kickbacks in conjunction with RESPA covered loans?			
3. Has the credit union prepared and (in accordance with Section 203.5(b)), made available for inspection by interested parties) copies of the HUD-1 Mortgage Loan Disclosure Statements for each calendar year in which it met the above requirements beginning with 1975?				12. Does the credit union have written policies or checklists for its staff to follow with regard to RESPA compliance?			
4. Has the data on these statements been broken down by census tracts or (when applicable) by ZIP codes, and are the numbers and amounts of loans granted or purchased properly reported?				HOLDER IN DUE COURSE			
5. Does the data reported on the statements indicate the possible existence of the practice of redlining?				1. Does the credit union sell repossessed or credit union-owned property?			
				If yes, does the note or lien instrument contain the NOTICE required by Section 433.2(a)?			
				2. Does the credit union have an arrangement with a vendor wherein (a) the vendor on a cooperative and continuing basis refers members to the credit union for purchase money loans or (b) the credit union and the vendor are affiliated by a formal or informal ongoing business arrangement related to financing sales or (c) the credit union is actively participating in a sales program or a joint advertising program?			
				If no, Stop! If yes, answer the remaining questions in this section.			
				3. If the vendor has requested the credit union to place the Section 433.2(b) NOTICE in the note or lien instrument and if the board has agreed to include this NOTICE, has it carefully considered the resultant potential liability and available alternatives?			

REGULATION B (Cont'd)

11. If a credit union requires the signature of a co-signer on the Note, the credit union must do so for all similarly situated applicants applying for a similar type and amount of credit without regard to sex or marital status (i.e., cannot require spouses to become co-maker for applicants, etc) except: (1) in certain instances in community property states (Texas, Louisiana, Idaho, New Mexico, Arizona, Washington, Nevada and California) and (2) where a married applicant applies for secured credit in order to create a valid lien, pass clear title, waive inchoate rights to property, or assign earnings.
12. A borrower has up to 24 months to bring civil action, so the credit union should retain this information for 24 months, but must retain it for at least 15 months.
13. Damages are limited to actual damages plus ten thousand dollars individual punitive damages, or (in the case of a class action) \$500,000 or 1% of net worth, whichever is less (effective 3/23/76).
14. Credit union policies should not include words or biases such as "spouse co-maker." The policies must treat all members equally without regard to sex or marital status.
15. Self-explanatory, but all terminology must be neutral as to sex (i.e., spouse instead of wife).
16. (A) For accounts established on or after 6/1/77, the credit union must determine if the spouse will use or be contractually liable on account if such accounts are offered and designate any such account to reflect the participation of both spouses. (B) When furnishing information concerning an account, the credit union shall report the designation and furnish information concerning the account: (1) to consumer reporting agencies; in a manner in which will enable the agencies to provide access to information about the account in the name of each spouse; and (2) to recipients other than such agencies, in the name of each spouse. (C) The credit union has the option to review all joint accounts and determine by themselves whether the spouse is permitted to use or is contractually liable on the account by 6/1/77. (D) The credit union must send the notice "Credit History for Married Persons" to all married applicants, describing their rights under the regulation to have their account maintained and reported as noted above. After 10/1/77, within 90 days after the applicant returns the letter with this request, the credit union must make the appropriate change on their records. If option B is used, the notice must be sent out by 10/1/77. For open-end accounts, the notice must be sent between 6/1/77 and 10/1/77.

EXPLANATIONS — FLOOD INSURANCE

1. Loans subject to flood insurance may be made for any purpose as long as they are secured by a security interest in improved real estate (residence or other walled and roofed structure) or a mobile home on a fixed foundation.
2. Under the guidelines, determinations made by a credit union acting in "Good Faith" (concerning the location of a property with respect to a special flood area) are final, provided that the credit union or its qualified agent relied on the current FIA Flood Hazard Boundary Map for the area in question. (A credit union can be certain that the map is current by calling 800-424-8872 or 8873.)
3. If loans of this type are secured by property in a special flood hazard area, the community must be participating in an approved flood program. If the community is not participating in an approved flood program, official flood insurance would not be available. Furthermore, the Flood Disaster Protection Act of 1973 and Part 760 of the NCUA Regulations prohibit the making of such loans unless the community was so designated within the preceding 12 months or unless one of the exceptions in Section 202(b) of the Act applies. These exceptions include loans to finance the construction or acquisition of a residential dwelling occupied as a residence (a) before or within 1 year following the official identification of the area within which it is located as being a flood hazard area or (b) prior to 3/1/76.)

EXPLANATIONS — REGULATION C

1. Self Explanatory.
2. A complete list of all SMSA's was enclosed with the Administrator's letter of July 13, 1976, to the boards of directors of all FCUs.
3. Reports must be:
 - a) prepared for all calendar years in which FCU met the requirements in items 1 and 2,
 - b) completed by the required deadlines, which are 9/30/76 for 1975 and 3/31 for each calendar year thereafter (other than those possible excepted in 203.4(a)(2)(iii), and
 - c) made available (for 5 years) for inspection by interested parties at FCU's main office (or other alternatives permitted under Section 203.5(b)).

4. Self explanatory except to note that:

- a) unless census tracts are not shown on the official 1970 Census Tract maps, ZIP codes may be used only for 1975 and (if separate semiannual reports are made) the first half of 1976, and these must be preceded by a Z on the report.
- b) instructions for completing the report may be found on page 2 of the HMDA-1 form (also, if the various columns were numbered numerically, column 4 would always be the total of columns 2 and 3, and items in column 7 would also be included in columns 4, 5, and 6).
- c) home improvement loans required to be reported are only those (secured or not) which clearly result in increasing the value of the applicant's home.
- d) data is required to be broken out of census tract/ZIP code only for the SMSA in which the FCU's main office is located (i.e., the relevant SMSA).
5. This is a subjective question, the answer to which will in part be dependent upon the examiner's familiarity with the FOM and the locality. Knowledge of rejection patterns, of course, is needed for a more conclusive evaluation.
6. Appropriate efforts include any one of the following:
 - a) insert a notice with the quarterly statements,
 - b) post a notice in the credit union office for at least one month, or
 - c) publish a notice in a local newspaper of general circulation.

EXPLANATIONS — HUD REGULATION X (RESPA)

1. A Federally-related loan covered under RESPA (per the Administrator's letter of 6/29/76 to the boards of directors of all FCUs) is any loan made by an FCU to finance the purchase or construction of residential real estate and secured by a first lien on that real estate, etc.
2. A sample is included in the enclosure to the above letter.
3. The form should be clear and concise. It must include the credit union's name. Section 3500.7(d)(1) also requires the following notice: "This form does not cover all items you will be required to pay in cash at settlement..."
4. This question can be answered by reviewing the good faith estimates and the related Uniform Settlement Statements.
5. Section 3500.7(e) requires the following (a) the name, address and telephone number of each provider designated by the credit union, the services which would be rendered by such provider and the fact that the credit union's estimate is based upon the charges of the designated provider, and (b) statement whether or not each such provider has a business relationship with the credit union.
6. Exemptions are confined to (a) transactions in which the borrower is not required to pay any settlement charges or adjustments and (b) transactions in which the borrower is required to pay a fixed amount for all charges imposed at settlement and the time of loan application (Section 3500.8(d)(1)(2). In addition Section 3500.10(c) indicates that the borrower may waive his/her rights to receive the USS up to the time of settlement. If these rights are waived, the credit union must mail or deliver the statement as soon as practicable after settlement.
7. Such fees are prohibited by Section 12 of RESPA.
8. Self Explanatory.
9. Required use of a specific title company would be a violation of Section 9 of RESPA (a) if the sale were being financed by the FCU or (b) if the funds for the purchase of the property were the proceeds of a Federally related mortgage loan made by another lender.
10. The permitted maximums are detailed in Section 10 of RESPA.
11. Self Explanatory.
12. Self Explanatory.

EXPLANATIONS — HOLDER IN DUE COURSE

1. If an FCU sells repossessed or credit union-owned property it becomes a seller subject to the seller requirements of this Rule, and it must include the Section 433.2(a) Notice in the related note or lien instrument if the sale is financed. This Notice: "Any holder of this consumer credit contract is subject to all claims and defenses which the debtor could assert against the seller of goods or services obtained pursuant hereto or with the proceeds hereof. Recovery hereunder by the debtor shall not exceed the amounts paid by the debtor hereunder."
2. Self Explanatory. (See Administrator's letter of 5/12/76 to the boards of directors of all FCUs.)
3. Section 433.2(b) Notice is: "Any holder of this consumer credit contract is subject to all claims and defenses which the debtor could assert against the seller of goods or services obtained with the proceeds hereof. Recovery

CONSUMER REGULATION COMPLIANCE CHECKLIST

INDICATE ✓ IN APPROPRIATE COLUMN	INDICATE ✓ IN APPROPRIATE COLUMN			INDICATE ✓ IN APPROPRIATE COLUMN	INDICATE ✓ IN APPROPRIATE COLUMN		
	YES	NO	N/A		YES	NO	N/A
HOLDER IN DUE COURSE (Contd.)				b) remove obsolete information from its files?			
4. If applicable, has the proper terminology been used and has it been confined to required loans only?				c) resolve accuracy disputes with members?			
5. Has the board taken definitive measures to protect itself from unnecessary losses resulting from exercise of the NOTICE?				d) provide reports only for legitimate purposes?			
FAIR CREDIT REPORTING ACT				e) keep a dated record of each recipient of information about a member even when inquiry is oral?			
1. Does the FCU ever report more than its own experiences or transactions with a member? If yes, question #5 must be completed.				f) as a provider of consumer credit reports, require and retain certifications as prescribed in Section 607 of the Fair Credit Reporting Act?			
2. Does the FCU request/use credit-related information from any outside source? (If both answers are No, "Stop")				g) have proper internal control procedures in the safeguarding and disclosure of information?			
3. If the credit union denies credit or requires additional collateral, based upon information obtained from a consumer report, is the member routinely advised (orally or in writing) at the time of the rejection that: a) the report contributed to the denial of credit? b) the name and address of the consumer or credit reporting agency?				6. If the FCU ever obtains Investigative Consumer Reports or causes them to be prepared, does it notify the member in writing within 3 days after ordering the report that (a) an investigative report may be made and (b) the member has a right to request a written disclosure of the nature and scope of the report?			
4. If the credit union denies credit based on information obtained from a source other than a consumer or credit reporting agency, is the member routinely informed at the time of the rejection that he has the right to know "the nature of the information" and that this information will be provided to him if a written request from him is received by the credit union within 60 days?				FAIR HOUSING			
5. Where the credit union reports more than its own experience with members, it may be found to be a consumer reporting agency, according to Section 603(f) of the Fair Credit Reporting Act. Therefore, if it does report such information, does the credit union: a) make required disclosures to members upon request and proper identification?				1. Does the FCU make loans for the purpose of purchasing, improving or repairing a dwelling? (If no, Stop)			
				2. Does the FCU a) Conspicuously display the logotype and notice of nondiscrimination in the public area of each office? b) State in all advertising that loans made for the purposes noted in one (1) above are considered without regard to race, color, religion, sex or national origin?			
				3. Does there appear to be any evidence that the credit union's lending policies or practices in loans of this type result in any member being treated less favorably than other similarly credit worthy members due to race, color, religion, sex or national origin?			
				4. Do the credit union's appraisal and loan collection policies appear to be free from such discriminatory bias on loans of this type?			

HOLDER IN DUE COURSE (Contd.)

hereunder by the debtor shall not exceed amounts paid by the debtor hereunder." The use of this Notice (or that in Section 433.2(a) on a loan document would in effect permit the buyer to withhold repayment, etc. if the seller failed to honor any warranty or other agreement related to the sale.

4. Where a credit union has been requested and has agreed to use the notice, it should use the notice only on those loans which will provide purchase money to the seller with whom a qualifying arrangement has been made. If it has agreed to include with the Notice, but has not done so, the FCU may be nonetheless liable. Proper terminology includes the notice in item three.

5. Definitive measures would include a thorough investigation of the seller's financial condition and business reputation as it relates to the prompt honoring of warranties and other sales agreements.

EXPLANATIONS — FAIR CREDIT REPORTING ACT

1. If a credit union passes any information other than information solely as to its own transactions or experiences with a member, it may be considered a consumer reporting agency.
2. Outside source could include information from the sponsor organization. (Examples include information from the personnel files or information from the front office for associational groups.) As well, it would include other creditors or consumer/credit reporting agencies.
3. A consumer report is any report (written or oral) issued by a consumer/credit reporting agency (a) which has a bearing on a consumer's credit

worthiness, character, etc. and (b) which is expected to be used to determine the consumer's eligibility for consumer credit. The nature of the information in the credit report does not have to be disclosed by the FCU.

4. Nature of the information would include: income is not what it was represented to be, debts are greater than represented, debts are not as current as represented, etc. The nature of the information should be given with enough detail to enable a member to question the accuracy of the information if he believes it is wrong. The source of the information does not have to be disclosed. However, it may be impossible to identify the "nature" of certain information without also revealing the source (i.e., you will be fired tomorrow!)

5. Self Explanatory.

6. An investigative consumer report is one which contains personal information (character, reputation, living habits, etc.) developed as a result of an investigation and based primarily on observations or opinions (as opposed to a factual consumer report).

EXPLANATIONS — FAIR HOUSING

1. The loan must be related to the structure. Loans for the purpose of purchasing appliances or paying taxes on the dwelling would not be covered under fair housing.
2. Required by Fair Housing Act and NCUA's Rules and Regulations, Section 701.31. In the event of a complaint of discrimination by a borrower, failure to have met these requirements would be deemed prima facie evidence of such practice.
3. Self Explanatory.
4. Self Explanatory.



National Credit Union Administration
Postage and Fees Paid

OFFICIAL BUSINESS
WASHINGTON, D.C. 20466
NATIONAL CREDIT UNION ADMINISTRATION

x h: b: t I

NCUA

INSTRUCTION

National Credit Union Administration
Washington, D.C.

Date: January 6, 1976 No. 4000.5

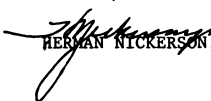
Subject: Complaint Letters

To: DISTRIBUTION LIST

1. **PURPOSE:** To promulgate policy and procedures for responding to members of operating Federal credit unions who write letters to Regional Directors expressing grievances or complaints about operating FCU's in their region.
2. **BACKGROUND:** A proper perspective of credit union philosophy recognizes that credit unions are owned by their members and that the National Credit Union Administration safeguards the democratic process for membership participation in operating their credit union. Therefore, members have a right to express legitimate concern about matters affecting the operation of their credit union, and the Administration has a statutory obligation to respond to such concern. When a member of an operating Federal credit union addresses a letter of complaint to a Regional Director, it is incumbent upon that Regional Director to respond directly to the member.
3. **POLICY:** A letter that is addressed to a Regional Director by a member of an operating Federal credit union in his region which alleges a complaint about a credit union under his supervision will be answered by that Regional Director directly to the member.
4. **PROCEDURE:** When a letter is received by a regional office which either directly or indirectly implies a complaint that involves an operating Federal credit union in that region, the Regional Director will
 - a. Cause the complaint to be investigated by the supervisory committee or examiner staff and will respond directly to the member concerning the findings and intended action, if any. If the supervisory committee is used to investigate the complaint, the Regional Director will request that the committee respond directly to him so that he can respond directly to the member.
 - b. Inform the credit union involved of the nature and circumstances of the complaint and request an explanation if it is appropriate to do so.
 - c. Provide the involved credit union with a copy of his reply to the member.
 - d. Request guidance from the Administrator at any point in time that it is determined that the complaint may be of congressional or national interest.

NCUA Instruction 4000.5

5. This instruction is effective upon receipt and will remain in effect until cancelled.


HERMAN NICKERSON, JR.

DISTRIBUTION: C

Exhibit J

RESOLUTION OF DISCRIMINATION COMPLAINTS

	<u>Region:</u>						<u>Washington</u>	<u>Total</u>
	<u>I</u>	<u>II</u>	<u>III</u>	<u>IV</u>	<u>V</u>	<u>VI</u>		
Resolved by mutual agreement	1		1		1	2		5
Complaint substantiated - corrective action			1			4		5
Complaint substantiated - no jurisdiction								0
No resolution - factual dispute								0
Complaint not substantiated	1	6	5	3	5	12		32
Referred back to sender		1	1			1		3
Information provided		1			2			3
Referred to another agency							1	1
Other		1					1	2
TOTALS	2	9	8	3	8	19	2	51



Exhibit K

NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

Office of the Administrator

April 17, 1978

TO THE BOARD OF DIRECTORS OF THE FEDERAL CREDIT UNION ADDRESSED :

RE: The Equal Credit Opportunity Act and ... Credit Rights in Housing

The Board of Governors of the Federal Reserve System has just released the latest in a planned series of brochures concerning provisions of the Equal Credit Opportunity Act and its Regulation B. It briefly describes consumers' credit rights in housing under this Act as well as other Consumer laws.

Entitled "The Equal Credit Opportunity Act and ... Credit Rights in Housing," this brochure explains the ways in which a consumer who is in the market for a housing loan is protected under ECOA. It also advises consumers of the applicability of the Fair Housing Act and the Home Mortgage Disclosure Act to this type of credit, and it provides consumers with sources of advice and help with related problems.

A copy of this brochure is enclosed for your information and use. Other brochures in this ECOA series will also be sent to you when they are released. If you desire additional copies, you may request them without charge from the Federal Reserve Bank in your district. Supplies are not available, however, from NCUA.

Very obviously this brochure contains material which could be most helpful to your members. Accordingly, I would encourage you to seriously consider making copies available to your members as a part of your educational program.

Sincerely,

Lawrence Connell
LAWRENCE CONNELL
Administrator
(acting)

NCUA Letter No. 18 (1978)

The Federal Trade Commission brochure on the Equal Credit Opportunity Act to which reference is made in the answer to question 22 is included in Appendix 15 of this volume.

The Federal Reserve pamphlets to which reference is made in the answer to question 23 are included as Attachment 13 of Appendix 8 of this volume.

BENJAMIN S. ROSENTHAL, N.Y., CHAIRMAN
 CARDIES COLLINS, ILL.
 ROBERT F. DRINAN, MASS.
 ELLIOTT M. LEVITSE, GA.
 DAVID W. EVANS, IND.
 ANTHONY MOLFETZ, CONN.
 FERNAND J. ST GERMAIN, R.I.
 HENRY A. WAXMAN, CALIF.

GARRY BROWN, MICH.
 CLARENCE J. BROWN, OHIO
 TOM CONGDON, ILL.

(202) 225-4407

NINETY-FIFTH CONGRESS
Congress of the United States

House of Representatives
 COMMERCE, CONSUMER, AND MONETARY AFFAIRS
 SUBCOMMITTEE

OF THE
 COMMITTEE ON GOVERNMENT OPERATIONS

RAYBURN HOUSE OFFICE BUILDING, ROOM B-377
 WASHINGTON, D.C. 20515

November 27, 1978

Hon. Lawrence Connell
 Administrator
 National Credit Union Administration
 2025 M Street N.W.
 Washington, D. C. 20456

Dear Mr. Connell:

In order to enable the Commerce, Consumer and Monetary Affairs Subcommittee to obtain a clearer picture of National Credit Union Administration enforcement of the Equal Credit Opportunity and Fair Housing Acts and Regulation B, I am writing to request further clarification of certain points raised in August and September in our earlier correspondence and in your testimony on September 14. I would appreciate your response as promptly as possible for completion of our record on this hearing.

In your testimony you indicated a reluctance to use testing to detect discriminatory pre-application discouragement. I would appreciate some clarification of your views on testing. Your reason for being reluctant to use testing was your view that it would not generally be feasible for an outsider to impersonate a legitimate customer in most credit unions where the membership is small and generally known to the credit union staff. However, 30 percent of all federal credit union share accounts are in the 252 federal credit unions having assets in excess of \$20 million each and membership generally in excess of 10,000 each. What is your view of the feasibility and desirability of testing in these large institutions which account for approximately one third of credit union activity?

The written questions on which I would appreciate clarification are as follows (the question numbers that head each paragraph refer to the question numbers in my letter of August 10):

Question 1: Although they are relevant to other matters, credit union procedures for handling loan applications and formal requests are not relevant to the particular problem of pre-screening and discouragement addressed in this question because pre-screening and discouragement take place before an application or request is made. My question, restated, is this: How do the NCUA's examination procedures determine whether discriminatory pre-

screening or discouragement of potential loan applicants on a prohibited basis are occurring?

Question 5: How do NCUA examiners evaluate the internal management controls or procedures of each credit union, especially in the largest credit unions, for ensuring that each employee complies with the requirements of the Equal Credit Opportunity Act, the Fair Housing Act, and Regulation B?

Question 6: Does your answer on September 8 imply that the size of the loan sample examined is generally the same at the largest credit unions as at the smallest? How do you justify the assumption that this uniform sample size provides as good a review of compliance at the large institutions as at the smallest?

Question 6 (continued): Does your answer imply that you have no formal guidelines or instructions to specify how the sample should be expanded when you have some prior indication of compliance problems, such as when a compliance problem was noted at a previous examination?

Question 7: What are the procedures followed for systematic oversight and review by the NCUA staff in Washington of the equal credit compliance examinations performed by the field examination staff?

Question 15: Would you supplement your answer to this question by providing a tabulation, by region and for all regions combined, showing the total number of credit unions examined, the number having at least one violation of some kind, and the number having no violations?

Question 20: The material requested in this question was requested as a potentially informative indication of the adequacy of the complaint handling at the district level. Consequently, even though a manual search of examination reports will be required, I must request at least a partial response, as follows: Your tabulation of consumer complaints by region (Exhibit J) shows that 32 of the 51 complaints received fell into the category of "complaint not substantiated". In those 32 cases, please examine the files manually to determine what portion of these complaints were about

- a. credit unions for which the report from a subsequent general compliance examination is available and in which one or more violations similar to the complaint were found at this subsequent examination;
- b. credit unions for which the report from a subsequent examination is available and in which no similar violations were found at this subsequent examination;

Hon. Lawrence Connell

3

November 27, 1978

- c. credit unions for which no subsequent examination has been conducted (or if conducted, the report is not yet available) and in which one or more violations similar to the complaint were found at a previously conducted examination; and
- d. credit unions for which no subsequent examination has been conducted (or if conducted, the report is not yet available) and in which no similar violations were found at any previous examination.

Question 23: How many of each type of pamphlet or other material were distributed in the period July 1977 through June 1978? Also, please be more specific about how you encourage broad dissemination of these materials.

Sincerely,

Benjamin S. Rosenthal
Chairman

BSR:tv



 NATIONAL CREDIT UNION ADMINISTRATION

WASHINGTON, D.C. 20456

January 12, 1979

Honorable Benjamin S. Rosenthal
 Chairman
 Commerce, Consumer, and Monetary
 Affairs Subcommittee
 Committee on Government Operations
 House of Representatives
 Rayburn House Office Building
 Room B-377
 Washington, D. C. 20515

Dear Mr. Rosenthal:

This is in response to your letter dated November 27, 1978, requesting further clarification of my views on enforcement of the Equal Credit Opportunity and Fair Housing Acts.

You initially request an expansion of my views on the use of testing in large Federal credit unions (FCU's). I believe that the use of testers to determine whether financial institutions are engaged in prescreening is desirable. Testing has been shown to be one sure means of identifying such activity. I believe that testing could be effectively used in large FCU's to ascertain whether discrimination is taking place at the pre-application stage (*i.e.*, whether the FCU is discouraging potential applicants from filing applications).

The following amplifies our previous input on specific numbered questions.

Question 1

We do not yet have formal examination procedures specifically directed towards identifying prescreening problems. However, examiners routinely observe the handling of applicants during the examination process, as I indicated in my letter of September 8, 1978. Also as noted above, I would support the use of testers in FCU's where it is possible to do so.

Question 5

NCUA examiners evaluate the internal management controls or procedures of FCU's by conducting interviews with appropriate employees. This is a routine process, but the extent and direction of the interviewing is determined in large measure by the extent of complaints and weaknesses encountered in other aspects of the compliance examination.

Question 6

The minimum size of the loan sample examined in depth for evidence of consumer law compliance is the same at the largest FCU's as at the smallest. However, in conducting other portions of the examination, examiners are required to carefully review one out of every ten loans granted by the CU, up to a maximum of 75. From their review of these loans, examiners can determine



NATIONAL CREDIT UNION ADMINISTRATION

WASHINGTON, D.C. 20456

whether the two loans sampled are in fact representative (from a consumer compliance point of view) of the FCU's total loan portfolio.

We would, however, like to expand the loan sampling particularly in larger FCU's and in those FCU's with identified compliance problems. If and when we receive approval for separate compliance examiners, this change will be implemented.

Examiners are trained, through our required examiner training programs, to "follow-up" by giving special attention on subsequent examinations to areas in which an FCU was found to have compliance problems at a previous examination. This is a standard examination technique.

Question 7

The compliance portions of examinations are reviewed selectively in our regional offices by the regional Consumer Affairs Analyst (CAA). An NCUA instruction which we are presently developing will establish the minimum group of compliance reports to be reviewed by each regional CAA. As soon as this instruction goes into effect, the Division of Consumer Affairs in Washington (DCA) will begin a systematic review of each region's conformance with the instruction. In the interim, DCA reviews compliance reports randomly but on a routine basis.

Question 15

Federal credit unions examined from 1-1-77 to 9-77:

	<u>No Violations</u>		<u>1 or More Violations</u>	
	<u>ECOA</u>	<u>Fair Housing</u>	<u>ECOA</u>	<u>Fair Housing</u>
Region I (Boston)	813	698	267	149
Region II (Harrisburg)	754	800	422	193
Region III (Atlanta)	559	497	287	197
Region IV (Toledo)	938	805	269	267
Region V (Austin)	776	627	290	157
Region VI (San Francisco)	686	584	210	82
Total	4,526	4,011	1,745	1,045

Question 20

Subsequent examination reports were available for 22 of the 32 "not substantiated" complaints: (a) only one of these showed a similar violation on a subsequent examination, (b) that complaint alleged discrimination based on marital status and subsequent examination revealed a non-conforming loan application form. In answer to parts (c) and (d) of your question, of the other 10 complaints, the previous examination reports did not show any similar violations.



NATIONAL CREDIT UNION ADMINISTRATION

WASHINGTON, D.C. 20456

Question 23

Approximately 15,000 each of 3 different ECOA pamphlets were distributed by NCUA during the period in question. An example of the transmittal letter is enclosed. It indicates the agency's encouragement of dissemination by FCU's.

If you have additional questions about present and planned enforcement programs I will be pleased to address them.

Sincerely,

A handwritten signature in cursive script that reads "Lawrence Connell".

LAWRENCE CONNELL
Administrator

Enclosures



NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

Office of the Administrator

April 17, 1978

TO THE BOARD OF DIRECTORS OF THE FEDERAL CREDIT UNION ADDRESSED :

RE: The Equal Credit Opportunity Act and ... Credit Rights in Housing

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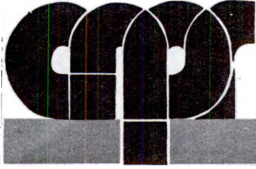
Very obviously this brochure contains material which could be most helpful to your members. Accordingly, I would encourage you to seriously consider making copies available to your members as a part of your educational program.

Sincerely,

Lawrence Connell
LAWRENCE CONNELL
Administrator
(acting)

NCUA Letter No. 18 (1978)

APPENDIX 10.—CENTER FOR NATIONAL POLICY REVIEW



Center for National Policy Review

William L. Taylor, Director

Roger S. Kuhn, Co-Director

August 31, 1978

RECEIVED

Hon. Benjamin S. Rosenthal, Chairman
Subcommittee on Commerce, Consumer & Monetary Affairs
House of Representatives
Rayburn House Office Building, Room B-377
Washington, D.C. 20515

8 1978

Benjamin S. Rosenthal, M.C.

Dear Mr. Chairman:

We welcome the opportunity to respond for the record to the questions posed in your August 17, 1978 letter. I will summarize these comments in my testimony to the Subcommittee on September 12.

1. Historical Background: The history of fair housing enforcement by the four financial regulatory agencies begins with the filing of rule-making petitions by the Center for National Policy Review in March of 1971 on behalf of thirteen civil rights and citizens' organizations, including the NAACP, the National Urban League, the League of Women Voters, the American Friends Service Committee, and the National Committee Against Discrimination in Housing. At that time, none of the agencies had any regulations or any enforcement program dealing with discriminatory mortgage lending practices. Indeed, the three bank regulatory agencies denied any responsibility in this regard.

During the ensuing five years, there were few favorable

developments. In April, 1972, the Federal Home Loan Bank Board issued a regulation (37 F.R. 8436, 4/27/72) prohibiting discrimination in rather general terms, based on an opinion of its General Counsel that the Board had both the power and the duty to enforce compliance with the Fair Housing Act. This was followed in December of 1974 by the promulgation of more detailed nondiscrimination "guidelines" (39 F.R. 43618, 12/17/74), elaborating on the regulations. A key provision of the Board's original proposal, however, was dropped in the final regulation: namely, a requirement that savings and loan associations note the race of mortgage applicants, so as to enable the Board and its examiners to detect patterns of potential discrimination by member institutions.

The only other action taken in response to our petitions was a hearing held by the FDIC on a proposed nondiscrimination and racial data notation regulation (37 F.R. 19385, 9/20/72). The proposed regulation was never issued despite favorable comments by the Office of Management and Budget, the Department of Justice, the Department of Housing and Urban Development, and the U.S. Commission on Civil Rights. The Comptroller of the Currency published an announcement of an intention to consider anti-discrimination regulations (36 F.R. 25167, 12/17/71), but no further action was taken. The Federal Reserve Board did not even formally consider taking regulatory action.

Meanwhile, at the insistence of the Department of Housing and Urban Development, the four agencies in 1972 distributed questionnaires to 18,000 supervised lenders inquiring into their mortgage lending practice. The responses contained admis-

sions of racial redlining by almost 900 institutions, and other forms of discrimination by hundreds of others. Since these responses constituted written admissions of unlawful conduct, one would assume that discrimination was more widespread than the responses revealed. In 1974, at the urging of the civil rights petitioners, the agencies conducted a set of three pilot racial data surveys in 18 SMSA's. The surveys revealed that minority applicants were rejected twice as often as white applicants. The one survey which permitted such analysis showed that the disparity was almost as great ^{even} when such factors as family income, years on the job, and family indebtedness were held constant. No action was taken by the agencies as a result of these surveys.

During this period, several legislative developments began to force the four agencies to begin taking action on fair lending enforcement. These included the enactment of the Equal Credit Opportunity Act of 1974, and the ECOA Amendments of 1976; the enactment of the Home Mortgage Disclosure Act of 1975; and the conduct of oversight hearings by the Senate Banking Committee in March, 1976, which resulted in a report highly critical of the fair lending enforcement activities of the regulatory agencies (S. Rept. 94-930, 6/3/76).

In the face of continued foot-dragging, including the continued refusal to collect race/sex data concerning home loan applicants, eleven of the thirteen petitioners brought suit against the four agencies in April, 1976. The filing of

the suit combined with the legislative oversight noted above have produced substantial movement at three of the four agencies, but minimal progress at the Federal Reserve Board. One development, affecting all four agencies, was the promulgation of amendments to Regulation B, effective in March of 1977, requiring lenders to ask home purchase loan applicants to note their race, sex and certain other information, to be used for monitoring purposes. The regulation, however, is narrow in its coverage and does not require that any use be made of the data (see response to Question 3, below).

2. General Evaluation of Present Enforcement: Effective fair lending enforcement requires a program with several components: (1) The collection and systematic analysis of monitoring data on home loan applicants, including race/sex data, creditworthiness data, property data, and loan terms for the purpose of detecting patterns of potential discrimination for in-depth investigation by examiners. (2) The development of examination methods and examiner training designed to detect the various forms of discrimination, including pre-screening, "effects test" violations, and redlining. (3) The adoption of procedures for thorough investigation and prompt resolution of discrimination complaints. (4) Establishment of civil rights enforcement specialist positions in Washington and regional offices at a policy-making and supervisory level, occupied by persons with experience in civil rights enforcement. (5) Use of the same enforcement methods and sanctions in the case of fair lending violations as are used in cases of viola-

tions of laws and regulations relating to "safety and soundness".

Each of these measures is covered in the settlement agreements entered with three of the four agencies as a result of the civil rights lawsuit. Each is being implemented by those three agencies, and will be discussed in more detail in response to subsequent questions. In general, each of these three agencies is making substantial strides and appears, at the moment, to be committed to effective enforcement.

The same cannot be said, however, of the Federal Reserve Board. A detailed exploration of the current posture of the Federal Reserve Board is contained in the May, 1978 report of Warren Dennis of Pottinger and Company, which was retained by the Board to study its fair lending examination and enforcement program. The summary of Mr. Dennis' findings is attached to this letter as Appendix A. The report accords with our own view that the Board has not recognized civil rights enforcement as an important responsibility; that examiners are not adequately trained, nor are examination methods appropriate for the detection of lending discrimination; that complaint processing procedures are inadequate; and that the Board lacks personnel with specific civil rights enforcement experience or responsibilities.

We understand that the Dennis report has been under study by the Board's staff since May, but thus far the Board has not made any changes initiated in its fair lending enforcement program. In early June, representatives of the Urban League and our Center

met with Chairman Miller to discuss the Board's fair lending enforcement posture, and found Mr. Miller strongly committed to change. Unfortunately, this commitment has not yet been translated into action by the Board's staff or by the Board Committee with jurisdiction over consumer protection and civic rights matters.

3. Loan Application Monitoring: The loan application monitoring information which Regulation B requires all lenders to record is inadequate in several respects: (1) It covers only home purchase loans, omitting construction, refinancing, rehabilitation and improvement loans. (2) No information is required on persons who inquire concerning a loan but do not file an application, thus omitting data potentially useful in detecting pre-screening. (3) No data is called for on persons who fail to supply the information themselves. Experience with the agencies' 1974 Fair Housing Information Survey suggests that about 20% will fail to supply information, and that this will include a higher proportion of rejected applicants. It will also predictably include a higher percentage of members of groups previously discriminated against, since they will fear discriminatory use of the information. Hence the loss of this data is a serious one.

Analysis of Regulation B monitoring data on accepted and rejected applicants can be somewhat helpful in identifying potentially discriminatory rejection patterns based on the characteristics of the borrower, but it does not serve to identify other discrim-

minatory patterns, including various forms of redlining. Moreover, without information concerning borrower creditworthiness, it provides only a very crude index of possible discrimination. Accordingly, we believe that additional information is necessary, concerning creditworthiness, property characteristics and loan terms. To a degree, the items of information to be collected is a question of judgment influenced by collection costs and type of lender. But the following items seem to us a fair minimum:

Creditworthiness: Income of applicant and co-applicant; combined monthly debt payments; combined net worth.

Property data: Location of property (by census tract if lender is subject to HMDA); age of property.

Loan terms: Loan amount requested; loan amount approved; loan-to-value ratio; appraised value-to-purchase price ratio; term to maturity; interest rate; fees or points.

The foregoing information permits a rough determination as to whether differences in treatment of applicants are explained by differences in creditworthiness; whether differences in treatment are correlated with property location or age in a manner suggesting possible redlining; whether discrimination may exist in the fixing of loan terms; and whether under-appraisals reflect a pattern of discrimination based on property location or age.

Since the Federal Reserve Board secures only those data on home loan applications required by Regulation B, the monitoring information available to it is clearly deficient. Even more serious, however, is the fact that the Board and its examiners do not use in any systematic way even those data which

are available. The Board has consistently declined to consider the development of a centralized data collection and analysis system, as the other three agencies are now doing. Arguably, given the small number of mortgage loans made by many state chartered member banks, it might be possible for examiners to perform data analyses on-site during bank examinations. But the Board's examiner manuals provide no instructions concerning analysis of Regulation B monitoring data, nor do they receive training in systematic data analysis. Rather, they are instructed in the most general terms to ascertain the lending policies of the bank through interviews with bank officials, and then to ascertain whether the policies are being adhered to in a non-discriminatory fashion by looking through a sample of files.

The FDIC is currently the most advanced of the agencies in the development of a system for collecting and analysing monitoring information. Its new regulation (43 F.R. 11563, 3/20/78) requires all banks to record race, sex and other personal information on both applicants and persons who inquire about loans, with the information to be supplied by bank personnel if not supplied by the customer. Banks subject to HMDA are required in addition to record comprehensive creditworthiness, property and loan term information on applications. The FDIC is currently field testing alternative data collection and analysis methodologies, to determine the most effective system for detecting discriminatory patterns both in rejections and in the terms of approved loans. The system will make use of creditworthiness and property data to detect possible discrimination based on

the borrower's identify and the age and location of the property. Target date for implementation of the system is May 15, 1979.

Although the Federal Home Loan Bank Board was the first of the agencies to settle the civil rights lawsuit, and is the only agency to have issued substantive anti-discrimination regulations, its current position on the all-important subject of data collection and analysis is unclear. In November, the FHLBB published a proposed regulation (42 F.R. 58182, 11/8/77) containing the basic information concerning borrowers, property and loan terms which would be required to detect possible discrimination. This information included race, sex and other personal characteristics of the applicant; income, indebtedness and other creditworthiness information; age and location of property; and loan terms and loan-to-value ratio. Most important, the regulation would have required institutions to report to the Board aggregate information on applications, rejections and adverse actions broken down by race, sex and marital status. This key provision would have enabled the Board to conduct comparative analyses to detect possible discriminatory patterns among individual institutions as called for by the settlement agreement.

Following an internal debate over the amount of information which should be required on the loan application register and the amount of information to be reported to Washington,

the Board's final regulation (43 F.R. 22332, 5/25/78) retreated on both fronts. The loan application register was shortened, although it retained most of the important information which examiners would require to detect patterns of discrimination. Far more serious, the provision for reporting minimal data to Washington was dropped altogether, and the Board is now engaged in an extended study of alternative loan application registers and alternative methods for using data, with an October 1, 1979 target date for implementation of a final system.

These developments have been of some concern. In the first place, the agreement provided for a thirty-month period, beginning in March, 1977, during which information concerning the Board's examination and enforcement program, including training materials and examination methods, would be shared with the plaintiffs, giving them an opportunity to comment and offer suggestions. It was contemplated that the data analysis program would be in place within a year, providing a year's worth of data and a six-month evaluation and comment period before the agreement ran out. Under the schedule now contemplated by the Board, the data collection and analysis system will not be installed until just after the end of the thirty-month period. Accordingly, the settlement agreement is now being extended for an additional eighteen months.

Our second concern is over the dropping of any provision for data reporting from the regulation. Obviously, unless minimal data is collected centrally, comparative analysis of institutions, areas and trends as called for by the settlement, is impossible. The Board has yet to adopt a position on this subject, which goes to the heart of the settlement agreement and, more significantly, to the heart of effective fair lending enforcement.

The Office of the Comptroller has not yet published a regulation, but is in an advanced stage of developing a regulatory proposal for the collection of monitoring data. The current thinking at the staff level suggests that the ultimate proposal will be a comprehensive one, calling for the collection and analysis of appropriate personal, creditworthiness and property data and centralized computer analysis.

4. Pre-screening and Discouragement: Pre-screening is without doubt a major source of discrimination in the lending process. Moreover, with the adoption of data collection and analysis, permitting ready detection of discriminatory patterns in the treatment of applications, we believe that discriminatory pre-screening may well increase as discriminatory lenders seek to avoid making loans on improper grounds without creating a record from which this may be detected. Accordingly, detection of pre-screening is of utmost importance.

There are two fundamentally different approaches to the

detection of pre-screening, both of which ought to be used in view of the essential difficulty of detecting the practice. One approach relies on statistics, the other on specially designed examination techniques.

The most obvious statistical approach is the one adopted by the FDIC: collection of race/sex data on persons who inquire about loan terms but do not file applications. By analyzing the profile of those who inquire but do not apply, it may be possible to detect discriminatory pre-screening. On the other hand, this method has limitations: no agency has been willing to apply it to persons who make telephone inquiries, and to do so presents obvious difficulties. Since most inquiries are in fact made by phone or indirectly through brokers, data concerning in-person or written inquiries (which is what the FDIC regulation calls for) has limited value.

The staff of the OCC is considering other statistical approaches. For example, if a lender rejects markedly fewer applications than most, this may be a sign that applications are being pre-screened. Or if a lender receives markedly fewer applications from minorities and women than most other lenders in the area, or than would be predicted from the demographic composition of the community where it does business, these data may likewise indicate pre-screening.

In all such cases, however, data can be only suggestive; they cannot prove that discriminatory pre-screening exists. Follow-up examinations are required in every case. Examination techniques, however, must be specially designed, since by definition pre-screening leaves no paper trail and it is unlikely

to be admitted during interviews with lender personnel. Carefully trained examiners can, however, observe the way customers are routed within the bank, and can arrange to overhear in-person and telephone conversations with receptionists and loan personnel.

In addition, the agencies should make use of "testers"-- a technique long used to detect discrimination in real estate sales and rentals. This would involve having agency personnel (not necessarily examiners) make telephone or in-person inquiries concerning the availability of loans on hypothetical properties of differing ages in different neighborhoods, or having a minority or female individual and a white male inquire about similar loans, to determine whether the responses suggested differential treatment or discouragement.

So far the agencies have resisted the suggestion that this be done, either out of a general distaste for the technique, or on the ground that it is inconsistent with the traditional relationship of the examiner to the lender -- i.e., one of cooperation and assistance. We do not believe that this relationship is appropriate in the case of an examination program designed to detect violations of law, however appropriate it may be in the context of assuring safety and soundness. In any case, for some time now the Massachusetts State Banking Commission has used the technique, and following her appearance before the Subcommittee the Commissioner of Banks will conduct a meeting at which she will share her agency's experience with

representatives of the federal agencies. We hope this will be useful in persuading the latter of the desirability of using this method in detecting pre-screening.

At the moment, we do not believe that any of the agencies has a satisfactory set of examination instructions covering pre-screening, although both the FDIC and the OCC are developing statistical approaches to detection.

A final source of pre-screening derives from the on-going business relationships and marketing practices of lenders. If a lender maintains on-going relationships only with brokers and developers who serve a white clientele or are active only in suburban neighborhoods, minority borrowers are as effectively pre-screened as if they were individually discouraged. Likewise, if loan applications are accepted only at suburban locations, or if office staff are all white and all male, it is predictable that few minority or female persons will apply for loans.

Only the FHLBB has come to grips in any way with business practices such as these: Its nondiscrimination regulations (12 CFR 531.8-7(d)) urge member institutions to review their business relationships and marketing practices to ensure that loan services are available without discrimination to the entire community, and further states the Bank Board's intention to systematically review associations' marketing practices wherever evidence of discrimination is discovered.

5. Uniform Enforcement Guidelines: Our detailed comments

on the proposed uniform fair lending enforcement guidelines (43 F.R. 29256, 7/6/78) are attached as Appendix B. In general, we believe the guidelines are unsatisfactory in several respects, and somewhat less useful than those released on May 25 by the FHLBB. They provide little incentive for lenders to end discriminatory practices voluntarily, since the enforcement actions proposed in the event of violations have little bite. They consist simply of securing an assurance against future violations; the refund of charges exacted from victims of discrimination if they can be identified and located; and in some cases, an affirmative advertising program (although advertising is generally not used to solicit mortgage loans) and notification to brokers that the institution pursues a nondiscriminatory policy. As our comments suggest, we think more affirmative remedial action should be required, and more frequent follow-up examinations should be used to ensure compliance.

6. Staff Organization and Training: Fair lending enforcement requires particular expertise, sensitivity and techniques which differ markedly not only from those required for traditional safety and soundness supervision but also from those required for consumer protection enforcement. Examination for compliance with Truth-in Lending, for example, can consist largely of spot checking disclosure forms and making calculations of finance charges. Discrimination examination requires detection of a broad range of practices, including subconscious stereotyping by loan officers, the application of unjustified lending criteria whose

effect is discriminatory, and marketing practices which make loans unavailable in minority neighborhoods. A sensitive understanding of the history and nature of discrimination in the real estate industry is required, along with sophisticated interview techniques, systematic data analysis, and an understanding of legal principles applicable in the civil rights field. Accordingly, specialized personnel is required to ensure that the examination process and the training of examiners are appropriately geared to the nature of the problem.

To a large degree, this fact is now recognized in the organization and staffing of three of the four agencies, the Federal Reserve Board being the single exception. The Federal Reserve has a Consumer Affairs Division with responsibility for compliance with the Real Estate Settlement Procedures Act, Truth in Lending, the Fair Credit Reporting Act, the Fair Credit Billing Act, the Consumer Leasing Act, the Federal Trade Commission Act (Regulation AA), the Flood Disaster Protection Act, and Regulation Q (interest on deposits), as well as the ECOA, Regulation B and the Fair Housing Act. No one in the Division or in the district Reserve Banks has special expertise, experience, or responsibilities with respect to fair lending enforcement. The Dennis report (p.12) states:

Our negative conclusions with respect to the Board's anti-discrimination enforcement efforts derive principally from our observations relative to the Board's not having recognized civil rights compliance as a discrete and separate area of responsibility differing from other consumer protection measures, and requiring specialized expertise and policy consideration.

Both the FDIC and the OCC have made major organizational changes, creating a separate civil rights office within an expanded and up-graded division dealing with civil rights, consumer protection and urban lending. Recruitment to fill the new positions has lagged at the FDIC, but an Acting Director of the Office of Consumer Affairs and Civil Rights has now been appointed. At the OCC, the new directors of both the over-all consumer and civil rights office and the civil rights unit are now on board.

The FHLBB has pursued a different route. There, pursuant to the settlement agreement, a special assistant for civil rights has been appointed in the Office of Examinations, with responsibility for overseeing examiner training and examination methods pertaining to fair lending. General policy coordination for complaint processing, data analysis and other phases of the Board's fair lending program is assigned to the Office of Community Investment's Consumer Division. While this arrangement is not ideal, it is functioning well because of the experience and commitment of the incumbents of these offices.

All of the agencies, with the exception again of the Federal Reserve, have also appointed civil rights specialists in their regional offices. This, too, was an element of the settlement agreements. Although they are beginning to exercise regional oversight of examinations and complaint investigations, they will not become uniformly and fully effective until the Washington civil rights offices have had time to provide additional training and set standards for their activities. Further, the

regional positions at the OCC are not yet established as regular permanent positions, but rather are filled on a rotating basis by senior examiners. We understand this is to be changed.

In the final analysis, the enforcement of the fair lending laws depends upon the training, commitment and skill of individual bank examiners. This has been strikingly demonstrated by the experience of the FHLBB since its examiners began undergoing training specifically for fair lending compliance examinations. Prior to 1977, few violations of the Fair Housing Act or the Board's nondiscrimination regulations were discovered by examiners. But in the 1977 calendar year, as examiners were retrained, 2,804 actual or possible violations were identified, 1,949 supervisory letters were sent, 52 special examinations were conducted, and more serious supervisory action was taken in eight cases. During a test conducted by examiners this summer using monitoring data to be required by the Board's new regulations, examiners reported violations at 133 of 227 associations examined, of which 16 involved apparent discriminatory activities and the balance such infractions as failure to collect monitoring data or failure to display required fair lending lobby posters.

In the case of the FHLBB, fair lending examinations are conducted by regular examiners as part of the over-all examination of the institution. All examiners are trained in fair lending, and their training is being steadily upgraded under the guidance of the Board's civil rights specialist.

In the case of the FDIC and the OCC, fair lending examination

are conducted as part of a separate "consumer compliance" examination by examiners who are assigned to this duty for six months and then return to performing commercial examinations. This system seems undesirable for two important reasons: (1) By the time examiners gain sufficient experience with this new form of examination, they are reassigned to commercial examinations and their experience is lost. (2) Examiners inevitably believe that consumer/fair lending examinations are a diversion from their primary role, and that their performance will not materially advance their careers. Both agencies are considering a change in the present arrangement, possibly creating a corps of specialists in consumer/civil rights compliance (perhaps with responsibilities under the Community Reinvestment Act as well), with a separate career ladder for the specialists. In our view this should be done with dispatch.

As for examiner training, the current program of the OCC was developed with assistance from the Justice Department's Civil Rights Division and is fairly strong. The FDIC's program requires a rather thorough upgrading, a process which is about to be undertaken with, we understand, the assistance of an outside consultant.

We should stress, however, certain weaknesses in examiner training and examination methods common to all of the agencies, which should be addressed over the coming months. First, as already indicated, pre-screening is not adequately dealt with, nor can it be in our view without the use of "testing". Secondly,

as monitoring data on applicant characteristics, creditworthiness, property characteristics and loan terms become available in the coming year, examiners must be trained to make use of this essential information. Finally, although many examiners now make use of Home Mortgage Disclosure Act data to detect possible redlining, they are not taught uniformly to do so. This omission may be rendered unimportant once locational data on individual loans is made available through each agency's own record keeping requirements, but it is essential that geographic data in some form be made use of systematically.

The Federal Reserve Board's fair lending examination program and examiner training are woefully inadequate. The Board has a special force of so-called "compliance examiners" who conduct examinations covering the full range of consumer protections laws referred to at the beginning of this section. They receive hardly any training or instructions, however, concerning fair lending. The Dennis report (pp. 9 and 13) contains the following observations and conclusions:

Examiners interviewed seemed unsure of their expertise in the area of civil rights investigation, and suggested that this "unsureness" was shared by most of their colleagues. In some respects there was evidence of a mild hostility toward civil rights matters based partly on a perception that devotion of their time and effort to civil rights matters would not materially advance their progress within the System, as it was not an area to which the Board attached great importance, and partly on a lack of confidence in their own knowledge of the rules of construction in the area.

Examiners also placed a healthy emphasis on the need to maintain the safety and soundness of institutions, but expressed concern that enforcement of civil rights laws might be inconsistent with this responsibility.

* * * * *

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4. Examiners are given virtually no guidance in how to recognize discriminatory lending practices or the legal standards for evaluating such practices.

5. Investigative tools and techniques for finding discrimination are lacking, and the sampling techniques in use are wholly inappropriate for finding substantive violations of law.

As for detection of redlining, since the Federal Reserve Board has not proposed any record-keeping requirement of its own, its only source of data on geographic lending patterns is HMDA. But the Board's HMDA Examination Instructions state that HMDA "is not an anti-redlining measure ... it is simply a disclosure act, relying on public scrutiny for its effect." In interrogatory responses filed in the civil rights lawsuit, the plaintiffs were advised by the Board that "HMDA data is [sic] not collected and analyzed by System personnel because such action is not mandated by the Act and would be at variance with its purpose." Examiners are therefore instructed to ensure that the data are compiled and disclosed as required by HMDA and Regulation C, but not to make use of the data to detect possible discriminatory redlining.

7. Consumer Complaint Handling: The chief requirements for effective handling fair lending complaints are a thorough investigative process which includes, in the usual case, an interview with the complainant, and time deadlines for completion of this process and the disposition of the complaint. With the exception of the Federal Reserve Board, all of the agencies now have good written procedures, but we do not have sufficient information to judge whether those procedures are followed in practice. Overseeing the complaint process, however, is within

the purview of the new civil rights specialists in the Washington and regional offices of the three agencies, and any deficiencies which may exist will hopefully be corrected over time.

The Federal Reserve has no procedures for investigating or disposing of complaints. Its only regulation on the subject is a sentence in Regulation AA providing that within 15 days of the receipt of a complaint, the complainant shall be advised either of its disposition or of the date on which its disposition may be expected. The Board does have an elaborate computerized system for monitoring the status of consumer complaints as they wend their way through the System's bureaucracy -- a system which turns out 14 monthly reports on the status of 236 categories of complaints, according to an affidavit of Janet Hart filed in the civil rights lawsuit. But there are no instructions on how complaints are to be investigated, how their validity is to be determined, or what action is to be taken on them if found valid.

According to information furnished in the civil rights lawsuit, the procedures which are followed in practice consist of a written or verbal inquiry to a bank official, or occasionally a review of bank records. On the basis of this inquiry, the complainant is notified that no violation has been found. The complainant is never interviewed, nor is there any other inquiry made outside the bank itself.

8. Civil Damages Litigation: In our view, government agencies should, as a general matter, inform the public of their rights. The FHLBB has taken two useful steps in this direction: (1) The Fair Lending lobby poster required by the Board's regulation in-

forms readers that they may sue for relief if they believe they have suffered discrimination. (2) Complainants are advised of their right to sue when the Board has investigated a complaint and found it valid. The OCC has issued a pamphlet outlining various consumer protection and fair lending statutes and advising national bank customers of their rights in general terms.

We do not believe, however, that civil litigation ordinarily is a promising avenue for relief from lending discrimination for several reasons. (1) Proving discrimination with the certainty required in litigation may require amassing and analyzing a large volume of data reflecting a discriminatory pattern, and this involves time and expense beyond the means of most loan-seekers. (2) The potential recovery in the case of a discriminatory loan denial rarely justifies the cost and inconvenience of a lawsuit. (3) Discriminatory lending practices are often subtle and hidden from view, and the victim is often unaware that he or she has in fact suffered discrimination and has a right to sue. (4) Most credit-worthy people seeking home loans will often secure credit from another lender -- though on less favorable terms -- and will have little interest in pursuing costly, time-consuming litigation to secure the limited relief available.

Accordingly, while we believe the public should be advised of its right to sue for damages or other relief in cases of discrimination, we are convinced that the principal means of protecting minorities and women from discrimination and its consequences

lie in enforcement action by the agencies. Primarily this means effective examination, backed by the supervisory powers and sanctions possessed by each agency, to detect discriminatory practices, prevent their continuance, and require offenders to make restitution to the victims of discrimination when they can be found. Secondly, this means prompt and thorough investigation of individual complaints, followed again by appropriate remedial action where complaints are found valid. We believe that three of the four agencies which are the subject of your hearings are making real progress in this direction.

Sincerely,



William L. Taylor
Director

Enclosures

B. Summary Of Observations

1. The Board has appeared hesitant to issue an unambiguous statement of its commitment to vigorous enforcement of civil rights laws among state member banks and has not identified civil rights legislation as having any particular priority among the Boards enforcement responsibilities. Consequently, examiners and other agency staff have not identified civil rights compliance as a priority within the agency and this has had a negative influence on the effectiveness of the entire enforcement program. At the same time, regulated lenders subject to the Board's supervisory jurisdiction have not had the benefit of clear policy direction on civil rights matters from their principal regulator. Further, they have not been given reasonable guidance as to the salient elements and indices of compliance with civil rights laws, necessary for their own protection in the event of a court-based challenge by individual, class or governmental plaintiffs.

2. The Board's enforcement and advisory programs do not adequately reflect the special nature of civil rights laws as construed by the courts and the extent to which it is inappropriate to interpret such laws in the same manner as other consumer or banking measures. Also, the Board's programs do not adequately reflect the presence and influence of a vast judicial literature containing precedents in the civil rights area in fields other than credit (housing, employment, education and voting,) which, under settled principles of construction, are also applicable to credit practices.

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3. The Board's enforcement and advisory programs do not adequately reflect the historical context in which current civil rights laws affecting lending practices were enacted. Consequently, interpretation of these laws to lenders, both in advisory visits and in the course of regular examinations, are likely to be lacking in sufficient information about the scope and application of civil rights laws.

4. Examiners are given virtually no guidance in how to recognize discriminatory lending practices or the legal standards for evaluating such practices.

5. Investigative tools and techniques for finding discrimination are lacking, and the sampling techniques in use are wholly inappropriate for finding substantive violations of law.

6. The Board's program lacks nationwide uniformity, with the level of resources, procedures and enforcement policies varying widely among the Reserve Banks.

7. The Board's procedures for handling complaints do not adequately assure that individual allegations of discrimination are investigated thoroughly and fairly or that potential "patterns" of discrimination are identified in the course of investigating individual matters.



Center for National Policy Review

William L. Taylor, Director

Roger S. Kuhn, Co-Director

August 25, 1978

Equal Credit Opportunity Guidelines
Room B-4107
Washington, D. C. 20551

Dear Sir or Madam:

The following comments on the proposed uniform guidelines for enforcement of Regulation B, the Equal Credit Opportunity Act, and the Fair Housing Act (43 F.R. 29256) are submitted by the Center for National Policy Review on behalf of the organizations which were plaintiffs in National Urban League, et al., v. Comptroller of the Currency, et al.

"General Enforcement Policy"

1. The proposed guidelines specify two general objectives of enforcement policy: First, to require corrective action for violations; and second, to assure compliance in the future. A third objective is recognized by the courts as an essential element in remedying violations of anti-discrimination laws: to remove the continuing effects of discriminatory conduct which has now ceased. This principle has been applied throughout the field of civil rights, including education (e.g., Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1), public housing (e.g., Hills v. Gautreaux, 425 U.S. 284); urban renewal (Garrett v. Hamtramck, 503 F.2d 1236); and employment (e.g., Pettway v. American Cast Iron Pipe Co., 494 F.2d 211). Where a lender has been found to have engaged in discriminatory conduct, the remedial action required should be broad enough to eliminate any lingering effects which may remain even after the conduct itself has ceased. This principle should be explicitly announced in the statement of "General Enforcement Policy." It should also be implemented by specific remedial requirements, some of which will be suggested later in these comments.

2. We believe that all lenders should be required to have written home loan underwriting and appraisal policies which are available to the public. The Federal Home Loan Bank Board has taken a major step in this direction by requiring lenders to have publicly available underwriting standards. The requirement in the proposed enforcement guidelines that institutions which have discriminated adopt written loan policies is a welcome, but in our view rather minimal, step.

The term "loan policy", however, requires clarification. It could be read to mean, for example, merely policies concerning interest rates and down-payments. We assume that the purpose of the requirement is to ensure that, where discrimination has been found, loan policies will in the future be nondiscriminatory. To achieve this objective, the required written policies should cover those aspects of lending which are potentially discriminatory. This includes both underwriting standards and appraisal standards. Therefore we urge that "loan underwriting and

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appraisal standards" be substituted for "loan policies" in the first paragraph of the statement of "General Enforcement Policy."

3. The proposal to require a "compliance plan" from lenders found to have discriminated is a sound one, and fully in accord with the common practice of courts and executive agencies in requiring compliance plans of public agencies and private firms which have been found in violation of civil rights requirements. Compliance plans are required, for example, by the Department of Health, Education and Welfare in enforcing Title VI of the 1964 Civil Rights Act, by the Treasury Department's Office of Revenue Sharing in enforcing the civil rights provisions of the State and Local Government Fiscal Assistance Act, 31 U.S.C. 1244. The published proposal, however, seems unduly narrow. The language suggests that a "compliance plan" need cover compliance only with the written loan policy just referred to. It seems both logical and necessary, however, that it cover compliance with all of the remedial actions required under all of the provisions of the guidelines.

4. The proposed guidelines state that, in prescribing remedial action, the supervisory agency will consider, in addition to the nature of the violation, the condition of the creditor and the cost of the corrective action proposed. While it may be that these considerations cannot be totally ignored, it seems most inappropriate to shift the cost of discrimination and its effects from the lender to the borrowing public because of the lender's financial condition or the cost of assuring an effective remedy. If the lender's financial condition is weak, it may well be the result of weak management — hardly a reason to afford a less-than-adequate remedy for management's violations of the anti-discrimination laws. The supervisory agencies have authority to provide advances or other assistance to institutions in financial difficulty, and the exercise of this authority is a far more appropriate means of protecting an institution from the consequences of improper discrimination than shifting the cost to the female or minority victims of discrimination. As for considering the cost of the remedy, it is clear that the cost of the remedy is not a proper reason for withholding adequate relief. E.G., Milliken v. Bradley, 433 U.S. 267.

Accordingly, we urge that the references to creditor condition and remedial cost be dropped, or at the very least that these be stated as subsidiary consideration in formulating corrective action.

5. It seems clear that a reference to sections 810 and 812 of the Fair Housing Act should be added at the end of the second paragraph of the "General Enforcement Policy" statement.

6. No mention is made of the steps which the supervisory agencies intend to take to ensure that remedial measures are in fact instituted by the institution in question -- that is, to ensure that mandated corrective action has been taken, that any "compliance plan" is being adhered to, and that measures have been taken to ensure against future violations. The enforcement guidelines published by the Federal Home Loan Bank Board on May 25, 1978 (page 2), provide for this to be done through regular examinations, and through more frequent examinations where this seems desirable. The joint guidelines should contain similar provisions.

"Specific Violations"

1. The heading of section I, "Discouraging Applications on a Prohibited Basis . . ." refers only to Regulation B. Discouraging applications for housing loans on the basis of race, religion, national origin or sex violates not only Regulation B and the ECOA, but also the Fair Housing Act. It is suggested that the heading reference be changed to refer to "the Act," or that a reference to section 805 of the Fair Housing Act be added.

2. The remedial actions contemplated by the proposed guidelines are generally sufficient to provide restitution to individual victims of discrimination, where they can be identified. But they are largely ineffective to eradicate the continuing effects of discriminatory practices on the affected class. This point is perhaps most evident in the context of pre-screening, which is the type of violation covered in section I.

The proposed guidelines would require affirmative advertising, targeted at the class previously discriminated against. While such advertising is undoubtedly a desirable measure, experience with affirmative advertising demonstrates that, taken alone, it is ineffective. In the context of real estate lending, it is especially ineffective because advertising is not a principal medium by which home loans are marketed. Accordingly, additional remedial action is quite clearly required.

The proposed guidelines suggest one additional action: "The creditor may be required to advise agents, dealers and community groups that it pursues a non-discriminatory lending policy." There are two reasons why this statement is unsatisfactory as written. First, it does not make notification mandatory, even in cases where a past course of conduct has given rise to the perception among agents, dealers and community members that applications from particular sources will not be looked on favorably. Secondly, the notice required evidently would state only that the lender "pursues a non-discriminatory lending policy", thus merely repeating assurances previously embodied, in the case of home loans, in the lender's advertising and in the required lobby poster. Experience demonstrates that a statement that the lender does not discriminate will have no effect in countering a discriminatory reputation, but will be greeted with cynical disbelief at best.

The proposed uniform guidelines should be contrasted with the guidelines issued last May 25 by the Federal Home Loan Bank Board. Pages 3 and 5 of the FHLBB guidelines provide that, if it is determined that action is necessary to inform the public that an unlawful practice has been discontinued, loan sources and community groups must be notified of the lender's "new" policies and practices. The FHLBB guidelines require also that brokers be told of procedures to follow to prevent perpetuation of the effects of the discontinued practices. As the FHLBB evidently recognizes, in these circumstances notification to loan sources should be mandatory, and the notice must state explicitly that prior practices have been discontinued or must announce the adoption of specific new policies — otherwise, the remedial action will have little or no impact.

But where a lender has engaged in discriminatory pre-screening, or in discriminatory treatment of applications (dealt with in sections II and III), affirmative advertising and notification of loan sources are often not sufficient to overcome the effects of the discriminatory practices. For example, if discrimination has consisted of discouraging or rejecting applications or requiring more onerous terms on loans to residents of minority neighborhoods, and the institution has previously not assigned lending staff to branches in those neighborhoods, it should be required to do so. If its discriminatory practices have included maintaining relationships only with real estate brokers and builders serving white clients and neighborhoods, it should be required affirmatively to seek relationships with brokers and builders who regularly serve minorities. If its staff and management have been essentially male and white, it should be required to make specific efforts to redress this imbalance — not because the law requires a balanced representation of women and minorities, but because the addition of minorities and women in responsible positions is an especially effective means of counteracting a previous reputation for discrimination.

The proposed guidelines, to be sure, cannot spell out the precise actions which should be required of a lender upon a finding of specific types of violation. Indeed, it is probably unwise for the supervisory agency to mandate particular steps to be taken in each type of case, since the actions which will be appropriate and effective will vary from one institution to another. Our basic points, therefore are two:

First, affirmative advertising and notice to loan sources are not sufficient in many cases, and the guidelines should therefore indicate that additional action may be required and should suggest what types of action this may be.

Second, lenders themselves should be required to develop "compliance plans", to be reviewed by the supervisory agency, which include not merely steps to implement written loan policies, but a full range of measures to ensure that the effects of previous discriminatory practices will be eradicated.

General Comment

The chief objective of enforcement should be to ensure compliance with law promptly and at reasonable cost to the public and to the object of regulation. Enforcement mechanisms, remedial measures, and sanctions should therefore, to the maximum extent feasible, be designed to promote voluntary compliance. Our general observation concerning the proposed enforcement guidelines and the remedial actions they propose is that they do little to encourage voluntary compliance. The remedial approach, with modest departures, is to require lenders who have committed violations of law or regulation to cease their violations and offer restitution to individuals who have suffered harm to the extent they can be identified and contacted. Having done this, however, the lender is in essentially the same position as it would have been had it not committed the violation — that is, it has not suffered in consequence. There is little incentive, therefore, for a lender to take steps to prevent violations from occurring. In the case of lenders failing to collect monitoring information (section V), there is no incentive at all.

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We recognize that the financial regulatory agencies have no authority to impose punitive sanctions to deter violations. Nonetheless, more effective remedial requirements of the sort which we have suggested, and more frequent examinations such as are used where "safety and soundness" violations are discovered, would help deter violations and encourage voluntary compliance because of the costs and inconvenience involved. Thus, such enforcement measures would have double value — ensuring that the effects of violations are fully eliminated, and encouraging voluntary compliance.

Sincerely,



Roger S. Kuhn
Co-director

cc: All Plaintiffs



Center for National Policy Review

William L. Taylor, Director

Roger S. Kuhn, Co-Director

May 31, 1978

MEMORANDUM

TO: Plaintiffs and Others Interested in National Urban League v. Comptroller of the Currency

FROM: Bill Taylor, Roger Kuhn and Marty Sloane

RE: Developments with the FHLBB

As most of you know, the Federal Home Loan Bank Board has adopted its final non-discrimination and data collection regulations (43 F.R. 22332, May 25, 1978). A copy of the regulations is attached.

Although in many respects the regulations are good, in one area of critical concern they represent a substantial retreat threatening compliance with the settlement agreement: The Board has once again postponed the establishment of the data collection and analysis program which it agreed to adopt.

The November proposal would have required lenders to report to the Board all loan rejections and adverse actions by race, sex and marital status. This would have enabled the Board to conduct analyses to detect patterns of potential discrimination for follow-up examination in depth. In addition, the proposal would have required associations to maintain a comprehensive "loan application register", giving specific information with regard to each application. This would have provided a means for examiners to detect more detailed patterns and to identify individual loan files for review.

The final regulation reduces the amount of information required on the application register, primarily by eliminating data relating to the applicant's creditworthiness. It remains a useful tool, however, since it retains information relating to race/sex/marital status/age; location and age of the property; action taken on the application; and loan terms if approved.

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But the Board has abandoned the requirement that any data be reported to Washington for analysis, and the explanatory material preceding the text of the regulation announces the Board's intention to conduct a series of tests of different forms of application register and reporting requirements before deciding upon a "uniform system." This promises indefinite delay in implementing the single most important element of a fair lending enforcement program and in complying with the central provision of the settlement agreement.

On the day the Board adopted its regulation, Chairman McKinney requested a meeting with representatives of the plaintiffs; the meeting was held on May 24 with both McKinney and new Board member Anita Miller attending. McKinney and Miller expressed dissatisfaction with the limited data collection and analysis program and the extensive loan register proposed in November, and expressed the view that further studies were necessary to determine what data collection program would be most useful and cost-effective. We replied that the time for further studies seemed long past; that a simple program of analysis based on limited data would serve the intended purpose of assisting examiners to detect discriminatory patterns for in-depth examination; and that a more elaborate system would take years to develop and might be unnecessarily expensive. McKinney said that the time schedule for the development and implementation of a final data collection and analysis program would be ready by the third week in June, and we agreed to meet with his staff to review it. If it is satisfactory, we will ask the Board to amend the agreement to embody this deadline and extend the life of the agreement 18 months beyond it.

* * * * *

In other respects, the regulations follow the November proposal, with some improvements and one major deficiency. The improvements are:

- + The November proposal required associations to have written loan underwriting standards. The final regulation requires that these standards be available to the public.
- + The final regulation explicitly prohibits the knowing use of appraisal standards which are discriminatory "per se or in effect".
- + The Board has proposed for public comment a regulation which would require associations to furnish a copy of the appraisal report when a loan is denied on the basis of the appraisal. A copy of this proposal is appended to the enclosed copy of the regulation; we will file comments and urge you to do so as well.

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- + Some improvements have been made in the description of neighborhood factors which may and may not be considered in lending decisions.
- + The Fair Housing Lender poster has been revised to mention the right to complain to the FHLBB or file a law suit in cases of suspected discrimination.

The chief deficiency in the final regulation is the way it deals with "pre-screening". Associations need not collect race/sex data on persons who make loan inquiries, unless the inquirer makes an "application" as that term is defined by the Federal Reserve Board under Regulation B. The definition (contained in an as-yet unpublished staff letter) is so vague as to be unmanageable, and in any event leaves it within the power of the lender to determine what inquiries will be treated as "applications" and thus subject to the race/sex data notation requirement. Although devising a method for dealing with pre-screening and collecting data on inquirers is not free from difficulty, the FDIC's rather straightforward regulation is far preferable to the FHLBB's and promises to elicit far more useful information for enforcement purposes.



Center for National Policy Review

William L. Taylor, Director

Roger S. Kuhn, Co-Director

December 27, 1978

Anita Miller
 Commissioner
 Federal Home Loan
 Bank Board
 1700 G Street, N. W.
 Washington, D. C. 20552

Dear Anita:

At our December 13th meeting you asked if we would share our thoughts with you concerning the detection of "prescreening." Here they are.

As a preliminary matter, it seems worth noting that "prescreening" can take a number of quite different forms. First, it may take place within the institution, where personnel from receptionists to loan officers may discourage would-be borrowers from filing applications. At another level, real estate brokers or builders often suggest financing sources to their clients, steering them to preselected lenders; or a broker may simply restrict the character of the clientele or neighborhood he or she serves, thereby effectively prescreening applications to lenders with which he or she regularly does business. Finally, prescreening may be the natural consequence of known or perceived policies of a lender. For example, if it is believed that an association makes no loans on properties in certain areas, or on homes under \$30,000, it will receive few if any applications on such properties.

The problem in each case, of course, is to develop means for detecting prescreening, and then to distinguish between prescreening based upon proper considerations and that based upon the race or sex of the customer or upon other improper considerations such as property age or location. Both tasks may be difficult, but no less important for that reason. Indeed, with the upgrading of the Bank Board's examination and enforcement program, improper lending practices may move from the post-application to the pre-application stage, as some lenders seek to avoid making a written record. This of course increases the importance of dealing with prescreening. Here are several approaches we would suggest:

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1. **Statistical:** Unless applicants are being prescreened, one would expect that a significant proportion of them would be rejected. Accordingly, an abnormally low rejection rate is evidence of prescreening. (For example, if a normal rejection rate is 15-20%, a rejection rate of 5% suggests prescreening). If the rejection rate is abnormally low only for minorities or women, this would indicate either that whites or men are suffering discriminatory rejections, or that minorities or women are being prescreened on the basis of race or sex; and history suggests that the latter is by far the more reasonable inference. If the rejection rate is abnormally low for both groups, then it becomes necessary to look at application flow to see whether the prescreening disproportionately screens out minorities or women. This can be done by comparing the race-sex profile of applicants with that of the association's community (as defined for CRA purposes), or with that of other associations serving the same area. A disproportionate low number of minorities or women in the applicant profile combined with an abnormally low rejection rate suggests that the prescreening is discriminatory.

The Bank Board's data collection and analysis program, combined with CRA and census information, would permit the Board to perform analyses of the sort suggested. Of course, the analyses can only raise questions for examiners to pursue through interviews with association personnel, real estate brokers, community groups, customers and former employees. But statistical analysis can be the trigger that prompts this more extensive investigation.

2. **"Testing":** I know you are familiar with the use of "testers" in detecting discrimination in real estate sales and rentals. Although the process may be somewhat more complex, the technique is adaptable to the case of mortgage lending discrimination. Through properly matched telephone inquiries or personal visits, testing can reveal differential treatment based, for example, on the race or sex of the inquirer, or the location or age of the property. Testing may not be well adapted to detecting discrimination in the accept-reject decision or in the award of loan terms, because the large number of factors entering into these decisions requires analysis of more data than testing can normally produce. But testing can be useful in detecting differential treatment in initial contacts with the lender.

Obviously testing must be carefully planned and executed. Many fair housing and other local groups have had experience in real estate testing and others have the capacity, with proper preparation, to carry on an effective testing program. Zina Greene of the Comptroller's Office has proposed the preparation and publication of a booklet on testing methods for use by fair housing groups, and also the conduct of training for testers. This would

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be highly useful. On the other hand, the Bank Board and other agencies ought to be prepared to conduct testing themselves in appropriate cases. Where there is an indication that discriminatory prescreening is occurring -- for example, as a result of statistical analysis or a customer complaint -- testing seems clearly called for. If there is no fair housing or other group with the experience or capacity to do the job, then it should be done by agency personnel. We know that the agencies resist the idea of using bank examiners as testers, because it is seen as inconsistent with their traditional function of assisting lenders to overcome weaknesses in management and lending practices. However, since the agencies have more recently been given law enforcement as well as safety and soundness responsibilities, this form of investigative work seems altogether appropriate. Perhaps it should be assigned to special compliance personnel rather than regular examiners.

3. Examination Techniques: To detect prescreening within the association's offices, the examiner can start by observing and listening to the way in-person and telephone inquiries are handled by association personnel. What questions are asked during the initial contact? Are certain types of inquirers steered to certain loan officers? Are some phone inquiries encouraged, and others discouraged? The second step should be to conduct interviews with association personnel involved in the initial contact. The objective should be to ascertain what the employee's instructions are, what procedures he or she follows, what questions are asked and for what purpose, and the like. Interview technique is important here; the examiner must avoid putting the interviewee on guard. Good training for examiners is essential, and techniques can be improved with experience.

Detection of prescreening outside the association involves interviews of the same sort involved in the CRA assessment process and consequently could be combined. Brokers and builders who regularly refer clients to the association should be asked their understanding of the association's policies and practices; other brokers (especially those serving minority home-buyers) should be asked the same questions. Fair housing and other community groups should be consulted to ascertain their perception of which local lenders are engaged in prescreening. While this sort of far-reaching investigation is probably not feasible in every examination, it is an important component of an investigation where more routine steps have given rise to suspicion.

We think that at this early stage it is impossible to say that any one of these approaches is superior to any other. Indeed, the prescreening problem is so intractable and multifaceted that we think it important to use all of these techniques. Probably testing by agency personnel and interviews

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with brokers and fair housing groups should be reserved for those cases where statistical analysis or on-site observations and interviews suggest that improper prescreening is occurring. But the techniques are important as follow-up procedures.

At your suggestion, I called Barry Tate of the U. S. League but found him on vacation until January 8th; accordingly, this letter is written without the benefit of his comments. I am sending him a copy, however, and will call him when he returns. I will let you know if we think these suggestions should be modified as a result of our conversation. Meanwhile, I hope you will find this letter helpful.

Sincerely,



Roger S. Kuhn
Co-director

cc: Zina Greene
Janet Hart
Martin Sloane
Carmen Sullivan
Barry Tate

Plaintiffs' Memorandum of Points and
Authorities in Support of their Motion
for Partial Summary Judgment, filed in
National Urban League, et al v. Office
of Comptroller of the Currency, et al.

Civil Action No. 76-0718
U.S. District Court, D.C.
Sept. 30, 1977

(excerpt)

III. THE FEDERAL RESERVE BOARD HAS FAILED TO CARRY OUT ITS DUTY TO USE ITS SUPERVISORY POWERS TO DETECT AND PREVENT MORTGAGE LENDING DISCRIMINATION BY ITS MEMBER BANKS

A. INTRODUCTION

The traditional position of the Federal Reserve Board concerning the use of its examination and supervision powers to detect and prevent discrimination is summarized in the following excerpt from the letter of May 23, 1961 from then Chairman William McChesney Martin, Jr. to Berl I. Bernhard, Staff Director of the United States Commission on Civil Rights: */

The essential purpose of the process of bank examination and supervision is to protect depositors against loss arising from unsound and illegal banking practices and thus to protect the community as a whole against the severe consequences of bank failures. To attempt to use these processes for collateral purposes, however worthy, would change them not only radically, but detrimentally.

To superimpose the responsibility for evaluating loan denials on top of the present duty of bank examiners and supervisors to review only loan approvals would add an entirely new and dangerous dimension to the scope of the examining and supervising function. The public interest that is served by having examiners hold that bank managements are erring in taking risks with other people's money in ways the examiner contends are unsound would be disserved if examiners were charged with holding that these managements were erring in not undertaking risks that the management contends are unsound. Where the one approach serves to reduce danger that the public may lose the funds it has on deposit in banks, the other approach would serve to increase it.

In addition, the injection of nonfinancial considerations into examination standards would extend the

*/ Defendant Federal Reserve Board's Response to Plaintiffs' First Interrogatories No. 10. Emphasis in original

process into fields in which bank examiners, whose training and experience must be concentrated on financial matters, could not reasonably be expected to have competence.

Furthermore, it must be borne in mind that bank examination is an after-the-fact process. To make it possible for an examiner to consider the elements of race, creed, and color in loan applications, a bank supervisory agency would find it necessary to require every bank to obtain from every would-be-borrower detailed answers to questions about their race, creed, and color which, in any event, would only be collateral to the basic financial considerations that must of necessity be paramount in the grant or denial of loans.

As the following analysis of the Board's current position shows, the views expressed by Chairman Martin still pervade the Board's approach to their enforcement obligations under the Fair Housing Law. Although the Board now pays lip-service to this statute, it has failed to adopt those basic examination and enforcement techniques which other agencies use in carrying out their civil rights responsibilities, which other federal agencies have urged upon the Board, and which the Board itself uses in other areas of its responsibilities.

**B. THE FEDERAL RESERVE BOARD REFUSES
TO COLLECT AND ANALYSE RACE AND
SEX DATA ON A SYSTEMATIC BASIS**

**1. COLLECTION AND ANALYSIS OF RACIAL DATA
IS A BASIC CIVIL RIGHTS ENFORCEMENT TECHNIQUE**

Over the years, the collection and analysis of racial data has become a routine component of civil rights enforcement throughout the federal government. The almost universal use of racial data is based on a recognition that this information is essential to the detection of discriminatory patterns.

In 1971, the Interagency Racial Data Committee ^{*/} concluded that the major cause of discrimination in federal programs was the absence of an effective means of identifying the beneficiaries of these programs. (Policies and Capabilities, p. 5; App. p.34). As its first recommendation, the Committee called for "Collection of Racial Data."

Each program of assistance of the Federal government should have an established procedure for knowing the number of persons, by race and income, participating in each project or activity receiving assistance. This data should be collected as a regular part of program operations, and tabulated on both a project wide and program wide basis. (Id. 81; App. p. 35). ^{**/}

In an Affidavit filed in this action, the United States Civil Rights Commission's expert in matters of federal agency civil rights enforcement stated a similar conclusion. Cynthia Graae, Acting Assistant Staff Director for Federal Evaluation, stated:

^{*/} This committee was established by the Office of Economic Opportunity's Task Force on Uniform Civil Rights Policies and Practices. Its co-chairpersons were drawn from the Department of Justice, and its members from the Departments of Labor, Transportation, HEW and Defense, and the Small Business and Veterans' Administrations. Six other agencies, including the Office of Management and Budget, appointed personnel to work with the Committee. It issued two reports: The Racial Data Policies and Capabilities of the Federal Government (1971), hereinafter cited Policies and Capabilities; and Establishing a Federal Racial/Ethnic Data System (1972), hereinafter cited Establishing A Data System.

^{**/} The Committee's 1972 report reiterated the need for racial/ethnic data. "Disparities in service to minorities under the government's assistance programs are to some degree caused and in large part perpetuated by Federal departments' and agencies' lack of knowledge about the racial/ethnic makeup of their clientele, and by their failure to use available information in planning and administration." Establishing a Data System, p.6; App. p. 36.

I have concluded that certain basic elements are essential to effective civil rights enforcement and, if adopted, would substantially reduce discrimination by institutions over which federal agencies have supervisory or regulatory control. Chief among these are:

- (a) Collection and maintenance of data by race, ethnic origin, and sex.
- (b) Staff analysis of such data....

Graae Affidavit, October 28, 1976, p. 3.

Today, racial data collection and analysis are the cornerstones of civil rights enforcement throughout the government. HEW, for example, collects data concerning the racial composition of the student bodies and staffs of virtually every public school system in the Nation. (45 C.F.R. Part 80, 38 F.R. 17981, 17982, July 5, 1973). The Equal Employment Opportunity Commission and the Office of Federal Contract Compliance Programs require race and sex data on the workforce of every firm employing more than 50 workers. (41 C.F.R. Part 60-1.7, 35 F.R. 10660, July 1, 1970). Federal agencies engaged in lending programs also routinely require racial data on borrowers. See, for example, Small Business Administration Form 135, HEW Student Loan Program Form C-1 OE 1154, item 9 and C-2 OE Form 1070, item 5. (These forms appear at App. pp 37-39). The Veterans Administration and FHA both call for racial data on applicants for loans to be approved for federal insurance or guarantees. See HUD Form G-1 FHA Form 3160, item D; HUD G-2 FHA Form 2501, item 2; HUD G-3 FHA Form 2900, item 4; VA Form 1802(a), item 2B. (These forms appear at App. pp 40-43).^{*}

^{*}/ The Office of Management and Budget coordinates agency racial data collection by prescribing uniform "Race and Ethnic Standards for Federal Statistics and Administrative Reporting." OMB Circular A-46, Exhibit F.

2. EVERY RESPONSIBLE FEDERAL AGENCY HAS URGED THE FEDERAL RESERVE BOARD TO COLLECT AND ANALYSE RACE/SEX DATA ON HOME MORTGAGE APPLICANTS

The Federal Reserve Board, along with its sister banking agencies, has specifically been urged to collect and analyse racial data in carrying out its Title VIII enforcement responsibilities by every federal agency with responsibility and expertise in the matter. In 1972, the FDIC proposed for comment a regulation which would have required its members to collect racial data for analysis by examiners. (37 F.R. 19385, Sept. 20, 1972). In response, the FDIC received comments from other federal agencies.

The Office of Management and Budget urged the adoption of "all the proposals contained" in the proposed regulation. (Letter to Hon. Frank Wille, Chairman, FDIC, from George P. Shultz, Director, OMB, March 20, 1972; App. pp 44-45). OMB's comments explicitly recommended that "sufficient records of the disposition of all loan applications should be maintained so as to enable the Financial Regulatory Agencies to ensure that the lending institutions comply with all statutes related to real-estate lending," and urged review of these records during regular examinations to identify and forestall possible violations of Title VIII. "It will, of course, be necessary to make provision for gathering and evaluating the records and data collected by the banks if the record-keeping requirements are incorporated into a regulation." (Emphasis added).

The Justice Department wrote:

We have found requirements for racial identification of applicants and records of reasons for rejection to be effective and practical tools in civil rights

law enforcement. It might also be helpful to include records of those making inquiry in person regarding loans who do not file applications and the identities of brokers who refer loan applicants, in order to determine whether minority applicants are being screened out before filing written applications.

(Letter to Mr. E. F. Downey, Secretary, FDIC, from David L. Norman, Assistant Attorney General, Civil Rights Division, Dec. 8, 1972; Hearings at 113-14; App. pp. 46-47).

The Department of HUD likewise supported the proposed racial data requirement, urging that it be broadened to include non-secured real estate loan applications and that banks be required to supply identification information if the applicant failed to do so. (letter to Mr. E. F. Downey from Malcolm E. Peabody, Jr., Acting Assistant Secretary for Equal Opportunity, HUD, Nov. 7, 1972; App. pp 48-50). The U. S. Commission on Civil Rights wrote: "We are convinced that a racial and ethnic data collection requirement is an absolutely essential element in any effective enforcement program. Thus we strongly support the Corporation's adoption of such a requirement." The Commission recommended expansion of the FDIC's proposal. (Letter to Hon. E. F. Downey from John A. Buggs, Staff Director, U. S. Commission on Civil Rights, November 1, 1972, pp. 2-3; App. pp 51-57).

A similar racial data requirement was proposed by the Federal Home Loan Bank Board, also in 1972 (37 F.R. 811, Jan. 19, 1972). The Office of Management and Budget urged the adoption of "regulations which would include all the proposals contained" in the published notice. (Letter to Hon. Preston Martin, Chairman, FHLBB, from George P. Shultz, Director, OMB, March 20, 1972; App. pp 58-59). The Civil Rights Commission "strongly [supported] the Board's adoption of a requirement for maintenance of racial and ethnic data on all loan applications."

(Letter to Hon. Jack Carter, Secretary, FHLBB, from John A. Buggs, Staff Director designate, Civil Rights Commission, March 21, 1972, pp. 2-3; App. pp. 60-68). HUD also endorsed racial data collection in its comments. (Letter to Hon. Eugene M. Herrin, Ass't Sec'y, FHLBB, from Samuel J. Simmons, Ass't Sec'y, HUD, March 31, 1972; App. pp. 69-71).

In testimony before the Senate Committee on Banking, Housing and Urban Affairs in March, 1976, the Department of Justice again urged the collection of racial data on loan applicants by the four financial regulatory agencies, citing the collection of such data by the Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, and the Veterans' Administration as close precedents. (Testimony of J. Stanley Pottinger, Ass't Att'y Gen., Civil Rights Div., Hearings at 77). John Buggs, Staff Director of the Civil Rights Commission testified in a similar vein:

A principal obstacle to examining the compliance status of the regulated financial institutions has been the lack of racial, ethnic and sex data. Without such data it has been almost impossible to determine the extent to which these institutions have been discriminatorily denying loans to minorities or women The most significant action the regulatory agencies could undertake to further fair housing would be to mandate the regular collection of such data by financial institutions making mortgage loans. (Hearings at 164)

The Assistant Secretary of HUD for Fair Housing and Equal Opportunity urged in his statement to the Committee, "that a race and sex data collection system be established on a national basis which covers each step in the application review and granting or denial of mortgage loans for residential housing."

(Testimony of James H. Blair, Hearings at 133)

In its Report on these Hearings, the Senate Banking Committee joined in the unanimous recommendation of the responsible Executive Branch agencies:

. . . As a minimum, an adequate enforcement program should include the following:
 A requirement that all mortgage lenders make notations to indicate minority status and sex on rejected and accepted loan applications and keep statistics on such loan applications, with approvals and denials broken down by race and sex. In time, these statistics should be expanded to include other social and economic characteristics under the authority of the Equal Credit Opportunity Amendments. These statistics should be furnished to the regulatory agencies on a regular basis and be made available to the public.
Report on Fair Lending Enforcement, Senate Committee on Banking, Housing and Urban Affairs, June 3, 1976, S. Rep't 94-930, p. 4 (hereafter Report)

The Senate Committee further urged the development of a data analysis system which "would enable the bank agencies to request a computerized lending profile of any particular lending institution" and "permit statistical analysis of acceptance [sic] and rejections by race, neighborhood and other socio-economic factors."
 (Id. at 11)

3. THE FEDERAL RESERVE BOARD IS THE ONLY FEDERAL FINANCIAL AGENCY WHICH REFUSES TO ACKNOWLEDGE THE NEED TO COLLECT AND ANALYSE RACE/SEX DATA ON A SYSTEMATIC BASIS

Two of the financial regulatory agencies, the FHLBB and the FDIC (whose members issue 85 percent of home mortgage loans made by regulated lenders), have agreed to adopt and have begun to develop a national computerized race/sex data collection and analysis system.^{*/} Section 2 of the March 22, 1977 agreement between the FHLBB and the plaintiffs, which led to the settlement and dismissal of this action against the FHLBB, provides as follows:

Section 2

The Board agrees to develop and implement a system for the collation and analysis of the racial/sex notation data collected in accordance with Section 1 of this Agreement, which system will produce effective

^{*/} The Comptroller's Office has not yet instituted or agreed to institute a race/sex data analysis program, but it appears to have acknowledged the need for one. See infra pp. .

and meaningful use of the aforesaid data as an aid to the Board's compliance program, without undue expense or undue diversion of personnel. The Board further agrees that it will review the system devised hereunder within one year following implementation of such system in accordance with Section 10 of this Agreement. . . . The Board further agrees that any system devised by it under this Section 2 of the Agreement will be structured so as to enable the Board, at a minimum, to discover areas and institutions where deviant adverse action or rejection rates are occurring, to identify patterns of rejections and adverse actions that warrant further study, to flag individual institutions for in depth studies, and to measure changes in rejection or adverse action rates over time

The FDIC settlement agreement of May 13, 1977 with the plaintiffs contains similar provisions for the institution of a data collection and analysis program in Section 1, A.

On January 6, 1977, the Federal Reserve Board promulgated amendments to Regulation B (42 F.R. 1242, 12 C.F.R. Part 202), which the Board was obliged to issue under the Equal Credit Opportunity Act Amendments of 1976 (15 U.S.C. 1691 et seq., 1977). Section 202.13 of this Regulation now requires lenders to request applicants for secured home purchase loans to supply information concerning their race/national origin, sex, marital status and age. This information is said by the Regulation to be "for monitoring purposes." It is thus available to any of the agencies charged with enforcement of the ECOA (Appendix A to the Regulation names 12 such agencies), if and to the extent that they wish to make use of it.

As already indicated, the FHLBB and FDIC are developing programs for the systematic collection and computerized analysis of this data on a nation-wide basis. They will use these analyses to flag for in-depth examination those institutions at which loan rejection patterns suggest the possibility of discrimination, and to measure progress in achieving equal treatment in home mortgage lending. The Federal Reserve Board has no such plans.

In January, 1977, the same month that it published the amendments to Regulation B, the Federal Reserve Board issued a 43-page set of "Examiner Instructions" governing "Consumer Affairs Examinations." These examinations are intended to cover civil rights as well as consumer protection matters. (Document furnished pursuant to Plaintiffs' First Request for Production No. 9.) Throughout these 43 pages there is no reference to race or sex data or any instructions whatsoever concerning methods for detecting racial discrimination in home mortgage lending.

There is in these instructions only a single paragraph specifically concerning home mortgage loans. It appears near the

end of an eleven-page section describing techniques for sampling applications for the purpose of detecting technical and substantive violations of consumer protection laws and regulations. ^{*}/

The paragraph reads as follows:

Probability sampling based on the above schedule generally would not be required for home mortgage loans. The volume of new mortgage loans written generally is relatively small. Moreover, because of the highly technical nature of this type of credit, negotiation of such loans typically is confined to a single loan officer, even in a relatively large bank, and to very few officers in a major bank. In addition, loan contracts tend to be standardized and generally of only one to three basic forms. For this type of lending operation, any errors or violations would tend to be systematic and permeate the portfolio. Also, in view of the relatively large principal amounts involved in the typical loan, arithmetic calculations and entries generally are carefully checked, thus resulting in minimal risk of clerical or typographic error. Accordingly, inspection of only a few loans of each available type originating with each loan officer generally would be necessary. In most cases, a sample of two to five loans for each type and source should be adequate.

This is the only instruction given to examiners concerning review of home mortgage applications. As will be observed, it is totally silent concerning the manner, if any, in which the race/sex information contained on these applications is to be analysed.

In March, 1977, the Federal Reserve Board issued a 21-page checklist for use by examiners in conjunction with the above-mentioned 43-page instruction manual in conducting consumer affairs examinations. (Document furnished in response to Plaintiffs First Request for Production No. 9). There is no reference

^{*}/
These laws and regulations include, for example, Regulation H, (National Flood Insurance); Regulation Q, (dealing with interest rate ceilings and other matters such as receipt and withdrawal of deposits); Regulation Z, (Fair Credit Billing Act, 15 U.S.C. 1666; Consumer Leasing Act of 1976, 15 U.S.C. 1667; Truth in Lending Act, 15 U.S.C. 1601; the Fair Credit Reporting Act, 15 U.S.C. 1681; and the Real Estate Settlement Procedures Act, 12 U.S.C. 2601.

whatsoever in this checklist to the analysis or even the existence of race/sex data on loan applications. *

In addition, the Board has promulgated an undated manual section entitled "Equal Credit Opportunity - Regulation B", which is intended "to acquaint examiners with the general requirements of Equal Credit Opportunity" and "to highlight provisions of Regulation B that most likely [sic] may be encountered in performing bank examinations." This 32-page issuance elaborates on and explains the ECOA and Regulation B, but provides no instructions as to examination methods. On pages 28-29, the race/sex notation requirement of Regulation B Section 202.13 is paraphrased, but nothing is said as to why race/sex information is requested or what use is to be made of it by examiners.

The Board evidently has in preparation an additional manual section entitled "Fair Housing Examinations." The Board supplied plaintiffs with a "redraft" of such a document dated October 29, 1976, in response to Plaintiffs' First Request for Production of Documents No. 9 and 14. This 9-page draft document paraphrases the sections of Title VIII and the ECOA which prohibit race and sex discrimination in credit extension and briefly discusses the

* / The checklist does direct the examiner's attention to other matters relevant to discriminatory mortgage lending practices. Examiners are asked to give "yes" or "no" answers to these questions: whether the bank has "branch audits which determine that its staff is aware of and adhering to bank policy regarding fair housing;" whether the bank's "housing finance advertising discloses that the bank is a fair housing lender;" whether its advertising might "tend to discourage loan applications by protected classes;" and whether the bank has applicant pre-screening procedures which result in particular classes of applicants being referred to particular loan officers, and, if so, whether this serves a "legitimate objective."

Section VI, E of the checklist deals with special examination procedures for real estate loans. It includes several questions concerning the Real Estate Settlement Procedures Act, flood insurance requirements, and whether Home Mortgage Disclosure Act data is being properly maintained. There is absolutely no reference, however, to applicant race/sex data or its use in monitoring non-discrimination compliance.

Home Mortgage Disclosure Act and the subject of "redlining." It makes no reference to race/sex data.

Finally, the Federal Reserve Board also has in draft form a manual section entitled "Home Mortgage Disclosure Act Examination." Its approach to the use of data made available under the Home Mortgage Disclosure Act (HMDA) (12 U.S.C. 2801 et seq.) is instructive. The Act was passed in response to charges by community and fair housing groups that lending institutions were denying mortgage loans to certain urban communities--especially older neighborhoods and minority neighborhoods--thus contributing to urban decay. It requires lenders to compile and make publicly available certain data regarding approved mortgage loans, broken down by census tract. This information is intended to enable interested persons to ascertain whether lending activities are confined to newer areas at the expense of older ones, and to white areas at the expense of mixed or minority neighborhoods.

The plaintiffs and other public groups have repeatedly urged the financial regulatory agencies to use the HMDA data in the detection of possible unlawful "redlining" practices. The Senate Banking Committee has recommended that "examinations should also utilize the statistics available under the Home Mortgage Disclosure Act to look for possible redlining." Report at 4.^{*} The Federal Reserve Board, however, has refused to concern itself with the use of the HMDA data to detect discriminatory patterns. Its examiners are instructed to ensure only that the data are compiled and disclosed, but not to examine the data itself.

The Board's examination philosophy and procedures in this regard are further elaborated in its response to Interrogatory 7(c) of the Plaintiffs' Second Set of Interrogatories:

* The Chairman of the House Banking Committee has expressed the same view. Letter from Cong. Henry Reuss to Hon. Arthur Burns, dated June 11, 1976, App. pp. 72-73.

(c) HMDA data is not collected and analysed by [Federal Reserve] System personnel because such action is not mandated by the Act and would be at variance with its purpose. HMDA is designed to provide a mechanism for interested parties at the local level to learn where depository institutions located in their communities are making home purchase and home improvement loans. It is not an anti-discrimination or enforcement statute; it merely attempts to provide depositors and local government officials with information that may be considered in deciding at which institution to deposit funds.

4. THE FEDERAL BOARD'S NEWLY INSTITUTED EXAMINATION PROCEDURES DO NOT MAKE SYSTEMATIC ANALYSIS OF RACE/SEX DATA.

As stated, the Federal Reserve Board's examiner manuals, instructions, and check-lists are entirely silent on whether and how the race/sex data on home mortgage applications are to be reviewed or analysed in the course of bank examinations. In response to Interrogatory 7 of Plaintiffs' Second Set of Interrogatories, the Board provided the following description of the use which its examiners, lacking specific instructions, allegedly make of this data:

(c) Currently, as part of each consumer compliance examination and as may be necessary to investigate a discrimination complaint, an examiner reviews and compares a number of application files containing 12 C.F.R. §202.13 information [pertaining to applicant race/national origin, sex, marital status and age]. The examiner randomly selects two to five recently approved applications containing the data for each available type of mortgage (FHA, VA, conventional) and for each loan officer or committee authorized to approve residential mortgage loans. The examiner also selects, to the extent available, two to five recently rejected applications representing each protected class covered by 12 C.F.R. §202.13, that is, racial-ethnic minorities, women, and the elderly.

The examiner first carefully scrutinizes the bank's lending policies to determine that they comply with all applicable laws. Next, the examiner discusses those policies and their execution with appropriate bank personnel to insure that the actions of all personnel conform to established policies.

Once the sample of approved and rejected mortgage applications is drawn, the examiner analyzes and compares the bank's residential mortgage lending policies with the appropriate creditworthiness characteristics (as established by those policies) of the sample of applicants to determine to the extent possible whether the bank's policies are being applied consistently and without regard to race, national origin, sex, marital status, and age. If evidence of probable discrimination is found in the sample of applications chosen for analysis then the examiner reviews additional files to determine if a pattern of apparent violations is evident.

There are several reasons why the process described by the Board is totally ineffective as a means of detecting the various discriminatory practices from which minorities and women suffer. In the first place, the process is said to start with a "careful scrutiny" of "the bank's lending policies" and a determination that

actions of its staff "conform to established policies." However, since banks are not required to have written policies and many do not, and since policy statements of bank officers, whether written or verbal, are certain to be self-serving and unlikely to be detailed and precise, such an inquiry hardly seems a solid foundation on which to build a compliance investigation. Secondly, the race/sex data are not systematically collected and statistically analyzed in a manner which could reveal discriminatory patterns. Rather, the examiner is left to detect individual instances of possible discrimination from an examination of individual loan files. Even in this, the examiner lacks any guidelines or instructions as to what to look for. Thirdly, without a systematic statistical analysis to work from, the examiner can hardly be expected to learn much from a review of a random sampling of individual loan files. Decisions concerning whether to grant a loan, and if so at what loan-to-value ratio, interest rate and term, involve complex and subtle judgements (as any bank officer or Federal Reserve Board official would surely agree). Lacking an analysis of data which reveals lending patterns, the Board's examination procedures relegate the examiner to second-guessing the bank's management with respect to denial of individual loans -- an exercise which the examiner, especially without specific instructions, is reluctant to undertake. Finally, the Board's professed examination procedures involve a comparison of "creditworthiness characteristics ... of applicants" with the bank stated policies, thus completely ignoring the possible presence of discriminatory property appraisal practices such as those described in Part I of this Memorandum.

The institution of national data-analysis programs by the FHLBB and the FDIC demonstrates the insubstantiality of the only possible justification for the Federal Reserve Board's refusal to do so -- expense. The Board could tie into the system of one of the other agencies, using its forms, analytic methods and computer programs, thus producing needed statistics at little cost. The fact is that the Board continues to

believe, in former Chairman Martin's words, that "non-financial considerations" should not enter the bank examination process. It therefore continues to turn its back on data available under Regulation B and under the Home Mortgage Disclosure Act which might assist it in identifying racially and sexually discriminatory mortgage lending practices.

C. THE FEDERAL RESERVE BOARD HAS NO PROCEDURES FOR PROMPT AND THOROUGH INVESTIGATION AND RESOLUTION OF DISCRIMINATION COMPLAINTS.

A systematic procedure for the investigation and resolution of complaints is an essential ingredient of civil rights enforcement programs.^{*/} The Department of Justice, which is responsible for setting standards for the enforcement of Title VI of the 1964 Civil Rights Act, has directed that:

Federal Agencies shall establish and publish in their [Title VI] guidelines procedures for the prompt processing and disposition of complaints. (28 C.F.R. 52.408)

According to the Board's response to Interrogatory 4(m) of the Plaintiffs' Second Set of Interrogatories, the only procedure adopted by the Board concerning complaint processing is Regulation AA (12 C.F.R. Part 227).^{**/} The paragraph of this Regulation covering the Board's complaint processing procedures reads as follows in its entirety:

^{*/}
Reliance on individual complaints, however, cannot take the place of a systematic monitoring and compliance program. This is especially true in home finance. Discrimination complaints by mortgage applicants are rare, because the victims are rarely aware that they have been victimized. Discrimination often takes the form of a higher down-payment, shorter maturity, or higher interest rate, and the applicant may not be familiar with the terms offered others. A common source of discrimination is under-appraisal based upon improper neighborhood factors, whose role in the appraiser's valuation is not known to the borrower. Where the application is rejected or an unfavorable counter-offer is made, the applicant is seldom told the reason; but if he or she is told, the reason given may be spurious or, if not spurious, may not be recognized by the applicant as discriminatory (e.g., the applicant has not previously owned a home, or the house involved is over 30 years old). Finally, even if the borrower does recognize discrimination, he or she often finds a loan elsewhere (probably on less favorable terms) and the incentive for filing a complaint is lost.

^{**/}
This regulation was issued Sept. 27, 1976 (41 F.R. 44361) pursuant to the Federal Trade Commission Act as amended (P.L. 93-637) and covers all types of consumer complaints. Response to Interrogatory 31, Plaintiffs' First Set of Interrogatories.

Within 15 business days of receipt of a written complaint by the Board or a Federal Reserve Bank, a substantive response or an acknowledgement setting a reasonable time for a substantive response will be sent to the individual making the complaint. (12 C.F.R. 227.2(b))

Not only is the Regulation silent on how long a "reasonable time" may be, but it fails to lay down any requirements whatsoever for the investigation or disposition of complaints.

The need for the adoption of complaint investigation procedures is demonstrated by the treatment given to discrimination complaints in the past. In its Response to Interrogatory 4 of Plaintiffs' Second Set of Interrogatories, the Board describes the handling of complaints of race and sex discrimination. Complaints are investigated either by regular Examiners (with no special training) or Consumer Affairs Examiners. Generally the investigation is conducted by telephone or correspondence, without a visit to the bank. Whether or not an "on-site" examination takes place, the investigation centers on bank personnel and records. The examiner is guided by the instructions, manuals and checklists governing regular bank examinations, which are devoid of instructions for investigating discrimination (see supra, pp. 32-35). There is nothing, either in these documents or elsewhere, suggesting the need to interview the complainant, to seek information from third parties such as brokers or appraisers, or to visit the security property.^{*/} (The instruction manuals of both the FHLBB and the FDIC suggest all of these steps.)

Similarly, cursory treatment was given to the Federal Reserve member banks which admitted discriminatory practices in their responses to the 1971 HUD Fair Lending Survey. Among the questions asked of banks in that survey, it will be recalled, were whether they refused to make mortgage loans

^{*/} According to the Board's response to Interrogatory 4(i), one Reserve Bank "obtains information from community action and real estate groups as background information only."

in areas of high minority concentration, and whether they considered the racial or ethnic characteristics of the neighborhood. (supra, pp. 6-8 .) Although the Board does not indicate how many of its member banks gave affirmative answers to each question, HUD's analysis shows that 3 percent of all regulated lenders refused to make loans in one or more minority neighborhoods, and 6 percent considered a neighborhood's racial or ethnic make-up. (Tables 8 and 9, Hearings, at 140.) If state-chartered member banks conformed to this pattern, affirmative answers to these questions would have been given, respectively, by 32 and 64 Federal Reserve regulatees, on the basis of the 1087 member banks responding to the questionnaire (Response to Plaintiffs' First Set of Interrogatories, No. 16).

The Board asserts that it "reviewed those individual responses [to the Questionnaire] which suggested the possibility of discriminatory practices." (Response to Plaintiffs' First Interrogatories, No. 19(d)). The extent of this review is revealed by its response to Interrogatory 1 of the Plaintiffs' Second Set of Interrogatories: In the first place, only 25 of the Board's respondents were reviewed at all. In nine of these cases, the investigation was conducted by phone or correspondence; no examiner was sent to the bank. In six of the 16 cases where an examiner was sent, this was done simply as part of the next regularly scheduled examination. In every case, however, the entire "investigation" apparently consisted of a conversation with an official of the bank. In no case is there any evidence that bank records were reviewed or any source outside the bank consulted. On the basis of self-serving explanations and disclaimers of their previous admissions of discrimination by bank officials, no violations were found by the Board and no remedial action was taken.

The Board's handling of the 1974 Fair Housing Information Survey results presents a similar picture. The Board investigated only two banks as a result of its analysis of the survey. An examiner was sent to one of the two banks involved. Once there, however, he reviewed no loan files or other bank records. The Board's conclusion that no remedial action was called for was based entirely on information supplied in a letter from an official of the bank. In the other case, no one visited the bank, but some bank records were requested by phone and were reviewed by an examiner. The examiner found no evidence in these records that differential credit standards were being applied to minority loan applicant. The Board does not indicate the extent of the review -- whether it included, for example, a comparison of accepted applications from whites with rejected applications from blacks, or whether it included any investigation whatever of the basis on which property appraisals were being made. (Response to Plaintiffs' Second Interrogatories, No. 2).

*/
 The survey data were analysed by totally inappropriate statistical methods -- methods designed to prove that an observed difference in rejection rates by race is ascribable to discrimination rather than to sampling error, chance or other factors. Analysis of Survey Forms A and C, furnished in response to Plaintiffs' First Request for Production of Documents No. 6. For two reasons this method is inappropriate. First, the data being analyzed were not sample data but included all transactions at the banks involved. Hence, there was no possibility of sampling error. Second, although chance or economic factors might be responsible for a differential rejection rate at a particular bank, it is equally true that it might not be the source of the difference. Instead, of analyzing the data in such a manner as to identify all banks where discrimination might exist, it chose a method designed to identify only those where it could be statistically proved to exist.

Section 2 of the FHLBB Settlement Agreement and Section 1, A of the FDIC Agreement recognize that the purpose of such analysis should be to "flag" institutions where divergent rejection rates are sufficiently suggestive of discrimination to warrant in-depth examination, rather than to establish that discrimination in fact exists.

In short, the Board lacks any procedures for the investigation and resolution of complaints or other evidence of race and sex discrimination. Its approach is to make inquiries of bank officials and to rely entirely upon their replies in determining whether remedial action is called for. Neither complainants nor third parties who would be likely to have relevant information are interviewed. And this methodology is followed even where the Board has in its possession the strongest possible evidence: statistical data indicating discrimination to a high degree of certainty, or written admissions from the bank itself.

D. THE FEDERAL RESERVE BOARD'S INDIFFERENCE TO ITS NON-DISCRIMINATION RESPONSIBILITIES IS CONFIRMED BY ITS STAFFING POLICIES AND PRACTICES

At least since the enactment of the Federal Fair Housing law in 1968, the Federal Reserve Board has had a responsibility to act against mortgage lending discrimination by its members. Yet to this day, there is no official or employee of the Board or any of the twelve Federal Reserve Banks who has special competence or primary responsibility in this area. (Response to Interrogatory 9, Plaintiffs' First Set of Interrogatories). Rather, race and sex discrimination are dealt with by personnel of the Division of Consumer Affairs, who also are responsible for compliance with the Fair Credit Reporting Act; the Real Estate Settlement Procedure Act; Regulation C (the Home Mortgage Disclosure Act); Regulation Z (Truth in Lending, Fair Credit Billing and Consumer Leasing Acts); Regulation AA (Unfair and Deceptive Act and Practices); Regulation H (National Flood Insurance); and Regulation Q (Interest on Deposits). (Responses to Plaintiffs' First Interrogatories, Nos. 6 and 37(f)).

The Board's staffing arrangements reveal either a remarkable lack of interest in Fair Housing enforcement or a total misunderstanding of the nature of mortgage lending discrimination. The subtle and pervasive problems of discriminatory appraisals, "redlining", discriminatory underwriting criteria, and personal loan officer bias are treated as just another set of "consumer

protection" issues. Discrimination is to be investigated by personnel accustomed to checking compliance with financial disclosure and reporting requirements which can be enforced by straightforward financial analysis and examination of bank forms.

An effective fair lending program requires that personnel having appropriate qualifications and training be given clearly defined authority and duties in this specialized area of enforcement. The Federal Reserve Board was urged by the Civil Rights Commission in 1974 to appoint a full-time fair housing official and to centralize civil rights responsibilities in a specialized staff.

(U.S. Comm'n on Civil Rights, The Federal Civil Rights Enforcement Effort, 1974, Vol. II, "To Provide for Fair Housing", 354-355).

The FHLBB and FDIC have agreed to appoint such a full-time specialist in Washington and to give training and responsibility to one person in each of their regional offices (FHLBB Settlement Agreement Sec. 5; FDIC Settlement Agreement, Sec. 1, C and D). The Federal Reserve Board, however, remains steadfast in its refusal to provide staffing appropriate to its responsibilities in this area.

Further evidence of the Board's historic and continuing insensitivity to problems of racial discrimination is found in the racial make-up of its work-force responsible for examination and enforcement. At the Federal Reserve Board's offices in Washington, among the 30 employees whose duties relate to examination of banks and supervision of examiners, one is black. Of the 14 such employees above GS-13, none is black. Of the 252 such employees of the 12 Reserve Banks above GS-13, five are black and three Hispanic. None of the 42 persons classified as "Officers" is minority (Defendants' Further Response to Interrogatory 8, First Set of Interrogatories, Schedule 1, Parts A and B).

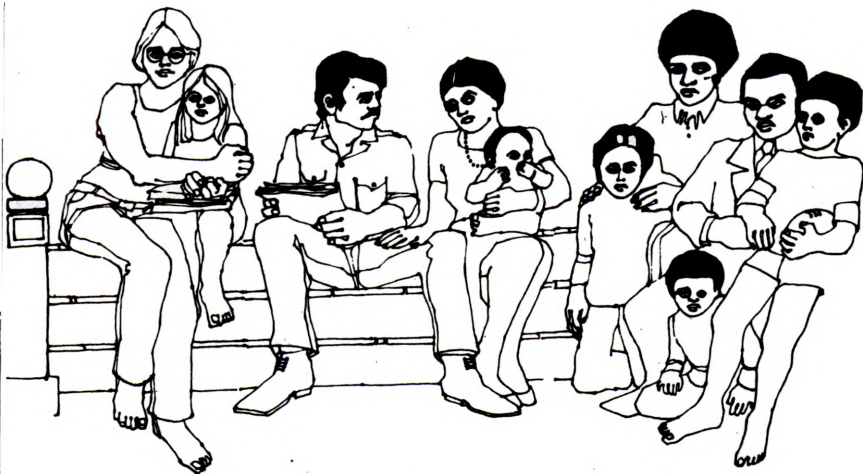
SUMMARY

The Federal Reserve Board's enforcement record is precisely what one would expect of an agency which lacks data, procedures,

and personnel to do the job. The Board has never issued a single cease and desist order or supervisory letter, nor taken any other formal remedial action with respect to fair lending violations by its members. (See Board's March 9, 1976, response to Question 9 posed by Senator Proxmire, Chairman of the Senate Banking Committee, Hearings, p. 295).

The Board's inaction cannot be ascribed to an absence of discrimination its member banks, nor to the Board's ignorance of discrimination by its members. This Memorandum has documented the widespread and varied forms of discriminatory appraisal and underwriting practices affecting mortgage lending. A substantial number of banks openly acknowledged discrimination in the 1971 HUD survey, and additional banks were (or could have been) identified through the 1974 pilot data surveys. Indeed, the Board conceded the existence of discrimination in its March, 1976 testimony before the Senate Banking Committee. (Hearings at 30).

The Board has failed to act because it has never given more than token recognition to its responsibility for fair lending enforcement. It has refused to inform itself systematically about discrimination by its member banks, through effective use of applicant or geographic (HMDA) data available to it. It has never provided appropriate instructions to its examination force concerning the detection of discrimination during regular examinations or in response to complaints. And it has never assigned a single member of its staff to primary responsibility for fair lending enforcement.



FAIR MORTGAGE

LENDING:

A Handbook for Community Groups

Center for National Policy Review
Catholic University Law School
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July 1978

FAIR MORTGAGE LENDING: A Handbook for Community Groups

A recent suit against the federal financial regulatory agencies for failure to enforce fair lending laws has produced a new program to crack down on race and sex discrimination in home finance, and to help minorities and women receive home mortgage and home improvement loans on fair and equal terms.

Your participation is needed to help make the new enforcement program work effectively to stop discriminatory lending.

This handbook has been prepared by the Center for National Policy Review for distribution to fair housing, civil rights, and community groups throughout the country. It describes the new enforcement program and suggests specific action steps that you should take to see that lenders in your community are complying with fair lending laws.

LOAN SEEKER'S RIGHTS

Federal laws have long prohibited many forms of lending discrimination. For example, it is illegal for a lender to deny a home mortgage loan, or offer one with unfavorable terms (such as higher interest, shorter maturity, larger down payment, or additional fees), because of:

- the borrower's race, national origin, religion, sex, marital status, or age;
- the racial or ethnic composition of the neighborhood where the home is located.

More subtle discriminatory practices are, or may be, illegal as well. Some are directly prohibited by federal laws or regulations. Others may be illegal if they have a particularly adverse impact on minorities or women or if they are being used as a pretext for discrimination. In these categories are lending practices such as:

- refusing credit (or offering less favorable terms) because of factors such as the age of a neighborhood's homes, the income level of its residents, or the size or price of its homes;
- appraising homes for less than their actual value on the basis of any of the above factors;
- refusing to count all of the earnings of a working wife in determining family income, or refusing to count steady part-time or overtime earnings;
- denying loans to persons who have not previously owned a home;
- making loans only to "preferred customers" or others with business or personal relationships with the lender;
- denying loans on small homes or homes selling below an arbitrary minimum price;
- giving undue weight to isolated credit difficulties in the distant past, or to arrests for minor infractions;
- providing no loan service at branches in lower income or minority neighborhoods or inner-city residential areas;
- charging a substantial application fee before giving preliminary consideration to loan inquiries.

Despite the existence of strong fair lending laws, however, minorities and women seeking home purchase or home improvement loans have continued to receive discriminatory treatment from lenders, in part because the federal government has not taken adequate enforcement action against discriminatory lending institutions.

Now the picture is beginning to change, partly because of a suit to compel enforcement of fair lending laws brought by civil rights and fair housing groups against the federal agencies that regulate home mortgage lenders.

REGULATION OF MORTGAGE LENDERS

Home mortgage lending institutions fall generally into two categories:

- banks, and savings and loan associations
- mortgage companies (also called mortgage bankers or mortgage brokers)

Banks and savings and loans are "supervised lenders"; that is, they are subject to regulation and examination by government regulatory agencies. These lenders not only extend credit but also accept deposits—through savings or checking accounts, for example. Mortgage companies, on the other hand, are not regulated and while they make loans, they do not accept deposits.

All banks and savings and loans which are insured by FDIC or FSLIC (nearly 20,000), are supervised by one of four federal regulatory agencies (Federal Home Loan Bank Board, Comptroller of the Currency, Federal Deposit Insurance Corporation, and Federal Reserve Board). These agencies maintain staffs of bank examiners who are sent to visit each supervised lender periodically to conduct a comprehensive investigation of its operations. If an examiner finds evidence of improper business practices, the lender is required to take immediate corrective action. The regulatory agencies have broad enforcement powers and can apply strong sanctions if needed to compel a lender to comply with federal laws and regulations.

The number of mortgage companies is difficult to pin down. At least 4,000 is a conservative estimate. These "nonsupervised lenders" are not subject to examination by federal regulatory agencies and thus are not covered by the new enforcement program described in this handbook.

BACKGROUND ON LAW SUIT AND SETTLEMENT

In 1976, a coalition of civil rights and fair housing organizations sued the four federal financial regulatory agencies in order to require

these agencies to use their broad enforcement powers to end the discriminatory policies and practices commonly followed by lending institutions.

CIVIL RIGHTS COALITION

National Urban League

National Committee Against Discrimination in Housing

National Association for the Advancement of Colored People

American Friends Service Committee

League of Women Voters of the United States

National Neighbors

Housing Association of Delaware Valley

Leadership Council for Metropolitan Open Communities (Chicago)

Metropolitan Washington Planning and Housing Association

Rural Housing Alliance

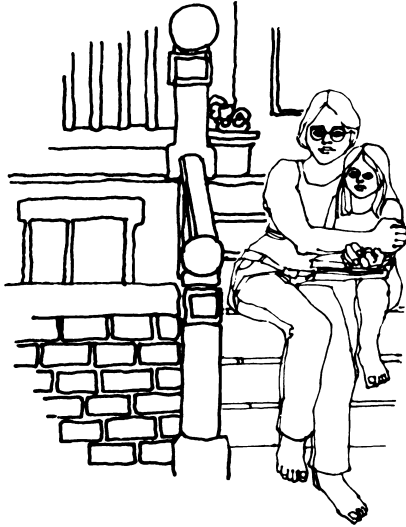
National Association of Real Estate Brokers

Finally recognizing their duty to enforce fair lending laws, three of the agencies entered into out-of-court settlement agreements which obligate them to implement a new enforcement program to search out and prevent lending practices which illegally discriminate against minorities and women. These agencies (Federal Home Loan Bank Board, Comptroller of the Currency, and Federal Deposit Insurance Corporation) regulate nearly all of the supervised mortgage lenders.*

The new enforcement program set up by the regulatory agencies is being monitored by the members of the coalition that brought the lawsuit and by the Center for National Policy Review, a civil rights law organization located at the Catholic University Law School in Washington, D.C. The Center for National Policy Review, along with the National Committee Against Discrimination in Housing, was co-counsel for the coalition in the lawsuit.

By understanding how the new program operates and by using it locally to pinpoint discriminatory lenders for federal enforcement action, community groups can help to ensure that the traditional victims of lending bias will be able to secure the home financing they need on fair and equal terms.

*The fourth federal financial regulatory agency, the Federal Reserve Board, did not agree to settle out-of-court, but is nonetheless taking steps to strengthen its fair lending enforcement efforts. The Federal Reserve Board supervises those state-chartered banks which are members of the Federal Reserve System. Generally these banks make few home loans.



KEY ELEMENTS OF NEW ENFORCEMENT PROGRAM

Under the new program, the federal regulatory agencies will take specific steps—

- *to detect* lending institutions whose policies and practices result in few loans to minorities or women,
- *to examine* the lending practices of such institutions to see whether the law has been violated; and, where violations are found,
- *to enforce* the law.

These steps include:

(1) *Analysis of each lender's fair lending record*

In order to determine whether minorities and women are receiving loans on a nondiscriminatory basis, the regulatory agencies are developing programs for systematically analyzing information collected from each lender. The information to be analyzed in most cases will include the race and sex of loan applicants and the age and geographic location of property on which loans are requested. In addition, persons inquiring about the availability of loans may be asked to indicate their race and sex on a form *even before they fill out an application*. Race and sex data for those who inquire about loans will help the regulatory agencies detect "pre-screening"—the common practice of discouraging minorities

or women from submitting written applications. Census tract information available under the Home Mortgage Disclosure Act will also be used to detect potentially illegal discrimination.

(2) Improvement of investigation methods

The regulatory agencies are now providing their bank examiners with training in the detection of discriminatory practices, and each lending institution is being subjected to periodic fair housing examinations. The agencies have established improved procedures for investigating discrimination complaints, which include follow-up interviews with complainants and, in some cases, interviews with appraisers, brokers, fair housing and community organizations. Deadlines have been established for completion of complaint investigations which in most cases will require agency action within 45 days.

(3) Civil rights staffing

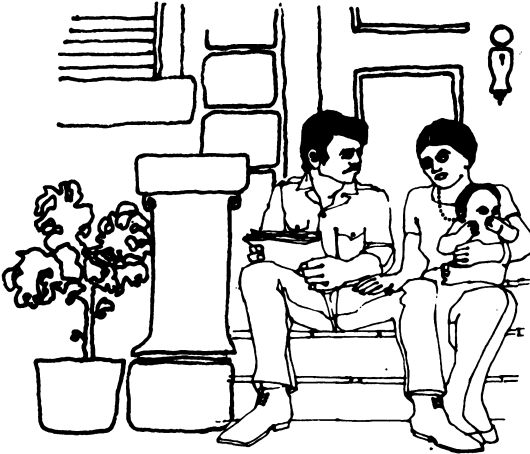
Each federal regulatory agency has a Washington, D.C. headquarters and a number of regional offices located throughout the country. Civil rights enforcement specialists have been appointed for each of these regional offices to help implement the new examination and complaint investigation program. In Washington, each agency is to have a senior fair housing specialist to continue to improve its enforcement program and to oversee the regional staff.

(4) Enforcement

Traditionally, bank examination has been concerned only with the "safety and soundness" of financial institutions, and enforcement action has been taken only when a bank or savings and loan was found to have engaged in practices threatening its fiscal solvency. Each of the regulatory agencies has now officially notified the lenders it supervises that the same enforcement sanctions will in the future be applied in cases of unfair lending that have previously been applied only when financial soundness appeared in jeopardy.

(5) Continued consultation with civil rights organizations

As provided in the settlement agreements, the Center for National Policy Review, on behalf of the coalition of organizations which brought the lawsuit, will continuously monitor the federal agencies' implementation of the new examination and enforcement program. Under the terms of these agreements, the civil rights coalition will recommend further improvements in training, examination, and enforcement methods.



ACTION STEPS FOR COMMUNITY GROUPS

There are several steps which civil rights, fair housing, and community organizations can take to help ensure that the new enforcement programs actually work and that the ultimate goal—equality in home finance—is achieved.

Action Step 1—

Learn the basics about your local lenders

Take a look at the lenders in your community. Get to know which ones are supervised by the federal agencies (all federally-insured banks and savings and loans, but not mortgage companies). Concentrate on the “supervised lenders” because they are subject to federal examination and enforcement action. Learn which ones are in the business of making mortgage and home improvement loans, and see whether they have good records of providing loans to minorities and women. Do they have discriminatory reputations? Ask real estate brokers, especially those serving minority clients or inner-city neighborhoods. Check the Home Mortgage Disclosure Act (HMDA) data to see in which neighborhoods each mortgage lender makes its loans. (This Act applies to most lenders in cities and metropolitan areas. See bibliography at the end of this handbook for information on how to use HMDA data.) Do you find a pattern of lending mostly in suburban communities and avoiding inner-city or minority neighborhoods? Background information of this sort on lenders will help you attack discrimination in your community.

Action Step 2—***Urge home-buyers to “shop around” for the best loan terms***

In the past, minority and female home-buyers often had to accept unfavorable loan terms—or couldn't get a mortgage loan at all—because of discrimination by lenders. Now, home-seekers should be urged to shop widely, even at institutions with a reputation for treating applicants unfairly, in order to find the lender which offers the best terms. The new examination and enforcement program should break barriers which in the past have made home financing hard to find.

When shopping for a loan, the prospective borrower should ask each lender about the availability of credit for the home he or she wishes to buy or improve, and should ask about loan terms to see which lender seems likely to offer the best deal. If any lending institution responds in a discriminatory manner, or seems to be avoiding giving information, there may be a basis for filing a complaint with the federal regulatory agency.

In many instances, it is the real estate broker rather than the home-buyer who arranges for financing. Therefore, your group should urge not only home-seekers but also brokers to look for loan opportunities for their clients from a variety of savings and loans and banks, rather than relying solely on lenders traditionally willing to extend credit to minorities and women. The new examination and enforcement program is intended to assist brokers as well as home-buyers in securing home mortgage loans on the best possible terms. This can only be accomplished if both shop widely for the most favorable terms.

Action Step 3—***Make sure home-buyers fill out the race/sex data forms***

Community groups should make a special effort to explain to prospective homebuyers the importance of filling out the forms supplied by lenders asking for the race and sex of loan applicants. By supplying this information, the applicant will be providing the federal regulatory agency with data it needs to search for discrimination.

Some people are reluctant to answer questions about their race or sex, because they feel that this is a private matter or that the information may be used to discriminate against them. But in mortgage lending, face-to-face contact usually takes place before an application is approved; thus, the applicant's race and sex will be known to the lender in any event. Filling out the form makes this information available to the regulatory agency as well, and thus enables it to detect discrimination that otherwise might be difficult if not impossible to spot from the lender's records. Moreover, the very fact that an applicant's race and

sex will be known to the regulatory agency makes it less likely that the lender will turn down the application or offer a loan on less favorable terms for an improper reason.

Action Step 4—

Be alert for "pre-screening"



Some institutions may try to avoid making a record of denying a loan to a woman or a minority customer by discouraging them from filing a written application. This practice is known as "pre-screening." Loan shoppers should be alert to this tactic, and should ask to fill out applications. Pre-screening in another form may be occurring when a lender charges a substantial fee for filing an application and refuses to discuss loan terms at all before the application is filed, thus trying to discourage the prospective buyer from actually applying. Whenever pre-screening is suspected, the practice should be challenged by making a complaint to the regulatory agency.

Action Step 5—

Help loan-seekers file complaints

Filing a discrimination complaint is simple and does not require iron-clad proof of illegal discrimination. On the contrary, a well-founded suspicion of discriminatory treatment is a sufficient basis for sending a complaint which will trigger an investigation of the lender's policies and practices by the federal regulator. Once a loan-seeker suspects unjust treatment and the decision is made to file a complaint, two simple steps are required: (1) determining the appropriate federal agency with which to lodge the complaint, and (2) writing a letter to that agency.

Determining the appropriate agency. In general, savings and loans are supervised by the Federal Home Loan Bank Board, national banks by the Comptroller of the Currency, and state-chartered banks by the Federal Deposit Insurance Corporation (or, in a few cases, the Federal Reserve Board). Your group can assist loan shoppers in determining the proper agency by calling the lending institution to ask which federal agency regulates it. Alternatively, the name of the institution or the sticker it displays on its doors or windows may provide the clues you need, as outlined in the chart below. Deciding which is the correct agency is not of crucial importance, however, because a complaint sent to the wrong agency will be forwarded to the right one.

Lending Institution	How To Recognize It	Regulatory Agency
savings & loan association which is federally insured	sticker on door or window 	Federal Home Loan Bank Board 1700 G Street, N.W. Washington, DC 20552
national bank	the word "National" in its name or the initials "N.A." after its name	Comptroller of the Currency 490 L'Enfant Plaza East, SW Washington, DC 20219
state-chartered bank which is federally-insured*	sticker on door or window 	Federal Deposit Insurance Corporation 550 17th Street, N.W. Washington, DC 20429

*A small percentage of federally-insured state-chartered banks are members of the Federal Reserve System and thus are regulated by the Federal Reserve Board (Washington, DC 20551). Don't worry, however, if you complain to the wrong agency; it will forward your complaint to the right one.

Filing the complaint. Once the appropriate federal agency has been determined, you should assist the loan applicant in writing and mailing the complaint. All that is needed is a letter stating that this is a discrimination complaint, and giving the following information:

- name, address, and phone number of the person complaining (the "complainant")
- name and address of the lending institution, and name (if known) of the employee who dealt with the complainant
- how the contact with the lender was made (by phone, mail, or in person, including whether an application was filled out)
- approximate date of the occurrence
- brief description of what happened (what sort of loan was requested, what information the borrower gave, and how the lender responded, including any reason given for the lender's response)
- statement of why the complainant thinks that he or she was discriminated against
- copies of correspondence with the lender (if any)

Once your group has assisted the loan seeker in filing the complaint, you will want to be sure that the regulatory agency follows through. To assure prompt handling of complaints, you should make contact with the Civil Rights Specialist in the nearest regional office of the appropriate federal regulatory agency. (See the list of regional offices at the end of this handbook.) If you feel that a complaint is not receiving prompt and proper treatment, contact the Center for National Policy Review for further follow-up action in Washington, D.C.

Action Step 6—

Work with the regional Civil Rights Specialists

Your group should contact the Civil Rights Specialist in each of the federal agencies' nearest regional office (address at end of handbook). Make an appointment or invite the Specialists to visit your community for an informal discussion of their work and how you can effectively assist each other. Become acquainted with them and make sure they know at least two people in your group and where they can be reached. Give each of the Specialists some printed information about your group. By developing ongoing working relationships with these Specialists, and by providing them with information and suggestions, you can help them have maximum impact within their agencies.

Action Step 7—

"Audit" lenders suspected of unfair practices

Your group may wish to conduct a test or "audit" of lender conduct. While perhaps more complex than testing for discrimination in housing sales or rentals, a check of whether minority and female loan seekers are being treated fairly can be made with careful advance planning.

You can start your "audit" by making telephone calls to lenders, or by visiting them in person to inquire about the availability and terms of credit for specific pieces of property. Watch for differences that may suggest unfair lending practices based on the race or sex of the applicant or the age or location of the property. For example, suppose someone whose name or accent indicates that he or she is a minority telephones a bank and is told that no mortgage loans are currently available, while an inquirer with an unrevealing name and accent is told to come in and fill out a mortgage application. If this happens, a complaint with the federal regulatory agency may be in order. Likewise, if an inquiry about a loan on a home in a minority or inner-city neighborhood gets a negative response while a question about a similar home in the suburbs is

welcomed, a complaint may be called for. And if a loan request for a home in an older part of town is discouraged while one on a similar home in a newer area is encouraged, this may indicate unlawful discrimination which should be called to the attention of the regulatory agency.

Whether by telephone calls or by actual visits to the lender's office, an "audit" of this sort requires that coordinated but independent inquiries be made to see if minorities and women are treated equally with others. In arranging to check an institution's practices in this way, your group should bring the "auditors" together before and after each phase of the "audit." The questions that each asks the lender must be carefully coordinated, and the lender's response to each must be known by the other, so that the same issues will be raised in each "auditor's" conversation with the lender. Fair housing groups which have had extensive experience in rental and sales testing will provide a good local source for help in planning and implementing an imaginative and effective "audit" of home mortgage lenders in your community.

Write or phone the Center for National Policy Review about your experience in conducting "audits." Let us know what methods seem to work best, so that your experience can be shared with others.

Action Step 8—

Meet and negotiate with lenders

Community groups should arrange meetings with lenders, particularly those having discriminatory reputations. Tell them that you wish to help them make more loans to minorities and women and to do business with all persons in the community on an equal basis. Urge local lenders to take a variety of affirmative steps, such as the following:

Affirmative Steps for Lenders

- Advertise in media known to reach underserved groups and areas, such as minorities and inner-city residential neighborhoods, making clear that a nondiscriminatory lending policy is now in force. Lenders should solicit loans from groups and areas where credit has usually been denied or offered on onerous terms in the past. Ads should be placed in Spanish (or other appropriate language) to reach non-English speaking persons.
- Seek out and develop business relationships with minority brokers, builders and developers, and with those who are active in minority neighborhoods. Develop ongoing relations also with fair

housing, civil rights, and community groups, as well as with local government redevelopment staff.

- Participate in FHA and HUD subsidy programs, and make loans on homes priced within the reach of low- and moderate-income people.
- Hire and promote minority and bilingual persons for public contact and decision-making jobs, including loan officers. Train key personnel in fair lending, and assign staff and budget priority to this activity. Place minorities and women on boards of directors. (Failure to take such steps serves to reinforce community perceptions that a lender is discriminatory, thus discouraging those denied credit in the past for illegal discriminatory reasons from making their credit needs known.)
- Adopt written underwriting and appraisal policies which reject discriminatory criteria such as age of housing stock, or the "changing" racial character of a neighborhood. Instruct all personnel, including outside appraisers, to adhere to these policies.
- Provide special assistance in the form of mortgage and home ownership counselling to historically underserved groups such as minorities, women or inner-city dwellers.
- Organize and participate in mortgage review boards with authority to review loan denials as well as the terms of approved loans.

An effective technique that some community groups have used to secure compliance with fair lending laws is, to negotiate with a lender a binding loan policy agreement. Some groups have successfully prevented lenders from getting government permission to open new offices until they have signed such an agreement. The terms should be specific, setting forth the lender's commitment to make mortgage loans to any creditworthy resident within a defined geographical area and stating the standards by which creditworthiness is to be determined. Some of the provisions of a loan policy agreement recently negotiated with a major Washington, D.C. lender are summarized in the box below. Write the Center for National Policy Review for a copy of the entire agreement.

NEGOTIATIONS WITH LENDERS

Neighborhood organizations in Washington, D.C. recently negotiated a binding loan policy agreement with a savings and loan association which wanted to open a new branch office. Local groups opposed establishment of the branch in their area until the association agreed to provide home financing opportunities for lower- and moderate-income and minority residents of the neighborhood. The agreement obligates the lender to make conventional mortgage loans to any creditworthy resident in the community on owner-occupied one- to four-family homes, including:

- mortgage loans at 90 percent of value with private mortgage insurance to buy single family homes priced at \$45,000 or less
- mortgage loans to purchase and rehabilitate single family homes priced at \$45,000 or less, with the improved value of the property no greater than \$60,000 (such loans to be 90 percent of improved value with private mortgage insurance)
- mortgage loans at 80 percent of improved value without private insurance to purchase, or purchase and rehabilitate, single family homes priced at \$45,000 or less with improved value of \$60,000 or less
- refinancing of outstanding mortgage loans at 90 percent of improved value with private mortgage insurance, to provide rehabilitation funds (the improved value not to exceed \$60,000 for single family homes, \$95,000 for two- to four-family homes, or \$45,000 for condominiums)

For these and other specified loans, the lender agreed to impose interest rates no greater than those available to other borrowers, and to provide the same maturity periods available to others in cases where the home has a sound structure. The agreement provides standards such as these for evaluating the creditworthiness of the borrower:

- All income of the applicant and spouse is to be counted—including income from overtime and part-time employment that is reasonably stable and likely to continue.
- Labor performed by a borrower which increases the value of the property will be considered the equivalent of a cash investment for the purpose of calculating loan-to-value ratios.

In addition, the lender agreed to make a variety of FHA/VA loans, to provide housing and loan counselling services to community residents, and to employ bilingual loan officers and community counselors.

Action Step 9—*Join forces with other local groups*

Inform others in the community about the new commitment on the part of the federal regulatory agencies to crack down on discriminatory lenders. Conduct workshops on fair lending rights and on steps local groups and individuals can take to see that lenders stop discriminatory practices and begin to deal fairly with all prospective borrowers. Share information with other groups in the area and become a local resource for fair lending assistance. Publicize what you are doing so that loan applicants encountering difficulty will know where to turn for help.

MORE INFORMATION ON . . .**1. The New Enforcement Program**

If you have questions about the new enforcement program of the federal financial regulatory agencies, or if you have suggestions for improving the enforcement program, contact the Center for National Policy Review (Catholic University Law School, Washington, D.C. 20064; tel. 202-832-8525). The Center is eager to learn of your experience in assisting minorities and women in applying for credit, and will be glad to provide you with whatever help it can. In addition, the Center would like to have your ideas for improving the enforcement program so that it can tell the agencies about them.

2. Federal Fair Lending Laws and Regulations

Important recent federal laws and regulations related to fair lending are listed here. They should be available from your local library, through the nearest federal document depository library, law school or Legal Services office.

Fair Housing Act (Title VIII of the Civil Rights Act of 1968); United States Code, Volume 42, Sections 3601-3619.

Equal Credit Opportunity Act; United States Code, Volume 15, Sections 1691-1691f; and *Federal Reserve Board Regulation B*; Code of Federal Regulations, Volume 12, Part 202 (1977).

Home Mortgage Disclosure Act; United States Code, Volume 12, Sections 2801-2809.

Community Reinvestment Act; United States Code, Volume 12, Sections 2901-2905 (1978).

Federal Home Loan Bank Board Nondiscrimination Regulation; Code of Federal Regulations, Volume 12, Parts 528 and 531.8 (1978).

Federal Deposit Insurance Corporation Fair Housing Advertising, Poster, and Recordkeeping Requirements; Code of Federal Regulations, Volume 12, Part 338 (1978).

3. Financial Aspects of Home Buying

For general information on the financial aspects of home buying, you may find helpful some basic pamphlets available free or at nominal cost from the U.S. Department of Housing and Urban Development (HUD). For example, *The Home Buyer's Estimator of Monthly Housing Cost* provides a measure for comparing different loan terms (prepared by HUD and available for \$1.75 from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402; GPO stock no. 023-000-00319-8). Other HUD materials (available free from HUD's Publication Service Center, Room B258, 451 7th Street, S.W., Washington, D.C. 20410) include: *Fixing Up Your Home: What To Do and How To Finance It*; *Protecting Your Housing Investment*; *Settlement Costs, A HUD Guide*; and *Wise Home Buying*.

4. Home Mortgage Disclosure Act (HMDA)

Information on how community groups can use data available under the Home Mortgage Disclosure Act is provided in a citizens handbook prepared by Karen Kollias, *Disclosure and Neighborhood Reinvestment: A Citizens Guide*, published by the National Center for Urban Ethnic Affairs (1521 16th Street, N.W., Washington, D.C. 20036).

5. Definitions of Home Buying Terms

Two elementary glossaries are available free from the HUD Publication Service Center (address above)—*Home Buyer's Vocabulary*, and *Homeowner's Glossary of Building Terms*—and a more detailed one (115 pages)—*Mortgage Banking Terms: A Working Glossary*—can be ordered from the Mortgage Bankers Association (1125 15th Street, N.W., Washington, D.C. 20005; price \$5.00; \$3.50 for students).

6. Groups Active in Fair Lending

Many groups throughout the country are active in fair lending. A few of them are listed below with a brief indication of areas in which they have particular expertise, should you wish to contact them for further information:

Center for Community Change, 1000 Wisconsin Avenue, N.W., Washington, D.C. 20007 (negotiations and affirmative agreements with lenders).

Center for National Policy Review, c/o Catholic University Law School, Washington, D.C. 20064 (federal regulatory agencies and the new enforcement program described in this handbook).

League of Women Voters of the United States, 1730 M Street, N.W., Washington, D.C. 20036 (fair lending enforcement at local, state, and national levels).

Metropolitan Washington Planning and Housing Association, 1225 K Street, N.W., Washington, D.C. 20005 (fair housing advocacy and affirmative lending policies).

National Center for Urban Ethnic Affairs, 1521 16th Street, N.W., Washington, D.C. 20036 (Home Mortgage Disclosure Act and neighborhood reinvestment).

National Committee Against Discrimination in Housing, 1425 H Street, N.W., Suite 410, Washington, D.C. 20005 (legal services and research on behalf of open housing and open communities).

National Peoples Action, 1123 West Washington Street, Chicago, Illinois 60607 (neighborhood reinvestment and community organizing).

National Urban League, 500 East 62nd Street, New York, New York 10021 (reinvestment research and action on urban and minority issues).

Philadelphia Mortgage Plan, Greater Philadelphia Partnership, Western Savings Building, Broad and Chestnut Streets, Philadelphia, Pennsylvania 19107 (cooperative effort of local financial institutions to make mortgage funds available in inner-city neighborhoods).



DIRECTORY OF FEDERAL REGULATORY AGENCIES

FEDERAL HOME LOAN BANK BOARD

Headquarters: 1700 G Street, N.W., Washington, D.C. 20552

Regional Offices

Write to: Civil Rights Specialist
c/o Federal Home Loan Bank
at the appropriate office listed below:

Post Office Box 2196
Boston, Massachusetts
617-223-5300

(Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont)

One World Trade Center
Floor 103

New York, New York 10048
212-432-2000

(New Jersey, New York, Puerto Rico and Virgin Islands)

11 Stanwix Street, 4th Floor
Gateway Center

Pittsburgh, Pennsylvania 15222
412-288-3400

(Delaware, Pennsylvania, West Virginia)

Post Office Box 56527
Atlanta, Georgia 30343
404-522-2450

(Alabama, District of Columbia, Florida, Georgia, Maryland, North Carolina, South Carolina and Virginia)

Post Office Box 598
Cincinnati, Ohio 45201
513-852-7500

(Kentucky, Ohio and Tennessee)

2900 Indiana Tower

One Indiana Square
Indianapolis, Indiana 46204
317-269-5371

(Indiana and Michigan)

111 East Wacker Drive
Chicago, Illinois 60601

312-565-5700
(Illinois and Wisconsin)

907 Walnut Street
Des Moines, Iowa 50309
515-243-4211

(Iowa, Minnesota, Missouri, North Dakota and South Dakota)

1400 Tower Building
Little Rock, Arkansas 72201
501-372-7141

(Arkansas, Louisiana, Mississippi, New Mexico and Texas)

Post Office Box 176
Topeka, Kansas 66601
913-233-0507

(Colorado, Kansas, Nebraska and Oklahoma)

Post Office Box 7948
San Francisco, California 94120
415-393-1000

(Arizona, Nevada and California)

Seattle, Washington 98101
206-624-3980

(Alaska, Hawaii and Guam, Idaho, Montana, Oregon, Utah, Washington and Wyoming)

OFFICE OF THE COMPTROLLER OF THE CURRENCY**Headquarters: 490 L'Enfant Plaza East, S.W., Washington, D.C. 20219****Regional Offices**

**Write to: Civil Rights/Consumer Specialist
c/o Office of the Comptroller
at the appropriate office listed below:**

**3 Center Plaza, Suite P-400
Boston, Massachusetts 02108
617-223-2274
(Connecticut, Rhode Island,
Vermont, New Hampshire,
Massachusetts and Maine)**

**1211 Avenue of the Americas
Suite 4250
New York, New York 10036
212-399-2997
(New York and New Jersey)**

**3 Parkway, Suite 1800
Philadelphia, Pennsylvania 19102
215-597-7105
(Pennsylvania and Delaware)**

**One Erieview Plaza
Cleveland, Ohio 44114
216-522-7141
(Ohio, Indiana, Kentucky)**

**F & M Center, Suite 2151
Richmond, Virginia 23277
804-643-3517
(West Virginia, Virginia, Maryland,
District of Columbia, North
Carolina)**

**Peachtree Cain Tower, Suite 2700
229 Peachtree Street, N.E.
Atlanta, Georgia 30303
404-221-4926
(Georgia, South Carolina, Florida)**

**Sears Tower, Suite 5750
Chicago, Illinois 60606
312-353-0300
(Illinois and Michigan)**

**165 Madison Avenue, Suite 800
Memphis, Tennessee 38103
901-521-3376
(Mississippi, Alabama, Tennessee,
Arkansas, Louisiana)**

**800 Marquette Avenue
1100 Midwest Plaza, East Building
Minneapolis, Minnesota 55402
612-725-2684
(Minnesota, North Dakota, South
Dakota, Wisconsin)**

**911 Main Street, Suite 2616
Kansas City, Missouri 64105
816-842-1648
(Iowa, Missouri, Nebraska, Kansas)**

**1201 Elm Street, Suite 3800
Dallas, Texas 75270
214-655-4000
(Texas and Oklahoma)**

**1405 Curtis Street, Suite 3000
Denver, Colorado 80202
303-837-4883
(Wyoming, Utah, Colorado,
Arizona, New Mexico)**

**707 Southwest Washington Street
Room 900
Portland, Oregon 97205
503-221-3091
(Montana, Idaho, Oregon, Wash-
ington, Alaska)**

**One Market Plaza
Steuart Street Tower, Suite 2101
San Francisco, California 94105
415-556-6619
(Nevada, California, Hawaii)**

FEDERAL DEPOSIT INSURANCE CORPORATION**Headquarters: 550 17th St., N.W., Washington, D.C. 20429****Regional Offices**

Write to: **Civil Rights-Consumer Specialist**
c/o Federal Deposit Insurance Corporation
at the appropriate office listed below:

233 Peachtree Street, N.E.
 Suite 2400
 Atlanta, Georgia 30303
 404-221-6631
 (Alabama, Florida, Georgia)

60 State Street, 17th Floor
 Boston, Massachusetts 02109
 617-223-6420
 (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont)

233 S. Wacker Drive, Suite 6116
 Chicago, Illinois 60606
 312-353-2600
 (Illinois, Indiana)

1 Nationwide Plaza, Suite 2600
 Columbus, Ohio 43215
 614-469-7301
 (Kentucky, Ohio, West Virginia)

300 North Ervay Street
 Suite 3300
 Dallas, Texas 75201
 214-749-7691
 (Colorado, New Mexico, Oklahoma, Texas)

2345 Grand Avenue, Suite 1500
 Kansas City, Missouri 64108
 816-374-2851
 (Kansas, Missouri)

1 South Pinckney Street
 Room 813
 Madison, Wisconsin 53703
 608-252-5226
 (Michigan, Wisconsin)

1 Commerce Square, Suite 1800
 Memphis, Tennessee 38103
 901-521-3872
 (Arkansas, Louisiana, Mississippi, Tennessee)

730 Second Avenue South
 Suite 266
 Minneapolis, Minnesota 55402
 612-725-2046
 (Minnesota, Montana, North Dakota, South Dakota, Wyoming)

345 Park Avenue, 21st Floor
 New York, New York 10022
 212-826-4762
 (New Jersey, New York, Puerto Rico, Virgin Islands)

1700 Farnam Street, Suite 1200
 Omaha, Nebraska 68102
 402-221-3366
 (Iowa, Nebraska)

5 Penn Center Plaza, Suite 2901
 Philadelphia, Pennsylvania 19103
 215-597-2295
 (Delaware, Maryland, Pennsylvania)

908 E. Main Street, Suite 435
 Richmond, Virginia 23219
 804-643-6716
 (District of Columbia, North Carolina, South Carolina, Virginia)

44 Montgomery Street, Suite 3600
 San Francisco, California 94104
 415-556-2736
 (Alaska, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, Utah, Washington)

FEDERAL RESERVE BOARD**Headquarters:** 21st and Constitution Ave., N.W., Washington, D.C. 20551**Regional Offices**

Write to: Civil Rights/Consumer Specialist
 c/o Federal Reserve Bank
 at the appropriate office listed below:

600 Atlantic Avenue
 Boston, Massachusetts 02106
 617-973-3000
 (Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island)

33 Liberty Street
 New York, New York 10005
 212-791-5000
 (New York and part of New Jersey)

100 North Sixth Street
 Philadelphia, Pennsylvania 19109
 215-574-6000
 (Delaware, parts of Pennsylvania and New Jersey)

1455 East Sixth Street
 P.O. Box 6387
 Cleveland, Ohio 44101
 216-293-9800
 (Ohio, Kentucky, parts of Pennsylvania and West Virginia)

100 North Ninth Street
 Richmond, Virginia 23261
 804-649-3611
 (Virginia, North Carolina, Maryland, South Carolina, District of Columbia, and part of West Virginia)

104 Marietta Street, N.W.
 Atlanta, Georgia 30303
 404-231-8500
 (Georgia, Tennessee, Alabama, Florida, Louisiana, Mississippi)

230 South LaSalle Street
 P.O. Box 834
 Chicago, Illinois 60690
 312-380-2320
 (Iowa and parts of Illinois, Indiana, Wisconsin and Michigan)

411 Locust Street
 P.O. Box 442
 St. Louis, Missouri 63166
 314-444-8444
 (Arkansas and parts of Illinois, Indiana, Missouri, Kentucky, Mississippi, and Tennessee)

250 Marquette Avenue
 Minneapolis, Minnesota 55480
 612-783-2345
 (Minnesota, North Dakota, South Dakota, Montana, and parts of Michigan and Wisconsin)

925 Grand Avenue
 Federal Reserve Station
 Kansas City, Missouri 64198
 816-881-2000
 (Kansas, Colorado, Wyoming, Oklahoma, Nebraska and parts of Missouri and New Mexico)

400 South Akard Street
 Station K
 Dallas, Texas 75222
 214-651-6111
 (Texas, parts of Oklahoma, New Mexico and Louisiana)

400 Sansome Street
 San Francisco, California 94120
 415-450-2000
 (California, Hawaii, Nevada, Arizona, Idaho and Oregon)

APPENDIX 11.—U.S. COMMISSION ON CIVIL RIGHTS, EXCERPTS FROM
"A DECADE OF FAIR HOUSING LAW," FORTHCOMING, MARCH 1979

UNITED STATES COMMISSION ON CIVIL RIGHTS

Washington, D. C. 20425

JAN 16 1979

JAN 16 1979

Honorable Benjamin S. Rosenthal
Chairman
Subcommittee on Commerce, Consumer, and Monetary
Affairs of the Committee on Government Operations
U. S. House of Representatives
Rayburn House Office Building, Room B-377
Washington, D. C. 20515

Dear Mr. Chairman:

Thank you for your request of January 2 to include a summary and excerpts of the chapter on the Federal financial regulatory agencies of this Commission's as yet unpublished report on Federal fair housing enforcement activities, as an appendix to a Subcommittee hearing volume. We are gratified that this chapter is of interest to you and the Subcommittee.

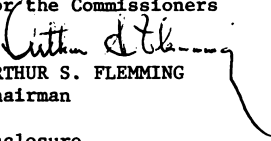
As a rule, this Commission does not release portions of its reports prior to their publication. However, we have discussed the unique nature of your request and believe that, in this case, it is appropriate to provide you with the material requested.

We hope that the enclosed excerpts we have selected are responsive to your needs. Please note that we have omitted footnotes and that the enclosed material represents a considerable condensation of the chapter on the Federal financial regulatory agencies in the report we will publish. We hope to publish the full report in March of this year.

If we can be of further assistance in this matter, please contact us.

Sincerely,

For the Commissioners


ARTHUR S. FLEMMING
Chairman

Enclosure

(1837)

EXCERPTS FROM FORTHCOMING U. S. COMMISSION ON CIVIL RIGHTS REPORT,
A DECADE OF FAIR HOUSING LAW, THE FEDERAL CIVIL RIGHTS ENFORCEMENT EFFORT,
CHAPTER 3, "THE FEDERAL FINANCIAL REGULATORY AGENCIES,"
TRANSMITTED TO SUBCOMMITTEE ON COMMERCE, CONSUMER, AND MONETARY AFFAIRS
OF THE COMMITTEE ON GOVERNMENT OPERATIONS, U. S. HOUSE OF REPRESENTATIVES
JANUARY 1979*

*The Commission expects to publish A Decade of Fair Housing Law in March 1979.
Footnotes have been deleted from the excerpts.

Chapter 3**The Federal Financial Regulatory Agencies****Board of Governors of the Federal Reserve System (FRB)****Federal Deposit Insurance Corporation (FDIC)****Office of the Comptroller of the Currency (COC)****Federal Home Loan Bank Board (FHLBB)****Summary**

Since 1974 the civil rights responsibilities of the four Federal financial regulatory agencies have increased significantly. In addition to Title VIII of the Civil Rights Act of 1968, the four agencies are now charged with duties pursuant to the Equal Credit Opportunity Act (ECOA), the Home Mortgage Disclosure Act (HMDA), and the Community Reinvestment Act of 1977.

As a result of these new statutory requirements, intensive congressional scrutiny, private litigation, and their own independent efforts, the agencies' fair housing posture has improved. In particular, each of the agencies has either issued or proposed rules, regulations, and/or guidelines clarifying the fair housing duties of the lenders they regulate. One of the most significant provisions of this body of regulations is the requirement that regulated institutions collect and maintain data on race, ethnicity, sex, marital status, and age on mortgage application forms.

Each agency has set up a separate unit or division to carry out its fair housing responsibilities. Moreover, each agency has established a fair housing component in its bank examination process. Each of the agencies has also improved its fair housing training of examiners and other staff and has provided written internal guidance for evaluating compliance with fair housing laws.

Since the adoption of improved examination procedures, FHLBB, FRB, and FDIC have detected numerous violations by their regulatees of fair housing requirements. COC, in contrast, although it regulates over 4,500 national banks, has discovered possible violations at only three institutions.

The numerical data provided to this Commission on the types of violations the agencies have uncovered in their examinations reveal only a very limited range of fair housing violations. These violations were generally technical rather than substantive, and included, for example, failure to display the equal housing lender poster, give the required notice of nondiscrimination in advertisements, or collect the racial, ethnic, and sex data required for compliance with the Equal Credit Opportunity Act. In most cases in which violations have been detected, the agencies have insufficiently monitored promised corrective action.

None of the Federal financial regulatory agencies has demonstrated sufficient use of ECOA data or of the census tract data required by HMDA. These data are essential for detecting patterns or practices of discrimination by mortgage lenders. Until the financial regulatory agencies make proper use of the data, their ability to uncover substantial fair housing violations will not measurably improve.

COC, FDIC, and FHLBB have received a considerable number of fair housing complaints since 1974. FRB has reported only two such complaints. As of May 1978, Federal financial regulatory agency investigation of these complaints had resulted in no corrective action; as of that time, none of the agencies had ever determined that a complaint was valid. This Commission's review of a sample of complaint files indicated that the absence of such a finding, however, may be the result of inadequate complaint investigations and failure to properly characterize as violations the problems uncovered in those investigations.

As of May 1978, none of the agencies had ever initiated formal enforcement action, such as administrative proceedings against a regulatee or referral to the Department of Justice. They have, however, allowed fair housing violations to remain uncorrected. For example, the fair housing examination reports submitted to this

Commission by one of the agencies indicated that, in the one case in which the same violations were noted in three consecutive annual examinations, the agency was unable to obtain voluntary compliance. Furthermore, at the time of the most recent examiner report, it has achieved no firm commitment that the institution would correct the violations. Another one of the agencies indicated to this Commission that correction of past violations would not be effected until proposed enforcement guidelines were adopted in final form.

Evaluation of Fair Housing Regulations

a. Regulation B

Regulation B, issued by FRB pursuant to the ECOA, pertains to discrimination in all areas of credit access, including but not limited to transactions related to fair housing. In addition to its data collection provisions, Regulation B represents a positive development in a number of respects:

- The regulation prohibits discriminatory conduct designed to discourage potential applicants as well as direct discrimination in the application process itself.
- Pursuant to the ECOA requirement that creditors notify applicants of the reason for denials of credit, the regulation gives reasonably comprehensive examples of the types of specific reasons which must be included in creditor notification.
- The regulation offers specific guidance on requirements imposed on creditors who release credit history information to third parties.

- The regulation specifically prohibits a number of discriminatory or potentially discriminatory inquiries by creditors in connection with credit applications, including questions relating to an applicant's spouse (except where a spouse or the spouse's property may be subject to liability resulting from credit transactions), an applicant's birth control practices, or an applicant's race, color, sex, religion, or national origin.

There are, however, a number of areas in which Regulation B is deficient. One of the more serious is the regulation's failure to include clear guidance on how Federal agencies should proceed with enforcement actions based on violations of the ECOA or Regulation B. The regulation merely states the general statutory language granting administrative enforcement responsibility to specific agencies.

A further shortcoming of Regulation B, which this Commission has noted previously, is its failure to include adequate guidance for applying the "effects test" definition of discrimination to the field of credit as Congress intended. The "effects test" dictates that the impact of, not the motivation behind, a particular practice is to be the threshold consideration in determining whether that practice establishes a prima facie case of discrimination. Although FRB acknowledges that Congress intended the "effects test" to be applied to credit practices, FRT does not go far enough in the regulation to meet its responsibility to define clearly the "effects test" for its regulatees. Nowhere in the text of Regulation B does FRB

clearly state what is required by the "effects test," or that this doctrine is to govern the judgments of enforcement agencies applying the regulation.

b. FHLBB Regulations

In 1977, FHLBB proposed a new regulation and guideline for the purpose of "monitoring compliance with the Equal Credit Opportunity Act (ECOA), Title VIII of the Civil Rights Act of 1968, and other civil rights statutes which the Board enforces." The regulation and guideline were finalized in 1978 and are applicable to Title VIII, ECOA, and CRA.

The provisions in the 1978 regulation include:

- Requiring written loan underwriting standards of all member institutions.
- Prohibiting redlining due to the age and location of a dwelling.
- Requiring a loan application register which denotes the race, sex, marital status, and age of the applicant and co-applicant; the census tract of the property; loan terms; and final disposition of the application.
- Provision for the lending institution to designate the race and/or sex of applicants on application forms where applicants fail to do so.
- Prohibiting reliance on appraisals which the institution knows, "or reasonably should know, is discriminatory on the basis of age or location of the dwelling, or is discriminatory per se or in effect" under Title VIII or ECOA.

The amended guideline also requires that lenders not only refrain from discriminating in their own lending practices, but also avoid doing business with developers and

real estate brokers who discriminate. The Commission has long advocated such a stance by the financial regulatory agencies. The positive guideline changes also include:

- Discouraging lenders from requiring that persons to whom they extend loans have "done business" with the institution in the past.

- Prohibiting inquiries into the childbearing intentions of applicants.

- Advising institutions to review their advertising and marketing practices to ensure "that their services are available without discrimination to the community they serve."

- Prohibiting "use of unfounded or unsubstantiated assumptions regarding effect upon loan risk of...the physical or economic characteristics of an area."

Despite these positive features, the loan register which is required by the regulation does not require notation of creditworthiness information in conjunction with race, sex, marital status, and age data as required by the 1977 proposed version; the final regulation does not require reporting to FHLBB the number of loan applications received, approved, or denied (or otherwise adversely acted upon) by race, sex, and marital status, as required in the 1977 proposed regulation. A major deficiency of the FHLBB regulation and guideline, is that, like Regulation B, they provide no instructions as to how and within what time frames enforcement actions are to take place.

c. FDIC's Fair Housing Regulation

FDIC's regulation contains a number of other features which deserve favorable comments.

- Coverage of all types of lending (home improvement, added constructions) related to housing, not merely mortgages.

- Incorporation of FDIC's nondiscrimination poster and advertising requirements.

- Modification of FDIC's fair housing poster to inform complainants that they may file complaints with FDIC, as well as with HUD.

- Inclusion of individuals making preapplication inquiries under the protections of the regulations.

As with Regulation B and FHLBB's regulation, a major shortcoming of FDIC's final regulation is that it contains no instruction or guidance on how investigations or other compliance activity will be conducted.

d. FRB Regulation C Pursuant to HMDA

Regulation C prescribes the data collection and disclosure requirements imposed pursuant to the Home Mortgage Disclosure Act (HMDA) on certain lenders who make "federally related mortgage loans." No Federal financial regulatory agency has issued procedures for action in the event that it discovers a lender has failed to maintain the data required by HMDA in the manner prescribed by the regulation. No agency has issued procedures for private citizens to follow when a lender does not make HMDA data publicly available as required by law and Regulation C.

The agencies are divided as to where responsibilities for promulgating such regulations lie. FDIC has written to this Commission, "Section 305 (a) of the Act (12 U.S.C. 2804 (a)) directs the Board of Governors to prescribe regulations to carry out the purposes of the Act. Nowhere does the Act authorize or direct FDIC to promulgate regulations relating to HMDA." In contrast, FRB has stated: "Since the Federal Reserve does not exercise enforcement jurisdiction over all depository institutions subject to HMDA, including enforcement procedures in Regulation C would have been inappropriate."

Data Collection and Use

FHLBB and FDIC have agreed, by settlements in the National Urban League suit, to adopt and develop a national racial, ethnic, and sex data collection and analysis system. COC, in its settlement of that case, also agreed to institute a data collection and analysis program, but no plans have yet been developed.

COC has indicated, however, that:

...a computer based data collection and analysis system which will be established in early 1979 will permit examiners to focus attention on those banks and particular loan files therein, where discriminatory patterns and practices are more likely to be found...Since our last communication we have hired a consultant who has developed a plan which we will be discussing with plaintiffs in the National Urban League suit in the very near future.

FRB is the only one of the four regulatory agencies which has not acknowledged the need to collect and analyze data

systematically. Although the district court has dismissed the National Urban League suit against FRB on procedural grounds, FRB notes that it is "...considering, in connection with a comprehensive review of the Federal Reserve's consumer and civil rights enforcement program, ways in which monitoring information might be used more effectively by examiners."

Although FHLBB and FDIC have agreed to institute a data collection and analysis system, it would appear that the use which the two agencies intend to make of data collected by their regulatees is not wholly satisfactory. The FDIC proposed regulation indicated that data would be used to flag institutions for a more thorough review. FHLBB, in its March 22, 1977, agreement with plaintiffs in the National Urban League suit, gave similar indication:

The Board...agrees that any [data collection and analysis] system devised by it...will be structured so as to enable the Board, at a minimum, to discover areas and institutions where deviant adverse action or rejection rates are occurring, to identify patterns of rejections and adverse actions that warrant further study, to flag individual institutions for indepth studies, and to measure changes in rejection or adverse action rates over time.

While it is significant that FHLBB and FDIC will make use of the data in setting priorities for indepth investigation, their regulations should also make clear the lenders' responsibility for using the data to determine if their lending practices have an adverse impact upon

minorities or women. If data indicate, for example, that minorities, women, or single persons have apparently been subjected to higher credit standards than whites, males, or married persons, or that nonvalidated credit standards have resulted in an unequal effect on protected classes, the burden of proof would shift to the creditor to show that discrimination has in fact not occurred, or to take affirmative action to correct the past discrimination and ensure against discriminatory practice in the future. Creditors who fail to take such corrective action voluntarily would be subjected to enforcement proceedings leading to the imposition of appropriate sanctions.

Examinations and Analysis of Examiner Reports

a. FRB

Approximately 97 percent of the 550 banks examined were in violation of Title VIII in two technical areas. Some banks either had not provided the equal housing lending poster in the bank and its branches or had not included the equal housing lender logo in advertisements. According to FRB, in each case in which violations were found, the bank promised correction. FRB also reported that no pattern of discrimination in real estate lending had been discovered by examiners.

FRB made completed fair housing examiner reports of three institutions available to the Commission. The types

of violations detected in these three cases, perhaps because of the use of the standardized forms with yes/no questions, tended to be the four most common violations found for all FRB-regulated institutions. FRB informed the Commission that each institution which was found to be in less than full compliance with fair housing requirements promised correction. However, although the files indicate that FRB recommended that outdated forms requesting prohibited information be abolished, no remedies appear to have been proposed for the three other types of violations. Moreover, the three fair housing examination files do not include records of any remedial action which may have been initiated by the three institutions. Thus it was not possible for Commission staff to evaluate whether violations were adequately addressed.

b. FDIC

In response to a Commission request that FDIC provide the number of violations detected as a result of that agency's fair housing examinations, the FDIC reported merely that no "substantive" violations of Title VIII had been reported and that, "while it is not clear that the failure to collect monitoring information under Regulation B represents a fair housing problem or violation, this particular violation is noted with some frequency."

FDIC did indicate that institutions frequently violated the agency's policy statement by failing to display the equal lending poster or by failing to give the required notice of nondiscrimination in advertisements for fair housing loans. The agency noted: "Moral suasion has generally been effective in bringing about correction in these areas." It also indicated that when it was discovered that an institution had failed to collect monitoring information required by Regulation B, the regional office staff "routinely" followed up to assure compliance.

FDIC sent this Commission three examination files. As is the case with FRB, it appears from an analysis of these files that the use of reporting forms in fair housing examinations which require a yes or no response limits the type of fair housing findings made by FDIC examiners. One examination report revealed that an institution failed to collect racial and ethnic and sex data but was at the same time judged to have policies and procedures which were "nondiscriminatory with respect to the receipt, evaluation and subsequent action on mortgage and home improvement loan applications." Such a determination has little meaning when made in the absence of relevant data.

The three fair housing examination files revealed the following four violations in one or more instances:

- Failure to display the equal lending poster;

- Failure of mortgage loan advertisements to contain required fair housing statement;
- Failure to notify applicants of adverse actions; and
- Failure to request racial, ethnic, and sex data on housing loan application forms.

In all instances, the bank in question promised to correct the violations.

c. COC

COC indicated to this Commission that as of April 3, 1978, its examiners had, as a result of the agency's fair housing examinations, uncovered possible fair housing violations at only three institutions. COC provided the Commission with the relevant examination report files. The three examination files indicate that examiners who conducted the fair housing reviews of the three institutions had good knowledge of fair housing requirements. However, a number of violations which were detected through the examination process did not appear to have been corrected.

COC noted:

...this fact should be placed in its proper perspective. In all cases discovered violations have been corrected prospectively. Correction of past violations will not be effected until Regulation B enforcement guidelines, currently out for public comment, have been adopted in final form. At that time all past violations will be addressed. We believe this to be preferable to requiring un-standardized corrective action while the issues are under further study.

As a result, COC has taken no actions for the purpose of providing relief to victims of discriminatory practices it has uncovered. For example, in one case COC found that inquiries had been made on appraisal forms as to the racial and ethnic composition of the neighborhood where the loan was to be made. COC ordered a special examination, and as a result, a new appraisal form was adopted by the institution. No action appears to have been taken, however, to rectify the discriminatory effect which the use of this form may have had prior to its discontinuation. In another case, evidence was uncovered that minority applicants had been rejected for loans without any apparent reason. Although the COC examiner brought these findings to the attention of bank management and, in fact, obtained an admission from the institution that the applicant had not received adequate consideration, no action appears to have been taken to provide relief to the past victims of this practice.

d. FHLBB

In calendar year 1977 FHLBB examiners detected 2,804 "possible or actual" fair housing violations as a result of the examination process. One thousand eight hundred and forty-nine supervisory letters, advising FHLBB regulatees of "possible or actual" fair housing violations were sent in calendar year 1977, and 52 special examinations following up on possible violations were conducted for the same period.

In the three examination reports FHLBB made available to this agency, examiners exhibited familiarity with fair housing requirements and conscientiousness in determining compliance with those requirements. Moreover, the examiners in some cases displayed persistence in seeking correction of violations. However, in the one case in which FHLBB found violations which remained uncorrected through three annual examinations, FHLBB could not obtain compliance through voluntary means. Nonetheless, FHLBB did not initiate formal enforcement proceedings against the institution. In that case, FHLBB examiners noted prescreening of applicants and lack of records on rejected applications in the 1975, 1976, and 1977 examinations of the institution. At the time of the 1977 examiner report, FHLBB had achieved no firm commitment from the institution that it would correct these violations.

Complaint Procedures

a. FRB

FRB has a regulation pertaining to consumer complaints in general, but does not have separate instructions for handling fair housing complaints. The consumer complaint regulation, commonly referred to as Regulation AA, states where and how complaints are to be filed.

Complaints are investigated by examiners at the 12 Federal Reserve Banks. If they are initially lodged with the Federal Reserve Board in Washington, D.C., they are forwarded to the appropriate Federal Reserve Bank for action. The Reserve Banks, in turn, send status reports of complaint investigations to the Consumer Affairs Division at FRB. Those reports include the bases on which the complainant is alleging a violation (for example, marital status or sex) a very brief account of the complaint, and the explanation of the respondent institution.

The reports do not contain a description of the investigation or an explanation of the decisions. This is especially unfortunate because FRB stores the information from these reports on computer and thus has the potential for doing a number of statistical analyses of the complaints it receives. If the reports were expanded, FRB would be able to monitor the adequacy of FRB complaint resolutions more closely.

b. FDIC

Prior to 1976, FDIC had no written fair housing complaint procedures. In fall 1976, FDIC adopted "Procedures for Investigating Fair Housing Complaints," which are applicable to complaints filed pursuant to Title VIII, ECOA, and HMDA.

The procedures, which were adapted from guidelines prepared by DOJ, are comprehensive and provide excellent instructions for examiner investigation of complaints. They state that the purpose of the fair housing complaint investigation is not only to determine the validity of the individual complaint, but also to "document the practice or act that caused the complaint, and determine whether the practice or act represented an isolated case or a general policy that must be corrected."

The investigative procedures direct the examiner to interview the complainant following review of the written complaint and to visit the respondent institution. While there, the examiner is to determine the institution's general loan policies; application procedures; underwriting policies, including credit scoring devices; lending patterns, by examining the locations in which loans, have been made by census tract or zip code, and "a representative sample of accepted and rejected mortgage applications for the period of time during which the complainant's application was submitted." The examiner is instructed to review appraisal forms, worksheets, and "any documents that list the amount of the loan made, interest rate, duration, points and date of approval" of those applications. Examiners are also instructed to contact appraisers and real estate brokers who had conducted business with the

respondent institution at the time of the complainant's application to determine whether the institution had reflected any discriminatory policies or practices of appraisers or real estate brokers.

The regional office, after determining if the complaint is valid, forwards the complaint and an explanation of the determination to the Washington office.

c. COC

COC has written procedures for processing Title VIII complaints, but as of March 1978, it had not developed such procedures for ECOA complaints and, indeed, had not allocated the resources for proper handling of ECOA complaints. Although all fair housing complaints are ultimately reviewed in Washington, they may be received, initially reviewed and investigated by the Regional Offices, prior to submission to the Washington Office for final review.

The procedures direct that the respondent institution be notified of the complaint and be given 10 days to respond to the charges. Following that, the complainant is to be interviewed and the complainant's and institution's accounts compared. Subsequently, bank personnel who were involved in the activities recounted in the complaint are to be interviewed at the institution. While at the institution, the examiner is to assess: 1) the bank's explanation for

the incident, including the reasons for denial of the loan or for the imposition of particular terms and conditions on the loan; 2) the bank's policy with regard to the making of loans, "including all factors taken into account in determining whether a given applicant is eligible for a loan or other financial assistance, including consideration of the neighborhood"; 3) whether any of those factors take into account "directly or indirectly, the applicant's race, color, religion, national origin, sex, or marital status"; and 4) the number of loans to applicants who are of the same race, color, religion, national origin, sex, or marital status as the complainant, and the time the loans were made.

The examiner is also to "review the name and residence of persons receiving such loans to determine whether the bank may have a policy of granting such loans only in certain neighborhoods." In determining the bank's policy, the examiner is to obtain copies of any available writings or documents pertaining to the bank's standards for making loans, and, in order to verify the lender's policy, other mortgage applications (both accepted and rejected) are to be reviewed. If the respondent institution has undergone a consumer examination, which would include an examination of fair housing compliance, the examiner is also to review the examination reports.

Within 10 business days of the conclusion of the investigation, the examiner is to submit a report to the Regional Administrator containing the examiner's recommendation for a decision. Within an additional 10 business days, the Regional Administrator is to review and comment upon the report and forward it to headquarters in Washington. Within 30 days, if the Regional Administrator and Washington staff approve the examiner's recommendation, the Washington staff is to inform the complainant and respondent institution of the decision. COC is the only one of the four agencies to impose time limitations on complaint resolution.

d. FHLBB

FHLBB's written instructions for handling fair housing complaints have been combined with its procedures for handling consumer complaints. FHLBB procedures call only for filing and processing complaints; they do not include instructions for actual complaint investigation. As with the banking regulatory agencies, all complaints, whether received in Washington or the regional offices, are to be investigated by regional personnel. As is also true for the other three agencies, FHLBB's regional personnel are to file status reports of the complaints with Washington.

The Washington office codes all complaints according to a number of facts including the status of their disposition,

the basis of the alleged violation, and the nature of their resolution. FHLBB has maintained these records of complaints against the saving and loan institutions it supervises only since July 1, 1977, when its new complaint procedures became effective.

Complaint Receipt

Since the promulgation of Regulation AA in 1976 and through March 1978, FRB recorded the receipt of only two fair housing complaints. Both were designated Title VIII complaints by FRB staff and neither was deemed legitimate by the Reserve Banks which investigated them.

FRB may have received additional complaints alleging discrimination in mortgage finance as well, if these complaints specifically alleged ECOA and not Title VIII violations. As FRB wrote to this Commission:

An explanation for the small number of complaints categorized as fair housing complaints is that consumer complaints alleging unlawful discrimination and citing ECOA and Regulation B have routinely been categorized as ECOA and not as Fair Housing Act violations. FRB is in the process, however, of changing its consumer complaint recording procedures; as part of this process, fair housing complaints will be more specifically encoded.

FDIC has fair housing complaint records from 1975. As of March 1978, FDIC had recorded 67 such complaints. In none of its complaint investigations did FDIC conclusively determine that discrimination had occurred.

COC has no record of having received a fair housing complaint prior to 1975. As of January 1978, it had

received 43 fair housing complaints. COC asserted that none of the complaints was a violation of law.

FHLBB has records of fair housing complaints as of July 1977 when it instituted its new complaint handling procedures. As of March 31, 1978, it had received 86 complaints alleging sex, marital status, race/national origin, or religious discrimination in credit transactions. Of these, FHLBB is unable to provide the precise number of complaints involving mortgage lending, but the Director of the Consumer Division, Office of Community Investment, FHLBB, estimates that "only two or three" allege discrimination in other types of credit transactions.

The four regulatory agencies provided the Commission with a total of 12 complaint files. While it is obviously not possible to draw definitive conclusions about each agency's complaint handling based on such a small sample, the Commission's review did note certain significant elements, some negative and some positive, in result.

Among the positive features identified with respect to some of the complaint investigations in the sample were:

- Interviewing was thorough. (FDIC)
- Time limitations were imposed. (FDIC, COC)
- Pattern and practice reviews were ordered. (FDIC)
- Rejected and accepted applications were noted on census tract maps. (FDIC, COC)

- Correction of "technical violations" was sought.

(FDIC, COC, FHLBB)

On the negative side, the complaint file samples as a whole indicated a tendency by agency complaint investigators to conduct insufficient investigation into the underlying issue of creditworthiness. An analysis of the sample complaint files revealed the following shortcomings with respect to investigation and resolution:

- Insufficient attempts were made to validate the objectivity of appraisals which were used as the basis for loan denial. (FDIC, COC)

- Complainants were not interviewed or contacted for further information. (FRB, COC, FHLBB)

- Not all allegations in the complaint were investigated. (FHLBB)

Remedial Activity

All four regulatory agencies, along with the National Credit Union Administration, have recently issued proposed uniform guidelines for administrative enforcement of Regulation B, the Equal Credit Opportunity Act, and the Fair Housing Act. The proposed guidelines indicate what type of corrective action creditors will be required to take when certain kinds of substantive violations are uncovered by the agencies. The enumerated violations include: prescreening of credit applicants; use of discriminatory criteria in determining creditworthiness; imposition of unequal terms and conditions in making loans; and failure to collect

monitoring information required by Regulation B. The enumerated remedies include: affirmative advertising directed at "the discouraged class," when evidence of prescreening has been discovered; soliciting new applications from former applicants, who may have been subjected to discriminatory credit evaluations and reimbursement of fees paid previously by applicants found to have been discriminatorily rejected, and soliciting Regulation B-required monitoring data for applications submitted since the effective date of Regulation B if an institution had previously failed to collect such data.

The proposed guidelines, therefore, constitute a positive step in the direction of more aggressive regulatory agency enforcement. However, as is true of the agencies' fair housing regulations, the guidelines do not outline uniform enforcement procedures, such as time frames, for compliance activity or provision for reviewing, as part of the examination process, data on race, ethnicity, sex, marital status, and age to identify possible discriminatory practices.

APPENDIX 12.—U.S. DEPARTMENT OF JUSTICE
THE ATTORNEY GENERAL'S REPORT TO CONGRESS PURSUANT TO THE EQUAL
CREDIT OPPORTUNITY ACT AMENDMENTS OF 1976
SUBMITTED FEBRUARY 1, 1978

This is the second report submitted pursuant to Section 707 of the Equal Credit Opportunity Act (15 U.S.C. 1691f) which requires the Attorney General to report annually concerning the administration of his functions under the statute and, if appropriate, to make recommendations.

The Equal Credit Opportunity Act enforcement program of the Justice Department is designed to: 1) identify violations of the statute and initiate civil lawsuits to obtain relief from unlawful conduct; 2) educate the public, both consumers and affected businesses, about the provisions of the Act; and 3) coordinate our activities with the work of other federal and state agencies in order to avoid duplication of effort and to arrive at a uniform approach to achieving compliance.

I. ACTIVITIES WITHIN THE DEPARTMENT

During 1977, the Housing Section of the Civil Rights Division, which is responsible for implementing the Department's Equal Credit Opportunity Act authority, was reorganized and its authorized strength increased by adding three lawyers, one legal technician and a secretary. The unit has been renamed the Housing and Credit Section, and approximately one-half of its proposed staff of 25 lawyers and eight paralegals will concentrate on credit matters.

Although the Civil Rights Division has gathered information about possible credit discrimination from a number of sources, complaints made to the Justice Department are the most important item in this area. During 1977 the Division received 46 complaints alleging violations of the Equal Credit Opportunity Act relating to credit transactions which did not involve housing. Another 10 complaints were received that concern discrimination by mortgage lenders alleging possible violations of both the Equal Credit Opportunity Act and Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.). A total of 56 credit-related investigations were initiated in 1977. Pending investigations include inquiries into the practices of several firms with nationwide operations and redlining complaints in major metropolitan areas.

Because the Department has not received a large number of specific ECOA complaints relating to retail credit and business credit, the Civil Rights Division has contacted women's groups and other organizations in order to determine the extent and nature of these problems. Letters explaining the rights granted by the Act and the duties it imposes on creditors are being sent to several hundred groups interested in issues affecting the classes protected by the statute and to trade organizations.

II. INTERAGENCY ACTIVITIES

The Department has continued to work with other federal agencies which have enforcement responsibilities under the Act. There have been no formal referrals from administrative agencies pursuant to Section 706(g), and the primary focus of our activities has been on training, coordinating investigations, and assisting in fashioning regulations under the Act. Our efforts include the following:

1. We have assisted in the preparation of training materials for other agencies and participated in classes held for examiners and staff employed by the Federal Reserve, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency and the Federal Home Loan Bank Board. A video tape program for Federal Home Loan Bank Board examiners was among the materials we helped to develop. It is our understanding that since the new training procedures were implemented, there has been a significant increase in the number of discrimination problems reported by Bank Board examiners.
2. Our lawyers participated in a series of conferences sponsored by the Department of Housing and Urban Development which were designed to instruct private attorneys and other interested persons about lending discrimination problems.

3. Civil Rights Division personnel attended six joint bank examinations conducted by the Office of the Comptroller of the Currency. This program resulted in a modification of the investigative procedures used by both the Department and National Bank Examiners.
4. An informal understanding has been reached between the Civil Rights Division and the Federal Trade Commission which will avoid duplication of investigative work. A cooperative arrangement has also been worked out with the Federal Home Loan Bank Board, and this procedure led to resolving two matters in 1977 by referring them to the Bank Board for action.
5. The Department has submitted comments on regulations proposed by the Federal Home Loan Bank Board. We have also commented on regulations proposed by the Federal Deposit Insurance Corporation.
6. The Civil Rights Division has commented on substantive interpretations of the Equal Credit Opportunity Act suggested by the Federal Reserve. Our comment asked that the Board of Governors amend the regulations to rescind an official staff interpretation which exempted all point-of-sale refusals to honor credit cards from the definition of "adverse action."

7. The Department is participating in the formulation of joint guidelines for relief in instances where Equal Credit Opportunity Act violations are found by some of the regulatory agencies. These guidelines are currently being considered by the Interagency Coordinating Committee composed of representatives from the Federal Reserve, Federal Home Loan Bank Board, Office of the Comptroller of the Currency and Federal Deposit Insurance Corporation.
8. During 1977, the Civil Rights Division was active as a member of an interagency task force set up in 1976 to strengthen government enforcement of Title VIII in the financing area. The work of this group also relates to the Equal Credit Opportunity Act.
9. Lawyers from the Civil Rights Division are working with the Redlining Task Force of the Urban Regional Planning Group which is preparing national urban policy recommendations for the President. Our lawyers have prepared draft option papers analyzing redlining problems.

COMMENTS

Even though the Act has been given substantial publicity, this Department has received surprisingly few

complaints and we know of only 8 lawsuits which have been filed by private plaintiffs during the past year. This lack of activity may be attributable to the fact that many people still are not aware of the statute. Based on discussions the Civil Rights Division staff has had with individual complainants, representatives of women's groups and other organizations concerned with the rights of the protected classes, we believe that the full scope of the ECOA is not understood by many persons and creditors affected by it. One of the goals of the reorganization within the Civil Rights Division's Housing and Credit Section is to provide additional resources so that we will be able to reach more people.

Our limited experience also suggests that many firms with questionable credit policies change them quickly after complaints are filed or the matter is brought to their attention by enforcement agencies. Under such circumstances, and where there are no continuing effects of the old practices, a lawsuit may not be necessary or desirable.

A third factor which may be contributing to the low amount of ECOA activity is the tendency of creditors to accept those applicants who complain to them. This results in the acceptance of persons who are knowledgeable about their rights and willing to confront the creditor. In most such instances no formal complaint is made. However, by

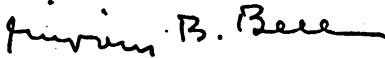
accepting those applicants who protest adverse credit decisions, and thus modifying its otherwise unlawful practice, a company's illegal policy may continue without the type of challenge which would require that it be abandoned entirely.

While the actual affect on credit practices is unknown, it appears that the issuance of official interpretations of the Act presents a potential enforcement problem. The statute in Section 706(e) authorizes the Federal Reserve Board Staff to interpret the law, and on September 1, 1976 the Civil Rights Division commented on Section 202.1(d) of the regulations which sets forth the procedure to be followed in obtaining staff interpretation letters. We were concerned that these letters, which were apparently intended to provide a simple mechanism for clarifying technical requirements of the Act or regulations, might be written too broadly and have a substantive impact on rights. Also, because Section 706(e) of the law exempts from liability any creditor who acts in reliance on an official interpretation, it is believed that substantive issues covered in interpretation letters would not be subjected to judicial scrutiny and, thus, although erroneous, might remain in effect.

On one occasion, an Official Staff Interpretation resulted in defining the meaning of "Adverse Action" in a

way that the Civil Rights Division believes is inconsistent with the purposes of the Act. The Federal Reserve Board later formally proposed amending the regulation section involved (Section 202.2(e)) and we have commented on this. However, the interpretation has been in effect for over nine months and during that time important rights have been affected. This type of problem could be avoided if in the future the Federal Reserve gave other governmental agencies and the public an opportunity to express their views before interpretation letters are issued on questions that may have a substantive impact.

The Department's Equal Credit Opportunity Act enforcement efforts reflect that there has been a general move by creditors to comply with the Act, but that violations continue. We have also found that where creditors refuse to cooperate with our investigators, it often leads to serious delays in resolving the matter. Because we believe that a thorough and objective investigation should precede the filing of a suit by the Department, it may be necessary to supplement existing civil investigative tools, and we are considering the possibility of seeking authority to compel the production of documents in selected situations involving civil rights matters.


Griffin B. Bell
Attorney General

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CIVIL RIGHTS DIVISION
UNITED STATES DEPARTMENT OF JUSTICE
COMMENTS
TO THE
FINANCIAL REGULATORY AGENCIES
ON PROPOSED UNIFORM
ENFORCEMENT GUIDELINES
UNDER THE
EQUAL CREDIT OPPORTUNITY ACT
AND THE FAIR HOUSING ACT
SEPTEMBER 5, 1978

Summary: The Civil Rights Division endorses the proposed uniform enforcement guidelines published on July 6, which are designed to provide the creditors supervised or examined by federal financial regulatory agencies with notice of the specific kinds of corrective action that will be required by the agencies if specific types of Equal Credit Opportunity Act violations are found. We believe the draft guidelines furnish a good outline of action which might be taken, and are also sufficiently flexible to permit additional steps where appropriate. As we observed during drafting sessions, we believe that the provisions which are directed towards providing relief to individual victims of discriminatory practices will be particularly helpful.

We note a few places where the proposed guidelines might be clarified and suggest an additional provision to assure that individuals who may be victims of a creditor's discriminatory practices will be adequately informed of their rights.

1. Reservation of Individual Right to Proceed

We think that the statement under General Enforcement Policy indicating that the agencies do not intend corrective action imposed under the proposed guidelines to be an exclusive

remedy is important, since it puts creditors on notice that agency action is not intended to preclude individual victims of discriminatory practices from proceeding on their own to enforce their rights. We note, however, that the individual rights specified are only those enforceable under Section 706 of the ECOA. Since the guidelines are designed to enforce both the ECOA and the Fair Housing Act, the reservation of rights should also refer to rights enforceable under Sections 810, 812 and 817 of the latter Act.

2. Discouraging Applications

We recognize the difficulty in designing an effective remedy to counteract the practice of discouraging applications on discriminatory grounds, and we think that the proposed affirmative advertising may, in many instances, be the only practical means of eliminating the effects of past discrimination. From the standpoint of enforcement, however, unless there are some means of identifying individuals who may be victims of "pre-screening" and other kinds of discouraging tactics, there is little chance to determine the scope of the discriminatory practice or to ascertain whether the corrective action imposed is effective. Accordingly, in such cases we suggest that the agencies adopt, as a proposed form of corrective action, a

logging requirement of the kind adopted by the Federal Home Loan Bank Board in its regulations, 12 CFR §528.6, or by the Federal Deposit Insurance Corporation in its regulations, 12 CFR §338.4.

3. Re-evaluation of Rejected Applications

In our view one of the most important forms of corrective action contained in the proposed guidelines is the provision for requiring the re-evaluation of rejected applications and the making of appropriate refunds to individuals who have been denied credit when the creditor has used discriminatory elements in its credit evaluation system. It is often difficult for individuals to determine if they have been denied credit on a discriminatory basis, and it similarly may not be practical for them to initiate a legal proceeding against a creditor to enforce their rights. The proposed relief gives victims the convenient option of receiving the credit to which they are entitled (or an appropriate refund of fees paid if they no longer wish credit).

However, this guideline discusses both re-evaluating applications and soliciting new applications, without making it clear which of the two documents, assuming that they differ, is to be used in making the credit decision. We suggest that

original applications could be used to the extent that information contained in them may be assumed to remain fresh (such as those applications that were submitted within the previous 90 days), and that new applications should be solicited only from those people who applied prior to that time. An alternative way of handling this would be to ask the applicants to confirm whether the information, as originally submitted, remains the same, and to update it where appropriate.

We agree that fees paid by persons who were discriminatorily rejected should be refunded to them, but we believe that fees charged of applicants who subsequently accept credit should be specifically limited to the amount charged at the time of the first application or the rate charged at the time of re-evaluation, whichever is lower.

4. Notice to Victims

As we indicated in our earlier comments to the drafting committee, victims of credit discrimination often have no practical way to determine whether their rights have been violated. Moreover, many individuals are not fully informed of the scope of their remedies against discriminatory practices to begin with, and they are placed at a severe disadvantage when

They are dealing with sophisticated creditors whose methods may seem obscure, and whose records remain confidential. Accordingly, we propose that, when individuals are identified during the course of an examination as having been denied credit on a prohibited basis, they should be informed generally of their rights under the ECOA and the Fair Housing Act, including their right to seek the assistance of counsel. Because of the statute of limitations written into the ECOA, this notice might be limited to persons who applied within the previous two years, although courts have held that the statute of limitations begins to run only when the complainant had reason to believe that discrimination has been practiced against him or her.

In instances where individuals may be offered some form of relief in connection with required corrective action, the offer should be accompanied by a statement explaining why it is being made and the private rights the person may exercise. The person should also be advised about how acceptance of the offer might affect his or her ability to enforce his or her rights independently. (While acceptance of the offer may not bar a private suit, any monetary payment probably would influence the amount a claimant would be awarded by a court.)

We appreciate lenders' natural reluctance to furnish this kind of notice to victims of discrimination. There is a possibility that the notice will generate interest in bringing lawsuits, but based on our experience in cases brought under the Fair Housing Act, we believe that the potential for subsequent private litigation is minimal. Identifiable victims have been inclined to accept the terms of the relief obtained by the government. Moreover, in our view the benefit conferred on consumers and on the public interest by providing the victims of unlawful practices with a full explanation of what occurred and with notice of their rights is sufficient to justify the potential exposure to additional claims.

Walter Gorman per FIS

Walter Gorman, Deputy Chief
Housing and Credit Section
Civil Rights Division

Michael L. Barrett

Michael L. Barrett, Attorney
Housing and Credit Section
Civil Rights Division



United States Department of Justice

WASHINGTON, D.C. 20530

JAN 18 1979

STANT ATTORNEY GENERAL

Congressman Benjamin S. Rosenthal
 Congress of the United States
 House of Representatives
 Commerce, Consumer and Monetary
 Affairs Subcommittee of the
 Committee on Government Operations
 Rayburn House Office Building
 Room B-377
 Washington, D.C. 20515

Dear Congressman Rosenthal:

This is in response to your December 27, 1978 letter requesting my views on the adequacy of the information-sharing agreement currently in effect between the Justice Department and the four financial regulatory agencies which have major responsibilities for ensuring compliance with the Fair Housing Act and the Equal Credit Opportunity Act.

The existing understanding actually requires no exchange of information between the four agencies identified in your letter and Justice, except that we will furnish notice to the appropriate agency when we decide to initiate a lawsuit. However, under the agreement HUD and this Department are obligated to share certain data. HUD agreed to furnish us with "a monthly list of financing institutions against whom complaints have been filed," and we must provide HUD with a similar list.

At the time the agreement was drafted, we sought to arrange for each agency to provide the Department of Justice with a periodic list of complaints the agency had received and to give us access to their files, including actual copies of the complaints. The final version of the understanding did not contain such provisions primarily because the agencies were unwilling to agree that when we notified them of a complaint, no agency action would be taken for a limited time (60 days was suggested) without our concurrence. The Justice Department would be similarly restrained when it learned of a complaint to an agency.

Notwithstanding the limited nature of our participation in the formal information sharing agreement, there has been a fairly extensive exchange of data between the Department of Justice and some of the agencies. Our dealings with the other agencies, include:

1. Department of Housing and Urban Development.

We have never received a monthly list of the financial institutions called for in the agreement, although from time-to-time HUD has furnished information about lenders that we specifically identify and on January 2 of this year we received printouts of all Fair Housing complaints HUD had open as of October and November 1978. There appear to be a number of financial institutions among the respondents listed on those documents. We are to receive similar lists each month in the future.

The Housing and Credit Section has for several years routinely notified HUD each month of complaints received, including complaints against financial institutions.

2. Federal Home Loan Bank Board.

Upon our request, Justice Department attorneys have been permitted to accompany Bank Board examiners conducting Fair Housing Act and Equal Credit Act reviews in order to obtain information needed to determine whether legal action should be recommended, and one Fair Housing Act suit by this Division was based in part on the information secured in this type of examination. We are not regularly advised

of complaints received by the Bank Board Staff, but we are routinely allowed to review copies of examination reports and the working papers of examiners when we ask for information concerning specific institutions.

The Justice Department does not uniformly advise the Federal Home Loan Bank Board of complaints received involving institutions whose operations are supervised by the Board. However, our general investigative procedure is to contact the appropriate supervisory agency at the commencement of any substantive inquiry to determine whether the agency has information which would assist in the fact gathering process. At that time the agency is apprised of the circumstances which triggered the investigation.

3. Comptroller of the Currency

When the Comptroller's office receives a complaint involving a financial institution over which it does not have supervisory authority, it will send the complaint to the proper regulatory agency and at the same time direct a copy to the Justice Department. Approximately 26 such complaints were sent to us. We have filed one case based on an investigation which was prompted by our receipt of this type of information. We are not given notice of complaints made to the Comptroller which involve national banks, and we do not advise that office of complaints we receive, except for the normal procedure explained above under which we will ordinarily contact the agency when we begin an investigation of a bank regulated by the Comptroller. */

*/ There have been at least two instances when we have not advised the Comptroller before investigating a national bank. One involved possible discrimination by a retail creditor who arranged for his customers to finance their purchasers through a national bank and the other concerned a situation where Departmental attorneys were outside Washington investigating a number of complaints and began their inquiry while still in the field.

The Housing and Credit Section of this Division has had extensive contacts with the Comptroller's staff and a series of six joint examinations involving both the Justice Department and national bank examiners were conducted in 1977. These joint undertakings were solely for training purposes and were done pursuant to an explicit understanding that the information would not be used as the basis for civil suits by the Attorney General.

When we make a written request for information concerning consumer examinations, the Comptroller's Office permits Department of Justice lawyers to read copies of examiner reports and related working papers. Attorneys from my staff are currently working with representatives from the Comptroller's Office to determine whether further information should be requested from one national bank. However, the Comptroller's staff has within the last four months declined to assist us in obtaining information from a national bank which refused to cooperate with this Department's investigation. In connection with that particular matter, the Chief Counsel for the Office of the Comptroller wrote to the bank attorney advising that "it is important to note that the ECOA does not give to the Attorney General independent investigatory or subpoena powers other than those generally available through a court of law." The Chief Counsel also told the bank that except for the discovery rules which apply to civil or criminal actions, he was "unaware of any statute vesting a right in the Department of Justice to compel release" of records. (A copy of this letter, with the identifying references deleted, is attached.)

4. Federal Deposit Insurance Corporation.

At the start of an investigation involving an FDIC supervised bank, we ordinarily follow the same general procedure noted above of contacting the agency to determine what information it might have relating to the subject's performance under the Fair Housing Act and Equal Credit Opportunity Act. The Agency allows us to review past examination reports of the bank and supporting documents. We do not routinely send the FDIC copies of complaints we receive nor does that agency notify us of complaints sent to it.

In August of this year, attorneys from the Housing and Credit Section proposed that a joint examination of an FDIC supervised bank be conducted to determine whether the institution was engaged in an unlawful pattern or practice of discrimination. The agency rejected this recommendation and suggested that FDIC examiners could review the Bank's compliance with the Fair Housing Act and Equal Credit Opportunity Act and would share the information developed by its examiners. (A copy of this correspondence is attached.) Subsequently, the FDIC examiners did investigate this matter and apprised us of their findings.

5. Federal Reserve Board.

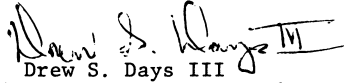
Although Division attorneys have had frequent contacts with the Federal Reserve Board staff, we have not asked this agency for information about specific banks. We have not received any complaints alleging that a bank supervised by the Federal Reserve Board is violating the Fair Housing Act or Equal Credit Opportunity Act, and we are not advised of complaints filed with this agency.

Despite the absence of a formal agreement requiring other agencies to provide information to this Department, I believe that we have managed to establish a fairly good working relationship with these offices. However, because the examination reports by their nature are mainly conclusory and the examiners' work papers are often limited to notes and a few documents, reviewing these files, while helpful, does not give us sufficient information to make a determination concerning the need for action by the Attorney General. Our past experience reflects that, except for the Federal Home Loan Bank Board, the agencies are unwilling to permit us to accompany their examiners in order to gather facts which might be used as evidence in a lawsuit. This Division does not have independent authority to compel the production of records before suit is filed and, therefore, it would be extremely helpful to have a clear understanding that the agencies will allow us to accompany their examiners or, as an alternative, agree to obtain specific documents or other information for us when we make an appropriate showing of need.

Also, in reading the three pages of testimony attached to your letter (pp. 88-90) I noticed that there was some uncertainty about the number of referrals made to the Justice Department under the two Acts. A review of our records reflects that the Housing and Credit Section has referred three matters to the Federal Home Loan Bank Board for administrative action, and that we have not received any substantive referrals from any agency. (As mentioned above, the Comptroller has sent us copies of complaints it directed to other agencies.)

I hope that this information will assist the Subcommittee in its work.

Sincerely,

A handwritten signature in dark ink, appearing to read "Drew S. Days III", with a horizontal line extending to the right.

Drew S. Days III
Assistant Attorney General
Civil Rights Division

NOV 17 1978

Dear _____

This is in response to your letter of August 17, 1978, in which you indicated that the Department of Justice has requested that your client,

provide certain information for the purpose of the Department's investigation of an alleged violation of the Equal Credit Opportunity Act (ECOA). In your opinion, it would be preferable for the bank to respond to this Office rather than to the Department of Justice. Accordingly, you request our opinion with regard to whether this Office will intervene in this matter or whether there will be dual enforcement of the Act.

As you know, the ECOA grants to the Comptroller of the Currency the responsibility for administrative enforcement of that Act with respect to national banks. ECOA, §704(a), 15 U.S.C. §1691c(a). In addition, the Attorney General is charged with the judicial enforcement of the ECOA:

(g) The agencies having responsibility for administrative enforcement under section 704, if unable to obtain compliance with section 701, are authorized to refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted.

(h) When a matter is referred to the Attorney General pursuant to subsection (g), or whenever he has reason to believe that one or more creditors are engaged in a pattern or practice in violation of this title, the Attorney General

may bring a civil action in any appropriate United States district court for such relief as may be appropriate, including injunctive relief.

ECOA, §§706(g) and (h), 15 U.S.C. §§1691e(g), (h). (Emphasis added). In my opinion, the use of the disjunctive "or" in Subparagraph (h) indicates that the Attorney General has the authority to institute a civil action irrespective of whether a referral has been made to his Office by one of the regulatory agencies charged with administrative enforcement of the ECOA. However, it is important to note that the ECOA does not give to the Attorney General independent investigatory or subpoena powers other than those generally available through the jurisdiction of a court of law.

The enforcement provisions of the ECOA must be interpreted in a manner that is consistent with the general visitorial powers over national banks, defined by Congress in 12 U.S.C. §484, which provides that:

No bank shall be subject to any visitorial powers other than such as are authorized by law, or vested in the courts of justice or such as shall be or shall have been exercised or directed by Congress, or by either House thereof or by any committee of Congress or of either House duly authorized.

12 U.S.C. §484. See also, 12 C.F.R. §7.6025(b). As your inquiry indicates, it may be argued that a demand for the disclosure of a national bank's records by a federal agency other than this Office could be barred by the provisions of this section unless such agency possesses independent authority to obtain such records because of the subject matter involved.

It is my opinion that the statutory provisions regarding the Attorney General's independent authority to bring an action against national banks under the ECOA, on the one hand, and the Comptroller's exclusive visitorial powers, on the other, are not in direct conflict. Where the Attorney General, in connection with a civil action, requests the disclosure of relevant bank records, he may exercise all powers available pursuant to the applicable rules of federal procedure. In such instances, the disclosure clearly would be "authorized by law, or vested in the courts of justice" as required by 12 U.S.C. §484. In addition, bank management may, of course, provide records voluntarily to the Department in the interest

of satisfying the Department that further investigation or commencement of a civil action is not warranted. Apart from normal discovery procedures available in a civil or criminal action, I am not aware of any statute vesting a right in the Department of Justice to compel release of such records.

In addition to the possible actions of the Attorney General, this Office will continue to exercise our regulatory enforcement authority with respect to the ECOA as it relates to national banks. 15 U.S.C. §1691 et seq.; 12 C.F.R. §202 et seq. Consequently, in the event a violation is discovered through an examination, a consumer complaint, or otherwise, this Office will investigate the matter by obtaining all relevant information and bank records. After it has been determined that a violation has, in fact, occurred, this Office will then attempt to effect corrective action within its regulatory authority. In the event that adequate corrective action is not achieved, the entire matter, with the relevant documentation, may be referred to the Attorney General.

I hope that the above comments will be of assistance to you and have answered your questions in a satisfactory manner.

Very truly yours,

(Signed)

John E. Shockey
Chief Counsel

1888

AUG 16 1978

DSD:WG:lob

Mr. John J. Early
Director, Division of Bank Supervision
Federal Deposit Insurance Corporation
Washington, D. C. 20429

Dear Mr. Early:

We have received information concerning possible discrimination in lending by the

Our information was provided by a black male, who applied for loans at the Bank on several different occasions, was turned down each time, and was given a different reason for rejection on each occasion. has alleged that the Bank refused him a loan because of his race. In order to respond to complaint, the Department wrote to the on August 8, 1978, to request access to certain information that we felt was essential to an evaluation of allegations.

On August 10, 1978, we were advised by the Bank that because they believe that the Federal Deposit Insurance Corporation should have initiated the investigation of complaint, they will not allow the Department of Justice to have access to the information requested. They indicated that they would cooperate with an inquiry by the FDIC into the same subject matter.

After considering the joint interests that the FDIC and our office have in this matter, we believe that it would be appropriate to conduct a joint examination of materials initially requested in our letter of August 8. Such an undertaking would include examiners from the FDIC and attorneys

cc: Records
Chronp
Gorman
✓Milton

from this Department. Inasmuch as the ^{has} indicated that it will make its records available to FDIC investigators, we are requesting your assistance in arranging a procedure which will enable our personnel to participate in this inquiry. We will, of course, provide you with the specific information that was furnished to this office by and any other relevant data we may have.

Although only a small percent of our investigations result in recommendations that litigation be initiated, the general enforcement procedure of this office is to seek injunctive relief wherever we find pattern or practice violations of the Fair Housing Act or the Equal Credit Opportunity Act. You should be aware that as a result of our records review a civil suit may be recommended pursuant to Section 706e(h) of the Equal Credit Opportunity Act (15 U.S.C. §1691e(h)). However, even if a suit is recommended and authorized, we ordinarily attempt to negotiate a consent decree before the complaint is filed and, then, a proposed consent order can be filed simultaneously with the complaint.

Finally, we are requesting that Teresa Milton, an attorney from this office, be given access to the most recent Compliance Examination of the

Thank you for your cooperation.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division

By:

Walter Gorman
Deputy Chief
Housing and Credit Section



FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, D.C. 20429

OFFICE OF DIRECTOR - DIVISION OF BANK SUPERVISION

DSD:WG:iob
August 29, 1978

DOCKETED
SEP 13 1978
CIVIL RIGHTS

Mr. Walter Gorman, Deputy Chief
Housing and Credit Section
Civil Rights Division
Department of Justice
Washington, D. C. 20530

Dear Mr. Gorman:

This is in response to your letter of August 16, 1978 requesting a joint investigation by FDIC examiners and Justice Department attorneys of the complaint of illegal credit discrimination by the

We have considered your request and believe an independent investigation by our examiners alone would be more in keeping with the statutory scheme envisioned under the Equal Credit Opportunity Act. Consequently, we would appreciate your furnishing us with a copy of your file in the matter so that we may initiate the appropriate investigation from our Philadelphia Regional Office. In this regard, we would anticipate sharing with the Department the information developed by our examiners and our conclusions in the matter. We would not, however, anticipate sharing with the Department any bank records obtained unless the records were obtained with the understanding that they could be furnished to the Department and those records constitute evidence of an apparent pattern or practice in violation of the Equal Credit Opportunity Act.

Sincerely,

John J. Early
Director

188-35-15
DEPARTMENT OF JUSTICE
7 SEP 12 1978
CIVIL RIGHTS

APPENDIX 13.—U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, RANDOLPH S. KINDER LETTER TO BENJAMIN S. ROSENTHAL COMMENTING ON PROPOSED ENFORCEMENT GUIDELINES FOR REGULATION B, DECEMBER 27, 1978



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D. C. 20410

OFFICE OF THE ASSISTANT SECRETARY
FOR FAIR HOUSING AND EQUAL OPPORTUNITY

IN REPLY REFER TO:

27 DEC 1978

Honorable Benjamin S. Rosenthal
Chairman, Commerce, Consumer, and
Monetary Affairs Subcommittee
Committee on Government Operations
Rayburn House Office Building, Room 377
Washington, D. C. 20515

Dear Mr. Chairman:

We are pleased to submit comments of the Department of Housing and Urban Development on the uniform enforcement guidelines proposed by the Federal Reserve Board, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, and the National Credit Union Administration to implement the Equal Credit Opportunity Act (ECOA) and the Federal Fair Housing Act (Title VIII).

In general, the proposed guidelines represent a positive step in the enforcement of the Equal Credit and Fair Housing laws. However, the guidelines do not clarify what relationship the guidelines have to the Fair Housing law. Further, it is unclear what impact the resolution of a complaint by a regulatory agency may have on HUD determinations made on the basis of individual Title VIII complaints of discriminatory housing practices involving the same creditor. Thus, although we support the objective of the issuance of joint guidelines in order that there be consistency in the approach of the enforcing agencies for Regulation B and the ECOA, we are of the opinion that the guidelines in their reference to enforcement of the Fair Housing Act should clearly indicate that HUD is the administrator of the Fair Housing Act and that all regulations issued by HUD pursuant to Title VIII of the Civil Rights Act of 1968 are not superseded or substituted for by the issuance of these guidelines. Specifically, we think it important that this disclaimer be included in the guidelines because the entire approach to enforcement action appears to be on a low key. We make the following comments in reference to specific provisions relating to the enumerated violations.

(1891)

I. DISCOURAGING APPLICATIONS ON A PROHIBITED BASIS IN VIOLATION OF SECTION 202.5(a) OF REGULATION B

We recommend that the action required would be the identifying of the actual victims of prescreening and the solicitation of applications for credit by individual letter. In addition, the action of soliciting credit applications from the discouraged class through affirmative advertising would be maintained.

The Comment included in the guidelines is very negative. It begins by stating "identifying the actual victims of prescreening may not be feasible." While in certain instances the identification of the actual victim may be impossible, in many instances this could be accomplished and that possibility should not be written out of the guidelines.

II. USING DISCRIMINATORY ELEMENTS IN CREDIT EVALUATION SYSTEMS IN VIOLATION OF THE FAIR HOUSING ACT AND SECTIONS 202.6(a) AND 202.7 OF REGULATION B

The action required should include a requirement that where an applicant had to pay additional fees or costs to secure credit from another agency or suffered monetary loss in securing credit through another source, the creditor would be required to reimburse such applicant for those monetary losses in addition to refunding any fees or costs paid by the applicant in connection with the application to the subject creditor.

In addition, the comment provides too much flexibility in determining the past period for which a creditor will be required to re-evaluate applications. There should be included a standard period of time for such an evaluation; for example, since the effective date of Regulation B, March 23, 1977.

III. IMPOSING MORE ONEROUS TERMS ON A PROHIBITED BASIS IN VIOLATION OF THE FAIR HOUSING ACT AND SECTION 202.6(b) OF REGULATION B

Again, the required action should include any compensation for losses the applicant may have suffered in addition to reimbursement or adjustment provided. The procedures for correcting such violations should be incorporated into these guidelines rather than referring to the procedures which are proposed for Regulation Z, not yet adopted.

. REQUIRING CO-SIGNERS ON A PROHIBITED BASIS IN VIOLATION OF THE FAIR HOUSING ACT AND SECTION 202.7(d) OF REGULATION B

In addition to requiring corrective action to an individual who received credit but was required to obtain an unnecessary co-signer, the creditor could be required to re-evaluate all applications. Where an applicant is unable to secure what was an unnecessary co-signer, and as a result, credit was denied, the creditor should be required to seek a reapplication from such applicant and to compensate the applicant for any monetary losses as a result of being denied credit in violation of the Act.

.. FAILING TO PROVIDE NOTICES OF ADVERSE ACTION IN VIOLATION OF SECTION 202.9 OF REGULATION B

Again, the corrective action should include compensation for monetary losses as the result of a married person being refused credit since January 1, 1978 on the basis of not maintaining and reporting separate credit histories.

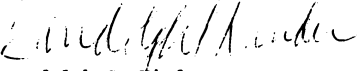
We are also concerned that the guidelines make no reference to the capabilities and authorities of these regulatory agencies to impose sanctions. While we are aware of the reluctance to impose sanctions and appreciate the desire on the part of these agencies that the institutions they supervise voluntarily comply, we consider it highly essential that notice of this power be included in the guidelines.

Furthermore, the individual who submits a complaint concerning discrimination in residential financing should be advised of his/her right to file a complaint with the Secretary of HUD. This should be made a specific provision in the guidelines.

We would also like to point out that while HUD has been considered a creditor for purposes of ECOA prohibitions and Regulation B when acting as a mortgage insurer, the subject guidelines do not apply directly to the Department; only the institutions supervised by the issuing agencies are subject to these administrative enforcement procedures. Most such institutions, however, are FHA-approved lenders and administrative enforcement of these guidelines may result in a conflict between the requirements of our insurance programs and the mandate of the supervisory agency under these guidelines. For instance, a larger downpayment required by a lender on a discriminatory basis, without the Department's knowledge, may result in a mandated renegotiation of the credit extension. Such renegotiation requires the approval of HUD-FHA and conflicting

requirements may result. Other third party assurers of repayment, such as VA, FmHA, private mortgage insurers, and other guarantors may be similarly affected. The rights of these parties in an affected transaction should be addressed in the guidelines.

Sincerely,



Randolph S. Kinder
Acting Assistant Secretary

cc: Theodore E. Allison, Secretary
Board of Governors of the
Federal Reserve System

APPENDIX 14.—TRADE ASSOCIATION SUBMISSIONS

AMERICAN
BANKERS
ASSOCIATION

1120 Connecticut Avenue, N.W.
Washington, D.C.
20036

EXECUTIVE VICE PRESIDENT

Willis W Alexander
202/467-4211

September 15, 1978



The Honorable Benjamin S. Rosenthal
U. S. House of Representatives
Washington, D.C. 20515

Benjamin S. Rosenthal, M.C.

Dear Congressman Rosenthal:

The American Bankers Association is responding to your request for comment on the financial regulatory agencies' enforcement of the Equal Credit Opportunity Act and the Fair Housing Act. We appreciate this opportunity to present our views generally on the enforcement of and compliance with these two Acts, and to more specifically address the many measures, through laws, regulations and the efforts of bankers, which serve to insure that redlining discrimination does not occur.

Our general evaluation of the enforcement policies and examination and supervisory activities of the three banking agencies is quite favorable. It is our belief that all three agencies have made a concerted effort, especially in recent years, to improve their enforcement policies and procedures and to increase the effectiveness of examinations in the area of nondiscrimination regulations. These efforts have resulted in enhanced understanding and expertise on the part of consumer credit examiners which have in turn heightened bankers' awareness of and compliance with all aspects of the many consumer credit laws.

The Office of the Comptroller of the Currency was the first to develop new examination procedures, a new manual and a more effective training program for consumer examiners. Already these are being reviewed and expanded with the intent of placing increased emphasis upon the Fair Housing Act.

In March of this year, the Federal Deposit Insurance Corporation reformed its fair housing rules and regulations with the expressed intent of providing a basis for a more effective FDIC fair housing enforcement program. This, however, is not the full extent of their efforts to improve the system of compliance. The FDIC is also in the process of reforming and expanding the compliance training program inclusive of a new training handbook.

Finally, the Federal Reserve Board commissioned the so-called Dennis study to evaluate and make recommendations on the Board's enforcement and education programs relating to anti-discrimination regulations. As a result of

(1895)

The Honorable Benjamin S. Rosenthal

**AMERICAN
BANKERS
ASSOCIATION**CONTINUING OUR LETTER OF
September 15, 1978

SHEET NO. 2

this study, the Fed is also revising its program in the area of consumer compliance with the express purpose of incorporating many of the suggestions of the Dennis report.

The greater emphasis being placed on the anti-discrimination laws by all three agencies in their enforcement policies and examination and supervisory activities is mirrored in the proposed uniform enforcement guidelines for Regulation B and the Fair Housing Act. These guidelines appear to be a reasonable effort on the part of all the financial institution regulatory agencies to strengthen enforcement in this area through the imposition of administrative remedies. Our Association commented on this proposal (copy enclosed) to the effect that the thrust of the guidelines is fair and reasonable provided certain limitations regarding substantive versus technical violations, statute of limitations and exposure to civil liability are incorporated into the final guidelines.

It is our belief that the current examination and enforcement policies of the agencies are effective in detecting violations of consumer credit laws and in encouraging banks to remedy these violations. More importantly, the continuing efforts of the agencies, as well as the banking industry, to improve their compliance activities, particularly regarding discrimination regulations, is evidence of the increased emphasis being placed on compliance in this area. These new policies and procedures should be given a chance to prove their effectiveness in assuring compliance with these laws before consideration is given to any further layering of laws and regulations.

The American Bankers Association is also a primary participant in the effort to inform and educate bankers on the requirements of the various anti-discrimination laws and to assist banks in achieving full compliance. Shortly after Regulation B was promulgated, our Association published a Comprehensive Compliance Manual on ECOA which is widely used by bankers (a copy of this manual is enclosed). Last spring Consumer Compliance Workshops were instituted by our Association with the assistance of representatives from the agencies, to educate and prepare bankers for total consumer compliance. These workshops have taken the form of mini-courses similar to the classes for consumer compliance examiners. The ABA is also in the process of producing an overall Consumer Compliance Manual to assist banks in evaluating and improving their own policies and procedures for compliance with consumer laws. Finalization of this Manual is merely awaiting the information on new policies and procedures, particularly in the areas of the Fair Housing Act, Equal Credit Opportunity Act and Community Reinvestment Act, which are now being formulated at all three agencies.

The greater emphasis placed on anti-discrimination enforcement and increased compliance by banks is important to the consideration of the need for and usefulness of further anti-redlining regulations. In addition to these

The Honorable Benjamin S. Rosenthal

AMERICAN
BANKERS
ASSOCIATIONCONTINUING OUR LETTER OF
September 15, 1978

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factors, it must be remembered that the Fair Housing and Equal Credit Opportunity Acts are only part of the picture since there are other overlapping laws and regulations which have been promulgated for the purpose of avoiding redlining discrimination. The Home Mortgage Disclosure Act (Regulation C) and the pending regulations for the Community Reinvestment Act are additional mechanisms for achieving this goal.

The American Bankers Association certainly supports the obligation of banks to avoid redlining discrimination. We believe that through the efforts of bankers, reinforced by the existing laws, regulations and oversight and enforcement activities of the agencies, the problem of redlining is rapidly being eradicated. In fact, since the Home Mortgage Disclosure Act became effective in June of 1976, that Act has elicited little or no complaints of redlining discrimination. This lack of evidence to support claims of extensive redlining, as well as the new regulations and programs dealing with the problem of redlining, convinces our Association that there is no current need for the issuance of additional anti-redlining regulations.

The four primary Federal laws which pertain to redlining are the Equal Credit Opportunity Act, the Fair Housing Act, the Home Mortgage Disclosure Act and the Community Reinvestment Act. At the present time, each of these laws is undergoing some form of analysis and/or alteration which will have an effect upon the total issue of anti-redlining compliance. There are proposed administrative enforcement guidelines for ECOA; each of the banking agencies are revising their fair housing compliance policies and procedures; the effectiveness and utility of the Home Mortgage Act is currently under study by a number of agencies; and finally, the Community Reinvestment Act and Regulations are to become effective on November 6 of this year. Each of these will have a tremendous impact on any redlining problem that may exist, and they should be given time to prove their effectiveness.

It is our belief that the enforcement steps outlined in the Federal financial institution regulatory agencies' proposed guidelines for ECOA and the Fair Housing Act are more than adequate for repeat violators of these two acts. However, it is difficult to envision a bank that would intentionally continue to violate provisions of these Acts once the violations have been identified, in view of the costs inherent in complying with the administrative remedies in the proposed enforcement guidelines and the increased exposure to civil liability which would result from such a procedure. Therefore, we believe the possibility of having to atone twice for any violations of ECOA or the Fair Housing Act, due to the exposure to both administrative remedies and civil penalties, is both a sufficient penalty for repeat violators and, more importantly, a very strong deterrent to such a practice.

In response to the last two questions posed in your letter, we cannot provide specifics as to the administrative costs of compliance. However, it is important to recognize the additional cost burdens that exist now with regard to both front-end start-up requirements and each individual loan application.

The Honorable Benjamin S. Rosenthal

AMERICAN
BANKERS
ASSOCIATIONCONTINUING OUR LETTER OF
September 15, 1978

SHEET NO. 4

There are obvious start-up costs, such as producing and revising forms and training personnel, the latter also being a continuing cost due to changes in both personnel and the laws and regulations. This should not minimize the import of the increased cost of taking and processing applications, which naturally results from these regulations. The increased cost, due to additional forms, mailings, and more time spent per application is obvious when one considers requirements such as requesting and recording of monitoring information, sending of adverse action notices, disclosure of optional inclusion of alimony payments, etc., which are all necessary steps in taking applications. In fact, more than one banker has declared that it costs more to turn down a loan today, than it costs to make a loan.

In conclusion, the American Bankers Association believes the compliance policies and procedures currently in effect along with the adjustments and improvements to be incorporated by the agencies in the near future create effective enforcement of the anti-discrimination regulations. More importantly, these innovations, as well as the proposed ECOA-FHA enforcement guidelines and Community Reinvestment Act Regulations which have not yet become effective, should be given sufficient time to prove their effectiveness before any consideration is given to further burdening with more anti-discrimination regulations.

Sincerely,

Willis W. Alexander
Executive Vice President

Enclosures

AMERICAN
BANKERS
ASSOCIATION

1120 Connecticut Avenue, N.W.,
Washington, D.C.
20036

EXECUTIVE DIRECTOR
GOVERNMENT RELATIONS

Gerald M. Lowrie
202/467-4097

September 5, 1978

Equal Credit Opportunity Guidelines
Room B-4107
Washington, D. C. 20551

Gentlemen:

The American Bankers Association is responding to the July 6, 1978 Federal Register notice requesting comments on the proposed uniform guidelines for the administrative enforcement of the Equal Credit Opportunity Act, Regulation B and the Fair Housing Act. While we intend to discuss the corrective actions recommended for specific violations, our Association will begin by addressing the concerns we have generally with the enforcement policy. These concerns are basically threefold: 1) the need to limit retroactive corrective actions to substantive violations, 2) the need for a general statute of limitations and more definite time period limitations for certain specific corrective actions and 3) the necessity of civil liability protection. Following these general considerations will be our comments on the specifics of the enforcement policy.

GENERAL CONSIDERATIONS

While the guidelines address eight substantive violations and the corresponding corrective actions which operate retroactively, it is not clear that this type of corrective action will only apply to substantive violations. In fact, the supplementary information states that "... creditors will be required to correct all violations, including such matters as an error on an application form." We believe it is essential to specify that these other violations need be corrected prospectively only, with the objective of assuring compliance in the future. In other words, it is important to include within the guidelines a distinction between types of violations, namely technical and substantive, and clarify that only the latter necessitate action involving past applicants.

In addition, whether or not a violation necessitates the corrective actions outlined under the specific violations should be determined by the extent or scope of the particular violation. If the violation encompasses only isolated applicants, and there is no course of conduct or pattern of violations, then the corrective actions should be modified so as to remedy only those specific cases. To do otherwise would be punitive rather than remedial. For example, to require adverse action notices to all applicants rejected during a period of time or to require a creditor to solicit applicants through affirmative



advertising, when there are only a few isolated violations, would be excessive. Therefore, we recommend that where there are isolated cases of substantive violations, either a *de minimis* standard should be adopted or a modification of the corrective actions, to correct the isolated violations, should be authorized.

The absence of any general statute of limitations concerns our Association for two reasons. First, we believe creditors should not be held indefinitely responsible for any violations. Presumably, examiners will detect all substantive violations and impose the corresponding corrective action during the next examination following finalization of the guidelines. However, this cannot be guaranteed, with the result that for certain violations, namely those not specifying a period of time, creditors may be subject to mounting liability and expense. Secondly, a number of the specific remedies apply equally to violations of the Fair Housing Act, which may involve violations occurring since 1968. Therefore, a general period of time must be specified (preferably measured from the date of examination), prior to which violations would not trigger the specific corrective actions. In addition, those specific remedies requiring actions on applications, should include a maximum period of time beyond which the corrective action would not apply.

In our judgment, the greatest flaw in the proposed guidelines is that corrective action does not cut off civil liability, and in fact a number of the specific corrective actions would serve to put consumers on notice, and thereby encourage civil actions. In some respects, the lack of protection from civil liability under these guidelines is more detrimental to creditors than under the previously proposed Regulation Z guidelines. Under the Equal Credit Opportunity Act, creditors would be vulnerable for two years rather than one, and there is no provision similar to that in Truth in Lending which extinguishes civil liability if a creditor corrects the violation within a certain period of discovery of the error.

To subject a creditor to the expense of the proposed remedies, which in some cases could be quite substantial, and in addition expose that creditor to actual and punitive damages from a civil suit, would constitute "double jeopardy." This is certainly not in keeping with the objective of the statute, from which the authority to promulgate these guidelines is derived, which is to assure a safe and sound banking system.

GENERAL ENFORCEMENT POLICY

Creditors that have not previously adopted a written loan policy, will be required to do so whenever substantive violations are discovered. This is one of the most positive aspects of the proposal, since a written loan policy, along with a compliance plan to implement that policy, is one of the best methods of deterring further violations and assuring compliance in the future. However,



we caution that a written loan policy should not be interpreted to include written credit evaluation standards.

Our Association also commends the flexibility provided by allowing the agencies to modify the remedies upon consideration of the character of the violation, the condition of the creditor and the cost/effectiveness of the corrective action.

SPECIFIC VIOLATIONS

I. Discouraging Applications on a Prohibited Basis in Violation of Section 202.5(a) of Regulation B

The remedy for discouraging applications would require a creditor to solicit credit applications from the discouraged class through affirmative advertising. Our primary concern with this is the change in focus, from identifying individuals discouraged on a prohibited basis to identifying a "discouraged class." Traditionally, the Equal Credit Opportunity and Fair Housing Acts have focused on situations involving individuals, and the language of Regulation B justifies this by prohibiting actions against "applicants" rather than a class of applicants. Elevating this prohibition, through the proposed guidelines, to a "discouraged class" is a broadening of the Act which could have severe implications, especially in its invitation to class actions.

Our Association also believes it is important to recognize, in the identification of violations, that Section 202.5(a) requires active discouragement, as opposed to inactive discouragement through the failure to encourage. Therefore, the lack of a certain quantity of a type of loan in a segment of the population is not proof of discouragement. Instead, an examiner must prove active discouragement, such as prescreening on a prohibited basis or advertising, the content of which discourages on a prohibited basis, before the corrective action can be required.

The substance of the corrective action contains two ambiguities which should be clarified prior to finalization of the guidelines, if affirmative advertising remains the method of corrective action.

The proposal states that "... all advertising will be subject to review by the enforcing agency." (Emphasis added.) We believe this needs to be clarified to specify whether this is meant to include all the banks advertising, or just the affirmative advertisements required by the corrective action. If the discouragement has occurred through advertisements, then there may be some merit to a review of all advertising. However, if the discouragement has occurred through another method, such as prescreening, then the review by the agencies should only encompass those affirmative advertisements required as the method of corrective action.

September 5, 1978



SHEET NO. 4

The other troublesome aspect of this proposal is that there are absolutely no time period guidelines. As stated earlier, we believe there should be a general statute of limitations, which in this case would limit how far back in time the examiners could go in checking for discouragement of applicants on a prohibited basis. On the other hand, there is no guidance for how long an affirmative advertising campaign would have to be sustained. Although we appreciate the flexibility incorporated into this section of the guidelines, we believe some maximums, either through a cost formula and/or time period, should be established.

Finally, we believe it is important to point out that some banks do not advertise for loans or at least not consumer loans. This raises the question: is affirmative advertising an appropriate remedy for banks in this category? An alternative to requiring affirmative advertising, when discouragement has been identified, would be to require the institution to propose and develop an affirmative plan, to be reviewed by the agency. This plan would have the same objective, encouraging those who have previously been discouraged.

II. Using Discriminatory Elements in Credit Evaluation Systems in Violation of the Fair Housing Act and Sections 202.6(a) and 202.7 of Regulation B

Once again we would like to first briefly address the scope of the violations identified prior to discussing the particular corrective action. In the assessment of rejections where discriminatory elements have been considered, we believe the corrective action should not apply to those applications with another provable basis for rejection. Although this may be difficult in judgmental systems it should be workable for credit scoring systems. However, whatever the credit evaluation system, when the use of discriminatory elements has been found, the corrective action of soliciting new applications should not be required for those applications where it can be shown that the applicant would have been rejected regardless of the consideration of the discriminatory element(s). To do otherwise would be punitive rather than remedial. Although this concept may be implicit in the statement that creditors will be required to solicit applications from individuals "discriminatorily rejected," we believe it should be explicitly stated in the final guidelines.

In addition to soliciting new applications, the corrective action requires the refund of any fees and costs paid in connection with the original applications, prohibits any fees for the new application, and requires reimbursement for any prepayment penalties incurred on any existing loans. For applicants who have been able to obtain equivalent credit elsewhere, these requirements are punitive to the creditor rather than remedial for the applicant. In fact, if the refund of fees connected to original applications includes a refund for those fees paid for the existing loan obtained in lieu of the discriminatorily denied credit, then the requirements would be clearly punitive, and would place these applicants in a better position than consumers originally granted credit. For this reason,



there must be a fee at some point, either a fee not refunded for a previous application or a fee charged for the new application, so that this remedy does not constitute a windfall to the applicant.

Our Association also believes there should be some maximum limit on the period of time during which the creditor would be required to re-evaluate credit applications, allowing flexibility within that limit. For a number of reasons, a period of time not greater than one year is realistic. Soliciting applicants rejected prior to a one-year period would not be cost effective as many creditworthy applicants would probably have acquired credit elsewhere on comparable terms or the need for credit will have passed, and therefore the response to such a solicitation would probably be minimal.

Finally, the Comment which follows this particular corrective action states that "(t)he standards of creditworthiness used to re-evaluate applications shall not be more stringent than those in effect at the time the applicant was denied credit." Although this is not troublesome, it should be clarified that upon re-evaluation these standards will be applied to the applicant's status at the time of reapplication. To require otherwise, would suggest that a creditor may have to make a loan to a non-creditworthy applicant. This would not be in keeping with the safe and sound operation of a bank.

III. Imposing More Onerous Terms on a Prohibited Basis in Violation of the Fair Housing Act and Section 202.6(b) of Regulation B

As discussed in the previous paragraph, it would be an unsound and unsafe practice to require a bank to renegotiate an extension of credit "... on terms for which [the applicant] qualified at the time credit was originally granted." To re-evaluate the terms of a credit extension according to the possibly out-date creditworthiness of a debtor and change the terms accordingly, would be the equivalent of requiring a bank to make a possibly unsound loan. Therefore, the credit extension should be re-evaluated according to the status of the debtor at the time of re-evaluation.

There are additional problems that must be confronted when consideration is given to changing the terms of a credit extension. Truth in Lending disclosures will probably have to be given at the time of renegotiation. This poses a problem, particularly for mortgage loans. Renegotiation may reinstitute the right of rescission, allowing the borrower to void the entire transaction well after the original three-day period has expired and the funds have been disbursed. Similarly, complications could arise in real estate loans if actions causing a defect in title were to occur subsequent to the filing of the original mortgage. A later renegotiation could result in the bank's security interest becoming subordinate to another lien claimant.



VI. Failing to Provide Notices of Adverse Action in Violation of Section 202.9 of Regulation B

We believe it is clearly punitive rather than remedial, and would confuse consumers, to require that notices of adverse action be sent to "all applicants denied credit within 25 months of the date of the examination." (Emphasis added) This corrective action should require adverse action notices only to those applicants denied credit who have not previously received an appropriate notice of adverse action. In addition, the period of time should be reduced to not greater than one year. The primary purpose of adverse action notices is to identify for applicants the weaknesses in their credit rating, so defects and omissions can be remedied in order to improve their credit standing. To supply an adverse action notice to an applicant denied credit over a year ago, would not serve this purpose, and in fact would probably serve to confuse consumers who have remedied their credit rating weaknesses.

VII. Failing to Maintain and Report Separate Credit Histories

Our only suggestion for this corrective action is to make a change in the wording. Creditors should be required to "request" or "solicit" all the necessary information that is lacking, rather than to "obtain" such information. To require a creditor to "obtain" this information could be asking the impossible.

We appreciate the opportunity to comment on this proposal. We believe the thrust of these guidelines is fair and reasonable, and hope our concerns and suggestions will be helpful in further consideration of final guidelines.

Sincerely,

Gerald M. Lowrie

Gerald M. Lowrie
Executive Director
Government Relations

THE
CONSUMER
BANKERS
ASSOCIATION

January 17, 1979

Congressman Benjamin S. Rosenthal
Chairman
Commerce, Consumer & Monetary Affairs Subcommittee
House Committee on Government Operations
B-377 Rayburn House Office Building
Washington, D. C. 20515

Dear Congressman Rosenthal:

This letter is in response to your inquiry to this Association regarding enforcement of the Equal Credit Opportunity Act and the Fair Housing Act by the Federal bank regulatory agencies. Specifically, your inquiry focused on agency policies and practices in this area.

In order to properly respond to your letter, we requested that all members of the CBA Legislative Committee answer your questions. We have compiled their answers, which serve as the basis for this Association's response. If further clarification is needed on any point raised in our letter, please do not hesitate to contact this office.

In your letter, you first posed a general question which read as follows:

"First, what is your general evaluation of the enforcement policies and examination and supervisory activities of the Comptroller of the Currency, Federal Reserve Board, and Federal Deposit Insurance Corporation in the area of equal credit opportunity? Given the statutory obligation of these agencies to enforce the laws against credit discrimination, do you find their enforcement policies and examination practices fair and reasonable? Have you suggestions for how these policies and practices could be modified or improved to ease the compliance burden on banks without compromising the effectiveness of the overall enforcement program?"

In responding to this question, many of our members pointed out that since they have only had one compliance examination, a thorough evaluation at this time is not possible. However,

all commentators found the compliance examination to be fair, reasonable, comprehensive and constructive. Most bankers felt that the examiners were adequately trained and knowledgeable with regard to the law (this was especially true with regard to the Comptroller's Office).

The only problem that has come to our attention is that there have been serious conflicts of opinion between the regulatory agencies over the proper interpretation of Regulation B. This lack of uniformity has engendered confusion and has made compliance difficult. Excerpted below is a section from the booklet, "The Most Common Violations Found in Consumer Compliance Examinations," published by CBA, in which a typical disagreement between the agencies is outlined.

"There is an apparent difference of opinion between bank financial regulators with regard to whether a creditor in an unsecured loan can obtain a nonapplicant spouse's signature on a continuing personal guarantee related to property held as a joint tenancy with rights of survivorship, or as a tenancy by the entirety. The Office of the Comptroller of the Currency in an Interpretive Staff Letter from the Legal Advisory Service, dated September 14, 1977, held that in an unsecured credit transaction a signature of a nonapplicant spouse on a continuing guarantee cannot be required because it creates personal liabilities on the part of the spouse. The Staff of the Federal Reserve Board, however, indicated in an unofficial letter dated July 23, 1976 that nonapplicant spousal signatures may be required where such signatures are essential to support the extension of credit."

Certain Regulation B requirements are also closely tied to state law requirements regarding the creation and enforcement of security interest. There have been serious disagreements between examiners and bank counsel regarding the relationship between state law and Regulation B.

The American Bar Association's Committee on the Regulation of Consumer Credit is aware of these problems and has appointed two subcommittees to review these problem areas and issue recommendations. These subcommittees, Unified Rulemaking Subcommittee and Relation to State Laws Subcommittee, are chaired by Ralph J. Rohner, Professor of Law, Catholic University, and Drew V. Tidwell of this Association, respectively.

We believe that your subcommittee should seriously consider discussing these problems with appropriate members of the above subcommittees.

With regard to the specific questions you posed in your letter, we submit the following responses.

1. What are your views about the enforcement steps it is appropriate and reasonable for the banking agencies to take in the case of banks that fail or refuse to correct equal credit opportunity or fair housing violations found and pointed out to them by examiners in two or more successive examinations?

Several of our bankers expressed shock and surprise that any bank would continue to violate a regulation after the problem had been brought to their attention, especially if the violation is apparent, obvious and not subject to dispute as mentioned above. However, we believe that before proceeding to enforcement action, the agency should confer with bank management and attempt to develop appropriate methods of adjustment. If, after a good faith effort, the bank continues to resist compliance, then appropriate unilateral action should be instituted.

We would also point out that in many instances, the violations are not part of a general pattern of noncompliance, but the result of inadvertence and carelessness by bank officers or employees. While the bank should be able to rectify these errors after their initial discovery, the agency might find a continuing problem in this area. In such a situation, we would suggest that the bank be required to improve its internal training programs since this is probably the cause of deficiency.

2. What are your views about the proposed uniform enforcement guidelines for Regulation B?

The Consumer Bankers Association has filed extensive comments with the Interagency Coordinating Committee regarding this issue. We have attached a copy of our comments to this letter.

3. Have you any specific comments or observations about the adequacy of the banking agencies' handling of individual consumer complaints?

None of our bankers had any problems with the handling

of consumer complaints since the agencies bring very few complaints to their attention. Also, several bankers commented that very few customers were using the complaint form developed by the Comptroller of the Currency. However, there was one comment of significant importance that we would like to bring to the Committee's attention.

A major West Coast banker pointed out that before a consumer appeals to the bank regulatory agency with regard to a consumer complaint, the consumer usually has contacted the bank and has not been satisfied with the bank's response. Therefore, he believes that the Federal bank agencies have committed a serious public relations error when they send the complaint back to the bank and request that the bank contact the customer. It is felt that the impression is given that the bank and the regulators are in league with each other. Therefore, he requested that a different procedure be developed where the regulator requests the appropriate documents from the bank and conducts an independent review.

4. Have you any sample measurements that you believe to be broadly representative of the administrative costs incurred by banks to comply with Regulation B? If so, what portion of these costs have been associated with the initial training and other front end start-up costs of banks' compliance programs, and what portions are continuing expenses directly associated with processing of applications? Can the continuing expenses be stated as costs per loan application or per \$100,000 of loan assets held? Can they be stated in terms of fractions of a percentage point on the interest rate of a typical mortgage or consumer loan? What was the method by which the measurements were made?

A few years ago, at the request of the Paperwork Commission, The Consumer Bankers Association did a survey regarding the paperwork burden that had been imposed by the revised Regulation B. Attached to this letter is a sample survey form, survey results, and a copy of the testimony we submitted to the Paperwork Commission. If you would like additional information on the survey, please let us know.

Also, Dr. Neil Murphy, then of the University of Maine, reworked our survey and developed a paper on the cost of compliance with Regulation B. We have attached a copy of Dr. Murphy's paper. The Federal Reserve Board also recently did a study regarding the cost of compliance with ECOA and the Fair Credit Billing Act. A copy of that material is also attached.

Although there were no definitive figures presented by our bankers, several did try to quantify the cost incurred in complying with the regulation.

A medium-size Midwest bank estimated that the cost of "producing" a loan had increased between 15% to 20% because of Regulation B.

A \$3 billion Western bank estimated that the start-up cost with regard to Regulation B was approximately \$250,000 with the following breakout:

Legal	5%
Training	20%
Forms/documents	60%
Administration	5%
Computer programming	10%

The bank has a sizeable branch network and estimates that its on-going costs for such items as forms/documentation, training, and administrative cost connected with Regulation B alone to be \$125,000.

In the same market area as the bank above, a \$400 million bank estimated that initial implementation costs were \$50,000, with additional yearly on-going costs for forms and training of \$10,000.

A \$1 billion mid-South bank estimated that Regulation B imposed an on-going yearly cost of \$80,000 to \$120,000 for legal work, forms and defense of frivolous suits.

All of the other bankers who commented felt that the cost was exorbitant, but that it would be very difficult to break out adequate figures that could be relied upon by the Committee.

5. Can you identify specific individual components of the required compliance steps that are especially costly to banks? What alternative ways might there be to achieve the same objectives at less cost?

It was the opinion of all those who commented that a longer lead-in with regard to regulatory change would save a significant amount of the cost of compliance. Financial institutions during the past few years have had to revise their forms and training procedures at least every six months in order to accommodate regulatory changes and various court

decisions reinterpreting consumer credit law. Therefore, most institutions would like to be able to exhaust existing supplies of forms before revising or reordering.

Also, model forms approved by the Federal Reserve Board would be useful in reducing costs, since the banker would not have to worry about the ever-changing legal interpretations of consumer laws. Among smaller institutions, there is a continuing plea that the Federal Reserve Board issue model forms, since this aspect of compliance is the most expensive for them.

Also, several bankers commented that providing reasons for adverse action have made customers more aggressive and inquisitive regarding reasons for turndowns. Thus, many banks have had to devote additional staff time to customer interviews in order to explain the reasons for adverse action.

Several of our lenders located in Western states have the belief that their "community property laws" have caused many real problems that have not been adequately handled by the Federal Reserve Board. These commentators strongly urge that the Federal Reserve Board employ individuals who understand community property law and have them review Regulation B as it relates to this area of property law.

Several commentators mentioned that the 25-month record retention requirement was imposing significant costs. They asked whether this requirement could be reduced since, with the new intensive compliance exams, any violation would be caught within a year.

The Consumer Bankers Association hopes that your Subcommittee finds these answers responsive to your inquiry. If you desire clarification, please do not hesitate to contact our staff.

Sincerely,


Charles F. Patterson, Jr.
President

Attachments

THE
CONSUMER
BANKERS
ASSOCIATION

September 5, 1978

Equal Credit Opportunity Guidelines
Room B-4107
Washington, D. C. 20551

Dear Sir:

The Consumer Bankers Association, which represents the consumer lending departments of over 315 commercial banks who hold over 55% of the consumer credit outstandings for such institutions, appreciates being provided this opportunity to present our views on the Proposed Equal Credit Opportunity Act Enforcement Guidelines.

Last December, this Association presented extensive comments to the Interagency Task Force on the Proposed Truth in Lending Enforcement Guidelines with regard to the issue of whether these guidelines were in actuality regulations, and therefore governed by the provisions of the Administrative Procedures Act. We questioned the authority of the agencies to issue or enforce the guidelines since, in our opinion, neither the Truth in Lending Act (15 U.S.C. 1600 et seq.) nor the Financial Institution Supervisory Act (12 U.S.C. 1818) authorizes such actions on the part of the Federal bank regulators. Therefore, attached as Addendum I is a revised version of the analysis which we had previously provided.

A second major concern is the failure to include a statute of limitations in the guidelines. In analyzing the guidelines, we find this problem pervades all sections of the proposal. The Association believes that some time limitation should be set instead of allowing the open-ended guidelines. However, in discussing this issue with agency officials, we have found a lack of appreciation for the fundamental legal and social policy reasons that led Anglo-Saxon lawmaking bodies since 1540 to set a statute of limitations for the correction or punishment of civil or criminal wrongs. Therefore, attached as Addendum II is an analysis prepared by the Association on this important issue.

Because of the complexity of Regulation B, many of the violations which might be encountered will be of a technical nature. This is especially true with regard to violations of many of the form or mechanical requirements of Regulation B. For example, failure to disclose that usage of the terms, Mr., Mrs., or Ms. is optional should be considered technical. We opine that in these cases the agency should require only prospective corrective action. In these instances, we do not believe any consumer benefit can be derived from having the creditor contact the consumer and take some form of corrective action.

While we are aware that both the "Supplementary Information" and "General Enforcement Policy" sections of the proposal state that "corrective action" will be required only for "substantial violations," we find no definition of this term. Does this refer to a significant violation but occurs only in isolated instances? Must there be some form of damage or reliance by the consumer before a substantial violation will be found? We hope that the agencies will answer these questions in the final guidelines. However, we point out that in many instances, to recontact or review old applications will be very expensive and of limited social utility.

Another major issue of concern relates to the significant increase in civil liability that will be imposed on financial institutions if they comply with an agency request or a cease and desist order from an agency to take corrective action. In fact, the guidelines state clearly that they will not act as a "foreclosure of a consumer's right to bring civil action under the Equal Credit Opportunity Act." Therefore, if an institution takes corrective action to redress the consumer, it is immediately opening itself up to suit under §706 of the Equal Credit Opportunity Act.

Under tort law, it has always been held that if a tortfeasor creates a dangerous situation and then corrects the situation in order to prevent further inquiry, the fact that the correction was made cannot be used in court. The public policy reason is that individuals should be encouraged to correct a dangerous situation without incurring further liability. See: ALR 2d 1296; Federal Rules of Evidences, Rule 407. This concept is referred to as the "Subsequent Remedial Measures Doctrine" and is embodied in both the common law as well as the Federal Rules of Evidences. If a creditor can be sued after making a consumer whole, then this basic long standing public policy concept will be defeated and voluntary corrective action discouraged.

The same philosophy has also been embodied in §130(b) of the Truth in Lending Act, which provides a cure provision. Obviously, the intent behind these guidelines is to provide redress for consumers who have been adversely affected by a financial institution's inadvertent violation of the Act. To allow a consumer to sue after the institution has made the consumer whole through corrective action would seem to transform these guidelines into punitive measures and places the institution in double jeopardy.

Since the Equal Credit Opportunity Act is a relatively new piece of legislation, it has not been subject to extensive litigation or judicial interpretation. However, the civil liability section of the Truth in Lending Act is very similar to that found in §706 of the Equal Credit Opportunity Act. Early Truth in Lending court decisions held that its remedies were remedial and not punitive. By allowing a creditor to take corrective action or make restitution and then be sued by the consumer who has been made whole, would transform this legislation into strictly a punitive measure.

The first specific violation which the guidelines address relates to "discouraging applications on a prohibited basis" in violation of §202.5(a). The first issue to arise relates to how the examiner will determine that "discouragement" has occurred. While we believe it would not be appropriate to provide a detailed list of all acts of discouragement, we believe that the banker should be given some indication as to what factors or methodology would be used to find that discouragement has occurred.

Secondly, the guidelines require that creditors would be required to solicit applications from discouraged classes through affirmative advertising. In imposing this requirement, we believe that consideration should be given to the fact that many institutions do not engage in advertising through the media and therefore, the propriety of this remedy is questionable. Furthermore, it is doubtful, in our opinion, that advertising is the proper method to remedy many forms of discouragement. For many reasons, we doubt the efficacy of affirmative advertising to properly remedy various types of discouragement.

For example, we would suggest that the agencies consider more flexible remedies in the guidelines and consider allowing the offending creditor to engage in some type of consumer education. In minority and low-income neighborhoods, an educational program on how to properly apply for and use credit would be more socially beneficial and productive than affirmative advertising. However, if the agencies insist on requiring affirmative advertising, we would point out that there are several practical problems with that course of action.

For instance, most effective types of advertising are usually done in the mass media, which usually is a newspaper with city-wide circulation. The same would be true of television and radio. We would doubt that running advertisements in this media would communicate with minority or lower income groups that have been discouraged. There is also some doubt that a media campaign would affect the manner in which individuals select the financial institutions which they will approach when applying for credit. In line with our previous suggestion, we would suggest that some other form of affirmative action would better serve all interests. Considering the dubious possibility that an advertising campaign will aid a discouraged class, we would suggest that the cost of advertising is closer to a penalty or fine rather than corrective action.

As a possible answer to the objections we have raised, we are aware that the agencies might require that the bank advertise in minority papers or radio, such as running an advertisement in a Spanish language paper. However, under the state law in several states such as Illinois, Massachusetts and California, if you advertise in Spanish or conduct any part of the transaction or solicitation in Spanish, then the installment loan contract must be in that foreign language. Therefore, if the bank does not have Spanish language contracts, which are very expensive and difficult to produce, then an advertising program in a Spanish paper could place a bank in violation of the state law. Furthermore, the Consumer Affairs Division of the Federal Reserve Board has received extensive documentation regarding the problems encountered in drafting Spanish Truth in Lending disclosures as well as contracts. A review of these files, we believe, would be beneficial.

In the "comment" portion of the first violation, we find that the agency discusses "victims of pre-screening." Both the guidelines and §202.5 of Regulation B embody the concept of "discouragement." On the other hand, pre-screening is a method by which creditors decide which groups they will solicit. The failure to solicit a group should not be equated with discouraging a credit application from that group. Basic economic necessity dictates that a creditor cannot solicit everyone in its market, and therefore the banker will attempt to attract those customers who will be the most likely to apply for credit and will be good customers if accepted. Therefore, omitting a group on the basis of valid economic evaluation should not be considered discouragement.

The second violation to be reviewed by the agencies relates to using discriminatory elements in credit evaluation systems, which will require a creditor to take several actions to correct this violation. In both this section and the preamble entitled,

"General Enforcement Policy," we find a requirement for a written loan policy. While we believe that all banks should have a written loan policy, this concept as used in the guidelines is different from the concept of a loan policy as viewed by commercial bankers.

The banking community views a loan policy as being a statement, which has been approved by the bank's board of directors and provided to all loan officers, stating the types of loans which are available from the bank and under what terms and rates. Since the proposed Community Reinvestment Act regulations will soon require this information to be made public, we foresee no problem with these guidelines requiring full public disclosure of the loan policy,

The type of loan policy which seems to be envisioned by the General Enforcement Policy Statement seems to be in line with our concept of a loan policy. However, the type of loan policy envisioned by the second guideline mandates that the credit evaluation criteria used by a lender be dictated by the agency. While Regulation B lists a number of factors a creditor cannot use to evaluate an applicant, we feel strongly that the agency lacks the authority to dictate to the bank what system of economic evaluation it should use when deciding if a person is creditworthy. This requirement, in our opinion, is a form of credit allocation.

This second guideline also requires a lender to reevaluate and solicit new applications from all applicants who have been rejected on a discriminatory basis. First, we are concerned as to who will make the decision as to whether an applicant was turned down on a discriminatory basis. In a judgmental credit evaluation system, it would be impossible, in many instances, to determine if an applicant was turned down on a discriminatory basis. Therefore, we believe that further disclosure should be made by the agency as to the methodology that will be used by the examiner to determine if discrimination has occurred.

Secondly, if creditworthy applicants were rejected on a discriminatory basis, then those applicants, in most instances, have probably secured credit elsewhere. In many instances, the applicant may have received credit on as good, if not better, terms than that available from the discriminatory creditor. Therefore, we must question whether any social benefit would be achieved by requiring the solicitation of new applications since the response will probably be small.

If the agencies do feel compelled to allow reapplication with refunding of any fees paid, waiving future fees and paying any prepayment penalty incurred by the consumer, then we find several problems with this approach.

First, the consumer should be required to show that the loan eventually secured was not on terms equal to or better than those available from the offending creditor. If no economic benefit can be derived by the consumer by switching creditors, then the agencies should not allow the consumer to do so. Furthermore, we must emphasize that a prepayment penalty must actually be incurred by the consumer for prepaying a loan. We suspect that many creditors in this situation will allow the consumer to prepay without imposing the penalty.

We also question the requirement that the consumer be refunded any fees or costs paid by them in connection with the original loan and then be excused from paying any fee in connection with the new application. This places the applicant in a better position than if discrimination had not occurred. The net effect is to punish the creditor by imposing a penalty for illegally discriminating, which is outside the authority of the agencies. Only the courts can impose penalties.

Also, in many instances, any economic damage suffered by the consumer could be cured short of requiring a new loan. The agency could require the creditor to pay to the consumer whatever additional charges or interest he incurred because of the discriminatory credit practice. This is preferable since the creditor will not have to pay for the prepayment penalty as well as waive and refund various fees, and the consumer will not have to reapply. In fact, a cash payment would make the consumer whole, which is the objective of the guidelines, without imposing unneeded costs on the banker.

Finally, when reviewing a credit application under this guideline, a bank should be able to determine whether or not the applicant is presently creditworthy. To make a loan to an individual who is not able to repay the loan would not serve any social purpose and would hurt the consumer. Furthermore, a bank has an obligation to make safe and sound loans which means not making loans to uncreditworthy customers.

With regard to Violation III, which deals with imposing more onerous terms on a prohibited basis, we would recommend that the agency consider only requiring the creditor to make such reimbursement as necessary in order to make the consumer whole. As mentioned above, to completely renegotiate a contract may be very expensive and of minimum social utility. Also, if

the agencies do require the creditor to change the terms of the contract, there is a possible Regulation Z violation involved. Therefore, we would recommend that an amendment to Regulation Z be considered to allow this type of change.

Violation IV relates to obtaining a co-signer on a prohibited basis. We would point out that under Illinois law, for example, the only persons who can serve as a co-signer are the debtor's spouse or parent. Therefore, we recommend that these considerations should be kept in mind when reviewing this guideline. Also, with regard to substitute co-signers, we suggest that the guidelines should be clarified to assure that the financial institution can insist that the new co-signer be a financially responsible individual.

Violation V relates to the failure to collect monitoring information in violation of §202.13. We believe that many customers, especially those who were denied credit, would resent the bank soliciting this information and consider it an invasion of privacy. We doubt the wisdom of requiring the collection of this information retroactively.

Violation VI requires a creditor who failed to provide a notice of adverse action to send such notice to "all applicants denied credit" within the past 25 months. First, we believe that it is an oversight that "all applicants" who were denied credit should receive the notice. We suggest that sending the notice should be limited to only those applicants who had adverse action taken against them and were not properly notified. We also question the utility of requiring a creditor to go back 25 months to inform an applicant of the reasons for adverse action. The primary reason for requiring the notice is to inform the applicant of the reason for denial so that the applicant can take any needed corrective action to improve his or her credit standing. Information which is over one year old may be of very limited usefulness since it is so dated. This is especially true when considering the great expense the creditor will have to go to in order to reconstruct from old credit files the notice of adverse action.

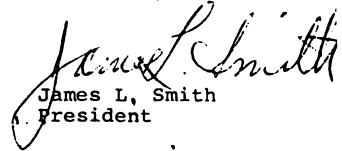
Violation VII relates to the failure to report separate credit histories for married persons. If the agency determines that the banker has failed to report such histories, we would recommend that the creditor be required to contact the customer and ask if he or she desires such reporting. However, if no response is received, the creditor should be considered to have

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complied with his responsibility under the regulation. The creditor should be required only to request this information once.

The Consumer Bankers Association appreciates this opportunity to comment on these guidelines. If you have any questions or desire clarification regarding our comments, please do not hesitate to contact the CBA Staff.

Sincerely,



James L. Smith
President

Attachments

ADDENDUM I

15 U.S.C. 1691c(a)(1) specifically empowers the banking agencies to enforce compliance with the requirements of the Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.) under Section 8(b) of the Federal Deposit Insurance Act (12 U.S.C. 1818(b)). The Association believes that the powers granted to the agencies by Section 1818(b) do not constitute authority for the ordering of restitution and affirmative action as proposed in the guidelines. Specifically, that section provides that when the agency finds, after a hearing, that any insured bank or bank which has insured deposits is engaging or has engaged "in an unsafe and unsound practice in conducting the business of such bank, or is violating or has violated. . . a law, rule or regulation," the agency:

"may issue and serve upon the bank an order to cease and desist from any such violation or practice. Such order may...require the bank... to cease and desist from the same, and further, to take affirmative action to correct the conditions resulting from any such violation or practice."

Section 1818(b) was enacted by the Financial Institution Supervisory Act of 1966, P.L. 89-695. There is nothing in the legislative history of this Act to indicate that Congress intended the agencies to have the power they are now asserting. The primary concern at the time was to prevent depletion of a bank's assets by a continuing unsafe or unsound practice resulting from the personal dishonesty of its officers. See, 1966 U.S. Code Congressional and Administrative News, 89th Cong., 2nd Sess., 3536, 3539. As stated in S. Rept. No. 1482, 89th Cong., 2nd Sess., 1966:

"Present law provides no other protection against increased losses caused by the continuation of such violations or practices while time consuming enforcement proceedings are in progress."

In United States v. Sessen, 399 U.S. 267 (1970), Justice Harlan, speaking for the Court stated:

"The axiom that courts should endeavor to give statutory language that meaning that nurtures the policies underlying the legislation is one that guides us when circumstances not plainly covered by the terms of the statute are subsumed by the underlying policies to which Congress was committed." (Ibid, p. 297-298.)

In enacting Section 1818(b), Congress never considered the propriety of an administrative remedy of the type proposed here; the possibility of an agency ordering financial restitution was never mentioned. Rather the concern was with the depletion of assets from ongoing unsafe and unsound practices and as stated by Chairman Wright Patman of the House Banking Committee in support of this legislation, the related concern of protecting the savings and checking accounts of depositors. (112 Cong. Recor 24984.)

Clearly then, the purpose of this Act was and is to preserve the assets of financial institutions, not to dissipate them, which would certainly be the result of the exercise of authority proposed here. There could be no other result, particularly when after an institution has made restitution, it would still be exposed to further civil liability for the same violation. This duplication of private recovery is not called for under the Equal Credit Opportunity Act and certainly does not meet the objective of the Financial Institution Supervisory Act in providing for a safe and sound banking system. To allow a duplication of private recovery is, at the least, unusual, and should not be assumed from such a general grant of agency authority clearly enacted to deal with other matters; the invocation of such a remedy should first be authorized by a specific statutory provision, after Congress has had an opportunity to carefully consider the specific problem at hand.

Congress itself has seen the merit of this position. The Truth in Lending Act (15 U.S.C. 1600 et seq.) is also enforced under Section 1818(b). Although similar guidelines to the ones at hand have been proposed by the agencies, S. 2802, the Truth in Lending Simplification and Reform Act, contains specific provisions and limitations by which the agencies can exercise this authority. It is self-evident that had Congress intended Section 1818(b), or believed that it conferred, the authority to require restitution on the agencies, then such a provision would not be necessary. However, not only did the Senate deem it necessary to confer the authority but also to place stringent limitations on that authority. Adjustments would be mandated only on a finding of a clear and consistent pattern and practice of violations, and only if there is no significant adverse impact on the safety and soundness of the institution.

The importance of these limitations cannot be imposed. Considering the spectrum of possible truth in lending violations, it is extremely significant that the Senate limited the restitution authority to only inaccurate disclosure of the annual percentage rate or finance charge, and then only under extreme circumstances of noncompliance with a further limitation that the safety and soundness of the bank must be considered. It could not be clearer that Congress did not intend, in empowering the agencies with enforcement authority for both the Truth in Lending

t and the Equal Credit Opportunity Act under Section 1818(b), for the exercise of the proposed authority. The limitations in Section 2802 show that Congress would not have conferred such unbridled authority on the agencies, indicating that this remedy is not within the grant of Section 1818(b).

Perhaps even more significant is the provision of S. 2802 which requires that an adjustment may be ordered only in accordance with institution of cease and desist procedures. This is important because cease and desist proceedings and orders are of prospective application only, aimed at correcting ongoing practices. As with Truth in Lending, many of the violations which may be found and ordered corrected under the Equal Credit Opportunity Act have long since been corrected by the institution. In which case, with no reason to believe that a bank, now aware of the proper procedures, would resume its illegal practices, there would be no need for an agency to issue a cease and desist order. This provision clarifies Congressional intent that agency enforcement authority should be prospective and remedial, rather than retrospective and punitive.

This interpretation is consistent with the reading and history of Section 1818(b). It is apparent when reviewing the history of this section that Congress intended the phrase, "to take affirmative action to correct the condition resulting from any such violation or practice," to mean that the agency could order prospective internal changes in how an institution conducts its business. As with the above noted provisions of S. 2802, it is obvious that under Section 1818(b) there is no separate authority to require "affirmative action" and that this action may be required only as incident to a cease and desist order. The guidelines as drawn completely ignore this clear mandate. For the agencies to order restitution not in conjunction with a cease and desist proceeding would clearly be a punitive measure. If Congress had intended the agencies to take on a judicial role, i.e., take punitive measures to enforce private rights, it could have so stated in 15 U.S.C. 1691(c). Instead, in Section 1691(e), Congress created a private right of action with specific penalties, including punitive damages.

To conclude, the Association does not believe, as a matter of standard statutory construction that Section 1818(b) can be interpreted to grant to the agencies the power to order reimbursement. Although the subsection grants cease and desist authority to Federal banking agencies when they find "a violation of law," we do not believe that it allows restitution. That phrase must be read in conjunction with and as subsidiary to the underlying "unsafe and unsound practices" prevention objective

of the section. Therefore, there is a serious question as to whether the "violation of the law" provision was ever intended to grant separate authority to the type asserted.

Further specific consideration must also be given to the means of exercising the enforcement authority conferred by Section 1818(b). A cease and desist order, prospective in application, by its very nature precludes restitution for past violations. Because of the problems outlined above, we believe that the agency should withdraw these proposals until a firmer legal basis can be established.

Equally important to the legal considerations are the practical aspects relating to the safety and soundness of the financial institutions, as expressed in the legislative history of the Financial Institution Supervisory Act and in the provisions of the pending S. 2802. The wisdom of enacting the guidelines as proposed is, at best, questionable. The ordering of restitution is clearly contrary to the objective of preserving the assets of a financial institution, and could operate to undermine the stability of the entire banking structure.

ADDENDUM II

The first statute of limitations were enacted by the English Parliament when the abuses of trying to enforce demands became unendurable. 32 Henry VIII, c. 2, enacted in 1540, applied only to when realty was involved. This was superseded in 1623 by 21 James I, c. 16, which included specific limitations on all actions. Kyle v. Green Acres at Verona, Inc., 207 A.2d 13, 514-5 (1965). Although originally justified by the theory that a long time lapse with no assertion of rights meant that payment had been made, this justification has long since been abandoned. 51 Am.Jur. 2nd Lim. Act. 32. In Pappas v. Braithwaite, 162 P.2d 212 (1945), the court noted:

"Inasmuch as statutes of limitation are not generally regarded with favor by the courts, it is the consensus of the authorities that the defense of the statute of limitations stands upon the same plane as any other legal defense, and is one to which, in proper circumstances, all men are entitled as a right. The defense is not technical, but is deemed to be legitimate, substantial and meritorious." 34 Am.Jur., Limitation of Actions, sec. 12 pp. 22,23.

The Supreme Court has consistently found statutes of limitations to be based on important public policy considerations:

"Statutes of limitation are vital to the welfare of society and are favored in the law. They are found and approved in all systems of enlightened jurisprudence. They promote repose by giving security and stability to human affairs. An important public policy lies at their foundation. They stimulate activity and punish negligence. While time is constantly destroying the evidence of rights, they supply its place by a presumption which renders proof unnecessary." Wood v. Carpenter, 101 U.S. 125, 139 (1879).

"Statutes of limitations are primarily designed to assure fairness to defendants. Such statutes promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared. The theory is that even if one has a just claim it is unjust not to put the adversary on notice to defend within the period of limitation and that the right to be free of stale claims in time comes to prevail over the right to prosecute them." Order of Railroad Telegraphers v. Railway Express Agency, Inc., 321 U.S. 342, 348-349 (1944).

The Association asserts that to enact the guidelines as proposed, without a statute of limitations, would be contrary to the public policy consistently espoused by both Congress and the courts. The bringing of stale claims, after evidence has disappeared and memories faded, is not only disruptive to the statutory scheme and the judicial system, but patently unfair to the defendants. The primary purpose of these statute is to compel the exercise of a right of action within a reasonable time so that the opposing party has a fair opportunity to defend. Housing Authority of Union City v. Commonwealth Trust Co., 136 A.2d 401, 404 (1957).

In this case, Congress has deemed two years as a reasonable time in which a private party may initiate civil litigation. By not adhering to this time period, the proposed guidelines are inconsistent with the general rule that the running of a limitation period under statute which both creates a right of action and also fixes the time within which suit for enforcement of that right must be commenced extinguishes the right of action as well as the remedy. See, e.g., United States ex rel. Texas Portland Cement Co. v. McCord, 233 U.S. 157, 162 (1914). The standard time period for initiating a contract action, under Federal and state law, is usually three years. As originally enacted, 15 U.S.C. 1691(f) called for a one year period for the bringing of actions. Congress amended this section in 1976, P.L. 94-239, 90 Stat. 253, to extend to two years the limitation period.

In considering this question not once, but twice, Congress has clearly intended for private actions to be brought promptly, and deemed two years as an adequate time period. The 1976 amendment expressly provides for a one year extension provided an agency has commenced an enforcement proceeding within two years of the date of the occurrence of the violation. Congress must have been considering the burden to banks, in this respect, for providing an extension to the private litigant only if an agency has commenced a proceeding serves to put the bank on notice that there is a claim so that the bank might fairly defend its position. As stated by the court in Kyle, at 517, 518:

"The underlying purpose of statutes of limitation is to prevent the unexpected enforcement of stale claims concerning which persons interested have been thrown off their guard by want of prosecution."

To permit the agencies to commence actions for an indefinite period would be to defeat this Congressional purpose.

This basic policy of not permitting actions on stale claims has been a tenet of American law since its beginning. The necessity and importance to all parties concerned and to the

judicial structure itself of providing a statute of limitations for statutorily created rights cannot be overemphasized. In Leitch v. New York Central R. Co., 58 NE2d 16, 20 (1944), the court succinctly stated:

"The very purpose of a statute of limitations is to require any necessary litigation to be brought within such times as the particular facts and circumstances may be proved with the utmost certainty and before adequate proof has become stale or entirely lost."

This is particularly important in action brought by the agencies under the Equal Credit Opportunity Act since, even if the bank has retained its records, such proof may not be conclusive. Unwritten policies and attitudes of the bank and its employees may be involved. To allow a Federal bank regulatory agency, in the name of the United States, to do for a private plaintiff what he has been barred by Congress from doing himself, is certainly contrary to Congressional intent in this case specifically as well as to the public policy advocated by Congress and the Judiciary for the last two hundred years.

The question of the role of the United States in such an action should also be considered at this point. Although the United States may not be bound by a statute of limitations in a suit brought by it to enforce a public right, such as a defense will prevail when it is suing to enforce the rights of individuals. See, e. g., United States v. Beebe, 127 U.S. 338 (1887); Curtner v. United States, 149 U.S. 662 (1893). In Beebe, the Court stated it thus:

"Applying these principles to this case, an inspection of the record shows that the Government, though in name the complainant, is not the real contestant party to the title or property in the land in controversy. It has no interest in the suit, and has nothing to gain from the relief prayed for, and nothing to lose if the relief is denied. The bill itself was filed in the name of the United States, and signed by the Attorney General on the petition of private individuals, and the right asserted without the intervention of the United States at all." (emphasis added)

The instant statute clearly provides for a private right of action. Any enforcement proceeding brought by an agency would be in lieu of such private action, to enforce a statutory right of an individual. As only a nominal plaintiff, the agency should be held to the prescribed statutory period.

The Association believes that Federal regulators before enacting the proposed guidelines without a statute of limitations,

should weigh heavily these considerations. In light of the important public policy and reasons therefore and the legal principles concerning the United States as a nominal plaintiff, it would be grossly unfair to potential defendants to enact these guidelines as proposed. It would undoubtedly lead to protracted litigation, which would not only hinder the very enforcement activity which these guidelines address, but would also disrupt the banking regulatory system, create further uncertainty as to the state of the law, and impose needless burdens on both the agencies and their respective banks.

Information basis for dollar cost evaluation of paperwork changes in consumer loan forms necessitated by Federal or State legislation or regulation.

Total consumer credit outstanding: \$ _____

Dollars in consumer loans outstanding in category affected by _____ Regulation or Law: \$ _____

* Indicates may be recurring cost.

1. Initial evaluation of new regs or legislation by senior loan officers	No. hours _____ \$ _____ per hour per officer - Total \$ _____
2. Initial consultation with counsel	No. hours counsel time _____ \$ _____ per hour \$ _____ No. hours officer time _____ \$ _____ per hour \$ _____
3. Preparation of initial draft of form changes by counsel	No. hours counsel time _____ \$ _____ per hour \$ _____
4. Review of required changes in form by counsel w/ senior loan officers	No. hours counsel time _____ \$ _____ per hour \$ _____ No. hours officer time _____ \$ _____ per hour \$ _____
5. Review of changes & discussion with senior management	No. hours counsel time _____ \$ _____ per hour \$ _____ No. hours officer time _____ \$ _____ per hour \$ _____ No. hours sr.mgt. time _____ \$ _____ per hour \$ _____
6. Initial discussion w/ operations personnel regarding implementation	No. hours officer time _____ \$ _____ per hour \$ _____ No. hours op.per. time _____ \$ _____ per hour \$ _____
7. Operations personnel planning for implementation	No. hours op.per. time _____ \$ _____ per hour \$ _____
8. Cost of expanding computer core space (if appropriate)	\$ _____
9. Cost of computer programing or re-programing (if appropriate)	\$ _____

- *10. Cost of periodic customer notification (if appropriate)
 Include as separate items: computer time \$ _____
 printout _____
 stuffing _____
 mailing _____
 postage _____
 Total _____ No. of notifications required per year _____ Total \$ _____
11. Cost of required multi-lingual changes (if appropriate)
- *12. Cost of reporting to regulatory agency (if appropriate)
 Include as separate items: form collection \$ _____
 computer time _____
 printout _____
 review _____
 mailing _____
 postage _____
 Total _____ No. of reports required per year _____ Total \$ _____
13. Cost of printing
 Include as separate items: layout \$ _____
 typesetting _____
 review _____
 corrections _____
 printing _____ Indicate no. of copies _____ Total \$ _____
14. Cost of collection of old forms
 (by mail or in person) No. hours _____ \$ _____ per hour X no. of people _____ \$ _____
15. Cost of distribution of new forms
 (by mail or in person) No. hours _____ \$ _____ per hour X no. of people _____ \$ _____
16. Cost of destruction of old forms \$ _____
- *17. Training of employees involved w/ consumers
 in filling out new forms No. hours _____ \$ _____ per hour X no. of people _____ \$ _____
- *18. Training of employees involved in processing
 new forms No. hours _____ \$ _____ per hour X no. of people _____ \$ _____
- *19. Cost of informing dealers
 (if appropriate) No. hours _____ \$ _____ per hour X no. of people _____ \$ _____

- *20. Increased time in reviewing credit applications
(if appropriate) No. hours _____ \$ _____ per hour X no. of people _____ \$ _____
- *21. Increased cost of credit checks \$ _____ per report X _____ no. of reports annually \$ _____
- *22. Increased cost of record retention. No. months increased _____ X \$ _____ per month \$ _____
- 23. Total cost (sum of all of the above) \$ _____
- 24. Cost of loan handlings

A. Per application:	<u>Total Cost</u>	= \$
	Total Applications	
B. Per application approved:	<u>Total Cost</u>	= \$
	Total Applications Approved	
C. Per application rejected:	<u>Total Cost</u>	= \$
	Total Applications Rejected	
D. Per application withdrawn:	<u>Total Cost</u>	= \$
	Total Applications Withdrawn	

RETAIN AS CONFIDENTIAL TRADE SECRET

Name of Bank _____ Address _____
 Telephone _____ Officer filling out form _____

(Counsel)	<u>No. Hours</u>	Appendix B (31 Banks)	<u>Amount Spent</u>	(Counsel)
	510		\$18,330	
	282		16,320	
	100		6,850	
	90		5,022	
	78		5,000	
	75		3,625	
	75		3,400	
	69		3,000	
	68		2,100	
	62		2,046	
	61		1,913	
	50	Mean = 63.4 hours	1,800	Mean = \$2,757.42
	40		1,700	
	39		1,600	
	38		1,365	
Median -	34		1,350	- Median
	32		1,250	
	30		1,220	
	30		1,200	
	28		1,200	
	26		1,050	
	22		750	
	20		613	
	18		600	
	18		485	
	17		375	
	15		360	
	14		320	
	12		306	
	10		210	
	3		120	

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Appendix B

45.22
27.50
21.48
14.00
6.05
4.94
4.15
~~3.70~~
3.45
2.38
1.79
1.75
1.68
1.53
1.45
1.41
1.37
1.29
1.23
1.16
1.02
.97
.83
.77
.69
.65
.56
.30
.30
.24
.24
.22

TOTAL COST PER APPLICATION
(from 32 banks)

Average 4.83

Range \$.22 - \$45.22

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STATEMENT OF
HOWARD E. WESTON
BEFORE THE
FEDERAL PAPERWORK COMMISSION
REPRESENTING THE
CONSUMER BANKERS ASSOCIATION
REGARDING
FEDERAL PAPERWORK BURDENS
ON
FINANCIAL INSTITUTIONS

SEPTEMBER 10, 1976

My name is Howard E. Weston, and I am Vice President of The Washington Trust Company of Westerly, Rhode Island. I am testifying on behalf of the Consumer Bankers Association. My bank has total assets of approximately \$100 million. I am accompanied today by Drew V. Tidwell, Legislative Representative of The Consumer Bankers Association. The Consumer Bankers Association (CBA) greatly appreciates this opportunity to appear before your Commission in order to discuss the paperwork burdens that are being imposed upon businessmen by various federal agencies through commercial banks.

What are these burdens? The results of a survey recently conducted by CBA indicated that in complying with only ONE federal regulation, the cost is \$4.83 for each loan application. This includes many factors which we will develop in detail later in this testimony. They include such items as destruction of old loan applications (one bank alone paid \$64,679 as of June 30, 1976 just to destroy its superceded loan application forms). For all reporting banks, legal counsel time averaged 63.4 hours and had an average cost of \$2,757.42.

According to a study conducted by Credit Research Center at Purdue University for the Federal Reserve Board, the cost to the entire consumer credit industry of complying with the ECOA notice requirement was \$7.5 million.

And who do you think ultimately pays for all of this? The depositor and the borrower. And in terms of the conservation of natural resources such as timber, and energy, we cannot even hazard a guess at the total cost in destroying what must surely be hundreds of thousands of tons of paper.

The Consumer Bankers Association is a national trade organization which represents the consumer lending departments of commercial banks. Our members hold more than 50 percent of all of the consumer loans outstanding in commercial banks -- some 38 billion dollars. The CBA represents bank lending officers who deal with the public daily. Much of our effort has been directed towards advising banks as to what they must do to comply with various federal regulations.

With traditional respect for the American legislative process, bankers have always tried to properly follow the law in accordance with the appropriate implementing regulations. Until recently we have found that we did not need a platoon of attorneys to advise us as to what would or would not comply with federal regulations.

I would be one of the first persons to admit that regulations and legislation are necessary in any industry if only to police and to correct the occasional abuses that do occur, however, the flood of consumer legislation that has descended upon us recently, in my opinion, has produced an environment of overkill.

I have attended conferences, conventions, seminars and any number of discussion groups, to avail myself of proper interpretation of rules and regulations; in most instances, I have been faced with utter frustration in not being able to obtain direct definitive answers. Even members of the Board of Governors of the Federal Reserve System have repeatedly prefaced their remarks before conventions and conferences with the common statement, "We won't know the answer to that question until it has been tested in court".

I for one, do not want to go to court for an answer; they are too crowded now with bankruptcies and truth-in-lending actions. I feel legislation can and should be drafted as well as implemented with due consideration of the problems that may develop. We have received little if any assistance from regulatory authorities as to how we should proceed to comply with consumer legislation.

In a recent conversation on this subject with me, my bank's President asked, "Have the regulators become the 'wreckulators?'" Is common sense no longer common?

Many of their regulations often time have all the clarity of Chaucerian riddles -- unsolvable for centuries. And they must be implemented over very short periods of time with a minimum of publicity given to their interpretation.

However, in the past five years, federal legislation and the consequent regulatory interpretations have been increasingly devised to "cross the t's and dot the i's". This has forced many small banks which have only few officers and no in-house legal counsel to conform to elaborate regulations which can only be interpreted by lawyers who are specialists in a given subject.

We have found that many of the regulations have been subject to bureaucratic committee writing. You are all familiar with the saying that a camel is actually a horse designed by a committee. Well, thanks to advanced technology, bureaucrats seem to be the only ones able to accomplish this impossible feat.

Increasingly, bankers have become disillusioned with such regulations -- particularly those whose purpose is to help the consumer. Civil and criminal penalties attached to noncompliance of the regulations are increasingly severe.

Throughout all of this, please be mindful that we lend the money which YOU and many millions of other American consumers have deposited with us. Both legally and morally bankers are obligated to return this money with interest. The extent of our concern with how to do this legally is now being matched by our bewilderment in understanding the regulations under which we must operate.

I can personally assure you that consumers, my customers, after reading the lending forms that regulations insist that we

furnish them, have turned to me in bewilderment and asked me to please fill it out for them. That, in most cases, contravenes the spirit and intent of the law. Picture the customer that I have known for 15 years and previously have asked him the questions on an application - now he must fill it out himself. In many cases, he can't read or understand them, he's embarrassed - is that fair?

Not only do we have overlapping confusion on everyone's part, overkill in the form of deadening notices, but we also have a very serious problem in dealing with the cost benefits of these confusing regulations to the consumer.

Our members are very concerned that the intent of the Congress in creating your commission to restrain bureaucratic paperwork be more than mere lip service. We are here because we believe that Congress will listen to you and act to cut the waste and confusion.

The main thrust of much of this commission's activities has been aimed at the burdens that have been placed upon businessmen in filling out forms which governmental agencies have sent to them. We believe that your analysis should be carried one step further. In the credit field, governmental agencies are now requiring significant form changes by bankers. These form changes mainly have been in two primary areas -- that in the application for credit and later the consumer credit contract between the banker and the customer.

To demonstrate to the Commission the paperwork burdens that will be imposed by this type of regulation, we have conducted a survey regarding the recently passed Equal Credit Opportunity Act, as implemented by the Federal Reserve Board's Regulation B, which prohibits discrimination in the granting of credit on the basis of sex or marital status.

A copy of our survey form is attached to this testimony as Appendix A. Some of the results of this survey are attached as Appendix B. After discussing these results, we would like to point out to the Commission how, in many instances, the form change dictated by the regulatory agency was not mandated by the Act when passed by Congress. Essentially, much of this regulation was conceived without the mandate of law. In addition, we would like to emphasize that these regulations tend only to confuse the consumer and has made granting of credit more difficult and expensive for the consumer.

Finally, we would like to make some suggestions to the Commission regarding how the consumer's rights can continue to be protected as intended by the Congress without imposing unwieldy and unrealistic paperwork burdens.

Turning first to our survey -- CBA is not the only group that has looked at the cost of regulating Reg. B. Recently the Federal Reserve Bank of Philadelphia surveyed a cross section of banks in

the New Jersey area to determine the cost of complying with Reg. B, which is attached as Appendix C. The main cost involved with this regulation is major changes in the application form which consumers fill out as well as the method used for evaluating credit. The results of the Philadelphia Fed study are that the impact of this regulation on the net income of banks ranging from \$50 million to \$500 million dollars in assets is from .9 percent to 3 percent of net income gentlemen, not gross income. This translates into a cost per share of stock, to between two cents and eight cents. In conferring with economists at the Federal Reserve Board they have informed CBA that this is the most expensive regulation ever imposed on the banking community.

Since the main impact of this regulation was on loan application forms, our Association did a survey on this matter.

As Appendix D we are attaching a sample survey form. We find that there are approximately \$92.5 million consumer loan accounts outstanding in commercial banks at this time. Every year, commercial banks in the country received \$40.7 million applications for credit. Keeping this in mind, we find that the average cost incurred by banks in complying with Reg. B per application is \$4.83. With regard to per application cost, we have found that it fluctuates from one financial institution to another in the following range -- \$.22 to \$45.22. We can see

generally that larger financial institutions find this regulation less expensive per application because of the larger volume of applications that they receive, however, there are certain inherent costs in complying with this regulation that must be paid by all institutions regardless of size.

We also found that our institutions had spent an average of \$2,757.42 for attorneys and those attorneys had to work an average of 63.4 hours in revising the bank's forms.

Many large institutions have informed us that disposal costs run into thousands of dollars. The point we are trying to make is that these regulations are expensive and all expenses are reflected in the cost of money factor. Appendicies E and F will show the cost of extending credit.

I am sure many of you now are questioning in your own minds whether the law (Equal Credit Opportunity Act) required the forms changes which we have found to be so costly. I believe that a careful reading of the law will show that this is not the case. Specifically, the Equal Credit Opportunity Act, which is Title 7 of the Consumer Credit Protection Act, contains the following:

S701(a) "It shall be unlawful for any creditor to discriminate against any applicant on the basis of sex or marital status with respect to any aspect of a credit transaction.

(b) "An inquiry of marital status shall not constitute discrimination for purposes of this title if such inquiry is for the purpose of ascertaining the creditor's rights and remedies applicable to the particular extension of credit, and not to discriminate in a determination of creditworthiness."

The rest of the text is composed of Section 702, which is the definition of terms, S703 which grants the Federal Reserve Board authority to write regulations, S704 which outlines the administrative enforcement, S706 which states the civil liability for violation, and S707 which gives the effective date.

This law is five pages long. The Federal Reserve Board regulations to implement this Act are 32 pages long. The guts of the Act are the two simple sentences, S701(a) and (b). And on the basis of these two sentences the Fed has imposed a 32 page regulation on the consumer finance community. We feel that this is unnecessary.

Two sections of the regulation clearly outline the intent of Congress. Specifically, I am referring to S202.2 and 202.4(a). If these were the only two changes required we would have no problems. The other requirements of the regulations were arbitrarily imposed.

Definitely, bankers and all individuals know when you are discriminating against a person because of his sex or marital status. Since loans are our main source of income and income is our only source of profit, what banker would turn down a loan (for his competition to take) just because the borrower happened to be fat or thin or bald or white or black or male or female? Bankers are just like any other businessman. When the customer walks in to buy and can pay the price of the goods, one person's dollar is just as good as anyone else's.

I believe that we can effectively demonstrate how there is not a need for detailed regulations to implement the law by referring to the Sherman Anti-trust Act which has been on the books since July 2, 1890. 15 U.S.C. Section 1 provides:

"Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal."

Section 2:

"Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding fifty thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court."

Most intelligent people would agree that this Act has been effectively administered and most businessmen know when they are and are not in compliance with it.

Another major point is that recently federal agencies seem to have gone "disclosure crazy". We find that under the Equal Credit Opportunity Act regulations, a disclosure of the consumer's rights must be made. This notice states the following:

"The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of sex or marital status. The Federal agency which administers compliance with this law concerning this bank, is (name and address of the appro-

priate agency.)"

Under the proposed Truth in Leasing regulation, again we find that the Fed is without Congressional mandate proposing a disclosure to the consumer of certain rights if there is a deficiency balance owing.

Finally, the FTC in its recent Holder-In-Due-Course Rule required that a notice type disclosure be placed on all consumer credit contracts. While everyone would quickly agree that legally the Congressional mandate could be carried out without these disclosures, most federal agency heads quickly respond that disclosures, while not mandated by the Act, are needed for "educational" efforts.

We must seriously question the value of such educational efforts. All consumer credit transactions are already exceedingly complicated because of the multitude of Truth in Lending disclosures that must be made. These additional disclosures only serve to confuse the consumer and impose additional paperwork costs on the bank, which they cannot continue to absorb.

While we have not done detailed studies on this matter, conversations with many economists have led us to the conclusion that from a cost effectiveness point of view, an educational campaign conducted by the agency to inform the public of its rights under this law as well as effective enforcement by bank regulatory agencies

would probably benefit the consumer more in the long run at far lesser cost to all parties concerned.

To further bolster this argument, we would point out that with regard to the FTC notice on Holder-in-Due-Course, many states have abolished this doctrine and never have required that notice be included in the consumer credit contracts. The FTC has not been able to show that the consumer has been any less protected because the notice has not been included. With regard to the leasing situation, again many states have abolished the right to collect deficiencies. The Federal Reserve Board staff is unable to prove that any consumer rights have been abrogated because the notice was not given. Thus, it is obvious that most federal agencies seem to operate on the assumption that the American businessman will violate the law whenever he can. This is not correct. Therefore, we do not feel that these paperwork burdens should be placed upon businessmen unless the federal agency can show that these businessmen are not complying with the law and regulations and there is not a more effective means of enforcement.

Furthermore, one of the most wasteful aspects of continual form changes is the cost of destroying old forms. Just taking this one Regulation B into consideration I would like to give you a few examples of some of the costs incurred by banks according to their size. A 228 million dollar bank with 21 million in consumer loans outstanding had to pay \$6,000 to destroy forms. A

1 billion dollar bank with 143 million in consumer loans outstanding had to pay \$17,300 to destroy forms. A 1.9 billion dollar bank with \$283,000 in credit card outstandings had to pay over \$20,000 for destruction of forms.

To give you some idea of how destruction costs were arrived at, a 900 million dollar bank in South Carolina, which handles BankAmericard, costed out for us how much expense they incurred in picking up old application forms from a merchant, placing new application forms in the merchant's office, and destroying the old forms. The cost came out to be \$18.02 per pickup from the merchant. For that one bank this cost ended up being \$150,088.83. This was figured on the conservative side with a very low input for labor costs. There are a total of 1,264,000 BankAmericard merchants in the continental United States. At the pickup cost per merchant of \$18.02, we find the total cost of just picking up and destroying old applications to be \$22,777,280.00. One California bank was forced to destroy 1,337,500 forms as of June 30 to comply with Regulation B.

We feel one of the major recommendations that this Commission could make should be that all federal agencies which regulate consumer credit be required to coordinate their activities, and to properly advertise in the appropriate media for the industry affected,

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hold hearings and take into consideration and publish for discussion potential cost benefit figures.

I would like to sum up this whole toward regulations and increased paperwork by giving you a something from my own personal experience.

I have worked in the consumer credit field for over 20 years and believe that I have expertise in the counseling of applicants and people who just seek good advice. In today's atmosphere of fear of reprisal, class action suits, and violation of rights, most bankers are unwilling and afraid, if you will, to ask many questions necessary to provide sound financial advice. The personal aspects of interviewing are disappearing and the real loser is not the lending institution, but the potential borrower. In a recent publication on the ECOA there appeared at the end of a page the following statement....

CAUTION...IT WOULD BE ADVISABLE NOT TO ACCEPT A SPOUSES SIGNATURE AS A COMAKER TO A NOTE, UNLESS THAT SPOUSE CAN QUALIFY FOR CREDIT IN HIS OR HER OWN RIGHT, AS SUCH ACTION MAY BE CONSIDERED DISCRIMINATION ON THE BASIS OF MARITAL STATUS.....

Boy, that is really some opinion....I read it to an over-65 Black couple on social security income just last Friday who came in to

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get a \$1000 loan to repaint their home. The wife's remark was,
"They sure don't make me feel like much; give me that piece of
paper, I'll sign it even if my husband gets all the income.
I've been telling him how to spend his money for over 40 years,
and I still do."

January, 1978

ECONOMIES OF SCALE IN THE COST OF COMPLIANCE
WITH CONSUMER CREDIT PROTECTION LAWS:
THE CASE OF THE IMPLEMENTATION OF THE
EQUAL CREDIT OPPORTUNITY ACT OF 1974

Neil B. Murphy, Professor of Finance
University of Maine, Orono

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Introduction

Since the passage of Truth in Lending in 1968, a number of Federal laws have been passed involving the Federal government in the entire field of consumer credit. With the exception of the Fair Credit Reporting Act, the procedures for implementing the law have been similar. That is, Congress holds hearings and legislation is enacted. That legislation empowers the Board of Governors of the Federal Reserve System to write regulations implementing the legislation. Enforcement of the regulations are then principally the responsibility of the Federal banking agencies (Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Federal Reserve Banks) and the Federal Trade Commission for most other grantor of consumer credit. While there have been some efforts to estimate the total cost of complying with one of these laws (Smith, 1977), there has been no systematic effort to assess the impact of compliance by size of credit grantor. The purpose of this paper is to determine the cost of complying with the Equal Credit Opportunity Act of 1974 for a sample of banks with special attention to the scale effects. Section I contains a discussion of the law, attendant regulations, and the nature of compliance costs. A statistical model and the results of statistical tests are presented in Section II while Section III is the summary and conclusion.

Section I

On October 28, 1974, the Equal Credit Opportunity Act of 1974 was signed into law by then President Ford. Rule-making authority under that act was given to the Board of Governors of the Federal Reserve System with one year to write regulations. The Board's Regulation B was published on October 16, 1975, less than two weeks before its effective date. That regulation contains a number of provisions which give rise to various types of compliance costs. Without going into the detail of Regulation B, those costs may be discussed prior to developing the statistical models to be estimated.¹

First, lenders must incur legal fees in tracking the legislative and regulatory developments, presenting their views during deliberations, interpreting the final version of the regulation and designing forms, computer systems, and training procedures to assure compliance.² Second, employees must be trained to assure that credit evaluation procedures comply with the regulations. All the relatively expensive legal service is wasted if the appropriate procedures are not followed by lender personnel. Third, new forms must be designed so that applications do not contain any mention of factors prohibited in the credit evaluation procedure. In addition to the printing and distribution of new forms, old forms must be destroyed. If a credit card issuing bank has application forms at each of the merchants that do business with it, the number of outlets can be large indeed. Consider also a large, statewide bank purchasing indirect automobile paper from an extensive dealer network. Finally, for many lenders, automated systems must be reprogrammed,

¹A more complete discussion of the specific provisions of Regulation B and the attendant costs is found in (Smith, 1977).

²The law contained a penalty of up to \$10,000 for each individual violation and up to \$100,000 (or 1% of net worth) in a class action in addition to punitive damages, court costs, and attorneys' fees. Thus, there is ample incentive to comply.

and computer runs enlarged. Also, automated scoring systems including the prohibited factors would have to be re-estimated and implemented to achieve compliance.

In attempting to detect any scale impact from the necessity of compliance, it is necessary to begin with a model of production and cost that permits the estimation of such effects. For both theoretical and empirical purposes, it is assumed that the "output" of the process of compliance is consumer credit that is not subject to legal challenge. The inputs to such a process are legal services, officer labor services, various operating labor services, materials, and services of real capital.

The structure of this model follows that developed by Bell and Murphy (1968). That is, if the production process is assumed to be of the Cobb-Douglas variety, a reduced-form cost function may be derived which is linear in logarithms.

$$(1) \text{ Log } C + \text{ Log } A + b_1 \text{ Log } CR + b_2 \text{ Log } WL + b_3 \text{ Log } WO + b_4 \text{ Log } WP$$

Where C = The cost of complying with Regulation B

CR = The total amount of consumer credit outstanding subject to Regulation B

WL = The hourly wage for legal services

WD = Hourly wage for officer services

WP = Hourly wage for operating personnel

The other factor prices, the real rental rate of capital and materials prices, are assumed not to vary in cross section and are subsumed in the constant term, A . b_1 is the reciprocal of the scale coefficient and measures any economies of scale. A value less than unity indicates the presence of economies of scale. b_2 , b_3 , and b_4 are elasticities of cost with respect to changes in factor prices. Since "compliance" is determined outside of the bank, for purposes of estimation the output is considered exogenous because of the penalties associated with noncompliance.

Section II

In August 1976, the Consumer Bankers Association conducted a survey of the costs of compliance with Regulation B. The survey covered forty-four members with a result of thirty-seven usable complete forms. Consumer credit outstanding ranged from \$13 to \$625 million. The forms were designed for member banks and Association officials, and participation was voluntary. While it is desirable to have a larger sample, this is the largest body of reasonably consistent data available.

For purposes of estimation, it is assumed that compliance cost is comprised of two separable components, legal costs and all others. The rationale for this is that one process involves highly skilled labor and little lower skilled labor or capital, while the other involves a lower skill mix and more capital and materials. Thus, equation (1) may be restated as follows:

$$(2) \text{ Log CL} = \text{Log A} + b_1 \text{ Log CR} + b_2 \text{ Log WL}$$

$$(3) \text{ Log CO} = \text{Log A} + b_1 \text{ Log CR} + b_2 \text{ Log WP}$$

Where CL = Legal expenses incurred in complying with Regulation B

CO = Other expenses incurred in complying with Regulation B

The models were estimated using ordinary least squares.

The results for legal expenses are shown in Table I. It can be seen that both the "output" and wage rate coefficients are statistically significant

TABLE I

Regression Results for Legal Cost
of Compliance Equations, August 1976

(All Variables in Logarithms)

Coefficient	Constant	Output	Wage Rate	R ²	t Statistic
	-3.3305	.5709	1.2364	.415	1.824
"t" Statistic		3.211	3.528		

(at the .05 level). The scale coefficient is less than unity, and the hypothesis that it is unity is not accepted. Thus, there appear to be substantial economies of scale in legal expenses of compliance with Regulation B. Larger banks spent more than smaller banks, but a ten percent change in credit is accompanied by 5.7 per cent change in legal expenses. The coefficient on the wage rate variable is quite high, exceeding unity. This implies that higher priced legal services are used more extensively than lower priced legal services. However, the test of the difference between the coefficient and unity indicates that the hypothesis that the coefficient is indeed unity cannot be rejected. The overall fit is not especially high, but it must be kept in mind that "compliance" is a new "product line." In addition, the final regulations were published only two weeks prior to their effective date. That is, it is reasonable to expect that firms would deviate substantially from the long run cost function due to the newness of the procedure. The banks were ranked by size, and the Durbin-Watson (d) statistic was calculated. The results indicate no auto correlation suggesting that the functional form is appropriate.

The results for other costs of compliance are shown in Table II. The scale coefficient is very close to being statistically significant and it once again shows substantial scale economies. The coefficient for the wage rate variable is statistically significant and its size is closer to

TABLE II

Regression Results of Operating Costs of Compliance Equation, August 1976 (All Variables in Logarithms)					
	Constant	Output	Wage Rate	R ²	d Statistic
Coefficient	.414	.4122	.7914	.2763	2.20
"t" Statistic		1.954	2.418		

what would be expected in such equations. The overall goodness of fit is again quite low, and the Durbin-Watson test shows no autocorrelation.

In addition to the reasons discussed earlier, it should be noted that there are important omitted variables that would effect compliance cost and improve the statistical performance of the model. Costs would most likely be explained better by number of loans, number of applications, number of dealers and merchants, kinds of credit (revolving vs. instalment) and other detail which is all included in the consumer credit variable. Further efforts to assess the size and magnitude of compliance costs should include expanding both the size of the sample and the number of variables included. Of course, improving the accuracy of the data should also be a high priority.

Section III

The passage of consumer credit protection legislation and ensuing regulation has continued apace since the Truth in Lending legislation in 1968. The total cost of implementing just one of the bills, the Equal Credit Opportunity Act of 1974, has been estimated at \$300 million (Smith, 1977). The purpose of this paper is to estimate the determinants of compliance costs for a sample of banks with special attention to the scale effects. The results indicate that there are substantial economies of scale in the process of compliance. Considering the total cost of implementation and the results of this study, there is some question as to the desirability of proceeding with such legislation at the pace of the last decade. Total costs must be absorbed by someone, the lender or the consumer, and a consistent policy of imposing relatively higher costs on small lenders may lead to more highly concentrated markets. Such a result may eliminate, or at least reduce, the

intended benefits of the legislation. In any event, this study should be viewed as a first step in assessing the impact of such legislation. Given the stakes of lenders, retailers, and consumers in the efficiency of the granting of consumer credit, more study is clearly indicated.

References

1. Frederick W. Bell and Neil B. Murphy, Costs in Commercial Banking: A Quantitative Analysis of Bank Behavior and its Relation to Bank Regulation (Boston: Federal Reserve Bank of Boston, 1968)
2. James F. Smith, "The Equal Credit Opportunity Act of 1974: A Cost Benefit Analysis, " Journal of Finance, May 1977.

(The author would like to acknowledge the help of James F. Smith and Frederick S. Hammer for discussions of operational aspects of compliance. Access to data began while the author was a consultant to the Commission on Federal Paperwork and was analyzed with the permission of the Consumer Bankers Association. The sole responsibility of the content of this article rests with the author.)

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(The Federal Reserve Board study of cost of compliance with ECOA referred to on page 4 of Patterson letter is included as Attachment 15 in Appendix 8 of this volume.)

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NATIONAL ASSOCIATION OF MUTUAL SAVINGS BANKS

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Cable Address:
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SAUL B. KLAMAN
PRESIDENT

September 18, 1978

The Honorable Benjamin S. Rosenthal
Chairman
Commerce, Consumer, and Monetary Affairs Subcommittee
Committee on Government Operations
House of Representatives
Room B-377 Rayburn House Office Building
Washington, D. C. 20515

Dear Mr. Chairman:

This letter is submitted in response to the request in your letter of August 21, 1978, for comments on the enforcement policies and practices of the federal financial regulatory agencies with regard to the Equal Credit Opportunity and Fair Housing Acts. You have, in addition, requested our views on the so-called "redlining" problem and the obligation of savings banks to meet community credit needs, and on other issues relating to fair housing and equal credit opportunity. We appreciate your solicitation of our views and we are encouraged that the Congress is beginning to exercise increased oversight responsibility in the area of consumer credit laws and regulations.

In this regard, we hope that the Congress will focus on the basic questions of whether the various consumer credit laws and regulations are effectively accomplishing their intended purposes and, indeed, whether many of these laws and regulations are actually needed. The savings bank industry has always supported reasonable consumer credit protection laws. We were, for example, the first financial industry to support federal truth-in-lending requirements and were among the earliest supporters of federal fair housing legislation.

We believe, however, that legislation and regulation in this area has become excessive in recent years. What is needed, in our view, is a comprehensive cost-benefit analysis of the entire structure of existing financial consumer protection laws and regulations, and the application of this technique to proposals for new laws and regulations at an early stage of the legislative and regulatory process. The questions you have asked regarding the costs of regulation encourage our hopes that you would support such an approach.

FDIC Enforcement Policies and Uniform Regulation B Enforcement Guidelines

As to our general evaluation of the FDIC's enforcement policies and examination and supervisory activities in the areas of fair housing and equal credit opportunity, comments that we have received from a number of savings banks reflect a general view that the examiners have been "fair and reasonable" in discharging their statutory obligations under the Consumer Credit Protection Act. The FDIC has recently instituted a program of separate examinations for consumer compliance, and this appears to have had a beneficial impact in terms of increased competence on the part of examining personnel. The basic problem, as we have noted, arises from the excessive and complex legislative and regulatory framework within which the regulators and the regulated alike must now operate.

With regard to the proposed uniform enforcement guidelines for Regulation B, you will find as Attachment A our formal comment letter submitted to the Federal Reserve Board. We support the concept of uniform agency enforcement of consumer credit laws, as indicated in our September 5, 1978, letter to the Board, as well as in our previous endorsement of the proposed inter-agency enforcement guidelines for Regulation Z (Truth in Lending). We do question, however, whether the FDIC and the other financial regulatory agencies possess adequate statutory authority to support the restitution aspects of the proposed Equal Credit Opportunity guidelines, and we strongly urge the Congress to eliminate this uncertainty by resolving the question one way or the other as soon as possible.

Perhaps the major outstanding compliance problem for creditors under the ECOA is the so-called "effects test," which has been incorporated into Regulation B and which is likewise carried over to the proposed uniform enforcement guidelines. The "effects test" is a nebulous judicial doctrine aimed at eliminating business practices which, while neutral on their face, may be found to produce discriminatory side effects. Like many consumer protection measures, the "effects test" doctrine is laudable in its intent but creates serious problems in practice. This Association has in comments to the regulatory agencies, and in testimony before the Congress, consistently maintained that the "effects test" is incompatible with the credit granting process, and we note that in a series of recent decisions the Supreme Court has begun to move away from the doctrine even in the employment area where it first evolved.^{1/}

Simply stated, the "effects test" is a pervasive unknown factor in the compliance responsibilities imposed under the ECOA, and we continue to maintain that it is both unfair and unnecessary to expose lenders to the potential losses from litigation and other enforcement actions under this

^{1/} Washington v. Davis 426 U.S. 229 (1976); Townsend v. Nassau County Medical Center, 558 F2d 117, cert. den. ___ U.S. ___ (1978); see also Arlington Heights v. Metropolitan Housing, 429 U.S. 252 (1977).

doctrine. In response, therefore, to your question as to which policies and practices could be modified to ease the compliance burden on savings banks without compromising the overall effectiveness of the FDIC's overall program, we recommend that the "effects test" be eliminated entirely from the implementing regulations and from any guidelines promulgated pursuant to the ECOA.

Redlining

It is unfortunate, in our view, that the "redlining" controversy has been allowed to play such a prominent role in public policy formation in recent years because there is little evidence that "redlining" is, in fact, a real and serious problem. Only a relative handful of this nation's thousands of financial institutions have actually been accused of "redlining," and such accusations, of course, do not in any way constitute proof that the practice has occurred. Yet financial institutions generally have been subjected to far-ranging laws and regulations which have imposed, and which will continue to impose, major costs and administrative burdens.

We recognize that the "redlining" issue reflects, in part, concern over meeting the critical national problem of neighborhood and community revitalization. And it reflects, as well, the desire to assure that all applicants for mortgage credit have an equal opportunity for their applications to be considered on their merits. It is our view, however, that focusing on unproved allegations of "redlining" is a simplistic and ultimately unproductive approach to these important issues.

In recent years, savings banks have vigorously reinforced their historic commitment to fair housing and non-discriminatory mortgage lending by organizing and participating in a variety of mortgage review funds and mortgage review boards. Particularly noteworthy examples are the statewide Mortgage Review Fund established by the Savings Banks Association of New York State and the Boston Urban Mortgage Review Board in which savings banks have played a leading role. Savings banks are participating in similar plans in a number of other areas. These plans provide the mechanism for a careful review of rejected applications and, where warranted, for the extension of credit to previously rejected applicants.

Savings banks, in short, are acting individually and through a variety of cooperative programs, such as the Philadelphia Mortgage Plan and the Neighborhood Housing Services Program of the Urban Reinvestment Task Force sponsored by the Federal Home Loan Bank Board, to meet the mortgage credit needs of individual borrowers and their communities. There is no need for many of the existing laws and regulations, let alone additional legislation or regulation, to coerce savings banks to meet their responsibilities in these areas. The need, rather, is for positive and supportive government policies to maximize the effectiveness of savings banks and other private financial institutions in community rebuilding and revitalization.

In particular, this will require new initiatives by the federal government to close the risk gap in community revitalization. One such initiative was proposed by NAMSB to the Secretary of Housing and Urban Development late last year, when we suggested the creation of a National Neighborhood Insuring Agency (NNIA). Under this proposal, the FHA would be renamed and expanded from a residential mortgage insuring agency into a total neighborhood credit insuring agency, in recognition of the fact that community revitalization encompasses essential nonresidential community facilities as well as housing. Our industry strongly supports the NNIA concept, which is actively being considered by HUD and at other levels of the federal government, and we intend to pursue it further. A copy of our NNIA proposal is included as Attachment B.

Antiredlining Regulations

As indicated, we strongly disagree with the approach implicit in the Home Mortgage Disclosure Act, the Community Reinvestment Act and various "anti-redlining" laws and regulations, which identifies financial institutions as convenient scapegoats for the complex problems of urban and community deterioration. We would most certainly be opposed to the issuance of additional "antiredlining" regulations on the part of the FDIC, for the basic reason that still more regulations based on a fundamentally erroneous approach to these problems will accomplish nothing except to add another layer of regulation to an already overregulated situation. With the imminent adoption of regulations to implement the Community Reinvestment Act, moreover, there clearly is no justification or need for any further regulations in this area. The need, as we have indicated, is to reverse the increasing tide of unnecessary and costly financial regulation.

The controversy over alleged "redlining and"community disinvestment" reflects a basic misconception of the true nature of urban and neighborhood decline, and of the role of private financial institutions in community rebuilding. Alleged "disinvestment" by thrift institutions and other lenders is not the cause of community decline. Community deterioration is a complex process reflecting a myriad of basic causal factors, ranging from shrinking economic and tax bases to high unemployment to the deterioration of police, fire, sanitation and other essential public services. When the process of community decline is far advanced, lending and investment opportunities for fiduciary lenders are necessarily reduced and risk levels are significantly increased. It should be clear that such a situation is not the cause but the effect of urban and neighborhood decline. Positive approaches -- such as our NNIA proposal -- are needed to promote community revitalization, not further regulations.

Enforcement Action

At the outset, we would observe that it is difficult for us to imagine that a mutual savings bank would fail or refuse to correct a compliance error pointed out in two or more successive examinations. If there were such a case, however, the enforcement tools available to the FDIC now include:

- bringing the matter to the attention of the bank's board of directors or trustees;
- a formal cease and desist order;
- a \$100 per day fine;
- referral to the Justice Department for civil prosecution;
- removal of bank officers; or
- suspension of FDIC insurance.

The foregoing remedies are more than adequate to ensure compliance. Most creditors are willing, indeed anxious, to comply with the requirements of the law. Moreover, we are of the opinion that the penalty provisions of the Consumer Credit Protection Act, particularly the high level of money damages permitted in suits instituted by private individuals or classes of individuals, lend themselves to considerable abuse and could well be reduced without any significant loss of compliance incentive.

Cost Measurements

On an industrywide basis, we do not have any sample measurements of the administrative costs incurred by savings banks to comply with Regulation B. As the Subcommittee is no doubt aware, a major study in this area is being conducted by Abt Associates of Washington, D. C., and it is our understanding that the results of their highly sophisticated research project will be available later this year. The Brookings Institution is also doing some work in this area and this Association has been cooperating with that particular effort. Similarly, the FDIC and the Federal Home Loan Bank Board are conducting a comprehensive study of the Home Mortgage Disclosure Act, including compliance costs.

We are firmly convinced that when these and other similar studies become available, it will be apparent to any objective observer that the marginal consumer benefits which may be attributable to the plethora of consumer law and regulation that has been imposed over the last ten years on financial institutions and the credit markets are more than offset by the direct and indirect costs of governmental enforcement and lender compliance. Especially for mutual institutions, such as savings banks, it is the consumer borrower and depositor who ultimately bear this cost burden. And all consumers, as taxpayers, bear the costs of government enforcement efforts.

Although we do not have industrywide cost data, we can provide you with some examples of cost estimates which have been submitted to us by individual banks of varying size:

- \$20,000 in annual costs to comply with Regulation B;
- \$22,400 in start-up costs in implementing Regulation B;
- \$10,000 minimum annual costs to comply with Regulation B;
- \$60,000 in annual costs to comply with Regulation B;
- a \$500 cost every time a change is made in Regulation B; and
- \$20,000 in annual costs for a loan portfolio of \$190 million, which breaks down to a cost of \$10.53 per \$100,000. With very modest compounding, this means that over a 10-year period the amount that would otherwise have gone into the bank's protective capital reserves is in excess of a quarter of a million dollars.

One of the problems of obtaining compliance cost figures, of course, is that the process of cost calculation itself generates additional costs which many institutions are unwilling to incur. While comprehensive cost data are not available, however, the communications we have received from many savings banks leave little doubt that the costs of complying with Regulation B, and with other consumer regulations, are quite substantial. We would hope, therefore, that the Congress will consider ways of reducing existing compliance costs through simplification and reduction of record-keeping and reporting requirements and other corrective measures, and that it will avoid imposing new costs through new laws and regulations.

Particular Compliance Burdens

In this connection, the single largest complaint on the part of the savings banks that have communicated with us is the excessive data collection and recordkeeping requirements imposed under ECOA, the Home Mortgage Disclosure Act, and similar state antidiscrimination measures. The collection of these data has now become extremely complex and burdensome. There are different requirements for FDIC-insured banks versus members of the Federal Home Loan Bank System (many savings banks are both); different data requirements for purchase money mortgages versus secured home improvement loans versus unsecured home improvement loans; and different procedures to be followed for loan applicants versus "inquirers." To the pervasive list of federal requirements, moreover, one must then add another layer of essentially overlapping but by no means uniform state data collection and recordkeeping requirements. Attachment C provided by a New York savings bank illustrates the complex reporting requirements now in effect in that state.

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The collection of such detailed information on such a massive scale -- from virtually all depository institutions -- is of dubious value to begin with, but doing it in such a confused, overlapping and inconsistent manner defies common sense. Thus, an immediate useful step that this Subcommittee, the Congress and the bank regulatory agencies could take would be to bring some uniformity to the information collection and recordkeeping requirements which lenders must follow. We wish to reiterate that the need for uniformity is not limited to type of lender, type of loan transaction, etc., but must also include a reconciliation of federal and state requirements.

Over the long run, we suggest that many "consumer protection" laws and regulations can actually be repealed, or at least be substantially simplified, without jeopardizing the enforcement of fair housing and other nondiscrimination statutes. The Home Mortgage Disclosure Act, for example, is largely being ignored by the consumers it was supposed to benefit, and should be allowed to expire in 1980 as scheduled. The need for the various data collection programs now in effect should likewise be examined closely. If they are found to generate costs disproportionate to the hoped-for benefits, they should be terminated. In this regard, we would point out that the present comprehensive data collection policy runs counter to the elementary law enforcement principle that targeted action, in response to specific complaints or other evidence of likely violation, is more productive than a policy of universal supervision on the assumption that all institutions are guilty until proven innocent.

We want to thank you again, Mr. Chairman, for the opportunity to submit our views and supporting information on the enforcement programs of the FDIC and other bank regulatory agencies. We hope that you and your colleagues on the Subcommittee will find our comments to be of value and we look forward to cooperating in subsequent oversight proceedings designed to improve the environment for providing credit opportunities for all of our citizens.

Sincerely yours,



Saul B. Klamon
President

Enclosures

1963

Attachment A

NATIONAL ASSOCIATION OF MUTUAL SAVINGS BANKS

NEW YORK, N.Y. 10017



WASHINGTON OFFICE
JAMES J. BUTERA
ASSOCIATE DIRECTOR
SUITE 200
1709 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20006
TEL. 202. 785-8144

September 5, 1978

Ms. Anne Geary
Chief Staff Attorney
Board of Governors of the
Federal Reserve System
Room B-4107
Washington, D.C. 20551

Re: Equal Credit Opportunity Guidelines

Dear Ms. Geary:

Pursuant to notice published in the Federal Register of July 6, 1978, the National Association of Mutual Savings Banks takes this opportunity to submit the following comments on the proposed uniform guidelines for administrative enforcement of the Equal Credit Opportunity and Fair Housing Acts. As was stated in this Association's letter of December 5, 1977, commenting on the proposed enforcement guidelines for Regulation Z, we endorse the concept of uniform guidelines for use by the various federal financial regulatory agencies in discharging their responsibilities pursuant to the Consumer Credit Protection Act. Uniform enforcement policies make sense not only from the standpoint of administrative fairness and efficiency, but guidelines of this sort can also be expected to contribute to a better understanding of consumer credit laws and their complex implementing regulations by lenders who bear the principal compliance burden.

Notwithstanding our general support for the uniform guideline approach, we do have certain reservations regarding this particular proposal. First, there is the question of the specific statutory basis which the agencies are relying upon in proposing, for example, that reimbursement be made to customers for discriminatory loan terms which are determined by the relevant enforcement agencies to have been imposed on a prohibited basis. Our review of the pertinent statutes, and particularly the legislative background of the 1976 amendments to the Equal Credit Opportunity Act, reveals that while considerable attention was given to the question of enforcement procedures, restitution of this sort

was nowhere contemplated. If, on the other hand, the agencies are relying primarily upon their general grant of supervisory authority over financial institutions, then the guidelines should so specify and be expanded to include the appropriate review procedure that will ensure that the due process rights of affected creditors are preserved. Assuming, arguendo, that the agencies possess the authority and do incorporate the restitution aspects of the proposed rule into the final guidelines, we respectfully suggest that an inter-agency review panel be established to resolve disputes that are bound to arise between an agency's examiners and the institution on the question of whether, in fact, there has been noncompliance necessitating restitution. The purpose of this review would be to provide the institution with a review procedure short of and less expensive than resorting to the judicial process.

Our other principal reservation relates to those instances to be described more fully herein, where the proposed guidelines appear to be overbroad in terms of ordering retroactive corrective action.

Turning now to the statement of General Enforcement Policy, we are pleased that the guidelines retain sufficient flexibility within the agency to modify the prescribed remedy when appropriate and, in particular, to consider the impact of the potential costs of the remedial action to the financial institution involved. We have no objection to the requirement that a creditor which has not previously adopted a written loan policy do so upon becoming subject to an enforcement action based on these guideline:

With regard to the proposed remedies for specific violations, we have the following comments:

I. Discouraging Applications - Requiring prospective advertising to encourage applications from classes of protected persons who were discriminated against in the past appears to be a reasonable corrective action. Under the proposed guidelines, however, the agencies would be authorized to review "all advertising" being contemplated by the institution which could include advertising for deposits, promoting goodwill, etc. We suggest that Guideline I should be amended to restrict the agency review to advertising aimed at generating loan demand.

II. Discriminatory Loan Evaluations - We are concerned that the phrase "discriminatory element in a credit evaluation system" is so broad as to make the potential impact of this section of the guidelines an unknown factor. It must be kept in mind that ECOA Reg. 202.6(a) which is referred to in this section incorporates the so-called "effects test" concept. This Association has consistently opposed the application of the effects test to the ECOA for the reason that the broad sweep of the doctrine could result in a creditor's underwriting policies being declared discriminatory solely because they happen to impact disproportionately on a particular class of persons. The proposed guidelines would aggravate this situation by requiring extensive corrective action, including restitution, for what might be inadvertent noncompliance. We therefore suggest that the corrective

ction ordered pursuant to Guideline II be limited to explicit discrimination on a prohibited basis. Alternatively, we recommend that a specific time limit be placed on the past period for which corrective action can be ordered.

III. Discriminatory Loan Terms - Other than to reiterate the uncertainty about the agencies authority to order reimbursement in individual cases, we have no objection to this guideline and note with favor that it is limited, on its face, to situations where more onerous loan terms are imposed "on a prohibited basis."

IV. Illegal Cosignors - We support this guideline as being an appropriate remedy which can be enforced without undue compliance costs on the part of the lending institution. We do suggest, in the interest of maintaining a proper balance, that a time limit of 25 months, at the most, be built into this guideline.

V. Failure to Collect Monitoring Information - The prospect that any mutual savings bank or other major real estate lender is not collecting monitoring information as requested by ECOA Reg. 202.13 or a substitute program is very remote, and for this reason it would be difficult to object to the proposed remedy. If, on the other hand, the requirement to go back to previous loan applicants and collect personal data were imposed when the bank's monitoring program is incomplete or perhaps technically deficient in some other way, then the retroactive aspect of the remedy appears to be overly harsh. We therefore suggest that this guideline be modified to distinguish between noncompliance of an egregious rather than a minor nature, and that corrective action in the latter instance be prospective only.

VI. Failure to Provide Notice of Adverse Action - We support this guideline with the same caveat noted above, namely, that it should not be applied in instances where there has been substantive compliance. We appreciate the fact that the general enforcement policy implies sufficient flexibility to arrive at this result, but from the standpoint of the creditor, it would be better to have this understanding specifically stated in Guideline VI.

VII. Erroneous Credit History Procedures - We support this guideline.

VIII. Altering Open End Accounts - No objection.

We trust that the foregoing comments will be of some use to the Board and the other agencies in their subsequent efforts to develop appropriate uniform enforcement guidelines. Of necessity, our letter emphasizes the potential problems which we perceive with the proposal as now drafted, but we

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do want to reiterate our support for the concept of uniform enforcement guidelines for consumer credit regulations and our general endorsement of this particular proposal aimed at promoting equal credit opportunities.

Sincerely yours,

James J. Butera
Associate Director

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Attachment B

Revised
12/16/77

BROADENING FHA INTO A NATIONAL NEIGHBORHOOD INSURING AGENCY

A Proposal Presented to
the Secretary of Housing and Urban Development
by
Dr. Saul B. Klamon, President
National Association of Mutual Savings Banks
December 9, 1977

The revitalization of our nation's neighborhoods in both inner-city and nonurban areas, is broadly accepted as an urgent national priority. It is recognized, as well, as a task of extraordinary complexity. A multifaceted private/public approach needs to be mounted, through many disciplines, to halt and reverse the forces undermining decent living standards in communities throughout the United States.

Channeling private risk capital and expertise into neighborhood rebuilding is clearly one critical requirement. This requirement has been met to some extent in some areas -- through individual initiatives in some cases, through organized local programs in others, and through federal sponsorship in still others. Some progress is visible in selected inner-city and other areas throughout the country. Further progress will undoubtedly be made, but it will be slow and isolated in the absence of other major initiatives.

One major initiative must be to limit the obvious risks to private lenders and investors of channeling large amounts of funds into deteriorating but still rebuildable neighborhoods. Private fiduciary responsibilities are inconsistent with excessive risk-taking. It is appropriate and necessary for the federal government to close this risk gap if the required private funds are to be made available. Here, then, is an ideal basis for creating a private/public partnership -- incorporating the key concept of risk-sharing --

to help rebuild our nation's declining neighborhoods. And the Federal Housing Administration within the Department of Housing and Urban Development is the ideal institution to spearhead federal participation in such a partnership with the private sector.

The Basic Proposal

The proposal to broaden FHA into a total neighborhood insuring agency is essentially a simple one: It is to expand the function and authority of FHA from that of insuring residential mortgage loans only, to insuring loans (and perhaps equity investments) to finance a full range of supportive nonresidential facilities as well.

Neighborhoods in both urban and nonurban communities consist of far more than housing. In addition to decent living accommodations, the proposal recognizes that neighborhood revitalization depends on the existence of shops, offices and other businesses which serve local residents and which offer employment opportunities. It recognizes the need for religious and educational structures, hospitals and recreation centers, and adequate community facilities of all types. It recognizes, in short, the essential interdependence of the overall community economy.

The proposed new federal underwriting agency -- which could be renamed the National Neighborhood Insuring Agency (NNIA) -- would reflect this interdependence. It would stress the need to consider each neighborhood community as a total complex and would encourage balanced revitalization by insuring both residential and nonresidential facilities. It could become a focal point of thinking, planning and implementing in terms of total neighborhood requirements, not just in terms of housing.

While full insurance, as now provided by FHA, should not be ruled

ut, the proposal envisages mainly a coinsurance arrangement, with private lenders and/or investors assuming a designated share of the risk, depending on the type of investment. This shared-risk approach would assure a continuing interest by private participants in the long-term success of projects, and should permit them considerable latitude in underwriting procedures.

The full decision-making process in such a shared-risk approach, from establishing standards of initial project selection and feasibility to the ultimate "go" signal, will, of course, require careful research and development beyond the scope of this outline proposal. This process, however, should be initiated at the most local level of public/private involvement and should move upward to the federal level as the project takes on definite shape and risk characteristics. It is envisioned that the proposed NNIA would work closely with existing public and private community groups and in cooperation with state and local mortgage insuring agencies which have been or may be established.

Required Changes in FHA

If the proposal for a National Neighborhood Insuring Agency has merit, why is FHA the logical base for its establishment? First, because in FHA the national organization and regional structure are already in place. Second, because in FHA the concept of federal mortgage insurance is well established. There is no need to reinvent the wheel and establish a new bureaucracy. There will, of course, be need for change in FHA's emphasis and direction. Among the most apparent will be the need to shift: (1) from a primarily suburban, minimum risk focus to a total neighborhood, somewhat greater risk focus; (2) from a narrow residential focus to a broader focus embracing commercial structures as well; and (3) from a concept of current economic soundness to one of potential economic soundness.

With respect to the last point, much of FHA's present mortgage insurance program is based on the assumed economic soundness of the loan to be insured, especially with respect to the basic section 203 home loan insurance program. Under the proposal outlined here, the concept of economic soundness, with its emphasis on minimizing exposure to possible loss, need not be abandoned. But it should be modified in recognition of the fundamentally different nature of neighborhood revitalization. It should be modified to embrace the concept of the future, or potential, economic soundness of the insured investment as it will exist within the framework of the entire rebuilt and rehabilitated area; it should not be restricted to the immediate economic soundness of an individual structure taken alone. This concept of potential economic soundness, which would have to be carefully thought through and precisely defined, could serve as a major criterion for the NNIA in evaluating the worthiness of any project.

In Conclusion

This proposal to broaden FHA into a National Neighborhood Insuring Agency (NNIA) is admittedly only in skeletal outline. Considerable thought and effort need to be given to matters of substance, organization and structure before it can be implemented, and, of course, legislative authority will be required. But the proposal itself is hardly complex. It is rooted in three basic concepts: (1) that viable neighborhoods and vibrant communities depend on much more than sound housing; (2) that rebuilding our nation's cities, and nonurban communities as well, will often require risks beyond the ability of private investors to assume; and (3) that the FHA is ideally suited to reassume its original role as the "innovative risk-taker" in a neighborhood-oriented private/public partnership.

With regard to the last point, the assumption of risk is what FHA was originally all about. By insuring against the risk of loss, FHA brought lenders and investors back into areas where they had feared to tread after the collapse of mortgage and housing markets in the "Great Depression." This proposal would return FHA to its risk-taking "roots" and broaden its role beyond housing to embrace essential supportive facilities as well. The new frontier of America, reflected most dramatically perhaps in the central cities, is in its neighborhoods. This is where the challenge is. This is where the opportunities are. It is where the broadened FHA should be.

This is not to say that FHA should abandon its current programs. The new FHA can and should continue to operate effectively in secondary mortgage markets. It can and should continue in the subsidized housing area. But a major new thrust needs to be mounted in the declining neighborhoods of America. And, in recognition of this new thrust -- this new focus -- it is time for the Federal Housing Administration to be restructured into a National Neighborhood Insuring Agency.

FED OR NY	SUBJECT	SCOPE	Attachment C AUTHORITY
FED	Community Reinv. Act Regs. (Proposed)	Separate Breakdowns: 1-to-4 family homes; resid. loans, 5-family or more; home-improvement loans; various other loan categories	12 CFR § 345.3 (b)(2)
NY	Proposed "Public Convenience & Advantage" Regs.	All residential mortgages, including leasehold loans; co-op apt. loans; home-improvement loans, <u>whether secured or not.</u> Requires record-keeping of applications and inquiries <u>incl.</u> telephone calls.	NY Banking Regs. § SB 2.8(a) and (b)(4) as proposed.
NY	Mortgage Report Regs.	All mortgages <u>except</u> one- or two-fam. home loans	NY Banking Regs. § SB 100.1
FED	Fair Housing Regs.	<u>Owner-occupied</u> 1-to-4 family homes; land to be used for such homes; home-improvement loans <u>if secured</u> ; requires record-keeping of applications and inquiries but <u>not</u> telephone calls.	12 CFR § 338.1 (e), (f), and (h).
NY	Mortgage Applic. Regs.	All resid. loans, incl. mortgages, leasehold loans, and co-op apt. loans.	NY Banking Regs. § 341.1(a)
NY	Mortgage & Deposit Disclos. Regs.	All 1-to-4 family residential loans; separate record of: those <u>not</u> owner- occupied; home-improvement loans; and co-op apt. loans.	NY Banking Regs. § G-107.7 and G-107.8.
FED	RESPA Regs., Incorporating By Reference FRB Reg. Z	1-to-4 family homes; condo units; mobile homes; but subject to exemptions listed in regs.	24 CFR 3500.5

1973



UNITED STATES LEAGUE of SAVINGS ASSOCIATIONS WASHINGTON OFFICE
1709 NEW YORK AVENUE, N.W. / WASHINGTON, D. C. 20006 / TEL. (202) 785-9150

September 15, 1978

Honorable Benjamin S. Rosenthal
Chairman
Subcommittee on Commerce, Consumer and Monetary Affairs
U.S. House of Representatives
Rayburn House Office Building, Room B-377
Washington, D. C. 20515

Dear Chairman Rosenthal:

The U.S. League of Savings Associations appreciates very much your invitation to provide our views in regard to the financial regulatory agencies' enforcement of the Equal Credit Opportunity Act (ECOA) and the Fair Housing Act. This invitation and your oversight hearings come at an appropriate time. Within the past several months, savings and loan associations have become subject to a substantially increased number of regulations relating to these two Acts.

Our general evaluation of the enforcement policies and examination and supervisory activities of the Federal Home Loan Bank Board in the area of fair housing and equal credit opportunity is that, for the most part, they have been both firm and fair. In recent examinations, examiners have been spending much more time and placing heavier emphasis on reviewing association policies and practices to make sure that they are in conformity with applicable law and regulations and that the public is being both served and protected.

We are very concerned, however, that institutional equality in the eyes of the federal regulators is changing rapidly, and that savings and loan associations will be expected to adhere to standards that are unreasonable -- as well as far more stringent -- than those imposed on other types of depository institutions. We are concerned further that some portions of the Federal Home Loan Bank Board's regulations go well beyond the law. In addition, we are concerned that the cost of compliance for most associations will far exceed any benefits that might be realized. As we elaborate later in this letter, we are concerned that the Federal Home Loan Bank Board has gone "overboard" in the regulations which it has imposed on the savings and loan business and that examiners are being instructed to do likewise when they examine a savings and loan association.

1. Proposed uniform enforcement guidelines for Regulation B, ECOA.

Your letter indicates that one of the items which your hearings will address is the proposed uniform enforcement guidelines for Regulation B of the Federal Reserve Board (which implements ECOA). We endorse the concept of uniformity and wish that objective could be achieved. Unfortunately, the Federal Home Loan Bank Board has already imposed on savings associations regulatory requirements which are more restrictive and costly than are contemplated in the proposed uniform enforcement guidelines.

For example, the proposed enforcement policy requires a supervised institution to adopt a written loan policy only after a substantive violation is discovered. However, our associations are presently required to have such a policy under the FHLBB's non-discrimination rules published in May, regardless of their record of compliance or non-compliance with ECOA and the Fair Housing Act. They are also required to make these written loan policies available to the public. Thus, savings associations are forced to reveal their credit standards to their competitors -- commercial and savings banks -- which are under no similar obligation to make their loan policies public. Another example relates to the proposed uniform policy of requiring lenders to engage in affirmative advertising and marketing policies once it has been determined that they are in violation of existing law and regulation. We point out that associations presently are required to engage in such affirmative action, regardless of whether violations are alleged.

We object to that section of the proposed uniform ECOA enforcement guidelines that indicates an intention to follow separate proposed enforcement guidelines for Regulation Z (which implements the Truth-in-Lending statute). Our objections may be summarized as follows:

1. Those guidelines relate to Truth in Lending compliance and were not designed for issues involving equal credit opportunity or fair housing.
2. We firmly believe that there is neither legal nor statutory basis for the proposed enforcement guidelines for Regulation Z.
3. We believe it is inappropriate administrative procedure to require adherence to a proposed guideline which technically does not exist.

We also have a number of other concerns and problems in connection with the proposed uniform guidelines for ECOA and we are enclosing with this letter a copy of our response to the agencies concerning this proposal.

2. Our views and objections to the non-discrimination regulations recently adopted by the Federal Home Loan Bank Board.

Our views can best be summarized by stating that we think they go too far -- perhaps so far as to be counter-productive. We offer the following comments in support of that statement:

(a) The non-discrimination regulations are often rationalized on the ground that they reflect a recent consent agreement that settled a lawsuit between a coalition of civil rights groups and the Federal Home Loan Bank Board. While savings associations were not a party to either the lawsuit or the settlement agreement, they, of course, bear the burden of compliance with additional restrictions and paperwork because of the settlement. They are particularly angered that the Federal Home Loan Bank regulations go far beyond anything that is required by that settlement agreement. Furthermore, we consider it particularly unjust that associations are subject to far greater restrictions and regulations than their primary competitors -- commercial banks. For example:

(i) State-chartered banks that are members of the Federal Reserve System are effectively "exempt." The Federal Reserve was unwilling to join in the settlement agreement and when the case went to court it was dismissed for lack of evidence.

(ii) National banks are not yet covered. Although the Comptroller of the Currency did enter into the settlement agreement, the Comptroller's Office has yet to issue any regulations.

(iii) State-chartered non-member banks and mutual savings banks which are subject to regulations issued by the FDIC are regulated on a much less restrictive basis. The FDIC regulations do not extend to banks that have assets of less than \$10 million, or that have offices outside a Standard Metropolitan Statistical Area.

However, all savings and loan associations are covered by the non-discrimination recordkeeping requirements -- regardless of size or location. In addition, the loan register prescribed by the FDIC for banks under its jurisdiction is limited to

loans, including improvement loans on 1-4 family units, at least one of which is owner-occupied. Savings and loan associations, on the other hand, must list in a loan register all loans related to residential property, including those on apartments.

Although the FHLBB's regulation has been final for only a few months, and some portions took effect on September 1, associations are already reporting to us that they are losing business because their customers find it easier to deal with financial institutions and mortgage firms not subject to such regulations -- with their attendant paperwork and delays.

(b) Reports from our members indicate that the FHLBB's non-discrimination regulations are resulting in associations being either less willing, or unwilling, to counsel prospective borrowers -- particularly low-income families and minorities -- regarding the cost of homeownership, how much housing they can afford, information they should know when buying a home, etc., for fear of inadvertently violating this regulation.

(c) In order to avoid charges of discrimination, and thus eliminate the time and expense of defending a decision regarding a loan application, associations may be inclined to make loans that perhaps should not be made.

(d) Under the Bank Board's new rules associations are required to prepare and make available to the public their loan underwriting standards. We do not object to the preparation of written standards, but we do object to the notion that lending is a precise science that can be governed by rigid standards and formulas. Associations have learned that the lending and underwriting process involves a substantial amount of judgment on behalf of the lender, and this cannot be reduced to a written formula or standard.

(e) We are very concerned that these FHLBB regulations will lead to numerous allegations of "discrimination" whenever a loan is not granted as applied for, and will ultimately lead to lawsuits -- as well as borrower, consumer activist, and examiner complaints and even harassment.

We consider our objections to involve matters of principle, rather than detail. In terms of detail, we do have many concerns and questions but, hopefully, these relate to details which we can work out with the Federal Home Loan Bank Board and its staff.

3. Our views regarding the enforcement steps the Board intends to take if an association is found by the examiner to be in violation.

Essentially we are very concerned that the superior position of examiners and their supervisory authorities, compared to the inability of management to respond and defend its position, may result in management often being denied due process.

We expect that there will be numerous differences of opinion between examiners and management as to whether or not a particular policy or practice is in violation of the regulations. There are no hard and fast rules or definitions of what is or is not "discrimination." Even the courts are not always in agreement. We recognize that there may be instances in which a particular policy can clearly be described as discriminatory. However, most situations are not clear cut. A determination as to what is a violation of the "Effects Test" is a matter which we believe is appropriately left to the courts. To leave such a determination solely in the hands of an examiner or a supervisory official is unfair to them, as well as to management.

Savings associations, of course, are continuously affected by the ups and downs of the general economy. Because of their structure and purpose, S&Ls are particularly vulnerable during periods of "tight" money or rapid increases in short-term market interest rates. When the available supply of savings deposits and other funds is not adequate to meet loan demand, associations will be required to find some way to ration loans. We are concerned that, regardless of the approach chosen, this will lead to allegations of "discrimination" and examiners will require an association to take some "corrective" action. In such situations there are no easy or perfect answers that avoid allegations of either discrimination or even "reverse" discrimination. Therefore, we believe it is particularly important for examiners and supervisors to not act in a heavy-handed manner and require associations to adopt corrective policies not suited to sound institutional management. It would indeed be unfortunate if supervisory authorities, for example, were to bring an alleged discriminatory practice to the attention of either individuals or the general public, requiring an association to take some specific action, only to have a subsequent determination by the courts that the practice in question was, in fact, not discriminatory.

4. We have no specific numbers as to the costs associations have incurred in order to comply with these new regulations, other than to suspect that they are substantial. (As mentioned above, the effective date for some portions was September 1, 1978.) We do know that nearly 3,000 delegates attended a series of four informational meetings conducted by the U.S. League held in June which explained compliance with these new regulations. The registration fee for that meeting was \$100. If other expenses, such as travel, hotel, meals, etc., averaged \$250, then associations to have their representatives attending those meetings exceeded \$1 million. That, of course, would be just a starting point for estimating compliance costs.

Associations spent a substantial amount of time -- and thus money -- preparing wirtten underwriting standards which were to be available for public distribution on September 1 for all types of loans. In late August the Board announced that it was not necessary to prepare such standards for non-residential loans. Although this was a welcome announcement, it meant that associations had wasted both time and money in preparing unnecessary underwriting standards for those types of loan. In addition, associations have expended a great deal of time and money with professional legal counsel to assure that their staffs know precisely what they can and cannot do and/or say regarding customers.

We expect even larger costs in the future, involving both substantial amounts of time and money, as management and their legal counsel cope with discussions (or perhaps confrontations) with examiners, supervisors, disgruntled borrowers and activist lawyers threatening litigation.

Perhaps the biggest cost, and one which cannot now be assessed, involves the likelihood that many associations may refuse to consider loan applicants they previously might have reviewed. Associations will be inclined to develop tighter, rather than looser, underwriting guidelines in order to have a standard which, when published, will withstand future challenge. As associations attempt to provide home loans to as many applicants as possible, they may tend to exclude some marginal credit applicants and properties that previously might have received serious consideration. Because associations are now required to develop specific underwriting standards and make loans accordingly, they will not have the flexibility to make those subjective and sometimes innovative judgments that traditionally have been an important part of the lending process.

5. Specific components of the regulation that we believe are especially costly have been mentioned above. These include the imposition of restrictive regulations on savings and loan associations not imposed evenly on other lenders, the necessity to prepare written underwriting standards and make them available to the public, the absence of a procedure requiring a determination as to what is or is not a violation, etc.

There are also unresolved, and potentially costly, conflicts between the specific components of the FHLBB's non-discrimination rules and the requirements and rulings of other federal agencies. (This situation should be of particular interest to your Subcommittee of the House Government Operations Committee.) Associations are thereby placed in a "no win" position; if they comply with the FHLBB's rules, they may then be in violation of those of a sister agency.

A couple of examples will illustrate the problem. Under the Bank Board's new regulations, an association must advise an inquirer of his or her right to file a loan application. It may be that the person filing the application is seeking a type of loan which the association does not offer --e.g., a second mortgage or loan on vacation property; or perhaps the S&L, because of tight money conditions, is forced to ration available funds -- e.g., not offer high loan-to-value ratio mortgages, such as 95% loans. Most S&Ls now charge a nominal application fee. However, we understand that the Federal Trade Commission considers it an unfair trade practice for a lender to charge an application fee when there is no chance that the applicant will receive favorable action. Thus, the mandatory acceptance provision of the FHLBB's rules could result in an unfair trade practice under FTC rules.

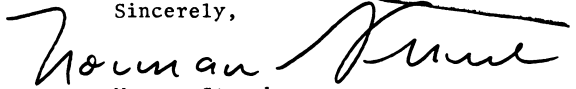
By further illustration, under Regulation B (EEOA), an applicant may request that the lender refer to the credit history of any account reported in the name of a former spouse if it accurately reflects the applicant's creditworthiness. In addition, the credit history of an ex-husband may be used to assess whether alimony payments are to be considered as a stable income source for the applicant. The Federal Trade Commission, however, has ruled that such credit histories may not be obtained regarding a former spouse unless that spouse specifically assents. Accordingly, if a recalcitrant ex-husband refused to permit the savings association to request his credit history, the association cannot consider that history, and it is unclear as to how it would treat the alimony, on an application for a loan by the ex-wife.

1980

As a result of over-regulation, the necessity to comply with the wide variety of laws, over-examination, and (sometimes over-zealous) over-enforcement, additional costs are being incurred. In the final analysis, these costs are paid by the consumer.

The U.S. League appreciates the opportunity to submit its views. If you have questions or if we can be of any further assistance, please do not hesitate to call upon us.

Sincerely,

A handwritten signature in black ink, appearing to read "Norman Strunk". The signature is fluid and cursive, with a long horizontal stroke at the end.

Norman Strunk
Executive Vice President

NS:msm

1981



UNITED STATES LEAGUE of SAVINGS ASSOCIATIONS

111 EAST WACKER DR. / CHICAGO, ILLINOIS 60601 / TEL. (312) 644-3100

JAMES A. HOLLENSTEINER
Staff Vice President

September 1, 1978

Equal Credit Opportunity Guidelines
Room B-4107
Washington, D. C. 20551

Gentlemen:

The purpose of this letter is to present the response of the United States League of Savings Associations to the proposed enforcement guidelines for ECOA and the Fair Housing Act. We appreciate the fact that the banking agencies have put these guidelines out for comment, rather than adopting them without the benefit of input from the businesses to be regulated. We encourage all banking agencies to continue to follow such a policy.

We believe that the banking agencies are seeking to attain a laudible objective; namely, "the adoption of guidelines that will promote uniform enforcement of the Equal Credit Opportunity Act and Fair Housing Act." We are also very pleased that there are several references in the proposed guidelines that an appropriate factor for consideration should be the cost and effectiveness of a corrective action. To an ever-increasing extent, financial institutions are required to spend substantial amounts of time, money and energy in order to comply with the provisions of the various consumer protection laws and the interpretations and applications thereof, with unknown actual benefits to the people that the laws are supposedly designed to protect and additional costs to all. Furthermore, the paper work is multiplying at an alarming rate and is of concern to not only the regulated business but also the Congress.

Whereas uniformity is a laudible objective, we are concerned as to whether that objective can be achieved. For example, the preamble to the guidelines states that they will "neither preclude the use of any other administrative authority that any of the agencies possess to enforce these

laws, nor limit the agencies' discretion to take other action to correct conditions resulting from violations of these laws. The agencies retain discretion to consider the suitability of the prescribed remedy under the circumstances of each case." Thus, the agencies are free to go their own way. The fact that these agencies have the discretion to enforce these laws on a nonuniform basis under the proposed guidelines as well as to issue their own rules as to what constitutes proper conduct under the Fair Housing Act and ECOA confuses the consumer and makes the consumer's remedy depend on the type of financial institution he happens to choose. Furthermore, it also puts some financial institutions such as savings associations at a competitive disadvantage with other types of financial institutions whose agencies take a more liberal or common sense approach to these acts and their enforcement.

We also would mention the following points that will contribute to less uniformity.

1. As of the present time the savings and loan business is much more heavily regulated than other financial institutions. This is particularly true since the adoption by the Federal Home Loan Bank Board of new and additional regulations relating to nondiscrimination in lending. We would like to see all financial institutions treated similarly and subject to essentially the same burdens, rather than associations being put in a position of being subject to much more onerous regulatory burdens than other financial institutions with which associations compete. To an ever increasing extent, associations are losing business to other lenders that are subject to less restrictive regulations.

For example, while savings associations which solicit home improvement or mobile home loans through their dealers are required to have their dealers designate the race and sex of loan applicants where the applicants choose not to do so. The Federal Reserve Board, to our knowledge, does not require this and our members have told us that dealers are forwarding loans to competition banks because if they do so they then do not have to be burdened with this requirement. We submit that it makes no sense to distinguish between banks and savings associations in terms of compliance with the law.

2. There currently are, and we would expect that there will continue to be, different interpretations among the different agencies and, of course, there will be different interpretations among the supervisory agents and examiners. For example, there is a difference of opinion between the Federal Reserve Board and the Federal Home Loan Bank Board as to whether the age of a building is an appropriate factor for a lender to consider when making a loan. Another example is that within the Federal Home Loan Bank System there seem to be differences of opinion from district to district as to whether age and marital status are items which must be included in the monitoring section or whether those are items which can be covered in the main body of the loan application.

3. In connection with different lending programs, and particularly some of the government programs, there may be forms and underwriting guidelines which are inconsistent with these proposed guidelines. It is suggested that these guidelines specifically state that any action taken by an institution in reliance on or because it is required by another federal agency such as FHA, FmHA, FNMA, VA, or FHLMC, be exempted from any enforcement action. We believe that institutions should not be caught in the middle between differing rules and interpretations of the various agencies.

Thus as a practical matter, we doubt that it will be possible to achieve even a reasonable degree of uniformity.

We also have a major concern as to how the guidelines will be enforced in practice, and particularly the extent to which the supervised institutions will be afforded due process. More specifically, we are concerned as to the ability of management to appeal a determination by an examiner or a supervisor. There are no hard and fast rules or definitions of what is or is not "discrimination" and even the courts are not always in agreement. We recognize that there may be some situations in which a particular policy can clearly be described as discriminatory. However, most situations are not as clear cut. A determination as to what is a violation of the "Effects Test" is a matter which we believe is appropriately left to the courts. To leave such a determination solely in the hands of an examiner or a supervisor is unfair to them, as well as to management. We would point out that the need for a procedure to make such a determination is recognized in S 2802, a bill which addresses

itself to a far less subjective area--namely, Truth-In-Lending. This bill is presently being considered by the Congress.

Our specific comments in regard to the various sections of the guidelines are as follows:

General Enforcement Policy. We would point out that the savings and loan business is "already there" and, thus, this is an example of where we are regulated and our competitors are not. The Federal Home Loan Bank Board announced in a press release its general enforcement policy relating to violations of its recently adopted nondiscrimination regulations. That policy is quite specific, as well as "stiff," for example, requiring an association to notify an individual that their rights have been violated. Whereas the proposed general enforcement policy requires a supervised institution to adopt a written loan policy only after a substantive violation is discovered, associations are presently required to have such a policy, regardless of their record of compliance or non-compliance with ECOA and the Fair Housing Act, and are also required to make these available to the public. Thus, savings associations are forced to reveal their credit standards to their competitors, banks, who are under no similar obligation to make them public.

Whereas we have generally endorsed the concept of written loan policies, we would point out that the existence of such a policy does not necessarily solve all problems or violations of ECOA or the Fair Housing Act.

Section I. Here again, we would point out that associations are "already there" and are required to engage in affirmative marketing and advertising policies. Whereas the proposed guidelines require such activity only after a violation has been discovered, associations are required to engage in such affirmative action, even though no alleged violations exist. In the application of this guideline, we would recommend that cost should be an important factor to be considered and that the measure of performance should not necessarily be based on the response received. Even though a lender advertises extensively, this does not always produce loan applications if, in fact, there are few people in the area or amount a particular group that are seeking loans.

Section II. We are particularly concerned as to the basis on which a determination will be made that a lender has "discriminatorily rejected" a loan applicant. As indicated above, determination of what is or is not discrimination is not an easy matter. Any time a loan applicant is rejected, it is possible to allege "discrimination." We also would request that there be a more specific time period which will be reviewed by examiners. Certainly, it should not extend to a pre-ECOA. We suggest it be 2 years, or since the last examination, whichever is shorter.

Section III. We are even more concerned in this section that the determination of the existence of a problem or violation is not a matter for resolution by an examiner.

We are very concerned and, in fact, object to the announced intention of following the proposed enforcement guidelines for Regulation Z. In the first place, those guidelines relate to Truth-In-Lending compliance and whether or not a lender has provided the correct numbers and information to a borrower, and not whether a lender is requiring credit insurance on a higher rate of interest. As a result, those guidelines will be used in connection with matters not intended when those guidelines were proposed. More importantly, we question whether there is any legal basis for the proposed enforcement guidelines for Regulation Z. Our concerns were expressed in a letter in which we stated that "the methodology prescribed in the proposed statement, i.e., "reimbursement," amounts to an illegal arrogation of authority and one that may not be implemented because direct or indirect statutory authority to do so does not exist." A copy of our complete letter is attached. We would point out that it is inappropriate administrative procedure to propose to follow a proposed guideline which technically does not exist at this point in time. As a result, neither the supervisors or supervised know what will be in those guidelines.

We would also point out that the reimbursement routines contained in that proposed enforcement guideline have been under discussion for an extended period of time. The fact that they are still not adopted is a reflection of the difficulty in developing computational

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guidelines, as evidenced by the several changes that have been made in the proposal. The delay may also reflect a question as to the legal basis for such guidelines.

We would also point out that different lenders are subject to different rules in relation to whether or not credit insurance is required. For example, associations required by regulation to secure private mortgage insurance on high ratio loans and on loans which are to be sold to the Federal Home Loan Mortgage Corporation.

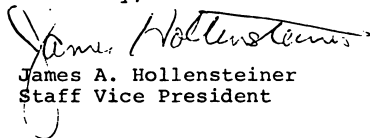
Section IV. We have no problem.

Section V. This is a good example of different agencies following different programs. We would point out that under our regulations an association is required to request the monitoring information. If such information is not collected, it may be because it was not available. Although an association is required to "designate to the extent possible" on the basis of sight and/or surname, such designation is not always possible. Thus, the mere non-existence of monitoring information does not mean a violation of the regulation.

Section VI, VII, and VIII. We have no problem.

If you have any questions or if we can be of any further assistance in discussing this matter with you, please feel free to call upon us.

Sincerely,



James A. Hollensteiner
Staff Vice President

JAH/pr/elm

cc: Mr. Robert H. McKinney, Chairman
Federal Home Loan Bank Board
Washington, D.C. 20552

Mr. George A LeMaistre, Chairman
Federal Deposit Insurance Corporation
Washington, D.C. 20428

Mr. G. William Miller, Chairman
Board of Governors
Federal Reserve System
Washington, D.C. 20551

Mr. H. Joe Selby
Acting Comptroller of the Currency
Washington, D.C.

Mr. Lawrence Connell, Jr.
Administrator, National Credit
Union Administration
Washington, D.C.

American Banker, December 28, 1978

Regulators Plan Using 'Testers' To Detect Fair Housing Violators

By JAY ROSENSTEIN

WASHINGTON — The three Federal regulators of commercial banks have confirmed reports that they are considering sending examiners or other individuals into institutions to pose as loan applicants in order to detect violations of Fair Housing Laws.

Officials at the Federal Reserve Board, the Federal Deposit Insurance Corp., and the Comptroller of the Currency confirmed that the use of "testers" is under consideration.

However, a spokesman for the Federal Home Loan Bank Board denied reports from counsel for civil rights and public interest groups that the FHLBB also is considering the method.

The use of testers is considered by many to be the most efficient way to determine whether an institution provides equal treatment to loan applicants regardless of race, age, sex and marital status.

The method is now being used to determine whether there is discrimination in the sale or lease of homes and apartments.

It has been supported by the Justice Department as an appropriate way to enforce

the Fair Housing Act, according to Walter Gorman, deputy chief of the agency's housing and credit section.

Testers are now being used at financial institutions on a limited basis at the state regulatory level.

A spokesman for the American Bankers Association said the trade group had no position on the issue.

Roger S. Kuhn, co-director of the Center for National Policy Review, and Martin L. Sloane, general counsel for the National Committee Against Discrimination in Housing, said in interviews that meetings with the four agencies showed that the regulators were considering testers, although no commitments had been obtained.

Nonetheless, the spokesmen for the citizens groups said they were satisfied that the agencies are genuinely concerned with combating subtle forms of discrimination as well as overt violations of the law.

Mr. Kuhn and Mr. Sloane were contacted after a meeting with staff of the Comptroller of the Currency concerning that agency's plans to implement new enforcement programs.

The counsel represented 10 civil rights and public interest groups which sued the Fed, the FDIC, the FHLBB and the Comptroller of the Currency in 1976 "to remedy the continuing failure and refusal of these agencies to take action to end discriminatory mortgage lending practices" at regulated institutions.

All but the Fed settled out of court, agreeing to establish data collection systems and other program to insure compliance with housing laws.

The case against the Fed was dismissed last May by the United States District Court here for lack of evidence.

However, Mr. Kuhn and Mr. Sloane in the interviews praised Fed chairman G. William Miller for acting to voluntarily improve the agency's examination and grievance procedures.

Mr. Kuhn said the citizens groups were satisfied that the agencies "are moving intelligently and in good faith" to implement anti-discrimination programs, although he added that the programs are being instituted "not quite as fast as we would have hoped."

Both the FDIC and the FHLBB have issued regulations to enforce the Fair Housing Laws.

Zina G. Greene, director of the division of civil rights at the Comptroller's office, said the agency plans to issue proposed regulations in April and final regulations in August.

Ms. Greene confirmed that testers are being considered by the Comptroller's office and that "all of the agencies are beginning to see that the issue must be addressed."

However, she stressed that this is one of several methods being evaluated by the agency as a device for detecting discrimination through the pre-screening of applicants.

Ms. Greene said the agency is also considering ways to monitor discrimination by realtors and better ways to utilize loan application information collected in accordance with the Home Mortgage Disclosure Act.

A study released this month by the MIT-Harvard Joint Center for Urban Studies shows discrimination against blacks in four of the five largest cities of New York State was more prominent than discrimination based on location of property.

Harvard University professor Robert Schafer said enforcement efforts in recent years to deter geographic discrimination have been "misdirected" and should concentrate more on racial discrimination.

Mr. Schafer said the probability of denial on equivalent loan applications in the New York City area was 11% for whites, 15% for other minorities and 21% for blacks. ■

EQUAL CREDIT OPPORTUNITY ACT

DISCRIMINATION IN CREDIT IS PROHIBITED . . . BY THE FEDERAL EQUAL CREDIT OPPORTUNITY ACT

The Equal Credit Opportunity Act prohibits discrimination in any aspect of a credit transaction because of your **sex, marital status, race, national origin, religion, or age** (with limited exceptions). It also prohibits discrimination because you receive payments from a **public assistance program** (such as Social Security or Aid to Families with Dependent Children).

The Equal Credit Opportunity Act helps creditworthy people obtain charge accounts, loans, mortgages, and other kinds of credit by not allowing creditors to treat applicants unequally because of characteristics such as sex, marital status, and race. But the Act does not guarantee that you will get credit, and creditors may still determine creditworthiness by considering such factors as the income, expenses, debts, and reliability of the applicant.

All creditors who regularly extend credit are covered by the Act, including banks, small loan and finance companies, retail and department stores, credit card companies, and credit unions.

The law went into effect in two stages. First, discrimination because of **sex or marital status** was prohibited (in October 1975) and then discrimination because of **race, national origin, religion, age, and receipt of public assistance** was prohibited (in March 1977).

HERE IS WHAT THE EQUAL CREDIT OPPORTUNITY ACT SAYS —

Even Before You Apply For Credit, A Creditor MUST NOT:

- Discourage you from applying for credit because of your **sex, marital status, age, religion, race, or national origin**, or because you get **public assistance income**.

When You Apply For Credit, A Creditor MUST NOT:

- Ask you what your **sex, race, national origin, or religion is**. (But, a creditor may ask you to voluntarily disclose your sex, marital status, race, and national origin if you are applying for a real estate loan to purchase a residence. This information helps federal agencies enforce anti-discrimination laws. A creditor may also ask you what your immigration or residence status is.)
- Ask you what your marital status is if you apply for a separate, unsecured account, unless you live in a community property state. The community property states are Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, and Washington. (A creditor may ask you whether you are "married," "unmarried," or "separated" if you apply for a joint account or an account secured by property.)
- Ask you whether you are divorced or widowed.
- Ask you for information about your spouse unless: 1) your spouse is applying with you, 2) your spouse will be allowed to use your account, 3) you are relying on your spouse's income or on alimony or child support income from a former spouse, or 4) you reside in a community property state.
- Ask you about your plans for having or raising children.
- Ask you whether you receive alimony, child support, or separate maintenance payments unless the creditor first tells you that you do not have to disclose such income unless you want to rely on that credit. (A creditor may ask if you have to pay alimony, child support, or separate maintenance.)

In Deciding Whether To Give You Credit, A Creditor MUST NOT:

- Consider your
 - sex,
 - marital status,
 - race,
 - national origin, or
 - religion.
- Consider your age unless:
 - You are too young to sign contracts (generally under 18).
 - You are 62 or over and the creditor will favor you because of your age.
 - The creditor uses a statistically-sound credit scoring system* which favors applicants age 62 or over.
 - The creditor uses your age to determine the meaning of other factors which are important to creditworthiness. (For example, a creditor could consider your age to see if your income might be reduced because you are about to retire. But, a creditor CANNOT deny your application or close your account because the creditor is not able to get credit life insurance on you because of your age.)
- Consider whether you have a telephone listing in your name. (But a creditor may consider whether there is a telephone in your home.)
- Consider the race of the people who live in the neighborhood where you want to buy or improve a house with borrowed money.

*In a "credit scoring system," the creditor assigns different points to your answers to questions on the application. (For example, owning a home might be worth 10 points while renting might be worth 5 points.) The total number of points helps the creditor to decide if you are creditworthy.

When Evaluating Your Income, A Creditor MUST NOT:

- Refuse to consider reliable **public assistance income** in the same manner as other income.
- Discount income because of your **sex or marital status**. (It is illegal, for example, for a creditor to count a man's salary at 100% and a woman's at 75%.) Also, a creditor may not assume that a woman of child-bearing age will stop work to have or raise children.
- Discount or refuse to consider income because it is derived from **part-time employment** or from a pension, annuity, or **retirement benefit program**.
- Refuse to consider consistently received **alimony, child support, or separate maintenance payments**. (A creditor may ask you for proof that this income has been consistently received.)

You Also Have The Right:

- To have credit in your maiden name (Mary Smith), your first name and your husband's surname (Mary Jones), or your first name and a combined surname (Mary Smith-Jones).
- To get credit without a co-signer, if you meet the creditor's standards.
- To have a co-signer other than your spouse, if a co-signer is necessary.
- To keep your own accounts after you change your name or marital status or reach a certain age or retire (unless the creditor has evidence you are unable or unwilling to repay).

After You File Your Application:

- You have the right to know whether your application was accepted or rejected within 30 days of filing it.
- If your application was rejected, you have the right to know why. The creditor must either immediately give you the specific reason(s) for the rejection or tell you that you have the right to the specific reasons if you make a request within 60 days. Examples of specific reasons are "Your income was too low" or "You haven't been employed at your job long enough." Indefinite and vague reasons such as "You didn't meet our minimum standards" or "You didn't receive enough points on our credit scoring system" do not comply with the law.

CREDIT HISTORIES AND THE EQUAL CREDIT OPPORTUNITY ACT

A good "credit history" (a record of how you paid your bills in the past) is often necessary to obtain credit. Unfortunately, this hurts many married, separated, divorced, and widowed women. These women often do not have credit histories in their own names even though they've used credit in the past for two reasons: 1) women often list their own credit histories when they married and changed their names and 2) creditors typically reported the credit histories on accounts shared by married couples in the husband's name only.

To solve this problem, beginning on June 1, 1977, the Act provides that creditors who report histories to credit bureaus must report information on accounts shared by you and your spouse in both of your names. (Some creditors will first send you a "Credit History for Married Persons Notice" asking you how you want the information reported.) You also have the right (beginning June 1, 1977) to require a creditor to report information on accounts you share with your spouse in both of your names. In addition, the Act requires that a creditor MUST NOT:

- Use unfavorable information about an account you shared with your spouse or former spouse, if you can show that the bad credit rating does not accurately reflect your willingness or ability to repay.
- Refuse to consider on your request the credit history of any account held in your spouse or former spouse's name which you can show is an accurate picture of your willingness and ability to repay.

Special Note To Women About Their Credit Histories:

- If you are married, divorced, separated, or widowed you should make a special point to call or visit your local credit bureau(s) to make sure that all relevant information normally carried by the credit bureaus is in a credit file under your own name.

What You Can Do If You Believe You Have Been Discriminated Against

You Can Complain to the Creditor

- Let the creditor know you are aware of the law.

You Can Also Sue the Creditor

- You have the right to bring a case in a Federal district court. If you win, you can recover your actual damages and punitive damages of up to \$10,000. You can also recover reasonable attorney's fees and court costs. A private attorney can advise you on how to proceed.
- If you join up with other people and file a class action, you may recover punitive damages for the class of up to \$500,000 or 1% of the creditor's net worth, whichever is less.

You Can Also File a Complaint With the Government

- You can report any violations to the appropriate government enforcement agency in order to assist the agency in enforcing the law. While the agencies use complaints to decide which companies to investigate, they cannot handle private cases. (See the list of enforcement agencies and the kinds of creditors they monitor at the end of this pamphlet.)
- When you are denied credit, the creditor must give you the name and address of the appropriate agency to contact.
- Many States also have equal credit opportunity laws of their own. Check with your State's Attorney General.

Where to Send Complaints and Questions

1. If a Retail Store, Department Store, Small Loan and Finance Company, Gasoline Credit Card, Travel and Expense Credit Card, State Chartered Credit Union, or Governmental Lending Program is involved, write to:

Federal Trade Commission
Equal Credit Opportunity
Washington, D.C. 20580

or one of the FTC Regional Offices:

Atlanta Regional Office
1718 Peachtree Street, N.W.
Suite 1000
Atlanta, Georgia 30309

Boston Regional Office
1301 Arloux Building
150 Causeway
Boston, Massachusetts 02114

Chicago Regional Office
Suite 1437
55 East Monroe Street
Chicago, Illinois 60603

Cleveland Regional Office
Room 1336
Federal Office Building
1240 East 9th Street
Cleveland, Ohio 44199

Dallas Regional Office
2001 Bryan Street
Suite 2665
Dallas, Texas 75201

Denver Regional Office
Suite 2900
1406 Curtis Street
Denver, Colorado 80202

Los Angeles Regional Office
11000 Wilshire Blvd.
Room 13209
Los Angeles, California 90024

New York Regional Office
22nd Floor, Federal Building
25 Federal Plaza
New York, New York 10007

San Francisco Regional Office
450 Golden Gate Avenue
Box 36005
San Francisco, California 94102

Washington, D.C. Regional Office
Gelman Building
2120 L Street, N.W.
Washington, D.C. 20037

Seattle Regional Office
28th Floor, Federal Building
915 Second Avenue
Seattle, Washington 98174

2. If a Bank is involved, write to one of the agencies listed below:

If the Bank is nationally chartered ("National" or "N.A." will appear in the Bank's name), write to:

Comptroller of the Currency
Consumer Affairs Division
Washington, D.C. 20219

- If the Bank is State chartered and is a member of the Federal Reserve System, write to:

Board of Governors of the Federal Reserve System
Director, Division of Consumer Affairs
Washington, D.C. 20551

- If the Bank is State chartered and is insured by the Federal Deposit Insurance Corporation (FDIC) but is not a member of the Federal Reserve System, write to:

Federal Deposit Insurance Corporation
Office of Bank Customer Affairs
Washington, D.C. 20429

3. If a federally-chartered or federally-insured Savings and Loan Association is involved, write to:

Federal Home Loan Bank Board
Equal Credit Opportunity
Washington, D.C. 20552

4. If a federally-chartered Credit Union is involved, write to:

Federal Credit Union Administration
Division of Consumer Affairs
Washington, D.C. 20456

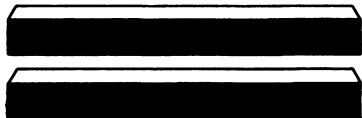
TO FIND OUT MORE:

If you have any general questions about the Equal Credit Opportunity Act that are not answered by this pamphlet, write to the Federal Trade Commission, Equal Credit Opportunity, Washington, D.C. 20580 or to one of its regional offices.

Published by the Federal Trade Commission
April 1977

For copies of the Equal Credit Opportunity Act or copies of this pamphlet write to: Federal Trade Commission, Legal and Public Records, Room 130, Washington, D.C. 20580.

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EQUAL CREDIT OPPORTUNITY ACT

