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Statement on

Enforcement of the Equal Credit Opportunity
Act, the Fair Housing Act and
Related Matters

Presented to the

Commerce, Consumer, and Monetary Affairs
Subcommittee of the ^{House} Committee on
Government Operations
United States House of Representatives

by

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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.