



NEWS RELEASE

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PR-82 (12-19-72)

OPENING STATEMENT

Frank Wille, Chairman
Federal Deposit Insurance Corporation

This hearing is intended to make available to the FDIC's Board of Directors further comments and additional information related to the proposed regulation on fair lending practices which the Corporation published in the Federal Register on September 20, 1972. We hope to be presented with suggestions for improving our proposed regulation both by representatives of lenders and representatives of borrowers.

In 1968, Congress passed a broad Civil Rights Act, the Civil Rights Act of 1968, in which was included a separate title, Title VIII, directed to preventing discrimination in housing. Title VIII, known as the Fair Housing Act, addressed itself not only to buyers and sellers of housing, but, through Section 805, prohibited discrimination based on race, color, religion, or national origin, in the financing of housing by banks and other institutions engaged in the business of making real estate loans.

While primary authority for administration and enforcement of the Civil Rights Act is vested in the Secretary of the Department of Housing and Urban Development, Section 808 of the Act requires all executive departments and agencies to cooperate with the Secretary to further the purposes of Title VIII of the Act.

- more -

The Federal Deposit Insurance Corporation is committed to a policy of preventing such illegal and unlawful discrimination. On December 17, 1971, the Corporation published a Statement of Policy directing insured nonmember State banks to give public notice that their real estate lending services are available without regard to race, color, religion, or national origin. The Policy Statement required (1) use of a standard non-discrimination logotype, (2) reference to such non-discrimination in the advertisement of real estate lending service, and (3) public posting of lobby notices to that effect in bank offices.

We have been enforcing that policy since its effective date and plan to continue to enforce that policy, whatever the results of our consideration of our proposed regulation.

At the same time, I should say that neither publication of these proposed regulations nor holding this hearing constitute a judgement by the FDIC that the nonmember banks it regulates discriminate in their lending practices against any potential borrower because of the race, color, religion, or national origin of that borrower. Since I have been Chairman of the Corporation we have had very few complaints from prospective borrowers -- less than five -- that any bank has denied a loan application because of such illegal discrimination. In none of these cases has our review to date shown such alleged discrimination existed. Similarly, no illegal discrimination in lending practices has become apparent to us through our regular examination process.

Judging solely from the FDIC's experience as a supervisory agency, therefore, we would have to say that FDIC has seen no concrete evidence that the banking industry is illegally discriminating in its residential lending practices because of race, color, religion or national origin.

At the same time, we recognize that our present system for discovering whether such discrimination exists may be subject to legitimate challenge as being inadequate or naive. We also recognize that there are a number of responsible authorities who have concluded that discrimination in residential lending based on race or color does exist. Notable among those authorities are The Honorable John Mitchell, former Attorney General of the United States, and the Department of Housing and Urban Development.

Our view of the proposed regulation, therefore, is that it may lead to new information by which the Corporation will be more easily able to discover whether nonmember banks are violating the Fair Housing Act. It is not being proposed as a result of any determination of the Corporation that nonmember banks are now violating the Act.

Some preliminary comments concerning the Federal Deposit Insurance Corporation are in order at this point.

There are 14,385 banks in the United States, 13,896 of which are commercial banks and 489 of which are mutual savings banks. The FDIC examines and shares with State Supervisors supervisory responsibility for about 58 percent of the commercial banks and for about 75 percent of the mutual savings banks.

The remaining insured commercial banks, which include the largest commercial banks in the country, are supervised by the Comptroller of the Currency and the Board of Governors of the Federal Reserve System. These agencies are separate and distinct from the FDIC although the Comptroller of the Currency also serves as a Member of the Board of the FDIC. The remaining mutual savings banks are not insured by the FDIC and are supervised by the Massachusetts or Maine Banking Commissioners.

Commercial banks and mutual savings banks, as classes of banks, each have about the same percentage of the country's mortgages, but have different characteristics with respect to size of bank and geographic location. Most of the commercial banks directly supervised by the FDIC, for example, are quite small in size, and many are located in very small communities throughout rural America. The mutual savings banks, which make more mortgage loans per bank, are substantially larger, and most are located in large cities.

The median size commercial bank which the FDIC supervises has only \$7.2 million in deposits, and roughly 90 percent of the commercial banks supervised by FDIC have less than \$25 million in deposits. While the FDIC supervises about 58 percent of the insured commercial banks in the country, those banks hold only about 18 percent of the total insured bank assets in the country. The insured mutual savings banks, on the other hand, have a median size of \$71 million in deposits, and while relatively very few in number, hold about 11 percent of the total insured bank assets in the country.

In other words, the Corporation has supervisory authority over and responsibility for only a few of the large metropolitan commercial banks in the United States. It does, however, have supervisory authority over 326 insured mutual savings banks, some of which are very large and many of which are located in large cities.

The banking industry, of course, is not the major lender in the residential lending market. The largest lender, by far, for residential mortgages is the savings and loan industry, with commercial banks, mutual savings banks, and life insurance companies together holding substantially less than the savings and loan industry. Of the \$337 billion in residential real estate mortgages outstanding as of 1971, savings and loan associations held nearly 43 percent of the mortgages, and commercial banks, mutual savings banks and life insurance companies each held from 11 to 14 percent.

These comments are designed to put in perspective the scope and effect of any regulation in this area issued by the FDIC. Neither savings and loan associations, nor life insurance companies, nor the largest commercial banks in big cities will be covered by any regulation issued by the FDIC. The Federal Home Loan Bank Board is the Federal regulator for the savings and loan industry, the Comptroller of the Currency and the Board of Governors of the Federal Reserve System supervise the larger, big-city banks, and there is no Federal regulator for the life insurance industry.

I mentioned earlier that the Corporation issued in December of 1971 a Policy Statement requiring banks to post lobby notices publicizing anti-discriminatory lending practices, to advertise to that effect, and to use a standard anti-discriminatory logotype in their advertising. At the same time that the Corporation issued that Policy Statement, it issued a Notice of Intention to Consider Proposed Regulations under the Act. That Notice spelled out in some detail the areas that the Corporation was considering for a proposed regulation, and the Corporation distributed that Notice widely among banks, the news media and other interested groups.

As a result of publication of that Notice, the Corporation received over 200 comments. These comments ranged from complete opposition to the intention to formulate regulations to complete support for such intention with suggestions that the areas covered by any such regulation be expanded beyond those that appeared in the Notice. One statement supporting the promulgation of regulations, a copy of which is attached, was submitted by The Honorable George Shultz, former Director of the Office of Management and Budget and now Secretary of the Treasury.

After considerable review and deliberation, the Corporation published for comment on September 20, 1972, a proposed regulation for non-discrimination in residential real estate lending. It is that proposed regulation which we are

here today to discuss. Please note that it is a proposed regulation, not a final regulation. We plan to listen attentively to what witnesses will say during the next day or two, to ask questions that are important to us, and to study carefully the written comments we have received before deciding on the precise content of any final regulation we may issue.

A brief review of the comments received since publication of the proposed regulation might prove informative to our witnesses.

We received a total of 161 letters responding to our request for comments on the proposed regulation, about 50 less than we earlier had received in response to our notice of intention to promulgate proposed regulations. Roughly categorized, 119 of those responses were opposed to the proposed regulation, 29 were neither opposed to nor supported the proposed regulation, and 13 supported the proposed regulation, including the Department of Justice, the Department of Housing and Urban Development, and the U. S. Commission on Civil Rights, copies of whose statements are attached. Obviously, very few of the approximately 8,000 banks under FDIC jurisdiction responded to our request for comments.

Those that in general support the proposed regulation have made many recommendations for changes or additions to the regulation. Speaking generally, one or more of this group has recommended:

- that the regulation be expanded to apply to all forms of financial assistance rather than residential lending loans, arguing that the inter-relationship between non-real estate lending requires such expansion since those discriminated against in other bank activities would be discouraged from even applying for residential mortgages.
- that the regulation be expanded to include a prohibition against lending discrimination based on sex, arguing that sexual discrimination in lending is an unsafe and unsound business practice.

- that discrimination based on age be prohibited.
- that the regulation be amended to prohibit acts that have a discriminatory effect rather than simply acts that show a discriminatory intent.
- that banks be required to keep a written log of all oral loan inquiries that they receive, arguing that without such a log enforcement of the prohibition against discrimination against those who simply make inquiry about the availability of real estate loans is impossible.
- that the regulation be expanded to require the use of the fair housing logotype in all bank advertising.
- that the Fair Housing Informational Statement be modified (1) to make its completion mandatory for loan applicants, (2) to provide for automatic issuance to the applicant of the reasons for denial of a loan, and (3) to change the racial and ethnic classifications in the proposed application to conform with the most recent classifications used by the Office of Management and Budget.
- that the regulation be expanded to include a requirement that builders and developers submit assurance of compliance with the spirit, if not the letter, of the regulation. The Corporation has consistently taken the position that such expansion is beyond its authority.

In addition to these suggestions relating directly to the proposed regulation, some of which, as you can tell, are general in nature and some of which are more specific in nature, many of the proponents urged the initiation by the FDIC of independent efforts separate and distinct from the regulation. Such suggestions included efforts to attract minority borrowers to nonmember banks, to hire and train minority employees for nonmember banks and to train the fair housing officer proposed by the regulation.

It is interesting to note that three commentators who were among the 13 supporting the proposed regulation, commented that the proposed regulation is totally insufficient and too weak to cope adequately with the problem of discrimination in mortgage lending.

The above is a capsule summary of the 13 letters we have received which we have generally categorized as being in favor of the proposed regulation. As I mentioned earlier, 119 letters were in general opposition to the proposal. While a number of those letters merely stated their opposition in general on personal terms, a great number did include specific criticisms and comments.

This criticism and these comments could best be summarized as follows:

- that implementing the requirements dictated by the proposed regulation and particularly the Fair Housing Informational Statement, was excessively burdensome and expensive. At least 67 letters contained this comment. Many commentators felt that the expense of administering the regulation would put those banks regulated by the FDIC at a competitive disadvantage in relationship to other banks, savings and loan associations, insurance companies, etc., not subject to the requirements of the regulation.
- that the Corporation exempt (1) small banks from the requirements of the regulation because of the expense involved and (2) banks in geographical areas containing no minority groups or only a very few.
- that the use and display of a proper sign in the lobby of a bank and the use of the logotype and slogan in advertising, as presently required by our Policy Statement, would serve the same purpose as the record-keeping requirements at much less expense.

-- that the proposal defeats the purposes of the Civil Rights Act of 1968. This refers to the fact that minority organizations have been trying for years to eliminate all references in applications and other filings to a person's race, color, religion, or national origin, and the proposed regulation would, consequently run contrary to the general trend of the last 20 years. These commentators felt that implementation of the regulation would at least hinder and perhaps destroy any program to combat discriminatory banking practices.

Without categorizing further, it is fair to say that almost every new requirement in the proposed regulation was criticized by one or more commentators. A number of commentators stated that the FDIC lacked the general legal authority to adopt such a regulation and a larger number suggested that the adoption of such a regulation would present conflicts between State laws and the regulation. In the same vein, some letters suggested that HUD and not the FDIC should be the responsible agency in this area.

I believe you can see from this brief summary of the position taken by those supporting the regulation and those opposing the regulation the kind of job FDIC faces in reconciling the opposing arguments.

We are gratified, however, that none of the comments we received professed opposition to the ultimate purpose of the proposed regulations, namely, that residential lending policies of State nonmember banks would be based on factors other than race, color, religion, or national origin.

We would like those who testify at this hearing to address themselves to the questions outlined in the Notice of Hearing published by the Corporation on November 24, 1972. Specifically, we would like comments on the authority of the Corporation for, and the desirability of, expanding the scope of the proposed regulation to include:

- (1) a prohibition against any lending discrimination based on sex;
- (2) a prohibition against discrimination in any lending practice, not simply mortgage lending.

In addition, the Corporation would appreciate comments, including any surveys, particularly from representatives of minority groups or individual members of minorities regarding the attitude of members of such groups toward providing the information required by the Informational Statement described in section 338.6 of the proposed regulation. As I mentioned earlier, the Corporation has received many comments arguing that excluding, not including, such data from loan applications is the best way to prevent conscious or unconscious racial discrimination in mortgage lending, and that including such data is inconsistent with historical efforts made over time by minority groups to exclude all such data from as many forms and records as possible. It is also alleged that including such data would conflict with State laws that specifically prohibit the solicitation of such data. We, of course, are left with the perplexing problem best described in these questions: Is the position of the petitioners and others who urge that we include this information in loan application forms representative of members of minority groups in the country? Has there really been a shift away from keeping such information off records to putting it on records? Perhaps our witnesses can help us answer these questions.

The Corporation has received many written comments from those who opposed the use of the Fair Housing Informational Statement because they felt it would serve little or no useful purpose in areas of low minority concentration while adding additional expense and record retention problems for nonmember banks. We would appreciate, therefore, comments from those testifying concerning:

- (1) the feasibility of applying section 338.6 of the proposed regulation on an experimental basis in limited geographical areas;

- (2) the feasibility of exempting from the requirements of section 338.6 of the proposed regulation State nonmember banks located in areas of low minority concentration; and
- (3) constructive alternatives to the Informational Statement that would provide reliable data indicating the existence or absence of discrimination in the mortgage lending practices of State nonmember banks without the administrative problems and expense inherent in the use of such a Statement.

In addition to these points, our various Directors or our General Counsel may have additional questions which we will raise with witnesses either during the course of their statements or following the completion of their statements.

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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

MAR 20 1972

Honorable Frank Wille
Chairman, Federal Deposit
Insurance Corporation
Washington, D. C. 20429

Dear Mr. Chairman:

This is in response to your notice released on December 20, 1971, which states that you are proposing to formulate regulations under Section 805 of Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3605) in areas related to real-estate financing by banks. I wish to express the Administration's interest in your notice and urge that you propose regulations which would include all the proposals contained therein.

It is the belief of this Administration that financial institutions engaged in mortgage lending should provide both the public and the Financial Regulatory Agencies with assurances that they do not discriminate in real-estate lending. The proposals to require public display by banks of their standards and criteria for granting real-estate loans, inclusion of statements in advertising that real-estate lending services are available without regard to race, color, religion or national origin, and posting of notices in bank lobbies which attest to the institution's compliance with Title VIII requirements would be useful to alert customers to the obligations of the lender. In addition, 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. Review of a sample of these records during your regular examinations of banks would help to identify instances of discrimination prohibited by Title VIII and might help to prevent other instances from occurring.

It will, of course, be necessary to make provision for gathering and evaluating the records and data collected by banks if the record-keeping requirements are incorporated into a regulation. A reporting form, similar to the civil rights questionnaire which has been developed by the Federal Reserve Board of Governors, could assist in your evaluation of data collected by the banks.

I would like to assure you that the executive departments and agencies involved in enforcement of the civil rights acts are prepared to assist your efforts. Development of data collection systems, review of complaints, and adjudication of violations are areas in which the Office of Management and Budget, the Civil Rights Commission, the Department of Housing and Urban Development and the Department of Justice could provide expertise and assistance.

Finally, I believe that by working together, with the support of financial institutions and their customers, we can control and eventually eliminate discriminatory lending practices.

Sincerely,

A handwritten signature in cursive script that reads "George P. Shultz". The signature is written in dark ink and is positioned below the word "Sincerely,".

GEORGE P. SHULTZ
DIRECTOR

Department of Justice
Washington, D.C. 20530

DEC 8 1972

Mr. E. F. Downey
Secretary
Federal Deposit Insurance
Corporation
550 17th Street, N.W.
Washington, D.C. 20429

Dear Mr. Downey:

This letter is in regard to the proposed nondiscrimination regulations which you published in the Federal Register on September 20, 1972. In general, the regulations seem appropriate and represent a significant step in designing a systematic means to eliminate discriminatory lending practices. I wish to offer several suggestions for your consideration.

1. Coverage of all banking services. In my opinion, racial discrimination in lending may be challenged as illegal as a contractual relationship within the ambit of 42 U.S.C. 1981. Your agency may issue and enforce regulations dealing with discrimination in lending by any covered institution. The regulations might properly extend to lending services other than real estate related services by a parity of reasoning. If you are interested, we would be pleased to confer with your agency on this matter at your convenience.

2. Definition of discriminatory practices.

The regulations might be more complete in defining specific examples of discriminatory conduct such as discriminatory credit standards, as well "redlining" of minority areas, which the proposal already covers. Conduct interfering with the exercise of rights under the fair housing law in violation of 42 U.S.C. 3617, such as denial of credit to persons dealing with minorities on a nondiscriminatory basis, might also be added.

3. Record-keeping requirements. 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.

4. Specification of credit standards. A

requirement for the establishment of written, objective, nondiscriminatory credit standards by each bank might be of substantial assistance both to the institutions, in achieving voluntary compliance, and to your agency, in reviewing their compliance.

5. Employment Regulations. A firm's

employment practices might affect its service to the minority community through its image and informal contacts with the community. Accordingly, the regulations might be used to supplement Executive Order 11246 for those institutions which are not required to submit formal affirmative action plans. For example, they might encourage banks to seek employment referrals from appropriate sources of minority applicants.

6. Advertising. The provision on advertising might be strengthened by a specific requirement that advertisements use the "Equal Housing Lender" slogan even if they are too small to display the logotype.

7. Affirmative action. In addition to the advertising requirements, you may wish to consider the following affirmative requirements:

(a) Requiring lending institutions to give specific notices to all brokers or organizations of brokers in the community that they have a nondiscriminatory policy, and the details of the policy, in view of the special role of brokers in making referrals for loans, and

(b) Providing for the distribution of brochures describing the various types of financing (FHA, VA, conventional, and privately insured mortgages), with the advantages and disadvantages of each, in order to provide some basis for independent judgment by borrowers.

8. Enforcement. The active role for your agency in enforcement indicated by the proposed regulations should greatly enhance their effectiveness.

9. Granting of deposit insurance. In processing applications for deposit insurance under 12 U.S.C. 1816, your agency is required to consider "the general character of [a bank's] management" and "the convenience and needs of the community to be served by the bank." These criteria might be interpreted as including a requirement concerning necessity and usefulness to the minority portion of a community.

Likewise, the criteria of "general character" might include a willingness to comply with the laws of the United States applicable to banks, including civil rights laws. Thus, your agency could consider revising application forms and procedures to obtain reasonable assurance that banks applying for insurance will serve all the people of the community on a nondiscriminatory basis.

The matters set forth in the comments above could, in my opinion, contribute to the effectiveness of the proposed regulations. If my staff or I can be of any further assistance in the preparation, implementation or enforcement of such regulations, please do not hesitate to contact us.

Sincerely,



DAVID L. NORMAN

Assistant Attorney General
Civil Rights Division



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D. C. 20410

SECRET

RECEIVED - NOV 7 1972

OFFICE OF THE ASSISTANT SECRETARY
FOR EQUAL OPPORTUNITY

IN REPLY REFER TO:

Mr. E. F. Downey
Secretary
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, D.C. 20429

Dear Mr. Downey:

This is in response to your invitation for comments on the FDIC proposed regulation on Fair Housing Lending Practices that appeared in the Federal Register on September 20, 1972, as new Part 338 of Title 12 of the Code of Federal Regulations. Our comments follow:

Section 339.4 -- Discriminatory advertising.

Paragraph (a) states that advertisements shall include a "facsimile of the logotype which is annexed hereto." The annexed logotype appears to have omitted the slogan "Equal Housing Lender." This should be included in the facsimile.

Section 338.6 -- Records of Racial and Ethnic Data on Loan Applications.

In paragraph (a) (1), it is stated that the recordkeeping requirement is only applicable where a loan or other financial assistance is "to be secured by a lien or other security interest in a dwelling." The nondiscrimination provisions of Section 338.2 through 338.5 apply regardless of whether a security interest is involved. Title VIII of the Civil Rights Act of 1968 says nothing about security interests. The recordkeeping requirements should be broadened so as to be congruent with the nondiscrimination requirements. Otherwise, how else may the FDIC measure compliance with the requirements?

This same comment applies to paragraph (a) (2) with respect to noting the census tract where property is located.

Paragraph (b) relates to a "Fair Housing Informational Statement." We recommend that the first part of the statement be revised. We object to what appears to be a strong invitation not to fill out the form. We think the FDIC should require banks to secure this information, as is required under HUD programs. Failure to do so will result in the data being unreliable if nonreporting is at all substantial. Even

if the FDIC does not wish to make it a requirement, different language should be employed. Further, the information is not provided "for your own protection under the Civil Rights Act of 1968," unless you are a member of a group discriminated against. We think the statement should be something like "so that we can ensure that all persons eligible for loans receive assistance without regard to race, religion, or national origin."

The categories in Part I of the statement should be adjusted. If "Other" means "other minorities," it should be so stated and a list of other minorities included. "Other," standing alone, may constitute an invitation for Jews, Italians, and many others to check it, thus rendering analysis impossible.

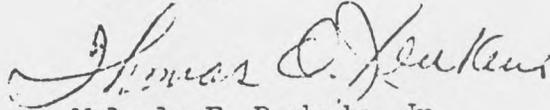
We believe the regulations or companion regulations should cover the subject of employment. We know that employment in policy-making jobs and meet-the-public jobs can influence a bank's lending practices and the minority public's image of the bank. The FDIC should require affirmative action plans from its member banks. The fair housing officer's duties might be expanded to cover this responsibility as well.

We suggest that the last line of the proposed issuance be reworded to read: "or call your local HUD Area or Insuring Office."

We have no further technical or general comments on the proposed regulation, but we do want to express our wholehearted support of the objective of the regulation. Publication of the proposed regulation will evidence an affirmative step by FDIC in furtherance of HUD's effort that began in July 1969 by convening representatives of FDIC and the other Financial Regulatory agencies for the purpose of developing regulations to implement the fair housing requirements of Title VIII of the Civil Rights Act of 1968. Since that time, the Comptroller of the Currency, the Federal Reserve Board, the Federal Home Loan Bank Board, the Fair Credit Administration, as well as FDIC, have published in the Federal Register proposals or regulations designed to assure fair lending practices by member institutions. The first such publications appeared in the Federal Register on December 29, 1971. Since then the Comptroller of the Currency, the Federal Reserve Board, the Farm Credit Administration, and the Federal Home Loan Bank Board have published regulations to implement the fair housing-lending requirements of Title VIII. Our information is that compliance with these issued regulations has been exceedingly responsible and favorable. Finally, let me say that we welcome the issuance of the proposed FDIC regulation as needed support of HUD's administration of the fair housing provisions of Title VIII.

Please let us know if there is any action that we may take that might assist in the adoption and publication of the proposed regulation at an early date.

Sincerely,



Malcolm E. Peabody, Jr.

for Acting Assistant Secretary
for Equal Opportunity

UNITED STATES COMMISSION ON CIVIL RIGHTS
WASHINGTON, D. C. 20425



STAFF DIRECTOR

November 1, 1972

Honorable E. F. Downey
Secretary
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, D.C. 20429

Dear Ms. Downey:

In response to the invitation of the Federal Deposit Insurance Corporation which appeared in the Federal Register on September 20, 1972, the Commission submits its comments and recommendations concerning the Corporation's proposed "Fair Housing Lending Practices."

1. General Comments

The Commission commends the Corporation for the steps it has proposed to take to meet its obligations regarding the prevention of discrimination in mortgage lending by insured banks. We believe the adoption of the proposed regulations, together with the suggestions for strengthening those regulations which follow, will set a necessary standard for the entire mortgage lending industry and contribute significantly to achieving the goal of equal housing opportunity.

We note that the Corporation's proposed requirements concerning the Equal Housing Lender Poster (§338.5) and the Fair Housing Informational Statement (§338.6(b)) both call for the inclusion of the address of the Department of Housing and Urban Development as the agency to be notified concerning any complaint alleging discriminatory treatment by a lender. While we agree that HUD should be so notified, we believe the Corporation has an equal obligation to be informed of such complaints in order to be in a position to carry out its own responsibilities. If the proposed regulations fail to provide for the receipt of complaints by your agency, the Corporation will be denying itself one source of information as to the nature of discriminatory practices and the geographic areas where concentrated enforcement efforts may be required. This also would suggest that the Corporation has no authority or interest in assuring against violations of Section 805 of Title VIII of the Civil Rights Act of 1968 or in furthering the purposes of that title. Yet, the Corporation's legal authority and, indeed, its obligation to act in this area are clearly indicated both by the language

of Section 808(d) of Title VIII and the provisions of Section 1818(a), (b), and (c) of Title 12 of the United States Code. Indeed, such authority is acknowledged in §338.8 of the proposed regulations. Thus we urge that the proposed regulations be amended to include the Corporation, as well as HUD, as an addressee for all complaints of discriminatory lending practices.

2. Comments on Specific Sections

a. Section 339.2. Nondiscrimination in residential and other financial assistance

The Commission is gratified over the inclusion in this section of paragraph (d), which would prohibit discrimination based on the racial or ethnic background of residents in the community where the applicant wishes to purchase a home. It thus seeks to counter the practice known as "redlining," a practice which, historically, both private lenders and the Federal Government have followed. Paragraph (d) puts the Corporation's regulators on clear notice that such a practice violates the fair housing law and should help to encourage lending officers to reassess their loan analysis criteria with a view to adopting less simplistic, more reliable, and much fairer standards.

b. Section 338.3. Nondiscrimination in applications

This proposed section would make unlawful any discriminatory treatment with regard to inquiries, requests, or applications concerning a loan or other service rendered by insured banks. We note, however, that while the Corporation thus considers the possibility of unequal treatment at the loan inquiry stage as being serious enough to warrant specific prohibition, it has failed to support its concern, in other sections concerned with record keeping, with a requirement for maintaining a written log of oral loan inquiries. Such a requirement was proposed by private civil rights organizations in their petition to the Corporation over a year ago. The Commission fully supports their proposal. While the record keeping requirement contained in Section 338.6 would enable examiners to determine whether patterns of discrimination exist with respect to persons who have actually filled out loan applications, it would not adequately meet the problem of minority families who are discouraged from even filing an application. By requiring lenders to keep a log of oral loan inquiries, data would be available to meet this problem. In addition, the requirement, by itself, would tend to deter lender personnel from discouraging minority applicants.

c. Section 338.4. Discriminatory advertising

The Commission endorses the concept embodied in this proposed requirement. We note, however, that its language with regard to the prohibition of certain "words, phrases, symbols, directions, forms, models, or other means" suggestive of a discriminatory policy fails to establish clear standards to guide bank personnel. We urge that the Corporation amend this section to include precise guidelines as to the types of words, phrases and other means to be used or avoided. Such guidelines should also address more subtle forms of discrimination, such as the selective placement of advertising in various media.

d. Section 338.6. Records of racial and ethnic data on loan applicants

The Commission has pointed out on numerous occasions that the complaint process, by itself, is wholly inadequate to the task of enforcing compliance with Title VIII. 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. We believe, however, that the requirement as presently worded omits two features which should be made part of the process of informing applicants about the decision to be made on their applications.

(1) Notification of applicants as to factors considered when reviewing loan applications

Unlike the proposed "Nondiscrimination Requirements" published by the Federal Home Loan Bank Board on January 19, 1972, the Corporation's racial and ethnic information form does not list those factors which might be considered by the bank in passing on a loan application. We believe such information could be of substantial help in enabling minority families to protect their own rights. We recommend the inclusion of a list of factors most commonly relied upon by member banks, stated in clear, non-technical language. In addition, individual lenders should be required, not simply permitted, to add such other loan analysis factors as they employ, again in clear terms. Such a requirement would not only assist the applicant to understand better a process which affects him significantly but could also benefit the lender in cases of rejected applications by avoiding conflicts with applicants who have not been forewarned of possible reasons for rejection.

(2) Notification of applicants as to action taken
on applications

Section 338.6(1) would require that one copy of Part I of the Fair Housing Informational Statement be filled out by the applicant and retained by the lender. We believe that it is important for the applicant himself to have a copy of Part I, with the changes to that form recommended elsewhere in these comments. Provided with his own copy, an applicant would have a permanent record of both the factors that will determine the acceptability of his application and the Federal agencies with whom he may register a complaint. In addition, the statements on the form will serve as a reminder that he does have a right to fair treatment and at least some recourse if that treatment is denied.

The Corporation proposal also provides that Part II of the Statement shall be completed and a copy given to the applicant upon rejection of his application, but only if he requests such a copy. In our view, the rejected applicant should not have the burden of specifically requesting an explanation. Given the deep sense of discouragement among minority families resulting from years of discrimination by the housing and home finance industry, and the need for that industry to help rebuild a sense of trust and confidence among minority citizens, we believe the lending institution should be required to provide an explanation for disapproval of a loan application, even in the absence of a request for one. Further, requiring lenders to affirmatively inform each loan applicant whose application is disapproved as to the reasons therefore would encourage lenders to re-examine existing standards and criteria and, where necessary, revise them.

We also are concerned over the language of the proposed "Fair Housing Informational Statement," which may serve to discourage applicants from providing the information necessary for monitoring compliance with Title VIII. While we have no objection to informing applicants that they are not required to provide the requested information, we believe the proposed Statement should be couched in more affirmative language aimed at encouraging full cooperation. At a minimum the Statement should specify that the information is necessary to assure against discrimination in mortgage lending by insured banks, so that applicants will understand that the request is not a mere invasion of their privacy by the Federal Government.

e. Section 338.7. Fair housing officer

The need for including the Corporation's address as a complaint recipient on each equal housing lender poster and in the Fair Housing Informational Statement has already been noted. In addition, given the designation in this section of a fair housing officer, a step which we particularly applaud, it would seem only logical that his title and office should be made a part of the complaint address.

f. Section 338.8. Enforcement

In addition to stating that violations of Title VIII and the proposed regulations are deemed to constitute violations of law within the meaning of section 8 of the Federal Deposit Insurance Act, the regulations also should specify the sanctions that may be imposed. Such information would make it clear to insured banks and the public that the Corporation considers compliance with Title VIII a matter of high importance.

3. Affirmative Enforcement by the Corporation

The Corporation's proposed regulations nowhere indicate measures to be adopted by the agency to supervise and enforce such regulations as may become effective. The Commission assumes that the Corporation considers such measures to be internal in nature and not appropriate for inclusion in this document. Nonetheless, affirmative action on the part of the agency is so central to the effective implementation of Title VIII that it cannot be divorced from consideration of the foregoing proposals.

The Commission has urged adoption of affirmative action programs by each of the financial regulatory agencies in three broad areas: the examination process, the collection and analysis of data, and the imposition of sanctions on those lenders found to be in violation of Federal fair housing laws.

With regard to the Corporation's examination of member banks, the Commission understands that a revised examiners' manual and a reporting form are being prepared, in conjunction with the proposed regulations, to improve the Corporation's examination procedure with respect to discriminatory practices. The Commission commends the Corporation for these steps and looks forward to their implementation as a potentially effective mechanism for monitoring compliance with Title VIII. The racial and ethnic data which can be collected under the proposed regulations could be of value in providing individual examiners with an essential base of information. They also could facilitate comparative analyses of data from different metropolitan or regional areas, which could increase the efficiency of the agency's overall examination process and provide valuable information to HUD for use in reformulating national policies and programs.

Analysis of lending criteria used by supervised mortgage lenders warrants special consideration. Finding ways to reform the nature and application of certain lending criteria now in use is one of the most difficult tasks that each of the Federal financial regulatory agencies now faces. The Commission believes such reform is essential if true progress towards equal opportunity in mortgage financing is to be made.

The Commission is greatly concerned over a number of lending criteria, currently in use by mortgage lending institutions, which operate in a manner that, directly or indirectly, discriminate against minority loan applicants. First, some institutions treat applicants who have been arrested in the same way they treat those who have been convicted, whether the arrest leads to a conviction or not. Since several studies have shown that minority persons, especially blacks, are far more subject to arrest, particularly without cause, than are whites, the practice of disqualifying a loan applicant on the basis of his arrest record alone operates in a discriminatory way against minority applicants, while serving no useful purpose.

Second, a majority of institutions include in their evaluations of loan applications, information as to whether the applicant was previously a homeowner. Prior homeowners are favored over renters. In view of past discrimination against minority families, particularly regarding sales housing, such a criterion also operates in a racially discriminatory manner. A recent study in St. Louis, for example, has indicated that past and present discrimination in the housing industry has resulted in minority families being unfairly deprived of the advantages of homeownership, at every income level.

Third, in evaluating the loan applications of married couples, most lending institutions refuse to consider the full amount of a working wife's contribution to total family income. In fact, many lenders refuse to recognize any portion of a wife's income. Since a higher percentage of minority families than white rely on the income from two or more family members, such practices by lenders places an additional, disproportionate burden on minority homeseekers.

Each of these practices, while apparently neutral with regard to race, has a clear discriminatory effect.

The removal of these kinds of barriers faced by minority homeseekers presents the greatest challenge to the financial regulatory agencies in meeting their obligations under the fair housing law. Through its

data collection activities, the Board will have the resources for monitoring and analyzing the lending practices of those banks it supervises, and the chance to effect widespread change where the need is found.

We hope these comments will be of help.

Sincerely,

John A. Buggs
JOHN A. BUGGS
Staff Director