



IMPACT 2022

CORNERSTONE ANNUAL MEETING & COUNCIL FORUM

Fair Lending Regulations and Examinations

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Disclaimer

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Agenda

- Fair Lending Overview
- Fair Lending Laws and Regulations
- Fair Lending Examinations
- Fair Lending Best Practices



Fair Lending Overview

Fair Lending

- What is Fair Lending?
 - A body of laws requiring fair and equal treatment of all credit applicants
 - Prohibits discrimination in any aspect of the credit process based on certain personal characteristics (prohibited factors or prohibited bases)

Lending Discrimination

- Three “types” of lending discrimination
 - Overt discrimination
 - Disparate treatment
 - Disparate impact



Overt Lending Discrimination

- Exists whenever lenders openly discriminate against loan applicants on a prohibited basis
 - We don't make motorcycle loans to people under the age of 25
- Exists whenever lenders express a discriminatory preference
 - We don't like to make motorcycle loans to people under the age of 25 but we have to

Disparate Treatment

- Treating a credit applicant differently based on one or more prohibited factors
- Less likely to occur when applicants are well qualified or clearly unqualified
- Most likely to occur when lender discretion is involved

Disparate Impact

- Occurs when lender treats all applicants equally, but a certain group of applicants is disproportionately impacted
- All members of impacted group do not have to be adversely impacted
- Does not require intent on part of lender

Fair Lending Prohibited Practices

- Expressing a preference based on prohibited factors
- Failing to provide information
- Discouraging applicants
- Using different standards to determine creditworthiness

Fair Lending Prohibited Practices

- Varying terms of credit
- Using different standards to evaluate collateral
- Treating borrowers differently in servicing or collecting a loan
- Engaging in advertising that indicates discrimination

Fair Lending Prohibited Practices

- A lender may not discriminate because of the characteristics of:
 - Any person involved in the transaction
 - Any person associated with a person involved in the transaction
 - Residents of the property being financed
 - The neighborhood of property being financed

Fair Lending Regulations

Fair Lending Laws and Regulations

- Equal Credit Opportunity Act & Regulation B
 - CFPB regulation; 12 CFR 1002
- Fair Housing Act
 - HUD regulation; 24 CFR 100-199
- Home Mortgage Disclosure Act & Regulation C
 - CFPB regulation; 12 CFR 1003

Reg B – Protected Classes

- Sex
- Marital status
- Race
- Color
- Religion
- National origin
- Age
- Receipt of public income
- Exercise of legal rights under the consumer protection laws



Reg B – Prohibition against Discrimination

- Application procedures
- Information requirements
- Investigation procedures
- Standards of creditworthiness
- Terms of credit
- Furnishing of credit information
- Treatment of delinquent or slow accounts
- Termination of credit
- Collection procedures

Reg B – Discrimination

- Discouraging applications
 - A credit union cannot make any oral or written statement to an applicant or prospective applicant that would discourage, on a prohibited basis, a reasonable person from making or pursuing an application for credit.



Reg B – Prohibited Information

- Credit unions must be careful when requesting information regarding:
 - Sex
 - Marital status
 - Alimony, child support
 - Childbearing intentions
 - Race, religion, national origin
 - Age
 - Income

Reg B – Sex Discrimination

- Sex
 - March 2021 ruling – “sex discrimination” includes sexual orientation and gender identity
 - Titles can be designated but must be optional
 - Ms., Mrs., Miss, Mr.

Sex Discrimination - Exceptions

- Marital Status
 - 3 situations when you can ask marital status
 - Secured credit
 - Joint credit
 - Applicant/collateral in community property state

Sex Discrimination - Exceptions

- Spousal Information
 - 4 situations when you can ask for information on the spouse
 - Spouse will use the account and/or be contractually liable on the account
 - Applicant is relying on spouse's income to repay loan
 - Applicant is relying on alimony or child support payments to repay loan
 - Applicant and/or collateral located in community property state

Reg B – Other Income/Debts

- Alimony, child support, or separate maintenance payments
 - You can ask if applicant is required to pay.
 - You can ask if applicant receives these payments but must inform that disclosure is optional.



Reg B – Childbearing

- Childbearing intentions or capabilities
 - You can ask about applicant's ability to repay the debt, such as probability of continuing employment.



Reg B – Other Factors

- Race, color, religion, or national origin
 - Cannot inquire about these issues
 - Can ask about permanent residence and immigration status



Reg B – Age

- You cannot:
 - Deny credit because of age
 - Ignore retirement income
 - Close an account or require reapplication because member reaches a certain age
 - Deny credit or close account because member is too old to qualify for credit life insurance

Reg B – Income

- Protected income includes income derived from:
 - Part-time employment
 - Alimony
 - Child support
 - Separate maintenance
 - Annuities
 - Pension or other retirement plans
 - Public assistance

Reg B – Public Assistance

- Receipt of public assistance
 - Unemployment
 - Welfare
 - Social Security/Disability Income
 - Retirement Benefits

Reg B – Joint Credit

- Requires evidence of intent to apply for joint credit



One More Exception

- Required for HMDA reporting
 - Ethnicity and race
 - Sex
 - Marital Status
 - Age

Reg B – Notification of Action Taken

- Timeframe for notification of action taken
 - 30 days – approval, counteroffer, adverse action
 - 30 days – adverse action on incomplete application
 - 30 days – adverse action taken on existing account
 - 90 days – after notification of counteroffer if not accepted

Fair Housing Act – Protected Classes



- Race
- Color
- National origin
- Religion
- Sex
- Handicap
- Familial status

Scope of Fair Housing Act

- Illegal to set loan terms based on prohibited factors:
 - Loan amount
 - Interest rate
 - Loan terms
 - Other credit terms

Fair Housing Act

- Prohibited activities
 - Racial steering
 - Redlining
 - Excessively low appraisals
 - Racially exclusive image
 - Discouraging applications
 - Excessively burdensome standards
 - Onerous terms and conditions
 - Practices that discriminate against women

Regulation C - HMDA

- Home Mortgage Disclosure Act
- Effective 1975
- Purpose
 - Determine if financial institutions are meeting housing needs of areas they serve
 - Assist in distributing public-sector investments
 - Help identify discrimination in mortgage lending

HMDA – Institutional Coverage

- Meet annual asset threshold
- Have home or branch office in a Metropolitan Statistical Area
- Made at least one home purchase loan/refinance of a home purchase loan secured by a first lien in preceding calendar year
- Federally insured/regulated or mortgage loan insured/guaranteed by Federal agency or loan will be sold to FNMA or FHLMC
- Meet transactional coverage threshold

HMDA – Loans Covered

- All dwelling-secured loans
 - Closed-end mortgages
 - Purchase
 - Equity
 - Refi
 - HELOCs
 - Reverse mortgages



HMDA – Reportable Information

- Applicant
- Loan
- Property



HMDA – Loan Application Register

- Update LAR quarterly
- Provide information to the CFPB by March 1
- Information made available to public
 - Modified LAR
 - FFIEC Disclosure Statement
- Lobby Notice
 - www.consumerfinance.gov/hmda

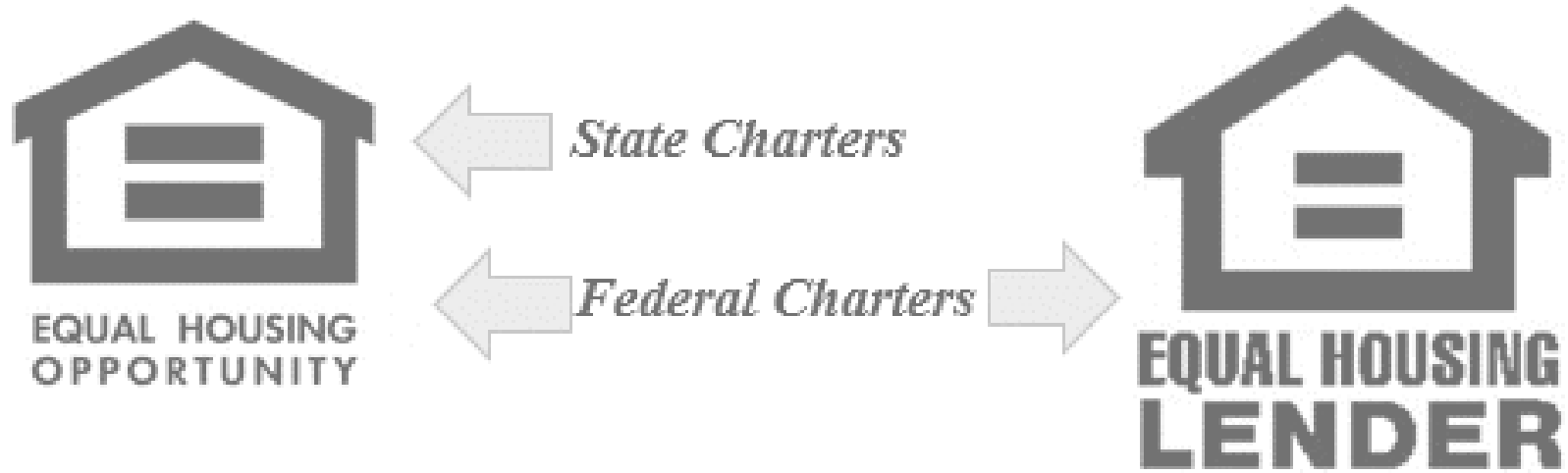
Non-discriminatory Advertising

- Regulations
 - Regulation B – Equal Credit Opportunity Act
 - Regulation Z – Truth in Lending Act
 - Fair Housing Act
 - UDAAP – Unfair, Deceptive, or Abusive Acts or Practices Act

Non-discriminatory Advertising

- Regulation B & Fair Housing Act
 - Use pictures of people of various:
 - Races
 - National origins
 - Ages
 - Genders
- UDAAP
 - appearance of bias can be considered deceptive

Non-discriminatory Advertising



TV/Radio ads

ABC Credit Union is an equal housing lender.

Fair Lending Examinations

Fair Lending Exam

- Which credit unions will be examined or receive supervision contact?
 - HMDA Outliers
 - Fair Lending Violations
 - General Compliance Risks
 - Other Factors

Fair Lending Exam

- Examiners will focus examination based on:
 - Credit operations
 - Risk that discriminatory conduct may occur
 - Feasibility of developing factually reliable record of institution's performance and compliance

Fair Lending Exam

- Credit Operations
 - Types/terms
 - Volume of/growth in each credit products
 - Demographics of membership
 - Organization of credit decision-making process
 - Loan officer compensation program
 - Documentation/date for loan products

Fair Lending Exam

- Evaluate Potential for Discriminatory Conduct
 - Underwriting guidelines, policies
 - Pricing policies, including risk-based pricing models
 - Loan application files
 - HMDA-LAR registers
 - Copies of any consumer complaints alleging discrimination

Fair Lending Exam

- Review Residential Loan Products and Identify Discrimination Risk Factors
 - Types of mortgage loans
 - Review marketing plans, policies, underwriting, appraisals

Fair Lending Exam

- Indicators of potential disparate treatment
 - Disparities in approval/denial rates
 - Disparities in processing times
 - Higher proportion of withdrawn applications
 - Disparities in prices
 - Use of risk-based pricing that is not objective/applied consistently
 - Using only pictures of non-minorities
 - Advertising only in media serving non-minority markets

Fair Lending Exam

- Compliance Management Review
 - Preventive Measures
 - Lending Practices and Standards
 - Lending policies
 - Training
 - Corrective Measures
 - Policy corrections
 - Employee training/discipline

Potential Penalties

- Enforcement Actions
- Civil Money Penalties
- Mitigating Factors
 - Number/duration of violations
 - Nature of evidence of discrimination
 - Pervasiveness of discrimination
 - Presence of policies
 - Corrective measures



Fair Lending Best Practices

Fair Lending Guidance

- NCUA Letter to FCUs 13-FCU-02
- NCUA Fair Lending Guide
 - Overview of laws
 - Operational requirements
 - Developing fair lending compliance policies
 - Checklists

Best Practices

- Policies and Procedures
- Fair Lending Risk Assessments
 - Voluntary Self Tests
- Fair Lending Compliance Management System Based on Risk Assessment
- Stay Current on Fair Lending Developments

Policies and Procedures

- State how CU will comply with fair lending laws and serve FOM
- Board and senior management buy-in
- Policies and procedures should be clear and easily understood
 - Deviations must be documented
- Training

Risk Assessments

- Evaluate all credit products
- Evaluate organizational structure
- Marketing/advertising
- Lending channels
- Evaluate collections

Compliance Management System

- Fair Lending Policy statement
- Regular training
- Monitoring and testing of policies and practices
- Assessment of marketing of loan products
- Board of Directors management oversight
- Compliance audit/review

Stay Current

- NCUA

<https://www.ncua.gov/files/publications/regulations/fair-lending-guide.pdf>

- CFPB

https://files.consumerfinance.gov/f/documents/cfpb_2020-fair-lending_report_2021-04.pdf

- State law
- Industry news



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