

Fair Lending Overview



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Fair Lending Regulations

Equal Credit Opportunity Act (ECOA)

Prohibits discrimination in *any* aspect of a consumer or commercial credit transaction

Fair Housing Act (FHA)

Prohibits discrimination in all aspects of “residential real-estate related transactions,” including but not limited to:

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



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ECOA Prohibited Bases

ECOA prohibits discrimination based on :

- Color
- Religion
- National origin
- Sex
- Marital status
- Age
- Race
- Income derived from public assistance
- Good faith exercise of any right under the Consumer Credit Protection Act.



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Fair Housing Prohibited Bases

FHA prohibits discrimination based on :

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



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Prohibited Practices

Under ECOA and/or FHA, a lender may not, because of a prohibited factor:

- Fail to provide information or services or provide different information or services regarding any aspect of the lending process, including credit availability, application procedures, or lending standards
- Discourage or selectively encourage applicants with respect to inquiries about or applications for credit
- Refuse to extend credit or use different standards in determining whether to extend credit



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Prohibited Practices (continued)

Under ECOA and/or FHA, a lender may not, because of a prohibited factor:

- Vary the terms of credit offered, including the amount, interest rate, duration, or type of loan
- Use different standards to evaluate collateral
- Treat a borrower differently in servicing a loan or invoking default remedies
- Use different standards for pooling or packaging a loan in the secondary market



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Prohibited Practices (continued)

It is a violation of fair lending laws to express, orally or in writing, a preference based on prohibited factors or to indicate that the lender will treat applicants differently on a prohibited basis even if the lender treats applicants equally.



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Prohibited Practices (continued)

A lender may not discriminate on a prohibited basis because of the characteristics of:

- An applicant, prospective applicant, or borrower
- A person associated with an applicant, prospective applicant, or borrower (for example, a co-applicant, spouse, business partner, or live-in aide)
- The present or prospective residents of the property to be financed
- The neighborhood or other area where property to be financed is located (e.g., on the basis of the area's racial or ethnic composition. This is known as "redlining.")



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Prohibited Practices (continued)

The FHA prohibits discrimination on the basis of handicap and requires lenders to make reasonable accommodations for a person with disabilities when such accommodations are necessary to afford the person an equal opportunity to apply for credit.



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Prohibited Practices (continued)

Some types of fair lending concerns that may result in additional regulatory review include:

- Disparities in the pricing of credit, including fees or rates, based on a prohibited factor and where price differences are not related to pricing factors described in bank policy
- Disparities in loan product selection or underwriting, where there is discretion by loan officers, including where policy is unclear or where exceptions are allowed
- Marketing and lending practices that exclude geographic areas based on the racial or ethnic composition of those areas (redlining)



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Implications of Fair Lending Violations

- Possible downgrade in compliance & CRA ratings
- Possible adverse impact on bank's reputation
- Legal risks
- Delay or denial of corporate applications
- Possible referral to DOJ,* HUD, CFPB, and/ or FTC
- Assessment of civil money penalties
- Restitution to affected borrowers

*Note: DOJ Referrals are required if FDIC has reason to believe the creditor has engaged in a pattern or practice of discouraging or denying loan applications in violation of ECOA.



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Best Practices in Fair Lending Compliance

Fair Lending Training

Fair Lending training is the foundation for a fair lending program. Ensure that:

- Training encompasses all affected employees and the Board of Directors
- A regular training schedule is established
- Records of training received by employees are maintained



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Best Practices in Fair Lending Compliance (continued)

Management Commitment

The most important aspect of any compliance management system is to have management be engaged in and committed to the process. Ensure that management:

- Reviews audit reports that address fair lending compliance
- Devote adequate resources to Compliance Officer and others with responsibility for monitoring fair lending compliance and training
- Ensures corrective action when violations are recognized



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Best Practices in Fair Lending Compliance (continued)

Fair Lending Monitoring System

There are numerous benefits to establishing a strong fair lending monitoring system, chief among them are:

- Ensuring a pro-active approach to fair treatment
- Identifying problems before a fair lending complaint investigation results
- Self correction is considered a mitigating factor by regulators in determining the type and intensity of mandated corrective action for fair lending violations



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Best Practices in Fair Lending Compliance (continued)

Self Evaluation

A common and effective monitoring system is the fair lending self-evaluation process. A self-evaluation can be any process that an institution establishes to assess its fair lending posture. The scope and nature of these evaluations vary widely among institutions based on a bank's size and risk profile, but the following are some of the most common:

- Second review of denied applications
- Analysis of Home Mortgage Disclosure Act Data for disparities
- Comparative file review
- Monitoring of lending policy exceptions



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Best Practices in Fair Lending Compliance (continued)

Self Test

- Under ECOA, a self-evaluation is different from a self-test. A self-test is defined as “any program, practice, or study designed and used specifically to determine the extent or effectiveness of a creditor's compliance with the act or Regulation B; and creates information that is not available and cannot be derived from files/records related to credit transactions.”
- The report or results of the self-test (NOT self-evaluation) that a creditor voluntarily conducts are privileged, but the privilege applies only if appropriate corrective action is being or has been taken.



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Best Practices in Fair Lending Compliance (continued)

Self Test

- Self-testing and corrective actions do not expunge or extinguish legal liability for violations of law. However, self-testing and comprehensive corrective action will be considered a substantial mitigating factor by regulatory agencies, HUD and DOJ when contemplating possible enforcement actions.

The most common types of self-testing are:

- Use of mystery shoppers to identify pre-application discrimination
- Surveys of loan applicants after decision



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Resources

- Interagency Fair Lending Examination Procedures

<http://www.ffiec.gov/PDF/fairlend.pdf>

- Overview of Fair Lending laws

<http://www.fdic.gov/regulations/compliance/manual/pdf/IV-1.1.pdf>



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