

Introduction

The Office of Thrift Supervision's nondiscrimination regulations for lending are found in § 528. These requirements were adopted in furtherance of the Federal civil rights laws and economical home financing purposes of the statutes administered by the agency. The nondiscrimination regulations prohibit, among other things, refusals to consider loan applications on the basis of the age or location of a dwelling, and discrimination based on race, color, religion, sex, handicap, familial status 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. These rules operate in addition to the provisions of the Equal Credit Opportunity Act and its implementing Federal Reserve Board Regulation B, and the Fair Housing Act.

Nondiscrimination in Lending and Other Services

As stated in § 528.2, no savings association may deny a loan or other service, discriminate in the purchase of loans or securities, or discriminate in fixing the amount, interest rate, duration, application procedures, collection or enforcement procedures, or other terms or conditions of a 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, handicap, familial status or national origin of:

- an applicant or joint applicant;
- any person associated with the applicant regarding such loan or other service, or with the purposes of such loan or other service;
- the present or prospective owners, lessees, tenants, or occupants of the dwelling(s), or other dwellings in the vicinity of the dwelling(s) for which such loan or other service is to be made or given; and
- the present or prospective owners, lessees, tenants, or occupants of other dwelling(s), for

which such loan or other service is to be made or given.

An association must consider, without prejudice, the combined income of joint applicants for a loan or other service. The practice of discounting all or a part of either spouses' income where spouses apply jointly is a violation 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 childbearing intentions of a couple or an individual may not be requested.

The OTS nondiscrimination regulations are specifically applicable to loan applications by American Indians, and to loans secured by property located on or in the vicinity of an American Indian Reservation.

Nondiscriminatory Appraisal and Underwriting**Appraisals**

Associations are prohibited by § 528.2a from using or relying upon an appraisal of a dwelling which it 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 or the Equal Credit Opportunity Act.

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 risk. An appraisal standard is one of several critical components of a sound underwriting policy. The savings association's written appraisal policy and practices, should provide for nondiscriminatory assessments of market conditions and estimates of market value. Management should include these considerations in its periodic review of the performance of approved appraisers.

Underwriting

Each association is required to have clearly written, nondiscriminatory loan underwriting standards available to the public upon request, at each of its offices. These standards must be annually reviewed by the association to ensure equal opportunity in lending. 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 unnecessarily 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.

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.

Perceived negative property features should be based upon sound economic principals, fully supported, and may not be double counted in the appraisal and underwriting process.

The FHLBB previously acknowledged that one valid reason for denying a loan would be a savings

association's inability to enforce its security interest following default if there was a lack of a judicial or quasijudicial process to do so in an area under the jurisdiction of an American Indian tribe. An association defending such a policy or practice as a bona fide business necessity must demonstrate that there is "no reasonable forum" provided by the tribal court system for the enforcement of its security interest. The following considerations apply:

- If a tribal court or other adjudicatory system provides remedies similar or identical to those available in state courts, there would be a conclusive presumption that a reasonable forum exists.
- If the lender can effectively recover the collateral, then a tribal system would constitute a reasonable forum, even if it differs from a state forum.
- An argument that the tribal process would be time consuming or too costly will not meet the "no reasonable forum" standard, unless specific statistical evidence is shown that the chances of cost-effective recovery, i.e., as related to the recoverable value of the security interest, are smaller than the chances under state law.
- If an association intends to offer as a reason for denial that a tribal legal system is inadequate, it must consult legal counsel. Prior to the association's denial of any loan application on this basis, management must obtain counsel's written opinion concluding that no reasonable forum exists in the tribal court system to allow the enforcement of a security interest. That opinion should be maintained as part of the file for each affected loan application.

Nondiscrimination in Applications

Associations are prohibited from discriminating on a prohibited basis against anyone who: makes application for any such loan or service; requests forms or papers to be used to make application for any such loan or service; or inquires about the availability of such loan or service.

Anyone inquiring about a loan has a right to file a written application and to receive a copy of the

association's underwriting standards. Each association has to inform inquirers of this right.

Nondiscriminatory Advertising

No association 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 the OTS nondiscrimination requirements. Advertisements other than for savings shall include a facsimile of the Equal Housing Lender logotype and legend.

Associations 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 association 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. This review should begin with an examination of the loan portfolio and applications to ascertain whether, in view of the demographic characteristics and credit demands of the community in which the association is located, it is adequately serving the community on a nondiscriminatory basis.

Equal Housing Lender Poster

Section 528.5 requires each association to post and maintain an Equal Housing Lender Poster in the lobby of each of its offices in a prominent place(s) readily apparent to all persons seeking loans. This section also mandates the text of the poster.

Loan/Application Registers

Savings associations subject to Federal Reserve Board Regulation C are required to maintain loan application registers and file those registers with the OTS in accordance with 12 CFR 203. In addition, savings associations must enter the reason for denial, using the codes in 12 CFR 203 for all loan denials.

Examination Objectives

To assure that the association is not discriminating on a prohibited basis in the loan decision-making process.

To assure that the association has procedures in place to assure that it is in compliance with the non discrimination requirements.

To assure that the association is properly completing its loan/application registers.

To aid the Community Reinvestment Act examination by determining within the assessment area, the distribution of applications received from and loans made in the community, including low/moderate income census tracts and in determining whether there are sections of the CRA community or effective lending territory in which the association is not an active lender.

Examination Procedures

On December 4, 1998, the Federal Financial Institutions Examination Council approved new Interagency Fair Lending Examination Procedures. OTS implemented these procedures effective for all examinations commencing March 1, 1999 or after. These procedures are set forth in Section 201 of this handbook.

Interagency Fair Lending Examination Procedures are designed to identify and document fair lending violations and compliance management deficiencies through a file analysis regimen. They represent a flexible framework for conducting an analysis of whether credit decisions are discriminatory in violation of the Fair Housing Act and the Equal Credit Opportunity Act. These procedures are to be integrated with the compliance examination program in an efficient and effective manner to assure appropriate oversight of all fair lending statutory and regulatory requirements in keeping with OTS' risk-focused, top-down approach.

Examiners should review the content and accuracy of the HMDA registers to ensure that the data reported is correct and can provide an appropriate basis for scoping the fair lending examination. The

HMDA review should be guided by the procedures contained in Section 205 of this handbook.

Examiners should conduct the fair lending examination by following the Interagency Fair Lending Examination Procedures set forth in Section 201 implemented in accordance with training and other agency guidance. During the examination, the examiner should also consider the institution's compliance with nondiscrimination obligations imposed by OTS regulations and the technical requirements of other applicable federal nondiscrimination laws and regulations.

References

Laws

Civil Rights Act of 1964

42 USC Title VIII of the Civil Rights Act of 1968-Fair Housing Act
3601 et seq.

42 USC Title IX of the Civil Rights Act of 1968-Prevention of Intimidation in Fair Housing
Section 901

15 USC Equal Credit Opportunity Act
1691 et seq.

12 USC Home Mortgage Disclosure Act
2801 et seq.

2 USC 2901 Community Reinvestment Act
et seq. of 1977

Regulations

24 CFR 109 Fair Housing Advertising Regulation

12 CFR 202 Regulation B

12 CFR 203 Regulation C

12 CFR 528 Nondiscrimination Requirements: Nondiscrimination in Lending and Other Services

Nondiscriminatory Appraisals and Underwriting
Nondiscrimination in Applications
Nondiscriminatory Advertising
Equal Housing Lender Poster
Monitoring Information—Loan Application Register
Nondiscrimination in Employment
Complaints

12 CFR 563e Community Reinvestment

Memoranda, Resolutions, and Opinions

SP 15 Enforcement Guidelines for Violations of the OTS' Nondiscrimination Regulations

R 30b Fair Housing Logos and Legends. Useful Guidelines for Sizing Logos and Legends; However, Alternative Use of "Equal Opportunity Lender" Legend Is No Longer Valid

TB 19 Revised HUD Fair Housing Regulations

TB 25 Disparities in Mortgage Lending

TB 40 Regulation B Amended to Implement the Women's Business Ownership Act of 1988

FHLBB Resolution 78-302 Published in the Supervisory Service as Comment-Ruling at 11,041. Prohibitions Against Discrimination in Financing of Housing

OGC
Opinion
03/21/74

Published in the Supervisory
Service as Comment-Ruling at
11,039. Applicability of Part 528
to 'Redlining', and 'Discrimination
in Effect' and the Association's
Burden of Proof. (See annotation
.2 to 12 CFR 528.2a)

Other References

FFIEC
Pamphlet

Home Mortgage Lending and
Equal Treatment