

Office of Regulatory Activities

TB 19 was superceded 12/1/99 by 24 CFR Part 14 and 12 CFR Part 528. Refer to Compliance Activities 200 and 210.

Handbook: Compliance Activities
Subjects: Fair Housing Act

Section: 210
TB 19

March 10, 1989

Revised FHLB Fair Housing Regulations

RESCINDED

Summary: On January 23, 1989, the Department of Housing and Urban Development ("HUD") published its Final Rule implementing the Fair Housing Amendments Act of 1988. The rule, which becomes effective on March 12, 1989, among other things, adds two new categories of protected persons and requires display of a revised fair housing poster. Other changes increase the penalties for noncompliance and revise procedures for filing and adjudicating complaints. Bank System Regulation 12 C.F.R. Part 528 is being amended to conform to relevant changes in the Fair Housing Act and HUD regulations.

For Further Information Contact:

The FHLBank District in which you are located or the Compliance Programs Division of the Office of Regulatory Activities, Washington, D.C.

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The Statute

The Fair Housing Amendments Act of 1988 [P.L. 100-430] was enacted on September 13, 1988, to strengthen Title VIII of the Civil Rights Act of 1968 ("Title VIII"), also known as the Fair Housing Act ("Act"). The amendments, effective March 12, 1989, among other things:

- Clarify that coverage of the Act (and HUD implementing regulations) extends to *all* entities whose business includes sale, rental, brokerage, advertising, or appraisal of residential real property, or providing "residential real estate-related transactions," and explicitly include in the definition of covered transactions all loans secured by residential real estate, regardless of the loan purpose;
- Add prohibitions against discrimination on the basis of a handicap or the familial status of any person associated with a covered sale or rental, or other covered transaction;
- Clarify that the provisions of the Act apply to secondary mort-

gage market and other purchase and sales transactions involving residential loans and residential-related securities;

- Clarify the obligations of the Federal financial regulatory agencies to promote affirmatively the objectives of the Act;
- Provide that an aggrieved party has one year from the date of an alleged discriminatory action to file a complaint with HUD and two years to file a complaint in court, and provide further that HUD may itself initiate complaints where it suspects discrimination;
- Grant to HUD authority to conduct discovery proceedings and to subpoena witnesses and documents in the course of investigating complaints;
- Require that upon receiving a complaint, either directly or by required referral from a regulatory agency, HUD must generally make its determination within 100 days. If HUD finds probable cause, it must issue a charge, following which the complainant may choose either an administrative proceeding or a jury trial. HUD or the Justice Department must place the case on a docket and represent the complainant; and

- Provide increased civil penalties and monetary and punitive damages, as well as injunctive relief, where prohibited practices are found.

HUD and FHLBS Regulations

On January 23, 1989, HUD published in the *Federal Register* [FR Vol. 54, No. 13, pages 3232-3317] its implementation of the Fair Housing Amendment Act of 1988. A complete copy of that *Federal Register* release appears as an attachment to this bulletin. The new regulations, codified as 12 C.F.R. Parts 100 - 121, are effective March 12, 1989.

The Office of Regulatory Activities expects member institutions to be fully aware of their new, as well as continuing, responsibilities under Title VIII and HUD's implementing regulations. Section 805 of the amended Act makes it unlawful to discriminate on a prohibited basis against any person not only in setting loan terms and conditions, but also "... in making available ..." a real estate-related transaction. Amendments to both the Act and HUD's regulations are clearly intended to broaden the scope of their coverage. Member institutions are encouraged to consult legal counsel for guidance in complying with the amended regulations, and to adopt policies and procedures that actively promote the conduct of business in conformity with the objectives of fair housing laws.

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In the following paragraphs, some of the many subjects covered in the HUD regulations are highlighted. The new protected categories and the new poster requirements. However, because of the abbreviated and partial coverage presented in this bulletin, all recipients are requested to study the complete HUD regulations attached.

The Bank System's own regulations at 12 C.F.R. Part 528 impose a number of similar nondiscrimination responsibilities. These rules are being amended to conform to relevant changes in Title VIII and the HUD regulations. In addition, Bank System complaint procedures are being reissued in revised form, to reaffirm existing procedures with appropriate changes to reflect new provisions of the amended Act and HUD regulations.

New Protected Categories

Title VIII prohibited discrimination in any aspect of the sale, rental, and financing of dwellings based on race, color, national origin, religion, or sex. The 1988 amendments expand this coverage to also prohibit discrimination on the basis of handicap or familial status.

"Handicap" means any physical or mental impairment which substantially limits one or more major life activities. Protection extends to persons with, or with a record of, such an impairment, or who are perceived or regarded as having such an impairment. The new regulations establish detailed rules for determining reasonable accommodations that must be provided to assist handicapped persons. [See 24 C.F.R. 100.202]

"Familial status" means the presence, or the anticipated presence, of

one or more children under 18 years of age. Reasonable occupancy standards established by local or state government, or by the landlord, are still permitted. Also, certain exemptions are available for developments that meet criteria set forth for housing of older persons. [See 24 C.F.R. 100.202 and 100.301]

While a number of the new requirements, especially those related to the handicapped, deal with design, construction and reasonable modification of physical structures, member institutions may be aware of the obligations imposed also on lenders, appraisers, and advertisers. Further, institutions, or their affiliates, engaged in or controlling the development, rental, or sale of residential properties (including real estate owned) will be directly responsible for compliance with regulations regarding both nondiscrimination and affirmative physical accommodation to the needs of handicapped persons.

Fair Housing Poster

Part 110 of the amended HUD regulations requires that all persons "... subject to sections 804 through 806 of the Fair Housing Act, 42 U.S.C. 3604 - 3606, ..." display a revised fair housing poster reflecting the new protected categories and other technical changes. The revised text for HUD fair housing posters, which must still be 11 by 14 inches in size, is specified in the regulation.

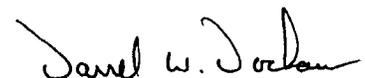
However, on March 7, 1989, the Federal financial regulatory agencies received HUD approval of a new "Equal Housing Lender" version of the fair housing poster, for display by Federally regulated financial institutions in lieu of the standard HUD poster. At this time the Federal Home Loan Bank Board is pre-

paring amendments to Bank System regulation 12 C.F.R. Part 528 which, when implemented, will require display of this Equal Housing Lender poster in all business lobbies of each member institution in lieu of, or in addition to, the standard HUD poster required by 24 C.F.R. Part 110.

A new, conforming fair housing poster must be displayed beginning March 12, 1989. An 8.5 by 11 inch facsimile of the proposed Equal Housing Lender poster is provided as an attachment to this bulletin. Pending final action by the Bank Board, institutions wishing to display this text on an 11 by 14 inch poster beginning March 12 may do so voluntarily. If the Equal Housing Lender text on the attachment is displayed properly, such use will satisfy the requirements of HUD regulation 24 C.F.R. Part 110 and, even though the Bank Board's amendment is still pending, will be deemed by the Office of Regulatory Activities to comply with Bank System regulation Part 528. While member institutions may display the standard HUD poster in order to satisfy HUD requirements, HUD posters will have to be replaced or supplemented by posters conforming to 12 C.F.R. Part 528 when the revised Bank System regulation becomes effective.

Attachment A: Proposed "Equal Housing Lender" poster to be incorporated in 12 C.F.R. 528.5

Attachment B: Full text of HUD fair housing regulations as published in the *Federal Register*



— Darrel W. Dochow, Executive Director