Equal Credit Opportunity Act (ECOA)

The Equal Credit Opportunity Act (ECOA), which is implemented by Regulation B, applies to all creditors. When originally enacted, ECOA gave the Federal Reserve Board responsibility for prescribing the implementing regulation. The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) transferred this authority to the Consumer Financial Protection Bureau (“CFPB” or “Bureau”). The Dodd-Frank Act granted rule-making authority under ECOA to the CFPB and, with respect to entities within its jurisdiction, granted authority to the CFPB to supervise for and enforce compliance with ECOA and its implementing regulations. In December 2011, the CFPB restated the Federal Reserve’s implementing regulation at 12 CFR Part 1002 (76 Fed. Reg. 79442)(December 21, 2011).

The statute provides that its purpose is to require financial institutions and other firms engaged in the extension of credit to “make credit equally available to all creditworthy customers without regard to sex or marital status.” Moreover, the statute makes it unlawful for “any creditor to discriminate against any applicant with respect to any aspect of a credit transaction (1) on the basis of race, color, religion, national origin, sex or marital status, or age (provided the applicant has the capacity to contract); (2) because all or part of the applicant’s income derives from any public assistance program; or (3) because the applicant has in good faith exercised any right under the Consumer Credit Protection Act.” The ECOA has two principal theories of liability: disparate treatment and disparate impact. Disparate treatment occurs when a creditor treats an applicant differently based on a prohibited basis such as race or national origin. Disparate impact occurs when a creditor employs facially neutral policies or practices that have an adverse effect or impact on a protected class unless it meets a legitimate business need that cannot reasonably be achieved as well by means that are less disparate in their impact.

In keeping with the broad reach of the statute’s prohibition, the regulation covers creditor activities before, during, and after the extension of credit. A synopsis of some of the more important points of Regulation B follows, and an examination program is provided for a more thorough review.

For fair lending scoping and examination procedures, the CFPB is temporarily adopting the FFIEC Interagency Fair Lending Examination Procedures that are referenced in the examination program. However, in applying those procedures the CFPB takes into account that the Fair

1 Sec.1071 of the Dodd-Frank Act added a new Sec. 704B to ECOA to require the collection of small business loan data. Sec.1474 amended subsection 701(e) of ECOA to generally require creditors to provide applicants copies of written appraisals and valuations developed in connection with the applicant’s application for a loan that is secured or would have been secured by a first lien on a dwelling promptly upon completion. Those amendments will be reflected in this document at a later date once they become effective.

2 12 CFR Part 1002 Supp. I Sec. 1002.4(a)-1; 12 CFR Part 1002 Supp. I Sec. 1002.4(a)-1. “Disparate treatment” may be “overt” (when the creditor openly discriminates on a prohibited basis) or it may be found through comparing the treatment of applicants who receive different treatment for no discernable reason other than a prohibited basis. In the latter case, it is not necessary that the creditor acts with any specific intent to discriminate.

3 12 CFR Part 1002 Supp. I Sec. 1002.6(a)-2.
Housing Act (FHAct), 42 U.S.C. 3601 et seq., unlike ECOA, is not a “Federal consumer financial law” as defined by the Dodd-Frank Act for which the CFPB has supervisory authority.\(^4\)

**Applicability – 12 CFR 1002.2(e), 1002.2(f), 1002.2(j), 1002.2(l), 1002.2(m), and 1002.2(q)**

Regulation B applies to all persons who, in the ordinary course of business, regularly participate in the credit decision, including setting the terms of the credit. The term “creditor” includes a creditor’s assignee, transferee, or subrogee who so participates. For purposes of discrimination or discouragement, 12 CFR 1002.4(a) and (b), the term creditor also includes a person who, in the ordinary course of business, regularly refers applicants or prospective applicants to creditors, or selects or offers to select creditors to whom requests for credit may be made.

Regulation B’s prohibitions apply to every aspect of an applicant’s dealings with a creditor regarding an application for credit or an existing extension of credit (including, but not limited to: information requirements; investigation procedures; standards of creditworthiness; terms of credit; furnishing of credit information; revocation, alteration, or termination of credit; and collection procedures). The regulation defines “applicant” as any person who requests or who has received an extension of credit from a creditor and includes any person who is or may become contractually liable regarding an extension of credit. Under Regulation B, an “application” means an oral or written request for an extension of credit made in accordance with procedures used by a creditor for the type of credit requested. “Extension of credit” means “the granting of credit in any form (including, but not limited to, credit granted in addition to any existing credit [,] the refinancing or other renewal of credit...or the continuance of existing credit without any special effort to collect at or after maturity).” Because the ECOA and Regulation B prohibit discrimination in any aspect of a credit transaction, a creditor violates the statute and regulation when discriminating against borrowers on a prohibited basis in approving or denying loan modifications. Moreover, as the definition of credit includes the right granted by a creditor to an applicant to defer payment of a debt, a loan modification is itself an extension of credit and subject to ECOA and Regulation B. Examples of loan modifications that are extensions of credit include, but are not limited to, the right to defer payment of a debt by capitalizing accrued interest and certain escrow advances, reducing the interest rate, extending the loan term, and/or providing for principal forbearance.\(^5\)

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\(^4\) In addition to potential ECOA violations, an examiner may identify potential violations of the FHAct through the course of an examination. The FHAct prohibits discrimination in the sale, rental, and financing of dwellings, and in other housing-related transactions, based on race, color, national origin, religion, sex, familial status (including children under the age of 18 living with parents or legal custodians, pregnant women, and people securing custody of children under the age of 18), and handicap (disability). The CFPB cooperates with the U.S. Department of Housing and Urban Development (HUD) to further the purposes of the FHAct. If a potential FHAct violation is identified, the examiner must consult with Headquarters to determine whether a referral to HUD or the U.S. Department of Justice and, if applicable, the creditor’s prudential regulator is appropriate.

Prohibited Practices – 12 CFR 1002.4

Regulation B contains two basic and comprehensive prohibitions against discriminatory lending practices:

- A creditor shall not discriminate against an applicant on a prohibited basis regarding any aspect of a credit transaction.

- A creditor shall not make any oral or written statement, in advertising or otherwise, to applicants or prospective applicants that would discourage, on a prohibited basis, a reasonable person from making or pursuing an application.

Note that the regulation is concerned not only with the treatment of persons who have initiated the application process, but also with lender behavior before the application is even taken. Lending officers and employees must be careful to take no action that would, on a prohibited basis, discourage a reasonable person from applying for a loan. For example, a creditor may not advertise its credit services and practices in ways that would tend to encourage some types of borrowers and discourage others on a prohibited basis. In addition, a creditor may not use prescreening tactics likely to discourage potential applicants on a prohibited basis. Instructions to loan officers or brokers to use scripts, rate quotes, or other means to discourage applicants from applying for credit on a prohibited basis are also prohibited.

The prohibition against discouraging applicants applies to in-person oral and telephone inquiries as well as to written applications. Lending officers must refrain from requesting prohibited information in conversations with applicants during the pre-interview phase (that is, before the application is taken) as well as when taking the written application.

To prevent discrimination in the credit-granting process, the regulation imposes a delicate balance between the creditor’s need to know as much as possible about a prospective borrower with the borrower’s right not to disclose information irrelevant to the credit transaction as well as relevant information that is likely to be used in connection with discrimination on a prohibited basis. To this end, the regulation addresses taking, evaluating, and acting on applications as well as furnishing and maintaining credit information.

Electronic Disclosures – 12 CFR 1002.4(d)

Disclosures required to be given in writing may be provided to the applicant in electronic form, generally subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 et seq.).

Rules for Taking Applications – 12 CFR 1002.5

Regulation B permits creditors to ask for any information in connection with a credit transaction, so long as they avoid certain clearly defined areas set forth in 12 CFR 1002.5, which include both the specific prohibited bases of discrimination and certain types of information that often relates to discrimination on a prohibited basis.
Applicant Characteristics

Creditors may not request or collect information about an applicant’s race, color, religion, national origin, or sex. Exceptions to this rule generally involve situations in which the information is necessary to test for compliance with fair lending rules or is required by a state or federal regulatory agency or other government entity for a particular purpose, such as to determine eligibility for a particular program. For example, a creditor may request prohibited information:

- In connection with a self-test being conducted by the creditor (provided that the self-test meets certain requirements) (12 CFR 1002.15);
- For monitoring purposes in relation to credit secured by real estate (12 CFR 1002.13; the Home Mortgage Disclosure Act, 12 U.S.C. 2801 (“HMDA”); Home Affordable Modification Program (“HAMP”)); or
- To determine an applicant’s eligibility for special-purpose credit programs (12 CFR 1002.8(b), (c) and (d)).

Information about a Spouse or Former Spouse – 12 CFR 1002.5(c)

A creditor may not request information about an applicant’s spouse or former spouse except under the following circumstances:

- The non-applicant spouse will be a permitted user of or joint obligor on the account. (NOTE: The term “permitted user” applies only to open-end accounts.)
- The non-applicant spouse will be contractually liable on the account.
- The applicant is relying on the spouse’s income, at least in part, as a source of repayment.
- The applicant resides in a community property state, or the property upon which the applicant is relying as a basis for repayment of the credit requested is located in such a state.
- The applicant is relying on alimony, child support, or separate maintenance income as a basis for obtaining the credit.
Inquiries Concerning Marital Status – 12 CFR 1002.5(d)(1) and 1002.5(d)(3)

Individual Credit

When an applicant applies for individual credit, the creditor may not ask the applicant’s marital status. There are two exceptions to this rule:

- If the credit transaction is to be secured, the creditor may ask the applicant’s marital status. (This information may be necessary to determine what would be required to gain access to the collateral in the event of default.)

- If the applicant either resides in a community property state or lists assets to support the debt that are located in such a state, the creditor may ask the applicant’s marital status. (In community property states, assets owned by a married individual may also be owned by the spouse, thus complicating the availability of assets to satisfy a debt in the event of default.)

Joint Credit

When a request for credit is joint (made by two or more individuals who will be primarily liable), the creditor may ask the applicant’s marital status, regardless of whether the credit is to be secured or unsecured, but may use only the terms “married,” “unmarried,” and “separated.” This requirement applies to oral as well as written requests for marital status information. “Unmarried” may be defined to include divorced, widowed, or never married, but the application must not be structured in such a way as to encourage the applicant to distinguish among these.

Alimony, Child Support, or Separate Maintenance Income – 12 CFR 1002.5(d)(2)

A creditor may ask if an applicant is receiving alimony, child support, or separate maintenance payments. However, the creditor must first disclose to the applicant that such income need not be revealed unless the applicant wishes to rely on that income in the determination of creditworthiness. An appropriate notice to that effect must be given whenever the creditor makes a general request concerning income and the source of that income. Therefore, a creditor either must ask questions designed to solicit only information about specific income (for example, “salary,” “wages,” “employment,” or other specified categories of income) or must state that disclosure of alimony, child support, or separate maintenance payments is not required.

Residency and Immigration Status – 12 CFR 1002.5(e)

The creditor may inquire about the applicant’s permanent residence and immigration status in the United States in determining creditworthiness.
Rules for Evaluating Applications – 12 CFR 1002.6

General Rule

A creditor may consider any information in evaluating applicants, so long as the use of the information does not have the intent or the effect of discriminating against an applicant on a prohibited basis. Generally, a creditor may not:

- Consider any of the prohibited bases, including age (providing the applicant is old enough, under state law, to enter into a binding contract) and the receipt of public assistance;
- Use child-bearing or child-rearing information, assumptions, or statistics to determine whether an applicant’s income may be interrupted or decreased;
- Consider whether there is a telephone listing in the applicant’s name (but the creditor may consider whether there is a telephone in the applicant’s home); or
- Discount or exclude part-time income from an applicant or the spouse of an applicant.

Systems for Analyzing Credit

Regulation B neither requires nor endorses any particular method of credit analysis. Creditors may use traditional methods, such as judgmental systems that rely on a credit officer’s subjective evaluation of an applicant’s creditworthiness, or they may use more-objective, statistically developed techniques such as credit scoring.

Credit Scoring Systems

Section 1002.2(p) of Regulation B prescribes the standards that a credit scoring system must meet to qualify as an “empirically derived, demonstrably and statistically sound, credit system.” All forms of credit analysis that do not meet the standards are automatically classified as “judgmental” systems. This distinction is important because creditors that use a “demonstrably and statistically sound” system may take applicant age directly into account as a predictive variable, whereas judgmental systems may do so only to determine a pertinent element of creditworthiness or to favor an elderly applicant.

Judgmental Evaluation Systems

Any system other than one that is empirically derived and demonstrably and statistically sound, is a judgmental system (including any credit scoring system that does not meet the prescribed technical standards). With limited exception, such a system may not take applicant age directly into account in evaluating creditworthiness. The act and the regulation permit a creditor to consider the applicant’s age for the purpose of evaluating other applicant information that has a

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6 This applies provided that the age of an elderly applicant is not assigned a negative factor or value.
demonstrable relationship to creditworthiness. Additionally, in any system of evaluating creditworthiness, a creditor may consider the age of an elderly applicant to favor the applicant in extending credit.

**Rules for Extensions of Credit – 12 CFR 1002.7**

Section 1002.7 of Regulation B provides a set of rules proscribing certain discriminatory practices regarding the creation and continuation of credit accounts.

**Signature Requirements**

The primary purpose of the signature requirements is to permit creditworthy individuals (particularly women) to obtain credit on their own. Two general rules apply:

- A creditor may not require a signature other than the applicant’s or joint applicant’s if under the creditor’s standards of creditworthiness the applicant qualifies for the amount and terms of the credit requested.

- A creditor has more latitude in seeking signatures on instruments necessary to reach property used as security, or in support of the customer’s creditworthiness, than it has in obtaining the signatures of persons other than the applicant on documents that establish the contractual obligation to repay.

When assessing the level of a creditor’s compliance with the signature requirements, examiners should consult with the Examiner-in-Charge if any questions arise.

**Special-Purpose Credit Programs – 12 CFR 1002.8**

The ECOA and Regulation B allow creditors to establish special-purpose credit programs for applicants who meet certain eligibility requirements. Generally, these programs target an economically disadvantaged class of individuals and are authorized by federal or state law. Some are offered by not-for-profit organizations that meet certain IRS guidelines, and some by for-profit organizations that meet specific tests outlined in 12 CFR 1002.8.

Examiners are encouraged, if an issue arises regarding such a program, to consult with Headquarters.

**Notifications – 12 CFR 1002.9**

A creditor must notify an applicant of action taken on the applicant’s request for credit, whether favorable or adverse, within 30 days after receiving a completed application. Notice of approval may be expressly stated or implied (for example, the creditor may give the applicant the credit card, money, property, or services for which the applicant applied).

Notification of adverse action taken on an existing account must also be made within 30 days.

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7Judgmental systems may consider the amount and probable continuance of income. A planned reduction in income due to retirement may, for example, be considered.
Under at least two circumstances, the creditor need not comply with the 30-day notification rule:

- The creditor must notify an applicant of adverse action within 90 days after making a counteroffer unless the applicant accepts or uses the credit during that time.

- The creditor may not have to notify an applicant of adverse action if the application was incomplete and the creditor sent the applicant a notice of incompleteness that met certain requirements set forth in 12 CFR 1002.9(c).

**Adverse Action Notice – 12 CFR 1002.9(a)(2)**

A notification of adverse action must be in writing and must contain certain information, including the name and address of the creditor and the nature of the action that was taken. In addition, the creditor must provide an ECOA notice that includes the identity of the federal agency responsible for enforcing compliance with the act for that creditor. This notice is generally included on the notification of adverse action. The creditor must also either provide the applicant with the specific principal reason for the action taken or disclose that the applicant has the right to request the reason(s) for denial within 60 days of receipt of the creditor’s notification, along with the name, address, and telephone number of the person who can provide the specific reason(s) for the adverse action. The reason may be given orally if the creditor also advises the applicant of the right to obtain the reason in writing upon request.

**Incomplete Applications – 12 CFR 1002.9(c)**

When a creditor receives an incomplete application, it may send one of two alternative notifications to the applicant. One is a notice of adverse action; the other is a notice of incompleteness. The notice of incompleteness must be in writing and must specify the information the creditor needs if it is to consider the application; it must also provide a reasonable period of time for the applicant to furnish the missing information.

**Applications Submitted Through a Third Party – 12 CFR 1002.9(g)**

When more than one creditor is involved in a transaction and adverse action is taken with respect to the application for credit by all the creditors involved, each creditor that took such action must provide a notice of action taken. The notification may be given by a third party; however, the notice must disclose the identity of each creditor on whose behalf the notice is given. If one of the creditors approves the application, the creditors that took adverse action need not provide notification.

**Notification to Business Credit Applicants – 12 CFR 1002.9(a)(3)**

The notification requirements for business credit applicants are different from those for consumer credit applicants and are more extensive if the business had gross revenues of
$1,000,000 or less in the preceding fiscal year. Extensions of trade credit, credit incident to a factoring agreement, and similar types of credit are subject to the same rules as those that apply to businesses that had gross revenues of more than $1,000,000.

Generally, a creditor must comply with the same notification requirements for business credit applicants with gross revenues of $1,000,000 or less as it does for consumer credit applicants. However, the creditor has more options when dealing with these business credit applicants. First, the creditor may tell the business credit applicant orally of the action taken. Second, if the creditor chooses to provide a notice informing the business credit applicant of the right to request the reason for action taken, it may, rather than disclose the reason itself, provide the notice at the time of application. If the creditor chooses to inform the applicant of the right to request a reason, however, it must provide a disclosure with an ECOA notice that is in retainable form and that gives the applicant the same information that must be provided to consumer credit applicants when this option is used (see 12 CFR 1002.9(a)(2)(ii)). Finally, if the application was made entirely over the phone, the creditor may provide an oral statement of action taken and of the applicant’s right to a statement of reasons for adverse action.

The notification requirements for business credit applicants with gross revenues of more than $1,000,000 are relatively simple. The creditor must notify the applicant of the action taken within a reasonable time period. The notice may be oral or in writing; a written statement of the reasons for adverse action and the ECOA notice need be provided only if the applicant makes a written request within 60 days of the creditor’s notification of the action taken.

**Designation of Accounts – 12 CFR 1002.10(a)**

A creditor that furnishes credit information to a consumer reporting agency must designate:

- Any new account to reflect the participation of both spouses if the applicant’s spouse is permitted to use or is contractually liable on the account; and

- Any existing account to reflect the participation of both spouses within 90 days after receiving a written request to do so from one of the spouses.

If a creditor furnishes credit information to a consumer reporting agency, the creditor must furnish the information in the name of the spouse about whom the information was requested.

**Record Retention – 12 CFR 1002.12**

**Applications**

In general, a creditor must preserve all written or recorded information connected with an application for 25 months (12 months for business credit) after the date on which the creditor informed the applicant of action taken on an application or of incompleteness of an application.
**Prohibited Information**

A creditor may retain information in its files that it may not use in evaluating applications. However, the information must have been obtained inadvertently or in accordance with federal or state law or regulation.

**Existing Accounts**

A creditor must preserve any written or recorded information concerning adverse action on an existing account as well as any written statement submitted by the applicant alleging a violation of the ECOA or Regulation B. This evidence must be kept for 25 months (12 months for business credit).

**Prescreened Solicitations**

The 25-month retention rule also applies when a creditor makes an offer of credit to potential customers. In such cases, the creditor must retain for 25 months following the date of the solicitation:

- The text of any prescreened solicitation;
- The list of criteria the creditor used to select potential recipients of the solicitation; and
- Any correspondence related to complaints (formal or informal) about the solicitation.

**Rules for Providing Appraisal Reports – 12 CFR 1002.14**

Regulation B requires that creditors provide a copy of the appraisal report used in connection with an application for credit to be secured by a lien on a dwelling. A creditor may provide the copy either routinely (whether or not credit is granted or the application is withdrawn) or upon an applicant’s written request. If the creditor provides an appraisal report only upon request, it must inform the applicant in writing of the right to receive a copy of the report.

**Incentives for Self-Testing and Self-Correction – 12 CFR 1002.15**

A self-test, as discussed in 12 CFR 1002.15 of Regulation B, must meet two criteria. First, it must be a program, practice, or study that a lender designs and uses specifically to determine the extent or effectiveness of its compliance with the regulation. Second, the results of the self-test must create data or factual information that is otherwise not available and cannot be derived from loan or application files or other records related to credit transactions. The findings of a self-test that is conducted voluntarily by a creditor and that meets the conditions set forth in 12 CFR 1002.15 are privileged against discovery or use by (1) a government agency in any examination or investigation related to the ECOA or Regulation B or (2) a government agency or an applicant in any legal proceeding involving an alleged violation of the ECOA or Regulation B. Privileged information includes the report or results of the test; data or other information created by the test; and any analysis, opinions, or conclusions regarding the results of the test.
To qualify for the privilege, appropriate corrective action is required when the results of a self-test show that it is more likely than not that there has been a violation of the ECOA or Regulation B.\(^8\) The privilege does not cover information about whether a test was conducted; the methodology, scope, time period, or dates covered by the test; loan or application files or other business records; and information derived from such files and records, even if aggregated, summarized, or reorganized.

**Enforcement, Penalties, and Liabilities – 12 CFR 1002.16**

In addition to actual damages, the Act provides for punitive damages of up to $10,000 in individual lawsuits and up to the lesser of $500,000 or 1 percent of the creditor’s net worth in class action suits. Successful complainants are also entitled to an award of court costs and attorney’s fees.

A creditor is not liable for failure to comply with the notification requirements of 12 CFR 1002.9 or the reporting requirements of 12 CFR 1002.10 if the failure was caused by an inadvertent error and the creditor, after discovering the error (1) corrects the error as soon as possible and (2) begins compliance with the requirements of the regulation. “Inadvertent errors” include mechanical, electronic, and clerical errors that the creditor can show (1) were not intentional and (2) occurred despite the fact that the creditor maintains procedures reasonably adapted to avoid such errors. Similarly, failure to comply with 12 CFR 1002.6(b)(6), 1002.12, and 1002.13 is not considered a violation if it results from an inadvertent error and the creditor takes the corrective action noted above. Errors involving 12 CFR 1002.12 and 1002.13 may be corrected prospectively by the creditor.

**REFERENCES**

**Laws**

12 U.S.C. 1691 *et seq.* Equal Credit Opportunity Act

**Regulations**

**Consumer Financial Protection Bureau Regulation (12 CFR)**

Part 1002 Equal Credit Opportunity (Regulation B)

\(^8\)12 CFR 1002.15(c)
Equal Credit Opportunity Act

Examination Procedures

- To determine whether the creditor has established policies, procedures, and internal controls to ensure that it is in compliance with the Equal Credit Opportunity Act (ECOA) and its implementing Regulation B.

- To determine whether the creditor discriminated against members of one or more protected classes in any aspect of its credit operations.

- To determine whether the creditor is in compliance with those requirements of ECOA that are set forth in Regulation B.

NOTE: This document refers throughout to the Interagency Fair Lending Examination Procedures (“IFLEP”). When applying those procedures, it is important to keep in mind that the Fair Housing Act, unlike ECOA, is not a “Federal consumer financial law” for which the CFPB has supervisory authority.

Section A: ECOA / REGULATION B COMPLIANCE MANAGEMENT / RISK ASSESSMENT EXAMINATION PROCEDURES

A. Examination Objective & Purpose

- To determine whether the creditor has established policies, procedures and internal controls to ensure that it is in compliance with the ECOA and Regulation B. The intensity and scope of the current ECOA / Regulation B examination will depend in part on the adequacy of the creditor’s compliance management program.

B. Examination Procedures

1. Review the creditor’s overall compliance management program. Following the Compliance Management Review procedures in the CFPB’ Supervision/Examination Manual; verify that the ECOA and Regulation B compliance is effectively integrated into the creditor’s compliance management program.

2. Consult Part II (“Compliance Management Review”) of the IFLEP and apply the Compliance Management Analysis Checklist in the IFLEP Appendix.

NOTE: When performing 1 and 2 above, pay special close attention to the creditor’s compliance management policies and procedures with respect to the following:

- Does any aspect of the creditor’s credit operations appear to vary by any of the prohibited bases? Examples: (i) The creditor establishes most of its branches in predominately non-
minority neighborhoods and does not have a presence in nearby minority neighborhoods; or (ii) Spanish and English advertisements emphasize different credit products.

- Do the creditor’s underwriting or pricing guidelines contain any unusual criteria that could have a possibly negative disparate impact on a protected class? (e.g., underwriting or price models that use ZIP codes.

- Are the creditor’s policies, procedures, or guidelines vague or unduly subjective with respect to (i) underwriting; (ii) pricing; (iii) referring applicants to subsidiaries, affiliates, or lending channels within the creditor; (iv) classifying applicants as “prime” or “sub-prime” borrowers; or (v) deciding what kinds of alternative loan products should be offered or recommended to applicants?

- Does the creditor allow exceptions to its underwriting, pricing, or product recommendation policies and procedures to be made subjectively or without clear guidance? Even if the policies and procedures are clear, does the creditor make a large number of such exceptions?

- Does the creditor give its employees significant discretion to decide what products to offer or the price to offer, including both interest rates and fees?

- Does any employee receive incentives depending, directly or indirectly, on the terms or conditions of the credit product sold or the price (including both interest rates and fees) charged?

- Does the creditor rely on third parties, such as brokers, for a significant part of its credit operations?

These factors create conditions under which the risk of fair lending violations may be increased. Whether any particular factor constitutes a fair lending violation requires consideration of the particular facts and circumstances at issue.

C. Examiner’s Compliance Management / Risk Assessment Examination Summary, Recommendation and Comments

[Click&type]
Section B: FAIR LENDING EXAMINATION PROCEDURES

A. Examination Objective & Purpose

- To determine whether the creditor discriminated against members of one or more protected classes in any aspect of its credit operations.

B. Pre-Examination Procedures – Data Request\(^1\)

1. For mortgages, determine if the CFPB has received all the data typically used by creditors in pricing and underwriting decisions. If not, in consultation with Headquarters, request from the creditor all relevant data in electronic format.

2. For non-mortgage products, in consultation with Headquarters, request from the creditor all relevant data in electronic format.

NOTE: It may take a significant amount of time for the creditor to produce data and for Headquarters to review it. Data requests should be sent out as early as practicable to ensure the incorporation of all analyses in the examination.

C. Pre-Examination Procedures – Scoping

No single fair lending examination can reasonably be expected to scrutinize every aspect of an institution’s credit operations. The purpose of pre-examination scoping is to help examiners target areas with the highest fair lending risk.

The examiners, together with Headquarters, should use statistical analyses whenever appropriate to scope fair lending examinations in addition to following the procedures in Part I of the IFLEP (“Examination Scope Guidelines”).

1. Review any preliminary data screens provided by Headquarters to identify possible examination focal points.\(^3\)

2. Review information from previous compliance examinations that could inform potential focal points of the current examination.

3. Follow the steps in the Examination Scope Guidelines. Inform Headquarters of the information you gathered about the creditor. Consult Headquarters to determine what additional information would be helpful to improve data analyses and refine scoping.

4. Together with Headquarters, finalize the scope and intensity of the fair lending examination.

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\(^1\) If it is decided that statistical methods will not be used in the examination, this step can be skipped.

\(^2\) For some creditors, the CFPB routinely requests additional mortgage data fields beyond the HMDA data. For these creditors, the examiners will likely not have to make any pre-examination mortgage data requests.

\(^3\) A focal point is a combination of loan product(s), market(s), decision center(s), time frame and prohibited basis to be analyzed during the fair lending examination.
D. Examination Procedures

The IFLEP’s examination procedures (Part III) are focused on conducting comparative file reviews and not statistical analysis. It is important to supplement the IFLEP examination procedures whenever statistical analysis is involved.

1. When statistical analysis is not part of the examination, follow Part III of the IFLEP to examine the creditor. Working with Headquarters, assess possible violations, and follow Part IV of the IFLEP, Steps 1–3, when discussing results with the creditor and reviewing all responses.

2. When statistical analysis is part of the examination, examiners should work closely with Headquarters to do the following:
   a. Follow Part III of the IFLEP to examine the creditor, including conducting comparative file reviews as appropriate.
   b. Integrate creditor-specific information into statistical models. Follow Part III.A of the IFLEP to verify the accuracy of the data. To the extent HMDA data is used, apply the HMDA / Regulation C examination procedures to verify data integrity. For non-mortgage data, consult with Headquarters on how to verify data integrity. If the most recent Compliance Management review indicates that the creditor does not have adequate policies and procedures in place to ensure data integrity, increase the sample size for the data verification.
   c. Assess possible violations, and follow Part IV of the IFLEP, Step 1, to discuss results with the creditor, including sharing our statistical analyses with the creditor and asking for comments and explanations.
   d. Review the creditor’s response. Follow Part IV of the IFLEP, Steps 2–3. If necessary, in consultation with Headquarters, refine our statistical models and re-analyze.

3. Consult with Headquarters to reach the final conclusions. Follow Part IV of the IFLEP, Steps 4–5.

E. Examiner’s Fair Lending Examination Summary, Recommendation and Comments

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Section C: REGULATION B EXAMINATION CHECKLIST

A. Examination Objective & Purpose

- To determine whether the creditor is in compliance with those requirements of ECOA that are set forth in Regulation B.

B. Examination Procedures

The ECOA and its implementing Regulation B not only prohibit discrimination in credit transactions, but also set forth additional requirements, such as requiring adverse action notices in appropriate circumstances. Thus, not all items on the checklist relate to discrimination. Some items on the checklist, however, do reflect a possible fair lending violation even though they are not stated in those terms.

Accordingly, depending on the general risk profile of the creditor and the Section A Compliance Management/Risk Assessment, not all items on the checklist need be included in every fair lending exam. Examiners should consult with Headquarters to determine which sections of this checklist should be completed in an examination.

The checklist, supporting documentation for any apparent violations, and management response should be included in the work papers. In consultation with Headquarters, the Examiner-in-Charge, and the Regional Manager, request that the management responsible for the transactions provide a response on any apparent violations.

A “No” answer indicates a possible exception or deficiency and should be explained in the work papers. If a line item is not applicable within the area you are reviewing, indicate “NA.”

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4 If the violation of 12 CFR 1002.6(b)(6), 1002.9, 1002.10, 1002.12, or 1002.13 results from an inadvertent error, namely a mechanical, electronic, or clerical error that the creditor demonstrates was not intentional and occurred notwithstanding the maintenance of procedures reasonably adapted to avoid such errors, there is no violation. On discovering an inadvertent error under 12 CFR 1002.9 and 1002.10, the creditor must correct it as soon as possible; inadvertent errors under 12 CFR 1002.12 and 1002.13 must be corrected prospectively. To determine whether an error is inadvertent, you should consult with the Examiner-in-Charge.
All citations are to Regulation B, 12 CFR Part 1002.

<table>
<thead>
<tr>
<th>Prohibited Practices</th>
<th>Yes No</th>
<th>Basis of Conclusion</th>
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<tbody>
<tr>
<td><strong>Discrimination</strong></td>
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<tr>
<td><strong>See Section B: Fair Lending Examination Procedures</strong></td>
<td>[Click&amp;type]</td>
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<tr>
<td><strong>Discouragement</strong></td>
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<tr>
<td>Obtain and review marketing and advertising materials (including signs or other displays), pre-screened solicitations, and the criteria used to determine the potential recipients of the particular solicitation, scripts, and interview forms used for pre-application interviews and for taking applications, and rate sheets and product information used in discussing available types of credit with applicants. Conduct loan agent interviews to determine whether they show an understanding of the regulatory requirements.</td>
<td>[Click&amp;type]</td>
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<tr>
<td>1. Does the creditor not make any oral or written statements, in advertising or otherwise, to applicants or prospective applicants that would discourage on a prohibited basis a reasonable person from making or pursuing an application? (12 CFR 1002.4(b))</td>
<td>[Click&amp;type]</td>
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<tr>
<td>2. Does the creditor not use statements that the applicant should not bother to apply based on a prohibited basis (e.g., you shouldn’t bother to apply because you are retired)? (12 CFR Part 1002, Supp. I, Comment 1002.4(b)-I(i))</td>
<td>[Click&amp;type]</td>
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<tr>
<td>3. Does the creditor not use words, symbols, models or other forms of communication in advertising that express, imply, or suggest a discriminatory preference or a policy of exclusion in violation of the ECOA? (Comment 1002.4(b)-I(iii))</td>
<td>[Click&amp;type]</td>
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<tr>
<td>4. Does the creditor not use scripts that discourage applications on a prohibited basis? (Comment 1002.4(b)-I(iii))</td>
<td>[Click&amp;type]</td>
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<tr>
<td>5. Are the criteria used for pre-screened solicitations not discriminatory on a prohibited basis? (12 CFR 1002.4(a), (b))</td>
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## Examination Procedures

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### Rules for Taking Applications

Obtain and review application forms (including scripts for telephone applications and screen shots of online applications), disclosures, a sample of loan files, creditor policies and procedures and audits pertaining to the taking of applications, and training materials. Conduct loan officer interviews to determine whether they show an understanding of the regulatory requirements and that policies and procedures are consistently applied.

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7. Does the creditor use written applications for credit that is primarily for the purchase or refinancing of dwellings that are occupied or to be occupied by the applicant as a principal residence and where the credit will be secured by the dwellings? (12 CFR 1002.4(c), 1002.13(a))

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8. If the creditor collects information (in addition to information required for government monitoring purposes, such as 12 CFR 1002.13, HMDA, and HAMP) on the race, color, religion, national origin, or sex of the applicant or any other person in connection with a credit transaction for purposes of a "self-test":

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5 A creditor may obtain information that is otherwise restricted to determine eligibility for a special purpose program, as provided in 12 CFR 1002.28(b), (c), and (d). To the extent there is an appropriately established and administered special purpose program under which any otherwise restricted information was requested, obtaining such information should not constitute a violation, and Headquarters and the Examiners-in-Charge should be consulted.

6 To the extent the institution maintains any information in its files that is prohibited by the ECOA or Regulation B for use in evaluating applications, that information may be retained if it was obtained: (a) prior to March 23, 1977; (b) from consumer reporting agencies, an applicant, or others without the specific request of the creditor, or (c) as required to monitor compliance with the ECOA and Regulation B or other federal or state statutes or regulations. (12 CFR 1002.12(a))

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CFPB Manual V.2 (October 2012) Procedures 7
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<th>Examination Procedures</th>
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<th>Basis of Conclusion</th>
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<tr>
<td>b. Does the creditor disclose to the applicant, orally or in writing, when requesting the information that (1) the applicant is not required to provide the information; (2) the creditor is requesting the information to monitor its compliance with the federal ECOA; (3) Federal law prohibits the creditor from discriminating on the basis of this information, or on the basis of an applicant’s decision not to furnish the information; and (4) if applicable, certain information will be collected based on visual observation or surname if not provided by the applicant or other person? (12 CFR 1002.5(b)(1))</td>
<td>☐ ☐</td>
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<td>9. If a designation of title, such as Ms., Miss, Mrs., or Mr. is requested on an application form, does the form disclose that such designation is optional, and does the application form otherwise use only terms that are neutral as to sex? (12 CFR 1002.5(b)(2))</td>
<td>☐ ☐</td>
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<tr>
<td>10. Does the creditor only request any information concerning the spouse or former spouse of an applicant when:</td>
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<tr>
<td>a. The spouse will be permitted to use the account:</td>
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<tr>
<td>b. The spouse will be contractually liable on the account:</td>
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<tr>
<td>c. The applicant is relying on the spouse’s income as a basis for repayment of the credit requested:</td>
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<tr>
<td>d. The applicant resides in a community property state or is relying on property located in such a state as a basis for repayment of the credit requested: or</td>
<td>☐ ☐</td>
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<tr>
<td>e. The applicant is relying on alimony, child support, or separate maintenance payments from a spouse or former spouse as a basis for repayment of the credit requested? (12 CFR 1002.5(c)(2))</td>
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### Examination Procedures

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<th>Basis of Conclusion</th>
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<tbody>
<tr>
<td>In the case of applications for individual unsecured credit, does the creditor inquire about the applicant’s marital status only when the applicant resides in a community property state or is relying on property located in such a state as a basis for repayment of the credit requested? (12 CFR 1002.5(d)(1))</td>
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<tr>
<td>In the case of applications for other than individual unsecured credit, are the creditor’s inquiries into marital status limited to the terms “married,” “unmarried,” and “separated” (a creditor may explain that the category “unmarried” includes single, divorced, and widowed persons)? (12 CFR 1002.5(d)(1))</td>
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<tr>
<td>If the creditor inquires whether income stated in an application is derived from alimony, child support, or separate maintenance payments, does the creditor also disclose to the applicant that such income need not be revealed if the applicant does not want the creditor to consider the information in determining the applicant’s creditworthiness? (12 CFR 1002.5(d)(2))</td>
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<td>Does the creditor not inquire about birth control practices, intentions concerning the bearing or rearing of children, or capability to bear children? (A creditor may inquire about the number and ages of an applicant’s dependents or about dependent-related financial obligations or expenditures, provided such information is requested without regard to sex, marital status, or any other prohibited basis.) (12 CFR 1002.5(d)(3))</td>
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**Rules for Evaluating Applications**

- Obtain and review policies and procedures, training materials, a sample of loan files, audits pertaining to evaluating and pricing applications for credit (including, but not limited to those regarding loan servicing, modifications, collections, and loss mitigation), and information regarding statistical models used in credit evaluations. Conduct loan underwriter interviews to determine whether they show an understanding of the regulatory requirements and whether policies and procedures are consistently applied.
## CFPB Examination Procedures

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<th>Yes</th>
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<tr>
<td>15.</td>
<td>To the extent that a creditor takes into account an applicant’s age (assuming that the applicant has the capacity to enter into a binding contract), determine whether the creditor uses age in an empirically derived, demonstrably and statistically sound, credit scoring system or a judgmental system. (<a href="https://www.gpo.gov/fdsys/pkg/CFPB-ECOA-2012-0002/pdf/CFPB-ECOA-2012-0002.pdf">12 CFR 1002.6(b)(2)(p)</a>)</td>
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<td></td>
<td>a. In an empirically derived, demonstrably and statistically sound, credit scoring system, is age a predictive variable and is the age of an elderly applicant (62 or older) not assigned a negative factor or value? (<a href="https://www.gpo.gov/fdsys/pkg/CFPB-ECOA-2012-0002/pdf/CFPB-ECOA-2012-0002.pdf">12 CFR 1002.6(b)(2)(ii)</a>)</td>
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<td></td>
<td>b. In a judgmental system of evaluating creditworthiness, is the applicant’s age considered only for the purpose of determining a pertinent element of creditworthiness? (<a href="https://www.gpo.gov/fdsys/pkg/CFPB-ECOA-2012-0002/pdf/CFPB-ECOA-2012-0002.pdf">12 CFR 1002.6(b)(2)(iii)</a>)</td>
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<td>c. Except as set forth in Checklist Item 15(b) above (use for pertinent element of creditworthiness), in any system for evaluating creditworthiness, is the age of an applicant 62 or older considered only to favor him or her in extending credit? (<a href="https://www.gpo.gov/fdsys/pkg/CFPB-ECOA-2012-0002/pdf/CFPB-ECOA-2012-0002.pdf">12 CFR 1002.6(b)(2)(iv)</a>)</td>
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<td>16.</td>
<td>Does the creditor only take into account whether an applicant’s income derives from any public assistance program in a judgmental system of evaluating creditworthiness and only for the purpose of determining a pertinent element of creditworthiness? (<a href="https://www.gpo.gov/fdsys/pkg/CFPB-ECOA-2012-0002/pdf/CFPB-ECOA-2012-0002.pdf">12 CFR 1002.6(b)(2)(ii)</a>)</td>
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<td>17.</td>
<td>When evaluating creditworthiness, does the creditor not make assumptions or use aggregate statistics relating to the likelihood that any category of persons will bear or rear children or will, for that reason, receive diminished or interrupted income in the future? (<a href="https://www.gpo.gov/fdsys/pkg/CFPB-ECOA-2012-0002/pdf/CFPB-ECOA-2012-0002.pdf">12 CFR 1002.6(b)(3)</a>)</td>
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<td>18.</td>
<td>Does the creditor not take into account whether there is a telephone listing in the name of an applicant for consumer credit? (<a href="https://www.gpo.gov/fdsys/pkg/CFPB-ECOA-2012-0002/pdf/CFPB-ECOA-2012-0002.pdf">12 CFR 1002.6(b)(4)</a>)</td>
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<td>YesNo</td>
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<tr>
<td>19. Does the creditor count, and not discount or exclude from consideration, the income of an applicant or the spouse of an applicant because of a prohibited basis? (12 CFR 1002.6(b)(5)) (A creditor may consider the amount and probable continuance of any income in evaluating an applicant’s creditworthiness.)</td>
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<tr>
<td>20. Does the creditor consider income derived from part-time employment, alimony, child support, separate maintenance payments, retirement benefits, or public assistance on an individual basis, and not on the basis of aggregate statistics? (Comment 1002.6(b)(5)-1)</td>
<td>☐ ☐</td>
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<tr>
<td>21. Does the creditor count, and not discount or exclude from consideration, the income of an applicant or the spouse of an applicant because the income is derived from part-time employment, is an annuity, pension, or other retirement benefit, or comes from multiple income streams? (12 CFR 1002.6(b)(5), Comment 1002.6(b)(5)-4) (A creditor may consider the amount and probable continuance of any income in evaluating an applicant’s creditworthiness.)</td>
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<tr>
<td>22. When an applicant relies on alimony, child support, or separate maintenance payments in applying for credit, does the creditor consider such payments as income to the extent that they are likely to be consistently made? (12 CFR 1002.6(b)(5))</td>
<td>☐ ☐</td>
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<td>23. To the extent the creditor considers credit history in evaluating the creditworthiness of similarly qualified applicants for a similar type and amount of credit, in evaluating an applicant’s creditworthiness, does the creditor consider:</td>
<td>☐ ☐</td>
<td>[Click&amp;type]</td>
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<tr>
<td>a. The credit history, when available, of accounts designated as accounts that the applicant and the applicant’s spouse are permitted to use or for which both are contractually liable? (12 CFR 1002.6(b)(6)(i))</td>
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## Examination Procedures

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<tr>
<td>b. On the applicant’s request, any information that the applicant may present that tends to indicate the credit history being considered by the creditor does not accurately reflect the applicant’s creditworthiness? (12 CFR 1002.6(b)(6)(ii))</td>
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<tr>
<td>c. On the applicant’s request, the credit history, when available, of any account reported in the name of the applicant’s spouse or former spouse that the applicant can demonstrate accurately reflects the applicant’s creditworthiness? (12 CFR 1002.6(b)(6)(iii))</td>
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<td>24. Does the creditor not deny credit in whole or in part based on the country an applicant is from? (Comment 1002.2(z)-2))</td>
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<td>25. Are married and unmarried applicants evaluated by the same standards? (12 CFR 1002.6(b)(8))</td>
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<td>26. In evaluating joint applicants, are joint applicants treated in the same manner regardless of the existence, absence, or likelihood of a marital relationship between the parties? (12 CFR 1002.6(b)(8))</td>
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<tr>
<td>27. Does the creditor not consider race, color, religion, or sex (or an applicant’s or other person’s decision not to provide the information) in any aspect of a credit transaction? (12 CFR 1002.6(b)(1), (9))</td>
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### Rules for Extensions of Credit

Obtain and review policies and procedures, training materials, a sample of loan files, closing instructions on a sample of loans, and audits pertaining to extensions of credit (including, but not limited to signature requirements and account management). Conduct loan officer and closing agent interviews to determine whether they show an understanding of the regulatory requirements and that policies and procedures are consistently applied.

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<tr>
<td>28. Does the creditor not refuse to grant an individual account to a creditworthy applicant on a prohibited basis? (12 CFR 1002.7(a))</td>
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</table>
29. Does the creditor not refuse to allow an applicant to open or maintain an account in a birth-given first name and a surname that is the applicant’s birth-given surname, the spouse’s surname, or a combined surname? (12 CFR 1002.7(b))

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30. With respect to applicants who are contractually liable on an existing open-end account, does the creditor on the basis of the applicant’s reaching a certain age or retiring or on the basis of a change in the applicant’s name or marital status, not require reapplication (except as permitted by 12 CFR 1002.7(c)(2), see Checklist Item 31), change the terms of the account, or terminate the account, unless there is evidence of the applicant’s inability or unwillingness to repay? (12 CFR 1002.7(c)(1))

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31. To the extent the creditor requires reapplication for an open-end account on the basis of a change in the marital status of an applicant who is contractually liable:

a. Does it do so only when (1) the original credit granted was based in whole or in part on the income of the applicant’s spouse; and (2) the creditor has information available to it indicating that the applicant’s income may not support the amount of credit currently available; and

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32. Does it allow the account holder full access to the account under the existing contract terms while the reapplication is pending? (12 CFR 1002.7(c)(2), Comment 1002.7(c)(2)-1)

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For joint applications, is there evidence of an intent to apply for joint credit at the time of application? (The creditor shall not deem the submission of a joint financial statement or other evidence of jointly held assets as an application for joint credit.) (12 CFR 1002.7(d)(1), Comment 1002.7(d)(1)-3)

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### Examination Procedures

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<tr>
<th>33. Does the creditor allow an applicant who is individually creditworthy to obtain credit without a spouse’s or other person’s signature (other than as a joint applicant)? (12 CFR 1002.7(d)(1), Comment 1002.7(d)(1)-(i))</th>
<th>Yes No</th>
<th>Basis of Conclusion</th>
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| 34. Does the creditor require a signature of an applicant’s spouse or other person, other than a joint applicant, on any credit instrument in only the following circumstances and based only on existing forms of ownership and not on the possibility of a subsequent change (Comment 1002.7(d)(2)-(i)) |
|---|---|---|
| a. If an applicant requests unsecured credit and relies in part upon property that the applicant owns jointly with another person to satisfy the creditor’s standards of creditworthiness, the creditor requires the signature of the other person only on the instrument(s) necessary, or reasonably believed by the creditor to be necessary, under the law of the state in which the property is located, to enable the creditor to reach the property being relied upon in the event of the death or default of the applicant. (12 CFR 1002.7(d)(2)) | | [Click & type] |

| b. If a married applicant requests unsecured credit and resides in a community property state, or if the applicant is relying on property located in such a state, the creditor requires the signature of the spouse only on any instrument necessary, or reasonably believed by the creditor to be necessary, under applicable state law to make the community property available to satisfy the debt in the event of default and (1) applicable state law denies the applicant power to manage or control sufficient community property to qualify for the credit requested under the creditor’s standards of creditworthiness; and (2) the applicant does not have sufficient separate property to qualify for the credit requested without regard to community property. (12 CFR 1002.7(d)(3)) | | [Click & type] |
### Examination Procedures

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<tr>
<td>c. If an applicant requests secured credit, the creditor requires the signature of the applicant’s spouse or other person only on those instruments necessary, or reasonably believed by the creditor to be necessary, under applicable law to make the property being offered as security available to satisfy the debt in the event of default (for example, an instrument to create a valid lien, pass clear title, waive inchoate rights, or assign earnings) (12 CFR 1002.7(d)(4))</td>
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<tr>
<td>35. Does the creditor refrain from routinely requiring a non-applicant joint owner to sign an instrument (such as a quitclaim deed) that would result in the forfeiture of the joint owner’s interest in the property? (Comment 1002.7(d)(2)-1(i))(C)</td>
<td>☐</td>
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<td>36. In those situations when under the creditor’s standards of creditworthiness, the personal liability of an additional party is necessary to support the credit requested, does the creditor allow the applicant to have either his or her spouse or someone other than his or her spouse to serve as the additional party? (12 CFR 1002.7(d)(5))</td>
<td>☐</td>
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<td>[Click&amp;type]</td>
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<tr>
<td>37. If a borrower’s creditworthiness is reevaluated when a credit obligation is renewed, does the creditor determine whether an additional party is still warranted and, if not warranted, release the additional party? (Comment 1002.7(d)(5)-3)</td>
<td>☐</td>
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<td>[Click&amp;type]</td>
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<tr>
<td>38. Does the creditor refuse to extend credit and not terminate an account because credit life, health, accident, or disability insurance is not available because of the applicant’s age? (12 CFR 1002.7(e))</td>
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### Special-Purpose Credit Programs

*Inquire as to whether the creditor offers a special-purpose credit program.*
## CFPB
### Examination Procedures

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<tr>
<th></th>
<th>Yes</th>
<th>No</th>
<th>Basis of Conclusion</th>
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<tbody>
<tr>
<td>39. To the extent an issue arose regarding a special-purpose credit program, were the Examiner-in-Charge and Headquarters consulted? In the Basis of Conclusion section, describe the issue, the office (and person) consulted at Headquarters, and the resolution. If not applicable, please note in the Basis of Conclusion.</td>
<td>☐</td>
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### Notifications

- Obtain and review policies and procedures, training materials, a sample of loan files, and audits pertaining to notifications (including, but not limited to those that pertain to prequalification and preapproval processes, incomplete applications, counteroffers, loan modifications, and those that apply when there are third parties or multiple creditors). Conduct loan officer interviews to determine whether they show an understanding of the regulatory requirements and that policies and procedures are consistently applied.

### Consumer Credit

40. With respect to consumer credit, the creditor appropriately notified applicants as follows:

<table>
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<th>Yes</th>
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<th>Basis of Conclusion</th>
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<tbody>
<tr>
<td>a. Within 30 days after receiving a completed application, the creditor notified applicants concerning the creditor’s approval of, counteroffer to, or adverse action on the application (unless the parties contemplated that the applicant would inquire about the status, the application was approved, and the applicant failed to inquire within 30 days after applying, in which case the creditor may treat the application as withdrawn). (12 CFR 1002.9(a)(1)(i) and 1002.9(c))</td>
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<td>YesNo</td>
<td>Basis of Conclusion</td>
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<td>b.</td>
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<td>c.</td>
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<td>d.</td>
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<tr>
<td>41. With respect to <strong>consumer credit</strong>, the creditor’s notifications given to an applicant when an adverse action is taken are in writing, capable of being retained, and contain all of the following:</td>
<td></td>
<td>[Click&amp;type]</td>
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<tr>
<td>a. A statement of the action taken;</td>
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<td>[Click&amp;type]</td>
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<tr>
<td>b. The name and address of the creditor;</td>
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<td>[Click&amp;type]</td>
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<tr>
<td>c. A statement of the provisions of Section 701(a) of the ECOA.</td>
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<td>[Click&amp;type]</td>
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7 This statement must be substantially similar to the following: “The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract), because all or part of the applicant’s income derives from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is [name and address as specified by the appropriate agency listed in appendix A of this regulation].” (12 CFR 1002.9(b)(1))
d. The name and address of the federal agency that administers compliance with respect to the creditor, and

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<td></td>
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e. Either:

i. A statement of specific reasons for the action taken that is specific and indicates the principal reason(s) for the adverse action (Statements that the adverse action was based on the creditor’s internal standards or policies or that the applicant, joint applicant, or similar party failed to achieve a qualifying score on the creditor’s credit scoring system are insufficient); or

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ii. A disclosure (which contains the name, address, and telephone number of the person or office from which the statement of reasons can be obtained) of the applicant’s right to a statement of specific reasons within 30 days, if the statement is requested within 60 days of the creditor’s notification (and if, the creditor chooses to provide the reasons orally, the creditor shall also disclose the applicant’s right to have them confirmed in writing within 30 days of receiving the applicant’s written request for confirmation). (12 CFR 1002.4(d)(1) and 1002.9(a)(2), (b)(1), (b)(2))
### Small Business Credit

| 42. Except for transactions conducted entirely by phone, in connection with **business credit for businesses with gross revenues of $1 million or less** in the preceding fiscal year or to start a new business (Comment 1002.9(a)(3)-1) (other than an extension of trade credit, credit incident to a factoring agreement, or other similar types of business credit): |
|---|---|
| a. Within 30 days after receiving a completed application, the creditor notified applicants concerning the creditor’s approval of, counteroffer to, or adverse action on the application orally or in writing **unless** the parties contemplated that the applicant would inquire about the status, the application was approved, and the applicant failed to inquire within 30 days after applying, in which case the creditor may treat the application as withdrawn. (12 CFR 1002.9(a)(1)(i), 1002.9(c), and 1002.9(a)(3)(i)(A)) | ☐ ☐ [Click&type] |
| b. Within 30 days after taking adverse action on an incomplete application, the creditor notified applicants of the adverse action orally or in writing **unless** written notice of incompleteness is provided within 30 days of receipt of the incomplete application, specifying the information needed, designating a reasonable period of time for the applicant to provide the information, and informing the applicant that failure to provide the information requested will result in no further consideration being given to the application. (12 CFR 1002.9(a)(1)(ii), 1002.9(e), and 1002.9(a)(3)(i)(A)) | ☐ ☐ [Click&type] |
| c. Within 30 days after taking adverse action on an existing account, the creditor notified applicants of the adverse action orally or in writing. (12 CFR 1002.9(a)(1)(iii) and 1002.9(a)(3)(i)(A)) | ☐ ☐ [Click&type] |
### Examination Procedures

#### ECOA

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<td>d.</td>
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**43.** Except for transactions conducted entirely by phone, in connection with business credit for businesses with gross revenues of $1 million or less in the preceding fiscal year or to start a new business (Comment 1002.9(a)(3)-l) (other than an extension of trade credit, credit incident to a factoring agreement, or other similar types of business credit), the creditor’s adverse action notices contained (orally or in writing):

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<td>a.</td>
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<td>b.</td>
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<td>c.</td>
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<td>d.</td>
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8 See supra note 7.
### CFPB

**Examination Procedures**

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<th>Yes</th>
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<th>Basis of Conclusion</th>
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<tr>
<td>e. Either:</td>
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<tr>
<td>i. A statement of specific reasons for the action taken (that is specific and indicates the principal reason(s) for the adverse action); or</td>
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<tr>
<td>ii. Unless provided at the time of application, a written, capable of being retained, disclosure (which contains the name, address, telephone number of the person or office from which the statement of reasons can be obtained, and, if given at the time of application, a statement of the provisions of Section 701(a) of the ECOA) of the applicant’s right to a statement of specific reasons within 30 days, if the statement is requested within 60 days of the creditor’s notification (and if, the creditor chooses to provide the reasons orally, the creditor shall also disclose the applicant’s right to have them confirmed in writing within 30 days of receiving the applicant’s written request for confirmation). (12 CFR 1002.9(a)(2), 1002.9(a)(3)(i)(A), 1002.9(a)(3)(i)(B), and 1002.9(b)(1))</td>
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44. With respect to applications made entirely by telephone in connection with business credit for businesses with gross revenues of $1 million or less in the preceding fiscal year or to start a new business (Comment 1002.9(a)(3)-1) (other than an extension of trade credit, credit incident to a factoring agreement, or other similar types of business credit), the creditor at least made an oral statement of the action taken and of the applicant’s right to a statement of reasons for adverse action. (12 CFR 1002.9(a)(3)(i)(C))

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9 See supra note 7.
<table>
<thead>
<tr>
<th>Large Business Credit</th>
<th>Yes</th>
<th>No</th>
<th>Basis of Conclusion</th>
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<tbody>
<tr>
<td>45. For businesses with gross revenues in excess of $1 million in the preceding fiscal year, or for extensions of trade credit, credit incident to a factoring agreement or other similar types of business credit, did the creditor at least: a. Communicate the notification of action taken within a reasonable time orally or in writing, and b. In response to an applicant’s written request for the reasons within 60 days of the creditor’s notification, provide in writing the reasons for adverse action and a statement of the provisions of Section 701(a) of the ECOA(^\text{10}) (12 CFR 1002.9(a)(3)(ii))</td>
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| All Credit Transactions | | | | |
|-------------------------| | | |
| 46. Within 30 days after receiving an application that is incomplete regarding matters than an applicant can complete, does the creditor (a) notify the applicant of adverse action (in the manner appropriate for the type of credit – business or consumer), or (b) send a written notice to the applicant specifying the information needed, designating a reasonable period of time for the applicant to provide the information, and informing the applicant that failure to provide the information requested will result in no further consideration being given to the application? (Although the creditor may inform the applicant orally of the need for additional information, if the application remains incomplete it must provide either notice within the specified time period.) (12 CFR 1002.9(c)) | ☐ | ☐ | [Click&type] |

\(^\text{10}\) See supra note 7.
<table>
<thead>
<tr>
<th>Question</th>
<th>Yes</th>
<th>No</th>
<th>Basis of Conclusion</th>
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<tbody>
<tr>
<td>47. When declining a request for a modification of a loan, does the</td>
<td>☐</td>
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<tr>
<td>creditor always provide an adverse action notice when the consumer is</td>
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<td>not delinquent or in default? (12 CFR 1002.9(a)(1)); see Federal</td>
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<td>Reserve Board Consumer Affairs Letter 09-13 (December 4, 2009) (</td>
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<td>13.htm)</td>
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<td>48. When an application involves multiple applicants, does the creditor</td>
<td>☐</td>
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<tr>
<td>provide notification of action to the primary applicant, when one is</td>
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<td>readily apparent? (12 CFR 1002.9(f))</td>
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<td>49. When an application is made on behalf of an applicant by a third</td>
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<tr>
<td>party to multiple creditors, including the creditor, and no credit is</td>
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<td>offered or if the applicant does not expressly accept or use the credit</td>
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<td>offered, does the creditor provide the appropriate adverse action</td>
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<tr>
<td>notice either directly or through the third party (disclosing the</td>
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<td>identity of each creditor on whose behalf the notice is given)? (12</td>
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<td>CFR 1002.9(g))</td>
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</table>

**Designation of Accounts**

Obtain and review policies and procedures, training materials, and audits pertaining to the designation of accounts on furnishing them to credit reporting agencies, as well as a sample of information reported to the credit reporting agencies.

50. To the extent the creditor furnishes consumer credit information, does  | ☐   | ☐  | [Click&type]        |
<p>| it designate any new account to reflect the participation of both      |     |    |                     |
| spouses if the applicant’s spouse is permitted to use or is contractually|     |    |                     |
| liable on the account (other than as a guarantor, surety, endorser, or  |     |    |                     |
| similar party) (12 CFR 1002.10(a), Comment 1002.10-1)                  |     |    |                     |</p>
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<th>Yes</th>
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<th>Basis of Conclusion</th>
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<tbody>
<tr>
<td>51. To the extent the creditor furnishes consumer credit information, does it designate any existing account to reflect the participation of both spouses if the applicant's spouse is permitted to use or is contractually liable on the account (other than as a guarantor, surety, endorser, or similar party) within 90 days after receiving a written request to do so from one of the spouses? (12 CFR 1002.10(a), Comment 1002.10-1)</td>
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<td>[Click&amp;type]</td>
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<tr>
<td>52. To the extent the creditor furnishes consumer credit information to a consumer reporting agency concerning accounts designated to reflect the participation of both spouses, does the creditor furnish the information in a manner that enables the consumer reporting agency to provide access to the information in the name of each spouse? (12 CFR 1002.10(b), Comment 1002.10-1)</td>
<td>☐</td>
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<td>[Click&amp;type]</td>
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<tr>
<td>53. To the extent the creditor furnishes consumer credit information in response to inquiries about accounts designated to reflect the participation of both spouses, does the creditor furnish the information in the name of the spouse about whom the information is requested? (12 CFR 1002.10(c), Comment 1002.10-1)</td>
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# CFPB

## Examination Procedures

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<tr>
<th>Record Retention</th>
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<th>Basis of Conclusion</th>
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<tbody>
<tr>
<td>Obtain and review policies and procedures, training materials, audits, a sample of loan files, relevant third-party contracts, and other records required to be retained (e.g., information relating to prescreened offers of credit and self-tests) that pertain to record retention (including but not limited to record retention schedules, retention of documents relating to prescreened offers of credit, and retention of documents relating to any self-tests). Inquire into whether there is any enforcement action or investigation involving the creditor.</td>
<td>☐</td>
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<td>[Click&amp;type]</td>
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<tr>
<td>54. Does the creditor retain for 25 months (12 months for business credit regarding businesses with gross revenues of $1 million or less in the previous fiscal year, except an extension of trade credit, credit incident to a factoring agreement, or other similar types of business credit) after the date that the creditor notifies an applicant of action taken or of incompleteness, an original or copy of the following:</td>
<td>☐</td>
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<td>[Click&amp;type]</td>
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<tr>
<td>a. The application and any other written or recorded information used in evaluating the application that is not returned to the applicant at the applicant’s request? (12 CFR 1002.12(b)(1)(i))</td>
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<td>[Click&amp;type]</td>
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<tr>
<td>b. Any information required to be obtained concerning characteristics of the applicant to monitor compliance with the ECOA and Regulation B or other similar law, such as the Home Mortgage Disclosure Act or Home Affordable Modification Program? (12 CFR 1002.12(b)(1)(i))</td>
<td>☐</td>
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<td>[Click&amp;type]</td>
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<tr>
<td>c. A copy of the notification of action taken, if written, or any notation or memorandum by the creditor, if made orally? (12 CFR 1002.12(b)(1)(ii)(A))</td>
<td>☐</td>
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<tr>
<td>d. A statement of specific reasons for adverse action, if written, or any notation or memorandum by the creditor, if made orally? (12 CFR 1002.12(b)(1)(ii)(B))</td>
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### Examination Procedures

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<th>Basis of Conclusion</th>
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<td>☐ ☐</td>
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**55.** Does the creditor retain for 25 months (12 months for business credit regarding businesses with gross revenues of $1 million or less in the previous fiscal year, except an extension of trade credit, credit incident to a factoring agreement, or other similar types of business credit) after the date that the creditor notifies an applicant of adverse action regarding an existing account, an original or copy of the following:

| a. | Any written or recorded information concerning the adverse action? (12 CFR 1002.12(b)(2)(i)) | ☐ ☐ | [Click&type] |
| b. | Any written statement submitted by the applicant alleging a violation of the ECOA or Regulation B? (12 CFR 1002.12(b)(2)(ii)) | ☐ ☐ | [Click&type] |

**56.** Does the creditor retain for 25 months (12 months for business credit regarding businesses with gross revenues of $1 million or less in the previous fiscal year, except an extension of trade credit, credit incident to a factoring agreement, or other similar types of business credit) after the date the creditor receives an application for which 1002.9’s notification requirements do not apply (e.g., when an application is expressly withdrawn, or an application is submitted to more than one creditor on behalf of the applicant, and the application is approved by one of the other creditors) all written or recorded information in its possession concerning the applicant, including any notation of action taken? (12 CFR 1002.12(b)(3), Comment 1002.12(b)(3)-1) | ☐ ☐ | [Click&type] |
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<th>Basis of Conclusion</th>
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<tr>
<td>57. If the creditor has actual notice that it is under investigation or is subject to an enforcement proceeding for an alleged violation of the ECOA or Regulation B by the Attorney General of the United States or by the CFPB or other enforcement agency charged with monitoring the creditor’s compliance with the ECOA and Regulation B, or if it has been served with notice of an action filed pursuant to Section 706 of the ECOA, did the creditor retain the foregoing information identified in Checklist Items 54–56 until final disposition of the matter (unless an earlier time is allowed by order of the agency or court)? (12 CFR 1002.12(b)(4))</td>
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<tr>
<td>58. For business credit from businesses with gross revenues of more than $1 million in the previous fiscal year, or an extension of trade credit, credit incident to a factoring agreement, or other similar types of business credit, does the creditor retain records for at least 60 days after notifying the applicant of the action taken, or for 12 months if the applicant requests in writing during the 60-day time period the reasons for adverse action or that records be retained? (12 CFR 1002.12(b)(5))</td>
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<tr>
<td>59. If the creditor conducts a self-test pursuant to 12 CFR 1002.15:</td>
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<tr>
<td>a. Does the creditor retain for 25 months after the self-test is completed, all written or recorded information about the self-test?</td>
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<tr>
<td>b. If the creditor has actual notice that it is under investigation or is subject to an enforcement proceeding for an alleged violation, or if it has been served with notice of a civil action, does the creditor retain the information until final disposition of the matter (unless an earlier time is allowed by the appropriate agency or court order)? (12 CFR 1002.12(b)(6))</td>
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<td>YesNo</td>
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**Information for Monitoring Purposes as to Applications from Natural Persons**

Obtain and review policies and procedures, training materials, a sample of loan files, quality control reports, and audits pertaining to information gathered for monitoring. Conduct loan officer interviews to determine whether they show an understanding of the regulatory requirements and that policies and procedures are consistently applied.

61. With respect to applications for credit that are primarily for the purchase or refinancing of dwellings (as defined in 12 CFR 1002.13(a)(2)) that are occupied or to be occupied by the applicant as a principal residence where the credit will be secured by the dwelling, does the creditor request (but not require) either on the application form or on a separate form that refers to the application (12 CFR 1002.13(b)) the following information regarding the applicant:

---

11 Examiners should ensure that the institution limits its requests for government monitoring information under this section to only these loans, except as permitted by 12 CFR 1002.5(a) & (b) (see Checklist Item 8) or as required by HMDA (relating home purchase loans, home improvement loans, refinancings, and optionally home equity lines of credit made in whole or in part for the purpose of home improvement or home purchase), or other governmental program or directive such as the Home Affordable Modification Program (HAMP).
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<th>Yes/No</th>
<th>Basis of Conclusion</th>
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<tbody>
<tr>
<td>a. Ethnicity, using the categories “Hispanic or Latino,” and “Not Hispanic or Latino”; and race, using the categories “American Indian or Alaska Native,” “Asian,” “Black or African American,” “Native Hawaiian or Other Pacific Islander,” and “White,” and allowing applicants to select more than one racial designation? (12 CFR 1002.13(a)(1)(i), Comment 1002.13(b)-1)</td>
<td>☐ ☐</td>
<td>[Click&amp;type]</td>
</tr>
<tr>
<td>b. Sex? (12 CFR 1002.13(a)(1)(ii)</td>
<td>☐ ☐</td>
<td>[Click&amp;type]</td>
</tr>
<tr>
<td>c. Marital status, using the categories married, unmarried, and separated? (12 CFR 1002.13(a)(1)(iii)</td>
<td>☐ ☐</td>
<td>[Click&amp;type]</td>
</tr>
<tr>
<td>d. Age? (12 CFR 1002.13(a)(1)(iv))</td>
<td>☐ ☐</td>
<td>[Click&amp;type]</td>
</tr>
<tr>
<td>62. If an applicant chooses not to provide the requested information or any part of it, does the creditor note that on the monitoring form and note on the form, to the extent possible, the ethnicity, race, and sex of the applicant(s) on the basis of visual observation or surname? (12 CFR 1002.13(b))</td>
<td>☐ ☐</td>
<td>[Click&amp;type]</td>
</tr>
<tr>
<td>63. If the creditor receives applications by mail, telephone, or electronic media and it is not evident on the face of an application how it was received, does the creditor indicate on the form or other application record how it was received? (Comment 1002.13(b)-3(iii))</td>
<td>☐ ☐</td>
<td>[Click&amp;type]</td>
</tr>
<tr>
<td>64. Does the creditor inform applicant(s) (a) that the information regarding ethnicity, race, sex, marital status, and age is being requested by the federal government for the purpose of monitoring compliance with federal statutes that prohibit creditors from discriminating against applicants on those bases; and (b) that if the applicant(s) chooses not to provide the information, the creditor is required to note the ethnicity, race and sex on the basis of visual observation or surname? (12 CFR 1002.13(c))</td>
<td>☐ ☐</td>
<td>[Click&amp;type]</td>
</tr>
</tbody>
</table>
### Examination Procedures

<table>
<thead>
<tr>
<th>Appraisal Reports(^{12})</th>
<th>Yes</th>
<th>No</th>
<th>Basis of Conclusion</th>
</tr>
</thead>
<tbody>
<tr>
<td>Obtain and review policies and procedures, training materials, a sample of loan files, and audits pertaining to providing appraisal reports. Conduct loan officer interviews to determine whether they show an understanding of the regulatory requirements and that policies and procedures are consistently applied.</td>
<td></td>
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<tr>
<td>65. With respect to applications for credit to be secured by a lien on a dwelling, does the creditor either:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>a. Routinely provide a copy of an appraisal report to an applicant (whether credit is granted or denied or the application is withdrawn); or</td>
<td></td>
<td></td>
<td>[Click&amp;type]</td>
</tr>
<tr>
<td>b. Provide a copy upon an applicant’s written request and notify (at any time during the application process and no later than when the creditor provides notice of action taken) an applicant in writing of the right to receive a copy of the appraisal report, specifying (i) that the applicant’s request must be in writing, (ii) the creditor’s mailing address, and (iii) that the request must be received within 90 days after the creditor provides notice of action taken on the application or 90 days after the application is withdrawn? (12 CFR 1002.14(a))</td>
<td></td>
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<tr>
<td>66. Does the creditor mail or deliver a copy of the appraisal report promptly (generally within 30 days) after the creditor receives the applicant’s request, receives the report, or receives reimbursement from the applicant for the report, whichever is last to occur? (12 CFR 1002.14(a)(2)(ii))</td>
<td></td>
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</table>

\(^{12}\) A creditor that is subject to the National Credit Union Administration regulations on making copies of appraisal reports available is not subject to these requirements (12 CFR 1002.14(b)).
## Disclosures

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
<th>No</th>
<th>Basis of Conclusion</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Obtain and review policies and procedures, training materials, and a sample of loan files, audits related to disclosures, and disclosures.</strong></td>
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<tr>
<td><strong>67.</strong> Are the creditor’s written disclosures that are required by Regulation B clear, conspicuous, and except for those required by 12 CFR 1002.5 (self-tests) and 1002.13 (monitoring), in a form the applicant can retain? (12 CFR 1002.4(d))</td>
<td>☐</td>
<td>☐</td>
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</tr>
<tr>
<td><strong>68.</strong> Are those disclosures that are required to be in writing that are made in electronic form provided in compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce (E-Sign) Act, where applicable? (12 CFR 1002.4(d)(2))</td>
<td>☐</td>
<td>☐</td>
<td>[Click&amp;Type]</td>
</tr>
<tr>
<td><strong>69.</strong> If an applicant accesses a credit application electronically from a place other than the creditor’s office, did the creditor provide the disclosures in a timely manner on or with the application, namely in electronic form (such as with the applications form on its website)? (Comment 1002.4(d)-2)</td>
<td>☐</td>
<td>☐</td>
<td>[Click&amp;Type]</td>
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<tr>
<td>Voluntary Self-Tests</td>
<td>Yes</td>
<td>No</td>
<td>Basis of Conclusion</td>
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<tr>
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</tr>
<tr>
<td>Identify whether the creditor purports to conduct self-tests. If so, request and review information required to be maintained under 12 CFR 1002.12(b)(6), including but not limited to information regarding its design and expected outputs, corrective actions, the methodology used or the scope of the self-test, the time period covered by the self-test, the dates it was conducted, and entities to whom it was disclosed.</td>
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<tr>
<td>70. To the extent the creditor conducts voluntary self-tests:</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>a. Is the program, practice or study (1) designed and used specifically to determine the extent or effectiveness of the creditor’s compliance with the ECOA or Regulation B; and (2) resulting in data or factual information that is not available and cannot be derived from loan or application files or other records related to credit transactions; and</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>b. Has the creditor taken or is it taking appropriate and timely corrective action when the self-test shows that it is more likely than not that a violation occurred (even though no violation has been formally adjudicated), namely action that is reasonably likely to remedy the cause and effect of a likely violation by identifying the policies and practices that are the likely cause of the violation and assessing the extent and scope of any violation? (12 CFR 1002.15(a)(2), (b)(1), (c), Comment 1002.15(a)(2)-2)</td>
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<tr>
<td>Yes/No</td>
<td>Basis of Conclusion</td>
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<tr>
<td>71. To the extent the creditor is claiming that the self-test privilege applies:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>a. Is the creditor providing information that is not privileged, including (a) information about whether the creditor conducted a self-test, the methodology used or the scope of the self-test, the time period covered by the self-test, or the dates it was conducted; (b) loan and application files or other business records related to credit transactions, and information derived from such files and records, even if the information has been aggregated, summarized, or reorganized to facilitate analysis; and (c) the creditor’s property appraisal reports, minutes of loan committee meetings, analysis performed as part of processing or underwriting a credit application, or other documents reflecting the basis for a decision to approve or deny an application, loan policies or procedures, underwriting standards, and broker compensation records? (12 CFR 1002.15(b)(3), Comments 1002.15(b)(1)(ii)-2 and 1002.15(b)(3)(ii)-1)</td>
<td>[Click&amp;type]</td>
<td></td>
<td></td>
</tr>
<tr>
<td>b. Has the creditor not voluntarily disclosed any part of the report or results, or any other privileged information, as a self-test, to an applicant, government agency, or the public? (12 CFR 1002.15(d)(2)(i))</td>
<td>[Click&amp;type]</td>
<td></td>
<td></td>
</tr>
<tr>
<td>c. Has the creditor not disclosed any part of the report or results, or any other information privileged as a self-test, as a defense to charges that the creditor has violated the ECOA or Regulation B? (12 CFR 1002.15(d)(2)(ii))</td>
<td>[Click&amp;type]</td>
<td></td>
<td></td>
</tr>
<tr>
<td>d. Has the creditor produced written or recorded information about the self-test that is required to be retained by 12 CFR 1002.12(b)(6)? (12 CFR 1002.15(d)(2)(iii))</td>
<td>[Click&amp;type]</td>
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### CFPB

**Examination Procedures**

<table>
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<tr>
<th>Yes</th>
<th>No</th>
<th>Basis of Conclusion</th>
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<tr>
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<td>☐</td>
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</table>

e. As applicable, has the creditor provided the self-test report, results, and any other information privileged under Regulation B in order to determine a penalty or remedy for a violation of the ECOA or Regulation that has been adjudicated or admitted? (12 CFR 1002.15(d)(3))

**Examiner’s Overall Summary, Recommendations, and Comments**

[Click&type]
Office of the Comptroller of the Currency
Federal Deposit Insurance Corporation
Federal Reserve Board
Office of Thrift Supervision
National Credit Union Administration

INTERAGENCY FAIR LENDING
EXAMINATION PROCEDURES

August 2009
# CONTENTS

## INTRODUCTION

<table>
<thead>
<tr>
<th>PART I: EXAMINATION SCOPE GUIDELINES</th>
<th>3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Background</td>
<td>8</td>
</tr>
</tbody>
</table>

### Background

- Step One: Develop an Overview
- Step Two: Identify Compliance Program Discrimination Risk Factors
- Step Three: Review Residential Loan Products
- Step Four: Identify Residential Lending Discrimination Risk Factors
- Step Five: Organize and Focus Residential Risk Analysis
- Step Six: Identify Consumer Lending Discrimination Risk Factors
- Step Seven: Identify Commercial Lending Discrimination Risk Factors
- Step Eight: Complete the Scoping Process

## PART II: COMPLIANCE MANAGEMENT REVIEW

<table>
<thead>
<tr>
<th>PART III: EXAMINATION PROCEDURES</th>
<th>21</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. Verify Accuracy of Data</td>
<td>22</td>
</tr>
<tr>
<td>B. Documenting Overt Evidence of Disparate Treatment</td>
<td>22</td>
</tr>
<tr>
<td>C. Transactional Underwriting Analysis - Residential and Consumer Loans.</td>
<td>23</td>
</tr>
<tr>
<td>D. Analyzing Potential Disparities in Pricing and Other Terms and Conditions</td>
<td>26</td>
</tr>
<tr>
<td>E. Steering Analysis</td>
<td>28</td>
</tr>
<tr>
<td>F. Transactional Underwriting Analysis - Commercial Loans.</td>
<td>31</td>
</tr>
<tr>
<td>G. Analysis of Potential Discriminatory “Redlining”.</td>
<td>33</td>
</tr>
<tr>
<td>H. Analysis of Potential Discriminatory Marketing Practices.</td>
<td>40</td>
</tr>
<tr>
<td>I. Credit Scoring.</td>
<td>42</td>
</tr>
<tr>
<td>J. Disparate Impact Issues.</td>
<td>42</td>
</tr>
</tbody>
</table>

## PART IV: OBTAINING AND EVALUATING RESPONSES FROM THE INSTITUTION AND CONCLUDING THE EXAMINATION

<table>
<thead>
<tr>
<th>APPENDIX</th>
<th>43</th>
</tr>
</thead>
<tbody>
<tr>
<td>I. Compliance Management Analysis Checklist</td>
<td></td>
</tr>
<tr>
<td>II. Considering Automated Underwriting and Credit Scoring</td>
<td></td>
</tr>
<tr>
<td>III. Evaluating Responses to Evidence of Disparate Treatment</td>
<td></td>
</tr>
<tr>
<td>IV. Fair Lending Sample Size Tables</td>
<td></td>
</tr>
<tr>
<td>V. Identifying Marginal Transactions</td>
<td></td>
</tr>
<tr>
<td>VI. Potential Scoping Information</td>
<td></td>
</tr>
<tr>
<td>VII. Special Analyses</td>
<td></td>
</tr>
<tr>
<td>VIII. Using Self-Tests and Self-Evaluations to Streamline the Examination</td>
<td></td>
</tr>
</tbody>
</table>

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CFPB Manual V.2 (October 2012)  Procedures 2
INTRODUCTION

Overview of Fair Lending Laws and Regulations

This overview provides a basic and abbreviated discussion of federal fair lending laws and regulations. It is adapted from the Interagency Policy Statement on Fair Lending issued in March 1994.

1. Lending Discrimination Statutes and Regulations

The Equal Credit Opportunity Act (ECOA) prohibits discrimination in any aspect of a credit transaction. It applies to any extension of credit, including extensions of credit to small businesses, corporations, partnerships, and trusts.

The ECOA prohibits discrimination based on:

- Race or color;
- Religion;
- National origin;
- Sex;
- Marital status;
- Age (provided the applicant has the capacity to contract);
- The applicant’s receipt of income derived from any public assistance program; or
- The applicant’s exercise, in good faith, of any right under the Consumer Credit Protection Act.

The Federal Reserve Board’s Regulation B, found at 12 CFR Part 202, implements the ECOA. Regulation B describes lending acts and practices that are specifically prohibited, permitted, or required. Official staff interpretations of the regulation are found in Supplement I to 12 CFR part 202.

The Fair Housing Act (FHAct) prohibits discrimination in all aspects of "residential real-estate-related transactions," including but not limited to:

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

The FHAct prohibits discrimination based on:

- Race or color;
- National origin;
- Religion;
- Sex;
- 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); or
- Handicap.

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Interagency Fair Lending Examination Procedures

HUD’s regulations implementing the FHA Act are found at 24 CFR Part 100. Because both the FHA Act and the ECOA apply to mortgage lending, lenders may not discriminate in mortgage lending based on any of the prohibited factors in either list.

Under the ECOA, it is unlawful for a lender to discriminate on a prohibited basis in any aspect of a credit transaction, and under both the ECOA and the FHA Act, it is unlawful for a lender to discriminate on a prohibited basis in a residential real-estate-related transaction. Under one or both of these laws, 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;
- 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; or
- Use different standards for pooling or packaging a loan in the secondary market.

A lender may not express, orally or in writing, a preference based on prohibited factors, or indicate that it will treat applicants differently on a prohibited basis. A violation may still exist even if a lender treated applicants equally.

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); or
- The present or prospective occupants of either the property to be financed or the characteristics of the neighborhood or other area where property to be financed is located.

Finally, the FHA Act 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.

2. Types of Lending Discrimination

The courts have recognized three methods of proof of lending discrimination under the ECOA and the FHA:

- Overt evidence of disparate treatment;
- Comparative evidence of disparate treatment;
- Evidence of disparate impact.
Disparate Treatment

The existence of illegal disparate treatment may be established either by statements revealing that a lender explicitly considered prohibited factors (overt evidence) or by differences in treatment that are not fully explained by legitimate nondiscriminatory factors (comparative evidence).

**Overt Evidence of Disparate Treatment.** There is overt evidence of discrimination when a lender openly discriminates on a prohibited basis.

**Example:** A lender offered a credit card with a limit of up to $750 for applicants aged 21-30 and $1,500 for applicants over 30. This policy violated the ECOA’s prohibition on discrimination based on age.

There is overt evidence of discrimination even when a lender expresses - but does not act on - a discriminatory preference:

**Example:** A lending officer told a customer, “We do not like to make home mortgages to Native Americans, but the law says we cannot discriminate and we have to comply with the law.” This statement violated the FHAct’s prohibition on statements expressing a discriminatory preference as well as Section 202.4(b) of Regulation B, which prohibits discouraging applicants on a prohibited basis.

**Comparative Evidence of Disparate Treatment.** Disparate treatment occurs when a lender treats a credit applicant differently based on one of the prohibited bases. It does not require any showing that the treatment was motivated by prejudice or a conscious intention to discriminate against a person beyond the difference in treatment itself.

Disparate treatment may more likely occur in the treatment of applicants who are neither clearly well-qualified nor clearly unqualified. Discrimination may more readily affect applicants in this middle group for two reasons. First, if the applications are “close cases,” there is more room and need for lender discretion. Second, whether or not an applicant qualifies may depend on the level of assistance the lender provides the applicant in completing an application. The lender may, for example, propose solutions to credit or other problems regarding an application, identify compensating factors, and provide encouragement to the applicant. Lenders are under no obligation to provide such assistance, but to the extent that they do, the assistance must be provided in a nondiscriminatory way.

**Example:** A non-minority couple applied for an automobile loan. The lender found adverse information in the couple’s credit report. The lender discussed the credit report with them and determined that the adverse information, a judgment against the couple, was incorrect because the judgment had been vacated. The non-minority couple was granted their loan. A minority couple applied for a similar loan with the same lender. Upon discovering adverse information in the minority couple’s credit report, the lender denied the loan application on the basis of the adverse information without giving the couple an opportunity to discuss the report.

The foregoing is an example of disparate treatment of similarly situated applicants, apparently based on a prohibited factor, in the amount of assistance and information the lender provided.

If a lender has apparently treated similar applicants differently on the basis of a prohibited factor, it must provide an explanation for the difference in treatment. If the lender's explanation is found
to be not credible, the agency may find that the lender discriminated.

**Redlining** is a form of illegal disparate treatment in which a lender provides unequal access to credit, or unequal terms of credit, because of the race, color, national origin, or other prohibited characteristic(s) of the residents of the area in which the credit seeker resides or will reside or in which the residential property to be mortgaged is located. Redlining may violate both the FHA Act and the ECOA.

**Disparate Impact**

When a lender applies a racially or otherwise neutral policy or practice equally to all credit applicants, but the policy or practice disproportionately excludes or burdens certain persons on a prohibited basis, the policy or practice is described as having a “disparate impact.”

**Example**: A lender’s policy is not to extend loans for single family residences for less than $60,000. This policy has been in effect for 10 years. This minimum loan amount policy is shown to disproportionately exclude potential minority applicants from consideration because of their income levels or the value of the houses in the areas in which they live.

The fact that a policy or practice creates a disparity on a prohibited basis is not alone proof of a violation. When an Agency finds that a lender’s policy or practice has a disparate impact, the next step is to seek to determine whether the policy or practice is justified by “business necessity.” The justification must be manifest and may not be hypothetical or speculative. Factors that may be relevant to the justification could include cost and profitability. Even if a policy or practice that has a disparate impact on a prohibited basis can be justified by business necessity, it still may be found to be in violation if an alternative policy or practice could serve the same purpose with less discriminatory effect. Finally, evidence of discriminatory intent is not necessary to establish that a lender's adoption or implementation of a policy or practice that has a disparate impact is in violation of the FHA Act or ECOA.

These procedures do not call for examiners to plan examinations to identify or focus on potential disparate impact issues. The guidance in this Introduction is intended to help examiners recognize fair lending issues that may have a potential disparate impact. Guidance in the Appendix to the Interagency Fair Lending Examination Procedures provides details on how to obtain relevant information regarding such situations along with methods of evaluation, as appropriate.

**General Guidelines**

These procedures are intended to be a basic and flexible framework to be used in the majority of fair lending examinations conducted by the FFIEC agencies. They are also intended to guide examiner judgment, not to supplant it. The procedures can be augmented by each agency as necessary to ensure their effective implementation.

While these procedures apply to many examinations, agencies routinely use statistical analyses or other specialized techniques in fair lending examinations to assist in evaluating whether a prohibited basis was a factor in an institution’s credit decisions. Examiners should follow the procedures provided by their respective agencies in these cases.

For a number of aspects of lending – for example, credit scoring and loan pricing – the “state of the art” is more likely to be advanced if the agencies have some latitude to incorporate promising
innovations. These interagency procedures provide for that latitude.

Any references in these procedures to options, judgment, etc., of “examiners” means discretion within the limits provided by that examiner’s agency. An examiner should use these procedures in conjunction with his or her own agency’s priorities, examination philosophy, and detailed guidance for implementing these procedures. These procedures should not be interpreted as providing an examiner greater latitude than his or her own agency would. For example, if an agency’s policy is to review compliance management systems in all of its institutions, an examiner for that agency must conduct such a review rather than interpret Part II of these interagency procedures as leaving the review to the examiner’s option.

The procedures emphasize racial and national origin discrimination in residential transactions, but the key principles are applicable to other prohibited bases and to nonresidential transactions.

Finally, these procedures focus on analyzing institution compliance with the broad, nondiscrimination requirements of the ECOA and the FHA. They do not address such explicit or technical compliance provisions as the signature rules or adverse action notice requirements in Sections 202.7 and 202.9, respectively, of Regulation B.
PART I
EXAMINATION SCOPE GUIDELINES

Background

The scope of an examination encompasses the loan product(s), market(s), decision center(s), time frame, and prohibited basis and control group(s) to be analyzed during the examination. These procedures refer to each potential combination of those elements as a "focal point." Setting the scope of an examination involves, first, identifying all of the potential focal points that appear worthwhile to examine. Then, from among those, examiners select the focal point(s) that will form the scope of the examination, based on risk factors, priorities established in these procedures or by their respective agencies, the record from past examinations, and other relevant guidance. This phase includes obtaining an overview of an institution’s compliance management system as it relates to fair lending.

When selecting focal points for review, examiners may determine that the institution has performed “self-tests” or “self-evaluations” related to specific lending products. The difference between “self-tests” and “self-evaluations” is discussed in the Using Self-Tests and Self-Evaluations to Streamline the Examination section of the Appendix. Institutions must share all information regarding “self-evaluations” and certain limited information related to “self-tests.” Examiners may choose to voluntarily disclose additional information about “self-tests.” Examiners should make sure that institutions understand that voluntarily sharing the results of self-tests will result in a loss of confidential status of these tests. Information from “self-evaluations” or “self-tests” may allow the scoping to be streamlined. Refer to Using Self-Tests and Self-Evaluations to Streamline the Examination in the Appendix for additional details.

Scoping may disclose the existence of circumstances – such as the use of credit scoring or a large volume of residential lending – which, under an agency’s policy, call for the use of regression analysis or other statistical methods of identifying potential discrimination with respect to one or more loan products. Where that is the case, the agency’s specialized procedures should be employed for such loan products rather than the procedures set forth below.

Setting the intensity of an examination means determining the breadth and depth of the analysis that will be conducted on the selected loan product(s). This process entails a more involved analysis of the institution’s compliance risk management processes, particularly as they relate to selected products, to reach an informed decision regarding how large a sample of files to review in any transactional analyses performed and whether certain aspects of the credit process deserve heightened scrutiny.

Part I of these procedures provides guidance on establishing the scope of the examination. Part II (Compliance Management Review) provides guidance on determining the intensity of the examination. There is naturally some interdependence between these two phases. Ultimately, the scope and intensity of the examination will determine the record of performance that serves as the foundation for agency conclusions about institutional compliance with fair lending obligations. The examiner should employ these procedures to arrive at a well-reasoned and practical conclusion about how to conduct a particular institution’s examination of fair lending performance.

In certain cases where an agency already possesses information that provides examiners with
guidance on priorities and risks for planning an upcoming examination, such information may expedite the scoping process and make it unnecessary to carry out all of the steps below. For example, the report of the previous fair lending examination may have included recommendations for the focus of the next examination. However, examiners should validate that the institution’s operational structure, product offerings, policies, and risks have not changed since the prior examination before condensing the scoping process.

The scoping process can be performed either off-site, onsite, or both, depending on whatever is determined appropriate and feasible. In the interest of minimizing burdens on both the examination team and the institution, requests for information from the institution should be carefully thought out so as to include only the information that will clearly be useful in the examination process. Finally, any off-site information requests should be made sufficiently in advance of the on-site schedule to permit institutions adequate time to assemble necessary information and provide it to the examination team in a timely fashion. (See "Potential Scoping Information" in the Appendix for guidance on additional information that the examiner might wish to consider including in a request).

Examiners should focus the examination based on:

- An understanding of the credit operations of the institution;
- The risk that discriminatory conduct may occur in each area of those operations; and
- The feasibility of developing a factually reliable record of an institution's performance and fair lending compliance in each area of those operations.

1. Understanding Credit Operations

Before evaluating the potential for discriminatory conduct, the examiner should review sufficient information about the institution and its market to understand the credit operations of the institution and the representation of prohibited basis group residents within the markets where the institution does business. The level of detail to be obtained at this stage should be sufficient to identify whether any of the risk factors in the steps below are present. Relevant background information includes:

- The types and terms of credit products offered, differentiating among broad categories of credit such as residential, consumer, or commercial, as well as product variations within such categories (fixed vs. variable, etc.);
- Whether the institution has a special purpose credit program or other program that is specifically designed to assist certain under-served populations;
- The volume of, or growth in, lending for each of the credit products offered;
- The demographics (e.g., race, national origin, etc.) of the credit markets in which the institution is doing business;
- The institution’s organization of its credit decision-making process, including identification of the delegation of separate lending authorities and the extent to which discretion in pricing or setting credit terms and conditions is delegated to various levels of managers, employees or independent brokers or dealers;
- The institution’s loan officer or broker compensation program;
- The types of relevant documentation/data that are available for various loan products and what is the relative quantity, quality and accessibility of such information (e.g., for which loan product(s) will the information available be most likely to support a sound and
reliable fair lending analysis); and

- The extent to which information requests can be readily organized and coordinated with other compliance examination components to reduce undue burden on the institution. (Do not request more information than the exam team can be expected to utilize during the anticipated course of the examination.)

In thinking about an institution’s credit markets, the examiner should recognize that these markets may or may not coincide with an institution’s Community Reinvestment Act (CRA) assessment area(s). Where appropriate, the examiner should review the demographics for a broader geographic area than the assessment area.

Where an institution has multiple underwriting or loan processing centers or subsidiaries, each with fully independent credit-granting authority, consider evaluating each center and/or subsidiary separately, provided a sufficient number of loans exist to support a meaningful analysis. In determining the scope of the examination for such institutions, examiners should consider whether:

- Subsidiaries should be examined. The agencies will hold a financial institution responsible for violations by its direct subsidiaries, but not typically for those by its affiliates (unless the affiliate has acted as the agent for the institution or the violation by the affiliate was known or should have been known to the institution before it became involved in the transaction or purchased the affiliate’s loans). When seeking to determine an institution’s relationship with affiliates that are not supervised financial institutions, limit the inquiry to what can be learned in the institution and do not contact the affiliate without prior consultation with agency staff.

- The underwriting standards and procedures used in the entity being reviewed are used in related entities not scheduled for the planned examination. This will help examiners to recognize the potential scope of policy-based violations.

- The portfolio consists of applications from a purchased institution. If so, for scoping purposes, examiners should consider the applications as if they were made to the purchasing institution. For comparison purposes, applications evaluated under the purchased institution’s standards should not be compared to applications evaluated under the purchasing institution’s standards.)

- The portfolio includes purchased loans. If so, examiners should look for indications that the institution specified loans to purchase based on a prohibited factor or caused a prohibited factor to influence the origination process.

- A complete decision can be made at one of the several underwriting or loan-processing centers, each with independent authority. In such a situation, it is best to conduct on-site a separate comparative analysis at each underwriting center. If covering multiple centers is not feasible during the planned examination, examiners should review their processes and internal controls to determine whether or not expanding the scope and/or length of the examination is justified.
Decision-making responsibility for a single transaction may involve more than one underwriting center. For example, an institution may have authority to decline mortgage applicants, but only the mortgage company subsidiary may approve them. In such a situation, examiners should learn which standards are applied in each entity and the location of records needed for the planned comparisons.

Applicants can be steered from the financial institution to the subsidiary or other lending channel and vice versa and what policies and procedures exist to monitor this practice. Any third parties, such as brokers or contractors, are involved in the credit decision and how responsibility is allocated among them and the institution. The institution’s familiarity with third-party actions may be important, for an institution may be in violation if it participates in transactions in which it knew or reasonably ought to have known other parties were discriminating.

As part of understanding the financial institution’s own lending operations, it is also important to understand any dealings the financial institution has with affiliated and non-affiliated mortgage loan brokers and other third-party lenders. These brokers may generate mortgage applications and originations solely for a specific financial institution or may broadly gather loan applications for a variety of local, regional, or national lenders. As a result, it is important to recognize what impact these mortgage brokers and other third-party lender actions and application processing operations have on the lending operations of a financial institution. Because brokers can be located anywhere in or out of the financial institution’s primary lending or CRA assessment areas, it is important to evaluate broker activity and fair lending compliance related to underwriting, terms and conditions, redlining, and steering, each of which is covered in more depth in sections of these procedures. Examiners should consult with their respective agencies for specific guidance regarding broker activity.

If the institution is large and geographically diverse, examiners should select only as many markets or underwriting centers as can be reviewed readily in depth, rather than selecting proportionally to cover every market. As needed, examiners should narrow the focus to the Metropolitan Statistical Area (MSA) or underwriting center(s) that are determined to present the highest discrimination risk. Examiners should use Loan Application Register (LAR) data organized by underwriting center, if available. After calculating denial rates between the control and prohibited basis groups for the underwriting centers, examiners should select the centers with the highest fair lending risk. This approach would also be used when reviewing pricing or other terms and conditions of approved applicants from the prohibited basis and control groups. If underwriting centers have fewer than five racial or national origin denials, examiners should not examine for racial discrimination in underwriting. Instead, they should shift the focus to other loan products or prohibited bases or examination types, such as a pricing examination.

However, if examiners learn of other indications of risks that favor analyzing a prohibited basis with fewer transactions than the minimum in the sample-size tables, they should consult with their supervisory office on possible alternative methods of analysis. For example, there is strong reason to examine a pattern in which almost all of 19 male borrowers received low rates, but almost all of four female borrowers received high rates, even though the number of each group is fewer than the stated minimum. Similarly, there would be strong reason to examine a pattern in which almost all of 100 control group applicants were approved, but all four prohibited basis group applicants were not, even though the number of prohibited basis denials was fewer than...
five.

2. Evaluating the Potential for Discriminatory Conduct

Step One: Develop an Overview

Based on his or her understanding of the credit operations and product offerings of an institution, an examiner should determine the nature and amount of information required for the scoping process and should obtain and organize that information. No single examination can reasonably be expected to evaluate compliance performance as to every prohibited basis, in every product, or in every underwriting center or subsidiary of an institution. In addition to information gained in the process of Understanding Credit Operations, above, the examiner should keep in mind the following factors when selecting products for the scoping review:

- Which products and prohibited bases were reviewed during the most recent prior examination(s), and conversely, which products and prohibited bases have not recently been reviewed?
- Which prohibited basis groups make up a significant portion of the institution’s market for the different credit products offered?
- Which products and prohibited basis groups the institution reviewed using either a voluntarily disclosed self-test or a self-evaluation?

Based on consideration of the foregoing factors, the examiner should request information for all residential and other loan products considered appropriate for scoping in the current examination cycle. In addition, wherever feasible, examiners should conduct preliminary interviews with the institution’s key underwriting personnel and those involved with establishing the institution’s pricing policies and practices.

Using the accumulated information, the examiner should evaluate the following, as applicable:

- Underwriting guidelines, policies, and standards;
- Descriptions of credit scoring systems, including a list of factors scored, cutoff scores, extent of validation, and any guidance for handling overrides and exceptions. (Refer to Part A of the Considering Automated Underwriting and Credit Scoring section of the Appendix for guidance);
- Applicable pricing policies, risk-based pricing models, and guidance for exercising discretion over loan terms and conditions;
- Descriptions of any compensation system, including whether compensation is related to loan production or pricing;
- The institution’s formal and informal relationships with any finance companies, subprime mortgage or consumer lending entities, or similar institutions;
- Loan application forms;
- Home Mortgage Disclosure Act – Loan Application Register (HMDA-LAR) or loan registers and lists of declined applications;
- Description(s) of databases maintained for loan product(s) to be reviewed;
- Records detailing policy exceptions or overrides, exception reporting, and monitoring processes;
- Copies of any consumer complaints alleging discrimination and related loan files;
- Compliance program materials (particularly fair lending policies), training manuals, organization charts, as well as record keeping, monitoring protocols, and internal
controls; and

- Copies of any available marketing materials or descriptions of current or previous marketing plans or programs or pre-screened solicitations.

**Step Two: Identify Compliance Program Discrimination Risk Factors**

Review information from agency examination work papers, institutional records, and any available discussions with management representatives in sufficient detail to understand the organization, staffing, training, recordkeeping, auditing, policies, and procedures of the institution’s fair lending compliance systems. Review these systems and note the following risk factors:

C1. Overall institution compliance record is weak.

C2. Prohibited basis monitoring information required by applicable laws and regulations is nonexistent or incomplete.

C3. Data and/or recordkeeping problems compromised reliability of previous examination reviews.

C4. Fair lending problems were previously found in one or more institution products or in institution subsidiaries.

C5. The size, scope, and quality of the compliance management program, including senior management’s involvement, designation of a compliance officer, and staffing is materially inferior to programs customarily found in institutions of similar size, market demographics, and credit complexity.

C6. The institution has not updated compliance policies and procedures to reflect changes in law or in agency guidance.

C7. Fair lending training is nonexistent or weak.

Consider these risk factors and their impact on particular lending products and practices as you conduct the product specific risk review during the scoping steps that follow. Where this review identifies fair lending compliance system deficiencies, give them appropriate consideration as part of the Compliance Management Review in Part II of these procedures.

**Step Three: Review Residential Loan Products**

Although home mortgages may not be the ultimate subject of every fair lending examination, this product line must at least be considered in the course of scoping every institution that is engaged in the residential lending market.

Divide home mortgage loans into the following groupings: home purchase, home improvement, and refinancings. Subdivide those three groups further if an institution does a significant number of any of the following types or forms of residential lending and consider them separately:

- Government-insured loans;
- Mobile home or manufactured housing loans;
- Wholesale, indirect, and brokered loans; and
- Portfolio lending (including portfolios of Fannie Mae/Freddie Mac rejections).
Interagency Fair Lending Examination Procedures

In addition, determine whether the institution offers any conventional “affordable” housing loan programs special purpose credit programs or other programs that are specifically designed to assist certain borrowers, such as under-served populations and whether their terms and conditions make them incompatible with regular conventional loans for comparative purposes. If so, consider them separately.

If previous examinations have demonstrated the following, then an examiner may limit the focus of the current examination to alternative underwriting or processing centers or to other residential products that have received less scrutiny in the past:

- A strong fair lending compliance program;
- No record of discriminatory transactions at particular decision centers or in particular residential products;
- No indication of a significant change in personnel, operations or underwriting or pricing policies at those centers or in those residential products;
- No unresolved fair lending complaints, administrative proceedings, litigation or similar factors; or
- No discretion to set price or credit terms and conditions in particular decision centers or for particular residential products.

Step Four: Identify Residential Lending Discrimination Risk Factors

- Review the lending policies, marketing plans, underwriting, appraisal and pricing guidelines, broker/agent agreements, and loan application forms for each residential loan product that represents an appreciable volume of, or displays noticeable growth in, the institution’s residential lending.
- Review also any available data regarding the geographic distribution of the institution’s loan originations with respect to the race and national origin percentages of the census tracts within its assessment area or, if different, its residential loan product lending area(s).
- Conduct interviews of loan officers and other employees or agents in the residential lending process concerning adherence to and understanding of the above policies and guidelines as well as any relevant operating practices.
- In the course of conducting the foregoing inquiries, look for the following risk factors (factors are numbered alphanumerically to coincide with the type of factor, e.g., "O" for "overt"; "P" for "pricing", etc.).

NOTE: For risk factors below that are marked with an asterisk (*), examiners need not attempt to calculate the indicated ratios for racial or national origin characteristics when the institution is not an HMDA reporter. However, consideration should be given in such cases to whether or not such calculations should be made based on gender or racial-ethnic surrogates.

Overt indicators of discrimination such as:

- O1. Including explicit prohibited basis identifiers in the institution’s written or oral policies and procedures (underwriting criteria, pricing standards, etc.).
- O2. Collecting information, conducting inquiries or imposing conditions contrary to express requirements of Regulation B.
- O3. Including variables in a credit scoring system that constitute a basis or factor
prohibited by Regulation B or, for residential loan scoring systems, the FHAct. (If a 
credit scoring system scores age, refer to Part E of the Considering Automated 
Underwriting and Credit Scoring section of the Appendix.).

O4. Statements made by the institution’s officers, employees, or agents that constitute an 
express or implicit indication that one or more such persons have engaged or do engage 
in discrimination on a prohibited basis in any aspect of a credit transaction.

O5. Employee or institutional statements that evidence attitudes based on prohibited 
basis prejudices or stereotypes.

Indicators of potential disparate treatment in Underwriting such as:

U1. *Substantial disparities among the approval/denial rates for applicants by monitored 
prohibited basis characteristic (especially within income categories).

U2. *Substantial disparities among the application processing times for applicants by 
monitored prohibited basis characteristic (especially within denial reason groups).

U3. *Substantially higher proportion of withdrawn/incomplete applications from 
prohibited basis group applicants than from other applicants.

U4. Vague or unduly subjective underwriting criteria.

U5. Lack of clear guidance on making exceptions to underwriting criteria, including 
credit scoring overrides.

U6. Lack of clear loan file documentation regarding reasons for any exceptions to 
standard underwriting criteria, including credit scoring overrides.

U7. Relatively high percentages of either exceptions to underwriting criteria or overrides 
of credit score cutoffs.

U8. Loan officer or broker compensation based on loan volume (especially loans 
approved per period of time).

U9. Consumer complaints alleging discrimination in loan processing or in 
approving/denying residential loans.

Indicators of potential disparate treatment in Pricing (interest rates, fees, or points) such as:

P1. Financial incentives for loan officers or brokers to charge higher prices (including 
interest rates, fees, and points). Special attention should be given to situations where 
financial incentives are accompanied by broad pricing discretion (as in P2), such as 
through the use of overages or yield-spread premiums.

P2. Presence of broad discretion in loan pricing (including interest rate, fees, and points), 
such as through overages, underages, or yield-spread premiums. Such discretion may be 
present even when institutions provide rate sheets and fees schedules if loan officers or 
brokers are permitted to deviate from those rates and fees without clear and objective 
criteria.

P3. Use of risk-based pricing that is not based on objective criteria or applied 
consistently.

P4. *Substantial disparities among prices being quoted or charged to applicants who
differ as to their monitored prohibited basis characteristics.

P5. Consumer complaints alleging discrimination in residential loan pricing.

P6. *In mortgage pricing, disparities in the incidence or rate spreads\(^2\) of higher-priced lending by prohibited basis characteristics as reported in the HMDA data.

P7. *A loan program that contains only borrowers from a prohibited basis group or has significant differences in the percentages of prohibited basis groups, especially in the absence of a Special Purpose Credit Program under ECOA.

**Indicators of potential disparate treatment by Steering such as:**

S1. Lack of clear, objective, and consistently implemented standards for (i) referring applicants to subsidiaries, affiliates, or lending channels within the institution (ii) classifying applicants as “prime” or “sub-prime” borrowers or (iii) deciding what kinds of alternative loan products should be offered or recommended to applicants (product placement).

S2. Financial incentives for loan officers or brokers to place applicants in nontraditional products (e.g., negative amortization, “interest only”, “payment option” adjustable rate mortgages) or higher cost products.

S3. For an institution that offers different products based on credit risk levels, any significant differences in percentages of prohibited basis groups in each of the alternative loan product categories.

S4. *Significant differences in the percentage of prohibited basis applicants in loan products or products with specific features relative to control group applicants. Special attention should be given to products and features that have potentially negative consequences for applicants (e.g., non-traditional mortgages, prepayment penalties, lack of escrow requirements, or credit life insurance).

S5. *For an institution that has one or more sub-prime mortgage subsidiaries or affiliates, any significant differences, by loan product, in the percentage of prohibited basis applicants of the institution compared to the percentage of prohibited basis applicants of the subsidiary(ies) or affiliate(s).

S6. *For an institution that has one or more lending channels that originate the same loan product, any significant differences in the percentage of prohibited basis applicants in one of the lending channels compared to the percentage of prohibited basis applicants of the other lending channel.

S7. Consumer complaints alleging discrimination in residential loan pricing or product placement.

S8. *For an institution with sub-prime mortgage subsidiaries, a concentration of those subsidiaries’ branches in minority areas relative to its other branches.

**Indicators of potential discriminatory Redlining such as:**

R1. *Significant differences, as revealed in HMDA data, in the number of applications

\(^2\) Regulation C, Section 203.4(a)(12).
Interagency Fair Lending Examination Procedures

received, withdrawn, approved not accepted, and closed for incompleteness or loans originated in those areas in the institution's market that have relatively high concentrations of minority group residents compared with areas with relatively low concentrations of minority residents.

R2. *Significant differences between approval/denial rates for all applicants (minority and non-minority) in areas with relatively high concentrations of minority group residents compared with areas with relatively low concentrations of minority residents.

R3. *Significant differences between denial rates based on insufficient collateral for applicants from areas with relatively high concentrations of minority residents and those areas with relatively low concentrations of minority residents.

R4. * Significant differences in the number of originations of higher-priced loans or loans with potentially negative consequences for borrowers, (e.g., non-traditional mortgages, prepayment penalties, lack of escrow requirements) in areas with relatively high concentrations of minority residents compared with areas with relatively low concentrations of minority residents.

R5. Other patterns of lending identified during the most recent CRA examination that differ by the concentration of minority residents.

R6. Explicit demarcation of credit product markets that excludes MSAs, political subdivisions, census tracts, or other geographic areas within the institution's lending market or CRA assessment areas and having relatively high concentrations of minority residents.

R7. Difference in services available or hours of operation at branch offices located in areas with concentrations of minority residents when compared to branch offices located in areas with concentrations of non-minority residents.

R8. Policies on receipt and processing of applications, pricing, conditions, or appraisals and valuation, or on any other aspect of providing residential credit that vary between areas with relatively high concentrations of minority residents and those areas with relatively low concentrations of minority residents.

R9. The institution’s CRA assessment area appears to have been drawn to exclude areas with relatively high concentrations of minority residents.

R10. Employee statements that reflect an aversion to doing business in areas with relatively high concentrations of minority residents.

R11. Complaints or other allegations by consumers or community representatives that the institution excludes or restricts access to credit for areas with relatively high concentrations of minority residents. Examiners should review complaints against the institution filed either with their agency or the institution; the CRA public comment file; community contact forms; and the responses to questions about redlining, discrimination, and discouragement of applications, and about meeting the needs of racial or national origin minorities, asked as part of obtaining local perspectives on the performance of financial institutions during prior CRA examinations.

R12. An institution that has most of its branches in predominantly non-minority neighborhoods at the same time that the institution's sub-prime mortgage subsidiary has
branches which are located primarily in predominantly minority neighborhoods.

*Indicators of potential disparate treatment in Marketing of residential products, such as:*

M1. Advertising patterns or practices that a reasonable person would believe indicate prohibited basis customers are less desirable.

M2. Advertising only in media serving non-minority areas of the market.

M3. Marketing through brokers or other agents that the institution knows (or has reason to know) would serve only one racial or ethnic group in the market.

M4. Use of marketing programs or procedures for residential loan products that exclude one or more regions or geographies within the institution’s assessment or marketing area that have significantly higher percentages of minority group residents than does the remainder of the assessment or marketing area.

M5. Using mailing or other distribution lists or other marketing techniques for pre-screened or other offerings of residential loan products that:

- Explicitly exclude groups of prospective borrowers on a prohibited basis or
- Exclude geographies (e.g., census tracts, ZIP codes) within the institution's marketing area that have significantly higher percentages of minority group residents than does the remainder of the marketing area.

M6. *Proportion of prohibited basis applicants is significantly lower than that group's representation in the total population of the market area.

M7. Consumer complaints alleging discrimination in advertising or marketing loans.

**Step Five: Organize and Focus Residential Risk Analysis**

Review the risk factors identified in Step 4 and, for each loan product that displays risk factors, articulate the possible discriminatory effects encountered and organize the examination of those loan products in accordance with the following guidance. For complex issues regarding these factors, consult with agency supervisory staff.

- Where overt evidence of discrimination, as described in factors O1-O5, has been found in connection with a product, document those findings as described in Part III, B, besides completing the remainder of the planned examination analysis.
- Where any of the risk factors U1-U9 are present, consider conducting an underwriting comparative file analysis as described in Part III, C.
- Where any of the risk factors P1-P7 are present, consider conducting a pricing comparative file analysis as described in Part III, D.
- Where any of the risk factors S1-S8 are present, consider conducting a steering analysis as described in Part III, E.
- Where any of the risk factors R1-R12 are present, consider conducting an analysis for redlining as described in Part III, G.
- Where any of the risk factors M1-M7 are present, consider conducting a marketing analysis as described in Part III, H.
- Where an institution uses age in any credit scoring system, consider conducting an
examination analysis of that credit scoring system’s compliance with the requirements of Regulation B as described in Part III, I.

Step Six: Identify Consumer Lending Discrimination Risk Factors
For any consumer loan products selected in Step One for risk analysis, examiners should conduct a risk factor review similar to that conducted for residential lending products in Steps Three through Five, above. Examiners should consult with agency supervisory staff regarding the potential use of surrogates to identify possible prohibited basis group individuals.

NOTE: The term surrogate in this context refers to any factor related to a loan applicant that potentially identifies that applicant’s race, color, or other prohibited basis characteristic in instances where no direct evidence of that characteristic is available. Thus, in consumer lending, where monitoring data is generally unavailable, a Hispanic or Asian surname could constitute a surrogate for an applicant’s race or national origin because the examiner can assume that the institution (which can rebut the presumption) perceived the person to be Hispanic or Asian. Similarly, an applicant’s given name could serve as a surrogate for his or her gender. A surrogate for a prohibited basis group characteristic may be used to set up a comparative analysis with control group applicants or borrowers.

Examiners should then follow the rules in Steps Three through Five, above, and identify the possible discriminatory patterns encountered and consider examining those products determined to have sufficient risk of discriminatory conduct.

Step Seven: Identify Commercial Lending Discrimination Risk Factors
Where an institution does a substantial amount of lending in the commercial lending market, most notably small business lending, and the product has not recently been examined or the underwriting standards have changed since the last examination of the product, the examiner should consider conducting a risk factor review similar to that performed for residential lending products, as feasible, given the limited information available. Such an analysis should generally be limited to determining risk potential based on risk factors U4-U8; P1-P3; R5-R7; and M1-M3.

If the institution makes commercial loans insured by the Small Business Administration (SBA), determine from agency supervisory staff whether SBA loan data (which codes race and other factors) are available for the institution and evaluate those data pursuant to instructions accompanying them.

For large institutions reporting small business loans for CRA purposes and where the institution also voluntarily geocodes loan denials, look for material discrepancies in ratios of approval-to-denial rates for applications in areas with high concentrations of minority residents compared to areas with concentrations of non-minority residents.

Articulate the possible discriminatory patterns identified and consider further examining those products determined to have sufficient risk of discriminatory conduct in accordance with the procedures for commercial lending described in Part III, F.

Step Eight: Complete the Scoping Process
To complete the scoping process, the examiner should review the results of the preceding steps and select those focal points that warrant examination, based on the relative risk levels identified above. In order to remain within the agency’s resource allowances, the examiner may need to choose a smaller number of focal points from among all those selected on the basis of risk. In such instances, set the scope by first, prioritizing focal points on the basis of (i) high number and/or relative severity of risk factors; (ii) high data quality and other factors affecting the likelihood of obtaining reliable examination results; (iii) high loan volume and the likelihood of widespread risk to applicants and borrowers; and (iv) low quality of any compliance program and, second, selecting for examination review as many focal points as resources permit.

Where the judgment process among competing focal points is a close call, information learned in the phase of conducting the compliance management review can be used to further refine the examiner’s choices.
PART II
COMPLIANCE MANAGEMENT REVIEW

The Compliance Management Review enables the examination team to determine:

- The intensity of the current examination based on an evaluation of the compliance management measures employed by an institution.
- The reliability of the institution’s practices and procedures for ensuring continued fair lending compliance.

Generally, the review should focus on:

- Determining whether the policies and procedures of the institution enable management to prevent, or to identify and self-correct, illegal disparate treatment in the transactions that relate to the products and issues identified for further analysis under Part I of these procedures.
- Obtaining a thorough understanding of the manner by which management addresses its fair lending responsibilities with respect to (a) the institution’s lending practices and standards, (b) training and other application-processing aids, (c) guidance to employees or agents in dealing with customers, and (d) its marketing or other promotion of products and services.

To conduct this review, examiners should consider institutional records and interviews with appropriate management personnel in the lending, compliance, audit, and legal functions. The examiner should also refer to the Compliance Management Analysis Checklist contained in the Appendix to evaluate the strength of the compliance programs in terms of their capacity to prevent, or to identify and self-correct, fair lending violations in connection with the products or issues selected for analysis. Based on this evaluation:

- Set the intensity of the transaction analysis by minimizing sample sizes within the guidelines established in Part III and the Fair Lending Sample Size Tables in the Appendix to the extent warranted by the strength and thoroughness of the compliance programs applicable to those focal points selected for examination.
- Identify any compliance program or system deficiencies that merit correction or improvement and present these to management in accordance with Part IV of these procedures.

Where an institution performs a self-evaluation or has voluntarily disclosed the report or results of a self-test of any product or issue that is within the scope of the examination and has been selected for analysis pursuant to Part I of these procedures, examiners may streamline the examination, consistent with agency guidance, provided the self-test or self-evaluation meets the requirements set forth in Using Self-Tests and Self-Evaluations to Streamline the Examination located in the Appendix.
PART III
EXAMINATION PROCEDURES

Once the scope and intensity of the examination have been determined, assess the institution’s fair lending performance by applying the appropriate procedures that follow to each of the examination focal points already selected.

A. Verify Accuracy of Data

Prior to any analysis and preferably before the scoping process, examiners should assess the accuracy of the data being reviewed. Data verifications should follow specific protocols (sampling, size, etc.) intended to ensure the validity of the review. For example, where an institution’s LAR data are relied upon, examiners should generally validate the accuracy of the institution’s submitted data by selecting a sample of LAR entries and verifying that the information noted on the LAR was reported according to instructions by comparing information contained in the loan file for each sampled loan. If the LAR data are inconsistent with the information contained in the loan files, depending on the nature of the errors, examiners may not be able to proceed with a fair lending analysis until the LAR data have been corrected by the institution. In cases where inaccuracies impede the examination, examiners should direct the institution to take action to ensure data integrity (data scrubbing, monitoring, training, etc.).

NOTE: While the procedures refer to the use of HMDA data, other data sources should be considered, especially in the case of non-HMDA reporters or institutions that originate loans, but are not required to report them on an LAR.

B. Documenting Overt Evidence of Disparate Treatment

Where the scoping process or any other source identifies overt evidence of disparate treatment, the examiner should assess the nature of the policy or statement and the extent of its impact on affected applicants by conducting the following analysis

Step 1: Where the indicator(s) of overt discrimination are found in or based on a written policy (for example, a credit scorecard) or communication, determine and document:

   a. The precise language of the apparently discriminatory policy or communication and the nature of the fair lending concerns that it raises;
   b. the institution’s stated purpose in adopting the policy or communication and the identity of the person on whose authority it was issued or adopted;
   c. How and when the policy or communication was put into effect;
   d. How widely the policy or communication was applied; and
   e. Whether and to what extent applicants were adversely affected by the policy or communication.

Step 2: Where any indicator of overt discrimination was an oral statement or unwritten practice, determine and document:

   a. The precise nature of both the statement or practice and of the fair lending concerns that they raise;
b. The identity of the persons making the statement or applying the practice and their descriptions of the reasons for it and the persons authorizing or directing the use of the statement or practice;
c. How and when the statement or practice was disseminated or put into effect;
d. How widely the statement or practice was disseminated or applied; and
e. Whether and to what extent applicants were adversely affected by the statement or practice.

Assemble findings and supporting documentation for presentation to management in connection with Part IV of these procedures.

C. Transactional Underwriting Analysis - Residential and Consumer Loans.

Step 1: Set Sample Size

a. For each focal point selected for this analysis, two samples will be utilized: (i) prohibited basis group denials and (ii) control group approvals, both identified either directly from monitoring information in the case of residential loan applications or through the use of application data or surrogates in the case of consumer applications.

b. Refer to Fair Lending Sample Size Tables, Table A in the Appendix and determine the size of the initial sample for each focal point, based on the number of prohibited basis group denials and the number of control group approvals by the institution during the 12 month (or calendar year) period of lending activity preceding the examination. In the event that the number of denials and/or approvals acted on during the preceding 12 month period substantially exceeds the maximum sample size shown in Table A, reduce the time period from which that sample is selected to a shorter period. (In doing so, make every effort to select a period in which the institution’s underwriting standards are most representative of those in effect during the full 12-month period preceding the examination.)

c. If the number of prohibited basis group denials or control group approvals for a given focal point that were acted upon during the 12-month period referenced in 1.b., above, do not meet the minimum standards set forth in the Sample Size Table, examiners need not attempt a transactional analysis for that focal point. Where other risk factors favor analyzing such a focal point, consult with agency supervisory staff on possible alternative methods of judgmental comparative analysis.

d. If agency policy calls for a different approach to sampling (e.g., a form of statistical analysis, a mathematical formula, or an automated tool) for a limited class of institutions, examiners should follow that approach.

Step 2: Determine Sample Composition.

a. To the extent the institution maintains records of loan outcomes resulting from exceptions to its credit underwriting standards or other policies (e.g., overrides to credit score cutoffs), request such records for both approvals and denials, sorted by loan product and branch or decision center, if the institution can do so. Include in the initial sample for each focal point all exceptions or overrides applicable to that focal point.

b. Using HMDA/LAR data or, for consumer loans, comparable loan register data to the
extent available, choose approved and denied applications based on selection criteria that will maximize the likelihood of finding marginal approved and denied applicants, as discussed below.

c. To the extent that the above factors are inapplicable or other selection criteria are unavailable or do not facilitate selection of the entire sample size of files, complete the initial sample selection by making random file selections from the appropriate sample categories in the Sample Size Table.

Step 3: Compare Approved and Denied Applications

Overview: Although a creditor's written policies and procedures may appear to be nondiscriminatory, lending personnel may interpret or apply policies in a discriminatory manner. In order to detect any disparate treatment among applicants, the examiner should first eliminate all but "marginal transactions" (see 3.b. below) from each selected focal point sample. Then, a detailed profile of each marginal applicant's qualifications, the level of assistance received during the application process, the reasons for denial, the loan terms, and other information should be recorded on an Applicant Profile Spreadsheet. Once profiled, the examiner can compare the target and control groups for evidence that similarly qualified applicants have been treated differently as to either the institution's credit decision or the quality of assistance provided.

a. Create Applicant Profile Spreadsheet

Based upon the institution's written and/or articulated credit standards and loan policies, identify categories of data that should be recorded for each applicant and provide a field for each of these categories on a worksheet or computerized spreadsheet. Certain data (income, loan amount, debt, etc.) should always be included in the spreadsheet, while the other data selected will be tailored for each loan product and institution based on applicable underwriting criteria and such issues as branch location and underwriter. Where credit bureau scores and/or application scores are an element of the institution’s underwriting criteria (or where such information is regularly recorded in loan files, whether expressly used or not), include a data field for this information in the spreadsheet.

In order to facilitate comparisons of the quality of assistance provided to target and control group applicants, respectively, every work sheet should provide a "comments" block appropriately labeled as the site for recording observations from the file or interviews regarding how an applicant was, or was not, assisted in overcoming credit deficiencies or otherwise qualifying for approval.

b. Complete Applicant Profiles

From the application files sample for each focal point, complete applicant profiles for selected denied and approved applications as follows:

- A principal goal is to identify cases where similarly qualified prohibited basis and control group applicants had different credit outcomes, because the agencies have found that discrimination, including differences in granting assistance during the approval process, is more likely to occur with respect to applicants who are not either clearly qualified or unqualified, e.g., “marginal” applicants. The examiner-in-charge should, during the following steps, judgmentally select from the initial sample only
those denied and approved applications which constitute marginal transactions. (See Appendix on Identifying Marginal Transactions for guidance.)

- If few marginal control group applicants are identified from the initial sample, review additional files of approved control group applicants. This will either increase the number of marginal approvals or confirm that marginal approvals are so infrequent that the marginal denials are unlikely to involve disparate treatment.

- The judgmental selection of both marginal-denied and marginal-approved applicant loan files should be done together, in a “back and forth” manner, to facilitate close matches and a more consistent definition of “marginal” between these two types of loan files.

- Once the marginal files have been identified, the data elements called for on the profile spreadsheet are extracted or noted and entered.

- While conducting the preceding step, the examiner should simultaneously look for and document on the spreadsheet any evidence found in marginal files regarding the following:
  - The extent of any assistance, including both affirmative aid and waivers or partial waivers of credit policy provisions or requirements, that appears to have been provided to marginal-approved control group applicants, which enabled them to overcome one or more credit deficiencies, such as excessive debt-to-income ratios; and
  - The extent to which marginal-denied target group applicants with similar deficiencies were, or were not, provided similar affirmative aid, waivers, or other forms of assistance.

c. Review and Compare Profiles

- For each focal point, review all marginal profiles to determine if the underwriter followed institution lending policies in denying applications and whether the reason(s) for denial were supported by facts documented in the loan file and properly disclosed to the applicant pursuant to Regulation B. If any (a) unexplained deviations from credit standards, (b) inaccurate reasons for denial, or (c) incorrect disclosures are noted, (whether in a judgmental underwriting system, a scored system, or a mixed system) the examiner should obtain an explanation from the underwriter and document the response on an appropriate workpaper.

NOTE: In constructing the applicant profiles to be compared, examiners must adjust the facts compared so that assistance, waivers, or acts of discretion are treated consistently between applicants. For example, if a control group applicant's DTI ratio was lowered to 42% because the institution decided to include short-term overtime income, and a prohibited basis group applicant who was denied due to "insufficient income" would have had his ratio drop from 46% to 41% if his short-term overtime income had been considered, then the examiners should consider 41%, not 46%, in determining the benchmark.

- For each reason for denial identified within the target group, rank the denied prohibited basis applicants, beginning with the applicant whose qualification(s) related to that reason for denial were least deficient. (The top-ranked denied
applicant in each such ranking will be referred to below as the “benchmark” applicant.

- Compare each marginal control group approval to the benchmark applicant in each reason-for-denial ranking developed in step (b), above. If there are no approvals who are equally or less qualified, then there are no instances of disparate treatment for the institution to account for. For all such approvals that appear no better qualified than the denied benchmark applicant:
  - Identify the approved loan on the worksheet or spreadsheet as an “overlap approval;” and
  - Compare that overlap approval with other marginal prohibited basis denials in the ranking to determine whether additional overlaps exist. If so, identify all overlapping approvals and denials as above.

- Where the focal point involves use of a credit scoring system, the analysis for disparate treatment is similar to the procedures set forth in (c) above, and should focus primarily on overrides of the scoring system itself. For guidance on this type of analysis, refer to Considering Automated Underwriting and Credit Scoring, Part C, in the Appendix.

Step 4: If there is some evidence of violations in the underwriting process, but not enough to clearly establish the existence of a pattern or practice, the examiner should expand the sample as necessary to determine whether a pattern or practice does or does not exist.

Step 5: Discuss all findings resulting from the above comparisons with management and document both the findings and all conversations on an appropriate worksheet.

D. Analyzing Potential Disparities in Pricing and Other Terms and Conditions

Depending on the intensity of the examination and the size of the borrower population to be reviewed, the analysis of decisions on pricing and other terms and conditions may involve a comparative file review, statistical analysis, a combination of the two, or other specialized technique used by an agency. Each examination process assesses an institution’s credit-decision standards and whether decisions on pricing and other terms and conditions are applied to borrowers without regard to a prohibited basis.

The procedures below encompass the examination steps for a comparative file review. Examiners should consult their own agency’s procedures for detailed guidance where appropriate. For example, when file reviews are undertaken in conjunction with statistical analysis, the guidance on specific sample sizes referenced below may not apply.

Step 1: Determine Sample Selection

Examiners may review data in its entirety or restrict their analysis to a sample depending on the examination approach used and the quality of the institution’s compliance management system. The Fair Lending Sample Size Tables in the Appendix provide general guidance about appropriate sample sizes. Generally, the sample size should be based on the number of
prohibited basis group and control group originations for each focal point selected during the 12 months preceding the examination and the outcome of the compliance management system analysis conducted in Part II. When possible, examiners should request specific loan files in advance and request that the institution have them available for review at the start of the examination.

Step 2: Determine Sample Composition and Create Applicant Profiles
Examiners should tailor their sample and subsequent analysis to the specific factors that the institution considers when determining its pricing, terms, and conditions. For example, while decisions on pricing and other terms and conditions are part of an institution’s underwriting process, general underwriting criteria should not be used in the analysis if they are not relevant to the term or condition to be reviewed. Additionally, consideration should be limited to factors which examiners determine to be legitimate.

a. While the period for review should be 12 months, prohibited basis group and control group borrowers should be grouped and reviewed around a range of dates during which the institution’s practices for the term or condition being reviewed were the same. Generally, examiners should use the loan origination date or the loan application date.

b. Identify data to be analyzed for each focal point to be reviewed and record this information for each borrower on a spreadsheet to ensure a valid comparison regarding terms and conditions. For example, in certain cases, an institution may offer slightly differentiated products with significant pricing implications to borrowers. In these cases, it may be appropriate to group these procedures together for the purposes of evaluation.

Step 3: Review Terms and Conditions; Compare with Borrower Outcomes

a. Review all loan terms and conditions (rates, points, fees, maturity variations, LTVs, collateral requirements, etc.) with special attention to those that are left, in whole or in part, to the discretion of loan officers or underwriters. For each such term or condition, identify (a) any prohibited basis group borrowers in the sample who appear to have been treated unfavorably with respect to that term or condition and (b) any control group borrowers who appear to have been treated favorably with respect to that term or condition. The examiner’s analysis should be thoroughly documented in the workpapers.

b. Identify from the sample universe any control group borrowers who appear to have been treated more favorably than one or more of the above-identified prohibited basis group borrowers and who have pricing or creditworthiness factors (under the institution’s standards) that are equal to or less favorable than the prohibited basis group borrowers.

c. Obtain explanations from the appropriate loan officer or other employee for any differences that exist and reanalyze the sample for evidence of discrimination.

d. If there is some evidence of violations in the imposition of terms and conditions, but not enough to clearly establish the existence of a pattern or practice, the examiner should expand the sample as necessary to determine whether a pattern or practice does or does not exist.
e. Discuss differences in comparable loans with the institution's management and document all conversations on an appropriate worksheet. For additional guidance on evaluating management’s responses, refer to Part A, 1-5, Evaluating Responses to Evidence of Disparate Treatment in the Appendix.

E. Steering Analysis

An institution that offers a variety of lending products or product features, either through one channel or through multiple channels, may benefit consumers by offering greater choices and meeting the diverse needs of applicants. Greater product offerings and multiple channels, however, may also create a fair lending risk that applicants will be illegally steered to certain choices based on prohibited characteristics.

Several examples illustrate potential fair lending risk:
- An institution that offers different lending products based on credit risk levels may present opportunities for loan officers or brokers to illegally steer applicants to the higher-risk products;
- An institution that offers nontraditional loan products or loan products with potentially onerous terms (such as prepayment penalties) may present opportunities for loan officers or brokers to illegally steer applicants to certain products or features; and
- An institution that offers prime or sub-prime products through different channels may present opportunities for applicants to be illegally steered to the sub-prime channel.

The distinction between guiding consumers toward a specific product or feature and illegal steering centers on whether the institution did so on a prohibited basis, rather than based on an applicant’s needs or other legitimate factors. It is not necessary to demonstrate financial harm to a group that has been “steered.” It is enough to demonstrate that action was taken on a prohibited basis regardless of the ultimate financial outcome. If the scoping analysis reveals the presence of one or more risk factors S1 through S8 for any selected focal point, consult with agency supervisory staff about conducting a steering analysis as described below.

**Step 1: Clarify what options are available to applicants.**

Through interviews with appropriate personnel of the institution and review of policy manuals, procedure guidelines, and other directives, obtain and verify the following information for each product-alternative product pairing or grouping identified above:

a. All underwriting criteria for the product or feature and their alternatives that are offered by the institution or by a subsidiary or affiliate. Examples of products may include stated income, negative amortization, and options ARMs. Examples of terms and features include prepayment penalties and escrow requirements. The distinction between a product, term, and feature may vary institution to institution. For example, some institutions may consider “stated income” a feature, whiles others may consider that a distinct product.

b. Pricing or other costs applicable to the product and the alternative product(s), including interest rates, points, and all fees.
Step 2: Document the policies, conditions or criteria that have been adopted by the
institution for determining how referrals are to be made and choices presented to
applicants.

- a. Obtain not only information regarding the product or feature offered by the institution
   and alternatives offered by subsidiaries/affiliates, but also information on alternatives
   offered solely by the institution itself.

- b. Obtain any information regarding a subsidiary of the institution directly from that
   entity, but seek information regarding an affiliate or holding company subsidiary only
   from the institution itself.

- c. Obtain all appropriate documentation and provide a written summary of all
   discussions with loan personnel and managers.

- d. Obtain documentation and/or employee estimates as to the volume of referrals made
   from or to the institution, for each product, during a relevant time period.

- e. Resolve to the extent possible any discrepancies between information found in the
   institution's documents and information obtained in discussions with loan personnel
   and managers by conducting appropriate follow-up interviews.

- f. Identify any policies and procedures established by the institution and/or the subsidiary
   or affiliate for (i) referring a person who applies to the institution, but does not meet
   its criteria, to another internal lending channel, subsidiary, or affiliate; (ii) offering
   one or more alternatives to a person who applies to the institution for a specific
   product or feature, but does not meet its criteria; or (iii) referring a person who
   applies to a subsidiary or affiliate for its product, but who appears qualified for a loan
   from the institution, to the institution; or referring a person who applies through one
   internal lending channel for a product, but who appears to be qualified for a loan
   through another lending channel to that particular lending channel.

- g. Determine whether loan personnel are encouraged, through financial incentives or
   otherwise, to make referrals, either from the institution to a subsidiary/affiliate or vice
   versa. Similarly, determine whether the institution provides financial incentives
   related to products and features.

Step 3: Determine how referral decisions are made and documented within the institution.

Determine how a referral is made to another internal lending channel, subsidiary, or affiliate.
Determine the reason for referral and how it is documented.

Step 4: Determine to what extent individual loan personnel are able to exercise personal
discretion in deciding what loan products or other credit alternatives will be made
available to a given applicant.
Step 5: Determine whether the institution's stated policies, conditions, or criteria in fact are adhered to by individual decision makers. If not, does it appear that different policies or practices are actually in effect?

Enter data from the prohibited basis group sample on the spreadsheets and determine whether the institution is, in fact, applying its criteria as stated. For example, if one announced criterion for receiving a "more favorable" prime mortgage loan was a back-end debt ratio of no more than 38%, review the spreadsheets to determine whether that criteria were adhered to. If the institution's actual treatment of prohibited basis group applicants appears to differ from its stated criteria, document such differences for subsequent discussion with management.

Step 6: To the extent that individual loan personnel have any discretion in deciding what products and features to offer applicants, conduct a comparative analysis to determine whether that discretion has been exercised in a nondiscriminatory manner.

Compare the institution's or subsidiary/affiliate's treatment of control group and prohibited basis group applicants by adapting the "benchmark" and "overlap" technique discussed in Part III, Section C, of these procedures. For purposes of this Steering Analysis, that technique should be conducted as follows:

a. For each focal point to be analyzed, select a sample of prohibited basis group applicants who received "less favorable" treatment (e.g., referral to a finance company or a subprime mortgage subsidiary or counteroffers of less favorable product alternatives).

   NOTE: In selecting the sample, follow the guidance of Fair Lending Sample Size Tables, Table B in the Appendix and select "marginal applicants" as instructed in Part III, Section C, above.

b. Prepare a spreadsheet for the sample which contains data entry categories for those underwriting and/or referral criteria that the institution identified in Step 1.b as used in reaching underwriting and referral decisions between the pairs of products.

c. Review the "less favorably" treated prohibited basis group sample and rank this sample from least qualified to most qualified.

d. From the sample, identify the best qualified prohibited basis group applicant based on the criteria identified for the control group, above. This applicant will be the "benchmark" applicant. Rank order the remaining applicants from best to least qualified.

e. Select a sample of control group applicants. Identify those who were treated "more favorably" with respect to the same product-alternative product pair as the prohibited basis group. (Again refer to the Sample Size Table B and marginal applicant processes noted above in selecting the sample.)

f. Compare the qualifications of the benchmark applicant with those of the control group applicants, beginning with the least qualified member of that sample. Any control group applicant who appears less qualified than the benchmark applicant should be identified on the spreadsheet as a "control group overlap."

g. Compare all control group overlaps with other, less qualified prohibited basis group applicants to determine whether additional overlaps exist.
h. Document all overlaps as possible disparities in treatment. Discuss all overlaps and related findings (e.g., any differences between stated and actual underwriting and/or referral criteria) with management, documenting all such conversations.

Step 7: Examiners should consult with their agency’s supervisory staff if they see a need to contact control group or prohibited basis group applicants to substantiate the steering analysis.

F. Transactional Underwriting Analysis - Commercial Loans.

Overview: Unlike consumer credit, where loan products and prices are generally homogenous and underwriting involves the evaluation of a limited number of credit variables, commercial loans are generally unique and underwriting methods and loan pricing may vary depending on a large number of credit variables. The additional credit analysis that is involved in underwriting commercial credit products will entail additional complexity in the sampling and discrimination analysis process. Although ECOA prohibits discrimination in all commercial credit activities of a covered institution, the agencies recognize that small businesses (sole proprietorships, partnerships, and small, closely-held corporations) may have less experience in borrowing. Small businesses may have fewer borrowing options, which may make them more vulnerable to discrimination. Therefore, in implementing these procedures, examinations should generally be focused on small business credit (commercial applicants that had gross revenues of $1,000,000 or less in the preceding fiscal year), absent some evidence that a focus on other commercial products would be more appropriate.

Step 1: Understand Commercial Loan Policies

For the commercial product line selected for analysis, the examiner should first review credit policy guidelines and interview appropriate commercial loan managers and officers to obtain written and articulated standards used by the institution in evaluating commercial loan applications.

NOTE: Examiners should consult their own agencies for guidance on when a comparative analysis or statistical analysis is appropriate and follow their agencies procedures for conducting such a review/analysis.

Step 2: Conduct Comparative File Review

a. Select all (or a maximum of 10) denied applications that were acted on during the three-month period prior to the examination. To the extent feasible, include denied applications from businesses that are (i) located in minority and/or integrated geographies or (ii) appear to be owned by women or minority group members, based on the names of the principals shown on applications or related documents. (In the case of institutions that do a significant volume of commercial lending, consider reviewing more than ten applications.)

b. For each of the denied commercial applications selected, record specific information from loan files and through interviews with the appropriate loan officer(s), about the principal owners, the purpose of the loan, and the specific, pertinent financial information about the commercial enterprise (including type of business - retail, manufacturing, service, etc.), that was used by the institution to evaluate the credit
request. Maintenance or use of data that identifies prohibited basis characteristics of those involved with the business (either in approved or denied loan applications) should be evaluated as a potential violation of Regulation B.

c. Select 10 approved loans that appear to be similar with regard to business type, purpose of loan, loan amount, loan terms, and type of collateral, as the denied loans sampled. For example, if the denied loan sample includes applications for lines of credit to cover inventory purchases for retail businesses, the examiner should select approved applications for lines of credit from retail businesses.

d. For each approved commercial loan application selected, obtain and record information parallel to that obtained for denied applications.

e. The examiner should first compare the credit criteria considered in the credit process for each of the approved and denied applications to established underwriting standards, rather than comparing files directly.

f. The examiner should identify any deviations from credit standards for both approved and denied credit requests and differences in loan terms granted for approved credit requests.

g. The examiner should discuss each instance where deviations from credit standards and terms were noted, but were not explained in the file, with the commercial credit underwriter. Each discussion should be documented.

Step 3: Conduct Targeted Sampling

a. If deviations from credit standards or pricing are not sufficiently explained by other factors either documented in the credit file or the commercial underwriter was not able to provide a reasonable explanation, the examiner should determine if deviations were detrimental to any protected classes of applicants.

b. The examiner should consider employing the same techniques for determining race and gender characteristics of commercial applicants as those outlined in the consumer loan sampling procedures.

c. If it is determined that there are members of one or more prohibited basis groups among commercial credit requests that were not underwritten according to established standards or received less favorable terms, the examiner should select additional commercial loans, where applicants are members of the same prohibited basis group and select similarly situated control group credit requests in order to determine whether there is a pattern or practice of discrimination. These additional files should be selected based on the specific applicant circumstance(s) that appeared to have been viewed differently by lending personnel on a prohibited basis.

d. If there are not enough similarly situated applicants for comparison in the original sample period to draw a reasonable conclusion, the examiner should expand the sample period. The expanded sample period should generally not go beyond the date of the prior examination.

Sampling Guidelines

a. Generally, the task of selecting an appropriate expanded sample of prohibited basis and control group applications for commercial loans will require examiner judgment.
The examiner should select a sample that is large enough to be able to draw a reasonable conclusion.

b. The examiner should first select from the applications that were acted on during the initial sample period, but were not included in the initial sample, and select applications from prior time periods as necessary.

c. The expanded sample should include both approved and denied, prohibited basis and control group applications, where similar credit was requested by similar enterprises for similar purposes.

G. Analysis of Potential Discriminatory “Redlining”

Overview: For purposes of this analysis, traditional “redlining” is a form of illegal disparate treatment in which an institution provides unequal access to credit, or unequal terms of credit, because of the race, color, national origin, or other prohibited characteristic(s) of the residents of the area in which the credit seeker resides or will reside or in which the residential property to be mortgaged is located. Redlining may also include “reverse redlining,” the practice of targeting certain borrowers or areas with less advantageous products or services based on prohibited characteristics.

The redlining analysis may be applied to determine whether, on a prohibited basis:

- An institution fails or refuses to extend credit in certain areas;
- An institution targets certain borrowers or certain areas with less advantageous products;
- An institution makes loans in such an area, but at a restricted level or upon less-favorable terms or conditions as compared to contrasting areas; or
- An institution omits or excludes such an area from efforts to market residential loans or solicit customers for residential credit.

This guidance focuses on possible discrimination based on race or national origin. The same analysis could be adapted to evaluate relative access to credit for areas of geographical concentration on other prohibited bases – for example, age.

NOTE: It is true that neither the Equal Credit Opportunity Act (ECOA) nor the Fair Housing Act (FHAct) specifically uses the term “redlining.” However, federal courts as well as agencies that have enforcement responsibilities for the FHAct have interpreted it as prohibiting institutions from having different marketing or lending practices for certain geographic areas, compared to others, where the purpose or effect of such differences would be to discriminate on a prohibited basis. Similarly, the ECOA would prohibit treating applicants for credit differently on the basis of differences in the racial or ethnic composition of their respective neighborhoods.

Like other forms of disparate treatment, redlining can be proven by overt or comparative evidence. If any written or oral policy or statement of the institution (see risk factors R6-10 in Part I, above) suggests that the institution links the racial or national origin character of an area with any aspect of access to or terms of credit, the examiners should refer to the guidance in Section B of this Part III, on documenting and evaluating overt evidence of discrimination.

Overt evidence includes not only explicit statements, but also any geographical terms used by the institution that would, to a reasonable person familiar with the community in question, connote a
specific racial or national origin character. For example, if the principal information conveyed by the phrase “north of 110th Street” is that the indicated area is principally occupied by Hispanics, then a policy of not making credit available “north of 110th Street” is overt evidence of potential redlining on the basis of national origin.

Overt evidence is relatively uncommon. Consequently, the redlining analysis usually will focus on comparative evidence (similar to analyses of possible disparate treatment of individual customers) in which the institution’s treatment of areas with contrasting racial or national origin characters is compared.

When the scoping process (including consultation within an agency as called for by agency procedures) indicates that a redlining analysis should be initiated, examiners should complete the following steps of comparative analysis:

1. Identify and delineate any areas within the institution’s CRA assessment area and reasonably expected market area for residential products that have a racial or national origin character;
2. Determine whether any minority area identified in Step 1 appears to be excluded, under-served, selectively excluded from marketing efforts, or otherwise less-favorably treated in any way by the institution;
3. Identify and delineate any areas within the institution’s CRA assessment area and reasonably expected market area for residential products that are non-minority in character and that the institution appears to treat more favorably;
4. Identify the location of any minority areas located just outside the institution’s CRA assessment area and market area for residential products, such that the institution may be purposely avoiding such areas;
5. Obtain the institution’s explanation for the apparent difference in treatment between the areas and evaluate whether it is credible and reasonable; and
6. Obtain and evaluate other information that may support or contradict interpreting identified disparities to be the result of intentional illegal discrimination.

These steps are discussed in detail below.

Using information obtained during scoping

Although the six tasks listed are presented below as examination steps in the order given above, examiners should recognize that a different order may be preferable in any given examination. For example, the institution’s explanation (Step 5) for one of the policies or patterns in question may already be documented in the CRA materials reviewed (Step 1) and the CRA examiners may already have verified it, which may be sufficient for purposes of the redlining analysis.

As another example, as part of the scoping process, the examiners may have reviewed an analysis of the geographic distribution of the institution’s loan originations with respect to the racial and national origin composition of census tracts within its CRA assessment or residential market area. Such analysis might have documented the existence of significant discrepancies between areas, by degree of minority concentration, in loans originated (risk factor R1), approval/denial rates (risk factor R2), and/or rates of denials because of insufficient collateral
Interagency Fair Lending Examination Procedures

(risk factor R3). In such a situation in which the scoping process has produced a reliable factual record, the examiners could begin with Step 5 (obtaining an explanation) of the redlining analysis below.

In contrast, when the scoping process only yields partial or questionable information or when the risk factors on which the redlining analysis is based on complaints or allegations against the institution, Steps 1-4 must be addressed.

Comparative analysis for redlining

Step 1: Identify and delineate any areas within the institution’s CRA assessment area and reasonably expected market area for residential products that are of a racial or national origin minority character.

NOTE: The CRA assessment area can be a convenient unit for redlining analysis because information about it typically already is in hand. However, the CRA assessment area may be too limited. The redlining analysis focuses on the institution’s decisions about how much access to credit to provide to different geographical areas. The areas for which those decisions can best be compared are areas where the institution actually marketed and provided credit and where it could reasonably be expected to have marketed and provided credit. Some of those areas might be beyond or otherwise different from the CRA assessment area.

If there are no areas identifiable for their racial or national origin minority character within the institution’s CRA assessment area or reasonably expected market area for residential products, a redlining analysis is not appropriate. (If there is a substantial, but dispersed minority population, potential disparate treatment can be evaluated by a routine comparative file review of applicants.) This step may have been substantially completed during scoping, but unresolved matters may remain. (For example, several community spokespersons may allege that the institution is redlining, but disagree in defining the area.) The examiners should:

a. Describe as precisely as possible why a specific area is recognized in the community (perceptions of residents, etc.) and/or is objectively identifiable (based on census or other data) as having a particular racial or national origin minority character.

- The most obvious identifier is the predominant race or national origin of the residents of the area. Examiners should document the percentages of racial or national origin minorities residing within the census tracts that make up the area. Analyzing racial and national origin concentrations in quartiles (such as 0 to <=25%, >25% to <= 50%, >50% to <= 75%, and >75%) or based on majority concentration (0 to <=50%, and >50%) may be helpful. However, examiners should bear in mind that it is illegal for the institution to consider a prohibited factor in any way. For example, an area or neighborhood may only have a minority population of 20%, but if the area’s concentration appears related to lending practices, it would be appropriate to use that area’s level of concentration in the analysis. Contacts with community groups can be helpful to learn whether there are such subtle features of racial or ethnic character within a particular neighborhood.

- Geographical groupings that are convenient for CRA may obscure racial patterns. For example, an under-served, low-income, predominantly minority
neighborhood that lies within a larger low-income area that primarily consisted of non-minority neighborhoods may seem adequately served when the entire low-income area is analyzed as a unit. However, a racial pattern of underservice to minority areas might be revealed if the low-income minority neighborhood shared a border with an under-served, middle-income, minority area and those two minority areas were grouped together for purposes of analysis.

b. Describe how the racial or national origin character changes across the suspected redlining area’s various boundaries.

c. Document or estimate the demand for credit within the minority area. This may include the applicable demographics of the area, including the percentage of homeowners, the median house value, median family income, or the number of small businesses, etc. Review the institution’s non-originated loan applications from the suspected redlined areas. If available, review aggregate institution data for loans originated and applications received from the suspected redlined areas. Community contacts may also be helpful in determining the demand for such credit. If the minority area does not have a significant amount of demand for such credit, the area is not appropriate for a redlining analysis.

Step 2: Determine whether any minority area identified in Step 1 is excluded, under-served, selectively excluded from marketing efforts, or otherwise less-favorably treated in any way by the institution.

The examiners should begin with the risk factors identified during the scoping process. The unfavorable treatment may have been substantially documented during scoping and needs only to be finished in this step. If not, this step will verify and measure the extent to which HMDA data show the minority areas identified in Step 1 to be under-served and/or how the institution’s explicit policies treat them less favorably.

a. Review prior CRA lending test analyses to learn whether they have identified any excluded or otherwise under-served areas or other significant geographical disparities in the institution’s lending. Determine whether any of those are the minority areas identified in Step 1.

b. Learn from the institution itself whether, as a matter of policy, it treats any separate or distinct geographical areas within its marketing or service area differently from other areas. This may have been done completely or partially during scoping analysis related to risk factors R5-R9. The differences in treatment can be in marketing, products offered, branch operations (including the services provided and the hours of operation), appraisal practices, application processing, approval requirements, pricing, loan conditions, evaluation of collateral, or any other policy or practice materially related to access to credit. Determine whether any of those less-favored areas are the minority areas identified in Step 1.

c. Obtain from the institution: (i) its reasons for such differences in policy, (ii) how the differences are implemented, and (iii) any specific conditions that must exist in an area for it to receive the particular treatment (more favorable or less favorable) that the institution has indicated.
Interagency Fair Lending Examination Procedures

Step 3: Identify and delineate any areas within the institution’s CRA assessment area and reasonably expected market area for residential products that are non-minority in character and that the institution appears to treat more favorably.

To the extent not already completed during scoping:

a. Document the percentages of control group and of racial or national origin minorities residing within the census tract(s) that comprise(s) the non-minority area;
b. Document the nature of the housing stock in the area;
c. Describe, to the extent known, how the institution’s practices, policies, or its rate of lending change from less- to more-favorable as one leaves the minority area at its various boundaries (Examiners should be particularly attentive to instances in which the boundaries between favored and disfavored areas deviate from boundaries the institution would reasonably be expected to follow, such as political boundaries or transportation barriers.); and
d. Examiners should particularly consider whether, within a large area that is composed predominantly of racial or national origin minority households, there are enclaves that are predominantly non-minority or whether, along the area’s borders, there are irregularities where the non-minority group is predominant. As part of the overall comparison, examiners should determine whether credit access within those small non-minority areas differs from credit access in the larger minority area.

Step 4: Identify the location of any minority areas just outside the institution’s CRA assessment area and market area for residential products, such that the institution may be purposely avoiding such areas.

Review the analysis from prior CRA examinations of whether the assessment area appears to have been influenced by prohibited factors. If there are minority areas that the institution excluded from the assessment area improperly, consider whether they ought to be included in the redlining analysis. Analyze the institution’s reasonably expected market area in the same manner.

Step 5: Obtain the institution’s explanation for the apparent difference in treatment between the areas and evaluate whether it is credible and reasonable.

This step completes the comparative analysis by soliciting from the institution any additional information not yet considered by the examiners that might show that there is a nondiscriminatory explanation for the apparent disparate treatment based on race or ethnicity.

For each matter that requires explanation, provide the institution full information about what differences appear to exist in how it treats minority and non-minority areas and how the examiners reached their preliminary conclusions at this stage of the analysis.

a. Evaluate whether the conditions identified by the institution in Step 2 as justifying more favorable treatment pursuant to institutional policy existed in minority neighborhoods that did not receive the favorable treatment called for by institutional policy. If there are minority areas for which those conditions existed, ask the institution to explain why the areas were treated differently despite the similar conditions.
b. Evaluate whether the conditions identified by the institution in Step 2 as justifying less favorable treatment pursuant to institutional policy existed in non-minority neighborhoods that received favorable treatment nevertheless. If there are non-minority areas for which those conditions existed, ask the institution to explain why those areas were treated differently, despite the similar conditions.

c. Obtain explanations from the institution for any apparent differences in treatment observed by the examiners, but not called for by the institution’s policies

- If the institution’s explanation cites any specific conditions in the non-minority area(s) to justify more favorable treatment, determine whether the minority area(s) identified in Step 1 satisfied those conditions. If there are minority areas for which those conditions existed, ask the institution to explain why the areas were treated differently despite the similar conditions.
- If the institution’s explanation cites any specific conditions in the minority area(s) to justify less favorable treatment, determine whether the non-minority area(s) had those conditions. If there are non-minority areas for which those conditions existed, ask the institution to explain why those areas were treated differently, despite the similar conditions.

d. Evaluate the institution’s responses by applying appropriate principles selected from the Appendix on Evaluating Responses to Evidence of Disparate Treatment.

Step 6: Obtain and evaluate specific types of other information that may support or contradict a finding of redlining.

As a legal matter, discriminatory intent can be inferred simply from the lack of a legitimate explanation for clearly less-favorable treatment of racial or national origin minorities. Nevertheless, if the institution’s explanations do not adequately account for a documented difference in treatment, the examiners should consider additional information that might support or contradict the interpretation that the difference in treatment constituted redlining.

a. Comparative file review. If there was a comparative file review conducted in conjunction with the redlining examination, review the results; or if it is necessary and feasible to do so to clarify what appears to be discriminatory redlining, compare denied applications from within the suspected redlining area to approved applications from the contrasting area.

- Learn whether there were any denials of fully qualified applicants from the suspected redlining area. If so, that may support the view that the institution was avoiding doing business in the area.
- Learn whether the file review identified instances of illegal disparate treatment against applicants of the same race or national origin as the suspected redlining area. If so, that may support the view that the institution was avoiding doing business with applicants of that group, such as the residents of the suspected redlining area. Learn whether any such identified victims applied for transactions in the suspected redlining area.
- If there are instances of either of the above, identify denied non-minority residents, if any, of the suspected redlining area and review their application files to learn whether they appear to have been treated in an irregular or less favorable
way. If so, that may support the view that the character of the area rather than of
the applicants themselves appears to have influenced the credit decisions.

- Review withdrawn and incomplete applications for the suspected redlining
  area, if those can readily be identified from the HMDA-LAR, and learn
  whether there are reliable indications that the institution discouraged those
  applicants from applying. If so, that may support the view that the
  institution was avoiding conducting business in the area and may
  constitute evidence of a violation of Section 202.4(b) of Regulation B.

Conversely, if the comparisons of individual transactions show that the institution treated
minority and non-minority applicants within and outside the suspected redlining area
similarly, that tends to contradict the conclusion that the institution avoided the areas
because it had minority residents.

b. Interviews of third parties. The perspectives of third parties will have been taken into
account to some degree through the review of available materials during scoping.
Later in the examination, in appropriate circumstances, information from third parties
may help determine whether the institution’s apparent differences in treatment of
minority and non-minority areas constitute redlining.

- Identify persons (such as housing or credit counselors, home improvement
  contractors, or real estate and mortgage brokers) who may have extensive
  experience dealing with credit applicants from the suspected redlined area.
- After obtaining appropriate authorization and guidance from your agency,
  interview those persons to learn of their first-hand experiences related to:
  - Oral statements or written indications by an institution’s representatives that
    loan applications from a suspected redlined area were discouraged;
  - Whether the institution treated applicants from the suspected redlining area as
called for in its own procedures (as the examiners understand them) and/or
  whether it treated them similarly to applicants from non-minority areas (as the
  examiners are familiar with those transactions);
  - Any unusual delays or irregularities in loan processing for transactions in the
  suspected redlining area; and
  - Differences in the institution’s pricing, loan conditions, property valuation
    practices, etc., in the suspected redlining area compared to contrasting areas.

Also, learn from the third parties the names of any consumers they described as having
experienced the questionable behavior recounted by the third party, and consider
contacting those consumers.

If third parties witnessed specific conduct by the institution that indicates the institution
wanted to avoid business from the area or prohibited basis group in question, this would
tend to support interpreting the difference in treatment as intended. Conversely, if third
parties report proper treatment or positive actions toward such area or prohibited basis
group, this would tend to contradict the view that the institution intended to discriminate.

c. Marketing. A clear exclusion of the suspected redlining area from the institution’s
marketing of residential loan products supports the view that the institution did not
want to do business in the area. Marketing decisions are affirmative acts to include or
exclude areas. Disparities in marketing between two areas may reveal that the
institution prefers one to the other. If sufficiently stark and supported by other evidence, a difference in marketing to racially different areas could itself be treated as a redlining violation of the Fair Housing Act. Even below that level of difference, marketing patterns can support or contradict the view that disparities in lending practices were intentional.

- Review materials that show how the institution has marketed in the suspected redlined area and in non-minority areas. Begin with available CRA materials and discuss the issues with CRA examiners, then review other materials as appropriate. The materials may include, for example, the institution’s guidance for the geographical distribution of pre-approved solicitations for credit cards or home equity lines of credit, advertisements in local media or business or telephone directories, business development calls to real estate brokers, and calls by telemarketers.

d. Peer performance. Market share analysis and other comparisons to competitors are insufficient by themselves to prove that an institution engaged in illegal redlining. By the same token, an institution cannot justify its own failure to market or lend in an area by citing other institutions’ failures to lend or market there.

However, an institution’s inactivity in an under-served area where its acknowledged competitors are active would tend to support the interpretation that it intends to avoid doing business in the area. Conversely, if it is as active as other institutions that would suggest that it intends to compete for, rather than avoid, business in the area.

- Develop a list of the institution's competitors.
- Learn the level of lending in the suspected redlining area by competitors. Check any public evaluations of similarly situated competitors obtained by the CRA examiners as part of evaluating the performance context or obtain such evaluations independently.

e. Institution’s record. Request from the institution information about its overall record of serving or attempting to serve the racial or national origin minority group with which the suspected redlining area is identified. The record may reveal an intent to serve that group that tends to contradict the view that the institution intends to discriminate against the group.

NOTE: For any information that supports interpreting the situation as illegal discrimination, obtain and evaluate an explanation from the institution as called for in Part IV. If the institution’s explanation is that the disparate results are the consequence of a specific, neutral policy or practice that the institution applies broadly, such as not making loans on homes below a certain value, review the guidance in the Special Analyses section of the Appendix under Disproportionate Adverse Impact Violations and consult agency managers.


When scoping identifies significant risk factors (M1-M7) related to marketing, examiners should consult their agency’s supervisory staff and experts about a possible marketing discrimination analysis. If the supervisory staff agrees to proceed, the examiners should collect information as follows:
Step 1: Identify the institution’s marketing initiatives.

a. Pre-approved solicitations
   - Determine whether the institution sends out pre-approved solicitations:
     - for home purchase loans;
     - for home improvement loans; and
     - for refinance loans.
   - Determine how the institution selects recipients for such solicitations:
     - learn from the institution its criteria for such selections; and
     - review any guidance or other information the institution provided credit-reporting companies or other companies that supply such lists.

b. Media Usage
   - Determine in which newspapers and broadcast media the institution advertises;
   - identify any racial or national origin identity associated with those media; and
   - determine whether those media focus on geographical communities of a particular racial or national origin character.
   - Learn the institution's strategies for geographic and demographic distribution of advertisements.
   - Obtain and review copies of the institution's printed advertising and promotional materials.
   - Determine what criteria the institution communicates to media about what is an attractive customer or an attractive area to cultivate business.
   - Determine whether advertising and marketing are the same to racial and national origin minority areas as compared to non-minority areas.

c. Self-produced promotional materials
   - Learn how the institution distributes its own promotional materials, both methods and geographical distribution; and
   - Learn what the institution regards as the target audience(s) for those materials.

d. Realtors, brokers, contractors, and other intermediaries
   - Determine whether the institution solicits business from specific realtors, brokers, home improvement contractors, and other conduits;
     - learn how the institution decides which intermediaries it will solicit;
     - identify the parties contacted and determine the distribution between minority and non-minority areas;
     - obtain and review the types of information the institution distributes to intermediaries; and
     - determine how often the institution contacts intermediaries.
Interagency Fair Lending Examination Procedures

- Determine what criteria the institution communicates to intermediaries about the type of customers it seeks or the nature of the geographic areas in which it wishes to do business.

  e. Telemarketers or predictive dialer programs

- Learn how the institution identifies which consumers to contact and whether the institution sets any parameters on how the list of consumers is compiled.

Step 2: Determine whether the institution's activities show a significantly lower level of marketing effort toward minority areas or toward media or intermediaries that tend to reach minority areas.

Step 3: If there is any such disparity, document the institution's explanation for it.

For additional guidance, refer to Part C of the Special Analyses section in the Appendix.

I. Credit Scoring.

If the scoping process results in the selection of a focal point that includes a credit or mortgage scored loan product, refer to the Considering Automated Underwriting and Credit Scoring section of the Appendix.

If the institution utilizes a credit scoring program which scores age for any loan product selected for review in the scoping stage, either as the sole underwriting determinant or only as a guide to making loan decisions, refer to Part E of the Considering Automated Underwriting and Credit Scoring section of the Appendix.

J. Disparate Impact Issues.

These procedures have thus far focused primarily on examining comparative evidence for possible unlawful disparate treatment. Disparate impact has been described briefly in the Introduction. Whenever an examiner believes that a particular policy or practice of an institution appears to have a disparate impact on a prohibited basis, the examiner should refer to Part A of the Special Analyses section of the Appendix or consult with agency supervisory staff for further guidance.
PART IV
OBTAINING AND EVALUATING RESPONSES FROM THE INSTITUTION AND CONCLUDING THE EXAMINATION

Step 1: Present to the institution’s management for explanation:

a. Any overt evidence of disparate treatment on a prohibited basis.
b. All instances of apparent disparate treatment (e.g., overlaps) in either the underwriting of loans or in loan prices, terms, or conditions.
c. All instances of apparent disparate treatment in the form of discriminatory steering, redlining, or marketing policies or practices.
d. All instances where a denied prohibited basis applicant was not afforded the same level of assistance or the same benefit of discretion as an approved control group applicant who was no better qualified with regard to the reason for denial.
e. All instances where a prohibited basis applicant received conspicuously less favorable treatment by the institution than was customary from the institution or was required by the institution's policy.
f. Any statistically significant average difference in either the frequency or amount of pricing disparities between control group and prohibited basis group applicants.
g. Any evidence of neutral policies, procedures, or practices that appear to have a disparate impact or effect on a prohibited basis.

Explain that unless there are legitimate, nondiscriminatory explanations (or in the case of disparate impact, a compelling business justification) for each of the preliminary findings of discrimination identified in this Part, the agency could conclude that the institution is in violation of the applicable fair lending laws.

Step 2: Document all responses that have been provided by the institution, not just its “best” or “final” response. Document each discussion with dates, names, titles, questions, responses, any information that supports or undercuts the institution's credibility, and any other information that bears on the issues raised in the discussion(s).
Step 3: Evaluate whether the responses are consistent with previous statements, information obtained from file review, documents, reasonable banking practices, and other sources, and satisfy common-sense standards of logic and credibility.

a. Do not speculate or assume that the institution’s decision-maker had specific intentions or considerations in mind when he or she took the actions being evaluated. Do not, for example, conclude that because you have noticed a legitimate, nondiscriminatory reason for a denial (such as an applicant’s credit weakness) that no discrimination occurred unless it is clear that, at the time of the denial, the institution actually based the denial on that reason.

b. Perform follow-up file reviews and comparative analyses, as necessary, to determine the accuracy and credibility of the institution’s explanations.

c. Refer to Evaluating Responses to Evidence of Disparate Treatment in the Appendix for guidance as to common types of responses.

d. Refer to the Disproportionate Adverse Impact Violations portion of the Special Analyses section of the Appendix for guidance on evaluating the institution’s responses to apparent disparate impact.

Step 4: If, after completing Steps 1 - 3 above, you conclude that the institution has failed to adequately demonstrate that one or more apparent violations had a legitimate nondiscriminatory basis or were otherwise lawful, prepare a documented list or discussion of violations, or a draft examination report, as prescribed by agency directives.

Step 5: Consult with agency supervisory staff regarding whether (a) any violations should be referred to the Departments of Justice or Housing and Urban Development and (b) enforcement action should be undertaken by your agency.
INTERAGENCY FAIR LENDING EXAMINATION
PROCEDURES

APPENDIX
TABLE OF CONTENTS

INTRODUCTION

I. COMPLIANCE MANAGEMENT ANALYSIS CHECKLIST 4
   A. Preventive Measures 4
   B. Corrective Measures 10

II. CONSIDERING AUTOMATED UNDERWRITING AND CREDIT SCORING 11
   A. Structure and Organization of the Scoring System 11
   B. Adverse Action Disclosure Notices 12
   C. Disparate Treatment in the Application of Credit Scoring Programs 12
   D. Disparate Impact and Credit Scoring Algorithms 13
   E. Credit Scoring Systems That Include Age 13
   F. Examination for Empirical Derivation and Statistical Soundness 13

III. EVALUATING RESPONSES TO EVIDENCE OF DISPARATE TREATMENT 14
   A. Responses to Comparative Evidence of Disparate Treatment 14
   B. Responses to Overt Evidence of Disparate Treatment 18

IV. FAIR LENDING SAMPLE SIZE TABLES 20
   Table A: Underwriting (Accept/Deny) Comparisons 20
   Table B: Terms and Conditions Comparisons 20

V. IDENTIFYING MARGINAL TRANSACTIONS 22
   A. Marginal Denials 22
   B. Marginal Approvals 23

VI. POTENTIAL SCOPING INFORMATION 24
   A. Internal Agency Documents and Records 24
   B. Information from the Institution 24

VII. SPECIAL ANALYSES 27
    A. Disproportionate Adverse Impact Violations 27
    B. Discriminatory Pre-application Screening 30
    C. Possible Discriminatory Marketing 30

VIII. USING SELF-TESTS AND SELF-EXAMINATIONS TO STREAMLINE THE EXAMINATION 32
Introduction

This Appendix offers a full range of information that might conceivably be brought to bear in an examination. In that sense, it is a menu of resources to be considered and selected from, depending on the nature and scope of the examination being conducted.
I. Compliance Management Analysis Checklist

This checklist is for use in conjunction with Part II of these procedures as a device for examiners to evaluate the strength of an institution’s compliance program in terms of its capacity to prevent and to identify and self-correct fair lending violations in connection with the products or issues selected for analysis. The checklist is not intended to be an absolute test of an institution’s compliance management program. Programs containing all or most of the features described in the list may nonetheless be flawed for other reasons; conversely, a compliance program that encompasses only a portion of the factors listed below may nonetheless adequately support a strong program under appropriate circumstances. In short, the examiner must exercise his or her best judgment in utilizing this list and in assessing the overall quality of an institution’s efforts to ensure fair lending compliance.

If the transactions within the proposed scope are covered by a listed preventive measure, and the answer is “Yes,” check the box in the left column. You may then reduce the intensity (mainly the sample size) of the planned comparative file review to the degree that the preventive measures cover transactions within the proposed scope. Document your findings in sufficient detail to justify any resulting reduction in the intensity of the examination.

You are not required to learn whether preventive measures apply to specific products outside the proposed scope. However, if the information you have obtained shows that the measure is a general practice of the institution, and thus applies to all loan products, check the box in the second column in order to assist future examination planning.

A. Preventive Measures

Determine whether policies and procedures exist that tend to prevent illegal disparate treatment in the transactions you plan to examine. There is no legal or agency requirement for institutions to conduct these activities. The absence of any of these policies and practices is never, by itself, a violation.
1. Lending Practices and Standards

a. Principal policy issues
   - Are underwriting practices clear, objective and generally consistent with industry standards?  YES NO NA
   - Is pricing within reasonably confined ranges with guidance linking variations to risk and/or cost factors?  YES NO NA
   - Does management monitor the nature and frequency of exceptions to its standards?  YES NO NA
   - Are denial reasons accurately and promptly communicated to unsuccessful applicants?  YES NO NA
   - Are there clear and objective standards for referring applicants to (i) subsidiaries, affiliates, or other lending channels within the institution, (ii) classifying applicants as “prime” or subprime” borrowers, or (iii) deciding what kinds of alternative loan products should be offered or recommended to applicants?  YES NO NA
   - Are loan officers required to document any deviation from the rate sheet?  YES NO NA
   - Does management monitor consumer complaints alleging discrimination in loan pricing or underwriting?  YES NO NA

b. Do training, application-processing aids, and other guidance correctly and adequately describe:
   - Prohibited bases under ECOA, Regulation B, and the Fair Housing Act?  YES NO NA
   - Other substantive credit access requirements of Regulation B (e.g., spousal signatures, improper inquiries, protected income)?  YES NO NA

c. Is it specifically communicated to employees that they must not, on a prohibited basis:
   - Refuse to deal with individuals inquiring about credit?  YES NO NA
   - Discourage inquiries or applicants by delays, discourtesy, or other means.  YES NO NA
   - Provide different, incomplete, or misleading information about the availability of loans, application requirements, and processing and approval standards or procedures (including selectively informing applicants about certain loan products while failing to inform them of alternatives)?  YES NO NA
   - Encourage or more vigorously assist only certain inquirers or applicants?  YES NO NA
   - Refer credit seekers to other institutions, more costly loan products, or potentially onerous features?  YES NO NA
   - Refer credit seekers to nontraditional products (i.e., negative

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CFPB Manual V.2 (October 2012) Procedures 5
Interagency Fair Lending Procedures

amortization, “interest only,” “payment option” adjustable rate mortgages) when they could have qualified for traditional mortgages.

- Waive or grant exceptions to application procedures or credit standards?
- State a willingness to negotiate?
- Use different procedures or standards to evaluate applications?
- Use different procedures to obtain and evaluate appraisals?
- Provide certain applicants opportunities to correct or explain adverse or inadequate information, or to provide additional information?
- Accept alternative proofs or creditworthiness?
- Require co-signers?
- Offer or authorize loan modifications?
- Suggest or permit loan assumptions?
- Impose late charges, reinstatement fees, etc.?
- Initiate collection or foreclosure?

d. Has the institution taken specific initiatives to prevent the following practices?
- Basing credit decisions on assumptions derived from racial, gender, and other stereotypes, rather than facts?
- Seeking consumers from a particular racial, ethnic, or religious group, or of a particular gender, to the exclusion of other types of consumers, on the basis of how “comfortable” the employee may feel in dealing with those different from him/her?
- Limiting the exchange of credit-related information or the institution’s efforts to qualify an applicant from a prohibited basis group.
- Drawing the institution’s CRA assessment area by unreasonably excluding minority areas?
- Targeting certain borrowers or areas with less advantageous products?

e. Does the institution have procedures to ensure that it does not:
- State racial or ethnic limitations in advertisements?
- Employ words or use photos in advertisements that convey racial or ethnic limitations or preferences?
- Place advertisement that a reasonable person would regard as indicating minority consumers are less desirable?
- Advertise only in media serving predominately minority or
nonminority areas of the market?

- Conduct other forms of marketing differentially in minority or nonminority areas of the market?
- Market only through brokers known to serve one racial or ethnic group in the market?
- Use a prohibited basis in any prescreened solicitation?
- Provide financial incentives for loan officers to place applicants in non-traditional products or higher-risk products?

2. Compliance Audit Function: Does the Institution Attempt to Detect Prohibited Disparate Treatment by Self-Test or Self-Evaluation?

NOTE: A self-test is any program, practice, or study that is designed and specifically used to assess the institution’s compliance with the ECOA and the Fair Housing Act. It creates data or factual information that is not otherwise available and cannot be derived from loan, application, or other records related to credit transactions (12 CFR 202.15(b)(1)\(^1\) and 24 CFR 100.141). The report, results, and many other records associated with a self-test are privileged unless an institution voluntarily discloses the report or results or otherwise forfeits the privilege. See 12 CFR 202.15(b)(2) and 24 CFR 100.142(a) for a complete listing of the types of information covered by the privilege. A self-evaluation, while generally having the same purpose as a self-test, does not create any new data or factual information, but uses data readily available in loan or application files and other records used in credit transactions and, therefore, does not meet the self-test definition. See Using Self-Tests and Self-Evaluations to Streamline the Examination in this Appendix for more information about self-tests and self-evaluations.

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Interagency Fair Lending Procedures

While you may request the results of self-evaluations, you should not request the results of self-tests or any of the information listed in 12 CFR 202.15(b)(2) and 24 CFR 100.142(a). If an institution discloses the self-test report or results to its regulator, it will lose the privilege. The following items are intended to obtain information about the institution’s approach to self-testing and self-evaluation, not the findings. Complete the checklist below for each self-evaluation and each self-test, where the institution voluntarily discloses the report or results. Evaluating the results of self-evaluations and voluntarily disclosed self-tests is described in Using Self-tests Self-Evaluations to Streamline the Examination in this Appendix.

a. Are the transactions reviewed by an independent analyst who:
   - Is directed to report objective results?
   - Has an adequate level of expertise?
   - Produces written conclusions?

b. Does the institution’s approach for self-testing or self-evaluation call for:
   - Attempting to explain major patterns shown in the HMDA or other loan data?
   - Determining whether actual practices and standards differ from stated ones and basing the evaluation on the actual practices?
   - Evaluating whether the reasons cited for denial are supported by facts relied on by the decision maker at the time of the decision?
   - Comparing the treatment of prohibited basis group applicants to control group applicants?
   - Obtaining explanations from decision makers for any unfavorable treatment of the prohibited basis group that departed from policy or customary practice?
   - Covering significant decision points in the loan process where disparate treatment or discouragement might occur, including:
     - The approve/deny decision?
     - Pricing?
     - Other terms and conditions?
   - Covering at least as many transactions as examiners would independently, if using the Fair Lending Sample Size Tables for a product with the application volumes of the product to be evaluated?
   - Maintaining information concerning personal characteristics collected as part of a self-test separately from application or loan files?
   - Timely analysis of the data?
   - Taking appropriate and timely corrective action?

c. In the institution’s plan for comparing the treatment of prohibited basis group applicants with that of control group applicants:
Are control and prohibited basis groups based on a prohibited basis found in ECOA or the FHAct and defined clearly to isolate that prohibited basis for analysis?

Are appropriate data to be obtained to document treatment of applicants and the relative qualifications vis-à-vis the requirement in question?

Will the data to be obtained reflect the data on which decisions were based?

Does the plan call for comparing the denied applicants’ qualifications related to the stated reason for denial with the corresponding qualifications for approved applicants?

Are comparisons designed to identify instances in which prohibited basis group applicants were treated less favorably than control group applicants who were no better qualified?

Is the evaluation designed to determine whether control and prohibited basis group applicants were treated differently in the processes by which the institution helped applicants overcome obstacles and by which their qualifications were enhanced?

Are responses and explanations to be obtained for any apparent disparate treatment on a prohibited basis or other apparent violations of credit rights?

Are reasons cited by credit decision makers to justify or explain instances of apparent disparate treatment to be verified?

d. For self-tests under ECOA that involved the collection of applicant personal characteristics, did the institution:

- Develop a written plan that describes or identifies the:
  - Specific purpose of the self-test?
  - Methodology to be used?
  - Geographic area(s) to be covered?
  - Type(s) of credit transactions to be reviewed?
  - Entity that will conduct the test and analyze the data?
  - Timing of the test, including start and end dates or the duration of the self-test?
  - Other related self-test data that is not privileged?

- Disclose at the time applicant characteristic information is requested, that:
  - The applicant will not be required to provide the information?
  - The creditor is requesting the information to monitor its compliance with ECOA?
  - Federal law prohibits the creditor from discriminating on the basis of this information or on the basis of an applicant’s decision not to furnish the information?
Interagency Fair Lending Procedures

- If applicable, certain information will be collected based on visual observation or surname if not provided by the applicant?

B. Corrective Measures

a. Determine whether the institution has provisions to take appropriate corrective action and provide adequate relief to victims for any violations in the transactions you plan to review.

- Who is to receive the results of a self-evaluation or voluntarily disclosed self-test?
- What decision process is supposed to follow delivery of the information?
- Is feedback to be given to staff whose actions are reviewed?
- What types of corrective action may occur?
- Are consumers to be:
  - Offered credit if they were improperly denied?
  - Compensated for any damages, both out of pocket and compensatory?
  - Notified of their legal rights?

b. Other corrective action:

- Are institutional policies or procedures that may have contributed to the discrimination to be corrected?
- Are employees involved to be trained and/or disciplined?
- Is the need for community outreach programs and/or changes in marketing strategy or loan products to better serve minority segments of the institution’s market to be considered?
- Are audit and oversight systems to be improved in order to ensure there is not recurrence of any identified discrimination?

COMMENTS

[Click&type]
II. Considering Automated Underwriting and Credit Scoring

These procedures are designed to help you in drawing and supporting fair lending conclusions in situations involving automated underwriting or credit scoring risk factors.

A. **Structure and Organization of the Scoring System**

Determine the utilization of credit scoring at the institution including:

1. For each customized credit scoring model or scorecard for any product, or for any credit scoring model used in connection with a product held in portfolio, identify and obtain:
   a. The number and inter-relationship of each model or scorecard applied to a particular product.
   b. The purposes for which each scorecard is employed (e.g., approval decision, set credit limits, set pricing, determine processing requirements, etc.).
   c. The developer of each scorecard used (e.g., in-house department, affiliate, independent vendor name) and describe the development population utilized.
   d. The types of monitoring reports generated (including front-end, back-end, account management, and any disparate impact analyses), the frequency of generation, and recent copies of each.
   e. All policies applicable to the use of credit scoring.
   f. Training materials and programs on credit scoring for employees, agents, and brokers involved in any aspect of retail lending.
   g. Any action taken to revalidate or re-calibrate any model or scorecard used during the exam period and the reason(s) why.
   h. The number of all high-side and low-side overrides for each type of override occurring during the exam period and any guidance given to employees on their ability to override.
   i. All cutoffs used for each scorecard throughout the examination period and the reasons for the cutoffs and any change made during the exam period.
   j. All variables scored by each product’s scorecard(s) and the values that each variable may take.
   k. The method used to select for disclosure those adverse action reasons arising from application of the model or scorecard.

2. For each judgmental underwriting system that includes as an underwriting criterion a standard credit bureau or secondary market credit score identify:
   a. The vendor of each credit score and any vendor recommendation or guidance on the usage of the score relied upon by the institution;
   b. The institution’s basis for using the particular bureau or secondary market score and the cutoff standards for each product’s underwriting system, and the reasons for any changes to the same during the exam period;
   c. The number of exceptions or overrides made to the credit score component of the underwriting criteria and the basis for those exceptions or overrides, including any guidance given to employees on their ability to depart from credit score underwriting standards, and;
d. Types of monitoring reports generated on the judgmental system or its credit scoring component (including front-end, back-end, differential processing, and disparate impact analysis), and the frequency of generation and recent copies of each.

B. **Adverse Action Disclosure Notices**

Determine the methodology used to select the reasons why adverse action was taken on a credit application denied on the basis of the applicant’s credit score. Compare the methodology used to the examples recited in the Commentary to Regulation B and decide acceptability against that standard. Identify any consumer requests for reconsideration of credit score denial reasons and review the action taken by management for consistency across applicant groups.

Where a credit score is used to differentiate application processing and an applicant is denied for failure to attain a judgmental underwriting standard that would not be applied if the applicant had received a better credit score (thereby being considered in a different – presumably less stringent – application processing group), ensure that the adverse action notice also discloses the bases on which the applicant failed to attain the credit score required for consideration in the less stringent processing group.

C. **Disparate Treatment in the Application of Credit Scoring Programs**

1. Determine what controls and policies management has implemented to ensure that the institution’s credit scoring models or credit score criteria are not applied in a discriminatory manner, in particular:
   a. Examine institution guidance on using the credit scoring system, on handling overrides, and on processing applicants and how well that guidance is understood and observed by the targeted employees and monitored for compliance by management; and
   b. Examine institution policies that permit overrides or that provide for different processing or underwriting requirements based on geographic identifiers or borrower score ranges to assure that they do not treat protected group applicants differently than other similarly situated applicants.

2. Evaluate whether any of the bases for granting credit to control group applicants who are low-side overrides are applicable to any prohibited basis denials whose credit score was equal to or greater than the lowest score among the low-side overrides. If such cases are identified, obtain and evaluate management’s reason for why such different treatment is not a fair lending violation.

3. Evaluate whether any of the bases for denying credit to any prohibited basis applicants who are high-side overrides are applicable to any control group approvals whose credit score was equal to or less than the highest score among the prohibited basis high-side overrides. If such cases are identified, obtain and evaluate management’s reason for why such different treatment is not a fair lending violation.

4. If credit scores are used to segment applicants into groups that receive different processing or are required to meet additional underwriting requirements (e.g., “tiered risk underwriting”), perform a comparative file review, or confirm the results and adequacy
of management’s comparative file review, that evaluates whether all applicants within each group are treated equally.

D. Disparate Impact and Credit Scoring Algorithms
Consult with agency supervisory staff to assess potential disparate treatment issues relating to the credit scoring algorithm.

E. Credit Scoring Systems That Include Age
Regulation B expressly requires the initial validation and periodic revalidation of a credit scoring system that considers age. There are two ways a credit scoring system can consider age: 1) the system can be split into different scorecards depending on the age of the applicant and 2) age may be directly scored as a variable. Both features may be present in some systems. Regulation B requires that all credit scoring systems that consider age in either of these ways must be validated (in the language of the regulation, empirically derived, demonstrably and statistically sound (EDDSS)).

1. Age-Split Scorecards: If a system is split into only two cards and one card covers a wide age range that encompasses elderly applicants (applicants 62 or older), the system is treated as considering, but not scoring, age. Typically, the younger scorecard in an age-split system is used for applicants under a specific age between 25 and 30. It de-emphasizes factors such as the number of trade lines and the length of employment and increases the negative weight of any derogatory information on the credit report. Systems such as these do not raise the issue of assigning a negative factor or value to the age of an elderly applicant. However, if age is directly scored as a variable (whether or not the system is age-split) or if elderly applicants are included in a card with a narrow age range in an age-split system, the system is treated as scoring age.

2. Scorecards that Score Age: If a scorecard scores age directly, in addition to meeting the EDDSS requirement, the creditor must ensure that the age of an elderly applicant is not assigned a negative factor or value. (See the staff commentary about 12 CFR 202.2(p) and 202.6(b)(2)). A negative factor or value means utilizing a factor, value, or weight that is less favorable than the creditor’s experience warrants or is less favorable than the factor, value, or weight assigned to the most favored age group below the age of 62 (12 CFR 202.2(v)).

F. Examination for Empirical Derivation and Statistical Soundness
Regulation B requires credit scoring systems that use age to be empirically derived and demonstrably and statistically sound. This means that they must fulfill the requirements of 12 CFR Section 202.2(p)(1)(i)(iv). Obtain documentation provided by the developer of the system and consult your agency’s most recent guidance for making that determination.
III. Evaluating Responses to Evidence of Disparate Treatment

A. Responses to Comparative Evidence of Disparate Treatment

The following are responses that an institution may offer – separately or in combination – to attempt to explain that the appearance of illegal disparate treatment is misleading and that no violation has in fact occurred. The responses, if true, may rebut the appearance of disparate treatment. You must evaluate the validity and credibility of the responses.

1. The institution’s personnel were unaware of the prohibited basis identity of the applicant(s).

   If the institution claims to have been unaware of the prohibited basis identity (race, etc.) of an applicant or neighborhood, ask it to show that the application in question was processed in such a way that the institution’s staff could not have learned the prohibited basis identity of the applicant.

   If the product is one for which the institution maintains prohibited basis monitoring information, assume that all employees could have taken those facts into account. Assume the same when there was face-to-face contact between any employee and the consumer.

   If there are other facts about the application from which an ordinary person would have recognized the applicant’s prohibited basis identity (for example, the surname is an easily recognizable Hispanic one), assume that the institution’s staff drew the same conclusions. If the racial character of a community is in question, ask the institution to provide persuasive evidence why its staff would not know the racial character of any community in its service area.

2. The difference in treatment was justified by differences in the applicants (applicants not “similarly situated”).

   Ask the institution to account for the difference in treatment by pointing out a specific difference between the applicants’ qualifications or some factor not captured in the application, but that legitimately makes one applicant more or less attractive to the institution or some nonprohibited factor related to the processing of their applications. The difference identified by the institution must be one that is important enough to justify the difference in treatment in question, not a meaningless difference.

   The factors commonly cited to show that applicants are not similarly situated fall into two groups: those that can be evaluated by how consistently they are handled in other transactions, and those that cannot be evaluated in that way.

   a. Verifying “not similarly situated” explanations by consistency

      The appearance of disparate treatment remains if a factor cited by the institution to justify favorable treatment for a control group applicant also exists for an otherwise similar prohibited basis applicant who was treated unfavorably. Similarly, the appearance of disparate treatment remains if a factor cited by the institution to justify unfavorable treatment for a prohibited basis applicant also exists for a control group applicant that got
favorable treatment. If this is not so, ask the institution to document that the factor cited in its explanation was used consistently for control group and prohibited basis applicants.

Among the responses that should be evaluated this way are:

— **Consumer relationship.** Ask the institution to document that a consumer relationship was also sometimes considered to the benefit of prohibited basis applicants and/or that its absence worked against control group consumers.

— **“Loan not saleable or insurable.”** If file review is still in progress, be alert for loans approved despite the claimed fatal problem. At a minimum, ask the institution to be able to produce the text of the secondary market or insurer’s requirement in question.

— **Difference in standards or procedures between branches or underwriters.** Ask the institution to provide transactions documenting that each of the two branches or underwriters applied its standards or procedures consistently to both prohibited basis and control group applications it processed and that each served similar proportions of the prohibited basis group.

— **Difference in applying the same standard (difference in “strictness”) between underwriters, branches, etc.** Ask the institution to provide transactions documenting that the stricter employee, branch, etc., was strict for both prohibited basis and control group applicants and that the other was lenient for both and that each served similar proportions of the prohibited basis group. The best evidence of this would be prohibited basis applicants who received favorable treatment from the lenient branch and control group applicants who received less favorable treatment from the “strict” branch.

— **Standards or procedures changed during period reviewed.** Ask the institution to provide transactions documenting that during each period the standards were applied consistently to both prohibited basis and control group applicants.

— **Employee misunderstood standard or procedure.** Ask the institution to provide transactions documenting that the misunderstanding influenced both prohibited basis and control group applications. If that is not available, find no violation if the misunderstanding is a reasonable mistake.

b. Evaluating “not similarly situated” explanations by other means.

If consistency cannot be evaluated, **consider an explanation favorably** even without examples of its consistent use if:

— The factor is documented to exist in (or be absent from) the transactions, as claimed by the institution.

— The factor is one a prudent institution would consider and is consistent with the institution’s policies and procedures.
Interagency Fair Lending Procedures

— File review found no evidence that the factor is applied selectively on a prohibited basis (in other words, the institution’s explanation is “not inconsistent with available information”).

— The institution’s description of the transaction is generally consistent and reasonable.

Some factors that may be impossible to compare for consistency are:

— **Unusual underwriting standard.** Ask the institution to show that the standard is prudent. If the standard is prudent and not inconsistent with other information, accept this explanation even though there is no documentation that it is used consistently.

— **“Close calls.”** The institution may claim that underwriters’ opposite decisions on similar applicants reflect legitimate discretion that you should not second guess. That is **not** an acceptable explanation for identical applicants with different results, but is acceptable when the applicants have differing strengths and weaknesses that different underwriters might reasonably weigh differently. However, do not accept the explanation if other files reveal that these “strengths” or “weaknesses” are counted or ignored selectively on a prohibited basis.

— **“Character loan.”** Expect the institution to identify a specific history or specific facts that make the applicant treated favorably a better risk than those treated less favorably.

— **“Accommodation loan.”** There are many legitimate reasons that may make a transaction appealing to an institution apart from the familiar qualifications demanded by the secondary market and insurers. For example, a consumer may be related to or referred by an important consumer, be a political or entertainment figure who would bring prestige to the institution, be an employee of an important business consumer, etc. It is not illegal discrimination to make a loan to an otherwise unqualified control group applicant who has such attributes while denying a loan to an otherwise similar prohibited basis applicant without them. However, be skeptical when the institution cites reasons for “accommodations” that an ordinary prudent institution would not value.

— **“Gut feeling.”** Be skeptical when institutions justify an approval or denial by a general perception or reaction to the consumer. Such a perception or reaction may be linked to a racial or other stereotype that legally must not influence credit decisions. Ask whether any specific event or fact generated the reaction. Often, the institution can cite something specific that made him or her confident or uncomfortable about the consumer. There is no discrimination if it is credible that the institution indeed considered such a factor and did not apply it selectively on a prohibited basis.

c. Follow up consumer contacts
Interagency Fair Lending Procedures

If the institution’s explanation of the handling of a particular transaction is based on consumer traits, actions, or desires not evident from the file, consider obtaining agency authorization to contact the consumer to verify the institution’s description. Such contacts need not be limited to possible victims of discrimination, but can include control group applicants or other witnesses.

3. The different results stemmed from an inadvertent error.

If the institution claims an identified error such as miscalculation or misunderstanding caused the favorable or unfavorable result in question, evaluate whether the facts support the assertion that such an event occurred.

If the institution claims an “unidentified error” caused the favorable or unfavorable result in question, expect the institution to provide evidence that discrimination is inconsistent with its demonstrated conduct, and therefore that discrimination is the less logical interpretation of the situation. Consider the context (as described below).

4. The apparent disparate treatment on a prohibited basis is a misleading portion of a larger pattern of random inconsistencies.

Ask the institution to provide evidence that the unfavorable treatment is not limited to the prohibited basis group and that the favorable treatment is not limited to the control group. Without such examples, do not accept an institution’s unsupported claim that otherwise inexplicable differences in treatment are distributed randomly.

If the institution can document that similarly situated prohibited basis applicants received the favorable treatment in question approximately as frequently and in comparable degree as the control group applicants, conclude there is no violation.

NOTE: Transactions are relevant to “random inconsistency” only if they are “similarly situated” to those apparently treated unequally.

5. Loan terms and conditions.

The same analyses described in the preceding sections with regard to decisions to approve or deny loans also apply to pricing differences. Risks and costs are legitimate considerations in setting prices and other terms and conditions of loan products. However, generalized reference by the institution to “cost factors” is insufficient to explain pricing differences.

If the institution claims that specific borrowers received different terms or conditions because of cost or risk considerations, ask the institution to be able to identify specific risk or cost differences between them.

If the institution claims that specific borrowers received different terms or conditions because they were not similarly situated as negotiators, consider whether application records might provide relevant evidence. If the records are not helpful, consider seeking authorization to contact consumers to learn whether the institution in fact behaved comparably toward prohibited basis and control group consumers. The contacts would be to learn such information as the institution’s opening quote of terms to the consumer and the progress of the negotiations.
If the institution responds that an average price difference between the control and prohibited basis groups is based on cost or risk factors, ask it to identify specific risk or cost differences between individual control group applicants with the lowest rates and prohibited basis group applicants with the highest rates that are significant enough to justify the pricing differences between them. If the distinguishing factors cited by the institution are legitimate and verifiable as described in the sections above, remove those applications from the average price calculation. If the average prices for the remaining control group and prohibited basis group members still differ more than minimally, consult with agency supervisory staff about further analysis. Findings or violations based on disparate treatment or disparate impact regarding cost or risk factors should be discussed with agency supervisory staff.

B. Responses to Overt Evidence of Disparate Treatment

1. Descriptive references vs. lending considerations.

A reference to race, gender, etc., does not constitute a violation if it is merely descriptive – for example, “the applicant was young.” In contrast, when the reference reveals that the prohibited factor influenced the institution’s decisions and/or consumer behavior, treat the situation as an apparent violation to which the institution must respond.

2. Personal opinions vs. lending considerations.

If an employee involved with credit availability states unfavorable views regarding a racial group, gender, etc., but does not explicitly relate those views to credit decisions, review that employee’s credit decisions for possible disparate treatment of the prohibited basis group described unfavorably. If there are no instances of apparent disparate treatment, treat the employee’s views as permissible private opinions. Inform the institution that such views create a risk of future violations.

3. Stereotypes related to credit decisions.

There is an apparent violation when a prohibited factor influences a credit decision through a stereotype related to creditworthiness, even if the action based on the stereotype seems well-intended – for example, a loan denial because “a single woman could not maintain a large house.” If the stereotyped beliefs are offered as “explanations” for unfavorable treatment, regard such unfavorable treatment as apparent illegal disparate treatment. If the stereotype is only a general observation unrelated to particular transactions, review that employee’s credit decisions for possible disparate treatment of the prohibited basis group in question. Inform the institution that such views create a risk of future violations.

4. Indirect reference to a prohibited factor.

If negative views related to creditworthiness are described in nonprohibited terms, consider whether the terms would commonly be understood as surrogates for prohibited terms. If so, treat the situation as if explicit prohibited basis terms were used. For example, an institution’s statement that “It’s too risky to lend north of 110th Street” might be reasonably interpreted as a refusal to lend because of race if that portion of the institution’s lending area north of 110th Street were predominantly black and the area south white.

5. Lawful use of a prohibited factor

a. Special Purpose Credit Program (SPCP).
If an institution claims that its use of a prohibited factor is lawful because it is operating an SPCP, ask the institution to document that its program conforms to the requirements of Regulation B. An SPCP must be defined in a written plan that existed before the institution made any decisions on loan applications under the program. The written plan must:

— Demonstrate that the program will benefit persons who would otherwise be denied credit or receive credit on less favorable terms.

— State the time period the program will be in effect or when it will be re-evaluated.

No provision of an SPCP should deprive people who are not part of the target group of rights or opportunities they otherwise would have. Qualified programs operating on an otherwise-prohibited basis will not be cited as a violation.

NOTE: Advise the institution that an agency finding that a program is a lawful SPCP is not absolute security against legal challenge by private parties. Suggest that an institution concerned about legal challenge from other quarters use exclusions or limitations that are not prohibited by ECOA or the FHAct, such as “first-time home buyer.”

b. Second review program.

Such programs are permissible if they do no more than ensure that lending standards are applied fairly and uniformly to all applicants. For example, it is permissible to review the proposed denial of applicants who are members of a prohibited basis group by comparing their applications to the approved applications of similarly qualified individuals who are in the control group to determine if the applications were evaluated consistently.

Ask the institution to demonstrate that the program is a safety net that merely attempts to prevent discrimination, and does not involve underwriting terms or practices that are preferential on a prohibited basis.

Statements indicating that the mission of the program is to apply different standards or efforts on behalf of a particular racial or other group constitute overt evidence of disparate treatment. Similarly, there is an apparent violation if comparative analysis of applicants who are processed through the second review and those who are not discloses dual standards related to the prohibited basis.

c. Affirmative marketing/advertising program:

Affirmative advertising and marketing efforts that do not involve application of different lending standards are permissible under both the ECOA and the FHAct. For example, special outreach to a minority community would be permissible.
### IV. Fair Lending Sample Size Tables

#### Table A: Underwriting (Accept/Deny) Comparisons

<table>
<thead>
<tr>
<th>Number of Denials or Approvals</th>
<th>Sample 1 Prohibited Basis Denials</th>
<th>Sample 2 Control Group Approvals</th>
</tr>
</thead>
<tbody>
<tr>
<td>5 - 50</td>
<td>20 - 50</td>
<td>51 – 250</td>
</tr>
<tr>
<td>51 - 150</td>
<td></td>
<td>&gt; 250</td>
</tr>
<tr>
<td>&gt; 150</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

| Minimum to review:            |                                  |                                  |
|-------------------------------|                                  |                                  |
| All                           | 51                                | 75                               |
| 20                            | 51                                | 100                              |

| Maximum to review:            |                                  |                                  |
|-------------------------------|                                  |                                  |
| 50                            | 100                               | 150                              |
| 5x prohibited basis sample (up to 50) | 5x prohibited basis sample (up to 125) | 5x prohibited basis sample (up to 300) |

#### Table B: Terms and Conditions Comparisons

<table>
<thead>
<tr>
<th>Number of Approvals</th>
<th>Sample 1 Prohibited Basis Approvals</th>
<th>Sample 2 Control Group Approvals</th>
</tr>
</thead>
<tbody>
<tr>
<td>5-25</td>
<td>20 - 50</td>
<td>51 – 250</td>
</tr>
<tr>
<td>26 - 100</td>
<td>51 – 250</td>
<td>&gt; 250</td>
</tr>
<tr>
<td>&gt; 100</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

| Minimum to review: |                                  |                                  |
|--------------------|                                  |                                  |
| All                | 26                                 | 50                               |
| 20                 | 40                                 | 60                               |

| Maximum to review: |                                  |                                  |
|--------------------|                                  |                                  |
| 25                 | 50                                 | 75                               |
| 5x prohibited basis sample (up to 50) | 5x prohibited basis sample (up to 75) | 5x prohibited basis sample (up to 100) |

See Explanatory Notes on following page.
Explanatory Notes to Sample Size Tables

1. Examiners should not follow Table B when conducting a pricing review that involves a regression analysis. Consult with agency supervisory staff for specific protocol in these cases.

2. When performing both underwriting and terms and conditions comparisons, use the same control group approval sample for both tasks.

3. If there are fewer than five prohibited basis denials or 20 control group approvals, refer to “Sample Size” instructions in the procedures.

4. “Minimum” and “maximum” sample sizes: select a sample size between the minimum and maximum numbers identified above. Examiners should base the size of their review on the level of risk identified during the preplanning and scoping procedures. Once the sample size has been determined, select individual transactions judgmentally. Refer to procedures.

5. If two prohibited basis groups (e.g., black and Hispanic) are being compared against one control group, select a control group that is five times greater than the larger prohibited basis group sample, up to the maximum.

6. Where the institution’s discrimination risk profile identifies significant discrepancies in withdrawal/incomplete activity between control and prohibited basis groups or where the number of marginal prohibited basis group files available for sampling is small, an examiner may consider supplementing samples by applying the following rules:

   - If prohibited basis group withdrawals/incompletes occur after the applicant has received an offer of credit that includes pricing terms, this is a reporting error under Regulation C (the institution should have reported the application as approved, but not accepted) and therefore these applications should be included as prohibited basis group approvals in a terms and conditions comparative file analysis.

   - If prohibited basis group incompletes occur due to lack of an applicant response with respect to an item that would give rise to a denial reason, then include them as denials for that reason when conducting an underwriting comparative file analysis.
V. Identifying Marginal Transactions

These procedures are intended to assist an examiner in identifying denied and approved applications that were not either clearly qualified or unqualified, i.e., marginal transactions.

A. Marginal Denials

Denied applications with any or all the following characteristics are “marginal.” Such denials are compared to marginal approved applications. Marginal denied applications include those that:

- Were close to satisfying the requirement that the adverse action notice said was the reason for denial.
- Were denied by the institution’s rigid interpretation of inconsequential processing requirements.
- Were denied quickly for a reason that normally would take a longer time for an underwriter to evaluate.
- Involved an unfavorable subjective evaluation of facts that another person might reasonably have interpreted more favorably (for example, whether late payments actually showed a “pattern” or whether an explanation for a break in employment was “credible”).
- Resulted from the institution’s failure to take reasonable steps to obtain necessary information.
- Received unfavorable treatment as the result of a departure from customary practices or stated policies. For example, if it is the institution’s stated policy to request an explanation of derogatory credit information, a failure to do so for a prohibited basis applicant would be a departure from customary practices or stated policies even if the derogatory information seems to be egregious.
- Were similar to an approved control group applicant who received unusual consideration or service, but were not provided such consideration or service.
- Received unfavorable treatment (for example, were denied or given various conditions or more processing obstacles), but appeared fully to meet the institution’s stated requirements for favorable treatment (for example, approval on the terms sought).
- Received unfavorable treatment related to a policy or practice that was vague, and/or the file lacked documentation on the applicant’s qualifications related to the reason for denial or other factor.
- Met common secondary market or industry standards even though failing to meet the institution’s more rigid standards.
- Had a strength that a prudent institution might believe outweighed the weaknesses cited as the basis for denial.
Interagency Fair Lending Procedures

- Had a history of previously meeting a monthly housing obligation equivalent to or higher than the proposed debt.

- Were denied for an apparently “serious” deficiency that might easily have been overcome. For example, an applicant’s total debt ratio of 50 percent might appear grossly to exceed the institutions guideline of 36 percent, but this may in fact be easily corrected if the application lists assets to pay off sufficient nonhousing debts to reduce the ratio to the guideline, or if the institution were to count excluded part-time earnings described in the application.

B. Marginal Approvals

Approved applications with any or all of the following characteristics are “marginal.” Such approvals are compared to marginal denied approved applications. Marginal approvals include those:

- Whose qualifications satisfied the institution’s stated standard, but very narrowly.

- That bypassed stated processing requirements (such as verifications or deadlines).
  - For which stated creditworthiness requirements were relaxed or waived.

- That, if the institution’s own standards are not clear, fell short of common secondary market or industry lending standards.

- That a prudent conservative institution might have denied.

- Whose qualifications were raised to a qualifying level by assistance, proposals, counteroffers, favorable characterizations, or questionable qualifications, etc.

- That in any way received unusual service or consideration that facilitated obtaining the credit.
VI. Potential Scoping Information

As part of the scoping process described in Part I of the procedures, you will need to gather documents and information to sufficiently identify their focal points for review. Below is a list of suggested information that you may wish to gather internally, as well as from the institution itself.

A. Internal Agency Documents and Records

1. Previous examination reports and related work papers for the most recent Compliance/CRA and Safety and Soundness Examinations.

2. Complaint Information.

3. Demographic data for the institution’s community.

Comment: The examiner should obtain the most recent agency demographic data for information on the characteristics of the institution’s assessment/market areas.

B. Information from the Institution

Comment: Prior to beginning a compliance examination, the examiner should request the institution to provide the information outlined below. This request should be made far enough in advance of the on-site phase of the examination to facilitate compliance by the institution. In some institutions, the examiner may not be able to review some of this information until the on-site examination. The examiner should generally request only those items that correspond to the product(s) and time period(s) being examined.

1. Institution’s Compliance Program. (For examinations that will include analysis of the institution’s compliance program.)

   a. Organization charts identifying those individuals who have lending responsibilities or compliance, HMDA, or CRA responsibilities, together with job descriptions for each position.

   b. Lists of any pending litigation or administrative proceedings concerning fair lending matters.

   c. Results of self-evaluations or self-tests (where the institution chooses to share the self-test results), and copies of audit or compliance reviews of the institution’s program for compliance with fair lending laws and regulations, including both internal and independent audits.

   NOTE: The request should advise the institution that it is not required to disclose the report or results of any self-tests of the type protected under amendments to ECOA and the FHAct programs.

   d. Complaint file.

   e. Any written or printed statements describing the institution’s fair lending policies and/or procedures.
Interagency Fair Lending Procedures

f. Training materials related to fair lending issues including records of attendance.

g. Records detailing policy exceptions or overrides, exception reporting, and monitoring processes.

2. Lending Policies / Loan Volume

a. Internal underwriting guidelines and lending policies for all consumer and commercial loan products.

Comment: If guidelines or policies differ by branch or other geographic location, request copies of each variation.

b. A description of any credit scoring system(s) in use now or during the exam period.

Comment: Inquire as to whether a vendor or in-house system is used; the date of the last verification; the factors relied on to construct any in-house system; and, if applicable, any judgmental criteria used in conjunction with the scoring system.

c. Pricing policies for each loan product, and for both direct and indirect loans.

Comment: The institution should be specifically asked whether its pricing policies for any loan products include the use of “overages”. The request should also ask whether the institution offers any “subprime” loan products or otherwise uses any form of risk-based pricing. A similar inquiry should be made regarding the use of any cost-based pricing. If any of these three forms are or have been in use since the last exam, the institution should provide pricing policy and practice details for each affected product, including the institution’s criteria for differentiating between each risk or cost level and any policies regarding overages. Regarding indirect lending, the institution should be asked to provide any forms of agreement (including compensation) with brokers/dealers, together with a description of the roles that both the institution and the dealer/broker play in each stage of the lending process.

d. A description of each form of compensation plan for all lending personnel and managers.

e. Advertising copy for all loan products.

f. The most recent HMDA LAR, including unreported data if available.

Comment: The integrity of the institution’s HMDA LAR data should be verified prior to the pre-examination analysis.

g. Any existing loan registers for each non-HMDA loan product.

Comment: Loan registers for the three-month period preceding the date of the examination, together with any available lists of declined loan applicants for the same period should be requested. Registers or lists should contain, to the extent available, the complete name and address of loan applicants and applicable loan terms, including loan amount, interest rate, fees, repayment schedule, and collateral codes.
h. A description of any application or loan-level databases maintained, including a
description of all data fields within the database or that can be linked at the loan level.

i. Forms used in the application and credit evaluation process for each loan product.

  Comment: At a minimum, this request should include all types of credit applications,
  forms requesting financial information, underwriter worksheets, any form used for the
  collection of monitoring information, and any quality control or second-review forms or
  worksheets.

j. Lists of service providers.

  Comment: Service providers may include: brokers, realtors, real estate developers,
appraisers, underwriters, home improvement contractors, and private mortgage insurance
companies. Request the full name and address and geographic area served by each
provider. Also request documentation of any fair lending requirements imposed on, or
commitments required of, any of the institution’s service providers.

k. Addresses of any Internet site(s).

  Comment: Internet “home pages” or similar sites that an institution may have on the
Internet may provide information concerning the availability of credit, or means for
obtaining it. All such information must comply with the nondiscrimination requirements
of the fair lending laws. In view of the increasing capability to conduct transactions on
the Internet, it is extremely important for examiners to review an institution’s Internet
sites to ensure that all of the information or procedures set forth therein are in compliance
with any applicable provisions of the fair lending statutes and regulations.

3. Community Information

a. Demographic information prepared or used by the institution.

b. Any fair lending complaints received and institution responses thereto.
VII. Special Analyses

These procedures are intended to assist examiners who encounter disproportionate adverse impact violations, discriminatory pre-application screening and possible discriminatory marketing.

A. Disproportionate Adverse Impact Violations

When all five conditions below exist, consult within your agency to determine whether to present the situation to the institution and solicit the institution’s response. Note that condition 5 can be satisfied by either of two alternatives.

The contacts between examiners and institutions described in this section are information-gathering contacts within the context of the examination and are not intended to serve as the formal notices and opportunities for response that an agency’s enforcement process might provide. Also, the five conditions are not intended as authoritative statements of the legal elements of a disproportionate adverse impact proof of discrimination; they are paraphrases intended to give you practical guidance on situations that call for more scrutiny and on what additional information is relevant.

NOTE: Even if it appears likely that a policy or criterion causes a disproportionate adverse impact on a prohibited basis (condition 3), consult agency supervisory staff if the policy or criterion is obviously related to predicting creditworthiness and is used in a way that is commensurate with its relationship to creditworthiness or is obviously related to some other basic aspect of prudent lending, and there appears to be no equally effective alternative for it. Examples are reliance on credit reports or use of debt-to-income ratio in a way that appears consistent with industry standards and with a prudent evaluation of credit risk.

Conditions

1. A specific policy or criterion is involved.

   The policy or criterion suspected of producing a disproportionate adverse impact on a prohibited basis should be clear enough that the nature of action to correct the situation can be determined.

   NOTE: Gross HMDA denial or approval rate disparities are not appropriate for disproportionate adverse impact analysis because they typically cannot be attributed to a specific policy or criterion.

2. The policy or criterion on its stated terms is neutral for prohibited bases.

3. The policy or criterion falls disproportionately on applicants or borrowers in a prohibited basis group.

   The difference between the rate at which prohibited basis group members are harmed or excluded by the policy or criterion and the rate for control group members must be large enough that it is unlikely that it could have occurred by chance. If there is reason to suspect a significant disproportionate adverse impact may exist, consult with agency supervisory staff, as appropriate.
4. There is a causal relationship between the policy or criterion and the adverse result.

The link between the policy or criterion and the harmful or exclusionary effect must not be speculative. It must be clear that changing or terminating the policy or criterion would reduce the disproportion in the adverse result.

5. Either a or b:

a. The policy or criterion has no clear rationale, appears to exist merely for convenience or to avoid a minimal expense, or is far removed from common sense or standard industry underwriting considerations or lending practices.

The legal doctrine of disproportionate adverse impact provides that the policy or criterion that causes the impact must be justified by “business necessity” if the institution is to avoid a violation. There is very little authoritative legal interpretation of that term with regard to lending, but that should not stop examiners from making the preliminary inquiries called for in these procedures. For example, the rationale is generally not clear for basing credit decisions on factors such as location of residence, income level (per se rather than relative to debt), and accounts with a finance company. If prohibited basis group applicants were denied loans more frequently than control group applicants because they failed an institution’s minimum income requirement, it would appear that the first four conditions plus 5a existed; therefore, the examiners should consult within your agency about obtaining the institution’s response, as described in the next section below.

b. Alternatively, even if there is a sound justification for the policy, it appears that there may be an equally effective alternative for accomplishing the same objective with a smaller disproportionate adverse impact.

The law does not require an institution to abandon a policy or criterion that is clearly the most effective method of accomplishing a legitimate business objective. However, if an alternative that is approximately equally effective is available that would cause a less severe impact, the policy or criterion in question will be a violation.

At any stage of the analysis of possible disproportionate adverse impact, if there appears to be such an alternative, and the first four conditions exist, consult within the agency how to evaluate whether the alternative would be equally effective and would cause a less severe impact. If the conclusion is that it would, solicit a response from the institution, as described in the next section.
Interagency Fair Lending Procedures

**Obtaining the institution’s response**

If the first four conditions plus either 5a or 5b appear to exist, consult with agency supervisory staff about whether and how to inform the institution of the situation and solicit the institution’s business justification. The communication with the institution may include the following:

- The specific neutral policy or criterion that appears to cause a disproportionate adverse impact.
- How the examiners learned about the policy.
- How widely the examiners understand it to be implemented.
- How strictly they understand it to be applied.
- The prohibited basis on which the impact occurs.
- The magnitude of the impact.
- The nature of the injury to individuals.
- The data from which the impact was computed.

The communication should request that the institution provide any information supporting the business justification for the policy and request that the institution describe any alternatives it considered before adopting the policy or criterion at issue.

**Evaluating and following up on the response**

The analyses of “business necessity” and “less discriminatory alternative” tend to converge because of the close relationship of the questions of what purpose the policy or criterion serves and whether it is the most effective means to accomplish that purpose.

Evaluate whether the institution’s response persuasively contradicts the existence of the significant disparity or establishes a business justification. Consult with agency supervisory staff as appropriate.
B. Discriminatory Pre-application Screening

Obtain an explanation for any:

- Withdrawals by applicants in prohibited basis groups without documentation of consumer intent to withdraw.
- Denials of applicants in prohibited basis groups without any documentation of applicant qualifications; or
- On a prohibited basis, selectively quoting unfavorable terms (for example, high fees or down payment requirements) to prospective applicants, or quoting unfavorable terms to all prospective applicants but waiving such terms for control group applicants. (Evidence of this might be found in withdrawn or incomplete files.)
- Delays between application and action dates on a prohibited basis.

If the institution cannot explain the situations, examiners should consider obtaining authorization from their agency to contact the consumers to verify the institution’s description of the transactions. Information from the consumer may help determine whether a violation occurred.

In some instances, such as possible “prescreening” of applicants by institution personnel, the results of the procedures discussed so far, including interviews with consumers, may be inconclusive in determining whether a violation has occurred. In those cases, examiners should, if authorized by their agency, consult with agency supervisory staff regarding the possible use of “testers” who would pose as apparently similarly situated applicants, differing only as to race or other applicable prohibited basis characteristic, to determine and compare how the institution treats them in the application process.

C. Possible Discriminatory Marketing

1. Obtain full documentation of the nature and extent, together with management’s explanation, of any:
   - Prohibited basis limitations stated in advertisements.
   - Code words in advertisements that convey prohibited limitations.
   - Advertising patterns or practices that a reasonable person would believe indicate prohibited basis consumers are less desirable or are only eligible for certain products.

2. Obtain full documentation as to the nature and extent, together with management’s explanation, for any situation in which the institution, despite the availability of other options in the market:
   - Advertises only in media serving either minority or nonminority areas of the market.
   - Markets through brokers or other agents that the institution knows, or could reasonably be expected to know, to serve only one racial or ethnic group in the market.
Interagency Fair Lending Procedures

- Utilizes mailing or other distribution lists or other marketing techniques for prescreened or other offerings of residential loan products* that:
  
  — Explicitly exclude groups of prospective borrowers on a prohibited basis;
  
  — Exclude geographies (e.g., census tracts, ZIP codes, etc.) within the institution’s marketing area that have demonstrably higher percentages of minority group residents than does the remainder of the marketing area, but which have income and other credit-related characteristics similar to the geographies that were targeted for marketing; or
  
  — Offer different products to such geographies, especially if subprime products are primarily marketed to racial or ethnic minorities.

*NOTE: Pre-screened solicitation of potential applicants on a prohibited basis does not violate ECOA. Such solicitations are, however, covered by the FHA. Consequently, analysis of this form of potential marketing discrimination should be limited to residential loan products.

3. Evaluate management’s response particularly with regard to the credibility of any nondiscriminatory reasons offered as explanations for any of the foregoing practices. Refer to the Evaluating Responses to Evidence of Disparate Treatment section in this Appendix for guidance.
VIII. Using Self-Tests and Self-Examinations to Streamline the Examination

Institutions may find it advantageous to conduct self-tests or self-evaluations to measure or monitor their compliance with ECOA and Regulation B. A self-test is any program, practice, or study that is designed and specifically used to assess the institution’s compliance with fair lending laws that creates data not available or derived from loan, application, or other records related to credit transactions (12 CFR 202.15(b)(1) and 24 CFR 100.140-100.148). For example, using testers to determine whether there is disparate treatment in the pre-application stage of credit shopping may constitute a self-test. The information set forth in 12 CFR 202.15(b)(2) and 24 CFR 100.142(a) is privileged unless an institution voluntarily discloses the report or results or otherwise forfeits the privilege. A self-evaluation, while generally having the same purpose as a self-test, does not create any new data or factual information, but uses data readily available in loan or application files and other records used in credit transactions and, therefore, does not meet the self-test definition.

Examiners should not request any information privileged under 12 CFR 202.15(b)(2) and 24 CFR 100.142(a), related to self-tests. If the institution discloses the results of any self-tests, or has performed any self-evaluations, and examiners can confirm the reliability and appropriateness of the self-tests or -evaluations (or even parts of them), they need not repeat those tasks.

NOTE: When the term self-evaluation is used below, it is meant to include self-tests where the institution has voluntarily disclosed the report or results.

If the institution has performed a self-evaluation of any of the product(s) selected for examination, obtain a copy thereof and proceed through the remaining steps of this section on Streamlining the Examination.

Determine whether the research and analysis of the planned examination would duplicate the institution’s own efforts. If the answers to Questions A and B below are both Yes, each successive Yes answer to Questions C through L indicates that the institution’s work up to that point can serve as a basis for eliminating examination steps.

If the answer to either Question A or B2 is No, the self-evaluation cannot serve as a basis for eliminating examination steps. However, you should still consider the self-evaluation to the degree possible in light of the remaining questions and communicate the findings to the institution so that it can improve its self-evaluation process.
A. Did the transactions covered by the self-evaluation occur not longer than two years ago prior to the examination? If the self-evaluation covered more than two years prior to the examination, incorporate only results from transactions in the most recent two years.

B. Did it cover the same product, prohibited basis, decision center, and stage of the lending process (for example, underwriting, setting of loan terms) as the planned examination?

C. Did the self-evaluation include comparative file review?

NOTE: One type of “comparative file review” is statistical modeling to determine whether similar control group and prohibited basis group applicants were treated similarly. If an institution offers self-evaluation results based on a statistical model, consult appropriately within your agency.

D. Were control and prohibited basis groups defined accurately and consistently with ECOA and/or the FHAct?

E. Were the transactions selected for the self-evaluation chosen so as to focus on marginal applicants or, in the alternative, selected randomly?

F. Were the data analyzed (whether abstracted from files or obtained from electronic databases) accurate? Were those data actually relied on by the credit decision makers at the time of the decisions?

To answer these two questions and Question G for the institution’s control group sample and each of its prohibited basis group samples, request to review 10 percent (but not more than 50 for each group) of the transactions covered by the self-evaluation. For example, if the institution’s self-evaluation reviewed 250 control group and 75 prohibited basis transactions, plan to verify the data for 25 control group and seven prohibited basis transactions.

G. Did the 10 percent sample reviewed for Question F also show that consumer assistance and institution judgment that assisted or enabled applicants to qualify were recorded systematically and accurately and were compared for differences on any prohibited bases?

H. Were prohibited basis group applicants’ qualifications related to the underwriting factor in question compared to corresponding qualifications of control group approvals? Specifically, for self-evaluations of approve/deny decisions, were the denied applicants’ qualifications related to the stated reason for denial compared to the corresponding qualifications for approved applicants?

I. Did the self-evaluation sample cover at least as many transactions at the initial stage of review as examiners would initially have reviewed using the sampling guidance in these procedures?

If the institution’s samples are significantly smaller than those in the sampling guidance but its methodology otherwise is sound, review additional transactions until the numbers
of reviewed control group and prohibited basis group transactions equal the minimums for the initial stage of review in the sampling guidance.

J. Did the self-evaluation identify instances in which prohibited basis group applicants were treated less favorably than control group applicants who were no better qualified?

K. Were explanations solicited for such instances from the persons responsible for the decisions?

L. Were the reasons cited by credit decision makers to justify or explain instances of apparent disparate treatment supported by legitimate, persuasive facts or reasoning?

If the questions above are answered Yes, incorporate the findings of the self-evaluation (whether supporting compliance or violations) into the examination findings. Indicate that those findings are based on verified data from the institution’s self-evaluation. In addition, consult appropriately within your agency regarding whether or not to conduct corroborative file analyses in addition to those performed by the institution.

If not all of the questions in the section above are answered Yes, resume the examination procedures at the point where the institution’s reliable work would not be duplicated. In other words, use the reliable portion of the self-evaluation and correspondingly reduce independent comparative file review by examiners. For example, if the institution conducted a comparative file review that compared applicants’ qualifications without taking account of the reasons they were denied, the examiners could use the qualification data abstracted by the institution (if accurate), but would have to construct independent comparisons structured around the reasons for denial.