



Comptroller of the Currency
Administrator of National Banks

Fair Lending Examination Procedures

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Fair Lending Examination Procedures

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Introduction

These procedures supersede the guidance in the *Comptroller's Handbook for Compliance* booklet "Fair Lending" issued in October 1997 for evaluating a national bank's compliance with the Fair Housing Act, Equal Credit Opportunity Act, and the Federal Reserve Board's Regulation B. In issuing this booklet, the OCC adopts the Federal Financial Institutions Examination Council's (FFIEC) "Interagency Fair Lending Examination Procedures," which the booklet includes and to which the OCC has added appropriate supplemental material. Generally, references to "OCC" in this booklet indicate OCC supplemental material and references to "agencies" indicate material drawn from the FFIEC procedures.

General Guidelines

The OCC has two methods to select national banks for comprehensive fair lending examinations. First, the OCC selects banks by periodically screening the population of banks according to criteria related to the risk of fair lending violations. The scoping guidelines in part I typically are not applicable to such **risk-based** examinations.

Second, the OCC selects a sample of banks randomly to receive comprehensive fair lending examinations. For **randomly selected** examinations of banks that are not community banks,¹ examiners should use the scoping guidelines. If the supervisory office or other OCC office has designated certain institutions, products, market areas, etc., as priorities to examine, OCC examiners should make scoping decisions accordingly. Absent such guidance, OCC examiners who use the scoping guidelines should treat them as a menu from which sections should be selected, not as a recipe to be followed entirely in every examination.

¹Community banks are banks having total assets of less than \$250 million and lacking regional or large bank affiliation. The OCC's consumer compliance examinations in community banks are transaction-based. Examiners test a limited number of transactions to determine the bank's level of fair lending compliance. Examiners also may use the OCC's community bank procedures in banks with total assets of up to \$1 billion, depending on the bank's structure and its history of compliance management.

These procedures are intended to be a basic and flexible framework to be used in 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, which can supply such additional procedures and details as are necessary to implement them effectively.

Although these procedures will apply to most examinations, each agency may continue to use for limited numbers of examinations the distinct approaches it has developed that are appropriate for select classes of institutions. Such approaches include, for example, the statistical modeling that some of the agencies use in selected examinations to assist in determining whether race or national origin was a factor in credit decisions.

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 procedures provide for that.

Specific to the OCC, this handbook:

- Directs examiners to take different approaches depending on whether a bank’s selection is **risk-based**, via the screening process, or **random**.
- Directs examiners to use the *Comptroller’s Handbook for Compliance* “Community Bank Consumer Compliance” booklet’s fair lending examination procedures in community banks.
- Establishes the deputy comptroller for Compliance Operations as the principal point of contact in OCC headquarters for examiners and supervisory offices with respect to fair lending examinations.
- Contains threshold procedures for determining whether the OCC should use statistical modeling for the comparative analysis.

- Contains procedures and supporting materials for determining whether banks are in compliance with:
 - **Requirements in Regulation B Regarding Other Illegal Limitations on Access to Credit.** A number of provisions in Regulation B are intended to facilitate access to credit by providing consumers with certain rights (for example, the right to open a credit account in a birth given name) or by imposing certain obligations on lenders (for example, not to alter terms of a credit account adversely because the account holder retires). Noncompliance can harm consumers. Some of Regulation B’s consumer rights are not stated explicitly in terms of a prohibited basis (for example, discounting or excluding “protected income,” in violation of 12 CFR 202.6(b)(5)). The OCC additionally evaluates the possible role of a prohibited basis in such violations. (In this handbook, only violations involving a prohibited basis are referred to as “discrimination.”) There is a checklist in appendix K of this handbook for reviewing compliance with these provisions of Regulation B and guidance in parts III and IV on using the checklist.
 - **Technical Requirements in Regulation B.** Regulation B requires banks to use certain practices that do not directly relate to evaluating the applicant’s creditworthiness (for example, retaining records of credit transactions). These requirements are important, in part, because they facilitate creation of records that support comparative file review and help consumers obtain their rights. Examiners evaluate compliance with these provisions as part of certain regularly scheduled compliance examinations and in all fair lending examinations that include review of files. There is a checklist in appendix L of this handbook to assist in these reviews and guidance in parts III and IV on using the checklist.

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 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 even in small banks, an examiner for that agency must conduct such

a review rather than interpret part II of these 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 can be applied to other prohibited bases and to nonresidential transactions. These procedures focus on analyzing lender compliance with the broad, anti-discriminatory requirements of the ECOA and the FH Act.

The OCC's failure to follow any of this handbook's procedures or practices does not necessarily bar a conclusion that a referral to the U. S. Department of Justice (DOJ), a referral to the U. S. Department of Housing and Urban Development (HUD), and/or an OCC enforcement action is appropriate to address possible illegal disparate treatment or some other fair lending violation. Neither is such a failure sufficient by itself to rebut information suggesting that a violation occurred. The OCC will base its conclusions on the reliability of the information in hand and on the totality of the information and circumstances.

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," March 1994.

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). Although ECOA prohibits discrimination on the basis of age in the extension of credit, it permits lenders to favor “elderly” applicants. Regulation B defines “elderly” as 62 years old or older.
- The applicant’s receipt of income derived from any public assistance program.
- 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 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 202.

The Fair Housing Act (FH Act) 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.
- Selling or renting a dwelling.

The FH Act 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).
- Handicap.

HUD’s regulations implementing the FH Act are found at 24 CFR 100. Because both the FH 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 FH 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 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 neighborhood or other area where property to be financed is located.

Finally, the FH 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.

Types of Lending Discrimination

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

- Overt evidence of disparate treatment,
- Comparative evidence of disparate treatment, and
- 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 through 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 FH Act’s prohibition on statements expressing a discriminatory preference as well as Section 202.5(a) of Regulation B, which prohibits discouraging applicants on a prohibited basis.

However, otherwise-prohibited overt language and distinctions are permissible in “Special-Purpose Credit Programs.” For more information, refer to appendix C, section B.

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. It is considered by courts to be intentional discrimination because no credible, nondiscriminatory reason explains the difference in treatment on a prohibited basis.

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 nonminority 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 since the judgment had been vacated. The nonminority 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 intentionally discriminated.

Illegal disparate treatment exists when applicants are "similarly situated," but are treated differently on a prohibited basis. Typically, a disfavored applicant who is "similarly situated" is as well or better qualified than a favored one, though factors other than qualifications may be relevant. In fair lending examinations, examiners usually focus on whether the deficiency the bank cited to justify the unfavorable treatment of an applicant from a prohibited basis group also existed for any favorably treated control group applicant who was no better qualified. Such an inconsistency is termed "apparent disparate treatment," indicating that the situation may be discrimination or it may have an innocent explanation. "Apparent" is not a synonym for "obvious" or "blatant."

If the bank shows that, at the time of the credit decisions, it considered a legitimate difference between the applicants that justified treating one more favorably than the other, the examiner will conclude that the applicants were not actually "similarly situated," so no illegal disparate treatment occurred. There are numerous lawful reasons why an applicant from one race, gender, etc., might be treated less favorably than one from another group. The anti-discrimination laws do not require uniform treatment of all customers.

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 FH 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.”²

Example: A lender’s policy is not to extend loans for single family residences for less than \$60,000.00. 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.

Although the precise contours of the law on disparate impact as it applies to lending discrimination are under development, it has been clearly established the single 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 FH Act or ECOA.

² Disparate impact has been referred to more commonly by the OCC as “disproportionate adverse impact.” It is also referred to as the “effects test.”

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 potential disparate impact situations if they happen to encounter them. Guidance in appendix G tells them how to obtain relevant information regarding such situations and how to evaluate and follow up on it, as appropriate.

Referral to DOJ or HUD

ECOA requires an agency to refer matters to the DOJ “whenever the agency has reason to believe that one or more creditors has engaged in a pattern or practice of discouraging or denying applications for credit in violation of section 1691(a)” of ECOA, which states ECOA’s basic prohibitions against discrimination. Additionally, ECOA requires an agency to notify HUD whenever there is reason to believe that both ECOA and the FH Act have been violated and the suspected violations have not been referred to DOJ. Furthermore, Executive Order No. 12892 requires that HUD be notified “upon receipt of information . . . suggesting a violation” of the FH Act, and that such information also be forwarded to DOJ if it “indicate[s] a possible pattern or practice of discrimination in violation of the act. . . .” Part IV of this handbook provides guidance to examiners and supervisory offices on how to respond to a bank’s apparent violation of a fair lending law.

Part I Examination Scope Guidelines

Background

Existing information may be used to expedite setting the scope. Also, scoping may lead to the use of a specialized analysis an Agency has developed that is not set forth in the procedures.

Key elements of scoping — for example, the prohibited basis, decision center, market, product, and review period — often are identified as part of the OCC's screening process. Therefore, the scope guidelines below typically are not applicable to such **risk-based** examinations. However, for **randomly selected** examinations of banks that are not community banks, examiners should use the scoping guidelines. If the supervisory office or other OCC office has designated certain institutions, products, market areas, etc., as priorities to examine, OCC examiners should make scoping decisions accordingly. Absent such guidance, OCC examiners who use the scoping guidelines should treat them as a menu from which sections should be selected, not as a recipe to be followed entirely in every examination.

Examiners typically should plan to examine only one focal point (as defined below). (In certain circumstances it may be appropriate to examine more than one focal point.) The focal point should include only one prohibited basis group and one control group at a time so as to isolate prohibited factors. (For example, compare "black" with "white," not "minority" with "white;" and compare "male" with "female," or "married" with "unmarried," not "married minority female" with "single white male.") The fact that one group outnumbers another in the population or customer pool is not determinative.

After scoping, examiners usually conduct a comparative file review either for possible illegal disparate treatment in underwriting (see part III.B) or in setting loan rates, terms, and conditions (see part III.C) for the focal point selected. These approaches may be applied even to validated credit scoring systems by using the guidance in appendix B.

In determining the scope of an examination, examiners should consider:

- The OCC's priorities and the supervisory office's long-term strategy for evaluating whether the bank's lending activities comply with the fair lending laws.
- The products, markets, and decision centers that are important to the institution.
- Availability of information that will support reliable results.
- Useful information that will add significantly to the cumulative picture of whether the bank complies with fair lending laws.
- Whether there are lending activities that have undergone significant changes in personnel, operations, or underwriting standards.

The fair lending laws broadly prohibit discrimination on all the bases listed in the Introduction. The OCC will enforce these laws to the fullest extent. However, the OCC places particular emphasis on evaluating whether there is discrimination against racial or national origin minorities in residential lending. Scoping, for those examinations where the scope has not been selected in the screening process, should always consider whether there is a reasonable likelihood of obtaining a useful, reliable result by examining for racial or ethnic discrimination in:

- Residential underwriting or
- The rates, terms, or conditions of residential loans made.

However, analysis of a nonresidential product (or of a prohibited basis group other than a racial or national origin minority) is appropriate when:

- The institution does not offer residential products (or there are few minority residents in the bank's market area);
- A comparative file review of any residential product (or of race or national origin) would not be useful and reliable;
- Previous examinations of residential products (or of possible discrimination against racial or national origin minority groups) have not found any violations or weaknesses in the bank's compliance program; or

- Examiners suspect discrimination in a specific nonresidential product (or on a different prohibited basis).

Examiners should be alert for the presence of conditions that may make it appropriate or necessary to shift the scope or approach of the planned examination, including:

- Insufficient applications to conduct a comparative analysis.
- Sufficient applications to permit comparative analysis by statistical modeling.
- The credit decision maker's lack of knowledge of the prohibited basis identities of customers.

There is further guidance on these matters at appropriate points below.

If there are pending administrative proceedings or government enforcement litigation involving the bank's fair lending compliance, generally a fair lending examination should not commence.

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.

Scoping may disclose the existence of circumstances — such as the use of credit scoring or the amount 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 consideration of compliance management quality, particularly as it relates 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 and the organization of these guidelines to arrive at a well-reasoned and practical conclusion about how to conduct a particular institution’s examination of fair lending performance.

In cases where information already in the possession of an agency 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.

Examiners should use available information and guidance whenever possible to expedite planning and reduce burden on the bank. OCC resources for determining which focal points might be worthwhile to examine include:

- Screening data and criteria.
- OCC or supervisory office priorities.
- The supervisory strategy for the bank.
- Community Reinvestment Act (CRA) performance evaluations.

- Information from community contacts.
- Consumer complaints.
- The results of Home Mortgage Disclosure Act (HMDA) and demographic analyses (for example, CRA analyses).

The scoping process can be performed either off-site, onsite, or both, depending on whatever is determined most feasible. In the interest of minimizing burdens on both the examination team and the lender, 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 appendix F, "Potential Scoping Information", 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.
- The feasibility of developing a factually reliable record of an institution's performance and fair lending compliance in each area of those operations.

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 residential, consumer, and other categories of credit.
- The volume of, or growth in, lending for each of the credit products offered.
- The demographics (i.e., 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 types of relevant documentation/data that are available for various loan products and what is the relative quantity, quality, and accessibility of such information, that is, for which loan product(s) will the information available be most likely to support a sound and reliable fair lending analysis.
- 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 CRA assessment area(s). When appropriate, the examiner should review the demographics for a broader geographic area than the assessment area.

When 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.

- 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 with 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 one during the planned examination and others in later examinations.
- 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.

- 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 a bank may be in violation if it participates in transactions in which it knew or reasonably ought to have known other parties were discriminating.

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 MSA or underwriting center that is determined to present the highest discrimination risk. Examiners should use LAR data organized by underwriting center, if available. After calculating denial rates between the control group and minorities for the underwriting centers, examiners should select the centers with the highest disparities. If underwriting centers have fewer than five black, Hispanic, or Native American denials, examiners should not examine for racial discrimination. Instead, they should shift the focus to other loan products or prohibited bases.

Low-Volume Focal Points: Consider Alternatives

The volume of applications for the prohibited basis group for the focal point serves as one general indicator of risk, because it represents the number of consumers potentially exposed to illegal discrimination. (Other indicators of risk are the presence of the risk factors identified during scoping and the quality of the compliance management system profiled in part II.)

Usually, examiners should not attempt a comparative analysis for a focal point if the numbers of prohibited basis group or control group applications for that focal point during the 12-month period to be reviewed do not meet the minimums in the fair lending sample size tables in appendix D, as follows:

- At least five denied applications from the prohibited basis group and 20 approved applications from the control group for a comparison of approve/deny decisions.
- At least five approved applications from the prohibited basis group and 20 control group approvals for a comparison of pricing, terms, and/or conditions.

If the focal point first selected does not have such volume, a higher-volume focal point generally should be chosen for review. When there are not enough applications for comparison by race, national origin, or gender, examiners should consider evaluating possible marital status discrimination by comparing married co-applicants with unmarried co-applicants.

If the 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 supervisor and Compliance Operations 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 white applicants were approved but all four black applicants were not, even though the number of prohibited basis denials was fewer than five.

High-Volume Focal Points: Consider Statistical Modeling

If the volume of applications is large, an opportunity may exist to use the OCC's statistical modeling program for the comparative file analysis rather than judgmental comparison and interpretation.

To determine whether the comparative file analysis should be conducted using statistical modeling, examiners will take the following steps before setting the scope of an examination.

Step 1: Determine whether:

- The bank reports HMDA data on any focal point being considered as the possible scope of the examination.
- The bank's HMDA-Loan Application Register (LAR) is automated and updated through the most recent quarter (as required by Regulation C).

Step 2: Determine whether there were at least 50 nonminority approvals, 50 nonminority denials, 50 approvals from a single race or national origin minority group, and 50 denials from the same race or national origin minority group during the most recent 12-month period for which the data in step 1 are available, for any single HMDA product in any one decision center of the bank to be examined.

Step 3: If both conditions in step 1 and the condition in step 2 exist, consult Compliance Operations about whether a statistical model might be used for the examination.

Following such consultation, Compliance Operations may direct examiners to:

- Obtain the bank's HMDA data in electronic form for all HMDA-reporting decision centers and subsidiaries and all products for the 12-month period for the institution to be examined. The bank's HMDA data and HMDA-LAR are preferable to the HMDA public access tapes, since they are likely to have more recent data.
- Determine how much, if any, of the additional application data (over and above that on the HMDA-LAR) evaluated by the bank's underwriters is maintained by the bank in electronic format for each HMDA product at each HMDA reporter (or other lending entity), and the process and time frame by which the bank might provide such data to the OCC.
- Determine whether the transactions recorded on the LAR for the 12-month period include classes of transactions that were underwritten to different standards (for example, for different reporters/entities/decision centers, for different loan purchasers, for an affordable housing product, or according to the standards of an acquiring or acquired institution), and whether those classes can be sorted in the electronic database.

- Provide recommendations regarding how to aggregate, disaggregate, sort, or otherwise analyze the HMDA data (and any additional data), and about which decision centers, products, etc., might be of greatest interest.
- Determine whether and when underwriting standards changed during the 12-month period for any class of transactions.
- Identify bank staff that can interpret the data.
- Determine the dates of projected examination activity and address any other administrative planning issues.

The OCC will determine whether any focal points may be appropriate to examine using statistical modeling.

Evaluating the Potential for Discriminatory Conduct

Step 1: 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?

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 lender's key underwriting personnel. 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 "Credit Scoring Analysis", appendix B for guidance.)
- Applicable pricing policies and guidance for exercising discretion over loan terms and conditions.
- The institution's corporate relationships with any finance companies, subprime mortgage or consumer lending entities, or similar institutions.
- Loan application forms.
- HMDA/LAR or loan registers and lists of declined applications.
- Description(s) of databases maintained for loan product(s) to be reviewed, especially any record of exceptions to underwriting guidelines.
- Copies of any consumer complaints alleging discrimination and loan files related thereto.
- Descriptions of any compensation system that is based on loan production or pricing.
- Compliance program materials (particularly fair lending policies), training manuals, organization charts, as well as record keeping and any monitoring protocols.
- Copies of any available marketing materials or descriptions of current or previous marketing plans or programs.

If the credit decision makers do not know whether the applicants are in the prohibited basis group or the control group, a comparative file review probably is not appropriate. Therefore, it is important that examiners identify:

- The points in the application or underwriting process at which there are face-to-face meetings with applicants; and
- Which of the bank's participants in the credit decision process review or have access to documents with government monitoring information.

The OCC assumes that if any employee of the bank knows an applicant's race, gender, etc., the bank's credit decision makers have such knowledge, unless specific facts show otherwise.

Step 2: 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, and policies of the institution's fair lending compliance systems. Review these systems and note the following risk factors (factors are numbered alphanumerically to coincide with the type of factor, e.g., "C" for compliance program, "O" for "overt," "P" for "pricing," etc.).

- C1. Overall institution compliance record is weak.
- C2. Prohibited basis monitoring information is incomplete.
- C3. Data and/or recordkeeping problems compromised reliability of previous examination reviews.
- C4. Fair lending problems were previously found in one or more bank products.
- C5. The size, scope, and quality of the compliance management program, including senior management's involvement, is materially inferior to programs customarily found in institutions of similar size, market demographics, and credit complexity.
- C6. The institution has not updated compliance guidance to reflect changes in law or in agency policy.

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 3: 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 improvements, 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 factory housing loans.
- Wholesale, indirect, and brokered loans.
- Portfolio lending (including portfolios of Fannie Mae/Freddie Mac rejections).

If no specific risk factors point toward selecting a particular loan type/purpose as defined in HMDA, conventional home purchase loans should be the first priority, followed by conventional home-improvement loans, government-insured home purchase loans, government-insured home-improvement loans, conventional refinancings, government-insured refinancings, and multifamily loans.

In addition, determine whether the lender offers any conventional “affordable” housing loan programs 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 standards at those centers or in those residential products.
- No unresolved fair lending complaints, administrative proceedings, litigation or similar factors.

Step 4: 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.

Broker/agent agreements and other information about third parties is reviewed to learn the bank's degree of control over and the level of familiarity with those activities, its potential legal liability, and any other supervisory risks. The facts of specific relationships will indicate whether the bank may be liable for any discrimination in such activities or in transactions that involve those third parties. Under Regulation B, a bank may be liable for violations committed by another creditor in connection with the same credit transaction if the bank knew or had reasonable notice of the violation before becoming involved in the credit transaction. Examiners should consult agency counsel to determine whether the bank may be held responsible for the transactions conducted under them.

- 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. (See the “Underwriter Interview” section in part III and the underwriter interview guide in appendix J.)

In the course of conducting the foregoing inquiries, look for the following risk factors:

OVERT indicators of discrimination such as:

- O1. Including explicit prohibited basis identifiers in underwriting criteria or pricing standards.
- 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 FH Act. (If a credit scoring system scores age, refer to part E of the credit scoring analysis in appendix B.)
- O4. Statements made by the institution’s officers, employees, or agents which 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.

If any of these risk factors are found, document them and follow up as called for in part III, section A.

* **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 a 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.

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 normal underwriting standards, 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. Relationship between loan pricing and compensation of loan officers or brokers.
- P2. Presence of broad discretion in pricing or other transaction costs.
- P3. Use of a system of risk-based pricing that is not empirically based and statistically sound.
- 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.

Examiners should also be alert for indications of risk related to other terms or conditions (such as co-signors, collateral, or length of term). For example, broad discretion and vague standards for collateral should be viewed as risk factors if they exist for a focal point. Examiners should consider adapting the transaction comparison techniques in part III to examine such situations.

In addition, the following are abusive (or “predatory”) lending practices that may involve violations of fair lending laws and which examiners should treat as risk factors:

- Collateral or equity “stripping” — loans made in reliance on the liquidation value of the borrower’s home or other collateral, rather than the borrower’s independent ability to repay, with the possible or even intended result of foreclosure or the need to refinance under duress;
- Interest rates or fees that far exceed the true risk and cost of making the loan;
- Inadequate disclosure of the true costs and risks of loan transactions;
- Lending practices that are fraudulent, coercive, unfair, deceptive or otherwise illegal;
- Loan terms and structures, such as negative amortization, when designed to make it more difficult or impossible for borrowers to reduce their indebtedness;
- “Padding” or “packing” — charging customers unearned, concealed or unwarranted fees;
- “Balloon” payment loans that may conceal the true burden of the loan financing and may force borrowers into costly refinancing or foreclosure situations;
- “Flipping” — frequent and multiple refinancings, usually of mortgage loans, requiring additional fees which strip equity from the borrower;
- Collection of up-front single-premium credit insurance — for example, life, disability, or unemployment insurance — when the consumer does not receive a net tangible financial benefit.

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

- S1. For an institution that has one or more subprime mortgage subsidiaries or affiliates, any significant differences, by loan product, in the percentage of prohibited basis applicants of the institution compared with the percentage of prohibited basis applicants of the subsidiary(ies) or affiliate(s).
- S2. Lack of clear, objective standards for (1) referring applicants to subsidiaries or affiliates, (2) classifying applicants as “prime” or

- “subprime” borrowers, or (3) deciding what kinds of alternative loan products should be offered or recommended to applicants.
- S3. For an institution that makes both conventional and FHA mortgages, any significant differences in the percentages of prohibited basis group applicants in each of these two loan products, particularly with respect to loan amounts of \$100,000 or more.
 - S4. For an institution that makes both prime and subprime loans for the same purpose, any significant differences in percentages of prohibited basis group borrowers in each of the alternative loan product categories.
 - S5. Consumer complaints alleging discrimination in residential loan pricing.
 - S6. A lender with a subprime mortgage company subsidiary or affiliate integrates loan application processing for both entities, such that steering between the prime and subprime products can occur almost seamlessly; i.e., a single loan processor could simultaneously attempt to qualify any applicant, whether to the bank or the mortgage company, under either the bank’s prime criteria or the mortgage company’s subprime criteria.
 - S7. Loan officers have broad discretion regarding whether to promote conventional or FHA loans, or both, to applicants and the lender has not issued guidelines regarding the exercise of this discretion.
 - S8. A lender has most of its branches in predominantly white neighborhoods. The lender’s subprime mortgage subsidiary has branches which are located primarily in predominantly minority neighborhoods.

In addition, the following are abusive (or “predatory”) lending practices that may involve violations of fair lending laws and which examiners should treat as risk factors:

- One-way referrals — for example, a prime lender refers subprime applicants to its subprime subsidiary but the subprime subsidiary does not refer prime applicants to the prime lender;
- Significant differences in the proportion of minority or female applicants between a prime lender and its subprime subsidiary; or
- Significant differences in the proportion of loans made in predominantly minority geographic areas between a prime lender and its subprime subsidiary.

Indicators of potential **DISCRIMINATORY REDLINING** such as:

- R1. *Significant differences, as revealed in HMDA data, in the number of loans originated in those areas in the lender'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 nonminority) 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. Other patterns of lending identified during the most recent CRA examination that differ by the concentration of minority residents.
- R5. Explicit demarcation of credit product markets that excludes metropolitan statistical areas (MSAs), political subdivisions, census tracts, or other geographic areas within the institution's lending market and having relatively high concentrations of minority residents.
- R6. 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.
- R7. Employee statements that reflect an aversion to doing business in areas with relatively high concentrations of minority residents.
- R8. Complaints or other allegations by consumers or community representatives that the lender excludes or restricts access to credit for areas with relatively high concentrations of minority residents.

Examiners should review complaints against the lender filed with their agency; 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 lenders" during prior CRA examinations.

NOTE: Broad allegations or complaints are not, by themselves, sufficient justification to shift the focus of an examination from routine comparative review of applications to redlining analysis. Such a shift should be based on complaints or allegations of specific practices or incidents that are consistent with redlining, along with the existence of other risk factors.

R9. A lender that has most of its branches in predominantly white neighborhoods at the same time that the lender's subprime 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 nonminority areas of the market.
- M3. Marketing through brokers or other agents that the lender 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 lender'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 products³ that:
 - Explicitly exclude groups of prospective borrowers on a prohibited basis; or

³ Pre-screened solicitation of potential applicants on a prohibited basis does not violate ECOA. Such solicitations are, however, covered by the FH Act. Consequently, analyses of this form of potential marketing discrimination should be limited to residential loan products subject to coverage under the FH Act.

- Exclude geographies (e.g., census tracts, ZIP codes, etc.) 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 monitored 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.

In addition, the following are abusive (or “predatory”) lending practices that may involve violations of fair lending laws and which examiners should treat as risk factors:

- Targeting persons, such as the elderly, women, minorities, and persons living in low- or moderate-income areas, who are perceived to be less financially sophisticated or otherwise vulnerable to abusive loan practices;
- Aggressive marketing tactics that amount to deceptive or coercive conduct.

Step 5: 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:

- 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, A, 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** described in part III, B.
- Where any of the risk factors P1-P5 are present, consider conducting a **pricing comparative file analysis** as described in part III, C.

- Where any of the risk factors S1-S8 are present, consider conducting a **steering analysis** as described in part III, D.
- Where any of the risk factors R1-R9 are present, consult agency managers about conducting an analysis for **redlining** as described in part III, F.
- Where any of the risk factors M1-M7 are present, consult agency managers about conducting a **marketing analysis** as described in part III, G.
- 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, H.

If one or more compliance-related risk factors exist along with the other risk factors for a focal point, that focal point should be considered even more strongly for examination.

Step 6: Identify Consumer Lending Discrimination Risk Factors

For credit card, motor vehicle, home equity, and other consumer loan products selected in step one for risk analysis in the current examination cycle, conduct a risk factor review similar to that conducted for residential lending products in steps three through five, above. Consult with agency managers 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, an outwardly Hispanic or Asian surname could constitute a surrogate for an applicant's race or national origin because then examiner can assume that the lender (who can rebut the presumption) perceived the person to be Hispanic. Similarly, an applicant's given name could serve as a surrogate for his or her gender. A surrogate for a prohibited basis characteristic may be used as to set up a comparative analysis with nonminority applicants or borrowers.

Prior to initiating an examination using surrogates, examiners should consult Compliance Operations.

Using decision rules in steps 3 - 5, above, for residential lending products, articulate the possible discriminatory patterns encountered and consider examining those products determined to have sufficient risk of discriminatory conduct.

Step 7: Analyze Commercial Lending Discrimination Risk

Where an institution does a substantial amount of lending in the commercial lending market, most notably small business loans (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, R4-R7, and M1-M3.

Examinations generally should focus on small business credit (commercial loan applicants that had gross revenues of \$1,000,000 or less in the preceding fiscal year), unless there is evidence that a concentration on other commercial products would be more appropriate.

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 relatively high concentrations of minority residents compared with areas with relatively low concentrations.

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 8: 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 (1) high number and/or relative severity of risk factors; (2) high data quality and other factors affecting the likelihood of obtaining reliable examination results; (3) high loan volume and the likelihood of widespread risk to applicants and borrowers; and (4) 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.

Once the scope has been set, the examiners should send the bank a request letter. (See sample fair lending section of request letter in appendix I.) The letter should state that the examination may be streamlined if the examiners can utilize any self-evaluation the bank conducted on the transactions within the proposed scope of the examination, and should emphasize that whether to disclose the self-evaluation results is voluntary. If the bank voluntarily discloses its results, the examiners should evaluate the self-evaluation as called for in "Streamlining the Examination" in appendix H.

Part II Compliance Management Review

NOTE: The OCC does not review compliance management programs in fair lending examinations of community banks. For community bank fair lending examinations, refer to the “Community Bank Consumer Compliance” booklet. For all other banks, examiners should complete this Compliance Management Review. However, they should **not** request the results of any fair lending self-evaluations conducted by the bank.

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.

For regulators whose policy is that examinations of certain types of institutions should focus on factors or conditions other than the quality of an institution’s compliance programs (such as performance in transactions), examiners should follow that policy.

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” in appendix A 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 appendix D, to the extent warranted by the strength and thoroughness of the compliance programs applicable to those focal points selected for examination. For focal points at institutions selected through the OCC’s **risk-based screening** process, examiners should complete the checklist but select the largest sample sizes within the ranges corresponding to the volumes of applications for the focal point, unless the compliance management review resolves concerns about the specific indications of risk that caused the bank to be 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 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 based on the information voluntarily disclosed by the bank, provided the self-evaluation meets the requirements set forth in “Streamlining the Examination” in appendix H.

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.

If the bank was selected through the OCC's **risk-based screening** process and is not a community bank, examiners should proceed with the type of analysis identified as appropriate in the screening process. If the bank was selected through the OCC's **random sample** of banks to be examined and is not a community bank, examiners should apply the appropriate analysis to the focal point they selected. If the bank is a community bank, the streamlined guidance in the "Community Bank Consumer Compliance" booklet applies. The analyses below will not apply if statistical modeling is used.

Transaction Files Checklists

If the fair lending examination involves review of transaction files, examiners must record information on two checklists as described below.

Other Illegal Limitations on Credit Checklist. Before reviewing files for the comparative treatment of applicants, examiners should review the "Other Illegal Limitations on Credit Checklist" in appendix K to ensure that they will recognize any of those violations. Note that the bank's policy or conduct does not have to operate on a prohibited basis to violate one of those requirements; however, examiners should also report whether or not there is any indication of prohibited disparate treatment in connection with apparent violations of this type. They should maintain one master checklist with information about any apparent violations they find during the file review. If they identify any apparent violations (even isolated), they will request explanations from the bank staff responsible for the transactions, evaluate each explanation, and verify any facts relied upon by the bank. If the explanations are not adequate, they should proceed as directed in part IV.

Technical Compliance Checklist. The examiners should use copies of the "Technical Compliance Checklist" in appendix L to review six files (an

approved and a denied consumer, business, and residential real estate loan application file) and note any apparent violations. If there appear to be any violations in those six files, then, during the comparative file review for the focal point, the examiners should observe and note on one master copy of the checklist whether the violations recur in the comparative file review.

Underwriter Interview

Every fair lending examination will include an interview of the decision-making underwriters (or equivalent bank staff, depending on the type of analysis). From these interviews, examiners should learn in detail how the credit criteria were applied and how the lending process operated. Examiners should use the “Underwriter Interview Guide” in appendix J. They should use the underwriter’s statements as a framework for the comparisons and for evaluating any explanations offered later by the bank if it is asked to account for potential disparate treatment between the prohibited basis group and control group.

The information obtained from the interview may make it necessary to change the scope or sample composition. In addition to the detailed questions in the “Underwriter Interview Guide,” examiners should ask the underwriters whether there is anything that would make it inappropriate to compare some of the transactions in the proposed scope with each other (such as changes in underwriting standards during the proposed review period that would make transactions from one part of the period inappropriate to compare with transactions from another part of the period, or the existence of loans to bank employees on favorable terms).

If the institution’s standards are unclear or if loan files lack data on applicants’ qualifications, the examiners should:

- Ask what specific problems were the basis for the reasons for denying applicants cited on the notices of adverse action.
- Using specific approved applicants, ask how the institution determined that they differed from the denied applicants.

- Use file comments (if any) that characterize qualifications as “good,” “adequate,” “weak,” etc., as points of reference.
- Track whether credit decision-makers evaluated the factors identified in the first three items consistently for the control and prohibited basis groups.

A. 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 potentially discriminatory policy or communication and the nature of the fair lending concerns that it raises.
- b. The lender’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.
- 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.

- e. Whether and to what extent applicants were adversely affected by the statement or practice.

After documenting those situations as called for here, examiners will request an explanation and evaluate the explanation in light of the guidance on overt evidence of discrimination in “Evaluating Responses to Evidence of Disparate Treatment” in appendix C.

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

B. 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: (1) prohibited basis group denials and (2) 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 table A in the “Fair Lending Sample Size Tables,” appendix D, 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 lender 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 lender’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 managers 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 or a mathematical formula) for a limited class of institutions, examiners should follow that approach.

See appendix D for additional guidance on using the sample size tables.

NOTE: Regardless of application volume or sample size, any clear instance of potential disparate treatment — even if the comparison consists of only two files — must be treated as an apparent violation.

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 lender 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.

If the sample size is much smaller than the total number of transactions in the period, examiners should select the sample based on the following features:

- Applications for residential loans other than “jumbo” loans.
- Approvals with the highest ratio of loan amount sought relative to income.
- Approvals with the longest processing times.
- Denials with the lowest ratio of loan amount sought to income.
- Denials involving questionable circumstances (for example, denial one day after application with the denial reason “unable to verify”).

Transactions with the features above are likely to be “marginal transactions,” as defined in step 3 below.

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 lender’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 lender 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 lender'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 spread sheet.

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.

The examiners should also tailor the spreadsheet for the product and prohibited basis to be reviewed to capture the information actually considered by the institution, particularly requirements or practices described by the underwriters in the underwriter interview.

All examiners who review files should meet prior to starting the file review to ensure that they have a uniform understanding of the file items to be identified and recorded (for example, how credit report codes will be interpreted, debt ratios will be calculated, income and monthly loan payments will be totaled, etc.).

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, i.e., "**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 E "Marginal Transactions" for guidance.)

The examiners should review denied application files in the sample to eliminate any prohibited basis group applications with qualifications so weak that there are not likely to be any approved applicants with similar qualifications. They should record only the name and/or number of the application, the disposition, and the key facts justifying the credit decision.

Similarly, the examiners should review the approved control group application files to eliminate well-qualified control group applications (those without flaws or with flaws too minor to serve as a basis for denial). They should record only the name and/or number of the application, the disposition, and the key facts justifying the credit decision.

The remaining files are “marginal.” Examiners should record detailed data from them on the worksheet or spreadsheet. When more than one reason for denial exists, but the applicant nearly met the bank’s standard for each requirement, the examiners should retain the denied file in the sample to use in comparisons for each reason.

- 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.
- 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 work paper.

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 percent because the lender 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 percent to 41 percent if his short-term overtime income had been considered, then the examiners should consider 41 percent, not 46 percent, 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 with 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 lender 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 part C of the “Credit Scoring Analysis” (appendix B).

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. **NOTE: A pattern or practice does not have to exist for there to be a violation and possible referral to an enforcement agency.**

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

C. Analyzing Potential Disparities in Terms and Conditions

Step 1: Set Sample Size

For each focal point selected for this analysis, two samples will be utilized: (i) prohibited basis group approvals 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 or commercial applications. Refer to table B in the “Fair Lending Sample Size Tables,” appendix D, and determine the size of the initial sample for each focal point, based on the number of prohibited basis group approvals and the number of control group approvals received by the lender during the 12 months preceding the examination and the outcome of the compliance management system analysis conducted in part II.

NOTE: Regardless of application volume or sample size, any clear instance of potential disparate treatment — even if the comparison consists of only two files — must be treated as an apparent violation.

Step 2: Determine Sample Composition

NOTE: Sample composition for a comparison of price and other terms and conditions will initially focus on controlling for two nondiscriminatory variables that can have a significant impact on loan terms: whether the loan was sold and the loan closing date. Other variables, such as household income and loan amount, will be accounted for on a case-by-case basis during the file comparison process.

- a. **Disposition of Loan.** Determine whether approved loans from which the sample is to be drawn have been consistently sold to the secondary market or held in portfolio. If both, determine the proportion for each category and use that proportion in selecting loans from each category for the sample. If the number of loans in either the sold or portfolio categories is too small to complete the minimum proportional sample size for that category, ignore loans in that category and complete the sample using loans solely from the larger category.

- b. **Period of Review.** Sort loans selected in (1), above, by **date of loan closing** and match batches of prohibited basis and control group loans that closed either on the same date or within a **range of dates** during which the lender's pricing policies were the same. If dates of loan closing are not consistently available, consider substituting the application date for the closing date.

Step 3: **Create Applicant Profile Spreadsheet**

Identify data that should be recorded for each loan to allow for a valid comparison regarding terms and conditions and place these onto a spreadsheet. Certain data must always be included in the spreadsheet, while the other data selected will be tailored for each loan product and lender based on loan terms offered and such issues as branch location and underwriter.

Step 4: **Review Terms and Conditions; Compare with Applicant Outcomes**

- a. Determine which loan terms and conditions (rates, points, fees, maturity variations, loan-to-value (LTVs), collateral requirements, etc.) are left, in whole or in part, to the discretion of loan officers or underwriters. For each such term or condition, identify (a) any **approved prohibited basis group applicants** in the sample who appear to have been treated unfavorably with respect to that term or condition and (b) any **approved control group applicants** who appear to have been treated favorably with respect to that term or condition. The examiner's analysis should be thoroughly documented in the work papers.
- b. Identify from the sample any **approved control group applicant(s)** who appear to have been treated more favorably than one or more of the above-identified prohibited basis group applicants and who have negative creditworthiness factors (under the lender's standards) that are equal to or worse than the prohibited basis group applicant(s).

- 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. **NOTE:** There does not have to be a pattern or practice for there to be a violation and possible referral to an enforcement agency.
- 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 - 6, "Evaluating Responses to Evidence of Disparate Treatment" in appendix C.

D. Steering Analysis

Institutions that make FHA as well as conventional loans and those that lend in both prime or "A" markets and in subprime markets (either directly or through subsidiaries or affiliates), present opportunities for loan officers to refer or "steer" applicants from one product or market to another. Steering is not unlawful per se and, in many instances, the availability of a more expensive form of credit may enable an applicant with credit problems to obtain a loan that might otherwise be unavailable. Steering can, however, raise fair lending issues if it occurs differently and less advantageously for prohibited basis group applicants than for similarly-situated non-minority applicants. If the scoping analysis reveals the presence of one or more risk factors S1 through S8 for any selected focal point, consult with managers about conducting a steering analysis as described below.

From the perspective of fair lending analysis, all steering scenarios involve a **decision** by the lender's personnel to guide an applicant's choice between a **more favorable** loan and one or more **less favorable** alternatives (e.g., referral to a more expensive subprime mortgage subsidiary). As such, a steering analysis should be focused on answering the following questions:

Step 1: Clarify which of the options available to customers are the more favorable and less favorable

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 and for the alternative product(s) that are offered by the institution or by a subsidiary or affiliate.
- 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 lender for determining how referrals are to be made and choices presented to customers.

- a. Obtain not only information regarding the product offered by the lender and alternative products offered by subsidiaries/affiliates, but also information on products and alternatives offered solely by the lender itself, e.g., conventional and FHA, secured and unsecured home improvement loans, prime and subprime mortgages.
- b. Obtain any information regarding a subsidiary of the lender directly from that entity, but seek information regarding an affiliate or holding company subsidiary only from the lender itself.
- c. Obtain all appropriate documentation and document 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 lender's documents and information obtained in interviews by conducting appropriate follow-up interviews.
- f. Identify any policies and procedures established by the institution and/or the subsidiary or affiliate for (1) referring a person who applies to the institution, but does not meet its criteria, to a subsidiary or affiliate; (2) offering to a person who applies to the institution for **a specific product**, but does not meet its criteria, one or more alternative loan products; or (3) referring a person who applies to a subsidiary or affiliate for its product, but who appears to be qualified for a loan from the institution, to the institution.
- g. Determine whether loan personnel are encouraged, through monetary incentives or otherwise, to make referrals, either from the institution to a subsidiary/affiliate or vice versa.

Step 3: Determine how both the decisions and the lender's policies, conditions or criteria are supposed to be documented in loan files, policy manuals, directives, etc.

Determine how, if at all, a referral from the institution to a subsidiary/affiliate, or vice versa, **and the reason for it**, would be documented in the loan files or in any other records of either the referring or receiving entity.

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 lender's stated policies, conditions, or criteria in fact are adhered to by individual decision makers. In the alternative, 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 lender 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 percent, review the spread sheets to determine whether that criteria was adhered to. If the lender'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 credit alternatives (e.g., conventional vs. FHA/VA) to offer applicants, conduct a comparative analysis to determine whether that discretion has been exercised in a nondiscriminatory manner.

Compare the lender'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, B. 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 table B in the "Fair Lending Sample Size Tables," appendix D, and select "marginal applicants" as instructed in part III, section B, above.

b. Prepare a spreadsheet for the sample which contains data entry categories for those underwriting and/or referral criteria that the lender 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 table B, in the sample size tables 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 criteria) with management, documenting all such conversations.

NOTE: A bank violates ECOA, the FH Act, or both if, on a prohibited basis, it attempts to discourage or deter a credit seeker from applying at all (commonly called “**pre-application screening**”). There is some additional guidance in section B of the “Special Analyses” (appendix G). However, pre-application screening on a prohibited basis cannot usually be detected through the types of analysis that can be conducted during an examination. If examiners find any indication that either steering or pre-application screening may be occurring, they should suggest the OCC consider pre-application testing of the bank.

E. 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 as to all commercial credit activities of a covered institution, the agencies recognize that small businesses (sole proprietorships, partnerships, and small, closely-held corporations), including those operated by prohibited basis group members, may have less experience in borrowing. 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 lender in evaluating commercial loan applications.

Examiners should select or adapt questions from the “Underwriter Interview Guide” (appendix J) for the interviews.

Step 2: Conduct Initial Sampling

- a. Select all (up to 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 (1) located in minority and/or integrated geographies or (2) 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 banks that do a significant volume of commercial lending, consider reviewing more than 10 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 lender to evaluate the credit request. In addition, inquire with the loan officer as to the gender and race, if known, of the principals of the business.
- 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, including the gender and race of the principals.
- 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 on an appropriate worksheet.

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. 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.

F. Analysis of Potential Discriminatory “Redlining”

Overview: For purposes of this analysis, “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.

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

- A lender fails or refuses to extend credit in such an area;
- A lender makes loans in such an area but at a restricted level or upon less-favorable terms or conditions as compared to contrasting areas; or
- A lender omits or excludes such an area from efforts to market residential loans or solicit customers for residential credit.

This guidance focuses on possible discrimination against racial or national origin minorities. 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 (FH Act) specifically uses the term “redlining.” However, federal courts as well as agencies that have enforcement responsibilities for the FH Act have interpreted it as prohibiting lenders 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 lender (see risk factors R5, R6, and R7 in part I, above) suggests that the lender 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 A 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 lender 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 lender’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:

- Identify and delineate any areas within the lender’s CRA assessment area or market area for residential products that are of a racial or national origin minority character;
- 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 lender;
- Identify and delineate any areas within the lender’s CRA assessment area or market area for residential products that are nonminority in character and that the lender appears to treat more favorably;
- Obtain the lender’s explanation for the potential difference in treatment between the areas and evaluate whether it is credible and reasonable; and
- 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 five 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 lender's explanation (step 4) for one of the policies or patterns in question may already be documented in the CRA materials reviewed (step 2) 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 lender'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 (risk factor R3). In such a situation in which the scoping process has produced a reliable factual record, the examiners could begin with step 4 (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 are complaints or allegations against the lender, steps 1, 2, and/or 3 must be addressed.

Comparative analysis for redlining

- Step 1: Identify and delineate any areas within the lender's CRA assessment area or 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 lender'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 lender 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 lender's CRA assessment area or 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 lender 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. However, they should bear in mind that it is illegal for the lender to consider a prohibited factor **in any way**. For example, an area might be only 20 percent black, but if a lender refuses to extend credit there because the lender believes the area is "changing to black," that too is a violation. Contacts with community groups can be helpful to learn whether there are such subtle features of racial or ethnic character.

- Geographical groupings that are convenient for CRA may obscure racial patterns. For example, an underserved, 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 underserved, **middle**-income, minority area and those two minority areas were grouped together for purposes of analysis. 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 lender excluded from the assessment area improperly, consider whether they ought to be included in the redlining analysis.
- b. Describe how the racial or national origin character changes across the suspected redlining area's various boundaries.
 - c. Document or estimate the amount, within the minority area, of types of housing for which the lender offers residential credit. If the minority area does not have a significant amount of such housing, the area is not appropriate for a redlining analysis.

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

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 underserved and/or how the lender's explicit policies treat them less favorably.

- a. Review prior CRA lending test analyses to learn whether they have identified any excluded or otherwise underserved 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 lender 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, R6, and R7. The differences in treatment can be in marketing, branch operations, 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 lender: (1) its reasons for such differences in policy, (2) how the differences are implemented, and (3) any specific conditions that must exist in an area for it to receive the particular treatment (more favorable or less favorable) that the lender has indicated.

Step 3: Identify and delineate any areas within the lender's CRA assessment area or market area for residential products that are nonminority in character and that the lender appears to treat more favorably.

To the extent not already completed during scoping:

- a. Document the percentages of whites 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 lender's practices, policies, or its rate of lending change from less favorable 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 lender would

reasonably be expected to follow, such as political boundaries or transportation barriers.)

- 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: Obtain the lender's explanation for the potential difference in treatment between the areas and evaluate whether it is credible and reasonable.

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

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

- a. Evaluate whether the conditions identified by the lender 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 lender to explain why the areas were treated differently despite the similar conditions.
- b. Evaluate whether the conditions identified by the lender 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 lender to explain why those areas were treated differently, despite the similar conditions.

- c. Obtain explanations from the lender for any potential differences in treatment observed by the examiners but not called for by the lender's policies.
 - If the lender's explanation cites any specific conditions in the nonminority 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 lender to explain why the areas were treated differently despite the similar conditions.
 - If the lender's explanation cites any specific conditions in the minority area(s) to justify less favorable treatment, determine whether the nonminority area(s) had those conditions. If there are **non**minority areas for which those conditions existed, ask the lender to explain why those areas were treated differently, despite the similar conditions.
- d. Evaluate the lender's responses by applying appropriate principles selected from appendix C, "Evaluating Responses to Evidence of Disparate Treatment."

Step 5: Obtain and evaluate specific types of other information that may support or contradict interpreting identified disparities to be the result of intentional illegal discrimination.

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. That might be the situation after step 4. Nevertheless, if the lender'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 was intended.

- 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 tends to support the view that the lender wanted to avoid 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 tends to support the view that the lender wanted to avoid 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 tends to 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 lender discouraged those applicants from applying. If so, that tends to support the view that the lender did not want to do business in the area and may constitute evidence of a violation of section 202.5(a) of Regulation B.

Conversely, if the comparisons of individual transactions show that the lender treated minority and nonminority applicants within and outside the

suspected redlining area similarly, that tends to contradict the conclusion that the lender 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 in interpreting whether the lender's potential differences in treatment of minority and nonminority areas were intended.
- 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 a lender's representatives that loan applications from a suspected redlined area were discouraged;
 - Whether the lender 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 nonminority 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 lender'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 after consultation with Compliance Operations.

If third parties witnessed specific conduct by the lender that indicates the lender 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 lender intended to discriminate.

The work papers should describe whether and why the examiners believe this information from third parties is reliable.

- c. **Marketing.** A clear exclusion of the suspected redlining area from the lender's marketing of residential loan products supports the view that the lender 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 lender 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 lender has marketed in the suspected redlined area and in nonminority 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 lender'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.

Even if differences in marketing practices are not violations themselves, examiners should consider whether they are part of a pattern of evidence

leading toward the conclusion that the lender intended to deal with groups selectively on a prohibited basis.

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

However, a lender's inactivity in an underserved 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 lenders 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 lender 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 lender intends to discriminate against the group.

Step 6: 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.

NOTE: If the lender's explanation is that the disparate results are the consequence of a specific, neutral policy or practice that the lender applies broadly, such as not making loans on homes below a certain value, review the guidance in appendix G, "Disproportionate Adverse Impact" and consult agency managers.

G. Analysis of Potential Discriminatory Marketing Practices

When scoping identifies significant risk factors (M1-M7) related to marketing, examiners should consult their managers and experts about a possible marketing discrimination analysis. If the managers agree to proceed, the examiners should collect information as follows:

Step 1: Identify the bank's marketing initiatives

a. Pre-approved solicitations

- Determine whether the bank sends out pre-approved solicitations:
 - For home purchase loans.
 - For home improvement loans.
 - For refinance loans.
- Determine how the bank selects recipients for such solicitations.
 - Learn from the bank its criteria for such selections.
 - Review any guidance or other information the bank provided credit reporting companies or other companies that supply such lists.

b. Media Usage

- Determine in which newspapers and broadcast media the bank advertises.
 - Identify any racial or national origin identity associated with those media.
 - Determine whether those media focus on geographical communities of a particular racial or national origin character.
- Learn the bank's strategies for geographic and demographic distribution of advertisements.
- Obtain and review copies of the bank's printed advertising and promotional materials.
- Determine what criteria the bank 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 nonminority areas.

c. Self-produced promotional materials

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

d. Realtors, brokers, contractors, and other intermediaries

- Determine whether the bank solicits business from specific realtors, brokers, home improvement contractors, and other conduits.
 - Learn how the bank decides which intermediaries it will solicit.
 - Identify the parties contacted and determine the distribution between minority and nonminority areas.
 - Obtain and review the types of information the bank distributes to intermediaries.
 - Determine how often the bank contacts intermediaries.
- Determine what criteria the bank communicates to intermediaries about the type of customers it seeks or the nature of the geographic areas in which it wishes to do business.

Step 2: Determine whether the bank’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 bank’s explanation for it.

For additional guidance, refer to part C of the “Special Analyses” section in appendix G.

H. 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 part C of the “Credit Scoring Analysis” (appendix B).

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 D of the “Credit Scoring Analysis” (appendix B).

I. 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 a lender appears to have a **disparate impact** on a prohibited basis, the examiner should refer to part A of the “Special Analyses” (appendix G) or consult with agency managers for further guidance.

Part IV 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 potential **disparate treatment** (e.g., overlaps) in either the underwriting of loans or in loan prices, terms, or conditions.
- c. All instances of potential **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 lender than was **customary** from the lender or was **required** by the lender'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 lender is in violation of the applicable fair lending laws.

Other Illegal Limitations on Credit Checklist

The examiners will present to bank management any apparent violation (even isolated) from the "Other Illegal Limitations on Credit Checklist" (appendix K) that was not explained adequately by the bank's staff.

Technical Compliance Checklist

The examiners should review the information on the "Technical Compliance Checklist" (appendix L) that they completed. They will consult with Compliance Operations to determine whether any violations represent a pattern or practice. If so, they must determine their root cause(s), present them to management, and obtain commitment(s) for corrective action. (Referral of these violations to DOJ is not mandated by ECOA.)

- 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 lender'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 lender 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 lender's explanations.

- c. Refer to “Evaluating Responses to Evidence of Disparate Treatment” (appendix C) for guidance as to common types of responses.
- d. Refer to the “Disproportionate Adverse Impact” portion of the “Special Analyses” (appendix G) for guidance on evaluating the institution’s responses to potential disparate impact.

Step 4: If, after completing steps 1 through 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 managers 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.

Appendix A: Compliance Management Analysis Checklist

NOTE: OCC examiners must not use the “Compliance Management Analysis Checklist” in community banks. The OCC focuses on transactions, not compliance management systems, in community bank (in which examiners are to use the *Comptroller’s Handbook for Compliance* booklet “Community Bank Consumer Compliance”).

This checklist is for use in conjunction with part II of these procedures as a device for evaluating the quality of preventive and corrective measures, identifying worthwhile innovations and offering suggestions for improvement. The checklist is not, however, intended to be an absolute test of a lender’s compliance management program. Lender programs containing all or most of the features described in the list may nonetheless be flawed for other reasons; conversely, a compliance program which 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 a lender’s efforts to ensure fair lending compliance.

If the transactions within the proposed scope are covered by a listed self-compliance measure, check the box in the left column. Reduce the intensity (mainly the sample size) of the planned comparative file review to the degree that the self-compliance measures cover transactions within the proposed scope. Document your findings in sufficient detail to justify any resulting reduction in the intensity of the examination.

Examiners should use the checklist as follows:

- Complete relevant portions of the checklist when compliance information about the focal point to be examined is received in response to the Request Letter.
- Use the checklist to structure an interview of the compliance officer and record information obtained about the compliance management system.

- For banks selected in the **random sample** of banks to receive fair lending examinations, examiners should complete the checklist for the focal point they selected for the scope of the examination. If the checklist documents that there are sound compliance measures for that focal point, the risk level is lower. The examiners should reduce the intensity of the examination commensurate with the lower risk by using sample sizes lower in the ranges in the sample size tables.
- For focal points at institutions selected through the OCC's **risk-based screening** process, examiners should complete the checklist but select the largest sample sizes within the ranges corresponding to the volumes of applications for the focal point, unless the Compliance Management Review resolves concerns about the specific indications of risk that caused the bank to be selected for examination.

You are not required to learn whether self-compliance measures apply to specific products outside the proposed scope. However, if the information you have obtained shows that the self-compliance measure is a general practice of the lender, 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:

Mark the box in the left column if the answer is "yes" for the transactions within the scope; mark the box in the right column if the answer is "yes" as a general practice of the lender.

a. Principal policy issues

- Are **underwriting practices** clear and similar to industry standards?
- Is **pricing** within reasonably confined ranges with guidance linking variations to risk and/or cost factors?
- Does management monitor the nature and frequency of **exceptions** to its standards?
- Are **denial reasons** accurately and promptly communicated to unsuccessful applicants?

NOTE: The items above are not compliance measures, but they are fundamental features of lending that tend to work against disparate treatment.

b. Do **training, application-processing aids, and other guidance** correctly and adequately describe:

- Prohibited bases under ECOA, Regulation B, and the Fair Housing Act?
- Other substantive credit access requirements of Regulation B (e.g., spousal signatures, improper inquiries, protected income).

c. Is it specifically **communicated to employees** that they must not, **on a prohibited basis**:

- Refuse to deal with individuals inquiring about credit?
- Discourage inquiries or applicants by delays, discourtesy, or other means?
- 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)?
- Encourage or more vigorously assist only certain inquirers or applicants?
- Refer credit seekers to other lenders?

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

d. Has the institution taken specific initiatives to **prevent forms of unintentional discrimination**, including:

- | | | |
|--------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | Basing credit decisions on assumptions derived from racial, gender, and other stereotypes, rather than facts? |
| <input type="checkbox"/> | <input type="checkbox"/> | Seeking customers from a particular racial, ethnic, or religious group, or of a particular gender, to the exclusion of other types of customers, on the basis of how "comfortable" the employee may feel in dealing with those different from him/her? |
| <input type="checkbox"/> | <input type="checkbox"/> | Because of their discomfort or unease in dealing with customers from certain racial, ethnic, or religious groups, or of a certain gender, limiting the exchange of credit-related information or their effort to qualify the applicant? |
| <input type="checkbox"/> | <input type="checkbox"/> | Is the institution's CRA assessment area drawn without unreasonably excluding minority areas? |

e. Does the institution have procedures to ensure that it does not:

- | | | |
|--------------------------|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | State racial or ethnic limitations in advertisements? |
| <input type="checkbox"/> | <input type="checkbox"/> | Employ code words in advertisements that convey racial or ethnic limitations? |

- Place advertisements that a reasonable person would regard as indicating minority customers are less desirable?
- Advertise only in media serving nonminority areas of the market?
- Conduct other forms of marketing only in nonminority areas of the market?
- Market only through brokers known to serve only one racial or ethnic group in the market?
- Use a prohibited basis in any pre-screened solicitation for residential credit?

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

NOTE: The following items are intended to obtain information about the bank’s approach for self-evaluation, not its findings. Do not request the **results** of self-evaluations. Evaluating the results of self-evaluations is described in “Streamlining the Examination” (appendix H).

Mark the box if the answer is “yes” for the transactions within the scope. Because the questions apply only to transactions within the scope of the examination, there is no second box to check.

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 bank’s approach for self-evaluation call for:

- Attempting to explain major patterns shown in the HMDA 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 might occur, including:
 - The approve/deny decision?
 - Pricing?
 - Other terms and conditions?
- Covering at least as many transactions as examiners would independently, by using the "Sample Size Tables" (appendix D) for a product with the application volumes of the product to be evaluated?

c. In the bank'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 FH Act 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-a-vis the requirement in question?
- Are the data to be obtained the data on which decisions were based, not later or irrelevant information?
- 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 bank 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?

3. Correcting Discriminatory Conduct

a. Determine whether the lender 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 self-evaluation results?
- 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 customers 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 lender's market to be considered?
- Are audit and oversight systems to be improved in order to ensure there is not a recurrence of any identified discrimination?

Appendix B: Credit Scoring Analysis

These procedures are intended to assist an examiner in arriving at supportable conclusions with respect to an institution's record of non-discrimination when the focal point involves a product for which the institution uses automated underwriting or when credit scoring risk factors make such a product the focal point.

Background

"Credit scoring system" as defined in Regulation B is "a system that evaluates an applicant's creditworthiness mechanically based on key attributes of the applicant and aspects of the transaction, and that determines, alone or in conjunction with an evaluation of additional information about the applicant, whether the applicant is deemed creditworthy." The OCC also has used the terms "scoring models" and "scorecards."

For the comparative analyses described here, examiners need most to learn how the score, underwriting policies and requirements for unscored factors, and human judgment influence the credit decision and interact in the bank's underwriting process.

As part of their scoping tasks to determine whether to use a statistical model, examiners may have learned about the databases in which information about scored applications is maintained. However, statistical modeling rarely is used in examinations of credit scoring systems. If no statistical model is used, examiners should evaluate whether the databases may facilitate their comparative analysis.

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:

- a. The number and inter-relationship of each model or card applied to a particular product;
 - b. The purposes for which each card is employed (e.g., approval decision, set credit limits, set pricing, determine processing requirements, etc.);
 - c. The developer of each card 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 process, criteria, and authority for overrides, how override decisions are documented, what reports are available on override activity; and 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 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 (**NOTE:** The variables themselves are not proprietary information, although how they are weighted may be);
 - k. The method used to select for disclosure those adverse action reasons arising from application of the model or scorecard;
 - l. Steps an application goes through before and after scoring;
 - m. How, and by whom, applicant data are obtained and characterized before being entered for credit scoring;
 - n. Whether assistance can be given to help applicants improve their qualification data; and
 - o. Any other way that intervention by the lender can affect the applicant's score or the outcome.
2. For each judgmental underwriting system that includes as an underwriting criteria 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), the frequency of generation and recent copies of each.

NOTE: For fair lending analysis, examiners typically need not inquire into the activities of credit bureaus or the accuracy of scores the bureaus calculated from consumers' credit histories. If a bank's policy is that a credit bureau score at a certain level is supposed to have certain consequences, examiners must determine whether control group and prohibited basis applicants at those levels received the same consequences.

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

Scoring systems should be examined for both types of evidence of disparate treatment — overt and comparative. For any instances of apparent disparate treatment, the bank may respond in the same ways as discussed in Evaluating Responses to “Evaluating Responses to Evidence of Disparate Treatment” (appendix C). Examiners should evaluate the responses in the same manner.

Overt Evidence of Disparate Treatment

The only permissible consideration of a prohibited basis in a credit scoring system is provided in Regulation B, which permits lenders to consider age, as long as:

- Persons over 62 are not treated less favorably than those under 62; and
- The scoring system is certified to be empirically derived and demonstrably and statistically sound (12 CFR 202.6 (b)(2)(ii)).

How to determine those two facts is further detailed in section D below.

Examiners must determine whether the system makes any other overt distinctions on a prohibited basis. For example, there would appear to be a violation if the scoring system assigns different credit limits depending on the marital status of the applicant(s) or uses a different cutoff score for applicants who apply on a prohibited basis. The bank should know and disclose to the examiners the factors included in any scoring system it uses in credit decisions. In that way, the bank and the OCC can be sure that no prohibited factors are scored and that age, when scored, is treated in conformity with Regulation B.

If there is overt evidence that applicants in a credit scoring system are treated less favorably, on a prohibited basis (other than age), examiners should ask the bank to respond in writing, and evaluate the response in the same way they would for any other overt evidence of disparate treatment.

Comparative Evidence of Disparate Treatment

If credit scores are the sole basis for granting credit, the fact that two applicants have different scores means they are not “similarly situated.” There is no disparate treatment if the different results are commensurate with the difference in scores, if those applicants have otherwise been treated similarly.

Comparative analysis may be appropriate to evaluate possible disparate treatment for pre-scoring and/or post-scoring underwriting activity. This can be done by judgmental interpretation by the examiners or statistical inferences from a statistical model.

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.
 - 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.

Other override policies and practices that indicate the existence of broad discretion that might be applied discriminatorily are:

- Excessive overrides.
- Judgmental elements or subjective reviews that could reverse the result called for by the score.
- Multiple judgmental criteria for overrides without explicit weighting or guidance as to which of these is most important.

- Numerous rules that could lead underwriters to reverse the result called for by the score.
 - Overlays of the scorecard and underwriting policies (for example, income and debt were scored variables but there is also a maximum debt-to-income (DTI) requirement).
 - Frequent use of "other," "miscellaneous," etc., as the reason for override.
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.

Post-scoring (override) analysis. As called for in steps 2 and 3, examiners should focus on judgmental decisions to approve or deny applications, that is, "overrides" of the result indicated by the score. "High-side" overrides are denials that have scores higher than the cutoff. "Low-side" overrides are approvals that have scores lower than the cutoff.

Prior to initiating steps 2 and 3, examiners should consult with their supervisor about developing a preliminary statistical analysis to show whether overrides were:

- Used in similar proportions within the control and prohibited basis groups.
- Applied consistently to control and prohibited basis group applications with similar characteristics.

If the overall pattern of overrides raises concerns, the OCC will explore further whether a statistical model ought to be used. The volume of overrides must equal at least 50 from each of the four “quadrants” of favorably or unfavorably treated control group and prohibited basis group applicants.

The role and complexity of human judgment in the underwriting process influence whether a statistical model is appropriate:

- A manual comparative file review probably is sufficient if the underwriters’ use of the score and other data is governed by straightforward guidelines and decisions are well documented. The examiners may be directed to review files to determine if legitimate, nondiscriminatory reasons exist for any differences identified through the preliminary statistical analysis.
- A statistical model may be appropriate if the use of the score and other criteria by the underwriters is vague, complex, subjective, and/or poorly documented.

Pre-scoring comparative analysis. The analysis focuses on whether disparate treatment occurred in collecting, classifying, or documenting data before being entered for credit scoring, and whether assistance was given selectively to improve qualifications. This typically is conducted by manual file review and judgmental comparison. The scoring system’s database may help to identify marginal applicants for such a comparison.

Examiners should:

- Select 50 denied applicants from the prohibited basis group that have scores marginally below the cutoff.

- Select 50 approved applicants from the control group that have scores marginally above the cutoff.
- Compare the two groups to learn whether qualifications were characterized and assistance was provided consistently.

If the volume of applications is large, the examiners should consult Compliance Operations about assistance in selecting the sample.

D. Credit Scoring Systems that Include Age

Regulation B imposes certain requirements on credit scoring systems that include age as a variable in the determination of creditworthiness. This examination section applies only to credit scoring systems that consider age.

Age is considered in a credit scoring system either (a) when it is explicitly included as a variable in the items scored by the system, or (b) when the population is segmented into two or more groups that are separated by the age of the members and each group is then separately scored.

1. Age as an Explicit Variable

- a. When age is an explicit variable, the examiner must first determine whether 202.6(b)(2)(ii) is met by the system. A credit scoring system meets this regulatory requirement when it assigns applicants age 62 or older the same or higher number of points for their age as are assigned to the most favored age (or age group) among all other applicants less than 62 years old. If the system fails this requirement, then, even if it is empirically derived and statistically sound, it still violates Regulation B. For purposes of assessing the degree of damage caused by the violation, the examiner should obtain a count of the number of applicants age 62 or older who, but for the difference in the score received for age as compared to the age (or age group) most favored by the system, (i) would have received credit, (ii) received credit on terms other than those for which they applied, or (iii) received credit on terms less favorable than which they would otherwise have qualified.
- b. If the system examined assigns applicants age 62 or older a value for "age" that is equal to or greater than the value assigned to any other age

or age group and the values assigned to the variable “age” for all applicants under age 62 is the same, then the system is permissible without further analysis. This conclusion results from the fact that even if the system was not empirically derived and demonstrably and statistically sound, age is only being used to favor the elderly and accordingly is permissible under 202.6(b)(2)(iv). Therefore, it is immaterial to the examiner whether the system is an empirically derived, demonstrably and statistically sound credit scoring system or is a judgmental system.

- c. If the system assigns applicants age 62 or older a value for “age” that is equal to or greater than the value assigned to any age or age group less than 62, but among applicants less than 62 the values for “age” are not equal, then the system must be empirically derived, demonstrably and statistically sound. To examine for these properties, the examiner should consult the agency’s most recent guidance on that issue.

2. Age-split Scorecards

There are two ways a credit scoring system can include age:

- As described in the previous section, age may be directly scored as a variable;
- The system can be split into different score cards depending on the age of the applicant.

Both features may be present in some systems. Regulation B requires that any credit scoring system that includes age in either of those ways must be “validated” (in the language of the regulation, “empirically derived, demonstrably and statistically sound”).

Validation is the only requirement imposed on a system with age-split score cards that do not directly score age as a variable, as long as the system is split into only two cards and one card covers a wide age range that encompasses elderly applicants. Such systems are treated as considering, but not scoring, age. 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. Regulation B imposes a second requirement on systems that score age — elderly applicants must be treated at least as favorably as applicants under the age of 62. (See the staff commentary on 12 CFR 202.6(b)(2).)

E. 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 202.2(p)(1)(i) - (iv). Obtain documentation provided by the developer of the system and consult the agency's most recent guidance for making that determination.

The OCC has provided guidance to national banks on evaluating the soundness of credit scoring systems. (See OCC Bulletin 97-24, "Credit Scoring Models," May 20, 1997.) If age is scored as a predictive factor or if age-split scorecards are used, a bank periodically must review the performance of its credit scoring system. Examiners should learn whether the bank has carried out such a review and whether the product scored has operated in a changing economic and customer environment. If so, it is even more important that the bank has performed a review. If the bank scores age, but has not conducted a review despite changes that call the predictive value of the system into question, examiners should consult their supervisor.

If the scoring system does **not** use age as a factor and does **not** split scorecards by age, examiners should not expect the bank to have reviewed the performance of the system or to have had it revalidated for purposes of fair lending compliance. (The examiners may remind the bank that it is prudent to review and revalidate the system so that it operates at optimal predictability, but that is not a fair lending issue.)

F. Disparate Impact

The OCC may evaluate the variables used in a validated credit scoring system to determine whether they have a disparate impact on any basis prohibited by the fair lending laws. However, the OCC will conclude a variable is justified by business necessity and does not warrant further scrutiny if the variable is

statistically related to loan performance and has an understandable relationship to an individual applicant's creditworthiness.

Appendix C: Evaluating Responses to Evidence of Disparate Treatment

This appendix discusses a lender's responses to comparative evidence of disparate treatment and overt evidence of disparate treatment.

A. Responses to Comparative Evidence of Disparate Treatment

The following are responses that a lender 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, rebut the appearance of disparate treatment. The examiners must evaluate the validity and credibility of the responses. Some of the types of responses are followed by lists of responses of that type that examiners often have encountered; the lists are only examples, and banks may offer explanations not on the lists.

1. The lender's personnel were unaware of the prohibited basis identity of the applicant(s).

If the lender 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 who made the decisions 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 customer.

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 lender 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 lender, or some non-prohibited factor related to the processing of their applications. The difference identified by the lender 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 lender 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 lender 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 lender 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:

- **Customer relationship.** Ask the lender to document that a customer relationship was also sometimes considered to the benefit of prohibited basis applicants and/or that its absence worked against control group customers.

- **“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 lender 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 lender 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 underwriter, branches, etc.** Ask the lender 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 lender 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 lender 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.

In all of those situations, the bank’s best response would be to show that the treatment in question occurred for both groups in proportion to their representation among otherwise comparable applicants.

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 lender would consider;
- File review found no evidence that the factor is applied selectively on a prohibited basis (in other words, the lender's explanation is "not inconsistent with available information"); and
- The lender'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 lender 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 lender may claim that underwriters' opposite decisions on similar applicants reflects legitimate discretion that the examiners 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. If the number of "close calls" exceeds 30, examiners should contact Compliance Operations about the potential to use statistical analysis to determine whether there is a pattern on a prohibited basis.
- **"Character loan."** Expect the lender 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 a lender apart from the familiar qualifications demanded by the secondary market and insurers. For example, a customer may be related to or referred by an important customer, be a political or entertainment figure who would bring prestige to the institution, be an employee of an important business customer, 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 lender cites reasons for “accommodations” that an ordinary prudent lender would not value.

- **“Gut feeling.”** Be skeptical when lenders justify an approval or denial by a general perception or reaction to the customer. 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 lender can cite something specific that made him or her confident or uncomfortable about the customer. There is no discrimination if it is credible that the lender indeed considered such a factor and did not apply it selectively on a prohibited basis.

c. Follow up customer contacts

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

When authorized by Compliance Operations, examiners may contact bank customers to gather additional facts necessary to determine whether a violation exists or to verify an explanation that has no documentation.

3. The different results stemmed from an inadvertent error.

If the lender 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 lender claims an **“unidentified error”** caused the favorable or unfavorable result in question, expect the lender 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).

The examiners must consider the **context** when evaluating **isolated, ambiguous** instances of apparent disparate treatment. They should find no violation when circumstances contradict the interpretation that the bank intended to treat applicants from the prohibited basis group less favorably. For example, discrimination is doubtful as the cause of an isolated, ambiguous lending decision or inconsistency when the bank clearly is receptive toward applicants from the prohibited basis group (as evidenced by, for example, frequent loans or aggressive advertising to the prohibited basis group) and has a record of training and other substantive efforts to comply with anti-discrimination laws.

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 a lender's unsupported claim that otherwise inexplicable differences in treatment are distributed randomly.

If the lender 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.

In examinations in which the OCC has access to a lender's detailed, automated database (such as for many credit-scored products), the examiners should contact Compliance Operations during the planning of the examination about involving the OCC's statistical experts to address random inconsistency issues. (Because the OCC's statistical modeling approach incorporates control group denials and prohibited basis group approvals as well as control group approvals and prohibited basis group denials, possible "random inconsistency" already is considered in the model's analysis.)

Even when a bank succeeds in demonstrating that its treatment of applicants is random, examiners should inform the bank that its inconsistent practices create the risk of future disparate treatment and raise concerns about the adequacy of its controls.

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 lender to “cost factors” is insufficient to explain pricing differences.

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

If the lender 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 customers to learn whether the lender in fact behaved comparably toward prohibited basis and control group customers. The contacts would be to learn such information as the lender’s opening quote of terms to the customer and the progress of the negotiations.

NOTE: This might be an appropriate situation to consult Compliance Operations about the use of **pre-application, matched-pair testing** to document the institution’s treatment of potential applicants.

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 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 within the agency about obtaining an analysis of whether the difference is statistically significant. Find a violation only if (1) there is evidence of disparate treatment of similarly situated borrowers or (2) there is a particular risk factor that meets all the criteria for a disproportionate adverse impact violation.

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 lender’s decisions and/or customer behavior, treat the situation as an apparent violation to which the lender 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 lender 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 lender 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 non-prohibited 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, a lender'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 lender'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 a lender claims that its use of a prohibited factor is lawful because it is operating an SPCP, ask the lender 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 lender 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; and
- State the time period the program will be in effect or when it will be re-evaluated.

No provision of a 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 lender 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 FH Act, 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 lender 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 FH Act. For example, special outreach to a minority community would be permissible. However, advertising and marketing that suggests, on a prohibited basis, that applications are not welcome may violate the FH Act, ECOA, or Regulation B’s prohibitions against discouraging applicants.

Appendix D: Fair Lending Sample Size Tables

In banks selected as part of the OCC’s **random sample** of banks to receive fair lending examinations, select a sample size within the appropriate range based on risk. For banks and focal points selected through the **risk-based screening** process, use the maximum sample size for the range unless the Compliance Management Review resolves concerns about the specific indications of risk that caused the bank to be selected for examination.

NOTE: Do not use these tables to evaluate focal points that involve credit scoring systems or self-evaluation results. Instead, see “Credit Scoring Analysis” (appendix B) and “Streamlining the Examination” (appendix H).

Table A: Underwriting (Accept/Deny) Comparisons

	Sample 1 Prohibited Basis Denials				Sample 2 Control Group Approvals		
Number of Denials or Approvals	5 - 50	51 - 150	> 150		20 - 50	51 - 250	> 250
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 sampled (up to 125)	5 x prohibited basis sample (up to 300)

Table B: Terms and Conditions Comparisons

	Sample 1 Prohibited Basis Approvals				Sample 2 Control Group Approvals		
Number of Denials or Approvals	5 - 25	26 - 100	> 100		20 - 50	51 - 250	> 250
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 sampled (up to 75)	5 x prohibited basis sample (up to 100)

See explanatory notes on the following pages.

Explanatory Notes to Sample Size Tables

1. When performing both underwriting and terms and conditions comparisons (NOTE: OCC examinations typically should include only one of the comparisons), use the same control group approval sample for both tasks.
2. If there are fewer than five prohibited basis denials or 20 control group approvals, refer to "Sample Size" instructions in the procedures.
3. "Minimum" and "maximum" sample sizes: select a sample size between the minimum and maximum based on the outcome of the Compliance Management Review conducted in part II of these procedures. Once the sample size has been determined, select individual transactions judgmentally. Refer to procedures. If the minimum number of approved files called for in a sample size table exceeds the maximum (as calculated using the table), the examiners should select the smaller number of files for the approved sample.
4. 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.
5. 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 lender 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.

Whenever possible, examiners should select the sample from the 12-month period immediately preceding the examination, not an earlier period. However, in **risk-based**, examinations, a review period may be designated as part of the screening results. Also, transactions or classes of transactions of particular interest may be identified to include in the sample.

For banks selected in the **random sample** of banks to be examined, the examiners should set the sample size based on the estimated risk of discrimination. The more risk factors identified during scoping (part I) and the weaker the compliance management system (as documented in part II), the larger the sample should be within the range.

If there is no LAR for the product, examiners can request the bank to estimate or count the numbers of nonminority and race or national origin minority group applications for home purchase or refinance loans. Alternatively, the examiners themselves may count. (This is feasible because Regulation B requires monitoring information for home purchase and refinance applications.)

NOTE: Regardless of application volume or sample size, any clear instance of potential disparate treatment — even if the comparison consists of only two files — must be treated as a apparent violation.

Appendix E: Marginal Transactions

Marginal Denials

Denied applications with any or all the following characteristics are “marginal.” Such denials are compared to marginal approved applications. Marginal 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 lender’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 lender’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 lender’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 lender’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 lender's more rigid standards;
- Had a strength that a prudent lender might believe outweighed the weaknesses cited as the basis for denial;
- Had a history of previously meeting a monthly housing obligation equivalent to or higher than the proposed debt; or
- 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 lender's 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 lender were to count excluded part-time earnings described in the application.

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 lender'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 lender's own standards are not clear, fell short of common secondary market or industry lending standards;
- That a prudent conservative lender might have denied;
- Whose qualifications were raised to a qualifying level by assistance, proposals, counteroffers, favorable characterizations or questionable qualifications, etc.; or
- That in any way received unusual service or consideration that facilitated obtaining the credit.

Appendix F: Potential Scoping Information

This appendix offers a full range of documentation and other 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. Any decision to select one or more particular items from this appendix for inclusion in a particular examination should, of course, include consideration of any burdens to the agency and lender in assembling and providing the selected item(s).

For examinations of institutions selected through the OCC’s **risk-based screening** process, the scope often will have been set as part of the screening process. The information request should usually be restricted to the focal point identified as part of the screening process. OCC examiners should be mindful of the advice in **part I, “Examination Scope Guidelines,”** that materials already in hand can expedite scoping. The information request may be reduced.

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. 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 certain of this information until the on-site examination.

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

NOTE: The OCC does not review compliance management programs in compliance examinations of community banks. Examiners should not request this information from community banks.

- a. Organization charts identifying those individuals who have lending responsibilities or compliance, HMDA or CRA responsibilities, together with job descriptions for each such position.
- b. Lists of any pending litigation or administrative proceedings concerning fair lending matters.
- c. Complaint file.
- d. Any written or printed statements describing the lender's fair lending policies and/or procedures.
- e. Training materials related to fair lending issues including records of attendance.

NOTE: The request should advise the lender that it is not required to disclose whether it has engaged in self-testing programs of the type protected under amendments to ECOA and the FH Act nor the results of such programs.

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 lender should be specifically asked whether its pricing policies for any loan products include the use of “**overages**”. The request should also ask whether the lender offers any “**subprime**” loan products for “B”, “C” or “D” risk level customers 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 lender should provide pricing policy and practice details for each affected product, including the lender’s criteria for differentiating between each risk **or cost** level. Regarding **indirect lending**, the lender should be asked to provide any forms of agreement (**including compensation**) with brokers/dealers, together with a description of the roles that both the lender and the dealer/broker play in **each stage** of the lending process.

See “Examination Scope Guidelines,” step 4, for guidance on how indirect lending should be considered when setting the scope of an examination.

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

The fair lending laws do not prescribe or prohibit particular compensation schemes. The examiners should consider whether the compensation scheme creates incentives for the originator or loan officer that might affect the consumer’s access to credit or terms of credit. The examiners should evaluate whether a comparative analysis can be developed for such decisions.

- e. Advertising copy for all loan products.
- f. The most recent HMDA / LAR, including unreported data if available. Information should be provided on diskette if possible.

Comment: The integrity of the institution's HMDA / LAR data should be verified prior to the pre-examination analysis. Verification should take place approximately two to three months prior to the on-site phase of the examination.

- 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 / 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.

Even though banks are not required to maintain, for fair lending purposes, registers of lending activity other than the HMDA-LAR, examiners should ask whether there are such records for the focal point selected. This additional information may help examiners select samples, time periods, etc.

- h. A description of any data bases maintained for each loan product, including a description of all data fields within the database.
- 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: realtors, real estate developers, appraisers, home improvement contractors and private mortgage insurance companies. Request the full name and address and geographic area served by each provider. Also request documentation as to any fair lending requirements imposed on, or commitments required of, any of the lender's service providers.

The guidance in "c" above with regard to indirect lenders also applies to these third parties.

- k. Addresses of any Internet site(s)

Comment: Internet home pages or similar sites that a lender may install on the Internet may provide information concerning the availability of credit, or means for obtaining it. All such information would have to comply with the anti-discrimination requirements of the fair lending laws. Moreover, future enhancements to the Internet may include the capacity to conduct partial or complete credit transactions via that medium. Accordingly, it is important for examiners to review a lender'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 lender responses thereto.

Appendix G: Special Analyses

This appendix discusses disproportionate adverse impact, discriminatory pre-application screening, and possible discriminatory marketing.

A. Disproportionate Adverse Impact Violations

When all five conditions below exist, consult within your agency whether to present the situation to the lender and solicit an explanation of the lender's business justification for the policy or criterion that appears to cause the disproportionate adverse impact. Note that condition 5 can be satisfied by **either** of two alternatives.

The contacts between examiners and lenders 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 examiners 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), do not proceed with this analysis if the policy or criterion is obviously related to predicting creditworthiness or 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.

Conditions

1. A specific policy or criterion is involved.

The policy or criterion suspected of producing a disproportionate adverse impact on a prohibited basis must 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. Similarly, a lender's policies of allowing employees to exercise discretion and to negotiate terms or conditions of credit can better be described as the **absence** of policies or criteria than as a situation in which a policy or criterion generates a disproportionate adverse impact. Broad discretion and vague standards raise concerns about discrimination, but examiners should focus on possible disparate **treatment**.

2. The policy or criterion on its stated terms is neutral for prohibited bases.
3. The disparity on a prohibited basis is significant.

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 the supervisory office, compliance manager, district counsel, and/or compliance management department, 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, or 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 says that the policy or criterion that causes the impact must be justified by “business necessity” if the lender 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 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 black applicants were denied loans significantly more frequently than white ones because they failed a lender’s minimum income requirement, it would appear that the first four conditions plus 5a existed; therefore, the examiners should consult within their agency about obtaining the lender’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 a lender to abandon a policy or criterion that is clearly the most effective method of accomplishing a 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 lender, as described in the next section below.

Obtaining the lender’s response

If the first four conditions plus either 5a or 5b appear to exist, consult within your agency about whether and how to inform the lender of the situation and solicit the lender’s business justification. The communication with the lender should explain:

- 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 state that no violation exists if the policy or criterion is used because of business necessity **and** there is no alternative that would accomplish the lender's objective with a smaller disproportionate adverse impact. It should inform the lender that cost and profitability are factors the agency will consider in evaluating the lender's business necessity. It should ask the lender to 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 lender's response persuasively contradicts the existence of the significant disparity or establishes a business justification. Consult the supervisory office, compliance manager, district counsel, and/or compliance management department, as appropriate.

B. Discriminatory Pre-application Screening

Obtain an explanation for any:

- Withdrawals by applicants in prohibited basis groups without documentation of customer intent to withdraw;
- Denials of applicants in prohibited basis groups without any documentation whether qualified; or
- On a prohibited basis, selectively quoting **strongly unfavorable** terms (for example, high fees or down payment requirements) to prospective applicants, or quoting **strongly 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.)

If the lender cannot explain the situations, examiners should consider obtaining authorization to contact the customers to verify the lender's description of the transactions. Information from the customer may help determine whether a violation occurred.

In some instances, such as possible "prescreening" of applicants by lender personnel, the results of the procedures discussed so far, including interviews with customers, may be inconclusive in determining whether a violation has occurred. In those cases, examiners should, if authorized by their agency, consult with management 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 lender treats them in the application process.

If examiners find any indication that either steering or pre-application screening may be occurring, they should suggest the OCC consider pre-application testing of the bank.

C. Possible Discriminatory Marketing

NOTE: See also "Analysis of Potential Discriminatory Marketing Practices" in part III.G.

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; or
 - Advertising patterns or practices that a reasonable person would believe indicate prohibited basis customers are less desirable.
2. Obtain full documentation as to the nature and extent, together with management's explanation, for any situation in which the lender, despite the availability of other options in the market:
- Advertises only in media serving nonminority areas of the market;
 - Markets through brokers or other agents that the lender knows, or could reasonably be expected to know, to serve only one racial or ethnic group in the market; or
 - Utilizes 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, 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.
- * **NOTE:** Pre-screened solicitation of potential applicants on a prohibited basis does not violate ECOA. Such solicitations are, however, covered by the FH Act. Consequently, analyses of this form of potential marketing discrimination should be limited to residential loan products subject to coverage under the FH Act.
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 "Evaluating Responses to Evidence of Disparate Treatment" (appendix C) for guidance.

Appendix H: Streamlining the Examination

The OCC classifies “self-assessments” by banks to determine the level and effectiveness of their fair lending performance into two types: “self-evaluations” of the institution’s actual transactions and “self-tests.” Examiners must **not** request the results of self-evaluations. However, if a bank voluntarily discloses such results, the examiners should evaluate whether the examination can be streamlined, as described below.

Both the FH Act, 24 USC 3614-1, and ECOA, 15 USC 1691c-1, provide regulated lenders a privilege from disclosing the results of self-tests, as defined in those regulations.⁴ Examiners must not ask whether banks have carried out self-tests. If the bank describes, or the examiners otherwise learn about, self-tests that appear to identify violations, the examiners should consult Compliance Operations, who in turn should consult appropriate counsel about the applicability of the self-test privilege.

The term “self-evaluation” is not used in the acts, but the OCC uses it to mean all types of self-assessments that do not fall within the statutory definition of self-test. The following guidance therefore applies only to self-evaluations.

Institutions may find it advantageous to conduct self-evaluations and, provided the examiners confirm the reliability and appropriateness of the self-evaluation (or even parts of it), they need not repeat those tasks. If the institution voluntarily disclosed the results of a self-evaluation of any of the product(s) selected for examination, proceed through the remaining steps of this section on streamlining the examination. If the institution has voluntarily disclosed the results of a self-evaluation of a product not selected in the scope of the examination, consider whether the product evaluated by the institution is appropriate under the scoping guidelines to substitute for another product that was selected. If such a substitution is considered appropriate, proceed through the remaining steps of this section.

⁴ A self-test creates data or factual information that is not available in and cannot be derived from loan or application files or other records related to credit transactions. For example, testing (mystery shopping) to determine whether there is disparate treatment in the pre-application stage of credit shopping is a self-test.

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 steps for the examiners.

If the answer to either question A or B is **No**, the self-evaluation cannot serve as a basis for eliminating examination steps. However, you should still evaluate the self-evaluation to the degree possible in light of the remaining questions and communicate the findings to the lender so that it can improve its self-evaluation process.

- A. Did the transactions covered by the self-evaluation occur not longer ago than two years 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 a lender 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 FH Act?
- 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 abstracted from files 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 below, 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 white and 75 black transactions, plan to verify the data for 25 white and seven black transactions.

- G. Did the 10 percent sample reviewed for question F also show that customer assistance and lender 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 lender'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.

The sample size tables set the number of files that should be reviewed to separate transactions that are marginal from those that are not. Neither the examiners nor the bank are expected to analyze in detail every file in the sample set from the tables. If the examiners need to review additional transactions, they should follow the file review steps in these procedures; that is, a quick first review to select marginal transactions, identification of "benchmarks" and "overlaps" (encompassing both the bank's data and the supplemental data collected by the examiners), and abstracting of detailed

data only from certain marginal files. If there were such instances, proceed to question J and evaluate how the bank handled them.

- 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?

If all the previous questions have been answered affirmatively, the examiners should be able to tell from the bank's spread sheet or other work papers whether applicants appear to have been treated inconsistently with their qualifications and whether there are differences in treatment between control and prohibited basis applicants. If there were no such instances of apparent disparate treatment, the examiners should incorporate the findings of the self-evaluation into the examination findings and indicate that those findings are based on verified data from the bank's self-evaluation.

- 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 the agency regarding whether or not to conduct corroborative file analyses in addition to those performed by the lender.

If not all of the questions in the section above are answered Yes, resume the examination procedures at the point where the lender's reliable work would not be duplicated by the examiners. 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.

Self-evaluation by Statistical Model

If a bank offers self-evaluation results based on a statistical model, the examiners will inform the supervisory office and confer with Compliance Operations. The OCC will assess the bank's self-evaluation and determine the reliability of the bank's statistical model.

Evidence of Violations

If the bank's self-evaluation identified apparent violations, examiners should attempt to verify whether they existed rather than relying on the bank's conclusions. If the violations are verified, the examiners should document fully how the violations were identified and verified and prepare to forward the information to be considered for appropriate enforcement. The results of self-evaluations are not exempt from legal requirements that the OCC refer fair lending violations to DOJ and/or notify HUD. The examiners should contact the supervisory office and Compliance Operations.

The examiners should not, at this time, suggest corrective action to the bank or characterize its corrective actions to date as adequate or inadequate. They should document whether any corrective action by the bank alleviated the violations and particularly note whether the bank responded to any apparent violations it identified as called for in the "Interagency Policy Statement on Discrimination in Lending" (OCC 94-30), question 6, including, but not limited to:

- Identifying customers whose applications may have been processed inappropriately, offering to extend credit to applicants who were improperly denied, compensating them for any damages (both out of pocket and compensatory), and notifying them of their legal rights.
- Correcting any institutional policies or procedures that may have contributed to the discrimination.

- Identifying and training and/or disciplining the employees involved.
- Considering the need for community outreach programs and/or changes in marketing strategy or loan products to better serve minority segments of the lender's market.
- Improving audit and oversight systems to ensure that the discrimination does not recur.

The examiners should consider whether the effectiveness of corrective action has been compromised by any delay by the bank in taking the corrective action.

Appendix I: Sample Fair Lending Section of Request Letter

Dear [bank]:

A review of your bank's compliance with the anti-discrimination requirements of the Fair Housing Act, the Equal Credit Opportunity Act, and Regulation B is scheduled to commence [DATE]. The examiners plan to focus on possible disparate treatment of applicants from different **[RACIAL OR NATIONAL ORIGIN GROUPS, GENDERS, AGE GROUPS, OR OTHER]**. We plan to review **underwriting [OR SETTING OF LOAN RATES, TERMS, AND CONDITIONS OR POSSIBLE REDLINING OR STEERING OR MARKETING]** for **[CREDIT PRODUCT]** during the period from **[DATE]** to **[DATE]** at **[BRANCH OR UNDERWRITING CENTER]**.

This examination is being conducted under the authority of 12 USC 481. However, it also constitutes an investigation within the meaning of section 3413(h)(1)(A) of the Right to Financial Privacy Act (RFPA), 12 USC 3401, et seq. Therefore, in accordance with section 3403(b) of the RFPA, the undersigned hereby certifies that the OCC has complied with the RFPA. Section 3417(c) of the act provides that good faith reliance upon this certification relieves your institution and its employees and agents of any possible liability to the customer in connection with the disclosure of the requested information.

To ensure early, prompt, and clear communication on any fair lending matters that need explanation, please designate a bank representative to serve as the fair lending liaison.

Enclosed is a list of materials that you should deliver to this office or have available for review at the bank. **[IF APPROPRIATE: THE HMDA-LAR YOU PROVIDED IN RESPONSE TO OUR PREVIOUS REQUEST IS ENCLOSED. THE FILES THAT WE REQUEST YOU TO HAVE AVAILABLE TO REVIEW ON-SITE ARE MARKED.]**

We will ask you to explain any apparent inconsistencies in treatment of applicants from the groups compared as well as to explain any other apparent

evidence of violations. In such situations, we will describe to you the sorts of information that would illustrate that the inconsistencies are not based on prohibited factors. Your bank is assumed to be in compliance with discrimination laws, unless evidence indicates otherwise.

Please inform us whether credit scoring was used to underwrite any of the transactions we plan to review. Also, please inform us of anything we may not be aware of that would make it inappropriate to compare certain transactions within the proposed scope of the examination to other transactions within the scope (such as a change in underwriting standards during the proposed review period).

We may be able to streamline the examination if your institution voluntarily discloses the results of a self-evaluation that included comparisons to detect prohibited differences in treatment of applications within the proposed scope of our examination. "Self-evaluation" means an analysis you derived from loan or application files or other records related to credit transactions. Whether to disclose the results of any fair lending self-evaluation is at your bank's discretion.

Sincerely,

Name
Title

Appendix J: Underwriter Interview Guide

Bank Name:
Exam Date:

Examiner:
Product:

As necessary, ask follow-up questions until it is clear how requirements or procedures apply to the files to be examined and until the rationales for unusual policies are understood. Items in **bold** are apparent violations if not carried out as prescribed in Regulation B. Examiners may conduct a second interview to discuss inconsistencies found during file reviews.

GENERAL	
1. Obtain from the chief underwriter an overview of the underwriting procedures and standards. Review written policies, procedures, standards, etc.	
2. Obtain any exceptions report maintained on loans approved despite failing to meet requirements. Learn who approves exceptions.	
3. How does the bank ensure that all information related to an application for credit is retained for 25 months after notifying the applicant of action taken, pursuant to Section 202.12(b) of Regulation B?	
4. Find out if a credit-scoring system is used. If so, obtain information and follow guidance as called for in appendix B, "Credit Scoring Analysis."	
For the following, learn whether there were interim changes during the period examined.	
5. Obtain copies of any consumer guidance on the loan process (such as: how to develop a viable application).	

6. Obtain copies of any checklists, log sheets, or other loan-processing aids used by bank personnel.	
CREDIT HISTORY	
7. Review with the underwriter a copy of each type of credit report used. Obtain copies of any code sheets or other guidance on using the credit report(s).	
8. At what stage of the transaction is a credit report obtained?	
9. Does the bureau send a copy of the report (or abstract) to consumers? Obtain a copy of the transmittal letter.	
10. Does the bank require that corrected information come from the bureau, or will it accept corrected information directly from the customer?	
11. What constitutes a sufficient credit history on which to make a decision?	
12. Is a minimum number of accounts reported required?	
13. Is a minimum length of reported credit history required?	
14. Has the bank made loans to persons who did not meet these standards?	
15. In such a case, what evidence of creditworthiness substituted for the bureau report?	
16. How does the bank evaluate information an applicant asks be considered to explain or correct inaccurate credit information from another source?	

17. How does the bank evaluate joint spousal accounts when a married person applies for individual credit?	
18. Does the bank treat unmarried joint applicants the same as married ones in terms of evaluating their creditworthiness?	
19. How does the bank evaluate accounts held jointly with a former spouse that an applicant for individual credit asks to be considered to show his or her own creditworthiness?	
20. What deficiencies would cause denial?	
21. Does a mortgage payment defect negate otherwise good credit? Does a good mortgage payment record offset other credit defects?	
22. How far into the past is derogatory information relevant?	
23. Does it matter if the debt has been paid?	
24. Is minor derogatory information ignored? What kinds?	
25. Does the bank solicit explanations? In which circumstances and which not? Obtain the form letter to the applicant, if one exists. If the mode of contact is by phone rather than letter, are these noted in the file?	
26. What constitutes a "good" explanation?	
27. Is the failure to disclose serious derogatory information on the application fatal?	

28. Is derogatory information associated with a medical problem in the applicant's household treated differently than other derogatory information?	
29. How does the bank view judgments, repossessions, and collections?	
30. Under what circumstances would the bank lend to a customer with a bankruptcy in his or her record?	
31. How does the bank view inquiries? Would the bank ever deny a loan solely on the basis of inquiries?	
FUNDS TO CLOSE	
32. What items must be covered by funds for closing?	
33. How many months of cash reserves are needed?	
34. When are funds from undocumented sources acceptable?	
35. Are applicants with inadequate or marginal cash to close advised how gift funds may be applied?	
36. Are grants as acceptable as gifts? From what sources?	
37. How does the bank assure that applicants are advised uniformly of this?	
38. May family or household cash be pooled for closing?	

EMPLOYMENT AND INCOME	
39. How many years on the job are required for income to be deemed stable? How many years in the line of work?	
40. What length of gap or frequency of changes in employment is regarded as a negative? Are explanations routinely requested for employment negatives?	
41. How is stable income defined?	
42. Do loan originators ask routinely for verifiable unstable sources of income, such as overtime and seasonal work?	
43. Is rent paid by household members counted as income?	
44. Do loan originators ask routinely about rent paid by household members?	
45. Is any or all nontaxable income to be "grossed up"?	
46. Are applicants asked routinely whether they expect their income to rise? What type of documentation is needed to establish a projected increase?	
47. How is part-time income handled?	
48. How is annuity, pension, or retirement income handled? Is the applicant told he or she need not disclose this income if he or she doesn't want it considered?	

49. How is income from alimony, child support, and separate maintenance handled? How is income from public assistance handled?	
PROJECTED HOUSING COSTS AND DEBTS	
50. What types of debts are included or excluded from ratio calculations?	
51. Are certain types of accounts viewed more negatively than others, for example, revolving debt?	
52. Under what circumstances would an applicant be advised to pay down debts?	
53. Would the bank specify which debts should be paid off?	
DEBT RATIOS	
54. What maximum housing debt and total debt ratios are used?	
55. What is the source or rationale for them?	
56. What would justify approving an application with a ratio higher than the requirement?	
57. Are applicants with qualifying ratios ever refused because of debt considerations?	
COLLATERAL/APPRAISALS	
58. Are applicants advised of their right to obtain a copy of the appraisal report on their property? Is a copy routinely provided?	
59. Does the bank employ its own appraisers?	

60. Review the guidance the bank provides appraisers, whether employed or independent.	
61. What rules govern adjustments to initial appraised values?	
62. Who reviews appraisals?	
63. When is PMI required?	
64. What does the bank do if a PMI company refuses to insure the loan?	
65. On adverse action notices and HMDA LAR "reasons for denial," does the bank report PMI denials as "denied for PMI," or does it merely repeat the substantive reason that the PMI company cited?	
GUARANTORS, ETC.	
66. Under what circumstances would a guarantor materially increase an applicant's likelihood of approval (e.g., if the applicant had bad ratios, poor credit history)?	
67. Are applicants with such weak qualifications routinely told that a guarantor would increase the likelihood of approval?	
APPLICATION PROCESS	
68. Where are applications accepted? Who handles them?	
69. Which bank staff meet face-to-face with applicants?	
70. Which bank staff review or have access to the applications with completed monitoring information?	

71. For a home purchase or refinance loan, how is government monitoring information obtained to comply with Section 202.13 of Regulation B?	
72. For other loans, how are staff directed not to obtain prohibited information?	
73. If the product is covered by HMDA, when and how are data entered on the LAR?	
74. What verifications are obtained? When and how?	
75. What happens if there is a problem obtaining verifications or if they are inconsistent with the application data?	
76. Is the applicant asked for assistance or explanation?	
77. Is there a "conditional approval" stage of the process?	
78. Do files document conditions and attempts to resolve them?	
79. How long are terms locked in by a written or oral agreement?	
80. Under what circumstances are lock-ins extended?	
81. How does the bank determine whether married applicants want to apply jointly or individually?	
DENIALS	
82. Obtain a list of the reasons for denial and review it with the interviewee.	

83. How is the adverse action notice prepared? Review it with the interviewee.	
84. How does the bank document the timely provision of adverse action notices?	
85. Is there a denial review process? How does it work?	
SECONDARY MARKET CONSIDERATIONS	
86. To whom does the bank principally sell loans?	
87. Arrange to have copies of the loan purchasers' guidance available during file review.	
88. In what ways are bank standards different from those loan purchasers require?	
89. What have been the lender's experiences in attempting to persuade loan purchasers to reconsider refusals to purchase?	
PORTFOLIO LENDING	
90. Does the bank lend for its own portfolio?	
91. How do the requirements for this differ from those for loans to be sold?	
92. Does the bank hold loans to "season" them until resale? What features would cause a loan to be handled this way?	

EXCEPTIONS	
93. Does the bank produce (for its management's use) an "exceptions" report that lists all residential loans made that do not meet the bank's stated requirements? Obtain any such report for the period being examined in the fair lending review.	
94. At what level in the bank can loans be approved that fail to meet requirements?	
COMPENSATING/OFFSETTING FACTORS	
95. Do strong qualifications in certain areas overcome an applicant's failure to meet requirements in others?	
96. Describe specific factors that operate to overcome particular deficiencies (e.g., projected income compensates for excessive total debt ratio)?	
97. Are compensating factors formal or informal? (Obtain any written guidance.)	
LOAN TERMS AND CONDITIONS	
98. How are prices set? Is there a range?	
99. Why would prices differ? Which aspects of pricing are fixed and which are discretionary?	
100. How is pricing influenced by third parties, such as brokers?	
101. How are loan terms set? Why would loan terms vary?	
102. How is the down-payment set? Why would requirements vary?	

103. How are collateral requirements set? Why would requirements vary?	
104. How are escrow amounts set? Why would they vary?	
105. What fees are imposed for the product? Why would they vary?	
FILE DOCUMENTATION	
106. How are contacts with the customer documented?	
107. How are in-bank conferences (or other face-to-face encounters) with the applicant documented?	
108. What work sheets should be found in the typical file?	
GENERAL	
109. Does your bank apply different standards in any of the geographical areas within the proposed scope of the examination? If so, why?	
110. Does your bank apply different standards based on the size of the loan requested?	
111. Does your bank apply different standards based on the amount of the applicant's income?	
112. Are there any factors we have not addressed that might make it inappropriate to compare some transactions within the proposed scope to others?	

Appendix K: Other Illegal Limitations on Credit Checklist

Examiners must review compliance with these provisions in all fair lending examinations that include review of files, and they may elect to do so as part of a regular, scheduled compliance examination. Examiners should review the checklist before comparative file review to ensure that they recognize the listed violations. As the file review proceeds, they should note any violations observed on one master checklist (not checklists for individual transactions). (If the examination does not include a comparative review of files, examiners should use checklists to review in detail 10 diverse files (approvals and denials, different products, etc.))

Examiners will obtain explanations for any apparent violations from the bank staff responsible for the transactions.

Some violations on the checklist are not stated in terms of prohibited bases. They are violations simply if the bank treated applicants other than as prescribed. Nevertheless, examiners should additionally determine whether the violations occurred selectively on a prohibited basis.

NOTE: Citations are to Regulation B, 12 CFR 202.1 et seq.

Apparent Violation (if No)	Yes	No	Basis for Conclusion
1. Does the bank permit holders of open-end accounts to retain the accounts despite the account-holder's retiring, or changes in age, name, or marital status? (202.7(c)(1))			
2. Is the age of an applicant 62 or older considered only to favor him or her? (202.6(b)(2)(iv))			
3. When evaluating the applicant's			

Apparent Violation (if No)	Yes	No	Basis for Conclusion
creditworthiness, does the bank ignore aggregate statistics or assumptions relative to the likelihood of bearing or rearing children? (202.6(b)(3))			
4. Does the bank count (and not discount or exclude) income derived from part-time employment or a retirement benefit? (202.6(b)(5))			
5. To the extent that the bank considers income, does it consider income from alimony, child support, or separate maintenance payments when it is likely to be consistently received? (202.6(b)(5))			
6. To the extent it considers credit history, does the bank consider: 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? (202.6(b)(6)(i))			

Apparent Violation (if No)	Yes	No	Basis for Conclusion
<p>b) At the applicant's request, information from the applicant indicating that past credit performance does not accurately reflect the applicant's creditworthiness? (202.6(b)(6)(ii))</p> <p>c) At the applicant's request, any credit information in the name of the applicant's spouse or former spouse that demonstrates the applicant's creditworthiness? (202.6(b)(6)(iii))</p>			
<p>7. Does the bank allow an applicant to open or maintain an account in birth-given names or combinations of birth-given and married names, if requested? (202.7(b))</p>			

Apparent Violation (if No)	Yes	No	Basis for Conclusion
8. If jointly owned property is relied on to satisfy the standards of creditworthiness or to secure the loan, are nonapplicant joint owners required to sign only instruments related to collateral? (202.7(d) (1) - (4))			
9. Is an applicant who qualifies individually allowed to obtain credit without the spouse's signature, or if an additional party is needed, to request a person other than the spouse? (202.7(d)(5))			
10. Does the bank grant credit even if credit life, health, accident, or disability insurance is not available because of the applicant's age? (202.7(e))			

Appendix L: Technical Compliance Checklist

Examiners must review compliance with these provisions in all fair lending examinations that include review of files, and they may elect to do so as part of a regular, scheduled compliance examination.

The examiners should use copies of this checklist to review in detail one approved and one denied consumer, business, and residential real estate file. If there appear to be any violations in those six, the examiners should maintain one master checklist during comparative file review (if there is one) to note any observed recurrence of the violations. If there are recurring violations, examiners should consult the supervisory office and compliance ADC to determine whether any violations represent a pattern or practice. If so, the root causes must be determined, the violations must be presented to management, and commitments for corrective action must be obtained.

NOTE: Citations are to Regulation B, 12 CFR 202.1 et seq., unless indicated otherwise.

Requirement (if answer is No, there appears to be a violation)	Yes	No	Basis for Conclusion
<p>1. Do files for home purchase and refinance loans show the bank requested the following monitoring information (202.13(a)):</p> <p style="padding-left: 40px;">a) Race/national origin, using the categories American Indian or Alaskan Native; Asian or Pacific Islander; Black; White; Hispanic; Other (specify)?</p> <p style="padding-left: 40px;">b) Marital status, using the categories married, unmarried, and separated?</p>			

Requirement (if answer is No, there appears to be a violation)	Yes	No	Basis for Conclusion
c) Age? d) Sex?			
2. Does the form used to collect monitoring information contain written notice that it is for federal government monitoring and that the bank must note race or national origin and sex on the basis of sight and/or surname if the applicant chooses not to do so? (202.13(c))			
3. Does the bank note on the monitoring form applicants' refusals to disclose monitoring information? (202.13(b))			
4. If the applicant refuses to provide the monitoring information, does the bank, to the extent possible on the basis of sight or surname, designate the race or national origin and sex of each applicant? (202.13(b))			
5. Do guidance or forms exclude requests for information relative to the gender; race or national origin; color; religion; or birth control, childbearing, or child-rearing intentions of the applicant (202.5(d)(3),(4),(5)), except for monitoring information required by section 202.13 on home mortgage loans?			
6. Do application forms or guidance limit information requests about a spouse or former spouse to transactions in which:			

Requirement (if answer is No, there appears to be a violation)	Yes	No	Basis for Conclusion
<p>a) that person will be permitted to use the account;</p> <p>b) that person will be contractually liable; or</p> <p>c) the applicant is relying on community property, the spouse's income, alimony, child support, or separate maintenance payments to repay the debt? (202.5(c))</p>			
<p>7. Do guidance and forms for unsecured individual loans include inquiries about the marital status of the applicant only when the applicant resides in a community property state or when community property is a basis for repayment of the debt? (202.5(d)(1))</p>			
<p>8. For loans other than individual unsecured credit, are inquiries into marital status no more extensive than obtaining the applicant's status as "married," "unmarried," or "separated"? (202.5(d)(1))</p>			
<p>9. Do guidance and forms ensure that the applicant is informed that income derived from alimony, child support, or separate maintenance payments need not be revealed? (202.5(d)(2))</p>			
<p>10. When a title, such as Ms., Miss, Mrs., or Mr., is shown on the</p>			

Requirement (if answer is No, there appears to be a violation)	Yes	No	Basis for Conclusion
application, does the form disclose that such designation is optional? (202.5(d)(3))			
11. Does the bank furnish joint account information to consumer reporting agencies in a manner that provides access to such information in the name of each spouse? (202.10(b))			
12. When the bank responds to an inquiry for credit information regarding a particular applicant, is the information furnished under the applicant's own name? (202.10(c))			
13. Are applicants informed of their right to obtain a copy of an appraisal report? (202.5a)			
<p>14. Do application files show that the bank notified non-commercial applicants in writing:</p> <p style="padding-left: 40px;">a) Of action taken within 30 days of receipt of a completed application? (202.9(a)(1)(i))</p> <p style="padding-left: 40px;">b) Of either adverse action because of incompleteness or of missing information that must be provided within a designated reasonable period for the application to be considered (within 30 days of receipt of the application)? (202.9(a)(1)(ii) and (c)(2))?</p>			

Requirement (if answer is No, there appears to be a violation)	Yes	No	Basis for Conclusion
<p>c) of adverse action (within 90 days after notifying the applicant of a counteroffer) if the applicant has not accepted the counteroffer (unless the notice of adverse action on the credit terms sought accompanied the counteroffer)? (202.9(a)(1)(iv))</p>			
<p>15. Do adverse action notices in denied files contain:</p> <p>a) A statement of action taken? (202.9(a)(2))</p> <p>b) A statement substantially similar to that contained in section 202.9(b)(1) of Regulation B?</p> <p>c) A statement of specific reasons for the action taken or disclosure of the applicant's right to such a statement? (202.9(a)(2)(i) and (ii))</p> <p>d) For businesses with revenues of \$1 million or less that were not given the reasons orally or in written form when adverse action was taken, written disclosure at such time or at the time of application of the right to a statement of reasons? (202.9(a)(3)(i)(B))</p>			

Requirement (if answer is No, there appears to be a violation)	Yes	No	Basis for Conclusion
16. If the bank is subject to HMDA, does the bank include data on the LAR on reasons for denial? (12 CFR 27.3)			
<p>17. Do application files retain, for 25 months after notice of action taken or notice of incompleteness (202.12(b)), the following (as applicable):</p> <p style="padding-left: 40px;">a) The application and all supporting material?</p> <p style="padding-left: 40px;">b) All information obtained for monitoring purposes?</p> <p style="padding-left: 40px;">c) The notification of action taken?</p> <p style="padding-left: 40px;">d) A statement of specific reasons for adverse action?</p> <p style="padding-left: 40px;">e) Any written statement submitted by the applicant alleging a violation of ECOA or Regulation B?</p>			
18. Was information relative to an investigative or enforcement action retained until final disposition of the matter? (202.12(b)(4))			
19. Were written applications used for home purchase and refinance transactions? (202.5(e))			

Procedures Map

The following table shows which sections of this booklet apply, by type of bank and basis for initiating a fair lending examination:

	Community Banks	All Other Banks	
	Risk-Based or Random Selection	Risk-Based Selection	Random Selection
Part I - Examination Scope Guidelines	NO	NO	YES
Part II - Compliance Management Review	NO	YES	YES
Part III - Examination Procedures	NO	YES	YES
Part IV - Concluding the Examination	NO	YES	YES

References

Laws

42 USC 3601-3619	Civil Rights Act of 1968 (Fair Housing Act)
24 CFR 100-110	Fair Housing Regulation
15 USC 1691 et seq.	Equal Credit Opportunity Act
12 CFR 202	Equal Credit Opportunity Regulation (Regulation B)

OCC Issuances

Banking Bulletin 92-17, "Guide to Fair Mortgage Lending"

Banking Bulletin 93-30, "Joint Statement on Fair Lending Expectations"

Banking Circular 263, "National Bank Fair Lending Efforts"

OCC Bulletin 94-30, "Discrimination in Lending: Interagency Policy Statement"

OCC Bulletin 97-24, "Credit Scoring Models"

Advisory Letter 96-3, "Fair Lending: Pilot Testing Program"

Advisory Letter 98-9, "Access to Financing for Minority Small Businesses"