Fair Lending Compliance Best Practices for Federal Credit Unions

Fair lending laws are designed to provide fair and equal access to credit, based on individual creditworthiness, without regard to a prohibited basis such as race, gender, or national origin. In addition to satisfying legal requirements, fair lending compliance is good business practice, and there can be major consequences for noncompliance. NCUA enforces fair lending laws for federal credit unions. NCUA developed the following best practices to educate and help ensure that the credit union’s lending program complies with fair lending laws and regulations.

**What are fair lending laws?** Fair lending laws include the Equal Credit Opportunity Act (Regulation B), Home Mortgage Disclosure Act (Regulation C), and Fair Housing Act, and federal credit unions must comply with them. The Equal Credit Opportunity Act 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 Home Mortgage Disclosure Act (HMDA) requires financial institutions, including credit unions, meeting certain reporting requirements to compile and disclose loan application data for home purchase loans, home improvement loans, and refinancings that they originate or purchase. The Fair Housing 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; and, selling or renting a dwelling.

**What practices are prohibited under fair lending laws?** Under the Equal Credit Opportunity Act and/or the Fair Housing Act, 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.

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1 The Equal Credit Opportunity Act prohibits discrimination based on race or color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to contract), the applicant’s receipt of income derived from any public assistance program, and the applicant’s exercise, in good faith, of any right under the Consumer Credit Protection Act. The Fair Housing 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), and handicap. Additionally, NCUA regulations contain nondiscrimination requirements that, among other things, prohibit discrimination with regard to real estate-related loans and activities. See 12 CFR § 701.31. The regulation also requires Federal credit unions engaging in real estate-related lending to display a notice of nondiscrimination.

2 NCUA’s fair lending examination program assesses compliance with the Fair Housing Act, but the U.S. Department of Housing and Urban Development (HUD) and the U.S. Department of Justice (DOJ) enforce the Fair Housing Act. NCUA reports violations of the Fair Housing Act to HUD or DOJ.


4 U.S. Department of Housing and Urban Development (HUD) regulations implementing the Fair Housing Act are found at 24 CFR Part 100.

5 NCUA Regulatory Alert 13-RA-01 provides the current data collection and filing requirements.
• 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.
• Use different standards for pooling or packaging a loan in the secondary market.

It is a violation of fair lending laws to express, orally or in writing, a preference based on prohibited factors or to indicate that the lender will treat applicants differently on a prohibited basis, even if the lender treats applicants equally. A lender may not discriminate on a prohibited basis because of the characteristics of:

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

What can federal credit unions do to mitigate fair lending risk? Federal credit unions can take several actions to proactively address fair lending risk. These actions include developing written fair lending policies and procedures, performing risk assessments, and ongoing monitoring of compliance with fair lending laws. All of these activities should be appropriate for the size and complexity of the credit union.

First, develop written fair lending policies and procedures. The fair lending policies and procedures should clearly state how the credit union will comply with fair lending laws and enable the credit union to serve the entire field of membership.

The board of directors and senior management should understand and convey to all credit union staff that they are responsible and accountable for complying with the fair lending laws and regulations.

Policies and procedures concerning the approval of credit, loan underwriting, pricing, and servicing standards should be clearly written and understood. Any deviations from these policies and procedures should be explained and documented.

Fair lending training should be provided for all credit union employees and officials involved in the lending process. Include training for employees who take applications, originate loans, service loans, and collect delinquent loans. The supervisory committee and internal audit staff should also incorporate an assessment of compliance with the credit union’s fair lending policies as a component of their review procedures.

Second, identify risks by conducting periodic fair lending risk assessments. The risk assessment should evaluate all credit products and services the credit union offers, its organizational structure, advertising or marketing media, and lending channels.

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Evaluate credit operations’ collections and loss mitigation functions. Determine if borrowers receive consistent treatment for loan modifications and loan workout arrangements.

Third, develop a fair lending program based on the results of the risk assessments. The compliance program should include sufficient internal controls to monitor and reduce fair lending risks at the credit union.

For example, mitigate risk by monitoring pricing decisions. Potential risk factors for pricing include:

- Lack of specific guidelines for pricing, including exceptions.
- Use of risk-based pricing that is not based on objective criteria or that is applied inconsistently.
- Broad pricing discretion, such as through overages, underages, or yield spread premiums.
- Lack of clear documentation of reasons for pricing decisions, including exceptions.
- Lack of monitoring for pricing disparities.
- Financial incentives for loan originators to charge higher prices.
- Pricing policies or practices that treat applicants of a protected class(es) differently or have a disparate impact.
- Loan programs only offered to borrowers of a particular protected class.
- Complaints about pricing by members.

Determine whether the credit union is required to submit HMDA data. If so, the credit union should ensure that verifying the accuracy of HMDA data is an important component of the compliance program. Management should specifically:

- Ensure personnel responsible for maintaining and reporting HMDA data clearly understand the collection and reporting requirements related to all data elements, especially the pricing and government monitoring information fields (ethnicity, race, and gender).
- Establish a verification system to test HMDA data.

Finally, stay current on fair lending developments.

NCUA has created a new Fair Lending Guide, which is available at http://www.ncua.gov/Legal/GuidesEtc/GuidesManuals/OCP_FairLendingGuide.pdf, to assist the credit union in developing or evaluating the fair lending compliance program. The guide includes:

- An overview of fair lending laws and regulations;
- Credit union operational requirements;
- Issues to consider when developing a fair lending compliance program; and
- Checklists for testing compliance with laws and regulations, or developing a compliant fair lending policy.
Additionally, NCUA’s Office of Consumer Protection (OCP) hosted a fair lending webinar to provide an overview of NCUA’s 2013 fair lending examination program, including:

- An explanation of the fair lending off-site supervision contact process;
- Fair lending tips and best practices that credit unions should consider; and
- Time for questions and answers.

An archive of the webinar presentation can be located by selecting “Videos and Webcasts” from the “News, Media, and Events” tab at www.ncua.gov.