



# Fair Lending and HMDA Compliance

February 20, 2015

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# Agenda

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- **Fair Lending Overview and Laws**
- **Fair Lending Examination Program**
- **Fair Lending Best Practices**
- **Home Mortgage Disclosure Act (HMDA) Reporting Requirements**
- **Common HMDA and ECOA Errors**



**REJECTED**  
**APPLICATION  
FOR CREDIT**

## FAIR LENDING OVERVIEW AND LAWS

# Fair Lending Overview

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## What is fair lending?

- Fair lending means “fair, equitable, and nondiscriminatory access to credit for consumers.”

## What is unlawful discrimination?

- Unlawful discrimination is treating certain consumers less favorably than others on a prohibited basis.

# Fair Lending Overview

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- **Equal Credit Opportunity Act** (15 U.S.C. § 1691 *et seq.*)
  - Implemented by CFPB's Regulation B (12 CFR Part 1002)
- **Fair Housing Act** (42 U.S.C. § 3601 *et seq.*)
  - Implemented by HUD's regulations (24 CFR Part 100)
- **Home Mortgage Disclosure Act** (12 U.S.C. § 2801 *et seq.*)
  - Implemented by CFPB's Regulation C (12 CFR Part 1003)

# ECOA and Regulation B

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ECOA prohibits discrimination in any aspect of a credit transaction (consumer or business) on the basis of ...

# ECOA – Regulation B

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- 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
- The applicant's exercise, in good faith, of any right under the Consumer Credit Protection Act

# ECOA – Regulation B

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## Technical requirements include:

- Notifying applicants of the credit decision within 30 days of receiving a completed application, with some exceptions.
- Collecting information about the applicant's race and other personal characteristics in applications, for certain dwelling-related loans.
- Providing applicants with copies of appraisals and other valuations developed for first-lien, dwelling-secured credit transactions.
- Retaining records of credit applications after notifying the member of its credit decision, for 25 months for consumer credit and 12 months for business credit, with some exceptions.

# Fair Housing Act

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Prohibits discrimination on a prohibited basis in residential real estate-related transactions

# Fair Housing Act

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## 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

# Fair Housing Act

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## Prohibited practices include—

- Failing or refusing to provide information about loan availability, application requirements, procedures or standards
- Providing information that is inaccurate or different from information provided to others
- Providing, failing to provide, or discouraging the receipt of loans
- Using different policies and procedures in evaluating creditworthiness
- Servicing loans in a discriminatory manner

# Home Mortgage Disclosure Act

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Requires financial institutions, including credit unions, to compile and disclose data about home purchase loans, home improvement loans, and refinancings that they originate or purchase, or for which they receive applications.

# Home Mortgage Disclosure Act

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## Provide the public with data that can be used to:

- Help determine whether credit unions are serving the housing needs of their communities
- Assist public officials in distributing public-sector investments so as to attract private investment to areas where it is needed
- Assist in identifying possible discriminatory lending patterns and enforcing compliance with anti-discrimination statutes

# Home Mortgage Disclosure Act

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A federally insured credit union is exempt from HMDA reporting for a given calendar year if on the preceding December 31st:

- It had neither a home office nor a branch office in a metropolitan statistical area (MSA) or
- Total assets were at or below the threshold established by the CFPB or
- It made no first-lien home purchase loans (including refinancing of home purchase loans) on one-to-four family dwellings in the preceding calendar year.

# Disclosure

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- **Reporting to agency**
- **FFIEC disclosure statement**
  - Public disclosure: home office
  - Public disclosure: other
    - At least one branch office in each other MSA and Metropolitan Divisions with offices or
    - Post address for written requests in lobby of each branch office and mail within 15 calendar days of written request
- **Modified LAR**
- **General notice**
- **Disclosure required even if the requester is not a credit union member**

# NCUA R&R Section 701.31

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## Real Estate Related Loans by Federal Credit Unions

### Nondiscrimination in Lending, Appraisals, and Advertising



# NCUA R&R Section 701.31

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## Prohibited factors:

- Race
- Color
- National Origin
- Religion
- Sex
- Handicap
- Familial Status

# NCUA R&R Section 701.31

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## Prohibited practices include, on the basis of a prohibited factor:

- Denying a real estate related loan
- Discriminating in exercising its right pursuant to the terms of the loan
- Discouraging an application

# NCUA R&R Section 701.31

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## Advertising

- **Cannot discriminate in advertising of real estate related loans on the basis of prohibited factors**
- **Must include nondiscrimination notice**
- **Must post nondiscrimination notice in credit union lobby**



# Examples of Prohibited Practices

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## Illegal cosigning requirements

- **Cannot require a spouse to cosign on a loan when the borrower qualifies for the loan on their own creditworthiness.**
- **Cannot require a co-signer to be a spouse for a loan where an additional party is necessary to support the credit requested.**

# Examples of Prohibited Practices

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## Differences in assessing creditworthiness

- Cannot evaluate credit score used for joint applicants differently based on whether or not the applicants are married

# Examples of Prohibited Practices

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## Favoring persons who are not “elderly” under ECOA and Regulation B

- Regulation B generally prohibits discrimination based on age
- An exception allows favoring the “elderly” in evaluating creditworthiness or credit terms
- Elderly means aged 62 or older



# FAIR LENDING EXAMINATION PROGRAM

# Program Scope

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- NCUA supervises and examines federal credit unions with assets of \$10 billion or less for compliance with fair lending laws. NCUA has enforcement authority for compliance with ECOA in federal credit unions and HMDA in federally insured credit unions.
- The Consumer Financial Protection Bureau (CFPB) supervises and examines insured credit unions with assets of \$10 billion or more for compliance with fair lending laws, and has primary enforcement responsibility with respect to those institutions
- CFPB has rulemaking authority with respect to ECOA and HMDA
- HUD has rulemaking authority with respect to the FH Act

# Fair Lending Examination Program

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## Fair Lending Exams

- On-site
- Transaction testing
- Each exam takes about 4 weeks (2 weeks on-site)

## Supervision Contacts

- Off-site
- No transaction testing
- Contact takes approximately 3 days

# Fair Lending Examination Program

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NCUA selects federal credit unions for a fair lending exam or off-site supervision contact if they demonstrate higher fair lending risk including:

- HMDA data outliers
- Member complaints
- Prior regulatory violations
- General compliance risks
- Whistleblower complaints
- Recommendations from field examiners

# Fair Lending Examination Program

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## Goals of a Fair Lending Examination

- **Detect illegal discrimination**
- **Ensure compliance with fair lending laws**
- **Educate about fair lending compliance**



# Fair Lending Examination Program

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## Concerns include—

- Weak Compliance Management System (CMS)
- Extensive HMDA Loan Application Register (LAR) errors where a revised LAR needs to be refiled
- Adverse Action Notice



# FAIR LENDING BEST PRACTICES

# FAIR LENDING BEST PRACTICES

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- **Making fair lending compliance part of the day-to-day responsibilities of credit union management and employees**
- **Self-identifying issues**
- **Taking corrective action**

**These best practices can be accomplished with an effective Compliance Management System (CMS)**

# Compliance Management System

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## Elements of an Effective CMS

- **Board of Directors and Management Oversight**
- **Policies and Procedures**
- **Training**
- **Monitoring/Testing and Corrective Action**
- **Compliance Audit**
- **Member Complaint Response**

# Policies and Procedures

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- Document policies and procedures
- Include sufficient detail
- Review and update frequently
- Cover all loan products and phases, such as advertising, marketing, underwriting, servicing, loss mitigation, and third party oversight.
- Address reviews done before the institution introduces new lending products or modifies existing products, including—
  - Evaluation of documents and disclosures
  - System testing
  - Staff training

# Board of Directors and Management Oversight

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- Demonstrate clear expectations about fair lending compliance within the institution and by third-party service providers
- Adopt clear policy statements about fair lending compliance
- Define clear responsibilities for fair lending compliance management
- Allocate resources appropriate for the institution's size and complexity
- Implement a fair lending audit function appropriate for the institution's size and complexity

# Training

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- Educate board of directors, management, staff
  - Board of directors should receive sufficient information to understand responsibilities and resource requirements
  - Management and staff should receive specific, comprehensive training that reinforces and helps implement written fair lending policies and procedures
- Address new and existing employee training
- Maintain a fluid schedule
  - Cover regulatory changes
  - Address observed weaknesses or noncompliance

# Monitoring/Testing and Corrective Action

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- Schedule and complete monitoring and testing
- Determine compliance with policies and procedures
- Consider the results of internal or external audits, risk assessments, or other guidelines
- Document who monitored what and when
- Escalate findings to management and the board of directors if appropriate
- Take prompt corrective action if appropriate

# Compliance Audit

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- Fair lending risk assessment
- Comparative file reviews
- HMDA analysis
- Evaluation of underwriting and pricing parameters
- Demographic analysis
- Review of—
  - Exception and override reports
  - Fair lending policies and procedures
  - Fair lending training
  - Marketing and advertising practices

# Complaint Response

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- Be responsive
- Be responsible
- Organize, retain, and use complaint information



# HMDA REPORTING REQUIREMENTS

# HMDA Reporting Requirements

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- 1. Total assets as of 12/31/2014 exceed \$44 million**
- 2. Have a home or branch office in an MSA on 12/31/2014**
- 3. During 2014, originated at least one home purchase loan or refinance a home purchase loan secured by a first lien on a 1-4 unit family dwelling**

# HMDA Reporting Requirements

## What's Reported

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**Each application for and origination and purchase of:**

- Home purchase loans
- Home improvement loans
- Refinancings
- Open-end home equity lines of credit (optional)

# HMDA Reporting Requirements

## What's Not Reported

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### Exclusions

Loans made or purchased in a fiduciary capacity

Loans on unimproved land

Construction and temporary financing loans

Purchase of interest in mortgage pool

Purchase of servicing rights

Loans acquired as part of a merger or acquisition or as part of the acquisition of all assets and liabilities of a branch office

Participation loans acquired

Prequalification requests (as opposed to preapproval requests)

Assumptions not involving a written agreement

# HMDA Reporting Requirements

## Current Loan Application Register (LAR) Data

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### Seven Categories of Data

1. Application or Loan Information
2. Action Taken
3. Property Location
4. Applicant and Co-applicant Information
5. Type of Purchaser of Loan
6. Reasons for Denial (optional under Reg. C)
7. Other Data



# COMMON HMDA AND ECOA ERRORS

# Common Errors

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## Incorrect Action Taken Reported – Application Withdrawn

“Application Withdrawn” may be used only when the application is expressly withdrawn by the applicant before a credit decision is made

# Common Errors

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## Action Taken – Counteroffers

- If a credit union makes a counteroffer to lend on terms different from the applicant's initial request (for example, for a shorter loan maturity or in a different amount) and the applicant does not accept the counteroffer or fails to respond, the credit union reports the action taken as a **denial** on the original terms requested by the applicant
- If the counteroffer is accepted, the credit union reports the application as an originated loan

# Common Errors

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## Action Taken – Conditional Approvals

If a credit union issues a loan approval subject to the applicant's meeting underwriting conditions (other than customary loan commitment or loan-closing conditions) and the applicant does not meet them, the institution reports the action taken as a **denial**.

# Common Errors

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## Preapprovals and Prequalifications

- Regulation C does not require reporting prequalification requests on the HMDA LAR
- Regulation C requires reporting preapproval requests

Under a covered preapproval program, the credit union completes a comprehensive analysis of the creditworthiness of the applicant and issues a written commitment to the applicant valid for a designated period of time to extend a home purchase loan up to a specified amount.

# Common Errors

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## Reporting Loan Sales

- If you sell a loan in the same calendar year in which it was originated or purchased, you must identify the type of purchaser to whom it was sold
- If the loan is sold to more than one purchaser, use the code for the entity purchasing the greatest interest
- Only report loans underwritten with Desktop Underwriter as sold to Fannie Mae when Fannie Mae purchases them (same for Loan Prospector and Freddie Mac)

# Common Errors

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## Government Monitoring Information (GMI) under Regulation B/ECOA

- Applies to applications for credit primarily for the purchase or refinancing of a dwelling occupied or to be occupied by the applicant as a principal residence
- A creditor must request as part of the application information about the applicant's ethnicity, race, sex, marital status, and age
- The applicant must be asked, but is not required, to supply the requested information
- A creditor must request this information even if it does not file HMDA reports

# Common Errors

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## GMI under Regulation B Continued

- Disclose that information is requested by the federal government for monitoring compliance
- If the applicant chooses not to provide the information or any part of it, note that fact on the form
- To the extent possible, if an applicant does not provide GMI, note on the form the ethnicity, race, and sex of the applicant on the basis of visual observation or surname

# Common Errors

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## GMI under Regulation C/HMDA

- Mail, internet, telephone applications: If an applicant does not provide GMI, use the code for "information not provided by applicant in mail, internet, or telephone application."
- Partial GMI: Permit an applicant to fill in only one or two of the three fields (ethnicity, race, sex).

# Common Errors

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## GMI Regulation C Continued

- Partial GMI, mail and internet applications – If an applicant marks a box indicating the applicant does "not wish to furnish" GMI but supplies some or all of the information, the lender must report the information supplied.
- An applicant must be permitted to select more than one race category, and the credit union must report all race categories selected.

# Common Errors

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## Adverse Action Notices / Statements of Credit Denial

- Must include name and address of the Federal agency that administers compliance with respect to the creditor
- Can be found in Appendix A to Part 1002
- Currently for federal credit unions:
  - National Credit Union Administration
  - Office of Consumer Protection
  - 1775 Duke Street
  - Alexandria, VA 22314

# Resources

## NCUA Fair Lending Compliance Resources

### Fair Lending Compliance Resources

These resources provide guidance on how to comply with fair lending laws.

	<p><a href="#">NCUA Fair Lending Guide</a></p> <p>This guide is intended for use by a credit union's board of directors and management, compliance officers, and others having responsibility for fair lending compliance as part of their duties.</p> <p><a href="#">NCUA Letter to Federal Credit Unions 13-FCU-02</a></p>
<p><b>Best Practices</b></p>	<p><a href="#">NCUA Fair Lending Compliance Best Practices for Federal Credit Unions</a></p>
<p><b>Fair Lending Compliance Program</b></p>	<p><a href="#">NCUA Fair Lending Compliance Program for Federal Credit Unions Frequently Asked Questions and Answers (April 2013)</a></p>
<p><b>NCUA Regulatory Alerts</b></p>	<p><a href="#">Regulatory Alert 15-RA-02: Home Mortgage Disclosure Act (HMDA) Data Collection Requirements for Calendar Year 2015 (February 2015)</a></p> <p><a href="#">Regulatory Alert 15-RA-01: Submission of 2014 Home Mortgage Disclosure Act (HMDA) Data (February 2015)</a></p> <p><a href="#">Regulatory Alert 14-RA-08: Submission of 2013 Home Mortgage Disclosure Act (HMDA) Data (February 2014)</a></p> <p><a href="#">Regulatory Alert 14-RA-06: Home Mortgage Disclosure Act (HMDA) Data Collection Asset Threshold for Calendar Year 2014 (January 2014)</a></p>

# Office Contact Page

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**Feel free to contact our office with questions or comments:**

**Office of Consumer Protection**

**Division of Consumer Compliance Policy and Outreach**

**E-mail: [ComplianceMail@ncua.gov](mailto:ComplianceMail@ncua.gov)**

**Office Phone: 703-518-1140**