

**NCUA Fair Lending Examination and Compliance Program
for
Federal Credit Unions**

Questions and Answers

1. What triggers a fair lending examination?

NCUA uses multiple factors to determine whether a federal credit union demonstrates the potential for higher fair lending risk which could lead to a fair lending exam or an off-site supervision contact, including Home Mortgage Disclosure Act (HMDA) reports, fair lending violations or complaints, general compliance risk, and other factors. Additional information about fair lending examination selection criteria is provided in Letter to Federal Credit Unions 13-FCU-02, dated March 2013.

2. What is the definition of a HMDA outlier?

If a review of a federal credit union's HMDA report indicates its lending practices fall outside the normal range for pricing, denials, withdrawals, or loan terms when compared to other financial institutions, the federal credit union is considered a HMDA outlier.

3. What will the fair lending offsite supervision contact entail?

Office of Consumer Protection (OCP) staff review the federal credit union's lending policies, procedures, training program, audit or verification assessments, compliance risk assessment, and marketing/advertising program or materials. At the conclusion of the offsite supervision contact, OCP staff will provide an oral report of their findings and recommendations to senior management and officials by conference call. A federal credit union will also receive a written report of the results within 3 to 5 business days of the call.

4. What information must a credit union provide for a fair lending examination?

The fair lending examination notification letter includes an items needed list, a loan officer questionnaire to complete, and request for information about products and services offered by the credit union. We will also request loan data for approved and denied loans in an electronic format. The items needed list is available at NCUA's website under "credit union resources and information" tab, then select "for credit unions," and page down until you see fair lending compliance resources.

5. Does NCUA have a sample fair lending policy available?

NCUA does not provide sample policies, but fair lending educational and compliance tools and resources are available at <http://www.ncua.gov/Resources/Pages/Fair-Lending-Compliance-Resources.aspx>.

When developing a policy, credit unions can use the OCP Fair Lending Guide which includes an overview of fair lending laws, operational requirements, review considerations, checklists, and definitions. The Fair Lending Compliance Best Practices for Federal Credit Unions helps ensure

that the credit unions compliance program complies with fair lending laws and regulations. This document notes that “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.” NCUA’s website also includes additional “frequently asked questions” regarding fair lending compliance.

6. What internal controls should be in place regarding fair lending compliance?

The credit union’s compliance program should include sufficient internal controls to mitigate and monitor fair lending risk at the credit union. Developing written fair lending policies and procedures, performing risk assessments, and ongoing monitoring of compliance with fair lending laws creates a good foundation for strong internal controls. All of these activities should be appropriate for the size and complexity of the credit union. The supervisory committee and/or internal audit staff should also incorporate an assessment of fair lending compliance in their review programs. NCUA has provided fair lending educational and compliance tools on NCUA’s website at <http://www.ncua.gov/Resources/Pages/Fair-Lending-Compliance-Resources.aspx>. These tools should help management develop sound internal controls.

7. Can you give a quick overview of how a non-HMDA filer would conduct a fair lending risk assessment?

All credit union should evaluate its credit products and services, organizational structure, advertising, marketing media, and lending channels. It is equally important to evaluate your credit union's operations, collections and loss mitigation functions. Specifically, review all areas of the credit operation to ensure all borrowers receive equal treatment regarding loan decisions, pricing, fees, services and loan workout arrangements.

8. Can credit unions self-test their fair lending compliance program?

Yes. Regulation B defines a “self-test” as any program, practice, or study that: (i) is designed and used specifically to determine the extent or effectiveness of a creditor's compliance with the Act or this regulation; and (ii) creates data or factual information that is not available and cannot be derived from loan or application files or other records related to credit transactions. 12 CFR § 1002.15(b)(1). Under the Fair Housing Act, self-testing includes, but is not limited to, using fictitious credit applicants (testers) or conducting surveys of applicants or customers, nor is it limited to the pre-application stage of loan processing. 24 CFR § 100.141.

Management must understand that corrective action is required when a self-test shows that it is more likely than not that a violation has occurred, even though no violation has been formally identified through an examination or supervision contact. 12 CFR § 1002.15(c).

9. Must all credit unions comply with fair lending laws?

Fair lending laws apply to all financial institutions involved in lending and apply equally to federal and state chartered credit unions. Fair lending laws and regulations include: the Equal Credit Opportunity Act (Regulation B); the Home Mortgage Disclosure Act (HMDA; Regulation C); and the Fair Housing Act (FH Act). In addition, NCUA regulations contain nondiscrimination requirements for federal credit unions regarding real estate-related loans. See 12 CFR § 701.31.

10. Is a credit union subject to fair lending laws if its loans are processed by a third party lender?
How can a credit union ensure that a third party processor meets the fair lending requirements?

Yes, fair lending laws apply to all financial institutions involved in any type of lending activity. Credit unions using third-party loan processors must still understand and comply with fair lending laws as they apply to other aspects of the lending process including, advertising and marketing, responding to public questions, and posting required signage.

Federal credit unions using third-party processors should review and follow the due diligence requirements discussed in Letter to Credit Unions 01-CU-20, dated November 2001, Letter to Credit Unions 08-CU-19, dated August 2008, and Letter to Credit Unions 10-CU-15, dated August 2010.

11. Is it permissible to ask an applicant about their number of dependents as part of the credit decision process on real estate related loans?

It is not permissible to ask a real estate loan applicant about the number of dependents, unless this information is needed to determine if the borrower qualifies for the first-time home-buyer program. The Fair Housing Act prohibits discrimination in a credit decision based on familial status. 24 CFR § 100.5. Familial status is defined as one or more individuals (who have not attained the age of 18 years) being domiciled with (a) a parent or another person having legal custody of such individual or individuals; or (b) the designee of such parent or other person having such custody, with the written permission of such parent or other person. 24 CFR § 100.20.

12. Can an applicant's age ever be taken into consideration in the credit approval process (for example, when a 90 year old person applies for a 30-year mortgage)?

A lender cannot use an applicant's age as a reason to deny credit since fair lending laws prohibit discrimination based on age. The lender may ask for the applicant's age, but may not use age as a factor in the credit decision, providing the applicant is old enough, under state law, to enter into a binding contract. According to section 1002.6(b)(2) of the commentary for Regulation B, any system of evaluating creditworthiness may favor a credit applicant who is age 62 or older. A credit program that offers more favorable credit terms to applicants age 62 or older is also permissible. A program that offers more favorable credit terms to applicants at an age lower than 62 is permissible only if it meets the special-purpose credit requirements of Section 1002.8 of Regulation B. 12 CFR §§ 1002.6, .8.

13. What are examples of age discrimination?

On the issue of age discrimination, the largest risk factor is creating a product which favors "senior citizens" without complying with the Equal Credit Opportunity Act (ECOA) and Regulation B rules on treatment of age. Regulation B permits favoring elderly applicants, defined as age 62 or older. For example, if a credit union provided a different age cut-off, such as 50 or 55 to qualify for favorable terms, or assigned lower credit limits to applicants under the age of 25, such practices could be construed as age discrimination. This is a violation of ECOA to take age directly into account to set credit terms. It is permissible to take age into account to evaluate

pertinent elements of creditworthiness, such as the length of time an applicant will continue to receive benefits based on age.

Regulation B permits consideration of age in credit scoring under two conditions:

- The system must be empirically derived and demonstrably and statistically sound. This means it must be based on the creditor's data or an acceptable substitute, developed using recognized statistical methods, and periodically validated.
- Elderly applicants must be treated at least as favorably as any other age group. This means that applicants age 62 and older must receive a score for age that is as high as or higher than the highest score for any other age group in the system.

Un-validated credit scoring systems based on age have the potential for age discrimination.

14. Can the credit union consider the likelihood of continuation of income from part-time employment as part of a credit decision?

A creditor may score or take into account the fact that an applicant has more than one source of earned income—a full-time and a part-time job or two part-time jobs. A creditor may also score or treat earned income from a secondary source differently than earned income from a primary source. The creditor may not, however, score or otherwise take into account the number of sources for income such as retirement income, social security, supplemental security income, and alimony. Nor may the creditor treat negatively the fact that an applicant's only earned income is derived from, for example, a part-time job. 12 CFR § 1002.6(b)(5) (Staff Commentary).

15. Are state unemployment payments considered a “public assistance program” for purposes of Regulation B compliance?

Yes, state unemployment payments are considered a “public assistance program” for purposes of Regulation B compliance. Regulation B defines “public assistance” as any federal, state, or local governmental assistance program that provides a continuing, periodic income supplement, whether premised on entitlement or need. The term includes (but is not limited to) Temporary Aid to Needy Families, food stamps, rent and mortgage supplement or assistance programs, social security and supplemental security income, and unemployment compensation. 12 CFR § 1002.2(z)(3) (Staff Commentary).

16. Is prohibiting a member’s use of unemployment compensation as a source of income a violation of Regulation B?

When considering income derived from a public assistance program, a creditor may take into account, for example, the length of time an applicant will likely remain eligible to receive such income, whether the applicant will continue to qualify for benefits based on the status of the applicant's dependents (as in the case of Temporary Aid to Needy Families, or social security payments to a minor), or whether the creditor can attach or garnish the income to assure payment of the debt in the event of default. 12 CFR § 1002.6(b)(6) (Staff Commentary).

17. Is business lending covered under Regulation B?

Some types of business credit are covered by Regulation B. Specifically, Regulation B defines covered business credit as extensions of credit primarily for business or commercial (including agricultural) purposes. 12 CFR § 1002.2(g). Regulation B excludes certain types of credit, such as public utilities credit, securities credit, incidental credit, and government credit from the definition of business credit. 12 CFR § 1002.3.

18. Where can you get a new Equal Housing Lender poster?

You can obtain copies of the Equal Housing Lender poster from NCUA Publications, by requesting item #1582. The cost is currently \$3.00 per poster, and you can mail a request and check made payable to:

NCUA Publications
1775 Duke Street
Alexandria VA 22314

19. What is the size requirement for the Equal Housing Lender notice?

The size requirements of the Equal Housing Lender notice are available on the U.S. Department of Housing and Urban Development website at

<http://www.hud.gov/offices/fheo/library/part109.pdf>

20. Does a credit union have to locate the required fair lending signage in each individual office of a branch where a loan is originated? Or, is it acceptable to just display the signage in the lobby?

Under NCUA Rules and Regulations, every federal credit union that engages in real estate-related transactions must display a notice of nondiscrimination. The notice must be placed in the public lobby of the credit union and in the public area of each office where real estate-related loans are made and must be clearly visible to the general public. So, if a credit union has several branch offices where real estate loans are made, the required signage must be posted in the branch lobby and in every office where real estate loans are made. 12 CFR § 701.31.

21. Can you discuss the recent Consumer Financial Protection Bureau's (CFPB) guidance (Bulletin 2013-02) on credit unions' responsibility for the fair lending performance of indirect dealers?

Credit unions should review their indirect lending programs in conjunction with the CFPB's bulletin to assure their programs comply with the Equal Credit Opportunity Act and Regulation B.

22. Who regulates credit union service organizations (CUSO) engaged in lending activities?

The state regulatory agency that chartered the CUSO may have supervision enforcement responsibilities for fair lending laws. The U.S. Department of Housing and Urban Development has enforcement authority for all entities involved in mortgage lending. The Consumer Financial Protection Bureau has authority to supervise CUSOs, especially those with assets in excess of \$10 billion. The United States Department of Justice has supervisory and enforcement authority for entities or creditors involved in mortgage lending and other credit transactions subject to fair lending laws.