

# Fair Lending Examination Procedures Program

# RESOINDED

This document and any attachments are superseded by Comptroller's Handbook - Consumer Compliance - Fair Lending.

## COMPLIANCE MANAGEMENT REVIEW

The Compliance Management Review enables the examination team to determine:

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

Generally, your 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 the Examination Scope Guidelines of the Handbook section.
- 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, you should consider institutional records and interviews with appropriate management personnel in the lending, compliance, audit, and legal functions. You should also refer to the Compliance Management Analysis Questionnaire 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 the Program and the Fair Lending Sample Size Tables in the Appendix, to the extent warranted by the strength and thoroughness of the compliance programs applicable to those Focal Points selected for examination.
- Identify any compliance program or system deficiencies that merit correction or improvement and present these to management in accordance with the section of this Program titled Obtaining and Evaluating Responses from the Lender and Concluding the Examination.



<b>Exam Date:</b>	
<b>Prepared By:</b>	
<b>Reviewed By:</b>	
<b>Docket #:</b>	

# Fair Lending Examination Procedures Program

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WKP. REF.

Where an institution performs a self-evaluation or has voluntarily disclosed the report or results of a self-test of any product or issue that is within the scope of the examination and that product or issue has been selected for analysis pursuant to the Examination Scope Guidelines found in the Fair Lending Handbook Section, you may streamline the examination, consistent with agency guidance, provided the self-test or self-evaluation meets the requirements set forth in Using Self-Tests and Self-Evaluations to Streamline the Examination located in the Appendix.

## EXAMINATION PROCEDURES

Review the Matters Requiring Board Attention and Corrective Actions from the three or four previous ROEs to ensure that the board and management have taken appropriate corrective action where necessary and persistent problems have not recurred.

Once you determine the scope and intensity of the examination, assess the institution's fair lending performance by applying the appropriate procedures that follow to each of the examination Focal Points already selected.

### A. Verify Accuracy of Data

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

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

### B. Documenting Overt Evidence of Disparate Treatment

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

<b>Exam Date:</b>	
<b>Prepared By:</b>	
<b>Reviewed By:</b>	
<b>Docket #:</b>	

# Fair Lending Examination Procedures Program

---

WKP. REF.

1. Where the indicator(s) of overt discrimination are found in or based on a written policy (e.g., a credit scorecard) or communication, determine and document:
  - The precise language of the apparently discriminatory policy or communication and the nature of the fair lending concerns that it raises.
  - The institution's stated purpose in adopting the policy or communication and the identity of the person on whose authority it was issued or adopted.
  - How and when the policy or communication was put into effect.
  - How widely the policy or communication was applied.
  - Whether and to what extent applicants were adversely affected by the policy or communication.

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2. Where any indicator of overt discrimination was an oral statement or unwritten practice, determine and document:
  - The precise nature of both the statement or practice and of the fair lending concerns that they raise.
  - 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.
  - How and when the statement or practice was disseminated or put into effect.
  - How widely the statement or practice was disseminated or applied.
  - Whether and to what extent applicants were adversely affected by the statement or practice.

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Assemble findings and supporting documentation for presentation to management in connection with the section of this Program titled Obtaining and Evaluating Responses from the Lender and Concluding the Examination.

<b>Exam Date:</b>	
<b>Prepared By:</b>	
<b>Reviewed By:</b>	
<b>Docket #:</b>	

# Fair Lending Examination Procedures Program

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WKP. REF.

## C. Transactional Underwriting Analysis - Residential and Consumer Loans

### 1. Set Sample Size

- For each Focal Point selected for this analysis, two samples will be utilized: (i) prohibited basis group denials, and (ii) control group approvals. Both identified either directly from monitoring information in the case of residential loan applications or through the use of application data or surrogates in the case of consumer applications.
- Refer to the Fair Lending Sample Size Table A in the Appendix and determine the size of the initial sample for each Focal Point, based on the number of prohibited basis group denials and the number of control group approvals by the institution during the twelve month 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.)
- 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 do not meet the minimum standards set forth in the Sample Size Table, you need not attempt a transactional analysis for that Focal Point. Where other risk factors favor analyzing such a Focal Point, consult with supervisory staff on possible alternative methods of judgmental comparative analysis.
- If agency policy calls for a different approach to sampling (e.g., a form of statistical analysis or a mathematical formula, or an automated tool) for a limited class of institutions, you should follow that approach.

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### 2. Determine Sample Composition

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

<b>Exam Date:</b>	
<b>Prepared By:</b>	
<b>Reviewed By:</b>	
<b>Docket #:</b>	

# Fair Lending Examination Procedures Program

---

WKP. REF.

applicable to that Focal Point.

- Using HMDA/LAR data for consumer loans, or 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.
  - 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.
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### 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, you should first eliminate all, but "marginal transactions" (see Complete Applicant Profiles 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, you can compare the target and control groups for evidence that similarly qualified applicants have been treated differently in the institution's credit decision or the quality of assistance provided.

- Create Applicant Profile Spreadsheet

Based upon the institution's written and/or articulated credit standards and loan policies, identify categories of data that should be recorded for each applicant. 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, branch location, underwriter, etc. 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 spreadsheet.

<b>Exam Date:</b>	
<b>Prepared By:</b>	
<b>Reviewed By:</b>	
<b>Docket #:</b>	

# Fair Lending Examination Procedures Program

---

WKP. REF.

In order to facilitate comparisons of the quality of assistance provided to target and control group applicants, 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.

- 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. The agencies have found that discrimination, including differences in granting assistance during the approval process, is more likely to occur with respect to applicants who are not either clearly qualified or unqualified, e.g., “marginal” applicants. The examiner-in-charge should, during the following steps, judgmentally select from the initial sample only those denied and approved applications which constitute marginal transactions. (See Identifying Marginal Transactions in the [Appendix](#) for guidance.)
- If few marginal control group applicants are identified from the initial sample, review additional files of approved control group applicants. This will either increase the number of marginal approvals or confirm that marginal approvals are so infrequent that the marginal denials are unlikely to involve disparate treatment.
- The judgmental selection of both marginal-denied and marginal-approved applicant loan files should occur 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, data elements called for on the profile spreadsheet are extracted or noted and entered.
- While conducting the preceding step, you should simultaneously look for and document on the spreadsheet any evidence of 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

<b>Exam Date:</b>	
<b>Prepared By:</b>	
<b>Reviewed By:</b>	
<b>Docket #:</b>	

# Fair Lending Examination Procedures Program

---

WKP. REF.

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.

- 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), you should obtain an explanation from the underwriter and document the response in the work papers.

**NOTE:** In constructing the applicant profiles to be compared, you 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 to 41 percent if his short-term overtime income had been considered, then you 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 as the "**benchmark**" applicant.)
- Compare each marginal control group approval to the benchmark applicant in each reason-for-denial ranking developed. 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:

<b>Exam Date:</b>	
<b>Prepared By:</b>	
<b>Reviewed By:</b>	
<b>Docket #:</b>	

# Fair Lending Examination Procedures Program

---

WKP. REF.

- ⇒ 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 Review and Compare Profiles section above, and should focus primarily on overrides of the scoring system itself. For guidance on this type of analysis, refer to *Considering Automated Underwriting and Credit Scoring Risk Factors*, [Part C in the Appendix](#).

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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, you should expand the sample as necessary to determine whether a pattern or practice exists.
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5. Discuss all findings resulting from the above comparisons with bank management and document both the findings and all conversations on an appropriate worksheet.
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## D. Analyzing Potential Disparities in Terms and Conditions

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

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

<b>Exam Date:</b>	
<b>Prepared By:</b>	
<b>Reviewed By:</b>	
<b>Docket #:</b>	



# Fair Lending Examination Procedures Program

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WKP. REF.

## 1. Determine Sample Selection

You may review data in its entirety or restrict their analysis to a sample depending on the examination approach used and the quality of the institution's compliance management system. The [Fair Lending Sample Size Tables in the Appendix](#) provide general guidance about appropriate sample sizes. Generally, the sample size should be based on the number of prohibited basis group 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 the Compliance Management Review section of this Program. When possible, you should request specific loan files in advance and request that the institution have them available for review at the start of the examination.

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## 2. Determine Sample Composition

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

- While the period for review should be 12 months, prohibited basis group and control group borrowers should be grouped and reviewed around a range of dates during which the institution's practices for the term or condition being reviewed were the same. Generally, you should use the loan origination date or the loan application date.
  - Identify data to be analyzed for each focal point to be reviewed and record this information for each borrower on a spreadsheet to ensure a valid comparison regarding terms and conditions. For example, in certain cases, an institution may offer slightly differentiated products with significant pricing implications to borrowers. In these cases, it may be appropriate to group these procedures together for the purposes of evaluation.
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<b>Exam Date:</b>	
<b>Prepared By:</b>	
<b>Reviewed By:</b>	
<b>Docket #:</b>	

# Fair Lending Examination Procedures Program

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WKP. REF.

3. Review Terms and Conditions; Compare with Borrower Outcomes
  - Review all loan terms and conditions (rates, points, fees, maturity variations, LTVs, collateral requirements, etc.) with special attention to those which are left, in whole or in part, to the discretion of loan officers or underwriters. For each term or condition, identify (a) any prohibited basis group borrowers in the sample who appear to have been treated unfavorably with respect to that term or condition, and (b) any control group borrowers who appear to have been treated favorably with respect to that term or condition. Your analysis should be thoroughly documented in the work papers.
  - Identify from the sample universe any control group borrowers who appear to have been treated more favorably than one or more of the above-identified prohibited basis group borrowers and who have pricing or creditworthiness factors (under the lender's standards) that are equal to or less favorable than the prohibited basis group borrowers.
  - Obtain explanations from the appropriate loan officer or other employee for any differences that exist and reanalyze the sample for evidence of discrimination.
  - 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, you should expand the sample as necessary to determine whether a pattern or practice does or does not exist.
  - 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 II of [Appendix A](#), Evaluating Responses to Evidence of Disparate Treatment.

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## E. Steering Analysis

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

<b>Exam Date:</b>	
<b>Prepared By:</b>	
<b>Reviewed By:</b>	
<b>Docket #:</b>	

# Fair Lending Examination Procedures Program

---

WKP. REF.

Several examples illustrate potential fair lending risk:

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

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

1. Clarify what options are available to applicants.

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

- All underwriting criteria for the product or feature and for the alternative product(s) that are offered by the institution or by a subsidiary or affiliate. Examples of products may include stated income, negative amortization and option ARMs. Examples of terms and features include prepayment penalties and escrow requirements. The distinction between a product, term, and feature may vary institution to institution. For example, some institutions may consider "stated income" a feature, while others may consider that a distinct product.
- Pricing or other costs applicable to the product and the alternative product(s), including interest rates, points, and all fees.

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<b>Exam Date:</b>	
<b>Prepared By:</b>	
<b>Reviewed By:</b>	
<b>Docket #:</b>	

# Fair Lending Examination Procedures Program

---

WKP. REF.

2. Document the policies, conditions, or criteria that the institution adopted for determining how referrals are made and choices presented to applicants.
- Obtain not only information regarding the product or feature offered by the institution and alternatives offered by subsidiaries/affiliates, but also information on alternatives offered solely by the institution itself.
  - Obtain any information regarding a subsidiary of the institution directly from that entity, but seek information regarding an affiliate or holding company subsidiary only from the institution itself.
  - Obtain all appropriate documentation and provide a written summary of all discussions with loan personnel and managers.
  - Obtain documentation and/or employee estimates of the volume of referrals made from or to the institution for each product during a relevant time period.
  - Resolve to the extent possible any discrepancies between information found in the institution's documents and information obtained in discussions with loan personnel and managers by conducting appropriate follow-up interviews.
  - Identify any policies and procedures established by the institution and/or the subsidiary or affiliate for (i) referring a person who applies to the institution, but does not meet its criteria, to another lending channel, subsidiary or affiliate; (ii) offering one or more alternatives to a person who applies to the institution for a specific product or feature, but does not meet its criteria, or (iii) referring a person who applies to a subsidiary or affiliate for its product, but who appears to be qualified for a loan from the institution, to the institution or referring a person who applies through one internal lending channel for a product but who appears to be qualified for a loan through another lending channel to that particular lending channel.
  - Determine whether loan personnel are encouraged, through financial incentives or otherwise, to make referrals, either from the institution to a subsidiary/affiliate or vice versa. Similarly, determine whether the institution provides financial incentives related to products and features.
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<b>Exam Date:</b>	
<b>Prepared By:</b>	
<b>Reviewed By:</b>	
<b>Docket #:</b>	

# Fair Lending Examination Procedures Program

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WKP. REF.

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

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

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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.
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5. Determine whether the institution's stated policies, conditions, or criteria are adhered to. If not, does it appear that different policies or practices are actually in effect?

Enter data from the prohibited basis group sample on the spreadsheets and determine whether the institution is 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 spreadsheets to determine whether the lender adhered to that criterion. If the institution's actual treatment of prohibited basis group applicants appears to differ from its stated criteria, document such differences for subsequent discussion with management.

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

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

<b>Exam Date:</b>	
<b>Prepared By:</b>	
<b>Reviewed By:</b>	
<b>Docket #:</b>	

# Fair Lending Examination Procedures Program

---

WKP. REF.

- For each Focal Point analyzed, select a sample of prohibited basis group applicants who received “less favorable” treatment (e.g., referral to a finance company or a subprime mortgage subsidiary or counteroffers of less favorable product alternatives).

**NOTE:** In selecting the sample, follow the guidance of Fair Lending [Sample Size Table B in the Appendix](#) and select “marginal applicants” as instructed in Part B of this Program.

- Prepare a spreadsheet for the sample that contains data entry categories for those underwriting and/or referral criteria that the institution used in underwriting and referral decisions between the pairs of products.
- Review the “less favorably” treated prohibited basis group sample and rank this sample from least qualified to most qualified.
- From the sample, identify the **best qualified** prohibited basis group applicant, based on the criteria identified for the control group. This applicant will be the “benchmark” applicant. Rank the remaining applicants from best to least qualified.
- 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. (Refer to the Sample Size Table B and marginal applicant processes in selecting the sample.)
- 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.**”
- Compare all control group overlaps with other, less qualified, prohibited basis group applicants to determine whether additional overlaps exist.
- 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.

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<b>Exam Date:</b>	
<b>Prepared By:</b>	
<b>Reviewed By:</b>	
<b>Docket #:</b>	

# Fair Lending Examination Procedures Program

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WKP. REF.

7. You should consult with Washington supervisory staff if you see a need to contact control group or prohibited basis group applicants to substantiate the steering analysis.
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## F. Transactional Underwriting Analysis – Commercial Loans

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

1. Understand Commercial Loan Policies

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

**NOTE:** Examiners should consult regional supervisory staff for guidance on when a comparative analysis or statistical analysis is appropriate, and follow their agencies general procedures for conducting such a review/analysis.

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<b>Exam Date:</b>	
<b>Prepared By:</b>	
<b>Reviewed By:</b>	
<b>Docket #:</b>	

# Fair Lending Examination Procedures Program

---

WKP. REF.

## 2. Conduct Comparative File Review

- Select all (or a maximum of ten) denied applications that were acted on during the three-month period prior to the examination. To the extent feasible, include denied applications from businesses that are (i) located in minority and/or integrated geographies or (ii) appear to be owned by women or minority group members, based on the names of the principals shown on applications or related documents. (In the case of institutions that have a significant volume of commercial lending, consider reviewing more than ten applications.)
- For each of the **denied commercial applications** selected, record specific information from loan files and through interviews with the appropriate loan officer(s), about the principal owners, the purpose of the loan, and the specific, pertinent financial information about the commercial enterprise (including type of business - retail, manufacturing, service, etc.), that was used by the institution to evaluate the credit request. Maintenance or use of data that identifies prohibited basis characteristics of those involved with the business (either in approved or denied loan applications) should be evaluated as a potential violation of Regulation B.
- Select ten 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, you should select approved applications for lines of credit from retail businesses.
- For each approved commercial loan application selected, obtain and record information parallel to that obtained for denied applications.
- You 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.
- You should identify any deviations from credit standards for both approved and denied credit requests, and differences in loan terms granted for approved credit requests.

<b>Exam Date:</b>	
<b>Prepared By:</b>	
<b>Reviewed By:</b>	
<b>Docket #:</b>	



# Fair Lending Examination Procedures Program

---

WKP. REF.

- You 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.
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### 3. Conduct Targeted Sampling

- 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, you should determine if deviations were detrimental to any protected classes of applicants.
- You should consider employing the same techniques for determining race and gender characteristics of commercial applicants as those outlined in the consumer loan sampling procedures.
- 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, you should select additional commercial loans, where applicants are members of the same prohibited basis group and select similarly situated control group credit requests in order to determine whether there is a pattern or practice of discrimination. Select these additional files based on the specific applicant circumstance(s) that appear to have been viewed differently by lending personnel on a prohibited basis.
- If there are not enough similarly situated applicants for comparison in the original sample period to draw a reasonable conclusion, you should expand the sample period. The expanded sample period should generally not go beyond the date of the prior examination.

#### Sampling Guidelines

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

<b>Exam Date:</b>	
<b>Prepared By:</b>	
<b>Reviewed By:</b>	
<b>Docket #:</b>	

# Fair Lending Examination Procedures Program

---

WKP. REF.

- You 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.
- 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.

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## G. Analysis of Potential Discriminatory “Redlining”

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

The redlining analysis may be applied to determine whether, on a prohibited basis, an institution does any of the following:

- Fails or refuses to extend credit in such an area.
- Targets certain borrowers or certain areas with less advantageous products.
- Makes loans in such an area but at a restricted level or upon less-favorable terms or conditions as compared to contrasting areas.
- Omits or excludes such an area from efforts to market residential loans or solicit customers for residential credit.

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

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

<b>Exam Date:</b>	
<b>Prepared By:</b>	
<b>Reviewed By:</b>	
<b>Docket #:</b>	

# Fair Lending Examination Procedures Program

---

WKP. REF.

Like other forms of disparate treatment, redlining can be proven by overt or comparative evidence. If any written or oral policy or statement of the institution (see risk factors R5, R6, and R7 in the Fair Lending Handbook Section on Indicators of Potential Discriminatory Redlining) suggests that the institution links the racial or national origin character of an area with any aspect of access to or terms of credit, you should refer to the guidance in Part A of this Program, on documenting and evaluating overt evidence of discrimination.

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

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

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

- Identify and delineate any areas within the institution’s CRA assessment area and reasonably expected market area for residential products that have a racial or national origin character.
- Determine whether any minority area identified in step 1 appears to be excluded, under-served, selectively excluded from marketing efforts, or otherwise less-favorably treated in any way by the institution.
- Identify and delineate any areas within the institution’s CRA assessment area and reasonably expected market area for residential products that are nonminority in character and that the institution appears to treat more favorably.
- Identify the location of any minority areas located just outside the institution’s CRA assessment area and reasonably expected market area for residential products, such that the institution may be purposely avoiding such areas.
- Obtain the institution’s explanation for the apparent difference in treatment between the areas and evaluate whether it is credible and reasonable.

<b>Exam Date:</b>	
<b>Prepared By:</b>	
<b>Reviewed By:</b>	
<b>Docket #:</b>	

# Fair Lending Examination Procedures Program

---

WKP. REF.

- Obtain and evaluate other information that may support or contradict whether identified disparities are the result of intentional illegal discrimination.

These steps are discussed in detail below.

## Using Information Obtained During Scoping

Although the six tasks listed are presented below as examination steps in the order given above, a different order may be preferable based on the examination. For example, the institution's explanation (step four) for one of the policies or patterns in question may already be documented in the CRA materials reviewed (step two) 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, you may have reviewed an analysis of the geographic distribution of the institution's loan originations with respect to the racial and national origin composition of census tracts within its CRA assessment or residential market area. Such analysis might have documented the existence of significant discrepancies between areas, by degree of minority concentration, in loans originated (risk factor R1), approval/denial rates (risk factor R2) and/or rates of denials because of insufficient collateral (risk factor R3). In such a situation in which the scoping process has produced a reliable factual record, you 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 institution, steps 1, 2, and/or 3 must be addressed.

## Comparative Analysis for Redlining

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

**NOTE:** The CRA assessment area can be a convenient unit for redlining analysis because information about it is typically already available. 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.

<b>Exam Date:</b>	
<b>Prepared By:</b>	
<b>Reviewed By:</b>	
<b>Docket #:</b>	

# Fair Lending Examination Procedures Program

---

WKP. REF.

If there are no areas identifiable for their racial or national origin minority character within the institution's CRA assessment area or reasonably expected market area for residential products, a redlining analysis is not appropriate. (If there is a substantial but dispersed minority population, potential disparate treatment can be evaluated by a routine comparative file review of applicants.)

This step may have been substantially completed during scoping, but unresolved matters may remain. (For example, several community spokespersons may allege that the lender is redlining, but disagree in defining the area.) You should:

- 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. You should document the percentages of racial or national origin minorities residing within the census tracts that make up the area. Analyzing racial and national origin concentrations in quartiles (such as 0 to  $\leq 25\%$ ,  $>25\%$  to  $\leq 50\%$ ,  $>50\%$  to  $\leq 75\%$ , and  $>75\%$ ) or based on majority concentration (0 to  $\leq 50\%$ , and  $>50\%$ ) may be helpful. However, you should bear in mind that it is illegal for the institution to consider a prohibited factor *in any way*. For example, an area or neighborhood may only have a minority population of 20%, but if the area's concentration appears related to lending practices, it would be appropriate to use that area's level of concentration in the analysis. Contacts with community groups can be helpful to learn whether there are such subtle features of racial or ethnic character within a particular neighborhood.
  - Geographical groupings that are convenient for CRA may obscure racial patterns. For example, an 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.

<b>Exam Date:</b>	
<b>Prepared By:</b>	
<b>Reviewed By:</b>	
<b>Docket #:</b>	

# Fair Lending Examination Procedures Program

---

WKP. REF.

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

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

You 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 one to be underserved and/or how the institution's explicit policies treat them less favorably.

- 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 one.
- Learn from the institution itself whether, as a matter of policy, it treats any separate or distinct geographical areas within its marketing or service area differently from other areas. This may have been done completely or partially during scoping analysis related to risk factors R6-10 and R7. The differences in treatment can be in marketing, products offered, branch operations (including the services provided and the hours of operation), appraisal practices, application processing, approval requirements, pricing, loan conditions, evaluation of collateral, or any other policy or practice materially related to access to credit. Determine whether any of those less-favored areas are the

<b>Exam Date:</b>	
<b>Prepared By:</b>	
<b>Reviewed By:</b>	
<b>Docket #:</b>	

# Fair Lending Examination Procedures Program

---

WKP. REF.

minority areas identified in step one.

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

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

To the extent not already completed during scoping:

- Document the percentages of control group and of racial or national origin minorities residing within the census tract(s) that comprise(s) the *non*minority area.
- Document the nature of the housing stock in the area.
- Describe, to the extent known, how the institution's practices, policies, or its rate of lending change from less- to more-favorable as one leaves the minority area at its various boundaries. (You should be particularly attentive to instances in which the boundaries between favored and disfavored areas deviate from boundaries the institution would reasonably be expected to follow, such as political boundaries or transportation boundaries.)
- You 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, you should determine whether credit access within those small *non*minority areas differs from credit access in the larger minority area.

- 
4. Identify the location of any minority areas located just outside the institution's CRA assessment area and reasonably expected market area for residential products, such that the institution may be purposely avoiding such areas. This can be done through plotting the institution's LAR loans with geocode data from the LAR. After this is

<b>Exam Date:</b>	
<b>Prepared By:</b>	
<b>Reviewed By:</b>	
<b>Docket #:</b>	

# Fair Lending Examination Procedures Program

---

WKP. REF.

done, analyze to see if the institution is excluding any predominately minority census tracts either within the assessment area or just outside of the assessment area.

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

6. Obtain the institution's explanation for the apparent difference in treatment between the areas and evaluate whether it is credible and reasonable.

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

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

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

<b>Exam Date:</b>	
<b>Prepared By:</b>	
<b>Reviewed By:</b>	
<b>Docket #:</b>	



# Fair Lending Examination Procedures Program

---

WKP. REF.

- Obtain explanations from the institution for any apparent differences in treatment observed by you, but not called for by the institution's policies.
  - If the institution's explanation cites any specific conditions in the *non*minority area(s) to justify more favorable treatment, determine whether the minority area(s) identified in step 1 satisfied those conditions. If there are minority areas for which those conditions existed, ask the institution to explain why the areas were treated differently, despite the similar conditions.
  - If the institution's explanation cites any specific conditions in the minority area(s) to justify less favorable treatment, determine whether the *non*minority area(s) had those conditions. If there are *non*minority areas for which those conditions existed, ask the institution to explain why those areas were treated differently, despite the similar conditions.
- Evaluate the institution's responses by applying appropriate principles selected from the [Appendix](#) on Evaluating Responses to Evidence of Disparate Treatment.

- 
7. Obtain and evaluate specific types of other information that may support or contradict a finding of redlining.

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

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

- Learn whether there were any denials of fully qualified applicants from the suspected redlining area. If so, that may support the view that the

<b>Exam Date:</b>	
<b>Prepared By:</b>	
<b>Reviewed By:</b>	
<b>Docket #:</b>	

# Fair Lending Examination Procedures Program

---

WKP. REF.

institution was to avoiding doing business in the area.

- Learn whether the file review identified instances of illegal disparate treatment against applicants of the same race or national origin as the suspected redlining area. If so, that may support the view that the institution was avoiding doing business with applicants of that group, such as the residents of the suspected redlining area. Learn whether any such identified victims applied for transactions in the suspected redlining area.
- If there are instances of either of the above, identify denied *non*minority residents, if any, of the suspected redlining area and review their application files to learn whether they appear to have been treated in an irregular or less favorable way. If so, that may support the view that the character of the area rather than of the applicants themselves appears to have influenced the credit decisions.
- Review withdrawn and incomplete applications for the suspected redlining area, if those can readily be identified from the HMDA-LAR, and learn whether there are reliable indications that the institution discouraged those applicants from applying. If so, that may support the view that the institution was avoiding conducting business in the area and may constitute evidence of a violation of Section 202.4(b) of Regulation B.

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

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

- Identify persons (such as housing or credit counselors, home improvement contractors, or real estate and mortgage brokers) who may have extensive experience dealing with credit applicants from the suspected redlined area.
- After obtaining appropriate authorization and guidance from the agency, interview those persons to learn of their *first-hand experiences* related to:

<b>Exam Date:</b>	
<b>Prepared By:</b>	
<b>Reviewed By:</b>	
<b>Docket #:</b>	

# Fair Lending Examination Procedures Program

---

WKP. REF.

- ⇒ oral statements or written indications by an institution's representatives that loan applications from a suspected redlined area were discouraged.
- ⇒ whether the institution treated applicants from the suspected redlining area as called for in its own procedures (as you understand them) and/or whether it treated them similarly to applicants from *non*minority areas (as you are familiar with those transactions).
- ⇒ any unusual delays or irregularities in loan processing for transactions in the suspected redlining area;
- ⇒ differences in the institution's pricing, loan conditions, property valuation practices, etc., in the suspected redlining area compared to contrasting areas.

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

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

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

- Review materials that show how the institution has marketed in the suspected redlined area and in *non*minority areas. Begin with available CRA materials and discuss the issues with CRA examiners, then review other materials as appropriate. The materials may include, for example, the

<b>Exam Date:</b>	
<b>Prepared By:</b>	
<b>Reviewed By:</b>	
<b>Docket #:</b>	

# Fair Lending Examination Procedures Program

---

WKP. REF.

institution's guidance for the geographical distribution of preapproved 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.

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

However, an institution'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 institutions, that would suggest 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.

Institution's record. Request information from the institution 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 intent to serve that group that tends to contradict the view that the institution intends to discriminate against the group.

**NOTE:** For any information that supports interpreting the situation as illegal discrimination, obtain and evaluate an explanation from the institution as called for in Part IV. If the 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 the Special Analysis section of the [Appendix](#) under Disproportionate Adverse Impact Violations and consult your manager.

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<b>Exam Date:</b>	
<b>Prepared By:</b>	
<b>Reviewed By:</b>	
<b>Docket #:</b>	

# Fair Lending Examination Procedures Program

---

WKP. REF.

## H. Analysis of Potential Discriminatory Marketing Practices

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

1. Identify the institution's marketing initiatives.
  - Preapproved solicitations
    - Determine whether the institution sends out preapproved solicitations:
      - ⇒ For home purchase loans.
      - ⇒ For home improvement loans.
      - ⇒ For refinance loans.
    - Determine how the institution selects recipients for such solicitations:
      - ⇒ Learn from the institution its criteria for such selections.
      - ⇒ Review any guidance or other information the institution provided credit reporting companies or other companies that supply such lists.
  - Media Usage
    - Determine in which newspapers and broadcast media the institution 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 institution's strategies for geographic and demographic distribution of advertisements.
    - Obtain and review copies of the institution's printed advertising and promotional materials.
    - Determine what criteria the institution communicates to media about what is an attractive customer or an attractive area to cultivate business.

<b>Exam Date:</b>	
<b>Prepared By:</b>	
<b>Reviewed By:</b>	
<b>Docket #:</b>	

# Fair Lending Examination Procedures Program

---

WKP. REF.

- Determine whether advertising and marketing are the same to racial and national origin minority areas as compared to *non*minority areas.
- Self-produced promotional materials
  - Learn how the institution distributes its promotional materials, both methods and geographical distribution.
  - Learn what the institution regards as the target audience(s) for those materials.
- Realtors, brokers, contractors, and other intermediaries
  - Determine whether the institution solicits business from specific realtors, brokers, home improvement contractors, and other conduits:
    - ⇒ Learn how the institution decides which intermediaries it will solicit.
    - ⇒ Identify the parties contacted and determine the distribution between minority and *non*minority areas.
    - ⇒ Obtain and review the types of information the institution distributes to intermediaries.
    - ⇒ Determine how often the institution 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.
- Telemarketers or predictive dialer programs

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

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2. Determine whether the institution's activities show a significantly lower level of marketing effort toward minority areas or toward media or intermediaries that tend to reach minority areas.
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<b>Exam Date:</b>	
<b>Prepared By:</b>	
<b>Reviewed By:</b>	
<b>Docket #:</b>	

# Fair Lending Examination Procedures Program

---

WKP. REF.

3. If there is any such disparity, document the institution's explanation for it.  
For additional guidance, refer to Part C of the Special Analyses section in the [Appendix](#).

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## I. Credit Scoring

If the scoping process results in the selection of a Focal Point that includes a credit or mortgage scored loan product, refer to the Considering Automated Underwriting and Credit Scoring Risk Factors section of the [Appendix](#).

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

## J. Disparate Impact Issues

These procedures have thus far focused primarily on examining comparative evidence for possible unlawful *disparate treatment*. *Disparate impact* has been described briefly in the Introduction. Whenever you believe that a particular policy or practice of an institution appears to have a *disparate impact* on a prohibited basis, you should refer to Part A of the Special Analyses section of the [Appendix](#) or consult with agency supervisory staff for further guidance.

## OBTAINING AND EVALUATING RESPONSES FROM THE LENDER AND CONCLUDING THE EXAMINATION

1. Present to the institution's management for explanation:
  - Any **overt** evidence of disparate treatment on a prohibited basis.
  - All instances of apparent **disparate treatment** (e.g., overlaps) in either the underwriting of loans or in loan prices, terms, or conditions.
  - All instances of apparent **disparate treatment** in the form of discriminatory steering, redlining, or marketing policies or practices.

<b>Exam Date:</b>	
<b>Prepared By:</b>	
<b>Reviewed By:</b>	
<b>Docket #:</b>	

# Fair Lending Examination Procedures Program

---

WKP. REF.

- 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.
  - All instances where a prohibited basis applicant received **conspicuously** less favorable treatment by the institution than was **customary** from the lender or was **required** by the institution's policy.
  - Any statistically significant average difference in either the **frequency** or **amount of pricing disparities** between control group and prohibited basis group applicants.
  - 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, the agency could conclude that the institution is in violation of the applicable fair lending laws.
- 
2. Document all responses that have been provided by the institution, not just its "best" or "final" response. Document each discussion with dates, names, titles, questions, responses, any information that supports or undercuts the institution's credibility, and any other information that bears on the issues raised in the discussion(s).
- 
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.
- Do not speculate or assume that the institution's decision-maker had specific intentions or considerations in mind when he or she took the actions being evaluated. Do not, for example, conclude that because you have noticed a legitimate, nondiscriminatory reason for a denial (such as an applicant's credit weakness) that no discrimination occurred unless it is clear that, at the time of the denial, the institution actually based the denial on that reason.

<b>Exam Date:</b>	
<b>Prepared By:</b>	
<b>Reviewed By:</b>	
<b>Docket #:</b>	



# Fair Lending Examination Procedures Program

---

WKP. REF.

- Perform follow-up file reviews and comparative analyses, as necessary, to determine the accuracy and credibility of the institution's explanations.
  - Refer to Evaluating Responses to Evidence of Disparate Treatment in the [Appendix](#) for guidance as to common types of responses.
  - Refer to Part V, Section A - Disproportionate Adverse Impact Violations of the [Appendix](#) for guidance on evaluating the institution's responses to apparent disparate impact.
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4. If, after completing Steps one through three 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.

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5. Consult with agency supervisory staff regarding whether (a) any violations should be referred to the Departments of Justice or Housing and Urban Development, and (b) enforcement action should be undertaken by the agency.

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## **EXAMINER'S SUMMARY, RECOMMENDATIONS, AND COMMENTS**

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<b>Exam Date:</b>	
<b>Prepared By:</b>	
<b>Reviewed By:</b>	
<b>Docket #:</b>	