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Section 1 Introduction

[Sample Client] is committed to the highest standards of compliance with all applicable federal fair housing and fair lending laws and regulations and requires all management, employees, and third-party vendors to follow these policies and adhere to these standards.

Fair Housing and Fair Lending Laws

Federal fair housing and fair lending laws and regulations include the federal Fair Housing Act, Equal Credit Opportunity Act and other federal statutes and regulations which prohibit discrimination in the sale, rental, and financing of homes. These statutes and regulations prohibit discrimination based on race, color, religion, sex, national origin, familial status, handicap, or other protected class in all aspects of the lending process including application, pricing/loan terms, underwriting, and property appraisal. Federal fair housing laws are located primarily in the Fair Housing Act, while the Equal Credit Opportunity Act addresses fair lending.

The Fair Housing Act was first enacted by Congress in 1968 as part of the Civil Rights Act. The Act has expanded to protect multiple groups and classes from discrimination in housing. In a transaction involving the sale of property or consideration for a rental lease, a seller or landlord may not deny housing, refuse to negotiate, or refuse to sell based on a discriminatory basis. The Fair Housing Act prohibits discrimination in real estate-related transactions, specifically in the following:

- Making or purchasing of loans or providing other financial assistance for purchasing, constructing, improving, repairing, or maintaining a dwelling
- Selling, brokering, or appraising of residential real property

Consumer protections extend to the mortgage lending industry under the federal Equal Credit Opportunity Act which prohibits the making or denial of lending decisions based on discriminatory motives. ECOA prohibited basis varies slightly from the Fair Housing Act:

- Race
- Color
- Religion
- National origin
- Sex
- Marital status
- Age (provided the applicant has the capacity to contract)
- Because all or part of the applicant's income derives from any public assistance program
- Because the applicant has in good faith exercised any right under Title VII of the Consumer Credit Protection Act

Section 4 Equal Credit Opportunity Act

Summary of Regulation

The Equal Credit Opportunity Act (ECOA) prohibits discrimination based on the following factors (“prohibited basis”):

- Race
- Color
- Religion
- National origin
- Sex (including sexual orientation and gender identity)
- Marital status
- Age (provided applicant has capacity to contract)
- Whether the applicant’s receipt of income is derived from a public assistance program
- The applicant’s good faith exercise of any rights under the Consumer Credit Protection Act

The Consumer Financial Protection Bureau (CFPB) and prudential regulators enforce ECOA and its implementing regulation, Regulation B. All federal agencies that regulate lending institutions have the authority to enforce Regulation B.

Regulation B covers creditor activities beginning with advertising, sales, and customer acquisition through the lending and loan servicing lifecycle, including default management. The regulation applies to all persons who, in the ordinary course of business, regularly participate in the credit decision, including setting the terms of the credit. The term “creditor” includes a creditor’s assignee, transferee, or subrogee. The term “creditor” also includes a person who, in the ordinary course of business, regularly refers applicants or prospective applicants to creditors, or selects or offers to select creditors to whom requests for credit may be made.

Regulation B’s prohibitions apply to every aspect of an applicant’s dealings with a creditor regarding an application for credit or an existing extension of credit, including, but not limited to, the following:

- Providing information to applicants or prospective applicants
- Application investigation procedures
- Standards of creditworthiness
- Terms of credit, including loan pricing
- Furnishing of credit information; revocation, alteration, or termination of credit
- Default collection procedures and loss mitigation procedures

ECOA has two principal theories of liability: disparate treatment and disparate impact. Disparate treatment occurs when a creditor treats an applicant differently based on a prohibited basis such as

Section 5 Fair Housing Act

Summary of Regulation

The primary purpose of the Fair Housing Act (FHAct) is to protect the right of a buyer or renter to seek housing. The FHAct was enacted as Title VIII of the Civil Rights Act of 1968, and prohibits discrimination in the sale, rental, or financing of dwellings, in the provision of real estate brokerage services, or in the availability of residential real estate-related transactions based on any of the following characteristics or prohibited bases:

- Race
- Color
- Religion
- Sex
- Handicap
- Familial Status (i.e., presence of children in the household)
- National origin

The FHAct does not prohibit any religious organization, association, or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association, or society, from limiting the sale, rental, or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted on account of race, color, or national origin.

The FHAct does not prohibit a private club that is not open to the public which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members.

The Secretary of the U.S. Department of Housing and Urban Development (HUD) is responsible for administering the FHAct and has mandatory enforcement powers. The Secretary may cooperate with state and local agencies charged with the administration of state and local fair housing laws and utilize the services of the agencies and their employees.

Section 6 Types of Lending Discrimination

The courts have recognized three types of potential evidence of lending discrimination under ECOA and FHAct:

- Overt evidence of disparate treatment
- Comparative evidence of disparate treatment
- Evidence of disparate impact

Overt Evidence of Disparate Treatment

Overt evidence of disparate treatment exists when a lender openly discriminates on a prohibited basis.

Example

A lender offers second mortgages to applicants ages 18-25 at a higher interest rate than applicants older than 25. The lender's policy of offering lower interest rates to borrowers over 25 violates ECOA's prohibition on discriminating on the basis of age.

Comparative Evidence of Disparate Treatment

Comparative evidence of disparate treatment discrimination occurs when a lender treats one credit applicant differently on the basis of one of the prohibited factors (i.e., race, color, national origin, sex, age, etc.) irrespective of the lender's intent.

Example

A nonminority couple applies for an automobile loan. When the lender finds adverse information in the couple's credit report, the couple is asked to explain it. Evidence is supplied to the lender that proves the adverse information, a judgment on the report, was not theirs. The nonminority couple was granted the loan. A minority couple applied for a similar loan with the same lender. Upon discovering adverse information in the minority couple's credit report, the lender denies the loan application on the basis of the adverse information without giving the couple an opportunity to discuss the report.

Section 7 Home Mortgage Disclosure Act

Summary of Regulation

The purpose of the Home Mortgage Disclosure Act (Regulation C) is to provide the public with loan data that can be used to

- help determine whether financial institutions are serving the housing needs of their communities;
- assist public offices in distributing investments to attract private investment to areas where it is needed; and
- assist in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes.

[Sample Client] is required to compile HMDA data quarterly and to submit an annual Loan Application Register (LAR) in compliance with the Home Mortgage Disclosure Act.

Prudential regulators also use HMDA data reported by lenders to detect potential fair lending issues.

HMDA Final Rule Changes

The HMDA Final Rule published August 24, 2017 by the CFPB included changes to Regulation C in four broad areas:

1. Types of institutions required to collect and report HMDA data
2. Types of transactions and applications subject to collection and reporting requirements
3. Data that must be collected and reported
4. Method and frequency of reporting data and making data available to the public

The Final Rule narrowed the scope of depository institutions subject to Regulation C beginning in 2017. Refer to [Sample Client]'s Home Mortgage Disclosure Act Policy for specific changes to institutional and transactional requirements.

It is [Sample Client]'s duty, as a depository institution or for-profit mortgage lending entity, to assess whether it is subject to HMDA. The assessment should be performed annually using the Final Rule's institutional and transactional coverage tests. The Final Rule adds a two-year lookback test to the institutional coverage tests. Refer to the CFPB's [2020 Home Mortgage Disclosure Act \(Regulation C\) Final Rule](#) for increased thresholds for institutions required to file.

In addition, there are ongoing revisions to MSA and census tract definitions which could cause [Sample Client] to either become a covered institution, or become exempt from HMDA, such as the following:

ECOA Checklist

Y/N	Consider the following:
	1. Does [Sample Client] prohibit its employees from making statements that would discourage, on a prohibited basis, applicants from making or pursuing an application? (§1002.4(b))
	2. Does [Sample Client] refrain from requesting information concerning the applicant's spouse or former spouse unless such person will be permitted to use or be contractually liable, or the applicant is relying on community property, the spouse's income, alimony, child support, or maintenance payments for repayment of the debt? (§1002.5(c) (2))
	3. Regarding applications for individual unsecured loans, does [Sample Client] refrain from inquiring as to the marital status of the loan applicant (unless community property is involved)? (§1002.5(d) (1))
	4. For secured loans, are inquiries into marital status limited to the terms "married," "unmarried," or "separated?" (§1002.5(d) (1))
	5. When income derived from alimony, child support, or maintenance payments is disclosed, is there evidence that [Sample Client] properly informed the applicant that such income need not be revealed? (§1002.5(d) (2))
	6. When a title such as Ms., Miss, Mrs., or Mr. is shown on the application, does the form appropriately disclose that such designation is optional? (§1002.5(b) (2))
	7. Are requests for information relative to birth control, childbearing, or rearing intentions of applicants prohibited? (§1002.5(d) (3))
	8. If [Sample Client] considers age or the fact that an applicant's income is derived from a public assistance program, does it do so only to determine a pertinent element of creditworthiness? (§1002.6(b) (2) (iii))
	9. If the age of an elderly applicant is considered, is such age used only to favor the elderly applicant? (§1002.6(b) (2) (iv))
	10. When evaluating the applicant's creditworthiness, does [Sample Client] refrain from considering aggregate statistics or assumptions relative to the likelihood of bearing or rearing children? (§1002.6(b) (3))
	11. Does [Sample Client] refrain from discounting or excluding income on a prohibited basis or because the income is derived from part-time employment, or a retirement benefit? (§1002.6(b) (5))
	12. Does [Sample Client] consider income from alimony, child support, or maintenance payments to the extent it is likely to be consistently received? (§1002.6(b) (5))