



Equal Credit Opportunity Act

Chapter 10

After reading this chapter, you will be able to:

- recognize the protected classes under the Equal Credit Opportunity Act;
- identify who is subject to the rules of the Equal Credit Opportunity Act and what activities are prohibited; and
- distinguish the exemptions from anti-discrimination rules under the Equal Credit Opportunity Act.

credit reporting agency

Equal Credit Opportunity Act

For a further discussion of this topic, see *Fair Housing* Chapter 8 of *Agency, Fair Housing, Trust Funds, Ethics and Risk Management*.

Learning Objectives

Key Terms

The federal **Equal Credit Opportunity Act** prohibits discrimination in lending based on race, color, religion, national origin, sex, marital status or age (provided an individual is of legal age).

The anti-discrimination rules apply to institutional lenders, mortgage brokers, and others who *make or arrange mortgages*.¹

Discriminatory practices take many forms, including:

- treating minority mortgage applicants less favorably than non-minority applicants;
- placing additional burdens on minority applicants;
- requiring a spouse's signature on a mortgage application when an applicant qualifies for a mortgage individually;²

Federal fair lending laws

Equal Credit Opportunity Act

A 1974 federal enactment prohibiting lenders from discriminating against borrowers from a protected class.

¹ 15 United States Code §1691a(e)

² *Anderson v. United Finance Company* (1982) 666 F2d 1274

- discouraging mortgage applicants based on their race, color, sex, etc.;³ and
- making inquiries into the marital status of mortgage applicants.⁴

The lender may not make any inquiries into whether an applicant's income is derived from *alimony* or *child support*. The lender may not inquire whether the applicant intends to bear children.⁵

Further, to deny a mortgage based on an applicant's receipt of income from a public assistance program, such as *welfare* or *social security*, is unlawful discrimination.⁶

However, discrimination is rarely practiced overtly. Most lenders are not transparent enough for the consumer to see the discrimination. Most often, discrimination takes the form of a lender denying a mortgage to a minority borrower without a valid reason, or applying different standards to minority and non-minority borrowers.

Different treatment is discrimination

Lenders need to be careful not to provide more assistance to non-minority borrowers than to minority borrowers when preparing applications and working out problems which arise. The *different treatment* of minority and non-minority applicants is another form of unlawful discrimination.

For example, an African-American couple applies for a mortgage to be insured by the **Federal Housing Administration (FHA)**, which will fund the purchase of a residence. The home the couple seeks to purchase is 75 miles from their place of work. The couple intends to occupy the home as their principal residence and commute to work.

The lender suspects the couple wants to purchase the home as an investment, and not to occupy it themselves. Since the type of FHA insurance sought may only be used to purchase homes which the buyer will occupy, the lender denies the mortgage application.

The lender does not discuss with the couple whether they intend to occupy the home. Also, the lender never suggests the couple can apply for a non-FHA mortgage. Due to a mortgage contingency, the couple loses their right to buy the home and incurs expenses in the process.

The couple seeks to recover their money losses from the lender under the *Equal Credit Opportunity Act*, claiming the lender's denial of their mortgage application was due to unlawful discrimination.

The lender claims the denial of the mortgage application was proper since it believed the couple did not intend to occupy the home, and thus did not qualify for an FHA-insured mortgage.

³ 12 Code of Federal Regulations §1002.5(b)

⁴ 12 CFR §1002.5(d)

⁵ 12 CFR §1002.5(d)

⁶ 15 USC §1691(a)(2)

Lenders are to provide the same level of assistance to non-minority borrowers as minority borrowers. Thus, the lender may not unilaterally decide the couple did not intend to occupy the home without first discussing the couple's intentions with them. Also, even if the couple did not qualify for an FHA-insured mortgage, as a matter of professional practice, the lender needs to refer them to other forms of financing.

Thus, the lender discriminated against the African-American couple by denying their mortgage application without a valid reason. Further, there was a failure to use diligence in assisting the couple to obtain other financing.⁷

Consider a California-regulated institutional lender who regularly arranges alternative forms of financing. The lender consistently informs non-minority applicants of their financing options when they deny a mortgage application.

The lender's failure to diligently provide the same assistance for minority applicants subjects the lender to liability for the minority applicant's money losses caused by the discrimination. Here, the unlawful discrimination is based on the lender's selective release of information based on status.⁸

Some exceptions to the anti-discrimination rules exist.

For example, a lender may lawfully consider a mortgage applicant's age when determining the applicant's creditworthiness. A lender may also consider whether the applicant receives income from a public assistance program, if such an inquiry is for the purpose of determining the amount and likely continuance of income levels from public assistance.⁹

Editor's note — Allowing lenders to consider an applicant's age or receipt of income from a public assistance program as an exception in determining the applicant's creditworthiness effectively removes these two factors from the anti-discrimination protection previously discussed.

While a lender may not refuse to accept applications or impose different mortgage terms based on an applicant's age or receipt of public assistance income, the lender can lawfully deny a mortgage based on these factors simply by stating the applicant is not creditworthy.

Further, lenders may consider an applicant's **immigration status** when considering a mortgage application. Immigration status is used by the lender to determine whether the applicant is a permanent resident of the United States.¹⁰

Differing levels of assistance

Discrimination by age and public assistance

⁷ *Barber v. Rancho Mortgage & Investment Corp.* (1994) 26 CA4th 1819

⁸ *Barber*, *supra*

⁹ 15 USC §1691(b)(2)

¹⁰ 12 CFR §1002.6(b)(7)

Denial of credit and notification

After the lender’s receipt of a mortgage application, the lender has 30 days to notify the applicant as to whether the mortgage is approved or denied. If the lender denies the mortgage, the lender is to deliver a statement to the applicant listing the specific reasons for the denial.¹¹ [See **RPI** Form 219]

Alternatively, if the lender does not give the applicant a statement of the specific reasons for the denial, the lender is required to deliver a notice to the applicant stating the applicant has the right, upon request, to obtain a statement listing the reasons for denial.

credit reporting agency

A private agency which collects and reports information regarding an individual’s credit history.

In addition to the *Equal Credit Opportunity Act*, California law controls **credit reporting agencies**. Consumers may request a free copy of their credit report once every year to review it for errors.¹²

Penalties for discrimination in lending include actual money losses sustained by a person who has been discriminated against and punitive money awards of up to \$10,000, plus attorney fees.¹³

¹¹ 15 USC §1691(d)

¹² Calif. Civil Code §1785.10

¹³ 15 USC §1691e

Chapter 10 Summary

The Equal Credit Opportunity Act prohibits discrimination in lending based on race, color, religion, national origin, sex, marital status or age. The Equal Credit Opportunity Act applies to institutional lenders, mortgage brokers, and others who regularly make or arrange mortgages.

Discrimination is rarely practiced overtly. Unlawful discrimination includes applying different standards to minority and non-minority borrowers, and providing more assistance to non-minority borrowers than to minority borrowers.

Exemptions to anti-discrimination rules exist, such as a lender’s consideration of an applicant’s age, public assistance program income, or immigration status when determining creditworthiness.

If the lender denies a mortgage application, it is to deliver a statement to the applicant listing the specific reasons for the denial, or deliver a notice to the applicant advising them of their right, upon request, to obtain a statement listing the reasons for denial.

Chapter 10 Key Terms

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Home Mortgage Disclosure Act

Chapter 11

After reading this chapter, you will be able to:

- identify the social goals of the federal Home Mortgage Disclosure Act (HMDA);
- identify which lenders and mortgage types the HMDA applies to; and
- find and interpret the data required for HMDA disclosure statements.

debt-to-income (DTI) ratio

Home Mortgage Disclosure Act (HMDA)

For a further discussion of this topic, see *Fair Housing* Chapter 10 of *Agency, Fair Housing, Trust Funds, Ethics and Risk Management*.

Learning Objectives

Key Terms

The federal **Home Mortgage Disclosure Act (HMDA)** seeks to prevent lending discrimination and unlawful redlining practices. The HMDA requires lenders to disclose home mortgage origination information to the public when the borrower is seeking a residential or home improvement mortgage.¹

State and federally regulated banks and mortgage brokers are required by the HMDA to compile home mortgage origination data. This data is submitted to their respective supervisory agencies.²

Home mortgage originations include:

- purchase-assist financing;
- construction for a new home;

Lenders release home mortgage data

Home Mortgage Disclosure Act (HMDA)

A regulatory scheme requiring lenders to publicly release loan data.

¹ Department of Housing and Urban Development Mortgagee Letter 94-22

² 12 United States Code §52802, 2803; Calif. Health and Safety Code §35816

- improvement of the borrower's home; or
- the refinance of an existing home mortgage.

Federal disclosure requirements

Lenders with total assets of more than \$28 million, and for-profit mortgage brokers with total assets of more than \$10 million, need to compile origination data and make it available to the public.

The data includes:

- the type and purpose of the mortgage;
- the owner-occupancy status of the real estate securing the mortgage;
- the amount of the mortgage;
- the action taken by the lender on the application;
- the sex, race and national origin of the mortgage applicant; and
- the income of the mortgage applicant.³

The data is grouped according to census tracts to determine the lender's activity within the tract.⁴

Lender exemptions

Lenders are exempt from HMDA disclosure requirements if:

- the lender does not have a branch office in a *metropolitan statistical area (MSA)*;
- the lender's assets on the preceding December 31 totaled less than \$28 million.⁵

For-profit mortgage brokers are exempt from HMDA disclosure requirements if on the preceding December 31:

- the mortgage broker did not have a branch office in a MSA; or
- the mortgage broker's assets totaled less than \$10 million and they originated less than 100 home purchase mortgages in the preceding year.⁶

Regardless of exemptions, all lenders approved by the *Department of Housing and Urban Development (HUD)* are to report to HUD and disclose the census tract information on all *Federal Housing Administration (FHA)* mortgages they originate.⁷

The data is compiled by the **Federal Financial Institutions Council** into a *disclosure statement* sent to the lender.⁸

³ 12 Code of Federal Regulations §1003.4(a)

⁴ 12 USC §2803(j)(2)(C)

⁵ 12 CFR §1003.3(a)(1)

⁶ 12 CFR §1003.3(a)(2)

⁷ HUD Mortgagee Letter 94-22

⁸ 12 CFR §1003.5(b)

The disclosure statement is required to be posted in a conspicuous location in the lender's office where it is readily accessible to the public. The disclosure is posted for a minimum of five years.⁹

On request from any member of the public, the lender is to make available a copy of the disclosure statement data.¹⁰

Lenders who regularly originate residential mortgages who do not report to a federal or state regulatory agency are to compile data on the number and dollar amount of mortgage originations for each fiscal year. This includes both actual originations and completed mortgage applications.¹¹

State regulated lenders who fall into this category include:

- insurers;
- mortgage bankers;
- investment bankers; and
- credit unions that do not make federally related mortgages.

The data is first categorized by geographical area, then by census tract. For each census tract, mortgage originations are grouped according to:

- FHA and Veterans Administration (VA) mortgage originations on owner-occupied, one-to-four unit dwellings;
- conventional purchase-assist mortgage originations on owner-occupied, one-to-four unit dwellings;
- home improvement mortgage originations on owner-occupied, one-to-four unit dwellings; and
- home improvement mortgage originations on occupied, one-to-four unit dwellings not occupied by the owner.¹²

California regulated lenders exempt from mortgage origination disclosures are:

- lenders whose originations of purchase-assist mortgages totaled less than 10% of the lender's mortgage volume during the current reporting year; and
- licensed real estate brokers who negotiate or arrange purchase-assist and home improvement mortgages.¹³

Federally regulated lenders are subject to investigation and penalties by federal authorities.¹⁴

California state regulated lenders

Monitoring federally regulated lenders

⁹ 12 USC §§2803(a)(2), 2803(c)

¹⁰ 12 USC §2803(a)(1)

¹¹ 21 Calif. Code of Regulations §7118(a)

¹² 21 CCR §7118(b)(2)

¹³ 21 CCR §7121

¹⁴ 12 USC §2803(h)

While disclosure of mortgage statistics helps to identify lending patterns, mortgage statistics alone are not sufficient to determine whether a lender is unlawfully practicing *redlining* or other discriminatory practices. [See Chapter 9]

debt-to-income (DTI) ratio
Percentage of monthly gross income that goes towards paying debt.

The mortgage statistic disclosures may be relevant when considered in conjunction with other evidence. This includes the *credit histories* of denied mortgage applicants and their **debt-to-income (DTI) ratios**.¹⁵

¹⁵ HUD Mortgagee Letter 94-22

Chapter 11 Summary

The federal Home Mortgage Disclosure Act (HMDA) prevents lending discrimination and unlawful redlining practices on residential or home improvement mortgages. The HMDA requires lenders to disclose information on their home mortgage originations to the public.

State and federally regulated banks are to maintain data on the type of mortgages they originate, the amount, the occupancy status of the real estate, the action taken by the lender on the application, and demographic information about the applicant.

This data is categorized by mortgage type, geographical area and census tract. It is then compiled into a disclosure statement which lenders are to post publically. These disclosures help identify lending patterns and prevent lending discrimination.

Chapter 11 Key Terms

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HUD advertising guidelines for sales and rentals

After reading this chapter, you will be able to:

- recognize the types of advertising considered discriminatory under the Federal Fair Housing Act (FFHA);
- use the Department of Housing and Urban Development (HUD) guidelines to avoid discriminatory preferences in advertising; and
- understand the consequences of failing to follow HUD advertising guidelines.

dwelling

Federal Fair Housing Act (FFHA)

For a further discussion of this topic, see *Fair Housing* Chapter 11 of *Agency, Fair Housing, Trust Funds, Ethics and Risk Management*.

The printing or publishing of an advertisement for the sale or rental of residential property that indicates a wrongful *discriminatory preference* is a violation of the **Federal Fair Housing Act (FFHA)**.¹ [See Chapter 7]

A property sold or leased for residential occupancy is referred to as a **dwelling**. The discriminatory preference rule applies to all brokers, developers and landlords in the business of selling or renting a *dwelling*.²

Real estate advertising guidelines are issued by the *Department of Housing and Urban Development (HUD)*. The guidelines are the criteria by which

¹ 42 United States Code §3604(c)

² 42 USC §§3603, 3604

Chapter 12

Learning Objectives

Key Terms

Avoiding discrimination in advertising

Federal Fair Housing Act (FFHA)

A collection of policies designed to prevent discrimination in the access to housing based on an occupant's inclusion in a protected class.

dwelling

A building occupied or designed to be occupied as a residence by one or more families.

Marketing real estate for sale or rent

HUD determines whether a broker has practiced or will practice wrongful discriminatory preferences in their advertising and availability of real estate services.

HUD guidelines also help the broker, developer, and landlord avoid signaling preferences or limitations for any group of persons when marketing real estate for sale or rent.

The selective use of words, phrases, symbols, visual aids and media in the advertising of real estate may indicate a wrongful *discriminatory preference* held by the advertiser. When published, the preference can lead to a claim of discriminatory housing practices by a member of the protected class.

Words in a broker's real estate advertisement that indicate a particular race, color, sex, sexual orientation, handicap, familial status or national origin are considered violations of the FFHA.

To best protect themselves, a broker refuses to use phrases indicating a wrongful preference, even if requested by a seller or landlord. Words or phrases indicating a preference in violation of the rights of persons from protected classes include:

- white private home;
- Jewish (or Christian) home;
- black home;
- Hispanic neighborhood; or
- adult building.

Preferences are often voiced in prejudicial colloquialisms and words such as *restricted, exclusive, private, integrated or membership approval*.

Indicating a preference by age is an **exclusion** from unlawful age discrimination when marketing qualified 55-or-over residences or communities. [See Chapter 7]

Selective stereotypical use of *media* or *human models* in an advertising campaign can also lead to discrimination against minority groups.

The HUD fair housing poster

The HUD issues guidelines that require real estate brokers selling or renting single family residences to display a *fair housing poster*.³

The fair housing poster is available at any HUD office.⁴

The broker marketing dwellings for sale or rent is to display the fair housing poster:

- in the broker's place of business; and

³ 24 CFR §§110.1, 110.10

⁴ 24 CFR §110.20

- at any dwelling offered for sale, other than SFRs.⁵

Thus, a broker holding an open house at a SFR listed for resale is not required to display the fair housing poster at the residence.

However, if a dwelling is marketed as part of a residential development, the fair housing poster is to be displayed by the developer during construction of the development. Later, the poster is to be displayed in the model dwellings whether or not the dwellings are sold through a broker.⁶

The fair housing poster is to be placed where they can be easily seen by any persons seeking to:

- engage the services of the broker to list or locate a dwelling; or
- purchase a dwelling in a residential development.⁷

Even though it is required, a broker will not be subject to any penalties for failing to display the **fair housing poster**. However, failure to display the fair housing poster is initially considered sufficient evidence in a lawsuit to show that a broker practiced discriminatory housing practices.⁸

Also, a real estate broker and their agents who follow HUD advertisement guidelines and display the fair housing poster is less likely to practice a discriminatory activity.

The fair housing poster openly assures potential sellers/landlords and buyers/tenants the broker does not unlawfully discriminate in the services offered.

Also, the broker following HUD advertising and poster guidelines is in a better position to defend themselves against a fair housing lawsuit. Use of the fair housing poster indicates to the public the broker's invitation to work with all individuals.

Failure to follow HUD guidelines

⁵ 24 CFR §110.10(a)

⁶ 24 CFR §§110.10(a)(2)(ii), 110.10(a)(3)

⁷ 24 CFR §110.15

⁸ 24 CFR §110.30

Chapter 12 Summary

Printing or publishing the sale or rental of a dwelling indicating a discriminatory preference is a violation of the Federal Fair Housing Act (FFHA). This includes the selective use of words and phrases in the advertising of real estate. This rule applies to brokers and agents, developers and landlords.

The Department of Housing and Urban Development (HUD) provides guidelines controlling advertisements for dwellings. HUD also publishes a fair housing poster which is to be displayed, when offering a dwelling for rent or sale, in the place of business of brokers, agents, developers and landlords and the dwelling offered, except for single family homes other than those offered by developers.

Licensees following HUD advertising and poster guidelines are in a better position to defend themselves against a fair housing lawsuit.

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