Fair Lending/Nondiscrimination Policy and Procedures

POLICY STATEMENT

The board of directors, management, and staff of [*insert the name of your credit union*] are committed to the practices of fair lending. It is the policy of this credit union to make credit products available to all applicants who meet our business focus in a fair and consistent manner within the confines of safe and sound practices.

[*Insert the name of your credit union*] does not discriminate against any credit applicant on the basis of race, color, religion, national origin, marital status, age (providing the applicant is of legal age and has the capacity to enter into a binding legal contract), sex, disability, familial status, receipt of public assistance, or if the individual has exercised in good faith any right under the Consumer Credit Protection Act, or on any other prohibited basis.

[*Insert the name of your credit union*] complies with all fair lending laws and regulations, including the Equal Credit Opportunity Act (ECOA), the Home Mortgage Disclosure Act (HMDA), the Fair Credit Reporting Act (FCRA), and the Fair Housing Act (FHAct).

The courts have recognized three methods of identifying lending discrimination under the ECOA and the FHAct:

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

DISPARATE TREATMENT

The existence of illegal disparate treatment may be established either by statements revealing that a lender explicitly considered prohibited factors (overt evidence) or by differences in treatment that are not fully explained by legitimate nondiscriminatory factors (comparative evidence).

Overt Evidence of Disparate Treatment. There is overt evidence of discrimination when a lender openly discriminates on a prohibited basis.

There is overt evidence of discrimination even when a lender expresses — but does not act on — a discriminatory preference:

Disparate treatment may more likely occur in the treatment of applicants who are neither clearly well-qualified nor clearly unqualified. Discrimination may more readily affect applicants in this middle group for two reasons. First, if the applications are “close cases,” there is more room and need for lender discretion. Second, whether or not an applicant qualifies may depend on the level of assistance the lender provides the applicant in completing an application. The lender may, for example, propose solutions to credit or other problems regarding an application, identify compensating factors, and provide encouragement to the applicant. Lenders are under no obligation to provide such assistance, but to the extent that they do, the assistance must be provided in a nondiscriminatory way.

The foregoing is an example of disparate treatment of similarly situated applicants, apparently based on a prohibited factor, in the amount of assistance and information the lender provided.

If a lender has apparently treated similar applicants differently on the basis of a prohibited factor, it must provide an explanation for the difference in treatment. If the lender's explanation is found to be not credible, the agency may find that the lender discriminated.

Redlining is a form of illegal disparate treatment in which a lender 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 or will reside or in which the residential property to be mortgaged is located. Redlining may violate both the FHAct and the ECOA.

Disparate Impact

When a lender applies a racially or otherwise neutral policy or practice equally to all credit applicants, but the policy or practice disproportionately excludes or burdens certain persons on a prohibited basis, the policy or practice is described as having a "disparate impact."

The fact that a policy or practice creates a disparity on a prohibited basis is not alone proof of a violation. If a lender's policy or practice has is found to have disparate impact, the next step is to seek to determine whether the policy or practice is justified by "business necessity." The justification must be manifest and may not be hypothetical or speculative. Factors that may be relevant to the justification could include cost and profitability. A policy or practice that has a disparate impact on a prohibited basis, but is justified by business necessity, may still be found to be in violation if an alternative policy or practice could serve the same purpose with less discriminatory effect. Finally, evidence of discriminatory intent is not necessary to establish that a lender's adoption or implementation of a policy or practice that has a disparate impact is in violation of the FHAct or ECOA.

Our credit union will institute policies and procedures to ensure that we do not engage in any discriminatory practice when dealing with loan applicants.

Furthermore, when collecting or modifying loans or when dealing with consumer's in foreclosure, the board directs management to ensure that we conduct these activities without discriminatory practices against a protected class.

Specifically the credit union will refrain from the following practices, which may be perceived as discriminatory in nature:

- Failing to provide information or services, or providing different information or services to applicants in any aspect of the lending process, including credit availability, application procedures, or lending standards;

- Discouraging or selectively encouraging applicants with respect to inquiries about or applications for credit;

- Refusing to extend credit or using different standards in determining whether to extend credit to applicants based on a prohibited basis;

- Refusing to extend credit or using different standards in determining whether to extend credit to applicants based solely on whether they have placed a fraud or military alert on their credit bureau report;

- Varying the terms of credit offered, including the amount, interest rate, duration, or type of loan based on a prohibited basis;

- Using different standards to evaluate collateral offered by applicants based on a prohibited basis;

- Treating any borrower differently in servicing a loan or invoking default remedies;

- Using different standards for pooling or packaging a loan in the secondary market based on a prohibited basis; or

- Steering borrowers to a particular loan based on the compensation that will be received by the loan originator.

FAIR LENDING COMPLAINTS

The [*insert the name of your credit union*] takes any complaint about its fair lending practices seriously. If any credit union employee or the National Credit Union Administration (NCUA) receives a fair lending complaint, the policy of the credit union is to take the following steps:

- The credit union will act on oral or written complaints immediately. All complaints will be referred to [*insert the name and/or title of the person responsible for fair lending compliance at your credit union*].

- The credit union will forward a letter to the member and, if appropriate, the NCUA, acknowledging the complaint and noting that a formal response will be forthcoming.

- The compliance officer or his or her designee will thoroughly review and investigate complaints.

- The compliance officer will maintain complete documentation concerning the complaint and the results of the credit union's investigation.

- When the investigation is complete, the credit union will send a letter to the member and, if appropriate, the NCUA, revealing the results of its investigation.

- If the situation indicates a significant error on the part of the credit union, monetary shortage to the member, or any other error affecting the member, a credit union officer will call the member, explain the situation, offer apologies, and request a meeting to discuss any corrective action and/or compensation for harm caused.

- The credit union will handle each complaint fairly and consistently and within the time frames prescribed by law, or within 30 days of the day the credit union received the complaint from the member or the NCUA, whichever is earlier.

The compliance officer or designee will maintain a log concerning fair lending complaints and will report to the board on a quarterly basis concerning the complaints and detailing the subject matter, results of the investigation, and resolution of each complaint.

If an investigation or self-testing program discovers practices that may be discriminatory, the credit union will determine the cause and take appropriate corrective action. This action may include but is not limited to the following:

- Identifying members whose applications may have been inappropriately processed, offering to extend credit if they were improperly denied, compensating them for any damages, both out-of-pocket and compensatory, and notifying them of their legal rights;

- Correcting any institutional policies or procedures that may have contributed to the discrimination

- Identifying, and then training and/or disciplining, the employees involved;
- Considering the need for community outreach programs and/or changes in marketing strategy or loan products to better serve minority segments of the lender's market; and
- Improving audit and oversight systems to ensure that there is no recurrence of the discrimination.

COMPENSATION PRACTICES, LOAN PRICING, AND ANTI-STEERING RULES

Our credit union will follow the compensation rules for mortgage loan originators set forth in Regulation Z at 12 CFR 1026.36. We will not pay loan originators, as defined in the regulation, based on the terms and conditions of the loan. We will also ensure that when the consumer pays the loan originator directly we will not also pay the loan originator any compensation.

The board directs management to implement procedures to ensure that we have a compensation policy in place for employees who are originators, brokers, and broker companies that is in compliance with Regulation Z.

Mortgage loan officers may not steer consumers to products that will pay them a higher commission. We will follow the rules in Regulation Z at 12 CFR 1026.36(e) regarding the anti-steering rules. Loan officers may enjoy a safe harbor if they offer consumers a product with the following features for each type of transaction in which the consumer expresses an interest:

- The lowest interest rate for which the consumer qualifies;
- The lowest points and origination fees; AND
- The lowest rate for which the consumer qualifies for a loan with no risky features, such as a prepayment penalty, negative amortization, or a balloon payment in the first seven years.

Loan originators may present up to three but not more than four loans per type of transaction. Type of transaction means fixed-rate loans, variable-rate loans, or reverse mortgages.

Loan Pricing

The credit union may price its loans based on risk and, in some cases, business necessity. If so, we will provide the risk-based pricing disclosures, as appropriate, that are required by the FCRA and its implementing regulations. The credit union will review its pricing policy in all lending divisions periodically and monitor pricing practices by each loan division to ensure that its pricing policies do not discriminate against any loan applicant on the basis of race, color, religion, national origin, marital status, age (providing the applicant is of legal age and has the capacity to enter into a binding legal contract), sex, disability, familial status, receipt of public assistance[1], or if the individual has exercised in good faith any right under the Consumer Credit Protection Act, or on any other prohibited basis. The responsibility for testing the effect of our pricing and reporting the results of such tests to the [*insert the name of the corporate committee (e.g., audit committee or compliance committee) or board of directors*] lies with the [*insert the name and title of the appropriate credit union officer (e.g., compliance officer, internal auditor, external auditor, or consultant)*].

---

[1] Public assistance may include (but is not limited to) benefits or income from the following programs: Supplemental Nutrition Assistance Program, Rent Supplement, Rental Housing Assistance, Supplemental Security Income, Unemployment Benefits, Temporary Assistance to Needy Families, and any other program income or benefits which may be commonly encountered.

NONTRADITIONAL MORTGAGE PRODUCTS

[*Insert this section if your credit union offers these products*.]

Our credit union offers a variety of mortgage products and some may be covered by the *Interagency Guidance on Nontraditional Mortgage Product Risks*. The products covered by the guidance include "interest-only" mortgages and "payment option" adjustable-rate mortgages. This includes all interest-only products and negative amortization mortgages, with the exception of home equity lines of credit.

Communications with Consumers

When promoting or describing nontraditional mortgage products, the credit union should provide consumers with information that is designed to help them make informed decisions when selecting and using these products.

When a consumer/member makes an inquiry to our mortgage staff about our products and we respond with information that includes nontraditional products, we will offer clear and balanced information so that the consumer/member can make an informed choice. All of our communication with the member will be guided by the *Interagency Guidance on Nontraditional Mortgage Product Risks* and the *Illustrations of Consumer Information for Nontraditional Mortgage Product Risks*, as adopted by the agencies.

Promotional Materials and Product Descriptions

Promotional materials and other product descriptions should provide information about the costs, terms, features, and risks of nontraditional mortgages that can assist consumers in their product selection decisions, including information about:

- Payment shock
- Prepayment penalties
- Cost of reduced documentation loans

Practices to Avoid

The board directs management to avoid any practice or policy that will obscure significant risk to the consumer. For example, if we advertise or promote a nontraditional mortgage by emphasizing the comparatively lower initial payments permitted for these loans, we should also provide clear and comparably prominent information alerting the consumer to the risks. The agencies have issued several booklets to assist consumers when choosing loan products at this website: http://www.federalreserve.gov/consumerinfo/default.htm. Management should consider using this information to help educate our members.

THIRD-PARTY PROVIDERS

In connection with its lending function, [*insert the name of your credit union*] identifies the following internal and external partners:

- Internal Partners
  - — [*Insert the name of holding company subsidiaries such as a finance company, mortgage company, or affiliate credit unions*]

— [*Insert the name of credit union subsidiaries that may make loans or take applications for loans*]

- External Partners

  — [*Insert all providers of loan services, including appraisers, attorneys, insurance providers, settlement service providers, or any other loan servicer that may have contact with your members or provide a service to them*]

  — [*Insert the names of all dealers and loan brokers including those dealers from whom you only receive referrals for direct loans*]

  — [*Insert the names of any marketing consultants or advertising agencies you may use to promote credit union loans*]

It is the policy of [*insert the name of your credit union*] to require third-party partners to adhere to the credit union's fair lending policy. To ensure that the credit union's partners are aware of the credit union's policies, the credit union will provide them with its nondiscrimination policy statement in writing before entering into a business relationship. (See Appendix A to this policy.) Furthermore, the credit union will request an affirmative statement from each partner that the partner has nondiscriminatory policies and procedures in place. In some cases, depending on the extent of the relationship, the credit union will review the partner's policies and procedures related to pricing, application procedures, marketing, and compensation. Each lending department manager is responsible for sending the credit union's policy statement to the third parties that his or her department does business with. The compliance officer is responsible for reviewing, when appropriate, the policies and procedures of third parties as they relate to fair lending.

With respect to nontraditional mortgage loans that the credit union makes, purchases, or services using a third party, such as a mortgage broker, correspondent, or other intermediary, the credit union should take appropriate steps to mitigate risks relating to compliance and consumer information concerns discussed in the *Interagency Guidance on Nontraditional Mortgage Product Risks.*

These steps would ordinarily include, but not be limited to:

- Conducting due diligence and establishing other criteria for entering into and maintaining relationships with such third parties

- Establishing criteria for third-party compensation designed to avoid providing incentives for originations inconsistent with this guidance

- Setting requirements for agreements with such third parties

- Establishing procedures and systems to monitor compliance with applicable agreements, credit union policies, and laws

- Implementing appropriate corrective actions in the event that the third party fails to comply with applicable agreements, credit union policies, or laws

TRAINING

It is the policy of [*insert the name of your credit union*] to train all employees of the credit union and the board of directors on fair lending at least once a year. The following employees will receive in-depth training:

- Mortgage loan originator, underwriters, and support staff

- Retail lenders and support staff
- Commercial lenders and support staff
- Senior management

The credit union may also include third parties in its annual fair lending training or conduct special training, depending on the relationship. The compliance officer will conduct such training and keep appropriate records.

The board of directors approved and adopted this policy on ________________________.

APPENDIXES

Appendix A

January 6, 2XXX

John Doe
President and Owner
ABC Car Dealer
123 Main St.
Anytown, New York 10556-5670

Dear Mr. Doe:

This letter is to inform you of [*insert the name of your credit union*] nondiscrimination policy.

The board of directors, management, and staff of [*insert the name of your credit union*] is committed to the practices of fair lending. It is the policy of this credit union to make credit products available to all applicants who meet our business focus in a fair and consistent manner within the confines of safe and sound practices.

[*Insert the name of your credit union*] does not discriminate against any credit applicant on the basis of race, color, religion, national origin, marital status, age (providing the applicant is of legal age and has the capacity to enter into a binding legal contract), sex, disability, familial status, receipt of public assistance, or if the individual has exercised in good faith any right under the Consumer Credit Protection Act, or on any other prohibited basis.

The credit union expects its business partners to adhere to the credit union's fair lending policy and to conduct themselves in a nondiscriminatory manner throughout the lending process. The credit union's policy extends to application procedures, pricing of loans or services, marketing practices, closing procedures, and compensation programs.

The board of directors, management, and staff of [*insert the name of your credit union*] encourage you to contact us with any questions about this policy and invite you and your staff to attend the credit union's annual fair lending training session.

Sincerely,

[*Insert the name and title of the appropriate credit union officer*]