



## Federal Housing Finance Agency Division of Public Interest Examinations

### ADVISORY BULLETIN

#### AB 2024 - 07: FHLBank Fair Lending and Fair Housing Compliance

#### Purpose

FHFA’s Division of Public Interest Examinations (DPIE) conducts the Federal Home Loan Bank (FHLBank) fair lending and fair housing<sup>1</sup> examinations program, led by the Office of Consumer Protection (“OCP”). The purpose of this Advisory Bulletin (AB) is to provide FHFA’s supervisory expectations and guidance to the FHLBanks on fair lending compliance. FHFA considers ensuring FHLBank compliance with fair lending laws part of FHFA’s obligation to affirmatively further the purposes of the Fair Housing Act in its program of regulatory and supervisory oversight over the FHLBanks and its responsibility to ensure the FHLBanks comply with all applicable laws.<sup>2</sup>

#### Background

Federal fair lending laws that apply to the FHLBanks include:

- Fair Housing Act – 42 U.S.C. 3601 et seq.
  - Discriminatory Conduct Under the Fair Housing Act – 24 CFR part 100
- Equal Credit Opportunity Act (ECOA) – 15 U.S.C. 1691 et seq.
  - Equal Credit Opportunity Act (Regulation B) – 12 CFR part 1002

FHFA’s regulation on fair lending, fair housing, and equitable housing finance plans codified FHFA’s fair lending, fair housing, and unfair or deceptive acts or practices oversight of the FHLBanks and Enterprises.<sup>3</sup> FHFA’s fair lending policy statement generally articulates its policy on fair lending and how it uses its authorities to ensure compliance with fair lending laws.<sup>4</sup> In certain circumstances, FHFA provides notification to the Department of Housing and Urban Development (HUD) and the Department of Justice (DOJ) of information that suggests a violation of the Fair Housing Act or that indicates a possible pattern or practice of discrimination in violation of the Fair

<sup>1</sup> References to “fair lending” throughout this document typically include both fair lending and fair housing.

<sup>2</sup> 12 U.S.C. 4511(b)(2), 42 U.S.C. 3608(d). *See also* 12 CFR Part 1293.

<sup>3</sup> 12 CFR Part 1293.

<sup>4</sup> 86 FR 36199, available at <https://www.govinfo.gov/content/pkg/FR-2021-07-09/pdf/2021-14438.pdf> (“FHFA Fair Lending Policy Statement”).

Housing Act.<sup>5</sup> The FHLBanks play a unique and important role in the secondary mortgage market, and FHFA expects that their operations and policies will promote fair lending compliance and further the purposes of fair lending laws and the public interest in the primary mortgage market.

## Guidance

Each FHLBank must comply with all applicable fair lending laws in its operations. FHFA expects each FHLBank to maintain a fair lending program that effectively identifies, assesses, monitors, and mitigates fair lending risk and prevents the FHLBank from violating fair lending laws. FHFA encourages each FHLBank to affirmatively further the purposes of the Fair Housing Act, including promoting fair lending compliance among its members and counterparties while furthering its public purposes in the mortgage market and within its own activities.

### I. Compliance with Fair Lending Laws

The following section provides general guidance for FHLBank compliance with fair lending laws. It is not intended to provide authoritative or definitive statements of the interpretation of the fair lending laws and is intended to give practical guidance for fair lending compliance with respect to FHLBank operations based on applying all of fair lending laws.<sup>6</sup> The examples provided are general in nature. When determining whether a fair lending violation has occurred, close scrutiny of the facts and law are warranted in all cases. However, even situations where conduct does not rise to the level of illegality with respect to fair lending may raise questions about effective risk management and support for its fair lending program. The fact that an aspect of fair lending law is not covered explicitly in this advisory bulletin should not be construed to mean that FHFA will not enforce that aspect.

#### A. Prohibited Bases

Prohibited bases<sup>7</sup> protected from discrimination under the Federal fair lending laws are:

- Race
- Color
- Religion
- National Origin
- Sex and Sexual Orientation<sup>8</sup>
- Marital Status
- Age
- Receipt of income derived from any public assistance program

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<sup>5</sup> Executive Order 12892, section 2-204, available at: <https://www.govinfo.gov/content/pkg/WCPD-1994-01-24/pdf/WCPD-1994-01-24-Pg110.pdf>.

<sup>6</sup> See FHFA Regulation on Fair Lending Oversight and Equitable Housing Finance, 12 CFR Part 1293.

<sup>7</sup> See, e.g., 12 U.S.C. 4545, 15 U.S.C. 1691(a), 42 U.S.C. 3601 *et seq.*

<sup>8</sup> See also [Executive Order 14168](#) (January 20, 2025).

- Exercise, in good faith, of any right under the Consumer Credit Protection Act<sup>9</sup>
- Familial status
- Disability<sup>10</sup>

An FHLBank may not discriminate on a prohibited basis because of the characteristics of:

- An applicant, prospective applicant, or borrower;
- A person associated with an applicant, prospective applicant, or borrower (for example, a co-applicant, spouse, business partner, or live-in aide);
- The present or prospective occupants of the subject property; or
- The characteristics of the neighborhood or other area where the subject property is or may be located.<sup>11</sup>

#### B. Covered FHLBank Activities

FHLBank activities covered by fair lending laws include but are not limited to:

- Purchasing loans secured by residential real estate (including setting terms and conditions for purchase);<sup>12</sup>
- Providing loans, grants, or financial assistance for or secured by residential real estate;<sup>13</sup>
- Participating in credit decisions;<sup>14</sup>
- Selling dwellings (such as through Real Estate Owned (REO) property disposition);<sup>15</sup>
- Advertising, communications, and statements (including among employees);<sup>16</sup>
- Setting standards for appraisals and relying on appraisals in connection with the financing of

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<sup>9</sup> Interference claims are also cognizable under the Fair Housing Act and its implementing regulation. *See* Section H, Retaliation or Interference; *e.g.*, 42 U.S.C. 3617 (“It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by section 3603, 3604, 3605, or 3606 of this title.”); 24 CFR 100.400.

<sup>10</sup> The Fair Housing Act uses the term “handicap” instead of the term “disability.” Both terms have the same legal meaning. *See Bragdon v. Abbott*, 524 U.S. 624, 631 (1998) (noting that the definition of “disability” in the Americans with Disabilities Act is drawn almost verbatim “from the definition of ‘handicap’ contained in the Fair Housing Amendments Act of 1988”). This AB uses the term “disability,” which is more generally accepted.

<sup>11</sup> *See, e.g.*, 12 CFR 1002, Official Interpretations, comment 2(z)-1; 24 CFR part 100.70(a).

<sup>12</sup> *See, e.g.*, 24 CFR 100.125.

<sup>13</sup> *See, e.g.*, 41 U.S.C. 3605, 24 CFR 100.110, 100.120. This includes grants or subsidized advances issued under the FHLBanks’ Affordable Housing Programs (12 CFR Part 1291), Community Investment Programs (12 CFR Part 1292), Community Investment Cash Advance Programs (12 CFR Part 1292), and voluntary programs, and FHLBank collateralized advances (12 CFR Part 1266).

<sup>14</sup> *See, e.g.*, 12 CFR 1002, Official Interpretations, comment 2(l)-1.

<sup>15</sup> *See, e.g.*, 24 CFR 100.60.

<sup>16</sup> *See, e.g.*, 24 CFR 100.75, 100.75(c)(2).

- any dwelling;<sup>17</sup>
- Making decisions related to loss mitigation in servicing of real estate loans (including establishing standards for such decisions);<sup>18</sup>
- Pooling residential real estate loans;<sup>19</sup>
- Establishing policies and procedures for grants and advances, including those made under housing and community investment programs such as the FHLBanks' Affordable Housing Programs (AHP), Community Investment Programs (CIP), Community Investment Cash Advance (CICA) Programs, and voluntary programs, and those not related to dwellings;<sup>20</sup> and
- Those that make housing unavailable.<sup>21</sup>

Evidence establishing discrimination under fair lending laws includes:

- Overt or direct evidence of disparate treatment;
- Comparative or indirect evidence of disparate treatment (including code word or redlining evidence);
- Evidence of disparate impact where the FHLBank did not demonstrate a legitimate business justification;<sup>22</sup> and
- Evidence of disparate impact where the FHLBank did demonstrate a legitimate business justification, but a less discriminatory alternative exists.<sup>23</sup>

Additional types of prohibited discrimination that are relevant in FHLBank fair lending compliance include:

- Discriminatory statements, steering, and discouragement;
- Use of discriminatory appraisals;<sup>24</sup> and
- Discriminatory interference or retaliation.

### C. *Direct and Vicarious Liability*

The Fair Housing Act imposes liability for violations through both direct and vicarious liability,

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<sup>17</sup> See, e.g., 24 CFR 100.135(d)(1).

<sup>18</sup> See, e.g., 24 CFR 100.130(b)(3); see also [Federal Reserve CA 09-13](#) (Dec. 4, 2009) (ECOA guidance for loss mitigation under HAMP program).

<sup>19</sup> See, e.g., 24 CFR 100.125(b)(2), (3).

<sup>20</sup> See, e.g., 24 CFR 100.120; 12 CFR Part 1002; 12 CFR Part 1291; 12 CFR Part 1292.

<sup>21</sup> See, e.g., 24 CFR 100.70(b).

<sup>22</sup> See, e.g., 24 CFR 100.500(b); see also [OCC Fair Lending Handbook](#) at 114 (January 2023) (“The legal doctrine of disparate impact provides that the policy or criterion that causes the impact must be justified by a valid or legitimate business need if the [regulated entity] is to avoid a violation. For example, the rationale generally is not clear for basing credit decisions on such factors as location of residence, income level (per se, rather than relative to debt), or accounts with a finance company.”).

<sup>23</sup> See, e.g., 24 CFR 100.500(b); see also [OCC Fair Lending Handbook](#) at 114 (January 2023). Viable less discriminatory alternatives do not impose materially greater costs or burdens on the FHLBank.

<sup>24</sup> See, e.g., 24 CFR 100.135.

including the conduct of employees and agents and third parties in certain circumstances.<sup>25</sup>

An FHLBank is directly responsible for a fair housing violation resulting from its own conduct, and vicariously responsible for a fair housing violation that results from the conduct of its agents and employees, regardless of whether the FHLBank knew or should have known of the conduct of its agents and employees, consistent with agency law.<sup>26</sup>

An FHLBank is also responsible when it fails to take prompt action to correct and end a fair housing violation in certain circumstances, including:

- Such a violation by the FHLBank’s employee or agent where the FHLBank knew or should have known of the discriminatory conduct; and
- Such a violation by a third party, where the FHLBank knew or should have known of the discriminatory conduct and had the power to correct it, depending on the extent of the FHLBank’s control or other legal responsibility an FHLBank may have with respect to the third party’s conduct.<sup>27</sup>

#### D. Disparate Treatment

Disparate treatment occurs when an FHLBank treats a borrower or property differently based on one of the prohibited bases. It does not require any showing that the treatment was motivated by prejudice or a conscious intention to discriminate beyond the difference in treatment itself. Disparate treatment may be more likely to occur in the treatment of borrowers or properties that are neither clearly well-qualified nor clearly unqualified or where discretionary processes are present.

The existence of disparate treatment may be established either by statements revealing that an FHLBank explicitly considered prohibited factors (overt or direct evidence), or by differences in treatment that are not fully explained by legitimate nondiscriminatory factors (comparative evidence). Disparate treatment can also be shown through appropriate statistical analysis.

##### 1. Overt or Direct Evidence of Disparate Treatment

There is overt or direct evidence of disparate treatment, without need for inference or comparative evidence, when oral or written statements indicate an FHLBank discriminates on a prohibited basis.<sup>28</sup>

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<sup>25</sup> See, e.g., 24 CFR 100.7.

<sup>26</sup> See, e.g., 24 CFR 100.7(a)(1) and (b) (“A person is vicariously liable for a discriminatory housing practice by the person's agent or employee, regardless of whether the person knew or should have known of the conduct that resulted in a discriminatory housing practice, consistent with agency law.”). The regulation refers to the law of agency and not statutes or regulations administered by the [Federal Housing Finance] Agency.

<sup>27</sup> See, e.g., 24 CFR 100.7(a)(1)(iii).

<sup>28</sup> See, e.g., 1994 Policy Statement on Discrimination in Lending, available at <https://www.govinfo.gov/content/pkg/FR-1994-04-15/html/94-9214.htm>; Federal Financial Institutions Examination Council Interagency Fair Lending Exam Procedures, available at <https://www.ffiec.gov/PDF/fairlend.pdf>.

*Example:* Suppose an FHLBank employee reviews a servicer’s request for loss mitigation on behalf of a borrower. The FHLBank’s policies and procedures require approval by the FHLBank of the borrower’s request and give employees substantial discretion in making loss mitigation decisions and do not include guidance on borrower income from public assistance sources. In the narrative justification for the decision to pursue foreclosure, the employee includes a statement that the borrower’s receipt of Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) evidences an inability to repay the mortgage, without any additional analysis. The FHLBank’s decision and the statement would be a violation because the FHLBank took an adverse action on the basis of a prohibited characteristic, receipt of public assistance income.<sup>29</sup>

## 2. Comparative or Indirect Evidence of Disparate Treatment

If an FHLBank has apparently treated similarly situated borrowers or properties differently on the basis of a prohibited factor, it must provide a legitimate nondiscriminatory explanation for the difference in treatment. If the FHLBank’s explanation is found to be not credible or not applied consistently to similarly situated borrowers or properties, FHFA may find that the FHLBank discriminated.<sup>30</sup>

*Example:* Suppose an FHLBank has two members with similar overall creditworthiness and collateral management practices who have similar maximum borrowing limits. The FHLBank’s guidelines require the FHLBank’s approval for borrowing in excess of a member’s borrowing limit. The first member has a demonstrated record of serving the housing finance needs of all members of its community and lending to all types of neighborhoods. The second member generally originates fewer mortgage loans in Black and Latino neighborhoods in its market area compared to similarly situated peer institutions and has been found to engage in redlining by a court. The FHLBank denies the first member’s request to borrow in excess of the member’s borrowing limit but approves the second member’s request. The FHLBank’s decision does not contain clear reasoning for the difference in treatment. The scenario presents heightened fair lending risk and could give rise to a violation because the FHLBank has treated two similarly situated applicants for an increase in credit differently potentially because of the race of the residents of neighborhoods where the applicant’s collateral is typically located and the FHLBank does not have an adequate justification for the difference in treatment.<sup>31</sup> To mitigate the risk, the FHLBank could monitor redlining risk (including fair lending litigation and enforcement) as part of its compliance management system and provide guidance to members about supporting all communities.

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<sup>29</sup> 15 U.S.C. 1691(a)(2); 12 CFR 1002.2(z), 1002.4(a); *see also* Consumer Financial Protection Bureau, Bulletin 2014-03: Social Security Disability Income Verification (Nov. 18, 2014), *available at* [https://files.consumerfinance.gov/f/201411\\_cfpb\\_bulletin\\_disability-income.pdf](https://files.consumerfinance.gov/f/201411_cfpb_bulletin_disability-income.pdf).

<sup>30</sup> *See, e.g.*, 1994 Policy Statement on Discrimination in Lending, FFIEC Interagency Fair Lending Exam Procedures.

<sup>31</sup> *See* 12 CFR 1002.2(z), comment 2(z)-1. *See also* 12 U.S.C. 1427(j) (requiring a FHLBank’s board of directors to “administer the affairs of the [FHLB]ank fairly and impartially and without discrimination in favor of or against any member”).

### 3. Redlining

Redlining is a form of illegal disparate treatment in which an FHLBank treats borrowers or properties differently because of the race, color, national origin, or other prohibited characteristic(s) of the residents of the area without any legitimate business reason. It may also arise when an FHLBank treats members and/or Participating Financial Institutions (PFIs) differently because of protected characteristics of the populations they serve. It is often shown by overt evidence or comparative evidence of differences in treatment and can be supported by maps showing differences in outcomes for borrowers or properties in neighborhoods with different racial characteristics.<sup>32</sup>

*Example:* Suppose fair lending data analysis reveals an FHLBank’s AHP Homeownership Set-Aside Program grants show a pattern of distribution to support home purchases in majority White neighborhoods, but very limited support for home purchases in majority Black neighborhoods. The FHLBank failed to identify the pattern through monitoring and did not provide guidance to its members on mitigating this fair lending risk. The pattern of distribution may give rise to heightened fair lending and litigation risk. To mitigate the risk, the FHLBank could monitor redlining risk in its program and provide guidance to members about ensuring the grants are used to support all communities.

### 4. Code Word Evidence of Disparate Treatment

Use of certain code words can be evidence of disparate treatment. Whether a code word is evidence of disparate treatment depends on the context, inflection (if spoken), tone of voice (if spoken), custom, and historical usage.<sup>33</sup> Examples of potential code words include describing minority neighborhoods as “crime-ridden,” “inner city” neighborhoods, or lacking “pride of ownership.”<sup>34</sup>

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<sup>32</sup> See, e.g., 1994 Policy Statement on Discrimination in Lending; FFIEC Interagency Fair Lending Exam Procedures; [OCC Fair Lending Handbook](#) at 8 (“Redlining may be established with overt evidence of an intent not to serve certain communities based on the [prohibited basis] characteristics of residents of those communities or by comparative evidence of a [regulated entity’s lending-related activities in minority and nonminority communities.”).

<sup>33</sup> *Ash v. Tyson Foods, Inc.*, 546 U.S. 454, 456 (2006). See *Avenue 6E Investments, LLC v. City of Yuma*, 818 F.3d 493, 506 (9th Cir. 2016) (applying *Ash v. Tyson* standard in a Fair Housing Act case). In general, when analyzing the custom factor, FHFA looks at real estate and mortgage industry standards and practices rather than “local” custom, as suggested by the U.S. Supreme Court in the employment context.

<sup>34</sup> See, e.g., *Toledo Fair Hous. Ctr. v. Nationwide Mut. Ins. Co.*, 704 N.E.2d 667, 674 (Ct. Com.Pl. Ohio 1997) (noting “pride of ownership” as subjective, discriminatory criteria in insurance underwriting); Consent Decree in *United States v. Nationwide Mut. Ins. Co.*, C2-97-291 (S.D. Ohio Mar. 10, 1997), available at <https://www.justice.gov/crt/housing-and-civil-enforcement-cases-documents-367> (banning “pride of ownership” in insurer’s underwriting as discriminatory); *Avenue 6E Investments, LLC v. City of Yuma*, 818 F.3d at 499 (noting “pride of ownership” as discriminatory comment in public opposition to affordable housing development); Uniform Standards of Professional Appraisal Practice, Advisory Opinion 16 (advising appraisers not to use the term “high-crime area” in fair housing advisory opinion



Code word evidence should be carefully evaluated in its full context before drawing conclusions.

*Example:* Suppose an FHLBank creates a [voluntary program](#) to fund grants to eligible affordable housing developers through its members. The program is competitive, and members submit applications for affordable housing developers in their communities, including an optional narrative for the member to further explain why this affordable housing developer is deserving of the grant. Suppose also that one member writes the following narrative for Developer X: “Developer X is great at what they do. They know which areas to avoid and they stick to the low-crime parts of town that show pride of ownership.” The member does not provide a narrative in its applications for other developers. The FHLBank selects Developer X and does not select any other applicants from this member. The FHLBank’s selection presents heightened fair lending risk and could be a violation because it gave preferential treatment to an applicant when there is code word evidence that the applicant discriminates on the basis of the race of the residents of neighborhoods when it chooses sites for development. To mitigate the risk, the FHLBank could review application narratives for language that presents fair lending risk, require its staff to document rationales for their application determinations, and require fair lending training for employees making application determinations.

#### E. Disparate Impact

When a neutral policy or practice disproportionately excludes or burdens certain persons or neighborhoods 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. When a disparate impact is identified, the next step is to determine whether the policy or practice is necessary to achieve one or more substantial, legitimate, nondiscriminatory objectives. Factors that may be relevant to the justification could include cost, profitability, or compliance with legal requirements, among others.<sup>35</sup> Even if a policy or practice that has a disparate impact on a

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from Appraisal Advisory Board). See *Greater New Orleans Fair Hous. Action Ctr. v. St. Bernard Parish*, 641 F.Supp.2d 563, 571–72 (E.D.La.2009) (finding references to crime “racially-loaded”); *Atkins v. Robinson*, 545 F. Supp. 852, 874 (E.D.Va.1982) (reference to “an abundance of crime” “may be interpreted as [a] veiled reference[ ] to race”); *Pierce v. Metropolitan Liability & Property Ins. Co.*, 1983 U.S. Dist. LEXIS 11368, \*18 (S.D. Ohio 1983) (“This report stated, in part, that the Plaintiffs' house was located in an area where there were a number of vacant or run-down houses, that the area of Plaintiffs' residence was located in a center city with a high frequency of reports of crime and vice. Based upon these facts, one could infer that Plaintiffs' house was located in a predominantly minority area.”); *Barrick Realty, Inc. v. City of Gary*, 354 F. Supp. 126 (N.D. Ind. 1973) (“Among the fears of white residents as non-whites begin to move into their neighborhood are rising crime rates, overcrowded schools, declining property values, and a generally lower quality of life.”).

<sup>35</sup> See, e.g., 24 CFR 100.125(c) (“This section does not prevent consideration, in the purchasing of loans, of factors justified by business necessity, including requirements of Federal law, relating to a transaction’s financial security or to protection against default or reduction of the value of the security. Thus, this provision would not preclude considerations employed in normal and prudent transactions, provided that no such factor may in any way relate to race, color, religion, sex, handicap, familial status or national



prohibited basis can be justified by a legitimate nondiscriminatory objective, the policy or practice still may be found to violate the Fair Housing Act if an alternative policy or practice could serve the legitimate nondiscriminatory interests by another practice with less discriminatory effect. Evidence of discriminatory intent is not necessary to establish a violation based on disparate impact. Appropriate statistical analysis is usually necessary to evaluate whether a policy creates a disparity and may also be relevant in assessing justification and potential less discriminatory alternatives.<sup>36</sup>

A fair lending self-evaluation of a policy or practice, assessing its impact and considering whether potential less discriminatory alternatives would serve the FHLBank's legitimate nondiscriminatory objective, should be part of an effective compliance risk management process, and provide helpful support for concluding that the policy or practice is not a disparate impact violation, especially when evidence indicates that the least discriminatory alternative was adopted.

*Example:* Suppose the FHLBank Mortgage Partnership Finance (MPF) Program changes its Selling Guide to impose a more restrictive maximum loan-to-value (LTV) ratio of 70 percent for one-unit primary residences subject to manual underwriting from a previous policy of 85 percent LTV. The policy change disproportionately excludes loans to Black borrowers from purchase by the FHLBank. The MPF Program and participating FHLBanks do not conduct fair lending analysis of the policy change and do not document a legitimate nondiscriminatory objective for the policy change or an analysis of potential alternatives between 70 percent and 85 percent LTV. This policy presents heightened fair lending risk and could be a violation because it has a disparate impact on a prohibited basis but lacks clear justification. An FHLBank could reduce its risk by documenting the legitimate nondiscriminatory objective for the policy change, conducting statistical analysis of home purchases to understand the potential disparities of the policy change, and searching for less discriminatory alternatives that serve the FHLBank's legitimate nondiscriminatory objective. If a less discriminatory alternative is identified, the FHLBank should implement it.

*Example:* Suppose an FHLBank imposes borrower credit characteristic requirements for single-family loan collateral that include a FICO credit score cutoff of 680. The FHLBank conducts a disparity analysis that shows that the cutoff disproportionately excludes loans to Latino and Black borrowers. The FHLBank documents a business reason for the FICO credit score cutoff but does not search for less discriminatory alternatives that would serve the legitimate nondiscriminatory interests by another practice with less discriminatory effect. This policy would present heightened fair lending risk and could be a violation because, while there is a documented legitimate business reason for the disparate impact, there may be potential less discriminatory alternatives to the policy. To mitigate this risk, the FHLBank could search for less discriminatory alternatives to the policy that would achieve its documented legitimate business reason and implement a less discriminatory alternative if one is found.

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origin.”); [OCC Fair Lending Handbook](#) at 113 (January 2023) (“The fact that a policy has a disparate impact . . . is not enough to establish a violation of fair lending laws and regulations. If the policy or criterion is related to predicting creditworthiness and is used in a way that is commensurate with its relationship to creditworthiness or is obviously related to some other basic aspect of prudent lending, the policy may be legally justified.”).

<sup>36</sup> See, e.g., 24 CFR 100.500, 12 CFR 1002.6(a), 1994 Policy Statement on Discrimination in Lending, FFIEC Interagency Fair Lending Exam Procedures.

*Example:* Suppose an FHLBank provides AHP Homeownership Set-Aside Program funds to members who, in turn, provide the funds as grants of \$30,000<sup>37</sup> per homebuyer to first-time homebuyers with incomes at or below 80 percent of area median income (AMI).<sup>38</sup> The FHLBank also offers a voluntary program with comparable program design elements<sup>39</sup> under which grants of \$50,000 per homebuyer are provided through FHLBank members to first-time homebuyers with incomes between 81-120 percent of AMI. Suppose also that, amongst the FHLBank members participating in these programs, first-time homebuyers with incomes of 80 percent or less of AMI are disproportionately Black or Latino compared with those whose incomes are 81-120 percent of AMI. Suppose the FHLBank did not provide a business justification for the difference in grant amounts under the two programs. The difference in grant amounts between the programs presents heightened fair lending risk and could violate fair lending laws because the difference has a disparate impact on Black and Latino applicants and the FHLBank has not articulated a business justification for the difference. To mitigate this risk, the FHLBank could conduct fair lending analysis to understand what disparities might exist, document the FHLBank's legitimate nondiscriminatory objective, and search for less discriminatory alternatives that serve that legitimate nondiscriminatory objective. If a less discriminatory alternative is identified, the FHLBank should implement it.

#### *F. Discriminatory Statements, Steering, and Discouragement*

Making or publishing advertisements, statements, or notices that indicate a preference, limitation or discrimination on a prohibited basis violates the Fair Housing Act.<sup>40</sup> Such statements could be made to the public, or to FHLBank agents or employees if made as part of a decision-making process.<sup>41</sup> Selecting media or locations for publication or the form of advertisements (such as the repeated absence of non-White models) may also constitute discriminatory advertisements or statements. Whether a statement is a violation does not depend on the intent of the speaker or writer, but on whether a reasonable person would interpret the statement to indicate a preference, limitation, or discrimination.

Unlawful steering also constitutes a violation of the Fair Housing Act.<sup>42</sup> Steering involves restricting or attempting to restrict neighborhood choice by word or conduct to perpetuate segregated housing patterns or discourage or obstruct free neighborhood choice. Examples include statements that discourage home purchases on a prohibited basis by exaggerating the drawbacks or failing to note the desirable features of a home or neighborhood, statements that indicate a person would not be comfortable or compatible with existing neighborhood residents, and not offering consumers the lowest cost product for which they qualify. It is also a violation to make oral or written statements to applicants that would discourage on a prohibited basis a reasonable person from making or pursuing

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<sup>37</sup> [As of January 1, 2025](#), the limit is \$32,099. It is adjusted annually.

<sup>38</sup> See 12 CFR 1291.42.

<sup>39</sup> Program design elements include, e.g., retention agreement requirements.

<sup>40</sup> 24 CFR 100.75. Affirmative marketing meeting certain requirements may be considered an exception to this prohibition. See [I.J., Recognized Exceptions](#).

<sup>41</sup> 24 CFR 100.75(c)(2).

<sup>42</sup> 24 CFR 100.70.

an application for credit.<sup>43</sup>

*Example:* Suppose an FHLBank provides materials to members to help promote usage of its AHP Homeownership Set-Aside Program funds. Suppose that none of the materials include pictures of non-White models, instead featuring only White models. This presents heightened fair lending risk and may be a violation because it can be interpreted to indicate a preference for White recipients of the funds.

#### G. *Reliance on Discriminatory Property Valuation*

It is a Fair Housing Act violation to use a property valuation in connection with the sale or financing of a dwelling when an FHLBank knows or reasonably should know that the property valuation improperly takes into consideration a prohibited basis.<sup>44</sup>

*Example:* Suppose an FHLBank participating in the MPF Program reviews servicers' loan modification exception requests on behalf of mortgage borrowers, including review of individual appraisal reports. An FHLBank employee notices the appraisal includes a statement about the concentration of Black residents in the subject property's neighborhood. The employee notifies their manager, but as the review checklist does not enable them to flag this risk, the manager ignores the statement and the FHLBank accepts the appraisal as part of the loan modification exception review. This would be a violation because the FHLBank nonetheless used the property valuation in connection with the financing of a dwelling when it knew that the appraisal improperly took race into consideration.

#### H. *Retaliation or Interference*

It is a Fair Housing Act violation to coerce, intimidate, threaten, or interfere with any person for having aided or encouraged any other person in the exercise of fair housing rights. This includes such conduct toward FHLBank employees or agents that report fair housing violations to an FHLBank or other authorities including FHFA or who take steps to try to correct such violations.<sup>45</sup>

*Example:* Suppose an FHLBank employee believes a member is violating fair housing laws and seeks to correct the problem by reporting the matter to the member's primary regulator. The employee's manager threatens to reassign the employee to a different practice group if the employee does not immediately drop the matter and reverse the employee's assessment. The manager's conduct would be a violation because the employee engaged in protected activity by trying to uphold fair housing rights and the manager's actions interfered with that activity in circumstances indicating it was motivated by the protected activity.

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<sup>43</sup> 12 CFR 1002.4(b).

<sup>44</sup> 24 CFR 100.135(d)(1). The Fair Housing Act does include a limited exemption for appraisers, who may "take into consideration factors other than race, color, religion, national origin, sex, [disability]. . . , or familial status" regardless of other requirements in the statute. 42 U.S.C. 3605(c).

<sup>45</sup> 24 CFR 100.400.

### I. Reasonable Accommodations

It is a Fair Housing Act violation for an FHLBank to fail to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a person with disabilities equal opportunity to use and enjoy a dwelling unit.<sup>46</sup>

*Example:* Suppose an FHLBank has a program administered by members intended in part to provide homeowners with disabilities with funds to make accessibility modifications to their homes. An applicant requires a particular accessibility modification to his home, but this modification is not on the approved list of accessibility modifications for the program. The applicant cannot effectively use his current home without the modification. The modification would be similar in cost and kind to other modifications on the approved list. The member requests an exception to approve the application and the FHLBank denies it because the specific modification is not on its approved list and does not consider any reasonable accommodation to its policy. The FHLBank's conduct would be a violation because the FHLBank is required to consider reasonable accommodations to its policies when necessary to afford a person an equal opportunity to use and enjoy a dwelling unit.

### J. Recognized Exceptions

There are activities that may appear to be violations of fair lending laws but are recognized exceptions to the laws' prohibitions. If such activities are conducted by an FHLBank according to appropriate legal standards, supervisory action by FHFA would generally not be warranted in these circumstances. These exceptions are discussed below.

#### 1. Special Purpose Credit Programs

The ECOA and Regulation B allow establishment of special purpose credit programs (SPCPs) benefiting applicants who meet certain eligibility requirements. Generally, these programs target an economically disadvantaged class of individuals and are authorized by federal or state law. This could include eligibility requirements involving one or more prohibited bases. The requirements for SPCPs are set forth in Regulation B.<sup>47</sup> Prudent risk management by an FHLBank offering such a program would also counsel good-faith conformity with the Advisory Opinion of the Consumer Financial Protection Bureau (CFPB) in implementation of any SPCP, which would provide liability protection under section 706(e) of ECOA.<sup>48</sup> HUD has confirmed in legal guidance that SPCPs

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<sup>46</sup> See also [Accessibility \(Design and Construction\), Group Homes, Reasonable Accommodation, Service Animals](#).

<sup>47</sup> See 12 CFR 1002.8. See also [Interagency Statement on Special Purpose Credit Programs Under the Equal Credit Opportunity Act and Regulation B](#).

<sup>48</sup> See Advisory Opinion on Special Purpose Credit Programs (Dec. 21, 2020), available at <https://www.consumerfinance.gov/rules-policy/final-rules/advisory-opinion-on-special-purpose-credit-programs/>.

complying with ECOA and Regulation B do not violate the Fair Housing Act,<sup>49</sup> and the DOJ has utilized SPCPs in a remedial settlement agreement that includes the Fair Housing Act.<sup>50</sup> FHFA and other Federal regulators and enforcement agencies further issued an Interagency Statement on Special Purpose Credit Programs that, in part, confirmed that “creditors may consider the use of special purpose credit programs across all types of credit covered by ECOA and Regulation B.”<sup>51</sup>

## 2. Age-Restricted Properties

The Fair Housing Act provides for occupant age-restricted housing under certain circumstances when the housing meets conditions under HUD’s regulations.<sup>52</sup> FHLBank programs that target occupant age-restricted properties meeting Fair Housing Act standards are permissible.

## 3. Affirmative Marketing

Affirmative advertising that attempts to reach members of traditionally disadvantaged groups or to reach persons who are least likely to apply for a program is permissible under the Fair Housing Act and ECOA.<sup>53</sup>

## II. Effective Fair Lending Program

The following section provides general guidance on FHFA’s supervisory expectations for effective FHLBank fair lending programs. This guidance does not affect or supersede other FHFA supervisory guidance on risk management. It is intended to provide practical guidance for implementing legal and regulatory requirements.<sup>54</sup>

FHFA expects each FHLBank to maintain a fair lending program that effectively identifies, assesses, monitors, and mitigates fair lending risk and prevents the FHLBank from violating fair lending laws. Fair lending risk includes violations of fair lending law or conditions that permit the occurrence of fair lending violations, but also issues that subject an FHLBank to reputational harm. In this way, fair lending risk poses both management and operational risks.

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<sup>49</sup> See Office of General Counsel Guidance on the Fair Housing Act’s Treatment of Certain Special Purpose Credit Programs That Are Designed and Implemented in Compliance with the Equal Credit Opportunity Act and Regulation B (Dec. 6, 2021), *available at*: [https://www.hud.gov/sites/dfiles/GC/documents/Special\\_Purpose\\_Credit\\_Program\\_OGC\\_guidance\\_12-6-2021.pdf](https://www.hud.gov/sites/dfiles/GC/documents/Special_Purpose_Credit_Program_OGC_guidance_12-6-2021.pdf).

<sup>50</sup> See, e.g., Settlement Agreement between the United States of America and Kleinbank, May 8, 2018, *available at*: <https://www.justice.gov/opa/press-release/file/1060996/download>.

<sup>51</sup> See Interagency Statement on Special Purpose Credit Programs Under the Equal Credit Opportunity Act and Regulation B (Feb. 22, 2022), *available at*: [https://www.fhfa.gov/sites/default/files/2023-03/spcp\\_interagency\\_statement\\_2022\\_02\\_22.pdf](https://www.fhfa.gov/sites/default/files/2023-03/spcp_interagency_statement_2022_02_22.pdf). See also FHFA AB 2023-06, FHLBank Framework for Pilot and Voluntary Programs (setting forth FHFA requirements for supervision of pilot programs and voluntary programs, including SPCPs).

<sup>52</sup> 24 CFR part 100, subpart E.

<sup>53</sup> 12 CFR 1002.4 comment 4(b)-2.

<sup>54</sup> See 12 CFR Part 1293; FHLBank Fair Lending Baseline Compliance Review Module.

The responsibility for an effective fair lending program goes beyond specific personnel responsible for fair lending compliance. An effective fair lending program requires effective FHLBank board and management oversight and support for the fair lending program and cooperation from business and operational areas at the FHLBank. Clear expectations that operational areas must take steps necessary to implement controls to mitigate fair lending risk and prevent the FHLBank from violating fair lending laws should be underscored by board and management support. The fair lending program should have board and management support in conducting its work free from interference or retaliation.

#### *A. Identifying Fair Lending Risk*

Identifying fair lending risk involves engaging personnel knowledgeable in fair lending, FHLBank activities and business operations, and recurring risk assessment to identify operational areas where fair lending risk may be present. It also involves utilizing available data to conduct fair lending analysis.

#### *B. Assessing Fair Lending Risk*

Assessing fair lending risk involves the assessment of operational areas using both qualitative and quantitative methods as appropriate to accurately assess the amount and nature of the fair lending risk present in an operational area.

#### *C. Monitoring Fair Lending Risk*

Monitoring fair lending risk involves having processes in place to monitor the identification and assessment of fair lending risk in an operational area to ensure that the identification and assessment remain up to date and accurate. It can involve both qualitative assessment of changes in the operational area, as well as regular statistical analysis to monitor fair lending risk.

#### *D. Mitigating Fair Lending Risk*

Mitigating fair lending risk involves creating and supporting a control environment around operational areas where fair lending risk is identified and assessed to effectively mitigate the risk. Fair lending training both at a general level and a specific level for an operational area's specific fair lending risks are an important component of mitigating fair lending risk. Because an FHLBank's responsibility for fair lending extends to its agents and, in some cases, other third parties, third party risk management is also an important component of mitigating fair lending risk. Development and assessment of less discriminatory alternatives in key business areas is an important component of mitigating fair lending risk, as well as preventing the occurrence of fair lending violations.

#### *E. Preventing the FHLBank from Violating Fair Lending Laws*

Preventing the FHLBank from violating fair lending laws is a core component of an effective fair lending program, and failure to do so is an indication that fair lending risk has not been appropriately identified, assessed, and mitigated. Such failure can also indicate an operational area has not adequately implemented controls or taken the steps identified by the fair lending program necessary to mitigate fair lending risk—a broader compliance issue for that operational area and an issue



implicating lack of board and management support for fair lending and oversight of the operations of the FHLBank.<sup>55</sup>

#### F. Cooperation

Cooperation is an important element of an effective fair lending program and a supervisory expectation of FHFA for all FHLBanks. Cooperation is expected of both business and operational areas with respect to the FHLBank's internal fair lending program, as well as with FHFA in conducting fair lending supervision. Cooperation includes the sharing of complete information requested by FHFA in its fair lending supervision. FHFA's policy statement on fair lending encourages FHLBank self-reporting of potential fair lending violations, and FHFA views self-reporting favorably in exercising its supervisory and enforcement discretion.<sup>56</sup>

### III. Fair Lending Risk Factors

Certain risk factors are commonly associated with higher fair lending risk and the existence of conditions under which fair lending violations may occur. FHFA's supervisory expectation is that an effective FHLBank fair lending program will take account of these risks and establish appropriate compliance controls commensurate with the risk presented. Failure to mitigate fair lending risk that occurs because of fair lending risk factors can result in supervisory findings by FHFA depending on the facts and circumstances.

Risk factors commonly associated with higher fair lending risk include:

- Substantial discretion to make decisions on transactions or properties
- Lack of clear policies, procedures, business rules, or decision criteria
- Lack of fair lending training for board, employees, agents, and third parties
- Lack of a robust fair lending model testing framework
- Use of factors in decision-making that are subjective rather than objective
- Use of geographic factors or different treatment of geographies
- Policies impacting outcomes that lack clear business justification
- Policies impacting outcomes that have not undergone review for effectiveness or need for a significant period of time
- Compensation criteria or other incentives that could lead to disparities in outcomes
- Reliance on third parties, including members, without appropriate oversight
- Unreliable or incomplete data
- Consumer complaints
- Employee statements indicating aversion to doing business in certain areas with relatively high concentrations of residents sharing a protected class characteristic

### **Related Guidance and Regulations**

#### I. Federal Fair Housing Fair Lending Laws and Regulations

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<sup>55</sup> See, e.g., 12 CFR Part 1236.

<sup>56</sup> [FHFA Fair Lending Policy Statement](#).

Fair Housing Act – 42 U.S.C. 3601 *et seq.*

Discriminatory Conduct Under the Fair Housing Act – 24 CFR part 100

Equal Credit Opportunity Act – 15 U.S.C. 1691 *et seq.*

Equal Credit Opportunity Act (Regulation B) – 12 CFR part 1002

FHFA Regulation on Fair Lending, Fair Housing, and Equitable Housing Finance Plans – 12 CFR part 1293

## II. FHFA Fair Lending Guidance and Requirements

### [FHFA Fair Lending Policy Statement](#)

## III. Federal Fair Lending Guidance

These resources are issued by Federal agencies related to fair lending matters. They may provide helpful guidance on the application of fair lending laws or examination and investigation procedures and methods in a variety of contexts. While FHFA considers the resources relevant and helpful guidance, the list of resources is not intended to be comprehensive. FHFA carefully considers the full context of the facts and law in any particular matter involving the FHLBanks' fair lending compliance.

### *A. General Federal Fair Lending Guidance*

General guidance from Federal agencies regarding fair lending can provide helpful guidance in particular matters.

[1994 Policy Statement on Discrimination in Lending](#)

[Interagency Fair Lending Exam Procedures](#)

[HUD Fair Housing Act Complaint Intake, Investigation, and Conciliation Handbook](#)

[CFPB ECOA Baseline Review Modules](#)

[OCC Fair Lending Handbook](#)

### *B. Federal Enforcement Actions and Administrative Decisions*

Complaints, administrative opinions, consent orders, and similar actions by Federal agencies that enforce fair lending laws can provide helpful guidance on particular matters.

[DOJ Housing and Civil Enforcement Section Cases](#)

[HUD Administrative Law Judge Fair Housing Act Decisions](#)

[FDIC Enforcement Actions](#)

[Federal Reserve Enforcement Actions](#)

[Office of the Comptroller of the Currency Enforcement Actions](#)

*C. Specific Federal Fair Lending Guidance*

Guidance from Federal agencies regarding specific topics as they relate to fair lending can provide helpful guidance in particular matters.

1. Accessibility (Design and Construction), Group Homes, Reasonable Accommodation, Service Animals

[Accessibility \(Design and Construction\) Requirements for Covered Multifamily Dwellings under the Fair Housing Act](#)

[Assessing a Person's Request to Have an Animal as a Reasonable Accommodation Under the Fair Housing Act \(HUD FHEO-2020-01\)](#)

[Reasonable Accommodations under the Fair Housing Act](#)

[State and Local Land Use Laws and Practices and the Application of the Fair Housing Act](#)

2. Advertising, Discriminatory Statements

[Fair Housing Act Advertising Guidelines \(former 24 CFR part 109\)](#)

[Memorandum on Guidance Regarding Advertisements Under 804\(c\) of the Fair Housing Act](#)

3. Criminal Background Checks

[Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions](#)

4. Limited English Proficiency

[Fair Housing Act Protections for Persons with Limited English Proficiency](#)

5. Low-Income Housing Tax Credit (LIHTC) Properties

[Inter-governmental Agreement on Low-Income Housing Tax Credit Properties](#)

6. Models

[OCC Bulletin 97-24 \(Disparate Treatment and Disparate Impact sections\)](#)

[Consumer Financial Protection Circular 2022-03](#)

7. Occupancy Standards

[Fair Housing Enforcement – Occupancy Standards Notice of Statement of Policy](#)

8. Public Assistance Income

[Section 8 Housing Choice Voucher Homeownership Program \(CFPB Bulletin 2015-02\)](#)

[Social Security Disability Income Verification \(CFPB Bulletin 2014-03\)](#)

9. Real Estate Owned Property

[Questions and Answers for Federal Reserve-Regulated Institutions Related to the Management of Other Real Estate Owned \(OREO\) Assets \(Fair Housing Act portions\)](#)

10. Rental Screening

[Guidance on the Application of the Fair Housing Act to the Screening of Applicants for Rental Housing](#)

11. Special Purpose Credit Programs

[Advisory Opinion on Special Purpose Credit Programs](#)

[HUD Office of General Counsel Guidance on the Fair Housing Act's Treatment of Certain Special Purpose Credit Programs That Are Designed and Implemented in Compliance with the Equal Credit Opportunity Act and Regulation B](#)

[Interagency Statement on Special Purpose Credit Programs Under the Equal Credit Opportunity Act and Regulation B](#)

12. Tribal Housing

[Limiting Housing to Indian Families or Tribal Members \(HUD Notice PIH 2009-4\)](#)

IV. Other Relevant FHFA Guidance

[Appendix to Part 1236, Prudential Management Operating Standards](#)

[AB 2013-03 FHFA Enforcement Policy](#)

[AB 2013-07 Model Risk Management Guidance](#)

[AB 2017-01 Classification of Adverse Examination Findings](#)

[AB 2018-08 Oversight of Third-Party Provider Relationships](#)

[AB 2023-06 FHLBank Framework for Pilot and Voluntary Programs](#)

[AB 2024-03 FHLBank Member Credit Risk Management](#)

[AB 2024-04 FHLBank Climate-Related Risk Management](#)

[AB 2024-06 Unfair or Deceptive Acts or Practices Compliance](#)

FHFA has statutory responsibility to ensure that the regulated entities carry out their missions consistently with the provisions and purposes of FHFA's statute and the regulated entities' authorizing statutes and applicable law. Advisory Bulletins describe supervisory expectations in particular areas and are used in FHFA examinations of the regulated entities. For questions pertaining to this Advisory Bulletin, contact [OCPSubmission@fhfa.gov](mailto:OCPSubmission@fhfa.gov).