



# Recent Developments in Fair Lending Examinations

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- Thresholds for disparate impact edge lower
- Broker pricing comes home
- Credit report fees in the cross-hairs
- The end of overages?

In evaluating an institution for potential discriminatory conduct, the “indicators of potential disparate treatment in loan servicing and loss mitigation” include:

- Lack of clear ***loan file documentation*** for servicing or loss mitigation decisions, granting of policy exceptions, or reasons for fee waivers.
- Weak or non-existent process and controls to ensure ongoing fair lending compliance, including that of ***third-party vendors***
- Lack of clear ***consumer disclosures*** on loss mitigation options available, the costs of each option, and the risks involved.
- Lack of clear procedures for determining a borrower’s ***ability to repay*** when selecting loss mitigation options.

**For HELOC modifications, indicators include**

- Soft or deteriorating market or declining market value determinations ***not considering potential disparate impact/redlining implications.***
- Under Regulation B, limitations regarding ***change*** in marital status, age, or retirement or additional creditworthiness information not considered.
- Market area determinations based on ZIP codes or census tracts rather than ***MSAs*** or larger geographical subdivisions.

- Duration of the process
- Spatial distribution of outcomes
- Dissimilar initial workout options
- Dissimilar modification offers

- Dozens of Potential Data Points
  - Underlying loan origination data
  - “Re-underwriting” of loan in servicing
  - Extent, type and timing of modification/foreclosure
  
- Sample Size – 100%
  
- HAMP Data

- Loss mitigation fair lending exams will be far more complex and painful given discretionary nature of the decisions, lack of clear standards and disaggregated data
- Expect, and prepare now for, loss mitigation fair lending examinations
  - Have a fair lending program for servicing that includes a disparate impact/disparate treatment analyses in addition to fair lending training for loss mitigation personnel
  - Lack of data comparable to originations means more loan file reviews
  - Ensure ability to get the data
- Be aware of greater risks in short sales, deeds in lieu and non-HAMP mods
- Mitigate risk by documenting decisions

## Interagency Fair Lending Examination Procedures, January 2010 (available at [www.occ.treas.gov/handbook/fairlep.pdf](http://www.occ.treas.gov/handbook/fairlep.pdf))

Indicators of potential disparate treatment in **LOAN SERVICING AND LOSS MITIGATION**, such as:

- \*Substantial disparities among loss mitigation servicing options by prohibited basis group characteristic.
- \*Substantial disparities in decision processing times by prohibited basis group characteristic.
- \*Significant disparities in the completion of foreclosure actions once legal process initiated by prohibited basis group characteristic.
- Lack of clear loan file documentation for servicing or loss mitigation decisions, granting of policy exceptions, or reasons for fee waivers.
- Weak or non-existent process and controls to ensure ongoing fair lending compliance, including that of third-party vendors
- Lack of clear guidance on determining appropriate loss mitigation options, making policy exceptions, or granting fee waivers.
- Internal audits, compliance reviews, or monitoring reports identifying significant weaknesses or violations in handling exceptions, fee waivers, incorrect credit reporting agency reporting, or complying with bank policies and procedures.
- Consumer complaints alleging discrimination in servicing or loss mitigation practices.
- High volume of policy exceptions or fee waivers by prohibited basis group characteristic.
- Significant level of litigation alleging discrimination in loan servicing or loss mitigation practices.
- Broad employee discretion in determining loan servicing and loss mitigation actions.
- Employees collecting information, conducting inquiries, or imposing conditions inconsistent with express Regulation B or FH Act requirements.
- Collection practices not based on delinquency status.
- Employee compensation based on workout, loss mitigation, or foreclosure strategy adopted.
- Lack of clear consumer disclosures on loss mitigation options available, the costs of each option, and the risks involved.
- Lack of clear procedures for determining a borrower's ability to repay when selecting loss mitigation options.
- Vague or subjective criteria for property inspections, broker price offers, appraisals, or other valuations.

Indicators of potential disparate treatment in **HELOC MODIFICATIONS**, such as:

- Significant value decline methodology not clearly supported, objectively determined, or consistently applied.
- Process to establish that borrower's financial condition significantly deteriorated beyond ability to repay not reasonable, objectively supportable, or clearly documented.
- Soft or deteriorating market determinations not based on reasonable economic criteria, supportable standards, consistently applied, or clearly documented.
- Soft or deteriorating market or declining market value determinations not considering potential disparate impact/redlining implications.
- Regulation Z, Regulation B, and FCRA adverse action disclosure process, as applicable, is not timely or does not exist.
- Under Regulation B, limitations regarding change in marital status, age, or retirement or additional creditworthiness information not considered.
- Market area determinations based on ZIP codes or census tracts rather than MSAs or larger geographical subdivisions.
- Borrower appeal process on how to initiate an appeal not readily available, consistently provided, or clearly explained.

- Original loan date
- Date of delinquency that triggered the modification or loss mitigation process
- Stage of delinquency (30, 60, 90 days, etc.)
- Date of workout decision (regardless of type – modification, short sale, deed in lieu, etc)
- Foreclosure initiated? Y/N
- Foreclosure referral date
- Foreclosure sale date
- Workout type completed (from following list)
  - No workout or unsuccessful workout
  - Loan modification
  - Repayment plan
  - Deed-in-lieu of foreclosure
  - Short sale
  - FHA partial claim
  - FHA secured
  - VA refund
  - Stipped repayment plan or stippled to modification
  - Forbearance plan
  - Mortgage insurance claim advance
  - FHA refinance/other
  - Renegotiated, referred or extended
  - Other
- Property location (state only)
- Reason for default
- Investor type (FNMA/FHLMC; GNMA; private investor)
- Borrower preference (borrower requested to retain property or liquidate)
- Loss mitigation process initiated by bank or borrower
- Channel or line of business that originated loan
- Timing of when loss mitigation process initiated (before 30 days past due or after?)
- Indicator of whether loss mitigation process still ongoing

- Original property value (based on appraised value at origination)
- Most recent property value
- Date of most recent property value
- Credit class (prime, Alt-A, subprime, etc.)
- Interest type at origination (fixed; variable)
- Documentation type at origination (full, alt-doc, low-doc, stated, no-doc)
- Interest only indicator
- Balloon indicator
- Prepayment penalty indicator
- Updated FICO used for workout evaluation
- Updated debt-to-income ratio used for workout evaluation
- Updated loan-to-value ratio used for workout evaluation
- Monthly income expense ratio (payment to income ratio - PITIA) used for workout evaluation
- Reason for default
- Employment status
- Fees, charges or overages paid
- Type of modification granted (each choice below has a Y/N indicator)
  - Capitalization
  - Interest rate frozen
  - Interest rate reduced
  - Loan term extended
  - Principal write-down
  - Principal deferred
- Extent of modification granted (quantify same list above)
  - Capitalization (amount capitalized)
  - Interest rate frozen (time period rate frozen)
  - Interest rate reduced (amount of reduction)
  - Loan term extended (time period extended)
  - Principal write-down (amount written down)
  - Principal deferred (amount deferred)
- Initial workout outcome completed (date)
- Final workout outcome completed (date)
- Full property address (street, city, state, zip, county)
- Mortgage insurance? Y/N
- Unpaid principal balance at time workout request