7 Common Fair Lending Compliance Myths

A Quick Fair Lending Training Module for Financial Institutions
Training Outline

• An Overview Fair Lending Basics
• Debunking the 7 Common Fair Lending Compliance Myths
• About TRUPOINT Partners
Fair Lending Basics
Fair Lending is a Hot Compliance Topic

Fair Lending consistently ranks as a top priority for regulators, and a key concern for financial institutions nationwide.
Basic Definitions

• **Dodd-Frank Act**: “Fair, equitable and nondiscriminatory access to credit for all consumers.”

• **ECOA (Equal Credit Opportunity Act)**: “A creditor shall not discriminate against an applicant on a prohibited basis regarding any aspect of a credit transaction.”
Main Fair Lending Laws

Fair Lending is an umbrella term, encompassing many regulations that cover consumer lending:

- Equal Credit Opportunity Act (ECOA) – Reg. B
- Fair Housing Act (FHA)
- Community Reinvestment Act (CRA) – Reg. BB
- Home Mortgage Disclosure Act (HMDA) – Reg. C
- Unfair, Deceptive and Abusive Acts and Practices (UDAAP)
  - Worded broadly, covers consumer lending
3 Types of Illegal Discrimination

1. **Overt Evidence of Disparate Treatment**: Occurs when a lender openly discriminates on a prohibited basis or expresses a discriminatory preference.

2. **Comparative Evidence of Disparate Treatment**: Occurs when a lender treats similarly situated applicants differently based on one of the prohibited bases during any part of the credit process. There is no requirement to show evidence that this treatment was motivated by prejudice or a conscious intention to discriminate.

3. **Disparate Impact**: Occurs when a lender applies an apparently neutral policy or practice equally to all applicants, but the policy or practice disproportionately excludes or burdens certain on a prohibited basis. When disparate impact is identified, the next step is to determine whether the policy or practice is justified by a “business necessity.”
The 7 Most Common* Fair Lending Myths

*Based on Actual Conversations & Observations
8 Fair Lending Myths

Like Bigfoot, some myths persist.

The following are 8 of the most common Fair Lending compliance myths.

Be prepared for these Fair Lending myths – and the realities!
Fair Lending Myth #1

“Our written policies and procedures have us covered.”

The Reality:

• Having policies and procedures in place is a great start for Fair Lending, and all areas of compliance and risk management. However, it’s not a complete approach.

• Regulators expect that in addition to policies and procedures, an institution should have oversight, analysis and monitoring in place.
Fair Lending Myth #2

“Fair Lending is really about the underwriting process.”

The Reality:

• Fair Lending regulations apply to every stage of the credit process, from marketing and redlining to servicing and loss mitigation.
• ECOA: A creditor shall not discriminate against an applicant on a prohibited basis regarding any aspect of a credit transaction.
Fair Lending Myth #3

“Our employees fully understand Fair Lending compliance.”

The Reality:

- Onsite interviews indicate that a general awareness is more common than a true understanding.
- In our experience, larger banks tend to have better understanding of Fair Lending, possibly due to increased training, risk exposure and tone from the top.
Fair Lending Myth #4

“We don’t have any diversity in our market area.”

The Reality:

• All communities have diversity. Many factors beyond race or religion are considered prohibited bases.
  • ECOA prohibits discrimination based on: race or color, religion, national origin, sex, marital status, age, receipt of income from any public assistance program, or the applicants exercise of rights under the Consumer Credit Protection Act.
  • ECOA applies to any extension of credit, including small businesses, corporations, partnerships and trusts.
  • FHA prohibits discrimination based on: race or color, national origin, sex, familial status (i.e. children under 18 living with a parent or legal custodian, pregnant women, and people securing custody of children under 18), or physical handicap.
  • FHA applies to all aspects of “residential real estate transactions.”
Fair Lending Myth #5

“Fair Lending is really about HMDA.”

The Reality:

- The Interagency Fair Lending Exam procedure steps show that Fair Lending encompasses far more than HMDA. Those steps include:
  - Develop a Scope
  - Identify Compliance Program Risk Factors
  - Review Residential Loan Products
  - Identify Residential Lending Discrimination Risk Factors
  - Organize and Focus Residential Risk Factors
  - Identify Consumer Lending Discrimination Factors
  - Identify Commercial Lending Discrimination Factors

* The regulators will also review consumer/auto loans as well as Small Business loans.
Fair Lending Myth #6

“*We have a consultant who helps manage Fair Lending.*”

The Reality:

• While a consultant is a valuable asset, Fair Lending compliance cannot be fully outsourced. Fair Lending is a team sport and requires everyone at the company’s involvement.

• A Fair Lending consultant can provide the following services:
  • Conduct compliance risk assessments annually as recommended.
  • Identify key risk areas for future focus.
  • Conduct statistical analysis, including regression if necessary, to uncover disparities that may indicate risk.
  • Provide clear guidance and recommendations for improvement.
Fair Lending Myth #7

“We’re a small lender, Fair Lending doesn’t apply to us.”

The Reality:

• Fair Lending applies to everyone.

• The amount of Fair Lending risk depends on multiple factors, including product complexity, market diversity, and more.

• While the level of intensity differs, Fair Lending is part of every compliance exam.
TRUPOINT Partners provides compliance data analysis and consulting services to more than 500 financial institutions nationwide.

We specialize in Fair Lending, HMDA, CRA, BSA/AML and UDAAP. Our services include risk assessments, analysis, training and more.

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