

This Agreement between Plaintiffs National Urban League, et al., (hereinafter "Plaintiffs") and defendants Office of the Comptroller of the Currency and John G. Heimann, Comptroller of the Currency (hereinafter "Comptroller") is made to resolve, as to the parties hereto, without adjudication of any issue of law or fact, litigation presently pending between Plaintiffs, the OCC and the Comptroller in the United States District Court for the District of Columbia entitled National Urban League, et al. v. Office of the Comptroller of the Currency, et al., (Civil Action No. 76-0718) (hereinafter "the lawsuit"). In executing this Agreement, none of the parties hereto makes any admission whatsoever as to any issue of law or fact raised in the lawsuit or which might be raised in the lawsuit. The OCC has entered this Agreement not only to settle the lawsuit, but also to further its existing commitment to effective enforcement of its nondiscrimination policies.

I. Section 1. OCC's Enforcement Program.

The OCC has implemented and will continue in effect special training and examination procedures related to consumer protection statutes and regulations, including fair housing lending, and a Consumer Affairs Division and system of trained Regional Consumer Specialists both with advisory and supervisory responsibilities in the area of fair housing lending. However, the OCC agrees that it will take the following additional actions in connection with its supervision and enforcement of fair housing lending practices of national banks as governed by Title VIII of the Civil Rights Act of 1968, 42 U.S.C. §3601, et seq. and Title VII of the Consumer Credit Protection Act, 15 U.S.C. §1591, et seq., as they relate to home mortgage lending (hereinafter the "home mortgage lending laws"):

- A. The OCC will establish a data collection and analysis system (the "OCC system") in Washington which will apply to written applications for loans to finance the purchase of one to four unit residential buildings in which the applicant intends to occupy one unit as a residence. The OCC system will make use of race/sex identification information voluntarily given by the applicant and collected by the bank pursuant to Federal Reserve Board Regulation B, and additional financial information on the applicant and the loan terms. All of

the financial information to be required is now included in the mortgage application forms approved by FNMA or FHLMC and widely used by mortgage lenders, or the form approved by the Federal Reserve Board in Regulation B. If the Regulation B is modified to not require race/sex data, the OCC will continue to require such data unless such requirement is prohibited by law.

The data collection and analysis system will consist of the following: Information from all applications which have been acted upon will be collected concerning the characteristics of the requested loan, the economic characteristics of the applicant and co-applicant, the race, sex, marital status and age of the applicant, and the loan disposition, which would include whether or not the loan was granted, and if granted, on what terms. The personal and certain financial information on each of these forms will be forwarded to the OCC's Washington Office for transcription to a computer based data file for analysis. The data collected will be analyzed in Washington by generally accepted statistical techniques to evaluate race, sex, marital status or age as factors in the bank's lending decisions. The objective of this analysis will not be to establish the actual existence of discrimination but rather to identify institutions which warrant further investigation. The analysis will not only focus on the acceptance or rejection of the loan, but also upon the terms given to the borrower. If personal characteristics such as race or sex appear to be a factor in the decision, a more detailed investigation will be made by specially trained examiners. A by-product of the statistical analysis will be the generation of data on applications broken down by race, sex, marital status, age and geographical location and on both approval/rejection rates and adverse action. These data should permit observation of trends over time and comparison of geographic areas such as SMSA's. This system will be in effect for a minimum of three years but is subject to change if the methodology does not prove to provide reliable data.

The OCC will determine deviations in nonresponse rates among the institutions examined by it and where such deviation affects the ability of OCC to analyze the data obtained from such institution or suggests possible failure to properly request information from applicants or discouragement of response, OCC will inquire into the reasons for the deviation and will take such action as is necessary and appropriate to eliminate the deviation.

If the identification rate obtained by the OCC differs substantially in composition by race or sex from the results achieved by the Federal Home Loan Bank Board in the control study which it will undertake, the OCC will take action to improve the identification rate. Such action may include advertising, use of additional lobby posters, identification by loan officers and direct agency inquiries to loan applicants. It is the OCC's intent that a means of identification be used which will maximize reliability of the resulting data.

The OCC will give further consideration to the inclusion of applications for secured home improvement loans in the OCC system. The inclusion of such applications will depend, in part, upon the ease with which such loans can be segregated from loans made for purposes other than the repair or remodeling of residential property, and whether the OCC believes sufficient additional information relating to lending practices can be obtained to justify the additional data collection costs.

The OCC will conduct programs to train selected examiners to (i) collect race and sex data maintained by institutions pursuant to the home mortgage lending laws, and (ii) use the Washington office analyses of those data in examinations for compliance with the home mortgage lending laws.

- B. The OCC will implement special procedures for the investigation and processing of complaints concerning discrimination in home mortgage lending. These procedures are described and set forth in Appendix "A" hereto.
- C. Within 90 days after the date of this memorandum, the OCC will advise all national banks that it is the policy of the OCC that the range of investigatory and enforcement methods available to the agency, including but not limited to special examinations and cease and desist proceedings under the Financial Institutions Supervisory Act of 1966, 12 U.S.C. §1818, will be used to detect or remedy prohibited discrimination in the same manner as these methods are used to detect and/or remedy possible or actual violations of other statutes applicable to national banks.
- D. (All new. Based on FDIC sec. 1, C). The OCC will designate an appropriate level civil rights specialist, specially trained in fair housing lending matters, who will be present in each Regional Office, and who shall be responsible in the Regional Office, among other things, for reviewing fair housing lending aspects of examination reports, advising examiners on fair housing lending matters, reviewing individual examination reports and discussing them with examiners, making recommendations for improvements in examination methods, and consulting with Regional Directors on fair housing lending enforcement recommendations.
- E. (All new. Based on FDIC sec. 1, C)..The OCC will create a policy-level position in its Washington office for a full-time civil rights specialist. This individual will have access to the Comptroller and will be responsible for advising, and reviewing the work of, Washington staff and the persons referred to in paragraph B above with respect to fair housing lending aspects of compliance examinations, disposition of complaints relating to fair housing lending, and enforcement actions involving violations of the home mortgage lending laws.

- F. (All new. Based on FDIC sec.1, I). The OCC will study the usefulness of data to it under the Home Mortgage Disclosure Act and will attempt to develop a system for meaningful use of this data in connection with the OCC's enforcement of the home mortgage lending laws. Plaintiffs acknowledge that they have been advised by the OCC's representatives that devising such a system may be unfeasible. It is understood that the OCC has no obligation to implement such a system if it reasonably and in good faith determines that it is not feasible to implement such a system. Before the OCC makes a final determination on feasibility, it will consult with Plaintiffs pursuant to the procedures outlined below.
- G. (All new. Based on FDIC sec.1, last paragraph). The OCC agrees that Plaintiffs will have the opportunity to comment on the OCC's enforcement programs and the OCC System described in this Section in order to provide the OCC with suggestions for improvement therein. During the term of this Agreement, OCC representatives will meet periodically (at least every six months) with representatives of Plaintiffs to discuss the programs described in this Section and to receive and consider suggestions any changes made or proposed therein, /from them. If so requested, Plaintiffs will receive a written explanation when their recommendations are not accepted. It is agreed by all parties to this Agreement that the responsibility for the implementation of these programs is solely the OCC's and not the Plaintiff's, and that in conducting enforcement programs pursuant to this Agreement the OCC may give due regard to the allocation of its financial and personnel resources among all of the duties which it carries out. Nothing in this Agreement is intended to subject the decisions of the OCC as to the appropriate allocation of such resources to review by any person or authority not otherwise empowered by law to review such decisions.

Section 2. Public Information.

During the term of this agreement, the OCC will provide plaintiffs the following materials and/or data at least annually or more often if available.

These materials and data also are or will be available to the public. With the exception of computerized data, they will be maintained in one file, to be known as the Fair Housing Lending File, for easy identification and public access.

- A. Copies of blank race/sex data notation forms and instructions which are used in the OCC system.
- B. A description of the OCC system. Any significant changes in that system will be announced publicly and will also be made available.
- C. Copies of instructions to personnel performing collation or analysis of race/sex data collected pursuant to the OCC system.
- D. Data, analyses and reports reports produced pursuant to the OCC system including data on applications broken down by race, sex, marital status, age and geographic location and approval/rejection rates and terms of approval. Such analyses will be produced in report form at least annually, and will show the results of the analysis of individual bank data which evaluates race or sex as a factor in the bank's lending decision (without, however, disclosing the bank's identity.) Consistent with Office needs for computer time and personnel, and their capabilities, analyses of a more limited scope and/or analyses at other intervals, can be produced upon request if the requesting party assumes the costs.
- E. Data indicating nonresponse rates on race/sex notation forms including information on whether there are deviant rates at particular institutions.
- F. Examiner training materials and examination manual sections concerned with the Home Mortgage Disclosure Act, the Equal Credit Opportunity Act, and the Fair Housing Act. Any significant change in these materials will be publicly announced and will also be made available. With prior arrangement, the OCC's Consumer Examiner training sessions may be observed.
- G. The Comptroller annually will provide statistics concerning the number of examiners and other personnel who have undergone special consumer examination training including training in fair housing lending; the number of consumer examinations conducted during the year; the number

of possible violations of the home mortgage lending laws identified by examiners or by means of data analyses under the OCC system; the number of complaints received pertaining to the home mortgage lending laws and their disposition; the number of investigatory actions taken as a result of possible violations of the home mortgage lending laws identified by examiners, data analyses or complaints; and the number of enforcement actions taken pertaining to these laws.

- H. An organization chart of the Consumer Affairs Division of the OCC, as well as job descriptions of the professional staff of this Division. Any significant changes in the organization of this Division or in its position in the organization of the Comptroller's Office as a whole, or in the system of Regional Consumer Specialists, will be publicly announced.
- I. The procedures of the OCC for investigating and resolving complaints concerned with the home mortgage lending laws. Any significant changes in the Comptroller's procedures concerning consumer complaints in general or home mortgage lending complaints in particular will be publicly announced.
- J. The OCC's analysis of its 1976 Fair Housing Lending Survey when such analysis is completed.
- K. Significant new or revised proposals, instructions, regulations, guidelines, procedures or reports concerning Fair Housing Lending and the OCC's data analysis system will be publicly announced and/or noticed in the Federal Register for comment as appropriate. Copies of all instructions, regulations, guidelines, procedures or reports of the OCC concerning Fair Housing Lending and currently in effect will be available in the Fair Housing Lending File.
- L. (All new. Based on FDIC sec. 2, N) Job descriptions for the persons described in Section 1, paragraphs D and E.

It is understood and agreed between the parties ^{that} / the OCC will not provide (a) any data or item which identifies or could reasonably lead to the identification of specific institutions or persons, nor confidential examination programs if such are developed in the future; (b) copies of examination reports, examiners' workpapers, or excerpts therefrom except for blank copies of such reports

or forms; (c) material which deals with specific compliance matters at specific institutions or which contains inter- or intra-agency advisory opinions, conclusions and recommendations; (d) legal analyses, opinions and conclusions of its Law Department or Consumer Affairs Division; and (e) data or materials identical to those previously provided.

II. Plaintiffs will:

1. Refer to the OCC's Consumer Affairs Division or advise it of any complaints of plaintiffs' members concerning prohibited discrimination in mortgage lending by national banks, unless the complainant objects.
2. Advise the OCC in the future of any studies of which plaintiffs may be aware, concerning the existence or nonexistence of prohibited discrimination in mortgage lending or other aspects of fair housing lending.
3. Upon request of the OCC and agreement of plaintiffs make available to the OCC qualified persons to speak on mortgage lending discrimination at OCC consumer examiner training sessions or similar programs, consistent with the other duties of such persons.

III. In consideration for the OCC's undertakings in this Agreement, plaintiffs hereby: (a) release and forever give up any right to sue the OCC and the Comptroller of the Currency to obtain relief for any action taken by the OCC or any action not taken by the OCC in the area of home mortgage lending discrimination, from 1968 to the date of this Agreement; and (b) release and forever give up any right to sue the OCC and the Comptroller of the Currency on any matter within the scope of the lawsuit entitled National Urban League, et al., v. Office of the Comptroller of the Currency, et al.; Provided, that (i) during the term of this Agreement Plaintiffs shall not be barred from bringing an action alleging that the OCC has breached this Agreement; and (ii) after the expiration of this Agreement, Plaintiffs shall not be barred from bringing an action alleging that the OCC has failed, at any time after the expiration of this Agreement, to properly supervise compliance by national banks with the then existing home mortgage lending laws. Nothing herein shall be construed to prevent Plaintiffs, in the trial of an action under (ii) above, from presenting evidence of the OCC's enforcement activi-

ties under the home mortgage lending / ^{laws} prior to the date of this Agreement, so long as such evidence is material, relevant and otherwise admissible in such trial. Nothing herein shall be construed as an admission by the OCC that Plaintiffs will have standing or a cause of action to challenge the OCC's enforcement of such laws.

Prior to initiating any action under (i) above, the Plaintiffs will first contact the Chief Counsel of the OCC and attempt, in good faith, to resolve any differences by negotiation. The parties agree that such negotiations shall continue for^a / period of at least sixty days, unless emergency circumstances require immediate action. In any such action, the party initiating the action shall attach to its complaint an affidavit of counsel setting forth the steps taken in compliance with this provision.

IV. Upon execution of this Agreement, the Plaintiffs and the OCC will file a stipulation in the United States District Court to dismiss the lawsuit insofar as it relates to the OCC and the Comptroller of the Currency.

V. The term of this Agreement shall be three years from the date set forth below.

Dated:

Dated: