



# Center for National Policy Review

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Box 129: UL v OCC  
Settlement Negotiations + Agreement  
FDIC 1976-77

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## MEMORANDUM

TO: Plaintiffs and Others Interested in National Urban League v. Comptroller of the Currency

FROM: Bill Taylor, Roger Kuhn, and Martin Sloane

RE: Proposed FDIC Regulation on Race/Sex Data and Fair Housing Advertising

Pursuant to the Settlement Agreement with the FDIC in the suit against the banking agencies, the FDIC has published for public comment a proposed regulation requiring member banks to collect and retain race and sex data on home mortgage applicants. This marks the FDIC's first step towards the establishment of a nationwide system of race/sex data collection and analysis designed to identify discriminatory patterns at individual banks and trigger in-depth investigation of their lending practices.

The proposed regulation goes beyond previous proposals and beyond the record-keeping requirements of Regulation B (the Federal Reserve Board's ECOA regulation) in several significant respects. First, the FDIC proposal would require banks to secure race/sex information from persons who "inquire" about a mortgage loan but do not actually file an application. This should help to detect, and even to discourage, "pre-screening" of would-be borrowers before the formal application stage. Second, unlike Regulation B, the FDIC proposal covers home construction and improvement as well as home purchase loans, and requires loan officers to supply from observation race/sex data not supplied by applicants. In addition, by requiring creditworthiness information, the regulation will enable the FDIC to perform data analyses which will more accurately pin-point discrimination. And finally, because census tract information is also required, it may be possible to cross-correlate individual applicant information with HMDA data.

The proposed regulation is by no means perfect, but it does represent a significant advance over previous proposals. Opposition from the banking industry is to be expected. It is therefore of the utmost importance that those who have for so long urged race/sex data analysis file comments with the FDIC which both urge improvements and give strong support to the proposal as a whole. The Center will file detailed comments; but it is most important that civil rights and fair housing organizations file comments directly with the FDIC. (Please send us copies of your comments so that we may discuss them with FDIC staff.)

The proposed regulation also includes non-discriminatory advertising and "Fair Housing Poster" requirements previously included in an FDIC "policy statement". The effect of inclusion in a "regulation" is to make violation a ground for remedial action by the FDIC. The Fair Housing Poster has been modified so as to advise aggrieved mortgage applicants that they may complain either to HUD or to the FDIC, where the present poster lists only HUD. Since HUD has no enforcement powers under Title VIII and lacks regulatory jurisdiction over banks, complaints to HUD are unlikely to produce corrective action. Under improved complaint examination procedures adopted by the FDIC, complaints to that agency should hold more promise. However, HUD has in the past maintained that, as the lead Title VIII enforcement agency, complaints should be addressed to it, and HUD may resist this proposed change in the Poster. We view the change as a significant improvement.

While the FDIC has taken this significant step under the Settlement Agreement, the Federal Home Loan Bank Board's progress has been disappointing. We will shortly be meeting with FHLBB Chairman McKinney, to assess the state of FHLBB's compliance with the Agreement. We hope that the pace of implementation of the Agreement will pick up in the immediate future and will keep you advised.

Meanwhile on September 30, we filed a motion for partial summary judgment in the continuing litigation against the Comptroller of the Currency and the Federal Reserve Board. We are asking the court to rule that section 808(d) of the Fair Housing Act and other Federal law requires these agencies to use their supervisory powers to detect and prevent mortgage lending discrimination, and that their current examination and enforcement programs do not live up to that obligation. If we are successful in this phase of the litigation, the sole remaining question would be the scope of the relief to which we are entitled — that is, the enforcement steps which the court may require the agencies to take.

In recent weeks, the Comptroller's Office has made a new settlement offer which includes a proposal for race/sex data analysis. However, the terms offered fall far short of those agreed to with the FHLBB and the FDIC and do not in our view constitute a reasonable basis for settlement. We remain hopeful that settlement talks may yet prove fruitful once the new Comptroller, John Heimann, is able to devote more attention to substantive matters within his agency.