



Center for National Policy Review

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MEMORANDUM

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

FROM: Roger Kuhn

This will be a report on implementation of the settlement agreements and other steps being taken by the financial regulatory agencies in connection with nondiscrimination enforcement.

Federal Home Loan Bank Board

The FHLBB has been the most troublesome of the agencies, but there are signs of important progress. We attribute the progress to (1) the replacement of Bob McKinney by Jay Janis; (2) Anita Miller's personal attention since McKinney's departure; (3) the prospect of Senate oversight hearings on fair lending enforcement next month; and (4) mounting pressure from the lawsuit plaintiffs which is largely responsible for all but the first of the foregoing developments.

1. Data collection and analysis. The Board has for 16 months been considering modification of the "loan application register" which it published for comment in November, 1977 and adopted in "final" form in May, 1978. (The register contains race/sex and economic data on the applicants and data on the age and location of the property.) At its October 11, 1979 meeting, the Board reviewed but did not adopt a new form of register, which will again be put out for public comment. Board approval of the new proposal is expected shortly, but it now becomes clear that the "final final" version of the loan register will not take effect for a minimum of three months. The only good news is that the proposed new register will be an improvement over the current one, which omits some important applicant information.

The loan register, of course, is itself only a means of recording race, sex and other data; the settlement agreement calls for a system of collection and analysis of the data. The questions of how much data will be collected, how and when it will be collected and how it will be analysed and made available to

examiners continue to be debated within the staff. The Board is scheduled to resolve this debate within the next ten days, based in large part on cost estimates which are currently being prepared. One proposal is that computerized analysis of loan register data be limited to institutions making more than 1000 loans per year, omitting about 75% of the industry and requiring examiners to analyse without computer assistance 20 or more items of information on up to 999 loans.

Please note: It is extremely important that every interested organization file comments on the FHLBB's new proposal when it appears. The Board will receive massive comment from the industry, and it is clearly waiting to see whether there is a substantial body of support for the loan register and for a system of collection and analysis of the loan register data. We will distribute copies of the Federal Register publication when it appears, along with our own analysis. Your comments should express your general support for the register, but should stress that the information it contains is useless without systematic analysis. You should urge the institution of such a system without further delay. Under an extension of the settlement agreement, that system was to have gone into effect on the first of October.

2. Organization and civil rights staffing. The settlement agreement called for the appointment of a full-time civil rights specialist as an assistant to the Director of what was then the key division of the FHLBB: the Office of Examinations and Supervision (OES). Shortly after the appointment of Johnnie Booker to this position, OES was abolished. Its examinations functions were transferred to the Federal Savings and Loan Insurance Corporation (an FHLBB subsidiary), and its supervision (i.e., enforcement) functions were transferred to the FHLBB's Office of District Banks. The Examinations Division was subsequently further divided into a policy and a field operations section, and the civil rights specialist wound up in the latter office. Johnnie Booker has been largely concerned with examiner training; other matters have been allowed to drift.

Meanwhile, both the FDIC and the Comptroller's Office created high-level divisions concerned with civil rights, community re-investment and consumer protection, and we began to urge the establishment of a similar unit at the FHLBB. We also pointed out that the total divorcement of examinations from supervision made no sense -- an opinion which has come to be shared by the Board and its staff. The Board now has under study the re-establishment of a single office of examinations and supervision, and may include in this office a policy-level unit devoted to civil rights enforcement and related functions. We will press for the creation of such a unit either in the re-established office or in the Office of Community Investment.

3. Examiner training and staffing. Our analysis of examiner civil rights training at the four agencies reveals that the FHLBB's is by far the weakest. The Federal Reserve Board and FDIC have totally revamped their civil rights training, following recommendations of a consultant who was formerly with the Justice Department's Civil Rights Division. The Comptroller's training is currently being revised along the same lines. Not only is the FHLBB's training the least effective, but it is conducted on a regional basis without a common syllabus or core of civil rights instructors. We are pressing the Bank Board to restructure its training on a centralized basis with the help of an outside consultant.

The FHLBB is also the only one of the four agencies lacking examiner specialists in the area of nondiscrimination. While there is hard staff resistance to the formal creation of an examination "speciality", the inadequacy of the present examiner force is now recognized, and it seems likely that some steps will be taken to deal with it during the months ahead.

4. Proxmire hearings. The oversight hearings will undoubtedly focus attention on the shortcomings of the FHLBB and will elicit testimony on measures the Board intends to take to remedy them. Without question, the current Board membership is the most sympathetic to civil rights which there has ever been -- or is likely to be again. We therefore hope that the next year will see the first concrete progress since the publication of the Board's nondiscrimination regulation in May, 1978 -- a regulation which the Board is still not in a position to enforce adequately.

Federal Deposit Insurance Corporation

1. Data collection and analysis. After more than a year of floundering, the FDIC staff is coming to grips with the development of a realistic data collection and analysis system. It will be a two-stage system.

Stage one will be an analysis of the "logs" which all FDIC banks are required to keep under the FDIC's 1978 data regulation, showing disposition of each application by applicant race, sex, age and marital status. Three hundred banks have recently been directed to submit copies of their logs for analysis; the remaining 2400 banks will receive similar instructions over the next several months, once an employee has been hired in Washington to process them for computer analysis.

On the basis of discriminatory patterns suggested by the "log analysis", and on the basis of other indications of possible discrimination at individual banks or in specific geographic areas, a far more elaborate analysis will be made of rejection patterns and terms of approved loans. These analyses, based on data from loan files, will be made available to examiners for use during follow-up examinations. The timing and method of analysis remain

to be determined, but the trend is now away from the unrealistic, highly sophisticated methodology previously under consideration and towards a more useful and simpler analysis. The system will be tested first in a few selected cities.

2. Staffing, training and examinations. The FDIC's Office of Consumer Affairs and Civil Rights now has a permanent head, Hank Newport, formerly of the Federal Reserve Board and Department of Transportation. Its civil rights and community reinvestment unit, under Bob Cook, formerly of the Justice Department's Civil Rights Division, has a professional staff of four.

The civil rights unit has been responsible for the FDIC's excellent new examiner training program. In addition, the FDIC has created a new examination speciality in nondiscrimination, consumer protection and community reinvestment, which is parallel to existing specialities such as trust examinations, and electronic fund transfer examinations.

3. Extension of settlement agreement. Settlement of the lawsuit was reached with the FDIC in May, 1977, and the agreement runs until May, 1980. It was assumed that this would afford ample time for the FDIC to implement its data collection and analysis program, to gain a year's experience with it, and then to receive and consider the plaintiffs' suggestions for improvements. With the agreement having only seven months to go, however, the data program is barely under way, leaving inadequate time for testing it and recommending improvements. Accordingly we have proposed to the FDIC that the agreement be extended for an additional two years. A reply to this proposal is expected shortly.

Comptroller of the Currency.

1. Data collection and analysis. The OCC is the furthest along in the development of its data analysis system. It will require banks to maintain information on applicant and property characteristics which is needed to detect discrimination both in rejections and in loan terms. Banks will be required to submit at least a sample of these data for computerized analysis prior to scheduled examinations, and the results of the analysis will be given to examiners. The method of analysis will highlight apparent departures from the banks lending standards which either disfavor protected classes or favor white males and white couples, and will identify for examiners the individual loan files in which the departures appear.

Although the OCC's final data regulation was essentially completed several weeks ago, repeated revisions (which we are assured are of a technical nature) have delayed its publication. It has just been approved by the Comptroller, but must now be approved within the Treasury Department, of which the OCC is a unit. The regulation, once published, will take effect January 1, 1980. Actual data collection and analysis will begin after three

months' worth of data have accumulated.

2. Staffing, training and examinations. The OCC's re-organized Office of Customer and Community Programs headed by Jo Ann Barefoot, formerly of Proxmire's staff, includes a special assistant for civil rights (the position vacated August 31 by Zina Greene) and three divisions, concerned respectively with civil rights, consumer and CRA examinations, with general policy in these areas, and with encouraging affirmative community reinvestment programs by national banks. The last division is headed by Mike Barton, formerly with the Proxmire Committee and NCDH. The other two divisions have three positions between them with specific civil rights responsibilities. Phil Samson, who was minority counsel to the Senate Housing Subcommittee under Senator Brooke, has been named head of the policy division. In addition, the OCC has elevated the civil rights/consumer specialist in each regional office to the level of Regional Director.

Civil Rights examiner training is now undergoing revision, making heavy use of the FDIC's newly developed program. Senior examiners and regional administrative officials will undergo training in December, after which all examiners will be retrained. The OCC is now recruiting examiners into the special civil rights/consumer/CRA examination force which was created last spring, but the recruitment effort has been disappointing. Further measures to attract good people are under consideration.

"Prescreening" and "discouragement".

There is a growing awareness on the part of the agencies that customers may be discouraged from applying for loans or may be steered or prescreened by a variety of devices, leaving no paper record on the basis of which discrimination might be detected. We have been concerned that this problem would grow as the agencies began to require racial recordkeeping, and have recommended a number of techniques for detecting discriminatory prescreening. These include a comparison between the demographic makeup of the applicant flow and that of the lender's community; investigation of unusually low rejection rates; use of HMDA data; in-bank investigations during examinations; and interviews with brokers, community groups, and former bank employees. The agencies are moving slowly toward the use of these techniques, but they continue to require special regional office clearance before an examiner can conduct interviews outside the bank.

The most effective technique for detecting prescreening, however, is the use of "testers" -- a technique long used to detect discrimination in housing sales and rentals. The FTC has a pilot "testing" program under way, and it now appears likely that some or all of the financial regulatory may join in a study of "testing" sponsored by HUD and jointly funded by the Ford Foundation. The object of the study would be to adapt "testing" methods to the home finance context; to develop methods for

selecting and training "testers"; and to demonstrate that "testing" can indeed be efficiently used to detect prescreening of home loan applicants.