

State and federal regulation of mortgage lending

Taskforce addressing racial disparities in homeownership

July 15, 2022



Department of Consumer
and Business Services

DCBS Fair Lending

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Equal Credit Opportunity Act

- The Equal Credit Opportunity Act (ECOA) and Regulation B are federal civil rights laws that prevent lenders and creditors from discriminating against applicants based on factors unrelated to their ability to repay.
- Protects consumers from lending discrimination based on **race, color, religion, national origin, sex, marital status, age, public assistance, or the exercise of any rights under the Consumer Credit Protection Act.**
- On March 9, 2021, the Consumer Financial Protection Bureau (CFPB) clarified that the prohibition against sex discrimination in ECOA and Regulation B encompasses **sexual orientation discrimination and gender identity discrimination**, including discrimination based on an applicant's nonconformity with sex-based or gender-based stereotypes.

ECOA special purpose credit programs

- The ECOA and Regulation B permit creditors to create “special purpose credit programs” to extend credit to applicants who meet certain eligibility requirements.
- Under these programs, lenders may offer special underwriting or pricing for traditionally disadvantaged groups without violating the ECOA and Regulation B.
- These programs include initiatives for
 - “credit assistance programs expressly authorized by Federal or state law for the benefit of an economically disadvantaged class of persons”;
 - “low-income minority borrowers”;
 - government sponsored housing credit subsidies for the “aged or the poor”;
 - small business lending programs providing credit to minority- or disabled-owned businesses; and
 - student loan programs based on the family’s financial needs.

The Fair Housing Act

- The Fair Housing Act (FHA) is a federal law that prohibits discrimination in the purchase, sale, rental, or financing of housing (private or public) based on race, skin color, sex, nationality, or religion – including disability and family status.
- The FHA is enforced at the federal level by the Dept. of Housing and Urban Development (HUD) and the United States Attorney General.
- The FHA has two main purposes:
 - (1) prevent discrimination and
 - (2) reverse housing segregation.
- The part of the law that calls for the reversal of segregation is to address decades of unjust government practices that have led to the presence of housing segregation.

Oregon illegal housing discrimination laws

- The Dodd-Frank Act gave the Oregon Department of Justice and DCBS authority to enforce the ECOA and Regulation B against DCBS licensees, Oregon chartered banks, and Oregon chartered credit unions.
- The Oregon Department of Justice has authority to bring an Unlawful Trade Practices Act case against state-regulated lenders subject to permission from DCBS.
- In addition to the federal housing protections, Oregon law forbids discrimination based on marital status; sexual orientation; income sources; victims of domestic violence, sexual assault or stalking; or the fact that a person won an eviction case brought by a former landlord.
- Oregon law also makes clear that housing discrimination is unlawful whether it is deliberate and intentional or has the effect – intentional or not, of having a greater or “disparate” impact on people who are in a protected group.

Oregon licensing of residential mortgage lending

Entities Licensed or Chartered by DCBS

- Oregon chartered banks and credit unions
- Mortgage bankers
- Mortgage brokers
- Mortgage loan originators
- Mortgage servicers

Examination of Oregon depository institutions

DCBS	FDIC
<ul style="list-style-type: none">• Safety and soundness	<ul style="list-style-type: none">• Safety and soundness• Federal fair lending laws (FHA, ECOA)• Federal consumer protection laws (TILA, RESPA, etc.)

Federal fair lending examinations

- Conducted by federal regulatory agencies (OCC, FRB, FDIC, NCUA, CFPB)
- Analyze HMDA data for disparities
- Examine policies and procedures
- Conduct transaction testing
- Investigate consumer complaints

Examinations of Oregon mortgage lenders under ORS Chapter 86A

- Regularly scheduled examinations
- Statutory authority to participate in multistate examinations
- Two types of examinations: full scope and limited scope
 - Full scope examinations typically consist of off-site preparation and review, followed by an on-site examination of records and practices, including interviews of staff and possibly borrowers.
 - Limited scope examinations are used for companies that have not had any prior licensing violations or deficiencies and are conducted entirely off-site through review of an institution's response to an Information and Data Request and Institution Questionnaire.
 - A limited-scope examination can lead to a full-scope examination based on information reviewed by an examiner.

ORS 86A fair lending education requirements

- Pre-licensure education requirements
 - First-time applicants for a loan originator license are required to **complete 20 hours of NMLS-approved education** that must include **three hours of federal law, three hours of ethics (which shall include fraud, consumer protection, and fair lending issues)**, two hours of non-traditional mortgage lending, plus eight hours of undefined education (referred to as electives) plus four hours of Oregon specific laws such as rate lock requirements.
- Continuing Education Requirements
 - Every state-licensed MLO (in any approved status) is required to complete **at least eight hours of NMLS approved education annually** that must **include three hours of federal law, two hours of ethics (which shall include fraud, consumer protection, and fair lending issues)**, and two hours of non-traditional mortgage lending, plus one hour elective, plus two hours of OR-specific education (referred to as an elective).

ORS 86A.198 – Language Requirements

- ORS 86A.198 governs **which mortgage documents must be provided in languages other than English** and applies to mortgage bankers, mortgage brokers, and mortgage loan originators (collectively referred to as “Licensees”).
- ORS 86A.198(2)(c) mandates that **Licensees provide a “statement notifying the borrower that certain loan documents associated with the transaction will be in English and advising the borrower to obtain appropriate assistance with any necessary translations”** (i.e. promissory notes and trust deeds).
- If the translator is an employee of the Licensee and does not assist the borrower in completing the application; process or analyze financial or application information; or discuss particular credit terms that are or may be available based on the borrower’s financial characteristics, a loan originator license is not required.
- If a translator **does any of the above-referenced activities**, the translator will need to satisfy the loan originator licensing requirements contained in ORS 86A.200 to 86A.239.

Oregon mortgage lender compliance exams

- Consistent with the CFPB ECOA Baseline Review Procedures, Oregon compliance examinations evaluate how institutions' compliance management systems identify and manage fair lending risks under the ECOA.
- The ECOA examination is broken down into **five modules**:
 - Module 1 Fair Lending Supervisory History
 - Module 2 Fair Lending Compliance Management System (CMS)
 - Module 3 Fair Lending Risks Related to Origination
 - Module 4 Fair Lending Risks Related to Servicing
 - Module 5 Fair Lending Risks Related to Model

Typical ML examination violations

- In 2022, the CFPB identified the following examination violations that occur with regular frequency
 - **Compensating loan originators differently based on product type** – Regulation Z generally prohibits compensating mortgage loan originators in an amount that is based on the terms of a transaction.
 - **Insufficient documentation for changed circumstance** – Regulation Z requires a creditor to provide the consumer with good faith estimates on the Loan Estimate for certain transactions.
 - **Disclosures failed to reflect the terms of legal obligation** – Regulation Z provides that closed-end disclosures, including the mortgage closing disclosure, must reflect the terms of the legal obligation between the parties.

Handling DCBS consumer complaints

- To file a complaint, consumers can:
 - Call (888) 877-4894 or
 - Visit <http://dfr.oregon.gov>
- Complaints are handled by the advocacy team as part of the DFR consumer protection mission.

DCBS mortgage lending enforcement

- For depository institutions, authority to conduct investigations and impose various civil penalties subject to ORS chapter 183.
- For mortgage bankers and mortgage brokers, the companies sponsoring the individual mortgage loan originators, authority to conduct investigations and impose civil penalties subject to ORS chapter 183.
- For mortgage loan originators, authority to conduct investigations and impose civil penalties subject to ORS chapter 183.
- Every ORS chapter 86A mortgage lender violation is a **separate offense with a penalty of \$5,000 for every violation** and, in the case of a continuing violation, each day's continuance is a separate violation, **but the maximum penalty for any continuing violation shall not exceed \$20,000 for each offense.**



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