Rescinded

Summary: On January 23, 1989, the Department of Housing and Urban Development ("HUD") published its Final Rule implementing the Fair Housing Amendments Act of 1988. The rule, which becomes effective on March 12, 1989, among other things, adds two new categories of protected persons and requires display of a revised fair housing poster. Other changes increase the penalties for noncompliance and revise procedures for filing and adjudicating complaints. Bank System Regulation 12 C.F.R. Part 528 is being amended to conform to relevant changes in the Fair Housing Act and HUD regulations.

For Further Information Contact:
The FHLBank District in which you are located or the Compliance Programs Division of the Office of Regulatory Activities, Washington, D.C.

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The Statute

The Fair Housing Amendments Act of 1988 [P.L. 100-430] was enacted on September 13, 1988, to strengthen Title VIII of the Civil Rights Act of 1968 ("Title VIII"), also known as the Fair Housing Act ("Act"). The amendments, effective March 12, 1989, among other things:

• Clarify that coverage of the Act (and HUD implementing regulations) extends to all entities whose business includes sale, rental, brokerage, advertising, or appraisal of residential real property, or providing "residential real estate-related transactions," and explicitly include in the definition of covered transactions all loans secured by residential real estate, regardless of the loan purpose;

• Add prohibitions against discrimination on the basis of a handicap or the familial status of any person associated with a covered sale or rental, or other covered transaction;

• Clarify that the provisions of the Act apply to secondary mortgage market and other purchase and sales transactions involving residential loans and residential-related securities;

• Clarify the obligations of the Federal financial regulatory agencies to promote affirmatively the objectives of the Act;

• Provide that an aggrieved party has one year from the date of an alleged discriminatory action to file a complaint with HUD and two years to file a complaint in court, and provide further that HUD may itself initiate complaints where it suspects discrimination;

• Grant to HUD authority to conduct discovery proceedings and to subpoena witnesses and documents in the course of investigating complaints;

• Require that upon receiving a complaint, either directly or by required referral from a regulatory agency, HUD must generally make its determination within 100 days. If HUD finds probable cause, it must issue a charge, following which the complainant may choose either an administrative proceeding or a jury trial. HUD or the Justice Department must place the case on a docket and represent the complainant; and

• Provide increased civil penalties and monetary and punitive damages, as well as injunctive relief, where prohibited practices are found.

HUD and FHLBS Regulations


The Office of Regulatory Activities expects member institutions to be fully aware of their new, as well as continuing, responsibilities under Title VIII and HUD’s implementing regulations. Section 805 of the amended Act makes it unlawful to discriminate on a prohibited basis against any person not only in setting loan terms and conditions, but also “... in making available ...” a real estate-related transaction. Amendments to both the Act and HUD’s regulations are clearly intended to broaden the scope of their coverage. Member institutions are encouraged to consult legal counsel for guidance in complying with the amended regulations, and to adopt policies and procedures that actively promote the conduct of business in conformity with the objectives of fair housing laws.
In the following paragraphs, one of the many subjects covered in the
HUD regulations is highlighted.

The new protected categories include the new poster requirements. How-
ever, because of the abbreviated and partial coverage presented in this
bulletin, all recipients are requested to study the complete HUD regu-
lations attached.

The Bank System’s own regulations at 12 C.F.R. Part 528 impose a num-
ber of similar nondiscrimination responsibilities. These rules are
being amended to conform to relevant changes in Title VIII and the
HUD regulations. In addition, Bank System complaint procedures are
being reissued in revised form, to reaffirm existing procedures with
appropriate changes to reflect new provisions of the amended Act and
HUD regulations.

New Protected Categories

Title VIII prohibited discrimination in any aspect of the sale, rental, and
financing of dwellings based on race, color, national origin, religion,
or sex. The 1988 amendments expand this coverage to also pro-
hibit discrimination on the basis of handicap or familial status.

“Handicap” means any physical or
mental impairment which substan-
tially limits one or more major life
activities. Protection extends to per-
sons with, or with a record of, such
an impairment, or who are per-
ceived or regarded as having such
an impairment. The new regulations
establish detailed rules for deter-
mining reasonable accommodations
that must be provided to assist
handicapped persons. [See 24 C.F.R.
100.202]

“Familial status” means the pres-
ence, or the anticipated presence, of
one or more children under 18 years
of age. Reasonable occupancy stan-
dards established by local or state
government, or by the landlord, are
still permitted. Also, certain exemp-
tions are available for developments
that meet criteria set forth for hous-
ing the elderly. [See 24 C.F.R.
100.301]

While a number of the new require-
ments, especially as related to the
handicapped, are with design, con-
struction, and reasonable modifica-
tion of physical structures, member
institutions must be aware of the
obligations imposed also on lend-
ers, appraisers, and advertisers.
Further, institutions, or their
affiliates, engaged in or controlling
the development, rental, or sale of
residential properties (including real
estate owned) will be directly
responsible for compliance with reg-
lations regarding both nondiscrim-
ination and affirmative physical
accommodation to the needs of
handicapped persons.

Fair Housing Poster

Part 110 of the amended HUD regu-
lations requires that all persons “...subject to sections 804 through 806
of the Fair Housing Act, 42 U.S.C.
3604 - 3606,...” display a revised fair
housing poster reflecting the new
protected categories and other tech-
nical changes. The revised text for
HUD fair housing posters, which
must still be 11 by 14 inches in size,
is specified in the regulation.

However, on March 7, 1989, the Fed-
eral financial regulatory agencies
received HUD approval of a new
“Equal Housing Lender” version of
the fair housing poster, for display
by Federally regulated financial
institutions in lieu of the standard
HUD poster. At this time the Fed-
eral Home Loan Bank Board is pre-
paring amendments to Bank System
regulation 12 C.F.R. Part 528 which,
when implemented, will require dis-
play of this Equal Housing Lender
poster in all business lobbies of each
member institution in lieu of, or in
addition to, the standard HUD
poster required by 24 C.F.R. Part 110.

A new, conforming fair housing
poster must be displayed beginning
March 12, 1989. An 8.5 by 11 inch
facsimile of the proposed Equal
Housing Lender poster is provided
as an attachment to this bulletin.
Pending final action by the Bank
Board, institutions wishing to dis-
play this text on an 11 by 14 inch
poster beginning March 12 may do
so voluntarily. If the Equal Housing
Lender poster by March 12 may do
so voluntarily. If the Equal Housing
Lender poster is deemed by the Office of Regulatory
activities to comply with Bank System
regulation Part 528. While
member institutions may display
the standard HUD poster in order to
satisfy HUD requirements, HUD
posters will have to be replaced or
supplemented by posters conform-
ing to 12 C.F.R. Part 528 when the
revised Bank System regulation
becomes effective.

Attachment A: Proposed “Equal
Housing Lender” poster to be incor-
pored in 12 C.F.R. 528.5

Attachment B: Full text of HUD fair
housing regulations as published in the
Federal Register

— Darrel W. Dochow, Executive Director