

as directed by the Secretary following Fair Housing Act and ECOA adjudications. The Act provides, generally, that the Director of OFHEO shall enforce violations by the GSEs of FHEFSSA and regulations in this subpart. This subpart establishes requirements implementing the Secretary's authority and provides for referral of cases to the Director.

§ 81.42 Prohibitions against discrimination.

(a) *General.* Neither GSE shall discriminate in any manner in making any mortgage purchases because of race, color, religion, sex, handicap, familial status, age, or national origin, including any consideration of the age or location of the dwelling or the age of the neighborhood or census tract where the dwelling is located in a manner that has a discriminatory effect.

(b) *Bases.* In following the prohibition in paragraph (a) of this section, the GSEs shall not discriminate based on:

(1) The race, color, religion, sex, handicap, familial status, age or national origin of:

(i) The borrower or joint borrower, or applicant or joint applicant;

(ii) Any persons associated with the borrower or joint borrower, or applicant or joint applicant in connection with such mortgage or the purposes thereof;

(iii) The present or prospective owners, lessees, tenants, or occupants of the dwelling or dwellings securing such mortgage; or

(iv) Persons in neighborhoods or communities in which properties secured by mortgages are located; or

(2) The age or location of the dwelling securing the mortgage or the age of the neighborhood or census tract where the dwelling is located or the housing stock in such neighborhood or census tract in a manner that has a discriminatory effect.

(c) *Liability.* Each GSE shall be liable for violations of this subpart that it or its officers, agents, or employees commit.

(d) *Exemptions.* Notwithstanding the prohibitions of paragraphs (a) and (b) of this section:

(1) Certain factors concerning the age and location of a dwelling, or the area in which the dwelling is located, properly may be considered.

(i) The age of the dwelling may be properly considered in the appraisal and underwriting process:

(A) To select comparable properties that have been sold or listed recently in the neighborhood for an appraisal; and

(B) As a basis for conducting more extensive inspections of structural aspects of the dwelling. The structural

soundness of a dwelling rather than its age may be considered in appraisal and other aspects of the underwriting process.

(ii) Certain location factors that may have a negative effect on a dwelling's value may be properly considered in an appraisal and in other aspects of the underwriting process. These factors include recent zoning changes, the number of abandoned homes in the immediate vicinity of the property, the condition of streets, parks and recreation areas, availability of public utilities and municipal services, and exposure to flooding, land faults, and other natural or human-made environmental hazards. Such factors, if used, must be specifically documented in the appraisal. Location factors may be used to select comparable properties that have been sold or listed recently in the neighborhood for an appraisal.

(2) This section does not prevent consideration of factors justified by business necessity, including requirements of Federal law, relating to a transaction's financial security or to protection against default or reduction of the value of the security. However, where such factors have a disparate result on the basis of race, color, religion, sex, handicap, familial status, age, or national origin, including any consideration of the age or location of the dwelling or the age of the neighborhood or census tract where the dwelling is located, as set forth in paragraph (b) of this section, the factors cannot be considered unless they both are justified by business necessity and no less discriminatory alternative to such factors exists.

(3) Age of the borrower or co-borrower may be considered in the underwriting process when required by statute, including the age requirements for Home Equity Conversion Mortgages (HECMs), 12 U.S.C. 1715z-20.

(e) *Business Practices Analysis.* Within ___ days of the effective date of this part, and thereafter periodically as requested by the Secretary, each GSE shall complete a Business Practices Analysis.

(1) Each Business Practices Analysis shall include a complete review of the GSE's business practices respecting the purchase of mortgages, including, without limitation, its underwriting guidelines and appraisal standards, repurchase requirements, pricing criteria, fees, and other procedures and practices affecting mortgage purchases that lead or could lead to discrimination because of race, color, religion, sex, handicap, familial status, age, or national origin, including any consideration of the age or location of

the dwelling or the age of the neighborhood or census tract where the dwelling is located in a manner that has a discriminatory effect. The purpose of the analysis is to determine whether any such business practices yield disparate results because of race, color, religion, sex, handicap, familial status, age, or national origin, including any consideration of the age or location of the dwelling or the age of the neighborhood or census tract where the dwelling is located in a manner that has a discriminatory effect, and whether such disparate results are justified by business necessity.

(2) Within ___ days after the effective date of this part, each GSE shall submit for the Secretary's review and comment a detailed outline and methodology for its Business Practices Analysis. Within ___ days following receipt of the outline and methodology, the Secretary will respond with comments, if any.

(3) Following completion of its Business Practices Analysis, each GSE shall report the results of the analysis to the Secretary. If a Business Practices Analysis identifies practices yielding disparate results affecting the protected classes under this subpart, the GSE must:

(i) Set forth fully the basis for the GSE's conclusion that a business necessity exists for the practice;

(ii) Present plans to end the practice; or

(iii) Report that the practice has ended.

§ 81.43 Review of underwriting guidelines.

(a) Each GSE shall analyze its underwriting and appraisal guidelines to determine whether such guidelines comply with the Fair Housing Act, the regulations promulgated thereunder, section 1325 of the Act, and this subpart including whether any of the guidelines are discriminatory on the basis of race, color, religion, sex, handicap, familial status, age, or national origin, including any consideration of the age or location of a dwelling or age of the neighborhood or census tract where the dwelling is located in a manner that has a discriminatory effect. Following the analysis, the GSE shall provide to the Secretary a full report on the analysis, including, without limitation, a description of remedies or plans to address any problems reported.

(b) Each GSE shall undertake its first review and analysis of its underwriting and appraisal guidelines as part of its Business Practices Analysis under § 81.42. Thereafter, each GSE shall conduct such a review and analysis periodically as requested by the Secretary.