Residential Mortgage Lending Disparities in Washington, D.C.

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District of Columbia Advisory Committee to the United States Commission on Civil Rights

August 1998

This report of a factfinding meeting of the District of Columbia Advisory Committee to the United States Commission on Civil Rights was prepared for the information and consideration of the Commission. Statements and viewpoints in this report should not be attributed to the Commission, but only to the participants in the factfinding meeting, other individuals or documents cited, or the Advisory Committee.

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Letter of Transmittal

District of Columbia Advisory Committee
to the U.S. Commission on Civil Rights

Members of the Commission
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Ruby G. Moy, *Staff Director*

The District of Columbia Advisory Committee submits this report of its factfinding meeting of December 12, 1994, on residential mortgage lending discrimination. This study was initiated by the Advisory Committee out of concern for the apparent lack of lending services and loan activity in minority and low-income areas in the District of Columbia as well as out of an interest in determining the level of government oversight of lending institutions. The Committee reviewed recent studies on lending rates to minority and nonminority applicants and minority communities, and analyzed jurisdictional boundaries of Federal and local government agencies and their efforts to enforce fair lending regulations in the District of Columbia.

Since lending institutions were invited, but did not attend the meeting, the Committee subsequently offered eight lending institutions an opportunity to present their views and comment on the report. Of these eight lending institutions, only two responded with comments. Not only were their comments included in the report in their entirety as appendices, their contributions resulted in significant revisions to the draft report. In addition, to further enhance the balance of viewpoints, six industry monitoring organizations were also invited to review the report and make comments. To supplement the information gathered at the factfinding meeting, staff conducted interviews with factfinding meeting participants and representatives of industry monitoring organizations. Staff also conducted independent research on changes in monitoring efforts by government agencies and civil rights organizations, and collected information on current issues in the mortgage lending debate.

Based on this information and followup research, the Committee concludes:

- Between 1990 and 1992, minority borrowers and minority communities within the District of Columbia, compared to nonminority borrowers, received a disproportionately smaller share of the total number and dollar value of residential mortgage loans. Minority loan applicants experienced higher rejection rates than nonminority borrowers. These variances have been found linked to specific tracts/wards within the District of Columbia along ethnic lines, calling into question the marketing and underwriting criteria used by mortgage lenders.

- Contrary to its legislative purpose, data collected under the Home Mortgage Disclosure Act do not include information necessary to determine whether institutions have engaged in acts of mortgage lending discrimination.
- Investigation of mortgage lending discrimination by institutions operating in the District of Columbia is primarily the responsibility of three Federal agencies: the Comptroller of the Currency, the Department of Housing and Urban Development, and the Department of Justice. District of Columbia government agencies play a minor role in fair lending enforcement due to budget restrictions and jurisdictional constraints placed on the District's authority to regulate lending institutions.

To address these concerns, the Committee urges Federal and District officials to monitor lending rates within specific geographic areas and undertake studies of the fairness of the lending process. These studies should attempt to determine whether lending disparities are due to discrimination or applicant creditworthiness such as financial and employment characteristics that contribute to a lenders' decision to reject loan applications.

We believe that this report contributes to the Commission's efforts to monitor fair housing enforcement at the national level and serves to inform the public of the importance of this issue. This report, in a recorded poll of all members of the Advisory Committee, was adopted by a vote of 8 to 0 (2 members were unavailable for vote).

Respectfully,

Steven Sims, *Chairperson*
District of Columbia Advisory Committee

District of Columbia Advisory Committee

Steven Sims, *Chairperson*
Washington, D.C.

Rev. Lewis M. Anthony**
Washington, D.C.

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* Served as Chairperson during the project preparation and report writing stages.
** These members were appointed to the Advisory Committee in September 1996 and were not members at the time the factfinding meeting.

Former members of the Advisory Committee who served during the study and report writing stages include. Mari Carmen Aponte, Laura Chin, Yetta W. Galiber, José Gutierrez, Rita DiMartino, Clifton B. Smith, Malcolm J. Stubblefield, and Jeffrey R. Weintraub

Acknowledgments

The District of Columbia Advisory Committee wishes to thank the staff of the Commission's Eastern Regional Office for its help in preparing this report. The planning and holding of the factfinding meeting was the principal assignment of Edward Darden. The report preparation, writing, and followup research were conducted by Marc D. Pentino, Esq. The Committee gratefully acknowledges the editorial comments and contribution of Alexander R.M. Boyle, vice chairman, Chevy Chase Bank; Robin K. Warren, assistant general counsel, NationsBank; Larry Riedman, fair lending specialist, Comptroller of the Currency, and Kenneth D. Jones, senior economist, General Accounting Office, during the affected agency review of the early draft report. Gloria Hong provided editorial assistance and Linda Raufu provided support in all stages of report preparation. The project was carried out under the overall supervision of several persons: John I. Binkley, former Director, Eastern Regional Office, for the planning and holding of the factfinding meeting; Edward Darden, Acting Director, for the initiation of the report preparation; and Ki-Taek Chun, Director, for the followup research, report writing and processing.

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Preface

The U.S. Commission on Civil Rights and its Advisory Committees have taken active roles in investigating barriers to fair housing opportunities for minorities and also in monitoring efforts made by government agencies and advocacy groups to eliminate discriminatory practices against prospective buyers and renters.[1] In the early 1990s, the District of Columbia Advisory Committee recognized that although discrimination in residential real estate transactions[2] had emerged as an important civil rights concern across the Nation, there appeared to be a lack of lending services and loan activity in minority and low-income areas in the District of Columbia. The Committee was concerned whether minorities were receiving an equitable share of loans and loan dollar amounts in comparison to nonminority applicants. Of equal concern to the Advisory Committee was the level of Federal and local government oversight of lending institutions operating in the District of Columbia as well as the level of lending institutions' compliance with Federal and local fair lending laws.

The Advisory Committee decided to hold a factfinding meeting to determine if discriminatory lending practices were occurring in the Washington, D.C., area and to appraise the status of Federal and local enforcement efforts to ensure fair lending opportunities. The Advisory Committee believed that its public meeting and the release of an ensuing report would serve several purposes:

1) To clarify the respective roles of Federal and local government agencies;
2) To provide an opportunity to government officials and community representatives to share their views or voice their concerns;
3) To gather pertinent information and research findings to develop an overall assessment of the fair lending issue in the District of Columbia; and
4) To better inform the general public and interested organizations on the issue of fair lending in the District.

On December 12, 1994, the Advisory Committee held a 1-day factfinding meeting.[3] Participants at the meeting included representatives from the Federal and District of Columbia government (U.S. Comptroller of the Currency, the D.C. Office of Banking and Financial Institutions, the D.C. Office of Human Rights, the D.C. Department of Human Rights and Minority Business Development), research agencies (Washington Lawyers' Committee for Civil Rights and Urban Affairs and the Urban Institute), and community advocacy organizations (Greater Washington Urban League and Center for Community Change).[4] To obtain a balance of viewpoints, two lending

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[1] "In its 1979 report, *The Federal Fair Housing Enforcement Effort*, the Commission advocated the creation of an Equal Housing Administration within the U.S. Department of Housing and Urban Development (HUD), . . . to [process] allegations of discrimination . . . [T]he Commission urged the adoption of amendments to existing fair housing law that would enable the Secretary of HUD to initiate complaints, . . . to issue cease and desist orders, . . . and other remedial steps as are necessary [to effectuate the Fair Housing Act]." U.S. Commission on Civil Rights, *The Fair Housing Amendments Act of 1988: The Enforcement Report* (Washington, D.C.: Government Printing Office, 1994), p. 1. In the 1980s and mid-1990s, the Commission produced two reports of consultations on fair housing, two directories of fair housing organizations, a report on the impact of losing State and local agencies from the Federal fair housing system and an assessment of HUD and the Department of Justice's fair housing enforcement efforts. Ibid. In March 1995, the Commission held a 1-day briefing in Washington, D.C., and accepted presentations from government officials and fair lending experts on the state of mortgage lending nationwide.

[2] The term residential real estate transaction has been defined as "the making or purchasing of loans or providing other financial assistance for purchasing, constructing, improving, repairing, or maintaining a dwelling; or secured by residential real estate." 42 U.S.C.A. § 3605.

[3] The factfinding meeting was entitled "Home Mortgage Lending in Washington, D.C." A transcript of these proceedings is on file in the Eastern Regional Office. All quotes in this Advisory Committee report, unless otherwise noted, are taken from this transcript.

[4] Participants in the factfinding meeting were (in order of appearance): Loraine R. Bennett, community reinvestment/fair lending coordinator, Greater Washington Urban League, Inc.; George Galster, senior research associate, The Urban Institute; John P. Relman and Richard Ritter, Washington Lawyers' Committee for Civil Rights and

institutions (Chevy Chase Bank and NationsBank) mentioned in local newspaper articles on the topic of fair lending and an additional government agency (the D.C. Department of Housing and Community Development) were invited to participate at the factfinding meeting but chose not to attend.[5]

In order to obtain a balance of divergent viewpoints, subsequent to the meeting eight lending institutions (Chevy Chase Bank, CitiBank, NationsBank, Independence Federal Savings Bank, Industrial Bank of Washington, Citizens Bank, N.A., Crestar Bank, and Signet Bank) were given an opportunity to present their views and comments on the report. These institutions were selected based on either their volume of lending activity or their mention in published articles concerning mortgage lending practices in the District of Columbia.[6] Of these eight lending institutions, only two (Chevy Chase and NationsBank) responded with comments.[7] Not only were their comments included in the report in their entirety as appendices, their contributions also resulted in significant revisions to the draft report. These contributions have been noted where appropriate in footnotes to the report.

To enhance the balance of viewpoints further, additional government agencies and industry monitoring organizations, not invited to the factfinding meeting, were also provided an opportunity to review the report and make comments. The Mortgage Bankers Association of America, the Neighborhood Assistance Corporation of America, the International Brotherhood of Teamsters, and the U.S. Department of Justice were provided the entire report. Of these four organizations, two (the International Brotherhood of Teamsters and the Mortgage Bankers Association) responded with comments that were duly incorporated. Pertinent portions of the report were also provided to the U.S. Department of Housing and Urban Development; the U.S. General Accounting Office, General Government Division—Financial Institutions and Markets; and the Capital Area Mortgage Partnership. Of these organizations, one (the General Accounting Office) responded with minor corrections that were incorporated.

With its focus on banks (but not on mortgage companies) operating in the District of Columbia, this report presents, first, a historical framework of Federal fair lending legislation and key events in the local community (chapter 1), followed by a description of Federal and local enforcement agencies charged with monitoring fair lending practices (chapter 2). Then it highlights findings of major studies that assess lending activity to minority and nonminority loan applicants in the District of Columbia (chapter 3). Finally, it summarizes the efforts by Federal and local government agencies and private groups to eliminate discriminatory lending practices (chapter 4).

Urban Affairs, Allen Fishbein, general counsel, Center for Community Change, Darrell Sheets, field manager/national bank examiner, Compliance Management, U S Comp roller of the Currency; Charlene Drew Jarvis, D C Council member and chairperson, Committee on Economic Development; Rochelle Duran, D.C. Office of Banking and Financial Institutions, and Antonio Acevedo, associate director, Office of Human Rights, D.C. Department of Human Rights and Minority Business Development

[5] Organizations invited to the factfinding meeting that did not attend include: S. Kathhryn Allen, chief compliance officer, Chevy Chase Bank; Richard Devaney, NationsBank, Merrick T. Malone, director, District of Columbia Department of Housing and Community Development

[6] According to the 1995 Home Mortgage Disclosure Act (HMDA) data, four of the institutions solicited for comment owned subsidiary mortgage companies that are among the top 15 lenders in the community. These 15 lenders made nearly 40 percent of the total conventional loans in the Washington metropolitan statistical area. See "1995 Lender Ranking of Loans Made by Census Tract Racial Composition / Income and Loan Type for Washington Metropolitan Statistical Area," information submitted by Allen Fishbein, Center for Community Change.

[7] Of the two responding institutions, NationsBank provided a detailed description of its commitment to fair lending and their lending record in Washington, D.C., area

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Appendices

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1 Historical Overview

The origins of Federal fair housing legislation prohibiting discriminatory lending practices and unfair credit practices can be traced to the national response to pressures for increased housing opportunities and desegregated neighborhoods.[1] This chapter chronicles pertinent Federal fair housing legislation that prompted the development of mortgage lending discrimination as a civil rights issue fostered by Federal legislation which increased public awareness of mortgage lending discrimination in the sale and rental housing markets and stimulated efforts by advocacy groups to gauge the levels of lending in the District of Columbia.

The Evolution of Fair Lending

Early Legislation

Title VIII of the Civil Rights Act of 1968,[2] often referred to as the Fair Housing Act (FHA), is considered an early attempt at establishing fair housing opportunity at the national level. "The act banned discrimination on the basis of race, color, religion, and national origin in most housing transactions" and enabled the U.S. Department of Housing and Urban Development (HUD) and the Department of Justice (DOJ) to investigate and file suit in discrimination cases.[3] Prior to the FHA, the Civil Rights Act of 1866 constituted "the only Federal law prohibiting private and/or public discrimination in housing[4]. . . but it pertained only to race discrimination and was applied only to governmental or public action."[5] In 1968 the Supreme Court interpreted the 1866 act as barring public *and private* racial discrimination in the sale or rental of property.[6] The decision, coupled with the FHA, subjected private housing providers to antidiscrimination provisions and Federal oversight.[7]

In the 1970s, HUD raised concerns that existing fair housing laws and regulations left the burden of enforcement responsibilities on private persons and fair housing organizations.[8] With this realization came additional Federal legislation designed to increase the scope of Federal enforcement powers over fair housing practices in American communities.[9]

In 1974 Congress passed the Equal Credit Opportunity Act (ECOA)[10] declaring illegal the discrimination by a creditor on the basis of race, color, religion, national origin, sex or marital status, or age in *any* credit transaction. The ECOA covered applications for mortgages and other forms of credit in the housing area.[11]

In 1977 the Community Reinvestment Act (CRA)[12] was enacted to create an affirmative

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[1] For an indepth discussion, see U.S. Commission on Civil Rights, *The Fair Housing Amendments Act of 1988: The Enforcement Report* (Washington, D.C.: Government Printing Office, 1994), pp. 1–24.

[2] Pub. L. No. 90–284, 82 Stat. 73.

[3] U.S. Commission on Civil Rights, *The Fair Housing Amendments Act of 1988: The Enforcement Report*, p. 8.

[4] Robert G. Schwemm, *Housing Discrimination: Law and Litigation* (New York: Clark Boardman and Callaghan, 1991) p. 27–3. (hereafter cited as *Law and Litigation*), as cited in U.S. Commission on Civil Rights, *The Fair Housing Amendments Act of 1988: The Enforcement Report*, p. 9.

[5] Ibid.

[6] Jones v. Alfred H. Mayer Co., 392 U.S. 409 (1968).

[7] *Law and Litigation*, p. 1–1.

[8] U.S. Commission on Civil Rights, *The Fair Housing Amendments Act of 1988: The Enforcement Report*, pp. 10–11.

[9] See section 504 of the Rehabilitation Act of 1973, 29 U.S.C.A. § 794 (West Supp. 1993); 24 C.F.R. § 8.1–8.71 (1993); the Housing and Community Development Act of 1974, Pub. L. No. 93–383, 88 Stat. 633 (1974) (codified in scattered sections of U.S.C.), and the Community Reinvestment Act of 1977, 12 U.S.C.A. § 2901–2906 (1977).

[10] As amended, 15 U.S.C.A. § 1691 (1982 & West Supp. 1993), 24 C.F.R. § 25.9 (1993). The act also barred discrimination on the basis of "all or part of the applicant's income deriv[ing] from any public assistance." 15 U.S.C.A. § 1691(a). "ECOA authorizes various methods of enforcement, including pattern or practice suits by the Attorney General, upon referral of a matter to her, and private actions by persons aggrieved for actual damages, punitive damages, . . . equitable and declaratory relief, and reasonable attorneys' fees and costs." U.S. Commission on Civil Rights, *The Fair Housing Amendments Act of 1988: The Enforcement Report*, p. 14. See also § 15 U.S.C.A. § 1691e(b)–(d) (1982).

[11] *Law and Litigation*, p. 29–5. *See also*, 15 U.S.C.A. § 1691e(b)–(d) (1982).

[12] See 12 U.S.C. § 2901 (a)—(b) (1977).

obligation upon both financial institutions and Federal supervisory agencies to encourage them to help meet the credit needs of local communities. The CRA required Federal supervisory agencies (see chapter 2) to assess an institution's record of meeting the credit needs of its community.[13] Under the CRA, each institution engaged in mortgage lending is required to adopt a CRA statement detailing the specific types of credit and residential loan products it offers in its delineated territory as well as a description of its efforts at meeting the credit needs of the community.

The Home Mortgage Disclosure Act

In 1975 Congress enacted the Home Mortgage Disclosure Act (HMDA)[14] in reaction to allegations that banking institutions were contributing to a decline of certain geographic areas by their failure to provide adequate home financing to qualified applicants on reasonable terms and conditions. The HMDA's stated purpose was to provide the citizens and public officials with information to enable them to determine whether depository institutions were serving community housing needs.[15] The HMDA required financial institutions[16] to maintain and make publicly available records on the number and dollar amounts of mortgage loans and completed applications by census tract as well as income levels, race, and gender.[17]

In 1989 Congress amended the HMDA to aid the public in identifying possible discriminatory lending practices.[18] The amendments permitted the public to request from lending institutions loan application register information upon which a profile of lending characteristics for a defined geographic area could be formed.[19] The available information included the type of loan, loan amounts, total numbers of loan approval/denials, location of the mortgaged property, and applicant racial characteristics. The expanded HMDA data thus became an added tool for Federal and local government agencies and consumer advocacy organizations for use in CRA and ECOA reviews, proving useful in later civil actions against lending institutions. The HMDA loan data, however, could not definitively determine whether a particular institution engaged in discrimination because it did not contain such critical information as an applicant's debt repayment record, employment experience, and other factors that bear on credit risk assessment. As a result, HMDA has been used as an indicator of suspect lending patterns.

The Impact of the HMDA Amendments

The 1989 HMDA amendments renewed interest in the examination of mortgage lending discrimination. In 1992 the Federal Reserve Bank of Boston (FRBB) released one of the first studies attempting to examine whether similarly qualified applicants were given equal access to credit.[20] Based on an examination of 131 Boston-area institutions, the FRBB study found that "higher rejection rates of black and Hispanic applicants for home mortgage loans could not be explained by differences in the qualifications of the credit applicants."[21] Even "after controlling for

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[13] *Id* § 2903(1)

[14] 12 U.S.C.A. § 2801–2811 (1975)

[15] *Id* § 2801 (1975)

[16] Under the act, "[a]ll commercial banks, savings and loan associations, credit unions, and other mortgage lending institutions that have assets of more than $10 million, make at least 1 one-to-four family home purchase loan, and have an office in a metropolitan statistical area (MSA) are required to meet HMDA reporting requirements." Federal Reserve Bank of Cleveland, *Cross-Lender Variation in Home Mortgage Lending*, Robert B. Avery, Patricia E. Beeson, and Mark S. Sniderman, Working Paper 9219 (1992), p. 3. A copy of the paper has been placed on file at the Commission's Eastern Regional Office.

[17] 12 U.S.C.A. § 2803 (b)(4) (1975).

[18] See Glenn B. Canner and Stuart A. Gabriel, "Market Segmentation and Lender Specialization in the Primary and Secondary Mortgage Markets," *Housing Policy Debate*, vol. 3, iss. 2 (1992), p. 242. This copyrighted material is used with the permission of the Fannie Mae Foundation.

[19] Note—To protect the privacy interests of individual loan applicants, the amendments required the deletion from the disclosed loan applications register information—the applicants' names, identification numbers, date of applications, and date of determination on the applications. See 12 U.S.C.A. § 2803 (j). (1975).

[20] The study limited its focus to a single stage of the lending process (the application processing stage).

[21] *Fair Lending Enforcement and the Data on the 1992 Home Mortgage Disclosure Act (HMDA): Hearings Before the Committee on Banking, Housing and Urban Affairs—United States Senate*, 104th Congr., 1st Sess. (1993) (testimony of Janet Reno, U.S. Attorney General, Nov. 4, 1993) (hereafter cited as Reno testimony). In reaction to the controversy over the study's methodology, the Fannie Mae Office of Housing Research duplicated the Federal Reserve Bank of Boston's research and published a working paper in 1993 confirming the

[differences in applicant qualifications,] black and Hispanic home mortgage applicants were still 56 percent more likely to be denied a loan than similarly qualified white applicants."[22]

Utilizing the HMDA data, DOJ also began investigating institutions and their lending practices to determine if given similar credit histories, minority loan applicants were excluded from defined lending territories and experienced rejection rates at higher rates than nonminorities.[23] In 1992 DOJ brought suit against Decatur Federal Savings and Loan Association, an Atlanta institution, in one of the Nation's first pattern or practice race discrimination alleging that the institution engaged in redlining practices, disparate marketing, and disparate approval of residential mortgage loans.[24] DOJ alleged that Decatur denied black loan applicants for failing to meet underwriting standards while extending special consideration to white applicants with similar creditworthiness who later received loan approval.[25]

Together, the FRBB study and the Decatur investigation by DOJ placed lending institutions around the country on notice that statistical methods could be used to assist investigators in assessing an institution's lending record. These developments also fueled nationwide suspicion that mortgage lending discrimination might be occurring in other regions of the country.

The Local Picture

Events Prior to the Factfinding Meeting

In May 1992, the Metropolitan Washington Planning and Housing Association studied home mortgage loans offered by both merger and nonmerger commercial banks (and mortgage affiliates) for the years 1988–1990.[26] The association then ranked the institutions according to their lending performance to minority applicants and minority communities within the District of Columbia.

In June 1993, *The Washington Post*, in a series of three articles, asserted that various communities within the District of Columbia were experiencing lending disparities along racial lines and that some institutions engaged in intentional nonservice of minorities. The *Post* attributed these disparities to the presence of a disproportionately large number of branches in nonminority areas and to a disparate pattern of lending to minorities by banks and thrifts operating in the District of Columbia.[27] By ranking the 15 largest area lenders according to the number of loans approved during a given period to minority and nonminority applicants, the *Post* found that minority areas and minority loan applicants of the District experienced lower loan originations compared to nonminority areas and nonminority applicants.[28]

Prompted by the *Post*'s findings, DOJ launched an investigation of Chevy Chase Bank and its subsidiary and later filed a civil suit in 1994.[29] DOJ alleged that the institutions intentionally failed to service African American residential

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Boston Fed's statistical results. However, competing viewpoints remain concerning the validity of the study's underlying data and conclusions. See NationsBank response, app. III, page 7. See also James H. Carr and Isaac Megbolugbe, *The Federal Reserve Bank of Boston Study on Mortgage Lending Revisited*, a Fannie Mae Working Paper, Fannie Mae Office of Housing Research, (1993). A copy of the working paper has been placed on file at the Commission's Eastern Regional Office.

[22] Reno testimony.

[23] Ibid.

[24] See United States v. Decatur Federal Savings and Loan Association, No. 1-92-CV-2198 (N.D. Ga. Sept. 17, 1992) (complaint).

[25] Decatur was also cited for "purposely exclud[ing] large portions of the black community from its defined lending market and rarely or never advertis[ing] its home loan products in media oriented to the black community." See *Federal Reserve Bulletin*, vol. 78, no. 11 (November 1992), p. 808.

[26] Metropolitan Washington Planning and Housing Association, *Summary of Bank Lending Practices in the District of Columbia* (May 1992). This project was funded by the District of Columbia Department of Housing and Community Development.

[27] The *Post*'s conclusions were based on its computer-generated analysis of 130,000 recorded deeds from 1985 and 1991 and its correlation of community racial compositions and income levels to the quantity and location of retail dwellings available in the area. Joel Glenn Brenner and Liz Spayd, "Separate & Unequal," *Washington Post*, June 6–8, 1993, p. A24.

[28] Ibid. See also, Department of Justice press release, "Justice Department obtains Unprecedented Settlement From D.C. Area Bank for Allegedly Failing to Service Black Areas," Aug. 22, 1994, p. 2.

[29] Ibid. See also United States v. Chevy Chase Federal Savings Bank and B.F. Saul Mortgage Co., U.S. Dist. Ct. for the District of Columbia, Complaint, Civ. Action No. 94–1824.

areas, used race as a factor in selecting branch and mortgage office areas locations, established a policy of not seeking business in predominantly minority areas while actively seeking business in nonminority areas, compensated its loan originators for solicitations to higher priced dwellings that predominantly are outside minority areas, and failed to advertise mortgage products oriented to the African American community.[30] The parties reached a settlement in the case in August 1994 in which Chevy Chase agreed "to pay $11 million through a special loan program," offer low loan financing, and open branches and mortgage offices in majority-black areas.[31] Chevy Chase claimed that there were no allegations or evidence that "any particular individual was discriminated against illegally" and denied any wrongdoing.[32] In this case, "there were allegations of a more subtle and judicially untested form of discrimination—allegations that Chevy Chase failed to market its services in a nondiscriminatory manner."[33] The Department of Justice has since praised Chevy Chase for its efforts in satisfying the terms of the consent decree and increasing mortgage lending to minority areas.[34]

In November and December 1994, the Greater Washington Urban League, Inc. (Urban League) and the Washington Lawyers' Committee for Civil Rights and Urban Affairs (Lawyers' Committee) released studies examining residential mortgage lending trends for single-family mortgages offered by selected institutions. The study by the Lawyers' Committee was the first of its kind to control for applicant income and lender reasons for rejecting loan applicants in investigating fair lending practices of Washington-area institutions. Both studies found ethnically based disparities in mortgage lending in the District of Columbia and alerted the community that racial disparities in underwriting and marketing could be a potential indicator of mortgage lending discrimination. (See chapter 3.)

Local Developments Subsequent to the Factfinding Meeting

Since the factfinding meeting, several developments in Federal fair lending oversight, community reinvestment, and continued analysis of the mortgage lending debate have occurred. These developments include: (1) new Community Reinvestment Act regulations affecting institution examinations,[35] (2) legislation that would exempt additional banks and savings institutions from HMDA reporting requirements,[36] (3) proposed changes to the Department of Housing and Urban Development fair housing enforcement budget, [37] (4) continued fair lending litigation,[38] and (5) re-

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[30] Ibid

[31] See DOJ press release, pp 2–3 No finding or determination of a violation of laws was found by the court in this case According to Chevy Chase bank, it has increased its mortgage lending to minorities areas in Washington, D C , by more than 500 percent. See app I.

[32] See Law and Business, Inc., Banking Policy Report, *What Hath Justice Department Wrought Through Chevy Chase?* vol 14, no 3 (Feb 6, 1995), p 8 (used with permission of Aspen Law and Business Publishers, a division of Aspen Publishers, Inc.)

[33] Ibid.

[34] See Janet Reno, U.S. Attorney General, remarks before the American Bankers Association, Boston, MA, May 20, 1996, pp. 22–24. See also app. I and "Reno Praises Bank's Strides to Meet Spirit of Bias Laws," *American Banker*, May 21, 1996. The Committee acknowledges the contribution of this article by Chevy Chase Bank.

[35] In the spring of 1995, Federal agencies released new Community Reinvestment Act regulations. The new regulations (effective on January 1, 1996) attempt to focus attention on the lending, investment, and service records of banks. Three different tests for lending institutions have been established to include a "strategic plan option" whereby community organizations can be involved in the Community Reinvestment Act evaluation process. Under each test, examiners rate banks according to their lending records. See National Community Reinvestment Coalition, *Summary of the New CRA Regulation: How Community Groups Can Get Involved in the CRA Process* (1997)

[36] See the Economic Growth and Regulatory Paperwork Reduction Act of 1996, Public Law 104–208, Sept. 30, 1996.

[37] See National Community Reinvestment Coalition, *Summary of the New CRA Regulation: How Community Groups Can Get Involved in the CRA Process.*

[38] In September 1995, the Lawyers' Committee filed a class action suit against NationsBank on behalf of 11 rejected loan applicants and all African Americans in the Washington, D.C., metropolitan statistical area alleging that the institution discriminated in the underwriting and processing of home mortgage loans NationsBank, N.A., and NationsBanc Mortgage Company were also named in the suit. "The class plaintiffs consist of all African Americans who attempted to purchased or contract for, did purchase or contract for or will in the future seek to purchase or contract for, mortgage loans from the Defendants on properties in the Washington, D.C. MSA and who were or will be subjected to the policies and practices [mentioned in the complaint]." Complaint, p. 98. See Lathern v. NationsBank Corporation, C.A. No. 1:95 CIV 01806, U.S. District Court for the District of Columbia (complaint). See also "NationsBank Bias Suit Blazes New Legal Trail," *Bank-*

cent reports by local community organizations regarding bias in rental and sales markets in the Washington, D.C., area.[39]

The Committee also recognizes that changes in the nature of the banking industry have occurred, resulting in increased loan application and approval rates to minority applicants. Although there is no complete analysis of lending trends in the District of Columbia, the Committee notes a national increase in loans to minorities. Since 1993, home purchase loans to African American borrowers rose 47.5 percent, loans to Hispanic applicants rose 36 percent, and mortgages made in low- and moderate-income census tracts rose 22 percent.[40] Industry analysts attribute this increase to a decline in conventional financial institution market share, increased competition by mortgage companies, and alternative household investment options.[41] As a result, lending institutions have aggressively marketed their lending products to minority applicants. As noted by NationsBank, competitive marketing strategies, the development of more flexible mortgage lending products, and the establishment of working relationships with community groups to serve low- and medium-income consumers may also account for increases in lending to minorities.[42]

These developments reflect the national trend for an analysis of mortgage lending discrimination in the context of related issues such as community development, urban renewal, and the role of government oversight of the private housing industry. The Advisory Committee will continue to monitor these and other related developments.[43]

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ing Policy Report, vol. 14, no. 20 (Oct. 16, 1995), p. 2 (used with permission of Aspen Law and Business Publishers, a division of Aspen Publishers, Inc.) NationsBank has submitted to the Committee a detailed explanation of this suit as shown in app. III (page 8).

[39] In August 1995, the International Brotherhood of Teamsters commissioned a report examining the lending performance of NationsBank in four cities, including the District of Columbia. The study found that NationsBank rejected black applicants for loans at rates five to six times higher than for white applicants. See The International Brotherhood of Teamsters, *NationsBank and Community Reinvestment, The Denial of Black Loan Applicants in Atlanta, Baltimore, Dallas and Washington, D.C.* (August 1995). In 1997 the Fair Housing Council of Greater Washington released two reports analyzing discrimination against minorities and persons with disabilities in the rental and sales markets in the District of Columbia and selected Maryland and Virginia counties. Both studies utilized "testing teams," comparing differential treatment of applicants with varying racial or national origin characteristics, and found minorities and persons with disabilities continue to experience discrimination in their search for housing. See *The Fair Housing Index—An Audit and Report on Disability Discrimination in the Greater Washington Rental and Sales Housing Markets* page 3, and *The Fair Housing Index—An Audit And Report On Disability Discrimination In The Greater Washington Rental And Sales Housing Markets* (The Fair Housing Council of Greater Washington: 1997), p. 1.

[40] See Office of the Comptroller of the Currency, press release, remarks by Eugene A. Ludwig, Comptroller of the Currency before the National Conference for Urban Economic Development, Feb. 27, 1997, p. 2.

[41] See Mark A. Pinsky and Valerie Threlfall, "The Parallel Banking System and Community Reinvestment" National Association of Community Development Loan Funds, Nov. 18, 1996, pp. 2–14.

[42] See NationsBank response, app. III, pp. 2–4.

[43] A note of interest to the reader: On Mar. 12–15, 1997, the National Community Reinvestment Coalition held its Annual Conference entitled "Beyond the Community Reinvestment Act. Being Effective in the New Lending Environment." The conference addressed issues such as current methods in analyzing Home Mortgage Disclosure Act data, homebuyer counseling, credit scoring, fair lending and fair housing enforcement, and the new Community Reinvestment Act regulations.

2 Policing the Industry—Fair Lending Enforcement

Introduction

Intended as an overview of fair lending enforcement, this chapter offers a brief description of the primary regulatory agencies that police the lending industry in the District of Columbia, their jurisdiction, and the mechanisms in place to investigate fair lending discrimination.[1] Included in this description are three Federal agencies—the Comptroller of the Currency (OCC), the Department of Housing and Urban Development (HUD), the Department of Justice (DOJ)—and two District of Columbia government offices—the Office of Banking and Financial Institutions (OBFI) and the Department of Human Rights and Minority Business Development (DHRMBD).[2]

Jurisdictional Boundaries

Lending institutions in the District of Columbia are regulated by both Federal and District of Columbia government agencies. "General Federal rulemaking authority for implementing the fair lending laws is divided between the Federal Reserve Board (FRB), which has such authority for the Equal Credit Opportunity Act (ECOA) and the Home Mortgage Disclosure Act (HMDA), and HUD, which has similar authority for the Fair Housing Act (FHA)."[3] "Oversight and enforcement responsibilities, however, are divided among at least 12 separate Federal agencies, including but not limited to the 5 Federal banking regulatory agencies,[4] Department of Justice, Department of Housing and Urban Development, Federal Trade Commission, and others."[5] Table 2–1 lists Federal and local regulatory agencies with brief descriptions of their jurisdictions. Although jurisdictional boundaries are present, there exists an overlap of enforcement powers between the various Federal and local government agencies.

In addition to interagency coordination among Federal agencies investigating fair housing compliance, Federal law requires HUD to investigate fair housing complaints and DOJ to file suit whenever an aggrieved party elects to pursue a Federal civil action.[6] Investigation of discriminatory lending practices can be initiated by either HUD or DOJ. Pursuant to Executive Order No. 12,259,[7] all executive agencies administering housing and urban development programs (including agencies having regulatory authority over financial institutions) are required to cooperate with the HUD Secretary, the primary Federal official responsible for national housing policy. Federal regulatory agencies are required to "notify HUD when the agency has reason to believe that an Equal Credit Opportunity Act violation also violated FHA and the matter was not referred to DOJ as a pattern or practice case."[8]

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[1] Agency descriptions, their functions, and enforcement methods were gathered at the factfinding meeting from testimony by representatives from the Comptroller of the Currency, District of Columbia's Office of Banking and Financial Institutions, and the Department of Human Rights and Minority Business Development—Office of Human Rights (DHRMBD). Information was also provided in written comments submitted to the Commission on Mar. 3, 1995, by Roberta Achtenberg, former Assistant Secretary for Fair Housing and Equal Opportunity at the Department of Housing and Urban Development and from additional staff research.

[2] The Office of Human Rights and the Office of Banking and Financial Institutions are under the general authority of the Department of Human Rights and Minority Business Development and the Department of Economic Development, respectively.

[3] U.S. General Accounting Office (GAO), *Fair Lending—Federal Oversight and Enforcement Improved but Some Challenges Remain*, GAO/GGD–96–145 (August 1996), p. 19. The Committee acknowledges Kenneth D. Jones, senior economist, General Accounting Office, for his contribution of this report.

[4] The primary banking regulatory agencies are the Federal Reserve, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, and the National Credit Union Administration. Ibid.

[5] Other agencies include the Federal Housing Finance Board, the Office of Federal Housing Enterprise Oversight, the Securities and Exchange Commission, and the Farm Credit Administration. Ibid.

[6] See also U.S. Commission on Civil Rights, *The Fair Housing Amendments Act of 1988: The Enforcement Report* (Washington, D.C.: Government Printing Office, 1994) (hereafter cited as USCCR, *The Enforcement Report*), pp. 15–23.

[7] Exec. Order No. 12,259, 3 C.F.R. 307 (1981), *reprinted in* 42 U.S.C.A. § 3608 (1988). See also Executive Order No. 12,892 Jan. 20, 1994, Federal Register, vol. 59, no. 13.

[8] GAO, *Fair Lending—Federal Oversight and Enforcement Improved but Some Challenges Remain*, p. 20, n. 4. Note—It is OCC's stated policy to "not initiate any enforcement action

HUD and DOJ have executed a "Memorandum of Understanding" outlining the "roles and responsibilities of each department," the "exchange of information," "breaches of conciliation agreements," and "prosecutions for interference with fair housing rights."[9]

Jurisdictional Division Between Federal and District of Columbia Regulatory Agencies

Recent Federal legislation reforming interstate banking law has helped define the jurisdictional division between Federal and District of Columbia regulatory agencies. As noted earlier, two District of Columbia agencies are charged with monitoring residential mortgage lending: the Office of Banking and Financial Institutions (OBFI) and the Department of Human Rights and Minority Business Development (DHRMBD). The OBFI's oversight ability is limited to banks that are chartered in the District of Columbia, when nearly all of the District's financial institutions hold Federal charters. As a result, regulation of financial institutions in the District of Columbia for compliance with fair lending laws has rested with the Federal Government.

In 1994 Congress enacted the Riegle-Neal Interstate Banking and Branching Efficiency Act (Riegle-Neal)[10] to reform banking law at the Federal level, address interstate bank mergers and branching [11] at the State level, and clarify the jurisdictional boundaries of State agencies. Prior to Riegle-Neal, banks were significantly restricted in their ability to engage in banking outside their home State. Riegle-Neal attempts to remove those restrictions by allowing institutions to expand across State boundaries either by merging (or acquiring) existing banks or by opening new banks or branches.[12] States are not permitted to restrict the right of merger, although Riegle-Neal does not limit a State's authority to regulate and examine those banks that are chartered by that State. The act requires States to enact regulations within prescribed timeframes to avoid the application of uniform Federal branching and merger rules [13] Under Riegle-Neal, should the District of Columbia elect to "opt in" to the Federal interstate branching schemata, its regulatory agencies would retain oversight ability over a) branches of an out-of-State bank operating in the District, b) existing District of Columbia branches that out-of-State banks are attempting to acquire, and c) banks chartered under the laws of the District that operate banks in other States. [14] In 1996 the District of Columbia Council enacted legislation to exercise this option and enable the District to adopt operating conditions for any interstate banking, branching, and bank mergers and acquisitions.[15] Consequently, an out-of-State national bank (operating branches in the District) would be required to comply with the District's community reinvestment and fair lending guidelines. This, presumably, would empower the OBFI to conduct examinations of the bank for compliance with the District's fair lending, community reinvestment, and consumer protection laws.[16]

until HUD or DOJ has responded to the referral or notification and described any intentions it has to pursue enforcement." Office of the Comptroller of the Currency, Department of Compliance Management, *Interim Procedures for Examining for Racial and Ethnic Discrimination in Residential Lending*, Examining Issuance Bulletin 93–3 (Apr. 30, 1993), p. 37. Also, ECOA provides the following courses of action for apparent violations of ECOA and or FHA: 1) mandatory referral to DOJ when pattern or practice of ECOA violations is found with or without related FHA violations, 2) optional referral to DOJ when isolated ECOA violation is found without related FHA violations, and 3) mandatory notice to HUD when FHA violation, not related to ECOA violation, is referred to DOJ. Ibid., pp. 33–34.

[9] USCCR, *The Enfocement Report, pp. 189–90* See also "Memorandum of Understanding Between DOJ and HUD Concerning Enforcement of the Fair Housing Act, as amended by the Fair Housing Amendments Act of 1988," Dec. 7, 1990 (hereafter cited as Memorandum of Understanding).

[10] Pub. L. No. 103–328, 108 Stat. 2338.

[11] The term "branch bank" "refers to an office of a bank physically separated from its main office, with common services and functions, and corporately part of the bank. 'Branch banking' is the operation of one banking institution as the instrumentality of another, in which the relationship between them is such that they operate as a single unit." *Black's Law Dictionary* (5th ed., 1979), p. 170. See Carey C. Chem, "Interstate Banking Issues After the Riegle-Neal Act of 1994," *BNA's Banking Report*, vol. 65 (1995), p. 416.

[12] Chem, "Interstate Banking Issues," pp. 415–16.

[13] See ibid., p. 417.

[14] Ibid., p. 418.

[15] See District of Columbia Mortgage Lender and Broker Act of 1996. Council of the District of Columbia.

[16] See D.C. Code Ann. § 26–804, 26–904 (1985).

Federal Enforcement Agencies

The Department of Housing and Urban Development and the Department of Justice

The Department of Housing and Urban Development's Office of Fair Housing and Equal Opportunity (FHEO) has been given responsibility to receive, process, and initiate mortgage lending discrimination complaints.[17] The Office may investigate instances of suspected housing discrimination without first receiving a specific complaint.[18] DOJ's Housing and Civil Enforcement Section of the Civil Rights Division litigates title VIII matters in court and files suit upon notice of a violation of fair lending laws.[19] (See chapter 1.) Since 1992, the Equal Credit Opportunity Act has required regulatory agencies to refer certain violations of the ECOA to the Attorney General whenever the agency "has reason to believe that one or more creditors has engaged in a pattern or practice of discouraging or denying applications for credit."[20]

HUD's Fair Housing Initiatives Program—Testing for Mortgage Lending Discrimination

HUD is authorized to initiate testing and other investigative activities to "discover and remedy discrimination in real estate-related transactions."[21] In 1987 the Fair Housing Initiatives Program (FHIP) was established, granting authority to FHEO "to make grants to, or enter into contracts or cooperative agreements with State or local governments or their agencies, or public or private nonprofit organizations or institutions" engaged in preventing discriminatory housing practices.[22] As currently administered, "FHIP provides funding for activities in four program areas: (1) administrative enforcement, (2) education and outreach, (3) private enforcement, and (4) fair housing organizations."[23] Under the FHIP, HUD has increased its efforts at detecting mortgage lending discrimination by funding private groups to perform testing programs that review the loan application or preapplication stage of the lending process.[24] The goal of testing programs is to evaluate discriminatory practices by targeting which institutions to examine and extracting relevant HMDA information.[25] Testing is often initiated following (1) the results of HMDA reviews; (2) "allegations by real estate agents that lenders refuse to make loans in minority neighborhoods," or that their "policies or practices have a disparate impact on protected classes or neighborhoods"; or (3) "requests from lenders wishing to evaluate their own internal compliance with fair housing law."[26]

HUD Initiatives to Remedy Alleged Discrimination

Conciliation Agreements

HUD is required, to the extent possible, to enter into conciliation between an aggrieved party and an institution.[27] Conciliation agreements are voluntary and both parties must agree to the process.[28] HUD processes a large percentage of the fair lending complaints by the conciliation process[29] (see section entitled Enforcement Data below). Relief under such an agreement can include binding arbitration, and monetary relief and injunctive relief against discriminatory practices.[30] Should an institution breach a conciliation agreement, the Secretary is empowered to recommend to the U.S. Attorney General that a civil

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[17] See USCCR, *The Enforcement Report*, pp. 15–18

[18] 42 U.S.C. § 3610

[19] See USCCR, *The Enforcement Report*, p. 194.

[20] 15 U.S.C. 1691e(g) See also GAO, *Fair Lending—Federal Oversight and Enforcement Improved but Some Challenges Remain.*

[21] 42 U.S.C.A. § 3616(a) (b) (1993).

[22] 24 C.F.R. § 125.104(a) (1993). See generally, Pub. L. No. 100–242, Title V, § 5651, 101 Stat. 1912 (1987), and amendments under Pub. L. No. 101–625, Title IX, § 953, 104 Stat. 4419 (1990), and Pub. L. No. 102–550, Title IX, § 905(b), 106 Stat. 3869 (1992) (codified, as amended, at 42 U.S.C.A. § 3616a (West Supp. 1993)).

[23] GAO, *Fair Lending—Federal Oversight and Enforcement Improved but Some Challenges Remain*, p. 51. It should be noted that "in fiscal year 1993, HUD awarded $9.6 million in grants under FHIP, with almost $5 million of that targeted to projects related to insurance redlining and mortgage lending discrimination. In fiscal year 1994, congressional appropriations for FHIP were increased to $20.5 million . Information obtained from FHIP-funded projects can be used by either public or private nonprofit organizations, or HUD, as the basis for a formal complaint against individuals or lending institutions." Ibid.

[24] Ibid., p. 51.

[25] See USCCR, *The Enforcement Report*, p. 120.

[26] Ibid., 121.

[27] 42 U.S.C.A. § 3610(b)(1) (1988).

[28] GAO, *Fair Lending—Federal Oversight and Enforcement Improved but Some Challenges Remain*, p. 49.

[29] Ibid.

[30] See 24 C.F.R. § 103.31 (b)(1) (1993).

TABLE 2-1
Regulatory Agencies and their Jurisdiction

Agency	Jurisdiction
Comptroller of the Currency (OCC)*	Federally chartered national banks and their subsidiaries, banks located in the District of Columbia
Federal Deposit Insurance Corporation (FDIC)	Banks, state savings associations or Federal savings associations and banks which are not members of the Federal Reserve system[1]
Office of Thrift Supervision (OTS)	Savings and loan associations and savings banks[2]
Board of Governors, Federal Reserve System (FRB)	State banks, banking associations, and trust companies which are members of the Federal Reserve system.[3]
National Credit Union Administration	Credit unions[4]
Department of Housing & Urban Development (HUD)	Fair housing complaint initiation, investigation and processing.
Department of Justice (DOJ)	Pattern or practice discrimination cases, cases referred by HUD or aggrieved party complaint.
Office of Banking & Financial Institutions (OBFI)	Institutions chartered in the District[5] *Pursuant to proposed legislation: National bank branches, the District for community reinvestment, consumer protection, fair lending requirements. Also, mortgage lenders and bankers (see section entitled Enforcement Conclusions and Future Directions below)*
Department of Human Rights and Minority Business Deveopment (DHRMBD)	Unlawful discriminatory practices in employment, real-estate transactions, public accommodations, and educational institutions. In addition, fair housing complaint investigation and referral.[6]

* The Committee acknowledges NationsBank's correction to the description of OCC's jurisdiction

[1] 12 C F R § 201 1

[2] 12 C F R § 500 1

[3] 12 U S.C A § 221–222

[4] 12 U.S C.A. § 701.6

[5] D.C Code Ann. Chap. 25, § 2—801(8), 26-802.1(a)(I).

[6] See D.C Code Ann Chap. 25, § 1–2512, 1–2515, 1–2519–20, 1–2544, 45.

TABLE 2-2
Number of Referrals by Bank Regulatory Agencies and HUD to DOJ for Violations of the Fair Lending Laws, by Agency, 1990–1995

	Bank regulatory agencies						
Year	FRB	FDIC	OCC	OTS	NCUA	HUD	Total
1990	0	0	1	0	0	0	1
1991	0	0	0	0	0	0	0
1992	1	3	0	0	0	0	4
1993	0	7	4	1	0	1	13
1994	1	12	7	5	0	0	25
1995	5	0	5	0	0	0	10
Total	7	22	17	6	0	1	53

Source: See app II

action be filed, bringing with it the possibility of assessment of monetary penalties.[31] In fiscal year 1995, HUD conciliated 105 mortgage lending complaints resulting "in some form of monetary compensation to the complainant."[32]

Best Practices Agreements

HUD is also required to pursue voluntary programs of compliance with fair housing laws. These efforts have taken the form of "best practices" agreements with lending institutions and trade associations consisting of a set of commitments to practices such as "self-testing, outreach to brokers and community organizations," and education for mortgage lending staff and consumers.[33] In 1994 HUD entered into its first best practices agreement with the Mortgage Bankers Association of America that included commitments to self-testing and outreach to brokers and community organizations as well as education, training, and recruitment of mortgage lending staff.[34] "According to HUD, as of November 30, 1995, 70 mortgage lenders had either signed or agreed in principle to sign best practices agreements."[35]

The Office of the Comptroller of the Currency

The Office of the Comptroller of the Currency (OCC) oversees all federally chartered national banks and banks in the District of Columbia.[36] (See table 2–1.) OCC has developed procedures for the collection and release by institutions of bank loan data. As of April 1996, the OCC's Washington, D.C., duty station monitored 35 community banks, which includes institutions in Maryland and northern Virginia, for compliance with the Equal Credit Opportunity Act (ECOA) and Community Reinvestment Act (CRA).[37] To rate an institution's success in meeting the CRA requirements, OCC reviews evidence of prohibited discriminatory or other illegal credit practices, the geographic distribution of the institution's credit extensions and denials, the institution's activities at meeting the credit needs of its community, and the range of marketing efforts targeted to the community.[38] In addition, OCC examiners conduct on and offsite reviews of bank HMDA data along with application files and interview an institution's chief underwriter and/or compliance officers. Following a bank review, the OCC examiner reaches a conclusion on whether there is "reason to believe" that discriminatory lending policies exist or if the policy reveals a disproportionate adverse effect on a racial or ethnic basis.[39] If a pattern or practice of denying applications for credit on a prohibited basis is found, the OCC communicates with the institutions on its findings and writes to all affected customers, alerting them to their rights under ECOA and FHA.[40] In certain cases, OCC ensures that individuals who were denied credit on a prohibited basis are compen-

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[31] 42 U.S.C.A. § 3610. See also 12 U.S.C.A. § 2903.

[32] GAO, *Fair Lending—Federal Oversight and Enforcement Improved but Some Challenges Remain*, p. 49.

[33] Agreements have also been reached with Countrywide Funding Corporation, of Pasadena, California, and Community Lending Corporation, of College Park, Maryland, and Collateral Mortgage Co. of Birmingham, Alabama, among others. See prepared statement of Roberta Achtenberg, former Assistant Secretary for Fair Housing and Equal Opportunity, U.S. Department of Housing and Urban Development, Briefing before the U.S. Commission on Civil Rights, "Efforts to End Discrimination in Mortgage Lending," Mar. 3, 1995, p. 4. The briefing is on file at the U.S. Commission on Civil Rights library.

[34] See remarks of Peter Kaplan, Director of the Office of Regulatory Initiatives and Federal Coordination, Office of Fair Housing and Equal Opportunity, HUD, Briefing before the U.S. Commission on Civil Rights, "Efforts to End Discrimination in Mortgage Lending," Mar. 3, 1995, pp. 127–28.

[35] GAO, *Fair Lending—Federal Oversight and Enforcement Improved but Some Challenges Remain*, p. 52.

[36] 12 U.S.C.A. § 24.

[37] John N. Quill, OCC field manager–Washington, D.C., duty station, telephone interview, Apr. 5, 1996. The Office identifies community bank as any bank under a billion dollars in assets. These are supervised by the Boston Field Office or the OCC's Regional Bank Division in the New York District Office. Ibid., correspondence dated Aug. 5, 1996. See also District of Columbia Advisory Committee to the U.S. Commission on Civil Rights, Factfinding Meeting, "Home Mortgage Lending in Washington, D.C.," Dec. 12, 1994 (hereafter cited as *Transcript*) testimony of Darrell Sheets, field manager/national bank examiner, Compliance Management, U.S. Comptroller of the Currency (hereafter cited as Sheets testimony), p. 136. There are other banks in the area that are over $1 billion in assets. Copy of interview notes on file at the Commission's Eastern Regional Office.

[38] See OCC, Examining Issuance 93–3, Interim Procedures, "Examining for Residential Lending Discrimination," Apr. 30, 1993.

[39] Sheets testimony, *Transcript*, p. 128. OCC's Washington Supervision Review Committee is responsible for coordinating with DOJ or HUD in all cases in which OCC is taking an enforcement action. See Sheets testimony, *Transcript*, p. 129.

[40] See Sheets testimony, *Transcript*, pp. 129.

sated by the institution.[41] "By 1994 [five Federal agencies[42]] had each adopted revised or interim procedures that abandoned the past process of only comparing rejected applications with underwriting standards and emphasized a 'comparative-file' approach."[43] "The comparative-file approach seeks primarily to detect disparate treatment by comparing the outcomes of the lending process for similarly qualified, but racially or ethnically different, applicants."[44]

Enforcement Data

During fiscal years 1990–1995, "HUD and FHIP agencies processed 2,356 fair lending complaints." Thirty-eight percent of these complaints (896 out of 2,356) were closed following conciliation agreements while 30.6 percent were closed administratively. HUD initiated investigation in 31 percent of these complaints (731 out of 2, 356) and determined fair lending violations in 1.9 percent of complaints (14 out of 731). In fiscal year 1995, HUD closed 456 complaints alleging discrimination in housing finance.[45]

During this time period, HUD and bank regulatory agencies made 35 referrals to DOJ, and DOJ filed suit against 6 of these institutions. As of summer 1996, DOJ had initiated 10 lawsuits for fair lending violations, 6 that were initiated following referrals from HUD and bank regulatory agencies. Nine of these 10 lawsuits were settled by a consent decree.[46] Several other investigations are underway both within and outside the banking industry.[47]

Table 2–2 illustrates the number of referrals by bank regulatory agencies and HUD for violations of fair lending laws during 1990–1995. The highest number of referrals occurred during 1994, and FDIC and OCC made the largest numbers of referrals to DOJ. Appendix II provides details for each referral listed below.

Local Enforcement Mechanisms

As noted at the beginning of this chapter, two agencies within the District of Columbia government are charged with monitoring residential mortgage lending discrimination: the Department of Human Rights and Minority Business Development and the Office of Banking and Financial Institutions (OBFI).[48]

Office of Human Rights

Under the District's human rights law, the Office of Human Rights (OHR) in the Department of Human Rights and Minority Business Development (DHRMBD) is charged with the responsibility of monitoring unlawful discriminatory practices in employment, real estate transactions, public accommodations, and educational institutions.[49] Institutions are required to submit to the department for approval an annual affirmative action plan that includes goals and timetables for the remediation of past or present discrimination.[50] Although OHR primarily investigates employment and housing issues, the office investigates consumer complaints regarding lending discrimination "filed by individuals, organizations, or the director, on his own initiative, based on studies, reports, or information" concerning specific cases of alleged discriminatory acts.[51] The office has had difficulty identifying specific acts of dis-

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[41] Ibid., p. 132

[42] These included the Federal Reserve Board, Office of the Comptroller of the Currency, the Federal Deposit and Insurance Corporation, Office of Thrift Supervision, and the National Credit Union Administration

[43] GAO, *Fair Lending—Federal Oversight and Enforcement Improved but Some Challenges Remain*, p. 36

[44] Ibid., pp. 36–37

[45] This text is published in ibid., p. 48. Corrected statistics were provided by Kenneth Jones, GAO. Information on the resolution of these complains by closure type is not available. "HUD may close complaints administratively with or without an investigation. This can occur, for example, when the complainant refused to cooperate with HUD during an investigation, or when HUD is unable to contact the complainant after the complaint is filed." GAO, *Fair Lending—Federal Oversight and Enforcement Improved but Some Challenges Remain*, p. 49.

[46] DOJ obtained a consent decree with each accused institution. As of December 1995, disposition of the case against the one institution not entering into a consent decree is still pending. GAO, *Fair Lending—Federal Oversight and Enforcement Improved but Some Challenges Remain*, p. 42. Corrected statistics were provided by Kenneth Jones, GAO.

[47] Ibid

[48] Information for this section of the chapter was provided by Rochelle Duran, formerly staff to the OBFI, and Antonio Acevedo, former staff to OHR. Additional information was gathered from telephone interviews with current OBFI and OHR staff. A copy of the interview notes has been placed on file at the Commission's Eastern Regional Office.

[49] See D.C. Code Ann., chap. 25, § 1–2512, 1–2515, 1–2519–20, 1–2544–45.

[50] See D.C. Code Ann. § 1–2524 (1981).

[51] Antonio Acevedo, associate director, Office of Human Rights, D.C. Department of Human Rights and Minority Business Development, testimony, *Transcript*, p. 191.

crimination from individual consumer-initiated complaints because minority applicants often do not understand that they have been discriminated against when their mortgage application has been rejected.[52] When a complaint is initiated by a qualified, but rejected, loan applicant, the office begins a field investigation if enough evidence is present. The office notifies the OBFI or the Office of the Corporation Counsel should an act of discrimination be found.[53] As of April 1996, only one charge alleging unlawful lending practices had been filed against a lending institution for the period 1989–1996.[54] Although the office is required to investigate all four areas of discrimination under its mandate, the office is unable to target mortgage lending discrimination as a priority due to the lack of staff resources.[55] Therefore, should a complaint against an institution be received, the office would refer the matter to the Fair Housing Council for investigation.[56]

Office of Banking and Financial Institutions

In 1985 the District of Columbia government established the Office of Banking and Financial Institutions (OBFI) to regulate banks with offices located only in the District, and bank holding companies (BHCs) and their subsidiary institutions that sought a District of Columbia charter.[57] The OBFI was empowered to process bank mortgage applications, to monitor banking practices, and to develop community reinvestment guidelines for institutions operating in the District of Columbia.[58] The predominant number of institutions operating in the District are federally chartered (therefore subject to OCC oversight), placing them beyond the OBFI's oversight jurisdiction. Although the OBFI receives approximately 12 lending discrimination complaints per day, it forwards all complaints it receives to the OCC, HUD, and the District of Columbia Office of Human Rights because it does not have a system designed to handle these complaints.[59] Currently, the office monitors merger institutions in the District of Columbia and is staffed by five employees.[60] As mentioned above, the District of Columbia Council has enacted legislation conforming to the requirements of Riegle-Neal, which would strengthen the OBFI's oversight ability. At the same time, however, there have been efforts by the D.C. Council to eliminate the office. The office has developed a reorganization plan to include complaint processing and mortgage lending discrimination evaluation.[61]

Enforcement Conclusions and Future Directions

The jurisdiction of these local regulatory enforcement agencies is limited to those institutions chartered in the District of Columbia, placing the majority of lending institutions operating in the District beyond their reach. More important, their enforcement capability is impaired by the lack of staff resources. These agencies are further limited because of statutory inability to regulate mortgage companies.[62] Mortgage companies, however, account for twice the number of loans and business volume compared to traditional lending institutions.[63] The apparent lack of enforcement effort by OHR combined with the OBFI's jurisdictional limitations weakens local government efforts at detecting residential mortgage lending discrimination. Furthermore, should allegations of mortgage lending discrimination be referred to these agencies, it appears that Federal supervisory agencies would be asked to handle the matter.

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[52] Ibid., p. 192.

[53] Ibid., p. 194–95.

[54] Winona Lake, acting associate director, DHP/MBD, telephone interview, Apr. 9, 1996. A copy of the interview notes has been placed on file at the Commission's Eastern Regional Office.

[55] Ibid.

[56] Ibid.

[57] D.C. Code Ann. § 26–802.1 (1985)

[58] D.C. Code Ann. § 26–802.1 (1985)

[59] Rochelle Duran, D.C. Office of Banking and Financial Institutions, testimony, *Transcript*, p. 188–89. See also, Anthony Romero, Office of Banking and Financial Institutions, telephone interview, June 21, 1996. A copy of the interview notes has been placed on file at the Commission's Eastern Regional Office.

[60] Ibid.

[61] Ibid.

[62] Note—the Department of Consumer and Regulatory Affairs does have the power to require a "certificate of authority" in order for the company to do business in the District. Acevedo testimony, *Transcript*, p. 183.

[63] Nationally, mortgage companies lent $437.6 billion for 1- 4-unit family homes, as compared to lending by commercial banks of $232.1 billion and $184.5 billion for savings and loans institutions. See "Volume of Long-Term Mortgage Loans Originated, by Type of Property, 1980 to 1992, by Lender, 1992," *Statistical Abstract of the United States, 1994*, p. 520.

3 Evaluating Lending Disparities in the District of Columbia

The Advisory Committee reviewed three studies of lending practices that were published by the three advocacy groups invited to the fact-finding meeting: the Washington Metropolitan Planning and Housing Association (Planning and Housing Association), the Greater Washington Urban League (Urban League), and the Washington Lawyers' Committee for Civil Rights and Urban Affairs (Lawyers' Committee).[1] This chapter provides (1) a demographic overview of minority and nonminority populations in the District of Columbia; (2) a brief summary of the statistical data and findings reported in these studies; and (3) a discussion of limitations in current data analysis. Instead of undertaking an independent evaluation of the validity of the above studies, the Advisory Committee presents relevant portions of their data and findings under three headings: methodology, findings, and conclusions.

In general, the studies attempted to assess the amount of lending in the District of Columbia by correlating Home Mortgage Disclosure Act (HMDA) loan and loan dollar value data to the location of mortgage property, and to examine the number of loan application approvals and denials along ethnic lines. Both the Urban League and the Lawyers' Committee studies ranked individual lenders based on this data.[2] It should be noted that no study uncovered specific findings of fair lending violations. Rather, the studies attempted to target for future inquiry lenders who showed disparities in underwriting and marketing decisions. As will be shown, the studies found disparate lending patterns correlated to specific wards in the District of Columbia.

Demographic Overview

The District of Columbia is divided into eight election wards that vary greatly in racial composition as shown in table 3–1. Ward 7 has a 100 percent minority tract while ward 3 has a 0 percent minority tract. Wards 5, 7, and 8 have a high percentage of minority tracts compared to wards 2 and 3, which have the lowest.[3] (A minority census tract is a tract consisting of at least 66 percent minority population.[4]) According to the 1990 census, 65.8 percent of the District of Columbia's population is black, 29 percent white, 5.4 percent Hispanic, and 4.6 percent "other."[5]

TABLE 3–1
Percentage of Minority Tracts by Ward

Ward	No. of census tracts	No. of minority census tracts	Pct. minority tract
7	23	23	100
8	23	22	96
5	26	24	92
4	23	20	87
6	26	17	65
1	22	10	46
2	32	7	22
3	18	0	0

Source: Greater Washington Urban League, Inc., *District of Columbia Single Family Mortgages Among Minorities, 1990–1992* (1994), p. 16

[1] See Metropolitan Washington Planning and Housing Association, *Summary of Bank Lending Practices in the District of Columbia* (1992); Greater Washington Urban League, Inc., *District of Columbia Single Family Mortgages Among Minorities, 1990–1992* (1994); Washington Lawyers' Committee for Civil Rights and Urban Affairs, *Ranking the Lenders: Investigation for Patterns of Racial Discrimination in the Making of Home Loans* (1994).

[2] Criticism has arisen over the Lawyers' Committee and Planning and Housing Association reports. As claimed by NationsBank, the reports did not take into account wholly owned mortgage companies, credit unions, and other financial services companies in their analysis of lending activity and did not distinguish whether the transactions studied involved purchase or refinance loan. See app. III, page 10—NationsBank Response.

[3] There are also six institutional tracts in the District of Columbia, representing Walter Reed Hospital, Soldiers' Home, Ft. McNair, DC Jail and DC General Hospital, Bolling Air Force Base, DC Village, the Arboretum, and St. Elizabeth's Hospital. Greater Washington Urban League, Inc., *District of Columbia Single Family Mortgages Among Minorities, 1990–1992* (1994), p. 14, n. 11.

[4] Ibid.

[5] Includes Asian, Pacific Islander, American Indian or Eskimo. See ibid., p. 16.

Summary of Statistical Findings

The Planning and Housing Association

Methodology

In its study, *Summary of Bank Lending Practices in the District of Columbia*, the Planning and Housing Association examined residential home mortgage and home improvement loans made during 1988, 1989, and 1990 by six merger banks and five nonmerger banks operating in the District of Columbia. In addition, the study reviewed the lending activity of five mortgage affiliates of six banks operating in the District for the years 1989 and 1990. The study limited its focus to underserved areas within the District, which it defined as areas having median household income not exceeding 80 percent of the median income for the District in 1980.[6] The study identified 58 out of 181 (or 32 percent) census tracts as meeting this criterion.[7] The study ranked the lenders according to the number and dollar amount of citywide loans offered. The study also compared the dollar amount of loans in underserved tracts to the percentage of total lending in the District of Columbia for each of the 3 years studied.[8]

Findings

Overall Lending Activity by Banks and Mortgage Affiliates—Total Lending by Ward

In order to assess whether a relationship existed between low loan dollar values to minority communities and individual wards and tracts in the District of Columbia, the study calculated the total loan dollar amount in relation to each ward and underserved areas within each ward for the 3-year period. As shown in table 3–2, wards 2 and 3 (wards that are predominantly nonminority) consistently received greater loan dollars than wards 4, 5, 7, and 8 (which have predominant minority populations).[9] However, "dollars loaned in ward 8, the city's poorest ward, increased by 45 percent in all census tracts between 1989 and 1990. . . ."[10]

The number of loans to wards 7 and 8 was found to "represent 11 percent of the total loans made in 1990 throughout the city, an increase from 7 percent in 1988."[11] Ward 3 received the highest loan values for each of the 3 years that can be attributed to high property values and high per capita income than any other ward.[12] Although some lenders lead the District in the volume of loans and loan dollar amounts, some of the same institutions could be ranked low in the percentage of total loans made in underserved communities.[13] Conversely, some low-volume lenders were found to lead the area in percentage of total loans made in underserved areas.

The Urban League

Methodology

In its study, *District of Columbia Single Family Mortgages Among Minorities, 1990–1992*, released in 1994, the Urban League examined single-family mortgage lending in the District of Columbia by 14 financial institutions for the years 1990, 1991, and 1992. The study compared approval rates by ethnic categories in both dollar and loan volume amounts, compared the geographic distribution of loan originations in minority and nonminority census tracts, and compared the denial rates as they relate to the ethnicity of the mortgage applicant in minority and nonminority census tracts.[14] The study, however, did not address the reasons for denial in its analysis of loan denial disparities.[15]

Findings

The Urban League made three findings concerning the number of loans and loan amounts made to minority and nonminority applicants, lending rates in the District's tracts and wards, and the ratio of loan denials to ethnic categories and location of mortgaged property.

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[6] Planning and Housing Association, *Summary of Bank Lending Practices*, p. 1.

[7] Ibid., p. 34.

[8] Metropolitan Washington Planning and Housing Association, press release, "Banking Study Released," July 31, 1992. The study did not compare the number of applications submitted to the number of approved loans, and reserved for future study the relationship between the location of mortgaged property and the race of applicants.

[9] Between 1989 and 1990 the total loan amount going to underserved areas declined by 54 percent. The Planning and Housing Association suggested that this decline in lending to underserved areas could be attributed to either high unemployment levels, making it difficult for some borrowers to meet credit standards; banks setting different lending goals for residential and nonresidential loans which were met; or low demand for residential mortgages or applications. Ibid., pp. 11–13.

[10] Ibid., press release.

[11] Ibid.

[12] Ibid., p. 34.

[13] Ibid.

[14] The Urban League also summarized each institution's efforts at increasing minority lending and provided institutional ranking based on the analyzed loan data.

[15] Ibid., p. 25. Under the Home Mortgage Disclosure Act, reporting by institutions of the reasons for denial is optional.

TABLE 3-2
Lending Amounts by Wards, 1988–1991

000s omitted

	*1988**			*1989*			*1990*		
	Loan amount	**Lending to UA**	**Underserved as % of total lending**	**Loan amount**	**Lending to UA**	**Underserved as % of total lending**	**Loan amount**	**Lending to UA**	**Underserved as % of total lending**
Ward 3	$71,389	N/A	N/A	$74,737	N/A	N/A	$63,491	N/A	N/A
Ward 2	36,006	$2,119	5 89	66,464	$7,311	11 00	35,266	$2,100	5 95
Ward 6	25,463	838	3 29	33,851	3,505	10 35	31,900	1,838	5 76
Ward 1	21,020	7,585	36 08	32,380	10,901	33 67	29,499	3,699	12 20
Ward 4	9,990	N/A	N/A	15,012	N/A	N/A	16,873	N/A	N/A
Ward 5	4,099	729	17 78	12,037	1,290	10 46	11,495	725	6 31
Ward 7	1,873	353	18 85	6,437	2,444	37 97	6,927	2,279	32 90
Ward 8	342	324	94 74	1,623	1,393	85 83	2,348	1,689	71 93
Total lending	170,182			242,541			197,799		
Lending to UA		11,948	7 02		26,844	11 07		12,231	6 18

* Does not include mortgage affiliates.
N/A = There are no underserved census tracts in these wards
UA = Underserved areas.

Source: Metropolitan Washington Planning and Housing Association, *Summary of Bank Lending Practices in the District of Columbia* (1992), pp. 19–23, 30.

TABLE 3–3
Loans to Minority Borrowers Compared to Total Loans

Single-family mortgages; 000s omitted

	Loan value to minorities/ total lending	Loans to minorities as % of total loan value	# Loans to minorities/ total lending	Loans to minorities as % of total loans
1990	$66,967/$249,581	26.83	925/2,157	42.88
1991	$59,859/$265,983	22.50	946/2,195	43.10
1992	$88,600/$525,082	16.87	935/3,275	28.55

Source: Greater Washington Urban League, Inc., *District of Columbia Single Family Mortgages Among Minorities, 1990–1992* (1994), p. 18.

TABLE 3–4
Summary of Total Single-family Mortgages

Dollars in thousands

	1990	1991	1992
Number of total loans	2,157	2,195	3,275
Number of loans in minority census tracts	898	1,033	1,056
% of total number of loans	**41.63%**	**47.06%**	**32.24%**
Dollar value of loans	$249,581	$265,983	$525,082
Dollars lent in minority census tracts	$64,559	$78,217	$102,634
% of total loan amount	25.87%	29.41%	19.55%

Source: Greater Washington Urban League, Inc., *District of Columbia Single Family Mortgages Among Minorities, 1990–1992* (1994), p. 30.

Overall Lending to Minorities

In spite of an increase in the volume of dollars loaned from 1990 to 1992, minorities received less than 27 percent of the total dollars loaned during the 3 years examined (26.83 percent in 1990, 22.50 percent in 1991, and 16.87 percent in 1992).[16] They also did not receive their share of the total number of loans in proportion to their respective populations. As shown in tables 3–3 and 3–4, 67 percent of the total loans in 1992 went to white applicants who represent 29 percent of the District's population compared to only 28.55 percent of the loans going to "black applicants who represent 65.8 percent of the city's population."[17] In addition, the percentage of total loans going to minority applicants decreased from 43.10 percent in 1991 to 28.55 percent in 1992.

[16] Ibid., p. 20.

[17] Ibid.

Lending Rates in Minority and Nonminority Tracts and Wards

As shown in table 3–4, both the number and dollar amount of single-family mortgage loans to minority tracts showed steady increases from 1990 to 1992.[18] However, expressed as a percentage of the total loan amount, they show a sharp decline between 1991 and 1992 (from 47.06 percent to 32.24 percent in the percentage of total number of loans and from 29.41 percent to 19.55 percent in the percentage of total loan amount).[19]

[18] A minority tract was defined as one "having a minority population in 1990 of two-thirds or greater." The study noted that "a contributing factor to the disparities is the rate at which different ethnic groups actually apply for loans. The number of minority applicants remained virtually unchanged from 1990–1992, while the number of white applicants nearly tripled." Ibid., pp. 4, 35.

[19] See. ibid.

TABLE 3-5
Summary of Single-family Mortgage Lending Activity by Ward
(Dollars in millions)

Nonminority wards	1990 # loans	1990 % of total loans	1990 $ value	1991 # loans	1991 % of total loans	1991 $ value	1992 # loans	1992 % of total loans	1992 $ value
Ward 1	290	13	34,782	237	11	31,865	418	13	63,217
Ward 2	310	14	42,792	364	17	52,960	535	16	86,759
Ward 3	425	20	81,366	515	23	91,669	1,171	36	250,569
Ward 6	295	14	33,190	258	12	31,116	357	11	47,659
Subtotal	***1,320***	***61***	***192,130***	***1,374***	***63***	***207,610***	***2,481***	***76***	***448,204***
Minority wards									
Ward 4	315	15	24,681	296	13	24,114	332	10	38,746
Ward 5	257	12	17,905	253	12	19,414	264	8	24,406
Ward 7	177	8	10,947	169	8	9,782	126	4	9,064
Ward 8	88	4	3,918	103	5	5,063	72	2	4,662
Subtotal	***837***	***39***	***57,451***	***821***	***38***	***58,373***	***794***	***24***	***76,878***

Source: Greater Washington Urban League, Inc., *District of Columbia Single Family Mortgages Among Minorities, 1990-1992* (1994), p. 36

TABLE 3-6
Percentage of Total Mortgage Loans in Each Ward from 1990 through 1992, Compared to the Percentage of the District's Total Owner-occupied, Single-family Residences in Each Ward

Ward	% minority tract	% of total DC SFUs	% of total loans 1990	1991	1992	Total for 3 years combined
Ward 7	100	14	8	8	4	20
Ward 8	96	4	4	5	2	11
Ward 5	92	17	12	11	8	33
Ward 4	87	20	15	13	10	38
Subtotals		***55***	***39***	***37***	***24***	
	% nonminority tract					
Ward 6	65	14	14	12	11	37
Ward 1	46	8	13	11	13	37
Ward 2	22	6	14	17	16	47
Ward 3	0	17	20	23	36	79
Subtotals		***45***	***61***	***63***	***76***	

SFU = Single-family units
Source Greater Washington Urban League, Inc., *District of Columbia Single Family Mortgages Among Minorities, 1990-1992* (1994), pp. 16, 35.

Single-family mortgage activity between minority and nonminority wards also provides a stark contrast. During 1990, 1991, and 1992, the predominantly nonminority wards 2 and 3 received the predominant number of loans and greater loan dollars in comparison to the predominantly minority wards 6, 7, and 8 which received the fewest.

Table 3–5 shows that the number of loans for nonminority wards in 1990 was 61 percent of total loans, increasing to 76 percent in 1992. The total number of loans to minority wards decreased from 39 percent in 1990 to 24 percent in 1992.

Lending Activity in Each Ward Correlated to the District's Owner-Occupied Single-Family Units.[20] As shown in table 3–6, in comparing the amount of lending in each ward to the amount of single-family units, the Urban League discovered that ward 3, which has the same percentage of single-family homes as ward 5, "received more than twice the percentage (36 percent) of mortgage loans of any other ward in the city in 1992."[21] In addition, "ward 2, which also has a predominantly white population, received 16 percent of the total loans in 1992, while having only 6 percent of the city's stock of owner-occupied, single-family homes."[22] Conversely, wards 7, 8, 5, and 4, which have predominantly minority populations, received increasingly smaller percentages of loans (39 percent in 1990, 37 percent in 1991, and 24 percent in 1992). In particular, "the percentage of loans made to borrowers for properties in wards 7 and 8, which are overwhelmingly minority populated, declined by 50 percent or more from 1991 to 1992."[23] In contrast, wards 6, 1, 2, and 3, which have predominantly nonminority populations, received an increasingly larger percentage of loans over the 3-year period (61 percent in 1990, 63 percent in 1991, and 76 percent in 1992).

Loan Denial Ratios

The Urban League examined whether denial rates differed based on applicant race. This study tabulated denial rate disparities between racial groups and examined whether denial rates varied depending upon the location of mortgaged property in either a minority or nonminority census tract. Table 3–7 shows that minority applicants

[20] Ibid., p. 35
[21] Ibid
[22] Ibid., p. 28.
[23] Ibid.

TABLE 3-7
Single-family Loan Denials by Race
(Number of loans)

Race	1990 No. applied	1990 No. denied	1990 *Denial %*	1991 No. applied	1991 No. denied	1991 *Denial %*	1992 No. applied	1992 No. denied	1992 *Denial %*
White	1,104	91	*8*	1,502	218	*15*	2,934	455	*16*
Minority									
Black	1,334	343	*26*	1,446	404	*28*	1,330	374	*28*
Asian	30	6	*20*	48	10	*21*	88	20	*23*
Hispanic	83	12	*14*	74	14	*19*	87	26	*30*
Total	1,447	361	*25*	1,568	428	*27*	1,505	420	*28*
Other	493	119	*24*	254	81	*32*	508	89	*18*
Total	3,044	571	*19*	3,324	727	*22*	4,967	964	*19*

Source Greater Washington Urban League, Inc., *District of Columbia Single Family Mortgages Among Minorities, 1990-1992* (1994), p 23

TABLE 3-8
Single-family Mortgage Denial Rates by Applicant Race and Location of Mortgaged Property, 1992

		Applicant race: Minority	Applicant race: Nonminority	Total denial rates
Tracts	Minority	368 denied; 1,284 approved 29% denial rate	91 denied; 475 approved 19% denial rate	459 denied; 1,759 approved 26% denial rate
	Nonminority	59 denied; 320 approved 18% denial rate	325 denied; 2,388 approved 14% denial rate	384 denied; 2,708 approved 14% denial rate
	Total	*427 denied; 1,604 approved* *27% denial rate*	*416 denied; 2,863 approved* *15% denial rate*	

Source Constructed using Urban League data

experienced higher rejection rates than white applicants. For instance, in 1992, black applicants experienced a 28 percent rejection rate, compared to 16 percent for white applicants. This disparity was shown to be consistent throughout the 3 years studied.

Table 3–8 shows that minority applicants applying for loans in minority tracts experienced denial rates nearly twice as high (29 percent) as majority applicants applying in nonminority tracts (15 percent).[24] Minorities applying in minority and nonminority tracts experienced a 26 percent denial rate in comparison to nonminority applicants, who experienced a 14 percent denial rate.[25] The study concluded that "the least likely applicant to be denied a mortgage is a white applicant applying for a mortgage in a nonminority tract."[26] The Urban League concluded that at least 1 out of 4 minority applicants applying for a single-family mortgage loan between 1990 and 1992 was rejected.[27]

[24] Ibid., p. 24

[25] Ibid.

[26] Ibid., pp. 24–25.

[27] Ibid., p. 23.

The Lawyers' Committee for Civil Rights and Urban Affairs

Methodology

The Lawyers' Committee studied the underwriting and marketing practices of lenders in the Washington, D.C., area. The committee's report, *Ranking the Lenders: Investigating for Patterns of Racial Discrimination in the Making of Home Loans*, examined disparities in rejection rates between minority and nonminority applicants and disparities in the marketing and soliciting of loans in minority neighborhoods, which formed the basis for the study's ranking of lenders. The study also examined mortgage applications and originations (for the years 1990–1993) for the purchase and refinance of "one-to-four"[28] family residences in the Washington, D.C., Metropolitan Statistical Area (MSA) by banks and mortgage subject to HMDA reporting requirements. Included in the study is analysis of reported loan information for conventional and government-insured loans.

Controls —Why the Lawyers' Committee Study Is Unique[29]

The Lawyers' Committee study tried to identify lenders in the Washington, D.C., area that might be engaged in a pattern or practice of racial discrimination in loan underwriting, similar to what DOJ did in *U.S. v. Decatur Federal Savings and Loan Association*. There, DOJ employed a logistic regression analysis using individual loan files to control for applicant characteristics in assessing the institution's loan denial rates. The Lawyers' Committee statistically adjusted for the magnitude of the racial disparities, taking into account the number of loan applications received by the institution, the effect of borrower income, and the reasons for applicant rejection reported under HMDA.[30] Lenders that showed the highest racial disparities in market share were ranked.

The Lawyers' Committee separately assessed racial disparities in marketing, using the same approach as the DOJ in its redlining cases. Namely, it analyzed the HMDA data to identify differences in the institution's market share of mortgage loans in majority-white and majority-black census tracts. This analysis indicated possible racial redlining because it examined mortgage loans made by all HMDA reporting institutions in the studied census tracts, comparing each institution's share of those loans in the white and black tracts.[31] The analysis was limited to high-volume lenders whose loan business would be expected to extend into many areas of the Washington, D.C., market, and it controlled for differences in loan size and type. Lenders that exhibited the highest racial disparities in market share were ranked by the Lawyers' Committee. Their lending patterns were displayed by computer mapping to show the relative concentrations of loans in the white and black tracts.

Findings

Racial Disparities in Underwriting—Rejection Rate Disparities

The Lawyers' Committee found that "13 large area lenders rejected African American applicants for conventional mortgage loans between 1990 and 1993 at significantly higher rates than whites even after controlling for income differences."[32] "At each of [the 13] institutions, black applicants were more than twice as likely to be rejected for loans as white applicants, and at 4 of the institutions, Hispanic applicants had a likelihood of rejection that was at least twice that of whites."[33] "The rejection rate disparities remained significant for the 13 lenders regardless

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[28] The term one to four refers to the designation of a particular dwelling as containing functional units. For instance, a two-family residence would refer to two distinct and functional units.

[29] This section is in large part based on a letter from Richard Ritter, Washington Lawyers' Committee for Civil Rights and Urban Affairs, dated Aug. 5, 1996. A copy has been placed on file at the Commission's Eastern Regional Office.

[30] "Analysis of the reasons for rejection was considered important because the Justice Department found in *Decatur* that race discrimination frequently occurred in underwriter assessments of the loan applicants' credit histories and debt-to-income ratios. After controlling for differences in income, lenders that rejected minority applicants at significantly higher rates than white applicants on these grounds were considered prime candidates for a full logistic regression study under the *Decatur* model. The Lawyers' Committee noted that not all lenders reported the reasons for applicant rejection. This is because HMDA permits, but does not require, the reporting of reasons for rejections." Ritter contribution.

[31] Ritter footnote omitted.

[32] Washington Lawyers' Committee for Civil Rights and Urban Affairs, *Ranking the Lenders: Investigation for Patterns of Racial Discrimination in the Making of Home Loans* (1994) p. 11.

[33] Ibid.

of the income of the borrowers."[34] On a year by year basis, rejection rate disparities *increased* in 1993 over the 1990–1992 average for virtually all lenders."[35] Lenders that originated large numbers of FHA and VA loans also showed high rejection rate disparities for black and Hispanic applicants.[36]

Racial Disparities in Marketing

"Fifteen large-volume mortgage lenders showed significant disparities throughout the Washington, D.C., MSA for the years 1990 through 1993 in their market shares of loans and loan applications in [minority] areas even after applying controls for the type of loan (jumbo and nonjumbo) and loan amount."[37] Using computer dot density maps, the study shows a virtually all-white lending pattern for many of these institutions.[38] Institutions that have a high volume of lending activity could be expected to originate loans in minority communities due to the proximity of minority to nonminority communities in the same areas of the MSA.[39] The Lawyers' Committee concluded that "significant imbalances in a lender's market share, when correlated with neighborhood racial characteristics, can be considered a fair indicator of possible racial redlining and discriminatory marketing."[40]

Limitations of HMDA Data and Interpretive Precautions

The foregoing studies demonstrate racial disparities in mortgage lending in the District of Columbia, raising serious civil rights concerns. Both at the factfinding meeting and through subsequent followup research, it was pointed out to the Advisory Committee that racial disparities alone are not to be taken automatically as a demonstration of lending discrimination itself although they constitute grounds for suspicion. Critics argue that the HMDA data do not include a sufficient array of necessary information to warrant a determination whether institutions have engaged in acts of mortgage lending discrimination.[41] More specifically, they point out that findings based on HMDA data are subject to the following interpretive precautions:

1) The HMDA database does not contain necessary information about individual applicants such as the level of debt, debt payment record, employment history, family size, financial obligations, assets, and other factors pertinent to an assessment of credit risk.[42] This necessary information is only available in individual loan applications maintained by financial institutions and not available in HMDA. Also missing in the HMDA data are specific underwriting standards of individual lending institutions.[43] These limitations make it difficult to determine the underlying reasons, i.e., standards used to assess prospective loan applications by individual institutions, and to make comparisons between bank commitments and their actual performance.[44]

These limitations not withstanding, the amount of HMDA data that is reported may be further reduced by the Economic Growth and Regulatory Paperwork Reduction Act of 1996.[45]

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[34] Ibid.

[35] Ibid., p. 2.

[36] Ibid., p. 22.

[37] Ibid., p. 12.

[38] The Lawyers' Committee suggested that a possible explanation for this disparity is that "lenders may target affluent or upper income borrowers who are often disproportionately white and reside in predominantly white areas . . . [or] impose minimum loan amounts or specialize in 'jumbo' loans that screen out low-income borrowers who are disproportionately black or minority." The Lawyers' Committee tested this theory by "adjust[ing] for differences in market share in black and white areas that might be due to a lender's decision to market separate types of loans in different ways." The Lawyers' Committee discovered that the market share disparities either increased or remained the same. Ibid., p. 29. Note—loan types were classed as either "jumbo," loans over $203,000, or "nonjumbo," loans under $230,000.

[39] Ibid., p. 29.

[40] Ibid.

[41] Nondiscriminatory factors can potentially influence data interpretation. These factors can include the unaccounted factor of the percentage of minority home owners compared with the percentage of minorities living in rental units and a particular institution's belief that it has enough loan applications to sustain a profitable business due to the lack of competition from other lenders. See also Loraine R. Bennett, community reinvestment/fair lending coordinator, Urban League, and John P. Relman, Lawyers' Committee, testimony before the District of Columbia Advisory Committee to the U.S. Commission on Civil Rights, Factfinding Meeting, "Home Mortgage Lending in Washington, D.C.," Dec. 12, 1994 (hereafter cited as *Transcript*), pp. 27, 77–78.

[42] Washington Lawyers' Committee, *Ranking the Lenders*, p. 18.

[43] Ibid.

[44] Metropolitan Washington Planning & Housing Association, *Summary of Bank Lending Practices in the District of Columbia, 1990–1992* (1994), p. 6.

[45] P. Law No. 104–208, Sept. 30, 1996.

Among other things, the act exempts approximately 1,500 lenders from the HMDA threshold reporting requirements.[46] A certain class of lenders will only be required to maintain data in their home offices, rather than in at least one branch in each metropolitan area in which they serve.[47] Together, these changes may make it difficult for community organizations to obtain HMDA data in order to identify lending disparities that trigger investigations of mortgage lending discrimination.

2) Observed disparities in loan activity and disposition of loan applications may be caused by factors related to the parties involved such as buyer, sales agent, loan originator, and others.[48] The HMDA data, however, do not allow the type of analysis that can link observed disparities to any specific factors. As such, one cannot assess the fairness of the lending process using HMDA data.[49] In addition, the data fail to "reflect the experience of prospective buyers who do not submit written loan applications to lenders. . .because they anticipate discriminatory treatment. . .in the home-buying process."[50]

3) Since intergroup (i.e., minority vs. nonminority) disparities in approval and rejection rates are affected by the cutoff point or lending criteria adopted by institutions, it can be misleading to compare institutions exclusively in terms of approval or rejection rates.[51] There are critics who maintain that rejection rate data are not a sound basis for a comparison of lending institutions. It is, therefore, necessary to control or adjust for differing lending criteria before making interinstitutional comparisons as a basis for assessing unfair lending practices.[52] However, some counter that since national banks report approximately 80 percent of the reasons for loan denials, the data, though limited, constitute a fairly complete source of information.[53]

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[46] Center for Community Change, *The 104th Congress: Less Money, Fewer Rules, More Power to the States* (1996), p. 24.

[47] Ibid.

[48] See Ronald E. Wienk, "Discrimination in Urban Credit Markets: What We Don't Know and Why We Don't Know It," *Housing Policy Debate*, vol. 3, iss. 2, p. 224 (this copyrighted material is used with permission of the Fannie Mae Foundation). There are three types of lending discrimination: overt, disparate treatment, and adverse impact. The lending process has been described as consisting of five stages. Each type of discrimination against protected classes can enter at any of the above stages of the lending process and is not limited to an institution's decision to accept or reject a mortgage application.

The five stages of the lending process include territory selection by an institution (stage 1), advertising and marketing (stage 2); prescreening of mortgage applicants (stage 3); mortgage application processing (stage 4); and steering of specific mortgage products (stage 5). See James H. Carr and Isaac Megbolugbe, *Federal Reserve Bank of Boston Study on Mortgage Lending Revisited*, a Fannie Mae Working Paper, Fannie Mae Office of Housing Research (1993). A copy of the working paper has been placed on file at the Eastern Regional Office of the USCCR.

Courts have recognized three methods of proof in lending discrimination under the ECOA and the FHA:

- *overt evidence of discrimination*—when a lender blatantly discriminates on a prohibited basis. This type does not require any showing that the treatment was motivated by prejudice or a conscious intention to discriminate against a person beyond the difference in treatment itself. It is considered by courts to be intentional discrimination because no credible, nondiscriminatory reasons explains the difference in treatment on a prohibited basis.
- *disparate treatment*—when a lender treats applicants differently based on one of the prohibited factors.
- *disparate impact*—when a lender applies a practice uniformly to all applicants but the practice has a discriminatory effect on a prohibited basis and is not justified by business necessity. The existence of a disparate impact may be established throughout review of how a particular practice, policy, or standard operates with respect to those who are affected by it. The existence of disparate impact is not established by a mere assertion or general perception that a policy or practice disproportionately excludes or injures people on a prohibited basis.

See also "Joint Policy Statement on Discrimination in Lending," *Federal Register*, vol. 59, no. 73.

[49] See *Fair Lending Enforcement and the Data on the 1992 Home Mortgage Disclosure Act (HMDA): Hearings Before the Committee on Banking, Housing and Urban Affairs, United States Senate*, 104th Cong., 1st Sess. (1993) (testimony of Lawrence Lindsay, member, Board of Governors of the Federal Reserve, Nov. 4, 1993).

[50] Ronald E. Wienk, "Discrimination in Urban Credit Markets: What We Don't Know and Why We Don't Know It," *Housing Policy Debate*, vol. 3, iss. 2, p. 224. Information taken from paper presented to the Fannie Mae Annual Housing Conference (1992), p. 8. This copyrighted material is used with permission of the Fannie Mae Foundation.

[51] See James P. Scanlan, "When Statistics Lie," *Legal Times*, Jan. 1, 1996.

[52] See ibid., p. 29.

[53] Larry Riedman, fair lending specialist, Office of the Comptroller of the Currency, "Use of Loan Files to Identify Victims of Lending Discrimination," paper presented to the Department of Housing and Urban Development Discrimination and Mortgage Lending Research Development and Federal Policy Conference, May 18–19, 1993, pp. 20–21. A copy of the revised paper dated June 15, 1993, has been placed on file at the Commission's Eastern Regional Office.

Summary

Although panelists representing the Lawyers' Committee and the Urban League were reluctant to conclude that their findings constituted proof of discrimination, their studies showed that minorities receive a lower number of loans and loan dollar amounts than nonminority applicants in identifiable tracts within the District. The studies also presented evidence of variances in the location of loans as well as the number of approved versus denied loan applications. In order to reach findings of discrimination, however, they said that individual loan file data, which were unavailable for their study, ought to be examined.

4 Efforts to Eliminate Disparities in Lending Results

Prompted by their increased awareness of fair housing issues, Federal agencies and some lending institutions, in recent years, have instituted efforts to counteract discriminatory lending practices. Since their mutual cooperation will have a significant impact in shaping the current debate on how best to eliminate residential mortgage lending discrimination, their remedial efforts are summarized below.

Federal Agencies

The creation of the President's Fair Housing Council and the Interagency Task Force on Fair Lending has strengthened cooperation and partnership building by Federal agencies charged with monitoring lending practices. In January 1994, President Clinton issued Executive Order 12892, [1] creating the President's Fair Housing Council. The Council is comprised of financial regulatory institutions and other executive agencies with the mandate of designing and coordinating, among the members, strategies to further fair housing opportunities.[2] The Council's function is to propose revisions to existing programs or activities, and to develop memoranda of understanding between the agencies regarding the coordination and investigation of fair housing complaints.[3] All executive departments and agencies that administer programs relating to housing and urban development are required to cooperate with the Secretary of HUD in administering the provisions of the Fair Housing Act (FHA). The Council expected to issue policy guidance statements on fair housing issues in the summer of 1996, although a meeting by the agency Secretaries and other members of the Council has not occurred as of that time.[4]

On April 15, 1994, 10 Federal agencies formed an Interagency Task Force on Fair Lending. The task force issued a joint policy statement describing its general position and administrative enforcement guidelines on the Equal Credit Opportunity Act and the FHA.[5] Its policy statement informs lenders and borrowers that the agencies are unified in their zero tolerance of lending discrimination.[6] It also reenunciated the standards that will be used to identify "disparate treatment" discrimination and what constitutes a "business necessity" defense to a charge by regulators that an institution did not market or approve loans to minority and nonminority applicants equitably.[7] The Task Force was expected to further clarify the principles set forth in the policy statement; however, as of August 1996, none had been issued.[8]

Local Community Programs

Following the *Washington Post* series on mortgage lending in the District of Columbia (see chapter 1), the District of Columbia Council, in 1993, established the Capital Area Mortgage

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[1] Exec. Order No. 12892, reprinted in US Code Congressional and Administrative News, vol. 4 (1993), p. B163

[2] The Council consists of the Secretaries of Housing and Urban Development, Health and Human Services, Transportation, Education, Labor, Defense, Agriculture, Veterans Affairs, Treasury, and Interior, Chair of the Federal Reserve, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Attorney General, and Chair of the Federal Deposit Insurance Corporation. See ibid., § 3–301.

[3] Ibid., pp. B164–66.

[4] Catherine Leroy, Director of Federal Agency Coordination, Office of Regulatory Initiates and Federal Regulatory Coordination, Department of Housing and Urban Development, telephone interview, Apr. 22, 1996. A copy of the interview notes has been placed on file at the Commission's Eastern Regional Office.

[5] 59 Fed. Reg., No.73, p. 18266. Federal signatory agencies included the Department of Justice, the Department of Housing and Urban Development, Office of the Comptroller of the Currency, Office of Thrift Supervision, the Board of Governors of the Federal Reserve, Federal Deposit and Insurance Corporation, the Federal Housing Finance Board, Federal Trade Commission, National Credit Union Administration, and the Office of Federal Housing Enterprise Oversight.

[6] Ibid.

[7] Ibid.

[8] Ivy Davis-Fox, Director of the Division on Mortgage Lending and Insurance Redlining (HUD), telephone interview, Apr. 19, 1996, and subsequent correspondence dated Aug. 12, 1996. A copy of the interview notes and letter has been placed on file at the Commission's Eastern Regional Office.

Partnership (CAMP) to offer rejected loan applicants a second review of their denied applications by an external review board.[9] In coordination with the District's Office of Financial and Banking Institutions (OBFI), CAMP conducts workshops for first-time homeowners, offering technical and financial assistance and financial management education. According to Anthony Romero, acting superintendent of OBFI, as of April 1996, CAMP had not held workshops, but plans to renew this practice.[10] CAMP also provides loan application packets to rejected applications informing them of its services and other fair lending information.[11] In addition, CAMP attempts to place rejected loans with other participating banks in an effort to give rejected loan applicants a second chance for approval.[12]

Financial Institutions

Descriptions of efforts by financial institutions at increasing the number of loans to minority applicants and eliminating discrimination in the lending process were provided to the Advisory Committee through responses by 14 institutions surveyed by the Urban League. The Urban League solicited information regarding each institution's efforts to reduce lending discrimination and to respond to the study's findings. The efforts of individual institutions include the following:[13]

- "Third and fourth level reviews of denied mortgage applications of low- and moderate-income persons."
- The development of annual community reinvestment plans and periodic CRA testing of branch personnel conducted by internal auditors and conducting a community needs assessment.
- Participation in CAMP and initiating meetings with District officials to develop public mortgage-assistance programs. Conducting community meetings and annual bank fairs where services and loan applications are discussed.
- Continuous employee retraining on community lending, reinvestment requirements, and fair lending.
- The publishing of quarterly newsletters regarding new developments in community development.

The Urban League made recommendations for improving lending to minorities, including establishment of an internal and external review system for denied applicants, offering affordable mortgage products with flexible underwriting criteria, employee education on fair lending issues, recruitment of an ethnically diverse work force, and increased marketing efforts.[14] More specifically, its recommendations include the following:

- All institutions should participate in external reviews of denied applications, such as proposed in the Capital Area Mortgage Partnership (CAMP)
- Review of denied minority applications should include review of a sample of approved white applications to ensure equitable application of underwriting criteria
- Marketing programs should include direct and frequent communication with community-based organizations and [R]ealtors who are patronized by minority residents and actively involved in minority neighborhoods
- Financial institutions should set goals that result in a market share for minorities and minority neighborhoods that reflect their representation in the District of Columbia
- Loan originators and appraisers must become familiar with all neighborhoods of the District of Columbia, particularly those with large minority populations

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[9] See Jarvis, testimony before the District of Columbia Advisory Committee to the U.S. Commission on Civil Rights, Factfinding Meeting, "Home Mortgage Lending in Washington, D.C." Dec. 12, 1994 (hereafter cited as *Transcript*), p. 159

[10] J. Anthony Romero, acting superintendent, District of Columbia Office of Banking and Financial Institutions, telephone interview, Apr. 22, 1996. A copy of the interview notes has been placed on file at the Commission's Eastern Regional Office.

[11] The success of this aspect of the project has been difficult to monitor because some lenders have not distributed loan rejection packets to every applicant. Leroy Hubbert, Chairman, Capital Area Mortgage Partnership (CAMP), telephone interview, Apr. 19, 1996. A copy of the interview notes has been placed on file at the Commission's Eastern Regional Office.

[12] Ibid.

[13] Information printed in various sections of Greater Washington Urban League, Inc., *District of Columbia Single Family Mortgages Among Minorities, 1990–1992* (1994), pp. 44–55.

[14] Loraine R. Bennett, community reinvestment/fair lending coordinator, Urban League, *Transcript*, pp. 21–22.

- All financial institutions should have an ongoing process for dialogue with a broad cross section of the community, ideally through advisory and monitoring committees.[15]

The Urban League noted that many of the institutions it surveyed had already instituted practices and policies consistent with its recommendations above.

Other Initiatives

The Advisory Committee found that several institutions have instituted programs designed to increase mortgage lending to minorities that are consistent with the Urban League's recommendations. In particular, NationsBank, in coordination with the Neighborhood Assistance Corp. of America, announced a program to offer $500 million over 5 years in mortgages as well as instituting education and prescreening programs for low- and moderate-income home borrowers.[16] Additional efforts by NationsBank are described in appendix III. Other institutions have made similar commitments with the goal of eliminating high initial mortgage costs.[17]

The National Community Reinvestment Coalition, a trade association of 453 community organizations around the country, has also endeavored to enhance lending services to traditionally underserved neighborhoods.[18]

Thus, it appears that government agencies have begun cooperating and building partnerships building in fair lending enforcement and that lending institutions have responded to calls for increased service to predominantly minority neighborhoods.

[15] Greater Washington Urban League, Inc., *District of Columbia Single Family Mortgages Among Minorities, 1990–1992* (1994), p. 56.

[16] Maryann Haggerty, "At NE Church, Hymns and Hopes for Mortgage Loans," *Washington Post*, Jan. 16, 1996, D1, D3.

[17] Ibid.

[18] See remarks of John Taylor, briefing before the U.S. Commission on Civil Rights briefing "Efforts to End Discrimination in Mortgage Lending," Mar. 3, 1995, p. 101.

5 Findings and Recommendations

Finding 1: Discriminatory Lending Practices—Available Data on Residential Mortgage Lending Discrimination

Between 1990 and 1992, minority borrowers and minority communities within the District of Columbia, compared to nonminority borrowers, received a disproportionately smaller share of the total number and dollar value of residential mortgage loans in relation to the size of their respective populations. In addition, minority loan applicants experienced higher rejection rates than nonminority borrowers. These variances in the total number and dollar value of loans and rejection rates have been *found linked to* specific tracts/wards within the District of Columbia along ethnic lines. The disproportionate number of approved loans to minorities versus nonminority applicants calls into question the marketing and underwriting criteria used by mortgage lenders. Data collected under the Home Mortgage Disclosure Act do not include information necessary to determine whether institutions have engaged in acts of mortgage lending discrimination. Racial disparities alone are not to be taken automatically as demonstration of lending discrimination because factors other than discrimination influence the approval or rejection of a loan application. These factors include applicant's financial and employment characteristics such as credit history, debt levels, debt repayment, employment history, and financial assets and obligations. Federal and local governments have not conducted indepth examinations of lending practices of area institutions to enable a determination of whether these factors or discrimination cause mortgage lending disparities in the District of Columbia. (Chapter 3, pp. 13–23.)

Recommendation 1.1

Federal and District officials should make it a priority to collect and accurately report lending information by race, ethnicity and lenders' reasons for rejection. Their future studies of mortgage lending discrimination should take into account other factors such as applicant employment and financial characteristics in order to determine whether lending disparities are due to discrimination or applicant financial and employment characteristics. Studies should also address lenders' decisions to market lending products and services in minority communities and to examine lender's standards for minority loan approval and denial.

Recommendation 1.2

Lending institutions should review lending policies and procedures, monitor their branches within the District of Columbia through the use of self-testing, and conduct periodic comprehensive reviews of loan file data. Institutions should also extend outreach to minority citizens and provide consumer credit education regarding extensions of credit and debt resolution on the lending process.

Recommendation 1.3

Lending institutions have a key role to play in ensuring an equitable distribution of loans to all groups of applicants. Lending institutions should ensure that advertising efforts are evenly presented to both minority and nonminority loan applicants and directed to all communities within the District of Columbia, and should also make every effort to gain public confidence in the residential mortgage lending system by demonstrating their commitment to provide unbiased lending services to both low-income and affluent communities. Institutions should recognize that minority communities are viable lending markets worthy of new branches capable of servicing predominantly minority neighborhoods and should require its loan originators and appraisers to become familiar with the lending needs of minorities and minority neighborhoods.

Finding 2:
Jurisdictional Limitations and Community Programs

Investigation of mortgage lending discrimination by institutions operating in the District of Columbia is primarily the responsibility of three Federal agencies: the U.S. Department of Housing and Urban Development, the Office of the Comptroller of the Currency, and the Department of Justice. Currently the District of Columbia's Office of Banking and Financial Institutions and the Office of Human Rights of the Department of Human Rights and Minority Business Development play a minor role in fair lending enforcement due to budget restrictions and jurisdictional constraints placed on the District's authority to regulate lending institutions. (Chapter 2, pp. 6–12.)

Recommendation 2.1

The District's banking laws should be revised to expand and strengthen the oversight ability of the District's regulatory agencies over lending institutions and other entities that offer mortgage products. Reforms should include regulation of mortgage companies and increased coordination with Federal agencies charged with investigating residential mortgage lending discrimination.

Finding 3:
Community Programs

Community programs such as the Capitol Area Mortgage Partnership (CAMP) are beneficial in providing rejected loan applicants with a second review of their loan applications and providing additional means for overall community development. Although this program is still in place, the success of the workshops and other services CAMP provides has not been evaluated. (Chapter 4, pp. 24–26.)

Recommendation 3.1

The OBFI should continue to expand programs such as CAMP and continue to monitor the program's effectiveness.

Finding 4:
Refinement of Enforcement Efforts

In spite of regulations and procedures issued by HUD to detect mortgage lending discrimination, enforcement coordination between government agencies has not developed to enable effective detection of discriminatory lending practices. Although efforts at forging new partnerships have occurred at the Federal level in the form of the President's Fair Housing Council and the Interagency Task Force on Fair Lending, at present, these efforts are still in their infancy. (Chapter 4, pp. 24–26.)

Recommendation 4.1

Investigative and enforcement coordination should be fostered by Federal agencies, the District's OBFI and OHR, and community-advocacy organizations to monitor lending rates within given geographic areas for discriminatory lending practices. Policy statements and enforcement guidelines should be issued to the public and lending institutions to further clarify each agency's monitoring role.

Recommendation 4.2

All fair lending enforcement agencies should report periodically, to the public, the results of their enforcement efforts and their progress in eliminating discriminatory lending practices.

Appendix I
Comments on the Report by Chevy Chase Bank

Committee's responses

August 21, 1996

United States
Commission on Civil Rights
624 Ninth Street, N.W.
Washington, D.C. 20425

Attn: Ki-Taek Chun, Director
Eastern Regional Office

Gentlemen:

We received and read with interest the draft report entitled, "Residential Mortgage Discrimination in Washington, D.C.", prepared by the District of Columbia Advisory Committee to the U.S. Commission on Civil Rights.

Given the importance and sensitivity of the matters covered by the draft report, we strongly suggest that the final report be updated to reflect the successes of the banking industry in making loans to minority borrowers in 1994 and 1995. For example, the HMDA reports for 1995 document major increases in loans to minority borrowers in Washington, D.C. It would be a disservice to the minority community and to the local banking industry to ignore the progress that has been made. Indeed, minority borrowers could be dissuaded from seeking financial services that are available today by a report that focused only on the past.

We also believe that several paragraphs of this report dealing with the civil suit by the Department of Justice (DOJ) against Chevy Chase Bank should be revised in the interests of fairness and completeness. At page ten, the draft states, "The parties reached a settlement in the case in August 1994 in which Chevy Chase agreed to pay $11 million to redlined areas through a special loan program..." This statement is neither accurate nor complete. Chevy Chase Bank had not redlined any area. To the contrary, during the period from 1988 to 1993, the Bank made 1,193 mortgage and home improvement loans to residents of the District of Columbia within the geographic area South of Calvert Street, N.W. and east of Connecticut Avenue, N.W. Our lending in the so-called "redlined" areas constituted 71.1% of our lending in the District of Columbia during these years. As noted in the Consent Decree:

The Committee has incorporated these comments into the final report for fairness and completeness. See chapter 1, page 4, and chapter 1, notes 31 and 34.

> " Chevy Chase and the Mortgage Company adamantly deny that any act or omission on their part as alleged in the government's complaint or this consent decree as violative of federal law was motivated in any way by discriminatory intent or racial bias. The Bank and Mortgage Company have agreed to the undertakings set forth in the Consent Decree to settle the government's claims against them and because they believe the affirmative lending actions and

8401 Connecticut Avenue • Chevy Chase, Maryland 20815

Committee's responses

practices described will enable them to better serve the African American community.

This Consent Decree is entered into solely for the purpose of resolving the claim against Chevy Chase and the Mortgage Company in the present proceeding involving their lending practices in the Washington, D.C. metropolitan area. The Court has not made any finding or determination that there has been a violation of the law. The entry of this Consent Decree is not to be considered an admission or finding of any violation of law by Chevy Chase or the Mortgage Company."

Acknowledged in chapter 1, page 4, last sentence of first full paragraph. See also note 34.

Given that these allegations of "redlining" were never proven and that Attorney General Janet Reno stated at an American Bankers conference on May 20, 1996 that Chevy Chase Bank "...should be the model to emulate" in minority mortgage lending in Washington, D.C. (see enclosed copy of article from the American Banker, dated May 21, 1996) we trust that the statement on page ten will be modified, at least to delete the derogatory term "redlined areas."

Chevy Chase is and has been committed to the letter and spirit of the Fair Housing Act. We have increased mortgage lending to minority areas in Washington, D.C. by more than 500% and we will continue to pursue opportunities to provide mortgage loan products and services which increase home ownership among minorities.

Thank you for the opportunity to comment.

Sincerely,

CHEVY CHASE BANK

Alexander R.M. Boyle
Vice Chairman

ARMB jnm ce
Enclosure

Appendix II
Details of Referrals by Banking Regulatory Agencies and the Department of Housing and Urban Development to the Department of Justice for Violations of the Fair Lending Laws, by Agency, 1990–1995

Agency	Year	No.	Action taken	Details of referral
FRB	1992	1	Legal action	DOJ/FTC lawsuit filed against Shawmut Mortgage Company charging racial discrimination; settled by consent agreement.
	1994	1	Legal action	DOJ complaint filed against Security State Bank alleging discrimination in loan pricing based on national origin; settled by consent agreement.
	1995	4	Returned to agency	Alleged discrimination based on marital status[a] and spousal signature violations; to be handled administratively.
	1995	1	Legal action	DOJ complaint filed against Fleet Financial Group for alleged discrimination in the pricing of home mortgage loans based on race and national origin.
OCC	1990	1	Returned to agency	None.
	1993	3	Returned to agency	Alleged discrimination based on age, sex, and marital status; violations to be handled administratively.
	1993	1	Legal action	DOJ lawsuit filed against First National Bank of Vicksburg charging racial discrimination; settled by consent agreement.
	1994	1	Returned to agency	Alleged racial discrimination; administrative remedy achieved through HUD.
	1994	1	Legal action	DOJ lawsuit filed against Huntington Mortgage Company alleging price discrimination based on race; settled by consent agreement.
	1994	5	Returned to agency	Marital status violation;[a] to be handled administratively.
	1995	2	Returned to agency	Marital status violation; to be handled administratively.
	1995	2	Returned to agency	Alleged age discrimination in use of credit scoring models; to be handled administratively.
	1995	1	Legal action	DOJ complaint filed against First National Bank of Gordon for alleged price discrimination against Native Americans.

(continued)

FDIC	1992	3	Returned to agency	CRA violations by small lenders; to be handled administratively
	1993	7	Returned to agency	Insufficient information.
	1994	1	DOJ intends to close and return	Alleged racial discrimination case; referred to and being handled by HUD
	1994	1	Returned to agency	Alleged violation of FHA based on apprarsal rules; isolated incident with administrative remedy achieved.
	1994	10	Returned to agency	Marital status violation; to be handled administratively.
OTS	1993	1	Returned to agency	Alleged racial discrimination in marketing; no cause found.
	1994	1	Under investigation by DOJ	Alleged discrimination based on race, national origin, sex, and age.
	1994	2	Returned to agency	Alleged discrimination based on national origin; failure to serve entire community; to be handled administratively.
	1994	1	Returned to agency	Alleged discrimination based on age; to be handled administratively.
	1994	1	To be returned	Alleged racial discrimination in marketing; insufficient documentation; to be handled administratively.
HUD	1993	1	Returned to agency	Racial discrimination case; nonserious violation to be handled administratively

Source U S General Accounting Office, *Fair Lending—Federal Oversight and Enforcement—Improved but Some Challenges Remain* (GAO/GGD–96–145, August 1996), pp 40–41

Appendix III
Comments on the Report by NationsBank

Committee's response

NationsBank COMMENTS ON
DRAFT REPORT ON
RESIDENTIAL MORTGAGE DISCRIMINATION
IN WASHINGTON, D.C.
PREPARED BY THE
DISTRICT OF COLUMBIA ADVISORY COMMITTEE TO THE U.S. COMMISSION ON CIVIL RIGHTS

NationsBank is pleased to have been given an opportunity to comment on the Draft report prepared by the District of Columbia Advisory Committee to the U.S. Commission on Civil Rights titled "*Residential Mortgage Discrimination in Washington, D.C.*" (the Report). Since non-discriminatory lending is essential to the stability and rebirth of our communities NationsBank is always interested in the comments made by governmental agencies, community groups, the press and most importantly our customers.

While the purpose of the initial Advisory Committee fact-finding public meeting outlined in the Report are extremely broad, the focus of the Report, as a result of the studies, is singularly the topic of fair lending practices.

At the outset, we would like to acquaint the Committee with NationsBank's record and commitment to fair lending nationally and particularly in the Washington, D.C. area. NationsBank is a recognized leader in implementing aggressive community investment and fair lending programs, but is also representative of many financial institutions in the Washington area which have diligently endeavored to serve the credit needs of the entire community, including the many African American residents of the District.

We have also provided specific comments on the contents of the Report. We hope that the Committee will re-evaluate its conclusions regarding the causes of the trends it has identified. NationsBank shares the Committee's concerns regarding disparities in lending patterns between minority vs non-minority applicants. These disparities in and of themselves, however, do not establish the existence of mortgage lending discriminations. It is our sincere belief that the Committee can best serve the interests of the minority populations that historically have been underserved and that continue to have more difficulty obtaining credit by addressing the root causes of these disparities.

I. NationsBank's Commitment and Record

A. NationsBank is examined regularly for compliance with the Community Reinvestment Act (CRA) and with fair lending laws and

NationsBank's lending record has been noted in the Preface, page viii, note 7.

regulations. Our bank in the District has received two consecutive "outstanding" ratings on CRA exams over the last 3 years. On both occasions, teams of OCC examiners spent several weeks reviewing the bank's compliance with fair lending laws. The examinations included comprehensive reviews of the bank's policies and procedures, as well as a comparative file review designed to confirm that the bank accords equal treatment to all credit applicants regardless of race. A copy of the most recent CRA Performance Evaluation of NationsBank, N.A. is enclosed.

Committee's responses

B. NationsBank maintains a sophisticated fair lending program, orchestrated by a full-time team of professionals. Preventive and detective techniques we have employed include: sophisticated pre-application self-testing; statistical analysis of credit decisions; comparative file reviews; override and exception analysis; one-up reviews, loan review boards, and internal assessments of policies and procedures.

C. In 1991, NationsBank made a commitment to lend $10 billion in low- and moderate-income neighborhoods over a 10 year period. In less than 5 years, NationsBank met and exceeded that commitment. As described in the enclosed "NationsBank Report to Communities", much of that lending occurred in Washington, D.C.

D. NationsBank has a strong record of lending to African Americans in the District.

- In 1993, the bank's mortgage affiliate, NationsBanc Mortgage Corporation, had a greater market share in Washington, D.C. for mortgage loans to African Americans (3.7%) than its market share for loans to non-minorities (3.5%).

- From 1992 to 1994, as a result of NationsBank's vigorous marketing activities and alliances with groups such as the Urban League, NAACP and the Association of Community Organizations for Reform Now (ACORN), the number of applications received from African Americans in Washington, D.C. increased 126% from 474 to 1,071, and the number of mortgage loans made by NationsBanc Mortgage Corporation to African Americans in Washington, D.C. jumped 102% from 354 to 715.

- In 1994, lending to African Americans accounted for 40% of NationBanc Mortgage Corporation's mortgage loans in Washington, D.C. In the same year, mortgage loan applications from African

Americans comprised 45.5% of all applications received by the mortgage company in the District.

Committee's responses

- In 1994, over 56% (525) of all mortgage loan applications received by NationsBanc Mortgage in the District came from minority census tracts and 52% (360) of loans made in the District were in such tracts.

E. NationsBanc Mortgage Corp. has initiated the development of special mortgage loan products with more flexible standards designed to make homeownership affordable for low- and moderate-income consumers. These products feature low down payments and liberalized debt-income ratios. In cooperation with the Mortgage Corporation, NationsBank banking affiliates extend unsecured loans that assist qualified mortgage applicants come up with the down payment. Hundreds of African Americans in Washington D.C. have benefited from these products.

- In 1994, 602 affordable mortgage loans totaling $64.8 million were made in the Washington area. 70% (422) of these loans were made to African Americans. In addition, NationsBanc Mortgage made 538 FHA and VA loans in the Washington area in 1994 totaling $62.4 million.

- Through its alliance with ACORN, NationsBank helped educate hundreds of potential homeowners through NationsBank's Home Buyer Education course. Many of the individuals went on to qualify for specially designed mortgage loans offered by NationsBank at below market interest rates. In 1994 alone, over 400 loans totaling $45.5 million were made through the ACORN special lending program in the Washington area. Nearly three-quarters (308) of these loans went to African Americans.

F. NationsBank has implemented marketing and outreach programs targeted to low- and moderate-income consumers and to African Americans

- Marketing and advertising campaigns in the DC area have featured focused "buys" in minority-oriented media, urban radio stations, and non-traditional media (billboards, etc.) Advertising copy is previewed for its acceptance by representatives of minority groups Bilingual communications and service delivery media have been developed especially for use in heavily Hispanic areas of the DC MSA.

Committee's responses

- NationsBank pioneered the "Community Loan Day" concept in the Washington, DC, area. Community Loan Days represent an alternative vehicle for generating new credit applications and, ultimately, loans. It also offers an array of educational seminars, including free copies of participants' credit histories and assistance in evaluating creditworthiness and correcting deficiencies. Several have been held in the Metro DC area in low- and moderate-income and minority neighborhoods, like Anacostia and Adams Morgan, through its Community Loans Days.

- In 1993, NationsBank acquired Maryland National Corporation. In the DC area, the effect was to add a large number of branches to this market. This is evidence of the Bank's desire to build on its existing physical presence, including in the predominantly minority District of Columbia where approximately 20 additional NationsBank offices are now located. Of particular note, the Bank opened banking centers in Anacostia and Mt. Pleasant.

- NationsBank has partnered with local community-based organizations to offer Home Buyer Education classes throughout the District. In 1994 alone, 20 such courses conducted in the District and Prince George's County, Maryland were attended by over 300 consumers.

G. In conjunction with its activities in the District, NationsBank and its predecessors have made lending and other commitments to the District of Columbia Office of Banking and Financial Institutions (OBFI).

- As of December, 1993, NationsBank's expanded commitments to the OBFI included a pledge to make $600 million in community investment loans in the District over a 10 year period. NationsBank has consistently met and exceeded that commitment.

- By the end of 1993, NationsBank had also met and exceeded its non-financial commitments to the OBFI by:

    - opening banking centers in Anacostia and Mt. Pleasant (more than years ahead of a 5 year commitment to do so).

    - exceeding its pledge to made at least 5% of its home mortgages in low- and moderate-income census tracts in the District. In fact, 14.6% of mortgage and home improvement loans were made in such tracts

- directing at least 20% of its discretionary purchasing in the District to District-based minority and women-owned firms.

H. NationsBank has created specialized business units to undertake community development initiatives.

- The bank's Community Development Lending Group has financed over 300 projects in the Washington area, resulting in the creation of over 5,000 units of multi-family housing and over 300 homeownership units (mostly cooperative housing) and more than 1 million square feet of retail and commercial space in low- and moderate-income neighborhoods.

- NationsBank Community Development Corporation has made equity investments and rehabilitated residential properties in low- and moderate-income neighborhoods in the District. For example, NationsBank Community Development Corporation purchased and is rehabilitating the Washington View Apartments, a 503 unit apartment community, as well as 38 affordable townhouses at Howard Gardens.

- NationsBank CDC also helped form the Nehemiah Project, a joint venture of financial institutions, a commercial developer and non-profit community-based organizations, whose goal is to redevelop property in the 14th Street Corridor to include 61 homeownership units and 23,000 square feet of neighborhood retail space.

- NationsBank was the sole lender for the acquisition, renovation and stabilization of the Villages of Parklands Project, a 1,281-unit apartment community in Southeast Washington. The $14.7 financing provided by NationsBank helped renew and revitalize this formerly crime-ridden community.

II. The Committee's Objectives

The Preface to the Report explains that a primary objective of the Committee was to determine whether discriminatory lending practices were occurring in the Washington D.C. area. The Committee examined research that showed disparities in the geographic distribution of mortgage loans and in the loan approval and denial rates for minorities in the District. However, as explained below, we believe the Committee failed to examine the reasons for these disparities and, instead, drew an unwarranted conclusion that the disparities resulted from lending discrimination.

Committee's responses

The Committee disagrees with this characterization. Nowhere in the report is it stated that the lending disparities resulted from lending discrimination.

The Report acknowledges that "racial disparities alone are not to be taken automatically as demonstration of lending discrimination itself" (page 46). Even the representatives of the Washington Lawyers' Committee and the Urban League, whose studies were reviewed in the Report, "were reluctant to conclude that their findings constituted proof of discrimination" (Report, page 48). Despite these admissions, the Report repeatedly presumes that lending discrimination is the cause of racial disparities. For example, the title of the Report is not "*Racial Disparities in Lending in Washington, D.C.*" but "*Residential Mortgage Lending Discrimination in Washington, D.C.*" Chapter 3 of the Report is not titled "*Evaluating Lending Data in the District of Columbia*", but "*Evaluating Discriminatory Practices in the District of Columbia.*" The bias implicit in these titles detracts from the very important findings and recommendations made by the Committee.

NationsBank is pleased that the Committee has solicited comments on the draft Report from several lending institutions. Such input, we hope, will give the Committee a more balanced perspective on this weighty issue. Since financial institutions were not among the participants at the Committee's fact-finding meeting in December, 1994, it is especially important that this additional point of view be considered by the Committee at this juncture.

We encourage the Committee to expand its inquiry to elicit information from additional representatives of the bank supervisory agencies, particularly the Enforcement or Consumer and Community Affairs Divisions of the Federal Reserve Board staff (FRB), the Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC). We are sure that each of those agencies, headquartered in the District of Columbia, will gladly furnish information regarding the depth and breadth of their procedures for examining the CRA and fair lending performance of banks and bank affiliates. This would include a description of the procedures followed by examiners to review individual loan files in order to ferret out any evidence of racially discriminatory treatment. The bank regulators can also furnish the Committee with statistics on the number of CRA and fair lending examinations they have conducted nationwide and in the District, the number that have resulting in findings of substantive (as opposed to technical) violations of fair lending laws and, of those found to have violated fair lending laws, the number that involved discrimination on the basis of race. These federal government agencies, more than any other group, have had the opportunity to scrutinize the actual practices of thousands of lenders. These agencies are uniquely positioned to provide the Committee with an informed perspective on the issue of racial discrimination and whether it is pervasive in the banking industry.

Committee's responses

Any bias implicit in the title of the report and in the title to chapter 3 was unintended. Nevertheless, the Committee has changed the titles to address this criticism and avoid the imputation of bias to the report. However, the Committee disagrees with NationsBank's observation that the report presumes that lending discrimination is the cause of racial disparities. (See chapter 3, pages 21–24, and Finding 1, page 27.)

In response to this observation, page viii of the Preface has been revised to reflect Committee efforts to include an industry perspective.

III. Chapter I: Historical Overview

Committee's responses

The Report reviews many of the watershed events that have taken place in the fair lending arena over the last 5 years. We hope a bank's perspective on some of those events will be helpful to the Committee.

The Report references the Working Paper issued by the Federal Reserve Bank of Boston in October, 1992 titled "*Mortgage Lending in Boston: Interpreting HMDA Data*" (Boston Fed Study) It is not clear whether the Committee reviewed the Boston Fed Study directly, or relied upon secondary sources to glean the study's conclusions As the Committee's Report points out, there continue to be competing views on the accuracy of the underlying data and, consequently, questions regarding the validity of the Study's conclusions. However, even if one accepts the accuracy of the Boston Fed Study, its conclusions are far from startling. The authors of the Boston Fed Study observed

The final report has been revised to acknowledge the continuing controversy of the Boston Fed Study. See chapter 1, page 2, note 21.

> "The results of this study indicate that minority applicants, on average, do have greater debt burdens, higher loan-to-value ratios, and weaker credit histories and they are less likely to buy single-family homes than white applicants, and that these disadvantages do account for a large portion of the difference in denial rates." (Boston Fed Study, page 2)

One approach to determine the effects of race on lending decisions used in the Boston Fed Study was to use existing data to develop an equation for credit decisions on white applicants, then apply the same equation to the minority applicants in the pool of loans studied When the Boston Fed did this, they found that, after controlling for variables related to creditworthiness such as debt ratios credit histories and loan-to-value ratios, the predicted minority denial rate would have been 20.2% rather than the actual denial rate of 28.1% (a 7.9 percentage point difference). Clearly, the reason for the 7.9 percentage point gap is of concern However, it should not be overlooked that even the predicted denial rate (i.e., those applications which clearly would have been denied regardless of race) of 20.2% was twice the actual denial rate for white applicants (10.3%) (Boston Fed Study, pages 40-41)

Banks learned from the Boston Fed Study that it was important to train lenders to provide the same level of assistance so that minority applicants are given the same opportunity as whites to present information that would explain or compensate for weaknesses in their credit applications This was a useful lesson that has clearly been of benefit to lenders and to minority consumers The remaining lesson from the Boston Fed Study, however, is

that such efforts cannot completely erase the racial disparities evident in HMDA data. Even when minorities receive the same "coaching" as white applicants, historical data show that high debt ratios, weak credit histories, and high loan-to-value ratios will continue to lead to disparities in denial rates. It is these root causes, then, that must be addressed in order to achieve greater parity in the availability of credit.

Committee's responses

The Report describes several fair lending investigations by the Department of Justice (DOJ) that resulted in the entry of consent decrees against lenders. In each of those cases, the lenders agreed to settle DOJ's claims while denying that they had engaged in any practices that violated fair lending laws. Among the investigations which led to court-approved settlement agreements between the government and lenders were the Decatur Federal and Chevy Chase settlements. These settlements were instructive insofar as they encouraged financial institutions to examine their own efforts to market their services and make banking services accessible to minority neighborhoods. However, it is noteworthy that no case referenced in the report and, indeed, no fair lending "lawsuit" brought by the DOJ against financial institutions to date, has ever been adjudicated by the courts. In none of these instances has a financial institution been determined in a court of law to have violated the fair lending laws.

The lawsuit filed by Washington Lawyers' Committee's lawsuit against NationsBank (Lathern v. NationsBank) contains allegations of unequal treatment of individual African American credit applicants. Earlier this year, the U.S. District Court for the District of Columbia dismissed the Lawyers' Committee's class allegations. Thus, the court ruled that the lawsuit pertains only to the claims of the individual plaintiffs named in the complaint filed last year. In a detailed response to the lawsuit filed with the court last year, NationsBank explained why each and every one of the Lathern plaintiffs was declined for credit (or in one case ultimately approved by NationsBank for credit) based on factors that are clearly related to their creditworthiness and in no way related to race. To date, the court has not ruled on the sufficiency of the plaintiffs allegations or the merits of NationsBank's refutation of those allegations. Consequently, one must be very careful about drawing any conclusions based on the mere fact that the lawsuit has been filed or that the claims made in the suit have been categorically denied.

NationsBank's description of this suit has been noted. See chapter 1, page 4, note 38.

IV. Chapter 2: Policing the Industry - Fair Lending Enforcement

The Report, at Table 2-1, provides a description of the supervisory authority of various federal and local agencies. We encourage the Committee to seek the agencies' assistance to ensure the accuracy of the Table. For example, we

Committee's responses

believe that the OCC does not have jurisdiction over state banks Rather, the Federal Reserve has jurisdiction over state banks which are members of the Federal Reserve System

This error was corrected in the final draft. See chapter 2, table 2-1, page 9.

The Report is also at odds with our understanding of the implications of the Riegle-Neal Interstate Banking and Branching Efficiency Act (Riegle-Neal). While Riegle-Neal does establish that interstate banks must comply with the consumer protection laws of the states in which they do business, it does not give state or other local agencies supervisory authority over such banks

We applaud the Committee for noting in its Report that from 1990 to 1995 the Department of Housing and Urban Development and the bank supervisory agencies made only 35 referrals to DOJ, resulting in a total of 10 DOJ investigations, 6 of which have been settled These are extraordinary numbers in our opinion Despite thousands of investigations and hundreds of vigorous CRA and fair lending examinations, very little evidence of discrimination has been found. This confirms our belief that racial and other discrimination, while it exists, is isolated and rare among financial institutions today. Indeed, according to the Report, HUD found fair lending violations in only 14 cases out of 2,356 Fair Housing complaints it investigated In other words, allegations of discrimination resulted in findings of actual discrimination in only 0 6% of the cases.

This information has been revised subsequent to NationsBank's review of the draft report. At the time of the draft report, the Committee did not have access to the GAO report. The Committee has since incorporated the GAO data and revised portions of the final report. (See Enforcement Ex. chapter 2, p. 11.)

V. Chapter 3: Evaluating Discriminatory Practices in the District of Columbia

We recommend that the Committee consider whether it would be appropriate to change the title of Chapter 3 to *"Evaluating Lending Data in the District of Columbia"*

The Committee changed the chapter title as suggested.

The Committee acknowledges that it did not undertake an independent evaluation of the validity of the studies it describes in the report Such an independent evaluation may have helped the Committee to more fully appreciate the limitations of the studies One point of view that the Committee apparently did consider was that of James P Scanlan who has observed that lenders that have high numbers of minority loan applicants and high lending rates to minorities are also more likely to have higher racial disparities in denial rates (See page 48 and footnote 38 of the draft Report.) This is, in fact a very real "Catch-22" for lenders, like NationsBank, who implement aggressive marketing programs, special loan programs and partnerships with community-based organizations to increase their lending to low- and moderate-income and minority consumers who are first-time homebuyers Surely the Committee would not suggest that the solution is for lenders to cease these efforts to make more loans to historically undeserved

populations. However, if respected individuals and groups like the Committee persist in presuming that disparities in denial rates are evidence of racial discrimination, lenders must question the wisdom of the strategies that may lead to high numbers of denied loan applications even while increasing the number of loans made to minorities.

Committee's responses

The analysis of the studies described in the Report is complicated by the time dimension measured -- 1990 through 1993. This period was characterized by major shifts in the mortgage business including interest rate movements, the expanded coverage of HMDA reporting requirements, banking and mortgage industry consolidations, the development of affordable mortgage products that offer successful alternatives to FHA/VA. Simply put, a 1990 transactions bears little resemblance to a 1993 transaction, and to commingle them diminishes whatever value their measurement may hold.

The Report shows that the Urban League, Lawyers Committee and Planning and Housing Association studies found disparate lending patterns among 15 mortgage lending institutions. However, there are key decisioning factors that the studies did not take into account, thus calling into question their validity. Those factors include:

These criticisms have been noted in chapter 3, page 13, note 2.

- Because HMDA data was unavailable, the studies ignored the activity of wholly-owned mortgage companies, credit unions, finance companies, small banks and minority-owned financial services companies. Omitting these other institutions leaves the reader with a sense of uncertainty that the studies offered any viable conclusions or findings. The spirit and practice of "Fair Lending" is not limited to banks or bank-owned mortgage companies but to all lenders

- There is no indication of the types of transaction reviewed in the studies, whether purchase, refinance or both. The two types of transactions are different in many ways and it may be inappropriate to commingle both types of loans in the same study or between studies

- The specific underwriting standards of individual lending institutions should be taken into consideration. Because credit standards vary from institution to institution, it is difficult to make comparisons among banks.

- Knowing the demographic makeup of the District. There have been a number of practical illustrations of cases in which the addition of more variables to the normal HMDA data set causes apparent statistical evidence of discrimination based on demographic characteristics of census tracts to disappear.

This point has been addressed in chapter 3, page 22, in item 1 of the discussion entitled 'Limitations of HMDA data and Interpretive Precautions.

- Critical information omitted from the HMDA study such as the applicant's credit history or debt-to-income ratio. Since credit history and debt-to-income ratios are among the most important (and presumably predictive) mortgage underwriting criteria, it is not surprising that they are the two most prevalent industry-wide HMDA denial reasons.

Committee's responses

If important determinants of the underwriting decision are left out, HMDA studies will tend to produce false positive indications of discrimination.

The measurement of denial rate disparities is, on the surface, a useful indicator of the gap between minority and non-minority credit extension success. However, it should be remembered that a change in the arithmetic disparity can be produced by movements in either or both of its components. The arithmetic "disparity" can increase (as it did for most lenders in 1992 and 1993) even when the denial rate for BOTH minorities and non-minorities actually declined. Systemic efforts to reduce denial rates cannot be applied only to minorities; more flexible standards help non-minorities as well.

Similarly, while studies evidence a preoccupation with rejection rates, little weight is given its more powerfully significant counterpart -- approval rates. NationsBank regularly enjoys one of the highest African American acceptance rates, suggesting that it was granting credit to applicants who would have been denied at other lending institutions.

VI. Chapter 4: Efforts to Eliminate Discriminatory Lending Practices in Washington, D.C.

The title of Chapter 4 of the Report suggests an unwarranted bias. We encourage the Committee to revise the title to "*Efforts to Eliminate Disparities in Lending Results.*" This change more accurately describes the Committee's focus on solutions that will truly make a difference for minorities living in the District.

The Report describes one local community program (CAMP) that provides rejected loan applicants a second review of their denied applications and that provides educational programs for first-time homeowners. The Committee also summarized information reported by the Greater Washington Urban League based on its survey of 14 financial institutions. We hope that the Committee will solicit information directly from financial institutions about the programs and community partnerships they have implemented to increase lending to low- and moderate-income and minority borrowers. If so, we are certain the Committee will find scores of examples of programs, like those NationsBank has described at the beginning of this Comment, which have resulted in hundreds of loans to African Americans and inestimable

enhancements to the neighborhoods in which African Americans and other minorities reside Perhaps after considering such efforts, the Committee will recommend continued and greater cooperation among financial institutions and non-profit organizations, such as the Urban League, the Neighborhood Assistance Corporation of America and various community-based organizations, to rebuild communities and provide credit education and counseling for inexperienced consumers.

Committee's responses

VII. Findings and Recommendations

We can find no basis for the Committee's first finding that the "disproportionate number of approved loans to minorities versus non-minority applicants calls into question the marketing and underwriting criteria used by mortgage lenders " We agree with the observation that "specific incidents of mortgage lending discrimination are difficult to ascertain" because of the multiplicity of factors that affect approval or rejection of applications. We know from firsthand experience, however, and we believe that the bank supervisory agencies would confirm for you, that arduous examinations of the lending practices and loan application files of financial institutions in the District of Columbia has found little if any evidence that such disparities are the result of racially discriminatory practices

We agree that the collection and accurate reporting of HMDA data is important. However, it is important to remember that the one reported study that did review actual credit files (the Boston Fed Study) concluded that even after controlling for legitimate factors related to creditworthiness, minorities were twice as likely to be denied credit. The search for "proof" of that disparities are caused by racial discrimination is not likely to bear fruit On the contrary, we know that the primary reasons for the disparities are differences in debt ratios, credit histories and loan-to-value ratios (or, put another way, the borrowers' ability to make substantial down payments). Greater focus on these root causes of lending disparities would go a long way toward equalizing lending results

VIII. Conclusion

NationsBank again thanks the Committee for giving us this opportunity to comment We share the Committee's dismay and frustration over the persistence of racial disparities in mortgage lending, but believe those disparities that persist today result primarily from disparities in wealth and education. That is why NationsBank will continue its efforts to educate minority consumers on how to qualify for credit and maintain good credit records, to support (with financing and equity investments) community

development activities that help restore neighborhoods as safe places for families to live, and to finance minority-owned and other business that enhance the economic viability of low- and moderate-income neighborhoods.

We look forward to receiving a copy of the Committee's final report.

Committee's responses