

July 18, 2012

The Honorable Ben S. Bernanke
Chairman
Board of Governors of the Federal Reserve System
Eccles Board Building
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551

Re: ABA Fair Lending Concerns

Dear Sir:

The American Bankers Association and our members are strong advocates for fair lending and for enforcement of the Equal Credit Opportunity Act and the Fair Housing Act that is faithful to the mandate of Congress prohibiting intentional illegal credit discrimination. We believe and our industry track record confirms that fair lending is achieved by consistently adhering to safe and sound credit standards for making, pricing and servicing loans, because doing so avoids intentionally treating consumers differently because of a prohibited basis.

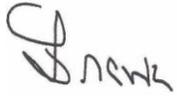
Recent case settlements as well as less visible supervisory experiences have attracted ABA member attention and prompted discussions among our members (including at this week's association Summer Leadership meetings) about the foundation for, and ramifications of, certain contested credit discrimination claims. ABA is particularly concerned by government agency statements and actions that assert enforcement of statutory fair lending obligations using the disparate impact, or "effects" discrimination doctrine. This doctrine seeks to impose liability on lenders for statistical disparities in outcomes that are not based on any demonstration of illegal intent or differential treatment. As the attached White Paper, *Disparate Impact Under FHA and ECOA: A Theory Without a Statutory Basis* demonstrates, we believe this doctrine is not supported by the legislation from which it seeks to draw its authority.

Accordingly, we urge government agencies to stand down from applying a disparate impact doctrine approach to fair lending supervision or enforcement and return to the objective of protecting borrowers from intentional prohibited-basis discrimination to assure that similarly situated people are treated similarly. Persisting in asserting the disparate impact doctrine will adversely impact credit availability and will create undue supervisory risk and burden that diverts valuable compliance and business resources from appropriate fair lending efforts.

The banking industry is committed to a color-blind, discrimination-free lending environment and will continue to work with our regulators to establish clear expectations about how a bank's fair lending performance will be judged. Accordingly, we are already reaching out at a staff level to continue the discussions we began this Spring with each of your agencies about

how best to support our members in their compliance efforts. We look forward to working with you to maintain the solid track record of the banking industry in abiding by its legitimate fair lending obligations.

Sincerely,

A handwritten signature in black ink, appearing to read "Frank Keating". The signature is stylized and written in a cursive-like font.

Frank Keating

Attachment

Cc: Board of Governors of the Federal Reserve System