

HUD's Policy Commentary

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The Assistant Secretary for Fair Housing and Equal Opportunity (FHEO) is responsible for enforcement of the Fair Housing Act.¹ I feel a particular responsibility in the area of fair lending because of HUD's role in the history of racial discrimination in mortgage lending and related activities. Accordingly, the Department has sought to ensure that the Federal Housing Administration (FHA) and other HUD programs are designed and administered in such a way as to overcome the vestiges of these discriminatory practices and to ensure that housing and other community resources are available to all, without respect to race, color, religion, national origin, sex, handicap, or familial status.

In addition to responding to individual complaints of discrimination, the Department relies on the social science literature, including studies such as the Boston Federal Reserve Bank report (Munnell et al., 1992) or the Berkovec, Canner, Gabriel, and Hannan (BCGH) study to: (1) help prioritize the use of limited resources and (2) identify methods and procedures that may be adapted to investigations of possible discrimination on a systemic basis. For reasons stated below, as well as those that have been suggested by the commentators, the BCGH study does not warrant significant changes in FHEO's approach to this difficult issue.

The BCGH study does not review or measure actual lending decisions to determine whether African-American and white applicants were held to the same standard. Instead, it focuses on a very limited segment of the mortgage market whose members—defaulted holders of FHA mortgages—are even less economically stable than the typical FHA mortgage holder. BCGH maintain that if there is discrimination in the FHA mortgage market, the least creditworthy of all African-American applicants (those most likely to default) will be denied loans. Thus, if underwriting criteria are applied more stringently to African Americans than they are to whites, the African Americans who do receive loans should be more creditworthy than whites and less likely to default. Since BCGH find that the African-American default rate is higher than that of whites, they reason that the results are inconsistent with the conclusion that there is systemic discrimination against African Americans.

The statistical and methodological limitations of the BCGH study have been amply discussed by the commentators in this colloquy. I will merely highlight the issues that are most relevant to my conclusion that the BCGH findings do not mandate a different Departmental approach to the problem of discrimination in mortgage lending.

First, any reasonable inference about discrimination based on mortgage default rests at least in part on the extent to which whites and African Americans are treated equally in the loan management process: Whether or not they are granted similar workouts or forbearance when they fall behind in their mortgage payments. Brent Ambrose and Charles Capone, who are generally critical of the BCGH study, found that aggregate data suggest no difference in treatment between African Americans and whites. However, their article is not sufficiently persuasive to overcome the concern that failure to address the existence of discrimination in the default/foreclosure process is a critical weakness of the BCGH study.

Second, mortgage lenders have properly noted that, in evaluating Home Mortgage Disclosure Act data, a focus on single factors—such as denial rates of loans—may be misleading. Just as there are many legitimate reasons why people may be denied a loan, such as credit history, there are many ways in which they can become victims of discrimination in mortgage lending. Cases investigated by HUD and the U.S. Department of Justice over the last few years show that denial of loan applications is just one of the ways in which discrimination occurs. The BCGH study does not account for discrimination in fees and interest rates, refusal to take an application, or geographic redlining. Even if the BCGH conclusion is correct, it does not address the possibility that discrimination occurs in forms not reflected in the study.

Third, critical information needed to describe the credit history of applicants is missing from the BCGH study, even though no one can qualify for a mortgage without such information. Nor, for that matter, could an FHEO investigator determine whether or not applicants are treated differently on the basis of race without this information. I am therefore reluctant to make an inference about an equitable underwriting process that lacks a major indicator of loan approval (that is, credit history).

Fourth, the BCGH study assumes that human beings act rationally in housing-related transactions when race is involved. There is ample evidence to the contrary. HUD obtains daily evidence of lenders, landlords, realtors, property managers, housing authorities, and municipalities that discriminate on the basis of race without evidence that such action is supported by rational or objective information. Indeed, one could say that decisionmaking based on racial prejudice is the ultimate irrational act, leading to irrational results and poisoning the decisionmaking process when it is considered as a factor.

Fifth, BCGH state that in order for any conclusions regarding discrimination based on default rates to be valid, one must assume that African Americans who have been denied a loan do not obtain financing elsewhere. To the contrary, our experience with complainants in lending discrimination cases shows that it is often the approval of a complainant's application elsewhere that raises the possibility of discrimination with the first institution.

In short, I agree with the commentators, as expressed by Professor Quigley, that: "The findings of housing market discrimination are not open to serious doubt. Nothing in the work of Berkovec, Canner, Gabriel, and Hannan leads me to change my prior assessment." Indeed, BCGH do not suggest that their study, with its admitted limitations and narrow focus, should be the basis for reducing or reinforcing the Department's effort to identify, remedy, or prevent discrimination in the area of mortgage lending. It is an assessment with which I concur.

Author

Elizabeth Julian is Acting Assistant Secretary for HUD's Office of Fair Housing and Equal Opportunity. Previously, she served as Deputy General Counsel for Civil Rights and Litigation, where she was responsible for all litigation, both affirmative and defensive. Prior to joining HUD, Ms. Julian practiced poverty and civil rights law. While in private practice, she helped found the Texas Lawyers Committee for Civil Rights, established to encourage private bar involvement in civil rights litigation and advocacy.

Note

Section 805 of the Fair Housing Act, Title VIII of the Civil Rights Act of 1968, as amended, makes it unlawful to discriminate against any person—on the basis of race, color, religion, sex, national origin, handicap, or familial status—in making available real estate-related transactions. It is also unlawful to discriminate in the terms and conditions under which such transactions are made available. Generally, real estate-related transactions include the making or purchasing of loans for the purchase, construction, improvement, repair, or maintenance of a dwelling. Real estate-related transactions also include loans that are secured by residential real estate.

References

Berkovec, J., G. Canner, S. Gabriel, and T. Hannan. 1994. "Race, Redlining, and Residential Mortgage Loan Performance." *Journal of Real Estate Finance and Economics* 9:263–294.

Munnell, Alicia H., Lynn E. Browne, James McEneaney, and Geoffrey M.B. Tootell. October 1992. "Mortgage Lending in Boston: Interpreting HMDA Data." Federal Reserve Bank of Boston Working Paper No. 92–7.