The Fair Housing Act (FHA) contains two different provisions primarily applicable to credit discrimination—section 3605\(^{66}\) and section 3604.\(^{67}\) Section 3605 of the FHA bars discrimination in residential real-estate-related transactions. This includes not only loans to purchase a dwelling but also loans in which a dwelling is taken as collateral or when the proceeds will go to improve or maintain residential property.\(^{68}\) This section will generally be useful in a credit discrimination case involving housing financing, especially home equity lending.

Section 3604 of the FHA bars discrimination in the terms or conditions of a sale or lease of any dwelling, the services or privileges associated with such a sale or rental, or the advertising of any dwelling, as well as discrimination making housing otherwise unavailable. Section 3604 also forbids the misrepresentation of the availability of any dwelling based on a discriminatory category and mandates that reasonable modifications for the disabled must be allowed.\(^{69}\) Section 3604 covers a broader range of actors than section 3605; however, many courts have not applied it to home equity lending cases unless a purchase is involved. Other courts have clearly stated that section 3604’s prohibition of practices that “otherwise make unavailable or deny” housing on a discriminatory basis applies to discrimination in the availability of mortgage financing.\(^{70}\) The two sections are not mutually exclusive.\(^{71}\)

There are two other provisions in the FHA that may be useful in a credit discrimination action. Section 3606 bars real estate brokers from discriminating in the provision of their services. Additionally, section 3617 provides that it is unlawful to coerce, intimidate, threaten, or interfere with the exercise or enjoyment of various rights granted or protected by the FHA, including the rights set forth in sections 3603, 3604, 3605, and 3606.\(^{72}\)

Both section 3604 and section 3605 prohibit discrimination on the basis of race, color, religion, national origin, sex, familial status, and handicap. Thus, there is considerable overlap with the ECOA; however, only the FHA prohibits familial status and handicap discrimination, while only the ECOA prohibits discrimination based on age, marital status, public assistance status, and exercise of rights under the Consumer Credit Protection Act. The FHA also does not impose any specific procedural requirements such as those found throughout the ECOA.

Remedies under the FHA include actual damages, punitive damages (unlike the ECOA, there is no limit on the size of punitive damages awards), equitable relief, and attorney fees. The Fair Housing Act provides for both administrative and judicial proceedings for redress of violations. Plaintiffs can pursue either approach or both simultaneously (up until the time one or the other goes to actual trial).

Any party aggrieved by discrimination can bring an action, and the Act generally applies to most entities that might be involved in credit discrimination. There are few explicit exemptions from the Act’s requirements.

Footnotes


68 See § 2.3.2 [1], infra.

69 Section 3605 does not include a similar “reasonable accommodation” requirement for disabled consumers.


71 See § 2.3.3 [2], infra (analyzing use of section 3605 versus section 3604, or both, in predatory mortgage lending cases).
72 See United States v. Am. Inst. of Real Estate Appraisers, 442 F. Supp. 1072, 1079 (N.D. Ill. 1977) (the promulgation of standards which cause real estate appraisers and lenders to treat race and national origin as negative factors in determining the value of dwellings and in evaluating the soundness of home loans may “interfere” with persons in the exercise and enjoyment of rights guaranteed by the Fair Housing Act in contravention of section 3617); Laufman v. Oakley Bldg. & Loan Co., 408 F. Supp. 489, 498 (S.D. Ohio 1976) (mortgage redlining “interferes” with the exercise of one’s right to voluntary interracial association in contravention of section 3617).

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