



Sample Fair Lending Policy for Fintech Program Managers

The following is not legal advice and should only be used as starting precedents and operational best practices. Each product and company is unique, and you should consult with an experienced lawyer licensed in the relevant jurisdiction(s) to tailor the sample as needed.

Lithic does not assume responsibility for the contents of, or the consequence of using, any version of these documents or any other document found on our website. Lithic's legal team knows many fintech lawyers and we're happy to point Lithic customers to recommendations.

1. To help you fill out this sample policy, we've added some footnotes with considerations and yellow-highlighted brackets and prompts for you to fill in information. We've additionally orange-highlighted particular sections that depend on particular companies' practices.
2. All highlighted brackets should be accurately completed and all footnotes should be deleted before the sample is finalized. Consider searching for "[" and "]" to make sure you don't miss any.
3. The terms should be reviewed generally to ensure they accurately reflect your operations and practices (without removing any legally required sections).
4. Finally, delete this instructions page.

Other card program-related legal forms can be found in our [documentation](#).

If you need more suggestions on how to build your compliance program, check out Lithic's Fintech Layer Cake podcast, available on major podcast and video streaming platforms.

This sample is made available by Lithic, Inc. under a Creative Commons Attribution-NoDerivs 4.0 International License: <https://creativecommons.org/licenses/by-nd/4.0/legalcode>. You can use the samples for card programs, but must obtain Lithic's prior consent if you wish to publicly share any modified versions.

* * * *

Table of Contents¹

1. Introduction	3
2. Background	3
2.1 Types of Lending Discrimination	4
2.2 Consequences of Noncompliance	5
3. Marketing	5
4. Applications	5
5. Underwriting	6
6. Notifications	6
7. Servicing, Collections and Liquidation	6
8. Complaints	7
9. Fair Lending Training	7
10. Monitoring	7
11. Record Retention	7
12. Roles and Responsibilities	7
13. Approval, Review and Version History	8

¹ When the policy is final or near-final, update the table of contents in case any sections were added or removed, and to ensure correct page numbers.

1. Introduction

It is the policy of [[Company legal name]], (“[[Company]],” or “Company”) to fully comply with fair lending laws and regulations. The policy is part of the Company’s compliance management system. The [[Compliance Officer]]² oversees the development and implementation of this Policy.

[[Company]] is not a bank, a bank holding company, or a subsidiary of a bank or a bank holding company. However, [[Company]] partners with banks (each, a “Bank Partner”) to provide services to its customers that are within the scope of [[Bank Partners’]] fair lending obligations.³ Accordingly, [[Company]] takes its role in ensuring fair and responsible lending practices very seriously, and promotes fair and responsible lending practices in all aspects of credit operations.

This policy applies to all activities and practices related to the [[Bank Partner’s]] credit offerings, including, but not limited to, product development, marketing, fulfillment, underwriting and pricing as well as servicing and collections. All Company employees must comply with the policy. Failure to comply with the policy will result in disciplinary action, including termination of employment when appropriate.

2. Background

The Equal Credit Opportunity Act (“ECOA”) and Regulation B, and certain state laws, are referred to as “the fair lending laws.” Under ECOA and Regulation B, it is illegal for creditors to discriminate, on a prohibited basis, against qualified applicants seeking credit. 15 U.S.C. § 1691 *et seq.*; 12 CFR part 1002. ECOA and Regulation B apply to both commercial and consumer credit. By making it illegal to discriminate on prohibited bases, ECOA ensures that all applicants have an equal and fair opportunity to obtain credit, as long as they are found to be creditworthy. Under ECOA, it is illegal to discriminate against an applicant because of the applicant’s:

- Race or color;
- Religion;
- National origin;
- Sex;
- Marital status;
- Age (provided the applicant has the capacity to contract);
- The applicant’s receipt of income derived from any public assistance program; or
- The applicant’s exercise, in good faith, of any right under the Consumer Credit Protection Act.

² Tailor as appropriate. Smaller companies and teams may not have a compliance officer, whereas larger companies may have a subordinate of the enterprise compliance officer take on a “lending compliance officer” role.

³ This policy assumes you are working with a bank as the lender of record. Companies that are self-licensed or offering products that do not need licenses will want to tailor this and other parts of this policy template.

Certain state laws prohibit discrimination in commercial credit transactions on many of the same prohibited bases under ECOA and Regulation B. Many of these states add additional prohibited bases, including, for example:

- Disability
- Familial status
- Military or veteran status
- Immigration status
- Sexual orientation
- Gender identity

It is the Company's policy to comply with all applicable federal and state fair lending laws.

Adherence to fair lending laws does not stop after an account has been opened or credit has been extended. The fair lending laws prohibit creditors from discriminating on a prohibited basis in virtually all aspects of a credit transaction, including:

- Marketing
- Taking credit applications
- Processing and evaluating credit applications
- Notifying the applicant of the credit decision
- Servicing the credit account/transaction
- Collections, workouts and liquidation
- Complaint resolution

2.1 Types of Lending Discrimination

ECOA and Regulation B contain two broad prohibitions against discriminatory lending practices:

- A creditor shall not discriminate against an applicant on a prohibited basis regarding any aspect of a credit transaction.
- A creditor shall not make any oral or written statement, in advertising or otherwise, to applicants or prospective applicants that would discourage, on a prohibited basis, a reasonable person from making or pursuing an application.

[[Company]] structures its operations and controls to ensure that it prevents the following three types of discrimination:

- Overt Discrimination - is intentional discrimination on a prohibited basis. For example, an underwriting policy that specifically does not count income from public

assistance would constitute overt discrimination on the basis of a prohibited characteristic.

- Disparate Treatment - is a form of discrimination that may arise when a lender treats an applicant less favorably than a similarly situated applicant on the basis of a prohibited characteristic, and there is no credible, non-discriminatory explanation for the difference in treatment. For example, providing a different rate, loan term or duration, information, or level of service to an applicant because of a prohibited factor, such as the race or gender of the borrower.
- Disparate Impact - arises when a lender applies a neutral policy or practice uniformly, but the policy or practice disproportionately affects a protected class, and there is no credible, non-discriminatory business justification for the policy. For example, a prohibition on extending credit to a particular type of business may result in a disparate impact if the prohibition leads to the exclusion of credit to businesses owned predominantly by members of protected classes.

2.2 Consequences of Noncompliance

Public assertions that a creditor has engaged in illegal discrimination are very harmful to a creditor's reputation. In addition, formal actions against a creditor are authorized by federal and state fair lending laws. Many states also authorize administrative enforcement of their fair lending laws by state departments or commissions for human rights.

ECOA and Regulation B authorize private parties to bring lawsuits individually or as a class action and collect actual and punitive damages (15 U.S.C. § 1691e.). Punitive damages are capped at \$10,000 in individual actions; for class actions, punitive damages are capped at the lesser of \$500,000 or 1 percent of the creditor's net worth. (15 U.S.C. § 1691e(b)). A court may also award reasonable attorney's fees and costs. Many states also authorize lawsuits for damages, attorney's fees and costs.

3. Marketing

The Company will not take actions or make statements that would discourage on a prohibited basis any prospective applicant from applying for credit.

4. Applications

The application process for the [[Bank Partner's]]⁴ credit offering is neutral and of a type applicable to every applicant. The Company will identify prospective applicants as discussed in this policy and will treat all applicants equally and without regard to prohibited bases throughout the application process.

The application process does not include asking questions related to the race, color, national origin, religion, sex, and marital status. The application and evaluation process will not include any discrimination against an applicant because income is derived from part time employment, public assistance, or is an annuity, pension or other retirement benefit. The application process will not include any inquiries as to whether the applicant receives income from alimony or child support. There is no requirement for a personal guarantee, or the signature of another person, including a spouse, if an applicant is creditworthy under the

⁴ Tailor if you are offering products with your own licenses, or in a manner that does not require a lending license.

[[Bank Partner's]] standards. Information is not collected about business owners' personal income.⁵

5. Underwriting

The [[Bank Partner's]]⁶ underwriting does not include any prohibited bases, or any neutral policies that could result in disparate impact discrimination. The Company has reviewed the models used in the [[Bank Partner's]] underwriting and periodically reviews and validates those models.

The program's practices and processes are documented in the underwriting policy.⁷ Exceptions and changes may be made in accordance with the underwriting policy.

6. Notifications

ECOA and Regulation B require creditors to notify applicants of action taken on applications within certain time frames. These notices include adverse action notices. Adverse action occurs when the creditor refuses to grant credit in substantially the amount or on substantially the terms requested in an application. Adverse action also occurs when there is a termination of an account or an unfavorable change in the terms of an account that does not affect all or substantially all of a class of the creditor's accounts; or there is a refusal to increase the amount of credit available to an applicant who has made an application for an increase.

If the [[Bank Partner]]⁸ takes adverse action, the Company will send a notice of adverse action including the specific reasons for the action taken. The Company notifies applicants of adverse action within the following timelines: within 30 days of receiving a complete application concerning the [[Bank Partner's]]⁹ approval, counteroffer, or adverse action on the application; 30 days after taking adverse action on an existing account; and 30 days after receiving an incomplete application unless a notice of incompleteness is sent in compliance with 12 CFR § 1002.9(c).

7. Servicing, Collections and Liquidation

The Company will not service accounts differently based on prohibited characteristics. Servicing includes processing and posting payments, notices to borrowers, and imposing late fees. The Company will not discriminate in treatment of borrowers in its default servicing, i.e., collections and liquidation.

8. Complaints

Complaints raising fair lending issues received by the Company will be routed through customer service channels to the [[Compliance Officer]]¹⁰ for resolution. The Company will ensure that customer-facing vendors have appropriate complaint resolution processes in place.

⁵ You will want to tailor this section to reflect your product's own underwriting and application practices. For example, you may require a personal guarantee from a spouse. Or you may not serve business customers.

⁶ Tailor if you are the lender of record.

⁷ If you are using a sponsor bank, your bank will likely require you to have a separate underwriting policy that documents your credit box. Tailor or delete this reference as appropriate.

⁸ Tailor if you are the lender of record.

⁹ Tailor if you are the lender of record.

¹⁰ Tailor if you do not have a compliance officer or route complaints to a different part of your company.

9. Fair Lending Training

Senior management and employees will receive fair lending training annually. New employees will receive fair lending training as part of the onboarding process.

10. Monitoring

The [[Compliance Officer]] promptly reports any self-identified fair lending violations to senior management. As part of quarterly compliance reports to senior management, the [[Compliance Officer]] includes a status report on the overall status of fair lending-related initiatives, regulatory developments and emerging issues, and critical areas of risk.

11. Record Retention

As required under Regulation B, all documentation pertaining to commercial credit applications must be retained for a minimum of 12 months after notice of action taken has been provided.

Documentation that is retained includes all of the following: applications; written information used in evaluating an application not returned to an applicant; memoranda of oral communication with applicant; notice of adverse action and specific reasons for adverse action; and any statement the applicant may have submitted alleging an ECOA or Regulation B violation.

The 12-month retention period must be extended if the Company receives notice that it or the [[Bank Partner]] is under an investigation or subject to an enforcement proceeding for an alleged violation of ECOA or Regulation B or has been served with notice of a lawsuit. In these cases, all relevant records will be retained until final disposition of the matter, unless an earlier time is allowed by order of the agency or court.

12. Roles and Responsibilities

The [[Compliance Officer]] will be responsible for evaluating and updating the policy to reflect any changes to applicable laws and regulations. The policy will be reviewed periodically and any appropriate changes will be made. The review includes consideration of feedback on the effectiveness of the policy and any [[Bank Partner]] input.

The Company will adopt and follow written procedures¹¹ to implement the policy. Procedures and changes to those procedures are reviewed and approved in advance of implementation by the [[Compliance Officer]]. In addition, any significant procedural changes are communicated to relevant staff by the [[Compliance Officer]], executive management or line managers through an appropriate email or training.

13. Approval, Review and Version History

Version	Changes By	Revision Notations	Date Reviewed
1		Policy drafted; effective date	

¹¹ You'll need to develop written operational guides for each of the teams involved in underwriting, customer service, onboarding, servicing and collections. We recommend you consult with outside counsel or other knowledgeable advisors who can help identify and tailor key documents.