SENATE COMMITTEE ON APPROPRIATIONS
Senator Sabrina Cervantes, Chair
2025 - 2026 Regular Session

AB 801 (Bonta) - Nondiscrimination

Version: July 2, 2026
Urgency: No
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Policy Vote: B. & F.I. 5 - 2, JUD. 11 - 2
Mandate: Yes
Consultant: Janelle Miyashiro

Bill Summary: AB 801 requires the Department of Financial Protection and Innovation (DFPI) to examine, at least once every four years, each bank, credit union, and residential mortgage lender under the supervision of the department for compliance with any applicable nondiscrimination law, as specified.

Fiscal Impact: DFPI estimates:
- Financial Protection Fund: Costs of $937,000 in Fiscal Year (FY) 2027-28 and $881,000 ongoing to establish procedures, update training manuals, and perform examinations of financial institutions.
- General Fund: Costs of $81,000 in FY 2027-28 and $66,000 ongoing for specialized fair lending training for examiners, including annual training to ensure compliance with federal and state fair lending laws.

Fees from examination assessments may offset these administrative costs to some extent; however, DFPI notes that General Fund support may be required to help reduce any impact on its licensing fees.

Background: A fair lending exam refers to the process whereby a financial regulator investigates and analyzes the records of a financial institution to determine whether the financial institution has complied with relevant nondiscrimination laws. Depository institutions and larger nonbank mortgage lenders are subject to fair lending exams conducted by federal regulators, though significant policy changes under the current federal administration have narrowed the scope of exams or even curtailed exams altogether. But taking a historical perspective on fair lending exams, one or more federal regulators had authority to conduct a fair lending exam on a given financial institution, depending on the type and size of the institution. Recognizing overlapping authorities, the federal regulators agreed on a set of interagency exam procedures to reduce duplicative or conflicting approaches between regulators. These procedures aided examiners in establishing the scope of the exam (i.e., the products, markets, time frame, and protected groups to analyze) and the intensity of the exam (i.e., the breadth and depth of the analysis to be conducted on the selected loan products). Notably, these procedures recognized the three methods of proof of lending discrimination under the federal Equal Credit Opportunity Act (ECOA) and federal Fair Housing Act (FHA): overt evidence of disparate treatment, comparative evidence of disparate treatment, and evidence of disparate impact.

Disparate treatment occurs when a lender treats a credit applicant differently based on one of the prohibited bases, such as race or sex. Disparate treatment can be identified on the basis of overt evidence when a statement or record reveals that a lender explicitly considered prohibited factors in their lending activities or on the basis of comparative evidence when differences in treatment are not fully explained by legitimate nondiscriminatory factors. Comparative evidence does not require showing that the treatment was motivated by prejudice or a conscious intention to discriminate.

Disparate impact describes a racially (or based on a different protected class) neutral policy or practice that is applied equally to all credit applicants but still results in the disproportionate exclusion of certain persons on a prohibited basis. In addition to showing that a disparate impact exists, in order to be considered a violation of FHA or ECOA, the examiner would need to determine if the policy or practice is justified by "business necessity." Even if the policy or practice that has a disparate impact can be justified by business necessity, a violation could be found if an alternative policy or practice could serve the same business purpose with less discriminatory effect.

Proposed Law:

- Establishes the California Fair Lending Examination Act (Act).

- Requires the Commissioner, at least once every four years, to examine the books and records of banks, credit unions, and residential mortgage lenders under the examination authority of the DFPI, for compliance with applicable nondiscrimination laws, including the ECOA, FHA, California Fair Employment and Housing Act (FEHA), Holden Act, and Unruh Civil Rights Act.

- In conducting these examinations:

    - Authorizes the Commissioner to examine the financial institution's books, records, and documents, and to examine the financial institution's officers, directors, employees, or agents under oath regarding the financial institution's operations.

    - Authorizes the Commissioner to cooperate with any state or federal agency, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation. Authorizes the Commissioner to accept an examination conducted by any of these entities in place of an examination by the Commissioner under the Act, unless the Commissioner determines that an exam conducted by any of these entities is insufficient to fulfil the Commissioner's responsibilities under the Act.

    - Requires the Commissioner to provide a written statement of findings for any examination conducted under the Act, issue a copy of that statement to the financial institution's principals, officers, or directors, and take appropriate steps to ensure correction of any violation of applicable nondiscrimination law, including a disparate impact related to a characteristic listed in FEHA that is not attributable to a legitimate business interest of the financial institution.

        - Provides that a statement of findings shall not be disclosed to anyone other than the financial institution, law enforcement officials, or other state or federal regulatory agencies for further investigation and enforcement.

  - Requires the Commissioner to assess a fee to the financial institution for the purpose of covering the costs of an examination conducted pursuant to the Act, not to exceed the reasonable expenses of the examination.

- Provides that an affiliate of the financial institution is subject to examination by the Commissioner on the same terms as the financial institution if a report from, or examination of, the financial institution provides documented evidence of unlawful activity between that financial institution and an affiliate benefitting, affecting, or arising from the activates regulated by the Act.

- Provides that a violation of an applicable nondiscrimination law is a violation of the licensing law that governs the financial institution, and that the DFPI may use its existing authority to bring an enforcement action against the financial institution based on the violation.

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