

Fair Lending Issues and Hot Topics

Outlook Live Webinar – November 2, 2011

**Non-Discrimination Working Group of the
Financial Fraud Enforcement Task Force**

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Overview

- **Opening Remarks**

- *Co-chairs of the Non-Discrimination Working Group*
- *Director of the Financial Fraud Enforcement Task Force*

- **Presentations**

- *U.S. Department of Justice*
- *Consumer Financial Protection Bureau*
- *National Credit Union Administration*
- *U.S. Department of Housing and Urban Development*
- *Federal Deposit Insurance Corporation*
- *Office of the Comptroller of the Currency*
- *Federal Reserve Board*

- **Questions**

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Opening Remarks

- **Sandy Braunstein**, *Director of the Division of Consumer and Community Affairs, Federal Reserve Board*
- **Thomas E. Perez**, *Assistant Attorney General for Civil Rights, U.S. Department of Justice*
- **Michelle Aronowitz**, *Deputy General Counsel for Enforcement and Fair Housing, U.S. Department of Housing and Urban Development*
- **Michael J. Bresnick**, *Executive Director, Financial Fraud Enforcement Task Force*

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Presentations

- **Redlining**

- *Jon Seward, Deputy Chief, Housing and Civil Enforcement Section, Civil Rights Division, U.S. Department of Justice*

- **Fair Lending Exams**

- *Patrice Ficklin, Assistant Director, Office of Fair Lending and Equal Opportunity, Consumer Financial Protection Bureau*
- *Tonya Sweat, Director, Consumer Compliance and Outreach, Office of Consumer Protection, National Credit Union Administration*

- **Maternity Leave Discrimination**

- *Joel Armstrong, Director, Office of Systemic Investigations, Office of Fair Housing and Equal Opportunity, U.S. Department of Housing and Urban Development*

Presentations *(continued)*

- **Broker Compensation in Fair Lending Cases**
 - *Sylvia Plunkett, Senior Deputy Director, Division of Depositor and Consumer Protection, Federal Deposit Insurance Corporation*
- **Fair Lending Beyond ECOA**
 - *Grovetta Gardineer, Deputy Comptroller for Compliance Policy, Office of the Comptroller of the Currency*
- **Unsecured Consumer Loans**
 - *Maureen Yap, Senior Attorney, Fair Lending Enforcement Section, Division of Consumer and Community Affairs, Federal Reserve Board*

Redlining

Jon Seward, Deputy Chief

Housing and Civil Enforcement Section

Civil Rights Division, U.S. Department of Justice

DOJ Redlining Investigations

- Review lender's business practices, including:
 - Branching and other channels
 - Lending policies and practices
 - Advertising and other
- Evaluate lending performance
- Review HMDA data, including:
 - Compare applications and originations in minority areas with other lenders
 - Compare lending activity in areas with various income and demographic characteristics
 - Assess market share in minority and non-minority areas

DOJ Redlining Cases

Failure to provide lending services to minority areas

- Few or no branches
- Little or no marketing
- Exclusion of minority areas from CRA Assessment Area
- Extremely low proportion of loans

DOJ Redlining Settlements

All recent redlining settlements include:

- Nondiscrimination provisions
- New branches in previously redlined areas
- Outreach and consumer education
- Training and changes to bank procedures
- Monetary relief ranging from \$900,000 to \$10 million in loan subsidies for previously redlined areas

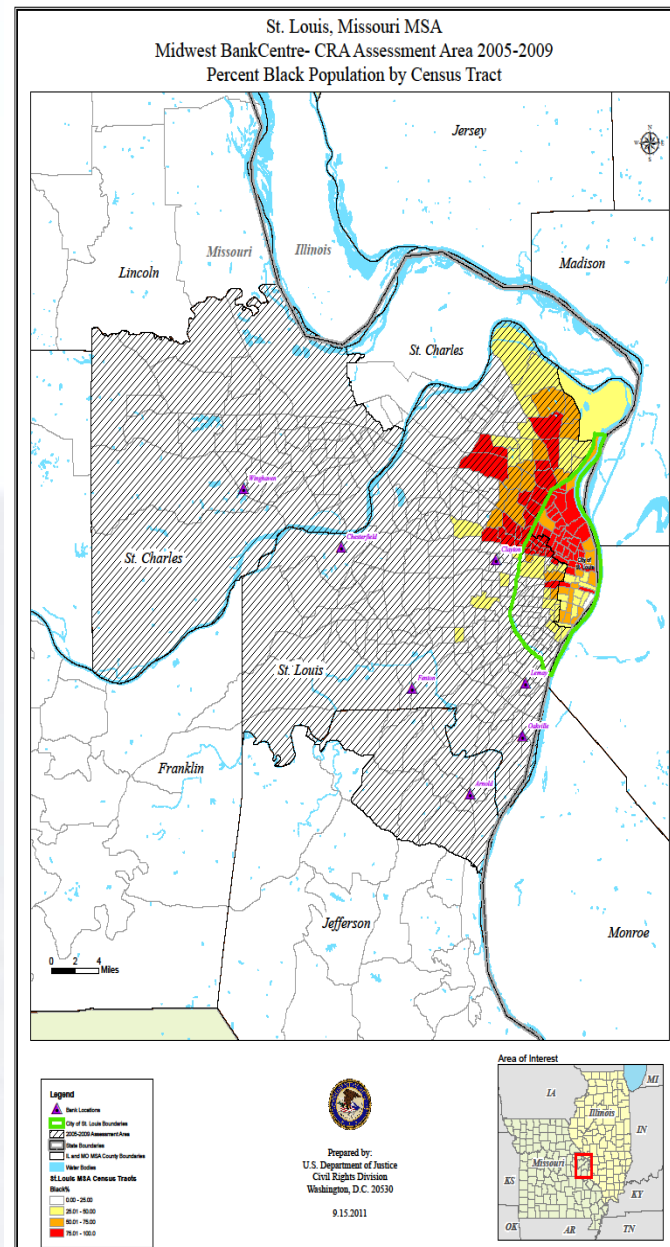
U.S. v. Midwest BankCentre (2011)

Allegations include:

- Branches exclusively in white census tracts
- CRA assessment area drawn around African-American communities in the City of St. Louis
- Fewer applications and originations from African-American census tracts than peers

Map of Midwest BankCentre CRA Assessment Area (2005 – 2009)

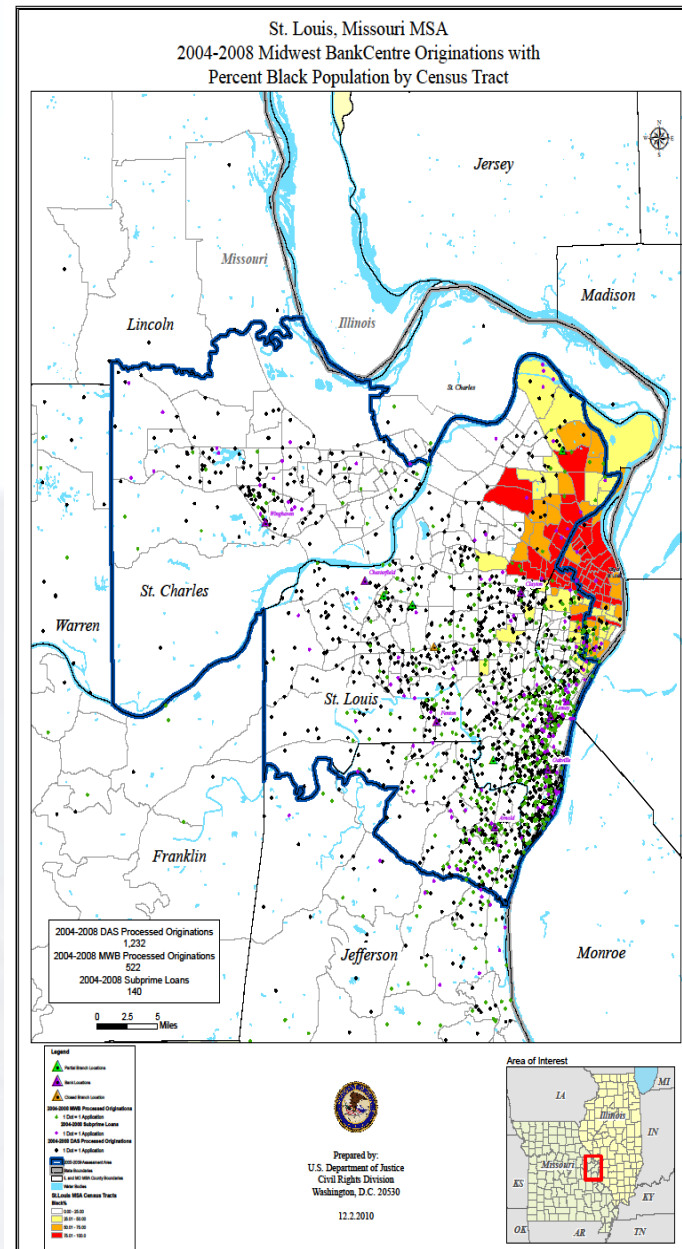
Areas in color are census tracts with high African-American population concentrations



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Map of Midwest BankCentre CRA Assessment Area

Distribution of Loan Originations (2004 – 2008)



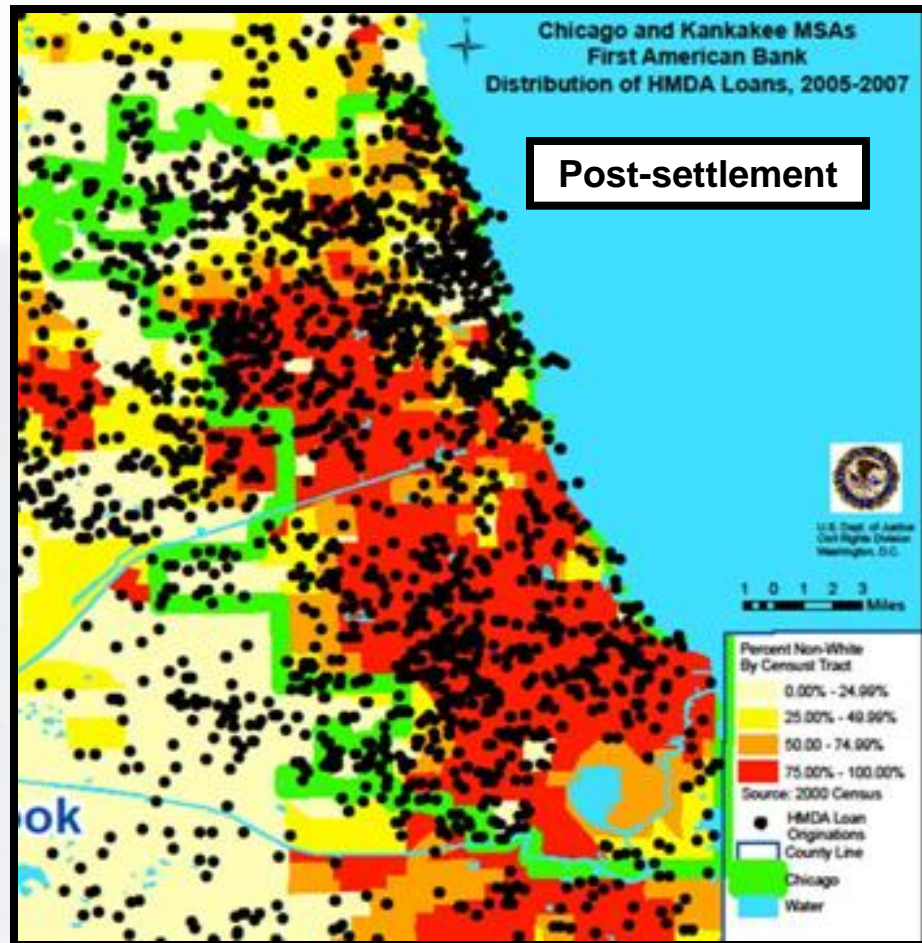
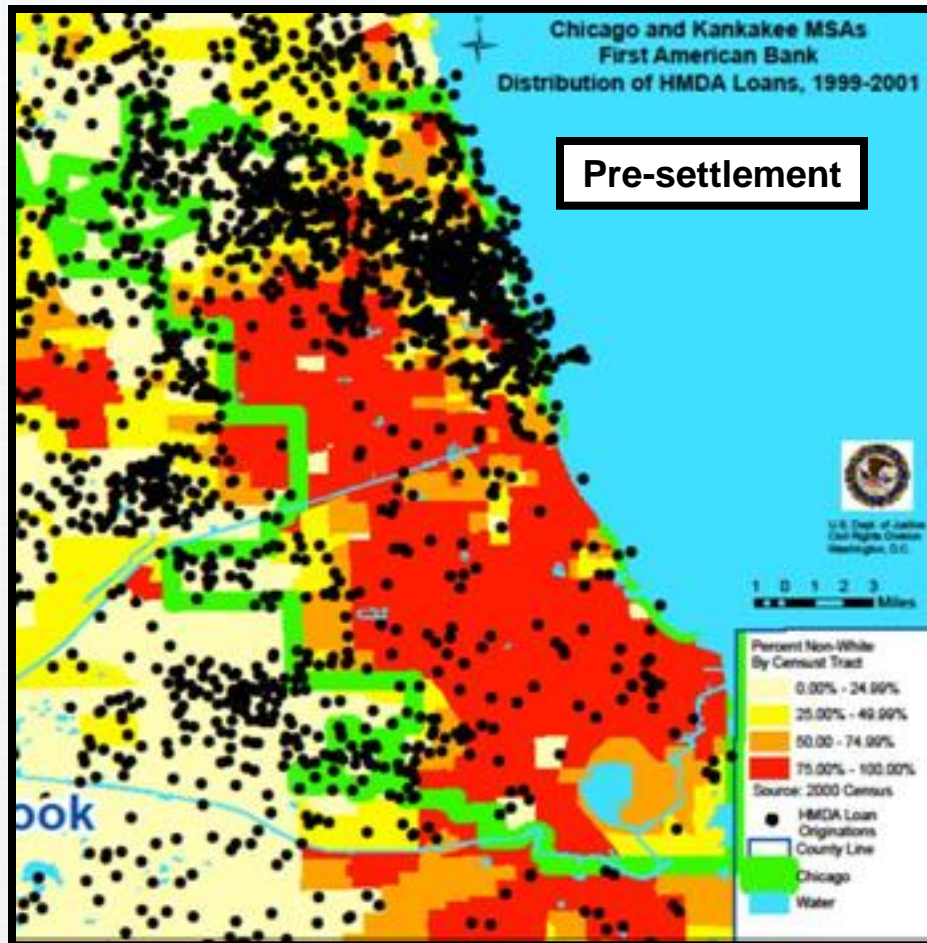
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U.S. v. Midwest BankCentre (2011)

Relief includes:

- \$900,000 special financing fund, credit repair and access to low-cost checking accounts for residents of redlined communities
- Bank will open a branch in previously redlined community
- Bank will engage in affirmative outreach and marketing to previously redlined communities

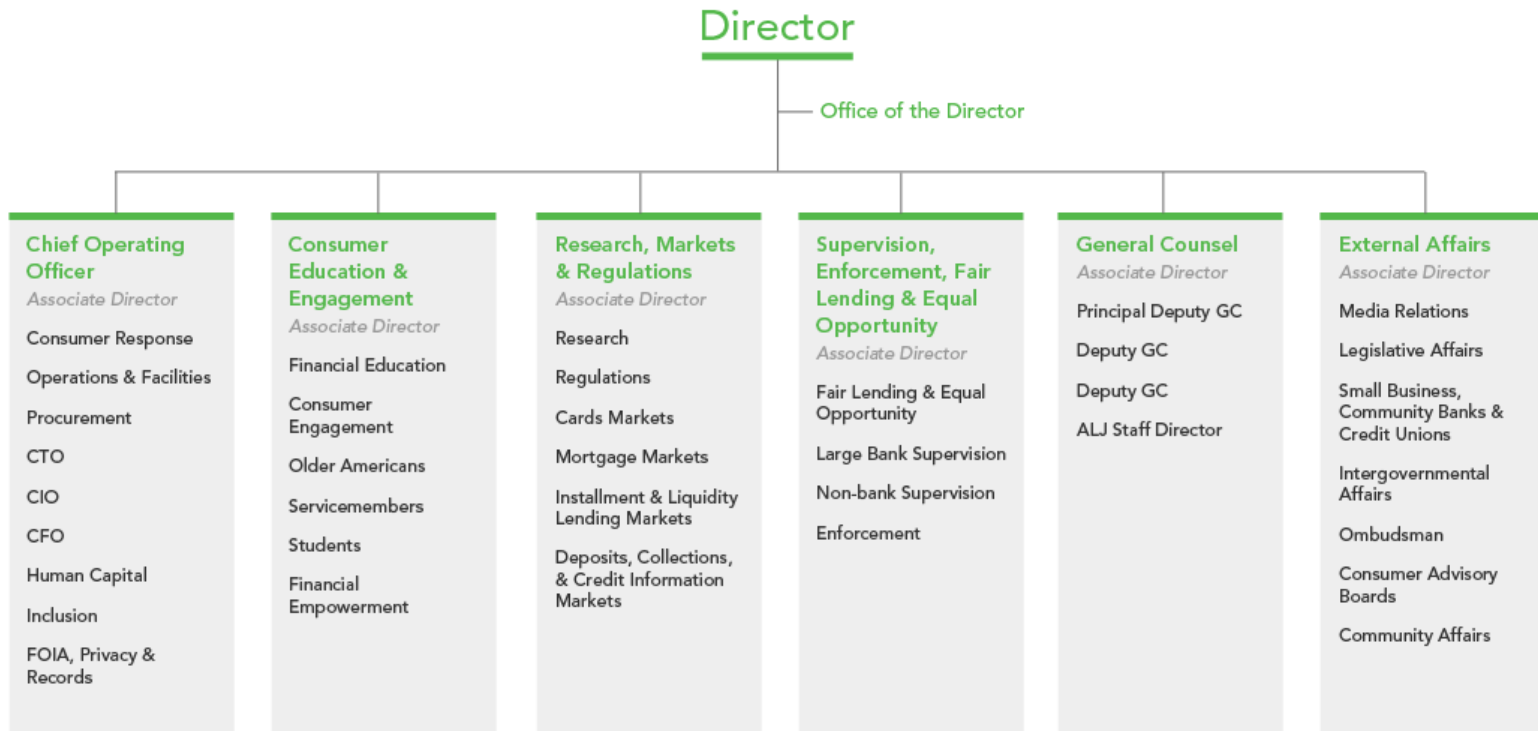
First American Bank: Distribution of HMDA Loans



Fair Lending Exams

*Patrice Ficklin , Assistant Director
Office of Fair Lending & Equal Opportunity
Consumer Financial Protection Bureau*

The CFPB's Structure



DRAFT
9/21/2011

Dodd-Frank Fair Lending Mandate

Dodd-Frank defines “Fair Lending” as:

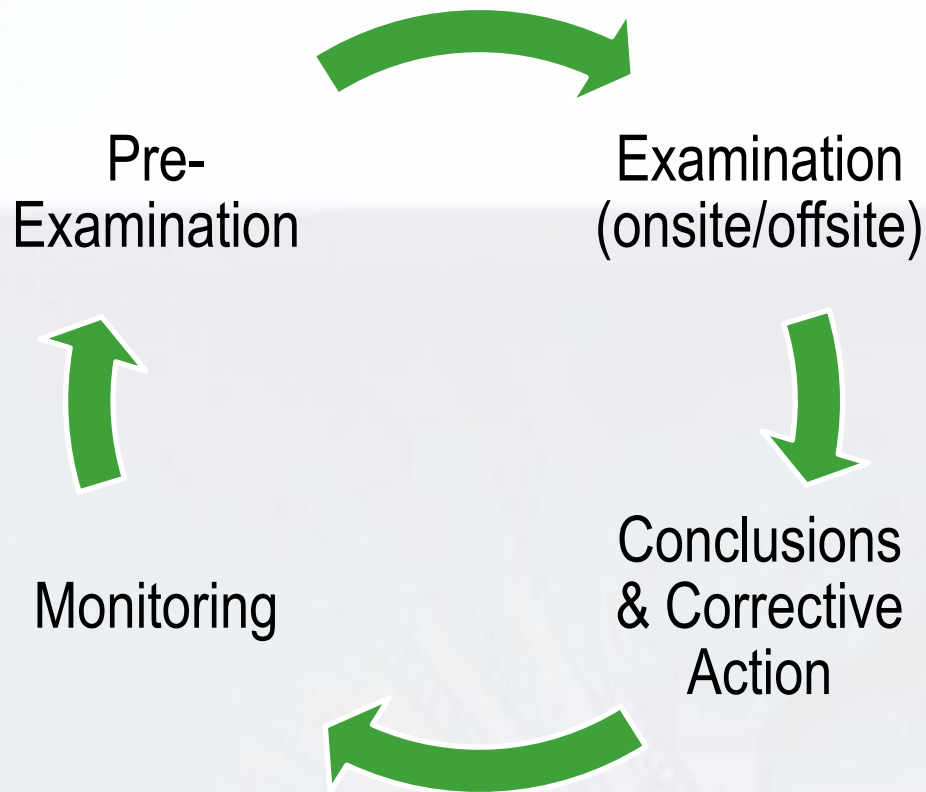
- “fair, equitable, and nondiscriminatory access to credit for consumers.”
DFA § 1002(13).

Dodd-Frank mandates the creation of an Office of Fair Lending and Equal Opportunity with the following specified functions:

- Providing oversight and enforcement of Federal fair lending laws that CFPB enforces, including Equal Credit Opportunity Act and Home Mortgage Disclosure Act;
- Coordinating CFPB’s fair lending efforts with Federal agencies and State regulators;
- Working with private industry, fair lending, civil rights, consumer and community advocates to promote fair lending compliance and education; and
- Providing annual reports to Congress on efforts of CFPB to fulfill its fair lending mandate. DFA § 1013(c).

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Ongoing Supervision Process



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Approach to Supervision

Fair Lending's supervision program is fully integrated with Bureau's supervision program.

Risk to Consumers

Data Analysis

Consistency across all supervised entities

Purpose of Supervision Manual

Provide transparent guidance to CFPB examiners that enables them to conduct consistent reviews of supervised entities:

Review compliance management systems

Check compliance with federal consumer financial laws, including ECOA and HMDA

Supervision Manual – Risk Assessment

Evaluate:

- Inherent Risks to Consumers
- As Mitigated by Effectiveness of Compliance Management

In order to:

Identify and Prioritize Examinations

Supervision Manual – ECOA and HMDA

Overall ECOA Examination Objectives

- Evaluate compliance management for ECOA and Regulation B
- Determine whether creditor discriminated in violation of ECOA
- Determine whether creditor otherwise violated ECOA and Regulation B

HMDA Overall Examination Objectives

- Evaluate compliance management for HMDA and Regulation C
- Evaluate HMDA and Regulation C compliance, including accuracy and timeliness of financial institution's submitted HMDA-LAR

Product Reviews – Mortgage Servicing

Review

- Compliance Management System's effectiveness in preventing violations of federal consumer protection laws, including ECOA
- Compliance with consumer protection laws, including fair lending laws
- Avoidance of discrimination & other risks to consumers

Fair servicing exam will focus on

Default Servicing

Foreclosures

Fair Lending Exams

*Tonya Sweat, Director
Consumer Compliance and Outreach
Office of Consumer Protection
National Credit Union Administration*

Fair Lending Exam Procedures

NCUA Reorganization

- Office of Consumer Protection
 - Created January 2010
 - Two Divisions
- Division of Consumer Compliance & Outreach
 - Nationwide fair lending exams

Examination Highlights

Examination Highlights

- FFIEC Exam Procedures
- Loan Application Registry
 - Incorrect/omitted entries
 - Withdrawals vs. denials
- ECOA/Regulation B
- Other lending products

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Contact Information

Office of Consumer Protection

National Credit Union Administration

1775 Duke Street

Alexandria, VA 22314

(703) 518-1140

www.ncua.gov

www.MyCreditUnion.gov

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Maternity Leave Discrimination

Joel Armstrong, Director

Office of Systemic Investigations

Office of Fair Housing and Equal Opportunity

U.S. Department of Housing and Urban Development

Maternity Leave Discrimination

- Fair Housing Act prohibits discrimination in housing because of familial status. 42 U.S.C. § 3601 et al
- Familial status includes any person who
 - is pregnant, or
 - is in process of securing legal custody of a child under the age of 18 years. 42 U.S.C. § 3602(k)
- HUD regulation implementing Fair Housing Act prohibits discrimination in making or purchasing of loans based on familial status. 24 C.F.R. Part 100

Maternity Leave Discrimination *(continued)*

- Prohibited practices:
 - Refusing to provide information about loan availability because of familial status,
 - Providing information that is inaccurate because of familial status,
 - Refusing to purchase loans because of familial status, and
 - Imposing different loan terms or conditions because of familial status. 24 C.F.R Parts 100.120, 100.125, and 100.130.
- HUD's Federal Housing Administration (FHA) loan program prohibits lenders from asking loan applicants about possible, future maternity leave. HUD Handbook 4155.1, Section 4.D.2.a. (General Policy on Borrower Income Analysis, Notes).

Broker Compensation in Fair Lending Cases

*Sylvia Plunkett, Senior Deputy Director
Division of Depositor and Consumer Protection
Federal Deposit Insurance Corporation*

FDIC Review of Broker Relationships

Red Flags

- Institution policy/practice that allows broker discretion in setting fees
- Institution monitors YSP but does not monitor discretionary broker fees

Basis for Fair Lending Violation

- Disparate impact
 - Policy or practice that is neutral on its face but results in disparate impact on a prohibited basis
 - Financial institution underwrote or funded the loans

FDIC Review of Broker Relationships

How would financial institution know?

- Firsthand knowledge
 - Truth in Lending (“TILA”) disclosures
 - Good Faith Estimates (“GFEs”)
 - HUD-1 Settlement Statement that disclosed the fees

How to Determine Disparate Impact

- Statistical analysis of all brokered loans
 - Determine all components of broker’s compensation
 - Run regression analysis

FDIC Review of Broker Relationships

Communication with Financial Institution

- FDIC sends preliminary findings to financial institution
- Requests any additional information including business justification

Fair Lending Beyond ECOA

Grovetta Gardineer

Deputy Comptroller for Compliance Policy

Office of the Comptroller of the Currency

Changes to OCC Fair Lending Examination Procedures

Loan servicing indicators (January 2010):

- Foreclosure disparities between protected classes and others
- Consumer complaints alleging discrimination in loan servicing
- Poorly documented or undocumented servicing decisions
- High levels of litigation alleging loan servicing discrimination
- Focal point setting guidance

Changes to OCC Fair Lending Examination Procedures *(continued)*

HELOC Modification Risk Factors (January 2010):

- Documentation lacking
- Unsupportable standards
- Market area determinations

HMDA Trends

Big Trends – 2010 HMDA Data

- Shrinkage in originated loans
- Fewer reporting institutions

Incidence of Higher Priced Loans

- Less overage percentage
- Still disparities between groups

Growth of FHA and VA Loans

- 7% in 2007 to 36% in 2010
- Potential steering issue

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Other Potential Areas for Concern

Protecting Tenants in Foreclosure Act

- What does it do?
- Who is eligible?
- What are the restrictions on lenders?
- How long will it last?

SCRA – A New Prohibited Basis?

- Many protections for active duty military regarding loans
- Actions by loan holders
- Recent large settlements

Unsecured Consumer Loans

*Maureen Yap, Senior Attorney
Fair Lending Enforcement Section
Division of Consumer and Community Affairs
Federal Reserve Board*

Unsecured Consumer Loans: Overview

- Many small banks offer small-dollar unsecured loans that serve a critical need for consumers
- Typical features
 - Closed-end installment loan with terms of 12-30 months
 - Small-dollar loan amounts (\$500-\$2,500)
 - Interest rates around 12-17%, fees between \$20-25, APR around 36%

Unsecured Consumer Loans: Issues

- Some lenders have not implemented fair lending controls for product
 - Standardized pricing practices
 - Monitoring
- Broad pricing discretion has long been recognized as a fair lending risk (See Interagency Fair Lending Examination Procedures)
- FRB has had one referral to DOJ on issue
- DOJ case: U.S. v. Nixon State Bank (FDIC Referral)

Unsecured Consumer Loans: Sample Issues

- Statistically significant interest rate disparities for minority borrowers and/or women that cannot be explained by legitimate pricing factors
- Lack of rate sheets or other pricing guidelines
- Broad pricing discretion at the loan officer level
- Lack of clear documentation of reasons for pricing decisions
- Lack of monitoring for pricing disparities

Unsecured Consumer Loans: Fair Lending Best Practices

- Lenders should...
 - Evaluate and monitor product, policies and practices for potential fair lending risk; and
 - Provide loan officers clear standards for underwriting and pricing (interest rate, fees and points)

Questions

