Outlook Live Transcript
2015 Interagency Fair Lending Hot Topics
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Note: Please use in conjunction with the presentation slides (slides and handouts).

Mike Vander Velde – Facilitator

Good afternoon and welcome to Outlook Live. I am Mike Vander Velde with the Federal Reserve, and I will be your facilitator. Today we will take a look at the 2015 Interagency Fair Lending Hot Topics. Our presenters today come from the Federal Reserve, CFPB, NCUA, FDIC, HUD, OCC, and the DOJ. We'll hear from them in just a minute. But first let's jump to slide number two and cover a few logistics for this call.

If you haven't done so yet, go ahead click on the webinar link that you received after registering, or you can head over to our website as seen on slide one. That address is www.consumercomplianceoutlook.org. There you can find the session materials and eventually the archive of the call.

Just a quick note on the webinar, we encourage you to listen to the audio through your PC, but there is a phone line option that you can access at any time. On the webinar tool, you might have noticed a section there to submit questions, and we encourage you to do that. There is an Ask Question button, you click on that, type your question, and we will add it to our queue. Alright, with that said, we have covered the logistics, and I am ready to pass the mic over to the host of our call from the San Francisco Fed, Mr. Jason Lew. Jason, take it away.

Jason Lew – Moderator

Thanks Mike. Hello everyone. My name is Jason Lew, and welcome to *Outlook Live*. It is my pleasure to open today's webinar on the 2015 Interagency Fair Lending Hot Topics Outlook Live.

As you can see from slides three and four, the seven agencies represented are planning to cover a variety of fair lending topics, including an:

- Update from the CFPB;
- Using data in evaluating fair lending risk;
- Compliance management systems;
- Pricing reviews;
- Post-origination fair lending risk;
- Discrimination against women on maternity leave; and
- Auto lending enforcement.

As you can see, we have a full agenda.

Before I hand things off to our speakers, I do want to mention that the Federal Reserve System also publishes a quarterly newsletter entitled *Consumer Compliance Outlook*. As Mike mentioned both the *Outlook Live* webinars and the *Consumer Compliance Outlook* Newsletters are part of the Federal Reserve System's outreach activities, are free of charge, and can be accessed at www.consumercomplianceoutlook.org.

So with that, I'll hand things off to Anna Tabor with the Consumer Financial Protection Bureau. Anna, the floor is yours.

Anna Marie Tabor (CFPB) – CFPB Mortgage Updates

Thank you Jason, I am pleased to join you today to discuss the work that the CFPB is doing to prevent discrimination in mortgage lending. Next slide please.

First I would like to tell you about our office, the CFPB's Office of Fair Lending. The Dodd-Frank Act established the Office of Fair Lending and Equal Opportunity within the CFPB and charged the office with providing oversight and enforcement of federal laws intended to ensure fair, equitable, and nondiscriminatory access to credit for both individuals and communities. Our responsibilities include providing oversight and enforcement of federal fair lending laws that the CFPB enforces, including the Equal Credit Opportunity Act or ECOA and the Home Mortgage Disclosure Act or HMDA. We also coordinate CFPB's fair lending efforts with federal agencies and state regulators. We work with the CFPB's Office of Regulations on the Bureau's required fair lending rulemaking. We promote fair lending compliance and education by working with private industry, fair lending, civil rights, and consumer and community groups, and we provide annual reports to Congress on the efforts of the CFPB to fulfill its fair lending mandate and on ECOA and HMDA. Next slide.

I'm going to focus my remarks on two topics related to discrimination in mortgage lending. First, I'll speak about the CFPB's work to prevent redlining. Second, I'll discuss our recent compliance bulletin on Section 8 Housing Choice Voucher Homeownership Program, a form of public assistance income that helps low-income, first-time home buyers in purchasing homes. Discrimination on the basis of the receipt of public assistance income is prohibited by ECOA and Regulation B. Next Slide.

Redlining is a form of illegal disparate treatment in which financial institutions make it more difficult for consumers to access credit based on the racial or ethnic composition of a neighborhood. In some early cases of redlining, actual red lines were drawn on maps around neighborhoods to which credit would not be provided, giving this practice its name. Today, we're focusing on redlining from an access to credit standpoint, particularly in light of contractions that have occurred in the wake of the great recession. On September 24, 2015, the CFPB and the Department of Justice announced a joint action against Hudson City Savings Bank for illegal redlining. Next slide.

Before I discuss this matter, I would like to describe some risk factors that may indicate potential redlining. Redlining risk factors may include, among other factors:

- Significant differences in applications or originations in neighborhoods with high concentrations of minority residents,
- A market area that excludes geographic areas with high concentrations of minority residents,
- Differences in branch or office locations or in the services of those locations, or

- Marketing that excludes geographies that have high concentrations of minority residents. Next slide.

Each institution should ensure that its CMS is tailed to its operations, and the scope, size, and complexity of the CMS may vary. Institutions that are effectively managing fair lending risk may include the following components in their CMS, among others.

- Ensuring reporting to the board of directors and senior management regarding fair lending risks and issues, including redlining,
- Reviewing policies and procedures for fair lending compliance,
- Monitoring lending operations for fair lending risks and violations including redlining, and
- Providing for prompt and full corrective action when appropriate.

Next I'd like to discuss a recent redlining matter that I mentioned a minute ago.

On September 24, 2015, the CFPB and the Department of Justice announced a joint action against Hudson City Savings Bank for illegal redlining. The complaint alleges that Hudson City structured its mortgage business to provide unequal access to credit products in majority Black and Hispanic neighborhoods in New York, New Jersey, Connecticut and Pennsylvania. Together the CFPB and the DOJ are asking the court to order Hudson City to pay $25 million in loan subsidies to make mortgage loans accessible to qualified borrowers in neighborhoods that the company had illegally redlined. This represents the largest federal court settlement for redlining in history as measured by loan subsidies provided to consumers.

The matter arose from an initial Bureau examination, which was followed by a joint investigation. The complaint alleges that from at least 2009 to 2013 Hudson City engaged in illegal redlining and systematically discouraged consumers in majority Black and Hispanic neighborhoods from applying for mortgage credit in violation of the Equal Credit Opportunity Act.

Among other things the complaint alleges that the bank placed its branches and loan officers principally outside of those neighborhoods. The complaint also alleges that nearly all of the mortgage brokers selected by the bank were located outside of those same neighborhoods.

In addition, Hudson City's limited marketing efforts occurred in neighborhoods with relatively few Black and Hispanic residents. The consent order, which is subject to court approval, requires Hudson City to take corrective action and provide fair access to credit for those credit-worthy residents who live in the Black and Hispanic neighborhoods that it had previously redlined. Specifically, the order requires Hudson City to pay $25 million to a loan subsidy program, which will help residents obtain mortgages on a more affordable basis in majority Black and Hispanic neighborhoods in the bank’s principal service areas.

The consent order will require Hudson City to take other remedial steps as well. The bank will open two new full-service branches within majority Black and Hispanic neighborhoods. It must also improve its fair lending compliance and training to help ensure it does not engage in future redlining. It will spend $750,000 to partner with local community-based organizations in the redlined communities. It will hire a consultant to assess the credit needs of Black and Hispanic neighborhoods, and it will hire a full-time director of community development to oversee the continued development of its lending in Black and Hispanic neighborhoods. Hudson City is required to address this lack of marketing to Black and Hispanic consumers by spending $1 million over five years on a targeted advertising and outreach campaign to generate applications for mortgage loans from qualified residents in the affected neighborhoods. The bank will also spend $500,000 over five years to provide financial literacy events for residents of affected majority Black and Hispanic neighborhoods. Finally Hudson City will pay a civil penalty of $5.5 million. Now, I would like to switch gears to discuss ECOA's prohibition on discrimination against recipients of public assistance income. Next Slide.

The Section 8 Housing Choice Voucher Homeownership Program was created to assist low-income, first-time homebuyers in purchasing homes. The program is funded by the Department of Housing and Urban Development or HUD and administered by participating local public housing authorities. Through the Section 8 HCV Homeownership Program the participating housing authority may provide an eligible consumer with a monthly housing assistance payment to help pay for home ownership expenses associated with a housing unit purchased in accordance with HUD's regulations. Next slide.

In May 2015, the Bureau issued a bulletin (CFPB Bulletin 2015-02) to remind creditors of their obligations under ECOA and Regulation B to provide non-discriminatory access to credit for mortgage applicants using income from the Section 8 Housing Choice Voucher Homeownership Program.

The CFPB had become aware of financial institutions excluding or refusing to consider income derived from this program during the loan application and underwriting process. The CFPB had also become aware of some institutions only permitting the vouchers to be used for certain mortgage loan products or delivery channels. Next slide.

Excluding or refusing to consider these vouchers as a source of income categorically or accepting the vouchers only for certain types of mortgage loans may violate ECOA and Regulation B. The bulletin offers guidance for lenders in managers their fair lending risk, including the importance of clear underwriting policies, providing training for underwriters and loan originators, and ensuring careful monitoring for compliance with underwriting policies. Next slide.

If you are interested in learning more about the CFPB's fair lending work, please visit our website: www.consumerfinance.gov. The website includes links to our *Supervision and Examination Manual* as well as supervisory guidance on fair lending issues. Next slide.

Before I wrap up, I'd also like to mention the extensive consumer resources on our website, including the Ask CFPB resource and our Consumer Complaints portal. And now I'd like to turn over the presentation to Maureen Yap of the Federal Reserve Board.

Maureen Yap (FRB) – Using Data in Evaluating Fair Lending Risk:

Thank you Anna, we are now on slide 18. Hello everyone, I am Maureen Yap from the Federal Reserve, and I would like to talk to you today about the use of data in the Federal Reserve's fair lending reviews. I will quickly review the first few general slides and then spend more time on the detail for redlining and pricing reviews.

So turning to slide 19, let's start by clarifying the fair lending authority. The key takeaway here is that pursuant to the Dodd-Frank Act, the Federal Reserve and the CFPB share supervisory authority for fair lending in mortgages for the large state member banks, and the Federal Reserve retained supervisory authority for fair lending for the state members banks of $10 billion or less.

Turning to slide 20, the key takeaway here is that under the ECOA, if the Board has reason to believe there is a pattern or practice of discrimination, the Board must refer the matter to the DOJ, which it has done for a number of matters.

Turning to slide 21, the key takeaway here is the Federal Reserve uses a risk-focused approach to exams, including the fair lending reviews. Of course the review of data is not the only source evaluated, but it is an important element of the review.

Turning to slide 22, here is a list of some of the data used to evaluate fair lending risk. These data are especially important for evaluating risk in redlining and pricing.

Turning to slide 23, we will first focus on redlining risk. Basically, Federal Reserve examiners use the 2009 procedures to review five sets of redlining risk factors. Namely, the CRA assessment area, branching, loan data, marketing and outreach, and complaints or overt statements.

Turning to slide 24, the key areas of data for evaluating redlining risk are the CRA assessment area, branch location, and the lending record.

Turning to slide 25, the key areas for redlining review are whether the CRA assessment area includes the whole political subdivision, and if it does not, whether the majority minority census tracks are inappropriately excluded. To help us determine this risk, we evaluate the data by reviewing the number and percent of majority minority tracks that are excluded, the number and percent of the minority population that is excluded, and maps of the bank's CRA assessment area and the surrounding areas showing the majority minority tracks, including any tracks that may have been excluded.

Turning to slide 26, for redlining reviews, we also review the bank's branch locations. The key area for review is the bank's branching patterns in majority minority census tracts. To help us evaluate this risk, we review the data for the number of branches currently present in majority minority and non-majority minority census tracts, the number of branches opened in those tracts, the number of branches closed in those tracts, and maps of the bank's CRA assessment area and surrounding areas showing the branch locations.

Turning to slide 27, for redlining reviews, we review the bank's HMDA mortgage application and origination data. If the bank is a CRA reporter, the Federal Reserve also reviews the bank's CRA loan origination data. To help us determine this risk, we evaluate the data by reviewing the number and percent of the bank's applications and originations in majority minority census tracts and any disparities between the percent of the bank's applications and originations in majority minority census tracts and the percent of the aggregate and adjusted aggregate applications and originations. We define the adjusted aggregate as the aggregate lenders with lending activity between 50% and 200% of the bank's volume and a rate spread incidence of less than 25%. Finally, we review maps of the bank's applications and originations in the bank's CRA assessment area and the surrounding areas. In sum, although the Federal Reserve can consider several resources in evaluating a bank's redlining risk, the key areas of focus for data is the bank's CRA assessment area, the bank's branching patterns, and the bank's lending record.

Turning to slide 28, we will next focus on pricing risk. Basically, Federal Reserve examiners use the 2009 procedures to review four sets of pricing risk factors, namely, discretion, financial incentives, loan data, and complaints.

Turning to slide 29, for mortgage loans if there is sufficient volume we will request the bank's HMDA mortgage origination data, also known as the HMDA Plus data. This data set will be separated by key products and reviewed for potential pricing disparities on a prohibited basis. The areas of pricing can include the APR, the interest rate, and the fees.

For consumer loans, if there is sufficient volume we will review the bank loan trial data also known as ALERT data. We begin by coding the data for the prohibited basis characteristics of the borrower. For more details, please see the Federal Reserve's 2013 webinar on this topic. The data set also will be separated by key products and reviewed for potential pricing disparities on a prohibited basis. Due to data limits, typically the area of review is the interest rate.

Turning to slide 30, as mentioned before, the data results are not the only source for evaluating risk. If the bank's data indicate disparities in pricing, examiners will evaluate this elevated risk in the context of other risk factors such as discretion. If it is determined that additional analysis is warranted, examiners will seek more information from the bank to determine whether there are legitimate pricing factors that explain the disparity. This may include a comparable file review and/or additional statistical analysis.

Turning to slide 31, the previous slides provided specifics on the Federal Reserve's use of data in evaluating fair lending risk. Following are some slides summarizing best practices related to these data and some free resources available from the Federal Reserve. With respect to best practices, banks should ensure that the data are accurate and up-to-date, analyze the data, and to the extent that elevated fair lending risk is present, ensure that explanations for this risk are clearly documented and appropriately analyzed.

Turning slide 32. For example, to the extent elevated fair lending risk is present, banks should document policies, procedures, and criteria, retain data that may explain disparities, and conduct further analysis to determine whether the issues are fully attributable to legitimate factors.

Finally turning to slide 33, we encourage banks to review some of the free resources provided by the Federal Reserve and listed on this slide. And now I will turn things over to Jamie Goodson of the NCUA.

Jamie Goodson (NCUA) – Compliance Management Systems

Thanks Maureen, and good afternoon. As Maureen mentioned, I am with the National Credit Union Administration, where I am in the Office of the Consumer Protection. Slide 35 please.

NCUA evaluates federal credit unions' compliance with the Equal Credit Opportunity Act, the Fair Housing Act, and NCUA's nondiscrimination regulation under the Fair Housing Act. This evaluation occurs through on-site fair lending exams and off-site supervision contact. In conducting the review of a credit union's fair lending compliance management system, NCUA analysts consider a variety of factors, many of which echo those mentioned by Anna in her presentation. Specifically, we look at the effectiveness of oversight by the board of directors and management, the quality and comprehensiveness of a credit union's policies and procedures, the training provided to the board of directors, management, and staff for both new and existing employees, the timeliness and comprehensiveness of monitoring and testing, and any appropriate corrective action, the independence and effectiveness of a credit union's compliance audits, and the responsiveness and responsibility shown in handling member complaints. I will focus my comments on policies and procedures. Slide 36 please.

Fair lending policies and procedures should be documented and sufficiently detailed to address compliance with fair lending laws in a manner designed to prevent violations and to detect and prevent harm to consumers. Policies and procedures are an institution's primary reference tool for managing fair lending compliance. They should be reviewed frequently and kept current. Fair Lending policies and procedures should cover all loan products and phases, including advertising, marketing, underwriting, servicing, loss mitigation, and third party oversight. They also should address requirements for conducting reviews before introducing new lending products or modifying existing products. These reviews should include evaluating documents and disclosures, testing systems, and training staff before product rollout. Slide 37 please.

Generally, the fair lending policies NCUA analysts review mention the most familiar prohibited bases for discrimination. Those are race, color, religion, national origin, sex, marital status, age, and for real estate related loans subject to the Fair Housing Act, familial status and handicap. However, some policies omit as a prohibited basis for discrimination the fact that all or part of an applicant's income comes from public assistance income. Others omit as a prohibited basis the exercise in good faith of a right under the Consumer Credit Protection Act or any state law for which the CFPB has granted an exemption.

Even if your institution's practices comply with fair lending laws, it is important that its policies reflect all the prohibited bases. Ensuring that your institution's fair lending policies are comprehensive reduces the risk that an employee will misunderstand applicable laws and regulations. Slide 38 please.

So Anna already spoke some about public assistance income, and I'm going to give a bit more background. Under Regulation B, which implements the Equal Credit Opportunity Act, you may consider receipt of public assistance income in a judgmental system of evaluating credit worthiness to determine a pertinent element of creditworthiness. Regulation B defines these terms in 12 CFR 1002.2. The judgmental system of evaluating applicants means any system for evaluating the creditworthiness of an applicant, other than an empirically derived, demonstrably and statically sound credit scoring system. Section 1002.2(p) defines empirically derived, demonstrably and statistically sound credit scoring system. Pertinent element of creditworthiness in relation to a judgmental system of evaluating applicants means any information about applicants that the creditor obtains and considers and that has a demonstrable relationship to its determination of creditworthiness. Slide 39 please.

It is especially important for policies to include sufficient detail about the types of income that constitute public assistance income. Significantly, under Regulation B, the term public assistance includes any federal, state, or local governmental assistance program that provides a continuing, periodic income supplement, whether it is premised on entitlement or need.

The term includes, but is not limited to, temporary assistance to needy families, food stamps, rent and mortgage supplement or assistance programs, Social Security and supplemental security income, and unemployment compensation. Slide 40 please.

Another prohibited basis for discrimination to be listed in policies is the fact that an applicant has in good faith exercised any right under the Consumer Credit Protection Act or any state law upon which the CFPB has granted an exemption. The Consumer Credit Protection Act is an umbrella law encompassing many different federal laws. Some of these laws are listed on this slide. Policies should reflect that you cannot discriminate against an applicant because he or she exercised a right under a federal law encompassed in the Consumer Credit Protection Act. In some cases, all or part of a state law is granted an exemption from the requirement of a federal law. For example, exemptions apply under the Truth in Lending Act to some provisions of certain state laws. In cases where an exemption applies, you cannot discriminate against an applicant because he or she exercised a right under the state law. Slide 41 please.

Having policies that reflect the requirements of fair lending laws is an important part of ensuring compliance with fair lending laws. Review policies to ensure that they are drafted carefully. Don't assume that staff will properly fill in the blanks where statements and policies are unclear. For example, review statements on underwriting that discuss only employment income without discussing other forms of income. Loan officers may know to consider non-employment income and may in fact follow procedures that comply with fair lending laws; however, it is important to reduce the chance of confusion by making sure your policies discuss public assistance income and other non-employment income.

Also it is important to make sure policies discuss fair lending considerations in all loan products and phases. For example, policies should make clear to staff developing ad campaigns that marketing materials should avoid suggesting that loan products or special offers are limited on a prohibited basis. As an example, ads should not suggest that the availability of a consumer credit product is limited to applicants with employment income. Slide 42 please.

You can find more information about the elements of a strong fair lending compliance management system from NCUA's perspective in the 2014 Interagency Fair Lending Hot Topics presentation. A link to this presentation appears in the webinar section of the fair lending webpages of NCUA's consumer compliance regulatory resources webpages. These webpages also provide additional information about fair lending and other consumer protection matters. Examples of the available resources are shown on this slide.

I will now turn the presentation over to Tara Oxley with the FDIC.

Tara Oxley (FDIC) – Pricing Reviews

Good afternoon. Today, I am going to discuss how the FDIC evaluates fair lending pricing risk as well as what factors examiners consider when deciding whether to conduct an in-depth pricing review. We have found that it is helpful for institutions to understand how examiners approach this issue so that they too can identify risks and take steps to mitigate such risks and avoid a fair lending violation. Slide 44 please.

I want to begin by first saying the FDIC does not to conduct a pricing review at every examination. Although we conduct a fair lending review at every examination, the FDIC follows a risk-based approach that focuses on areas with the greatest risk of consumer harm. Thus, it is possible that the pricing a particular loan product will be an area of risk, but depending on the facts and circumstances of your particular institution it also may not.

In assessing risk, examiners will first begin with an analysis of the institution and its loan products. This will require that the examiner understand the size and complexity of the institution, the credit products it offers, any recent changes either to the institution itself or its loan products, its policies and procedures, and demographic information about the community it serves. Examiners will also review the bank's overall fair lending compliance program to understand what the bank does to both identify and mitigate fair lending risk.

After looking at all of these factors, examiners will evaluate the risk that is inherent in the bank's operations, and for those loan products where examiners have identified inherent risk, examiners will then determine which loan products warrant further review. This is a very fact-specific analysis and a determination that may change from exam to exam as institutions grow and change. Slide 45 please.

If a loan product is selected for further analysis, examiners will next review all of the discrimination risks for that particular loan product using the *Interagency Fair Lending Examination Procedures*. When looking specifically at pricing, and determining if there are any risks that warrant further review, examiners will look to see if any red flags exist. These red flags are not, per se, fair lending violations, but rather increase the likelihood of a fair lending violation given their fair lending risk.

Typically, examiners may conduct a more in-depth analysis if more one or more of the following red flags are present:

- Raw disparities between target and control group – For example, if there are differences in the average interest rate charged to Blacks versus non-Hispanic-White borrowers.
- Unmonitored or insufficient monitoring of pricing discretion – Once an institution allows individual loan officers or third parties discretion in setting prices and does not properly monitor such risk, this creates an area of fair lending risk. While discretion is not prohibited, risk is heightened when discretion is not effectively controlled or monitored by the bank.
- Lack of clear written pricing policy – Another red flag exists where a bank does not have a clear policy as to how prices are set. Or should a policy exist, a policy that provides objective criteria and is difficult to measure.
- Lack of documentation for any exceptions to policy – In many cases, the bank may have a policy that provides standards, but then loan officers may make exceptions to policy without properly documenting the reason for the exception.
- Financial incentives by office or loan originator – Although Regulation Z prohibits a bank from paying a loan officer based on the terms of conditions of the loan, including the price, compliance with this law does not eliminate fair lending risk. In fact, it is a red flag if the bank sets pricing targets for certain mortgage loan originators or for certain offices. We have seen instances where one loan office has borrowers with a higher target price as compared to another office, and this difference resulted in a fair lending violation given that the office with a higher rate was located in a majority minority area.
- And finally complaints by consumers or community advocates that specifically focus on the bank's pricing procedures or policies. Next slide please.

Once examiners have found that one or more red flags exist, examiners will then determine if such risks are sufficiently mitigated by the institution. For example, if the institution conducted a fair lending audit that sufficiently analyzed the area of concern and implemented any needed corrective action, examiners may choose not to conduct the pricing review of that particular loan product.

If however, examiners determine that a loan product has inherent risk and identify pricing risk factors that have not been sufficiently mitigated they may determine that an in-depth pricing review is necessary. This process will require some feedback from the bank given that our analysis is based on how specifically the bank priced the loans at issue.

Although examiners will first begin their pricing review by looking at the bank's written pricing policies and rates streets, they will also interview bank personnel to gain a full understanding of the bank's process for pricing loans.

Examiners will then gather data from the bank's loan files and conduct a statistical analysis of the bank's pricing data. The statistical analysis will be bank-specific, meaning that the statistical model will be based on the bank's specific pricing policies as documented in its policies and rate sheets, as well as information gained from the bank interviews. There is no one-size-fits-all approach and banks should never assume that a model that works for one institution will work for them. Any statistical analysis performed should be tailored to the bank's operations.

Given the large volume of loans that we typically analyze, the FDIC commonly conducts a regression analysis, which allows us to determine whether pricing disparities exist on a prohibited basis after considering all of the bank's pricing criteria. Our analysis not only considers the criteria that the bank used to price the loan, but also will account for how that criteria was considered by the bank. For example, if the bank prices a loan differently depending on the applicant's credit score, and those credit scores are grouped into various buckets, our analysis will account for those differing buckets. Finally, the FDIC statistical analysis is typically conducted at the portfolio level and not by individual loan officer, broker, or dealer. We do however sometimes conduct broker by broker or dealer by dealer analysis to see if any one particular person or dealer is driving the disparity. Next slide please.

Now that I have explained the various red flags examiners consider when assessing pricing risks and how the FDIC conducts an in-depth pricing review, I am going to quickly provide some suggestions as to what a bank can do it if it has identified a fair lending risk in its pricing of certain loans. We find that such a risk may be lessened by effective compliance management systems that include clear written pricing policies that address how loans are priced.

If loan officer discretion is allowed, the policy should explain how discretion may be applied.

- The bank should ensure that everyone is aware of the bank's policy.
- Documenting and tracking exceptions to policy – Banks should track exceptions to ensure applicants are not negatively impacted on a prohibited basis and require that documentation be maintained to justify any exceptions.
- A robust monitoring system – This may differ from institution to institution depending on the complexity of one's operations, but generally monitoring on a quarterly basis will suffice. As discussed earlier, the FDIC generally conducts its analysis at the portfolio level, but because it is helpful to know if any particular broker or dealer is driving a disparity, the bank's analysis should be conducted both at a portfolio level and by broker or dealer.

- Finally, if disparities exist, banks should take appropriate corrective action against individual employees or third parties. These actions could include restitution, fair lending training, or increased frequency of monitoring. Next slide please.

Finally the FDIC offers several resources to help banks understand their fair lending risk. Set forth on this slide are links to our technical assistance videos, which include detailed information on managing fair lending risk, an FDIC publication entitled Supervisory Highlights which discusses several compliance issues including fair lending, and the FDIC's Compliance Examination Manual.

I will now turn the presentation over to Kathryn Ray, who will discuss post-origination fair lending risks.

Kathryn Ray (OCC) – Post-Origination Fair Lending Risks

Thank you, Tara. Today I am talking about post-origination fair lending risks, and I will be focusing on mortgage-related issues. This is certainly not a new topic, but it continues to be an area of interest. Ensuring compliance with the fair lending laws and post-origination activities is one part of the puzzle of addressing the effects of the recent housing crisis. Today I plan to talk about the OCC's fair lending risk assessment process and how the quality of bank's risk management factors into our evaluation. Then, I will cover some basics on what our examiners and economists may consider in an exam focusing on loss mitigation activities. And finally, I will briefly touch on fair lending risks related to Other Real Estate Owned.

OCC examiners conduct a fair lending risk assessment in every supervisory cycle. The specifics of this process differ based on the size of the bank, but for banks of every size, examiners look at risks that arise from the product marketing stage all the way to the loss mitigation and servicing stage. I should note that compliance with the mortgage servicing rules that became effective in early 2014 should go a long way toward mitigating fair lending risk. We anticipate that compliance with these rules will result in more standard outcomes and processing times for distressed borrowers. However, even full compliance with these rules will not eliminate fair lending risk. For instance, the rules do not dictate a particular outcome for borrowers who apply for loss mitigation. Borrowers evaluated for the same type of loss mitigation options could have varying degrees of success, thus implicating fair lending concerns if adverse outcomes are correlated with prohibited basis group characteristics. Additionally, the use of third parties to perform loss mitigation activities without appropriate controls can heighten fair lending risk.

For small servicers that are exempt from certain requirements of the mortgage servicing rules, these servicers should still have in place appropriate policies and procedures to identify and address fair lending risks. If a bank conducts mortgage servicing or loss mitigation activities, examiners evaluate the strength of their policies, procedures, and controls relating to fair lending risk. For instance, examiners look at whether servicing staff receive effective training on fair lending compliance. If post-origination activities are performed by a third-party, examiners may look at controls to ensure that the third party's employees are adequately trained on fair lending compliance. Examiners also look at complaints and pending litigation to assess the bank's level of fair lending risk.

Moving on to slide 51, the results of our risk assessment inform our supervisory strategy for the bank. Depending in part on the results of the risk assessment, an examination focusing on post-origination activities may be scheduled. Undoubtedly, there are challenges to conducting analysis in this area, and it is not as straightforward as, for example, a more traditional exam of underwriting decisions where we are comparing approved applicants to denied applicants. Our examiners and economists have to consider the availability and quality of data to review. Additionally, determining what outcomes to compare and what outcomes are more desirable can be a very complex undertaking. While there are certainly challenges, there may be many circumstances in which useful analysis can be performed to test whether there are patterns that should be explored further. For example, data may be available to analyze outcomes for borrowers who received a particular loss-mitigation option or a specific subset of loans such as portfolio loans. Additionally, data may be available to explore disparities and duration time, such as the time from referral to a foreclosure to the foreclosure sale. If HMDA data on distressed borrowers is not available, proxy methodologies may be considered to assign race, ethnicity or gender.

Depending on the circumstances, geocoding, first name, surname, or a combination of these methodologies could be used to proxy for demographic characteristics. As always, addressing fair lending concerns in this area starts with the quality of the bank's processes for understanding the risks of its own activities and those performed on its own behalf by third parties. Next slide please.

Shifting gears slightly to Other Real Estate Owned. The OCC has encouraged banks to work constructively with residential borrowers at risk of default and to avoid unnecessary foreclosures, and, of course, the mortgage servicing rules promote outreach to borrowers to help them avoid foreclosure. But in the event that a property is foreclosed on and the bank acquires the property, does fair lending risk end? The answer of course is no. The goal is for banks to dispose of residential real estate as expeditiously as possible. But where expeditious disposition is not possible, these properties must be maintained and disposed of in compliance with applicable laws, including the Fair Housing Act.

If for example, bank-owned properties in white neighborhoods are demonstrably better maintained than properties in African-American neighborhoods, the bank is exposed to fair lending risk. Similarly to the situation with loss mitigation activities, real estate maintenance activities frequently involve relationships with third parties. And this situation can heighten exposure to fair lending risks.

Moving on to slide 53, there are two resources that I would like to mention in my remaining time today, both of which are available on our website. The first is the Comptroller's Handbook on *Other Real-Estate Owned*. This handbook outlines the OCC's expectations for managing risks associated with acquisition of foreclosed properties. Third-party relationships should be subject to the same risk management process that would be expected if a bank were conducting the activity directly. The second resource is the 2013 bulletin on third-party relationships (OCC Bulletin 2013-29, *Third Party Relationships*). This bulletin provides guidance on the components of an effective risk management process for these relationships. Effective risk management processes will vary with the level of risk and complexity of the relationship that should include due diligence in selecting the service provider and ongoing monitoring to assess the management of foreclosed properties. And with that I will turn it over to Tim Smyth from HUD.

Timothy Smyth (HUD) – Discrimination against Women on Maternity Leave

Thank you. My name is Timothy Smyth. I'm from the Department of Housing and Urban Development where I am the director of the Office of Systemic Investigations.

I'm going to talk to you today about discrimination against women on maternity leave. I submit to you that this topic is the most straightforward, common sense, and well-settled obligation that you will hear about today. We have been addressing this issue at the department for the past six years and yet we continue to see these complaints on a weekly if not a monthly basis. My office, the Office of Systemic Investigations, sits atop regional and field offices throughout the country that processes complaints on behalf of individuals. I'm on slide 55. Those complaints come to us from individuals who assert violations of the Fair Housing Act. And the Office of Systemic Investigation provides technical support in cases involving multiple victims where there may be pervasive or institutional forms of discrimination. We also provide assistance in trying to mediate or settle those matters, and in complex or novel cases that require statistical analysis, including lending cases.

Maternity lending discrimination remains a problem that we see through complaint-based allegations at the Department of Housing. It is not hard to avoid this form of liability.
It is not expensive to avoid it. In fact, it is expensive to ignore it, and we continue to see these complaints all the time. Slide 57.

In 2014, the Department of Housing entered into a $5 million settlement with Wells Fargo.
That $5 million settlement alleged violations of the Fair Housing Act because of maternity leave lending discrimination. Six families in different states each received $165,000. There were also up to 250 claimants who were awarded up to $20,000. The complaints included:

- making loans unavailable based on both the protected classes of sex and familial status
- forcing women applicants to sacrifice or forgo their maternity leave and return to work prior to closing on a loan, and
- the making of discriminatory statements to and against women who were pregnant or who had recently given birth.

Wells Fargo is the nation's largest provider of mortgage home loans. It is worth noting that since the settlement, Wells has adopted a policy that is compliant with the law, and they should be praised for that. Wells Fargo's current underwriting guidelines have been approved by the Department. They do not require applicants on temporary leave to return to active status as a condition of mortgage approval. They allow the use of pre-leave income if the applicant's work date precedes the date of the first payment. In other words, if one returns to work before the first mortgage payment is due and the institution is not made aware that the applicant's post-leave income will be less than its pre-loan income. And applicants who will not return to work prior to the first payment may use any income received during the leave period to meet the generally applicable underwriting standards.

If temporary income during the leave is not sufficient, the applicant can use any liquid assets not otherwise used to close on the loan. And these standards that Wells Fargo embraced have also been embraced by a number of regulators including FHA and Fannie and Freddie, who have offered guidance very similar to the terms that Wells now implements.

Both prior to the Wells Fargo case in 2014 and up to the present, HUD has processed over 190 maternity lending discrimination complaints. We have reached more than 40 settlements amounting in cash payout of more than $1.5 million, and we've achieved settlements, some in concert with the Department of Justice and some independently with Bank of America,
Cornerstone Bank, and the Mortgage Guarantee Insurance Corporation. One of HUD's first cases resulted in a DOJ settlement with the Mortgage Guarantee Insurance Corporation, compensating more than 70 victims and paying a civil penalty. Another settlement in 2013 with Cornerstone Bank resulted

in a $750,000 settlement. These settlement terms should get your attention. This is a serious issue that affects many women, and men for that matter.

The Fair Housing Act prohibits housing practices discriminating against individuals on the basis of disability, as well as sex and familial status. All three protected classes are implicated by maternity leave lending discrimination.

- 42 USC 3604 prohibits statements that indicate a preference, limitation, or discrimination based on disability, sex, or familial status.
- 42 USC 3604(f)(1) prohibits discrimination or otherwise making unavailable because of a disability.
- 42 USC 3604(f)(2) prohibits discrimination in terms, conditions, or privileges because of a disability.
- 42 USC 3605 prohibits discrimination in residential real estate-related transactions for all the aforementioned protected classes.

Again the three protected classes that are potentially implicated by the type of discrimination I'm discussing are sex, familial status, and disability. The types of maternity leave lending cases that we've seen involve discriminatory statements. For example, a lender says that it cannot approve or close on a loan due to the maternity leave status of the potential borrower or the lender says it cannot use maternity-related income to underwrite the loan. We also see violations of the Fair Housing Act by offering loans on different terms and conditions. Lenders that require loan applicants to provide a written explanation of their plans for additional children over the next three years or lenders that require loan applicants to report to work before they will close on the loan.

If an applicant is not currently on parental leave, the lender may not ask if either spouse plans on taking leave in the future. Maternity leave, also referred to as parental leave or pregnancy leave, applies to situations where the applicant is on paid or unpaid leave status with their current employer due to a child, pregnancy, birth or securing legal custody, including adoption of a child. Slide 62.

I mentioned the guidance that's been issued. The FHA Handbook on Single-Family Housing has significant guidance on these issues. For borrowers with gaps in employment of six months or more, the mortgagee may consider the borrower’s current income as effective income if it can verify and document that the borrower has been employed in the current job for at least six months at the time of the case number assignment and a two-year work history prior to the absence from employment using standard or alternative employment verification. In other words, even prolonged absence, the FHA handbook provides for. For borrowers with a temporary reduction in income due to short-term disability or similar short-term leave, including what's commonly referred to as maternity or paternal leave, the mortgagee may consider the borrower’s current income as effective income if it can verify and document that the borrower intends to return to work, I'm sorry, I'm on slide 63 now, the borrower has the right to return to work, and the borrower qualifies for the mortgage taking into account any reduction of income due to the circumstances. Slide 64 please.

If the borrower returns to work before or at the time of the first payment due date, pre-leave income can be used. If returning after the due date, current income plus surplus liquid assets can be used as income supplements. This is the heart of the Wells settlement. It’s the heart of the guidance from FHA, and as you'll see in the following slides, it is similar to guidance by Fannie and Freddie. If the borrower, I repeat if the borrower returns to work before or at the time of the first payment due date, previous income can used. If returning after that date, current income plus surplus liquid assets can be used. Slide 65.

The required documentation – the FHA handbook provides that the mortgagee must provide the following documentation for borrowers on temporary leave:

1. A written statement from the borrower confirming the borrower's intent to return to work, and the intended return date.
2. Documentation generated by the current employer confirming the borrower's eligibility to return to current employer after temporary leave; and
3. Documentation of sufficient liquid assets, in accordance with the sources of funds as defined, used to supplement the borrower's income through intended date of return to work with current employer. Slide 66.

Freddie Mac has issued a bulletin (Bulletin Number 2011-21, updated September 24, 2013) on temporary leave that is largely consistent with FHA's guidance, as well as the Wells settlement terms that were discussed earlier. For temporary leave, different underwriting if the applicant will or will not return to work before the first mortgage payment is due. The leave ceases being temporary when the borrower does not intend to return to the current employer or does not have a commitment from a current employer to return to work. That is not temporary leave.

The borrower's returning to the current employer prior to or on the first mortgage due date, the seller may use the borrowers pre-leave gross monthly income. Again, this is the Freddie Mac guidance. For borrowers returning after their first mortgage payment due date, the seller may use gross monthly income received during temporary leave. If that income is reduced or interrupted, the seller may consider the reduced income amount plus the borrower's available liquid assets not already committed for enabling the mortgage such as the down payment or closing costs. And the documentation requirements for Freddie Mac are very similar to those for FHA. Slide 67.

Fannie Mae has also issued a Guide Announcement (updated September 24, 2013) on disability-related income underwriting. So disability-related income – temporary leave sometimes is mixed in with disability income, and so I wanted to include the slide to tip you off to another issue which is the treatment of disability income. Fannie Mae's guidance states that disability-related income underwriting – unless the lender has knowledge to the contrary, if income does not have an expiration date that has been documented, the lender should consider the income stable; therefore no additional documentation is needed. Social Security Income documentation may include an award letter, federal tax return, 1099s, or recent bank statements. Slide 69.

HUD – pursuant to its memorandum of understanding with the various regulators I am joined by today – HUD must notify the lender's regulator of specific Fair Housing Act complaints accepted by the Department. We're required to send a copy of the complaint to the regulator and notify them in advance of any site inspections that we might do.

We recommend that you consult with your regulator about CRA assessment area changes if needed for conciliation agreements.

And some lending institutions have asked us how much communication we have with their regulators. We communicate with regulators on a regular basis and exchange information about our investigations on a regular basis. Next slide, slide 70.

If you have any knowledge of housing discrimination or wish to refer someone to the Department of Housing concerning discrimination, you can visit www.hud.gov or call our toll-free number. I encourage you to do so. Thank you.

I will turn this over to Marta Campos from the Department of Justice.

Marta Campos (DOJ) – Auto Lending Enforcement

Thank you, Tim. Good afternoon. I am a lawyer in the Civil Rights Division at the Justice Department, and I'm here to talk about my office's efforts in the area of auto lending discrimination. Slide 72 please.

I would like to start by talking about what parties are covered under our jurisdiction in this area. And that is basically lenders and dealerships. Lenders break into two categories, direct lenders and indirect lenders and what I mean by an indirect lender is a lender that rather than taking applications directly from consumers, they make auto loans through a network of car dealerships. On the indirect lenders side, one subcategory is captive lenders that are car brand specific. On the dealer/dealership side, it is not just the dealer that arranges for the loan, but it could also be the dealer that funds the loan that is a covered party. In a minute, I will talk about two settlements that involve indirect auto lenders. Slide 73 please.

The stage for this work that I'm talking about is a joint effort between the Justice Department, my office in the Justice Department, and the CFPB. Over the last several years we have jointly opened a series of investigations looking at different types of auto lenders, looking at some of the largest lenders in the country, auto lenders in the country, and focusing on markup disparities.

I would like to say a word about the analysis in these cases. As I am sure you're all familiar, auto loan applications may not record the race or national origin of the borrower, which requires us then to use a different method to identify the race or national origin of each borrower in a database we analyze, in any database we analyze. For that, we have used recently the Bayesian Improved Surname Geocoding, which is otherwise known as the BISG method, to calculate the race or ethnicity of the applicants based on factors such as geography, meaning the address of the borrower, and name-based, meaning the last name based on publicly-available data published by the U.S. Census Bureau. These joint probabilities are then used in our econometric analyses to estimate any disparities in dealer markups based on race or national origin. On its website, the CFBP has a white paper on this methodology. It is worth noting that comparable methodologies have been used in contexts as diverse as voting issues, employment issues, and policing matters. Slide 74 please.

The first case I want to talk about is the case against American Honda Finance Corporation.
I should mention all of the cases, including the two I'm talking about today, are available on our website which is www.justice.gov/crt. When you go to the screen on the left, there is a link for cases and matters, and there you will be able to find our complaints, settlements, press releases, and a summary of each case. This case was one of the ones I mentioned that was a joint investigation with the CFPB. We filed and settled the case this summer and compliance is underway. The case was brought under the Equal Credit Opportunity Act, which prohibits discrimination, among other protected classes, on the basis of race or national origin in any aspect of a credit transaction and that includes automobile lending. American Honda Finance Corp., which I will now refer to as Honda, is a captive lender headquartered in Torrance, California. Honda funds purchases of automobiles through

the indirect lending model I described earlier. Honda sets an interest rate, which is known as the buy rate for each loan based on the consumer's credit worthiness and other objective criteria related to credit risk. Automobile lenders then have the ability to mark up the interest rate at their discretion. Through many of our investigations of indirect auto lenders to date, we have observed that allowing dealers broad discretion to mark up the buy rate increases fair lending risk. Slide 75 please.

Our case against Honda was filed in the U.S. District Court in the Central District of California. The complaint alleges that the lender charged minority borrowers higher rates, higher markups in indirect auto loans, and that dealers involved had broad discretion in marking up the rate subject to some caps. We further allege that the lender did not sufficiently monitor to detect disparities. On the same day that we filed and settled this case, the CFPB filed its consent order settling the case in its administrative order process within that agency. The DOJ and the CFPB consent orders are essentially identical except for one category of relief I will discuss shortly. Slide 76 please.

In our case against Honda, we alleged disparities in the pricing of auto loans originated by the lender against African-Americans, Hispanic and Asian or Pacific Islander borrowers and there on the screen you see the basis point differential we alleged for each of these protected classes. As a result of those differences, we alleged that the average African-American victim was obligated to pay over $250 more during the term of the loan because of the discrimination we alleged. Similarly, the average Hispanic victims, we allege, was obligated to pay over $200 more, and the average Asian or Pacific Islander victim was obligated to pay over $150 more. The case was based on data DOJ and the CFPB analyzed for calendar years 2011 to 2013. However, the settlement extends the covered period to January 14, 2015, which is the date we executed the settlement. Slide 77 please.

The settlement in this case includes a $24 million fund that will be administered jointly with the CFPB and where the agencies will direct the damages calculations. In addition to that, the DOJ consent order and settlement includes a $1 million financial literacy fund that is designed to benefit African-American, Hispanic, and Asian and/or Pacific Islander populations and should be focused on consumer auto finance. This is a groundbreaking settlement because Honda has agreed to significantly limit the discretion of car dealers to charge interest rate markups on Honda loans, and Honda has agreed to impose the markups that are significantly lower than those allowed by most other indirect auto lenders.

Before this, Honda’s policy allowed for dealer markups of an additional 2 to 2.25 additional percentage points, and that is the common industry standard. Under the settlement, Honda will now limit the dealer markup to 1.25 percentage points for loans of 60 months in duration or less and 1 percentage point for loans that are 60 months of duration or more. It is the first time that a lender has capped the mark-up rates to this extent. We believe that the lower caps should reduce or eliminate the disparities that we often see in indirect auto lending between the interest rate markups charged minority borrowers and those charged to similarly situated nonminority borrowers. Slide 78 please.

Two months after having filed the Honda matter, we also brought and settled a case against Fifth Third Bank. That investigation, like Honda’s, focused on the dealer's discretion to mark up the rate and on the fact that the lender did not monitor to detect and address race or national origin disparities in its portfolio. In the Fifth Third Bank case, the statistical disparities, we alleged, ranged from to 35 to 36 basis points for African Americans and Hispanics, and resulted in payments of over $200 over the life of the loan. Slide 79.

That settlement is an $18 million settlement that, like Honda's, will be administered jointly with the CFPB and with the agencies directing the calculation, and will also include reduction of dealer markups to 100 and 125 basis points. Auto lending has been an area of focus for the Civil Rights Division, and enforcement of lending laws in the last couple of years, and we have taken action against large financial institutions funding auto loans, as well as smaller institutions, and individual dealerships.

I will give you three examples from the past:

1. Our case against Allied Bank and Allied Financial which we did along with the CFPB, included an $80 million settlement fund and there, the lender agreed to improve compliance management system to be put in place that now includes a robust dealer and company-wide monitoring.
2. Another category of settlement is the case against Evergreen Bank Group, which was an FDIC referral to the Department of Justice, and there, the lender eliminated dealer discretion and established a non-discretionary compensation system. And that case was settled for $395,000.
3. And lastly, talking about individual dealerships, our case along with the state of North Carolina, against Auto Fare, required owners and operators of two buy-here, pay-here dealerships to implement a number of specific practices to ensure that their loans and repossession practices are no longer unfair and predatory.

The Department of Justice continues to work on investigations directing and addressing mark-up practices to see whether they are violating the Equal Credit Opportunity Act.

I will now turn it back to Maureen Yap of the Federal Reserve Board.

Maureen Yap – Questions and Answers

Thanks Marta, and thanks to all our presenters. We are now going to turn it over to a question and answer session, and we will start with a question for the CFPB. This is a very timely question.

Question #1 – The question is: what is the latest update on the HMDA rulemaking?

Anna Tabor

Thanks Maureen. That is a timely question because today, the CFPB finalized the Regulation C HMDA rulemaking. The rule is going to shed more light on consumers' access to mortgage credit by updating reporting requirements, and the CFPB is working with other federal regulators to streamline the reporting processes for financial institutions.

Now, as I'm sure many people know, the Home Mortgage Disclosure Act or HMDA requires certain institutions to collect, report, and disclose information about their mortgage lending activity, and this information is important because it helps to show whether financial institutions are serving the housing needs of their communities. It also assists public officials to distribute public sector investment to attract private investment to areas where it is needed. And it helps with the identification of potentially discriminatory lending patterns and enforcement of anti-discrimination laws. The Dodd-Frank Act transferred rulemaking authority for HMDA to the Consumer Financial Protection Bureau, and it also amended HMDA to add new data points and authorized the Bureau to require additional information from covered institutions as well.

Back in July of 2014, the Bureau proposed amendments to Regulation C to implement the changes in the Dodd-Frank Act. The Bureau carefully reviewed and considered the comments that it received on its proposed amendments and today has issued the final rule.

Just to give a quick overview of some of the highlights, the final rule changes what data financial institutions are required to provide in order to improve the quality of HMDA data. The changes include changes to improve market information and also changes to facilitate monitoring of fair lending compliance and access to credit. Some of the new information included is the property value, the term of the loan, the duration of any teaser or introductory interest rates, also information about debt-to-income ratios, the interest rate of the loan, and discount points charged for the loan.

In addition, the rule also requires that covered lenders report, with some exceptions, information about all applications and loans secured by dwellings, including reverse mortgages and open-end lines of credit.

Furthermore, one of the goals in updating the recording requirements is to identify opportunities to streamline reporting and make it easier for financial institutions to comply with the law. So the final rule issued today will ease reporting requirements for some small banks and credit unions, and also among other things, it will align reporting requirements with industry data standards.

We should also note that most of the provisions in the final rule will take effect on January 1, 2018. Lenders will collect the new information in 2018 and then report this information by March 1, 2019.

Maureen Yap

Thank you, Anna. The next question is for the NCUA, and the question is:

Question #2 – Can the creditor consider how long an applicant will be eligible to receive public assistance income?

Jamie Goodson

Yes, the official interpretations of Regulation B give examples of circumstances that a creditor can take into account when taking income from public assistance programs. The official interpretation gives examples that include the length of time an applicant likely will remain eligible to receive public assistance income and whether the applicant will continue to qualify for benefits based on the status of the applicant's dependence. And that comes into play for example with Social Security payments to a minor.

Maureen Yap

Okay, thank you Jamie. The next question we have is for the FDIC, and the question is:

Question #3 – How does the FDIC analyze prohibited basis groups for nonmortgage loans?

Tara Oxley

Given that banks are not permitted to collect the borrower's race, ethnicity, or gender on nonmortgage loans, the FDIC relies on other information to determine the race, ethnicity, or gender of an applicant or a borrower. To determine gender, we use information obtained from Social Security Administration, which includes more than 64,000 names. And to determine race and ethnicity, we rely on information obtained from the 2000 census, which includes more than 15,000 surnames.
I do want to indicate however that we use this information to identify our initial target and control group loans. The examiners will also ask bank management to verify the sex, race or ethnicity of both target and control group borrowers, as applicable.

Maureen Yap

The next question we have is for the OCC. The question is:

Question #4 – One of the challenges for smaller institutions with a modest level of loss mitigation activity is insufficient sample sizes to conduct statistical analysis. What advice do you have for institutions looking to do self-analysis that are in this situation?

Kathryn Ray

Thanks Maureen. If it makes sense for comparing outcomes, sample sizes could be increased by looking at additional time periods of data. Another technique may be to identify sets of files to compare, and then drill down into handling of the borrowers' loss-mitigation applications from the point of initial contact all the way to when the application was decisioned. And, while statistical analysis is an important tool, it is not the only tool. Self-analysis can also focus on the bank's policies, and procedures, and whether they were followed in the bank's decision-making. For example, if there are only a small number of modifications, the bank can review those modifications to see whether its policies were followed. And if there are exceptions present in those files, the bank could review the exceptions to make sure they comply with the policy.

Maureen Yap

Okay, thank you Kathryn. The next question we have is for HUD.

Question #5 – In the presentation, the discussion centered around maternity leave. The question is: Can a case brought on the behalf of a man who takes paternity leave?

Timothy Smyth

Yes it can, and it has. The vast majority of the cases we see, again through our complaint-based work, have been on behalf of women, and often our notions of gender play an aspect in those cases and are probative of discrimination, but we have processed cases on behalf of men on parental leave and recently issued a charge of discrimination in one of those cases.

Maureen Yap

Okay thank you Tim. The next question we have is for the DOJ. The question is:

Question #6 – You mentioned in the Honda case that DOJ filed in federal district court and the CFPB in its administrative process, why is that? And related – do the consent orders require injunctive relief?

Marta Campos

As to the first part of the question, it can be done one of two ways. I would say ECOA gives the Justice Department authority to file actions in federal district court to enforce violations of ECOA, and the Consumer Financial Protection Act gives the CFPB independent authority to bring lawsuits to enforce ECOA, as well as other consumer financial protection laws. Because of the similar authorities, each agency may bring its own lawsuit or when appropriate may file suit together. In some instances, DOJ and the CFPB have filed an action in federal district court together. In other matters, we have filed separate ones. In either instance, the agencies have worked closely together to make sure that the relief and settlement is parallel under the ECOA claims, as there may be other claims in a case that are not ECOA-related for which only the CFPB has jurisdiction.

And in terms of the question about the consent order in Honda, yes, the compensation policy that I talked about limiting the caps is something that will now be in effect for five years. The consent orders require that Honda reduce the dealer discretion by those caps that I mentioned, and also requires – both consent orders – require that Honda take affirmative steps to be in compliance with ECOA and to direct its dealer network to be in compliance. And in addition to that, Honda must provide data throughout the term of the consent order to both agencies.

Maureen Yap

Thank you Marta and that also addresses another question about what period is covered under the Honda settlement, which you said is about five years.

Mart Campos

Yes it will run five years from the date that escapes me right now, I believe it is July 16/17, 2015.

Maureen Yap

Great thank you. And two questions came in that I think we can take from the Federal Reserve.

Question #7 – One question was to repeat the information about how the Federal Reserve defines the adjusted aggregate for redlining.

We define the adjusted aggregate as the aggregate lenders with lending activity between 50 and 200 percent of the bank volume and a rate spread incidence of less than 25 percent.

Question #8 – There was also question related to the pricing aspect of the discussion, how does the Federal Reserve determine what pricing factors it includes?

The answer there is that our pricing models are custom-designed to reflect the legitimate pricing factors used by the bank. So, as an example, many community banks do not use the national credit scores, but instead they might use the payment history. That is, the payment history with this particular bank, and so we would include that payment history in the models, but we would not include the credit score.

So it looks like we have time for a few more questions. We have another question for the CFPB.

Question #9 – The question is what steps should lenders take to better serve applicants who speak languages other than English?

Anna Tabor

So the CFPB encourages lenders to provide assistance to borrowers of limited English proficiency, or LEP borrowers, and also to reach out to us with ideas on how to promote access. We are exploring the obstacles that LEP consumers face when attempting to access credit and also the challenges the creditors face when complying with various legal and regulatory obligations and interacting with LEP consumers.

The Office of Fair Lending is exploring opportunities through a dialogue with industry and advocates around serving limited English proficiency communities. We've been talking to an industry council, trade associations, and individual lenders, as well as with advocates and civil rights groups.

Maureen Yap

Okay, thank you Anna. We have another question for the NCUA, and the question is:

Question #10 – How do you know if your underwriting system is a judgmental system?

Jamie Goodson

Under Regulation B, a judgmental system is a system for evaluating an applicant's creditworthiness that is not what we call an empirically derived, demonstrably, statistically sound credit scoring system. That's a mouth full. It's often referred to as an EDDSS scoring system. So Regulation B defines the term credit scoring system and states several criteria a credit scoring system must meet to qualify as an EDDSS credit scoring system. The definition is in section 1002.2(p) and is really long and associated official interpretations provide additional clarification.

But in fact, whether a system is an EDDSS credit scoring system or a judgmental system of evaluating creditworthiness really matters in determining how a creditor can consider age.

The main point for considering public assistance income is that generally you can consider whether an applicant's income derives from any public assistance program only for the purpose determining a pertinent element of creditworthiness.

Maureen Yap

Okay thank you Jamie. We have another question that is for the FDIC, and the question is:

Question #11 – What is the basis for finding a bank liable for discrimination that occurs at the dealer or broker level if you aren't looking at the analysis by dealer or broker or all of the dealer or broker loans?

Tara Oxley

Typically, our theory of discrimination in these types of cases is that the bank's policy of unmonitored or insufficient monitoring of discretion creates an environment where members of a protected class are adversely impacted in connection with the bank's loans. Thus, you may find a fair lending violation where a bank has unmonitored or insufficient monitoring of the discretion it allows in the setting of an interest rate or a fee or compensation by a third-party that without a legitimate business reason has a disproportionate adverse impact on a protected group.

I do want to stress, however, that we are not saying discretion in and of itself is problematic, rather it is where a bank does not sufficiently monitor its discretion that may be problematic.
Thus, it is really important for a bank to know its data.

Also, as I mentioned during my presentation, the FDIC holds the bank accountable for portfolio level disparities. Legitimate differences between brokers, however, will be considered, as appropriate. Although our analysis will not typically control for broker, it will instead control for the relevant factor or factors that differentiate brokers. So for example, if brokers with certain characteristics or in a certain geography face particular competitive constraints, the analysis may control for such characteristics or geography.

Maureen Yap

Okay thank you. And we have a question for the OCC:

Question #12 – What is the OCC's involvement in processing the complaints that the National Fair Housing Alliance has filed with HUD regarding maintenance of OREO properties by OCC-supervised financial institutions?

Kathryn Ray

Maureen, these complaints are filed with HUD who is processing them, and the OCC is coordinating with HUD as it regularly does for Fair Housing Act complaints.

Maureen Yap

Okay thank you. We have a question here for HUD.

Question #13 – The question is to elaborate a little bit more on why HUD thinks the maternity leave discrimination issue may still be a problem.

Timothy Smyth

Although every case is different we often see fact patterns where the dialogue with a lender stops as soon as the temporary maternity leave is revealed. And the guidance is very clear that that is not how the lender is to address the issue. And the secondary calculation of liquid assets and temporary income is not engaged in and that can lead to problems and to potential exposure.

Maureen Yap

We have a question that came in that I think we can take for the Federal Reserve, and the question has to do with

Question #14 – Can you provide an explanation of some of the redlining risks in connection with marketing efforts?

Sure. Some of the things that we've observed in connection with marketing efforts, some things can increase the redlining risk. One example would be marketing only to existing customers, where the institution does not have a lot of customers that are minorities who are located in majority minority census tracts.

Similarly, if the bank is focused on marketing around branches, but the branches are not located in minority areas, and the bank is struggling to do outreach to minority areas – that can further increase the risk.

Another thing that we ask banks to consider, while not required, but is to consider outreach to specialized media. So for example, if there are Spanish-language radio stations or newspapers, serving the Hispanic community in the area – that might be one example where the lender could conduct some efforts to help mitigate its redlining risk.

Another area where we see increased redlining risk has to do with filters for direct marketing. So for example, the lender should review any filters related to geography, to income, to existing customers, and to homeowners and consider whether that will increase the redlining risk.

Marta Campos

This is Marta Campos from DOJ. If one were to look at the DOJ redlining settlements and I think also maybe the Hudson joint CFPB/DOJ redlining settlement, there is similar directive there for outreach and publishing and marketing to previously underserved areas.

Maureen Yap

Excellent thank you. I think we're at the end of our questions at this point. We want to thank everyone for their attention and definitely thank our speakers for today.

Mike Vander Velde - Closing

Thanks again and just to let you know we're going to send out a quick survey. Please do take a moment to fill that out. We appreciate the feedback. Again thank you for joining us today. A special thank you to the presenters and as a quick reminder, check our website www.consumercomplianceoutlook.org for the archive of this call and for information on upcoming sessions.

Have a great day everybody. We'll talk to you next time.

[event concluded]