

2016 Interagency Fair Lending Hot Topics

Outlook Live Webinar – October 4, 2016

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Overview

- **CFPB Mortgage Updates**

- *Anna-Marie Tabor, Deputy Fair Lending Director, Office of Fair Lending and Equal Opportunity, Consumer Financial Protection Bureau*

- **HMDA Validation Observations**

- *Matthew Nixon, Program Officer, Office of Consumer Protection, Division of Consumer Compliance Policy and Outreach, National Credit Union Administration*

- **New at the OCC: Compliance and Community Affairs Business Unit**

- *Donna Murphy, Deputy Comptroller, Office of the Comptroller of the Currency*

Overview *(continued)*

- **Redlining Risk**
 - *Maureen Yap, Managing Counsel, Fair Lending Enforcement Section, Division of Consumer and Community Affairs, Federal Reserve Board*
- **Redlining: A Bank's Reasonably Expected Market Area**
 - *Tara L. Oxley, Chief, Fair Lending and CRA Examinations, Federal Deposit Insurance Corporation*
- **Redlining**
 - *Lucy Carlson, Acting Deputy Chief, Housing and Civil Enforcement Section, Civil Rights Division, U.S. Department of Justice*

CFPB Mortgage Updates

*Anna-Marie Tabor, Deputy Fair Lending Director
Office of Fair Lending and Equal Opportunity
Consumer Financial Protection Bureau*

CFPB's Office of Fair Lending and Equal Opportunity

- Fair Lending means: “fair, equitable, and nondiscriminatory access to credit for consumers”
- Our Fair Lending activities and responsibilities include:
 - Fair Lending Supervision and Enforcement – Providing oversight and enforcement of Federal fair lending laws
 - Rulemaking – Working with CFPB's Office of Regulations on fair lending-related rulemakings
 - Outreach – Promoting fair lending compliance, education, and reporting
 - Interagency Coordination – Coordinating fair lending efforts with Federal agencies and State regulators

Mortgage Updates: Topics

- Public Enforcement Action:
BancorpSouth Bank
- CFPB's Regulation C Rulemaking
- ECOA Baseline Review Modules

Public Enforcement Action:

BancorpSouth Bank

- In June 2016, the CFPB and the DOJ filed a [joint complaint](#) against BancorpSouth Bank for discriminatory mortgage lending practices that harmed African Americans and other minorities
- \$4 million in direct loan subsidies in minority neighborhoods in Memphis
- \$800,000 for community programs, advertising, outreach, and credit repair
- \$2.78 million to African-American consumers who were unlawfully denied or overcharged for loans, and a \$3 million penalty
- The complaint and the consent order resolving the complaint were filed with the United States District Court for the Northern District of Mississippi. The court entered the order in July 2016

CFPB's Regulation C Rulemaking

- The Dodd-Frank Act amended HMDA and transferred to the CFPB Regulation C rulemaking authority
- The Bureau issued the HMDA proposed rule on July 24, 2014
 - 97-day comment period
 - About 400 comments
- The Bureau issued the [HMDA final rule](#) on October 15, 2015 to implement provisions of the Dodd-Frank Act and make other improvements to Regulation C
- Additional guidance posted to the CFPB's [HMDA Implementation](#) webpage

Data Points—At a Glance

Current data points (including modified and unmodified data points)

<ul style="list-style-type: none"> • Legal Entity Identifier • Universal Loan Identifier • Application Date • Loan Type 	<ul style="list-style-type: none"> • Loan Purpose • Preapproval • Construction Method • Occupancy Type • Loan Amount 	<ul style="list-style-type: none"> • Action Taken • Action Taken Date • State • County • Census Tract 	<ul style="list-style-type: none"> • Ethnicity • Race • Sex • Income • Type of Purchaser 	<ul style="list-style-type: none"> • Rate Spread • HOEPA Status • Lien Status • Reason for Denial
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Data points identified in the Dodd-Frank Act

<ul style="list-style-type: none"> • Property Address • Age • Credit Score • Loan Term 	<ul style="list-style-type: none"> • Total Loan Costs, or Total Points and Fees • Property Value 	<ul style="list-style-type: none"> • Prepayment Penalty Term • Introductory Rate Period 	<ul style="list-style-type: none"> • Non-Amortizing Features • Application Channel 	<ul style="list-style-type: none"> • Mortgage Loan Originator NMLSR Identifier
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Data points added under the Bureau's discretionary authority

<ul style="list-style-type: none"> • Origination Charges • Discount Points • Lender Credits • Interest Rate 	<ul style="list-style-type: none"> • Debt-to-Income Ratio • Combined Loan-to-Value Ratio 	<ul style="list-style-type: none"> • Manufactured Home Secured Property Type • Manufactured Home Land Property Interest 	<ul style="list-style-type: none"> • Total units • Multifamily Affordable Units • Automated Underwriting System 	<ul style="list-style-type: none"> • Reverse Mortgage • Open-End Line of Credit • Business or Commercial Purpose
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ECOA Baseline Review Modules

- The Equal Credit Opportunity Act (ECOA) [Baseline Review Modules](#) are used by examiners during ECOA baseline reviews
- The modules are used to identify and analyze risks of ECOA violations, to facilitate the identification of ECOA and Regulation B violations, and to inform fair lending prioritization decisions for future CFPB reviews

ECOA Baseline Review Modules

(continued)

- ECOA Baseline Review Modules were updated on October 30, 2015
- Modules include:
 - Module 1: Supervisory History
 - Module 2: Compliance Management System (CMS)
 - Module 3: Risks Related to Origination
 - Module 4: Risks Related to Servicing
 - Module 5: Risks Related to Models
- Institutions may wish to review the modules when developing their compliance management systems

ECOA Baseline Review Modules

(continued)

CFPB Examination Procedures

ECOA Baseline Review

Module 4: Fair Lending Risks Related to Servicing

IPL Examination or Review Summary	
CFPB Docket #	[Click&type]
Name of Supervised Entity	[Click&type]
IPL(s) Reviewed	[Click&type]
Describe the entity's fair lending related risks and controls related to servicing. Address the following topics. Separate modules should be completed for each IPL reviewed.	
Fair Lending Training and Monitoring	
a. Does the entity provide fair lending training to its servicing staff? If so, please describe the type and frequency of such training. (C7)	[Click&type]
b. Does the entity perform any fair lending related monitoring of its servicing? If so, note the frequency of the monitoring, the part(s) of the entity responsible for monitoring, the results of the last monitoring performed, and any corrective action(s) taken. (C5)	[Click&type]
SUMMARY [Click&type]	

Consumer Resources

- [Ask CFPB](#)
 - Ask CFPB is an interactive online tool that gives consumers answers to more than 1,000 questions about financial products and services, including credit cards, mortgages, student loans, bank accounts, credit reports, payday loans, and debt collection at www.consumerfinance.gov/askcfpb
- [Consumer Complaints](#)
 - To submit a complaint about a consumer financial product or service, consumers can visit: www.consumerfinance.gov/complaint or call 855-411-CFPB (2372). The CFPB can assist consumers in over 180 languages

HMDA Validation Observations

Matthew Nixon, Program Officer

Office of Consumer Protection

Division of Consumer Compliance Policy & Outreach

National Credit Union Administration

Overview

- Background
- “Application Withdrawn” Action Taken Reporting Errors
- Correlation between “Application Withdrawn” Errors and Other Issues
- Examination and Supervision Impact

Background

- “Application Withdrawn” action taken definition is narrowly defined in Regulation C
- 11.10% of applications reported by NCUA regulated credit unions in 2014 were reported as “Application Withdrawn”
- Systemic misreporting frequently observed with industry outliers
- Much of NCUA’s fair lending work involves HMDA data integrity outliers

Application Withdrawn

“Application Withdrawn” action taken is reported when an application is:

- Expressly withdrawn by the applicant
- Before a credit decision is made

Actions Not Taken by Applicant

If not expressly withdrawn by the applicant, do not report “Application Withdrawn”. Actions an institution can take and report on its HMDA LAR include, but are not limited to:

- Application Approved but not Accepted
- File Closed for Incompleteness

Actions Not Taken by Applicant

(continued)

Correlation between “Application Withdrawn” reporting errors and unusually long times for institutions to take action

APPLICATION DATE	ACTION DATE	# DAYS
8/12/2014	3/19/2015	219
7/4/2014	3/19/2015	258
6/19/2014	3/19/2015	273
5/27/2014	3/19/2015	296
4/2/2014	2/9/2015	313

Applicant Action After Credit Decision

The “Application Withdrawn” action taken code may not be used when an applicant withdraws their application after the institution makes a credit decision:

- Report “Application Denied” if the institution is unwilling to make loan based on terms requested
- Report “Application Approved but not Accepted” if the institution is willing to extend credit but the loan is not consummated

Examination & Supervision Impact

- HMDA resubmission when error rates exceed resubmission threshold
- Regulation C and Regulation B violations
- Compliance management system weaknesses
- Magnitude of errors may make offsite surveillance unreliable

New at the OCC: Compliance and Community Affairs Business Unit

*Donna Murphy, Deputy Comptroller
Office of the Comptroller of the Currency*

Introduction

- In March 2016, the Comptroller established the Compliance and Community Affairs business unit (CCA), led by a new Senior Deputy Comptroller, who reports directly to the Comptroller
- CCA will focus on enhancing the OCC's ability to:
 - Comprehensively identify and address compliance risk
 - Issue timely guidance and procedures
 - Communicate effectively about emerging compliance issues

CCA Leadership

- Senior Deputy Comptroller Grovetta Gardineer
- Three Deputy Comptrollers
 - Barry Wides, Community Affairs
 - Beverly Cole, Compliance Supervision
 - Donna Murphy, Compliance Risk

Background on CCA

- CCA structure combines Policy, Supervision and Outreach units
- Factors supporting the CCA structure include:
 - Lessons learned from financial crisis
 - Pace of legal and regulatory change
 - Pace of technological change, *e.g.*, marketplace lending

Key Benefits

- Promote consistent platform for compliance activities and assessment of risk to enhance value-added supervision across all OCC-supervised entities
- Bring headquarters and local staff focusing on compliance policy, compliance supervision, and community development into one unit to enhance effective supervision, decision-making, and outreach

Key Goals

- Partner with safety and soundness supervision
- Maximize resources to address the greatest compliance risks and support fair access to bank services
- Support local examiners with timely training, policy development, risk analytics, examination tools and quality assurance
- Provide support for banks and savings associations in their efforts to ensure compliance management functions evolve to meet new markets and challenges

Supervisory Approach

- The OCC will continue to apply an integrated and risk-based approach to bank supervision
- The new Compliance Supervision division will partner with safety and soundness supervision to plan and complete compliance examinations on a local level
- Compliance conclusions will roll up with safety and soundness conclusions in one report of examination

Compliance Risk

- Deputy Comptroller Donna Murphy
- Four Directors
 - BSA/AML Policy
 - Consumer Compliance Policy
 - CRA & Fair Lending Policy
 - Compliance Tools and Training

CRA and Fair Lending

- New Director for CRA and Fair Lending will enhance development of consistent agency guidance, policies and procedures relating to CRA and fair lending
- CCA build out will include similarly-focused positions within Compliance Supervision to enhance implementation and coordination of CRA and fair lending supervision
- Working together, CCA will bring a heightened focus to fair lending and increase our ability to recognize and address areas of fair lending risk on a local level

Redlining Risk

*Maureen Yap, Managing Counsel
Fair Housing Enforcement Section
Division of Consumer and Community Affairs
Federal Reserve Board*

Overview

- The Federal Reserve's Fair Lending Authority
- The Federal Reserve's Referrals to the DOJ
- The Federal Reserve's Redlining Reviews
 - Definition of Redlining
 - Overview of Key Risk Factors
 - CRA Assessment Area
 - Branching
 - Marketing and Outreach
 - Overt Statements
 - Complaints
- Resources

The Federal Reserve's Fair Lending Authority

- The Federal Reserve Board supervises:
 - Over 800 state member banks (SMBs)
 - SMBs above \$10B for compliance with the Fair Housing Act
 - SMBs of \$10B or less for compliance with the Fair Housing Act, the ECOA, and Regulation B
- The CFPB supervises institutions above \$10B for compliance with the ECOA and Regulation B
- Thus, the Federal Reserve and the CFPB share supervision authority for fair lending in mortgages for SMBs above \$10B

The Federal Reserve's Referrals to DOJ

- Pursuant to 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
- The Federal Reserve has referred a number of matters to the DOJ, including matters regarding:
 - ✓ Redlining
 - ✓ Pricing
 - Mortgages
 - Mortgage Discount Points
 - Unsecured Loans
 - Direct and Indirect Auto Loans
 - ✓ Underwriting
 - Maternity Leave Discrimination
 - Disability Discrimination
 - ✓ Spousal Signatures
 - ✓ Credit Reporting
- So far in 2016, the Federal Reserve has had 7 referrals: 2 redlining, 1 pricing (unsecured loans), and 4 spousal signature

The Federal Reserve's Redlining Reviews

- Definition of Redlining
 - As stated in the [2009 Interagency Fair Lending Examination Procedures](#), redlining is “provid[ing] unequal access to credit, or unequal terms of credit, because of the race, color, national origin, or other prohibited characteristic(s) of the residents of the area in which the credit seeker resides or will reside or in which the residential property to be mortgaged is located”

The Federal Reserve's Redlining Reviews *(continued)*

- The Federal Reserve conducts risk-focused consumer compliance exams, including fair lending reviews
- Federal Reserve examiners evaluate the risk in the bank's products and fair lending risk management program to determine whether further analysis is warranted
- Based on the 2009 Interagency Fair Lending Examination Procedures, examiners generally will review the following risk factors for redlining:
 - CRA Assessment Area
 - Branching
 - Marketing and Outreach
 - Lending Disparities
 - Overt Statements
 - Complaints
 - Previous Findings
- While it is important to monitor lending disparities, the bank can control much of its risk by focusing on its policies, procedures, and business model

CRA Assessment Area

- Key Risk: The bank's CRA assessment area appears to have been drawn to exclude areas with relatively high concentrations of minority residents. For example, the bank's CRA assessment area consists of a partial Metropolitan Statistical Area, Metropolitan Division, or county that inappropriately excludes majority minority census tracts.
- Example That May Indicate Elevated Risk:
 - The bank's business model has changed without a review of the bank's CRA assessment area, e.g.:
 - ✓ Mergers or acquisitions
 - ✓ New branches or loan production offices
 - ✓ New lending patterns

CRA Assessment Area *(continued)*

- Banks should:
 - Have policies and procedures to regularly review their CRA assessment areas, particularly if the bank's business model changes
 - Document the reasons for selecting the assessment area delineations

Branching

- Key Risk: The bank does not have any branches or loan production offices (LPOs) in majority minority tracts
- Example That May Indicate Elevated Risk:
 - The bank has acquired branches based on opportunities presented, without having a branching strategy that considers fair lending risk
 - The bank now has a series of branches that form a “donut hole” that excludes the majority minority tracts

Branching *(continued)*

- Banks should:
 - Have policies and procedures to evaluate fair lending risk in connection with opening, acquiring, or closing branches or LPOs
 - Document the reasons, including any data or analysis, to support the branching and LPO decisions

Marketing and Outreach

- Key Risk: The bank's marketing and outreach activities tend to exclude majority minority tracts
- Examples That May Indicate Elevated Risk:
 - The bank's marketing and outreach are limited to CRA assessment areas or areas around the branches that do not contain majority minority tracts
 - The bank limits a direct mailing to current customers who are disproportionately in non-majority minority tracts, thus effectively excluding majority minority tracts from marketing

Marketing and Outreach *(continued)*

- Examples That May Indicate Elevated Risk (cont.):
 - The bank limits a direct mailing to zip codes that are not in majority minority tracts
 - The bank limits its marketing to real estate brokers that do not serve majority minority tracts
 - The bank's website and/or marketing materials do not include diverse human models
 - The bank does not conduct affirmative marketing to majority minority tracts

Marketing and Outreach *(continued)*

- Banks should:
 - Have policies and procedures to evaluate fair lending risk for marketing and outreach initiatives
 - Monitor and evaluate whether the marketing and outreach activities are reaching the whole of the credit market area, including the majority minority tracts
 - Consider affirmative marketing (which is permitted under Regulation B)

Overt Statements

- Key Risk: The bank has a policy (oral or written) that indicates a preference on a prohibited basis
- Examples That May Indicate Elevated Risk:
 - The bank's loan policy states that loans outside of the CRA assessment area are "undesirable," and the CRA assessment area excludes majority minority tracts
 - The bank's loan policy states that the institution will not lend north of 110th Street, and the majority of the residents in that area are Hispanic (or other minority)
 - The bank's Community Development Officer states that bank management asked her to discontinue outreach in a major urban area, where 97% of the tracts are majority minority tracts

Overt Statements *(continued)*

- Banks should:
 - Review policies, procedures, and changes to the business model for fair lending risk if there are limits on a prohibited basis, including on the basis of geography (i.e., the race of the residents of the neighborhood where the mortgage property would be located)

Complaints

- Key Risk: There are complaints that indicate an elevated risk of redlining discrimination.
“Complaints” include:
 - Complaints to the Federal Reserve or the bank
 - Concerns raised in CRA public comment letters or by community contacts
 - Complaints to other federal or state agencies
 - Lawsuits by a private party or government agency
 - Inquiries or investigations by other federal or state agencies

Complaints *(continued)*

- Complaints include (cont.):
 - Complaints generated through Internet websites or social media
 - Press articles raising concerns about the bank's practices
- Banks should:
 - Have policies and procedures to monitor complaints from various sources, look for trends that may indicate redlining risk, and take appropriate action

Federal Reserve Resources

- [Consumer Compliance Outlook](#) – Federal Reserve publication dedicated to consumer compliance
- [Outlook Live](#) – Federal Reserve webinars on consumer compliance topics
- [Community Banking Connections](#) – Federal Reserve publication and website dedicated to providing guidance, resources and tools for community banks
- [Interagency Fair Lending Examination Procedures](#) and [Appendix](#)
- [Federal Reserve Consumer Help](#)

Redlining: A Bank's Reasonably Expected Market Area

*Tara L. Oxley, Chief
Fair Lending and CRA Examinations
Federal Deposit Insurance Corporation*

What is a REMA?

- **REMA:** Reasonably Expected Market Area
- FFIEC Interagency Fair Lending Examination Procedures state:
 - *REMA - where the institution actually marketed and provided credit and where it could reasonably be expected to have marketed and provided credit*
 - *Some REMAs might be beyond or otherwise different from a bank's CRA assessment area*

Why is the REMA Important?

- The REMA is used to evaluate redlining risk
- The analysis will determine whether a bank is providing equal access to credit to those in its REMA. This will involve looking at whether the bank is:
 - Not extending credit in certain areas
 - Targeting certain areas with less advantageous products
 - Offering different loans to different areas
 - Not marketing residential loans to certain areas

How is the REMA Determined?

- Discussion with Bank
- Branching
- Marketing Efforts
 - Print Advertising
 - Calling Program
 - Direct Mailings
- Brokers or Realtors
 - Location/Areas Served



How is the REMA Determined?

(continued)

- Location of the Bank's Loan Applications, Originations, and Deposit Customers
- Significant Barriers to Lending
 - Geographic Barriers
 - Limited Housing Stock
 - Low Population Levels



Be Proactive

- Determine your REMA
- Use your REMA when conducting a redlining risk assessment
- Be aware of where you are lending and marketing, and where you are not
- Determine whether any changes are necessary

Resources

- [Interagency Fair Lending Examination Procedures](#)
- [FDIC Compliance Examination Manual](#)

Redlining

*Lucy Carlson, Acting Deputy Chief
Housing and Civil Enforcement Section
Civil Rights Division
U.S. Department of Justice*

History of Redlining

Federal Housing Administration (FHA)

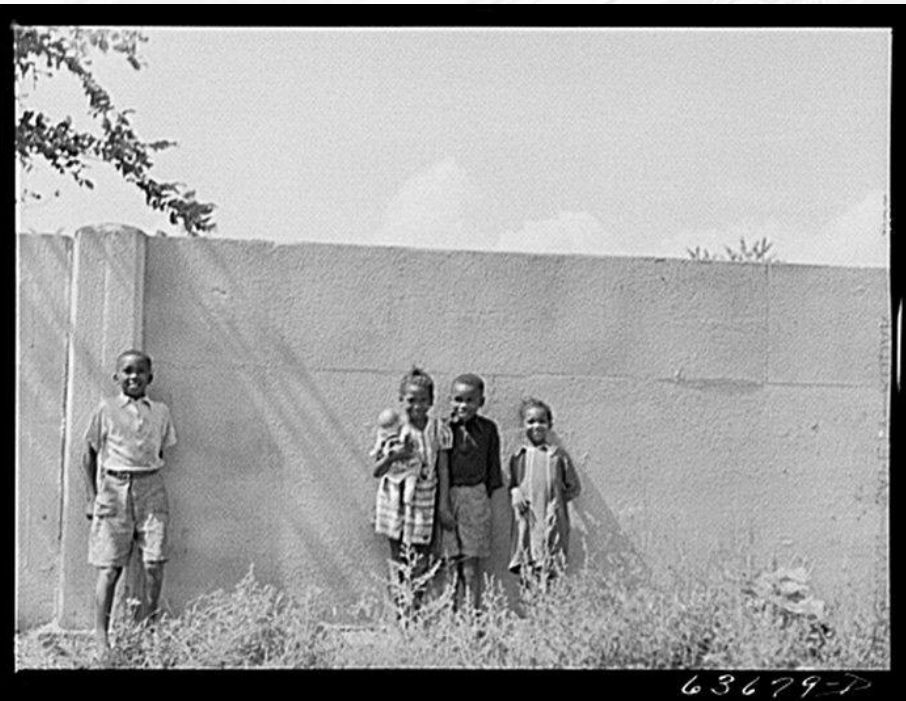
FHA gave a grade to each community to indicate the level of credit risk assigned by FHA



HOLC Map of New Orleans



8 Mile Road Neighborhood in Detroit



Legislative/Regulatory Efforts to Address Redlining

- Community Reinvestment Act (CRA)
- Home Mortgage Disclosure Act (HMDA)
- Equal Credit Opportunity Act (ECOA)
- Fair Housing Act (FHA)

A Persistent Fair Lending Issue

- 10 DOJ Settlements involving allegations of redlining since 2002
- Regulatory and enforcement agencies priority

Redlining

- Failure to provide lending services to minority areas
- Investigations focus on:
 - CRA assessment area excluding minority areas
 - Few or no branches
 - Limited or no marketing
 - Extremely low proportion of loans

DOJ Redlining Settlements

All recent redlining settlements include:

- Loan subsidy funds to generate additional lending in previously redlined areas
- New physical locations in previously-redlined areas
- Outreach & consumer education
- Training and changes to bank procedures

Hudson City Settlement

For previously-redlined areas:

- \$25M in loan subsidies
- Two new branches
- \$1.5M in targeted advertising, outreach and consumer education
- \$750K to partner with community groups to assist residents

Hudson City Settlement

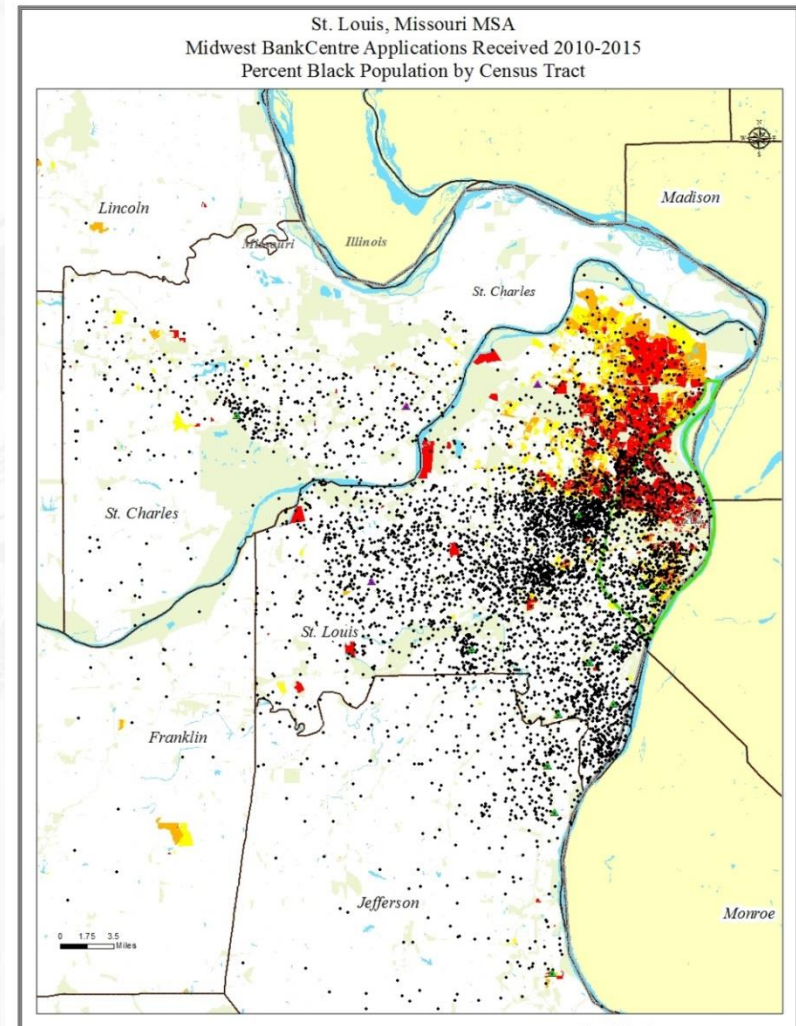
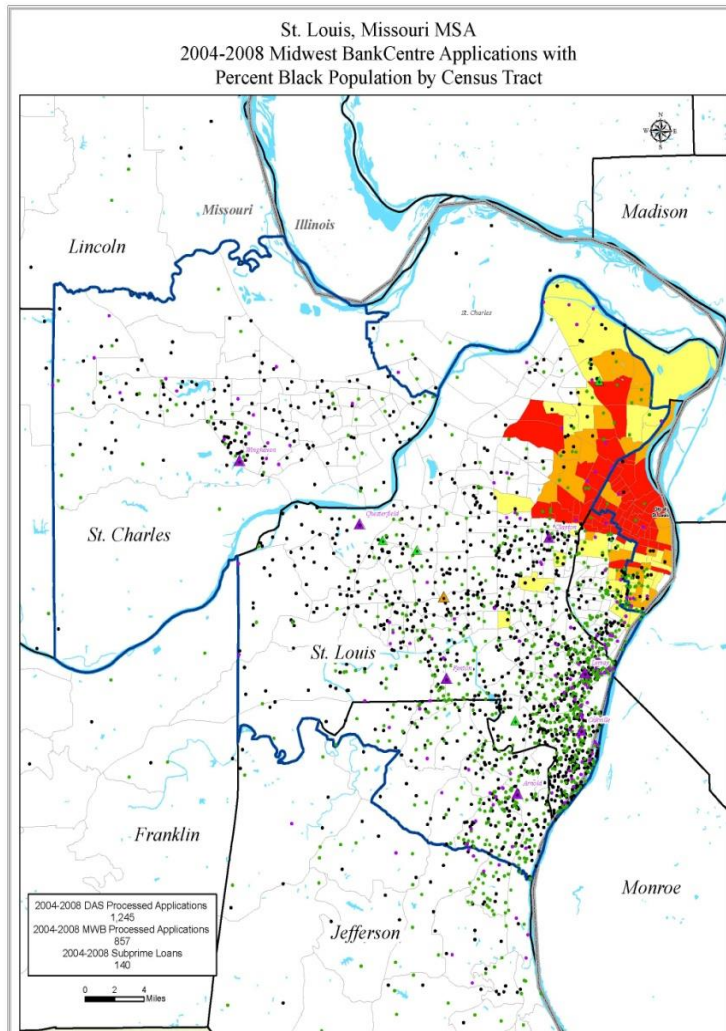
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- Nondiscrimination provisions
- Expansion of CRA assessment areas
- Training and changes to bank procedures
- \$5.5M to CFPB Civil Penalty Fund

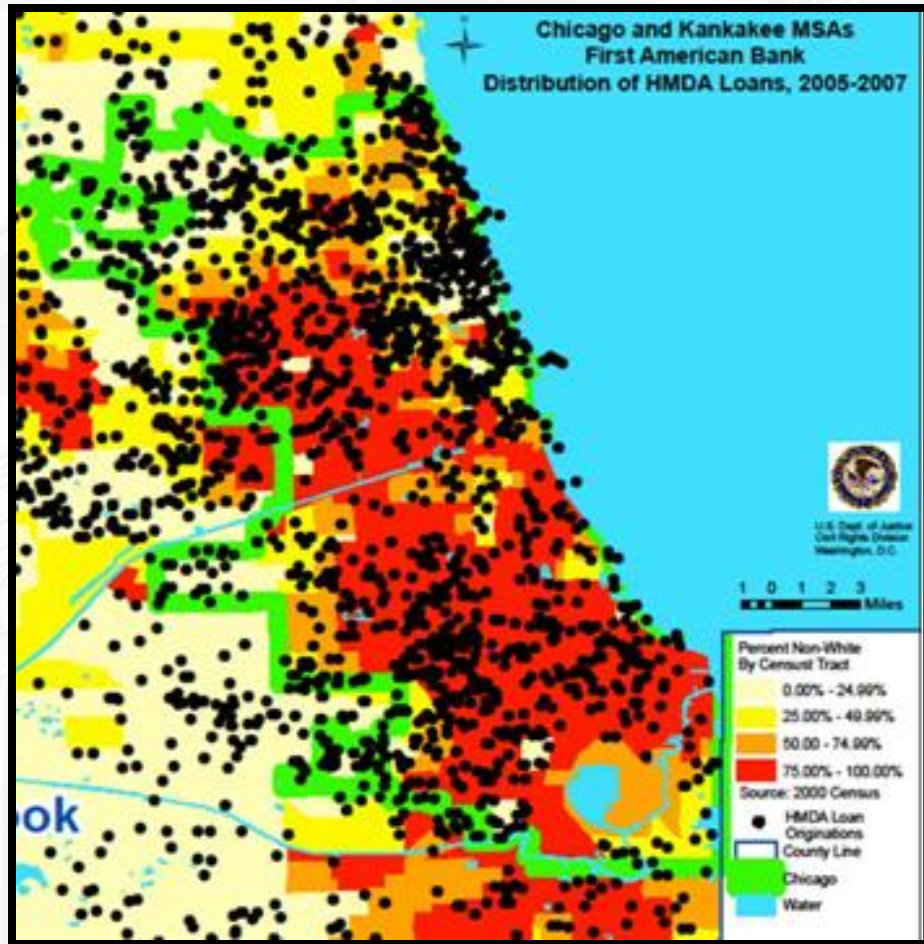
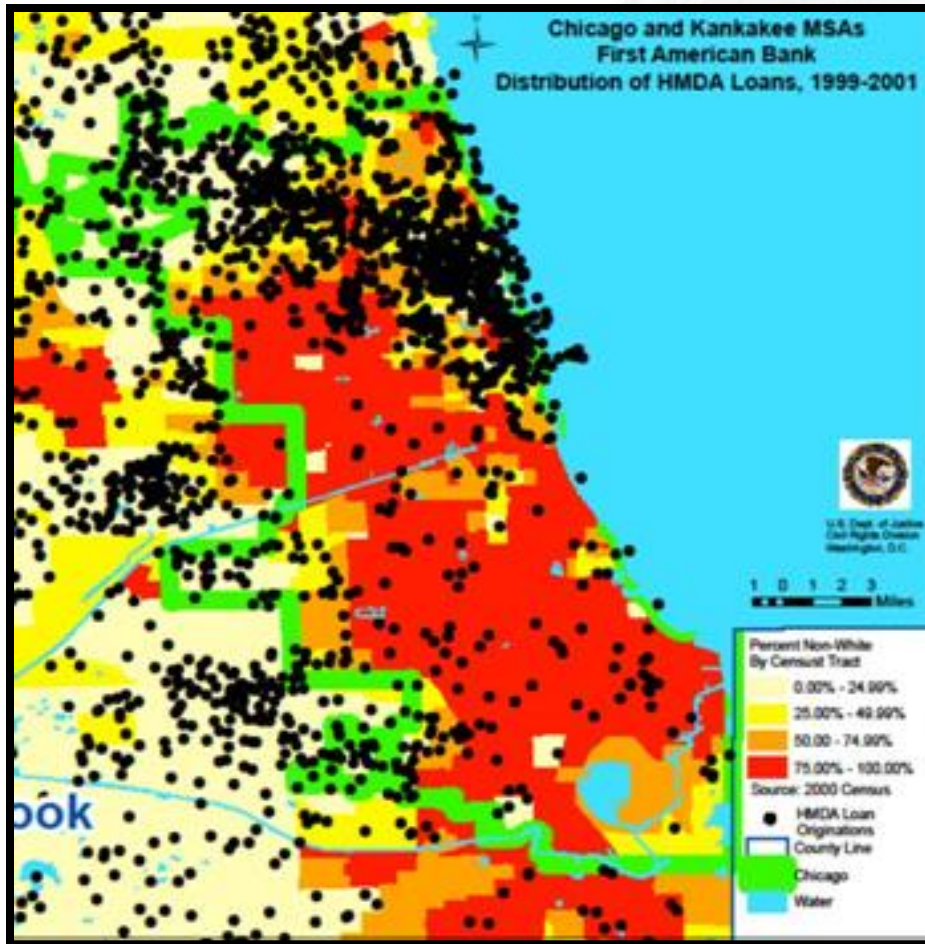
Midwest BankCentre Success Story

- Opened branch in town with no bank branches
- After one year, hundreds of checking and savings accounts opened
- Fewer people relying on fringe lenders
- Bank proactively opening another branch in majority-minority neighborhood

Midwest BankCentre: Before and After



First American Bank: Before and After



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For speeches, complaints, settlements, press releases, and ECOA reports to Congress visit:

<http://www.usdoj.gov/fairhousing>



Questions?