Outlook Live Transcript
2016 Interagency Fair Lending Hot Topics
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Note: Please use in conjunction with the presentation slides (slides and handouts).

Amy Vaughn – Facilitator

Good afternoon, and welcome to Outlook live. I am Amy Vaughn with the Federal Reserve, and I will be your facilitator. Today we will cover, "Interagency Fair Lending Hot Topics." This call is scheduled for 90 minutes. Let me start with a big thank you to our presenters, who we will be hearing from in just a moment.

First, let's jump to slide two up to cover some logistics. If you haven't done so yet, click on the webinar link you received after registering, or you can head over to our website: www.consumercomplianceoutlook.org. There you can find the session materials and eventually the archive of this call. Just a quick note on the webinar, we encourage you to listen to the audio through your PC, but if you need a phone option, we do have limited amount of numbers available. You can find that number on the player page in the webinar. As for questions, please submit them by clicking on the "Ask Question" button in the webinar. We will be taking those at the end of the call. I would also like to remind you that we are offering continuing professional education credits for attending this session. If you are interested in that, you must do two things. First, be registered for the session, and second, you must complete the post session survey.

Let me cover the legal language really quick. The opinions expressed in this presentation are intended for informational purposes and are not formal opinions of, nor binding on, the Board of Governors of the Federal Reserve System or any other agency. Alright, with that said, we are ready to get started, and I will turn it over to Maureen Yap from the Federal Reserve Board of Governors. Maureen, the floor is yours.

Maureen Yap (FRB) – Moderator

Thanks Amy, and I will turn it over to Anna from the CFPB.

Anna-Marie Tabor (CFPB) – CFPB Mortgage Updates

Thank you, Maureen. Before I jump into the mortgage updates, I'd like to talk about my office at the CFPB, the Office of Fair Lending. Next slide, please (slide 6).

The Dodd-Frank Act mandated the creation of the Office of Fair Lending and Equal Opportunity at the CFPB to ensure equal access to credit for all consumers. The Office of Fair Lending focuses on ensuring that all creditworthy consumers have fair, equitable and nondiscriminatory access to credit. Our office spearheads the Bureau's efforts to identify fair lending risks and violations, and if violations are found, to ensure that consumer harm is properly remediated. To that end, the Office of Fair Lending oversees and enforces two key federal fair lending laws: the Equal Credit Opportunity Act, or ECOA, and the Home Mortgage Disclosure Act, or HMDA. Starting with ECOA, ECOA and its implementing regulation,

Regulation B, protect applicants for credit from discrimination in any aspect of a credit transaction on a prohibited basis. I will list the prohibited bases here:

- Race,
- Color,
- Religion,
- National Origin,
- Sex,
- Marital Status,
- Age,
- Receipt of Public Assistance Income, and
- Exercising Rights under the Consumer Credit Protection Act.

Turning to HMDA, it requires among other things, that certain lenders collect and disclose data about home loan applications and originations, including information on applicant race, ethnicity, and sex. The Office of Fair Lending's responsibilities and functions include:

- Supervision and Enforcement,
- Regulations,
- Outreach, and
- Interagency Coordination.

What are our current supervision and enforcement priorities? Our first fair lending priority is mortgage lending, which will be the focus of my presentation today. Homeownership plays a critical role in wealth building for consumers. That is particularly true for communities of color where the greatest source of wealth is the home. For that reason, the Bureau will continue to maintain a significant focus on fair lending in the mortgage arena. Our work in this area includes HMDA validation and enforcement work, as well as in-depth mortgage analyses and investigations focused on ECOA compliance. With respect to these in-depth ECOA reviews, given the tight credit environment of the last few years, our focus has been on underwriting and redlining. Mortgage servicing is also included in this area of focus.

Our second fair lending priority is indirect auto lending. This is an area where lenders need to be aware of fair lending risks and monitor for fair lending risk in their portfolios.

And our third fair lending priority is credit cards. While mortgage lending, auto finance, and credit cards will continue to be a focus for the Bureau and key priorities for the Office of Fair Lending, we are also concerned about fair lending risk in other product markets, including small business lending. Next slide, please (slide 7).

The focus of my presentation today will be on the priority area of mortgage lending. First, I'm going to speak about a recent enforcement matter. Second, I will speak to the CFPB's Regulation C rulemaking. And third, I would like to make the participants aware of an updated set of ECOA exam procedures available on our website, the ECOA Baseline Review Modules. Next slide, please (slide 8).

On June 29, 2016, the Consumer Financial Protection Bureau and Department of Justice announced a joint action against BancorpSouth Bank alleging discriminatory mortgage lending practices that harmed African Americans and other minorities. The complaint alleges that BancorpSouth engaged in numerous discriminatory practices, including:

- Illegally redlining in Memphis,
- Denying certain African Americans mortgage loans more often than similarly situated non-Hispanic White applicants,
- Charging African American customers for certain mortgage loans more than non-Hispanic White borrowers with similar loan qualifications, and
- Implementing an explicitly discriminatory loan denial policy.

As part of this investigation, the CFPB sent testers to several BancorpSouth branches to inquire about mortgages, and the results of that testing support the allegations in the complaint. It is alleged that in several instances, a BancorpSouth loan officer treated the African-American tester less favorably than a White counterpart. Specifically, the complaint alleges that BancorpSouth employees treated African American testers, who sought information about mortgage loans, worse than White testers with similar credit qualifications. For example, the complaint alleges that BancorpSouth employees provided information that would restrict African American consumers to smaller loans than White testers. As approved by the court, BancorpSouth will pay:

- $4 million in direct loan subsidies in minority neighborhoods in Memphis,
- At least $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.
- Additional information about this matter including the complaint and consent order is available on our website.

Can I have the next slide, please (slide 9)?

Now I would like to shift gears to discuss the HMDA rulemaking. In addition to our supervisory and enforcement work, the Bureau also has responsibility for issuing regulations under HMDA. As you may know, Regulation C implements HMDA. In the Dodd-Frank Act, Congress directed the Bureau to update Regulation C by, among other things, having lenders report new information that could help identify potential discriminatory lending practices and other issues in the marketplace. On October 15, 2015, the CFPB finalized changes to Regulation C to improve the quality and type of HMDA data, and reduce the reporting burden for lenders by streamlining and modernizing the submission of data. The Bureau received approximately 400 comments from the public after publishing a proposed rule in August 2014, and a number of changes were made after considering these comments. Next slide, please (slide 10).

The Bureau's final rule improves the information reported about the residential mortgage market under HMDA. The new information includes, for example, the property value, the term of the loan, the term of any prepayment penalty, the duration of any teaser or introductory interest rates, and the applicant's or borrower's age and credit score. In addition, the Bureau will require financial institutions to provide more information about underwriting and pricing, including an applicant's debt-to-income ratio, the interest rate of the loan, and the discount points charged. Along with more information about automated underwriting and denial reasons, these data will be critical to better understanding a financial institution's underwriting decisions. When effective, the newly-revised Regulation C will require covered lenders to report, with some exceptions, all loans secured by a dwelling -- including reverse mortgages and open-end lines of credit. The updates to Regulation C will enhance the ability to screen for possible fair lending problems, helping both institutions and regulators focus their attention on the riskiest areas where fair lending problems are most likely to exist.

The Bureau was mindful to provide generous lead time to implement the changes to the regulation. We have set the effective date for most provisions for January 2018, which means the first HMDA data under the new rule will be reported to the appropriate federal agencies by March 1, 2019. Institutions should pay careful attention to the implementation schedule, as it provides different effective dates for various portions of the amended rule. We've also simplified the HMDA reporting requirement by generally requiring institutions report HMDA data if they make 25 or more closed-end loans or 100 open-end lines of credit in each of the preceding two years. The Bureau estimates that this burden-reducing threshold will reduce the overall number of current small depository institutions required to report HMDA data by approximately 22%. The Bureau continues to look for ways to help the mortgage industry implement the new mortgage lending data reporting rules and has created regulatory implementation resources available online at http://www.consumerfinance.gov/policy-compliance/guidance/implementation-guidance/hmda-implementation/. Next slide, please (slide 11).

My last topic is the ECOA Baseline Review Modules. These 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. They are part of the CFPB's supervision and examination manual. Next slide, please (slide 12).

On October 30, 2015, the CFPB published an update to the ECOA Baseline Review Modules. The procedures have been reorganized into five modules: Fair Lending Supervisory History, Fair Lending Compliance Management System, and modules on risks related to origination, servicing, and models. Examination teams at the CFPB will use the second module, Fair Lending Compliance Management System, to evaluate compliance management as part of in-depth ECOA targeted reviews. The fifth module, Fair Lending Risks Related to Models, is a new addition that examiners will use to review models that supervised financial institutions may use. The ECOA Baseline Review Modules are consistent with and cross-reference the FFIEC Interagency Fair Lending Examination Procedures. They can be utilized to evaluate fair lending risk at any supervised institution and in any product line. They are part, as I mentioned before, of the CFPB's examination manual and are available on our website. As with the rest of the examination manual, institutions that wish to, may review the modules when developing their own compliance management systems. Next slide, please (slide 13).

Examiners may complete one or more modules as part of a broader review of compliance within an institution product line. For example, in order to evaluate fair lending risks related to mortgage servicing, examination teams may use Module 4 shown here, Fair Lending Risks Related to Servicing. This module includes questions on such topics as servicing consumers with limited English proficiency and policies and procedures related to the offering of hardship and loss mitigation options. Next slide, please (slide 14).

I will end by noting that in addition to compliance resources, we also have a number of consumer resources on our website, some of which are identified on this slide. Now I'll turn over the presentation to Matt from the NCUA (slide 15).

Matthew Nixon (NCUA) – HMDA Validation Observations

Thanks, Anna. I am Matt Nixon, and I work in the NCUA's Office of Consumer Protection. Today, I will discuss observations we have noted in our HMDA validation work; specifically in the systemic misreporting of "application withdrawn" actions taken. Next slide, please (slide 16).

I will provide some background related to our examination and supervision efforts. I will talk specifically about common errors we've noted and how errors in the over-reporting of “application withdrawn” actions taken frequently correlate with other HMDA reporting errors and Regulation B issues, and I will discuss the impact systemic misreporting of actions taken on a credit union’s HMDA LAR has on NCUA's examination and supervision efforts. Next slide, please (slide 17).

About five years ago, our fair lending examiners began to identify instances of systemic misreporting of “application withdrawn” action taken codes in some credit unions, and the errors were large enough to skew the credit unions’ data sets. The “application withdrawn” action taken definition is narrowly defined in Regulation C. Applications may be reported as withdrawn only when an applicant expressly withdraws an application before the credit union makes a credit decision. The occurrences were frequent enough for our office to calculate and evaluate industry averages for various action taken categories. With some categories, such as “approved but not accepted,” reporting an above average percentage did not generally correlate with occurrences of errors; however, in the case of higher reported “application withdrawn” percentages, a credit union’s outlier status frequently did correlate with high error rates. Initially, we focused examination and supervision efforts on credit unions with reported withdrawal rates exceeding 40%. We’ve since reduced that percentage to 25%, or roughly double the industry average, with no drop-off in error identification. In other words, the credit unions we are selecting based on data integrity concerns using current threshold are still frequent systemic misreporters. Currently, approximately 10% of our fair lending examination work and 40% of our fair lending supervision contact work focuses on HMDA data integrity elements. Next slide, please (slide 18).

As mentioned, the “application withdrawn” action taken code is used when an applicant expressly withdraws their application before the institution makes a credit decision. Errors we observe generally stem from either: 1) the institution, not the applicant, taking action to close the file, or 2) the applicant expressly withdrawing their application after a credit decision has been made and communicated to the applicant; generally a denial. Next slide, please (slide 19).

Based on our observations, credit unions are frequently taking action to close inactive files in situations where they erroneously report withdrawals. This often occurs when applications have either been “approved but not accepted” or “closed for incompleteness.” Note that in order to use code 5, “file closed for incompleteness,” Regulation C requires the institution to at first send a Regulation B Notice of Incompleteness. In situations where “withdrawals” are erroneously reported, we've observed credit unions treating applications as incomplete files, but either failing to send Regulation B notices of incompleteness or sending notices without all required information, such as the additional information needed or the deadline to provide required information. Also, with applications reported as withdrawn but treated as incomplete files, we've observed credit unions erroneously including prequalification requests. Under Regulation C, the definition of an application does not include prequalification requests. A prequalification request is a request by a prospective loan applicant, other than a request for preapproval, for a preliminary determination on whether the prospective applicant would likely qualify for credit under the institution’s standards, or for a determination on the amount of credit for which the prospective applicant would likely qualify. Next slide, please (slide 20).

In our examination and supervision work, we've observed that credit unions who systemically misreport “approved but not accepted” applications and files “closed for incompleteness” as “withdrawals,” also frequently report unusually long periods of time between application dates and action taken dates. This can be the result of a warehousing process where a credit union sets aside and does not work inactive application files until something triggers the credit union to close several at once. This is shown in the example on the slide. This practice may suggest a failure to comply with Regulation B notification requirements. Regulation B requires a creditor to notify an applicant of action taken within 30 days after receiving a completed application concerning the creditor's approval of, counter offer to, or adverse action on the application. Action taken may extend beyond 30 days in some instances. For example, with incomplete applications, a creditor may provide a written notice of incompleteness within the first 30 days and designate a reasonable period of time for the applicant to provide the information. Or, a creditor may give an applicant up to 90 days to consider a counter offer. While creditors may occasionally take long periods of time to take final action on submitted applications, and fully comply with Regulation B notification requirements, this generally should be an infrequent occurrence. NCUA looks more closely at credit unions who frequently report more than 100 days to take action. Next slide, please (slide 21).

Institutions often condition loan approval upon borrowers meeting creditworthy conditions that are not known at time of application, such as obtaining a satisfactory appraisal. Once the appraisal is obtained, if the institution is unwilling to make the loan in the amount requested because the appraisal does not support the institution's required loan-to-value ratio, the institution should report "application denied." The institution should also report "application denied" if, based on the appraisal, it extends a counter offer in a lower amount that the applicant does not accept. Once a credit decision is made, an application cannot be reported as "withdrawn," even if the applicant tells the institution to withdraw the application. We've observed instances where credit unions denied applications based on low appraisals, informed applicants of their unwillingness to lend based on the terms requested, then asked the applicants what they would like to do, and reported withdrawals on the credit unions' HMDA LARs when the applicant responded by requesting that the applications be withdrawn. In these instances, in addition to incorrectly reporting "application withdrawn" on their HMDA LARs, credit unions often did not provide required adverse action notices. Next slide, please (slide 22).

NCUA will ask credit unions to correct and resubmit their HMDA LARs when error rates exceed resubmission thresholds. Failure to correctly report HMDA action taken codes may lead to Regulation C violations, and NCUA has observed a correlation between high error rates in the reporting of "withdrawn applications" and Regulation B notification violations. HMDA LAR reporting errors that are systemic in nature are generally indicative of weaknesses in an institution's compliance management system; such as inadequate HMDA training, oversight and audit. Equally concerning for NCUA are high error rates in fields such as "action taken", which may make off-site surveillance unreliable. Now I'm going to turn it over to Donna from the OCC (slide 23).

Donna Murphy (OCC) – New at the OCC: Compliance and Community Affairs Business Unit

Good afternoon, everyone. I am Donna Murphy with the Office of the Comptroller of the Currency, and today I'm going to deviate a little bit from the usual approach to this webinar of focusing on a particular fair lending issue or product or service to talk about more process-based activities at the OCC. Next slide, please (slide 24).

In March of this year, Comptroller Thomas Curry established the Compliance and Community Affairs business unit, which I will call CCA. It is led by a new senior deputy comptroller who reports directly to the comptroller. Some of you, particularly national banks and federal thrifts, have probably heard about how these changes at the OCC are designed to enhance our ability to provide support for our local examination teams in the areas of CRA and fair lending, as well as consumer compliance, BSA and AML. I'm going to talk today about how CCA will focus on enhancing the OCC's ability to comprehensively address compliance risk in these areas, to issue timely guidance and procedures, to communicate effectively about emerging compliance issues, and at the end of my few minutes, I will come back to fair lending specifically. Next slide, please (slide 25).

This slide tells you a little about the leadership of CCA. The senior deputy comptroller, also a member of OCC's executive committee, is Grovetta Gardineer, and she has three deputy comptrollers who report directly to her. Barry Wides, who is a longtime OCC deputy comptroller for community affairs, Beverly Cole, who is the new deputy comptroller for compliance supervision, and myself in the compliance risk area. Next slide, please (slide 26).

As indicated by the deputy comptroller titles, the CCA structure combines policy, supervision, and outreach units in one area. This decision by the OCC was supported by a number of factors. First of all, lessons learned from the financial crisis, and the changes in the consumer compliance framework coming out of that crisis have led to the creation of laws and rules designed for a fairer and more equitable banking system; this is paired with an accelerated pace of technological change that resulted in many areas of new delivery systems and products such as marketplace lending. On the BSA side, there are ongoing threats to banks and thrifts from illicit actors that have been changing rapidly as well. Also we believe these factors have enhanced the need for regular communication and collaboration both within the OCC and among the financial regulators. All these factors heighten the need for an executive level unit in the OCC dedicated to compliance risk and supervision. To address this need, the Comptroller and the OCC have aligned the compliance risk division, which was formally in the chief national bank examiner's office, and the community affairs division, that was formerly in the chief counsel's office, under CCA. In addition, a new compliance supervision division has been created to support local examiners in applying a consistent risk-based approach across the OCC's compliance supervision activities and to obtain a more comprehensive view of compliance risks from all our supervised institutions. Next slide, please (slide 27).

This slide highlights two of the key benefits that we believe result from the creation of CCA. First, CCA promotes a consistent platform for compliance activities and assessment of risk to enhance value added supervision across all OCC-supervised entities. And a related benefit is that CCA brings headquarters and the local staff focusing on compliance policy, complaint supervision, and community development into one unit to enhance our effective supervision, decision-making, and outreach. Next slide, please (slide 28).

We have many goals at CCA, but a couple of them are highlighted on this slide. First, we're going to continue to partner effectively between compliance supervision and safety and soundness supervision. We're going to maximize our resources, so we can address the greatest compliance risks and support fair access to bank services across our supervised institutions. We are going to support local examiners with timely training, policy development, risk analytics, examination tools, and quality assurance. And another key goal is to make sure that we are providing support for our banks and savings associations in their efforts to ensure compliance management functions that are evolving to meet the new markets and challenges. Next slide, please.

One of the questions that we get a lot is how this is going to change the OCC's supervisory approach. The answer is that in terms of the supervisory approach to our banks and thrifts, there won't be very much change in practice. 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. For example, the new compliance supervision division will develop supervisory strategies for our compliance examination activities with input from the supervisory offices, and compliance supervision will work with the local business units to execute the strategies.

For fair lending and other compliance conclusions coming out of our exams, those will roll up with our safety and soundness conclusions into one report of examination. And CCA's efforts around community development will continue to promote fair access to bank services and expand financial inclusion through the various and numerous outreach activities of the community affairs office. Next slide, please.

Circling back to the specific topic of fair lending, in my area of compliance risk, there will be four directors, which is a change from our current two. The directors will report to the deputy comptroller for compliance risk: one director in the BSA/AML Policy area, one in Consumer Compliance Policy, one in Compliance Tools and Training, and a specific director for CRA & Fair Lending Policy.

The compliance risk area is responsible for the development of policy, guidance, procedures, examiners' tools, and training, as I mentioned earlier. Given the importance of the existing and emerging risks in the areas of fair lending and CRA, CCA is designed to focus specific resources on those areas in both compliance risk and in the compliance supervision area. Next slide, please.

Within compliance risk, the new director for CRA and fair lending policy will enhance our development of consistent agency guidance, policies and procedures related to CRA and fair lending. At the same time, CCA is building out similarly-focused positions within compliance supervision to enhance our implementation and coordination of fair lending and CRA supervision on a local level. The CCA structure also will enhance our ability to coordinate and collaborate with our fellow regulators, many of whom are on this call, and to enhance our outreach and coordination with key fair lending stakeholders. Working together, CCA will bring a heightened focus to fair lending and increase the OCC's ability to identify and address areas of fair lending risk.

With that, I'll wrap up and pass the microphone to Maureen.

Maureen Yap (FRB) – Redlining Risk

I am Maureen Yap, Managing Counsel for fair lending at the Federal Reserve, and now we will turn to three presentations that will discuss redlining. First, I will begin with the Federal Reserve's overview of redlining risk. Next slide, please. We are on Slide 34.

I will quickly go over these next three slides. The key take away here is that the Federal Reserve supervises state member banks for compliance with the fair lending laws. For banks above $10 billion, the Federal Reserve shares with the CFPB, the authority to supervise state member banks for compliance with fair lending and mortgages. Next slide, please.

The key take away here is that pursuant to the ECOA, the Federal Reserve has referred several matters to the DOJ, including redlining matters; some of which have become public enforcement actions. Next slide, please.

On Slide 36, the key take away here is that the definition of redlining is quite broad, but boils down to unequal treatment of residents or neighborhoods on a prohibited basis. Next slide, please.

We are on Slide 37. As the definition indicates, there could be many ways to consider whether there's a redlining violation, and the Federal Reserve will consider all of the facts and circumstances in making that determination. The Federal Reserve conducts risk-focused fair lending exams based on the risk factors noted in the 2009 procedures. Mainly, we focus on the CRA assessment area, branching, marketing and outreach, lending disparities, overt statements, complaints, and previous findings. We often get questions about the statistical disparities. That is important for monitoring, but we believe that the bank can have an effective redlining risk management program by focusing on the business model. So those are the risk factors we will highlight today. Next slide, please.

The first risk factor is the CRA assessment area. As per the 2009 procedures, the key risk is that the bank's CRA assessment area appears to have been drawn to exclude areas with relatively high concentrations of minority residents. As an example, the bank's risk may be elevated if the bank's CRA assessment area consists of a partial MSA, MD, or county that inappropriately excludes majority minority census tracts. With respect to the bank's business model, the risk may be elevated in situations where there's a merger or acquisition, where there are changes to the opening or closing of branches or LPOs, or there are other changes that result in new lending patterns. Next slide, please.

So what should banks do to control the risks? Banks should have policies and procedures to regularly review the CRA assessment area. In particular, if the bank's business model changes in ways that may affect the bank's lending pattern, such as through mergers or acquisitions, the bank should review the CRA assessment area. Also the bank should document the reasons for selecting the CRA assessment area and ensure that those reasons apply equally to minority and nonminority areas. Next slide, please.

The second risk factor is branching, or other credit granting facilities such as LPOs. The key risk is where a bank does not have any branches or LPOs in minority areas. With respect to the bank's business model, the risk may be elevated where the bank has acquired branches based on opportunities presented. In some situations, the bank may end up with a series of branches that exclude majority minority tracts and form a donut hole around minority areas. Next slide, please.

What should banks do to control the risk? First, banks should have policies and procedures to evaluate the fair lending risk in connection with the opening, acquiring, or closing of branches or LPOs. Also, the bank should document the reasons to support the branching and LPO decisions. The documentation may include data, maps, and analysis. Again, the bank should ensure that the reasoning is applied equally to minority areas and nonminority areas. Next slide, please.

The third risk factor is marketing and outreach. The key risk is when the bank's marketing and outreach tend to exclude minority areas. With respect to the bank's business model, there are a number of scenarios that may elevate redlining risk. We will go over a few. For example, the risk may be elevated if the bank's marketing is limited to the bank's CRA assessment area and that assessment area inappropriately excludes minority tracts. Another example is where a bank limits its marketing to an area around branches and that limited area excludes minority tracts. Next slide, please.

Yet another example is where the bank limits its direct mailings either to current customers, very few of whom live in minority areas or to zip codes that do not include minority areas. Similarly, the risk may be elevated if the bank only uses brokers that do not serve minority areas. Also, to the extent that the bank uses human models on its website and/or marketing materials, the risk may be elevated if the bank does not use diverse human models. Finally, the risk may be elevated if the bank does not conduct affirmative marketing particularly if the bank's lending record shows that it is not originating loans in minority areas. Next slide, please.

What should banks do to control the risk? Bank should have policies and procedures to evaluate the fair lending risk for marketing initiatives. The fair lending review should not be limited to the content of the marketing but should also include a review of the geographic reach of the marketing. More specifically, banks should monitor and evaluate whether the marketing reaches the whole of the credit market area, including the minority areas. Finally, banks should consider affirmative marketing in minority areas, especially if the bank's lending record reflects a lack of lending in minority areas. Next slide, please.

The fourth risk factor we will discuss today is overt statements. The key risk is that the bank has a policy, oral or written, that indicates a preference on a prohibited basis. Let's first focus on an emerging risk that we've seen more frequently and has been described in recent DOJ and CFPB settlements. This has to do with the bank's "undesirable" loan policy. The example is that a bank lists loans outside of the bank CRA assessment area as "undesirable", and the assessment area inappropriately excludes minority areas. The bank may reinforce this policy with maps to loan officers that clearly indicate that loans in the minority areas outside the CRA assessment area are "undesirable" and may even have additional structural barriers to originating such loans, such as additional criteria, paperwork or supervisor reviews that the loan officer has to complete in order to originate such a loan. The second example is taken from the 2009 procedures and describes the bank loan policy that states the bank will not lend north of 110th Street, and it is widely known that the majority of the residents of that area are Hispanic. The final example is where a bank's community development officer tells examiners that bank management has asked her to discontinue outreach to a major urban area, which is mostly minority. All three of these examples could be considered overt statements that indicate elevated redlining risk. Next slide, please.

What should banks do to control the risk? Banks should review policies, procedures, and changes to the business model for fair lending risk. In particular, the bank should carefully review any policies that are based on geography that might tend to exclude minority areas. Next slide, please.

The final redlining risk factor we will discuss today is complaints. The key take away here is that the definition of complaints can be very broad. On this slide and the next, we have a definition that is taken from Federal Reserve CA Letter 13-19, which is the Federal Reserve's Community Bank Risk-Focused Supervision Program. From there, complaints can 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. Next slide, please.

Complaints can also include complaints generated through Internet websites or social media, and press articles raising concerns about the bank's practices.

So what should banks do to control the risk? Banks should be aware of all the potential sources of complaints and should have policies and procedures to monitor these complaint sources. Banks should look for trends that may indicate elevated redlining risk and take appropriate action. Next slide, please.

Finally, this slide provides a list of some of the free resources that the Federal Reserve provides to the public, including resources for industry, consumers, and consumer advocates. Now I will turn it over to Tara from the FDIC.

Tara Oxley (FDIC) – Redlining: A Bank's Reasonably Expected Market Area (REMA)

Hi, my name is Tara Oxley, and today I will be discussing a bank's reasonably expected market area or REMA. During this presentation, I will explain what the REMA is and how it is used by examiners. I will also provide information as to how the REMA is created and what the bank can do to be proactive in identifying redlining risk. Next slide, please.

Let me first begin by defining what exactly a REMA is. The FFIEC Interagency Fair Lending Examination Procedures explain that the REMA is not only the area where the institution actually marketed and provided credit, but also includes areas where the bank could reasonably be expected to have marketed and provided credit. Additionally, the procedures note that the REMA may differ from a bank's CRA assessment area and thus banks should not always assume that they are one in the same. Now let's understand why the REMA is important. Next slide, please.

Determining the REMA is an important first step when conducting a redlining analysis. Although there are several factors that the FDIC considers when conducting a redlining review, the FDIC typically starts the process by not only looking at the bank's CRA assessment area, but also looking at the bank's lending or lack of lending in its REMA. When evaluating potential redlining issues, examiners are ultimately assessing whether the institution is providing equal access to credit for those in its REMA. This will involve looking at, for example, whether the institution is not extending credit in certain areas, targeting certain areas with less advantageous products, offering different loan products to different areas, or not marketing residential loans at all to certain areas. Determining the REMA and understanding the demographic composition of the REMA helps examiners make conclusions about the bank's lending activities in that area. Take for example a bank that is operating in a city that has mixed race demographics. The western portion of the city is predominantly white while the Eastern portion is comprised of a majority black neighborhood. When conducting a redlining of this bank, examiners may first determine that the entire city represents the bank's REMA. Examiners will then evaluate the bank's activities in the city to determine if the bank is providing equal access to credit to those areas that are predominantly white versus those areas that are majority black. It would be problematic if the bank was for example, marketing and originating credit to residents in the majority white western portion of the city while not marketing and making fewer loans to the eastern portion were black residents live. Next slide, please.

Next, I'm going to discuss how examiners determine the REMA. It is important to recognize that examiners will consider many factors when making this determination. Although I will go through some of the more common considerations today, these analyses are fact specific and thus additional considerations may be made. Examiners typically begin the process of determining the REMA by first having a conversation with the bank to understand how the bank defines its market area, as well as to learn how the bank attracts customers and solicits new business. For example, if the bank receives applications from its branch locations, examiners will look at where the branches are located, as well as the bank's history of opening and closing branches. If the bank operates loan production offices, examiners will also typically consider these locations when determining the REMA. Examiners would have concerns if it appears the bank's branching strategy avoided majority minority areas within the REMA. Examiners will also review the bank's marketing efforts to determine what geographic areas the bank intends to reach through its advertising. For instance, if the bank advertises using direct mailing or has a call program, examiners will determine which zip codes or areas these marketing efforts are targeted. Again, it would be problematic if the bank's marketing efforts targeted or avoided portions of the REMA on a prohibited basis such as race. Similarly, if the bank has a relationship with loan brokers or local realtors, an examiner would want to know where those brokers or realtors are located and what areas they serve. Examiners may also inquire as to whether the institution provided any specific guidance to such realtors or brokers to help determine where the bank seeks to do business. Next slide, please.

When creating the REMA, examiners will also plot both an institution's loan applications and loan originations in mapping software. This information will give a visual depiction of where the institution is getting business and may help examiners identify any geographic gaps in the institution's lending activity. It is important to note however, that a bank's REMA can include areas the bank has not originated any loans or few numbers of loans or applications. As stated earlier, the REMA is defined as the area where the institution actually marketed and provided credit, as well as where it could reasonably be expected to have marketed and provided credit. Thus, examiners may include areas with little or no lending if they determined that the bank could have reasonably served this area. In addition to loan activity, examiners may also use mapping software to plot the addresses of the bank's deposit account holders. Examiners may reason that if the bank can obtain deposit customers from certain areas, the bank should also be able to obtain loan customers from those same areas. This may also be important for marketing considerations if the bank uses deposit statement stuffers to advertise its credit product. When determining the REMA, examiners will also take into account any significant barriers that can make it difficult for the bank to serve a particular area. This could include geographic barriers such as mountains or large bodies of water that limit the reach of the bank's activities. Moreover, examiners will assess the demand for credit throughout the market by assessing applicable demographics, including population levels and the percentage of homeowners. Next slide, please.

Now that you understand what factors examiners will consider when determining your REMA, you may want to determine your REMA prior to conducting any redlining risk assessment. Typically, banks conduct their analysis on the CRA assessment area, but because their REMA may not match the bank's assessment area, we encourage you to determine your REMA based on the factors I discussed previously. Also, given that a picture is worth a 1,000 words, it may be helpful to utilize mapping software to plot loans, applications, deposits, advertising reach, branches, loan originator locations, and any other factors that are applicable to your institution -- to help you visually see what your reasonably expected market area truly is. We find that mapping a bank's branches and lending patterns can be helpful in identifying potential redlining concerns. Finally, once you understand whether the institution has fair lending risk in this area, you will be better able to assess whether changes need to occur so that the bank has little to no redlining risk and is providing equal access to credit. As always, examiners are available to help should you have any questions. Next slide, please.

Additionally, on the last slide of my presentation, I have included links to the interagency fair lending examination procedures and the FDIC's compliance examination manual, should you want more information about the REMA. Thank you, and now I will turn it over to Lucy from the DOJ.

Lucy Carlson (DOJ) - Redlining

Thanks, Tara. Good afternoon, I am Lucy Carlson, and I am Acting Deputy Chief for fair lending in the Civil Rights Division of the Department of Justice. The Department of Justice enforces the Equal Credit Opportunity Act, the Fair Housing Act, and also the Servicemembers Civil Relief Act. We have independent enforcement authority, and we also bring enforcement actions based on referrals from our agency partners. Maureen and Tara have already covered redlining very thoroughly today, and in fact, you may wonder what else I have to talk about. The factors that they talked about are very similar to the evidence that the Department of Justice looks at when we are investigating redlining, so I am not going to review that material. Instead, I am going to give you some background about the historical context for redlining, and then I am going to talk about the kind of relief that the Department of Justice usually seeks in redlining cases. Next slide, please (slide 58).

What we call redlining today was part of accepted practice before the 1960s. In the 1930s, Congress created the Homeowners Loan Corporation, or HOLC, and the Federal Housing Administration (FHA) to slow the rate of foreclosures during the Depression. The HOLC was kind of the 1930's version of the GSEs. The participation in the mortgage market by HOLC and the FHA led to an expansion of the housing market and expanded homeownership for many people, but definitely not for everyone. The actions of the FHA and HOLC actually increased segregation in some cities and prevented minority borrowers from accessing credit. In 1935, the FHA evaluated 239 cities across the nation for financial risk, and they developed a national appraisal system that was widely adopted by lenders who wanted to make FHA-insured loans. You can see on the slide, the classifications were color systems beginning with blue and then green, yellow, and red, and the classifications were <u>explicitly</u> related to race. I won't give you the entire description for each grade. The green grade was described as homogenous, yellow areas lack homogeneity, and red areas have undesirable populations. Those were references to the race of the people who lived in those communities. Next slide, please (slide 59).

This slide shows a map of New Orleans that was prepared by the HOLC and used by the FHA. You can see the color coding and you can see at that time that New Orleans was rated mostly red and yellow. If you are familiar with New Orleans, you know that the French Quarter is northwest of the river at the bend, and you can see that the Ninth Ward, that became famous during Hurricane Katrina, was rated red by FHA at that time. These classifications and maps led to more segregated neighborhoods. One example is the 8-Mile area in Detroit. Residents who wanted to build new homes in the primarily White neighborhood were denied FHA loans because they were too close to a Black neighborhood. A developer solved this problem by building a wall to keep the neighborhoods separate. Next slide, please (slide 60).

These are two photos of the wall that was built in 1941 between the White and Black neighborhoods in the 8-Mile area of Detroit. In the 1960s, the term redlining was coined to reflect lenders' decisions not to lend in minority communities, and it was beginning in the late 1960s and the '70s that Congress began to create legislative solutions directed at ending redlining. Next slide, please (slide 61).

I want to briefly talk about the statutes that are related to redlining enforcement actions. The first two statutes on this list provide important information that is used in our redlining investigations and enforcement actions. Congress enacted the Community Reinvestment Act, the CRA, in 1977 to encourage banks to serve the credit needs of their entire geographic markets, including low- and moderate-income neighborhoods. As Maureen and Tara discussed, a redlining investigation looks at the bank's CRA assessment area. The Home Mortgage Disclosure Act, HMDA, was passed around the same time -- in 1975. HMDA and Regulation C provide public loan data that can be used in our redlining statistical analysis. The other two statutes here of course are the statutes that provide jurisdiction for redlining cases: ECOA and the FHA. Under both of those statutes, it is illegal to discriminate in mortgage lending on the basis of race, national origin, and the other protected classes that Anna mentioned earlier. Next slide, please (slide 62).

Despite these legislative efforts to address redlining, it continues to be a persistent issue. It is a priority enforcement area for the Department of Justice; and to me, it is a critical enforcement area because of the significant harm that is caused to minority communities that don't have access to credit, and the important changes that our settlements bring to minority communities, sometimes communities that have not had any access to banking services. Next slide, please (slide 63).

This slide is a quick recap of what you've already heard about what redlining is and what are the factors that we look at, so I'm going to move past that to the next slide, please (slide 64).

I'm going to talk a little about the components of most of our redlining settlements. All of our recent settlements include these components: asubsidy fund that can be used to give in interest-rate reductions or to pay closing costs or give down payment assistance to help attract qualified borrowers in the areas that were previously not served. In many cases this aspect of the settlement helps generate additional lending for the bank. We also asked banks to put new physical locations in the previously redlined areas, that is usually branches, that brings both credit and other banking services to what may have been a banking desert before. We also have provisions for outreach and consumer education and for training and changes to the bank's procedures. We have sometimes required hiring a Director of Community Development to coordinate marketing and outreach efforts. Next slide, please (slide 65).

Hudson City is a redlining settlement from last year. This is a joint investigation with the CFPB. Hudson City's markets include New Jersey, New York City and its surrounding counties, and Philadelphia, and Bridgeport, Connecticut Metropolitan Areas. In that case, there was a $25 million loan subsidy, and the bank is required to put two new branches in the redlined areas. It also included a fund for targeted advertising, outreach and consumer education to the formerly redlined areas, and a fund to partner with community groups to assist residents with things like financial education. Next slide, please (slide 66).

This just talks about a few of the other requirements of the consent order including expansion of the CRA assessment area to include -- what Tara just talked about -- to include what we think is a reasonable market and also training for the bank's employees so they understand the requirements of ECOA and the Fair Housing Act. The Hudson City case is too recent for us to see the effects of the settlement, so for that, I am going to turn to our 2011 settlement with Midwest BankCentre. Next slide, please (slide 67).

Midwest Bank does business in the St. Louis area.   We view the results of this settlement as a success both for St. Louis communities and for Midwest Bank. There are obvious benefits for the communities in St. Louis who have access to credit that was not available before, and it has also brought additional customers and increased lending for the bank. Midwest has decided to proactively open a second branch beyond what is required by the consent order, and they are taking a really creative approach. The branch is going to be located on the campus of an African-American church, and they hope that that's going to help with outreach to that community. Next slide, please (slide 68).

This is a map, sort of a before and after map for Midwest Bank, and it shows loan applications. On the left slide, is the time period 2004 to 2008, and on the right side 2010 to 2014. Each dot represents a loan application and the red, orange, and yellow shading show concentrations of minority populations so you can see there are a lot of additional loan applications in the shaded areas in the after slide. That means those communities in St. Louis have access to credit, and the bank is making a lot of loans that it might not otherwise have made. Next slide, please (slide 69).

This is a similar map, so sort of a second example of the same principle showing a before and after related to our settlement with First American Bank in the Chicago area. We see a similar result: There are many more loans in the red and yellow shaded areas than there were before the settlement. When we enter into a redlining settlement with a lender, the Department of Justice is always looking for a settlement that will benefit the community, but we would also like to bring new customers to the lender and strengthen the lender's business in the community. My takeaway from what we've talked about today is that there has been a lot of discussion of redlining, and redlining is a significant enforcement area for the regulators and for the Department of Justice, and is likely to remain an enforcement priority in the future. Next slide, please (slide 70).

You can get more information about the Department's fair lending work at these links. I think now Amy is going to remind everyone how to ask questions.

Questions and Answers Session

Amy Vaughn (Facilitator):
That's right. Now it is time to take your questions, so if you are in the webinar, please click the "Ask Question" button that you see on the player page and type it in, and click submit. We have had quite a few coming in, so let's go ahead and get to those. I would like to turn it over to Maureen.

Maureen Yap (FRB):
Thanks, Amy. Our first question here is for the CFPB. The question is:

Does the Bureau's redlining analysis differ from that of other regulators?

Anna-Marie Tabor (CFPB):
The answer to that is no. When evaluating identified redlining risk, the Bureau's approach is consistent with that of other federal agencies, including other federal law enforcement agencies and bank regulators who are participating in this panel today. For example, the Bureau looks at risk indicators that are described in the interagency fair lending exam procedures, which were originally issued by the prudential regulators and were later adopted by the CFPB. The Bureau also looks at the types of evidence that the Department of Justice has cited in support of its complaints alleging redlining and that Lucy described in her presentation today. The sources identify multiple factors that the Bureau considers during a redlining evaluation, so for example, comparing applications received and originations in minority and nonminority areas in comparing with a lender's peers, the scope of the

lender's CRA assessment area, physical branch and office locations, the lender's marketing practices, institution policies, employee statements and conduct, and other relevant evidence.

Maureen Yap (FRB):
Thanks. The next question we have is for the NCUA. The question is:

NCUA mentioned that prequalification requests are not considered applications for purposes of HMDA reporting, but preapproval requests are. What's the difference?

Matthew Nixon (NCUA):
Thanks, Maureen. To be a covered preapproval program, the written commitment issued under the program must result from a full review of the credit-worthiness of the applicant, and that includes such verification of income, resources, and other matters that is typically done by the institution as part of its normal credit evaluation program. A prequalification request, which is not considered an application under Regulation C, is a request by a prospective loan applicant for a preliminary determination on whether the prospective applicant would likely qualify for credit under an institution's standards or for a determination on the amount of credit for which the prospective applicant would likely qualify. In situations we observe where credit unions have included prequalification requests on their HMDA LARs in error, frequently the commitment letters that they issue are subject to verification of income, which is not performed until a later date. Also, I should probably mention that while prequalification requests are not considered applications for the purposes of Regulation C, these requests may constitute applications under Regulation B for purposes of adverse action notices.

Maureen Yap (FRB):
Thank you. The next question we have is for the OCC. The question is:

It seems like the OCC is increasing the number of fair lending examinations it is conducting. Is that true? And for larger banks, doesn't this duplicate work by the CFPB?

Donna Murphy (OCC):
Thanks, Maureen. The OCC's supervision is risk based, and it doesn't focus on a specific number of examinations to be conducted each year. In scheduling for fair lending examinations, we take into account information available from HMDA, from our risk assessments, and other information that is available to examiners to decide which institutions exhibit the highest level of risk. In the last several years, we revised processes for assessing fair lending risk for many of the institutions we supervise, and we continue to update those processes. So bankers likely have observed first firsthand some changes. These changes are part of a broad effort across the OCC related to the creation of CCA to help ensure that we are collecting information needed to make good decisions on how to target the fair lending examination and other consumer compliance work. With regard to the question about the overlap with the CFPB, as I think Maureen mentioned earlier, for institutions with assets over $10 billion, the prudential regulator, in this case the OCC, has overlapping authority with the CFPB for fair lending oversight of mortgage lending. This is because CFPB supervises these institutions for compliance with the Equal Credit Opportunity Act, while in this case the OCC has authority to supervise for Fair Housing

Act compliance. We are in regular contact with our counterparts at the CFPB to coordinate supervisory efforts, and based on that information and our supervisory processes, we attempt to ensure a continuity of appropriate fair lending supervision while avoiding undue burden or duplicative examination work.

Maureen Yap (FRB):
Thank you. We have a question for the Federal Reserve. The question is:

We noticed that your presentation did not discuss in-depth the lending disparities prong of a redlining review. Why is that?

Maureen Yap (FRB):
We often see banks struggle to understand the statistical analysis for potential disparities or banks make statistical analysis a central feature of their compliance management program. What we are trying to say here is that while statistical analysis is useful for monitoring whether discrimination has occurred, we believe that a bank can have an effective fair lending risk management program that can prevent potential discrimination by focusing on the business model. So for redlining, that means focusing on having effective policies and procedures for evaluating redlining risk in the CRA assessment area, branching and the LPO locations, marketing and outreach, complaints, and statements in oral and written policies that place limits on a geographic basis. The same principal is also true for pricing. That is, a bank can have an effective fair lending risk management program by focusing on having effective policies and procedures to control fair lending risk in discretion and financial incentives. So it is still important for a bank to monitor disparities on a prohibited basis, and you can take a look at the webinars and articles from 2012 that discuss that the review of lending disparities and look at whether the bank's lending in majority minority tracts is similar to that of other lenders in the same CRA assessment area or market area. There are a number of different ways to look at lending disparities but that can be a good starting point.

However, again, the business model should also be a key feature of the bank's fair lending risk management program.

Okay so the next question we have is for the FDIC. The question is:

I understand that the Community Reinvestment Act requires that a bank delineate one or more CRA assessment areas. Must the bank also create it's reasonably expected market area? Is this a regulatory requirement?

Tara Oxley (FDIC):
Good question. There is no regulatory requirement for a bank to determine its REMA. As I mentioned during my presentation, the examiner is actually the one determining the REMA when analyzing a bank's redlining risk, but they will seek input and information from the bank while they are doing this. Thus, it is important for a bank to always know where it is lending and marketing. Additionally, even though there is no regulatory requirement for a bank to create a REMA, banks should try and be proactive; such that they are aware of any lending disparities in the REMA as that will raise the bank's fair lending risk.

Maureen Yap (FRB):

Thank you. The next question we have is for the DOJ. The question is:

When a DOJ settlement requires a bank to open a new branch, where should the branch be sited?

Lucy Carlson (DOJ):
Our consent orders have certain requirements related to where the branch must be located. For example, it is generally required to be in an easily accessible area within the redlined minority community, and the department must approve the location, but we don't tell the bank where to open the branch. We expect that the branch will be in the place that the bank chooses.

Maureen Yap (FRB):
Okay. Thank you. The next question is for the CFPB and the question is:

Now that the HMDA rule is complete, what are the Bureau's plans regarding small business data collection?

Anna-Marie Tabor (CFPB):
The Bureau is starting its work to implement Section 1071 of the Dodd-Frank Act, which amends ECOA to require financial institutions to report information concerning credit applications made by women owned, minority owned, and small businesses. The Bureau has moved this rulemaking to the pre-rule phase. First, we are focusing on outreach and research to develop our understanding of the players, the products, the practices, the business lending markets, and of the potential ways to implement Section 1071. Then, we expect to begin developing proposed regulations concerning the data to be collected and determining the appropriate procedures and privacy protections needed for information gathering and public disclosure under the section.

Maureen Yap (FRB):
Thank you. The next question is for the NCUA. The question is:

Does NCUA perform HMDA validations at all fair lending exams?

Matthew Nixon (NCUA):
NCUA uses a risk-based evaluation process to select exam focal points. We perform validations at all fair lending exams that have HMDA data integrity focal points. HMDA validations may or may not be performed at other fair lending exams, and that's going to be based on the examiner's assessment of risk.

Maureen Yap (FRB):
The next question is for the OCC. The question is:

How does the OCC use HMDA data in the fair lending examination process and will this change with the new HMDA data?

Donna Murphy (OCC):
Thank you, Maureen. The OCC conducts a comprehensive fair lending risk assessment for all of our supervised institutions in each exam cycle. That risk assessment will take into consideration the bank's

credit products and processes from the beginning of customer engagement, marketing, through the application and origination, and servicing of those loans. The one component of the OCC's fair lending risk assessment is the consideration of mortgage products offered by the bank, and if the bank is a HMDA reported, the OCC reviews the bank's reported HMDA data to identify potential lending disparities as part of that risk assessment. So, after the risk assessment is done, as I mentioned earlier, that is used to inform our risk-based supervisory strategy for each institution. Given the new HMDA data the banks will begin collecting next year, the OCC is currently evaluating its HMDA review and fair lending risk assessment processes, and we will incorporate the additional data as that goes forward.

Maureen Yap (FRB):
Okay. Thank you. The next question is for the Federal Reserve. The question is:

What is affirmative marketing and why is it important?

Maureen Yap (FRB):
Affirmative marketing is discussed in the commentary to Regulation B, at the comment for discouragement, which is 12 CFR 1002.4(b), and it is comment two. The commentary states that creditors may affirmatively solicit or encourage members of traditionally disadvantaged groups to apply for credit, especially groups that might not normally seek credit from the creditor. So Regulation B does contemplate and permit affirmative marketing that may be directed, for example, at majority minority tracts. And recent public DOJ redlining settlements have noted whether the bank is engaged in affirmative marketing. A bank should review whether affirmative marketing is appropriate for its business model, especially if the bank's lending record indicates potential redlining risk because the bank is not originating loans in minority areas.

The next question we have is for the FDIC, and the question is:

Can a bank have more than one REMA?

Tara Oxley (FDIC):
Yes, it is possible the bank will have more than one REMA. For example, a relatively large bank may operate in multiple markets, and thus, examiners may create multiple REMAs to use when assessing the bank's redlining risk. Also, examiners understand that a bank's REMA may change over time, so when the examiners are considering a bank's fair lending performance over a multiyear period, the examiners may use multiple REMAs that are adjusted each year to account for changes in the bank's marketing, branching strategy, etc. over that same time period.

Maureen Yap (FRB):
Thank you. The next question we have is for the DOJ. The question is:

I heard in the past that redlining is a priority for the DOJ and apparently for the other agencies as well, why is it still a priority?

Lucy Carlson (DOJ):
I would say that it is still a priority because it is a persistent problem despite years of enforcement actions. And I would say that it is a priority for the Department because of the significant impact on minority communities and the importance of banking services.

Maureen Yap (FRB):
Okay, thank you. The next question we have is for the CFPB. The question is

What HMDA data will be made public under the final rule?

Anna-Marie Tabor (CFPB):
In the final HMDA rule, the Bureau adopted a balancing test to determine whether and how HMDA data should be modified prior to its disclosure to the public in order to protect applicant and borrower privacy, while also fulfilling HMDA's disclosure purposes. The CFPB will provide at a later date a process for the public to provide input on the application of the balancing test to determine the HMDA data that will be publicly disclosed.

Maureen Yap (FRB):
Okay, thank you. The next question is for the NCUA. The question is:

NCUA mentioned a HMDA resubmission threshold but did not say what threshold applies. When does NCUA require credit unions to correct and resubmit HMDA data?

Matthew Nixon (NCUA):
NCUA resubmission guidelines are based on a random sampling of entries from a credit union's HMDA LAR, which are reviewed during a fair lending examination. We require credit unions to correct and resubmit HMDA data when 10% or more of their HMDA LAR sample entries contain errors or when there is an error rate of 5% or more in an individual data field. That said, we are currently reviewing our resubmission requirements, so these guidelines may change in the future.

Maureen Yap (FRB):
Okay, thank you. The next question is for the CFPB. The question is:

What is the Bureau implementing to help reduce burden on the industry on operationalizing the HMDA rule?

Anna-Marie Tabor (CFPB):
The Bureau is working to streamline and to modernize HMDA operations and is engaged in developing applications and tools to help financial institutions with HMDA reporting. For example, the Bureau is creating a web-based HMDA data submission and edit-check system to replace the current data submission software and to replace the paper-based edit checking that occurs today. We are also publishing the modified loan application register, or LAR, for institutions as reporting occurs.

And we are developing an open-source, high-volume geocoder based on continuous public demand for data. In addition, to further reduce burden, the Bureau's source code for file validation is an open-source, so that financial institutions and vendors can use the same code that the Bureau uses to validate submissions.

Maureen Yap (FRB):
Okay, thank you. We have another question that came in, and I will start. The question is:

In assessing redlining risk, would regulators consider purchased loans in majority minority areas in the statistical analysis or is this more of a CRA consideration?

Maureen Yap (FRB):
This is Maureen from the Federal Reserve, and I will start. Typically, the consideration of purchased loans has more to do with the CRA. For the redlining analysis, we are more focused on providing direct access to credit, particularly in the minority areas. We have not had a situation where we have considered the purchased loans. Historically that has not been a part of the consideration. That said, when we have a fair lending issue at the Federal Reserve, we issue what we call a preliminary finding letter, which is a detailed written letter to the bank explaining our concerns. And the bank has an opportunity to respond. At that point, the bank can raise whatever concerns it has. For example, it could discuss purchased loans. But in the past we have not considered purchased loans as part of the redlining analysis. That has been reserved more for the CRA consideration.

Anna-Marie Tabor (CFPB):
This is Anna from the CFPB. In a redlining investigation, the geographic patterns of an institution's generation of applications and provision of credit, especially as compared to its peers, are important considerations. And depending on the facts of a particular matter, an institution's loan purchases may be relevant. Generally, however, if a lender engages in acts or practices that could discourage potential applicants in certain communities from applying to that institution, such as, for example, advertising or locating its physical presence through offices or third parties that are mostly outside of or do not effectively serve minority neighborhoods. In that situation, simply purchasing loans from other institutions will not negate those discouraging acts or practices.

Maureen Yap (FRB):
We have another question that came in and I will start. The question is:

Why were all the presentations focused on HMDA mortgage loans? Is there risk in consumer loans such as unsecured loans?

Maureen Yap (FRB):
This is Maureen from the Federal Reserve, and I will start. The discussions today mostly did focus on mortgage loans but there certainly is fair lending risk in other types of consumer loans, for example, in unsecured loans. And we've also seen fair lending risk in direct vehicle loans. At the Federal Reserve, we do examine for fair lending risk in those areas. Typically, those types of loans don't have risk in pricing for financial incentives, so the two key risk factors are discretion and disparities. We will take a look at the loan trial data and review the policies, and also look for any overt statements or previous findings to look for the combination of risk factors that might suggest a high risk or potential violation. We have at the Federal Reserve done a number of referrals to the DOJ for unsecured loans and direct vehicle loans, and I know that the DOJ has had some public settlements in that area as well.

Lucy Carlson (DOJ):
This is Lucy from the Department of Justice. Yes, that's the case -- you could see them on our website. We did talk a lot about mortgages today, but I think Anna mentioned indirect auto loans, and that is definitely a priority area, and we also have brought cases in the past few years on credit card lending,

and as Maureen said, on unsecured lending, so you can see complaints and resolutions of those on our website.

Donna Murphy (OCC):
This is Donna from the OCC, and I would just say when I was discussing our fair lending risk assessments earlier, if it wasn't clear, HMDA is a part of that but we also look across all the bank's consumer lending products when we are doing fair lending risk assessment and determining how to target a fair lending exam.

Matthew Nixon (NCUA):
This is Matt with NCUA. To echo what Donna said, NCUA will also review both mortgage and consumer lending during fair lending examinations and we select focal points based on our assessment of risk. One reason why most of what we spoke to today was related to mortgage lending is because it was based on data that is readily available, whereas with consumer lending reviews, we have to utilize some other techniques such as proxy testing, but we certainly do not exclude consumer lending from our fair lending reviews and analyses.

Maureen Yap (FRB):
Okay. Thank you. Another question we have:

What would you look for in a bank's fair lending risk related to a branch closing decision?

This is Maureen from the Federal Reserve. Basically, what we are looking for is to ensure that the way the bank analysis was the same for minority areas as well as nonminority areas. So the bank might look at a number of different factors. They may have data, they may have maps, and they may have analysis, including consultant analysis. What we are looking to see is that the analysis is the same for minority and nonminority areas and that fair lending risk was taken into account. We may also look to see if there is an overall pattern. For example, there may be concerns if a number of the branches and LPOs that were closed were mostly in minority areas while the opening of branches and LPOs was mostly in the nonminority areas. So those are a couple of the things that we would look at, but mostly we are looking at consistency across the geographic areas.

Maureen Yap (FRB):
Another question we had has to do with marketing. The question is:

This particular bank has virtually eliminated marketing in print, TV, and radio, and now most of the marketing, because they did not get good results in the marketing, they do community outreach across the geographic area. But now they are focusing their marketing on digital marketing and direct mail to current customers, so they wanted to know an overview of the fair lending risk there.

Maureen Yap (FRB):
This is Maureen from the Federal Reserve, and as we indicated earlier, there are a number of different risks that can crop up in marketing. One of them can be for current customers. So if the current

customers are primarily located in nonminority areas that can raise the risk. It is not necessarily so much the medium that is used, but whether the type of marketing is able to reach the whole of the market area including minority areas. Also, if the bank is able to demonstrate that they do significant community outreach, which is more the time spent in different areas, and that those outreach efforts are located also in minority areas, that would reduce the fair lending risk.

That brings us to the end of the session. We want to thank the presenters for all of the information that they were able to provide today, and we wanted to thank all of you for your time and attention to discuss these critically important issues.

Amy Vaughn (Facilitator):
Okay, thanks, Maureen. I would like to echo that thanks. Thank you all for joining us today. In just a few minutes, you will receive an e-mail with the survey link. Please take a moment to fill that out. We read every response and strive to make our sessions better based upon your feedback. And a special thanks to our Outlook Live team for putting this together and coordinating with the agencies. As quick reminder, you can check out our website for the archive of this call and for information on upcoming sessions. Have a great day everyone. We will talk to you next time.

[Event concluded]