

# 2022 Fair Lending Interagency Webinar

**Outlook Live Webinar – December 6, 2022**

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## Webinar Overview

- HUD: Appraisal Discrimination: Trends and Risk Mitigation
- CFPB: Appraisal Bias Action Update
- FHFA: Action on Appraisal Bias
- OCC: A Tool to Expand Access to Credit: Special Purpose Credit Programs
- NCUA: Credit Union Update
- FDIC: Fair Lending Referral Matters
- FRB: Redlining Risk Assessments: Using the 2020 Decennial Census Data
- DOJ: Recent Redlining Enforcement Actions

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## Appraisal Discrimination: Trends and Risk Mitigation

*Rosanne Avilés, Trial Attorney  
Office of General Counsel, Fair Housing Enforcement Division  
U.S. Department of Housing & Urban Development*

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## Rise in Complaints Involving Alleged Violations of 42 U.S.C. § 3605

Twofold increase in the number of complaints filed with HUD involving allegations of Section 805 of the Fair Housing Act (42 U.S.C. § 3605)

**2X** Appraisal Discrimination Complaints

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## Interagency Task Force on Property Appraisal and Valuation Equity (PAVE)

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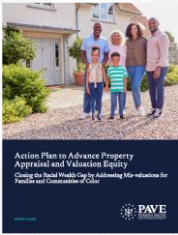
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Action Plan to Advance Property Appraisal and Valuation Equity

The Action Plan can be found at [www.fair.gov](https://www.fair.gov)



Action Plan to Advance Property Appraisal and Valuation Equity  
 Clinging On Rural Wealth Gap by Addressing Mis-valuation for Healthcare Consumers of Color

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### Interagency Task Force on Property Appraisal and Valuation Equity (PAVE)

- Provide guidance to the appraisal industry
- Make the appraisal industry more accountable
- Empower consumers with information and assistance
- Prevent algorithmic bias in home valuations with information and assistance
- Cultivate an appraiser profession that is well-trained and looks like the communities it serves
- Leverage federal data and expertise to inform policy, practice, and research on appraisal bias

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### Lender Best Practices - Appraisals

- Up-to-Date Fair Lending Policies and Procedures
  - Fair lending complaint process
  - Reconsideration of Value (ROV) Procedures – Publicly Available and Easily Accessible
  - Notice accompanying appraisal explaining the lender's policies and procedures for contesting an appraisal and requesting a ROV.
  - Prepared to refer consumers to applicable state or federal authorities if there is an allegation of a discriminatory appraisal
- Adequate Personnel Training
- Monitor and Analyze the Full Scope of Appraisal-Related Activities, Including Third Parties

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## Appraisal Bias Action Update

*Makalia Griffith, Counsel*  
Office of Fair Lending and Equal Opportunity  
Consumer Financial Protection Bureau

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## ECOA Background & Scope

The purpose of the Equal Credit Opportunity Act (ECOA) is to promote the availability of credit to all creditworthy applicants without regard to:

1. Race
2. Color
3. Religion
4. National origin
5. Sex (including sexual orientation and gender identity)
6. Marital status
7. Age (provided the applicant has the capacity to contract)
8. The fact that all or part of the applicant's income derives from a public assistance program; or
9. The fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act.

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## ECOA Background & Scope: Applicability

ECOA prohibits a **creditor** from discriminating on a prohibited basis regarding any aspect of a **credit transaction**.

**“Creditor”** means a person who, in the ordinary course of business, regularly participates in a credit decision, including setting the terms of the credit. The term creditor includes a creditor’s assignee, transferee, or subrogee who so participates.

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## ECOA Background & Scope: Applicability

(continued)

- “Credit transaction” means
  - every aspect of an applicant’s dealings with a creditor regarding an application for credit or an existing extension of credit.
  - This includes, but is not limited to:
    - information requirements;
    - investigation procedures;
    - standards of creditworthiness;
    - terms of credit;
    - furnishing of credit information;
    - revocation, alteration, or termination of credit; and
    - collection procedures.

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## ECOA Background & Scope: Applicability

(continued)

- Regulation B covers a **wide range** of credit transactions including:
  - Consumer loans, including home mortgages loans
  - Business loans, including commercial real estate loans
- Regulation B prohibits creditors from acts or practices directed at **prospective applicants** that could discourage a reasonable person, on a prohibited basis, from applying for credit.

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## ECOA: Applicability to Appraisals

- “Any aspect of a credit transaction” includes:
  - The creditor’s “information requirements,” “investigation procedures” and “standards of creditworthiness” (12 C.F.R. § 1002.2(m)).
  - Appraisals are an aspect of a credit transaction.
  - Discrimination “on a prohibited basis” (e.g., on the basis of race) includes:
    - discrimination against an applicant subject to the appraisal;
    - discrimination against individuals with whom the applicant is affiliated or associated, including other residents in the neighborhood where the property offered as collateral is located (12 C.F.R. § 1002, Supplement 1 2(z)).
  - A **creditor**, in certain circumstances, may be liable under ECOA for relying on a discriminatory appraisal.

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## UDAAP: Applicability to Appraisals

- The CFPB has authority under the Consumer Financial Protection Act (CFPA) to identify, prohibit, supervise for and prosecute **unfair acts or practices** committed by any covered person or service provider in connection with any transaction for, or offer of, a consumer financial product or service.
- Discrimination based on group characteristics may be illegal, unfair, and harmful to consumers.

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## UDAAP: Applicability to Appraisals (continued)

An **unfair act or practice** is one that

- 1) causes or is likely to cause substantial injury to consumers;
- 2) is not reasonably avoidable; and
- 3) is not outweighed by countervailing benefits to consumers or competition.

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## CFPB's Work on Appraisal Bias

- Engaged with other agencies on issues of bias in home appraisals through the Property Appraisal and Valuation Equity (PAVE) Taskforce.
  - CFPB (and other agencies) will issue guidance on the Fair Housing Act's and ECOA's application to the appraisal industry (Action 1.1).
  - CFPB (and other agencies) will, as needed, devise and implement changes to how examinations of mortgage lenders under their purview are conducted, develop examination aides and appropriate examination manual changes, and train staff on enhanced examination and data collection procedures (Action 2.3).
  - Enforcement agencies will collaborate to (a) develop approaches to data analysis that identify discrimination, and (b) identify case studies illustrating facts that agencies have found to support taking action on valuation discrimination (Action 2.1).
- Actively working with our inter-agency partners and relevant stakeholders on issues of bias in home appraisals.
- Providing resources to help ensure that the appraisals used to make lending decisions are accurate and free from bias.

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## CFPB SBREFA Process: Automated Valuation Model (AVM) Interagency Rulemaking

- Dodd-Frank Act amendments to FIRREA require the CFPB along with certain other agencies to engage in rulemaking.
- To address potential fair lending risk in models, CFPB is considering proposing a requirement that covered institutions establish policies, practices, procedures, and control systems to ensure that their AVMs comply with applicable nondiscrimination laws.
- CFPB is concerned that without proper safeguards, flawed versions of these models could digitally redline certain neighborhoods and further embed and perpetuate historical lending, wealth, and home value disparities.
- CFPB's [SBREFA process](#):
  - Feb 2022: Issued Proposals and Alternatives Under Consideration.
  - March 2022: Convened a Small Business Review Panel to consult with representatives of small entities likely to be affected directly by the AVM rulemaking options under consideration.
  - May 2022: Released the Final Report of the Small Business Review Panel on the CFPB's Proposals and Alternatives Under Consideration for the Automated Valuation Model (AVM) Rulemaking.

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## Ethics Rule: Interagency Comments 02/04/2022

- Comments were provided on the Appraisal Standards Board Ethics Rule that allowed for appraisals to rely on "supported" conclusions based on protected characteristics such as race or ethnicity.
- Comments (1) noted that the Federal ban on discrimination under the Fair Housing Act (FHA) and Equal Credit Opportunity Act (ECOA) is not limited to "unsupported" conclusions; (2) outlined relevant FHA and ECOA provisions; and (3) recalled that FHA and ECOA prohibit both disparate treatment and disparate impact discrimination.
- Comments were submitted by senior staff at the following agencies: CFPB, DOJ, HUD, FDIC, FRB, OCC, NCUA, and FHFA.

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## Reconsideration of Value (ROV): [CFPB Blog 10/06/2022](#)

- Responsible lenders focused on serving their customers typically will provide borrowers with clear, actionable information about how to raise concerns about the accuracy of an appraisal.
- In ROV, borrowers point out errors or omissions, including inadequate comparable properties, or evidence of prohibited bias.
- Process must allow for reconsideration to determine whether appraisal adjustment is appropriate.
- Some lenders inform borrowers of how to request ROV when providing required copies of valuations; other lenders may provide ROV information before an appraisal is conducted.
- Clear, plain-language ROV notices help to ensure process is nondiscriminatory.
- Failure to provide a clear and consistent ROV process may risk violating federal law.

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# Action on Appraisal Bias

Annalyce Shufelt, Senior Attorney Advisor (Fair Lending)  
Office of Fair Lending Oversight  
Federal Housing Finance Agency

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# Who Are We?

- The Federal Housing Finance Agency (FHFA) is the regulator for Fannie Mae, Freddie Mac, and the Federal Home Loan Banks.
  - FHFA is also currently conservator for Fannie Mae and Freddie Mac.
- FHFA's Office of Fair Lending Oversight (OFLO) was established in 2018.
- FHFA does not regulate primary mortgage market lenders.
- Public fair lending data about the Enterprises is available at the [FHFA Fair Lending Data Webpage](#).

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# Appraisal Commentary Blog Post

**Reducing Valuation Bias by Addressing Appraiser and Property Valuation Commentary**

Published: 02/01/2022

**Key Takeaways**

- Appraisers should address any ethnicity, race, or national origin information that has been requested and does not directly relate to the property being appraised.
- Appraisers should not include any information that is not directly related to the property being appraised.
- Appraisers should not include any information that is not directly related to the property being appraised.

**Background**

The Office of Fair Lending Oversight (OFLO) is a division of the Federal Housing Finance Agency (FHFA). OFLO is responsible for monitoring and enforcing fair lending laws and regulations.

**Key Points**

- Appraisers should not include any information that is not directly related to the property being appraised.
- Appraisers should not include any information that is not directly related to the property being appraised.
- Appraisers should not include any information that is not directly related to the property being appraised.

**Conclusion**

The Office of Fair Lending Oversight (OFLO) is committed to ensuring that appraisers provide accurate and unbiased valuations for all borrowers, regardless of their ethnicity, race, or national origin.

A town was described as having a "Black race population above state average."

Noting that "Koreatown is considered 'highly diverse' ethnically," listing the percentages of residents from various races and nationalities and describing that the number of foreign-born persons was "considered high compared to the city as a whole."

The ethnic groups that have immigrated to a neighborhood over the course of many years and noted it was "one spicy neighborhood."

"The racial makeup of the city was 86.28% white, 12.46% Black or African-American, 0.52% Native American, 0.22% Asian, and 0.52% from two or more races. 0.56% of the population were Hispanic or Latino of any race."

Noting that "there is more Asian influence of late" buying the market.

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## Freddie Mac and Fannie Mae Research




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## Uniform Appraisal Dataset (UAD): Aggregate Statistics



### UAD Aggregate Statistics

- ✓ Published October 2022
- ✓ Quarterly data covering 2013 – 2022 Q2
- ✓ Neighborhood characteristics, including demographic composition
- ✓ Multiple geographic levels
- ✓ Use FHFA mapping and graphing tools in the browser, or download the data for your own use

[Dashboards, data, graphs, maps, and other reports are available here](#)

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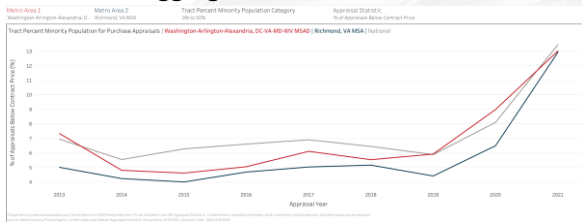
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## UAD Aggregate Statistics Dashboards




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## A Tool to Expand Access to Credit: Special Purpose Credit Programs

*David Adkins, CRA/FL Compliance Policy Specialist  
Office of the Comptroller of the Currency*

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## OCC and Special Purpose Credit Programs

“I encourage national banks and federal savings associations to explore the opportunities available through special purpose credit programs. The special purpose credit program provisions of ECOA and Regulation B are one mechanism that banks can use to open the door to homeownership to communities that have been historically shut out or otherwise disadvantaged. Doing so can be a significant step in addressing the racial and ethnic homeownership and wealth gaps that persist in the United States.”

- Acting Comptroller Hsu, [December 9, 2021 News Release](#)

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## Equal Credit Opportunity Act (ECOA)

- Prohibits creditor from discriminating against any applicant, with respect to any aspect of a credit transaction based on race, color, religion, national origin, sex, age, and receipt of public assistance
- Applies to any extension of credit, including those to small businesses, corporations, partnerships, and trusts.

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## SPCP Statutory and Regulatory Authority

- ECOA, 15 USC §1691(c)(3)
  - Provides that the prohibitions against discrimination are not violated when a creditor refuses to extend credit offered pursuant to certain special purpose credit programs (SPCPs) satisfying Regulation B-prescribed standards
- Regulation B, 12 CFR §1002.8
  - Programs must meet standards prescribed by CFPB

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## Fair Housing Act—HUD Guidance

*“A non-profit organization’s Special Purpose Credit Program established to serve an economically disadvantaged class of persons or a for-profit institution’s Special Purpose Credit Program designed and implemented in compliance with ECOA and Regulation B generally do not violate the [Fair Housing] Act.”*

— HUD’s Office of General Counsel Guidance on the Fair Housing Act’s Treatment of Certain Special Purpose Credit Programs, December 6, 2021

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## HUD’s Office of Fair Housing and Equal Opportunity Statement

*“[Housing-related special purpose credit] programs, if constructed thoughtfully and in accordance with the CFPB’s regulations and guidance, can be a significant step towards bridging the racial and ethnic homeownership and wealth gaps that exist throughout the United States.”*

— FHEO’s Statement by HUD’s Office of Fair Housing and Equal Opportunity on Special Purpose Credit Programs as a Remedy for Disparities in Access to Homeownership, December 7, 2021

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## Agencies' Role

- The CFPB, OCC or other agencies do not determine whether individual programs qualify for special purpose credit status.
  - The creditor administering or offering the loan program must make that determination.
  - A creditor may initiate a special purpose credit program without the approval of the CFPB, OCC or any other regulator.
- Banks considering SPCPs are encouraged to discuss their plans with the regulator(s).

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## Regulation B's For-Profit SPCPs Standards

- Written plan
  - Class of people
  - Procedures and standards
  - Time period
  - Description of analysis the organization conducted to determine need for the program
- Creditors' determination that the program will benefit a class of people who would otherwise be denied credit or would receive it on less favorable terms

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## CFPB Advisory Opinion December 2020

- Written Plan Guidance
  - Must explain whether the class of persons will be required to demonstrate a financial need and/or share a common characteristic
  - Procedures and standards must be designed to increase the likelihood that the targeted class of persons will receive credit that otherwise would be denied or will receive credit on more favorable terms than they otherwise would have
  - Plan must explain how the procedures and standards will increase credit availability for the targeted class of people

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## CFPB Advisory Opinion December 2020

- Determination of Need for a Special Purpose Credit Program
  - Can be based on:
    - Organization's own research
    - Data from outside sources
  - Analysis must have a nexus to the organization's customary credit standards
  - Creditor cannot request demographic information from applicants that it is otherwise prohibited under ECOA, in order to collect data to support a future SPCP

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## Supervisory Experience

- Used sparingly, but there are longstanding programs that are successful
- Compliance with regulatory standards can be challenging
  - Many technical requirements
- Additional considerations
- Opportunities have been identified and new programs are starting

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## References

- Equal Credit Opportunity Act (ECOA), 15 USC §1691(c)(3)
- Regulation B, 12 CFR§1002.8
- HUD's Office of General Counsel Guidance on the Fair Housing Act's Treatment of Certain Special Purpose Credit Programs That Are Designed and Implemented in Compliance with the Equal Credit Opportunity Act and Regulation, December 6, 2021
- FHCO's Statement by HUD's Office of Fair Housing and Equal Opportunity on Special Purpose Credit Programs as a Remedy for Disparities in Access to Homeownership, December 7, 2021
- CFPB Advisory Opinion on Special Purpose Credit Programs, December 21, 2020
- OCC Advisory Letter 2003-8, Financing Minority Businesses
- Comptroller's Handbook, Fair Lending
- P. Ficklin and C. Nier, *The Use of Special Purpose Credit Programs to Promote Racial and Economic Equity*, Racial Justice in Housing Finance

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# Credit Union Update

*Matthew Nixon, Program Officer  
Office of Consumer Financial Protection  
National Credit Union Administration*

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# Agenda

- Regulation B – Federal Credit Union Violation Statistics and Trends
- 2022 Fair Lending Guidance
  - NCUA Letter to Credit Unions 22-CU-04, Equal Credit Opportunity Act Nondiscrimination Requirements
  - NCUA Letter to Credit Unions 22-CU-03, Special Purpose Credit Programs
- 2023 Exam Scope Activities – Fair Lending

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# Regulation B Violations in Federal Credit Unions

Section	Description	2018		2019		2020		2021		2022	
		#	% of Total	#	% of Total	#	% of Total	#	% of Total	#	% of Total
1002.4	General Rules	13	15%	25	5%	13	10%	34	28%	17	15%
1002.5	Requests for Information	1	1%	2	0%	1	1%	1	1%	2	2%
1002.6	Evaluation of Applications	14	16%	14	3%	5	4%	27	22%	24	22%
1002.7	Extensions of Credit	2	2%	2	0%	5	4%	1	1%	1	1%
1002.9	Notifications	39	45%	389	84%	104	76%	47	39%	57	52%
1002.12	Record Retention	3	3%	20	4%	5	4%	4	3%	2	2%
1002.13	Information for Monitoring Purposes	2	2%	5	1%	2	1%	2	2%	2	2%
1002.14	Providing Appraisals and Other Valuations	12	14%	4	1%	0	0%	2	2%	5	5%
Other		1	1%	2	0%	1	1%	4	3%	0	0%
<b>Total</b>		<b>87</b>	<b>100%</b>	<b>463</b>	<b>100%</b>	<b>136</b>	<b>100%</b>	<b>122</b>	<b>100%</b>	<b>110</b>	<b>100%</b>

- Chart includes data on federal credit unions with assets less than or equal to \$10 billion
- 2022 reflects partial-year data (January 1, 2022 through October 21, 2022)
- Chart counts each violated provision of a regulation once during an examination, regardless of the number of individual violations found during review of that provision

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## Regulation B Violations in Federal Credit Unions (continued)

Section	Description	2018		2019		2020		2021		2022	
		#	% of Total	#	% of Total	#	% of Total	#	% of Total	#	% of Total
1002.4	General Rules	13	15%	25	3%	13	10%	34	28%	17	15%
1002.5	Requests for Information	1	1%	2	0%	1	1%	1	1%	2	2%
1002.6	Evaluation of Applications	14	16%	14	3%	5	4%	27	22%	24	22%
1002.7	Extensions of Credit	2	2%	2	0%	5	4%	1	1%	1	1%
1002.9	Notifications	39	45%	389	84%	104	76%	47	39%	57	52%
1002.12	Record Retention	3	3%	20	4%	5	4%	4	3%	2	2%
1002.13	Information for Monitoring Purposes	2	2%	5	1%	2	1%	2	2%	2	2%
1002.14	Providing Appraisals and Other Valuations	12	14%	4	1%	0	0%	2	2%	5	5%
Other		1	1%	2	0%	1	1%	4	3%	0	0%
	<b>Total</b>	<b>87</b>	<b>100%</b>	<b>463</b>	<b>100%</b>	<b>136</b>	<b>100%</b>	<b>122</b>	<b>100%</b>	<b>110</b>	<b>100%</b>

- Section 1002.9 violations are the most cited Regulation B violations by NCUA examiners
- Include Adverse Action Notice and Notice of Incompleteness content, and notification deadlines
- NCUA examiners performed Section 1002.9 transaction testing in 2019

## Regulation B Violations in Federal Credit Unions (continued)

Section	Description	2018		2019		2020		2021		2022	
		#	% of Total	#	% of Total	#	% of Total	#	% of Total	#	% of Total
1002.4	General Rules	13	15%	25	5%	13	10%	34	28%	17	15%
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- In 2021, NCUA shifted examiner efforts toward the broad nondiscrimination requirements of ECOA and Regulation B
- Since 2021, NCUA examiners have reviewed Interagency Fair Lending Examination Procedures Risk Factors

## NCUA Letter 22-CU-04

### NCUA LETTER TO CREDIT UNIONS

NATIONAL CREDIT UNION ADMINISTRATION  
1775 Duke Street, Alexandria, VA 22314

DATE: February 2022                      LETTER NO: 22-CU-04  
TO: Federally Insured Credit Unions  
SUBJ: Equal Credit Opportunity Act Nondiscrimination Requirements

Dear Boards of Directors and Chief Executive Officers:

The [Equal Credit Opportunity Act](#) (ECOA) promotes the availability of credit to all creditworthy applicants without regard to race, color, religion, national origin, sex, marital status, or age



## NCUA Letter 22-CU-04

- Defines discriminatory credit practices
- Addresses risk areas related to:
  - Applicant marital status
  - Applicant age
  - Income consideration
  - Redlining
  - Indirect lending

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## NCUA Letter 22-CU-03

### NCUA LETTER TO CREDIT UNIONS

NATIONAL CREDIT UNION ADMINISTRATION  
1775 Duke Street, Alexandria, VA 22314

DATE: February 2022 LETTER NO: 22-CU-03  
TO: Federally Insured Credit Unions  
SUBJ: Special Purpose Credit Programs  
ENCL: [Interagency Statement on Special Purpose Credit Programs Under the Equal Credit Opportunity Act and Regulation B](#)

Dear Boards of Directors and Chief Executive Officers:  
Five federal financial institutions regulatory agencies, in conjunction with the Department of Housing and Urban Development (HUD), the Federal Housing Finance Agency, and the

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## NCUA Letter 22-CU-03

- Includes the *Interagency Statement on Special Purpose Credit Programs Under the Equal Credit Opportunity Act and Regulation B*
- Explains the role a SPCP can play in achieving a credit union's financial inclusion mission

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## NCUA 2023 Exam Scope Activities

- 2022 Fair Lending Supervisory Priorities
  - Overt indicators of discrimination risk factors
  - Underwriting discrimination risk factors
  - Appraisal bias
- 2023 Fair Lending Supervisory Priorities
  - Pricing discrimination risk factors
  - Steering discrimination risk factors
  - Appraisal bias

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## Fair Lending Referral Matters

*David Evans, Senior Fair Lending Specialist  
Federal Deposit Insurance Corporation*

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## FDIC Fair Lending Referrals – 2021/2022

- Discuss recent fair lending referrals to the Department of Justice
  - Highlight general fact patterns for matters involving redlining, third party activity, indirect automobile lending, and underwriting discrimination in student lending
  - Provide information and resources to help mitigate fair lending risk

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## Redlining

- Issues identified based on a lack of lending in majority-Black census tracts
- Violation support based on policies that led to a lack of lending:
  - Branching
  - Marketing/Outreach
  - CRA assessment area delineation
- Reasonably Expected Market Area
  - “where the institution actually marketed and provided credit and where it could reasonably be expected to have marketed and provided credit.”

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## Third Party Activity

- Fair lending risk when the institution relies on a third party to underwrite or price credit
- Online platforms where customers apply for credit:
  - Required consumers to remove fraud alert
  - Overt policy that assigned higher-risk rating for “non-spouse”
- The bank is ultimately responsible for managing risks that arise through third-party relationships and activities (includes any activities that violate laws and regulations)

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## Indirect Automobile Lending

- Unmonitored discretion in setting loan rates led to borrowers being priced differently on a prohibited basis
- Statistical analysis controlling for pricing criteria used to determine if the rate disparities are statistically significant
- Bank considered creditor for these transactions and can be held responsible for any buy rate, mark-up, or contract rate disparities

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## Underwriting Discrimination – Student Lending

- Cohort Default Rate (CDR) – published by the U.S. Department of Education
- CDR shows the percentage of a school's borrowers who default on certain loans
- Bank used CDR as an eligibility threshold to determine which applicants could apply for credit
- Disproportionate exclusion of people who attended Historically Black Colleges and Universities (HBCUs) from applying for credit, as certain HBCUs had CDRs that exceeded the cutoff

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## Mitigating Fair Lending Risk

- Review of written policies and procedures, including those of any third parties
- Monitor the actions of the third party to the same extent as if the activity were handled within the bank itself
- Identify potential redlining risk:
  - Understand the bank's market area, and the demographics of the geographies within that area
  - Evaluate the methods by which the bank obtains loan applications, including any marketing or outreach efforts and branches
  - Assess the bank's lending performance within the market area

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## Resources

- [FDIC Banker Resources – Fair Lending](#)
- [FDIC Technical Assistance Videos – Fair Lending](#)
- [FDIC – Identifying and Mitigating Potential Redlining Risks](#)
- [Interagency Fair Lending Examination Procedures](#)
- [Guidance for Managing Third-Party Risk](#)

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## Redlining Risk Assessments: Using the 2020 Decennial Census Data

*Susan Torzilli, Managing Counsel  
Fair Lending Enforcement Section  
Division of Consumer and Community Affairs  
Federal Reserve Board*

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## Overview

- The Federal Reserve's Fair Lending Authority
- Overview of Key Redlining Risk Factors
- Updated Census Data
- New Federal Reserve Resource: Census Reports by MSA
- Applying the Updated Census Data
- Other Federal Reserve Resources

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## The Federal Reserve's Fair Lending Authority

- The Federal Reserve Board supervises:
  - Over 700 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

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### Overview of Key Redlining Risk Factors

- Based on the 2009 Interagency Fair Lending Examination Procedures, examiners generally will review the following risk factors for redlining:
  - Assessment Areas \*
  - Lending Disparities \*
  - Branching \*
  - Marketing and Outreach \*
  - Overt Statements and Complaints

\* Decennial Census Data impacts analysis of risk factor

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### Updated Census Data

- For loan data collected in 2022, Federal Reserve will use updated 2020 Decennial Census data for supervisory activities
- Key changes relevant to redlining analyses and risk assessments:
  - Census tract boundaries changes (number of tracts, physical boundaries)
  - Demographic composition changes
- It is important for lenders to understand the changes in their market(s) and any redlining risk that may arise from those changes

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### New Federal Reserve Resource: Census Reports by MSA

- Federal Reserve developed and is publishing materials to help lenders and the public understand the boundary and demographic composition changes
- The report consists of maps to show boundary and demographic changes by MSA and tables to show changes in volume of majority minority census tracts (MMCTs) in an MSA
- Report allows side-by-side comparison of 2011 - 2015 ACS 5-Year Data (2015 ACS 5-Year) and 2020 Decennial Census data

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## Maps for All 384 MSAs

- Maps show revised geographic dimensions of census tracts
- Maps show racial and national origin composition changes:
  - Tracts are shaded based on the percentage minority group compared to the total tract population



- Maps visualize racial and national origin composition in two ways:
  - Census tracts which are majority Black/Hispanic
  - Census tracts which are majority minority using all minority group

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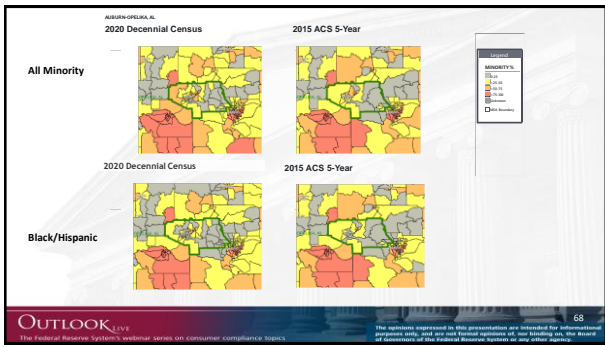
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## Tables for All 384 MSAs

- Tables show:
  - Total number of census tracts within the MSA using the 2015 ACS 5-Year and the 2020 Decennial Census
  - Number of MMCTs using the 2015 ACS 5-Year and the 2020 Decennial Census
    - Presented showing the Black/Hispanic definition and the all-minority definition

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## Tables: Illustrative Example

Majority Minority Tracts (2020 Decennial Census)						Majority Minority Tracts (2015 ACS 5-Year)					
	Total Tracts	Tracts ≤ 50% All Minority	Tracts > 50% All Minority	Tracts ≤ 50% B/H Minority	Tracts > 50% B/H Minority		Total Tracts	Tracts ≤ 50% All Minority	Tracts > 50% All Minority	Tracts ≤ 50% B/H Minority	Tracts > 50% B/H Minority
Number	48	39	9	43	5	Number	27	23	4	25	2
Percentage	100%	81%	19%	90%	10%	Percentage	100%	85%	15%	93%	7%

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## Applying the Updated Census Data: Assessment Area

- Federal Reserve examiners review whether the bank's assessment areas appear to inappropriately exclude MMCTs
- *Managing redlining risk*: review whether demographics changed in the bank's assessment area, and whether MMCTs appear to be inappropriately excluded
  - Such reviews in light of new census data may be contemplated by established policies and procedures to regularly review CRA assessment areas
  - Document reasons for selecting or changing the assessment area delineations

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## Applying the Updated Census Data: Lending Disparities

- Federal Reserve examiners review whether the bank's record of HMDA lending and/or CRA small business lending shows statistically significant disparities in MMCTs when compared with comparable lenders
- *Managing redlining risk*: review lending in the relevant market in light of new tract boundaries and MMCT designations
  - Monitor by comparing lending activity against lenders in relevant assessment areas or credit markets that have lending activity between 50-200 percent of the lender's volume

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## Applying the Updated Census Data: Branching

- Federal Reserve examiners review whether the bank's strategy for branch or loan production office (LPO) locations appears to exclude MMCTs, or whether the branches or LPOs in MMCTs do not offer the same products or services as those offered in nonminority neighborhoods
- *Managing redlining risk*: review branching patterns in the relevant market in light of new tract boundaries and MMCT designations
  - Evaluate whether existing branches are serving MMCTs
  - If not, consider reassessing branching strategies

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## Applying the Updated Census Data: Marketing and Outreach

- Federal Reserve examiners review whether the bank's marketing and outreach strategy appears to treat MMCTs less favorably
- *Managing redlining risk*: review marketing reach in the relevant market in light of new tract boundaries and MMCT designations
  - Evaluate whether marketing and outreach activities are reaching the whole of the credit market area, including the MMCTs
  - If not, consider whether marketing strategies need to be reassessed

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## Other Federal Reserve Resources

- **Consumer Compliance Outlook** – Federal Reserve publication dedicated to consumer compliance
  - [Consumer Compliance Outlook](#)
- **Outlook Live** – Federal Reserve webinars on consumer compliance topics
  - [Archives \(consumercomplianceoutlook.org\)](#)
- **Community Banking Connections** – Federal Reserve publication and website dedicated to providing guidance, resources and tools for community banks
  - <http://www.communitybankingconnections.org/>
- **Interagency Fair Lending Examination Procedures**
  - <http://www.ftiee.gov/PDF/fairlend.pdf>
  - <http://www.ftiee.gov/PDF/fairapps.pdf>
- **Federal Reserve Consumer Help**
  - <https://www.federalreserveconsumerhelp.gov/>

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## Recent Redlining Enforcement Actions

*Jennifer A. Slagle Peck, Trial Attorney / Detailee from the OCC  
Civil Rights Division  
U.S. Department of Justice*

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## Combatting Redlining Initiative

- On October 22, 2021, the Department of Justice announced an unprecedented, coordinated enforcement effort to combat redlining
- Since then, the Department has opened numerous redlining investigations, and settled four matters.
  - Cadence – Houston, TX
  - Trustmark – Memphis, TN
  - Trident Mortgage – Philadelphia, PA
  - Lakeland Bank – Newark, NJ
- The Department is working with US Attorneys’ Offices and focused on building strong partnerships with regulators

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## Defining Redlining

- Redlining: an illegal practice whereby lenders discourage loan applications, or deny equal access to home loans and other credit services, or avoid providing home loans and other credit services to neighborhoods based on the race, color, or national origin of the residents of those neighborhoods
- Violates both the Fair Housing Act and the Equal Credit Opportunity Act
- Areas of focus to determine if a lender has redlined an area can include:
  - CRA assessment area / lender’s service area
  - Statistical analyses
  - Branch locations and placement of mortgage loan officers
  - Marketing and advertising

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## Recent Redlining Enforcement Resolutions

- *CFPB & United States v. Trident Mortgage Company* (E.D. Pa.)
  - Complaint filed on July 27, 2022, available [here](#)
  - Consent Order entered on September 14, 2022, available [here](#)
- *United States v. Lakeland Bank* (D. NJ.)
  - Complaint filed on September 28, 2022, available [here](#)
  - Consent Order entered on September 29, 2022, available [here](#)

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## Trident

- Referral from the CFPB
- First DOJ redlining case against a non-depository institution
- Investigation was conducted jointly by DOJ, CFPB, and three state Attorneys General
- The state AGs also made allegations against Trident's affiliated real estate company, Fox and Roach
- Investigation uncovered emails circulated within the company that contained racial slurs and racist content

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## Trident – Statistics

- Application disparities
  - Statistically significant disparities in each year from 2015 through 2019 and across all years combined
  - Peers generated applications in high-minority census tracts (HMCTs) at a rate 2.5 times that of Trident
  - Trident's applications in MMCTs and HMCTs were disproportionately from white borrowers
- Origination disparities
  - Peers generated loans in HMCTs at a rate twice that of Trident
- Trident knew of disparities but did not take meaningful action prior to the CFPB exam

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### Trident – Geography & Offices

- 80% of Trident’s lending was in the Philadelphia MSA
- Physical offices co-located with affiliated real estate company throughout the MSA
- 53 offices
  - 51 in majority-white areas
  - 2 in majority-minority areas
  - 0 in high-minority areas
- Trident did not assign any loan officers to solicit applications in MMCTs or incentivize the development of business in MMCTs
- No efforts to hire loan officers with ties to MMCTs

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### Trident – Terms of Resolution

- \$18.4 million in a loan subsidy fund targeted at majority-minority neighborhoods
- \$875,000 toward advertising and community outreach
- \$750,000 toward community development partnerships
- \$375,000 toward consumer financial education
- At least four office locations in majority-minority neighborhoods
- At least four loan officers assigned to majority-minority neighborhoods
- \$4 million civil money penalty to CFPB

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### Lakeland

- Independent investigation based on Attorney General’s pattern-or-practice authority under the Fair Housing Act
- Allegations focused on a lending area based on geographical boundaries, Lakeland’s Assessment Area, and the reasonably expected market area
- Statistical evidence demonstrated Lakeland’s peers generated applications – and loan originations – in majority-Black and Hispanic areas at a rate 5 times that of Lakeland for the Relevant Time Period

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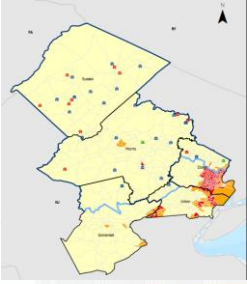
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### Lakeland – Geography & Offices

- Lakeland's Assessment Area did not include the entire Newark MD
- Counties with MBHCTs were only included in part; MBHCTs were excluded
- No branches in an MBHCT

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### Lakeland - Marketing

- Lakeland relied on loan officers to develop referral sources and distribute marketing materials
- When Lakeland finally directed marketing efforts to MBHCTs, efforts were minimal and inadequate
- Lakeland knew of its redlining risk based on internal assessments but still failed to conduct meaningful outreach or marketing to potential applicants within MBHCTs

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### Lakeland – Terms of Resolution

- \$12 million in a loan subsidy fund targeted at majority-Black and Hispanic areas
- \$750,000 toward advertising, community outreach, and consumer financial education
- \$400,000 toward community development partnerships
- At least two new branches (including one in Newark)
- At least four loan officers assigned to majority-Black and Hispanic neighborhoods

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## Where to find us

[www.usdoj.gov/fairhousing](http://www.usdoj.gov/fairhousing)

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

<http://www.justice.gov/crt/housing-and-civil-enforcement-section>

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## Questions?

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