2023 Interagency
Fair Lending Webinar

Outlook Live Webinar – December 14, 2023

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The Federal Reserve System's webinar series on consumer compliance topics

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Webinar Overview

- FHFA: Enterprise Fair Lending and Fair Housing Rating System

- DOJ: Combating Redlining Initiative: Recent Enforcement Actions

- FDIC: Redlining Risk: From Awareness to Taking Actions

- NCUA: Indirect Auto Fair Lending

- HUD: Appraisal Discrimination: Application of the Fair Housing Act & Risk Mitigation

- CFPB: Fair Lending & Consumer Risks in AI/ML

- FRB: Disability Discrimination

- OCC: CRA Final Rule, Fair Lending Laws, and Financial Inclusion

FHFA AB 2023-05:
Enterprise Fair Lending and Fair Housing Rating System

Lindsey Cope, Attorney Advisor (Fair Lending)
Office of Fair Lending Oversight
Federal Housing Finance Agency

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

Rating System Objectives

- Clarify FHFA's fair lending supervisory expectations for Enterprises as examination program matures

- Provide feedback to Enterprises in same way they receive feedback from other FHFA supervisory offices

- Establish policy of progressive supervision; ensure consequences for poor ratings

Background

- Issued as [Advisory Bulletin 2023-05](#)

- System modeled after Consumer Compliance (CC) Ratings, CRA, and CAMELSO rating systems

Rating System Overview

- Does not apply to Federal Home Loan Banks

- Scale of 1-5, 1 being best, 5 being worst

- Component ratings feed into composite rating

- Measures four component factors:

Factor	Factor Description
Enterprise Operations and Efficacy	• Business unit fair lending compliance • Board and management oversight
Fair Lending Oversight Program	• Fair lending compliance program performance
Supervision Process and Legal Compliance	• Examination process • Severity/duration of adverse findings
Equitable Housing Finance	• Equity measures and efficacy

Composite Ratings

1. The Enterprise's demonstrated commitment to fair lending compliance, risk prevention, and equity and its fair lending compliance management program is strong in every respect and typically, each component is rated "1" or "2". The Enterprise as a whole is candid, proactive, and cooperative with its regulators about any issues and the Enterprise is in substantial compliance with the law and with supervisory standards.

2. The Enterprise's dedication to fair lending compliance, risk prevention, and equity and its fair lending compliance management program is generally strong and most components are rated "1" or "2", with no component rated more severely than a "3". The Enterprise is in significant compliance with the law and with supervisory standards, and engagement with regulators regarding fair lending issues is satisfactory.

Composite Ratings *(continued)*

3. The Enterprise's dedication to fair lending compliance, risk prevention, and equity and its fair lending compliance management program needs improvement. Most components are rated "3" or better, with no component rated more severely than a "4". The Enterprise may be in non-compliance with one or more legal requirements or supervisory standards and its engagement with regulators regarding fair lending issues and/or equity goals needs improvement.

4. The Enterprise's dedication to fair lending compliance, risk prevention, and equity and its fair lending compliance management program is weak and deficient. The Enterprise is in non-compliance with the law or supervisory standards.

5. The Enterprise's dedication to fair lending compliance, risk prevention, and equity and its fair lending compliance management program is critically deficient or nonexistent. The Enterprise is in substantial non-compliance with the law or supervisory standards and equity goals and requirements.

	Enterprise Operations and Efficacy				
Rating – 1	Business units prioritize risk mitigation with controls, less discriminatory alternatives, collaboration	All business units regularly & thoroughly review policies for issues	Board and Management engaged and proactive about risk mitigation	Positive trends or meaningful efforts in reducing key disparities	Fair lending prioritized across Enterprise
Rating – 2	Business units generally consider risk mitigation	Policies generally reviewed for risk before adoption	Board and management engaged in risk mitigation	Most key disparities show positive trends or have strong justifications	
Rating – 3	Business units sometimes consider risk mitigation	Policies sometimes reviewed for risk before adoption	Board and management engagement with fair lending risk needs improvement	Key disparities show some negative trends, most with strong justifications	
Rating – 4	At least some business units do not generally consider risk mitigation	Business unit policies are frequently not reviewed for risk prior to adoption	Board and management engagement in risk mitigation deficient	Negative trends in many key disparities with weak justifications	
Rating – 5	At least one business unit's risk mitigation efforts critically deficient	At least some business units routinely fail to review policies for risk prior to adoption	Board and management unengaged in risk mitigation or actively obstructionist	Most, if not all, key disparities trend negatively with weak justifications	

Fair Lending Oversight Program

Rating – 1	Business units receive regular comprehensive fair lending training	Strong monitoring of consumer impact models & policies	High-risk activities limited and subject to heightened review	Goals & outcomes of compliance exceed minimum legal standards	Quality of fair lending analysis is strong
Rating – 2	All business units generally receive regular comprehensive training	Satisfactory monitoring of key consumer impact models & policies	Alternatives & guardrails appropriately applied for high- risk activities	Goals & outcomes generally exceed minimum legal standards	Quality of fair lending analysis is meaningful
Rating – 3	Not all business units receive regular fair lending training	Ongoing monitoring of consumer impact models & policies may not be comprehensive	High-risk activities not always adequately limited	Goals & outcomes may seek to exceed minimum legal standards but do not always succeed	Quality of fair lending analysis needs improvement
Rating – 4	Most business units receive inconsistent or inadequate fair lending training	Inconsistent or deficient monitoring of consumer impact models & policies	High-risk activities allow for discretion without appropriate guardrails	Goals & objectives do not seek to exceed and/or do not meet minimum legal standards	Quality of fair lending analysis is deficient
Rating – 5	Most business units do not receive training or training is deficient	Minimal or no ongoing monitoring of consumer impact models & policies	Minimal or no controls for high-risk activities	Goals & objectives of program critically deficient; does not meet minimal legal standards	Quality of fair lending analysis critically deficient

Supervision Process and Legal Compliance

Rating – 1	No violations identified in rating year	Any MRAs are Deficiencies	Enterprise works diligently and efficiently to resolve outstanding MRA	Cooperative and candid in oversight
Rating – 2	Most, if not all, risks managed so violations or MRA isolated	Efforts to resolve outstanding violations or MRA significant	Generally candid and cooperative in oversight engagement	
Rating – 3	Violations and/or MRAs have been identified	Efforts to resolve outstanding violations or MRAs need improvement	Enterprise is sometimes candid and cooperative in oversight	
Rating – 4	MRAs, individual or systemic violations identified in the subject year	Enterprise's efforts to resolve outstanding violations or MRAs deficient	Enterprise generally lacks candor and cooperation in oversight	
Rating – 5	Individual and/or systemic violations and MRAs identified in rating year	Efforts to resolve outstanding violations or MRAs critically deficient	Enterprise dishonest and/or uncooperative in oversight	

Equitable Housing Finance

Rating – 1	Equity prioritized across Enterprise	EHFP sets ambitious and impactful goals; updates goals mid cycle	Enterprise works diligently towards goals; unmet goals have strong justification	Strong, respectful engagement with community & individual stakeholders	All EHFP objectives & actions innovative, meaningful, clearly relate to identified barriers
Rating – 2	Pursues current EHFP and builds on prior EHFP	Difficult, meaningful goals; sometimes mid-cycle updates	Good faith effort to meet goals; most unmet have strong justification	Extensive engagement & responsiveness to individual & community stakeholders	Nearly all objectives & actions meaningful and logically related to barriers
Rating – 3	Equity efforts limited to current EHFP; updates not usually pursued mid cycle	EHFP sets moderately difficult or impactful goals	Efforts to meet goals need improvement; justifications for failing to meet are weak	EHFP reflects range of stakeholders and is responsive to feedback	Some objectives & goals logically relate to identified barriers
Rating – 4	Enterprise's commitment to equity is deficient	Enterprise sets goals that are unambitious and/or with minor impact	Efforts to meet goals deficient; justifications for unmet goals weak	Some stakeholder engagement not from diverse range or not responsive	Few objectives & actions logically relate to identified barriers
Rating – 5	No articulated commitment to equity	EHFP goals easy to achieve and/or have minimal impact	Efforts to meet goals critically deficient; justifications deficient or nonexistent	Engagement only with preexisting stakeholders; unresponsive to feedback	Objectives & actions do not logically relate to identified barriers

DOJ's Combating Redlining Initiative: Recent Enforcement Actions

Sara L. Niles
Senior Trial Attorney / Coordinator of Combating Redlining Initiative
Civil Rights Division
U.S. Department of Justice

Defining Redlining

- Redlining occurs when lenders deny or discourage applications or avoid providing loans or other credit services in neighborhoods because of the race, color, or national origin of the residents of those neighborhoods

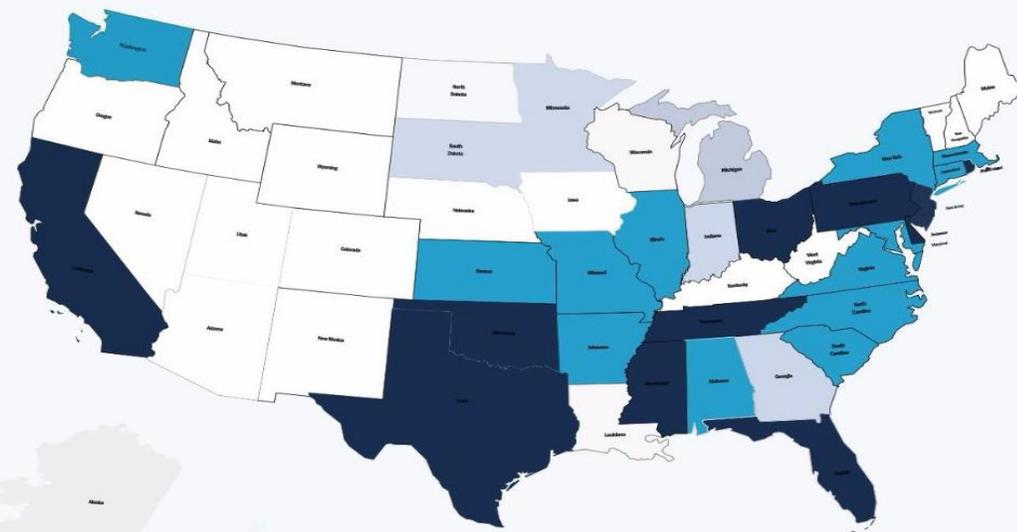- Violates both the Fair Housing Act and the Equal Credit Opportunity Act

Combating Redlining Initiative

- On October 22, 2021, the Department of Justice announced an unprecedented, coordinated enforcement effort to combat redlining

Over $100 Million to Redlined Communities

LEGEND
▼ CRI Settlements
▼ CRI Investigations
▼ Pre-CRI Redlining Settlements

Recent Redlining Enforcement Resolutions

- *United States v. City National Bank* (C.D. California)
- *United States v. Park National Bank* (S.D. Ohio)
- *United States v. ESSA Bank* (E.D. Pennsylvania)
- *United States v. American Bank of Oklahoma* (N.D. Oklahoma)
- *United States v. Washington Trust Co.* (D. Rhode Island)
- *United States v. Ameris Bank* (M.D. Florida)

City National Bank (Los Angeles MD)

- Largest bank headquartered in Los Angeles, CA
- Approximately 55% of Los Angeles's census tracts are majority-Black and Hispanic
- Assets of over $90 billion
- Identifies as a "bank to the stars" – serving high net worth clients in business and entertainment industries and offering mortgages only as an "accommodation" to existing clients

City National Bank – Key Allegations

- Branches: Of the 11 branches opened in the last 20 years only <u>one</u> is located in a majority-Black and Hispanic neighborhood

- Inadequate marketing

- Inadequate fair lending oversight

- Failure to offer affordable loan products

- Statistics: Peers generated applications for properties in Majority-Black and Hispanic tracts at **<u>six times</u>** the rate of CNB

City National Bank Applications 2017-2020
Los Angeles Metropolitan District (Los Angeles County)

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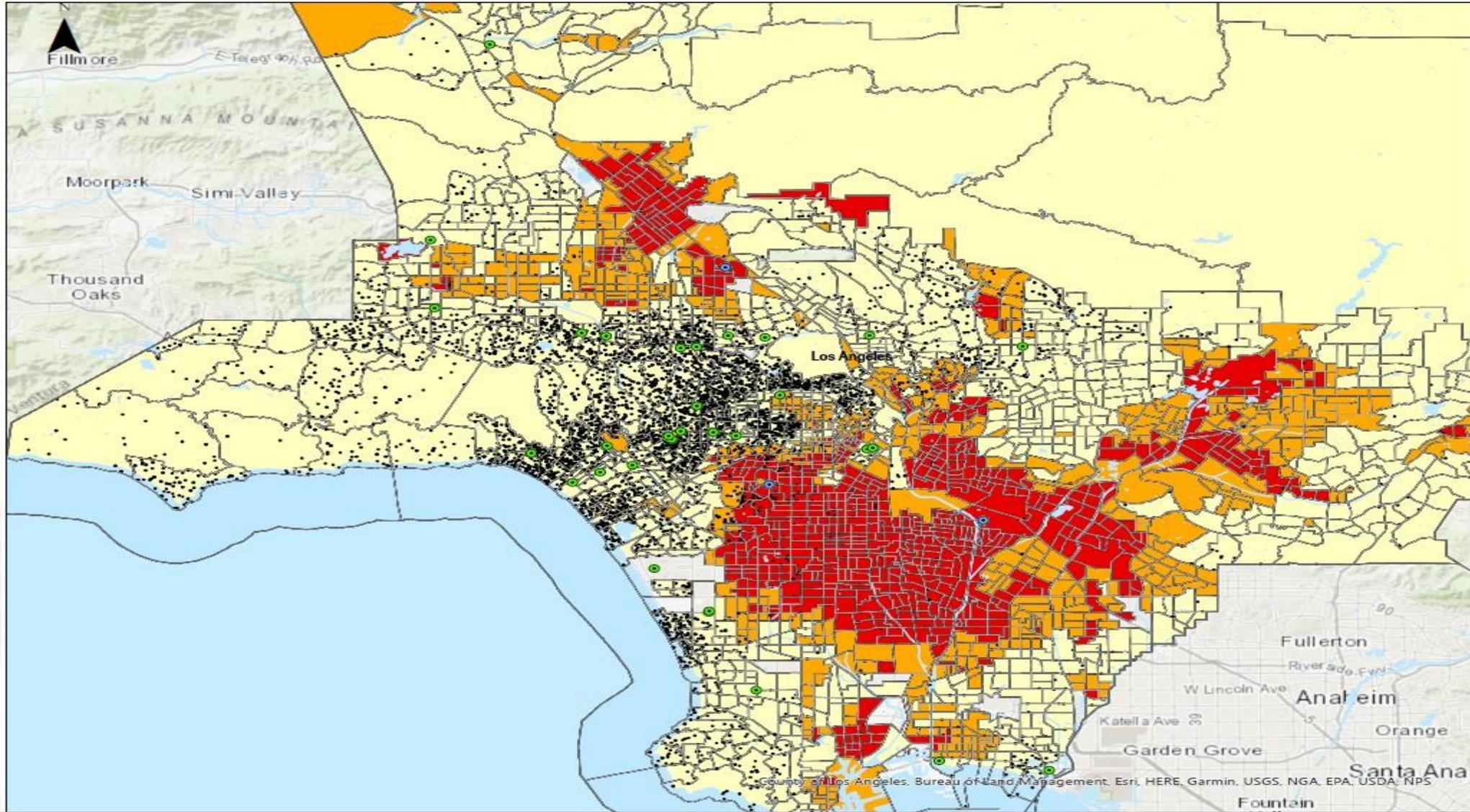
City National Bank – Terms of Resolution

- $29.5 million in a loan subsidy fund targeted at majority-Black and Hispanic neighborhoods
- $500,000 toward advertising and community outreach
- $750,000 toward community development partnerships
- $500,000 toward consumer financial education
- At least one new full-service branch in a majority-Black and Hispanic neighborhood
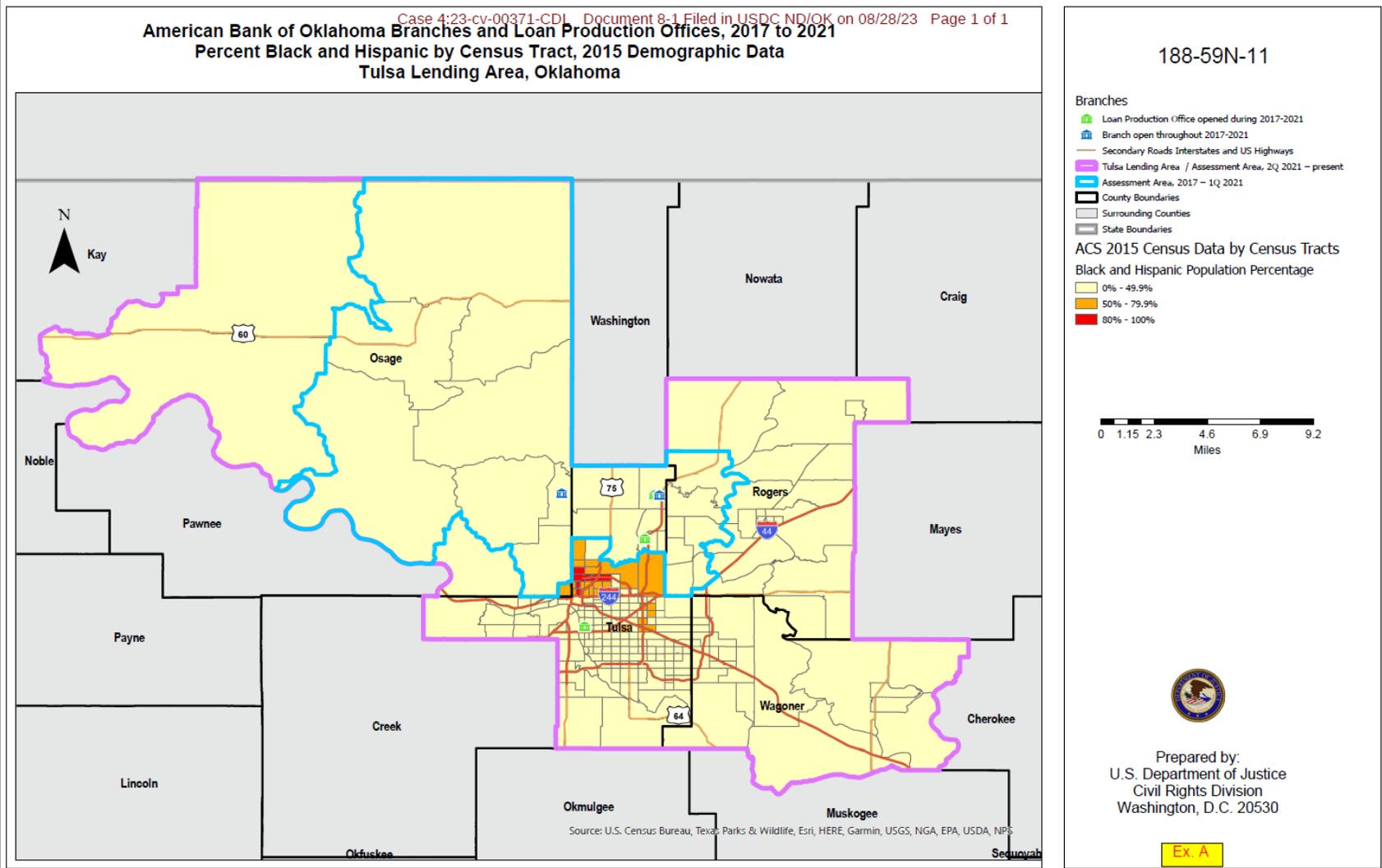- At least four loan officers assigned to majority-Black and Hispanic neighborhoods

American Bank of Oklahoma (Tulsa MSA)

- Small community bank in the Tulsa Metropolitan Area
- Historically serviced majority-white suburbs north of Tulsa
- When expanded into Tulsa, skipped over the majority-Black and Hispanic areas in the northern portion of Tulsa County
- Brought in conjunction with the US Attorney's Office in the Northern District of Oklahoma
- Time period: 2017-2021

American Bank of Oklahoma – Key Allegations

- Branches and LPOs
- Inadequate marketing
- Failure to implement effective fair lending compliance management system after warning from regulator
- Statistics: Peers generated applications for properties in Majority-Black and Hispanic tracts at **five times** the rate of ABOK
- Email evidence
- Assessment Area

American Bank of Oklahoma- Assessment Area

American Bank of Oklahoma Branches and Loan Production Offices, 2017 to 2021
Percent Black and Hispanic by Census Tract, 2015 Demographic Data
Tulsa Lending Area, Oklahoma

American Bank of Oklahoma – Terms of Resolution

- $950,000 loan subsidy fund
- $100,000 toward advertising, community outreach, and consumer financial education
- $100,000 toward community development partnerships
- Physical Expansion- Community Oriented LPO
- At least two loan officers assigned to majority-Black and Hispanic neighborhoods

Combating Modern Day Redlining

[Office of Public Affairs | PSA: Justice Department is Combating Modern-Day Redlining](#)
[United States Department of Justice](#)

[View Video (YouTube)](#) | [Redlining and Your Rights (justice.gov)](#)

Where to find us

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

Redlining Risk: From Awareness to Taking Actions

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Division of Depositor and Consumer Protection
Federal Deposit Insurance Corporation

Overview

- Awareness and Critical Thinking to Lending Patterns and Demographics.

- Use of Mapping to Measure the Effectiveness of a Fair Lending Program.

- Take Action to Mitigate Redlining Risks.

Understanding the Principles of Lending Patterns and Demographics

Any County in Any State

CONN: CONNECTICUT
MASS: MASSACHUSETTS
NH: NEW HAMPSHIRE
RI: RHODE ISLAND
VT: VERMONT

Any County At A Glance

Changing Demographics

	2010 US Census	2020 US Census
Any County Census Tracts	529	645
Majority Minority Tracts	396 (74.9%)	514 (79.7%)
Majority Hispanic Tracts	169 (31.9%)	208 (32.2%)
Majority Black Tracts	73 (13.8%)	74 (11.5%)
Majority Asian Tracts	3 (0.6%)	13 (2.0%)
% Owner Occupied Households in Majority Minority Tracts	45.5%	51.4%
Median Home Value in Majority Minority Tracts (Weighted Average)	$119,085	$193,390

Explanation of FDIC's Statistical Redlining Analysis

- Redlining analysis is conducted using publicly available Home Mortgage Disclosure Act (HMDA), and 2020 Census data.

- The analysis compares a bank's loan application and origination counts within the identified geography to the aggregated loan application and origination counts of other institutions serving those same areas.

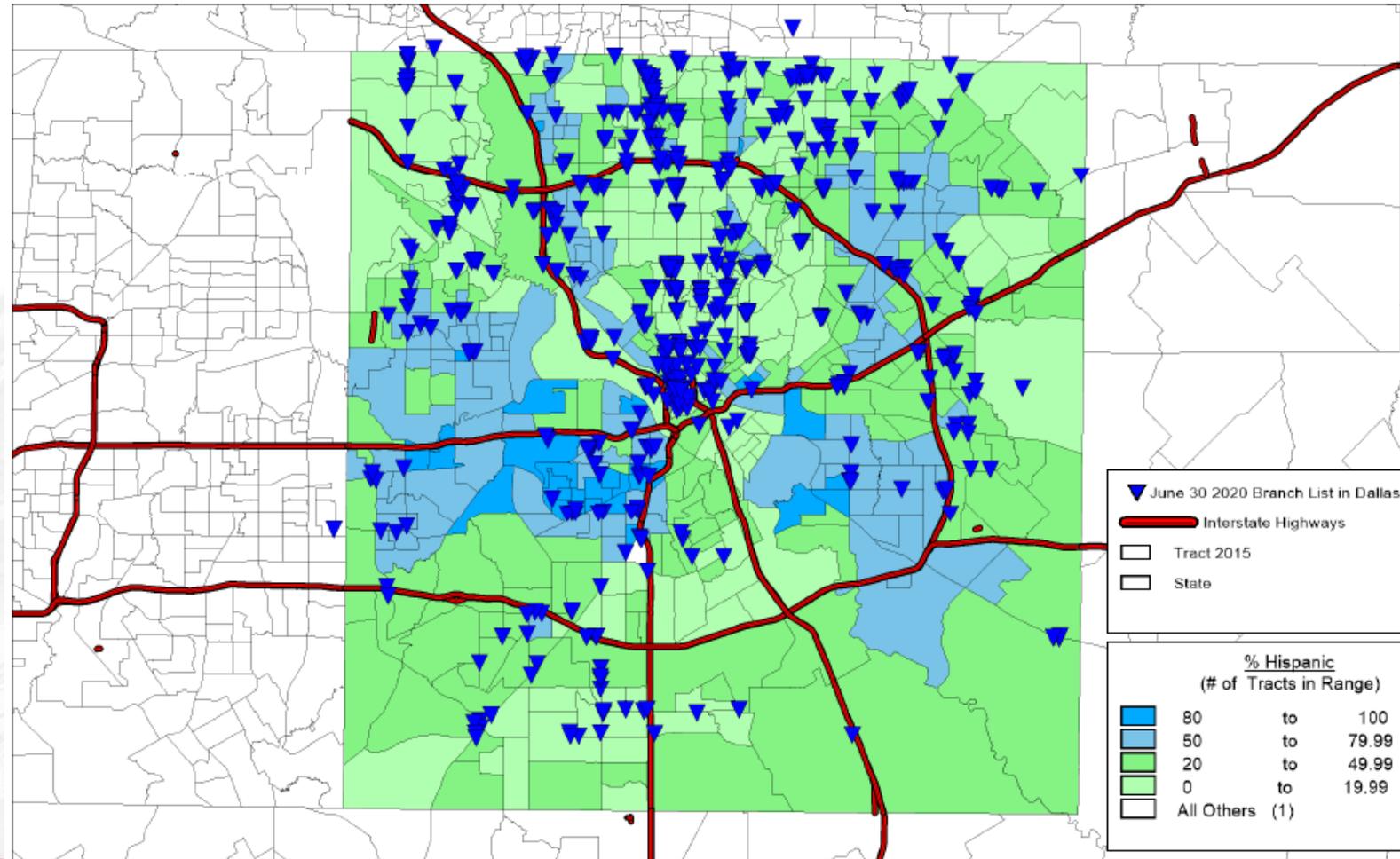# Explanation of FDIC's Statistical Redlining Analysis
(continued)

- **Loan Types:** Analytics will restrict the analyses to the loan type (75% Lending Profile) for both the Bank and the adjusted aggregate of other HMDA reporters.

- **FDIC-Identified Peer Institutions:** Adjusted aggregate institutions are selected based on two criteria – HMDA reportable application counts and incidence of reportable rate spread on HMDA reportable loans.
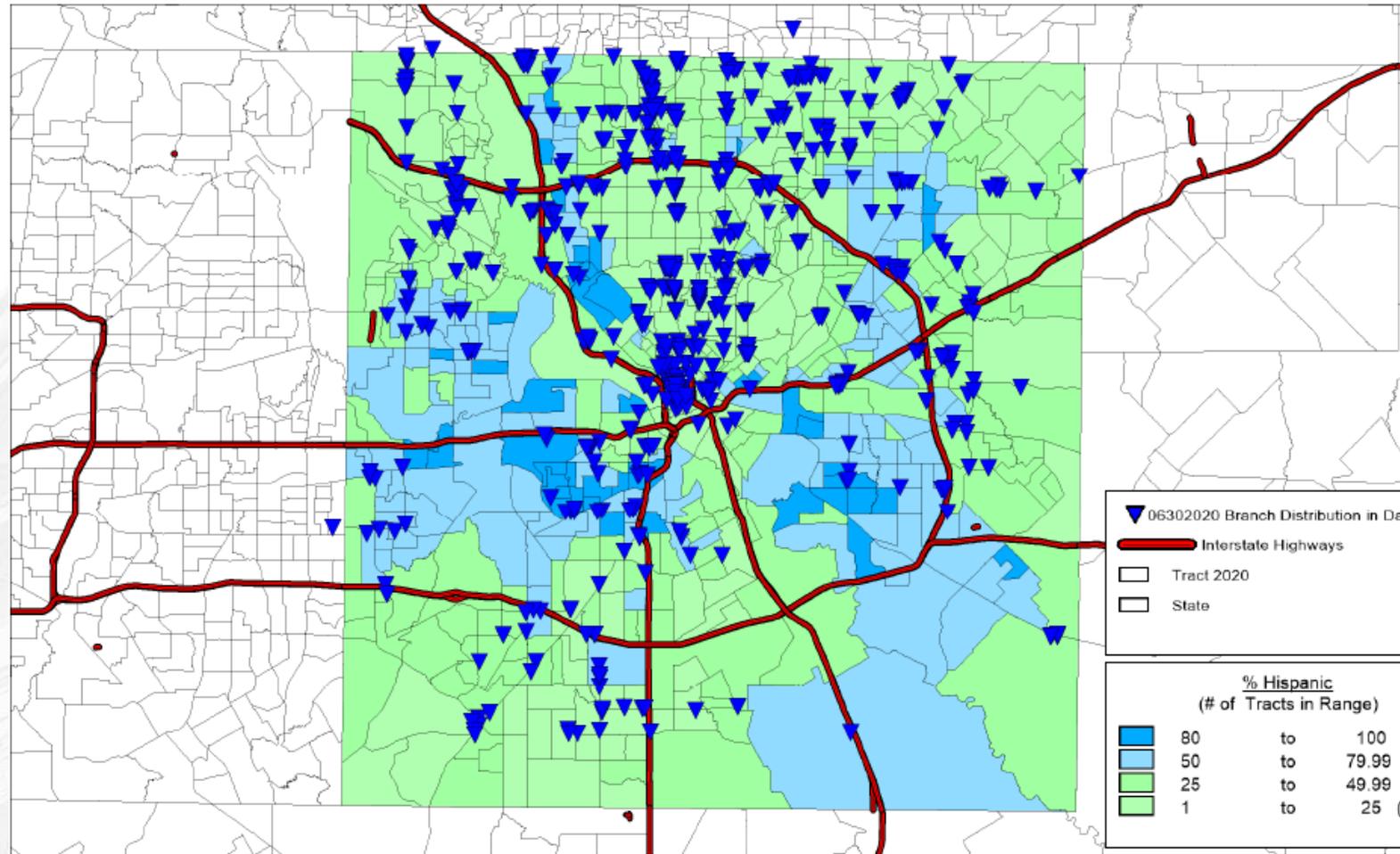
Use of Mapping to Measure the Effectiveness of a Fair Lending Program

- Mapping – Where are our institutions located per Any County within Any State? Where are our branches and/or loan production offices located per Any County within Any State?
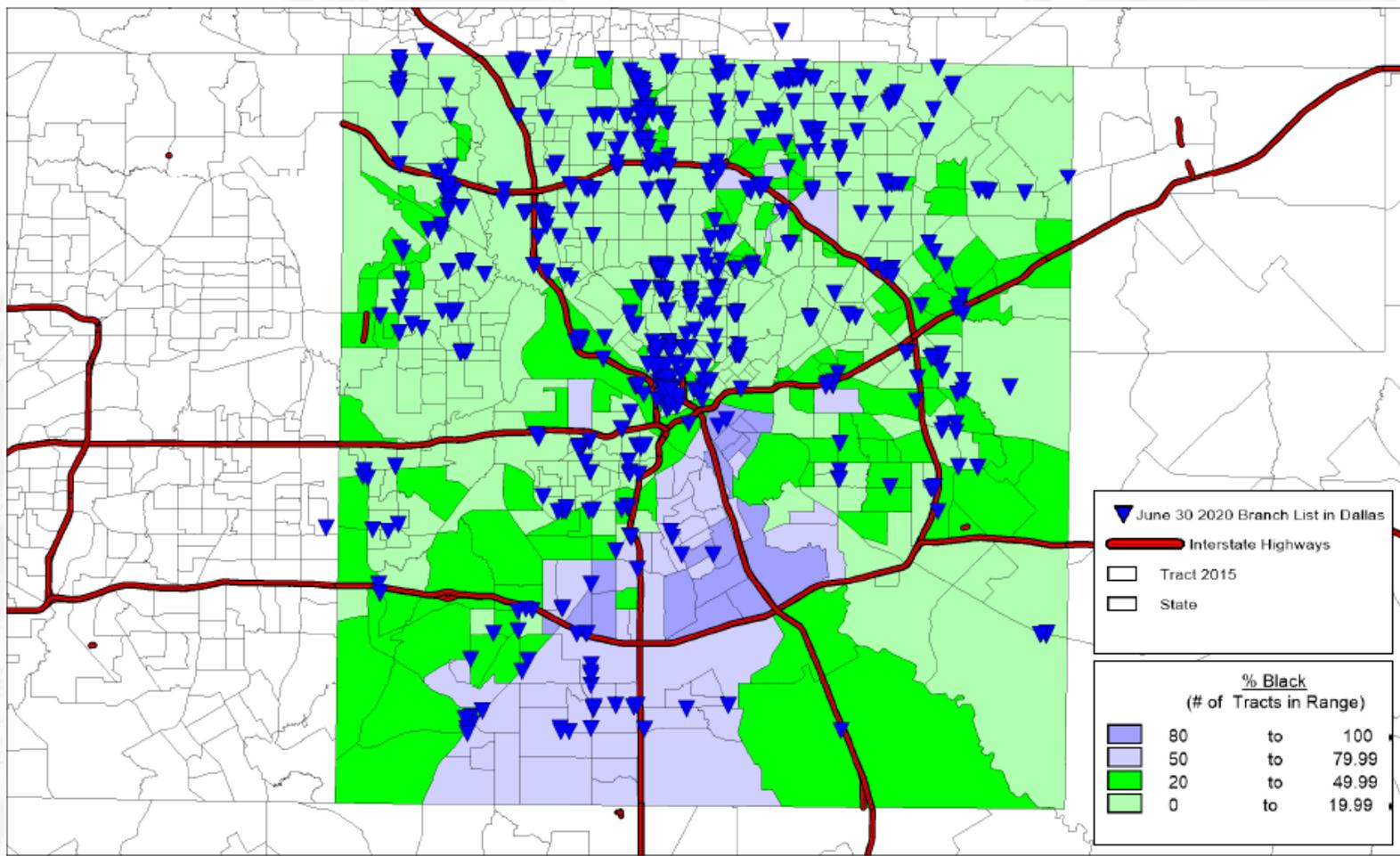
Any County: 2015 ACS Data with
2020 Branch Distribution – Percent Hispanic

Legend:

▼ June 30 2020 Branch List in Dallas
━━ Interstate Highways
☐ Tract 2015
☐ State

% Hispanic
(# of Tracts in Range)

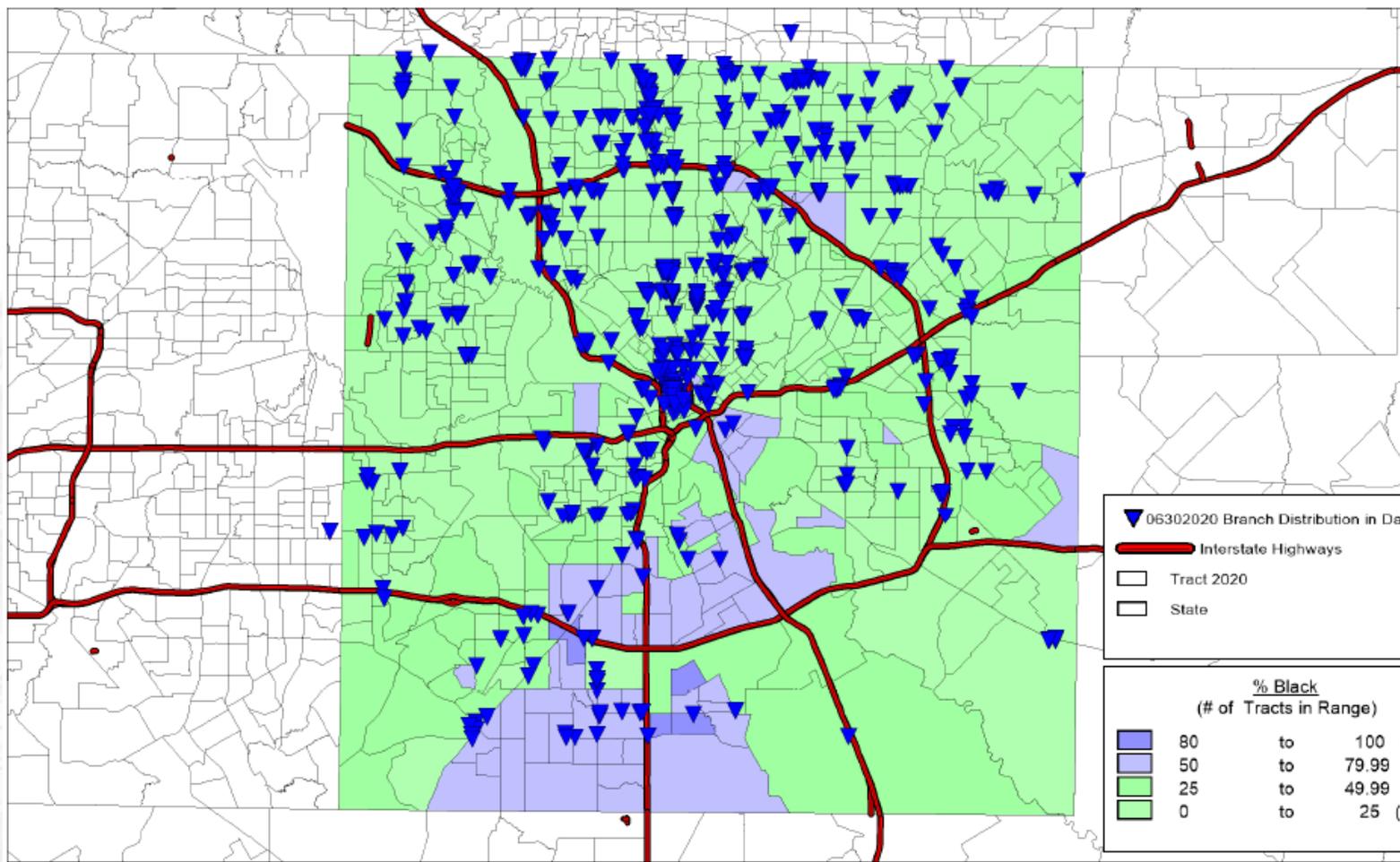|			
	80	to	100
	50	to	79.99
	20	to	49.99
	0	to	19.99
All Others	(1)		

Any County: 2020 Census Data with
2020 Branch Distribution – Percent Hispanic

Any County: 2015 ACS Data with
2020 Branch Distribution– Percent Black-African American

Legend:
- ▼ June 30 2020 Branch List in Dallas
- ▬ Interstate Highways
- ☐ Tract 2015
- ☐ State

% Black
(# of Tracts in Range)

80	to	100
50	to	79.99
20	to	49.99
0	to	19.99

Any County: 2020 ACS Data with
2020 Branch Distribution– Percent Black-African American

Take Action to Mitigate Redlining Risks

- Risk Factor: Lack of applications and loans in majority-minority tracts

Conduct Credit Needs Assessment -	Determine what are the credit needs of Majority Minority Areas, and how do these needs align with the financial institution's business model. Consider ways to bridge the gaps between credit needs and credit products being offered.
Create Strategies for Applications -	Implement, Revise and Manage the on-going effectiveness.
Conduct Marketing Due Diligence -	Considerations that generic (direct or mass) marketing may not provide the best results from a historical and lending performance perspective. Considerations for Outreach vs Advertisement Approach.
Connect Business Relationships and Referral Sources -	Make sure referrals are RESPA compliant.
Create Alliances with Third Parties -	Build trusting connections, communication and community.

Take Action: Lack of a Strategy to Compete with Mortgage Entities Using Technology

- Ensure operations/marketing of products thru technology is consistent within both non-minority AND majority-minority geographies within markets served.

- Is there a way to reduce the time for a mortgage approval?

- Is there a way to facilitate the mortgage process, such as online mortgage applications or promoting the convenience of finding mortgage options through a few simple steps?

Take Action to Mitigate Redlining Risks

- Analyzing Lending Patterns:
  - Review lending patterns visually.
  - Look at both HMDA applications and originations.
  - When historical risk is noted, periodically track rather than waiting for the annual HMDA data.
  - Evaluate what lending policies, procedures or practices are driving the lending numbers.
  - Think about how changes correlate to the numbers before implementing changes.
  - Take action – Implement changes and reevaluate delivery to add convenience?

Take Action to Mitigate Redlining Risks
(continued)

- Banks can analyze without fair lending software:
  - Example – Using pivot tables in Excel.
- Consider comparing your bank's lending numbers to a similar situated HMDA group and demographics:
  - Typically, 50% to 200% of your bank's HMDA volume.
  - This data can be pulled from the FFIEC website and calculated without fair lending software.
  - FFIEC HMDA Flat Files Data for Similar Situated HMDA group: https://www.ffiec.gov/hmda/hmdaflat.htm.

Take Action: Analyzing Marketing
(continued)

- Marketing is more than advertising/promotions.

- Outreach efforts are part of marketing.

- Develop measurable performance goals, such as increase in loan applications or loan originations for a specific time period.

- Establish a tracking system to document Efforts.

- Reevaluate whether performance goals are being met.

- Take Action – Be Proactive and Not Reactive.

Take Action to Mitigate Redlining Risks
(continued)

- Reporting to the Board and Management is Not Enough – Action is Required.

- Provide an accurate picture of risk. Highlight weak areas and the methodology for corrective action.
  - The quality of the reporting is more important than quantity.

Indirect Auto Fair Lending

Matthew Nixon, Director
Division of Fair Lending Supervision
Office of Consumer Financial Protection
National Credit Union Administration

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Overview

- NCUA's 2024 Indirect Auto Fair Lending Examination Approach
- NCUA Guidance
  - NCUA Letter to Credit Unions 22-CU-04, Equal Credit Opportunity Act Nondiscrimination Requirements
  - NCUA Letter to Credit Unions 01-CU-20, Due Diligence Over Third Party Service Providers
  - NCUA Letter to Credit Unions 07-CU-13, Evaluating Third Party Relationships
  - NCUA Letter to Credit Unions 10-CU-15, Indirect Lending and Appropriate Due Diligence
- Oversight Expectations

2024 Indirect Auto Fair Lending Screening Process

- In 2024, the NCUA will perform fair lending examinations at some federal credit unions meeting to following conditions:
  - Total assets >= $500 million
  - Ratio of indirect auto loans / total loans > 48%
  - Permits discretionary markups > 125bps
  - No recent NCUA fair lending examination
- Does not preclude fair lending examiners from reviewing indirect auto fair lending at other examinations

Indirect Auto – DOJ Public Consent Orders

	Ally	Honda	Fifth Third	Toyota
Date	12/19/2013	07/14/2015	09/28/2015	02/02/2016
Alleged Disparity	AA 29bps Asian/PI 22bps Hispanic 20bps	AA 36bps Asian/PI 25bps Hispanic 28bps	AA 35bps ----- Hispanic 36bps	AA 27bps Asian/PI 18bps -----
Restitution	$80M redress $18M penalty	$24M redress	$18M redress	Up to $21.9M redress
Program Impact	Keep Program (200-250bps) Enhanced CMS	Reduce Caps (100-125bps) Less Rigorous CMS	Reduce Caps (100-125bps) Less Rigorous CMS	Reduce Caps (100-125bps) Less Rigorous CMS

NCUA Letters to Credit Unions

- NCUA Letter to Credit Unions 22-CU-04, Equal Credit Opportunity Act Nondiscrimination Requirements
  - The use of discretionary markups presents fair lending risks not usually associated with flat fee or flat percentage compensation structures.
  - Credit unions that permit discretionary markups should ensure their fair lending compliance management systems are sufficiently robust to enable the credit union to measure and address pricing disparities on a prohibited basis.
- NCUA Letter to Credit Unions 01-CU-20, Due Diligence Over Third Party Service Providers
  - Failure to establish monitoring and reporting practices over third parties constitutes an unsafe and unsound practice.

NCUA Letters to Credit Unions

- NCUA Letter to Credit Unions 07-CU-13, Evaluating Third Party Relationships
  - Credit unions trading direct control over business functions to third parties may expose themselves to credit, interest rate, liquidity, transaction, compliance, strategic, and reputation risks.
  - Credit unions engaging in third party relationships must have an infrastructure (staffing, equipment, technology, etc.) sufficient to monitor the performance of third-party arrangements.
- NCUA Letter to Credit Unions 10-CU-15, Indirect Lending and Appropriate Due Diligence
  - Sound due diligence includes assessing dealer relationships both initially and ongoing, comprehensive written policies, assessing legal agreements, and risk management.

Indirect Lending Oversight

- Communicate Expectations – which may include:
  - Sending written communication to participating dealers explaining the credit union's ECOA expectations
  - Articulating the credit union's expectation that interest rates will be marked up in a non-discriminatory manner, if discretionary markups are permitted

- Monitor – Conduct regular analyses of indirect loan pricing data for potential disparities on a prohibited basis, if discretionary markups are permitted.

- Take Action – Restrict or eliminate discretionary markups from a dealer's compensation structure, or exclude dealers from future transactions, when analyses identify unexplained disparities on a prohibited basis.

Appraisal Discrimination:
Application of the Fair Housing Act &
Risk Mitigation

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

Fair Housing Act

- It is illegal discrimination to take any of the following actions based on race, color, religion, sex, disability, familial status, or national origin:

  42 U.S.C. § 3605

  - Refuse to make a mortgage loan or provide other financial assistance for a dwelling
  - Impose different terms or conditions on a loan
  - Discriminate in appraising a dwelling

  42 U.S.C. § 3617

  - Threaten, coerce, intimidate or interfere with anyone exercising a fair housing right or assisting others who exercise the right
  - Retaliate against a person who has filed a fair housing complaint or assisted in a fair housing investigation

Connolly v. Lanham
2023 WL 4932870 (D. Md. Aug. 2, 2023)

- Among other things, the case involves Black homeowners who sued Loandepot.com, the Appraiser that appraised their home, and the appraiser's company for discriminating based on race in violation of the Fair Housing Act. The homeowners alleged that the appraiser deliberately appraised their home for far below its value and that the lender relied on the low appraisal in denying their refinance application.

- Loandepot.com filed a motion to dismiss the Fair Housing Act claims – 42 U.S.C. § 3605 and 42 U.S.C. § 3617 claims survived the motion to dismiss.

Lenders who rely on a discriminatory appraisal may be liable under the Fair Housing Act

- Direct Liability
  - The Fair Housing Act's implementing regulations state that "[a] person is directly liable for . . . [f]ailing to take prompt action to correct and end a discriminatory housing practice by a third-party, where the person knew or should have known of the discriminatory conduct and had the power to correct it." 24 C.F.R. § 100.7(a)(1)(iii).

- Vicarious Liability
  - "A person is vicariously liable for a discriminatory housing practice by the person's agent or employee, regardless of whether the person knew or should have known of the conduct that resulted in a discriminatory housing practice, consistent with agency law." 24 C.F.R. § 100.7(b).

Complaint Resolution Process

- Establish policies, procedures, and training to ensure employees understand the complaint resolution lifecycle.

- Consider addressing the follow questions:

  – When are Reconsiderations of Value appropriate and when are second appraisals warranted?

  – What happens to the loan during the complaint resolution process?

  – What organization officials need to be involved?

  – Do you act on verbal complaints or only once documentation is provided?

  – What steps are taken to research and respond to complaints?

  – What expectations and guidelines do you have for non-appraiser employees who "explain" the appraisal to consumers?

  – When and how are employees supposed to alert the appraisal management company (AMC) about a complaint?

Quality Control & Third-Party Management

- What policies and procedures are in place to review appraisals?
  - Do they address concerning items that warrant further review or explanation (e.g., unusually large line, net, and gross adjustments; large variations in gross living area or gross building area; distant comparable properties; appraised value inconsistent with market conditions)?
    - How are those concerning items handled?
  - If there are items in the report that have warranted explanations, have the explanations been reviewed for adequacy?
- Are there adequate policies and procedures in place to review all the different standard appraisal forms such as the *Uniform Residential Appraisal Report* (Fannie Mae Form 1004/ Freddie Mac Form 70); *Individual Condominium Unit Appraisal Report* (Fannie Mae Form 1073/ Freddie Mac Form 465); *Individual Cooperative Interest Appraisal Report* (Fannie Mae Form 2090); *Small Residential Income Property Appraisal Report* (Fannie Mae Form 1025/ Freddie Mac Form 72)?
- Are AMCs complying with the policies and procedures for reviewing appraisals?

Fair Lending & Consumer Risks in AI/ML

Susan Grutza, Senior Counsel
Office of Fair Lending and Equal Opportunity
Consumer Financial Protection Bureau

Algorithmic Bias

- Putting algorithmic bias in context
- Key drivers
- CFPB activity

Algorithms and Fair Lending

- Financial services have long been affected by structural racism and human bias, such as redlining and underwriting discrimination.
- While algorithms– including credit scoring– may sometimes reduce human bias and expand access to responsible credit, they are not immune from either structural racism or human bias.
- Moreover, when algorithms discriminate, the resulting harm may be more widespread because of scale.
- If not carefully monitored, new data sources, complex algorithms, and digital marketing may further calcify racial inequity in ways that are hard to detect.
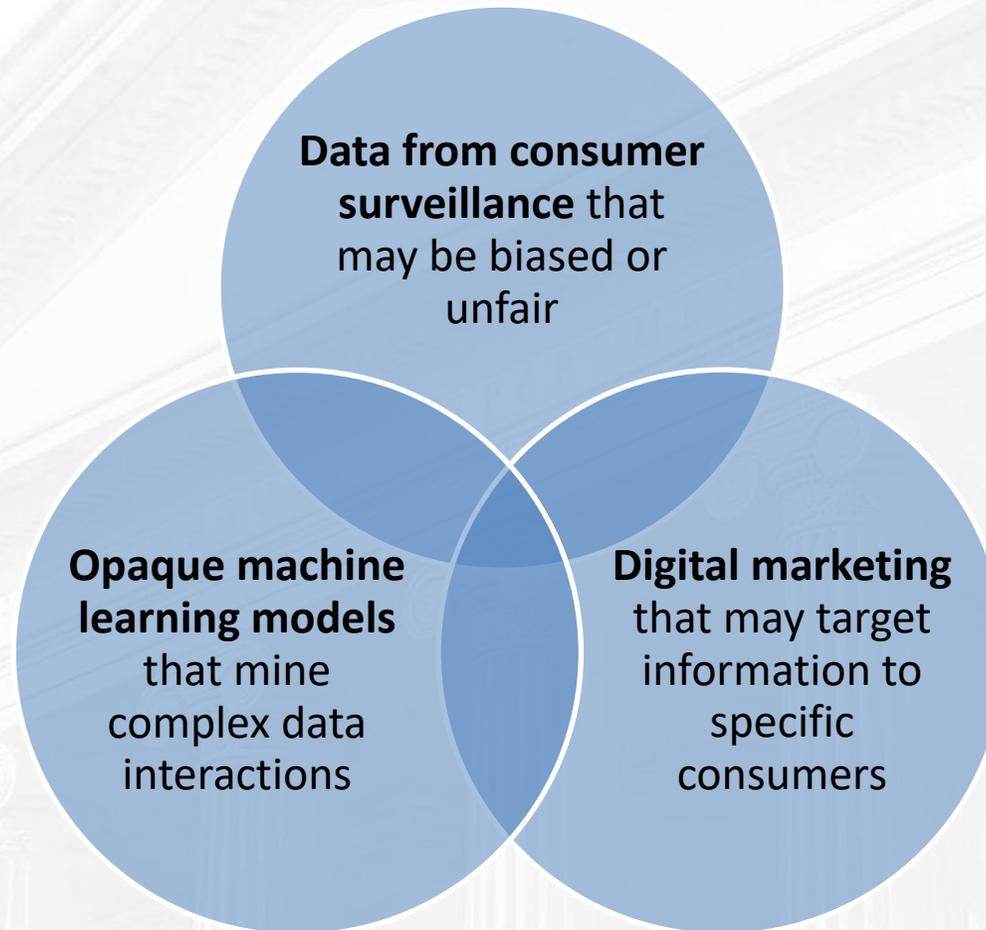
Laws are Technology Neutral

- The Equal Credit Opportunity Act (ECOA), the Dodd-Frank Act's prohibition against Unfair, Deceptive, or Abusive Acts or Practices (UDAAP), and the Fair Credit Reporting Act (FCRA) apply to consumer financial services.

- These laws govern certain activities, regardless of how an entity conducts the activities.

- Whether an entity makes underwriting decisions with a sophisticated algorithm or a pencil and a calculator, the laws apply equally.

Key Consumer Protection Requirements

- ECOA protects applicants from discrimination in any aspect of a credit transaction based on protected characteristics, such as race, color, national origin, sex (including sexual orientation and gender identity), and marital status.

- FCRA and ECOA lay out requirements for adverse action notices.

- The Dodd-Frank Act prohibits unfair, deceptive, or abusive acts or practices.

Drivers of Algorithmic Bias

Data from consumer surveillance that may be biased or unfair

Opaque machine learning models that mine complex data interactions

Digital marketing that may target information to specific consumers

Risks from Data

- Data may contain errors or be unrepresentative in ways that create fair lending risk and/or are unfair.

- Data may include prohibited bases or variables that may serve as proxies for prohibited bases.

- Even variables that appear neutral may have a disparate impact based upon a prohibited basis, such as by reflecting historical discrimination.

Risks from Opaque Models

- Complex, opaque models may be hard to interpret and test for legal compliance.

- Concerns regarding proxies for prohibited bases may be heightened in models that include highly complex variable interactions.

- Models may be used for purposes for which they were not validated.

CFPB Activity Regarding Adverse Action Notices

- ECOA and Regulation B require creditors to provide statements of specific reasons to applicants against who adverse action is taken.
- Circular 2022-03: *Adverse action notification requirements in connection with credit decisions based on complex algorithms*
  - ECOA and Regulation B do not permit creditors to use complex algorithms when doing so means they cannot provide the specific and accurate reasons for adverse actions.
- Circular 2023-03:*Adverse action notification requirements and the proper use of the CFPB's sample forms provided in Regulation B*
  - Creditors may not rely on the checklist of reasons provided in the sample to satisfy their obligations under ECOA if those reasons do not specifically and accurately indicate the principal reason(s) for the adverse action. Nor, as a general matter, may creditors rely on overly broad or vague reasons to the extent that they obscure the specific and accurate reasons relied upon.

CFPB AI/ML Resources

- [Required Rulemaking on Personal Financial Data Rights](#) *Oct. 2023*

- [Adverse Action Notification Requirements and the Proper Use of the CFPB's Sample Forms Provided in Regulation B](#) *Sep. 2023*

- [Algorithms, Artificial Intelligence, and Fairness in Home Appraisals](#) *Jun. 2023*

- [Consumer Use of Buy Now, Pay Later: Insights from the CFPB Making Ends Meet Survey](#) *Mar. 2023*

- [CFPB and Federal Partners Confirm Automated Systems and Advanced Technology Not an Excuse for Lawbreaking Behavior](#) *Apr. 2023*

- [Director Chopra's Prepared Remarks on the Interagency Enforcement Policy Statement on "Artificial Intelligence"](#) *Apr. 2023*

- [CFPB Issue Spotlight Analyzes "Artificial Intelligence" Chatbots in Banking](#) *Jun. 2023*

- [Chatbots in Consumer Finance](#) *Jun. 2023*

- [Buy Now, Pay Later: Market Trends and Consumer Impacts](#) *Sep. 2022*

- [Limited Applicability of Consumer Financial Protection Act's "Time or Space" Exception to Digital Marketers](#) *Aug. 2022*

- [Adverse Action Notification Requirements in Connection with Credit Decisions Based on Complex Algorithms](#) *May 2022*

Disability Discrimination

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Protection Against Disability Discrimination

- The Fair Housing Act (FHA) prohibits discrimination on the basis of handicap (disability)
  - We generally use the term "disability" now in place of "handicap"; the terms are used interchangeably

  (h) "Handicap" means, with respect to a person--
  - (1) a physical or mental impairment which substantially limits one or more of such person's major life activities,
  - (2) a record of having such an impairment, or
  - (3) being regarded as having such an impairment…
- Handicap is not a prohibited basis under the Equal Credit Opportunity Act (ECOA).
  - However, ECOA prohibits discrimination on the basis of receipt of public assistance income
  - Disability income is one form of public assistance income

Protection Against Disability Discrimination

- **FHA Sec. 804. [42 U.S.C. 3604] Discrimination in sale or rental of housing and other prohibited practices**

- (f)(3)(B) a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling;

- 1994 Interagency Policy Statement on Discrimination in Lending:

  – The FHA requires lenders "to make reasonable accommodations for a person with disabilities when such accommodations are necessary to afford the person an equal opportunity to apply for credit."

Types of Disabilities

- HUD provides examples of major life activities that may be impaired by a disability
  - For example, walking, speaking, hearing, seeing, breathing, working, learning, performing manual tasks, and caring for oneself
- HUD provides examples of different types of disabilities:
  - Orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, HIV, developmental disabilities, mental illness, drug addiction, and alcoholism
  - Some types of disabilities may be invisible, but still limit a person's life activities
- Short-term disability is a protected characteristic under the FHA

Disability Discrimination Complaints

- Consumers may not know that they are protected from disability discrimination by FHA and/or ECOA
- Consumer may not allege "discrimination," but nevertheless describe potential disparate treatment
- Examples:
  - I was given the runaround because I have disability income.
  - The loan officer asked for extra documentation for my disability income, even though the award letter does not have an expiration date.
  - The bank asked for a note from my doctor and I didn't think that was fair.
- Important to understand the complaint allegations and determine whether they could describe potential discrimination

Issues to Watch Out for:
Disability Discrimination

- Elevated risk fact patterns:
  - Not "grossing up" untaxed disability income the same way other untaxed income is treated
  - Not considering disability income in underwriting
- Fannie Mae's selling guides have requirements on how to treat disability income
  - Short term disability income *can* be used to qualify for a loan, assuming certain documentation and other conditions are met (return to work date).
  - Long term/permanent disability income *can* be used to qualify for a loan.
    - Generally, long-term disability will not have a defined expiration. The requirement for re-evaluation of benefits is not considered a defined expiration date.

Issues to Watch Out for:
Reasonable Accommodation

- Elevated risk fact patterns:
  - Consumer needs an advocate or other person present to provide them with assistance, such as in communicating with the MLO
  - Consumer needs information in written form or delivered orally
  - Consumer needs to meet MLO in accessible location

Issues to Watch Out For:
Overt Statements

- Examples of Overt Statements that may indicate elevated risk:
  - Prefers not to deal with disability income because of underwriting documentation requirements
  - Requests medical information from the consumer or their doctor about their disability
  - Expresses concern about continuity of disability income when the income meets Fannie Mae or other investor guidelines
  - Questions whether the consumer is really disabled or "deserves" the disability income

Resources

- [HUD Disability Webpage](#)

- [Fannie Mae Selling Guide on Long Term Disability](#)

- [Fannie Mae Selling Guide on Short Term Disability](#)

CRA Final Rule, Fair Lending Laws, and Financial Inclusion

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CRA New Final Rule

- Issued October 24, 2023 – by the Office of the Comptroller of the Currency, the Federal Reserve, and the Federal Deposit Insurance Corporation
- Encourages banks to help meet the credit needs of its entire community
  - Adapts to changes in the banking industry
  - Provides greater clarity and consistency in the application of CRA regulations
  - Tailors performance standards, data collection requirements, and reporting requirements
  - Promotes transparency and public engagement
  - Confirms that CRA and fair lending responsibilities are mutually reinforcing
  - Promotes a consistent regulatory approach across the agencies

CRA New Final Rule and Fair Lending

- CRA and Fair Lending are mutually reinforcing

- The final rule:
    - Retains requirements that bank facility-based assessment areas are prohibited from reflecting illegal discrimination and must not arbitrarily exclude low- or moderate-income census tracts
    - Retains the regulatory provision that CRA ratings can be downgraded as a result of discriminatory or other illegal credit practices

HMDA Data Disclosures

- The final rule includes additional information on the agencies' websites related to the distribution of home mortgage loans, including:

  - The number and percentage of originations and applications of a large bank's home mortgage loans by borrower or applicant income level, race, and ethnicity; and

  - The number and percentage of originations and applications of aggregate mortgage lending of all lenders reporting HMDA data in the facility-based assessment area and as applicable, the retail lending assessment area

CRA New Final Rule and Financial Inclusion

- Support for minority depository institutions (MDI), women's depository institutions (WDI), low-income credit unions (LICU), and community development financial institutions (CDFI)
- Recognizes community development (CD) place-based activities
- Considers the impact and responsiveness of CD Activities
- Evaluates a bank's lending in major product lines provided:
  – In low-income census tracts and moderate-income census tracts;
  – To low-income borrowers and moderate-income borrowers; and
  – To the smallest businesses and farms
- Expands place-based community development activity to include activities in Native Land Areas

CRA New Final Rule and Small Business and Small Farm Lending

- Encourages banks to help meet the credit needs of small businesses and small farms. For example:

  - Similar to the current Rule, the Retail Lending Test evaluates the borrower distribution of lending to businesses and farms based on an additional range of gross annual revenues

  - The impact and responsiveness review (part of the new rule) provides for agencies to consider specifically CD activities that support small businesses or small farms with gross annual revenues of $250,000 or less

Special Purpose Credit Programs (SPCP) and New Final CRA Rule

- SPCP – responsive credit program under Retail Services and Products Test

- Agencies believe that this will encourage creditors to explore opportunities to develop SPCP programs

- SPCPs need to comply with applicable law, including ECOA requirements to receive consideration

Questions?