2015 Interagency Fair Lending Hot Topics

Outlook Live Webinar – October 15, 2015

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Overview

- **CFPB Mortgage Updates**
  - *Anna-Marie Tabor, Deputy Fair Lending Director, Office of Fair Lending and Equal Opportunity, Consumer Financial Protection Bureau*
- **Using Data in Evaluating Fair Lending Risk**
  - *Maureen Yap, Managing Counsel, Fair Lending Enforcement Section, Division of Consumer and Community Affairs, Federal Reserve Board*
- **Compliance Management Systems**
  - *Jamie Goodson, Director, Division of Consumer Compliance Policy and Outreach, Office of Consumer Protection, National Credit Union Administration*

Overview *(continued)*

- **Pricing Reviews**
  - *Tara L. Oxley, Chief, Fair Lending and CRA Examinations, Federal Deposit Insurance Corporation*
- **Post-Origination Fair Lending Risks**
  - *Kathryn Ray, Special Counsel, Office of the Comptroller of the Currency*
- **Discrimination against Women on Maternity Leave**
  - *Timothy Smyth, Director, Office of Systemic Investigations, U.S. Department of Housing and Urban Development*
- **Auto Lending Enforcement**
  - *Marta Campos, Trial Attorney, Housing and Civil Enforcement Section, Civil Rights Division, U.S. Department of Justice*

CFPB Mortgage Updates

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

CFPB's Office of Fair Lending and Equal Opportunity

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

Topics

- **Redlining**
- Section 8 Compliance Bulletin

Redlining – Overview

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

Redlining – Risk Factors

- Redlining risk factors may include, among other factors:
  - Significant differences in applications and/or originations in neighborhoods with high concentrations of minority residents
  - Market area excludes geographic areas with high concentrations of minority residents
  - Differences in branch/office locations and services in areas with high concentrations of minority residents
  - Marketing excludes geographies that have high concentrations of minority residents

Redlining – CMS Solutions

- Effective compliance management systems (CMS) will identify and address redlining risk through steps such as:
  - Ensuring reporting to the Board of Directors and Senior Management regarding fair lending risks and issues, including redlining
  - Reviewing policies and procedures for fair lending compliance
  - Monitoring lending operations for fair lending risks and violations, including redlining
  - Providing for prompt and full corrective action when appropriate

Topics

- Redlining
- **Section 8 Compliance Bulletin**

Section 8 HCV Homeownership Program

- The Section 8 Housing Choice Voucher (HCV) Homeownership Program was created to assist low-income, first-time homebuyers in purchasing homes. The program is funded by the Department of Housing and Urban Development (HUD) and administered by participating local public housing authorities (PHA)
- Through the Section 8 HCV Homeownership Program, the participating PHA may provide an eligible consumer with a monthly housing assistance payment (HAP) to help pay for homeownership expenses associated with a housing unit purchased in accordance with HUD's regulations
- In addition to HUD's regulations, the PHAs may also adopt additional requirements, including lender qualifications or terms of financing

Section 8 HCV Homeownership Program Compliance Bulletin

- In May 2015, the Bureau issued a bulletin to remind creditors of their obligations under ECOA and Regulation B to provide non-discriminatory access to credit for mortgage applicants using income from the Section 8 HCV Homeownership Program
- The CFPB had become aware of financial institutions excluding or refusing to consider income derived from this program during the loan application and underwriting process. The CFPB had also become aware of some institutions only permitting the vouchers to be used for certain mortgage loan products or delivery channels

Section 8 HCV Homeownership Program Compliance Bulletin *(continued)*

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

Online Fair Lending Resources

- Each institution should ensure that its CMS is tailored to its operations; the scope, size and complexity of the CMS may vary
- For more information, review the following resources available on our website: www.consumerfinance.gov
  - Supervision and Examination Manual & Updates
  - Press Release: CFPB and DOJ Order Hudson City Savings Bank to Pay $27 Million to Increase Mortgage Credit Access in Communities Illegally Redlined
  - Section 8 Housing Choice Voucher Homeownership Program Bulletin

Consumer Resources

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

Using Data in Evaluating Fair Lending Risk

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

Overview

- The Federal Reserve's Fair Lending Authority
- Federal Reserve Referrals
- Federal Reserve Fair Lending Reviews
- Federal Reserve Redlining Reviews
- Federal Reserve Pricing Reviews
- Best Practices
- Federal Reserve Resources

The Federal Reserve's Fair Lending Authority

- The Federal Reserve Board supervises:
  - Over 800 state member banks (SMBs)
  - SMBs above $10B for compliance with the FHA
  - SMBs of $10B or less for compliance with the FHA, 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

Federal Reserve Referrals

- Pursuant to the ECOA, if the Board has reason to believe there is a pattern or practice of discrimination, the Board must refer the matter to the DOJ
- The Federal Reserve has referred a number of matters to the DOJ, including matters regarding:
  - ✓Redlining
  - ✓Pricing
    - Mortgages
    - Mortgage Discount Points (Fair Lending and UDAP)
    - Unsecured Loans
    - Direct and Indirect Auto Loans
  - ✓Underwriting
    - Maternity Leave Discrimination
    - Disability/Public Assistance Discrimination
  - ✓Spousal Signatures
  - ✓Credit Reporting

Federal Reserve Fair Lending Reviews

- The Federal Reserve conducts risk-focused consumer compliance exams, including fair lending reviews
- Federal Reserve examiners evaluate the risk in the bank's products and fair lending risk management program to determine whether further analysis is warranted
- Generally, Federal Reserve examiners use the following sources to help evaluate fair lending risk:
  - Policies and procedures
  - Interviews with bank personnel
  - Prior exam history
  - Complaints
  - Data

Federal Reserve Fair Lending Reviews *(continued)*

- With respect to data, Federal Reserve examiners generally use the following to help evaluate fair lending risk:
  - CRA assessment area data
  - Branch and LPO locations
  - HMDA data and HMDA Plus data
  - CRA small business loan data
  - Loan trial data (aka ALERT data)
- The bank's data are especially important for evaluating risk in two key areas: redlining and pricing

Federal Reserve Redlining Reviews

- Federal Reserve examiners evaluate redlining risk as part of consumer compliance exams
  - Based on the 2009 Interagency Fair Lending Examination Procedures, examiners evaluate the redlining risk factors, including:
    - CRA assessment area
    - Branch locations
    - Loan application and origination data
    - Marketing and outreach
    - Complaints or overt statements that may reflect discrimination

Federal Reserve Redlining Reviews *(continued)*

- Federal Reserve examiners use the bank's data to evaluate three of the risk factors:
  - CRA assessment area
  - Branch locations
  - Lending record

Federal Reserve Redlining Reviews
(continued)

- CRA Assessment Area
  - The bank's CRA assessment area for the review period is evaluated pursuant to Regulation BB to determine whether the assessment area includes a whole political subdivision and whether majority minority census tracts are inappropriately excluded. The evaluation is conducted by reviewing:
    - The number and percent of majority minority tracts in the market that are excluded from the bank's CRA assessment area
    - The number and percent of the minority population in the market that is excluded from the bank's CRA assessment area
    - Maps of the bank's CRA assessment area and the surrounding areas

Federal Reserve Redlining Reviews
(continued)

- Branch Locations
  - The bank's branch location data and policies for the review period are evaluated to determine whether branching patterns may reflect illegal discrimination. The evaluation is conducted by reviewing:
    - The number of branches currently present in majority minority and non-majority minority census tracts
    - The number of branches opened in majority minority and non-majority minority census tracts
    - The number of branches closed in majority minority and non-majority minority census tracts
    - Maps of the bank's CRA assessment area with the branch locations and the surrounding areas

Federal Reserve Redlining Reviews
(continued)

- Lending
  - The bank's HMDA mortgage application and origination data for the review period are evaluated to determine whether there are lending disparities when the bank's lending patterns data are compared to the aggregate and the adjusted aggregate. The evaluation is conducted by reviewing:
    - The number and percent of the bank's applications and originations in majority minority census tracts
    - Any disparities between the percent of the bank's applications and originations in majority minority census tracts and the percent of the aggregate and adjusted aggregate's application and originations
    - Maps of the bank's applications and originations in the bank's CRA assessment area and the surrounding areas

Federal Reserve Pricing Reviews

- Federal Reserve examiners evaluate pricing risk as part of consumer compliance exams
  - Based on the 2009 Interagency Fair Lending Examination Procedures, examiners evaluate the pricing risk factors, including:
    - Policies or procedures that indicate discretion in pricing and/or exceptions
    - Financial incentives based on the terms or conditions of the loan
    - Loan data
    - Complaints or overt statements that may reflect discrimination

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Federal Reserve Pricing Reviews
(continued)

- HMDA Mortgage Originations: If there is sufficient volume for a mortgage product, the bank's HMDA mortgage origination data (HMDA Plus data) for the review period are evaluated to determine whether there are disparities in pricing (APR, interest rate, fees) on a prohibited basis (race, national origin, gender)
- Consumer Loan Originations: If there is sufficient volume for a consumer loan product, the bank's consumer loan trial data for the review period are evaluated to determine whether there are disparities in pricing (usually interest rate) on a prohibited basis (majority minority tract, national origin, gender)

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Federal Reserve Pricing Reviews
(continued)

- Note that if the bank's data indicate disparities in pricing, examiners will evaluate this elevated risk in the context of other risk factors, such as discretion
- If it is determined that additional analysis is warranted, examiners will seek more information from the bank to determine whether there are legitimate pricing factors that explain the disparity
- This may include a comparable file review and/or additional statistical analysis

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Best Practices

- With respect to data and fair lending risk, banks should:
  - Ensure that the data are accurate and up-to-date
  - Analyze the data to determine whether elevated fair lending risk is present
  - To the extent that elevated fair lending risk is present, ensure that explanations for this risk are clearly documented and appropriately analyzed

Best Practices *(continued)*

- For example, banks should:
  - Document policies and procedures designed to mitigate elevated redlining risk
  - Document pricing and underwriting criteria (including exceptions)
  - Retain data that may explain gross disparities
  - Conduct further analysis of areas of elevated fair lending risk to determine whether the issues are fully attributable to legitimate factors

Federal Reserve Resources

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

Compliance Management Systems

Jamie Goodson, Director
Division of Consumer Compliance Policy and Outreach
Office of Consumer Protection
National Credit Union Administration

Elements of an Effective Fair Lending Compliance Management System

- Board of Directors and Management Oversight
- Policies and Procedures
- Training
- Monitoring/Testing and Corrective Action
- Compliance Audit
- Member Complaint Response

Today's discussion will focus on policies and procedures

Spotlight on Policies and Procedures

- Document policies and procedures
- Include sufficient detail
- Review and update frequently
- Cover all loan products and phases, such as advertising, marketing, underwriting, servicing, loss mitigation, and third party oversight
- Address reviews done before the institution introduces new lending products or modifies existing products, including—
  - Evaluation of documents and disclosures
  - System testing
  - Staff training

Include Sufficient Detail

- List and discuss all prohibited bases
- Include the fact that all or part of an applicant's income comes from public assistance income
- Include the fact that the applicant has in good faith exercised any right under—
  - the Consumer Credit Protection Act (CCPA);
  - or any state law upon which CFPB has granted an exemption

Public Assistance

- Regulation B specifies when you may consider receipt of public assistance income
  - In a "judgmental system" of evaluating creditworthiness
  - to determine a "pertinent element of creditworthiness"
- Judgmental system: defined in 12 CFR 1002.2(t)
- Pertinent element of creditworthiness: defined in 12 CFR 1002.2(y)

Receipt of Public Assistance

- Any Federal, state, or local governmental assistance program that provides a continuing, periodic income supplement, whether premised on entitlement or need
- Examples:
  - Temporary Aid to Needy Families
  - Food stamps
  - Rent and mortgage supplement or assistance programs
  - Social security and supplemental security income
  - Unemployment compensation

Exercise of Right

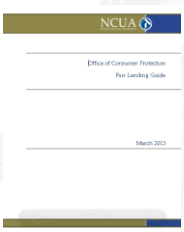
- Under Consumer Credit Protection Act (CCPA) or state law for which CFPB has granted an exemption
- CCPA: Includes laws such as the Truth in Lending Act (TILA), Fair Credit Billing Act, Consumer Leasing Act, Fair Credit Reporting Act, Fair Debt Collection Practices Act, Electronic Fund Transfer Act, and Equal Credit Opportunity Act
- State law: Such as exemptions from certain TILA provisions listed in Official Staff Interpretations to Regulation Z

Review and Update Frequently

- Careful drafting is important
- Say what you mean
- Example: references to "employment income"
- Address fair lending considerations in marketing, product development, forms, etc.

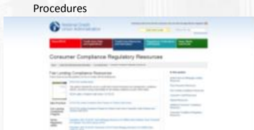
NCUA Fair Lending Resources

NCUA Fair Lending Guide



Additional Resources

- Best Practices
- FAQs
- Regulatory Alerts
- Webinars
- HMDA Resources
- Interagency Fair Lending Examination Procedures



Pricing Reviews

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

Assessing an Institution's Inherent Risk

- Examine using a risk-based methodology
- Evaluate the bank's structure; credit products; any changes to the institution or its loan products; policies and procedures; and demographic information
- Consider bank's fair lending compliance program
- Identify institutional inherent risks

"Red Flags" that Equate to Increased Pricing Risk

- Raw disparities between target/control groups
- Unmonitored/insufficient monitoring of pricing discretion
- Lack of clear, written pricing policies
- Lack of documentation for/tracking of exceptions
- Financial incentives by office or originator
- Complaints

Conducting a Pricing Review

- Review bank policies and procedures
- Interview bank personnel
- Gather and evaluate loan data
- Conduct statistical analysis:
  - Bank-specific: no "one-size-fits-all" analysis
  - Models are developed based on bank's pricing criteria
  - Generally, at the portfolio level

The Importance of an Effective Compliance Management System

- Banks should create an effective compliance management system that includes:
  - Clear, written policies that detail the specific discretion afforded to employees and third parties
  - Documentation and tracking of exceptions to policy
  - A robust monitoring system that is conducted regularly (*i.e.*, quarterly basis) and at both the portfolio and broker/dealer level
  - Taking appropriate corrective action

FDIC Resources

- Directors' Resource Center - Technical Assistance Video Program
- Supervisory Highlights
- Compliance Examination Manual

Post-Origination Fair Lending Risks

Kathryn Ray, Special Counsel
Office of the Comptroller of the Currency

OCC Fair Lending Risk Assessments

- Conducted in every supervisory cycle
- Focus on entire life cycle of the loan
- Includes servicing, loss mitigation, and foreclosure activities
  - Evaluate quality of bank's risk management
  - Training of post-closing staff and third parties
  - Complaints and litigation

Examinations

- Depending on risks identified, a fair lending examination could be scheduled with loss mitigation as a focal point
- OCC evaluates whether there are patterns in outcomes that are correlated with prohibited basis group characteristics

"Other Real Estate Owned" Risks

- Disparities in maintenance, marketing and disposition of foreclosed properties correlated with race or ethnicity of neighborhood's residents implicate the provisions of the Fair Housing Act
- Reliance on third parties can increase fair lending risk

"Other Real Estate Owned" Risks
(continued)

- Comptroller's Handbook, *Other Real-Estate Owned*
  - "The use of third parties does not diminish the responsibility of the board of directors and management to ensure that foreclosed properties are administered in a safe and sound manner and in compliance with applicable law"
- OCC Bulletin 2013-29, *Third Party Relationships*
  - Due diligence before entering a contractual relationship
  - Ongoing monitoring to assess management of foreclosed properties

Discrimination against Women on Maternity Leave

Timothy Smyth, Director
Office of Systemic Investigations
U.S. Department of Housing and Urban Development

Systemic Office Consultation

- Complaints: Systemic Issues
  - Potential for additional victims (could affect large number of people)
  - Preventing new victims (pervasive or institutional in nature)
  - Conciliation strategies and relief
  - Complex or novel analysis needed to reach determination
- Data
  - Acquiring, analyzing, understanding, mapping

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Maternity Lending Discrimination

- It is still a problem
- It is not that hard
- It is expensive
- ....and I am still seeing these complaints all the time

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$5 Million Settlement With Wells Fargo

- $165,000 among six families in different states
- Up to 250 claimants will get $20,000 each. Additional claimants will get a prorated share
- Complaints included:
  - making loans unavailable based on sex and familial status
  - forcing women applicants to sacrifice their maternity leave and return to work prior to closing on their loan
  - by making discriminatory statements to and against women who were pregnant or who had recently given birth

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HUD's Focus on Maternity Leave-Related Lending Discrimination

- Prior to the Wells Fargo case and since 2010:
  - 190 maternity leave discrimination complaints have been filed with HUD
  - More than 40 settlements amounting to ~ $1.5 million
  - Settlements with Bank of America, Cornerstone Bank, and the Mortgage Guarantee Insurance Corporation (MGIC)

Fair Housing Act

- The Act prohibits housing practices discriminating against individuals on the basis of disability.
  - 42 U.S.C 3604(c) prohibits statements that indicate a preference, limitation, or discrimination based on disability
  - 42 U.S.C. 3604(f)(1) prohibits discrimination or otherwise making unavailable because of disability
  - 42 U.S.C 3604(f)(2) prohibits discrimination in terms, conditions, or privileges because of disability
  - 42 U.S.C. 3605 prohibits discrimination in residential real estate-related transactions

Maternity Leave: Bases for Violation

- Sex
  - Pregnancy
- Familial Status
  - Pregnancy
  - Securing legal custody of person under 18
  - Maternity or paternity leave status
- Disability
  - Medical complications related to pregnancy

Maternity Leave: Violations

- Discriminatory Statements
  - Lender says it cannot approve or close the loan due to maternity leave status
  - Lender says it cannot use maternity leave related income to underwrite the loan
- Different Terms and Conditions
  - Lender requires loan applicant to provide a written explanation of their plans for additional children over the next 3 years
  - Lender requires loan applicants to report to work before it will close on the loan

Guidelines: FHA Handbook on Single Family Housing

- For Borrowers with gaps in employment of six months or more (an extended absence), the Mortgagee may consider the Borrower's current income as Effective Income if it can verify and document that:
  1. The Borrower has been employed in the current job for at least six months at the time of case number assignment; and
  2. A two year work history prior to the absence from employment using standard or alternative employment verification

Guidelines: FHA Handbook on Single Family Housing *(continued)*

- For Borrowers with a temporary reduction of income due to a short-term disability or similar temporary leave, the Mortgagee may consider the Borrower's current income as Effective Income, if it can verify and document that:
  1. the Borrower intends to return to work;
  2. the Borrower has the right to return to work; and
  3. the Borrower qualifies for the Mortgage taking into account any reduction of income due to the circumstance

Guidelines: FHA Handbook on Single Family Housing *(continued)*

- If borrower returns to work before or at the time of first payment due date, pre-leave income can be used
- If returning after the due date, current income plus surplus liquid assets can be used as income supplement

Guidelines: FHA Handbook on Single Family Housing *(continued)*

- The Mortgagee must provide the following documentation for Borrowers on temporary leave:
  1. A written statement from the Borrower confirming the Borrower's intent to return to work, and the intended date of return;
  2. Documentation generated by current employer confirming the Borrower's eligibility to return to current employer after temporary leave; and
  3. Documentation of sufficient liquid assets, in accordance with Sources of Funds, used to supplement the Borrower's income through intended date of return to work with current employer

Guidelines - Freddie Mac

- See Bulletin Number 2011-21, dated November 4, 2011; effective February 15, 2012
  - Updated September 24, 2013
- Temporary Leave, Section 37.13(a)(vii)
  - Different underwriting if applicant will or will not return to work before 1st mortgage payment due date
  - Documentation requirements

Guidelines – Fannie Mae

- See Selling Guide Announcement SEL-2011-13, dated December 20, 2011. (Temporary Leave Income)
  - Updated September 24, 2013
- Disability Related Income Underwriting
  - Unless lender has knowledge to the contrary, if income does not have an expiration date and has been documented, the lender should consider the income stable; therefore, no additional documentation is needed
    - Examples of income with undefined expiration date: Base Salary, SSDI, Veterans Disability Compensation

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Guidelines – Fannie Mae
(continued)

- Social Security income documentation
  - Award letter;
  - Federal tax returns;
  - 1099s; or
  - Recent bank statements

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Notification to Regulator

- FFIEC MOU requires HUD to notify the lender's regulator of the Fair Housing complaints accepted by the Department for investigation
  - Send copy of complaint
  - Notify regulator in advance of site inspections
- Recommend that you consult with lender's regulator about CRA assessment area changes if needed for conciliation agreements
- What information can HUD investigator get from lender's regulator?

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U.S. Department of Housing and Urban Development

To report housing discrimination:
- 1-800-669-9777
- www.hud.gov

Auto Lending Enforcement

Marta Campos, Trial Attorney
Housing and Civil Enforcement Section
Civil Rights Division
U.S. Department of Justice

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Covered Parties

- Lender that funds the loan
  - Direct lenders
  - Indirect lenders
    - Independent financial institutions
    - Captive lenders
- Individual dealership that arranges for the loan

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Joint DOJ CFPB Effort

- Opened a series of investigations
- Different types of lenders
- Several of the largest auto lenders in country
- Looked at mark up disparities

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U.S. v. American Honda Finance Corp.

- Joint investigation with CFPB
- Filed and settled in July 2015
- Compliance underway

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U.S. v. American Honda Finance Corp.
(continued)

- Complaint alleges lender charged minority borrowers higher interest rate markups on indirect auto loans
- Dealers granted broad and subjective discretion by lender to mark up buy rate, subject to caps
- Lender did not conduct sufficient monitoring to detect race or national origin disparities

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U.S. v. American Honda Finance Corp.
(continued)

- Statistical Disparities
  - – African-Americans: 36 bps
  - – Hispanics: 28 bps
  - – Asian/Pacific Islanders: 25 bps
- Corresponds to discriminatory payments over term of loan from $150 to over $250

U.S. v. American Honda Finance Corp.
(continued)

- $24 million settlement fund
  - – administered jointly with CFPB
  - – agencies direct damage calculations
- $1 million financial literacy fund
  - – only with DOJ
- Honda must reduce the amount of discretion it gives to dealers to mark up interest rates to 100/125 bps

U.S. v. Fifth Third Bank

- Statistical Disparities
  - – African-Americans: 35 bps
  - – Hispanics: 36 bps
- Corresponds to discriminatory payments over term of loan of over $200

U.S. v. Fifth Third Bank
(continued)

- $18 million settlement
  - administered jointly with CFPB
  - agencies direct damage calculations
- Fifth Third must reduce the amount of discretion it gives to dealers to mark up interest rates to 100/125 bps

Questions?