



VBA Protect – Fair Lending Hot Topic

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Fair Lending Laws & Regulations



Regulation B – Equal Credit Opportunity Act

- Prohibits discrimination on any aspect of a credit transaction

Regulation C – Home Mortgage Disclosure Act

- Requires financial institutions to maintain reports and publicly disclose mortgage lending data.

Regulation BB – Community Investment Act

- Encourages institutions to meet the credit needs of the communities they serve

Fair Housing Act

- Prohibits discrimination on any aspect of a residential real-estate transaction

Prohibited Basis



Regulation B

- Sex
- Age
- Race
- Color
- Martial Status
- National Origin
- Religion
- Public Assistance
- Exercise Consumer Rights

Fair Housing

Same as Regulation B

Familial Status

Disability

Equality Act – Passed Congress – In Senate

Sexual Orientation

Gender Identity

Forms of Discriminations



- **Overt Discrimination** – Blatant discrimination such as higher rates or steering
- **Disparate Treatment** – Providing a different level of service to an individual based on a prohibited basis
- **Disparate Impact** – Unintentional impact through a policy or process



Fair Lending & CFPB

- Issued Fair Lending Report April 2021
- Economic impact from the pandemic resulting in inequitable burden to minorities & minority communities
- Risk-based prioritization fair lending exams
- Settlement for Alleged Discriminations by lending institutions

CFPB - Allegations of Discrimination



Townstone Financial – 7/20/20 – The nonbank retail mortgage creditor in Chicago, from 2014 to 2017, drew almost no applications for mortgages on properties in African American neighborhoods.

- Made statements in weekly radio & podcast discouraging African Americans
- Illegal redlining for discouraging potential applicants in minority neighborhoods.

CFPB - Allegations of Discrimination



Washington Federal Bank, N.A – 10/27/2020 –
Inaccurate HMDA data of its mortgage transactions for
2016 and 2017.

- Inaccurate data makes it difficult for the public & regulators to discover & stop discrimination.
- Bank fined \$200,000 in civil money penalty.

DOJ – Discriminations Cases



- 2020 – Bank of America – Lending discrimination on the basis of disability (under legal guardianship/conservatorship)
- 2020 Guaranteed Auto Sales - Offering different terms of credit based on race (Black) on purchase and finance of used cars
- 2019 – First Merchant Bank –redlining – lending discrimination in African-American neighborhoods

Fair Lending & CMS



Fair lending should be part of the Banks CMS or a separate Fair Lending Program. In either case components should include:

- Fair Lending Policy
- Fair lending Risk Assessment
- Policies and Procedures
- Change Management
- Monitoring/Self Assessments/
Auditing
- Training
- Consumer Complaints

Fair Lending & CMS



This was an emphasis throughout the Technical Assistance Videos developed and released by the FDIC in February 2021. FIL-10-2021 announced the release of nine fair lending videos to assist Banks in the management of their fair lending risks. The videos work through the FDIC Exam Process and the fair lending risks included under the Interagency Fair Lending Examination Procedures.



Fair Lending Policy

- Establishes the Bank's position regarding Fair and Responsible Banking
- Establishes responsibility and accountability for fair treatment
- Includes a Non-Discrimination Statement

Fair Lending Policy



CFPB March 9, 2021, Interpretive rule clarifying that the prohibition against sex discrimination under the Equal Credit Opportunity Act (ECOA) and Regulation B includes sexual orientation discrimination and gender identity discrimination. This prohibition also covers discrimination based on actual or perceived nonconformity with traditional sex- or gender-based stereotypes, and discrimination based on an applicant's social or other associations.

Fair Lending Risk Assessment



- Bank should have a documented risk assessment that is updated annually and presented to management and the Bank's Board.
- The assessment should include the potential risk and the description of the mitigation control.
- The assessment will help the Bank to focus on the high risk areas

Fair Lending Risk Assessment



Should align with the discriminatory risk factors outlined in the Interagency Examination Procedures

- Compliance Program
- Overt
- Underwriting
- Pricing
- Steering
- Redlining
- Marketing
- Servicing & Loss Mitigations



Discretion and Exceptions

Discretion - Freedom to make the decision

Exception - Something that is outside of the rules (policy)
or outside of the normal practice

- Does the bank allow lenders to have discretion or make exceptions
- Is there oversight on discretion & exceptions
- Are discretions & exceptions monitored

Exceptions – Pricing & Underwriting



Continues to be a primary focus of regulatory examiners.

- Has the Banks policies and procedures effectively established:
 - The Banks stance regarding pricing & underwriting exceptions
 - Provided guidance on the type of acceptable exceptions
 - Provided levels of authority for approval of exceptions
 - Established standards for documenting and reporting exceptions
 - Trending of exceptions for fair lending purposes



General QM Rules

Revisions to the general QM rules considerations:

- What is the DTI standard for Bank loans?
- Is the Loan Policy updated?
- Monitor for exceptions
- Is the standard valid – annual back testing

Tiered Pricing, Credit Score & Models



Bank has pricing based on Credit Score – Best practice is to perform a validation of the break points to ensure no form of disparity.

- Conduct an analysis annually on the break points of denials to approvals to identify disparity to a protected class.
- Adjust the break points to ensure fairness and attainable of credit for protected class.
- Models used for credit decisions do not have factors that treat applicants differently

Lending Pattern Analysis & Market Penetration



Know your Bank's market penetration and lending patterns before your regulator.

- Peer Comparison
- Tract Minority Level & Borrower Characteristic Comparison
- Mapping



Peer Comparison

One form of lending pattern analysis utilized by the regulators is Peer Comparison. Submitted HMDA data will be utilized along with available Peer Aggregate data. Regulators like to use a three-year trend to identify patterns of discrimination.

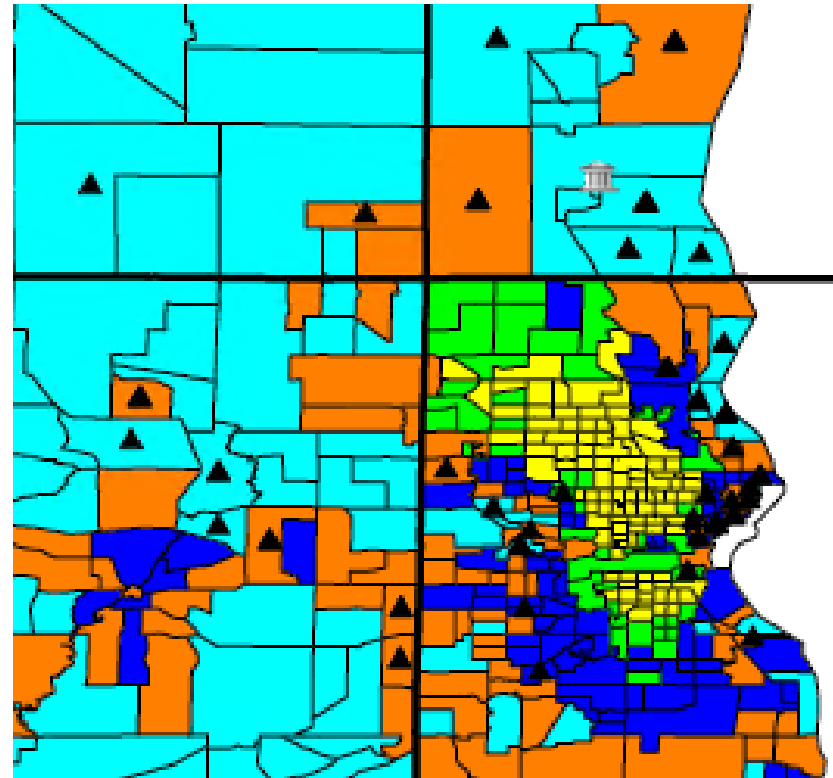
- Use of all Peers within lending area (assessment area or REMA)
- Use of peer banks with at least 200% above your HMDA LAR and 50% below

Peer Comparison



Geographic Distribution of Lending Activity - HMDA Type Originations											
Tract Minority Level	Census Tracts		2019			2020*			2021* (Thru 3/31/2021)		
	Tract #	Tract %	Bank No.	Bank %	Peer %	Bank No	Bank %	Peer %	Bank No	Bank %	Peer %
Less Than 10 % Minority	111	25.75	4	23.5	46.1	27	41.5	46.1	19	44.2	46.1
10% to less than 20% Minority	95	22.04	8	47.1	29.0	27	41.5	29.0	16	37.2	29.0
20% to less than 50% Minority	83	19.26	3	17.7	16.4	9	13.9	16.4	6	14.0	16.4
50% to less than 80% Minority	42	9.74	1	5.9	4.2	2	3.1	4.2	1	2.3	4.2
80% to 100% Minority	97	22.51	1	5.9	4.3	0	0.0	4.3	1	2.3	4.3
Not Available	3	0.70	0	0.0	0.0	0	0.0	0.0	0	0.0	0.0
Total	431	100.00	17	100.0	100.0	65	100.0	100.0	43	100.0	100.0

What Does This Map Show You



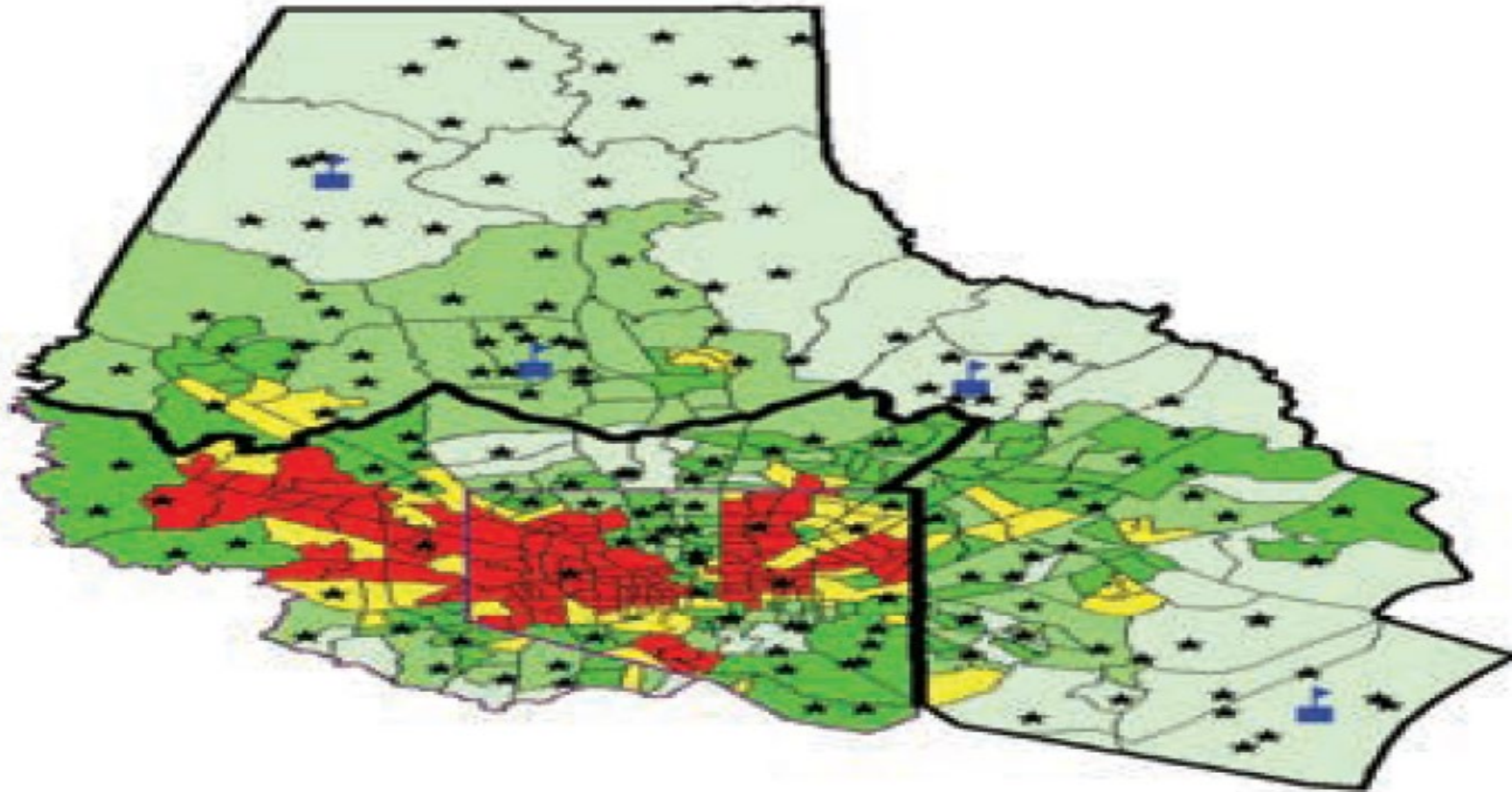
Redlining



Redlining is the systematic denial of various services to residents of specific, often racially associated, neighborhoods or communities, either explicitly or through the selective raising of prices

As noted in April 2021 Fair Lending Report of the CFPB, one of the areas of focus with the 2020 mortgage origination work was redlining.

Redlining





Redlining – How to Avoid

- Branch open & close policy has a non-discrimination statement
- Know your REMA or CMA (Reasonably Expected Market Area)
- Understand lending patterns compared to peers (include review of applications)
- Geocode all loans

Loan File Comparison Review



Conduct a file review to identify forms of disparity

- Underwriting
- Pricing

Review target minority group to non-minority group

- Software enables automated file comparison listing
- Manual judgmental sample selection

Loan File Comparison Review



Selective similarly situated loans based on:

- Loan Type
- Purpose
- Terms
- Loan Amount
- Income
- Occupancy Status
- Lien Status

Second Review – Adverse Action



- A review of potential denied loan applications prior to the Adverse Action being sent to borrowers
- Written process for second review
- Identify the person(s) to signoff as the second review
- Document the second review was completed

Complaints



Bank should have a Complaint Log to track complaints

- Banks should be monitoring complaints to ensure no form of alleged discrimination
- If discrimination is identified, corrective action should be implemented immediately
- Retraining of staff on Fair Lending and discrimination should be conducted

Monitoring & Upward Reporting is Key



- Frequent monitoring of lending patterns & exceptions to identify disparity risk
- Upward reporting to ensure management & board are aware of lending patterns & fair lending risk
- Ensure corrective actions to be implemented when fair lending risk has been identified

Marketing & Discrimination



- Marketing policy to include non-discriminatory statement
- Be aware of data source – social media - data mine data
- Vet third party marketing vendors
- Diversify pictures of individuals in ads
- Establish monitoring and trending processes

Outreach



Bank continues to show below peer performance from lending pattern analysis.

- Determine efforts for more outreach opportunities by contacting non-profit organizations for minorities within the community
- Develop a partnership with the non-profit to assist with a loan program and financial literacy training.
- Document the Bank's efforts along with upward reporting.

Servicing & Loss Mitigation



- Servicing & Loss Mitigations Policies and Procedures notes the compliance to fair lending laws & regulations
- Ensure consistent practice for servicing of loans and when a loans enters foreclosure
- Ensure loan file is fully documented to demonstrate consistent practice
- Exceptions should be documented, reported & monitored
- Staff receive fair lending training

Special Purpose Credit Program



Regulation B 1002.8

The special purpose credit program is a defined program which is offered by a for-profit organization, or in which such an organization participates to meet special social needs, if:

- The program is established and administered pursuant to a written plan that identifies the class of persons that the program is designed to benefit and sets forth the procedures and standards for extending credit pursuant to the program; and
- The program is established and administered to extend credit to a class of persons who, under the organization's customary standards of creditworthiness, probably would not receive such credit or would receive it on less favorable terms than are ordinarily available to other applicants applying to the organization for a similar type and amount of credit.



Special Purpose Credit Program – Cont.

Requirements

1. The bank will need to identify the unmet credit need in the community which can be first identified with contact with community leaders of the unmet credit needs.
2. Once the unmet credit need is identified, the bank needs to develop a written plan. The plan must contain information to support the need through:
 - The individuals or group that the program is to benefit;
 - Procedures and standards of the program;
 - Period of time for the loan program will exist or when the program will be reevaluated to determine if the need continues;
 - Document the research and analysis by the bank to justify the creation of the special purpose credit program.



Special Purpose Credit Program – Cont.

3. Arrange a meeting with your regulatory agency. Present the written plan of the special purpose credit program along with your data research. The agency can provide valuable information as to ensure the bank is on target or if the program requires tweaking.
4. As the bank releases information regarding the special purpose credit program to the targeted group or location consider marketing medium, regulatory compliance and working with community organizers to help get the word out.
5. Monitor the bank's efforts of originating the special purpose credit program. A bank can collect government monitoring information as noted below.

Regulation B 1002.5 and 1002.15 allow financial institutions to collect government monitoring information for self- testing purposes.

Diversity Equity & Inclusion (DEI)



FDIC released their Strategic plan for DEI 2021 through 2023

- Externally, the plan will improve DEI in FDIC contracting opportunities, enhance our ability to assess diversity policies and practices at financial institutions, and provide additional support for Minority Depository Institutions.
- We will partner with our supervised institutions to identify and promote DEI policies and practices to make their communities more inclusive.

DEI – Cont.



- We will foster diversity, equity, and inclusion in the banking system consistent with our mandate.
- Encourage DEI in FDIC business activities and at regulated financial institutions and foster financial inclusion in the banking system.

DEI – Cont.



OCC noted in its 2020 Annual Report a framework and guidance to institutions to voluntarily conduct assessments in their policies & practices:

- Organizational commitment to diversity & inclusion
- Workforce profile & employee practices
- Procurement & business practices – supplier diversity
- Practices to promote transparency of diversity & inclusion
- Entities' self assessment processes

DEI – Cont.



FRB is similar to OCC.

- Organizational commitment to diversity & inclusion
- Workforce profile & employee practices
- Procurement & business practices – supplier diversity
- Practices to promote transparency of diversity & inclusion
- Entities' self assessment processes

FRB sends out a Diversity Self-Assessment - Currently voluntary

Diversity, Equity & Inclusion at the Bank



What type of actions should I take?

1. Start having a conversation with stakeholders at the bank. How can each of them bring an idea to the table on how to improve diversity, equity and inclusion within the bank and in the its community its serves
2. Best place to start is with the Compliance Committee. Encourage robust discussions within committee meetings for inclusion and document within committee minutes.

Diversity Equity & Inclusion



3. Determine for your community, what are the unmet needs in the community, underserve bank service or unmet credit needs
 - Reach out to local non-profit organizations focused on minorities, minority locations and low-income individuals and areas. Listen! Document the contacts made and the unmet needs identified.
 - Bring this to the Compliance Committee to discuss. What areas can the bank start to think, plan and implement. Start in one area. Document your efforts.
 - If unable to determine or need ideas. Contact your local regulatory agency community affairs department who can provided resources.

Questions



References



A recorded version of the live HMDA Data Browser webinar is available at www.consumerfinance.gov/about-us/events/archive-past-events/hmda-data-browser/ .

Access to the HMDA Data Browser is available at <https://ffiec.cfpb.gov/data-browser/> .

CFPB Interpretive Rule Clarifying Prohibit Against Sex Discrimination at <https://www.consumerfinance.gov/about-us/newsroom/cfpb-clarifies-discrimination-by-lenders-on-basis-of-sexual-orientation-and-gender-identity-is-illegal/>

Access the at FDIC Diversity, Equity & Inclusion 2021 to 2023 Strategic Plan at [Diversity, Equity, and Inclusion Strategic Plan 2021-2023 \(fdic.gov\)](https://www.fdic.gov/diversity-equity-inclusion/2021-2023-strategic-plan/)

Access to the OCC 2020 Annual Report – Office of Minority and Women Inclusion at [pub-omwi-annual-report-fy2020 \(1\).pdf](https://www.occ.gov/news-issuances/annual-report/2020/omwi-annual-report-fy2020-1.pdf)

Access to the FRB Diversity Self-Assessment at [Diversity Self-Assessment Template for the Federal Reserve Board Regulated Entities–FR 2100](https://www.frb.org/diversity/self-assessment/)

Thank You



TCA A Better Way