



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

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

CFPB –ECOA- Advisory Opinion on May 9, 2022



- **Continues to protect borrowers after they have applied for and received credit:** Lenders are prohibited from discriminating against borrowers with existing credit. For example, ECOA prohibits lenders from lowering the credit limit of certain borrowers' accounts or subjecting certain borrowers to more aggressive collections practices on a prohibited basis, such as race.

CFPB –ECOA- Advisory Opinion on May 9, 2022



- **Requires lenders to provide “adverse action notices” to borrowers with existing credit:** Adverse action notices explain why an unfavorable decision was made against a borrower. Credit applicants and borrowers receive these notices for reasons including that credit was denied, an existing account was terminated, or an account’s terms were unfavorably changed. “Adverse action notices” discourage discrimination, and they help applicants and borrowers learn the reasons for creditors’ decisions.

Fair Lending & CFPB



- Issued Fair Lending Annual Report May 2022
- Risk-based prioritization fair lending exams
- Proposal issues 9/21/21 regarding Regulation B to change to ECOA to collect & report data to the CFPB on applications for small businesses including those owned by women & minorities.
- Interagency rulemaking to develop quality control standards for Automated Valuation Models to ensure protections against manipulation of data, seek to avoid conflicts of interest, address potential fair lending risk in models with required established policies, practices, procedures and controls to comply with nondiscrimination laws.
- Amending Regulation X in Mortgage Servicing to reinforce equitable economic recovery to help protect borrowers from unwelcomed surprises as they exited forbearance, to prevent unnecessary foreclosures and to support the housing market in an orderly fashion post-pandemic.
- Settlement for Alleged Discriminations by lending institutions

Fair Lending & CFPB - Continued



- Regulation B interpretive rules stating sex discrimination includes sexual orientation and gender identity.
- Encourages all financial institutions to better serve all consumers regardless of their Limited English Proficiency.
- Accuracy of HMDA data to ensure accurate fair lending analysis

Trustmark - October 22, 2021



- Discriminated against applicants and prospective applicants
- Redlining in majority Black & Hispanic communities in the Memphis MSA
- Engaged in acts and practices that would discourage prospective applicants from applying for credit.
- Trustmark to invest \$3.85 million in loan subsidy programs, open a loan production office in the Black and Hispanic neighborhoods.

Trustmark - October 22, 2021 – Continue



- Fund targeted advertising to Black & Hispanic Neighborhoods in Memphis
- Improve the Bank's fair lending compliance and serve the credit needs of the Black & Hispanic neighborhoods in Memphis MSA
- Pay \$5.0 million in civil money penalty

LendUp Loans – September 8, 2021



- Failed to timely issue required adverse action notices .
- Failed to provide accurate denial reasons on its adverse action notices to thousands of loan applicants.
- Impose an injunction prohibiting from offering or providing credit, collecting, selling, assigning loans and from making misrepresentation in sale or collection of consumer debt.
- Imposed a \$100,000 civil money penalty and required the payment of 40.5 million in consumer redress, to be suspended upon payment of civil money penalty based on LendUp's inability to pay.

Another CFPB Initiative – P.A.V.E.



Interagency Task Force on Property Appraisal & Valuation Equity (P.A.V.E.)

- Examine the various forms of discrimination that appear in residential property valuations practices and strengthen guardrails against discrimination
- Enhance the laws to drive accountability in the appraisal industry
- Build a diverse, well-trained, and accessible Appraiser workforce
- Empowering consumers to take action against bias
- Address potential bias in automated valuation models

UDAAP & Fair Lending



CFPB announced on March 16, 2022 that UDAAP will be included in Fair Lending exams.

- The areas that will have additional focus to determine illegal discrimination includes:
 - Credit servicing
 - Collections
 - Credit reporting
 - Payments
 - Remittance
 - Deposit

Board Responsibility



- Provide sufficient oversight of management and loan function
- Ensure sufficient resources devoted to training and monitoring
- Approve Fair Lending Policy
- Review Fair Lending Risk Assessment
- Periodic loan performance reporting
- Ensure management addresses outliers

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

Sample Exceptions Report



Pricing Exceptions Report Fields	Underwriting Exceptions Report Fields
Loan Number	Loan Number
Borrower	Borrower
GMI	GMI
Minority Borrower Y/N	Minority Borrower Y/N
Geocoding	Geocoding
Minority Tract Y/N	Minority Tract Y/N
Loan Program	Loan Program
Note Date	Note Date
Pricing on Rate Sheet or Pricing engine	Credit Score Exception
Pricing Granted	Loan to Value Exception
Fee waivers	Deb to Income Exception
Lender credit	Other Exception
Loan Officer	Loan Officer
Approver of Exception	Approver of Exception
Approval Date	Approval Date
Comment on Justification for exception	Comment on Justification for exception

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 attainability of credit for protected class.
- Ensure models used for credit decisions (AI) 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.

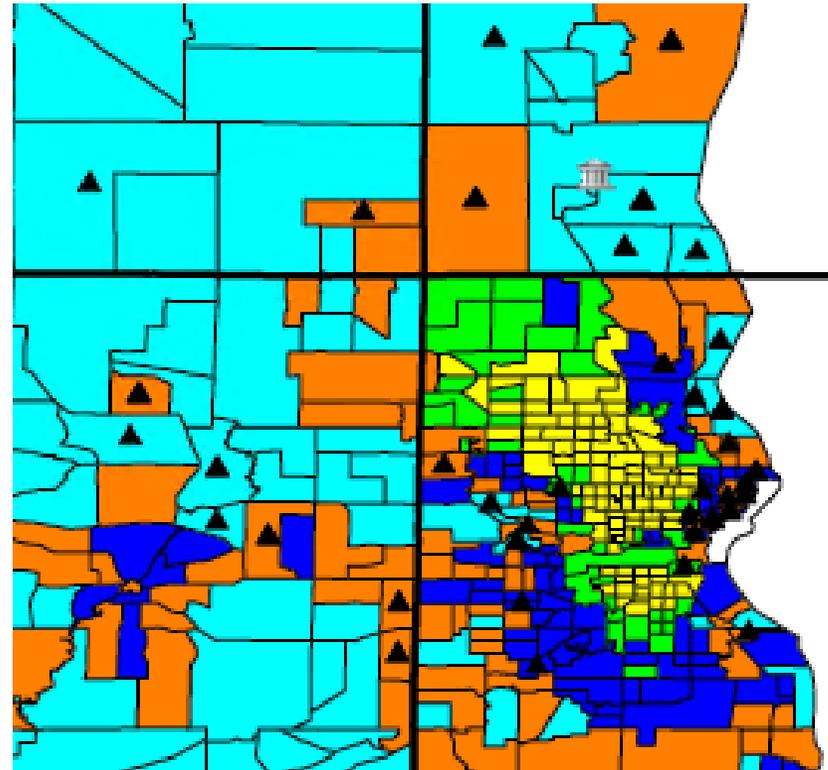
- Use of all Peers within lending area (assessment area or REMA)
- Use of peer banks with at least 200% above your HMDA LAR and 50% below

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



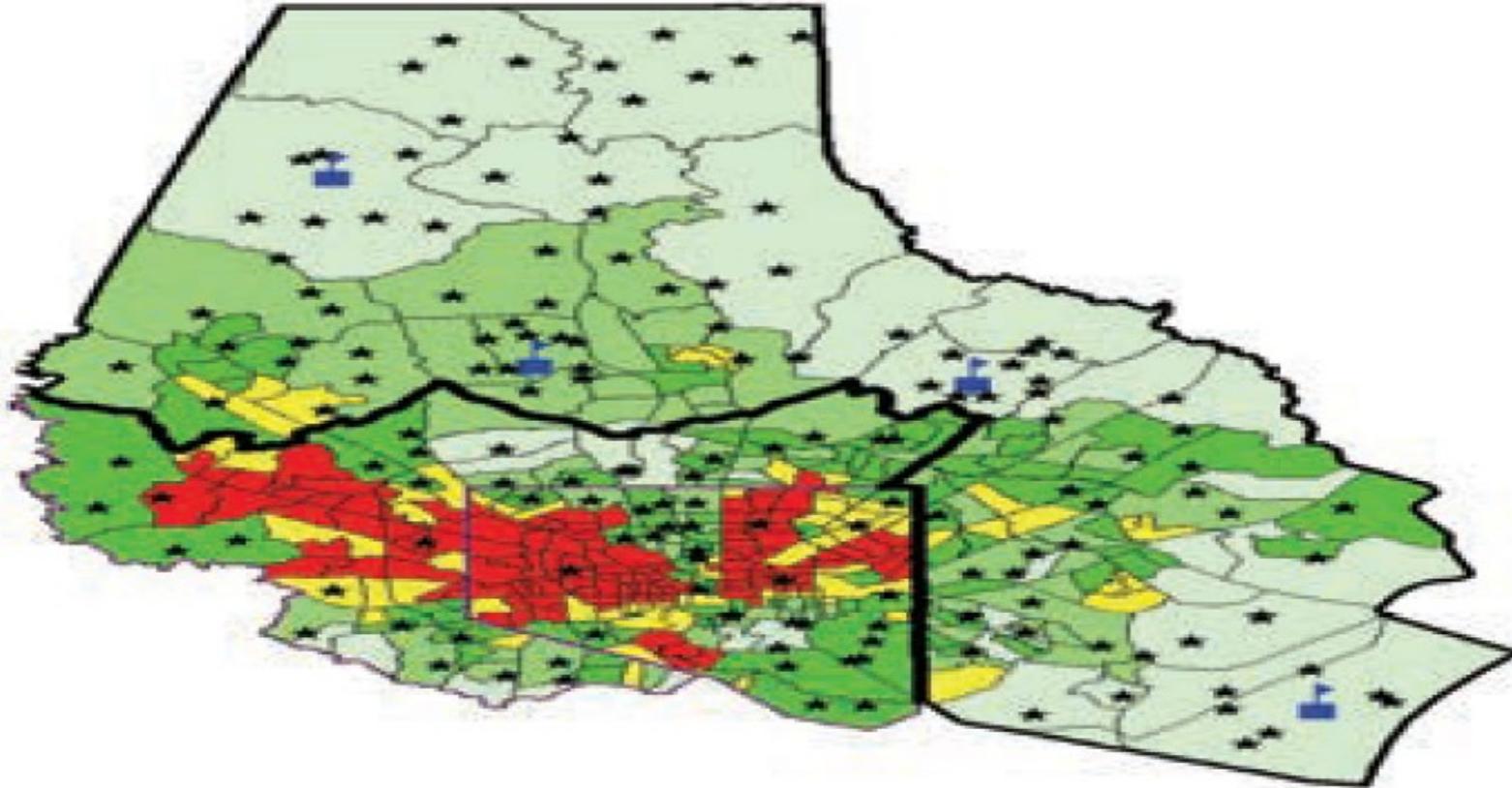
Redlining



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 May 2022 Fair Lending Report of the CFPB, redlining continues to be a priority of the regulators.

Redlining





Redlining – How to Avoid

- Branch open & close policy has a non-discrimination statement
- Know your REMA or CMA (Reasonably Expected Market Area)
- Understand and monitor lending patterns compared to peers (include review of applications) and in relation to lending area tract demographics
- Best Practice to 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

Fair Lending Training - Annually



- Training should be annually
- Board of Directors
- All staff not just lenders

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 & on website
- 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 compliance with 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

Diversity, Equity & Inclusion



- Lending staff diverse
- Marketing material diverse
- Inclusive
- Be aware of bias

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.

New CRA Proposal Rules – May 5, 2022



Interagency release proposal to the new CRA Rules.

- Bank size changes based on new thresholds
- Resource for Community Development Activities
- Facility-based assessment area
- Changes to evaluation metrics
- Consistent exam practices
- Over a hundred questions the Interagency would like comments
- Comments by August 5, 2022

Questions



Thank You



TCA A Better Way