



# Fair Lending Compliance

**Presented by:** Barry M. Pelagatti | Partner, Financial Services Industry Group Leader

# Welcome and Meet Your Team



**BARRY PELAGATTI, CPA** | *Partner, Audit Services Group*

Barry is a Partner in RKL's Audit Services Group and leader of the firm's Financial Services Industry Group. With more than two decades of service to financial institutions throughout the Mid-Atlantic, Barry directs the strategy, growth and management of RKL solutions for banks, credit unions and other institutions, ranging from assurance and tax services to data security assessments and business continuity planning. Barry also serves as Managing Partner of RKL's Exton Office.

# What We Will Cover

01.

## Overview of Fair Lending Laws

Overview of ECOA, FHA, HMDA, CRA, UDAAP and FCRA

02.

## Types of Discrimination

Overt Discrimination, Disparate Treatment and Disparate Impact

03.

## Penalties / Enforcement Actions

Common Violations, Public Enforcement Actions

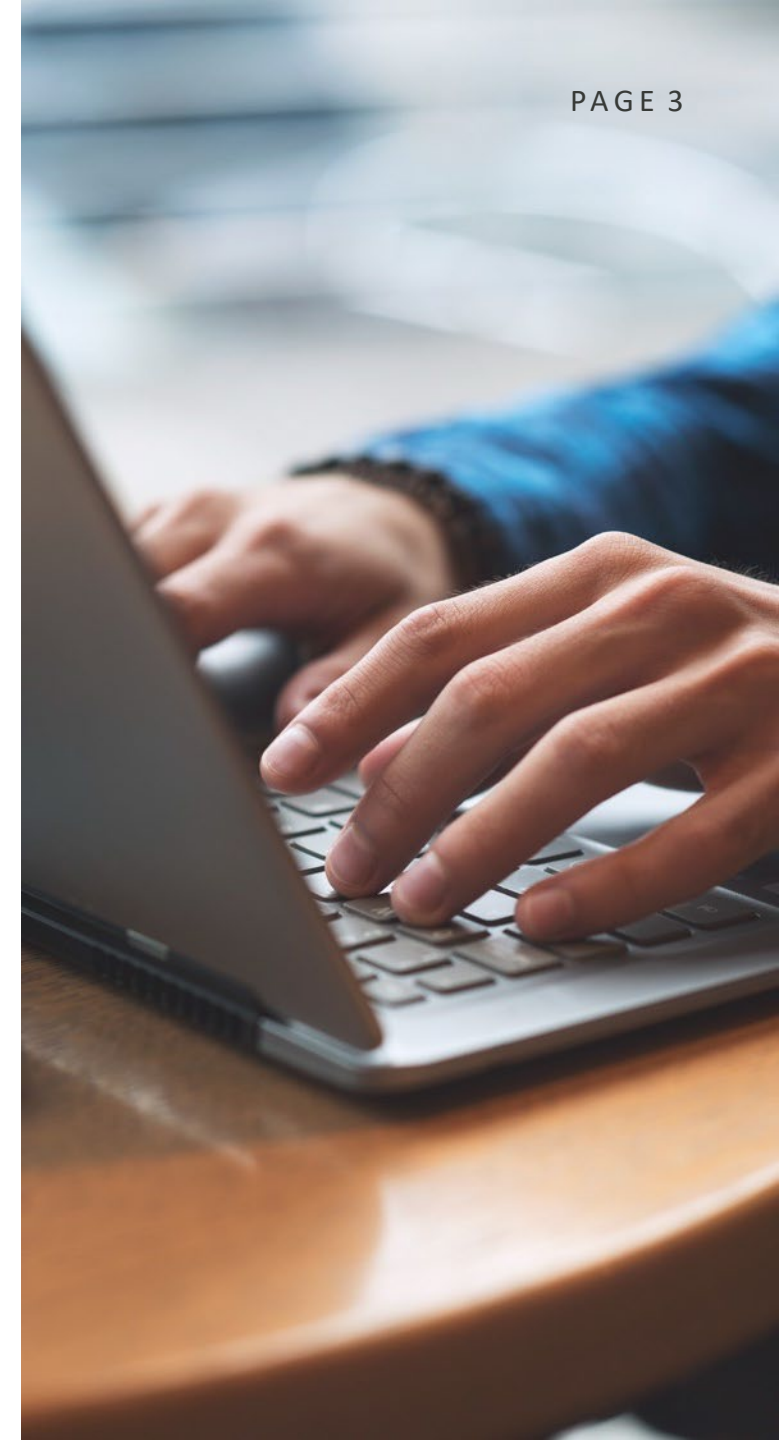
04.

## Resources

Technical Videos, Fair Lending Resources

05.

## Questions





# FAIR LENDING LAWS

# Fair Lending Laws

Fair Lending is not a law by itself

- Combination of laws and regulations
- May have different standards based on size and transaction volume of each institution (HMDA, CRA)

Fair Lending may encompass:

- Equal Credit Opportunity Act (ECOA)
- Fair Housing Act (FHA)
- Home Mortgage Disclosure Act (HMDA);
- Community Reinvestment Act (CRA)
- Unfair Deceptive Abusive Acts or Practices Act (UDAAP); and
- Fair Credit Reporting Act (FCRA)

# Overview of Alphabet Soup



# Equal Credit Opportunity Act (ECOA)

- [12 CFR 1002 – Regulation B](#)
- Prohibits discrimination on a prohibited basis regarding any aspect of a credit transaction.
- Congress passed ECOA in October 1974; prohibits lending discrimination based on sex or marital status.
- In March of 1976, Congress amended the law to further prohibit lending discrimination based on race, color, religion, national origin, age, the receipt of public assistance income, or exercising one's rights under certain consumer protection laws.
- Rule writing authority transferred to the CFPB.
- The CFPB shares the job of enforcing ECOA with other federal agencies (FDIC, FRB, OCC, NCUA), including the Department of Justice and Federal Trade Commission.

# Equal Credit Opportunity Act (ECOA)

Prohibition applies to all dealings between consumers and loan applicants and a financial institution, including the following:

- Application procedures
- Information requirements
- Investigation procedures
- Standards of creditworthiness, including criteria to evaluate creditworthiness
- Terms of credit
- Furnishing of credit information
- Revocation
- Alteration
- Administration of credit accounts
- Treatment of delinquent or slow accounts
- Termination of credit
- Collection procedure



# Equal Credit Opportunity Act (ECOA)

12 CFR 1002.1(b) Purpose - To promote the availability of credit to all creditworthy applicants without regard to any of the prohibited factors:

- Color
- Religion
- National origin
- Sex
- Marital status
- Age (provided the applicant has the capacity to contract)
- All or part of the applicant's income derived from a public assistance program (i.e. Welfare benefits)
- The applicant has in good faith exercised any right under the Consumer Credit Protection Act
  - Denying applications due solely to a Fraud or Active Duty Alert on a credit report

# Equal Credit Opportunity Act (ECOA)

March 30, 2023 – CFPB issued Final Rule to implement section 1071 of Dodd-Frank, governing small business lending under ECOA.

Requires financial institutions to compile, maintain, and submit to the CFPB certain data on applications for credit for women-owned, minority-owned, and small businesses.

[Executive Summary](#)

[Compliance Date Info Sheet](#)

[Data Points Chart](#)

# Fair Housing Act (FHA)

- [42 U.S.C. 3601](#)
- On April 11, 1968, President Lyndon Johnson signed the Civil Rights Act of 1968, which was meant as a follow-up to the Civil Rights Act of 1964.
- The 1968 Act expanded on previous acts and prohibited discrimination concerning the sale, rental, and financing of housing, based on race, religion, national origin, sex, (and as amended) handicap and family status.
- Title VIII of the Act is also known as the Fair Housing Act (of 1968).

# Fair Housing Act (FHA)

- Prohibits discrimination by direct providers of housing, such as landlords and real estate companies as well as other entities, such as municipalities, banks or other lending institutions and homeowners insurance companies whose discriminatory practices make housing unavailable to persons because of:
  - race or color,
  - religion,
  - sex,
  - national origin,
  - familial status, or
  - disability.
- In cases involving discrimination in mortgage loans or home improvement loans, the Department of Justice may file suit under both the Fair Housing Act and the Equal Credit Opportunity Act.

# ECOA & FHA

March 9, 2021 – [CFPB’s interpretive rule to ECOA](#) , made it clear that **lenders cannot discriminate based on sexual orientation or gender identity.**

**ECOA** - Prohibits discrimination in ANY aspect of a consumer or commercial credit transaction

Prohibited Basis
Color
Religion
National Origin
Sex
Marital Status
Age
Race
Income derived from public assistance
Rights under the Consumer Credit Protection Act

**FHA** - Prohibits discrimination in ALL aspects of a “residential real-estate related transaction”

Prohibited Basis
Color
Religion
National Origin
Sex
Familial Status
Disability
Race

# Home Mortgage Disclosure Act (HMDA)

- [12 CFR 1003 – Regulation C](#)
- Requires financial institutions to collect, report and disclose information about their mortgage lending activity.
- This data will help:
  - Show whether lenders are serving the housing needs of their communities;
  - Give public officials information that helps them make decisions and policies; and
  - Shed light on lending patterns that could be discriminatory.
- HMDA was originally enacted by Congress in 1975.
- Underwent a significant revision in 2015; changes effective in 2018.
- Collecting/reporting 48 data categories and over 100 individual data fields.
- Report prior year's data to CFPB by March 1.

# Home Mortgage Disclosure Act (HMDA)

LOAN/APPLICATION REGISTER Page \_\_\_ of \_\_\_

Form FR HMDA-LAR  
Reporter's Identification Number Agency Code

Name of Reporting Institution City, State, ZIP

All columns (except Reasons for Denial) must be completed for each entry. See the instructions for details.

Application or Loan Information							Action Taken		Property Location					Applicant Information				Type of Purchaser of Loan	Reasons for Denial (Optional)
Application or Loan Number	Date Application Received (mm/dd/ccyy)	Type	Purpose	Owner Occupancy	Loan Amount in thousands	Date (mm/dd/ccyy)	Four-Digit MSA Number	Two-Digit State Code	Three-Digit County Code	Six-Digit Census Tract	Race or National Origin		Sex		Gross Annual Income in thousands				
											A	CA	A	CA					
<b>Example of Loan Originated</b>																			
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<b>Example of Application Denied</b>																			
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# Community Reinvestment Act (CRA)

- Requires the Federal agencies to encourage financial institutions to help meet the credit needs of the communities in which they do business, including low and moderate income (LMI) neighborhoods.
- CRA was enacted in 1977 and is undergoing modernization (OCC's final rule is suspended). Expecting regulators to create a uniform rule.
- The CRA requires that each insured depository institution's record in helping meet the credit needs of its entire community be evaluated periodically. That record is taken into account in considering an institution's application for deposit facilities, including mergers and acquisitions.
- Examinations and requirements vary based on an institution's size. CRA also has a collection and reporting requirement for lending activity; as well as a collection requirement for community development loans, investments/donations and activities.
- Exam evaluations are made public, which is unique to CRA.



# Community Reinvestment Act (CRA)

- Requirements include:
  - Public Notice
  - Public File Data collection and reporting
  - Assessment Area
  
- CRA examinations have lead to violations of:
  - UDAAP
  - RESPA
  - TILA – right of rescission

# Unfair Deceptive Abusive Acts or Practices Act (UDAAP)

- [12 USC 5531](#)
- Institutions are legally required to refrain from committing unfair, deceptive, or abusive acts or practices.
- Fair Lending regulatory scrutiny intensified. Regulators focus on the entire credit life cycle! If regulators do not find Fair Lending violations, they will look to UDAAP!
- UDAAP applies to virtually every aspect of a banking relationship; from marketing to servicing to collections.
- Sound familiar? ECOA covers “any aspect of a credit transaction;” from marketing to servicing to collections.

# Unfair Deceptive Abusive Acts or Practices Act (UDAAP)

## Unfair

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

## Deceptive

- (1) The representation, omission, act, or practice misleads or is likely to mislead the consumer;
- (2) The consumer's interpretation of the representation, omission, act, or practice is reasonable under the circumstances; and
- (3) The misleading representation, omission, act, or practice is material.

## Abusive

- Materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service; or
- Takes unreasonable advantage of:
  - A lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service;
  - The inability of the consumer to protect its interests in selecting or using a consumer financial product or service; or
  - The reasonable reliance by the consumer on a covered person to act in the interests of the consumer.

# Unfair Deceptive Abusive Acts or Practices Act (UDAAP)

Common UDAAP related violations:

- Auto lenders
- Payday lenders
- Financial aid services or debt relief services
- Debt collectors
- Overdraft practices
- Advertising targeting service members
- Credit cards – add-on products
- Advertising/marketing

# Fair Credit Reporting Act (FCRA)

- [15 U.S.C. § 1681](#)
- Became effective on October 26, 1970.
- The FCRA was enacted to promote the accuracy, fairness, and privacy of consumer information contained in the files of consumer reporting agencies.
- The Act protects information collected by consumer reporting agencies such as credit bureaus, medical information companies and tenant screening services.
- Information in a consumer report cannot be provided to anyone who does not have a purpose specified in the Act.

# Fair Credit Reporting Act (FCRA)

- Companies that provide information to consumer reporting agencies also have specific legal obligations, including the duty to investigate disputed information. In addition, users of the information for credit, insurance, or employment purposes must notify the consumer when an adverse action is taken on the basis of such reports.
- [Do you know your rights under the FCRA?](#)

# Fair Lending Examinations

- Fair Lending Supervisory History
- Fair Lending Compliance Management System
  - Board and management oversight
  - Policies and procedures
  - Training
  - Monitoring & Audit
  - Consumer complaint response
- Fair Lending Originations
  - Marketing & Advertising
  - Accepting and Referring Applications/Steering
  - Underwriting
  - Redlining
- Fair Lending Servicing
  - Training
  - Monitoring
  - Servicing Options for Consumers with Limited English Proficiency (LEP)
  - Offering of Hardship/Loss Mitigation Options
- Fair Lending Use of Models



[FFIEC FL Exam Procedures](#)

[CFPB's ECOA's Baseline Procedures](#)

# Bias in Property Appraisals

- Recent activity regarding appraisals performed for minority homeowners
  - Media reports – High profile national news
    - Single Black woman in Indianapolis had her home appraised in 2020 in conjunction with a loan that was valued at \$125,000. She paid for a market analysis which said the home could sell for \$187,000. Her lender would not change the value, so she had another appraiser value the home and that was for \$110,000. She got a third appraisal, asking a white friend to pose as her brother and it appraised for \$259,000.
    - A couple in Marin City California spent thousands of dollars to renovate their home they bought in 2016. In 2020 during a request to refinance, the home appraised for \$995,000. When a white friend posed as the homeowner, a different appraiser valued the home at \$1,482,500.
    - A couple in Maryland are suing both the appraisal company and the lender for under-valuing their home by almost \$300,000 and being denied for a refinance due to the value.



# Bias in Property Appraisals (continued)

- Non profit community coalitions testing their communities
  - The NCRC – National Community Reinvestment Coalition – performed a test in Baltimore that showed stark differences in appraised values between homes owned by minorities and homes owned by non-minorities. Results show possible bias in, not only the valuations, but in customer service as well.
- FHFA commentary on Appraisal Bias
  - Rate of undervaluation of 13.4% in White tracts, 19.2% in minority tracts and 23.3% in high minority tracts
  - Undervalued in high minority tracts 74% higher than in White tracts.
  - Undervalued in minority tracts 43% higher than in White tracts.
- Recent CFPB blog regarding the Reconsideration of Value Process (ROV)
  - Urging lenders to abide by the consumer's wishes to reconsider values provided by appraisers
  - Ensuring that homebuyers and homeowners can challenge inaccurate appraisals is one of many efforts that the CFPB and other federal agencies are working on to ensure fair and accurate appraisals.



# TYPES OF DISCRIMINATION

# ECOA - Prohibition Against Discrimination

- 12 CFR 1002.4(a) General Rules
- A financial institution cannot discriminate on a prohibited basis regarding any aspect of a credit transaction.
- Discrimination occurs whenever you treat any person less favorably than others.
- Three “types” of lending discrimination.
  - Overt discrimination occurs when a lender blatantly discriminates on a prohibited basis.
  - Disparate treatment occurs when a lender treats applicants differently based on one of the prohibited factors.
  - Disparate impact occurs when a lender applies a practice uniformly to all applicants, but the practice has a discriminatory effect on a prohibited bases and is not justified by business necessity.

# ECOA - Prohibition Against Discrimination

- 1002.4(b) Discouragement
- A creditor may not make any oral or written statement to an applicant, or prospective applicant, that would discourage, on a prohibited basis, a reasonable person from making or pursuing an application of credit. Examples of such actions would be:
  - Making statements that an applicant should not bother to apply after the applicant states that he or she is retired.
  - Using words, symbols, models or other forms of communication in advertisements that express, imply, or suggest a discriminatory preference of policy of exclusion.
    - Use of all white models, or all young models.

# Overt Discrimination

A creditor offers a credit card with a limit of up to \$750 for applicants aged 21 to 30 and \$1,500 for applicants over the age of 30.

*This violates the ECOA prohibition on age discrimination.*

# Disparate Treatment

- A creditor provides information only on “subprime” and similar products to minority applicants who request information about the creditor's mortgage products, but provides information on a wider variety of mortgage products to similarly situated nonminority applicants.
- A creditor provides more comprehensive information to men than to similarly situated women.
- A creditor requires a minority applicant to provide greater documentation to obtain a loan than a similarly situated nonminority applicant.
- A creditor waives or relaxes credit standards for a nonminority applicant but not for a similarly situated minority applicant.
- Redlining.

# Disparate Impact

A creditor maintains a policy of offering a specific credit product with a minimum amount of \$100,000.

*This may discriminate against individuals who cannot afford the payments for credit of this amount.*

# ECOA - Prohibition Against Discrimination

## Redlining

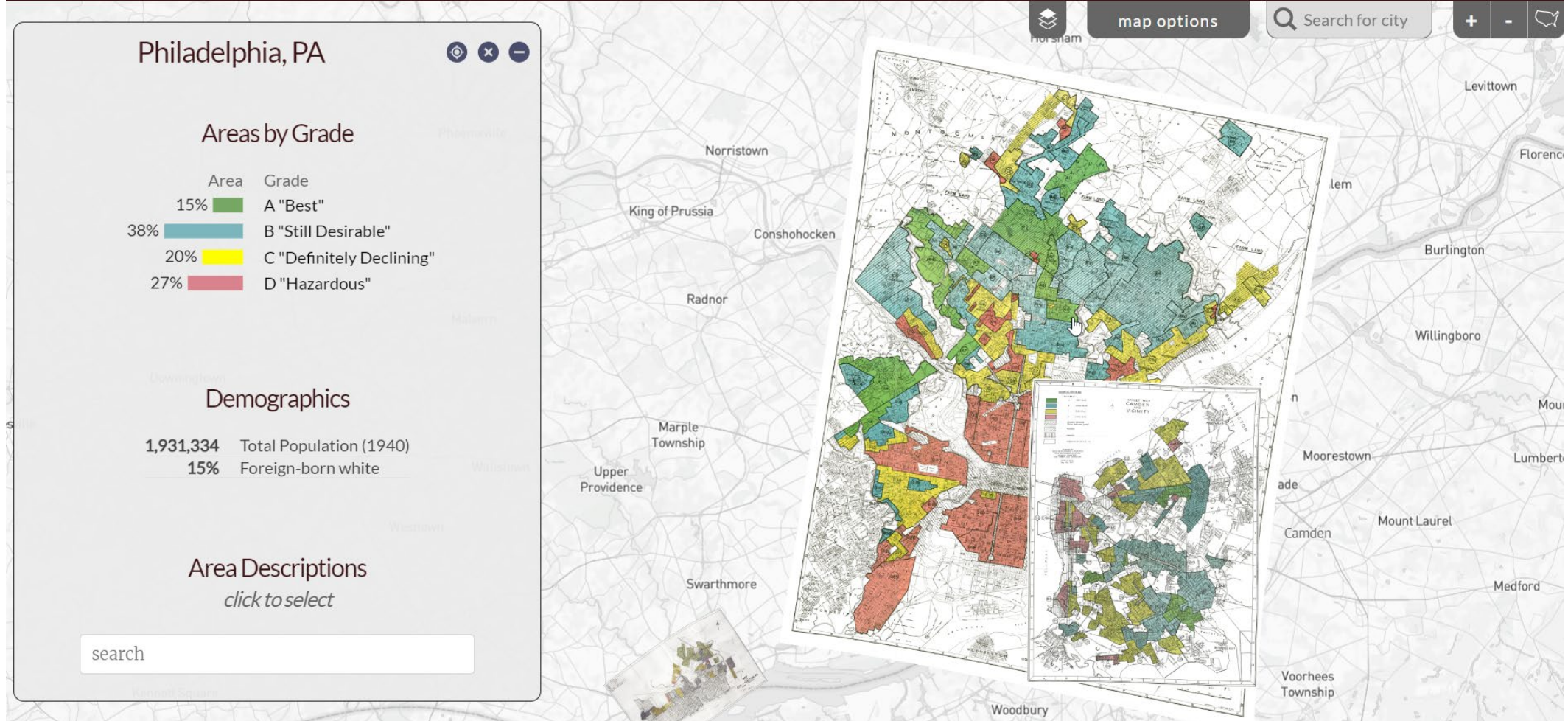
- A form of illegal disparate treatment
- When a lender provides unequal access to credit, or unequal terms of credit, because of the race, color, national origin, or other prohibited characteristics of
  - Where a credit seeker resides,
  - Where a credit seeker will reside, or
  - In which the residential property to be mortgaged is located
- Redlining may violate both the ECOA and the FHA



# Redlining Map Example

Mapping Inequality Redlining in New Deal America

Introduction Downloads & Data About Contact Us American Panoram



# Real Examples of Discrimination

## Visa Preapprovals Approve "if true" Statement

Member is 22 years old or older

Member is not 70 years old or older

The address must be domestic

The address is not an APO or FPO

SSN is not "888888888" or (000000000)

# Real Examples of Discrimination

Action Taken	Action Date	Reason for Denial	Loan Type	Loan Purpose	Loan Amount	Race	Co-app Race	Sex	Co-app Sex	Annual Income	Findings	Lender / Underwriter Response
Denied	7/24/2018	DTI Credit	Conventional	Home Improvement	\$40,000	3- black	n/a	2 - female	n/a	\$12,000	Credit Score 646, DTI 63 - recommended additional borrower with income to cover payments - mortgage is joint. She has just one piece of credit she is paying (her mortgage) which is joint since 1992 and was once 60 days past due. All other trade lines are student loans not in repayment	Declined - no 2nd review noted
Approved	5/21/2018	n/a	Conventional	Home Improvement	\$48,500	5 - white	n/a	2 - female	n/a	\$24,000	Credit Score 699, dti 79 - exception made for dti	LO Approved

# Real Examples of Discrimination

Action Taken	Action Date	Reason for Denial	Loan Type	Loan Purpose	Loan Amount	Race	Co-app Race	Sex	Co-app Sex	Annual Income	Findings	Lender / Underwriter Response
Denied	2/6/2018	DTI	Conventional	Home Improvement	\$ 45,000	3 - black	n/a	2 - female	n/a	\$ 55,000	Credit Score 725, dti 50 - She was asked to produce a strong co-borrower	Denied - no 2nd review
Approved	6/1/2018	n/a	Conventional	Home Improvement	\$ 86,000	5 - white	n/a	1 - male	n/a	\$ 60,000	Credit Score 750, dti 58 - exception made for dti	LO Approved

# Real Examples of Discrimination

Action Taken	Action Date	Reason for Denial	Loan Type	Loan Purpose	Loan Amount	Race	Co-app Race	Sex	Co-app Sex	Annual Income	Findings	Lender / Underwriter Response
Denied	8/13/2018	DTI	Conventional	Home Improvement	\$ 45,000	3 - black	n/a	1 - male	n/a	\$ 36,000	Credit Score 655, dti 54 - Based on current credit score max is 40%; recommend strong co borrower - no counter offer to payoff debt and secure 1st lien at 80% mentioned	Denied - no 2nd review noted
Approved	2/23/2018	n/a	Conventional	Home Improvement	\$ 12,500	5 - white	n/a	1 - male	n/a	\$ 132,000	Credit Score 651, dti 44 - Lower credit score, dti is more than max, no exception appears to have been approved. Rental income less than 3 months, but was included to bring dti to 37%, per comments from processor	LO Approved

# Confirmed Discrimination

- If discrimination is found, there may be violations of multiple regulations due to their overlap. It's not uncommon to be under simultaneous examination by different agencies, and therefore, fined for the same violation pursuant to different regulations.
- (Example: Consistently failing to issue a mortgage to individuals with a certain credit score - violation of the ECOA and investigated by the CFPB; also violating the FHA, under investigation by HUD.)
- FYI - UDAAP is used widely on the deposit side too, because there is no such thing as Fair Deposit regulations.

# Document the Loan File

- Phone calls, emails, in-person meetings and mailed/faxed communication with customers impact ECOA notifications and HMDA coding requirements
- If it's not evidenced in the loan file, it didn't happen
- Customer decides not to proceed with application before or after credit decision is made
  - Coding variations exist for HMDA between Withdrawn and Approved/Not Accepted
- Counteroffers are sometimes communicated verbally
- Denial communicated verbally
  - Can impact ECOA notification requirements and HMDA coding for Action Taken Date and Final Action
- Requests for additional information from customer can be made verbally

# | Penalties / Enforcement Actions



# What may happen...

- Possible adverse impact on institution's reputation
- Legal risks
- Delay or denial of corporate applications
- Possible referral to DOJ,\* HUD, CFPB, and/ or FTC
- Assessment of civil money penalties
- Restitution to affected borrowers
- Lookback and scrub of HMDA data
- Regulatory referrals to the DOJ are required if regulators have reason to believe the financial institution has engaged in a pattern or practice of discouraging or denying loan applications in violation of ECOA.\*

\*Agencies cooperate in rule-writing and enforcement!

# Common ECOA Violations

[CFPB's 2022 Fair Lending Report to Congress](#)

**TABLE 3: TABLE 5: REGULATION B VIOLATIONS CITED BY FFIEC AGENCIES, 2021**

Regulation B Violations: 2021	FFIEC Agencies Reporting
<p><b><u>12 C.F.R. § 1002.4(a), 1002.7(d)(1): Discrimination</u></b></p> <p>Discrimination on a prohibited basis in a credit transaction; improperly requiring the signature of the applicant's spouse or other person.</p>	<p>NCUA,<sup>81</sup> FRB,<sup>82</sup> OCC,<sup>83</sup> CFPB<sup>84</sup></p>
<p><b><u>12 C.F.R. § 1002.5(b), 12 C.F.R. § 1002.5(c), 12 C.F.R. § 1002.5(d): Inquiring about protected class</u></b></p> <p>Inquiring about the race, color, religion, national origin, or sex of an applicant or any other person in connection with a credit transaction, except as permitted in §§ 1002.5(b)(1) and (b)(2), or 1002.8 in the case of a special purpose credit program; requesting any information concerning an applicant's spouse or former spouse, except as permitted in § 1002.5(c)(2); requesting the marital status of a person applying for individual, unsecured credit, except as permitted in § 1002.5(d)(1) (for credit other than individual, unsecured, a creditor may inquire about the applicant's marital status, but must only use the terms "married," "unmarried," and "separated"); inquiring as to whether income stated in an application is derived from alimony, child support, or separate maintenance payments, except as permitted in § 1002.5(d)(2); or requesting information about birth control practices, intentions concerning the bearing or rearing of children, or capability to bear children, except as permitted in § 1002.5(d)(3).</p>	<p>FDIC,<sup>85</sup> CFPB<sup>86</sup></p>
<p><b><u>12 C.F.R. § 1002.6(b)(8), (b)(9): Specific rules concerning use of information</u></b></p> <p>Failure to evaluate married and unmarried applicants by the same standards; in evaluating joint applicants, a creditor shall not treat applicants differently based on the existence, absence, or likelihood of a marital relationship between the parties; a creditor shall not consider race, color, religion, national origin, sex (or an applicant's or other person's decision not to provide the information) in any aspect of a credit transaction.</p>	<p>NCUA,<sup>87</sup> CFPB<sup>88</sup></p>

# Common ECOA Violations

[CFPB's 2022 Fair Lending Report to Congress](#)

<p><b><u>12 C.F.R. § 1002.9(a)(1)(i), (a)(2), (b)(1); (b)(2); (c): Adverse Action</u></b></p> <p>Failure to provide notice to the applicant 30 days after receiving a completed application concerning the creditor's approval of, counteroffer to, or adverse action on the application; failure to provide appropriate notice to the applicant 30 days after taking adverse action on an incomplete application; failure to provide sufficient information in an adverse action notification, including the specific reasons for the action taken.</p>	<p>FDIC,<sup>89</sup> NCUA,<sup>90</sup> OCC,<sup>91</sup> FRB,<sup>92</sup> CFPB<sup>93</sup></p>
<p><b><u>12 C.F.R. § 1002.13(a)(1): Information for Monitoring Purposes</u></b></p> <p>Failure to request as part of an application for credit for purchase or refinancing of a dwelling occupied or to be occupied by the applicant as a principal residence, where the extension of credit will be secured by the dwelling the following information regarding the applicant(s): ethnicity and race; sex; marital status; and age.</p>	<p>CFPB</p>
<p><b><u>12 C.F.R. § 1002.14 (a)(1), (a)(2), (a)(3), (a)(4): Appraisals and Valuations</u></b></p> <p>Failure to provide appraisals and other valuations.</p>	<p>OCC,<sup>94</sup> FDIC<sup>95</sup></p>

# CFPB FL Supervision

In 2021, the supervisory priorities in FL examinations included:

- Racial and economic equity and promoting recovery related to the pandemic
  - Mortgage originations and pricing
  - Small business lending
    - Disparities in application, underwriting and pricing processes, redlining
  - Student loan origination
    - P&P that exclude certain types of income or property on the basis of geography
  - P&P regarding geographic and other exclusions in underwriting
  - Use of AI and machine learning models
    - Area of expansion for CFPB - digital redlining and algorithmic bias
  - Redlining
  - Steering
  - HMDA data integrity
- 
- FDIC, NCUA and CFPB made 6 DOJ referrals in 2021

# Public Enforcement Actions

## Trident Mortgage Company, LP

- On July 27, 2022, the Bureau, together with the United States Department of Justice (DOJ), filed a complaint and proposed consent order in the United States District Court for the Eastern District of Pennsylvania.
- The Bureau's and DOJ's joint complaint alleges that Trident engaged in unlawful discrimination on the basis of race, color, or national origin against applicants and prospective applicants, including by redlining majority-minority neighborhoods in the Philadelphia-Camden-Wilmington, PA-NJ-DE-MD Metropolitan Statistical Area (Philadelphia MSA) and engaged in acts and practices directed at prospective applicants that would discourage prospective applicants from applying for credit in violation of the Equal Credit Opportunity Act (ECOA), Regulation B, and the Consumer Financial Protection Act of 2010 (CFPA). DOJ also alleges that Trident's conduct violated the Fair Housing Act (FHA).
- If approved by the court, the proposed consent order would require Trident to invest \$18.4 million in a loan subsidy program, among other cures and physical presence changes.
- Trident must also pay a civil money penalty of \$4 million.

# Public Enforcement Actions

## Trustmark National Bank

- On October 22, 2021, the Bureau, together with the United States Department of Justice (DOJ), filed a complaint and proposed consent order in the federal district court for the Western District of Tennessee.
- The joint complaint alleged that Trustmark engaged in unlawful discrimination against applicants and prospective applicants, including by redlining majority Black and Hispanic communities in the Memphis, Tennessee-Mississippi-Arkansas Metropolitan Statistical Area (MSA) and engaged in acts and practices directed at prospective applicants that would discourage prospective applicants from applying for credit in violation of the Equal Credit Opportunity Act (ECOA), Regulation B, and the Consumer Financial Protection Act of 2010 (CFPA). DOJ also alleged that Trustmark's conduct violated the Fair Housing Act (FHA).
- Trustmark to invest \$3.85 million in a loan subsidy program, among other cures and physical presence changes.
- The order also requires Trustmark to pay a civil money penalty of \$5 million, \$4 million of which would be remitted as a penalty paid to the Office of the Comptroller of the Currency for FHA violations arising from the same conduct alleged in the complaint.

# Public Enforcement Actions

## LendUp Loans, LLC

- On September 8, 2021, the Bureau filed a lawsuit in the United States District Court for the Northern District of California.
- The Bureau alleged that LendUp's brand identity is tied to its marketing claims that, through on-time payments and repeat borrowing, borrowers will accrue points and ascend the "LendUp Ladder," gaining access to loans with more favorable interest rates or larger loan amounts as consumers reach higher Ladder levels. In 2016, the Bureau issued an administrative consent order against LendUp to address the Bureau's finding that LendUp misled consumers about the benefits of its loans.
- The Bureau alleged that LendUp's marketing claims were deceptive under the Consumer Financial Protection Act of 2010 and violated the prohibitions of the Bureau's 2016 order. The Bureau also alleged that LendUp failed to timely issue required adverse-action notices and failed to provide accurate denial reasons on its adverse-action notices to thousands of loan applicants, in violation of the Equal Credit Opportunity Act and Regulation B, and that these violations also constitute violations of the CFPB.
- The order also imposes a \$100,000 civil money penalty and requires the payment of \$40,500,000 in consumer redress, to be suspended upon payment of the civil money penalty based on LendUp's demonstrated inability to pay.

# Public Enforcement Actions

## JPay

- On October 19, 2021, the CFPB ordered JPay to pay \$4 million for consumer redress, prohibited JPay from engaging in the illegal conduct found by the CFPB, and required JPay to pay a \$2 million civil money penalty.
- JPay provided prepaid cards to formerly incarcerated individuals upon their release from prison or jail (JPay debit release card). The debit release cards contained the balance of funds owed to former inmates upon their release, including their commissary money, as well as any “gate money,” which are entitlements provided pursuant to state or local law, policy, or regulation to ease transition to society after release from prison or jail. The CFPB found that JPay **violated EFTA and its implementing Regulation E by requiring consumers to establish an account with the particular financial institution that issued the JPay debit release card as a condition of receiving a government benefit**, namely their gate money.
- JPay’s violations of EFTA and Regulation E also constituted violations of CFPA. The CFPB also found that JPay engaged in unfair and abusive acts and practices by causing fees to be imposed through its JPay debit release card on consumers who were required to get a JPay debit release card to access the money owed to them at the time of their release from prison or jail.
- In addition, the CFPB found that JPay violated the CFPA’s prohibition against unfair acts and practices by causing some consumers to be charged fees on their JPay debit release card that were not authorized by their cardholder agreements, and the CFPA’s prohibition against deceptive acts and practices by misrepresenting fees of some JPay debit release cards.



# Public Enforcement Actions

## **Townstone Financial Inc.**

- On July 15, 2020, the Bureau filed a lawsuit in federal district court in the Northern District of Illinois. On November 25, 2020, the Bureau amended the complaint. The Bureau alleges that Townstone violated ECOA and Regulation B.
- As alleged in the complaint, from 2014 through 2017, Townstone drew almost no applications for mortgages on properties in African-American neighborhoods located in the Chicago-Naperville-Elgin Metropolitan Statistical Area (Chicago MSA) and few applications from African-Americans throughout the Chicago MSA. The Bureau alleges that Townstone engaged in acts or practices, including making statements during its weekly radio shows and podcasts through which it marketed its services, that illegally discouraged African-American prospective applicants from applying for mortgage loans and engaged in illegal redlining by engaging in acts or practices that discouraged prospective applicants living or seeking credit in African-American neighborhoods in the Chicago MSA from applying for mortgage loans.
- The Bureau's complaint seeks an injunction against Townstone, as well as damages, redress to consumers, and the imposition of a civil money penalty.
- Litigation is ongoing.

# Public Enforcement Actions

## Washington Federal Bank, N.A.

- On October 27, 2020, the Bureau settled with Washington Federal Bank, N.A. to address the Bureau's finding that it reported inaccurate HMDA data about its mortgage transactions for 2016 and 2017.
- Inaccurate HMDA data can make it difficult for the public and regulators to discover and stop discrimination in home mortgage lending or for public officials and lenders to tell whether a community's credit needs are being met.
- The settlement requires Washington Federal to pay a \$200,000 civil money penalty and develop and implement an effective compliance-management system to prevent future violations.
- Washington Federal reported HMDA data for over 7,000 mortgage applications in both 2016 and 2017. The Bureau found that these data included significant errors, with some samples having error rates as high as 40%.

# Public Enforcement Actions

## **Washington Federal Bank, N.A.**

- The Bureau found that the errors in Washington Federal's 2016 HMDA data were caused by a lack of appropriate staffing, insufficient staff training, and ineffective quality control. The errors in its 2017 HMDA data were directly related to weaknesses in Washington Federal's compliance-management system.
- The Bureau found weaknesses in the areas of board and management oversight, monitoring, and policies and procedures. The significant errors in reported mortgage-application data violated HMDA and Regulation C. These violations also constituted violations of the Consumer Financial Protection Act.

# HMDA Violations

## **Freedom Mortgage Corporation**

- For each year from 2013 through 2016, it originated more than 50,000 home-purchase loans, including refinancings of home-purchase loans.
- Data for 2014 to 2017 contained errors. The Bureau found that Freedom reported inaccurate race, ethnicity, and sex information and that much of Freedom's loan officers' recording of this incorrect information was intentional.
- For example, certain loan officers were told by managers or other loan officers that, when applicants did not provide their race or ethnicity, they should select non-Hispanic white regardless of whether that was accurate.
- Under the terms of the consent order, Freedom must pay a civil money penalty of \$1.75 million and take steps to improve its compliance management to prevent future violations.

## **Nationstar Mortgage LLC**

- Consistently failing to report accurate data about mortgage transactions for 2012 through 2014.
- The CFPB assessed a \$1.75 million civil penalty, improve its compliance management to prevent future violations, and review, correct, and make available its corrected HMDA data from 2012–2014.

# Fair Lending Actions & Penalties

- City of Philadelphia filed a lawsuit against Wells Fargo for discriminatory lending practices targeting minority borrowers (under FHA); steering African-Americans and Latino applicants toward high-cost or high risk loans. Lawsuit is pending.
- JP Morgan settled lending discrimination lawsuit (under FHA and ECOA) for \$53 million for recklessly disregarding the rights of at least 53,000 African-American and Hispanic borrowers.
- ABC Credit Union sued for allegedly discriminating against potential borrowers on the basis of sex or familiar status (under FHA). Lawsuit is pending.
- American Express paid \$95 million (ordered by CFPB) in consumer redress for discriminating against consumers in Puerto Rico, the U.S. Virgin Islands, and other U.S. territories by providing them with credit and charge card terms that were inferior to those available in the 50 U.S. states. American Express also discriminated against certain consumers with Spanish-language preferences.
- Meridian Title Corporation fined \$1.25 million by the CFPB for steering customers to a title insurer owned in part by several of its executives.

# Fair Lending Actions & Penalties

- Zero Parallel (online lead aggregator) was fined \$100,000 by the CFPB for steering consumers toward lenders who offered illegal or unlicensed loans that were void in the consumer's state
- Citigroup may face Fair Lending penalty: denying minority customers the kinds of mortgage discounts that the bank offered to many other borrowers
- Community Trust Bank fined \$4.75M for UDAAP violations by FRB for failing to properly disclose add-on products
- Cross River Bank (Teaneck, NJ) and affiliate pay \$1.5M fine for UDAAP violations assessed by FDIC – requiring consumers to sign loan documents without knowing essential terms; failing to inform consumers of debt negotiation limitations; misrepresenting settlement timeframes and credit improvements
- FTC fined NY Debt Collector \$18.8M for using threats and abusive language to collect debt
- Bancorp issued \$2M penalty for UDAAP violations by FDIC for failing to accurately disclose fees



# Resources

# Resources

[Technical Assistance Videos on Fair Lending](#)

[Interagency Fair Lending Webinar \(2020\)](#)

[Adverse Action Notice Requirements](#)

[Interagency Fair Lending Examination Procedures](#)



# Do You Have Questions?





# Thank You for Joining Us

Whatever your next move, we're here to help.

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