FAIR LENDING UPDATE

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July 2024

REDLINING – DOJ'S COMBATTING REDLINING INITIATIVE

- DOJ's October 22, 2021 announcement of its "Combatting Redlining Initiative" addressed the Fair Lending and Fair Banking priorities
  - Attorney General Garland's remarks:
    - "Today, we are committing ourselves to addressing modern-day redlining by making far more robust use of our fair lending authorities," and "we will spare no resource to ensure that federal fair lending laws are vigorously enforced and that financial institutions provide equal opportunity for every American to obtain credit. To that end, you can expect more cases like the one we are announcing today." (Consent Order)
    - DOJ's "most aggressive and coordinated enforcement effort to address redlining" and "will seek to address fair lending concerns on a broader geographic scale than the Justice Department has ever done before."
  - CFPB Director Chopra: Bureau will be "closely watching for digital redlining, disguised through so-called 'neutral algorithms.'"
    - "Black-box underwriting decisions are not necessarily creating a more level playing field and may be exacerbating the bias feeding into them," and "the speed at which banks and lenders are turning lending and marketing decisions over to these algorithms is concerning to me."

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REDLINING DEFINED

- Redlining occurs when lenders deny or discourage applications or avoid providing loans or other credit services in neighborhoods because of the race, color, or national origin of the residents of those neighborhoods
  - Violates both the Fair Housing Act and the Equal Credit Opportunity Act
- **Redlining** is an illegal disparate treatment in which lenders avoid providing credit services to individuals living in minority communities because of the race, color, national origin or other prohibited bases of residents of those communities. Lenders redline by providing unequal access to credit or unequal terms of credit.
- **Reverse redlining** is the illegal practice of extending credit on unfair terms in specific communities on a discriminatory basis. For example, lenders have been found to target low-income borrowers with subprime and balloon loans (high-interest, high-costs products and services) without considering the entire portfolio of loans based on each applicant's merits.
- **Digital redlining** is the use of digital resources (websites, social media, etc.) to market or provide unequal access to or terms of credit to potential applicants via "targeted marketing" methods. Based on some prohibited bases, individuals are only shown loan options the marketer allows them to see. What information is used to reach the "perfect applicant" for each product or service – religious views, political perspectives, marital status, etc.?????

FINANCIAL SOLUTIONS

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DOJ'S INITIATIVE TO COMBAT REDLINING

- This Initiative is being led by the Civil Rights Division's Housing and Civil Enforcement Section in partnership with U.S. Attorney's Offices, will build on the longstanding work by the division that seeks to make mortgage credit and homeownership accessible to all Americans on the same terms, regardless of race or national origin and regardless of the neighborhood where they live. The Initiative will:
  - Utilize U.S. Attorneys' Offices as force multipliers to ensure that fair lending enforcement is informed by local expertise on housing markets and the credit needs of local communities of color.
  - Expand the department's analyses of potential redlining to both depository and non-depository institutions. Non-depository lenders are not traditional banks and do not provide typical banking services, but engage in mortgage lending and now make the majority of mortgages in this country.
  - Strengthen our partnership with financial regulatory agencies to ensure the identification and referrals of fair lending violations to the Department of Justice.
  - Increase coordination with State Attorneys General on potential fair lending violations.

FINANCIAL SOLUTIONS

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LEGAL FRAMEWORK: REDLINING VIOLATES THE FAIR HOUSING ACT AND THE EQUAL CREDIT OPPORTUNITY ACT

- The fair lending laws were designed to remedy credit discrimination, including redlining. The federal financial regulators have long recognized that redlining violates the fair lending laws, including in the following policy documents:
  - 1994 Interagency Policy Statement on Discrimination in Lending: Redlining refers to the illegal practice of refusing to make residential loans or imposing more onerous terms on any loans made because of the predominant race, national origin, etc., of the residents of the neighborhood in which the property is located. Redlining violates both the Fair Housing Act and the Equal Credit Opportunity Act.
  - 2009 Interagency Fair Lending Examination Procedures: Redlining is a form of illegal disparate treatment in which a lender provides 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.
- Similarly, courts have repeatedly recognized that redlining is a violation of the Fair Housing Act and the Equal Credit Opportunity Act.

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$114.8+ MILLION SECURED THROUGH DEPARTMENT'S COMBATING REDLINING INITIATIVE AS OF MARCH 2024

- Since the Initiative was launched, the department has announced six redlining cases and settlements and secured millions in relief for communities of color that have been victims of lending discrimination across the country.
  - $31 million settlement with City National Bank
  - $20 million settlement with Trident Mortgage Company
  - $13.5 million settlement with FNB Pennsylvania (Yadkin Valley)
  - $13 million settlement with Lakeland Bank
  - $9 million settlement with Park National Bank
  - $9 million settlement with Ameris Bank
  - $8.85 million settlement with Trustmark National Bank
  - $5.55 million settlement with Cadence Bank
  - $3 million settlement with ESSA Bank and Trust
  - $1.9 million settlement with Patriot Bank

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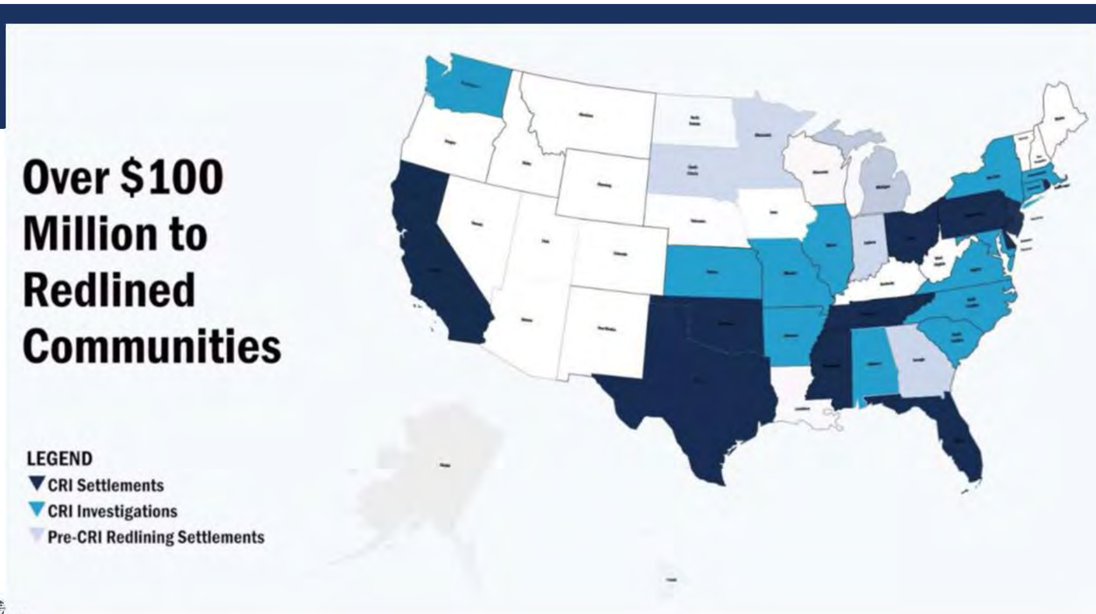

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DOJ CASE: FNB PENNSYLVANIA IN NC ($13.5 MILLION) (2/5/24)

- The complaint alleges, from 2017 through 2021, FNB, including as **Successor in Interest to Yadkin Bank**, which it acquired in 2017, failed to provide mortgage lending services to predominantly Black and Hispanic neighborhoods in Charlotte and Winston-Salem, and discouraged people seeking credit in those communities from obtaining home loans. FNB's home mortgage lending was focused disproportionately on white areas of Charlotte and Winston-Salem. For example, other lenders generated applications in predominantly Black and Hispanic neighborhoods at 2.5X the rate of FNB in Charlotte and 4X the rate of FNB in Winston-Salem. FNB's branches in both cities were also overwhelmingly located in predominantly white neighborhoods, with the bank closing its sole branch in a predominantly Black and Hispanic neighborhood in Winston-Salem in 2021.
- The complaint further alleges that FNB relied on mortgage loan officers working out of predominantly white areas to generate loan applications and that the bank did not track how its mortgage loan officers developed loan referrals or how they distributed the bank's mortgage marketing materials. The Justice Department and the State of North Carolina have resolved their claims via two proposed consent orders, which are both subject to court approval. The consent orders require FNB to invest $13.5 million to increase credit opportunities for communities of color in Charlotte and Winston-Salem. Specifically, FNB will:
  - Invest at least $11.75 million in a loan subsidy fund to increase access to home mortgage, home improvement and home refinance loans for residents of majority-Black and Hispanic neighborhoods in FNB's Charlotte and Winston-Salem service areas;
  - Spend $1 million on community partnerships to provide services related to credit, consumer financial education, homeownership and foreclosure prevention for residents of predominantly Black and Hispanic neighborhoods in those service areas;
  - Spend $750,000 for advertising, outreach, consumer financial education and credit counseling focused on predominantly Black and Hispanic neighborhoods in those service areas;
  - Open three new branches in predominantly Black and Hispanic neighborhoods in Charlotte and Winston-Salem (two in Charlotte and one in Winston-Salem), with at least one mortgage banker assigned to each branch; and
  - Hire a director of community lending who will oversee the continued development of lending in communities of color.

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SETTLEMENT REQUIRED COMMUNITY CREDIT NEEDS ASSESSMENT

- A Community Credit Needs Assessment is a research-based market study to help a lender identify the needs for financial services in an area, required to be prepared by an independent, third party consultant(s).
- FNB must submit a Community Credit Needs Assessment for majority-Black and Hispanic census tracts within the Charlotte and Winston-Salem Assessment Areas including the following information to the DOJ:
  1. An evaluation (to include market research and interviews) of residential mortgage credit needs and current lending opportunities available in the area;
  2. Recent demographic and socioeconomic data;
  3. Potential strategies for FNB to provide residential mortgage products and lending services in these census tracts;
  4. An assessment of potential appropriate locations and hours of operation for new branches in these census tracts;
  5. A review of loan products offered by other lenders and their success in the market;
  6. An overview of federal, state, and local programs that are available to charlotte and winston-salem assessment area residents seeking and obtaining residential mortgage loans; and
  7. Recommendations addressing how each requirement of the consent order should be carried out to best achieve the remedial goals

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APPRAISER AND LENDER ALLEGEDLY VIOLATE FHA & ECOA

- On March 13, 2023, the DOJ and the CFPB filed a Statement of Interest in Connolly v. Lanham (D. Md.), a private lawsuit brought under the Fair Housing Act (FHA), the Equal Credit Opportunity Act (ECOA), and other laws.
- The complaint in the case alleges that an appraiser and a lender violated the FHA and ECOA by lowering the valuation of a home because the owners were Black and by denying a mortgage refinancing application based on that appraisal. The defendants have moved to dismiss the complaint.
- The Statement of Interest explains that it is illegal for a lender to rely on an appraisal that it knows or should know to be discriminatory and provides guidance on pleading and proof standards under the FHA and ECOA.

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HOW TO COMBAT POTENTIAL DIGITAL REDLINING

- Review the criteria used for any advertising filters deciding who sees which advertisements
- Understand the technological algorithms and decisioning
- Review reports detailing the advertising audiences reached by the ads
- Don't overlook the potential for redlining in traditional marketing methods
  - Which ads in which neighborhood newsletters (paper or digital, etc.)
- Review geographic marketing plans for your entire marketing and assessment area

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7 WAYS TO ANALYZE YOUR DATA FOR FAIR LENDING RISK

- I. Review your geocoding lending data for croissants or doughnuts.
  - If a C-shaped or O-shaped lending pattern is visible, you have redlining risk. This will attract regulatory attention and you must be prepared to explain your pattern of lending.
- II. Evaluate marketing risk using application data.
  - You should be marketing to all communities and geographic areas within your service area. Analyze:
    - Applications in majority-minority census tracts.
    - Distribution of applications within market areas.
    - Application market share within the unique market areas.
- III. Evaluate underwriting risk using origination data.
  - Originations in majority-minority census tracts.
  - Distribution of originations within market areas.
  - Origination market share within the unique market areas.

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7 WAYS TO ANALYZE YOUR DATA FOR FAIR LENDING RISK

- IV. Consider your reverse redlining risk, the risk of targeting majority-minority or high-minority census tracts with less desirable loan products.
  - Do you have higher priced products with a concentration in LMI or majority-minority tracts??
- V. Compare your performance to peers
- VI. Assess changes in your branch and remote service facilities (e.g., ATMs) networks
  - Do all of your branches have the same hours and offer the full array of products and services?
- VII. Review your fair lending and Community Reinvestment Act (CRA) data
  - Examiners will be evaluating HMDA data, peer performance data, census tract demographics, and other important statistics. Know Your Numbers!!!!

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IMMIGRATION STATUS AND ELIGIBILITY FOR CREDIT (10/12/23)

- CFPB and DOJ issued a Joint Statement on creditors' use of immigration status for eligibility for credit transactions
  - Issued in response to consumers reportedly being rejected for credit cards and loans because of their immigration status, even when they have strong credit histories and are otherwise qualified to receive the loans
- Warns lenders that "unnecessary or overbroad" reliance on immigration status in credit decisioning process may violate ECOA and other federal laws
  - "Immigration status may broadly overlap with or, in certain circumstances, serve as a proxy for…protected characteristics [including race and national origin]. Creditors should therefore be aware that if their consideration of immigration status is not 'necessary to ascertain the creditor's rights and remedies regarding repayment' and it results in discrimination on a prohibited basis, it violates ECOA and Regulation B."
- Examples of ECOA violations – creditor:
  - Who has a blanket policy of refusing to consider applications from certain groups of noncitizens regardless of the credit qualifications of individual borrowers
  - With a policy of placing undue consideration on certain criteria, such as how long a consumer has had a SSN, which may serve as a proxy for citizenship or immigration status, which in turn, may implicate a protected characteristic
  - Who requires documentation, identification, or in-person applications only from certain groups of noncitizens
- Recommends creditors evaluate whether their reliance on immigration or citizenship status is necessary to ascertain their repayment rights

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FHFA: COLLECTION OF FAIR LENDING DATA

- FHFA (Aug. 10, 2022) announced that Fannie Mae and Freddie Mac will start requiring servicers to obtain and maintain borrowers' fair lending data
  - Beginning March 1, 2023, servicers will be required to collect borrower data including race, ethnicity, age, gender, and preferred language on the Supplemental Consumer Information Form (SCIF)
  - Data must transfer with servicing throughout the mortgage term
- Follows May 2022 announcement that requires lenders to collect information on borrower's language preference, and any homebuyer education or housing counseling received
  - Purpose: lenders can increase their understanding of borrowers' needs throughout the home buying process
- Fannie Mae SVC-2022-06 incorporates new fair lending data requirements into its Servicing Guide; Freddie Mac Bulletin 2022-17 outlines servicing requirements
  - Data elements must be stored in a format that can be searched, queried, and transferred
- The SCIF will allow the applicant to indicate any homeownership education or housing counseling that they have received. In announcing the SCIF requirement, FHFA stated that the "purpose of the SCIF is to collect information about the borrower's language preference, if any, and on any homebuyer education or housing counseling the borrower received, so lenders can better understand borrower needs during the home buying process."

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To be completed by the **Lender:**
Lender Loan No./Universal Loan Identifier ______________ Agency Case No. ______________

Supplemental Consumer Information Form

The purpose of the Supplemental Consumer Information Form (SCIF) is to collect information on homeownership education and housing counseling and/or language preference to help lenders better understand the needs of borrowers during the home buying process.

Borrower Name (First, Middle, Last, Suffix) ______________

Homeownership Education and Housing Counseling

Homeownership education and housing counseling programs are offered by independent third parties to help the Borrower understand the rights and responsibilities of homeownership.

Has the Borrower(s) completed homeownership education (group or web-based classes) within the last 12 months? ☐ NO ☐ YES

If YES: (1) **What format was it in:** *(Check the most recent)* ☐ Attended Workshop in Person ☐ Completed Web-Based Workshop

(2) **Who provided it:**

If a HUD-approved agency, provide Housing Counseling Agency ID # ______________

For a list of HUD-approved agencies go to: https://www.hud.gov/program_offices/housing/sfh/hcc

If not a HUD-approved agency, or unsure of HUD approval, provide the name of the Housing Education Program: ______________

(3) **Date of Completion** ___/___/_____ *mm/dd/yyyy*

Has the Borrower(s) completed housing counseling (customized counselor-to-client services) within the last 12 months? ☐ NO ☐ YES

If YES: (1) **What format was it in:** *(Check the most recent)* ☐ Face-to-Face ☐ Telephone ☐ Internet ☐ Hybrid

(2) **Who provided it:**

If a HUD-approved agency, provide Housing Counseling Agency ID # ______________

For a list of HUD-approved agencies go to: https://www.hud.gov/program_offices/housing/sfh/hcc

If not a HUD-approved agency, or unsure of HUD approval, provide name of Housing Counseling Agency: ______________

(3) **Date of Completion** ___/___/_____ *mm/dd/yyyy*

SCIF Form 1103 updated 07-06-22

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Language Preference

Language Preference – Your loan transaction is likely to be conducted in English. This question requests information to see if communications are available to assist you in your preferred language. Please be aware that communications may NOT be available in your preferred language.

Optional - Mark the language you would prefer, if available:

○ English ○ Chinese (中文) ○ Korean (한국어) ○ Spanish (Español) ○ Tagalog (Tagalog) ○ Vietnamese (Tiếng Việt) ○ Other: ____________ ○ I do not wish to respond

Your answer will NOT negatively affect your mortgage application. Your answer does not mean the Lender or Other Loan Participants agree to communicate or provide documents in your preferred language. However, it may let them assist you or direct you to persons who can assist you.

Language assistance and resources may be available through housing counseling agencies approved by the U.S. Department of Housing and Urban Development. To find a housing counseling agency, contact one of the following Federal government agencies:

- U.S. Department of Housing and Urban Development (HUD) at (800) 569-4287 or https://www.hud.gov/program_offices/housing/sfh/hcc.
- Consumer Financial Protection Bureau (CFPB) at (855) 411-2372 or www.consumerfinance.gov/find-a-housing-counselor.

Supplemental Consumer Information Form
Fannie Mae/Freddie Mac Form 1103
5/2022

SCIF Form 1103 updated 07-06-22

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FHFA FINALIZES FAIR LENDING OVERSIGHT RULE

- The Federal Housing Finance Agency released a final rule to codify fair lending and fair housing standards on April 29, 2024. The final rule codifies:
  - Fair lending oversight requirements for Fannie Mae, Freddie Mac, and the Federal Home Loan Banks.
  - Requirements for the government-sponsored enterprises to maintain Equitable Housing Finance Plans.
  - Requirements for the GSEs to collect and report homeownership education, housing counseling, and language preference information from the Supplemental Consumer Information Form.
  - Expanded fair lending compliance requirements and Equitable Housing Finance Plan oversight.
- The FHFA said it:
  - Will seek public feedback to inform the next three-year plans through a request for input and listening session.
  - Expects to hold a public listening session in June 2024.
  - Anticipates releasing the next plans in January 2025.

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FHFA PRESS RELEASE (APRIL 29, 2024)

- Since the release of their Plans in June 2022, the Enterprises have made significant progress towards ensuring all borrowers and renters have access to fair, sustainable, and equitable housing opportunities. The Enterprises have served close to 2.6 million families under the Plans by educating consumers, reducing closing costs, introducing innovation into underwriting, and combating appraisal bias. The Enterprises also propose new actions for 2024, including a focus on promoting homeownership for first-generation homebuyers.
- "As we reflect on the significance of Fair Housing Month, FHFA and its regulated entities will continue to address barriers that make affordable housing difficult to find," said FHFA Director Sandra L. Thompson. "These initiatives are critically important at a time when housing affordability remains a persistent challenge."

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APPRAISAL REGULATION SOURCES

- Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA")
- Federal Banking Agencies' regulations
- Uniform Standards of Professional Appraisal Practice ("USPAP")
- 2009 Truth in Lending, Regulation Z (12 CFR 226.36(b))
  - Applicable to closed-end consumer principal dwelling loans
- 2010 Interagency Appraisal Guidelines
- 2011 Truth in Lending Act, Section 129E
  - Added by Dodd Frank Act to impose appraisal independence requirements, applies to all consumer credit transactions secured by a consumer's principal dwelling
- 2015 Interagency Guidelines for Appraisal Management Companies
- 2018 (April) Economic Growth and Regulatory Paperwork Reduction Act (EGRPRA) mandated appraisal rule update
- 2018 (May) Economic Growth, Regulatory Relief and Consumer Protection Act

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USPAP UPDATE – EFFECTIVE JANUARY 1, 2024

- As of January 1, the amended USPAP (the operational standards that govern real property appraisal practice) includes updates to the Ethics Rule that expressly prohibit appraisers from engaging in both unethical discrimination and illegal discrimination. An appraiser cannot engage in illegal discrimination, which includes acting in a manner that violates or contributes to a violation of applicable anti-discrimination laws or regulations, including, but not limited to, the Fair Housing Act ("FHA"), the Equal Credit Opportunity Act ("ECOA"), and the Civil Rights Act of 1866.
- The prohibition also encompasses unethical discrimination – developing an opinion of value based or with bias with respect on an actual or perceived protected characteristic of any person, "upon the premise that homogeneity of the inhabitants of a geographic area is relevant for the appraisal," or using a characteristic to attempt to conceal a bias in the performance of an appraisal assignment.

Alston & Bird, March 8, 2024
Appraisal Bias Focus Continues in 2024

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FFIEC HEARING ON APPRAISAL BIAS – FEBRUARY 13, 2024

- On February 13, the Office of the Comptroller of the Currency ("OCC") held the fourth of the Appraisal Subcommittee's public hearing on appraisal bias. Representatives of the Federal Financial Institutions Examination Council ("FFIEC") regulatory agencies (the Federal Reserve Board, Federal Deposit Insurance Corporation, Consumer Financial Protection Bureau, National Credit Union Administration, and OCC), the U.S. Department of Housing and Urban Development, and the Federal Housing Financial Agency took questions from individuals speaking on behalf of the Appraisal Foundation, the Mississippi and Texas state appraiser regulatory boards, and the appraisal profession.
- The discussion focused on efforts to combat appraisal bias, including through diversification of the appraisal profession.

Alston & Bird, March 8, 2024
Appraisal Bias Focus Continues in 2024

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FFIEC STATEMENT ON VALUATION BIAS – FEBRUARY 14, 2024

- The FFIEC, on behalf of its member entities, outlined consumer compliance and safety and soundness examination principles to "promote credible appraisals" and mitigate risk from valuation practices due to potential discrimination. Through this guidance, the FFIEC encourages institutions to establish a formal valuation program "to identify noncompliance with appraisal regulations, USPAP, inaccuracies, or poorly supported valuations." The guidance identifies:
  a) ECOA, the FHA, the Truth in Lending Act, and the Federal Trade Commission Act as the applicable consumer protection laws; and
  b) Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 and USPAP as safety and soundness requirements.
- Under the guidance, the consumer compliance examination principles focus primarily on compliance with consumer protection requirements and prohibitions on discrimination relating to valuation practices. The FFIEC designed these principles to ensure that an institution's board and management oversight, third party risk management and compliance management program (including policies and procedures, training, monitoring and/or audit, and consumer complaint handling) are commensurate with the size of the institution and appropriate to identify potentially discriminatory valuation practices or results.
- Similarly, the FFIEC's safety and soundness examination principles focus on financial condition and operations relating to the review and assessment of an "institution's practices for identifying, monitoring and controlling the risk of valuation discrimination or bias." Such assessments are similar to the consumer compliance examination principles, but also include an evaluation of the collateral valuation program and valuation review function, credit risk review function, and consideration of materiality in relation to the institution's overall lending activities.

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CHOPRA LETTER ON APPRAISAL ISSUE (MARCH 18, 2024)

- CFPB Director Rohit Chopra (March 18, 2024) released a comment letter regarding recent Appraisal Subcommittee hearings. Chopra is a voting member of the FFIEC.
- Noted how the appraisal process was governed not by a governmental agency, but instead by a not-for-profit corporation leading to "key issues" related to appraisal bias
  - This organization was governed by the Appraisal Subcommittee (ASC) which monitors and reviews the organizational structure of the not-for-profit appraisal corporation
  - "Over a year ago, the ASC kicked off a series of hearings focused on appraisal bias. Over the course of four hearings, we examined the governance framework and integrity of The Appraisal Foundation, given its outsized impact on the appraisal market for residential real estate.
  - Throughout those hearings, the witness testimonies point to an insular and contorted governance structure that all but guarantees that the profession and practices remain out of tune with the needs of housing market, and much less likely to address appraisal bias."

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CHOPRA LETTER ON APPRAISAL ISSUE (MARCH 18, 2024)

- Chopra listed several issues gleaned from the four hearings:
  - "Severe deficiencies" with the not-for-profit's conflict of interest policies, noting that the Executive Branch's employee conflict of interest policies spanned 77 pages, while the not-for-profit's policy was less than 10
  - Not-for-profit has an "insular and contorted governance structure" that favors private over public interests
  - Appraisal Foundation's governance processes (such as electing its President) lack transparency
    - Highlighted these 3 examples and described the overall lack of accountability as "deeply troubling" because the not-for-profit was one of the most powerful players when it comes to appraisals
- Chopra's TOUGH Concluding Statement
  - "The Appraisal Foundation is essentially a lawmaking body that is neither accountable to the public nor subject to competitive market forces. These issues are deeply troubling as The Appraisal Foundation is one of the most, if not the most, powerful player in America when it comes to appraisals and plays a controlling role in key issues contributing to appraisal bias. As long as The Appraisal Foundation remains an insular body controlled by a small circle, operating behind closed doors, those issues will continue to go unaddressed."

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MORTGAGE SERVICING SUPERVISORY HIGHLIGHTS (APRIL 24, 2024)

- CFPB published an edition of Supervisory Highlights describing the agency's actions to combat junk fees charged by mortgage servicers, as well as other illegal practices. CFPB examinations found servicers charging illegal junk fees, such as prohibited property inspection fees; sending deceptive notices to homeowners; and violating loss mitigation rules that help struggling borrowers stay in their homes. In response to the CFPB's findings, financial institutions refunded junk fees to borrowers and stopped their illegal practices.
- "The mortgage servicing examination work announced today builds on prior CFPB exam work combatting junk fees in the mortgage servicing and other consumer financial markets. In October of last year, the CFPB announced that its examination work from February to August of 2023 resulted in $140 million refunded to consumers for unlawful junk fees in the areas of bank account deposits, auto loan servicing, and international money transfers. Since that time, the CFPB's supervision junk fee work has resulted in more than $120 million in additional junk fee refunds in the area of bank account deposits."

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MORTGAGE SERVICING SUPERVISORY HIGHLIGHTS (APRIL 24, 2024)

Some key findings from today's edition of Supervisory Highlights include mortgage servicers:

- **Illegally charging and obscuring fees:** Mortgage servicers charged homeowners prohibited and unauthorized fees. These included prohibited fees for property inspections and late fees that exceeded amounts allowed by their mortgage loan agreements. Mortgage servicers also failed to explain the reasons for fees by not describing them adequately on statements.
- **Keeping homeowners on the hook for fees during COVID-19:** During COVID-19, many servicers used a streamlined process to determine repayment options for struggling homeowners. Some servicers failed to waive late fees and penalties, as required.
- **Missing deadlines to pay property tax and home insurance:** Mortgage servicers that accepted or required money from borrowers to pay taxes and insurance failed to make those payments in a timely manner, which caused some borrowers to incur penalties. Servicers only took responsibility for those penalties for missed on-time payments if homeowners submitted complaints.
- **Deceiving homeowners and failing to properly evaluate them for repayment options:** Some servicers sent notices to homeowners in financial distress that stated they had been approved for a repayment option. In fact, no final decisions had been made, and some of the homeowners were ultimately rejected. Examiners also found servicers sent some homeowners false notices saying that they had missed payments and should apply for repayment options. Servicers also improperly denied requests for help and failed to evaluate struggling borrowers for repayment options as required under the CFPB's mortgage servicing rules.

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FED: ARTIFICIAL INTELLIGENCE (AI) AND REDLINING

- Fed Vice Chair for Supervision Michael Barr (July 18, 2023) delivered a speech on adjusting the FHA and ECOA in response to the increasing relevance of artificial intelligence
  - Benefit: digital economy offers many great utilizations, such as accessing creditworthiness of individuals without credit history and facilitating wider access to credit for those who may otherwise be excluded
  - Negative implication: technologies can potentially violate the fair lending laws and may perpetuate existing disparities and inaccuracies, among other things
- Special Purpose Credit Programs can be used as a tool to address discrimination and bias in mortgage credit transactions
- 2 recent initiatives taken by the Fed to tackle appraisal discrimination and bias in housing mortgage credit transactions were mentioned:
  - Inviting public feedback on a proposed rule to uphold credibility and integrity in AVMs
  - Seeking input on guidance addressing risks related to deficient home appraisals, emphasizing "reconsiderations of value" (ROVs)
- Through the Fed's supervisory process, it is evaluating whether firms have proper risk management and controls, including with respect to these new technologies

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AUTOMATED VALUATION MODELS (AVM) PROPOSAL

- OCC, Fed, FDIC, NCUA, FHFA, and CFPB (June 1, 2023) issued a Notice of Proposed Rulemaking to implement quality control standards concerning automated valuation models (AVMs) used by mortgage originators and secondary market issuers
  - Mandated by Dodd-Frank Act
- Institutions that engage in certain credit decisions or make securitization determinations would be required to adopt quality control standards (policies, practices, procedures, and controls) to ensure a high level of confidence that estimates produced by an AVM are fair and nondiscriminatory
- Requirements:
  - Would need to protect against data manipulation and avoid conflicts of interest
  - Would be required to conduct random sample testing and reviews and comply with applicable nondiscrimination laws
- CFPB Director comments:
  - While AVMs rely on mathematical formulas and number crunching to produce estimates (and are often used to "check" human appraisers or used in place of an appraisal), they can still embed human biases they are meant to correct
  - Due in part to data input into AVMs, algorithms used, and biases and blind spots on the part of individuals who develop the models
- Reliance on AMV technology must not be used as an excuse to evade the law

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AUTOMATED VALUATION MODELS (AVM) FINAL RULE (JULY 17, 2024)

- Six federal regulatory agencies today issued a final rule, pursuant to the Dodd-Frank Act, designed to help ensure the credibility and integrity of models used in valuations for certain mortgages secured by a consumer's principal dwelling.
- In particular, the rule will implement quality control standards for automated valuation models (AVMs) used by mortgage originators and secondary market issuers in valuing those homes. The final rule is substantially similar to the proposal issued in June 2023.
- Under the final rule, the agencies will require institutions that engage in certain transactions secured by a consumer's principal dwelling to adopt policies, practices, procedures, and control systems designed to:
  - Ensure a high level of confidence in estimates;
  - Protect against data manipulation;
  - Seek to avoid conflicts of interest;
  - Require random sample testing and reviews; and
  - Comply with nondiscrimination laws.

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RECONSIDERATION OF VALUE (ROV) PROPOSED GUIDANCE

- OCC, Fed, FDIC, NCUA, and CFPB (June 8, 2023) issued proposed interagency guidance relating to reconsiderations of value (ROV) for residential real estate valuations
  - Advises institutions on policies that would afford consumers an opportunity to introduce evidence that was not previously considered in the original appraisal
- References "deficiencies" in real estate valuations, which can be due to errors or omissions, valuation methods, assumptions, or other factors
  - Deficiencies can "prevent individuals, families, and neighborhoods from building wealth through homeownership by potentially preventing homeowners from accessing accumulated equity, preventing prospective buyers from purchasing homes, making it harder for homeowners to sell or refinance their homes, and increasing the risk of default."
- Non-credible valuations pose risks to institutions as well: loan losses, violations of law, fines, civil money penalties, damages, and civil litigation
- The guidance:
  - Provides direction on how ROVs overlap with appraisal independence requirements and compliance with relative laws and regulations
  - Identifies how institutions can implement and improve existing ROV policies while remaining compliant with regulations, preserving appraiser independence, and being responsive to consumers
  - Explains how deficiencies can pose risk to financial institutions and describes how ROV policies should be factored into risk management functions
  - Provides examples of ROV policies, procedures, control systems, and complaint processes to address deficient valuations.

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RECONSIDERATION OF VALUE (ROV) FINAL GUIDANCE (JULY 2024)

- Five federal regulatory agencies today issued final guidance addressing reconsiderations of value (ROVs) for residential real estate transactions. The guidance advises on policies and procedures that financial institutions may implement to allow consumers to provide financial institutions with information that may not have been considered during an appraisal or if deficiencies are identified in the original appraisal. The guidance:
  - Offers examples of ROV policies and procedures that a financial institution may implement to help institutions identify, address, and mitigate discrimination risk;
  - Describes the risks of deficient residential real estate valuations; and
  - Explains how financial institutions may incorporate ROV processes into risk management functions.
- ROVs are requests from a financial institution to an appraiser or other preparer of a valuation report to reassess the value of residential real estate. Deficiencies identified in valuations, either through an institution's valuation review processes or through consumer-provided information, may be a basis for financial institutions to question the credibility of the appraisal or valuation report.
- The agencies finalized the guidance largely as proposed, with the addition of clarifying edits based on public comments received on the proposed guidance published in July 2023.

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ACTING COMPTROLLER'S COMMENTS ON AI

- Acting Comptroller of the Currency Michael Hsu (June 16, 2023) in remarks at the ABA's Risk and Compliance Conference, warned that the unpredictability of artificial intelligence (AI) can pose significant risks to the financial system
  - Banks must manage risks when adopting technologies such as tokenization and AI
  - Reiterated skepticism over cryptocurrency
  - Warned that legal frameworks and risk and compliance capabilities for tokenizing real-world assets and liabilities at scale require further development, especially considering cross-jurisdictional situations and ownership and property rights
- AI issues:
  - It has the "potential to reduce costs and increase efficiencies; improve products, services and performance; strengthen risk management and controls; and expand access to credit and other bank services."
  - Significant challenges: bias and discrimination challenges in consumer lending, fraud, and risks created from the use of "generative" AI
  - Alignment is the core challenge: because AI systems are built to learn and may not do what they are programed to do, governance and accountability challenges may become an issue – "Who can and should be held accountable for misaligned, unexpected, and harmful outcomes?"
  - Use of third parties to develop and support AI is also a concern
- 3 principles to manage risk and approach innovation "responsibly and purposefully":
  - Innovate in stages, expand only when ready, and monitor, adjust and repeat
  - "build the brakes while building the engine" and ensure risk and compliance professionals are part of the innovation process
  - Engage with regulators early and often during the process and ask for permission, not forgiveness

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CFPB: ADVERSE ACTION DUE TO ARTIFICIAL INTELLIGENCE (AI)

- CFPB (Sept. 19, 2023) issued updated guidance in the form of a Circular about requirements when using artificial intelligence and other complex models to deny credit
  - Clarifies prior guidance (lenders must provide specific and accurate reasons for adverse actions against consumers)by stating lenders cannot simply use CFPB sample adverse action forms and checklists when taking adverse actions against consumers, but must explain the reasons for such adverse actions to help improve consumers' chances for future credit, and protect consumers from illegal discrimination
  - Creditors must disclose specific reasons for adverse action, even if consumers may be surprised, upset, or angered to learn their credit applications were being graded on data that may not intuitively relate to their finances
- Potential that consumers may be denied credit as a result of the increased use of complex, predictive decision-making technologies to analyze large datasets that may include consumer surveillance data or other information that the consumer may not believe is relevant to their finances
- Creditor is not absolved from requirement to specifically and accurately inform consumers of reasons for adverse actions because the use of predictive decision-making technologies in their underwriting models makes it difficult to pinpoint the specific reasons for such adverse actions

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FFIEC: PROPERTY VALUATION PRACTICES EXAM PRINCIPLES VALUATION DISCRIMINATION AND BIAS IN RESIDENTIAL LENDING

- Federal Financial Institutions Examination Council (Feb 12, 2024) released a statement on exam principles related to ensuring fair and creditable residential property valuation practices among supervised institutions
  - Emphasized necessity for institutions to comply with anti-discrimination laws and regulations, such as ECOA and the FHA, while also adhering to safety and soundness regulations outlined in statutes like FIRREA
- Effective valuation review programs are essential for identifying and addressing deficiencies, ensuring compliance with appraisal regulations, and promoting fair lending practices
- Through exam processes, both in consumer compliance and safety and soundness assessments, FFIEC aimed to mitigate risks associated with valuation discrimination or bias

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ATTACHMENT A VALUATION DISCRIMINATION AND BIAS IN RESIDENTIAL LENDING FFIEC CONSUMER COMPLIANCE EXAMINATION PRINCIPLES

- In assessing compliance management systems, examination processes should consider whether the institution's risk management practices for residential real estate valuations are appropriate to identify and address valuation discrimination.
- Consistent with the member entities' risk-focused consumer compliance examination approach, examiners should consider the following principles when assessing the risks arising from potential valuation discrimination:
  - Board and senior management oversight
  - Consumer compliance program

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FFIEC CONSUMER COMPLIANCE EXAMINATION PRINCIPLES BOARD AND SENIOR MANAGEMENT OVERSIGHT

- Evaluation of whether the board of directors and management, as appropriate for their respective roles and responsibilities, ensure that the institution implements and maintains compliance management systems (including third-party oversight) commensurate with the institution's residential real estate lending risk profile, including information provided to the board that communicates the strength of the consumer compliance program.
  - **Third-party risk management:** Evaluation of the institution's oversight of residential real estate valuation third parties' consumer compliance-related policies, procedures, internal controls, and training. Evaluation of an institution's due diligence and ongoing monitoring of third parties, including persons or entities that prepare valuation reports, third-party appraisers, and appraisal management companies, to assess compliance with consumer protection laws and regulations, including anti-discrimination laws.

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FFIEC CONSUMER COMPLIANCE EXAMINATION PRINCIPLES CONSUMER COMPLIANCE PROGRAM

- Assessment of the institution's policies and procedures, training, monitoring, and/or audit practices; the institution's consumer complaint response systems or processes; and the institution's ability to identify and resolve incidences of potential valuation discrimination.
  - **Policies and procedures:** Assessment of the institution's collateral valuation review function for identifying potentially discriminatory valuation practices or results.
  - **Training program:** Assessment of the institution's training programs to ensure that they appropriately address identification of potential discrimination in residential real estate lending and collateral valuation programs, whether internally identified or from consumer inquiries or complaints.
  - **Monitoring and/or audit:** Assessment of the institution's adherence to its policies and procedures designed to identify and address potential discrimination.
  - **Consumer complaints:** Evaluation of the institution's systems or processes for reviewing, documenting, tracking, addressing, monitoring, and handling collateral valuation complaints, including those that allege potential discrimination. This includes handling complaints from various channels and sources (such as letters, phone calls, in person, regulators, third-party service providers, emails, and social media).

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ATTACHMENT B VALUATION DISCRIMINATION AND BIAS IN RESIDENTIAL LENDING SAFETY AND SOUNDNESS EXAMINATION PRINCIPLES

- Examiners review institutions' residential real estate collateral valuation programs as a component of safety and soundness examinations. Therefore, examination processes should include consideration of whether institutions' risk management practices for valuations are appropriate to identify and address valuation discrimination or bias and promote credible valuations.
- Consistent with a member entity's risk-focused examination approach, the FFIEC summarized 8 principles that will guide supervisory assessments of the risks arising from potential valuation discrimination or bias.

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ATTACHMENT B VALUATION DISCRIMINATION AND BIAS IN RESIDENTIAL LENDING SAFETY AND SOUNDNESS EXAMINATION PRINCIPLES

1. Consumer protection issues: Consideration of consumer compliance examination findings, including feedback through discussions with compliance examiners; and reviewing other examination planning information to identify consumer complaints, litigation, and other matters related to valuation discrimination or bias, as applicable.
2. Risk assessment: Consideration of the materiality of residential real estate lending in relation to the institution's overall lending activities, size, complexity, and risk profile.
3. Governance: Assessment of the institution's policies, processes, staff organization and resources, control systems, and management information systems for residential real estate collateral valuations, as well as the institution's ability to identify and resolve incidences of potential valuation discrimination or bias.
4. Collateral valuation program: Evaluation of the institution's practices for selecting, retaining, and overseeing independent, qualified, and competent individuals (and applicable valuation models) that have the ability to render unbiased and credible opinions of collateral value.

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ATTACHMENT B VALUATION DISCRIMINATION AND BIAS IN RESIDENTIAL LENDING SAFETY AND SOUNDNESS EXAMINATION PRINCIPLES

5. Third-party risk management: Evaluation of the institution's oversight of valuation-related third parties and their review functions, including the institution's understanding of how these third parties identify, monitor, and manage the risks related to valuation discrimination or bias.
6. Valuation review function: Assessment of the institution's valuation review function for identifying potentially discriminatory or biased valuation results.
7. Credit risk review function: Assessment of the institution's credit risk review function for residential real estate loan portfolios for appropriate consideration of potentially discriminatory or biased valuations.
8. Training program: Assessment of the institution's training program intended to provide staff with the knowledge and skills to identify and resolve valuation discrimination or bias.

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RESPONDING TO THE CREDIT NEEDS OF INDIVIDUALS AND COMMUNITIES

- Far too many minority households and businesses continue to lack fair and equitable access to credit. This critical unmet need, coupled with historic and ongoing discrimination such as redlining, has exacerbated the racial wealth divide and continues to leave many communities shut out from and underserved by lenders.
- In February, the CFPB joined seven other federal agencies in issuing a statement encouraging lenders to explore opportunities available to them to increase credit access through special purpose credit programs (SPCPs) to better serve historically disadvantaged individuals and communities.

- § 1002.8 Special purpose credit programs
- SPCPs provide a framework for financial institutions to create credit programs to help address special social needs while complying with federal fair lending laws. SPCPs have not been widely implemented because of creditors' regulatory concerns.

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RESPONDING TO THE CREDIT NEEDS OF INDIVIDUALS AND COMMUNITIES

- Under Federal law, lenders are permitted to design and implement SPCPs to extend credit to a class of persons who would otherwise be denied credit or would receive it on less favorable terms, under certain conditions.
- In particular, the Equal Credit Opportunity Act (ECOA) and Regulation B permit creditors to offer or participate in SPCPs to meet special social needs through:
  - Any credit assistance program authorized by federal or state law for the benefit of an economically disadvantaged class of persons;
  - Any credit assistance program offered by a non-for-profit organization for the benefit of its members or an economically disadvantaged class of persons; or
  - Any SPCP offered by a for-profit organization, or in which such an organization participates to meet special social needs, if it meets certain standards prescribed in regulation by the Bureau.

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FRB CONSUMER COMPLIANCE OUTLOOK 2022 4TH ISSUE SPCPS REQUIREMENTS OFFERED BY FOR-PROFIT INSTITUTIONS

- The requirements for SPCPs that for-profit institutions offer to meet special social needs were summarized by the FRB. Regulation B specifies the following SPCP requirements that apply to for-profit financial institutions:
  - (i) 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
  - (ii) 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.
- Here are the details of these requirements:
  - Written plan
  - Target a class of persons the program is intended to benefit
  - Must include the procedures and standards for extending credit
  - Define program duration and reevaluation
  - Describe the Analysis supporting the need for the SPCP
  - Establish that "a class of persons would otherwise be denied credit or would receive it on less favorable terms" under the creditor's existing credit standards

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FTC & DFA's Unfair	FTC's Deceptive	DFA's Abusive
Act or practice is likely to cause substantial injury	Representation, omission or practice misleads or is likely to mislead the customer	Materially interferes with consumer's ability to understand the product or service
Injury cannot be reasonably avoided by the consumer or commercial entity	Act is deceptive to a person acting reasonably Considers the target audience	Advantage taken of consumer's lack of understanding of costs, risks or conditions
Injury is not outweighed by benefits to customers or to competition	Representation, omission or practice is material and impacts person's conduct or decision ***Materiality is frequently presumed!***	Taking advantage of the consumer's Inability to protect consumer's own interests; Considers the targeted audience's characteristics
		Taking advantage of consumer's reliance on the premise the bank would be acting in consumer's best interest

Violation can be any one or a combination!

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INHERENT UDAAP RISK: MARKET DEMOGRAPHICS

Geographic	Where are you located?
	Are there Low to Moderate Income (LMI) concentrated areas? Are they a significant percentage of your market?
Population	Is there a significant percentage of potentially vulnerable groups in your target market?
	Elderly, especially in LMI areas
	Students or young adults
	Servicemembers or veterans (including dependents)
	Consumers who speak English as a second language
	Consumers with poor credit
	Consumers of certain national origin
	Consumer recently experiencing financial distress
	Others considered less financially savvy

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INHERENT UDAAP RISK: PRODUCTS & SERVICES

Do you provide products or services perceived as a high UDAAP risk?
Does your mix of products include any that are complex in nature?
Do you offer a blend of products that include some which are simpler in nature?
What fees do you charge for products and services?
What is the relative percentage of your fee income?

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INHERENT UDAAP RISK: PRODUCTS & SERVICES

How do you Communicate and Market?
Print
Television
Radio
Social Network channels

How do you Deliver?
Centralized or decentralized
Outsource operations, such as bill pay or collections
Use other vendors

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UDAAP HIGH RISK ISSUES

- Customer Value
- Fulfillment of Promises
- Opaque Disclosures
- Timing of Information Disclosures
- "Unconscionable" Fees
- Vulnerable Customer Treatment

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CFPB SUMMER 2023 SUPERVISORY HIGHLIGHTS

- CFPB (July 26, 2023) published its Summer 2023 Supervisory Highlights
  - Covers enforcement actions in auto origination, auto servicing, consumer reporting, debt collection, deposits, fair lending, information technology, mortgage origination, mortgage servicing, payday lending and remittances from June 2022 through March 2023
- Significant UDAAP findings, findings across many consumer financial products, and exams on nonbanks
  - Auto Origination: deceptive marketing of auto loans; ads showcased cars larger and newer than the products for which actual loan offers were available, which misled consumers
  - Auto Servicing:
    - Charging interest on inflated loan balances resulting from fraudulent inclusion of non-existent options
    - Collecting interest on artificially inflated amounts without refunding consumers for the excess interest paid
    - Canceling automatic payments without sufficient notice, leading to missed payments and late fee assessments
    - Cross-collateralization, requiring consumers to pay other unrelated debts to redeem their repossessed vehicles
  - Consumer Reporting:
    - Failing to maintain proper procedures to limit furnishing reports to individuals with permissible purposes
    - Not reviewing and updating policies
    - Neglecting reasonable investigations of direct disputes
    - Failing to notify consumers of frivolous disputes or provide accurate address disclosures for consumer notices
  - Debt Collection: FDCPA and UDAAP issued; unlawful attempts to collect medical debt and deceptive representations about interest payments

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CFPB SUMMER 2023 SUPERVISORY HIGHLIGHTS

- Significant UDAAP findings, findings across many consumer financial products, and exams on nonbanks
  - Deposits: assessing both nonsufficient funds and line of credit transfer fees on the same transaction, resulting in double fees being charged for denied transactions
  - Fair Lending:
    - Pricing discrimination in granting pricing exceptions based on competitive offers
    - Discriminatory lending restrictions related to criminal history and public assistance income
  - Information Technology: Lacking adequate information technology security controls, led to cyberattacks and fraudulent withdrawals from thousands of consumer accounts
  - Mortgage Origination: Reg. Z violations
    - Differentiating loan originator compensation based on product types
    - Failing to accurately reflect the terms of the legal obligation on loan disclosures
  - Mortgage Servicing:
    - Loss mitigation timing
    - Misrepresenting loss mitigation application response times
    - Continuity of contact procedures
    - Spanish-language acknowledgment notices
    - Failing to provide critical loss mitigation information
    - Failing to credit payments sent to prior servicers after a transfer
    - Did not maintain policies to identify missing information after a transfer

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CFPB SUMMER 2023 SUPERVISORY HIGHLIGHTS

- Significant UDAAP findings, findings across many consumer financial products, and exams on nonbanks
  - Payday Lending:
    - Unreasonable limitations on collection communications
    - False collection threats
    - Unauthorized wage deductions
    - Misrepresentations regarding debt payment impact
    - Not complying with the Military Lending Act
    - Failing to retain evidence of compliance with Reg. Z disclosure requirements
  - Remittances:
    - Failing to develop written policies and procedures to ensure compliance with the Remittance Rule's error resolution requirements, including inadequate substitutes or policies without proper implementation

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PROPOSED RULE ON INCENTIVE COMPENSATION

- OCC, FDIC, NCUA and FHFA (May 6, 2024) issued a Proposed Rule on incentive-based compensation, pursuant to Dodd-Frank Act Section 956
  - Requires federal regulators to prescribe regulations or guidelines regarding incentive-based compensation at financial institutions
    - Fed and SEC are not participating
  - Regulators first proposed a rule to implement Section 956 in 2011, and again in 2016
    - Reproposing 2016 version without change, but with alternatives
- Section 956 defines "covered financial institutions" as those with at least $1 billion in assets:
  - Depository institutions or depository institution holding companies, registered broker-dealers, credit unions, investment advisers, Fannie Mae, and Freddie Mac, or any other financial institution that federal regulators determined should be treated as a covered financial institution
- Requires regulators to prohibit incentive-based compensation arrangements that encouraged "inappropriate risks"
  - Prohibitions intended to make these more sensitive to risk, such as a ban on incentive-based compensation arrangements that do not include risk adjustment of awards, deferral of payments, or forfeiture and clawback provisions
- Proposed Rule also has recordkeeping and disclosure requirements to help federal regulators monitor potential issues

CFPB: CONTRACT TERMS AND CONDITIONS

- CFPB (June 4, 2024) issued a circular, "Unlawful and unenforceable contract terms and conditions," warning against use of unlawful or unenforceable terms and conditions in contracts for consumer financial products or services
  - Contracts include terms and conditions that claim to limit consumer rights and protections
- Fine print may just be an attempt to confuse people about their rights
  - Common example is the general liability waiver, which purports to fully insulate companies from suits even though most states have laws that create hosts of exemptions to these waivers
- Explains how and when fine print tricks and intimidation in contracts for consumer financial products and services may violate the Consumer Financial Protection Act's prohibition on deceptive acts and practices (UDAAP)
- Companies may be liable even if the unenforceable terms are borrowed from form templates or widely available contracts
- Director Chopra: Bureau will address companies that "deceptively slip these terms into their fine print."

SUPREME COURT OVERTURNS CHEVRON DOCTRINE

- U.S. Supreme Court (June 28, 2024) issued an opinion overturning the Chevron Deference Doctrine, a test used by federal regulators to interpret ambiguous language in existing law in rulemaking and enforcement actions
  - 6-3 ruling results from combined two cases, Loper Bright Enterprises v. Raimondo and Relentless, Inc. v. U.S. Department of Commerce that challenged a ruling that leveraged the Chevron Deference Doctrine
  - Overturns a 1984 decision (Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.) that led federal courts to defer to administrative agencies in interpreting ambiguous statutes
    - Chevron doctrine was based on the idea that when Congress passes a statute ambiguous enough to have multiple interpretations, it implicitly delegates to agencies enforcing the statute the authority to resolve the ambiguity based on their expertise
    - Court rejects Chevron's core premise by requiring courts to decide the meaning of ambiguous statutes without deferring to an agency's interpretation – rejected the idea that agencies are better positioned than courts to interpret statutes relevant to their expertise

SUPREME COURT OVERTURNS CHEVRON DOCTRINE (CONTINUED)

- Court held that according to the Administrative Procedure Act (APA), courts must "exercise their independent judgment in deciding whether an agency has acted within its statutory authority," stipulating that courts cannot reference an agency's interpretation of law they claim is ambiguous
  - Decided that "a statutory ambiguity does not necessarily reflect a congressional intent that an agency, as opposed to a court, resolve the resulting interpretive question" and that Chevron's presumptions were "misguided"
  - Agencies' interpretations should provide informative expertise instead of binding a court
- But preserved deference to agencies' decisions where Congress has explicitly delegated authority: Court recognized that "some statutes expressly delegate to an agency the authority to give meaning to a particular statutory term."
- Emphasized prior decisions relying on Chevron were unaffected: "we do not call into question prior cases that relied on the Chevron framework. The holdings of those cases that specific agency actions are lawful…are still subject to statutory stare decisis despite our change in interpretive methodology"

DELAY OF 6-YEAR DEADLINE TO CHALLENGE REGULATIONS

- U.S. Supreme Court (July 1, 2024) issued an opinion delaying a 6-year statute of limitations to legally challenge federal regulations until a plaintiff is injured
  - Corner Post Inc., vs. Board of Governors of the Federal Reserve System, Court held that the statute of limitations for an Administrative Procedures Act (APA) challenge accrues from the date of a plaintiff's injury, not from the date of final agency action
- APA generally authorizes parties injured by agency action to obtain judicial review
  - In most cases, this review is limited to "final agency action."
  - Two elements (injury and final agency action) are necessary for an APA claim
  - In Corner Post, Court considered whether the absence of one of these elements (injury) prevents the limitations period from starting
- APA's limitations period is "six years after the right of action first accrues," the default limitations period for civil actions against the United States
- Court resolved a Circuit Court split over the interpretation of "accrues."
  - Case was about application of the Durbin Amendment (Reg. II) on interchange fees – was the date of injury the date Reg. II was finalized (in 2011) or the date Corner Post itself suffered injury?
  - Eighth Circuit (and others) held that the limitations period accrues from the date of final agency action, regardless of the date of injury; Sixth Circuit held that the limitations period accrues from the date of injury

FINANCIAL SOLUTIONS FOR GROWING COMPANIES, INC.

CFPB LOOKING INTO MORTGAGE CLOSING COSTS

- CFPB (May 30, 2024) issued a Request for Information (RFI) into so-called "junk fees" associated with mortgage closing costs to "understand why closing costs are increasing, who is benefiting, and how costs for borrowers and lenders could be lowered."
  - Cited research concluding that borrowers paid a median amount of $6,000 in closing costs as of 2022
- Seeking public feedback on:
  - Whether there are fees that are particularly problematic or burdensome for consumers;
  - Whether there are unnecessary fees charged for loan closure;
  - Whether and to what extent consumers compare closing costs across lenders;
  - Whether and to what extent consumers shop for closing costs across settlement providers;
  - Determination of fees, the beneficiaries, and lenders' influence over third-party costs;
  - Which fees have increased, and what are their causes;
  - Factors contributing to rising closing, credit report, and credit score costs, the roles of various entities in the credit report chain, competitive pressures on these costs, and their consumer impact;
  - Lenders' ability to negotiate closing costs more effectively than consumers; and
  - Potential impact of closing costs on housing affordability, homeownership access, or home equity
- Findings from the RFI will inform possible rulemaking, guidance and other policy

FINANCIAL SOLUTIONS FOR GROWING COMPANIES, INC.

CHOPRA COMMENTS ON HIGHER MORTGAGE COSTS

- CFPB Director Chopra (May 20, 2024) speech at a trade association event addressed rising costs in the mortgage lending industry, which may be due to limited competition in credit reporting
  - Mortgage industry is dominated by 3 major conglomerates, and credit scores were provided by a single corporation
    - These entities have significantly increased the price for credit reports and credit scores in recent years, with increases reaching as high as 400% since 2022
      - Price increases are no longer tied to volume discounts and instead now based on a flat fee pricing model, exacerbating costs for lenders
    - Lenders require credit reports and credit scores for loan origination and adhere to secondary market requirements, which necessitate purchasing these reports multiple times, like for joint applications
    - These increase origination fees or interest rates and have impacted both lenders (especially small lenders) and homebuyers disproportionately
  - Questioned accuracy of credit reports, with reporting industry profiting from expedited correction services known as a "rapid rescore"
  - Emphasized need for regulatory intervention to address these issues within the mortgage industry – "limiting chokepoints" is critical
  - CFPB is examining these rising costs and considering regulatory measures to enhance competition and affordability
  - Also promoted "open banking," which would allow consumers to share their financial data directly with lenders to potentially reduce reliance on traditional credit reports and credit scores

CFPB 2023 FAIR LENDING REPORT

- CFPB (June 26, 2024) published its Fair Lending Annual Report to Congress for 2023, listing CFPB's actions against discrimination and promoting fair access to credit
- Described 1071 rulemaking efforts and AVM rulemaking
  - Also listed ROV guidance and adverse action forms when AI contributes to decision
- Described efforts to combat appraisal bias, including working through the FFIEC Appraisal Subcommittee and filing court briefs
- Enforcement:
  - CFPB took action against Citibank for allegedly discriminating against Armenian Americans applying for credit cards and sued a Texas-based developer (Colony Ridge) for allegedly targeting Latino borrowers with predatory loan products
  - Addressed how some institutions may not have reported demographic data as required by HMDA, resulting in additional recent enforcement actions for inaccurate data reporting

CFPB'S COMMITMENT TO A FAIR MORTGAGE MARKET

- CFPB (June 10, 2024) blog post reminding mortgage lenders of its commitment to maintaining a fair, competitive, and nondiscriminatory market
  - CFPB's research found a small group of lenders and loan originators allegedly failed to report HMDA data, particularly demographic information for an abnormally large percentage of their total loan originations, which could be an indicator that this group was misreporting data
  - Analysis found thousands of loan officers who reported a lack of demographic information for 95% or more of their mortgage applications, raising concerns about potential discrimination
- CFPB has intensified efforts to address HMDA compliance through enforcement actions and supervisory examinations
  - Emphasized its commitment to holding companies accountable for non-compliance and encourages employees who suspect violations to report them
  - CFPB noted its work against 2 major lenders for failing to report accurate data under the HMDA, one against Freedom Mortgage for allegedly submitting false mortgage lending information and imposed a $3.95 million civil penalty
- CFPB ordered Bank of America to pay a $12 million penalty for allegedly failing to collect accurate demographic information from mortgage applicants and reporting that applicants had chosen not to respond

CFPB SUMMER 2024 SUPERVISORY HIGHLIGHTS

- CFPB (July 2, 2024) issued its Summer 2024 edition of Supervisory Highlights
  - Covers period from April 1, 2023 to December 31, 2023
  - Covers many issues from student loan servicing to supervision of medical providers offering payment products, among others
- Findings:
  - UDAAP when servicing auto loans
    - Servicers mishandled consumers' final loan payments by not informing borrowers that they were required to pay final payments manually even if they were enrolled in auto pay programs, then charged borrowers late fees for failing to make their final loan payment on time
  - UDAAP when servicing student loans
    - Servicing of preauthorized electronic fund transfers – "excessive" barriers to assistance, providing inaccurate benefit forms and failing to notify consumers about funds transfers
    - Significant problems with phone hold times, understaffed call centers and problems with interactive voice response systems, some were unable to gain access to online account management systems
    - Inaccurate information about forms borrowers were required to file to qualify for loan programs with certain benefits such as forbearance
    - Failed to follow requirements about notifying borrowers in advance when preauthorized EFTs were larger than prior transfers

CFPB SUMMER 2024 SUPERVISORY HIGHLIGHTS

- Debt collection – debt collectors:
  - Failed to provide validation notices within 5 days of their initial contact with borrowers
  - Concealed their true company names in communications with borrowers
  - Contacted borrowers at inconvenient or unusual places and at times used aggressive or abusive language
  - Communicated or attempted to communicate with consumers through a medium, such as a text message and/or through a specific telephone number that the consumers had requested the debt collectors not use to communicate with the consumers
  - Committed UDAAP when, with respect to receivables that were sold to debt collectors, they erroneously determined the applicable statutes of limitations in one particular state to be 10 years rather than 5 years
- Medical credit cards
  - Significant complaints about how healthcare providers promoted and sold medical credit cards to consumers
  - Patients felt misled and pressured to open a credit card account
- Deposits and prepaid accounts
  - Practices that prevent consumers from accessing their funds and account information
  - Some institutions failed to inform consumers that their accounts had been frozen because fraud or other suspicious activity was suspected
- Allotment savings accounts for servicemembers and other federal employees
  - In some cases, servicemembers and other federal employees may have had accounts opened or kept open without their knowledge, resulting in excess fees or other harm
  - Institutions did not send periodic statements to consumers with dormant allotment accounts for extended periods of time during which they charged fees on thousands of dormant accounts

COURT REVERSAL: ECOA COVERS "PROSPECTIVE APPLICANTS"

- U.S. Court of Appeals for the 7th Circuit (July 11, 2024) reversed a district court's decision to dismiss CFPB's claims that Townstone Mortgage Company and its owner violated ECOA by engaging in discriminatory marketing
  - CFPB (July 15, 2020) initiated a redlining enforcement action alleging Townstone discouraged African Americans from applying for mortgage loans and redlined African American neighborhoods in Chicago
  - In 2023, U.S. District Court for the Northern District of Illinois dismissed CFPB's action; on appeal, CFPB argued its interpretation of ECOA is supported by historical context of Reg. B and has not been contested by Congress
- 7th Circuit noted Congress intended to allow for penalties in cases where prospective applicants are discouraged; therefore, Reg. B's rule against deterring prospective applicants aligns with both the text and the intent of the ECOA
  - Court reasoned it "cannot constrain artificially the ECOA to a single provision" and rather, must review it as a whole
  - ECOA prohibits "not only outright discrimination against applicants for credit, but also the discouragement of prospective applicants for credit."
- Remanded the case and left it to the district court to determine whether defendants' alleged conduct was prohibited discouragement under ECOA, in addition to whether defendants' argument that their allegedly unlawful conduct is protected by the First Amendment's guarantee of free speech
- 7th Circuit noted that its decision treated the ECOA issue as "a question of statutory interpretation subject to our de novo review" and took into account the recent U.S. Supreme Court ruling in Loper Bright Enterprises v. Raimondo, which overturned the Chevron doctrine

FFIEC PUBLISHES 2023 DATA ON MORTGAGE LENDING

- On July 11, 2024, the FFIEC published data on 2023 mortgage lending transactions reported under the Home Mortgage Disclosure Act (HMDA) by 5,113 U.S. financial institutions, including banks, savings associations, credit unions, and mortgage companies.
- The HMDA data are the most comprehensive source of publicly available information on mortgage market activity. The data are used by industry, consumer groups, regulators, and others to assess potential fair lending risks and for other regulatory and informational purposes. The data also help the public assess how financial institutions are serving the housing needs of their local communities and facilitate federal financial regulators' fair lending, consumer compliance, and Community Reinvestment Act examinations.
- The Snapshot National Loan-Level Dataset released July 11, 2024 contains the national HMDA datasets as of May 1, 2024.
- For 2023, the number of reporting institutions increased by about 14.6 percent from 4,460 in the previous year to 5,113.

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Fair Lending Report of the Consumer Financial Protection Bureau

Table of Contents

1. Fair lending enforcement and supervision

1.1 Risk-based prioritization

Because Congress charged the Consumer Financial Protection Bureau (CFPB) with the responsibility of overseeing many lenders and products, the CFPB has long used a risk-based approach to prioritizing supervisory examinations and enforcement activity. This approach helps ensure that the CFPB focuses on areas that present substantial risk of credit discrimination for consumers and small businesses.[1]

As part of the prioritization process, the CFPB identifies emerging developments and trends by monitoring key consumer financial markets. If this field and market intelligence identifies fair lending risks in a particular market, that information is used to determine the type and extent of assets applied to address those risks.

The prioritization process incorporates a number of additional factors, including tips and leads from industry whistleblowers, advocacy groups, and government agencies; supervisory and enforcement history; consumer complaints; and results from analysis of Home Mortgage Disclosure Act (HMDA) and other data.

As a result of its annual risk-based prioritization process, in 2023 the CFPB focused much of its fair lending supervision efforts on: mortgage origination (including redlining, property valuation bias, and HMDA and Regulation C compliance); credit card marketing and the use of alternative data in digital marketing; and on the use of automated systems and models, sometimes marketed as artificial intelligence (AI) and machine learning models, in credit card originations.

As in previous years, the CFPB's 2023 mortgage origination work continued to focus on redlining (intentional discrimination against applicants and prospective applicants living or seeking credit in minority neighborhoods, including by discouragement). The CFPB's mortgage work also included assessing potential discrimination in mortgage underwriting and pricing processes, including assessing whether there were disparities in application, underwriting, and pricing processes, and whether there were weaknesses in fair lending-related compliance

[1] *See* Risk-Based Approach to Examinations, *Supervisory Highlights* Summer 2013 at 23, https://files.consumerfinance.gov/f/201308_cfpb_supervisory-highlights_august.pdf, for additional information regarding the CFPB's risk-based approach in prioritizing supervisory examinations.

management systems. The CFPB's mortgage origination work also included reviewing residential property appraisal service providers to identify risks that may arise due to potential discrimination or bias as well as HMDA data integrity and validation reviews.

The CFPB's credit card work included assessing credit card lenders' digital marketing practices relating to credit cards, as well as credit card lenders' use of alternative data in that marketing. The CFPB's credit card work also included evaluation of automated systems and models, sometimes marketed as artificial intelligence and machine learning models, used by credit card lenders in credit card originations, as well as assessing whether there were disparities in application, underwriting, and pricing processes, and whether the institutions searched for less discriminatory alternatives to the models used.

Across multiple markets, the CFPB continued to assess whether lenders complied with the adverse action notice requirements of the Equal Credit Opportunity Act (ECOA) and Regulation B and evaluated whether lenders maintain policies and procedures that unlawfully exclude property on the basis of geography in underwriting decisions, unlawfully exclude certain types of income, and treat criminal history in an unlawful manner.

1.2 Fair lending enforcement

Congress authorized the CFPB to bring actions to enforce the requirements of eighteen enumerated statutes, including ECOA, HMDA, and the Consumer Financial Protection Act of 2010 (CFPA), which prohibits unfair, deceptive, and abusive acts or practices. The CFPB is able to engage in research, conduct investigations, file administrative complaints, hold hearings, and adjudicate claims through the CFPB's administrative enforcement process. The CFPB also uses its independent litigation authority to file cases in federal court alleging violations of fair lending laws under the CFPB's jurisdiction. Like other federal regulators, the CFPB is required to refer matters to the Department of Justice (DOJ) when it has reason to believe that a creditor has engaged in a pattern or practice of lending discrimination.[2]

1.2.1 ECOA-related public enforcement actions

In 2023, the CFPB announced two ECOA-related public enforcement actions, relating to discrimination on the basis of race and national origin, one against Citibank N.A. (Citibank) and the other against Colony Ridge Development, LLC, and Colony Ridge BV, LLC, and affiliate

[2] *See* 15 U.S.C. § 1691e(g).

mortgage company Colony Ridge Land, LLC (collectively, the Colony Ridge defendants). For more information on these ECOA-related enforcement actions, see Section 6.1.2 of this report.

1.2.2 HMDA-related public enforcement actions

HMDA, its implementing Regulation C, and Regulation B require mortgage lenders to report certain information about loan applications and originations to the CFPB and other federal regulators. HMDA data are the most comprehensive source of publicly available information on the U.S. mortgage market. Both the public and regulators can use this information to monitor whether financial institutions are serving the housing needs of their communities, as well as to identify possible discriminatory lending patterns.

In 2023, the CFPB announced public enforcement actions against two repeat offenders for reporting false, erroneous, or incorrect HMDA data: Freedom Mortgage Corporation (Freedom Mortgage) and Bank of America, N.A.

The CFPB will continue to monitor the rate at which mortgage lenders fail to collect and report applicants' demographic information. The rate of nonreporting of demographic information has been increasing since 2019, potentially compromising the ability of the CFPB and other financial regulators, enforcement agencies, academics, other mortgage lenders, and civil rights and consumer advocates, to detect and remedy redlining, discouragement, and other forms of discrimination in the mortgage market. The CFPB's evaluations will include assessments of lenders' demographic reporting practices and HMDA compliance systems to ensure they are monitoring for inaccurate or incomplete demographic information reporting and complying with HMDA.

FREEDOM MORTGAGE

On October 10, 2023, the CFPB filed a lawsuit against Freedom Mortgage, a residential mortgage loan originator and servicer, alleging that it submitted legally-required mortgage loan data that were riddled with errors.[3] In 2020, Freedom Mortgage reported HMDA data on over 700,000 applications and originated nearly 400,000 HMDA-reportable loans worth almost $100 billion, making it the third largest mortgage lender in the United States by origination volume. Freedom Mortgage is a repeat offender: at the time the CFPB filed its complaint, Freedom was already under a CFPB Consent Order related to previous HMDA violations. In 2019, the CFPB issued an order against Freedom finding that it intentionally misreported certain HMDA data fields from at least 2014 to 2017.[4] In the CFPB's lawsuit, the CFPB alleges

[3] *See* https://www.consumerfinance.gov/enforcement/actions/freedom-mortgage-corporation-hmda-2023/.
[4] *See* https://files.consumerfinance.gov/f/documents/cfpb_freedom-mortgage-corporation_consent-order_2019-05.pdf.

that the mortgage loan data for 2020 that Freedom Mortgage submitted contained widespread errors across multiple data fields, in violation of HMDA and Regulation C. The CFPB's complaint further alleges that by reporting inaccurate HMDA mortgage loan data for 2020, Freedom Mortgage also violated the 2019 order and the CFPA. The CFPB seeks appropriate injunctive relief and a civil money penalty.

BANK OF AMERICA

On November 28, 2023, the CFPB issued an order against Bank of America for routinely submitting falsified HMDA data.[5] The CFPB found that between 2016 and late 2020, hundreds of Bank of America's loan officers failed to ask applicants for their race, ethnicity, and sex, as required by law, and instead falsely recorded that the applicants chose not to provide this information, in violation of HMDA, Regulation C, and the CFPA. The CFPB's order requires Bank of America to pay a $12 million civil money penalty and to develop policies and procedures to ensure compliance with HMDA and Regulation C, including recording and auditing phone applications to make sure that HMDA data are accurately collected and recorded.

1.2.3 ECOA referrals to Department of Justice

The CFPB must refer to DOJ any matter when it has reason to believe that a creditor has engaged in a pattern or practice of lending discrimination in violation of ECOA.[6] The CFPB may refer other potential ECOA violations to DOJ as well.[7] In 2023, the CFPB referred 18 matters to DOJ pursuant to 15 U.S.C. § 1691e(g). More information on these referrals can be found in Section 6.1.6 of this report.

1.2.4 Implementing enforcement orders

When an enforcement action is resolved through a public enforcement order, the CFPB (together with other government entities, when relevant) takes steps to ensure that the respondent or defendant complies with the requirements of the order. Depending on the specific requirements of individual public enforcement orders, the CFPB may take steps to ensure that borrowers who are eligible for compensation receive remuneration and that the defendant has complied with the injunctive provisions of the order, including implementing a comprehensive fair lending compliance management system.

[5] *See* https://www.consumerfinance.gov/enforcement/actions/bank-of-america-na-hmda-data-2023/.
[6] 15 U.S.C. § 1691e(g).
[7] *Id*.

1.3 Fair lending supervision

The CFPB's Supervision program assesses compliance with federal consumer financial protection laws and regulations at banks and nonbanks over which the CFPB has supervisory authority. As a result of the CFPB's efforts to fulfill its fair lending mission during 2023, the CFPB initiated 28 fair lending examinations or targeted reviews.

In 2023, two of the most frequently identified fair lending issues in supervisory communications related to the granting of pricing exceptions and HMDA violations.

In 2023, the CFPB issued several fair lending-related Matters Requiring Attention and entered Memoranda of Understanding directing entities to take corrective actions that the CFPB will monitor through follow-up supervisory actions. In these communications, the CFPB directed mortgage lenders to correct violations relating to redlining, including by institutions providing consumer remediation designed to spur lending in redlined areas. The CFPB also directed lenders to enhance their fair lending compliance management systems in several ways, including by directing institutions to, when testing and approving credit scoring models, document the specific business needs the models serve, as well as document specific standards for assessing whether a model serves each stated business need. Further, the CFPB also directed the institutions to test credit scoring models for prohibited basis disparities and to require documentation of considerations the institutions will give to how to assess those disparities against the stated business needs. To ensure compliance with ECOA and Regulation B, institutions were directed to develop a process for the consideration of a range of less discriminatory models. Additionally, institutions were directed to test and validate the methodologies used to identify principal reasons in adverse action notices required under ECOA and Regulation B. Finally, institutions were directed to implement policies, procedures, and controls designed to effectively manage HMDA compliance, including regarding integrity of data collection.

During 2023, informed by the Director's priority to address risks of consumer harm from advanced and emerging technologies in consumer finance, the CFPB continued to increase its technical capacity and analyses to ensure that the use of this technology does not pose risks to consumers or violate federal consumer financial law.

2. Rulemaking and guidance

2.1 Rulemaking

During 2023, the CFPB issued a final rule on small business lending data collection and issued a notice of proposed rulemaking on automated valuation models (AVMs).

The CFPB publishes an agenda of its planned rulemaking activity biannually, which is available at: https://www.consumerfinance.gov/rules-policy/regulatory-agenda.

2.1.1 Small business lending data collection rulemaking

In section 1071 of the Dodd-Frank Act, Congress directed the CFPB to adopt regulations governing the collection of small business lending data.[8] Section 1071 amended ECOA to require financial institutions to compile, maintain, and submit to the CFPB certain data on applications for credit for women-owned, minority-owned, and small businesses.

Congress enacted section 1071 for the purpose of facilitating enforcement of fair lending laws and enabling communities, governmental entities, and creditors to identify business and community development needs and opportunities for women-owned, minority-owned, and small businesses.

On March 30, 2023, the CFPB issued a final rule amending Regulation B to implement changes to ECOA made by section 1071 of the Dodd-Frank Act.[9] Consistent with section 1071, covered financial institutions are required to collect and report to the CFPB data on applications for credit for small businesses, including those that are owned by women or minorities. The rule also addresses the CFPB's approach to privacy interests and the publication of section 1071 data; shielding certain demographic data from underwriters and other persons; recordkeeping requirements; enforcement provisions; and the rule's effective and compliance dates.

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[8] 15 U.S.C. § 1691c-2.

[9] Consumer Fin. Prot. Bureau; *Small Business Lending under the Equal Credit Opportunity Act (Regulation B)* (Mar. 30, 2023), https://www.consumerfinance.gov/rules-policy/final-rules/small-business-lending-under-the-equal-credit-opportunity-act-regulation-b/.

In light of court orders in ongoing litigation, the CFPB has announced plans to extend the compliance dates in the small business lending rule.[10] More information about pending litigation is contained in Section 5 of this report.

2.1.2 Automated Valuation Models rulemaking

On June 1, 2023, the CFPB, along with its interagency partners, the Federal Reserve Board (FRB), Office of the Comptroller of the Currency (OCC), Federal Deposit Insurance Corporation (FDIC), National Credit Union Administration (NCUA), and Federal Housing Finance Agency (FHFA) (collectively, the Agencies) requested public comment on a proposed rule designed to ensure the credibility and integrity of models used in real estate valuations.[11] In particular, the proposed rule would implement quality control standards for AVMs used by mortgage originators and secondary market issuers in valuing real estate collateral securing mortgage loans. AVMs are used as part of the real estate valuation process, driven in part by advances in database and modeling technology and the availability of larger property datasets. While advances in AVM technology and data availability have the potential to contribute to lower costs and reduce loan cycle times, it is important that institutions using AVMs take appropriate steps to ensure the credibility and integrity of their valuations. It is also important that the AVMs that institutions are using adhere to quality control standards designed to comply with applicable nondiscrimination laws.

The proposed standards are designed to ensure a high level of confidence in the estimates produced by AVMs; help protect against the manipulation of data; seek to avoid conflicts of interest; require random sample testing and reviews; and promote compliance with applicable nondiscrimination laws.

The comment period for the proposed rule closed on August 21, 2023.

[10] More information is available at: https://www.consumerfinance.gov/1071-rule/, a page compiling key materials related to the CFPB's small business rulemaking, including information on the interim final rule to extend compliance deadlines.

[11] Consumer Fin. Prot. Bureau; Off. of the Comptroller of the Currency; Fed. Hous. Fin. Agency; Fed. Reserve Sys.; Fed. Deposit Ins. Corp.; Nat'l Credit Union Admin.; *Quality Control Standards for Automated Valuation Models* (Jun. 1., 2023), https://files.consumerfinance.gov/f/documents/cfpb_automated-valuation-models_proposed-rule-request-for-comment_2023-06.pdf.

2.2 Guidance

The CFPB issues guidance to its various stakeholders in many forms, including Consumer Financial Protection Circulars (Circulars), advisory opinions, interpretive rules, statements, bulletins, publications such as *Supervisory Highlights*.

2.2.1 Proposed interagency guidance on reconsiderations of value for residential real estate valuations

On June 8, 2023, the CFPB, along with FRB, FDIC, NCUA, and OCC requested public comment on proposed guidance addressing reconsiderations of value (ROV) for residential real estate transactions.[12] ROVs are requests from a financial institution to an appraiser or other preparer of a valuation report to reassess the value of residential real estate. An ROV may be warranted if a consumer provides information to a financial institution about potential deficiencies or other information that may affect the estimated value. The proposed guidance advises on policies that financial institutions may implement to allow consumers to provide financial institutions with information that may not have been considered during an appraisal, or if deficiencies are identified in the original appraisal.

The comment period for the proposed guidance closed on September 19, 2023.

2.2.2 Consumer Financial Protection Circular 2023-03: Adverse action notification requirements and the proper use of the CFPB's sample forms provided in Regulation B

On September 19, 2023, the CFPB released a Circular pertaining to certain legal requirements that lenders must adhere to, including when using artificial intelligence and other complex models.[13] The Circular describes how, under ECOA and Regulation B, lenders must make available to an applicant a statement of specific and accurate reasons when taking adverse action against the applicant and cannot simply use the CFPB sample adverse action forms and

[12] Consumer Fin. Prot. Bureau; Off. of the Comptroller of the Currency; Fed. Hous. Fin. Agency; Fed. Reserve Sys.; Fed. Deposit Ins. Corp.; Nat'l Credit Union Admin; *Interagency Guidance on Reconsideration of Value of Residential Real Estate Valuations* (Jun. 8, 2023), https://files.consumerfinance.gov/f/documents/cfpb_interagency-guidance-reconsiderations-of-value-of-residential-real-estate_2023-06.pdf.

[13] Consumer Fin. Prot. Bureau, Consumer Financial Protection Circular 2023-03 Adverse action notification requirements and the proper use of the CFPB's sample forms provided in Regulation B (Sep. 19. 2023), https://www.consumerfinance.gov/compliance/circulars/circular-2023-03-adverse-action-notification-requirements-and-the-proper-use-of-the-cfpbs-sample-forms-provided-in-regulation-b/.

checklists if they do not reflect the actual reason for the denial of credit or other adverse action. This requirement is especially important with the growth of advanced algorithms and personal consumer data in credit underwriting. The legal requirement to explain the reasons for adverse actions helps improve consumers' chances for future credit and protect consumers from illegal discrimination and serve an educational role, allowing consumers to understand the reasons for a creditor's action and take steps to improve their credit status or rectify mistakes made by creditors.

2.2.3 Coverage of Franchise Financing under ECOA, including the Small Business Lending Rule

On June 5, 2023, the CFPB published a document affirming the extent to which ECOA and Regulation B apply with respect to franchisees seeking credit to finance their businesses.[14] Franchising is a significant portion of the small business ecosystem, and franchisees generally obtain credit either directly from the franchisor or from third party finance companies, which could be independent of the franchisor or brokered by or affiliated with the franchisor. These financing arrangements are likely "credit" and "business credit" under ECOA and Regulation B.

2.2.4 Supervisory Highlights

The CFPB's *Supervisory Highlights* reports provide general information about the CFPB's supervisory activities at banks and nonbanks without identifying specific entities. These reports communicate the CFPB's key examination findings and operational changes to the CFPB's supervision program. In 2023, the CFPB published three issues of *Supervisory Highlights*.[15]

The CFPB released the 30th edition of *Supervisory Highlights* on July 26, 2023, which covered examinations completed between July 1, 2022, and March 31, 2023.[16] This report included findings of ECOA and Regulation B violations in several areas, including pricing discrimination and discriminatory lending restrictions. Specifically, examiners found that mortgage lenders violated ECOA and Regulation B by discriminating in the incidence of granting pricing exceptions for competitive offers across a range of ECOA-protected characteristics, including race, national origin, sex, and age.

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[14] Consumer Fin. Prot. Bureau, *Coverage of Franchise Financing Under the Equal Credit Opportunity Act, Including the Small Business Lending Rule* (May 2023), https://files.consumerfinance.gov/f/documents/cfpb_coverage-of-franchise-financing_2023-05.pdf.

[15] Consumer Fin. Prot. Bureau Issue 29, *Junk Fees Special Edition*, Winter 2023; Issue 30, Summer 2023; Issue 31, *Junk Fees Update Special Edition* Fall 2023.

[16] Consumer Fin. Prot. Bureau, Issue 30, *Summer 2023* (Jul. 31, 2023), https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-30_2023-07.pdf.

Additionally, this edition detailed examiners' findings on certain lending restrictions, including how lenders handled the treatment of applicants' criminal records. The use of criminal history in credit decisioning may create a heightened risk of violating ECOA and Regulation B. In this review, examiners uncovered risky policies and procedures relating to the use of criminal history information at several institutions in several areas of credit, including mortgage origination, auto lending, and credit cards, but most notably within small business lending.

Further, examiners identified institutions improperly treating income derived from public assistance. In some instances, lenders imposed stricter standards on income derived from public assistance programs, while in other instances, institutions excluded income derived from certain public assistance programs.

In 2023, the CFPB issued two other editions of *Supervisory Highlights*, which pertained specifically to junk fees.

All issues of *Supervisory Highlights* are available at: https://www.consumerfinance.gov/compliance/supervisory-highlights/.

2.2.5 HMDA guidance and resources

Given the importance of accurate HMDA data, including to the CFPB's fair lending mission and for transparency in the mortgage market, the CFPB maintains a comprehensive suite of resources on its public website to help filers fulfill their reporting requirements under HMDA and Regulation C and to allow others to evaluate and study mortgage lending. A complete accounting of the CFPB's materials for HMDA data users and filers can be found in Appendix A of this report.

3. Stakeholder engagement

The CFPB engages with external stakeholders, including tribal governments, consumer advocates, civil rights organizations, industry, academia, and other government agencies. This engagement comes in varied forms, including disseminating the CFPB's work and policy priorities through blogs, press releases, or speeches, as well as reaching out directly to advocates and consumers through website updates and social media. The CFPB also regularly issues research and reports analyzing data and market conditions. To further an all-of-government approach to fair lending enforcement, the CFPB also participates in several interagency groups.

3.1 Promoting and broadcasting the fair lending and access to credit mission

3.1.1 CFPB blog posts, press releases, and other communications

The CFPB regularly uses blog posts, statements, press releases, guides, brochures, social media, media interviews, and other tools to timely and effectively communicate with stakeholders.

In 2023, the CFPB published numerous blog posts relating to fair lending topics, including: the joint letter sent to The Appraisal Foundation, urging it to revise its draft ethics rule;[17] the CFPB's Statement of Interest filed in *Connolly & Mott v. Lanham et al.* and the CFPB's commitment to ensuring fair and accurate appraisals;[18] the CFPB's Statement of Interest filed in *Roberson v. Health Career Institute LLC;*[19] an interagency proposed rulemaking on AVMs;[20] a blog explaining how chatbots, including those supported by large language models and those marketed as AI can fail to provide adequate customer service;[21] the CFPB's *Amicus* brief in

[17] Patrice Alexander Ficklin and Tim Lambert, *Appraisal standards must include federal prohibitions against discrimination* (Feb. 14, 2023), https://www.consumerfinance.gov/about-us/blog/appraisal-standards-must-include-federal-prohibitions-against-discrimination.

[18] Seth Frotman, Zixta Q. Martinez, and Jon Seward, *Protecting homeowners from discriminatory home appraisals*, (Mar. 13, 2023), https://www.consumerfinance.gov/about-us/blog/protecting-homeowners-from-discriminatory-home-appraisals/.

[19] Seth Frotman, *Protecting people from discriminatory targeting* (Apr. 14, 2023), https://www.consumerfinance.gov/about-us/blog/protecting-people-from-discriminatory-targeting/.

[20] Rohit Chopra, *Algorithms, artificial intelligence, and fairness in home appraisals* (Jun. 1, 2023), https://www.consumerfinance.gov/about-us/blog/algorithms-artificial-intelligence-fairness-in-home-appraisals/ .

[21] Eric Halperin and Lorelei Salas, *The CFPB has entered the chat* (Jun. 7, 2023), https://www.consumerfinance.gov/about-us/blog/cfpb-has-entered-the-chat/.

Saint-Jean v. Emigrant Mortgage Company;[22] the publication of the 2022 Annual Fair Lending Report to Congress;[23] the CFPB's initiative to better understand the financial experiences of immigrants in the United States;[24] and the Appraisal Subcommittee's November 1 public hearing to discuss the challenges and solutions to preventing bias in the home appraisal process.[25]

The CFPB also issued several press releases relating to fair lending topics, including announcements regarding: the availability of the 2022 HMDA modified loan application register data;[26] the finalization of the small business lending rule,[27] the issuance of a joint statement confirming that automated systems and advanced technology is not an excuse for law-breaking behavior;[28] the publication of the proposed AVM rule and request for public comment;[29] an issue spotlight on AI chatbots in banking;[30] the publication of two new reports on the financial opportunities and challenges facing Southern communities;[31] the availability of 2022 HMDA data;[32] a roundtable on special purpose credit programs (SPCPs);[33] the issuance of Consumer Financial Protection Circular 2023-03, Adverse action notification requirements and the proper use of the CFPB's sample forms provided in Regulation B;[34] the Freedom Mortgage enforcement

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22 Seth Frotman, *Protecting consumers' right to challenge discrimination* (Jun. 26, 2023), https://www.consumerfinance.gov/about-us/blog/protecting-consumers-right-to-challenge-discrimination/.

23 Patrice Alexander Ficklin, *The CFPB's 2022 fair lending annual report to congress* (Jun. 29, 2023), https://www.consumerfinance.gov/about-us/blog/the-cfpbs-2022-fair-lending-annual-report-to-congress/.

24 Sonia Lin, *Protecting immigrant access to fair credit opportunities*, (Oct. 12, 2023), https://www.consumerfinance.gov/about-us/blog/protecting-immigrant-access-to-fair-credit-opportunities/.

25 Consumer Fin. Prot. Bureau, *Next public hearing on appraisal bias: November 1* (Oct. 23, 2023), https://www.consumerfinance.gov/about-us/blog/next-public-hearing-on-appraisal-bias-november-1/.

26 Consumer Fin. Prot. Bureau, *2022 HMDA Data on Mortgage Lending Now Available* (Mar. 20, 2023), https://www.consumerfinance.gov/about-us/newsroom/2022-hmda-data-on-mortgage-lending-now-available/.

27 Consumer Fin. Prot. Bureau, *CFPB Finalizes Rule to Create a New Data Set on Small Business Lending in America* (Mar. 30, 2023), https://www.consumerfinance.gov/about-us/newsroom/cfpb-finalizes-rule-to-create-a-new-data-set-on-small-business-lending-in-america/.

28 Consumer Fin. Prot. Bureau, *CFPB and Federal Partners Confirm Automated Systems and Advanced Technology Not an Excuse for Lawbreaking Behavior* (Apr. 25, 2023), https://www.consumerfinance.gov/about-us/newsroom/cfpb-federal-partners-confirm-automated-systems-advanced-technology-not-an-excuse-for-lawbreaking-behavior/.

29 Consumer Fin. Prot. Bureau, *Agencies Request Comment on Quality Control Standards for Automated Valuation Models Proposed Rule* (Jun. 1, 2023), https://www.consumerfinance.gov/about-us/newsroom/agencies-request-comment-on-quality-control-standards-for-automated-valuation-models-proposed-rule.

30 Consumer Fin. Prot. Bureau, *CFPB Issue Spotlight Analyzes "Artificial Intelligence" Chatbots in Banking* (Jun. 6, 2023), https://www.consumerfinance.gov/about-us/newsroom/cfpb-issue-spotlight-analyzes-artificial-intelligence-chatbots-in-banking/.

31 Consumer Fin. Prot. Bureau, *CFPB Releases Reports on Banking Access and Consumer Finance in Southern States* (Jun. 20, 2023), https://www.consumerfinance.gov/about-us/newsroom/cfpb-releases-reports-on-banking-access-and-consumer-finance-in-southern-states/.

32 Consumer Fin. Prot. Bureau, *FFIEC Announces Availability of 2022 Data on Mortgage Lending* (Jun. 29, 2023), https://www.consumerfinance.gov/about-us/newsroom/ffiec-announces-availability-of-2022-data-on-mortgage-lending/.

33 Consumer Fin. Prot. Bureau, *Agencies to Host Roundtable on Special Purpose Credit Programs* (Aug. 24, 2023), https://www.consumerfinance.gov/about-us/newsroom/agencies-to-host-roundtable-on-special-purpose-credit-programs/.

34 Consumer Fin. Prot. Bureau, *CFPB Issues Guidance on Credit Denials by Lenders Using Artificial Intelligence* (Sep. 19, 2023), https://www.consumerfinance.gov/about-us/newsroom/cfpb-issues-guidance-on-credit-denials-by-lenders-using-artificial-intelligence/.

action for reporting allegedly erroneous data under HMDA;[35] the issuance of the CFPB and DOJ's joint statement reminding financial institutions that all credit applicants are protected from discrimination on the basis of race, national origin, race, and other characteristics covered by ECOA, regardless of their immigration status;[36] the publication of a new analysis on state Community Reinvestment Act (CRA) laws, highlighting how states ensure financial institutions' lending, services, and investment activities meet the credit needs of their communities;[37] the Citibank enforcement action;[38] the Bank of America enforcement action;[39] and the Colony Ridge enforcement action.[40]

3.1.2 CFPB engagements with stakeholders

The CFPB often engages directly with external stakeholders to inform the CFPB's policy developments and message the CFPB's priorities and recent work. In 2023, CFPB staff participated in 69 stakeholder engagements related to fair lending and access to credit issues. Through speeches, presentations, podcasts, roundtables, webinars, and other smaller discussions on fair lending topics, the CFPB strives to keep abreast of economic and market realities that impact the lives of individuals, small businesses, and communities the CFPB is charged with protecting.

Throughout 2023, numerous engagements centered around the use of advanced technologies including their use in discriminatory targeting, consumer surveillance, and digital redlining; redlining; discrimination on the basis of receipt of public assistance income; false and erroneous HMDA data reporting; student lending; and credit reporting.

[35] Consumer Fin. Prot. Bureau, *CFPB Sues Repeat Offender Freedom Mortgage Corporation for Providing False Information to Federal Regulators* (Oct. 10, 2023), https://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-repeat-offender-freedom-mortgage-corporation-for-providing-false-information-to-federal-regulators/.

[36] Consumer Fin. Prot. Bureau, CFPB and Justice Department Issue Joint Statement Cautioning that Financial Institutions May Not Use Immigration Status to Illegally Discriminate Against Credit Applicants (Oct. 12, 2023), https://www.consumerfinance.gov/about-us/newsroom/cfpb-and-justice-department-issue-joint-statement-cautioning-that-financial-institutions-may-not-use-immigration-status-to-illegally-discriminate-against-credit-applicants/.

[37] Consumer Fin. Prot. Bureau, *CFPB Issues New Report on State Community Reinvestment Laws* (Nov. 2, 2023), https://www.consumerfinance.gov/about-us/newsroom/cfpb-issues-new-report-on-state-community-reinvestment-laws/.

[38] Consumer Fin. Prot. Bureau, *CFPB Orders Citi to Pay $25.9 Million for Intentional, Illegal Discrimination Against Armenian Americans* (Nov. 8, 2023), https://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-citi-to-pay-25-9-million-for-intentional-illegal-discrimination-against-armenian-americans/.

[39] Consumer Fin. Prot. Bureau, *CFPB Orders Bank of America to Pay $12 Million for Reporting False Mortgage Data* (Nov. 28, 2023), https://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-bank-of-america-to-pay-12-million-for-reporting-false-mortgage-data/.

[40] Consumer Fin. Prot. Bureau, C*FPB and Justice Department Sue Developer and Lender Colony Ridge for Bait-and-Switch Land Sales and Predatory Financing* (Dec. 20, 2023), https://www.consumerfinance.gov/about-us/newsroom/cfpb-and-doj-sue-developer-and-lender-colony-ridge-for-bait-and-switch-land-sales-and-predatory-financing/.

3.2 Data and reports

3.2.1 State Community Reinvestment Act: Summary of State Laws

On November 2, 2023, the CFPB published a new analysis of state-specific versions of CRA laws, highlighting how states ensure financial institutions' lending, services, and investment activities meet the credit needs of their communities. Many states adopted laws similar to the federal CRA in the decades following the 1977 passage of the landmark federal anti-redlining law. The report examined the laws of seven states (Connecticut, Illinois, Massachusetts, New York, Rhode Island, Washington, West Virginia) and the District of Columbia, and found that data collected by federal agencies, such as HMDA, are often used for state CRA compliance and other oversight purposes.[41]

3.2.2 Banking and Credit Access in the Southern Region of the United States

On June 21, 2023, the CFPB published a data spotlight, *Banking and Credit Access in the Southern Region of the U.S.*[42] Spanning the states of Alabama, Arkansas, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee, this report seeks to identify gaps as well as opportunities to increase financial access in the region, particularly through branch presence and bank account access, and capital access such as mortgage lending and small business lending. The analysis looks at trends by state, the region as a whole, and differences between rural and non-rural areas. Utilizing HMDA data, the analysis also identified differences for mortgage originations and denials by race and ethnicity in both rural and non-rural communities.

[41] Consumer Fin. Prot. Bureau, *State Community Reinvestment Act: Summary of State Laws* (Nov. 2, 2023), https://www.consumerfinance.gov/data-research/research-reports/state-community-reinvestment-acts-summary-of-state-laws/.

[42] Consumer Fin. Prot. Bureau, *Banking and Credit Access in the Southern Region of the U.S.* (Jun. 21, 2023), https://files.consumerfinance.gov/f/documents/cfpb_ocp-data-spotlight_banking-and-credit-access_2023-06.pdf.

3.2.3 Consumer Finances in Rural Areas of the Southern Region

On June 21, 2023, the CFPB published a data spotlight, *Consumer Finances in Rural Areas of the Southern Region*.[43] This report is the second in a series profiling the finances of consumers in rural communities. Nearly 48 million people live in the southern region examined in this report, which includes Alabama, Arkansas, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee. Intended to provide a starting point in better understanding the financial lives of consumers in rural areas of the southern United States, this report takes a broad survey of consumer financial profiles, including credit scores, financial distress, medical debt, and other debt categories and compares profiles of consumers in the rural South to those in other geographies. Among other things, the report examines originations for auto loans by credit score and majority-minority census tracts, by state and for the region as a whole.

3.2.4 Availability of 2022 HMDA data

On March 20, 2023, the CFPB announced the initial availability of the 2022 HMDA modified loan application register data on the Federal Financial Institutions Examination Council's (FFIEC) HMDA Platform for approximately 4,394 HMDA filers.[44] These published data contain loan-level information filed by financial institutions, modified to protect consumer privacy.[45]

On June 29, 2023, the FFIEC announced the availability of static "Snapshot" HMDA data, a static dataset of 2022 mortgage lending transactions at 4,460 financial institutions reported under HMDA as of May 1, 2023.[46] These data include a total of 48 data points providing information about the applicants, the property securing the loan or proposed to secure the loan in the case of non-originated applications, the transaction, and identifiers.

[43] Consumer Fin. Prot. Bureau, *Consumer Finances in Rural Areas of the Southern Region* (Jun. 21, 2023), https://files.consumerfinance.gov/f/documents/cfpb_or-data-point_consumer-finances-in-rural-south_2023-06.pdf.

[44] Consumer Fin. Prot. Bureau, *2021 HMDA Data on Mortgage Lending Now Available* (Mar. 20, 2023), https://www.consumerfinance.gov/about-us/newsroom/2022-hmda-data-on-mortgage-lending-now-available/

[45] Additional activity has occurred since the close of this reporting period. On March 26, 2024, the CFPB announced the availability of the HMDA modified loan application data for 2023, available at https://ffiec.cfpb.gov/data-publication/modified-lar/2023.

[46] Consumer Fin. Prot. Bureau, *FFIEC Announces Availability of 2022 Data on Mortgage Lending* (Jun. 29, 2023), https://www.consumerfinance.gov/about-us/newsroom/ffiec-announces-availability-of-2022-data-on-mortgage-lending/.

3.2.5 Report on the Home Mortgage Disclosure Act Rule Voluntary Review

On March 3, 2023, the CFPB published a report containing the findings of the CFPB's voluntary review of the CFPB's final HMDA rule (issued in October 2015) and related amendments (collectively, the HMDA Rule).[47] The report analyzed, among other key issues, how changes in reporting thresholds and other amendments affected HMDA data coverage and the available data on the supply over time of open-ended lines of credit and closed-end mortgage loans; how new or revised HMDA data points have contributed to predicting underwriting and pricing outcomes; and how revised and expanded reporting of race and ethnicity helped provide additional data on subpopulation groups in the residential mortgage market.

3.2.6 Data Point: 2022 Mortgage Market Activity and Trends

On September 27, 2023, the CFPB released its annual report on residential mortgage lending activity and trends for 2022.[48] The report shows that in 2022, mortgage applications and originations declined markedly from the prior year, while rates, fees, discount points, and other costs increased. Overall affordability declined significantly, with borrowers spending more of their income on mortgage payments and lenders more often denying applications for insufficient income. Most refinances during the reported period were cash-out refinances, and, in a reversal of recent trends, the median credit score of refinance borrowers declined below the median credit score of purchase borrowers. As in years past, independent lenders continued to dominate home mortgage lending, with the exception of home equity lines of credit.

[47] Consumer Fin. Prot. Bureau, *Report on the Home Mortgage Disclosure Act Rule Voluntary Review* (Mar. 3, 2023), https://files.consumerfinance.gov/f/documents/cfpb_hmda-voluntary-review_2023-03.pdf.

[48] Consumer Fin. Prot. Bureau, *Data Point: 2022 Mortgage Market Activity and Trends* (Sep. 27 2022), https://www.consumerfinance.gov/data-research/research-reports/data-point-2022-mortgage-market-activity-trends/.

4. Interagency engagement

The CFPB regularly coordinates with other tribal, federal, state, county, municipal, and international government entities; policymakers; and the organizations that represent them regarding current and emerging fair lending risks. Through numerous interagency organizations and taskforces, the CFPB coordinated its 2023 fair lending regulatory, supervisory, and enforcement activities to promote consistent, efficient, and effective enforcement of federal fair lending laws.

The CFPB, along with the Department of Housing and Urban Development (HUD), Federal Trade Commission (FTC), FDIC, FRB, NCUA, OCC, DOJ, and FHFA, constitute the Interagency Task Force on Fair Lending. This Task Force meets regularly to discuss fair lending enforcement efforts, share current methods of conducting supervisory and enforcement fair lending activities, and coordinate fair lending policies. In 2023, the NCUA was the Chair of this Task Force.

Through the FFIEC, the CFPB has robust engagements with other partner agencies that focus on fair lending issues. For example, throughout the reporting period, the CFPB has continued to chair the HMDA and CRA Data Collection Subcommittee, a subcommittee of the FFIEC Task Force on Consumer Compliance. This subcommittee oversees FFIEC projects and programs involving HMDA data collection and dissemination, the preparation of the annual FFIEC budget for processing services, and the development and implementation of other related HMDA processing projects as directed by this Task Force.

Together with DOJ, HUD, and FTC, the CFPB also participates in the Interagency Working Group on Fair Lending Enforcement, a standing working group of federal agencies that meets regularly to discuss issues relating to fair lending enforcement. The agencies use these meetings to also discuss fair lending developments and trends, methodologies for evaluating fair lending risks and violations, and coordination of fair lending enforcement efforts.

As required by section 1022 of the Dodd-Frank Act, the CFPB also consults with other agencies as part of its rulemaking process.[49] For example, in 2023, while developing its small business lending data collection final rule, the CFPB consulted or offered to consult with FRB, FDIC, NCUA, OCC, HUD, DOJ, FTC, the Department of Agriculture, the Department of the Treasury, the Economic Development Administration, the Farm Credit Administration (FCA), the Financial Crimes Enforcement Network, and the Small Business Administration (SBA)

[49] 12 U.S.C. § 5512.

including, among other things, on consistency with any prudential, market, or systemic objectives administered by such agencies.

In addition to the established interagency organizations, CFPB personnel meet regularly with personnel from other agencies, including with DOJ, HUD, FTC, FHFA, state Attorneys General, and the prudential regulators to coordinate and discuss the CFPB's fair lending work.

4.1 Special purpose credit program interagency roundtable

On September 12, 2023, the CFPB, along with HUD, OCC, and FHFA hosted a roundtable discussion on SPCPs.[50] In addition to remarks by the respective leaders of the participating agencies, the event included a roundtable discussion with representatives from community groups and trade organizations that are focused on the opportunities and benefits of SPCPs. The event was open to the public via livestream.

4.2 Joint statements

On April 25, 2023, the CFPB, along with DOJ, Equal Employment Opportunity Commission, and FTC issued a joint statement committing to enforcement efforts against discrimination and bias in automated systems.[51] In the statement, all four agencies resolved to vigorously enforce their collective authorities and to monitor the development and use of automated systems, including those sometimes marketed as AI.

On October 12, 2023, the CFPB along with DOJ, issued a joint statement reminding financial institutions that, while ECOA and Regulation B do not expressly prohibit consideration of immigration status, they prohibit creditors from using immigration status to discriminate on the basis of national origin, race, or any other characteristic covered by ECOA.[52]

[50] Consumer Fin. Prot. Bureau, *Agencies to Host Roundtable on Special Purpose Credit Programs*, (Aug. 24, 2023), https://www.consumerfinance.gov/about-us/newsroom/agencies-to-host-roundtable-on-special-purpose-credit-programs/.

[51] Consumer Fin. Prot. Bureau; Dept. of Justice Civil Rights Div.; Equal Opportunity Comm'n; Federal Trade Comm'n; *Joint Statement on Enforcement Efforts Against Discrimination and Bias in Automated Systems*, (Apr. 25, 2023), https://files.consumerfinance.gov/f/documents/cfpb_joint-statement-enforcement-against-discrimination-bias-automated-systems_2023-04.pdf.

[52] Consumer Fin. Prot. Bureau; Dept. of Justice Civil Rights Div. *Joint Statement on Fair Lending and Credit Opportunities for Noncitizen Borrowers under the Equal Credit Opportunity Act* (Oct. 12, 2023), https://files.consumerfinance.gov/f/documents/cfpb-joint-statement-on-fair-lending-and-credit-opportunities-for-noncitizen-b_jA2oRDf.pdf.

4.3 Appraisal bias

Appraisal bias is a key fair lending priority of the CFPB. Throughout 2023, the CFPB has been very active with its interagency partners to advance work to combat appraisal bias through the FFIEC Appraisal Subcommittee (ASC), correspondence, court briefs, proposed guidance, and work of the Property Appraisal and Valuation Equity Task Force.

The ASC comprises designees from the CFPB and certain other federal agencies, including FDIC, HUD, FRB, OCC, NCUA, and FHFA, and is tasked with providing federal oversight of state appraiser and appraisal management company regulatory programs, as well as a monitoring and reviewing framework for The Appraisal Foundation, the private, nongovernmental organization that sets appraisal standards. CFPB Deputy Director Zixta Martinez currently serves as the Chairperson of the ASC. Through the ASC, the CFPB addresses topics including discriminatory bias in home appraisals.

The ASC held its first-ever hearing about appraisal bias on January 24, 2023. The hearing served to raise awareness of the issue of appraisal bias by focusing on its scope and impact, and to provide information on the role of the ASC in the appraisal regulatory system. On May 19, 2023, the ASC held its second public hearing, which explored the appraisal regulatory system and focused on appraisal standards, appraiser qualification criteria and barriers to entry into the profession, appraisal practice, and state regulation. The ASC held its third public hearing on November 1, 2023, which discussed how a residential appraisal is developed and reviewed, the ROV process for residential real estate valuations, and the development of rural appraisals. These hearings were the first three in a series of four planned hearings relating to appraisal bias.

On February 14, 2023, senior officials from the CFPB, FDIC, HUD, NCUA, FRB, DOJ, OCC, and FHFA submitted a joint letter to The Appraisal Foundation. The letter urged The Appraisal Foundation to revise its draft Ethics Rule for appraisers to include a detailed statement of federal prohibitions against discrimination that exist under the FHA and ECOA. The agencies expressed concern that some appraisers may be unaware of these prohibitions and, of particular concern, that the draft Ethics Rule emphasized that “[a]n appraiser must not engage in unethical discrimination,” implying that appraisers may engage in “ethical” discrimination, a concept foreign to current law and practice.

On March 13, 2023, the CFPB filed a joint statement of interest with DOJ in *Connolly & Mott v. Lanham et al.*, explaining the application of the FHA and ECOA to lenders relying on discriminatory home appraisals. For more information on this statement of interest, see Section 5.1 of this report.

On June 1, 2023, the CFPB, in conjunction with the FRB, FDIC, FHFA, NCUA, and OCC, proposed a rule regarding quality control standards for AVMs. For more information on this rulemaking, see Section 2.1.2 of this report.

On June 8, 2023, the CFPB, in conjunction with the FRB, FDIC, NCUA, and OCC, requested public comment on proposed guidance addressing ROV for residential real estate transactions. The proposed guidance would advise on policies that financial institutions may implement to allow consumers to provide financial institutions with information that may not have been considered during an appraisal or if deficiencies are identified in the original appraisal. For more information on this proposed guidance, see Section 2.2.1 of this report.

In 2023, the CFPB also continued to engage with other agencies on issues of bias in home appraisals through the Interagency Task Force on Property Appraisal and Valuation Equity. More information on this Task Force is available at https://pave.hud.gov.

5. Amicus program and other litigation

5.1 Amicus briefs and statements of interest

The CFPB files *amicus*, or “friend-of-the-court,” briefs in significant court cases concerning federal consumer financial protection laws, including cases involving ECOA. These briefs provide courts with the CFPB’s views and help ensure that consumer financial protection statutes are correctly and consistently interpreted. In 2023, the CFPB filed two fair lending related *amicus* briefs and a statement of interest.

On June 23, 2023, the CFPB filed an *amicus* brief in *Saint-Jean et al. v. Emigrant Mortgage Co. & Emigrant Bank* in support of Plaintiffs who won a jury verdict against Emigrant Mortgage Company and Emigrant Bank (Emigrant) for violating ECOA.[53] The jury found that Emigrant had for years targeted Black and Latino borrowers and neighborhoods in New York City with predatory mortgage loans and practices. The CFPB’s brief addresses three issues raised on appeal to explain why the jury verdict should be affirmed: (1) the timeliness of Plaintiff’s claims under the doctrine of equitable tolling, (2) the propriety of the district court’s jury instructions under ECOA, and (3) the public policy goals undermined by enforcing a waiver of claims in a loan modification agreement.[54]

On April 14, 2023, the CFPB filed an *amicus* brief in *Roberson v. Health Career Institute LLC*.[55] In the brief, the CFPB explained that discriminatory targeting violates ECOA. In particular, the CFPB’s brief explains that ECOA’s prohibition on discrimination applies to “any aspect of a credit transaction,” meaning it covers every aspect of a borrower’s dealings with a creditor, not just the specific terms of a loan -- like the interest rate or fees. The CFPB’s brief also explains that in order to survive a motion to dismiss under ECOA, plaintiffs need only plead facts that plausibly allege discrimination, rather than the elements of a prima facia case, which is not a pleading requirement but rather an evidentiary standard.[56]

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[53] Brief for Consumer Financial Protection Bureau as Amici Curiae Supporting Plaintiff-Appellees, Saint-Jean v. Emigrant Mortg. Co., 50 F. Supp. 3d 300 (E.D.N.Y. 2014) (No. 22-3094).

[54] *See* https://files.consumerfinance.gov/f/documents/cfpb_saint-jean-et-al-v-emigrant-mortgage-coemigrant-bank_2023-06.pdf.

[55] Statement of Interest of the Consumer Financial Protection Bureau in Support of Plaintiffs, Roberson et al v. Health Career Institute LLC et al. (S.D.Fla. 2023) (No. 9:22CV81883).

[56] *See* https://www.consumerfinance.gov/compliance/amicus/briefs/roberson-v-health-career-institute-llc/.

On March 13, 2023, the CFPB and DOJ filed a joint statement of interest in *Connolly & Mott v. Lanham et al.* explaining that relying on discriminatory home appraisals can violate ECOA.[57] The law is clear that mortgage lenders cannot take race, sex, or any other prohibited bases into account when evaluating the creditworthiness of an applicant. As such, lenders cannot rely on a discriminatory appraisal if they knew, or should have known, that the appraisal was discriminatory. The statement of interest also explains that, to survive a motion to dismiss under ECOA, plaintiffs need only plead facts that plausibly allege discrimination, rather than establish a prima facie case, which is not a pleading requirement but rather an evidentiary standard. In the statement of interest, the Department of Justice also addresses how the FHA applies to discriminatory appraisals.[58]

More information regarding the CFPB's amicus program is available on the CFPB's website.[59]

5.2 Litigation

In September 2022, the CFPB was sued in the U.S. District Court for the Eastern District of Texas by the U.S. Chamber of Commerce et. al, challenging an update to the UDAAP section of the CFPB's examination manual. The updated manual clarified that discriminatory conduct may violate the CFPA's prohibition on unfair practices and provided guidance to examiners on how discriminatory conduct should be examined to determine whether it violates the unfairness prohibition. The court granted plaintiffs' motion for summary judgment, vacated the manual update, and permanently enjoined the CFPB from engaging in any examination, supervision or enforcement action against any member of the plaintiff associations based on the CFPB's interpretation of its unfairness authority set forth in the updated manual. The CFPB filed a notice of appeal in November 2023, and the appeal was stayed by the Fifth Circuit pending the Supreme Court's resolution of *CFPB v. CFSA*.[60]

On March 30, 2023, the CFPB issued its final rule on small business lending under ECOA, as required by section 1071 of the Dodd-Frank Act.[61] On April 26, 2023, the Texas Bankers Association and Rio Bank sued the CFPB in the U.S. District Court for the Southern District of Texas challenging the validity of the final rule. The court entered a preliminary injunction enjoining the CFPB from enforcing or implementing the rule against plaintiffs (including the American Bankers Association, who had joined as a plaintiff via an amended complaint filed on

[57] Statement of Interest for the United States, Connolly et al. v. Lanham et al., 685 F.Supp.3d 312 (No. 1:22CV02048).
[58] *See* https://www.consumerfinance.gov/compliance/amicus/briefs/connolly-mott-v-lanham-et-al/.
[59] *See generally* https://www.consumerfinance.gov/policy-compliance/amicus/.
[60] Additional activity as occurred since the close of this reporting period. On May 16, 2024, the Supreme Court issued a decision in CFPB v. CFSA. *See Consumer Fin. Prot. Bureau v. Cmty. Fin. Servs. Ass'n of Am., Ltd.*, 601 U.S. 416 (2024).
[61] *See* https://www.consumerfinance.gov/rules-policy/final-rules/small-business-lending-under-the-equal-credit-opportunity-act-regulation-b/.

May 14, 2023) and their members, and stayed the compliance dates for plaintiffs and their members pending a decision in *CFPB v. CFSA*.[62] On October 26, 2023, the court extended that order to apply to all covered entities following the intervention of other plaintiffs seeking to join the lawsuit. Separately, on August 11, 2023, the Kentucky Bankers Association and several Kentucky banks sued to challenge the rule in the U.S. District Court for the Eastern District of Kentucky. The court preliminarily enjoined the CFPB from enforcing the rule pending a decision in *CFPB v. CFSA.*[63] A third lawsuit was filed on December 26, 2023, in the U.S. District Court for the Southern District of Florida by the Revenue Based Finance Coalition, a trade association representing merchant cash advance providers.

[62] Additional activity has occurred since the close of this reporting period. *See* fn. 65, *supra*.
[63] Additional activity has occurred since the close of this reporting period. *See* fn. 65, *supra*.

6. Interagency reporting on ECOA and HMDA

The CFPB is statutorily required to file a report to Congress annually describing the administration of its functions under ECOA, summarizing public enforcement actions taken by other agencies with administrative enforcement responsibilities under ECOA, and providing an assessment of the extent to which compliance with ECOA has been achieved.[64] In addition, the CFPB's annual HMDA reporting requirement calls for the CFPB, in consultation with HUD, to report annually on the utility of HMDA's requirement that covered lenders itemize certain mortgage loan data.[65] The information below provides the required reporting.

6.1 Reporting on ECOA enforcement

The enforcement and compliance efforts and assessments made by the eleven agencies assigned enforcement authority under section 704 of ECOA[66] are discussed in this section, as reported by the 11 ECOA enforcement agencies.

TABLE 1: FFIEC AGENCIES WITH ADMINISTRATIVE ENFORCEMENT OF ECOA[67]

FFIEC AGENCIES	Consumer Financial Protection Bureau (CFPB)	Federal Deposit Insurance Corporation (FDIC)	Federal Reserve Board (FRB)	National Credit Union Administration (NCUA)	Office of the Comptroller of the Currency (OCC)

[64] 15 U.S.C. § 1691f.
[65] 12 U.S.C. § 2807.
[66] 15 U.S.C.A. § 1691c.
[67] Collectively, the FRB, FDIC, NCUA, OCC, and CFPB comprise the FFIEC. The State Liaison Committee was added to FFIEC in 2006 as a voting member. Federal Fin. Instit. Examination Council, http://www.ffiec.gov (last visited Jun. 12, 2024).

TABLE 2: NON-FFIEC AGENCIES WITH ADMINISTRATIVE ENFORCEMENT OF ECOA

NON-FFIEC AGENCIES			
	Agricultural Marketing Service (AMS) of the U.S. Department of Agriculture (USDA)	Department of Transportation (DOT)	Farm Credit Administration (FCA)
	Federal Trade Commission (FTC)	Securities and Exchange Commission (SEC)	Small Business Administration (SBA)[68]

6.1.1 Public enforcement actions

In 2023, of the federal agencies with ECOA enforcement authority, the CFPB, FDIC, and FTC brought a total of four fair lending enforcement actions. Information on the DOJ's fair lending program and fair lending related public enforcement actions can be found at: https://www.justice.gov/crt/fair-lending-program-0.

6.1.2 CFPB enforcement actions

In 2023, the CFPB brought two fair lending enforcement actions: Citibank and Colony Ridge.

CITIBANK

On November 8, 2023, the CFPB ordered Citibank, N.A. to pay $25.9 million in fines and consumer redress for intentionally and illegally discriminating against credit card applicants the

[68] 15 U.S.C. § 1691c.

bank identified as Armenian American.[69] From at least 2015 through 2021, Citibank discriminated against retail services credit card applicants with surnames that Citibank employees associated with consumers of Armenian national origin, targeting applicants with surnames ending in "-ian" and "-yan" as well as applicants in or around Glendale, California. Nicknamed "Little Armenia," Glendale is home to approximately 15% of the Armenian American population in the U.S. When Citibank identified credit card applicants as potentially being of Armenian national origin, the bank applied more stringent criteria to these applications, including denying them outright and requiring additional information or placing a block on the account.

Further, Citibank supervisors conspired to hide the discrimination by instructing employees not to discuss the discriminatory practices in writing or on recorded phone lines. Citibank employees also lied about the bases of denial, providing false reasons to denied applicants.

COLONY RIDGE

On December 20, 2023, the CFPB, together with DOJ, filed a complaint against the Texas-based Colony Ridge defendants.[70] The lawsuit alleges Colony Ridge sells unsuspecting families flood-prone land without water, sewer, or electrical infrastructure, and that the company sets borrowers up to fail with loans they cannot afford. As alleged in the complaint, roughly one in four Colony Ridge loans ends in foreclosure, after which the company repurchases the properties and sells them to new borrowers. As alleged in the complaint, Colony Ridge targets Hispanic borrowers. In particular, Colony Ridge advertises almost exclusively in Spanish, often on TikTok or other social media platforms, often featuring national flags and regional music from Latin America. In their marketing, Colony Ridge promised consumers the American dream of home ownership with its own seller financing: an easy-to-obtain loan product that requires no credit check and only a small deposit. The complaint alleges that foreclosure and property deed records from September 2019 through September 2022 show that Colony Ridge initiated foreclosures on at least 30% of seller-financed lots within just three years of the purchase date, with most loan failures occurring even sooner. Records also confirm that Colony Ridge accounted for more than 92% of all foreclosures recorded in Liberty County, Texas between 2017 and 2022.

In the complaint, the CFPB and DOJ allege that defendants violated ECOA by targeting consumers of Hispanic origin with a predatory loan product. The CFPB separately alleges that the Colony Ridge defendants violated the CFPA by making deceptive representations to consumers; that Colony Ridge Development and Colony Ridge BV violated the Interstate Land Sales Full Disclosure Act (ILSA) by making untrue statements, omitting material facts, failing to provide required accurate translations, and failing to report and disclose required information;

[69] *See* https://www.consumerfinance.gov/enforcement/actions/citibank-n-a/.
[70] *See* https://www.consumerfinance.gov/enforcement/actions/colony-ridge/.

and that defendants violated the CFPA by virtue of their violations of ECOA and ILSA, respectively. DOJ further alleges defendants' conduct violated the FHA.

The joint complaint seeks, among other things, injunctions against defendants to prevent future violations of federal consumer financial laws, redress to consumers, damages, and the imposition of civil money penalties.

6.1.3 Interagency enforcement actions

In 2023, the FTC, along with the State of Wisconsin, brought an enforcement action in federal court against Rhinelander, a Wisconsin auto dealer group, its current and former owners, and general manager Daniel Towne, alleging, among other things, that defendants violated ECOA and Regulation B by discriminating against American Indian consumers by charging them higher financing costs and fees.[71] Among other things, the settlement with Rhinelander's current owners and Defendant Towne requires the company to establish a comprehensive fair lending program that will, among other components, allow consumers to seek outside financing for a purchase, and cap the additional interest markup Rhinelander can charge consumers, as well as require the current owners and Defendant Towne to pay $1 million to refund affected consumers.[72] The former owners, Rhinelander Auto Center, Inc. and Rhinelander Motor Company, agreed to a separate settlement, that requires the companies to permanently wind down the businesses and pay $100,000 to refund affected consumers.[73]

On March 8, 2023, the FDIC issued a public consent order for Cross River bank under section 3(q) of the Federal Deposit Insurance Act (Act), 12 U.S.C. § 1813(q). The FDIC determined that Cross River bank engaged in unsafe or unsound banking practices related to its compliance with applicable fair lending laws and regulations by failing to establish and maintain internal controls, information systems, and prudent credit underwriting practices in conformance with the Safety and Soundness Standards contained in Appendix A of 12 C.F.R. Part 364, or the violations of ECOA, 15 U.S.C. § 1691, et seq., as implemented by Regulation B, 12 C.F.R. Part 1002, and the Truth in Lending Act, 15 U.S.C. § 1601, et seq., as implemented by Regulation Z, 12 C.F.R. Part 1026.

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[71] *FTC v. Rhinelander Auto Ctr., Inc.*, No. 23-cv-737 (W.D. Wis., filed Oct. 24, 2023), *available at* https://www.ftc.gov/system/files/ftc_gov/pdf/1-ComplaintbyFTC-WIagainstRhinelander.pdf.

[72] *FTC v. Rhinelander Auto Ctr., Inc.*, No. 23-cv-737 (W.D. Wis. Nov. 6, 2023) (stipulated order for permanent injunction, monetary judgment, and other relief as to Defendants Rhinelander Auto Group LLC, Rhinelander Import Group LLC, and Daniel Towne), https://www.ftc.gov/system/files/ftc_gov/pdf/18-ConsentJudgmentEnteredastoRAGRMGandTowne.pdf.

[73] *FTC v. Rhinelander Auto Ctr., Inc.*, No. 23-cv-737 (W.D. Wis. Nov. 6, 2023) (stipulated order for permanent injunction, monetary judgment, and other relief as to Defendants Rhinelander Auto Center, Inc., and Rhinelander Motor Company), https://www.ftc.gov/system/files/ftc_gov/pdf/17-ConsentJudgmentEnteredastoRACandRMC.pdf.

6.1.4 Number of institutions cited for ECOA and Regulation B violations

In 2023, the agencies and the CFPB collectively reported citing 189 institutions with violations of ECOA and/or Regulation B.

6.1.5 Violations cited during ECOA examinations

Among institutions examined for compliance with ECOA and Regulation B, the FFIEC agencies reported that the most frequently cited violations were as follows:

TABLE 3: REGULATION B VIOLATIONS CITED BY FFIEC AGENCIES, 2023

Regulation B Violations: 2023	**FFIEC Agencies Reporting**
12 C.F.R. § 1002.4, 1002.7(d)(1): **Discrimination** Discrimination on a prohibited basis in a credit transaction; improperly requiring the signature of the applicant's spouse or other person.	NCUA,[74] CFPB[75]
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** 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).	FDIC,[76] OCC[77]
12 C.F.R. § 1002.6 (b)(2), (5): **Specific rules concerning use of information** Improperly evaluating age, receipt of public assistance in a credit transaction.	CFPB

[74] 12 C.F.R. § 1002.4(a).
[75] 12 C.F.R. § 1002.4, § 1002.7(d)(1).
[76] 12 C.F.R. § 1002.5(b)-(d).
[77] 12 C.F.R. § 1002.5(b).

12 C.F.R. § 1002.9(a)(1)(i), (a)(2), (b)(1); (b)(2); (c): **Adverse Action** 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.	OCC,[78] NCUA,[79] FRB,[80] FDIC,[81] CFPB[82]
12 C.F.R. § 1002.13(a)(1), (b): **Information for Monitoring Purposes** Failure to obtain information for monitoring purposes; failure to request information on an application pertaining to the applicant's ethnicity or race.	OCC
12 C.F.R. § 1002.14 (a)(1), (a)(2), (a)(3), (a)(4): **Appraisals and Valuations** Failure to provide appraisals and other valuations.	OCC,[83] NCUA[84]

Among institutions examined for compliance with ECOA and Regulation B, the Non-FFIEC agencies reported that the most frequently cited violations were as follows:

TABLE 4: REGULATION B VIOLATIONS CITED BY NON-FFIEC AGENCIES ENFORCING ECOA, 2023

Regulation B Violations: 2023	Non-FFIEC Agencies Reporting
12 C.F.R. § 1002.9(a)(1)(i), (a)(2): **Adverse Action** 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 sufficient information in an adverse action notification, including the specific reasons for the action taken.	FCA
12 C.F.R. § 1002.13: **Failure to request and collect information for monitoring purposes**. Failure to obtain information for monitoring purposes.	FCA

The AMS, SEC, and the SBA reported that they received no complaints based on ECOA or Regulation B in 2023. The FTC is an enforcement agency and does not conduct compliance examinations.

[78] 12 C.F.R. § 1002.9(a)(2); § 1002.9(a)(1)(i); § 1002.9(b)(2).
[79] 12 C.F.R. § 1002.9(a)(1); § 1002.9(a)(2); § 1002.9(b)(2).
[80] 12 C.F.R. § 1002.9(a)(1)(i); § 1002.9(b)(2).
[81] 12 C.F. R. § 1002.9(a)(1);(a)(2); (b)(2).
[82] 12 C.F.R. § 1002.9(a)(1),(2); 1002.9(b); § 1002.9(c).
[83] 12 C.F.R. § 1002.14(a)(1); § 1002.14(a)(2).
[84] 12 C.F.R. § 1002.14(a)(2).

6.1.6 Referrals to the Department of Justice

The agencies assigned enforcement authority under section 704 of ECOA must refer a matter to DOJ when there is reason to believe that a creditor has engaged in a pattern or practice of lending discrimination in violation of ECOA.[85] They also may refer other potential ECOA violations to DOJ.[86] In 2023, 5 agencies (FDIC, NCUA, FRB, OCC and CFPB) collectively made 33 such referrals to DOJ involving discrimination in violation of ECOA. This is an increase of 175 percent in such referrals since 2020 (12 referrals). A brief description of those matters follows.

In 2023, the CFPB referred 18 fair lending matters to DOJ. The referrals included: discrimination on the basis of race and national origin in mortgage lending (redlining); discrimination in underwriting on the basis of receipt of public assistance income; predatory targeting on the basis of race and national origin; discrimination in pricing exceptions on the basis of race, national origin, sex, and age; and discrimination in credit cards on the basis of national origin and race.

In 2023, the FDIC referred seven fair lending matters to DOJ. The referrals included: one matter involving discrimination on the basis of race in mortgage lending (redlining); three matters for discrimination on the basis of race and national origin in mortgage lending (redlining); one matter involving discrimination in underwriting in commercial loans on the basis of race, color, national origin, and religion; one matter involving discrimination in auto loan pricing on the basis of sex or gender; and one matter for discrimination in auto loan pricing on the basis of race and national origin.

NCUA referred six ECOA matters to DOJ which involved discrimination based on age and discrimination based on marital status.

The OCC made one referral to DOJ for a matter that involved discrimination on the basis of race, color, or national origin in mortgage lending (redlining).

The FRB referred one fair lending matter to DOJ. The matter involved discrimination on the basis of marital status in agricultural and commercial lending.

6.2 Reporting on HMDA

The CFPB's annual HMDA reporting requirement calls for the CFPB, in consultation with HUD, to report annually on the utility of HMDA's requirement that covered lenders itemize loan data

[85] 15 U.S.C. § 1691e(g).
[86] *Id*.

in order to disclose the number and dollar amount of certain mortgage loans and applications, grouped according to various characteristics.[87] The CFPB, in consultation with HUD, finds that itemization and tabulation of these data furthers the purposes of HMDA.

[87] 12 U.S.C. § 2807.

7. Looking forward & focus on digital discrimination

The CFPB has made clear that the same laws and regulations apply to all technologies, regardless of the complexity or novelty of the technology deployed by institutions, including when it comes to combatting unlawful discrimination or explaining how certain credit decisions are made. ECOA is a powerful means to address unlawful digital discrimination in any aspect of a credit transaction. In 2023, the CFPB continued to combat digital discrimination through enforcement matters,[88] supervisory matters,[89] rulemaking,[90] guidance,[91] and using an all-of-government interagency approach.[92]

Looking forward, the CFPB will continue to enforce the law to root out unlawful discrimination, including when discrimination may be disguised by other processes within credit transactions. This includes actions that financial institutions take around the selection and procurement of data for use in advanced technological methods. Data brokers sell myriad types of personal data and sensitive information about consumers, some of which may directly implicate protected bases under ECOA. These data, alone or in combination with other data, may create proxies for, or have a disparate impact on, any of the ECOA prohibited bases. Creditors subject to ECOA and Regulation B may violate these laws if they use these data to engage in discriminatory targeting, steering, redlining, or in other ways that create unlawful discrimination.

The same holds true for fraud screens purported to facilitate compliance with other consumer protection and banking laws. While fraud detection compliance regimes may serve important

[88] *See* https://www.consumerfinance.gov/enforcement/actions/colony-ridge/.

[89] See Section 1.3, *supra*.

[90] Consumer Fin. Prot. Bureau; Off. of the Comptroller of the Currency; Fed. Hous. Fin. Agency; Fed. Reserve Sys.; Fed. Deposit Ins. Corp.; Nat'l Credit Union Admin.; *Quality Control Standards for Automated Valuation Models* (Jun. 1., 2023), https://files.consumerfinance.gov/f/documents/cfpb_automated-valuation-models_proposed-rule-request-for-comment_2023-06.pdf.

[91] Consumer Fin. Prot. Bureau, Consumer Financial Protection Circular 2023-03 Adverse action notification requirements and the proper use of the CFPB's sample forms provided in Regulation B (Sep. 19. 2023), https://www.consumerfinance.gov/compliance/circulars/circular-2023-03-adverse-action-notification-requirements-and-the-proper-use-of-the-cfpbs-sample-forms-provided-in-regulation-b/.

[92] Consumer Fin. Prot. Bureau; Off. of the Comptroller of the Currency; Fed. Hous. Fin. Agency; Fed. Reserve Sys.; Fed. Deposit Ins. Corp.; Nat'l Credit Union Admin; *Interagency Guidance on Reconsideration of Value of Residential Real Estate Valuations* (Jun. 8, 2023), https://files.consumerfinance.gov/f/documents/cfpb_interagency-guidance-reconsiderations-of-value-of-residential-real-estate_2023-06.pdf; Consumer Fin. Prot. Bureau; Dept. of Justice Civil Rights Div.; Equal Opportunity Comm'n; Federal Trade Comm'n; *Joint Statement on Enforcement Efforts Against Discrimination and Bias in Automated Systems*, (Apr. 25, 2023), https://files.consumerfinance.gov/f/documents/cfpb_joint-statement-enforcement-against-discrimination-bias-automated-systems_2023-04.pdf.

purposes, institutions that are subject to ECOA and Regulation B may not use fraud screens and associated policies and procedures as an excuse to violate or circumvent fair lending laws.[93]

Further, as the CFPB continues to monitor markets and institutions for fair lending compliance, the CFPB will also continue to review the fair lending testing regimes of financial institutions. Robust fair lending testing of models should include regular testing for disparate treatment and disparate impact, including searches for and implementation of less discriminatory alternatives using manual or automated techniques. CFPB exam teams will continue to explore the use of open-source automated debiasing methodologies to produce potential alternative models to the insitutions' credit scoring models.

In 2024 and beyond, the CFPB will continue to combat digital discrimination and also continue to take steps to be a leader when it comes to building the federal government's capabilities to address these types of transformative technologies.

[93] Discrimination on a prohibited basis can violate ECOA and Regulation B when it occurs in any aspect of a credit transaction, including when it occurs through practices that entities may characterize as related to fraud detection. *See, e.g.*, https://www.consumerfinance.gov/enforcement/actions/citibank-n-a/.

Appendix A: HMDA resources

As stated in Section 2.2.5, the CFPB maintains a comprehensive suite of resources pertaining to the reporting and use of HMDA data, in addition to the annual HMDA filing guides released annually by the FFIEC. These resources include: Executive Summaries of HMDA rule changes;[94] Small Entity Compliance Guide;[95] Institutional and Transactional Coverage Charts;[96] Reportable HMDA Data Chart;[97] sample data collection form;[98] FAQs;[99] a Beginners Guide to Accessing and Using HMDA Data;[100] and downloadable webinars,[101] which provide an overview of the HMDA rule. In June of 2023, the CFPB published a summary of the 2022 data on mortgage lending.[102] The CFPB also provides on its website an interactive version of Regulation C that is easier to access and navigate than the printed version of Regulation C.[103]

Together with the Federal Financial Institutions Examination Council (FFIEC),[104] the CFPB also routinely updates its HMDA resources throughout the year to ensure HMDA reporters have the most up-to-date information. For example, in November 2023, the CFPB released the 2024

94 Consumer Fin. Prot. Bureau, *Executive Summary of the 2020 Home Mortgage Disclosure Act (Regulation C) Final Rule* (Apr. 16, 2020), https://files.consumerfinance.gov/f/documents/cfpb_rule-executive-summary_hmda-2020.pdf; https://www.consumerfinance.gov/about-us/blog/changes-to-hmda-closed-end-loan-reporting-threshold/. Summaries for different reporting years are available at: https://www.consumerfinance.gov/compliance/compliance-resources/mortgage-resources/hmda-reporting-requirements/.

95 Consumer Fin. Prot. Bureau, *Home Mortgage Disclosure (Regulation C) Small Entity Compliance Guide* (Feb. 2023), https://files.consumerfinance.gov/f/documents/cfpb_hmda_small-entity-compliance-guide_2023-02.pdf.

96 Consumer Fin. Prot. Bureau, *HMDA Institutional Coverage Chart*, https://files.consumerfinance.gov/f/documents/cfpb_hmda-institutional-coverage_2023.pdf; Consumer Fin. Prot. Bureau, *HMDA Transactional Coverage Chart*, https://files.consumerfinance.gov/f/documents/cfpb_hmda-transactional-coverage_2023.pdf.

97 Consumer Fin. Prot. Bureau, *Reportable HMDA Data: A Regulatory and Reporting Overview Reference Chart for HMDA Data Collected in 2023* (Feb. 9, 2023), https://files.consumerfinance.gov/f/documents/cfpb_reportable-hmda-data_regulatory-and-reporting-overview-reference-chart_2023-02.pdf.

98 Consumer Fin. Prot. Bureau, *Sample Data Collection Form*, https://files.consumerfinance.gov/f/documents/201708_cfpb_hmda-sample-data-collection-form.pdf.

99 Consumer Fin. Prot. Bureau, *Home Mortgage Disclosure Act FAQs*, *https://www.consumerfinance.gov/compliance/compliance-resources/mortgage-resources/hmda-reporting-requirements/home-mortgage-disclosure-act-faqs/*.

100 Consumer Fin. Prot. Bureau, *A Beginner's Guide to Accessing and Using Home Mortgage Disclosure Act Data* (Jun. 13, 2022), https://files.consumerfinance.gov/f/documents/cfpb_beginners-guide-accessing-using-hmda-data_guide_2022-06.pdf.

101 Consumer Fin. Prot. Bureau, *HMDA Webinars*, https://www.consumerfinance.gov/compliance/compliance-resources/mortgage-resources/hmda-reporting-requirements/webinars/.

102 Consumer Fin. Prot. Bureau, *Summary of 2022 Data on Mortgage Lending* (Jun. 29, 2023), https://www.consumerfinance.gov/data-research/hmda/summary-of-2022-data-on-mortgage-lending/.

103 *Interactive Bureau Regulations, Regulation C*, https://www.consumerfinance.gov/rules-policy/regulations/1003/.

104 Collectively, the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), the Office of the Comptroller of the Currency (OCC), and the CFPB comprise the Federal Financial Institutions Examination Council (FFIEC). The State Liaison Committee was added to FFIEC in 2006 as a voting member. Federal Fin. Instit. Examination Council, http://www.ffiec.gov (last visited June 5, 2024).

Filing Instructions Guide,[105] an online interactive Filing Instructions Guide,[106] and the 2023 Supplemental Guide for Quarterly Filers.[107] Together with the FFIEC, in March of 2023, the CFPB also published the 2023 edition of the HMDA Getting it Right Guide.[108] The CFPB also works with the FFIEC to publish data submission resources for HMDA filers and vendors on its Resources for HMDA Filers website, https://ffiec.cfpb.gov.

In addition, HMDA reporters can ask questions about HMDA and Regulation C, including how to submit HMDA data, by emailing the CFPB's HMDA Help at HMDAHelp@cfpb.gov. The CFPB also offers financial institutions, service providers, and others informal staff guidance on specific questions about the statutes and rules the CFPB implements, including ECOA and Regulation B and HMDA and Regulation C, through its Regulation Inquiries platform at www.reginquiries.consumerfinance.gov.

[105] Consumer Fin. Prot. Bureau, *Filing instructions guide for HMDA data collected in 2024* (Nov. 2023), https://s3.amazonaws.com/cfpb-hmda-public/prod/help/2024-hmda-fig.pdf.
[106] 2023 FIG (Filing Instructions Guide), https://ffiec.cfpb.gov/documentation/fig/2023/overview.
[107] Consumer Fin. Prot. Bureau, *Supplemental Guide for Quarterly Filers for 2024* (Aug. 2023), https://s3.amazonaws.com/cfpb-hmda-public/prod/help/supplemental-guide-for-quarterly-filers-for-2024.pdf.
[108] Federal Fin. Instit. Examination Council, *A Guide to HMDA Reporting, Getting it Right!* (Mar. 23, 2023), https://www.ffiec.gov/hmda/pdf/2023Guide.pdf.

Appendix B: Defined terms

TERM	DEFINITION
AMS	Agricultural Marketing Service of the U.S. Department of Agriculture
ASC	FFIEC's Appraisal Subcommittee
AVM	Automated Valuation Models
CFPA	Consumer Financial Protection Act of 2010
CFPB	Consumer Financial Protection Bureau
CRA	Community Reinvestment Act
Dodd-Frank Act	Dodd-Frank Wall Street Reform and Consumer Protection Act
DOJ	U.S. Department of Justice
DOT	U.S. Department of Transportation
ECOA	Equal Credit Opportunity Act

FCA	Farm Credit Administration
FDIC	Federal Deposit Insurance Corporation
FHA	Fair Housing Act
FHFA	Federal Housing Finance Agency
Federal Reserve Board or FRB	Board of Governors of the Federal Reserve System
FFIEC	Federal Financial Institutions Examination Council - the FFIEC member agencies are the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), the Office of the Comptroller of the Currency (OCC), and the Consumer Financial Protection Bureau (CFPB). The State Liaison Committee was added to FFIEC in 2006 as a voting member.
FTC	Federal Trade Commission
HMDA	Home Mortgage Disclosure Act
HUD	U.S. Department of Housing and Urban Development
ILSA	Interstate Land Sales Full Disclosure Act

NCUA	National Credit Union Administration
OCC	Office of the Comptroller of the Currency
ROV	Reconsideration of Value
SBA	Small Business Administration
SEC	Securities and Exchange Commission
SPCP	Special Purpose Credit Program
UDAAP	Unfair, Deceptive, or Abusive Acts or Practices
USDA	U.S. Department of Agriculture