

April 2017

Fair Lending Report of the Consumer Financial Protection Bureau



Consumer Financial
Protection Bureau

Message from Richard Cordray

Director of the CFPB



For over five years, the Consumer Financial Protection Bureau has pursued its statutory mandate to provide “oversight and enforcement” of the fair lending laws under our jurisdiction. I am proud of all we have accomplished in ensuring that creditworthy consumers are not denied credit or charged more because of their race or ethnicity or any other prohibited basis.

Our fair lending guidance, supervisory activity, and enforcement actions have three goals: to strengthen industry compliance programs, root out illegal activity, and ensure that harmed consumers are remediated. Over these past five years, we have engaged in robust fair lending dialogue with industry and this dialogue has served to significantly strengthen industry compliance programs. Members of our Fair Lending Office have logged over 300 outreach meetings and events, not to mention preparing responses to the many calls and emails received from compliance officials. We have invested significant efforts toward strengthening industry compliance management systems because they are critical first-line measures to protect consumers from discriminatory lending policies and practices. As a result, our examiners now often find that lenders have already implemented sound policies and procedures to identify and address potential fair lending violations, based on our prior guidance.

We also have achieved remarkable success in our fair lending enforcement activities during this time period, reaching historic resolution of the largest redlining, auto finance, and credit card fair lending cases, and instituting relief that has halted illegal practices. Our fair lending supervision and enforcement activities have resulted in over \$400 million in remediation to harmed consumers.

In the coming years, we will increase our focus on markets or products where we see significant or emerging fair lending risk to consumers, including redlining, mortgage loan servicing, student loan servicing, and small business lending. Discrimination on prohibited grounds in the financial marketplace, though squarely against the law, is by no means a thing of the past. The Consumer Bureau will continue to enforce existing fair lending laws at a steady and vigorous pace, taking care to ensure broad-based industry engagement and consistent oversight.

I am proud to present our 2016 Fair Lending Report.

Sincerely,

A handwritten signature in blue ink that reads "Richard Cordray". The signature is written in a cursive, flowing style.

Richard Cordray

Message from Patrice Alexander Ficklin



Director, Office of Fair Lending and Equal Opportunity

When I left private practice to join the CFPB in 2011, I carried with me my experiences as industry counsel, advising bank and nonbank clients on fair lending compliance. I knew from my work that many lenders are interested in building and maintaining robust fair lending self-monitoring systems that reflect best practices in consumer protection. I advised my clients on their efforts to evaluate and address fair lending risk not only in mortgage origination, but also in mortgage servicing, credit cards, and other areas that had not been a traditional fair lending focus. Together we enhanced the existing methods of proxying for race and ethnicity, an essential step to allow my clients to *fully* implement the mandate contained in the Equal Credit Opportunity Act (ECOA), which prohibits discrimination in all manner of consumer credit, not simply mortgages.

Shortly after arriving at the CFPB in 2011, I led a handful of other public servants in founding the CFPB's Fair Lending Office, which the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) charged with "oversight and enforcement" of ECOA. We drew from our experiences and dialogue with industry, the information transferred to us from our sister prudential regulators, civil rights and consumer advocate groups' perspectives, and the expertise of the Bureau's markets teams to establish our first three fair lending priorities: mortgage origination, auto finance, and credit cards. We have accomplished much in these markets over these past five years, not the least of which are the \$400 million in remediation to harmed consumers *and* the remarkable and robust dialogue we enjoy with many financial

services providers in support of their efforts to treat all of their customers in a fair and responsible manner.

As outlined in my December 2016 blog post¹, my team has again looked to our statutory mandate and relevant data to refresh the Bureau's fair lending priorities. In 2017 we will increase our focus in the areas of redlining and mortgage and student loan servicing to ensure that creditworthy consumers have access to mortgage loans and to the full array of appropriate options when they have trouble paying their mortgages or student loans, regardless of their race or ethnicity. In addition, we will focus more fully on pursuing our statutory mandate to promote fair credit access for minority- and women-owned businesses. We know that these businesses play an important role in job creation for communities of color, while also strengthening our economy.

The Dodd-Frank Act mandated the creation of the CFPB's Office of Fair Lending and Equal Opportunity and charged it with ensuring fair, equitable, and nondiscriminatory access to credit to consumers; coordinating our fair lending efforts with federal and state agencies and regulators; working with private industry, fair lending, civil rights, consumer and community advocates to promote fair lending compliance and education; and annually reporting to Congress on our efforts.

I am proud to say that the Office continues to fulfill our Dodd-Frank mandate and looks forward to continuing to work together with all stakeholders in protecting America's consumers. To that end, I am excited to share our progress in this, our fifth, Fair Lending Report.²

Sincerely,



Patrice Alexander Ficklin

¹ Patrice Ficklin, *Fair Lending priorities in the new year*, Consumer Financial Protection Bureau (Dec. 16, 2016), <http://www.consumerfinance.gov/about-us/blog/fair-lending-priorities-new-year/>.

² See Dodd-Frank Act § 1013(c)(2)(D), Pub. L. No. 111-203, 124 Stat. 1376 (2010) (codified at 12 U.S.C. § 5493(c)(2)(D)).

Table of contents

| | |
|--|-----------|
| Message from Richard Cordray | 1 |
| Message from Patrice Alexander Ficklin..... | 3 |
| Table of contents..... | 5 |
| Executive summary..... | 7 |
| 1. Fair Lending prioritization | 12 |
| 1.1 Risk-based prioritization: A data-driven approach to prioritizing areas of potential fair lending harm to consumers | 12 |
| 1.2 Fair lending priorities | 14 |
| 2. Fair Lending supervision | 15 |
| 2.1 Fair Lending supervisory observations | 15 |
| 3. Fair Lending enforcement..... | 27 |
| 3.1 Fair Lending public enforcement actions..... | 27 |
| 3.2 HMDA Warning Letters - Potential Mortgage Lending Reporting Failures | 33 |
| 3.3 Implementing enforcement orders..... | 34 |
| 3.4 ECOA referrals to the Department of Justice..... | 37 |
| 3.5 Pending fair lending investigations..... | 37 |

| | |
|--|-----------|
| 4. Rulemaking and related guidance..... | 39 |
| 4.1 HMDA and Regulation C | 39 |
| 4.2 ECOA and Regulation B..... | 45 |
| 4.3 Small business data collection..... | 47 |
| 4.4 Amicus Program | 48 |
| 5. Interagency coordination | 51 |
| 5.1 Interagency coordination and engagement..... | 51 |
| 6. Outreach: Promoting fair lending compliance and education..... | 53 |
| 6.1 Blog posts | 54 |
| 6.2 Supervisory Highlights | 56 |
| 6.3 Speaking Engagements & Roundtables..... | 57 |
| 7. Interagency reporting..... | 59 |
| 7.1 ECOA enforcement | 59 |
| 7.2 Referrals to the Department of Justice | 62 |
| 7.3 Reporting on the Home Mortgage Disclosure Act | 63 |
| 8. Conclusion | 64 |
| Appendix A: | 65 |
| Defined terms | 65 |

Executive summary

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank or Dodd-Frank Act)³ established the Bureau as the Nation’s first federal agency with a mission focused solely on consumer financial protection and making consumer financial markets work for all Americans. Dodd-Frank established the Office of Fair Lending and Equal Opportunity (the Office of Fair Lending) within the CFPB, and charged it with “providing oversight and enforcement of Federal laws intended to ensure the fair, equitable, and nondiscriminatory access to credit for both individuals and communities.”⁴

Prioritization. The Bureau’s risk-based prioritization process allows the Office of Fair Lending to focus our supervisory and enforcement efforts on the markets, products, and institutions that represent the greatest fair lending risk for consumers. Based on the risks we identified, our market-level focus for the past five years has been on ensuring that consumers are not excluded from or made to pay more for mortgages, indirect auto loans, and credit cards because of their race, ethnicity, sex, or age.

Going forward, because of emerging fair lending risks in other areas, we are increasing our focus on redlining, mortgage and student loan servicing, and small business lending. We remain committed to assessing and evaluating fair lending risk in all credit markets under the Bureau’s jurisdiction. See Section 1 for more information.

³ Pub. L. No. 111-203, 124 Stat. 1376 (2010).

⁴ Dodd-Frank Act § 1013(c)(2)(A) (codified at 12 U.S.C. § 5493(c)(2)(A)).

Supervision and enforcement activity. In 2016, our fair lending supervisory and public enforcement actions resulted in approximately \$46 million in remediation to harmed consumers.⁵ Mortgage lending continues to be a key priority for the Office of Fair Lending for both supervision and enforcement. We have focused in particular on redlining risk, evaluating whether lenders have intentionally discouraged prospective applicants in minority neighborhoods from applying for credit. Although statistics play an important role in this work, we never look at numbers alone or in a vacuum, but rather consider multiple factors, including potentially nondiscriminatory explanations for differential lending patterns. See Sections 2.1.6 and 3.1.1 for more information. Through 2016, our mortgage origination work has covered institutions responsible for close to half of the transactions reported pursuant to the Home Mortgage Disclosure Act (HMDA), and more than 60% of the transactions reported by institutions subject to the CFPB's supervision and enforcement authority.⁶

In 2016, the Bureau continued its work in overseeing and enforcing compliance with ECOA in indirect auto lending through both supervisory and enforcement activity, including monitoring compliance with our previous supervisory and enforcement actions. Our indirect auto lending work has covered institutions responsible for approximately 60% of the auto loan market share by volume.⁷

The Bureau also continued fair lending supervisory and enforcement work in the credit card market. We have focused in particular on the quality of fair lending compliance management systems (CMS) and on fair lending risks in underwriting, line assignment, and servicing. Our work in this highly-concentrated market has covered institutions responsible for more than 85%

⁵ Figures represent estimates of monetary relief for consumers ordered or required by the Bureau or a court as a result of supervisory or enforcement actions on fair lending matters in 2016, as well as other monetary payments such as loan subsidies, increased consumer financial education, and civil money penalties.

⁶ CFPB analysis of HMDA data for 2015.

⁷ CFPB analysis of 2015 AutoCount data from Experian Automotive.

of outstanding credit card balances in the United States.⁸

The Bureau has conducted supervision and enforcement work in other markets as well. For example, this year we continued targeted ECOA reviews of small-business lending, focusing in particular on the quality of fair lending compliance management systems and on fair lending risks in underwriting, pricing, and redlining. Our supervisory work to date in small business lending has covered institutions responsible for approximately 10% of the non-agricultural small business market share. See Sections 2 and 3 for more information.

Rulemaking. In January 2016, in response to ongoing conversations with industry about compliance with Regulation C, HMDA's implementing regulation, the Bureau issued a Request for Information (RFI) on the Bureau's HMDA data resubmission guidelines, and is considering whether to adjust its existing HMDA resubmission guidelines and if so, how.⁹ On September 23, 2016, the Bureau published a Bureau Official Approval pursuant to section 706(e) of the ECOA concerning the new Uniform Residential Loan Application and the collection of expanded HMDA information about ethnicity and race in 2017. On March 24, 2017, the Bureau published a proposed rule concerning amendments to Regulation B's ethnicity and race information collection provisions.¹⁰ See Section 4 for more information.

Interagency coordination and collaboration. The Bureau continues to coordinate with the Federal Financial Institutions Examination Council (FFIEC) agencies,¹¹ as well as the

⁸ CFPB analysis of 3Q 2016 call reports.

⁹ Consumer Financial Protection Bureau, *Request for Information Regarding Home Mortgage Disclosure Act Resubmission Guidelines 2015-0058* (Jan. 7, 2016), http://files.consumerfinance.gov/f/201601_cfpb_request-for-information-regarding-home-mortgage-disclosure-act-resubmission.pdf.

¹⁰ Consumer Financial Protection Bureau, *Amendments to Equal Credit Opportunity Act (Regulation B) Ethnicity and Race Information Collection 2017-0009* (March 24, 2017), http://files.consumerfinance.gov/f/documents/201703_cfpb_NPRM-to-amend-Regulation-B.pdf.

¹¹ 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

Department of Justice (DOJ), the Federal Trade Commission (FTC), and the Department of Housing and Urban Development (HUD), as we each play a role in ensuring compliance with and enforcing our nation's fair lending laws and regulations. See Section 5 for more information on our interagency coordination and collaboration in 2016.



CFPB Fair Lending Director Patrice Ficklin provides a keynote address at the CRA and Fair Lending Colloquium hosted by Wolters Kluwer in November 2016.

to FFIEC in 2006 as a voting member.

Outreach to industry, advocates, consumers, and other stakeholders. The Bureau continues to initiate and encourage industry and consumer engagement opportunities to discuss fair lending compliance and access to credit issues, including through speeches, presentations, blog posts, webinars, rulemaking, and public comments. See Section 6 for more information on our outreach activities in 2016.



CFPB Principal Deputy Fair Lending Director Frank Vespa-Papaleo speaks at a National Fair Housing Alliance Conference in June 2016.

This report generally covers the Bureau's fair lending work during calendar year 2016.

1. Fair Lending prioritization

1.1 Risk-based prioritization: A data-driven approach to prioritizing areas of potential fair lending harm to consumers

To use the CFPB's fair lending resources most effectively, the Office of Fair Lending, working with other offices in the Bureau, has developed and refined a risk-based prioritization approach that determines how best to address areas of potential fair-lending-related consumer harm in the entities, products, and markets under our jurisdiction.

One critical piece of information that we consider in the fair lending prioritization process is the quality of an institution's compliance management system, which the Bureau typically ascertains through its supervisory work. The Bureau has previously identified common features of a well-developed fair lending compliance management system,¹² though we recognize that the appropriate scope of an institution's fair lending compliance management system will vary based on its size, complexity, and risk profile. In our experience, the higher the quality of an institution's fair lending compliance management system, the lower the institution's fair lending risk to consumers, other things being equal.

As part of the prioritization process the Office of Fair Lending also works closely with the

¹² See Consumer Financial Protection Bureau, *Fair Lending Report of the Consumer Financial Protection Bureau* at 13-14 (Apr. 2014), http://files.consumerfinance.gov/f/201404_cfpb_report_fair-lending.pdf.

Bureau's special population offices, including the Office for Students and Young Consumers, the Office of Older Americans, and the Bureau's Markets offices, which identify emerging developments and trends by monitoring key consumer financial markets. If this market intelligence identifies fair lending risks in a particular market that require further attention, we incorporate that information into our prioritization process to determine the type and extent of attention required to address those risks. For instance, Fair Lending's work with the Office of Consumer Lending, Reporting, and Collections Markets and the Office for Students and Young Consumers highlighted potential steering risks in student loan servicing, which resulted in the prioritization of this market in our supervisory work.

The fair lending prioritization process incorporates a number of additional factors as well, including; consumer complaints; tips and leads from advocacy groups, whistleblowers, and government agencies; supervisory and enforcement history; and results from analysis of HMDA and other data.

Once the Bureau has evaluated these inputs to prioritize institutions, products, and markets based on an assessment of fair lending risk posed to consumers, the Office of Fair Lending considers how best to address those risks as part of its strategic planning process. For example, we can schedule an institution for a supervisory review or, where appropriate, open an enforcement investigation. We can also commit to further research, policy development, and/or outreach, especially for new issues or risks. Once this strategic planning process is complete, we regularly coordinate with other regulators so we can inform each other's work, complement each other's efforts, and reduce any burden on subject institutions.

Risk-based prioritization is an ongoing process, and we continue to receive and evaluate relevant information even after priorities are identified. At an institution level, such information may include new tips and leads, consumer complaints, additional risks identified in current supervisory and enforcement activities, and compliance issues identified and brought to our attention by institutions themselves. In determining how best to address this additional information, the Office of Fair Lending considers several factors, including (1) the nature and extent of the fair lending risk, (2) the degree of consumer harm, and (3) whether the risk was

self-identified and/or self-reported to the Bureau. Fair Lending takes account of responsible conduct as set forth in CFPB Bulletin 2013-06, *Responsible Business Conduct: Self-Policing, Self-Reporting, Remediation, and Cooperation*.¹³

1.2 Fair lending priorities

Because the CFPB is responsible for overseeing so many products and so many lenders, we re-prioritize our work from time to time to make sure that we are focused on the areas of greatest risk to consumers. In the coming year, we will increase our focus on the markets or products listed below, which present substantial risk of credit discrimination for consumers.

- **Redlining.** We will continue to evaluate whether lenders have intentionally discouraged prospective applicants in minority neighborhoods from applying for credit.
- **Mortgage and Student Loan Servicing.** We will evaluate whether some borrowers who are behind on their mortgage or student loan payments may have more difficulty working out a new solution with the servicer because of their race, ethnicity, sex, or age.
- **Small Business Lending.** Congress expressed concern that women-owned and minority-owned businesses may experience discrimination when they apply for credit, and has required the CFPB to take steps to ensure their fair access to credit. Small business lending supervisory activity will also help expand and enhance the Bureau's knowledge in this area, including the credit process; existing data collection processes; and the nature, extent, and management of fair lending risk.

The Bureau remains committed to ensuring that consumers are protected from discrimination in all credit markets under its authority.

¹³ Consumer Financial Protection Bureau, *Responsible Business Conduct: Self-Policing, Self-Reporting, Remediation, and Cooperation*, CFPB Bulletin 2013-06 (June 25, 2013), http://files.consumerfinance.gov/f/201306_cfpb_bulletin_responsible-conduct.pdf.

2. Fair Lending supervision

The CFPB's Fair Lending Supervision program assesses compliance with ECOA and HMDA at banks and nonbanks over which the Bureau has supervisory authority. Supervision activities range from assessments of institutions' fair lending compliance management systems to in-depth reviews of products or activities that may pose heightened fair lending risks to consumers. As part of its Fair Lending Supervision program, the Bureau continues to conduct three types of fair lending reviews at Bureau-supervised institutions: ECOA baseline reviews, ECOA targeted reviews, and HMDA data integrity reviews.

When the CFPB identifies situations in which fair lending compliance is inadequate, it directs institutions to establish fair lending compliance programs commensurate with the size and complexity of the institution and its lines of business. When fair lending violations are identified, the CFPB may direct institutions to provide remediation and restitution to consumers, and may pursue other appropriate relief. The CFPB also refers a matter to the Justice Department when it has reason to believe that a creditor has engaged in a pattern or practice of lending discrimination in violation of ECOA.¹⁴ The CFPB may also refer other potential ECOA violations to the Justice Department.

2.1 Fair Lending supervisory observations

Although the Bureau's supervisory process is confidential, the Bureau publishes regular reports

¹⁴ 15 U.S.C. § 1691e(g).

called *Supervisory Highlights*, which provide information on supervisory trends the Bureau observes without identifying specific entities. The Bureau may also draw on its supervisory experience to publish compliance bulletins in order to remind the institutions that we supervise of their legal obligations. Industry participants can use this information to inform and assist in complying with ECOA and HMDA.

2.1.1 Evaluating mortgage servicing compliance programs

Our supervisory work has included use of the ECOA Baseline Modules, which are part of the CFPB Supervision and Examination Manual. Examination teams use these modules to conduct ECOA Baseline Reviews, which evaluate how well institutions' compliance management systems identify and manage fair lending risks. The Mortgage Servicing Special Edition of *Supervisory Highlights*,¹⁵ published in June 2016, reminded institutions that Module 4 of the ECOA baseline review modules, "Fair Lending Risks Related to Servicing," is used by Bureau examiners to evaluate compliance management systems under ECOA. Among other things, Module 4 contains questions regarding fair lending training of servicing staff, fair lending monitoring of servicing, and servicing of consumers with limited English proficiency.

2.1.2 Reporting actions taken for conditionally-approved applications with unmet underwriting conditions

The Summer 2016 edition of *Supervisory Highlights*,¹⁶ published in June 2016, highlighted findings from examinations where institutions improperly coded actions taken in reported HMDA data. Among other things, Regulation C requires covered depository and non-depository institutions to submit to the appropriate federal agency data they collect and record pursuant to

¹⁵ Consumer Financial Protection Bureau, *Supervisory Highlights Mortgage Servicing Special Edition 2016* at 5 (June 22, 2016), http://files.consumerfinance.gov/f/documents/Mortgage_Servicing_Supervisory_Highlights_11_Final_web.pdf.

¹⁶ Consumer Financial Protection Bureau, *Supervisory Highlights Summer 2016* at 13-16 (June 30, 2016), http://files.consumerfinance.gov/f/documents/Supervisory_Highlights_Issue_12.pdf.

Regulation C, including the type of action taken on reportable transactions.¹⁷ As reported in *Supervisory Highlights*, examiners found that after issuing a conditional approval subject to underwriting conditions, the institutions did not accurately report the action taken on the loans or applications. As a result, Supervision directed one or more institutions to enhance their policies and procedures regarding their HMDA reporting of the actions taken on loans and applications and, where necessary, provide adverse action notices. Supervision also required one or more institutions to resubmit their HMDA Loan Application Register (LAR) where the number of errors exceeded the CFPB's HMDA resubmission thresholds.

2.1.3 Expanding credit through the use of special purpose credit programs

The Summer 2016 edition of *Supervisory Highlights*¹⁸ discussed supervisory observations of special purpose credit programs, which are established and administered to extend credit to a class of persons who otherwise probably would not receive such credit or would receive it on less favorable terms. ECOA¹⁹ and Regulation B²⁰ permit a creditor to extend special purpose credit to applicants who meet eligibility requirements for certain types of credit programs.²¹ Regulation B specifically confers special purpose credit program status upon:

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

¹⁷ 12 CFR 1003.4(a), (a)(8); 12 CFR 1003.5(a)(1).

¹⁸ Consumer Financial Protection Bureau, *Supervisory Highlights Summer 2016* at 16-18 (June 30, 2016), http://files.consumerfinance.gov/f/documents/Supervisory_Highlights_Issue_12.pdf.

¹⁹ 15 U.S.C. § 1691 *et seq.*

²⁰ 12 C.F.R. pt. 1002.

²¹ 15 U.S.C. § 1691(c)(3) (providing that ECOA's prohibitions against discrimination are not violated when a creditor refuses to extend credit offered pursuant to certain special purpose credit programs satisfying Regulation B-prescribed standards); 12 C.F.R. § 1002.8 (special purpose credit program standards).

- (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.²²

The commentary to Regulation B clarifies that, in order to satisfy these requirements, “a for-profit organization must determine that the program will benefit a class of people who would otherwise be denied credit or would receive it on less favorable terms. This determination can be based on a broad analysis using the organization's own research or data from outside sources, including governmental reports and studies.”²³

As *Supervisory Highlights* noted, during the course of the Bureau's supervisory activity, examination teams have observed credit decisions made pursuant to the terms of programs that for-profit institutions have described as special purpose credit programs. Examination teams have reviewed the terms of the programs, including the written plan required by Regulation B, and the institution's determination that the program would benefit a class of people who would otherwise be denied credit or would receive it on less favorable terms.

In every case, special purpose credit program status depends upon adherence to the ECOA and Regulation B requirements for special purpose credit programs. A program, for example, offering more favorable pricing or products exclusively to a particular class of persons without evidence that such individuals would otherwise be denied credit or would receive it on less favorable terms would not satisfy the ECOA and Regulation B requirements for a special

²² 12 C.F.R. § 1002.8(a)(3).

²³ 12 C.F.R. pt. 1002, Suppl. I, 1002.8, cmt. 8(a) at 5.

purpose credit program. With that in mind, however, the Bureau generally takes a favorable view of conscientious efforts that institutions may undertake to develop special purpose credit programs to promote extensions of credit to any class of persons who would otherwise be denied credit or would receive it on less favorable terms.

2.1.4 Offering language services to limited English proficient (LEP) consumers

The Fall 2016 edition of *Supervisory Highlights*,²⁴ published in October 2016, discussed supervisory observations about the provision of language services to consumers with limited English proficiency (LEP). The Dodd-Frank Act, ECOA,²⁵ and Regulation B²⁶ mandate that the Office of Fair Lending “ensure the fair, equitable, and nondiscriminatory access to credit”²⁷ and “promote the availability of credit.”²⁸ Consistent with that mandate, the CFPB, including through its Office of Fair Lending, continues to encourage lenders to provide assistance to LEP consumers.²⁹ Financial institutions may provide access to credit in languages other than English in a manner that is beneficial to consumers as well as the institution, while taking steps to ensure their actions are compliant with ECOA and other applicable laws.

²⁴ Consumer Financial Protection Bureau, *Supervisory Highlights Fall 2016* at 20 (Oct. 31, 2016), http://files.consumerfinance.gov/f/documents/Supervisory_Highlights_Issue_13_Final_10.31.16.pdf.

²⁵ 12 U.S.C. § 1691 *et seq.*

²⁶ 12 C.F.R. pt. 1002 *et seq.*

²⁷ 12 U.S.C. § 5493(c)(2)(A).

²⁸ 12 C.F.R. § 1002.1(b).

²⁹ According to recent American Community Survey estimates, there are approximately 25 million people in the United States who speak English less than “very well.” U.S. Census Bureau, *Language Spoken at Home, 2011-2015 American Community Survey 5-Year Estimates*, https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_15_5YR_S1601&prodType=table.

As reported in *Supervisory Highlights*, in the course of conducting supervisory activity, examiners have observed one or more financial institutions providing services in languages other than English, including to consumers with limited English proficiency,³⁰ in a manner that did *not* result in any adverse supervisory or enforcement action under the facts and circumstances of the reviews. Specifically, examiners observed:

- Marketing and servicing of loans in languages other than English;
- Collection of customer language information to facilitate communication with LEP consumers in a language other than English;
- Translation of certain financial institution documents sent to borrowers, including monthly statements and payment assistance forms, into languages other than English;
- Use of bilingual and/or multilingual customer service agents, including single points of contact,³¹ and other forms of oral customer assistance in languages other than English; and
- Quality assurance testing and monitoring of customer assistance provided in languages other than English.

³⁰ The Bureau recently updated its ECOA baseline review modules. See Consumer Financial Protection Bureau, *Supervisory Highlights: Winter 2016* at 28-29 (Mar. 8, 2016), http://files.consumerfinance.gov/f/201603_cfpb_supervisory-highlights.pdf. Among other updates, the modules include new questions related to the provision of language services, including to LEP consumers, in the context of origination and servicing. See Consumer Financial Protection Bureau, *CFPB Examination Procedures, ECOA Baseline Review Modules* 13, 21-22 (Oct. 2015), http://files.consumerfinance.gov/f/201510_cfpb_ecoa-baseline-review-modules.pdf. These modules are used by examiners during ECOA baseline reviews to identify and analyze risks of ECOA violations, to facilitate the identification of certain types of ECOA and Regulation B violations, and to inform fair lending prioritization decisions for future CFPB reviews. *Id.* at 1.

³¹ See 12 C.F.R. § 1024.40(a)(1) & (2) (requiring mortgage servicers to assign personnel to a delinquent borrower within a certain time after delinquency and make assigned personnel available by phone in order to respond to borrower inquiries and assist with loss mitigation options, as applicable).

Examiners have observed a number of factors that financial institutions consider in determining whether to provide services in languages other than English and the extent of those services, some of which include: Census Bureau data on the demographics or prevalence of non-English languages within the financial institution's footprint; communications and activities that most significantly impact consumers (e.g., loss mitigation and/or default servicing); and compliance with federal, state, and other regulatory provisions that address obligations pertaining to languages other than English.³² Factors relevant in the compliance context may vary depending on the institution and circumstances.

Examiners also have observed situations in which financial institutions' treatment of LEP and non-English-speaking consumers posed fair lending risk. For example, examiners observed one or more institutions marketing only some of their available credit card products to Spanish-speaking consumers, while marketing several additional credit card products to English-speaking consumers. One or more such institutions also lacked documentation describing how they decided to exclude those products from Spanish language marketing, raising questions about the adequacy of their compliance management systems related to fair lending. To mitigate any compliance risks related to these practices, one or more financial institutions revised their marketing materials to notify consumers in Spanish of the availability of other credit card products and included clear and timely disclosures to prospective consumers describing the extent and limits of any language services provided throughout the product lifecycle. Institutions were not required to provide Spanish language services to address this risk beyond the Spanish language services they were already providing.

³² See, e.g., 12 C.F.R. § 1005.31(g)(1)(i) (requiring disclosures in languages other than English in certain circumstances involving remittance transfers); 12 C.F.R. § 1026.24(i)(7) (addressing obligations relating to advertising and disclosures in languages other than English for closed-end credit); 12 C.F.R. § 1002.4(e) (providing that disclosures made in languages other than English must be available in English upon request); Cal. Civ. Code § 1632(b) (requiring that certain agreements "primarily" negotiated in Spanish, Chinese, Tagalog, Vietnamese, or Korean must be translated to the language of the negotiation under certain circumstances); Or. Rev. Stat. § 86A.198 (requiring a mortgage banker, broker, or originator to provide translations of certain notices related to the mortgage transaction if the banker, broker, or originator advertises and negotiates in a language other than English under certain circumstances); Tex. Fin. Code Ann. § 341.502(a-1) (providing that for certain loan contracts negotiated in Spanish, a summary of the loan terms must be made available to the debtor in Spanish in a form identical to required TILA disclosures for closed-end credit).

As reported in *Supervisory Highlights*, the Bureau's supervisory activity resulted in public enforcement actions related to the treatment of LEP and non-English-speaking consumers, including actions against Synchrony Bank and American Express Centurion Bank. The Fall 2016 edition of *Supervisory Highlights* also discussed common features of a well-developed compliance management system that can mitigate fair lending and other risks associated with providing services to LEP and non-English-speaking consumers.

2.1.5 HMDA data collection and reporting reminders for 2017

The Fall 2016 edition of *Supervisory Highlights*³³ noted HMDA data collection and reporting reminders for 2017. Please see Section 4.1.4 for detail on changes to HMDA data collection and reporting in 2017 and later years.

2.1.6 Assessing redlining risks

The Fall 2016 edition of *Supervisory Highlights*³⁴ noted that the Office of Fair Lending has identified redlining as a priority area in the Bureau's fair lending work. Redlining is a form of unlawful lending discrimination under ECOA. Historically, actual red lines were drawn on maps around neighborhoods to which credit would not be provided, giving this practice its name. The federal prudential banking regulators have collectively defined redlining as "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

³³ Consumer Financial Protection Bureau, *Supervisory Highlights Fall 2016* at 25-26 (Oct. 31, 2016), http://files.consumerfinance.gov/f/documents/Supervisory_Highlights_Issue_13_Final_10.31.16.pdf.

³⁴ Consumer Financial Protection Bureau, *Supervisory Highlights Fall 2016* at 27 (Oct. 31, 2016), http://files.consumerfinance.gov/f/documents/Supervisory_Highlights_Issue_13_Final_10.31.16.pdf.

residents of the area in which the credit seeker resides or will reside or in which the residential property to be mortgaged is located.”³⁵

The Bureau considers various factors, as appropriate, in assessing redlining risk in its supervisory activity. These factors, and the scoping process, are described in detail in the Interagency Fair Lending Examination Procedures. These factors generally include (but are not limited to):

- Strength of an institution’s CMS, including underwriting guidelines and policies;
- Unique attributes of relevant geographic areas (population demographics, credit profiles, housing market);
- Lending patterns (applications and originations, with and without purchased loans);
- Peer and market comparisons;
- Physical presence (full service branches, ATM-only branches, brokers, correspondents, loan production offices), including consideration of services offered;
- Marketing;
- Mapping;
- Community Reinvestment Act (CRA) assessment area and market area more generally;
- An institution’s lending policies and procedures record;
- Additional evidence (whistleblower tips, loan officer diversity, testing evidence, comparative file reviews); and
- An institution’s explanations for apparent differences in treatment.

³⁵ FFIEC Interagency Fair Lending Examination Procedures Manual (Aug. 2009), <https://www.ffiec.gov/pdf/fairlend.pdf>. CFPB Supervision and Examination Manual (Oct. 2012), http://files.consumerfinance.gov/f/201210_cfpb_supervision-and-examination-manual-v2.pdf.

The Bureau has observed that institutions with strong compliance programs examine lending patterns regularly, look for any statistically-significant disparities, evaluate physical presence, monitor marketing campaigns and programs, and assess CRA assessment areas and market areas more generally. Our supervisory experience reveals that institutions may reduce fair lending risk by documenting risks they identify and by taking appropriate steps in response to identified risks, as components of their fair lending compliance management programs.

Examination teams typically assess redlining risk, at the initial phase, at the Metropolitan Statistical Area (MSA) level for each supervised entity, and consider the unique characteristics of each MSA (population demographics, etc.).

To conduct the initial analysis, examination teams use HMDA data and Census data³⁶ to assess the lending patterns at institutions subject to the Bureau's supervisory authority. To date, examination teams have used these publicly available data to conduct this initial risk assessment. These initial analyses typically compare a given institution's lending patterns to other lenders in the same MSA to determine whether the institution received significantly fewer applications from minority³⁷ areas³⁸ relative to other lenders in the MSA. Examination teams may consider the difference between the subject institution and other lenders in the percentage of their applications or originations that come from minority areas, both in absolute terms (for example, 10% vs. 20%) and relative terms (for example, the subject institution is half as likely to

³⁶ The Bureau uses the most current United States national census data that apply to the HMDA data – for example, to date it has used 2010 census data for HMDA data 2011 and later. Specifically, the “Demographic Profiles” are used.

³⁷ For these purposes, the term “minority” ordinarily refers to anyone who identifies with any combination of race or ethnicity other than non-Hispanic White. Examination teams have also focused on African-American and Hispanic consumers, and could foreseeably focus on other more specific minority communities such as Asian, Native Hawaiian, or Native Alaskan populations, if appropriate for the specific geography. In one examination that escalated to an enforcement matter, the statistical evidence presented focused on African-American and Hispanic census tracts, rather than all minority consumers, because the harmed consumers were primarily African-American and Hispanic.

³⁸ Examination teams typically look at majority minority areas (>50% minority) and high minority areas (>80% minority), although sometimes one metric is more appropriate than another, and sometimes other metrics need to be used to account for the population demographics of the specific MSA.

have applications or originations in minority areas as other lenders).³⁹

Examination teams may also compare an institution to other more refined groups of peer institutions. Refined peers can be defined in a number of ways, and past Bureau redlining examinations and enforcement matters have relied on multiple peer comparisons. The examination team often starts by compiling a refined set of peer institutions to find lenders of a similar size – for example, lenders that received a similar number of applications or originated a similar number of loans in the MSA. The examination team may also consider an institution’s mix of lending products. For example, if an institution participates in the Federal Housing Administration (FHA) loan program, it may be compared to other institutions that also originate FHA loans; if not, it may be compared to other lenders that do not offer FHA loans. Additional refinements may incorporate loan purpose (for example, focusing only on home purchase loans) or action taken (for example, incorporating purchased loans into the analysis). Examination teams have also taken suggestions, as appropriate, from institutions about appropriate peers in specific markets.

In considering lending patterns, examination teams generally consider marketing activities and physical presence, including locations of branches, loan production offices, ATMs, brokers, or correspondents. As noted in *Supervisory Highlights*, in one or more supervisory matters, the institutions concentrated marketing in majority-White suburban counties of a Metropolitan Statistical Area (MSA) and avoided a more urban county with the greatest minority population in the MSA. In one or more other exams, examiners observed that, although there were disparities in branch locations, the location of branches did not affect access to credit in that case because, among other things, the branches did not accept “walk-in” traffic and all applications were submitted online. The results of the examinations were also dependent on

³⁹ This relative analysis may be expressed as an odds ratio: the given lender’s odds of receiving an application or originating a loan in a minority area divided by other lenders’ comparable odds. An odds ratio greater than one means that the institution is **more** likely to receive applications or originate loans in minority areas than other lenders; an odds ratio lower than one means that the institution is **less** likely to do so. Odds ratios show greater risk as they approach zero.

other factors that showed equitable access to credit, and there could be cases in which branch locations in combination with other risk-based factors escalate redlining risk.

For redlining analyses, examination teams generally map information, including data on lending patterns (applications and originations), marketing, and physical presence, against census data to see if there are differences based on the predominant race/ethnicity of the census tract, county, or other geographic designation. Additionally, examination teams will consider any other available evidence about the nature of the lender's business that might help explain the observed lending patterns.

Examination teams have considered numerous factors in each redlining examination, and have invited institutions to identify explanations for any apparent differences in treatment.

Although redlining examinations are generally scheduled at institutions where the Bureau has identified statistical disparities, statistics are never considered in a vacuum. The Bureau will always work with institutions to understand their markets, business models, and other information that could provide nondiscriminatory explanations for lending patterns that would otherwise raise a fair lending risk of redlining.

2.1.7 Enforcement actions arising from supervisory activity

In addition to providing information on supervisory trends, *Supervisory Highlights* also provides information on enforcement actions that resulted from supervisory activity. See Section 3.3.1 for more information on such public enforcement actions.

3. Fair Lending enforcement

The Bureau conducts investigations of potential violations of HMDA and ECOA, and if it believes a violation has occurred, can file a complaint either through its administrative enforcement process or in federal court. Like the other federal bank regulators, the Bureau refers matters to the DOJ when it has reason to believe that a creditor has engaged in a pattern or practice of lending discrimination.⁴⁰ However, when the Bureau makes a referral to the DOJ, the Bureau can still take its own independent action to address a violation. In 2016, the Bureau announced two fair lending enforcement actions in mortgage origination and indirect auto lending. The Bureau also has a number of ongoing fair lending investigations and has authority to settle or sue in a number of matters. In addition, the Bureau issued warning letters to mortgage lenders and mortgage brokers that may be in violation of HMDA requirements to report on housing-related lending activity.

3.1 Fair Lending public enforcement actions

3.1.1 Mortgage

BancorpSouth Bank

On June 29, 2016, the CFPB and the DOJ announced a joint action against BancorpSouth Bank

⁴⁰ 15 U.S.C. § 1691e(g).

(BancorpSouth) for discriminatory mortgage lending practices that harmed African Americans and other minorities. The complaint filed by the CFPB and DOJ⁴¹ alleged that BancorpSouth engaged in numerous discriminatory practices, including illegal redlining in Memphis; denying certain African Americans mortgage loans more often than similarly situated non-Hispanic White applicants; charging African-American borrowers more for certain mortgage loans than non-Hispanic White borrowers with similar loan qualifications; and implementing an explicitly discriminatory loan denial policy. The consent order, which was entered by the court on July 25, 2016, requires BancorpSouth to pay \$4 million in direct loan subsidies in minority neighborhoods⁴² in Memphis, at least \$800,000 for community programs, advertising, outreach, and credit repair, \$2.78 million to African-American consumers who were unlawfully denied or overcharged for loans, and a \$3 million penalty.⁴³

BancorpSouth is a regional depository institution headquartered in Tupelo, Mississippi that operates branches in eight states: Alabama, Arkansas, Florida, Louisiana, Mississippi, Missouri, Tennessee, and Texas. In the complaint, CFPB and DOJ alleged that BancorpSouth:

- **Illegally redlined in Memphis:** The agencies alleged that, at least from 2011 to 2013, BancorpSouth illegally redlined in the Memphis area—the market from which the bank received the most applications—by structuring its business to avoid and discourage consumers in minority neighborhoods from accessing mortgages. Specifically, the agencies alleged that the bank placed its branches outside of minority neighborhoods, excluded nearly all minority neighborhoods from the area it chose to serve under the Community Reinvestment Act, and directed nearly all of its marketing away from minority neighborhoods. As a result, BancorpSouth generated relatively few applications

⁴¹ Compl., *United States v. BancorpSouth Bank*, No. 1:16-cv-00118-GHD-DAS (N.D. Miss. June 29, 2016), ECF No. 1, http://files.consumerfinance.gov/f/documents/201606_cfpb_bancorpsouth-joint-complaint.pdf.

⁴² Majority-minority neighborhoods or minority neighborhoods refers to census tracts with a minority population greater than 50%.

⁴³ Consent Order, *United States v. BancorpSouth Bank*, No. 1:16-cv-00118-GHD-DAS (N.D. Miss. July 25, 2016), ECF No. 8, http://files.consumerfinance.gov/f/documents/201606_cfpb_bancorpsouth-consent-order.pdf.

from minority neighborhoods as compared to its peers.

- **Discriminated in underwriting certain mortgages:** The agencies also alleged that one of BancorpSouth's lending units discriminated against African-American applicants by denying them mortgage loans—including loans with consumer as well as business purposes—more often than similarly situated non-Hispanic White applicants. Specifically, the agencies alleged that BancorpSouth granted its employees wide discretion to make credit decisions on mortgage loans. This discretion resulted in African-American applicants being denied certain mortgages at rates more than two times higher than expected if they had been non-Hispanic White.
- **Discriminated in pricing certain mortgage loans:** The agencies also alleged that one of BancorpSouth's lending units discriminated against African-American borrowers that it did approve by charging them higher annual percentage rates than non-Hispanic White borrowers with similar loan qualifications. Specifically, the agencies alleged that BancorpSouth granted its employees wide discretion to set the prices of mortgage loans. This discretion resulted in African-American borrowers paying significantly higher annual percentage rates than similarly situated non-Hispanic White borrowers, costing African-American consumers hundreds of dollars more each year they held the loan.
- **Implemented an explicitly discriminatory denial policy:** The complaint alleged that BancorpSouth required its employees to deny applications from minorities and other “protected class” applicants more quickly than those from other applicants and not to provide credit assistance to “borderline” applicants, which may have improved their chances of getting a loan. The bank generally permitted loan officers to assist marginal applicants, but the explicitly race-based denial policy departed from that practice. An audio recording of a 2012 internal meeting at BancorpSouth clearly articulates this discriminatory policy, as well as negative and stereotyped perceptions of African Americans.

The consent order requires BancorpSouth to take a number of remedial measures, including paying \$4 million into a loan subsidy program to increase access to affordable credit, by offering qualified applicants in majority-minority neighborhoods in Memphis mortgage loans on a more affordable basis than otherwise available from BancorpSouth. The loan subsidies can include interest rate reductions, closing cost assistance, and down payment assistance. In addition, the consent order requires BancorpSouth to spend \$500,000 to partner with community-based or governmental organizations that provide education, credit repair, and other assistance in

minority neighborhoods in Memphis, and to spend at least \$300,000 on a targeted advertising and outreach campaign to generate applications for mortgage loans from qualified consumers in majority-minority neighborhoods in Memphis. The consent order also requires BancorpSouth to pay \$2.78 million to African-American consumers who were improperly denied mortgage loans or overcharged for their loans because of BancorpSouth's allegedly discriminatory pricing and underwriting policies. Finally, BancorpSouth paid a \$3 million penalty to the CFPB's Civil Penalty Fund.

In addition to the monetary requirements, the court decree orders BancorpSouth to expand its physical presence by opening one new branch or loan production office in a high-minority neighborhood (a census tract with a minority population greater than 80%) in Memphis. The bank is also required to offer African-American consumers who were denied mortgage loans while BancorpSouth's allegedly discriminatory underwriting policy was in place the opportunity to apply for a new loan at a subsidized interest rate. Among other revisions to its policies, BancorpSouth is also required by the consent order to implement policies that require its employees to provide equal levels of information and assistance to individuals who inquire about mortgage loans, regardless of race or any other prohibited characteristic.

When investigating identified redlining risks, the Bureau's approach is consistent with that of other federal agencies, including other federal law enforcement agencies and bank regulators. For example, the Bureau looks to risk indicators described in the Interagency Fair Lending Examination Procedures, which were initially issued by the prudential regulators and later adopted by the Bureau.⁴⁴ The Bureau also looks to the types of evidence that DOJ has cited in support of its complaints alleging redlining. These sources identify multiple factors that the Bureau considers during a redlining investigation, detailed above in Section 2.1.6 on Redlining.

As part of its investigation, the CFPB also sent testers to several BancorpSouth branches to inquire about mortgages, and the results of that testing support the CFPB and DOJ allegations.

⁴⁴ See CFPB Supervision and Examination Manual (Oct. 2012), http://files.consumerfinance.gov/f/201210_cfpb_supervision-and-examination-manual-v2.pdf (CFPB Examination Procedures, Equal Credit Opportunity Act Baseline Review Modules).

The agencies alleged that, in several instances, a BancorpSouth loan officer treated the African-American tester less favorably than a non-Hispanic White counterpart. Specifically, the complaint alleged that BancorpSouth employees treated African-American testers who sought information about mortgage loans worse than non-Hispanic White testers with similar credit qualifications. For example, BancorpSouth employees provided information that would restrict African-American consumers to smaller loans than non-Hispanic White testers. This investigation was the CFPB's first use of testing to support an allegation of discrimination. Testing is a tool the Bureau employs in its enforcement investigative activity. Other government agencies, including the DOJ and HUD, as well as private fair housing organizations and state and local agencies, have used testers for decades as a method of identifying discrimination. Courts have long recognized testing as a reliable investigative tool.

3.1.2 Auto Finance

Toyota Motor Credit Corporation

On February 2, 2016, the CFPB resolved an action with Toyota Motor Credit Corporation (Toyota Motor Credit)⁴⁵ that requires Toyota Motor Credit to change its pricing and compensation system by substantially reducing or eliminating discretionary markups to minimize the risks of discrimination. On that same date, the DOJ also filed a complaint and proposed consent order in the U.S. District Court for the Central District of California addressing the same conduct. That consent order was entered by the court on February 11, 2016. Toyota Motor Credit's past practices resulted in thousands of African-American and Asian and Pacific Islander borrowers paying higher interest rates than similarly-situated non-Hispanic White borrowers for their auto loans. The consent order requires Toyota Motor Credit to pay up to \$21.9 million in restitution to affected borrowers.

Toyota Motor Credit is the U.S. financing arm of Toyota Financial Services, which is a subsidiary

⁴⁵ Consent Order, *In re Toyota Motor Credit Corp.*, CFPB No. 2016-CFPB-0002 (Feb. 2, 2016), http://files.consumerfinance.gov/f/201602_cfpb_consent-order-toyota-motor-credit-corporation.pdf

of Toyota Motor Corporation. As of the second quarter of 2015, Toyota Motor Credit was the largest captive auto lender⁴⁶ in the United States and the fifth largest auto lender overall. As an indirect auto lender, Toyota Motor Credit sets risk-based interest rates, or “buy rates,” that it conveys to auto dealers. Indirect auto lenders like Toyota Motor Credit then allow auto dealers to charge a higher interest rate when they finalize the deal with the consumer. This policy or practice is typically called “discretionary markup.” Markups can generate compensation for dealers while giving them the discretion to charge similarly-situated consumers different rates. Over the time period under review, Toyota Motor Credit permitted dealers to mark up consumers’ interest rates as much as 2.5%.

The enforcement action was the result of a joint CFPB and DOJ investigation that began in April 2013. The agencies investigated Toyota Motor Credit’s indirect auto lending activities’ compliance with ECOA. The Bureau found that Toyota Motor Credit violated ECOA by adopting policies that resulted in African-American and Asian and Pacific Islander borrowers paying higher interest rates for their auto loans than non-Hispanic White borrowers as a result of the dealer markups that Toyota Motor Credit permitted and incentivized. Toyota Motor Credit’s pricing and compensation structure meant that for the period covered in the order, thousands of African-American borrowers were charged, on average, over \$200 more for their auto loans, and thousands of Asian and Pacific Islander borrowers were charged, on average, over \$100 more for their auto loans.

The CFPB’s administrative action and DOJ’s consent order require Toyota Motor Credit to reduce dealer discretion to mark up the interest rate to only 1.25% above the buy rate for auto loans with terms of five years or less, and 1% for auto loans with longer terms, or to move to non-discretionary dealer compensation. Toyota Motor Credit is also required to pay \$19.9 million in remediation to affected African-American and Asian and Pacific Islander borrowers whose auto loans were financed by Toyota Motor Credit between January 2011 and February 2, 2016. Toyota Motor Credit is required to pay up to an additional \$2 million into the settlement fund to compensate any affected African-American and Asian and Pacific Islander borrowers in

⁴⁶ Captive auto lenders are indirect auto lenders that are directly affiliated with a particular automobile manufacturer.

the time period between February 2, 2016, and when Toyota Motor Credit implements its new pricing and compensation structure. The Bureau did not assess penalties against Toyota Motor Credit because of its responsible conduct, namely the proactive steps the institution is taking to directly address the fair lending risk of discretionary pricing and compensation systems by substantially reducing or eliminating that discretion altogether. In addition, Toyota Motor Credit is required to hire a settlement administrator who will contact consumers, distribute the funds, and ensure that affected borrowers receive compensation.

3.2 HMDA Warning Letters - Potential Mortgage Lending Reporting Failures

On October 27, 2016, the CFPB issued warning letters to 44 mortgage lenders and mortgage brokers. The Bureau had information that appeared to show these financial institutions may be required to collect, record, and report data about their housing-related lending activity, and that they may be in violation of those requirements. The CFPB, in sending these letters, made no determination that a legal violation did, in fact, occur.

HMDA, which was originally enacted in 1975, requires many financial institutions to collect data about their housing-related lending activity, including home purchase loans, home improvement loans, and refinancings that they originate or purchase, or for which they receive applications. Annually, these financial institutions must report to the appropriate federal agencies and make the data available to the public. The public and regulators can use the information to monitor whether financial institutions are serving the housing needs of their communities, to assist in distributing public-sector investment so as to attract private investment to areas where it is needed, and to identify possible discriminatory lending patterns.

Data transparency helps to ensure that financial institutions are not engaging in discriminatory lending or failing to meet the credit needs of the entire community, including low- and moderate-income neighborhoods. Financial institutions that avoid their responsibility to collect and report mortgage loan data hinder regulatory efforts to enforce fair lending laws.

The CFPB identified the 44 companies by reviewing available bank and nonbank mortgage data. The warning letters flag that entities that meet certain requirements are required to collect, record, and report mortgage lending data. The letters say that recipients should review their

practices to ensure they comply with all relevant laws. The companies are encouraged to respond to the Bureau to advise if they have taken, or will take, steps to ensure compliance with the law. They can also tell the Bureau if they think the law does not apply to them.⁴⁷

3.3 Implementing enforcement orders

When an enforcement action is resolved through a public enforcement order, the Bureau (and the DOJ, when relevant) takes steps to ensure that the respondent or defendant complies with the requirements of the order. As appropriate to the specific requirements of individual public enforcement orders, the Bureau may take steps to ensure that borrowers who are eligible for compensation receive remuneration and that the defendant has implemented a comprehensive fair lending compliance management system. Throughout 2016, the Office of Fair Lending worked to implement and oversee compliance with the pending public enforcement orders that were entered by federal courts or entered by the Bureau's Director in prior years.

3.3.1 Settlement Administration

Ally Financial Inc. and Ally Bank

On December 19, 2013, working in close coordination with the DOJ, the CFPB ordered Ally Financial Inc. and Ally Bank (Ally) to pay \$80 million in damages to harmed African-American, Hispanic, and Asian and/or Pacific Islander borrowers. The DOJ simultaneously filed a consent order in the United States District Court for the Eastern District of Michigan, which was entered by the court on December 23, 2013. This public enforcement action represented the federal

⁴⁷ More information on HMDA reporting requirements and a sample warning letter are available at <http://www.consumerfinance.gov/about-us/newsroom/cfpb-warns-financial-institutions-about-potential-mortgage-lending-reporting-failures/>.

government's largest auto loan discrimination settlement in history.⁴⁸

On January 29, 2016, approximately 301,000 harmed borrowers participating in the settlement—representing approximately 235,000 loans—were mailed checks by the Ally settlement administrator, totaling \$80 million plus interest, which the Bureau announced in a blog post in English and Spanish.^{49,50} In addition, and pursuant to its continuing obligations under the terms of the orders, Ally has also made ongoing payments to consumers affected after the consent orders were entered. Specifically, Ally paid approximately \$38.9 million in September 2015 and an additional \$51.5 million in May 2016, to consumers that Ally determined were both eligible and overcharged on auto loans issued during 2014 and 2015, respectively.

Provident Funding Associates

As previously reported, on May 28, 2015, the CFPB and the DOJ filed a joint complaint against Provident Funding Associations (Provident) for discrimination in mortgage lending, along with a proposed order to settle the complaint in the United States District Court for the Northern District of California. The complaint alleged that from 2006 to 2011, Provident discriminated in violation of ECOA by charging over 14,000 African-American and Hispanic borrowers more in brokers' fees than similarly situated non-Hispanic White borrowers on the basis of race and national origin. The consent order, which the court entered on June 18, 2015, requires Provident to pay \$9 million in damages to harmed borrowers, to hire a settlement administrator to distribute funds to the harmed borrowers identified by the CFPB and DOJ, and not to

⁴⁸ Consent Order, *In re Ally Financial Inc.*, CFPB No. 2013-CFPB-0010 (Dec. 20, 2013), http://files.consumerfinance.gov/f/201312_cfpb_consent-order_ally.pdf.

⁴⁹ Patrice Ficklin, *Harmed Ally Borrowers Have Been Sent \$80 Million in Damages*, Consumer Financial Protection Bureau (Jan. 29, 2016), <http://www.consumerfinance.gov/blog/harmed-ally-borrowers-have-been-sent-80-million-in-damages/>.

⁵⁰ Patrice Ficklin, *Prestatarios perjudicados por Ally reciben \$80 millones en daños*, Consumer Financial Protection Bureau (Feb. 4, 2016), <http://www.consumerfinance.gov/about-us/blog/prestatarios-perjudicados-por-ally-reciben-80-millones-en-danos/>.

discriminate against borrowers in assessing total broker fees.⁵¹

In Fall 2016, the Bureau published a blog post in English and Spanish announcing the selection of the settlement administrator and its mailing of participation packets to eligible consumers.

^{52,53} The blog post also provided information to consumers on how to contact the administrator, participate in the settlement, and submit settlement forms.

American Honda Finance Corporation

As previously reported, on July 14, 2015, the CFPB and the DOJ resolved an action with American Honda Finance Corporation (Honda) to put new measures in place to address discretionary auto loan pricing and compensation practices. Honda's past practices resulted in thousands of African-American, Hispanic, and Asian and Pacific Islander borrowers paying higher interest rates than non-Hispanic White borrowers for their auto loans between January 1, 2011, and July 14, 2015, without regard to their creditworthiness. The consent order requires Honda to change its pricing and compensation system to substantially reduce dealer discretion and minimize the risks of discrimination, and pay \$24 million in restitution to affected borrowers.⁵⁴

In October 2016, the Bureau published a blog post in English and Spanish announcing that the settlement administrator was mailing participation packets to potentially eligible consumers,

⁵¹ Consent Order, *United States v. Provident Funding Assocs., L.P.*, No. 3:15-cv-023-73 (N.D. Cal. May 28, 2015), ECF No. 2, http://files.consumerfinance.gov/f/201505_cfpb_consent-order-provident-funding-associates.pdf.

⁵² Patrice Ficklin, *Provident Settlement Administrator to Contact Eligible Borrowers Soon*, Consumer Financial Protection Bureau (Sept. 28, 2016), <http://www.consumerfinance.gov/about-us/blog/provident-settlement-administrator-contact-eligible-borrowers-soon/>.

⁵³ Patrice Ficklin, *Administrador del Acuerdo de Provident planea ponerse en contacto con prestatarios elegibles próximamente*, Consumer Financial Protection Bureau (Oct. 6, 2016), <http://www.consumerfinance.gov/about-us/blog/administrador-del-acuerdo-de-provident-planea-ponerse-en-contacto-con-prestatarios-elegibles-proximamente/>.

⁵⁴ Consent Order, *In re American Honda Finance Corp.*, CFPB No. 2015-CFPB-0014 (July 14, 2015), http://files.consumerfinance.gov/f/201507_cfpb_consent-order_honda.pdf.

and providing information to consumers on how to contact the administrator, participate in the settlement, and submit settlement forms.^{55, 56}

3.4 ECOA referrals to the Department of Justice

The CFPB must refer to the DOJ a matter when it has reason to believe that a creditor has engaged in a pattern or practice of lending discrimination in violation of ECOA.⁵⁷ The CFPB also may refer other potential ECOA violations to the DOJ. In 2016, the CFPB referred eight matters to the DOJ. In four of the eight matters, the DOJ declined to open an independent investigation and deferred to the Bureau's handling of the matter. The CFPB's referrals to the DOJ in 2016 covered a variety of practices, specifically discrimination in mortgage lending on the bases of the age, marital status, receipt of public assistance income, and sex; discrimination in indirect auto lending on the bases of national origin, race, and receipt of public assistance income; and discrimination in credit card account management on the bases of national origin and race.

3.5 Pending fair lending investigations

In 2016, the Bureau had a number of ongoing fair lending investigations and authorized enforcement actions against a number of institutions involving a variety of consumer financial

⁵⁵ Patrice Ficklin, *What you need to know to get money from the settlement with Honda Finance for overcharging minorities*, Consumer Financial Protection Bureau (Oct. 3, 2016), <http://www.consumerfinance.gov/about-us/blog/what-you-need-know-get-money-settlement-honda-finance-overcharging-minorities/>.

⁵⁶ Patrice Ficklin, *Lo que necesita saber para recibir dinero del acuerdo de compensación con Honda Finance por cobrarles de más a las minorías*, Consumer Financial Protection Bureau (Oct. 11, 2016), <https://www.consumerfinance.gov/about-us/blog/lo-que-necesita-saber-para-recibir-dinero-del-acuerdo-de-compensacion-con-honda-finance-por-cobrarles-de-mas-las-minorias/>.

⁵⁷ 15 U.S.C. § 1691e(g).

products. Consistent with the Bureau's priorities and the Office of Fair Lending's risk-based prioritization, one key area on which the Bureau focused its fair lending enforcement efforts was addressing potential discrimination in mortgage lending, including the unlawful practice of redlining. Redlining occurs when a lender provides unequal access to credit, or unequal terms of credit, because of the racial or ethnic composition of a neighborhood. At the end of 2016, the Bureau had a number of pending investigations in this area. Additionally, at the end of 2016, the Bureau had a number of pending investigations in other areas.

4. Rulemaking and related guidance

4.1 HMDA and Regulation C

On October 2015, the Bureau issued and published in the *Federal Register* a final rule to implement the Dodd-Frank amendments to HMDA.⁵⁸ The rule also finalizes certain amendments that the Bureau believes are necessary to improve the utility of HMDA data, further the purposes of HMDA, improve the quality of HMDA data, and create a more transparent mortgage market.

4.1.1 HMDA history

HMDA, as implemented by Regulation C, is intended to provide the public with loan data that can be used to help determine whether financial institutions are serving the housing needs of their communities; to assist public officials in distributing public-sector investment to attract private investment in communities where it is needed; and to assist in identifying possible discriminatory lending patterns and enforcing anti-discrimination statutes.⁵⁹ HMDA data are

⁵⁸ Home Mortgage Disclosure, 80 Fed. Reg. 66,128 (Oct. 28, 2015) (codified at 12 C.F.R. pt. 1003), <https://www.gpo.gov/fdsys/pkg/FR-2015-10-28/pdf/2015-26607.pdf>.

⁵⁹ 12 U.S.C. § 2801; 12 C.F.R. § 1003.1(b).

also used for a range of mortgage market monitoring purposes by community groups, public officials, the financial industry, economists, academics, social scientists, regulators, and the media. Bank regulators and other agencies use HMDA to monitor compliance with and enforcement of the CRA and federal anti-discrimination laws, including ECOA and the Fair Housing Act (FHA).

The Dodd-Frank Act transferred rulemaking authority for HMDA to the Bureau, effective July 2011. It also amended HMDA to require financial institutions to report new data points and authorized the Bureau to require financial institutions to collect, record, and report additional information.

4.1.2 Summary of Regulation C changes

The HMDA Rule changes institutional coverage in two phases. First, to reduce burden on industry, certain lower-volume depository institutions will no longer be required to collect and report HMDA data beginning in 2017. A bank, savings association, or credit union will not be subject to Regulation C in 2017 unless it meets the asset-size, location, federally related, and loan activity tests under current Regulation C and it originates at least 25 home purchase loans, including refinancings of home purchase loans, in both 2015 and 2016. Second, effective January 1, 2018, the HMDA Rule adopts a uniform loan-volume threshold for all institutions. Beginning in 2018, an institution will be subject to Regulation C if it originated at least 25 covered closed-end mortgage loan originations in each of the two preceding calendar years or at least 100 covered open-end lines of credit in each of the two preceding calendar years. Other applicable coverage requirements will apply, depending on the type of covered entity.

The Rule also modifies the types of transactions covered under Regulation C. In general, the HMDA Rule adopts a dwelling-secured standard for transactional coverage. Beginning on January 1, 2018, covered loans under the HMDA Rule generally will include closed-end mortgage loans and open-end lines of credit secured by a dwelling and will not include

unsecured loans.

For HMDA data collected on or after January 1, 2018, covered institutions will collect, record, and report additional information on covered loans. New data points include those specifically identified in Dodd-Frank as well as others the Bureau determined will assist in carrying out HMDA's purposes. The HMDA Rule adds new data points for applicant or borrower age, credit score, automated underwriting system information, debt-to-income ratio, combined loan-to-value ratio, unique loan identifier, property value, application channel, points and fees, borrower-paid origination charges, discount points, lender credits, loan term, prepayment penalty, non-amortizing loan features, interest rate, and loan originator identifier as well as other data points. The HMDA Rule also modifies several existing data points.

For data collected on or after January 1, 2018, the HMDA Rule amends the requirements for collection and reporting of information regarding an applicant's or borrower's ethnicity, race, and sex. First, a covered institution will report whether or not it collected the information on the basis of visual observation or surname. Second, covered institutions must permit applicants to self-identify their ethnicity and race using disaggregated ethnic and racial subcategories. However, the HMDA Rule will not require or permit covered institutions to use the disaggregated subcategories when identifying the applicant's or borrower's ethnicity and race based on visual observation or surname.

The Bureau is developing a new web-based submission tool for reporting HMDA data, which covered institutions will use beginning in 2018. Regulation C's appendix A is amended effective January 1, 2018 to include new transition requirements for data collected in 2017 and reported in 2018. Covered institutions will be required to electronically submit their loan application registers (LARs). Beginning with data collected in 2018 and reported in 2019, covered institutions will report the new dataset required by the HMDA Rule, using revised procedures that will be available at www.consumerfinance.gov/hmda.

Beginning in 2020, the HMDA Rule requires quarterly reporting for covered institutions that reported a combined total of at least 60,000 applications and covered loans in the preceding calendar year. An institution will not count covered loans that it purchased in the preceding calendar year when determining whether it is required to report on a quarterly basis. The first quarterly submission will be due by May 30, 2020.

Beginning in 2018, covered institutions will no longer be required to provide a disclosure

statement or a modified LAR to the public upon request. Instead, in response to a request, a covered institution will provide a notice that its disclosure statement and modified LAR are available on the Bureau's website. These revised disclosure requirements will apply to data collected on or after January 1, 2017 and reported in or after 2018.

For data collected in or after 2018 and reported in or after 2019, the Bureau will use a balancing test to determine whether and, if so, how HMDA data should be modified prior to its disclosure in order to protect applicant and borrower privacy while also fulfilling HMDA's disclosure purposes. At a later date, the Bureau will provide a process for the public to provide input regarding the application of this balancing test to determine the HMDA data to be publicly disclosed.

4.1.3 Reducing industry burden

The Bureau took a number of steps to reduce industry burden while ensuring HMDA data are useful and reflective of the current housing finance market. A key part of this balancing is ensuring an adequate implementation period. Most provisions of the HMDA Rule go into effect on January 1, 2018—more than two years after publication of the Rule—and apply to data collected in 2018 and reported in 2019 or later years. At the same time, an institutional coverage change that will reduce the number of depository institutions that need to report is effective earlier: on January 1, 2017. Institutions subject to the new quarterly reporting requirement will have additional time to prepare: that requirement is effective on January 1, 2020, and the first quarterly submission will be due by May 30, 2020.

As with all of its rules, the Bureau continues to look for ways to help the mortgage industry implement the new mortgage lending data reporting rules, and has created regulatory implementation resources that are available online. These resources include an overview of the final rule, a plain-language compliance guide, a timeline with various effective dates, a decision tree to help institutions determine whether they need to report mortgage lending data, a chart that provides a summary of the reportable data, a chart that describes when to report data as not applicable, a chart that describes what transactions are reportable, a webinar on the HMDA

Rule, and a Technology Preview for the Bureau's new web-based submission tool. In addition, the Bureau has published Filing Instruction Guides (FIG) for 2017 and 2018 that include file specifications. The Bureau will monitor implementation progress and will be publishing additional regulatory implementation tools and resources on its website to support implementation needs.⁶⁰ Since the HMDA rule was issued on October 15, 2015, the Bureau has focused on outreach by sharing information about the regulatory changes, including webinars, responding to industry inquiries, and issuing press releases and emails to stakeholder groups. In addition, Bureau staff has spoken at numerous industry-focused conferences and mortgage events. Since the HMDA rule has been released, the Bureau's website has had over 50,000 visits to the HMDA implementation page and over 18,000 downloads of our plain-language HMDA compliance guide.

4.1.4 Filing 2017 HMDA Data

Beginning with the HMDA data collected in 2017 and submitted in 2018, responsibility to receive and process HMDA data will transfer from the Federal Reserve Board (FRB) to the CFPB. The HMDA agencies have agreed that a covered institution filing HMDA data collected in or after 2017 with the CFPB will be deemed to have submitted the HMDA data to the appropriate federal agency.⁶¹ The effective date of the change in the federal agency that receives and processes the HMDA data does not coincide with the effective date for the new HMDA data to be collected and reported under the Final Rule amending Regulation C published in the *Federal Register* on October 28, 2015. The Final Rule's new data requirements will apply to data collected beginning on January 1, 2018. The data fields for data collected in 2017 have not changed.

Also beginning with data collected in 2017, filers will submit their HMDA data using a web

⁶⁰ These resources are available at Consumer Financial Protection Bureau, *Home Mortgage Disclosure Act rule implementation*, <http://www.consumerfinance.gov/regulatory-implementation/hmda/>.

⁶¹ The HMDA agencies refer collectively to the CFPB, the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), the FRB, the National Credit Union Administration (NCUA), and the Department of Housing and Urban Development (HUD).

interface referred to as the “HMDA Platform.” In addition, beginning with the data collected in 2017, as part of the submission process, a HMDA reporter’s authorized representative with knowledge of the data submitted shall certify to the accuracy and completeness of the data submitted. Additional information about HMDA, the FIG, and other data submission resources is located at the Bureau’s website.⁶²

4.1.5 HMDA data resubmission RFI

In response to dialogue with industry and other stakeholders, the Bureau is considering modifications to its current HMDA resubmission guidelines. In comments on the Bureau’s proposed changes to Regulation C, some stakeholders asked that the Bureau adjust its existing HMDA resubmission guidelines to reflect the expanded data the Bureau will collect under the HMDA Rule.

Accordingly, on January 7, 2016, the Bureau published on its website a Request for Information (RFI) asking for public comment on the Bureau’s HMDA resubmission guidelines.⁶³ Specifically, the Bureau requested feedback on the Bureau’s use of resubmission error thresholds; how they should be calculated; whether they should vary with the size of the HMDA submission or kind of data; and the consequences for exceeding a threshold, among other topics. Some examples of questions posed to the public include:

- Should the Bureau continue to use error percentage thresholds to determine the need for data resubmission? If not, how else may the Bureau ensure data integrity and compliance with HMDA and Regulation C?
- If the Bureau retains error percentage thresholds, should the thresholds be calculated

⁶² See Consumer Financial Protection Bureau, *Filing instructions guide for HMDA data collected in 2017* (July 2016), <http://www.consumerfinance.gov/data-research/hmda/static/for-filers/2017/2017-HMDA-FIG.pdf>.

⁶³ See Consumer Financial Protection Bureau, *CFPB Seeks Public Input on Mortgage Lending Information Resubmission Guidelines* (Jan. 7, 2016), <http://www.consumerfinance.gov/newsroom/cfpb-seeks-public-input-on-mortgage-lending-information-resubmission-guidelines/>.

differently than they are today? If so, how and why?

- If the Bureau retains error percentage thresholds, should it continue to maintain separate error thresholds for the entire HMDA LAR sample and individual data fields within the LAR sample? If not, why?

The RFI was published in the *Federal Register* on January 12, 2016.⁶⁴ The 60-day comment period ended on March 14, 2016. As of this report's publication date, in light of feedback received, the Bureau was considering whether to adjust its existing HMDA resubmission guidelines and if so, how.

4.1.6 HMDA rule technical corrections and clarifying amendments

Since issuing the 2015 HMDA Final Rule, the Bureau has identified and received information about some areas of uncertainty about requirements under the rule. This spring, the Bureau plans to seek comment on a proposal to amend certain provisions of Regulation C to make technical corrections and to clarify certain requirements under Regulation C.

4.2 ECOA and Regulation B

In 2016, with regard to ECOA, the CFPB published a Bureau Official Approval and was in the proposed rule stage to amend certain sections of Regulation B.

4.2.1 Status of New Uniform Residential Loan Application and Collection of Expanded Home Mortgage Disclosure Act Information about Ethnicity and Race in

⁶⁴ Request for Info. Regarding Home Mortgage Disclosure Act Resubmission Guidelines, 81 Fed. Reg. 1,405 (Jan. 12, 2016), <https://www.gpo.gov/fdsys/pkg/FR-2016-01-12/pdf/2016-00442.pdf>.

2017 under Regulation B

On September 23, 2016, the Bureau published a Bureau Official Approval pursuant to section 706(e) of the ECOA concerning the new Uniform Residential Loan Application and the collection of expanded HMDA information about ethnicity and race in 2017.⁶⁵

In accordance with the request by Federal Housing Finance Agency and the Federal Home Loan Mortgage Corporation (Freddie Mac) and the Federal National Mortgage Association (Fannie Mae), the Bureau reviewed the revised and redesigned Uniform Residential Loan Application issued on August 23, 2016 (2016 URLA). Under the terms provided in the Bureau's notice, the Bureau determined that the relevant language in the 2016 URLA is in compliance with the specified provisions of Regulation B. A creditor's use of the 2016 URLA is not required under Regulation B. However, the notice provides that, a creditor that uses the 2016 URLA without any modification that would violate § 1002.5(b) through (d) would act in compliance with § 1002.5(b) through (d).

The notice also addressed collection of information concerning the ethnicity and race of applicants in conformity with Regulation B from January 1, 2017, through December 31, 2017. The Bureau's official approval provided that at any time from January 1, 2017, through December 31, 2017, a creditor may, at its option, permit applicants to self-identify using disaggregated ethnic and racial categories as instructed in appendix B to Regulation C, as amended by the 2015 HMDA final rule. The Bureau believes such authorization may provide creditors time to begin to implement the regulatory changes and improve their compliance processes before the new requirement becomes effective, and therefore mandatory, on January 1, 2018. Allowing for this increased implementation period will, in the Bureau's view, reduce compliance burden and further the purposes of HMDA and Regulation C.

⁶⁵ Consumer Financial Protection Bureau, *Status of New Uniform Residential Loan Application and Collection of Expanded Home Mortgage Disclosure Act Information about Ethnicity and Race in 2017 under Regulation B* (Sept. 23, 2016), https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/092016_cfpb_HMDAEthnicityRace.pdf.

4.2.2 Amendments to Equal Credit Opportunity Act (Regulation B) Ethnicity and Race Information Collection

Regulation C currently requires financial institutions to collect and report information about the ethnicity and race, as well as certain other characteristics, of applicants and borrowers.

Regulation C, as amended by 2015 HMDA Final Rule, generally effective January 1, 2018, will require financial institutions to permit applicants and borrowers to self-identify using disaggregated ethnic and racial categories beginning January 1, 2018. Regulation B also currently requires creditors to request and retain information about the ethnicity and race, as well as certain other characteristics, of applicants for certain dwelling-secured loans, but uses only aggregate ethnic and racial categories. On March 24, 2017, the Bureau issued a proposed rule seeking comment on amendments to Regulation B to permit creditors additional flexibility in complying with Regulation B in order to facilitate compliance with Regulation C, to add certain model forms and remove others from Regulation B, and to make various other amendments to Regulation B and its commentary to facilitate the collection and retention of information about the ethnicity, sex, and race of certain mortgage applicants.⁶⁶

4.3 Small business data collection

Section 1071 of the Dodd-Frank Act requires financial institutions to compile, maintain, and submit to the Bureau certain data on credit applications for women-owned, minority-owned, and small businesses.⁶⁷ Congress enacted Section 1071 for the purpose of facilitating enforcement of fair lending laws and identifying business and community development needs and opportunities for women-owned, minority-owned, and small businesses. The amendments

⁶⁶ Consumer Financial Protection Bureau, *Amendments to Equal Credit Opportunity Act (Regulation B) Ethnicity and Race Information Collection 2017-0009* (March 24, 2017), http://files.consumerfinance.gov/f/documents/201703_cfpb_NPRM-to-amend-Regulation-B.pdf.

⁶⁷ Dodd-Frank Act § 1071 (codified at 15 U.S.C. § 1691c-2).

to ECOA made by the Dodd-Frank Act require that certain data be collected and maintained, including the number of the application and date the application was received; the type and purpose of loan or credit applied for; the amount of credit applied for and approved; the type of action taken with regard to each application and the date of such action; the census tract of the principal place of business; the gross annual revenue of the business; and the race, sex, and ethnicity of the principal owners of the business. The Bureau's Fall 2016 Unified Agenda and Regulatory Plan indicates that rulemaking pursuant to Section 1071 is now in the pre-rule stage.⁶⁸ This first stage of the Bureau's work will be focused on outreach and research and on the potential ways to implement section 1071, after which the Bureau will begin developing proposed rules concerning the data to be collected and determining the appropriate operational procedures and privacy protections needed for information-gathering and public disclosure.

The Bureau has begun to explore some of the issues involved in the rulemaking, including through ongoing engagement with industry and other stakeholders. In addition, current and future small business lending supervisory activity will help expand and enhance the Bureau's knowledge in this area, including the credit application process; existing data collection processes; and the nature, extent, and management of fair lending risk. The Bureau is also considering how best to work with other agencies to, in part, gain insight into existing business lending data collection efforts and to explore possible ways to cooperate in future efforts.

4.4 Amicus Program

The Bureau's Amicus Program files amicus, or friend-of-the-court, briefs in court cases concerning the Federal consumer financial protection laws that the Bureau is charged with implementing, including ECOA. These amicus briefs provide the courts with our views on significant consumer financial protection issues and help ensure that consumer financial protection statutes and regulations are correctly and consistently interpreted by the courts.

⁶⁸ Semiannual Regulatory Agenda, 81 Fed. Reg. 94,844, 94,846 (Dec. 23, 2016).

In 2016, the Bureau filed an amicus brief in *Alexander v. AmeriPro Funding, Inc.*, in which a group of consumer plaintiffs appealed the dismissal by the United States District Court for the Southern District of Texas of an ECOA complaint alleging discrimination by mortgage lenders on the basis that all or part of the plaintiffs' income derived from a public assistance program. The District Court held that the complaint failed to allege facts that gave rise to a *prima facie* showing of discrimination under the *McDonnell-Douglas* framework and also failed to allege direct evidence of discrimination because the allegations were "conclusory" and did not allege hostility or animus.⁶⁹ The Bureau filed its amicus brief on February 23, 2016, and argued that the District Court's decision imposed pleading burdens on ECOA plaintiffs that were not required by ECOA or the Federal Rules of Civil Procedure.⁷⁰

On February 16, 2017, in a unanimous decision, the United States Court of Appeals for the Fifth Circuit reversed the dismissal with respect to some of the plaintiffs but affirmed the dismissal with respect to others.⁷¹ Reversing the District Court, the court held that one set of plaintiffs stated an ECOA claim because they alleged that they applied for credit, that the creditor refused to consider public assistance income in considering their credit applications, and that the applicants as a result received less favorable mortgages. Unlike the District Court's decision, the court did not require the plaintiffs to also allege hostility or animus or to make a *prima facie* showing of discrimination under the *McDonnell-Douglas* framework. Affirming the District Court, the court also held that another set of plaintiffs failed to state a claim under ECOA because they either failed to allege sufficient facts of discriminatory conduct, failed to allege

⁶⁹ *Alexander v. AmeriPro Funding, Inc.*, No. H-14-2947, 2015 WL 4545625 at *4-5 (S.D. Tex. July 28, 2015).

⁷⁰ Br. of Amicus Curiae Consumer Financial Protection Bureau in Supp. of Appellants and Reversal, *Alexander, et al. v. AmeriPro Funding, Inc., et al.*, No. 15-20710 (5th Cir. Feb. 23, 2016), ECF No. 00513394181, <https://www.consumerfinance.gov/policy-compliance/amicus/briefs/alexander-ameripro-funding/>.

⁷¹ *Alexander v. AmeriPro Funding, Inc.*, 848 F.3d 698 (5th Cir. 2017).

facts indicating that they had applied for credit, or failed to allege facts indicating that one defendant was a “creditor” under ECOA.

5. Interagency coordination

5.1 Interagency coordination and engagement

The Office of Fair Lending regularly coordinates the CFPB's fair lending regulatory, supervisory and enforcement activities with those of other federal agencies and state regulators to promote consistent, efficient, and effective enforcement of federal fair lending laws.⁷² Through our interagency engagement, we work to address current and emerging fair lending risks.

On November 14, 2016, along with other members of the FFIEC, the Bureau issued an updated Uniform Interagency Consumer Compliance Rating System.⁷³ The revisions reflect the regulatory, supervisory, technological, and market changes that have occurred since the system was established. The previous rating system was adopted in 1980, and the proposed revisions aim to address the broad array of risks in the market that can cause consumer harm, including fair lending violations. The Bureau plans to implement the updated rating system on consumer compliance examinations that begin on or after March 31, 2017.

⁷² Dodd-Frank Act § 1013(c)(2)(B) (codified at 12 U.S.C. § 5493(c)(2)(B)).

⁷³ Uniform Interagency Consumer Compliance Rating System, 81 Fed. Reg. 79,473 (Nov. 14, 2016), <https://www.federalregister.gov/documents/2016/11/14/2016-27226/uniform-interagency-consumer-compliance-rating-system>.

The CFPB, along with the FTC, DOJ, HUD, FDIC, FRB, NCUA, OCC, and the Federal Housing Finance Agency, comprise the Interagency Task Force on Fair Lending. The 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.

The CFPB belongs to a standing working group of federal agencies – with the DOJ, HUD, and FTC – that meets regularly to discuss issues relating to fair lending enforcement. These agencies comprise the Interagency Working Group on Fair Lending Enforcement. The agencies use these meetings to discuss fair lending developments and trends, methodologies for evaluating fair lending risks and violations, and coordination of fair lending enforcement efforts. In addition to these interagency working groups, we meet periodically and on an ad hoc basis with the prudential regulators to coordinate our fair lending work.

The CFPB takes part in the FFIEC HMDA/Community Reinvestment Act Data Collection Subcommittee, which is a subcommittee of the FFIEC Task Force on Consumer Compliance, as its work relates to the collection and processing of HMDA data, and the Bureau is one of the agencies to which HMDA data is submitted by financial institutions.

6. Outreach: Promoting fair lending compliance and education

Pursuant to Dodd-Frank,⁷⁴ the Office of Fair Lending regularly engages in outreach with industry, bar associations, consumer advocates, civil rights organizations, other government agencies, and other stakeholders to help educate and inform about fair lending. The Bureau is committed to communicating directly with all stakeholders on its policies, compliance expectations, and fair lending priorities. As part of this commitment to outreach and education in the area of fair lending, equal opportunity, and ensuring fair access to credit, Bureau personnel have engaged in dialogue with stakeholders on issues including the use of public assistance income in underwriting, redlining, disparate treatment, disparate impact, HMDA data collection and reporting, indirect auto financing, the use of proxy methodology, and the unique challenges facing LEP and lesbian, gay, bisexual and transgender (LGBT) consumers in accessing credit. Outreach is accomplished through issuance of Reports to Congress, Interagency Statements, *Supervisory Highlights*, Compliance Bulletins, letters, blog posts, speeches and presentations at conferences and trainings, and participation in meetings to discuss fair lending and access to credit matters.

⁷⁴ Dodd-Frank Act § 1013(c)(2)(C) (codified at 12 U.S.C. § 5493(c)(2)(C)).

6.1 Blog posts

The Bureau firmly believes that an informed consumer is the best defense against discriminatory lending practices. When issues arise that consumers need to know about, the Bureau uses many tools to aid consumers in financial decision-making.^{75,76} The Bureau regularly uses its blog as a tool to communicate effectively to consumers on timely issues, emerging areas of concern, Bureau initiatives, and more. In 2016 we published 14 blog posts related to two main fair lending topics: providing consumers updated information about our fair lending enforcement actions and providing consumer education on fair lending. Our enforcement update blog posts included the announcement (in both English and Spanish) of the BancorpSouth Bank settlement,^{77,78} updates on the Ally Financial Inc. and Ally Bank settlement,^{79,80} updates on the Provident Funding Association, L.P. settlement^{81,82} and updates

⁷⁵ For helpful information on shopping for auto loans, please see the Bureau's Know Before You Owe: Auto Loans toolkit, at Consumer Financial Protection Bureau, *Take control of your auto loan*, <http://www.consumerfinance.gov/consumer-tools/auto-loans/>.

⁷⁶ For helpful information on shopping for home loans, please see the Bureau's toolkit, at Consumer Financial Protection Bureau, *Owning a Home: Tools and resources for homebuyers*, <http://www.consumerfinance.gov/owning-a-home/>.

⁷⁷ Patrice Ficklin & Daniel Dodd-Ramirez, *Redlining: CFPB and DOJ action requires BancorpSouth Bank to pay millions to harmed consumers*, Consumer Financial Protection Bureau (June 29, 2016), <http://www.consumerfinance.gov/about-us/blog/redlining-cfpb-and-doj-action-requires-bancorpsouth-bank-pay-millions-harmed-consumers/>.

⁷⁸ Patrice Ficklin & Daniel Dodd-Ramirez, *La delimitación ilegal: Acción del CFPB y del Departamento de Justicia requiere que el banco BancorpSouth pague millones de dólares a consumidores perjudicados*, Consumer Financial Protection Bureau (July 6, 2016), <http://www.consumerfinance.gov/about-us/blog/la-delimitacion-ilegal-accion-del-cfpb-y-del-departamento-de-justicia-requiere-que-el-banco-bancorpsouth-pague-millones-de-dolares-consumidores-perjudicados/>.

⁷⁹ Patrice Ficklin, *Harmed Ally borrowers have been sent \$80 million in damages*, Consumer Financial Protection Bureau (Jan. 29, 2016), <http://www.consumerfinance.gov/about-us/blog/harmed-ally-borrowers-have-been-sent-80-million-in-damages/>.

on the American Honda Finance Corporation settlement.^{83,84} Our consumer education blog posts included reminding consumers of their rights for fair treatment in the financial marketplace^{85,86}, a series of two blog posts about the history of ECOA⁸⁷ and what it means for consumers⁸⁸, a blog post outlining the 2017 priorities for Fair Lending,⁸⁹ and a blog post about

⁸⁰ Patrice Ficklin, *Prestatarios perjudicados por Ally reciben \$80 millones en daños*, Consumer Financial Protection Bureau (Feb. 4, 2016), <http://www.consumerfinance.gov/about-us/blog/prestatarios-perjudicados-por-ally-reciben-80-millones-en-danos/>.

⁸¹ Patrice Ficklin, *Provident Settlement Administrator to contact eligible borrowers soon*, Consumer Financial Protection Bureau (Sept. 28, 2016), <http://www.consumerfinance.gov/about-us/blog/provident-settlement-administrator-contact-eligible-borrowers-soon/>.

⁸² Patrice Ficklin, *Administrador del Acuerdo de Provident planea ponerse en contacto con prestatarios elegibles próximamente*, Consumer Financial Protection Bureau (Oct. 6, 2016), <http://www.consumerfinance.gov/about-us/blog/administrador-del-acuerdo-de-provident-planea-ponerse-en-contacto-con-prestatarios-elegibles-proximamente/>.

⁸³ Patrice Ficklin, *What you need to know to get money from the settlement with Honda Finance for overcharging minorities*, Consumer Financial Protection Bureau (Oct. 3, 2016), <http://www.consumerfinance.gov/about-us/blog/what-you-need-know-get-money-settlement-honda-finance-overcharging-minorities/>.

⁸⁴ Patrice Ficklin, *Lo que necesita saber para recibir dinero del acuerdo de compensación con Honda Finance por cobrarles de más a las minorías*, Consumer Financial Protection Bureau (Oct. 11, 2016), <http://www.consumerfinance.gov/about-us/blog/lo-que-necesita-saber-para-recibir-dinero-del-acuerdo-de-compensacion-con-honda-finance-por-cobrarles-de-mas-las-minorias/>.

⁸⁵ Patrice Ficklin, *You have the right to be treated fairly in the financial marketplace*, Consumer Financial Protection Bureau (Apr. 29, 2016), <http://www.consumerfinance.gov/about-us/blog/you-have-right-be-treated-fairly-financial-marketplace/>.

⁸⁶ Patrice Ficklin, *Usted tiene derecho a que lo traten de manera justa en el mercado financiero*, Consumer Financial Protection Bureau (May 2, 2016), <http://www.consumerfinance.gov/about-us/blog/usted-tiene-derecho-que-lo-traten-de-manera-justa-en-el-mercado-financiero/>.

⁸⁷ Brian Kreiswirth & Anna-Marie Tabor, *What you need to know about the Equal Credit Opportunity Act and how it can help you: Why it was passed and what it is*, Consumer Financial Protection Bureau (Oct. 31, 2016), <http://www.consumerfinance.gov/about-us/blog/what-you-need-know-about-equal-credit-opportunity-act-and-how-it-can-help-you-why-it-was-passed-and-what-it/>.

⁸⁸ Rebecca Gelfond & Frank Vespa-Papaleo, *What you need to know about the Equal Credit Opportunity Act and how it can help you: Know your rights*, Consumer Financial Protection Bureau (Nov. 2, 2016),

shopping for an auto loan.⁹⁰

The blog posts may be accessed any time at www.consumerfinance.gov/blog.

6.2 Supervisory Highlights

Supervisory Highlights reports anchor the Bureau's efforts to communicate about the Bureau's supervisory activity. Because the Bureau's supervisory process is confidential, *Supervisory Highlights* reports provide information on supervisory trends the Bureau observes, without identifying specific entities, as well as information on public enforcement matters that arise from supervisory reviews. In 2016, *Supervisory Highlights* covered many topical issues pertaining to fair lending, including mortgage servicing, HMDA examinations where institutions improperly coded actions taken on conditionally-approved applications with unmet underwriting conditions, LEP consumers, redlining, and settlement updates for recent enforcement actions that originated in the supervisory process.

More information about the topics discussed this year in *Supervisory Highlights* can be found in Section 2.1 of this Report. As with all Bureau resources, all editions of *Supervisory Highlights* are available on www.consumerfinance.gov/reports.

<http://www.consumerfinance.gov/about-us/blog/what-you-need-know-about-equal-credit-opportunity-act-and-how-it-can-help-you-know-your-rights/>.

⁸⁹ Patrice Ficklin, *Fair Lending priorities in the new year*, Consumer Financial Protection Bureau (Dec. 16, 2016), <http://www.consumerfinance.gov/about-us/blog/fair-lending-priorities-new-year/>.

⁹⁰ Patrice Ficklin & Daniel Dodd-Ramirez, *Don't get taken for a ride; protect yourself from an auto loan you can't afford*, Consumer Financial Protection Bureau (July 5, 2016), <http://www.consumerfinance.gov/about-us/blog/dont-get-taken-ride-protect-yourself-auto-loan-you-cant-afford/>.

6.3 Speaking Engagements & Roundtables

To meet our mission of educating and informing stakeholders about fair lending, the Office of Fair Lending and Equal Opportunity had the opportunity to participate in a number of outreach speaking events and roundtables throughout 2016. In these events, we shared information on fair lending priorities, emerging issues, and heard feedback from our stakeholders on the work we do.

Fair Lending staff attended numerous roundtables throughout the year on a variety of issues related to fair lending. Some examples of the topics covered include student lending, language access issues, HMDA, small business lending, mortgage servicing, and credit reporting.



CFPB Director Richard Cordray, External Affairs Assistant Director Zixta Martinez, and Fair Lending Director Patrice Ficklin with participants from an African-American leaders roundtable.



Bureau staff meet with participants from a roundtable on fair lending.

7. Interagency reporting

Pursuant to ECOA, the CFPB is required to file a report to Congress describing the administration of its functions under ECOA, providing an assessment of the extent to which compliance with ECOA has been achieved, and giving a summary of public enforcement actions taken by other agencies with administrative enforcement responsibilities under ECOA.⁹¹ This section of this report provides the following information:

- a description of the CFPB's and other agencies' ECOA enforcement efforts; and
- an assessment of compliance with ECOA.

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.⁹²

7.1 ECOA enforcement

The enforcement efforts and compliance assessments made by all the agencies assigned enforcement authority under Section 704 of ECOA are discussed in this section.

⁹¹ 15 U.S.C. § 1691f.

⁹² 12 U.S.C. § 2807.

7.1.1 Public enforcement actions

In addition to the CFPB, the agencies charged with administrative enforcement of ECOA under Section 704 include: the FRB, the FDIC, the OCC, and the NCUA (collectively, the FFIEC agencies)⁹³; the FTC, the Farm Credit Administration (FCA), the Department of Transportation (DOT), the Securities and Exchange Commission (SEC), the Small Business Administration (SBA), and the Grain Inspection, Packers and Stockyards Administration (GIPSA) of the Department of Agriculture.⁹⁴ In 2016, CFPB had two public enforcement actions for violations of ECOA, and the OCC issued one public enforcement action for violations of ECOA and/or Regulation B.

7.1.2 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:

TABLE 1: MOST FREQUENTLY CITED REGULATION B VIOLATIONS BY FFIEC AGENCIES: 2016

| FFIEC Agencies Reporting | Regulation B Violations: 2016 |
|----------------------------|---|
| CFPB, FDIC, FRB, NCUA, OCC | 12 C.F.R. §§ 1002.4(a): Discrimination on a prohibited basis in a credit transaction. |
| | 12 C.F.R. § 1002.6(b): Improperly considering age, receipt of public assistance, certain other income, or another prohibited basis in a system of |

⁹³ The FFIEC is a “formal interagency body empowered to prescribe uniform principles, standards, and report forms for the federal examination of financial institutions” by the member agencies listed above and the State Liaison Committee “and to make recommendations to promote uniformity in the supervision of financial institutions.” Federal Financial Institutions Examination Council, <http://www.ffiec.gov> (last visited March 31, 2017).

⁹⁴ 15 U.S.C. § 1691c.

evaluating applicant creditworthiness.

12 C.F.R. § 1002.7(d)(1): Improperly requiring the signature of an applicant's spouse or other person.

12 C.F.R. §§ 1002.9(a)(1), (a)(1)(i), (a)(2), (b), (b)(2), (c): Failure to timely notify an applicant when an application is denied; failure to provide notice to the applicant 30 days after receiving a completed application concerning the creditor's approval of, counteroffer or adverse action on the application; failure to provide sufficient information in an adverse action notification, including the specific reasons the application was denied; failure to timely and/or appropriately notify an applicant of either action taken or of incompleteness after receiving an application that is incomplete.

12 C.F.R. §§ 1002.12(b)(1), (b)(1)(ii)(A): Failure to preserve records on actions taken on an application or of incompleteness.

12 C.F.R. §§ 1002.13(a)(1)(i): Failure to request information on an application pertaining to an applicant's ethnicity,

12 C.F.R. §14(a), (a)(1): Failure to routinely provide an applicant with a copy of all appraisals and other written valuations developed in connection with an application for credit that is to be secured by a first lien on a dwelling, and/or failure to provide an applicant with a notice in writing of the applicant's right to receive a copy of all written appraisals developed in connection with the application.

TABLE 2: MOST FREQUENTLY CITED REGULATION B VIOLATIONS BY OTHER ECOA AGENCIES, 2016

| Other ECOA Agencies | Regulation B Violations: 2016 |
|---------------------|---|
| FCA | <p>12 C.F.R. § 1002.9: Failure to timely notify an applicant when an application is denied; failure to provide sufficient information in an adverse action notification, including the specific reasons the application was denied.</p> <p>12 C.F.R. § 1002.13(a)(1): Failure to request and collect information about the race, ethnicity, sex, marital status, and age of applicants seeking certain types of mortgage loans.</p> |

The GIPSA, the SEC, and the SBA reported that they received no complaints based on ECOA or Regulation B in 2016. In 2016, the DOT reported that it received a “small number of consumer inquiries or complaints concerning credit matters possibly covered by ECOA,” which it “processed informally.” The FTC is an enforcement agency and does not conduct compliance examinations.

7.2 Referrals to the Department of Justice

In 2016, the FFIEC agencies including the CFPB referred a total of 20 matters to the DOJ. The FDIC referred four matters to the DOJ. These matters alleged discriminatory treatment of persons in credit transactions due to protected characteristics, including age, race, national origin, and receipt of public assistance income. The FRB referred seven matters to the DOJ. These matters alleged discriminatory treatment of persons in credit transactions due to protected characteristics, including race, national origin, and marital status. The OCC referred one matter to the DOJ on the basis of marital status discrimination. The CFPB referred eight matters to the DOJ during 2016, finding discrimination in credit transactions on the following prohibited bases: race, national origin, age, receipt of public assistance income, sex, and marital status.

7.3 Reporting on the Home Mortgage Disclosure Act

The CFPB's annual HMDA reporting requirement calls for the CFPB, in consultation with the Department of Housing and Urban Development (HUD), to report annually on the utility of HMDA's requirement that covered lenders itemize loan data in order to disclose the number and dollar amount of certain mortgage loans and applications, grouped according to various characteristics.⁹⁵ The CFPB, in consultation with HUD, finds that itemization and tabulation of these data further the purposes of HMDA. For more information on the Bureau's proposed amendments to HMDA's implementing regulation, Regulation C, please see the Rulemaking section of this report (Section 4).

⁹⁵ See 12 U.S.C. § 2807.

8. Conclusion

In this, our fifth Fair Lending Report to Congress, we outline our work in furtherance of our statutory mandate to ensure fair, equitable, and nondiscriminatory access to credit. Our work continues to reflect the areas that pose the greatest risk of consumer harm, and we continue to reprioritize our approach to better position our work to understand and address emerging issues. Our multipronged approach uses the full variety of tools at our disposal – supervision, enforcement, rulemaking, outreach, research, data-driven prioritization, interagency coordination, and more. We are pleased to present this report as we continue to fulfill our statutory mandate as well as the Bureau’s mission to help consumer finance markets work by making rules more effective, by consistently and fairly enforcing these rules, and by empowering consumers to take more control over their economic lives.

APPENDIX A:

Defined terms

| TERM | DEFINITION |
|----------------|---|
| Bureau | The Consumer Financial Protection Bureau |
| CFPB | The Consumer Financial Protection Bureau |
| CMS | Compliance Management System |
| CRA | Community Reinvestment Act |
| Dodd-Frank Act | The Dodd-Frank Wall Street Reform and Consumer Protection Act |
| DOJ | The U.S. Department of Justice |
| DOT | The U.S. Department of Transportation |
| ECOA | The Equal Credit Opportunity Act |

| | |
|-----------------------|---|
| FCA | Farm Credit Administration |
| FDIC | The U.S. Federal Deposit Insurance Corporation |
| Federal Reserve Board | The U.S. Board of Governors of the Federal Reserve System |
| FFIEC | The U.S. 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. |
| FRB | The U.S. Board of Governors of the Federal Reserve System |
| FTC | The U.S. Federal Trade Commission |
| GIPSA | Grain Inspection, Packers and Stockyards Administration of the U.S. Department of Agriculture |
| HMDA | The Home Mortgage Disclosure Act |
| HUD | The U.S. Department of Housing and Urban Development |
| LEP | Limited English Proficiency or Limited English Proficient |

| | |
|------|--|
| LGBT | Lesbian, gay, bisexual and transgender |
| NCUA | The National Credit Union Administration |
| OCC | The U.S. Office of the Comptroller of the Currency |
| SBA | Small Business Administration |
| SEC | U.S. Securities and Exchange Commission |