

2013 Interagency Fair Lending Hot Topics

Outlook Live Webinar – October 24, 2013

Non-Discrimination Working Group of the Financial Fraud Enforcement Task Force

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Overview

- **HMDA and Regulation C Compliance**
 - Anna-Marie Tabor, Deputy Fair Lending Director, Office of Fair Lending and Equal Opportunity, Consumer Financial Protection Bureau
- **NCUA's Fair Lending Compliance Program**
 - Tonya Sweat, Director, Consumer Compliance Policy and Outreach, National Credit Union Administration
- **Developing a Strong Compliance Management System for Fair Lending**
 - Tara L. Oxley, Chief, Fair Lending and CRA Examinations, Federal Deposit Insurance Corporation
- **Pricing Risks for Mortgages and Non-Mortgages**
 - Maureen Yap, Special Counsel/Manager, Fair Lending Enforcement Section, Division of Consumer and Community Affairs, Federal Reserve Board

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Overview (continued)

- **Third-Party Service Provider Oversight: Supervision of Auto Dealers**
 - Mayte Rivera, Deputy Commissioner, CRA, Fair Lending and Community Affairs, Massachusetts Division of Banks
- **Loan Modification and Loss Mitigation**
 - Mark L. Hotz, National Bank Examiner - Compliance Specialist, Office of the Comptroller of the Currency
- **Fair Lending Updates**
 - Sara Pratt, Deputy Assistant Secretary, Office of Enforcement Programs, Office of Fair Housing and Equal Opportunity, U.S. Department of Housing and Urban Development
- **Recent Mortgage Pricing Cases**
 - Coty Montag, Deputy Chief, Housing and Civil Enforcement Section, Civil Rights Division, U.S. Department of Justice

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HMDA and Regulation C Compliance

*Anna Tabor, Deputy Fair Lending Director
Office of Fair Lending and Equal Opportunity
Consumer Financial Protection Bureau*

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HMDA and Regulation C

- Require certain lenders to collect and report information about most mortgage applications as well as most originated and purchased mortgage loans
- Include data about the borrower, the loan, and the property securing the loan
- Include data on race, ethnicity, and sex

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HMDA Purposes and Uses

- Help determine whether financial institutions are serving the housing needs of their communities
- Assist public officials in distributing public-sector investment so as to attract private investment to areas where it is needed
- Assist in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes
- The CFPB uses HMDA data extensively in discharging the rule-writing, research, supervisory, and enforcement responsibilities conferred upon it by the Dodd-Frank Act

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Effective HMDA Compliance Management

- Each institution should ensure that its HMDA compliance management system is tailored appropriately to its operations
- Comprehensive policies, procedures, and internal controls to ensure ongoing compliance with the collection and reporting requirements set forth in HMDA and Regulation C

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Effective HMDA Compliance Management *(continued)*

- As appropriate to the size and complexity of the institution, comprehensive and regular pre-submission HMDA audits, to test and evaluate data accuracy, and that include a reasonable amount of transactional analysis, written reports detailing findings, and recommendations for corrective actions
- Reviews of any regulatory changes that may have occurred since the prior examination and/or data collection and reporting cycle
- Reporting systems that are appropriate given the volume and scope of the institution's lending operations

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Effective HMDA Compliance Management *(continued)*

- One or more individuals assigned responsibility for oversight, data entry, and data updates, including the timely and accurate reporting of the institution's data
- Appropriate, sufficient, and periodic employee training to ensure responsible personnel understand HMDA and Regulation C standards and reporting requirements
- Effective corrective action in response to previously identified deficiencies
- Appropriate board and management oversight

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CFPB HMDA Verification Reviews

- CFPB HMDA Examination Procedures – Located in the [CFPB Supervision and Examination Manual](#)
- Resubmission Schedule and Guidelines issued through [CFPB Bulletin 2013-11](#)
- When violations are identified, CFPB action may include:
 - Requiring correction and resubmission of the erroneous data
 - Potentially issuing enforcement action and civil money penalties

HMDA Enforcement Factors

- The size of an institution's HMDA LAR and the observed error rate
- Whether an institution self-identified its HMDA errors outside the context of an active examination or examination-related activity, and independently took appropriate corrective action

HMDA Enforcement Factors (continued)

- If the institution has previously been on notice regarding high HMDA LAR errors such that the institution should have known of ongoing HMDA LAR error rates in excess of the resubmission threshold:
 - Whether error rates observed during the current exam are sufficiently lower such that they should be viewed as a sign of substantial progress in improving HMDA compliance management; or
 - Whether, despite notice, error rates have remained high or have increased

HMDA Enforcement Actions

- October 2013 Consent Orders
 - Mortgage Master (Non-depository)
 - Washington Federal (Depository)
- Terms include:
 - Payment of civil money penalties
 - Development and implementation of an effective HMDA compliance management system to prevent future violations
 - Correction and resubmission of data

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NCUA's Fair Lending Compliance Program

*Tonya Sweat, Director
Consumer Compliance Policy and Outreach
National Credit Union Administration*

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NCUA Nondiscrimination Requirements

- With regard to real estate-related loans, prohibits federal credit unions from, among other things:
 - Engaging in lending practices that discriminate or have the effect of discriminating on the basis of race, color, national origin, religion, sex, handicap, or familial status (having children under the age of 18)
 - Using an appraisal if it knows or should know the appraisal is based on a prohibited basis
 - Engaging in advertising that indicates discrimination on a prohibited basis

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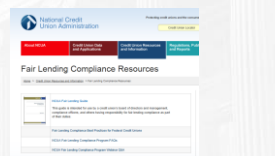
Letter to Federal Credit Unions 13-FCU-02

Letter: [13-FCU-02](#)

- Restated NCUA's policy on the fair lending compliance program
- Explained criteria for selecting federal credit unions for a fair lending examination or offsite supervision contact
- Announced new fair lending educational and compliance tools

NCUA Fair Lending Resources

- [NCUA Fair Lending Guide](#)
- [Fair Lending Compliance Resources](#)
 - Fair lending best practices and FAQs



Contact Us

- National Credit Union Administration
Office of Consumer Protection
1775 Duke Street
Alexandria, VA 22314
Phone: 703-518-1140
Fax: 703-518-6672
ocpmail@ncua.gov
- Consumer Compliance and Fair Lending
compliance@ncua.gov
- Other Resources
www.ncua.gov
www.mycreditunion.gov

Developing a Strong Compliance Management System for Fair Lending

*Tara L. Oxley, Chief
Fair Lending and CRA Examinations
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Components of a Strong Compliance Management System

There are three key components of a strong and effective CMS that supports fair lending:

- Board and Senior Management Oversight
- Strong Program
- Regular Audits

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Board and Senior Management Oversight

- Conduct a fair lending risk assessment
 - Know where you have fair lending risk
- Know your products
 - Especially when new products are being considered
- Know your data
 - Review loan data/trade area

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Strong Program

- Written policies and procedures
 - Should be clear and quantifiable
- Monitoring
 - Secondary review process/exceptions
- Training
 - For all personnel with customer contact/address all stages of the loan process
- Consumer complaints
 - Should be a process in place to handle complaints

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Regular Audits

- Complements a bank's internal monitoring system
- Scope and frequency is based on several factors
- Self-tests and self-evaluations can determine if appropriate controls are in place
 - Self-tests (i.e., mystery shopping)
 - Creates information
 - Self-evaluations (i.e., comparative file reviews)
 - Uses data readily available

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Pricing Risks for Mortgages and Non-Mortgages

*Maureen Yap, Special Counsel/Manager
Fair Lending Enforcement Section
Division of Consumer and Community Affairs
Federal Reserve Board*

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Overview of Pricing Risks

- Pricing has long been recognized as a fair lending risk
- Pricing risk includes the risk of disparities in the APR, interest rate, fees, points, overages, and mark-ups on a prohibited basis
- Common fair lending risk factors include:
 - Financial incentives tied to the price of the loan
 - Broad discretion in setting prices, interpreting vague criteria, or granting exceptions
 - Lack of documentation regarding the reasons for exceptions

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Pricing Risks for Mortgages

- Regulation Z Mortgage Loan Origination Compensation rule prohibits compensation to the loan originator based on the terms and conditions of the loan
- But Regulation Z does not eliminate fair lending risk
- For example, the bank may set a different target price (interest rate and fees) for each loan originator to offer to consumers
- Fair lending risks can arise if the high-price loan originators are concentrated in minority areas
- Federal Reserve has had one referral on this issue

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Pricing Risks for Mortgages (continued)

- Banks that set target prices for loan originators should:
 - Check for compliance with Regulation Z
 - Monitor pricing across loan originators, including the APR, interest rate, fees, and “overages” (price above par interest rate and zero discretionary fees); use statistical analysis if there is sufficient volume
 - Recognize the risk of potential reverse redlining where high-price loan originators are concentrated in minority neighborhoods. Consider mapping loans by target price
 - Recognize that setting target prices for loan originators raises fair lending risks

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Pricing Risks for Indirect Auto Lending

- Three-party transaction: consumer, auto dealer, bank
- Fair lending risks arise where:
 - Bank and dealer have financial incentives to mark up the contract interest rate above the buy rate
 - Bank grants the dealer discretion to set the contract interest rate
 - Bank does not monitor the pricing across its portfolio
- Federal Reserve has had one referral on this issue, which resulted in a DOJ public enforcement action

Pricing Risks for Indirect Auto Lending (continued)

- Banks that provide financial incentives tied to the price of the loan and allow pricing discretion should:
 - Code loans by gender, ethnicity, and majority minority census tract (more than 50% minority)
 - Monitor the mark-ups
 - Across the entire portfolio
 - On a periodic basis based on loan volume (ensuring adequate time to identify trends)
 - Include non-mark up loans
 - Use statistical analysis if there is sufficient volume

Pricing Risks for Unsecured Consumer Loans

- Banks offer small-dollar unsecured loans that serve a critical need for consumers
- Fair lending risks arise where:
 - Bank grants the loan originators discretion to set the interest rate and fees (including for employee loans)
 - Bank does not require that loan originators clearly and consistently document exceptions
 - Bank does not monitor the pricing across loan originators
- Federal Reserve has had two referrals on this issue

**Pricing Risks for
Unsecured Consumer Loans *(continued)***

- We recognize the unsecured consumer loans can be a source of responsible credit for consumers
- Banks that offer unsecured consumer loans can mitigate the fair lending risk by:
 - Using a rate sheet that provides clear guidance to loan originators
 - Documenting any price exceptions clearly and consistently

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**Pricing Risks for
Unsecured Consumer Loans *(continued)***

- For banks that permit discretion in pricing unsecured consumer loans, more analysis may be warranted, such as:
 - Coding loans by gender, ethnicity, and majority minority census tract (more than 50% minority)
 - Monitoring pricing across loan originators, including the APR, interest rate, and fees
 - Using statistical analysis if there is sufficient volume

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**Third-Party Service Provider
Oversight:
Supervision of Auto Dealers**

*Mayte Rivera, Deputy Commissioner
CRA, Fair Lending and Community Affairs
Massachusetts Division of Banks*

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Third-Party Service Provider Oversight: Supervision of Auto Dealers

Division of Banks at a Glance: Supervisory Role

- Evaluates for Safety and Soundness; Compliance with Consumer Protection Laws, including CRA and Fair Lending Act
- Number of Depository Institutions: 209
- Number of Licensees: 7,945
 - Includes mortgage companies, mortgage loan originators, money services businesses, consumer finance companies, and debt collectors

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Third-Party Service Provider Oversight: Supervision of Auto Dealers (continued)

- State's Perspective:
- Examiner's consideration:
 - Does institution mitigate fair lending through:
 - Risk assessment;
 - Ongoing risk monitoring through strong Compliance Management Systems (CMS);
- Examiner's goal:
 - Reduce overall fair lending risk factors by providing clear requirements and recommendations for CMS, and
 - Eliminate discrimination through oversight, and ongoing evaluation of institutions and licenses.

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Third-Party Service Provider Oversight: Supervision of Auto Dealers (continued)

- Scoping considerations when evaluating the role of auto dealers
 - Size of consumer loan portfolio
 - Fee agreements with auto dealer(s)
 - Loan application data (timeframe: from end-date of last examination to YTD)
 - Data analysis: pricing on approvals; review of denials

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Third-Party Service Provider Oversight: Supervision of Auto Dealers *(continued)*

- Evaluating the Role of Third-Party Service Providers, i.e. Auto Dealers: Some Lessons
 - Best Practices:
 - › Strong procedures between third-party service provider and lender.
 - › Comprehensive contracts and agreements between parties.
 - › Routine monitoring reports from service-provider to creditor/lender.
 - › Tracked fair lending training participation by third-party service provider.

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Third-Party Service Provider Oversight: Supervision of Auto Dealers *(continued)*

- Fair Lending Deficiencies: Implications
 - Financial loss
 - Litigation
 - Reputational damage
 - CRA downgrade

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Loan Modification and Loss Mitigation

*Mark L. Hotz, National Bank Examiner - Compliance Specialist
Office of the Comptroller of the Currency*

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Loan Modification and Loss Mitigation

Fair lending requirements apply throughout the life of the loan!

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Loan Modification and Loss Mitigation FL Risk Indicators

- Substantial disparities among options provided by prohibited basis group characteristic
- Substantial disparities in decision processing times by prohibited basis group characteristic
- Lack of clear loan file documentation for loan modification or loss mitigation decisions, granting of policy exceptions, or reasons for fee waivers
- Weak or non-existent process and controls to ensure ongoing fair lending compliance, including that of third-party vendors

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Loan Modification and Loss Mitigation FL Risk Management

- Policies and procedures
 - Products and options
 - Underwriting: rate, terms, conditions
 - Policy exceptions
 - Decision/processing timeframes
 - File documentation
- Analysis, monitoring and testing
 - Complaints and litigation
 - Third-party servicers and vendors
- Training

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Loan Modification and Loss Mitigation Resources

- OCC Specific Materials
 - Loan Servicing and Loss Mitigation Indicators ([OCC Fair Lending Handbook](#) – January 2010)
 - OCC Mortgage Foreclosure Guidance Bulletin ([OCC 2011-29](#) - June 2011)
- TILA/RESPA Mortgage Servicing Standards – January 2014

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Fair Lending Updates

*Sara Pratt, Deputy Assistant Secretary
Office of Enforcement Programs
Office of Fair Housing and Equal Opportunity
U.S. Department of Housing and Urban
Development*

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Recent Mortgage Pricing Cases

*Coty Montag, Deputy Chief
Housing and Civil Enforcement Section
Civil Rights Division, U.S. Department of Justice*

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Mortgage Pricing Cases Filed in September 2013

- *United States v. Plaza Home Mortgage, Inc.* (S.D. Cal.)
- *United States v. Chevy Chase Bank, through its successor in interest* (E.D. Va.)
- *United States v. Southport Bank* (E.D. Wis.)

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Plaza Home Mortgage

- FTC referral
- Wholesale pricing discrimination from 2006 to 2010
- Range of broker fee disparities
 - African-American borrowers – 28.2 to 93.8 basis points; higher in individual MSAs
 - Hispanic borrowers – 34.4 to 61.4 basis points; higher in individual MSAs

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Plaza Home Mortgage (continued)

- Complaint and proposed consent order filed on September 26, 2013
- Court entered consent order on October 1
- Monetary Relief: \$3 million to African-American and Hispanic victims
- DOJ determines damages for victims
- Payments will be distributed by third party administrator

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Plaza Home Mortgage *(continued)*

- Injunctive relief includes
 - Revised pricing policies and procedures
 - Broker monitoring program
 - Fair lending training
 - Maintenance of a community enrichment program

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Chevy Chase Bank

- OCC referral
- Retail and wholesale pricing discrimination against African-American and Hispanic borrowers from 2006 to 2009
- Retail net overage disparities ranged from 7 to 23 basis points; more in individual branches
- Wholesale APR disparities ranged from 4.9 to 7.5 basis points

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Chevy Chase Bank *(continued)*

- Complaint and proposed settlement agreement and order filed on September 30, 2013
- Court entered the order on October 3
- Monetary relief: \$2.85 million to more than 3,100 African-American and Hispanic victims
- DOJ determines damages for victims
- Payments will be distributed by third party administrator

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Southport Bank

- FDIC referral
- Wholesale pricing discrimination in 2007 and 2008
- Range of broker fee disparities
 - African-American borrowers – 43 to 134 basis points
 - Hispanic borrowers – 61 to 82 basis points

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Southport Bank (continued)

- The United States filed a complaint and proposed consent order on September 26, 2013
- Court entered order on October 11
- Southport will pay \$687,000 to African-American and Hispanic victims
- DOJ determines damages for victims
- Bank no longer in wholesale business; will notify DOJ if it intends to reenter business

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Resources

- [Interagency Statement and on Fair Lending Compliance and Qualified Mortgages, October 22, 2013](#)
- [Interagency Fair Lending Examination Procedures and Appendix](#)
- [CFPB ECOA Baseline Review Procedures](#)
- [CFPB ECOA Targeted Review Procedures](#)
- [HUD Enforcement Actions](#)
- [DOJ Enforcement Actions](#)
- [Massachusetts Enforcement Actions](#)

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Prior Outlook Live FL Topics

- [Indirect Auto Lending – Fair Lending Considerations](#) – August 6, 2013 (with Federal Reserve Proxy Methodology)
- [Fair Lending Hot Topics](#) – October 17, 2012
- [Fair Lending Issues and Hot Topics](#) – November 2, 2011

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Questions



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