

2017 Interagency Fair Lending Hot Topics

Outlook Live Webinar – November 16, 2017

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Overview

- **HMDA Update**

- *Eric Wang, Deputy Fair Lending Director, Office of Fair Lending and Equal Opportunity, Consumer Financial Protection Bureau*

- **What's Up with HMDA?**

- *Vonda Eanes, Director, CRA and Fair Lending Policy, Office of the Comptroller of the Currency*

- **Special Purpose Credit Programs**

- *Matthew Nixon, Program Officer, Office of Consumer Financial Protection and Access, National Credit Union Administration*

- **Compliance Management for Consumer Loans**

- *Katrina Blodgett, Counsel, Fair Lending Enforcement Section, Division of Consumer and Community Affairs, Federal Reserve Board*

Overview *(continued)*

- **Fair Lending Monitoring Programs**
 - *Tara L. Oxley, Chief, Fair Lending and CRA Examinations, Federal Deposit Insurance Corporation*
- **Recent Common Issues in Consumer Complaints at HUD**
 - *Jacy Gaige, Director, Office of Systemic Investigations, U.S. Department of Housing and Urban Development*
- **Denial Investigations and Cases**
 - *Marta Campos, Trial Attorney, Housing and Civil Enforcement Section, Civil Rights Division, U.S. Department of Justice*

HMDA Update

*Eric Wang, Deputy Fair Lending Director
Office of Fair Lending and
Equal Opportunity
Consumer Financial Protection Bureau*

Agenda

1. FFIEC HMDA Examiner Transaction Testing Guidelines
2. HMDA Examination
3. HMDA Data Processing
4. CFPB Resources for HMDA Reporters

FFIEC HMDA Examiner Transaction Testing Guidelines

- Apply to examinations of HMDA data collected beginning in 2018 and reported beginning in 2019
- Eliminate the file error resubmission threshold
- Establish, for the purpose of counting errors toward the field error resubmission threshold, allowable tolerances for certain data fields
- Provide a more lenient 10 percent field error resubmission threshold for financial institutions with LAR counts of 100 or less
- Provide uniform guidelines for all financial institutions that report HMDA data

HMDA Examination

- CFPB and the other FFIEC agencies are updating the HMDA Examination Procedures and Getting It Right Guide
- CFPB’s approach in initial examinations for compliance with the revised Regulation C will be consistent with the approach taken in the implementation of other statutory and regulatory changes requiring significant systems and operational modifications
- CFPB did not prioritize any “key fields” because we would like to maintain the ability to examine all HMDA data fields for accuracy to help ensure the integrity of the entire HMDA data set

HMDA Data Processing

- CFPB will assume the operations functions from the Federal Reserve for the HMDA data processing beginning with the HMDA data collected in 2017 and reported in 2018
- CFPB has comprehensively reviewed the HMDA reporting process with special focus on:
 - Improving upon the data collected and released
 - Reducing unnecessary burden on financial institutions
 - Modernizing and streamlining the collection and reporting of HMDA data

CFPB Resources for HMDA Reporters

- The CFPB established [a HMDA webpage](#) that provides many resources for HMDA reporters, including:
 - HMDA implementation resources, including quick reference guides, and webinars
 - Filing Instructions Guides for 2017 and 2018
 - HMDA edits for 2017 and 2018
 - Technology Preview
 - LAR Formatting Tool
 - Regulatory Inquiry
 - + more

What's Up with HMDA?

Vonda Eanes, Director

CRA and Fair Lending Policy

Office of the Comptroller of the Currency

What's Up With HMDA?

- Institutional coverage
- Expanded data collection
- Changes to reportable transactions
- Transition – Things to consider
- Agency actions
- Fair lending considerations
- Resources

Institutional Coverage

- 2017: depository institutions that meet asset size, location and originate at least 25 home purchase/refinance loans
- 2018: depository institutions that meet asset size, location and:
 - Originate at least 25 closed-end mortgage loans in each of the preceding two years; or
 - Originate at least 500 open-end lines of credit in each of the preceding two years

Expanded Data Collection

- Data Elements
 - Retains 9 data elements
 - Modifies 14 data elements
 - Added 25 new data elements
 - Total of 48 data elements, with 110 data fields

Changes to Reportable Transactions

- Adds open-end lines of credit secured by a dwelling, for home purchase, home improvement, or refinance
- Eliminates unsecured home improvement loans
- Defines “covered loans” and “reverse mortgage”
- Adds “multifamily residential structure or community” to the definition of a “dwelling”
- Adds “multifamily dwelling that is a manufactured home community” to the definition of a “manufactured home”

Transition – Things to consider

- Applications received in 2017 with action taken in 2018
 - Report using 2018 rules for institutional coverage and data collection
 - Refer to [CFPB guidance](#) on reporting race and ethnicity

Agency Actions

- Issued
 - [FFIEC Examiner Transaction Testing Guidelines](#)
 - FDIC, FRB, OCC [Interagency Guidance](#) on Designated Key Data Fields
 - FDIC, FRB, OCC [Interagency Notice of Proposed Rulemaking](#) to reconcile CRA with HMDA

Agency Actions *(continued)*

- In process
 - FFIEC HMDA Examination Procedures
 - FFIEC *Getting It Right* Guide
 - Supplementary Agency Guidance

Fair Lending Considerations

- Leverage additional data fields to enhance the risk screening process
 - Credit scores
 - Debt to income
 - Loan to value
 - Cost of loan
- Risk-focused examinations

Resources

- [Loan/Application Register \(LAR\) Formatting Tool](#)
- [HMDA Platform](#)
- [CFPB Guidance on Collection & Reporting of Race and Ethnicity](#)
- [HMDA Rule Key Dates Timeline](#)

Special Purpose Credit Programs

*Matthew Nixon, Program Officer
Office of Consumer Financial Protection and Access
National Credit Union Administration*

Types of Federal Credit Union Charters

- Single common bond (occupational and associational)
- Multiple common bond
- Community

Regulation B Special Purpose Credit Programs

- Authorized by federal or state law to benefit economically disadvantaged;
- Offered by not-for-profit organization to benefit its members or economically disadvantaged; or
- Offered by for-profit organization, if:
 - Written plan
 - Established and administered to extend credit to persons who would not normally receive such credit

Regulation B Special Purpose Credit Programs *(continued)*

- Creditor determines if program benefits “economically disadvantaged class of persons”
- Program cannot be established to evade ECOA’s nondiscrimination requirements
- Creditor may request common characteristic information to determine eligibility
- Creditor may request information needed to determine financial need

Other Targeted Credit Programs

- ECOA nondiscrimination requirements apply
- Understanding of demographics differences
- Written policies
- Life of program monitoring

Compliance Management for Consumer Loans

*Katrina Blodgett, Counsel
Fair Lending Enforcement Section
Division of Consumer and Community Affairs
Federal Reserve Board*

Overview

- The Federal Reserve's Fair Lending Authority
- Federal Reserve Referrals
- Federal Reserve Fair Lending Reviews
- Fair Lending Risks for Consumer Loan Pricing
- Elements of an Effective Compliance Management System
 - Board and Senior Management Oversight
 - Policies and Procedures
 - Risk Monitoring and Management Information Systems (MIS)
 - Internal Controls
- Federal Reserve Resources

The Federal Reserve's Fair Lending Authority

- The Federal Reserve Board supervises:
 - Over 800 state member banks (SMBs)
 - SMBs above \$10B for compliance with the Fair Housing Act
 - SMBs of \$10B or less for compliance with the Fair Housing Act, Equal Credit Opportunity Act (ECOA) and Regulation B
- The CFPB supervises institutions above \$10B for compliance with the ECOA and Regulation B
- Thus, the Federal Reserve and the CFPB share supervision authority for fair lending in mortgages for SMBs above \$10B

Federal Reserve Referrals

- Pursuant to the ECOA, if the Board has reason to believe there is a pattern or practice of discrimination, the Board must refer the matter to the DOJ
- The Federal Reserve has referred a number of matters to the DOJ, including matters regarding:
 - ✓ Redlining
 - ✓ Pricing
 - Mortgages
 - Mortgage Discount Points (Fair Lending and UDAP)
 - Unsecured Loans
 - Direct and Indirect Auto Loans
 - ✓ Underwriting
 - Maternity Leave Discrimination
 - Disability/Public Assistance Discrimination
 - ✓ Spousal Signatures
 - ✓ Credit Reporting

Federal Reserve

Fair Lending Reviews

- The Federal Reserve conducts risk-focused consumer compliance exams, including fair lending reviews
- Federal Reserve examiners evaluate the risk in the bank's products and the bank's compliance management program to determine whether further analysis is warranted
- *This discussion will focus on fair lending risks and compliance management for the pricing of consumer loans. However, the same principles would apply to developing an effective fair lending risk management program for consumer loan underwriting, and for mortgage and indirect auto pricing and underwriting. Institutions supervised by the Federal Reserve can contact their Reserve Bank for additional guidance.*

Fair Lending Risks for Consumer Loan Pricing

- Many community banks offer consumer loans that serve a critical need for consumers
- The fair lending risk for pricing arises when:
 - The bank grants the loan originators broad discretion to set the interest rate and fees
 - The bank does not use rate sheets or other pricing guidelines
 - The bank does not require the loan originators to clearly and consistently document pricing decisions, including exceptions
 - The bank does not monitor for potential pricing disparities on a prohibited basis

Elements of an Effective Compliance Management System

- Board of Directors and Senior Management Oversight
- Policies and Procedures
- Risk Monitoring and Management Information Systems (MIS)
- Internal Controls

Compliance Management: Board and Senior Management Oversight

- The bank's board and senior management should:
 - Ensure that they understand the level of risk in the bank's products, services, and business lines, including the fair lending risk in consumer loan pricing
 - Ensure that the bank has a compliance management program that is consistent with the size, complexity, and risk profile of the bank's products, services, and business lines

Compliance Management: Policies and Procedures

- Banks should:
 - Develop policies and procedures (such as rate sheets, checklists, job aids, etc.) designed to ensure consistent outcomes and prevent discrimination on a prohibited basis
 - Provide training on the fair lending risk in consumer loan pricing, and the bank's policies and procedures to appropriately control that risk

Compliance Management: Policies and Procedures *(continued)*

- Best practices include:
 - Using rate sheets or loan origination software that use clear pricing criteria, and, if applicable, clear pricing exception criteria
 - Requiring the loan originators to clearly and consistently document pricing decisions, including exceptions

Compliance Management: Risk Monitoring and MIS

- Banks should:
 - Develop risk monitoring systems commensurate with the level of discretion permitted by the bank (*best practices are on the following slides*)
 - Develop reports to provide the board of directors and senior management with the information needed to identify and evaluate fair lending risk for consumer loan pricing

Compliance Management: Risk Monitoring and MIS *(continued)*

DISCRETION: NONE

The bank implements rate sheets or automated pricing software with clear, written pricing criteria, and does not permit loan originators any discretion to deviate from the rate sheet (including fees) or automated pricing software.



RISK MONITORING

The bank should simply validate that loan originators are following the rate sheet or automated pricing software.

Compliance Management: Risk Monitoring and MIS *(continued)*

Example

DISCRETION: NONE



RISK MONITORING (example)

Rate Sheet: The bank can review a sample of files to ensure that the loan originators are following the rate sheet.

Automated Software: The bank can review the system to ensure that it is calculating the rate (and fees) correctly and does not allow overrides.

Compliance Management: Risk Monitoring and MIS *(continued)*

DISCRETION: MINIMAL

The bank implements rate sheets or automated software with clear, written pricing criteria; and clear, written pricing exception criteria. The bank does not permit loan originators any discretion to deviate from the rate sheet or automated pricing software, except for the stated pricing exceptions.



RISK MONITORING (example)

- Collect data on the exception criteria and the exceptions.
- Monitor the exceptions (frequency and amount) for potential disparities on a prohibited basis.

Compliance Management: Risk Monitoring and MIS *(continued)*

Example

DISCRETION: MINIMAL



RISK MONITORING (example)

- The bank can collect the exception data on a simple spreadsheet.
- The bank can monitor the percentage of each group (target/control) that received exceptions, and the average amount of the pricing exception received by each group (target/control).
- The greater the difference between the groups, the greater the risk. The bank should be able to explain any differences in the frequency and amount of exceptions.

Compliance Management: Risk Monitoring and MIS *(continued)*

SAMPLE SPREADSHEET – EXCEPTION CRITERIA

- *Assume a bank that allows exceptions for 2 or more years of a deposit relationship, \$5000 or more average monthly balance, or a paid-as-agreed bank loan in the past 5 years*

LOAN NUMBER	GENDER	NATIONAL ORIGIN	MAJORITY MINORITY TRACT	EXCEPTION (YES/ NO)	AMOUNT OF EXCEPTION	YEARS OF DEPOSIT RELATIONSHIP	AMOUNT OF DEPOSIT RELATIONSHIP	PAID AS AGREED BANK LOAN IN PAST 5 YEARS

Compliance Management: Risk Monitoring and MIS *(continued)*

DISCRETION: BROAD

The bank permits loan originators discretion in the pricing criteria and pricing exceptions (whether or not some of the pricing criteria and exception criteria are stated on a rate sheet or in automated pricing software).



RISK MONITORING

- Collect data on the interest rate, discretionary fees, exceptions, and all pricing criteria used by the bank.
- Monitor pricing (including the interest rate and fees) for potential disparities on a prohibited basis.

Compliance Management: Risk Monitoring and MIS *(continued)*

Example

DISCRETION: BROAD



RISK MONITORING (example)

- The bank can collect the data on a simple spreadsheet, but accurate data collection may be challenging as the bank permits loan originators broad discretion in the pricing criteria.
- The bank can monitor the average interest rate and average discretionary fees for each group (target/control).
- The greater the difference between the groups, the greater the risk.
- The bank should be able to explain any differences in the interest rates and discretionary fees. Again, it may be difficult for the bank to explain differences if the bank permits the loans originators broad discretion and the pricing criteria are not consistent for all borrowers.

Compliance Management: Risk Monitoring and MIS *(continued)*

SAMPLE SPREADSHEET – ALL PRICING CRITERIA

- *Assume a bank that prices based on the credit score (undefined), the amount of deposit relationship (undefined), a paid-as-agreed bank loan (undefined time period), and “other factors.”*
- *Note that it may be difficult for the bank to explain any disparities without clearly defined criteria.*

LOAN NUMBER	GENDER	NATIONAL ORIGIN	MAJORITY MINORITY TRACT	INTEREST RATE	DISCRETIONARY FEES	CREDIT SCORE	AMOUNT OF DEPOSIT RELATIONSHIP	PAID AS AGREED BANK LOAN

Compliance Management: Risk Monitoring and MIS *(continued)*

- Practice tip:
 - For information on the Federal Reserve’s step-by-step guide to coding for gender and ethnicity, see the 2013 Consumer Compliance Outlook Live webinar, [Indirect Auto Lending — Fair Lending Considerations](#)

Compliance Management: Internal Controls

- Banks should:
 - Develop periodic fair lending self-assessment processes, such as compliance reviews and audits, that are appropriate for the size, complexity, and risk profile of the bank's products, services, and business lines

Federal Reserve Resources

- [Consumer Compliance Outlook](#) – Federal Reserve publication dedicated to consumer compliance
- [Outlook Live](#) – Federal Reserve webinars on consumer compliance topics
- [Community Banking Connections](#) – Federal Reserve publication and website dedicated to providing guidance, resources and tools for community banks
- [CA Letter 09-6: Interagency Fair Lending Examination Procedures](#) and [Appendix](#)
- [CA Letter 13-19: Community Bank Risk-Focused Consumer Compliance Supervision Program](#)

Fair Lending Monitoring Programs

*Tara L. Oxley, Chief
Fair Lending and CRA Examinations
Federal Deposit Insurance Corporation*

Agenda

- What is a Fair Lending Monitoring Program and Why is it Important?
- Lending Data Analysis
 - Best Practices
 - Pricing Data Analysis
 - Underwriting Data Analysis
 - Third Party Data Analysis
 - Data Analysis for Non-HMDA Lending
- Exceptions and Overrides Review
- FDIC References

What is a Fair Lending Monitoring Program and Why is it Important?

- A strong Compliance Management System includes monitoring
- The FDIC's Compliance Manual defines "monitoring" as a proactive approach by an institution to identify procedural or training weaknesses in an effort to preclude regulatory violations. It also includes transactional testing.

Lending Data Analysis – Best Practices

- The components of a fair lending monitoring program will differ based on a bank's size and complexity but should include, at a minimum, an analysis of a bank's lending data, and an exceptions and overrides review
- Banks should conduct periodic analyses of their bank data for fair lending risk
- Reviews should be conducted on a portfolio-wide basis
 - Analysis should not be at the loan officer or branch level, unless bank can demonstrate that policies and procedures differ by loan officer or branch

Best Practices: Pricing Data Analysis

- Where no discretion in pricing, conduct a sample review of loans to confirm
- Where discretion in pricing:
 - Isolate the area of discretion and determine whether disparities exist
 - If significant raw disparities in pricing are found, analyze such loans, to determine if difference is due to credit-related factors
 - If unexplained disparities remain, take corrective action

Best Practices: Underwriting Data Analysis

- No discretion in underwriting, conduct a sample review of loans to confirm
- Discretion in underwriting:
 - Isolate area of discretion and determine whether disparities exist
 - If there are significant raw disparities in underwriting, analyze such loans to determine if difference is due to credit-related factors
 - If unexplained disparities remain, take corrective action

Best Practices: Third Party Data Analysis

- Risks associated with third-party relationships are the same as if the bank had performed the service directly
- Conduct analysis where discretion exists:
 - For brokers, this might be the amount of compensation each broker receives
 - For dealers, this might be the amount of discretion to mark up the buy rate
 - Analysis should be both portfolio-wide and by individual dealer or broker

Data Analysis for Non-HMDA Lending

- Banks should implement a reasonable method to identify credit applicant characteristics that are not present in all loan data
- U.S. Census list can assist with identifying gender and ethnicity
 - For gender – use first names of borrowers based on U.S. Census list of common [female](#) and [male](#) first names
 - For ethnicity – use surnames of borrowers based on [U.S. Census list](#) of common Spanish surnames

Exceptions and Overrides Reviews

- Review any written guidelines relating to exceptions and overrides
 - If policies are vague or allow for discretion, fair lending risk is heightened
- Conduct sample review to determine if guidelines were followed

Exceptions and Overrides Reviews

(continued)

- Collect data on the exception criteria and maintain a tracking spreadsheet
 - Review spreadsheet to determine if borrowers are being treated differently, on a prohibited basis
- Determine if any revisions or clarifications to policy, as well as training, are needed

FDIC References

- [Directors' Resource Center - Technical Assistance Video Program](#)
- [FDIC Compliance Examination Manual](#)
- [Financial Institution Letter \(FIL\) 44-2008, Guidance for Managing Third Party Risk](#)

Recent Common Issues in Consumer Complaints at HUD

Jacy Gaige, Director

Office of Systemic Investigations

The Office of Fair Housing and Equal Opportunity

The Department of Housing and Urban Development

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Recent Common Issues in Consumer Complaints at HUD

- HUD FHEO investigates complaints under the Fair Housing Act filed by individuals, fair housing groups, or Secretary-Initiated
- Over 8,000 complaints were filed in FY 2016, including several hundred lending complaints
 - Disability (58%)
 - Race, color and national origin (38%)
 - Familial Status (11%)
 - Sex (10%)
 - Religion (2%)

Recent Common Issues in Consumer Complaints at HUD *(continued)*

- Policies
 - Treatment of disability income
 - Treatment of parental leave income
 - Collateral policies
 - Reasonable accommodations
 - Targeting tools for marketing through social media
- Individual Treatment
 - Inferior assistance in overcoming deficiencies
 - Foreclosure rescue scams targeted at protected classes

Recent Common Issues in Consumer Complaints at HUD *(continued)*

- Disability Income
 - Requirements for verification of disability, such as letter from a doctor
 - Requirements for verification of 3-year continuation of receipt of disability income, such as letter from SSA
 - Requirements for co-signor
- Reasonable Accommodations
 - Failure to accommodate missed deadlines or other non-fundamental alterations

Recent Common Issues in Consumer Complaints at HUD *(continued)*

- Parental Leave Income (familial status and gender)
 - Requiring a parent to actually return to work before income can be counted
 - Requiring a letter from an employer that the employer expects the employee to return to work before income can be counted
 - Making statements like “Many women don’t return to work” and “You may change your mind about going back to work after you have a baby”

Recent Common Issues in Consumer Complaints at HUD *(continued)*

- Collateral
 - Allowing investor loans for small rental properties, but not if the purpose is to set up a group home
 - Not lending on Native American Reservations, even when legal systems are similar to rest of state
 - Not lending on collateral below a certain amount
 - Not lending in specific communities

Recent Common Issues in Consumer Complaints at HUD *(continued)*

- Targeting Tools for Marketing through Social Media
 - Geography selection
 - Protected class selection: i.e.,
 - Non parents/Parents
 - Gender
 - Characteristics closely related to protected classes

Recent Common Issues in Consumer Complaints at HUD *(continued)*

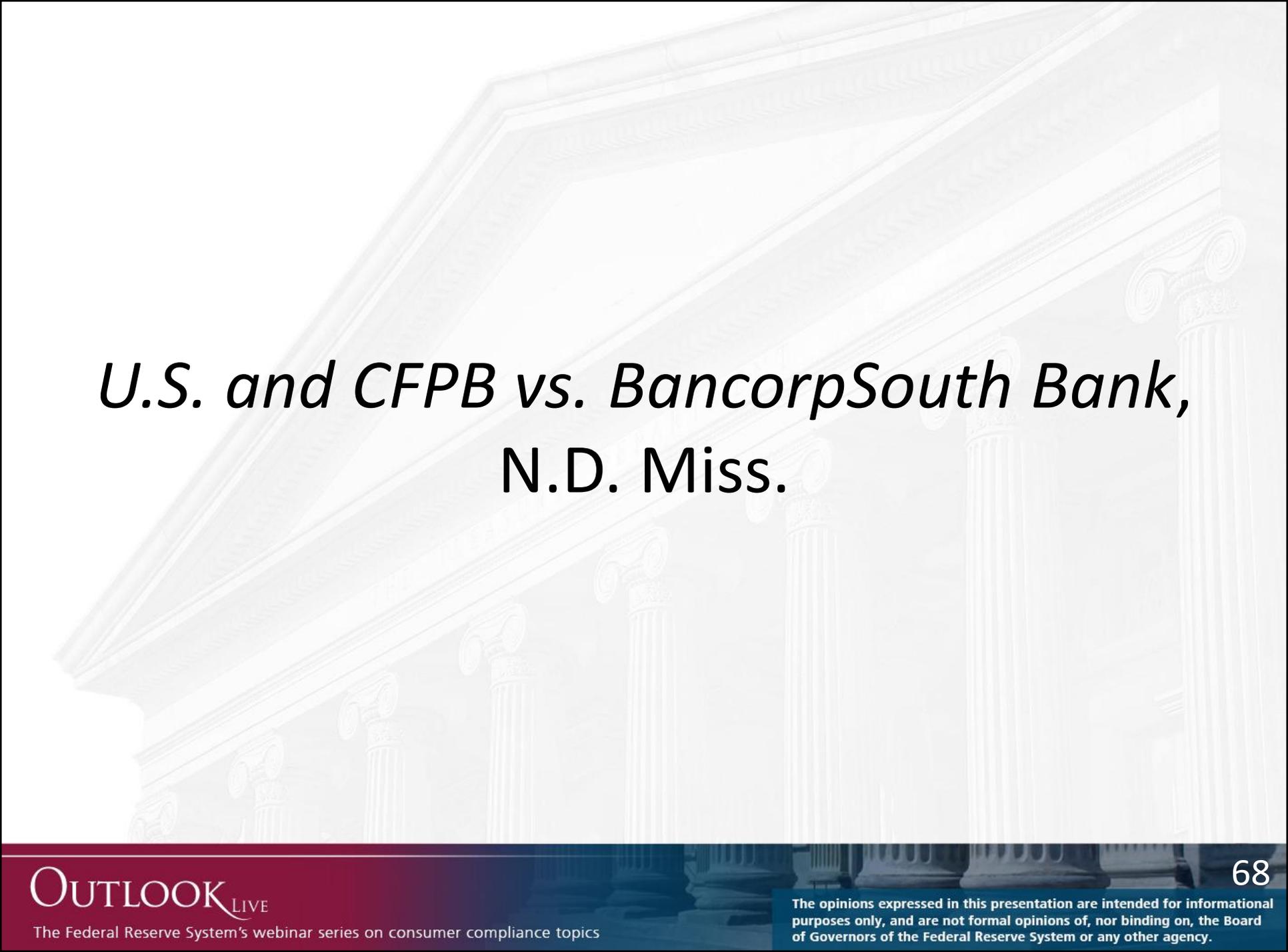
- Individual Treatment
 - Inferior assistance in overcoming deficiencies
 - Foreclosure rescue scams targeted at protected classes

Denials Investigations and Cases

Marta Campos, Trial Attorney

Housing and Civil Enforcement Section

Civil Rights Division, U.S. Department of Justice



*U.S. and CFPB vs. BancorpSouth Bank,
N.D. Miss.*

BancorpSouth Bank

- Joint DOJ/CFPB investigation
- Complaint allegations
 - Redlining
 - Pricing
 - Underwriting
- Compliance is underway

BancorpSouth Bank *(continued)*

- Terms of the Settlement Agreement:
 - \$4M in loan subsidies for previously-redlined areas
 - \$2.78M settlement fund for unlawfully denied applicants
 - One new branch or LPO in a previously-redlined area
 - \$800K in advertising, outreach, and other relief

BancorpSouth Bank *(continued)*

- Amended policies
 - Pricing and underwriting
- Further improved internal controls
- Fair lending training
- \$3M to CFPB Civil Penalty Fund

Denial Claim

- Complaint allegations:
 - Bank required its employees to deny loans from minority applicants more quickly than similarly-qualified white applicants
 - Bank instructed its employees not to provide credit assistance to applicants whose applications were marginally qualified

Denial Claim

- In audio recording of a branch meeting, branch manager instructed loan officers to turn down applications from minority applicants in 21 days
- Applications from white applicants were not subject to this shorter review period

Denial Claim

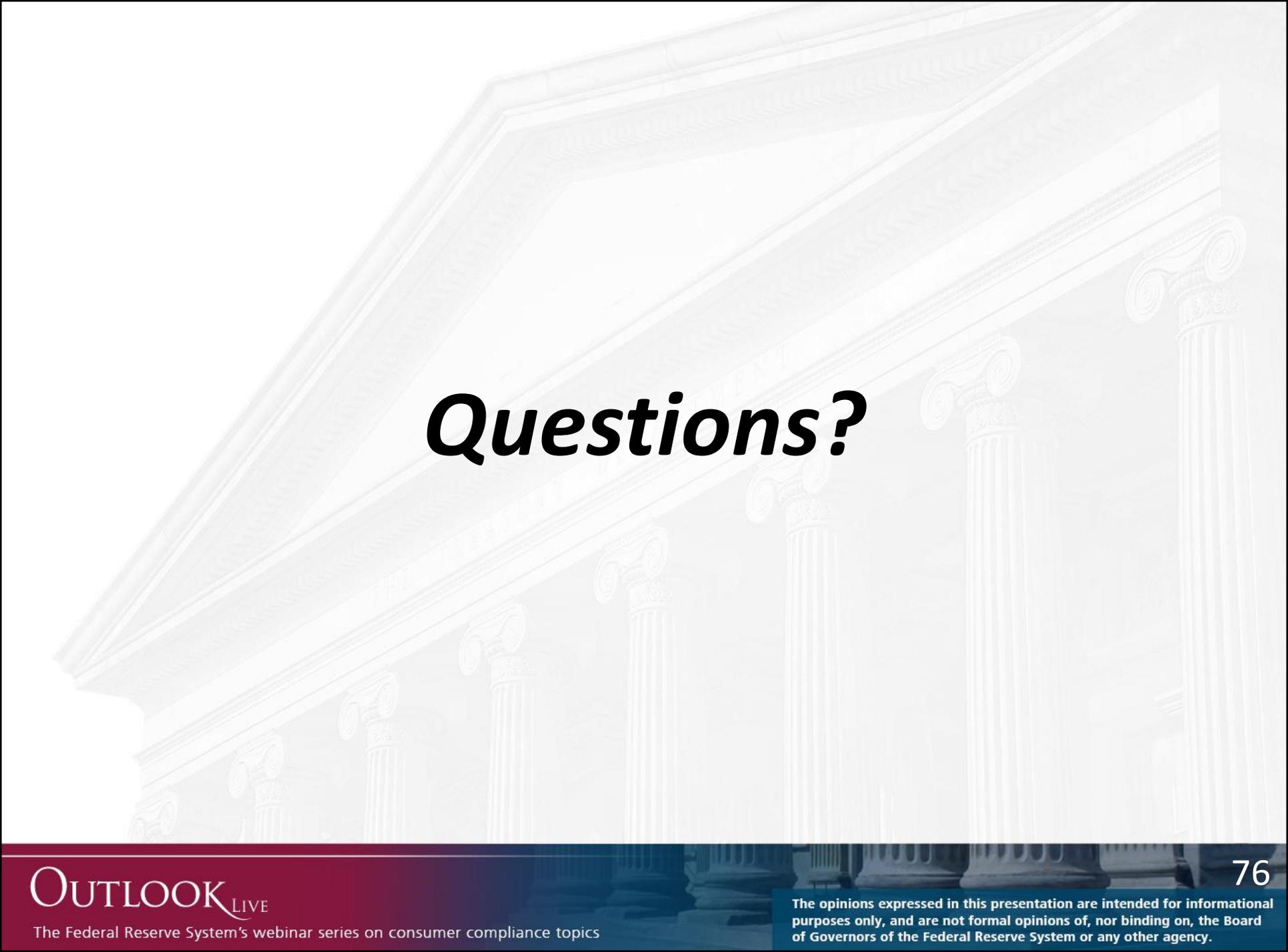
- Branch manager also instructed loan officers not to assist marginally-qualified applicants in improving their credit scores so that their applications would be approved

References

www.usdoj.gov/fairhousing

For speeches, complaints, settlements, press releases,
and ECOA reports to Congress visit:

<http://www.justice.gov/crt/housing-and-civil-enforcement-section>



Questions?