Fair lending report of the Consumer Financial Protection Bureau

Consumer Financial Protection Bureau

April 2014

Message from Richard Cordray

Director of the CFPB

From the moment we first opened our doors, the Consumer Financial Protection Bureau has been focused on the financial issues central to the everyday lives of consumers. As our economy continues to recover, we believe consumers must be able to look ahead with hope and resilience. And we want them to know that the Bureau is standing on their side and looking out for their interests.

Far too many consumers still must navigate a financial marketplace laden with deceptive marketing, debt traps, dead ends, and discrimination. At the Consumer Bureau, we are fierce advocates for a consumer financial marketplace that allows all Americans to pursue a path to greater opportunity. To that end, we are working to remove the unnecessary obstacles too many Americans face in the consumer financial marketplace. This includes ferreting out discrimination in credit markets, including the markets for home mortgages and auto lending.

The Bureau's Office of Fair Lending and Equal Opportunity is dedicated to these issues. This passionate and talented team, led by Fair Lending Director Patrice Alexander Ficklin, focuses on ensuring that all creditworthy consumers have fair, equitable, and nondiscriminatory access to credit by spearheading the Bureau's efforts to identify fair lending risks and violations and, if violations are found, ensuring that consumer harm is promptly remediated. Consumers do not have to stand alone in the fight against discrimination. We are standing on their side to make sure that every consumer is treated fairly in the consumer financial marketplace.

Over the course of the past year, the Bureau has helped empower consumers to make sound financial decisions. The Office of Fair Lending and Equal Opportunity has worked to ensure that consumers are not prevented from pursuing their dreams because of discriminatory policies or practices. This report on the Bureau's Fair Lending work discusses our efforts to ensure fair, equitable, and nondiscriminatory access to credit for all.

Sincerely,

Richard Cordray

Message from Patrice Alexander Ficklin

Director of Fair Lending and Equal Opportunity

In the Consumer Financial Protection Bureau's first Fair Lending Report to Congress, we recounted our efforts to build the Office of Fair Lending and Equal Opportunity. In our inaugural year, we focused on building a robust, effective, and efficient fair lending office, and putting in place the tools necessary to carry out our mandate. In this report we describe our steady focus on ensuring that consumers have fair, equitable, and nondiscriminatory access to credit by using all of the tools at our disposal – including research, supervision, enforcement, consumer education and outreach, rulemaking, and interagency engagement.

Our approach is driven by awareness that, for many consumers, access to credit remains a challenge. Over the past year we have maintained a sharp focus on two of the most important financial transactions in a consumer's life – obtaining a home mortgage loan and financing an automobile purchase. These transactions are milestones in the lives of ordinary consumers, but without fair and equal access to credit, some Americans may never realize these milestones. What is worse, some consumers may face discrimination if they do.

That is why the Bureau is committed to using data-driven analysis in order to identify and evaluate potentially unlawful barriers or discriminatory risks to credit access. Our analysis of this issue is informed by a range of qualitative and quantitative factors, which allow us to better understand fair lending risks and decide where to dedicate Bureau resources. For instance, we use empirical data to analyze fair lending risk to consumers within credit markets. We also consider qualitative data such as consumer complaints as well as information gathered through our ongoing dialogue with industry, advocates, and others. This data-driven approach allows us to determine whether research, supervision, enforcement, consumer education or rulemaking tools are appropriate to address specific fair lending risks to consumers.

We remain committed to transparency in the work that we do through robust and ongoing dialogue with all market participants, including industry, consumers, and civil rights organizations. Since our last report to Congress, the Bureau has provided fair lending tools and materials and engaged in public dialogue in order to educate, inform, and learn from consumers, advocates, and industry. For instance, we introduced our Home Mortgage Disclosure Act Database, which allows the public to study trends in the mortgage market across the Nation and in their own communities. In addition, we have published two fair lending bulletins to help consumers and industry stakeholders recognize fair lending and access to credit risks in the home mortgage and auto lending markets. Most recently, in November, 2013, the Bureau hosted an auto finance forum at our headquarters in Washington, DC, to facilitate a constructive dialogue with a wide range of market participants.[1] The forum included several panel discussions with senior Bureau officials, other federal regulators, and representatives from consumer, dealer, and lender organizations. We will continue to engage with researchers, advocates, industry, and consumers so that we can all benefit from an open and ongoing dialogue.

I am proud to present the Bureau's Fair Lending Report to Congress.

Sincerely,

Patrice Alexander Ficklin

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[1] Consumer Financial Protection Bureau, CFPB Auto Finance Forum (Nov. 14, 2013), *available at* http://www.consumerfinance.gov/blog/live-from-the-cfpb/.

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Executive summary

The Consumer Financial Protection Bureau (CFPB or Bureau) presents this Fair Lending Report to Congress in fulfillment of its statutory obligation and continued commitment to accountability and transparency. This report provides an update on the efforts of the Bureau to fulfill its fair lending mandate, and provides additional reporting required by the Equal Credit Opportunity Act (ECOA) and the Home Mortgage Disclosure Act (HMDA).[2]

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 American consumers, responsible businesses, and the economy as a whole. 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 that are enforced by the Bureau," including ECOA and HMDA.[4] The Office of Fair Lending also coordinates "fair lending efforts of the Bureau with other Federal agencies and State regulators, as appropriate, to promote consistent, efficient, and effective enforcement of Federal fair lending laws," and works "with private industry, fair lending, civil rights, consumer and community advocates on the promotion of fair lending compliance and education."[5]

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[2] *See* 12 U.S.C. § 5493(c)(2)(D); 15 U.S.C. § 1691f; 12 U.S.C. § 2807.

[3] *See* Pub. L. No. 111-203, 124 Stat. 1376 (2010).

[4] *See* § 1013(c)(1)–(c)(2)(A), 124 Stat. at 1970.

[5] *See* § 1013(c)(2)(B)–(C), 124 Stat. at 1970.

The CFPB has made substantial progress in its fair lending work since our last report.[6] The Bureau continues to sharpen its focus and commit resources to those institutions, products, and markets that pose the highest fair lending risk to American consumers, while continuing to listen and provide guidance to CFPB-supervised institutions.

Key developments include:

- **Increasing efficiencies in fair lending activity**. We have created, refined, and implemented a risk-based fair lending prioritization process to ensure that our supervisory work focuses on the areas presenting the greatest fair lending risk to consumers. Our prioritization approach uses quantitative and qualitative data to assess fair lending risk to consumers. We similarly assess risk to consumers to prioritize our enforcement work.
- **Guidance on supervisory reviews**. The Bureau publicly released information about the methods our examination teams use to conduct three types of fair lending supervisory reviews: ECOA Baseline Reviews, ECOA Targeted Reviews, and HMDA Data Integrity Reviews. We have completed dozens of supervisory ECOA and HMDA reviews. Through these supervisory activities we detected some violations of ECOA and HMDA; we also found that many lenders have instituted and maintained strong fair lending compliance management systems (CMS) and had no violations of ECOA or HMDA. Using the guidance issued by the Bureau describing these reviews, lenders may self-assess their own compliance with ECOA and HMDA. We also provided guidance to industry via *Supervisory Highlights* and Bulletins discussing fair lending topics.
- **Supervision and enforcement priorities.** Based on data and information gathered and analyzed by the Bureau, we identified mortgage lending and auto finance as key priorities for our supervision and enforcement work.
    - **Mortgage lending**. We concluded fair lending supervisory reviews of a number of mortgage lenders, and found that many lenders have strong fair lending compliance management systems and had no violations of ECOA or HMDA. We did, however,

[6] *See* Fair Lending Report of the Consumer Financial Protection Bureau (Dec. 2012), *available at* http://files.consumerfinance.gov/f/201212_cfpb_fair-lending-report.pdf.

discover some instances of fair lending noncompliance. The Bureau took enforcement action against two mortgage lenders for violating HMDA, which resulted in the assessment of civil money penalties and other relief. In addition to jointly investigating certain matters with the United States Department of Justice (DOJ), the CFPB also made several referrals to the DOJ for violations of ECOA, one of which resulted in a recent enforcement action.

- **Auto finance**. The Bureau has focused on indirect auto lenders' discretionary dealer markup and compensation policies via supervisory activity, enforcement investigations, and industry guidance – including the *Indirect Auto Lending and Compliance with the Equal Credit Opportunity Act* Bulletin released in March 2013.[7] The Auto Bulletin highlighted to indirect auto lenders their existing compliance obligations under ECOA. In fact, the Bureau and the DOJ recently took enforcement action against an indirect auto lender for violations of ECOA. The CFPB will continue to evaluate potential fair lending risks in the auto finance market as part of our ongoing supervision program.

- **Other product areas**. The Bureau has ongoing supervision and enforcement work in other markets, such as credit cards. The CFPB took enforcement action against one lender for violations of ECOA in unsecured consumer lending. The CFPB also referred three lenders to the DOJ for violations of ECOA in unsecured consumer lending. We remain committed to assessing and evaluating fair lending risk in all credit markets under the Bureau's supervision.

- **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 education, including speeches, presentations, classroom lectures, and forums addressing fair lending and access to credit issues. For example, on August 6, 2013, along with federal partners at the Federal Reserve Board and the DOJ, the Bureau participated in a webinar on auto finance.

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[7] Consumer Financial Protection Bureau, CFPB Bulletin 2013-02, *Indirect Auto Lending and Compliance with the Equal Credit Opportunity Act* (Mar. 21, 2013), *available at* http://files.consumerfinance.gov/f/201303_cfpb_march_-Auto-Finance-Bulletin.pdf.

- **Interagency coordination and collaboration**. The Bureau continues to coordinate with the Federal Financial Institutions Examination Council (FFIEC) agencies, as well as the DOJ, the Federal Trade Commission (FTC), and the Department of Housing and Urban Development (HUD), as we each play a role in enforcing our nation's fair lending statutes. In fact, in 2012, the CFPB formalized its fair lending enforcement relationship with the DOJ via a Memorandum of Understanding (MOU).[8]

This Fair Lending Report generally covers the period from July 21, 2012 through December 31, 2013. In addition, the Interagency Reporting on ECOA and HMDA section of this report conveys reported information on the Bureau's and other administrative agencies' functions under ECOA and HMDA, as required by those statutes, for the period of January 1, 2012 to December 31, 2013.

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[8] *See* Memorandum of Understanding between The Consumer Financial Protection Bureau and The United States Department of Justice Regarding Fair Lending Coordination (Dec. 6, 2012), *available at* http://files.consumerfinance.gov/f/201212_cfpb_doj-fair-lending-mou.pdf.

1. Risk-based prioritization and the fair lending toolkit

1.1 Analyzing fair lending risk: A data-driven approach to prioritizing areas of potential fair lending harm to consumers

To use the Consumer Financial Protection Bureau's fair lending research, supervision, and enforcement resources most efficiently and effectively, the Office of Fair Lending, working with others in the Bureau, developed a fair lending risk-based prioritization approach that assesses and determines how best to address fair lending risk in the entities, products, and markets under our jurisdiction.

The Bureau uses its risk-based prioritization approach to consider many qualitative and quantitative factors at the institution, product, and market levels to determine what, where, and how fair lending risks to consumers should be addressed. These factors include: complaints and tips from consumers, advocacy groups, whistleblowers, and other government agencies; supervisory and enforcement history; quality of lenders' compliance management systems (CMS); data analysis; and market insights. The Office of Fair Lending integrates all of this information into the fair lending prioritization process, which is incorporated into the Bureau's larger risk-based prioritization process, allowing the Bureau to efficiently allocate its fair lending resources to the areas of greater risk to consumers.

1.1.1 Complaints and tips

The CFPB uses input from a variety of external and internal stakeholders to inform its fair lending prioritization process. We consider fair lending complaints received by the Bureau's

Office of Consumer Response or brought to the Office of Fair Lending's attention by advocacy groups, whistleblowers, and other government agencies (at the local, state, and federal levels). As part of the prioritization process, the Office of Fair Lending also considers public and private litigation.

1.1.2 Supervisory and enforcement history

The Bureau considers information gathered from the Bureau's and other regulators' prior fair lending work, including any supervisory or enforcement actions. At the institution level, the Bureau considers results from past reviews, the extent and nature of any violations previously cited, and remediation efforts. Additionally, the Bureau considers self-identified issues and whether the institution took appropriate corrective action when it identified those issues. We also closely monitor institutions' compliance with any orders arising from previous enforcement actions pursued by the CFPB or, in some cases, by other federal government agencies.

1.1.3 Quality of compliance management systems

One critical piece of information the Bureau obtains through our supervisory work is the quality of an institution's fair lending CMS, which is a key factor considered in the fair lending prioritization process. While the appropriate scope of an institution's fair lending CMS will vary based on its size, complexity, and risk profile, common features of well-developed CMS include[9]:

- An up-to-date fair lending policy statement;
- Regular fair lending training for all employees involved with any aspect of the institution's credit transactions, as well as all officers and board members;
- Ongoing monitoring for compliance with fair lending policies and procedures, and appropriate corrective action if necessary;

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[9] *See* Consumer Financial Protection Bureau, Equal Credit Opportunity Act Baseline Review Modules (July 19, 2013) *available at* http://files.consumerfinance.gov/f/201307_cfpb_ecoa_baseline-review-module-fair-lending.pdf*; see also* Consumer Financial Protection Bureau, Supervision and Examination Manual (Oct. 31, 2012), *available at* http://files.consumerfinance.gov/f/201210_cfpb_supervision-and-examination-manual-v2.pdf; Consumer Financial Protection Bureau, Supervisory Highlights: Fall 2012 (Oct. 31, 2012) *available at* http://files.consumerfinance.gov/f/201210_cfpb_supervisory-highlights-fall-2012.pdf.

- Ongoing monitoring for compliance with other policies and procedures that are intended to reduce fair lending risk (such as controls on loan originator discretion), and appropriate corrective action if necessary;
- Review of lending policies for potential fair lending violations, including potential disparate impact;
- Depending on the size and complexity of the financial institution, regular statistical analysis, as appropriate, of loan-level data for potential disparities on a prohibited basis in pricing, underwriting, or other aspects of the credit transaction, to include both mortgage and non-mortgage products such as credit cards, auto lending, and student lending;
- Regular assessment of the marketing of loan products; and
- Meaningful oversight of fair lending compliance by management and where appropriate, the financial institution's board of directors.

Many CFPB-supervised institutions face similar fair lending risks, but they may differ in how they manage those risks, based on the size, complexity and risk profile of each institution. The key consideration is that the lower the quality of an institution's fair lending CMS, the higher the institution's fair lending risk.

1.1.4 Data analysis

The Bureau's fair lending prioritization process is also driven by quantitative data analysis that evaluates developments and trends at the institution and market levels. For example, in the housing finance marketplace, Home Mortgage Disclosure Act (HMDA) data allows regulators to assess a specific institution's risk as well as risk across the market in order to identify those institutions or segments that appear to present heightened fair lending risk to consumers.

Home Mortgage Disclosure Act

The Dodd-Frank Act expanded the scope of the data covered lenders are required to collect and submit under HMDA. Section 1094 of Dodd-Frank amended HMDA to require the collection and submission of additional data fields, including:

- The age of the applicant or borrower

- Rate spread (for all loans)
- Collateral value
- Credit score
- Non-fully amortizing payment features
- Total points and fees
- Prepayment penalty term
- The period after which a rate may change
- Loan term
- Origination channel
- As appropriate, identifiers for loan originators, loans, and parcels
- "[S]uch other information as the Bureau may require"[10]

At the time of this report, the CFPB's efforts to implement these changes are in the pre-rulemaking stage. The CFPB continues to research, consider, and evaluate what changes it may propose to Regulation C. CFPB leadership and staff also continue to receive stakeholders' views. The CFPB will take steps to protect the privacy interests of mortgage applicants and borrowers in the course of making any additional data available to the public under HMDA.

Small business data collection

Section 1071 of the Dodd-Frank Act amended Equal Credit Opportunity Act (ECOA) to require financial institutions to collect and report to the CFPB data on lending to small, minority-, and women-owned businesses in order to "facilitate the enforcement of fair lending laws and enable communities, governmental entities, and creditors to identify business and community development needs and opportunities of women owned, minority-owned, and small

[10] 12 U.S.C. § 2803(b).

businesses."[11] The Dodd-Frank Act also directed the CFPB to prescribe rules and guidance as necessary to carry out, enforce, and compile data pursuant to that section. In April 2011, the CFPB issued guidance stating that the data collection and submission obligations arising under these ECOA amendments do not arise until the CFPB issues implementing regulations.[12]

The CFPB has begun to explore the issues our rulemaking will need to address. In particular, the CFPB is looking to how the Bureau might work with other agencies to, in part, gain insight into existing small business data collection efforts and possible ways to cooperate in future efforts. The CFPB is also learning from our work implementing Dodd-Frank Act changes to HMDA, which concerns a similar information collection and reporting system.

1.1.5 Market insights

The Office of Fair Lending works closely with all of the Bureau's markets offices, which monitor consumer financial markets to identify emerging developments and trends: Mortgage Markets; Card Markets; Installment and Liquidity Lending Markets; and Credit Information, Collections, and Deposits Markets. The Bureau uses the factors and trends identified by our markets offices to provide insight into the markets we oversee and to identify fair lending risks that may require further study or action. For example, our work with Installment and Liquidity Lending Markets has assisted in our understanding of the auto lending market and common pricing practices, and helped to address the fair lending risk in lenders' discretionary dealer markup and compensation policies. Information on market trends relating to fair lending is then incorporated into our risk-based prioritization process.

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[11] Dodd-Frank Act, § 1071(a).

[12] Letter from Leonard Kennedy, CFPB General Counsel, to Chief Executive Officers of Financial Institutions under Section 1071 of the Dodd-Frank Act (Apr. 11, 2011), *available at* http://files.consumerfinance.gov/f/2011/04/GCletter-re-1071.pdf.

1.2 Addressing fair lending risk: The CFPB's fair lending toolkit

Once the Bureau has analyzed these data sources to prioritize institutions, products, and markets based on an assessment of fair lending risk posed to consumers, the CFPB must choose appropriate tools for addressing these prioritized risks. For example, we can schedule an institution for a supervisory review or, where appropriate, open an enforcement investigation. Given that market experts and economists comprise a key part of our staff, the CFPB can also commit to further analysis and study, especially of market-wide emerging issues or risks. We use our prioritization approach to select appropriate tools to address the specific fair lending risk to consumers. Our primary tools to address fair lending risk across consumer financial markets are Supervision and Enforcement, discussed in detail below.

1.2.1 Supervision tools

Through the CFPB's supervision program, examination teams evaluate the risk of consumer harm presented by an institution's products, services, policies, and practices. The supervision program evaluates large banks' and certain nonbank financial services providers' compliance with federal consumer financial laws, including ECOA and HMDA.[13] Fair lending supervisory reviews look at these areas with a particular focus on fair lending risk to consumers, and also evaluate whether any discriminatory acts or practices occurred during the period under review.

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[13] Bureau-supervised entities include banks, thrifts, and credit unions with over $10 billion in assets and their affiliates and service providers. *See* 12 U.S.C. § 5515(a). The Bureau also supervises nonbank financial services providers of any size engaged in mortgage lending (such as originators, brokers, servicers, and loan modification or foreclosure relief services), payday lending, private education lending, and their service providers. *See* § 5514(a)(1). For other markets such as debt collection, consumer reporting, auto finance, and money services businesses, the Bureau may supervise "larger participant[s]" in these markets after defining by rule what qualifies as a larger participant within each specific marketplace. 12 U.S.C. §§ 5514(a)(1)(B), (a)(2). Thus far, we have defined larger participants in the consumer debt collection, consumer reporting, and student loan servicing markets. *See* Defining Larger Participants of the Student Loan Servicing Market, 78 Fed. Reg. 73,383 (Dec. 6, 2013) (codified at 12 C.F.R. pt. 1090); Defining Larger Participants of the Consumer Debt Collection Market, 77 Fed. Reg. 65,775 (Oct. 31, 2012) (codified at 12 C.F.R. pt. 1090); Defining Larger Participants of the Consumer Reporting Market, 77 Fed. Reg. 42,874 (July 20, 2012) (codified at 12 C.F.R. pt. 1090). Our supervision program now includes examinations of larger participants within all of these markets, including examinations that assess these entities' compliance with ECOA as appropriate.

Generally, the CFPB's fair lending supervision program assesses whether supervised entities are in compliance with the requirements of ECOA and Regulation B, and – for mortgage lenders – HMDA and Regulation C.

- ECOA and Regulation B prohibit discrimination in "any aspect of a credit transaction."[14] This includes not only mortgage lending but also a wide array of other types of lending, including auto finance, credit cards, and unsecured loans. In addition, ECOA and Regulation B require creditors to provide certain disclosures to applicants.
- HMDA and Regulation C require certain mortgage lenders to collect and report specific information about their mortgage lending activity to regulators and the public, including data on applicants' and borrowers' race, ethnicity, and sex.[15]

In executing its fair lending supervision program, the Bureau conducts three types of fair lending reviews: ECOA Baseline Reviews, ECOA Targeted Reviews, and HMDA Data Integrity Reviews. Our reviews are consistent with established supervisory practice, and borrow from the procedures used in fair lending reviews conducted by the Federal Financial Institutions Examination Council (FFIEC) agencies. Indeed, the Bureau's Supervision and Examination Manual incorporates the Interagency Fair Lending Examination Procedures.

ECOA Baseline Reviews

ECOA Baseline Reviews facilitate the identification of ECOA and Regulation B violations and inform fair lending prioritization decisions. When an ECOA Baseline Review is scheduled, examiners work with the Office of Fair Lending and with CFPB regional management to determine the appropriate scope of the review, depending on the nature of the institution's business model and the level of known fair lending risk at the institution.

On July 19, 2013, the Bureau issued the *ECOA Baseline Review Modules*, which are used by CFPB examination teams when conducting ECOA Baseline Reviews.[16] These modules may be

[14] 15 U.S.C. § 1691(a); 12 C.F.R. § 1002.4(a).

[15] *See* 12 U.S.C. § 2803; 12 C.F.R. § 1003.4.

used to assess fair lending risks particular to three specific product lines – mortgage lending, mortgage servicing, and auto lending – but can generally be utilized to evaluate fair lending risk at any supervised institution and in any product line.

When using the modules to conduct an ECOA Baseline Review, CFPB examination teams review an institution's fair lending supervisory history, including any history of fair lending risks or violations previously identified by the CFPB or any other federal or state regulator. Examination teams collect and evaluate information about an entity's fair lending compliance program, including board of director and management participation, policies and procedures, training materials, internal controls and monitoring and corrective action. In addition to responses obtained pursuant to information requests, examination teams may also review other sources of information, including any publicly-available information about the entity as well as information obtained through interviews with institution staff or supervisory meetings with an institution.

Through these reviews, we detected some violations of ECOA; however, we also found that many lenders have instituted and maintained strong fair lending CMS, and had no violations of ECOA.

ECOA Targeted Reviews

If the Bureau's risk-based prioritization process reveals that a particular institution's business model, policies, or procedures present fair lending risks that warrant in-depth review, the Bureau may conduct an ECOA Targeted Review of that institution. Generally, these reviews focus on a specific line of business, such as mortgages, credit cards, or auto finance. ECOA Targeted Reviews typically include statistical analysis and, in some cases, loan file reviews in order to evaluate an institution's compliance with ECOA and Regulation B within the specific business line selected.

The CFPB uses data analysis and testing to detect and assess disparities in an institution's treatment of applicants and borrowers, by analyzing whether similarly-situated applicants and borrowers were treated differently because of a prohibited basis. If, during an ECOA Targeted

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[16] Consumer Financial Protection Bureau, *ECOA Baseline Review Modules* (July 19, 2013), *available at* http://www.consumerfinance.gov/f/201307_cfpb_ecoa_baseline-review-module-fair-lending.pdf.

Review, the Office of Fair Lending preliminarily determines that similarly-situated borrowers and applicants were treated differently or received different outcomes because of a prohibited basis, the CFPB will send a letter stating its preliminary findings and inviting the institution to provide additional information for consideration as the CFPB determines whether the institution has violated ECOA.

HMDA Data Integrity Reviews

Accurate HMDA data is critical to understanding fair lending risk at both the institution level and across the home mortgage market. The CFPB's HMDA Data Integrity Reviews evaluate the accuracy of institutions' HMDA data and assess whether institutions have adequate HMDA compliance management. The Bureau has conducted HMDA reviews at dozens of mortgage lenders, both bank and nonbank. Through these reviews, we detected some violations of HMDA; however, we also found that many lenders have instituted and maintained strong CMS and had no violations of HMDA. In early October 2013 the Bureau published its HMDA Resubmission Schedule and Guidelines, which provide instruction and additional detail on the HMDA Data Integrity review process. This guidance is discussed in the CFPB Bulletins section of this report.

1.2.2 Enforcement tools

The Bureau has several tools available to promote fair, equitable, and nondiscriminatory access to credit, including its authority under ECOA, HMDA, and the Dodd-Frank Act to bring public enforcement actions.[17] As part of its enforcement authority, the CFPB may conduct investigations[18] and issue civil investigative demands.[19] The CFPB may conduct administrative hearings[20] or, through its independent litigating authority, commence a civil action in a federal

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[17] *See* 15 U.S.C. § 1691c(a)(9); 12 U.S.C. § 2804(b)(1)(B), (d); §§ 5563–5564.

[18] *See* 12 U.S.C. § 5562.

[19] *See* § 5562(c).

[20] *See* § 5563.

or state court.[21] In any such action, the CFPB may seek appropriate legal and equitable relief, including: restitution, payment of damages or other monetary relief, limits on the activities or functions of the person, and civil money penalties.[22]

When appropriate, the CFPB also refers patterns or practices of lending discrimination to the Department of Justice (DOJ).[23] The Bureau's ongoing collaboration with the DOJ is discussed in the Fair Lending Enforcement and Interagency Engagement sections of this report.

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[21] *See* § 5564.

[22] *See* § 5565.

[23] *See* Memorandum of Understanding between The Consumer Financial Protection Bureau and The United States Department of Justice Regarding Fair Lending Coordination (Dec. 6, 2012), *available at* http://files.consumerfinance.gov/f/201212_cfpb_doj-fair-lending-mou.pdf.; *see also* 15 U.S.C. § 1691e(g).

2. Addressing fair lending risk: Supervision and enforcement in housing, automobile, and other financial markets

As a result of our prioritization process, the CFPB has focused in particular on fair lending risks in the home mortgage lending and auto finance markets, in addition to conducting work in other consumer financial product marketplaces. For most consumers, buying a home or car is the largest single purchase they will make in their lifetimes. As such, the Bureau is dedicated to ensuring that consumers are informed of and protected from potential fair lending risks or access to credit issues.

2.1 Marketplaces for housing finance, automobile finance, and other consumer financial products

Our prioritization process identified two key product areas for fair lending risk: housing and automobile finance. Although much of the Bureau's fair lending work has been in these two areas, we continue to evaluate fair lending risk across other markets to guide future supervision and enforcement activity.

2.1.1 Housing finance

The Bureau has dedicated significant supervision and enforcement resources to identifying violations of Equal Credit Opportunity Act (ECOA) as well as assessing fair lending risk in home mortgage lending. When fair lending risks are observed, the Bureau directs mortgage lenders to evaluate and improve their compliance management system (CMS). When ECOA and Regulation B violations are identified, the CFPB requires lenders to take corrective actions that can include remediation and restitution to consumers, civil money penalties, as well as other appropriate relief.

The Bureau is committed to ensuring Home Mortgage Disclosure Act (HMDA) compliance. As a data-driven agency, the CFPB recognizes the importance of accurate HMDA data, which is used by the Bureau, other federal and state regulators and law enforcement agencies, and also by the public – including industry, academia, civil rights, fair lending, fair housing and consumer groups, and community advocates. The Bureau is working to promote compliance by mortgage lenders required to report data under HMDA and will pursue public enforcement action, including civil penalties, when appropriate. The Bureau's efforts to help mortgage lenders comply with HMDA are discussed in the CFPB Bulletins section of this report.

2.1.2 Automobile finance

Other than a home, a car or truck is often one of the largest purchases a consumer makes in his or her lifetime. The size of the auto lending market reflects this fact; it is the third largest market in terms of loans outstanding in the consumer financial marketplace, behind only mortgages and student loans. In 2013, outstanding auto loan balances were approximately $863 billion, with over $355 billion originated during 2013.[24] The total number of auto loan originations was over 17.2 million.[25]

Auto lenders generally fall under the CFPB's supervisory or enforcement jurisdiction. This includes financial institutions, like banks, credit unions, captive auto lenders, and certain nonbank companies. In its current supervision and enforcement activities, the Bureau is evaluating indirect bank and nonbank auto lenders' compliance with ECOA, consistent with our statutory jurisdiction.

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[24] Federal Reserve Bank of New York, *Quarterly Report on Household Debt and Credit* (Feb. 2014), *available at* http://www.newyorkfed.org/microeconomics/data.html.

[25] CFPB estimate of 2013 auto loan originations from Experian's AutoCount database.

2.1.3 Other consumer financial products

The CFPB is committed to evaluating fair lending risk and addressing ECOA violations when they are identified in other consumer financial product markets, such as credit cards, to ensure fair, equitable, and nondiscriminatory access to credit and the provision of credit without regard to prohibited bases. The CFPB possesses a varied fair lending toolkit with respect to these markets. We may monitor emerging fair lending trends; gather information and other inputs for the Bureau's risk-based fair lending prioritization process; evaluate the adequacy of creditors' CMS; schedule targeted reviews; assess fair lending compliance; and take enforcement action when appropriate.

2.2 Fair lending supervision

2.2.1 Housing finance supervision

We concluded fair lending supervisory reviews of a number of mortgage lenders, and found that many lenders have strong fair lending compliance management systems and had no violations of ECOA or HMDA. We did, however, discover some instances of fair lending noncompliance. As noted previously in this report, the CFPB conducts three types of supervisory reviews: ECOA Baseline Reviews, which may be used to examine for any type of fair lending risk, in any product line; ECOA Targeted Mortgage Reviews, which may be used to examine a specific line of business, and typically include statistical analysis and, in some cases, loan file reviews; and HMDA Data Integrity Reviews, which evaluate the accuracy of institutions' HMDA data and assess whether institutions have adequate HMDA compliance management. Our reviews are consistent with established supervisory practice, and borrow from the procedures used in fair lending reviews conducted by the other Federal Financial Institutions Examination Council (FFIEC) agencies. Indeed, the Bureau's Supervision and Examination Manual, incorporates the Interagency Fair Lending Examination Procedures.

In conducting ECOA Baseline Reviews of housing finance providers, CFPB examination teams have observed various factors that indicate heightened fair lending risk, including weak or nonexistent fair lending CMS; underwriting and pricing policies that consider prohibited bases in a manner that violates ECOA or presents a risk of a fair lending violation; and inaccurate HMDA data. The Bureau has also observed noncompliance with Regulation B's adverse action notification requirements, as detailed in the Summer 2013 edition of *Supervisory Highlights*.[26] The Bureau's *Supervisory Highlights* reports, available at www.consumerfinance.gov, offer more information on market and supervisory trends throughout the year.

When the fair lending prioritization process identifies a mortgage lender for an ECOA Targeted Mortgage Review, examination teams may examine one or more of the following areas to evaluate ECOA compliance: underwriting, pricing, redlining, and steering. ECOA Targeted Mortgage Reviews are data-driven exercises. Consistent with the practices of other supervisory agencies, the Bureau conducts fair lending statistical analysis of an institution's own mortgage lending data to identify specific risk areas.

On October 9, 2013, the Bureau issued its *HMDA Resubmission Schedule and Guidelines*[27] in order to inform the public about the CFPB's HMDA Data Integrity Reviews. The *HMDA Resubmission Schedule and Guidelines* provide instruction to CFPB examination teams performing HMDA Data Integrity Reviews, and list the applicable error thresholds that CFPB examination teams will generally use to determine whether institutions should correct and resubmit their HMDA data. While these guidelines largely draw from prior standards set by other supervisory agencies, they do contain different guidelines for HMDA reviews at very large lenders, because a low error rate at a large institution could reflect a larger number of HMDA data errors than a comparable error rate at a smaller institution. This Bulletin is discussed in the CFPB Bulletins section of this report.

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[26] Consumer Financial Protection Bureau, *Supervisory Highlights: Summer 2013* (Aug. 21, 2013), *available at* http://files.consumerfinance.gov/f/201308_cfpb_supervisory-highlights_august.pdf.

[27] Consumer Financial Protection Bureau, CFPB Bulletin 2013-11, *Home Mortgage Disclosure Act (HMDA) and Regulation C – Compliance Management; CFPB HMDA Resubmission Schedule and Guidelines; and HMDA Enforcement* (Oct. 9, 2013), *available at* http://files.consumerfinance.gov/f/201310_cfpb_hmda_compliance-bulletin_fair-lending.pdf. These guidelines will be incorporated into the Bureau's Supervision and Examination Manual when it is next updated.

2.2.2 Automobile finance supervision

For ECOA Targeted Reviews of financial institutions that conduct indirect auto lending, the Bureau may conduct fair lending statistical modeling and analysis using the institution's indirect auto lending data. Over the last year, the Bureau's ECOA Targeted reviews have evaluated auto lenders' underwriting, buy rates, and discretionary dealer markup and compensation policies and practices for ECOA compliance. We found heightened fair lending risk in the area of discretionary markup and compensation.

In March 2013, the CFPB issued the *Indirect Auto Lending and Compliance with the Equal Credit Opportunity Act* Bulletin to provide guidance to indirect auto lenders that permit auto dealers to increase consumer interest rates and that compensate dealers with a share of the increased interest revenue.[28] This Bulletin is discussed in the CFPB Bulletins section of this report.

The Bureau applies the same supervision program tools across markets, including the financial institutions that conduct indirect auto lending. Both ECOA Baseline Reviews and ECOA Targeted Reviews evaluate policies and procedures and various aspects of the lenders' CMS, including internal controls and monitoring. The CFPB examination team considers:

- The circumstances under which dealers are permitted to deviate up or down from the "buy rate" and how this affects dealer compensation;
- Whether there are caps or other limits on dealers' discretion to go above or below the buy rate;
- Whether any controls are in place to prevent auto dealers from exercising discretion in a way that discriminates on a prohibited basis; and
- How the entity monitors compliance.

While fair lending analyses of mortgage lending are simplified by the availability of lender data reported under HMDA, this is not the case with indirect auto lending. Information on race,

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[28] Consumer Financial Protection Bureau, CFPB Bulletin 2013-02, *Indirect Auto Lending and Compliance with the Equal Credit Opportunity Act* (Mar. 21, 2013), *available at* http://files.consumerfinance.gov/f/201303_cfpb_march_-Auto-Finance-Bulletin.pdf.

ethnicity, and gender is typically not permitted to be collected as part of an auto lending transaction. Therefore, the Bureau uses a proxy methodology to differentiate among consumers based upon these characteristics. The concept of using proxies for unavailable data is a widely accepted mathematical and statistical approach used across many disciplines. The Bureau conducts its proxy analysis by using publicly available data from the Social Security Administration and the Census Bureau. In an effort to facilitate compliance and help lenders understand various proxy methods, we published a blog post entitled: *Preventing Illegal Discrimination in Auto Lending*,[29] outlining the ways in which a proxy methodology could be used to determine race, ethnicity, or gender. Moreover, we understand that many responsible lenders regularly use proxies in their own fair lending analyses where self-reported race, ethnicity, and gender data are not available. The Bureau has encouraged lenders who are not currently doing so to select a reasonable proxy method consistent with their size and complexity and to monitor their auto lending data for fair lending risk.

2.2.3 Other consumer financial products

The CFPB conducts ECOA Baseline Reviews and ECOA Targeted Reviews of consumer financial services providers in areas other than mortgage and auto finance, such as credit cards. Examination teams may pose questions that are product specific, or inquire into more general fair lending concerns that may also be applicable to the particular product that is the focus of the review.

2.3 Fair lending enforcement

2.3.1 Housing finance

The Bureau continues our fair lending enforcement work in the housing finance market, including matters arising from CFPB's supervisory activity. While the details of ongoing investigations are confidential, the CFPB's conclusions will typically be made public if an

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[29] Patrice Ficklin, Consumer Financial Protection Bureau, *Preventing Illegal Discrimination in Auto Lending* (Nov. 4, 2013), *available at* http://www.consumerfinance.gov/blog/preventing-illegal-discrimination-in-auto-lending.

enforcement action is filed. The Bureau's enforcement activity resulted in several mortgage-related referrals to the Department of Justice (DOJ), as well as public enforcement actions for ECOA and HMDA violations.

Referrals to the Department of Justice

As amended by the Dodd-Frank Act, Section 706(g) of ECOA[30] provides for the CFPB, along with the other federal agencies having responsibility for enforcement of ECOA under Section 704 of ECOA,[31] to refer certain violations of ECOA to the Attorney General of the United States. During the reporting period,[32] the CFPB referred three mortgage-related matters to the DOJ. Two of the referrals involved findings that a mortgage lender discriminated on the basis of marital status; the Justice Department deferred to the Bureau's handling of the merits of these matters. One referral contained findings that a mortgage lender discriminated on the basis of race and national origin in the pricing of mortgage loans; the DOJ authorized a lawsuit based on this referral, and pursued joint enforcement activity with the CFPB.

ECOA enforcement action

PNC BANK, AS SUCCESSOR TO NATIONAL CITY BANK

On December 23, 2013, the Bureau and the DOJ filed a joint complaint against and consent order with National City Bank for charging higher prices on mortgage loans to African-American and Hispanic borrowers than similarly situated white borrowers between the years 2002 and 2008. The consent order requires that PNC Bank, as the successor to National City Bank, pay $35 million to a settlement fund for affected African-American and Hispanic borrowers who obtained mortgage loans from National City between 2002 and 2008. The consent order also requires that PNC hire a settlement administrator to distribute funds to victims identified by the

[30] 15 U.S.C. § 1691e(g).

[31] 15 U.S.C. § 1691c.

[32] As noted above, this report generally covers the period from July 21, 2012 through December 31, 2013. In addition, the Interagency Reporting on ECOA and HMDA section of this report conveys reported information on the Bureau's and other administrative agencies' functions under ECOA and HMDA, as required by those statutes, for the period of January 1, 2012 to December 31, 2013.

CFPB and the DOJ. The settlement administrator, hired by PNC, must be accessible to victims, on a cost-free basis, and ensure that impacted borrowers receive compensation.

HMDA enforcement actions

On October 9, 2013, the CFPB announced two HMDA-related public enforcement actions against two Bureau-supervised mortgage lenders. The two entities were Mortgage Master, Inc., a nonbank based in Walpole, Massachusetts, and Washington Federal, a federally insured depository institution headquartered in Seattle, Washington.[33]

MORTGAGE MASTER

The Bureau found that Mortgage Master violated Section 304 of HMDA[34] and Section 1003.4 of Regulation C[35] because Mortgage Master had significant data errors in the 21,015 mortgage loan applications it reported for 2011. The Bureau concluded that Mortgage Master violated HMDA based on the significant rate of errors the Bureau found in a HMDA Data Integrity Review of a sample of loans from its 2011 HMDA data and that it failed to maintain procedures reasonably adapted to avoid the identified HMDA errors. In this enforcement action, the Bureau coordinated with state authorities; the CFPB's Consent Order was negotiated concurrently with a Consent Order from the Commonwealth of Massachusetts Division of Banks. The CFPB required Mortgage Master to:

- Pay a civil penalty of $425,000;
- Correct and resubmit its 2011 HMDA data; and
- Develop and implement an effective HMDA compliance management system to prevent future violations.

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[33] Washington Federal is now Washington Federal N.A.

[34] 12 U.S.C. § 2803.

[35] 12 C.F.R. § 1003.4.

WASHINGTON FEDERAL

The Bureau found that Washington Federal violated Section 304 of HMDA[36] and Section 1003.4 of Regulation C[37] because Washington Federal had significant data errors in the 5,785 mortgage loan applications it reported for 2011. The Bureau concluded that Washington Federal violated HMDA based on the significant rate of errors the Bureau found in a HMDA Data Integrity Review of a sample of loans from Washington Federal's 2011 HMDA data and that it failed to maintain procedures reasonably adapted to avoid HMDA errors. The CFPB required Washington Federal to:

- Pay a civil penalty of $34,000;
- Correct and resubmit its 2011 HMDA data; and
- Develop and implement an effective HMDA compliance management system to prevent future violations.

In both matters, the amount of the civil money penalties reflect the size of the lending activity, the significant error rate we found, and the history of prior HMDA violations. The civil penalties assessed against and paid by Washington Federal and Mortgage Master were deposited into the CFPB's Civil Penalty Fund.

2.3.2 Automobile finance

The Bureau is currently investigating whether a number of indirect auto lenders unlawfully discriminated in the pricing of automobile loans, particularly in their use of discretionary dealer markup and compensation policies. During the reporting period, the Bureau made one referral to the DOJ, and subsequently took joint enforcement action with the DOJ against that indirect auto lender for violations of ECOA.

[36] 12 U.S.C. § 2803.

[37] 12 C.F.R. § 1003.4.

ECOA enforcement action

ALLY FINANCIAL INC. AND ALLY BANK

On December 20, 2013, the CFPB and the DOJ announced an enforcement action and Consent Order that required Ally Financial Inc. and Ally Bank (collectively, Ally) to pay $80 million in damages to consumers who were harmed by Ally's discriminatory dealer markup and compensation policy between April 2011 and December 2013. The policy resulted in illegal discrimination against over 235,000 African-American, Hispanic, and Asian and Pacific Islander borrowers. In addition, the Consent Order required Ally to hire a settlement administrator to distribute funds to harmed African-American, Hispanic, and Asian and Pacific Islander borrowers, identified by the CFPB and the DOJ. The administrator must be accessible to victims, on a cost-free basis, and ensure that impacted borrowers receive compensation. In addition, Ally was required to pay an $18 million penalty to the CFPB's Civil Penalty Fund.

Pursuant to the Consent Order, Ally also must monitor dealer markups to prevent future discrimination or may choose to eliminate dealer markup policies altogether. Ally must implement a compliance program to prevent future discrimination, including: dealer education; prompt corrective action against dealers when there are dealer disparities; and portfolio-wide analysis of pricing data for disparities. In the alternative, Ally can decide to move away from discretionary dealer markups to a non-discretionary dealer compensation structure, which would eliminate its obligation to monitor the fair lending risk of ongoing dealer markups.

2.3.3 Other consumer financial products

The Bureau's continued monitoring of fair lending risk to consumers considers emerging issues and trends across product markets and the Bureau pursues enforcement action as appropriate when violations are identified. With respect to unsecured consumer lending, the Bureau has made three referrals to the DOJ and pursued one enforcement action.

Referrals to the Department of Justice

In the context of unsecured consumer lending, the CFPB referred three lenders to the DOJ for violations of ECOA. These referrals involved allegations that the lenders discriminated on the prohibited bases of receipt of public assistance, sex, marital status, and/or age. The DOJ deferred to the Bureau's handling of the merits of these matters.

ECOA enforcement actions

AMERICAN EXPRESS CENTURION BANK

On October 1, 2012, the CFPB, in conjunction with federal and state partners, announced an enforcement action and Consent Order that required American Express Centurion Bank to address various illegal practices. Among the illegal practices identified, the CFPB found that the bank unlawfully discriminated on the basis of age in violation of ECOA because its credit scoring system used a partially implemented age-split scorecard, which functioned as an improper "second look" for card applicants aged 35 years old and under. The CFPB found that such a system violated ECOA.

The Consent Order required American Express Centurion Bank to take all action necessary to eliminate violations of ECOA and ensure full compliance with the law. Specifically, the CFPB Consent Order required that American Express Centurion Bank not unlawfully discriminate on the basis of age in credit decisions. American Express Centurion Bank was also required to certify that all qualified consumers who suffered unlawful age discrimination had an opportunity to reapply for a card.

The American Express Centurion Bank Consent Order resulted from information that was collected during a routine examination conducted by the Federal Deposit Insurance Corporation (FDIC) and the Utah Department of Financial Institutions. The FDIC transferred portions of the investigation to the CFPB when the Bureau opened its doors in 2011 and, together, the federal and state agencies pursued this matter and brought the enforcement action.

3. Promoting fair lending compliance, education, and dialogue: Outreach to private industry, fair lending, fair housing, civil rights, consumer and community advocates

Throughout the year, CFPB leadership and staff in the Office of Fair Lending frequently provide testimony, speeches, and presentations, and participate in panel discussions, roundtables, and webinars on fair lending topics to various audiences, including Congressional committee staff, banks, nonbanks, national and state fair lending groups, academics and researchers, and community and consumer advocates. The Bureau also engages in extensive outreach with private industry, fair lending, civil rights, and consumer and community advocates in order to promote fair lending compliance and education.[38] All of this work gives the CFPB and the Office of Fair Lending the opportunity to reach out and promote fair lending compliance and education, identify emerging issues and new risks, and champion fair and equal access to credit.

[38] 12 U.S.C. § 5493(c)(2)(C).

3.1 The Consumer Advisory Board

As outlined in Section 1014(a) of the Dodd-Frank Act, the purpose of the Consumer Advisory Board (CAB) is "to advise and consult with the Bureau in the exercise of its functions under the Federal consumer financial laws, and to provide information on emerging practices in the consumer financial products or services industry, including regional trends, concerns, and other relevant information."[39]

In late September 2013, Fair Lending Director Ficklin participated in the Consumer Advisory Board meeting convened in Mississippi. As part of the CAB meeting Director Richard Cordray hosted a public session and series of small gatherings with industry, advocates and consumers focused on access-to-credit issues. In addition, the Bureau unveiled the HMDA Tool, which is discussed in the Interagency Reporting on ECOA and HMDA section of this report.

3.2 CFPB Bulletins

The CFPB is committed to communicating directly with private industry, fair lending, civil rights, and consumer and community groups, in order to promote fair lending education and compliance. Fair lending outreach is accomplished through numerous channels, such as the issuance of Bulletins targeted to industry, as well as through speeches and smaller gatherings addressing fair lending and access to credit matters to industry, consumer and community groups, and others. Key outreach documents published during the reporting period include:

3.2.1 Indirect Auto Lending and Compliance with the Equal Credit Opportunity Act[40]

On March 21, 2013, the CFPB issued a Bulletin entitled *Indirect Auto Lending and Compliance with the Equal Credit Opportunity Act*. The Auto Bulletin was published to offer guidance to all

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[39] 12 U.S.C. § 5494(a).

[40] Consumer Financial Protection Bureau, CFPB Bulletin 2013-02, *Indirect Auto Lending and Compliance with the Equal Credit Opportunity Act* (Mar. 21, 2013), *available at* http://files.consumerfinance.gov/f/201303_cfpb_march_-Auto-Finance-Bulletin.pdf.

indirect auto lenders within the Bureau's jurisdiction on compliance with the existing fair lending requirements of Equal Credit Opportunity Act (ECOA). The Bulletin highlights the fair lending risk inherent in some indirect auto lenders' discretionary dealer markup and compensation policies. The Bulletin also outlines ways in which lenders can improve their compliance management systems or shift to alternate dealer compensation structures.

On August 6, 2013, along with federal partners from the Non-Discrimination Working Group of the Financial Fraud Enforcement Task Force, including the Federal Reserve Board and the Department of Justice (DOJ), Fair Lending Director Ficklin presented a webinar on auto finance. In addition, in November, 2013, the Bureau hosted an auto finance forum at our headquarters in Washington, DC to facilitate a constructive dialogue with a wide range of auto lending market participants.[41] The forum included several panel discussions with senior Bureau officials, other federal regulators, and representatives from consumer, dealer, and lender organizations.

3.2.2 Home Mortgage Disclosure Act (HMDA) and Regulation C – Compliance Management; CFPB HMDA Resubmission Schedule and Guidelines; and HMDA Enforcement[42]

On October 9, 2013, the CFPB issued a Bulletin titled *Home Mortgage Disclosure Act (HMDA) and Regulation C – Compliance Management; CFPB HMDA Resubmission Schedule and Guidelines; and HMDA Enforcement*. Released in conjunction with the CFPB's HMDA Resubmission Schedule and Guidelines, discussed above, the HMDA Bulletin provides guidance on compliance with HMDA and Regulation C to mortgage lenders under the CFPB's jurisdiction. The Bulletin emphasizes the importance of collecting and reporting accurate HMDA data and also highlights common components of an effective HMDA compliance management system

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[41] Consumer Financial Protection Bureau, CFPB Auto Finance Forum (Nov. 14, 2013), *available at* http://www.consumerfinance.gov/blog/live-from-the-cfpb/.

[42] Consumer Financial Protection Bureau, CFPB Bulletin 2013-11, *Home Mortgage Disclosure Act (HMDA) and Regulation C –Compliance Management; CFPB HMDA Resubmission Schedule and Guidelines; and HMDA Enforcement* (Oct. 9, 2013), *available at* http://files.consumerfinance.gov/f/201310_cfpb_hmda_compliance-bulletin_fair-lending.pdf.

(CMS). In addition, the Bulletin discusses factors the CFPB may consider when determining whether to pursue a HMDA enforcement action and civil money penalties.

4. Interagency engagement

The Office of Fair Lending regularly coordinates the CFPB's fair lending efforts with those of other federal agencies and state regulators to promote consistent, efficient, and effective enforcement of federal fair lending laws.[43] Through our interagency engagement, we work to address emerging fair lending risks.

4.1 Interagency coordination on enforcement

The CFPB's fair lending mandate requires close coordination and collaboration with the Bureau's federal and state regulatory and enforcement partners. The Office of Fair Lending leads the Bureau's efforts in this area. In addition to the joint enforcement actions cited in the Fair Lending Enforcement section, the CFPB also entered into a Memorandum of Understanding with the Department of Justice (DOJ).

CFPB-DOJ Memorandum of Understanding on fair lending enforcement

Recognizing that effective cooperation is important to protect consumers, prevent duplication of efforts, and provide consistent enforcement, the CFPB formalized its fair lending enforcement

[43] 12 U.S.C. § 5493(c)(2)(B).

relationship with the DOJ via a Memorandum of Understanding (MOU) on December 6, 2012.[44] The MOU outlines the general framework for:

- **Sharing information and preserving its confidentiality:** The agencies share information about matters that the CFPB refers to the DOJ and joint investigations under Equal Credit Opportunity Act (ECOA), in order to coordinate fair lending enforcement. The MOU establishes strict confidentiality protections for this shared information.

- **Joint investigations and coordination:** The MOU provides for collaboration and coordination in investigations. The agencies also meet regularly to discuss pending fair lending investigations and opportunities for coordination.

- **Referrals and notifications between the agencies:** Like other federal financial regulators, the CFPB refers matters to the DOJ when it has reason to believe that a creditor has engaged in a pattern or practice of lending discrimination. Because a referral to the DOJ does not affect the CFPB's authority to pursue its own supervisory or public enforcement action, the CFPB and the DOJ coordinate their efforts to avoid unnecessarily duplicative actions. The agencies have also agreed to notify each other at key stages of their enforcement work, such as the opening of an investigation or filing of a lawsuit.

The CFPB and the DOJ are committed to finding ways to further strengthen their coordination efforts.

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[44] *See* Memorandum of Understanding between The Consumer Financial Protection Bureau and The United States Department of Justice Regarding Fair Lending Coordination (Dec. 6, 2012), *available at* http://files.consumerfinance.gov/f/201212_cfpb_doj-fair-lending-mou.pdf.

4.2 Interagency reporting on ECOA and HMDA

Pursuant to ECOA and HMDA, 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 providing a summary of public enforcement actions taken by other agencies with administrative enforcement responsibilities under ECOA.[45] This section of the CFPB's Fair Lending Report provides the information required by ECOA: first, it describes the CFPB's and other agencies' ECOA enforcement efforts, and provides an assessment of compliance with ECOA; then, it summarizes the outreach efforts of the various agencies charged with responsibility under ECOA. This section of the report covers the period from January 1, 2012, to December 31, 2013. In addition, the CFPB's annual HMDA reporting requirement[46] 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 certain mortgage loan data.

4.2.1 ECOA enforcement

The enforcement efforts and compliance assessments made by all the agencies assigned enforcement authority under Section 704 of ECOA[47] are discussed in this section.

Public enforcement actions

In addition to the CFPB, the agencies charged with administrative enforcement of ECOA under Section 704 include: the Federal Reserve Board (FRB), the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), and the National Credit Union Administration (NCUA) (collectively, the Federal Financial Institutions

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[45] *See* 15 U.S.C. § 1691f.

[46] *See* 12 U.S.C. § 2807.

[47] *See* § 1691c.

Examination Council agencies or FFIEC agencies);[48] the Federal Trade Commission (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 of the Department of Agriculture (GIPSA).[49] During the reporting period from January 1, 2012 through December 31, 2013, CFPB had three public enforcement actions for violations of ECOA, the FDIC issued 19 public enforcement actions for violations of ECOA and/or Regulation B; and the OCC had four ECOA-related public enforcement actions.

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: 2012

FFIEC Agencies Reporting	Regulation B Violations: 2012
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. § 1002.5(b) - Improperly requesting information about an applicant's race, color, religion, national origin, or sex. 12 C.F.R. § 1002.7(d)(1) - Improperly requiring a borrower to obtain the signature of a spouse or other person. 12 C.F.R. § 1002.9(a)(1), (a)(2), and (b)(2) - Failure to timely provide sufficient information,

[48] 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." *See* http://www.ffiec.gov/.

[49] *See* 15 U.S.C. § 1691c.

	including a statement of specific reasons for adverse action, in an adverse action notification. 12 C.F.R. § 1002.10(a) and (b) – Failure to appropriately designate accounts and provide routine reports to consumer reporting agencies (CRAs). 12 C.F.R. § 1002.13(a) and (b) – Failure to request and collect information about applicants seeking credit primarily for the purchase or refinance of a principal residence, including applicant race, ethnicity, sex, marital status, and age, for monitoring purposes.

TABLE 2: MOST FREQUENTLY CITED REGULATION B VIOLATIONS BY FFIEC AGENCIES: 2013

FFIEC Agencies Reporting	Regulation B Violations: 2013
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. § 1002.5(b), (d) - Improperly requesting information about an applicant's race, color, religion, national origin, sex or marital status; failure to appropriately consider protected information. 12 C.F.R. § 1002.6(b) – Improperly considering age or whether income is derived from any public assistance program. 12 C.F.R. § 1002.7(d)(1) - Improperly requiring a borrower to obtain the signature of a spouse or other person. 12 C.F.R. § 1002.9(a)(1), (a)(2), and (b)(2) - Failure to timely provide sufficient information, including a statement of specific reasons for adverse action, in an adverse action notification.

	12 C.F.R. § 1002.10(a) and (b) – Failure to appropriately designate accounts and provide routine reports to consumer reporting agencies (CRAs). 12 C.F.R. § 1002.12(b) – Failure to properly preserve records. 12 C.F.R. § 1002.13(a) and (b) – Failure to request and collect information about applicants seeking credit primarily for the purchase or refinance of a principal residence, including applicant race, ethnicity, sex, marital status, and age, for monitoring purposes.

Of the remaining agencies, only the FCA conducted examinations and reported results in 2012 and in 2013. The Regulation B violations most frequently cited by the FCA were:

TABLE 3: MOST FREQUENTLY CITED REGULATION B VIOLATIONS BY OTHER ECOA AGENCIES, 2012

Other ECOA Agencies	Regulation B Violations: 2012
FCA	12 C.F.R. § 1002.9 - Failure to provide sufficient information, including specific reasons for adverse action, in an adverse action notification. 12 C.F.R. § 1002.13(b) - Failure to collect information about applicants seeking credit primarily for the purchase or refinancing of a principal residence, including applicant race, ethnicity, sex, marital status, and age, for monitoring purposes.

TABLE 4: MOST FREQUENTLY CITED REGULATION B VIOLATIONS BY OTHER ECOA AGENCIES, 2013

Other ECOA Agencies	Regulation B Violations: 2013
FCA	12 C.F.R. § 1002.9 - Failure to provide sufficient information, including specific reasons for adverse action, in an adverse action notification. 12 C.F.R. § 1002.12(b) - Failure to properly preserve records. 12 C.F.R. § 1002.13(b) and (c) - Failure to collect information about and disclose to applicants seeking credit primarily for the purchase or refinancing of a principal residence, including applicant race, ethnicity, sex, marital status, and age, for monitoring purposes.

The GIPSA, the SBA, and the SEC reported that they received no complaints based on ECOA or Regulation B in 2012 and 2013. In both 2012 and 2013, the DOT reported that it received a "small number of consumer complaints concerning credit matters possibly covered by ECOA," that it "processed informally." The FTC is an enforcement agency and does not conduct compliance examinations.

4.2.2 Referrals to Department of Justice

In 2012, the FFIEC agencies including CFPB referred a total of 12 matters to the DOJ. The FRB referred two matters to the DOJ; the OCC made one referral to the DOJ; and the FDIC referred a total of eight matters to the DOJ. These matters alleged discriminatory treatment of persons in credit transactions due to protected characteristics, including race, sex, and marital status. CFPB referred one matter to the DOJ during 2012, finding discrimination in credit transactions on the basis of age.

In 2013, the FFIEC agencies including CFPB referred a total of 24 matters to the DOJ. The FRB referred six matters to the DOJ; the OCC made one referral to the DOJ; and the FDIC referred a total of 11 matters to the DOJ. These matters alleged discriminatory treatment of persons in credit transactions due to protected characteristics, including national origin, age, race, marital status, and receipt of public assistance income. CFPB referred six matters to the DOJ during 2013, finding discrimination in credit transactions on the following prohibited bases: national origin, sex, race, public assistance income, age, and marital status.

4.2.3 Interagency outreach related to ECOA supervision and enforcement

The CFPB and FFIEC agencies all engage in interagency outreach efforts to coordinate our activities aimed at ensuring fair lending compliance. These outreach activities also help the agencies with enforcement responsibilities under Section 704 of ECOA to ensure that fair lending laws are enforced in a consistent and fair manner.

Interagency guidance on the qualified mortgage and fair lending

The CFPB's Ability-to-Repay Rule implements provisions of the Dodd-Frank Act that require creditors to make a reasonable, good faith determination that a consumer has the ability to repay a mortgage loan before extending credit to the consumer. Lenders are presumed to have complied with the Ability-to-Repay Rule if they issue Qualified Mortgages, which must satisfy requirements that prohibit or limit risky features that harmed consumers in the recent financial crisis. In response to industry questions about fair lending risk, including possible disparate impact, the CFPB, the FRB, the FDIC, the NCUA, and the OCC issued guidance[50] addressing the choice to offer only Qualified Mortgages.

The CFPB and these other federal regulators do not anticipate that a creditor's decision to offer only Qualified Mortgages would, absent other factors, elevate a supervised institution's fair lending risk. Creditors should continue to evaluate fair lending risk as they would for other types of product selection decisions, including by carefully monitoring policies and practices and implementing effective compliance management systems.

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[50] *See Interagency Statement on Fair Lending Compliance and the Ability-to-Repay and Qualified Mortgage Standards Rule*, (Oct. 22, 2013), *available at* http://files.consumerfinance.gov/f/201310_cfpb_guidance_qualified-mortgage-fair-lending-risks.pdf.

Financial Fraud Enforcement Task Force's Non-Discrimination Working Group

The Financial Fraud Enforcement Task Force was established in November 2009 by an Executive Order to strengthen the efforts of the DOJ in conjunction with federal, state, and local agencies "to investigate and prosecute significant crimes and other violations relating to the . . . financial crisis and economic recovery efforts, recover the proceeds of such financial crimes and violations, and ensure just and effective punishment of those who perpetuate financial crimes and violations."[51] The Non-Discrimination Working Group monitors new practices and emerging trends in order to proactively address fair lending issues, including promoting sound fair lending compliance and improving efforts to detect and eliminate discrimination.

The Bureau co-chairs the Non-Discrimination Working Group. Fair Lending Director Ficklin represents the CFPB. Along with Fair Lending Director Ficklin, the Director of the FRB's Division of Consumer and Community Affairs, the Assistant Attorney General for the DOJ's Civil Rights Division, the Deputy General Counsel of HUD, and a representative from the National Association of Attorneys General (NAAG) lead the Non-Discrimination Working Group.

On October 17, 2012, Office of Fair Lending senior staff participated in a webinar on the importance of effective fair lending compliance management. In addition, on August 6, 2013, along with federal partners from the Non-Discrimination Working Group, Fair Lending Director Ficklin presented a webinar on auto finance. Finally, on October 24, 2013, Office of Fair Lending senior staff participated in an interagency webinar on emerging fair lending issues.

Federal Interagency Task Force on Fair Lending

The CFPB, along with the FTC, DOJ, HUD, FDIC, FRB, NCUA, OCC and the Federal Housing Finance Agency (FHFA) comprise the Federal Interagency Task Force on Fair Lending. The Task Force meets regularly to share information regarding lending discrimination and fair lending policy issues. The agencies use these meetings to discuss fair lending enforcement efforts, share current methods of conducting supervisory and enforcement fair lending

[51] Exec. Order No. 13519, 74 Fed. Reg. 60,123 (Nov. 17, 2009).

activities, and coordinate fair lending policies. A representative from the Bureau currently chairs this task force.

Interagency working group on fair lending enforcement

The CFPB belongs to a standing working group of Federal agencies – with the DOJ, HUD, and the FTC – that regularly meets to discuss issues relating to fair lending enforcement. These regular discussions are designed to ensure that Federal fair lending enforcement efforts are well-coordinated. 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.

FFIEC subcommittee on HMDA and the Community Reinvestment Act

The CFPB is part of the FFIEC Subcommittee on HMDA and the Community Reinvestment Act. The Bureau participates in the subcommittee as its work relates to the collection and processing of HMDA data, over which the CFPB has supervisory and enforcement jurisdiction.

4.2.4 Reporting on the Home Mortgage Disclosure Act

The CFPB's annual HMDA reporting requirement[52] calls for the CFPB, in consultation with HUD, to report annually on the utility of HMDA's requirement that covered lenders itemize in order to disclose the number and dollar amount of certain mortgage loans and applications. The CFPB, in consultation with HUD, finds that itemization and tabulation of these data further the purposes of HMDA.

On September 18, 2013, during a Consumer Advisory Board meeting in Mississippi, the CFPB announced an initiative aimed at improving public understanding of, and transparency into, the housing finance marketplace through an online tool that provides meaningful access to public HMDA data for consumers, academics, researchers, advocates, fair lending organizations, and industry. The CFPB's HMDA Public Use Database Tool currently focuses on the number of mortgage applications and originations, in addition to loan purposes and loan types, for 2007 through 2012. It looks specifically at first-lien, owner-occupied, one- to four- family and

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[52] *See* 12 U.S.C. § 2807.

manufactured homes. Using the tool, the public can see nationwide summaries of home lending activity or can choose interactive features that allow them to isolate the information for specific metropolitan areas. The public can easily explore millions of data points with these user-friendly graphs and charts.

Interactive features highlight key trends, showing via a nationwide heat map that applications and loan originations increased in most local mortgage markets in 2012; showing via a graph that a significant driver of the increased mortgage numbers in 2012 was a rise in the number of homes refinanced; and, also via graph, homebuyers' heavy reliance on mortgages insured by the Federal Housing Administration or guaranteed by the Department of Veterans Affairs since the housing market crash of a few years ago.

The CFPB is committed to further enhancing the functionality of its online HMDA tool and plans to release additional features over time. In the meantime, the public will be able to drill down to their city or state and learn about trends affecting their region.

As mentioned earlier in this report, Section 1094 of the Dodd-Frank Act requires the Bureau to engage in rulemaking to modify the scope of the data covered lenders are required to collect and submit under HMDA. The CFPB's efforts to implement these changes are in the pre-rulemaking stage, as the Bureau continues to research, consider, and evaluate what changes it may propose to Regulation C.

5. Conclusion

The CFPB's Fair Lending Report describes our ongoing work to ensure fair, equitable, and nondiscriminatory access to credit. The CFPB has examined banks and nonbanks, including mortgage and auto lenders, to assess compliance with federal fair lending laws. Where noncompliance was found, the CFPB required creditors to improve fair lending compliance management systems (CMS), end illegal practices, and remediate consumer harm. The CFPB will maintain a sharp focus on discrimination, with the aim of ensuring that consumers will be less likely to encounter this obstacle when navigating the consumer financial marketplace.

The Bureau, through its Office of Fair Lending and many others, will continue to work to ensure fair, equitable, and nondiscriminatory access to credit. We realize the marketplace will remain dynamic in the months and years to come. Therefore, we will continue to study the consumer financial marketplace. To better understand industry and consumer perspectives, we will continue to engage in outreach with these stakeholders. We will analyze how emerging trends may affect fair lending and access to credit issues, and continue to focus our efforts on areas posing the greatest fair lending risk to consumers. And we will also continue to provide guidance to industry to enhance compliance measures under the federal fair lending laws and regulations.

As part of the CFPB's supervisory work, we will continue to monitor for discrimination in the Nation's credit markets. As part of the CFPB's enforcement work, we will continue to pursue appropriate matters with public enforcement activities that remedy discrimination, increase compliance with statutory and regulatory obligations, and put money back into the pockets of harmed consumers. Finally, we will continue our outreach efforts, which are aimed at promoting fair lending compliance and education among industry and consumers.