# Fair Lending Report of the Bureau of Consumer Financial Protection

# Message from Kathleen L. Kraninger

## Director

This Fair Lending Report describes the Consumer Financial Protection Bureau's 2018 activities to expand fair, equitable, and nondiscriminatory access to credit and to ensure that consumers are protected from discrimination.[1]

Earlier this spring I outlined my priorities for how the Bureau will use its tools to carry out our mission. I shared how Congress granted to the Director the tools of education, regulation, supervision, and enforcement, each of which serves an important component in the Bureau's execution of its mission. I believe that the best application of these tools is to focus on prevention of harm to consumers and that includes protecting consumers from unfair, deceptive and abusive acts or practices as well as from discrimination. The Bureau's very purpose is to ensure that all consumers have access to consumer financial products and services which is based on having fair, transparent, and competitive markets.

Protecting consumers from discrimination is one of the primary objectives laid out in the Dodd-Frank Act—an objective that the Bureau takes very seriously. Under my leadership, the Bureau will continue to vigorously enforce fair lending laws in our jurisdiction, and will stand on guard against unlawful discrimination in credit. In addition to that core work, the Bureau will continue to explore cutting-edge fair lending issues including how consumer-friendly innovation can increase access to credit to all consumers—and especially unbanked and underbanked consumers and their communities.

I am truly excited to take the Bureau's work in fair lending to a new level, and I look forward to working with all stakeholders on these important matters.

Sincerely,

[1] (12 U.S.C. § 5511(b)(2))

Kathleen L. Kraninger

# Message from Patrice Alexander Ficklin

## Director, Fair Lending

2018 marked the Office of Fair Lending and Equal Opportunity's seventh full year of spearheading the Bureau's efforts to fulfill its fair lending mandate. It was also a year of transition for the Office as it prepared to move to the Director's office as part of the Office of Equal Opportunity and Fairness. Throughout the transition, the Office has continued to focus on promoting fair, equitable, and nondiscriminatory access to credit and has embarked on new efforts to coordinate the Bureau's fair lending work both internally, and with other governmental agencies, industry, and stakeholders to encourage innovation in expanding responsible credit access.

The Bureau's supervisory and enforcement activity in 2018 focused on mortgage lending, small business lending, and student loan servicing. Our mortgage lending activity focused on redlining, underwriting, pricing, steering, servicing, and Home Mortgage Disclosure Act data integrity. Redlining continues to be a priority for the Bureau in both mortgage lending and small business lending. The Bureau continues to facilitate implementation of the 2010 Dodd Frank Act amendments to HMDA and the subsequent changes under the Economic Growth, Regulatory Relief, and Consumer Protection Act.[2]

On July 18, 2018, the Bureau announced the creation of its Office of Innovation and transitioned the work of Project Catalyst to this new office. The Bureau encourages responsible innovations that could be implemented in a consumer-friendly way to help serve populations currently underserved by the mainstream credit system. The Office worked closely with Project Catalyst since its inception to increase consumer access to credit. The Fair Lending office looks forward to the continued close working relationship with the Office of Innovation.

In September 2018, the Office held a symposium, *Building a Bridge to Credit Visibility,* the first in a series of planned convenings aimed at expanding access to credit for consumers who face barriers to accessing credit. The Bureau estimates that 45 million Americans are credit invisible

[2] Public Law 115-174, 132 Stat. 1296 (2018).

or lack sufficient credit history which in turn causes those consumers to face barriers to accessing credit, or pay more for credit. The Symposium was attended, both in-person and via web-based livestream video, by hundreds of stakeholders from industry, government, think tanks, academia, and consumer advocacy and civil rights organizations, representing a diverse range of experiences and perspectives.

Along with the rest of the Bureau, the Office welcomed our new Director, Kathy Kraninger, in early December 2018 and began work to implement her commitment to enforce the fair lending laws under the Bureau's jurisdiction using the tools of education, rulemaking and guidance, supervision and enforcement.

Since its inception, the Office has done tremendous work in fulfilling its Dodd-Frank mandate to protect America's consumers from lending discrimination and promote credit access.[3]

Sincerely,

Patrice Alexander Ficklin

[3] *See* Dodd-Frank Act § 1013(c)(2)(D)(codified at 12 U.S.C. § 5493(c)(2)(D)).

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# 1. Access to credit

The Bureau is responsible for providing oversight and enforcement of Federal laws intended to ensure "fair, equitable, and nondiscriminatory access to credit for both individuals and communities."[4] To achieve the mission, the Bureau focuses both on preventing discrimination and addressing it when it happens. The Bureau has available a number of prevention tools: outreach and education, and the issuance of guidance, promulgation of regulations, and supervision and enforcement.

In 2018, Fair Lending used a number of these tools and increased its focus on ensuring fair, equitable, and nondiscriminatory access to credit through: (1) hosting a symposium on credit invisibility; (2) establishing collaboration with the new Office of Innovation; (3) monitoring a No-Action Letter; and (4) prioritizing supervisory reviews of third-party credit scoring models to further the Bureau's interest in identifying potential benefits and risks associated with the use of alternative data and modeling techniques.

## 1.1 Symposium and report on credit visibility

The CFPB has reported in recent years, in a series of publications,[5] that roughly 20 percent of the adult population have no credit records or very limited credit records with the three Nationwide Credit Reporting Agencies (NCRAs). As a result, these "credit invisible" and "unscorable" consumers are unable to fully participate in the credit marketplace. This can limit their ability to withstand financial shocks and achieve financial stability.

In September 2018, the Bureau convened its first fair lending Symposium to address the issue of access to credit, entitled *Building a Bridge to Credit Visibility*. The Symposium was attended, both in-person and via web-based livestream video, by hundreds of stakeholders from industry, government, think tanks, academia, and consumer advocacy and civil rights organizations, representing a diverse range of experiences and perspectives. Panelists discussed strategies and

[4] 12 U.S.C. § 5493(c)(2)(A).

[5] *See* CFPB Data Point: *Becoming Credit Visible* (June 2017), s3.amazonaws.com/files.consumerfinance.gov/f/documents/BecomingCreditVisible_Data_Point_Final.pdf; CFPB, *Who Are the Credit Invisibles? How to Help People with Limited Credit Histories* (Dec. 2016), s3.amazonaws.com/files.consumerfinance.gov/f/documents/201612_cfpb_credit_invisible_policy_report.pdf; CFPB, *Data Point: Credit Invisibles* (May 2015), files.consumerfinance.gov/f/201505_cfpb_data-point-credit-invisibles.pdf.

innovations for overcoming barriers faced by credit invisible consumers and unscorable consumers and expanding credit access. The Symposium was held at CFPB Headquarters in Washington, D.C.

The Bureau's *Building a Bridge to Credit Visibility* Symposium added to the growing body of knowledge on the credit invisible population, sometimes referred to as unbanked and underbanked. The Symposium, and the *Geography of Credit Invisibility* data point[6] released in conjunction with the Symposium, provided a platform where industry, consumer and civil rights advocates, regulators, researchers, and other stakeholders could raise awareness of the issues that credit invisible and unscorable consumers face, learn more about financial innovation that is happening, and shape plans for how to continue to increase future access to credit going forward.

At the Symposium, a number of stakeholders took part in substantive panel discussions. During the first panel, each speaker delivered a short talk on credit, exploring issues such as credit invisibility, lending deserts, and innovation to expand access to credit. During the second panel, panelists explored questions related to entry products that bridge consumers to credit visibility while also preparing them for financial success. During the third panel, panelists focused on identifying barriers and solutions to accessing credit in the small business lending space, and discussed the roles played by different stakeholders in this space. And finally, during the last panel, participants discussed the role alternative data and modeling techniques can play in expanding access to traditional credit.

A few key themes were evident across panel discussions at the Symposium. These themes can inform action planning for private and public sector stakeholders from industry, consumer and civil rights advocacy organizations, academia, and government. Some of these key themes were:

- Strengthen the business case for expanding access to credit.
- Explore innovation that expands credit access without sacrificing consumer protections.
- Understand the experience of the credit invisible population.
- Recognize that "high-touch" relationships are important.
- Conduct more research and data analysis.

[6] *See* CFPB, *Data Point: The Geography of Credit Invisibility* (Sept. 2018), s3.amazonaws.com/files.consumerfinance.gov/f/documents/bcfp_data-point_the-geography-of-credit-invisibility.pdf.

- Be mindful that not all credit is equal.

At the Symposium, Jacqueline Reses from Square, Inc. and Square Capital ("Square") gave the keynote address. Later in the day, Paul Watkins, Assistant Director of the Bureau's Office of Innovation, shared his vision for the new office. Finally, Bureau leaders ended the Symposium with a "fireside chat," highlighting key themes from the day and exploring the ways the CFPB's mission provides the Bureau with tools to engage on these issues.

Additional information including the symposium agenda, a video of the symposium (with closed-captioning), and an informational blog post can be found on the Bureau's website.[7]

## 1.2 Collaboration with Office of Innovation

In 2018, the Bureau prioritized innovation in part to help expand fair, equitable and nondiscriminatory access to credit to underserved populations.[8] To lead this effort, on July 18, 2018, the Bureau created the Office of Innovation and transitioned the work that was being done under Project Catalyst to this new office. The Office of Innovation helps the Bureau fulfill its statutory mandate to promote competition, innovation, and consumer access within financial services. To achieve this goal, the new office focuses on creating policies to facilitate innovation, engaging with entrepreneurs and regulators, and facilitating identification of outdated and unnecessary regulations.[9] Fair Lending's focus on fair, equitable, and nondiscriminatory access to credit for individuals and communities provides for synergy with the work of the Office of Innovation.

The Office of Innovation is in the process of revising the Bureau's No Action Letter (NAL) and trial disclosure policies, and establishing a Product Sandbox, in order to increase participation by organizations seeking to advance new products and services. The Bureau encourages innovative products and services that benefit consumers, including those that promote fair, equitable, and nondiscriminatory access to credit. As part of its coordination function, the

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[7] https://www.consumerfinance.gov/about-us/events/archive-past-events/building-bridge-credit-visibility/.

[8] Historically, the Office of Fair Lending has worked closely with the Bureau's Project Catalyst, which was established to encourage consumer-friendly innovation and entrepreneurship in markets for consumer financial products and services. Through Project Catalyst, the Bureau sought to advance consumer-friendly innovation by way of outreach to innovators, discussion of Special Purpose Credit Programs, and the No-Action Letter program. By staffing Project Catalyst Office Hours and engaging in discussions with No-Action Letter candidates, Fair Lending has worked to advance innovation.

[9] Consumer Financial Protection Bureau, *Bureau of Consumer Financial Protection Announces Director for the Office of Innovation,* https://www.consumerfinance.gov/about-us/newsroom/bureau-consumer-financial-protection-announces-director-office-innovation/.

Office of Fair Lending engages with potential entrants into the Bureau's Innovation programs, including those interested in special purpose credit programs[10] to help promote credit access for underserved borrowers.

## 1.3 Upstart no-action letter

In February 2016, the Bureau issued its initial No Action Letter (NAL) policy, which provides Bureau staff the ability to evaluate an applicant's consumer financial product or service and signify that Bureau staff has no present intent to recommend initiation of supervisory or enforcement action against the entity in respect to the product or service.[11]

In 2018 Fair Lending continued to monitor Upstart Network, Inc. (Upstart) under the terms of the no-action letter it received from Bureau staff on September 14, 2017.

By way of background, Upstart is a company that uses machine learning in making credit and pricing decisions. Based in San Carlos, Calif., Upstart provides an online lending platform for consumers to apply for personal loans, including credit card refinancing, student loans, and debt consolidation. Upstart evaluates consumer loan applications using traditional factors such as credit score and income, as well as incorporating non-traditional sources of information such as education and employment history.

The no-action letter issued to Upstart signified that Bureau staff has no present intent to recommend initiation of supervisory or enforcement action against Upstart with respect to the Equal Credit Opportunity Act. The letter applies to Upstart's model for underwriting and pricing applicants as described in the company's application materials. The no-action letter is specific to the facts and circumstances of the particular company and does not serve as an endorsement of the use of any particular variables or modeling techniques. In 2018 Fair Lending monitored Upstart under the terms of the 2017 NAL. Under the terms of the no-action letter issued by Bureau staff, Upstart agreed to share certain information with the CFPB regarding the loan applications it receives, how it decides which loans to approve, and how it will mitigate risk to consumers, as well as information on how its model expands access to credit for traditionally underserved populations. In addition, Upstart agreed as part of its request for a NAL to employ other consumer safeguards. These safeguards, which are described in the application materials posted on the Bureau's website, include ensuring compliance with adverse

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

[11] The 2016 policy as submitted to the Federal Register is available at https://files.consumerfinance.gov/f/201602_cfpb_no-action-letter-policy.pdf. As of the issuance of this report, a revised NAL policy is under consideration. See Section 1.4 for more information.

action notice requirements, and ensuring that all of its consumer-facing communications are timely, transparent, and clear, and use plain language to convey to consumers the type of information that will be used in underwriting.

The CFPB expects that this information will further its understanding of how the types of practices employed by Upstart impact access to credit generally and for traditionally underserved populations, as well as the application of compliance management systems for these emerging practices.

## 1.4 Models

When making credit decisions, lenders often rely on proprietary or third-party credit scoring models. In recent years, new third-party credit scoring models have been developed for lenders based on information beyond the contents of a consumer's core credit file. The use of alternative data and modeling techniques may expand access to credit or lower credit cost and, at the same time, present fair lending risks.

In 2018, Fair Lending recommended supervisory reviews of third-party credit scoring models so that the Bureau "keep[s] pace with the evolution of technology in consumer financial products and services in order to accomplish its strategic goals and objectives."[12] These recommended reviews would focus on obtaining information and learning about the models and compliance systems of third-party credit scoring companies for the purpose of assessing fair lending risks to consumers and whether the models are likely to increase access to credit. Observations from these reviews are expected to further the Bureau's interest in identifying potential benefits and risks associated with the use of alternative data and modeling techniques.

A significant focus of the Bureau's interest in models is ways that alternative data and modeling may expand access to credit for consumers who are credit invisible or who lack enough credit history to obtain a credit score. The Bureau is also interested in other potential benefits associated with the use of alternative data and modeling techniques that may directly or indirectly benefit consumers, including enhanced creditworthiness predictions, more timely information about a consumer, lower costs, and operational improvements.

[12] CFPB Strategic Plan for FY 2018-2022, https://files.consumerfinance.gov/f/documents/cfpb_strategic-plan_fy2018-fy2022.pdf.

# 2. Outreach: Promoting fair lending compliance and education

A key tool that the Bureau uses to help prevent lending discrimination is outreach and education. Pursuant to Dodd-Frank,[13] the Office of Fair Lending regularly engages in outreach with Bureau stakeholders, including consumer advocates, civil rights organizations, industry, academia, and other government agencies, to: (1) educate them about fair lending compliance and access to credit issues and (2) hear their views on the Bureau's work to inform the Bureau's policy decisions.

The Bureau is committed to communicating directly with all stakeholders on its policies, compliance expectations, and fair lending priorities, and to receiving valuable input about fair lending issues and how innovation can promote fair, equitable, and nondiscriminatory access to credit.

## 2.1 Blog posts

The Bureau regularly uses its blog as a tool to communicate effectively to consumers and other stakeholders on timely issues, emerging areas of concern, Bureau initiatives, and more. In 2018 the Bureau published four blog posts related to fair lending topics including: providing consumers updated information about a fair lending enforcement action,[14] announcing the Bureau's day -long Symposium, *Building a Bridge to Credit Visibility*,[15] announcing the release

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

[14] Patrice Alexander Ficklin, *What you need to know to get money from the settlement with BancorpSouth Bank for alleged discrimination*, Consumer Financial Protection Bureau (June 5, 2018), https://www.consumerfinance.gov/about-us/blog/what-you-need-know-get-money-settlement-bancorpsouth-bank-alleged-discrimination/.

[15] Patrice Alexander Ficklin, *Save the date for the 'Building a Bridge to Credit Visibility' symposium*, Consumer Financial Protection Bureau (Aug. 02, 2018), https://www.consumerfinance.gov/about-us/blog/save-date-building-bridge-credit-visibility-symposium/.

of a new research report on the geographic patterns of credit invisibility,[16] and noting the release of the fair lending annual report on 2017 activities.[17]

The Bureau's blog posts, including those related to fair lending, may be accessed at www.consumerfinance.gov/blog.

## 2.2 Supervisory Highlights

*Supervisory Highlights* has long been a report that anchors the Bureau's efforts to communicate about the Bureau's supervisory activity. More information about the fair lending topics discussed this year in *Supervisory Highlights* can be found in Section 5.1.1 of this Report. As with all Bureau resources, all editions of *Supervisory Highlights* are available on www.consumerfinance.gov/reports.

## 2.3 Speaking engagements and roundtables

Staff from the Bureau's Office of Fair Lending and Equal Opportunity participated in a number of outreach speaking events and roundtables throughout 2018 to: (1) educate them about fair lending compliance and access to credit issues and (2) hear their views on the Bureau's work to inform the bureau's policy decisions. In these events, staff shared information on fair lending priorities, emerging issues, and heard feedback from stakeholders on fair lending issues and how innovation can promote fair, equitable, and nondiscriminatory access to credit. Some examples of the topics covered include fair lending priorities, fair lending model governance, innovations in lending, redlining, HMDA, small business lending, alternative data, and installment lending contracts. In addition to these outreach events, the 2018 Symposium, discussed in Section 1.1 of this Report, served as a principal vehicle to exchange information related to access to credit to inform the Bureau's policy making activity.

[16] Ken Brevoort & Patrice Ficklin, *New research report on the geography of credit invisibility*, Consumer Financial Protection Bureau (Sept. 19, 2018), https://www.consumerfinance.gov/about-us/blog/new-research-report-geography-credit-invisibility/.

[17] Patrice Alexander Ficklin, *Promoting fair, equitable, and nondiscriminatory access to credit: 2017 Fair Lending Report* (Dec. 4, 2018), https://www.consumerfinance.gov/about-us/blog/promoting-fair-equitable-and-nondiscriminatory-access-credit-2017-fair-lending-report/.

# 3. Guidance and rulemaking

## 3.1 HMDA exemptions under EGRRCPA

As part of the Bureau's efforts to enforce Home Mortgage Disclosure Act (HMDA) and its implementing regulation, Regulation C, on August 31, 2018, the Bureau issued an interpretive and procedural rule to implement and clarify the requirements of section 104(a) of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA), which earlier in 2018 amended certain provisions of HMDA.[18]

The rule clarifies that insured depository institutions and insured credit unions covered by a partial exemption have the option of reporting exempt data fields as long as they report all data fields within any exempt data point for which they report data; clarifies that only loans and lines of credit that are otherwise HMDA reportable count toward the thresholds for the partial exemptions; clarifies which of the data points in Regulation C are covered by the partial exemptions; designates a non-universal loan identifier for partially exempt transactions for institutions that choose not to report a universal loan identifier; and clarifies the exception to the partial exemptions for negative Community Reinvestment Act examination history. The rule also provided that at a later date, the Bureau would initiate a notice-and-comment rulemaking to incorporate these interpretations and procedures into Regulation C and further implement the Act.[19]

The Bureau also engaged in a number of non-rulemaking activities to facilitate the EGRRCPA implementation. The Bureau reviewed its compliance guides and examination manuals to make appropriate updates, as well as engaged with stakeholders regarding the issuance of guidance to meet the statutory requirements and facilitate compliance.[20]

[18] Public Law 115-174, 132 Stat. 1296 (2018).

[19] Consumer Financial Protection Bureau, Partial Exemptions from the Requirements of the Home Mortgage Disclosure Act Under the Economic Growth, Regulatory Relief, and Consumer Protection Act (Regulation C) (September 7, 2018), 45325-45333, 83 FR 45325, https://www.federalregister.gov/documents/2018/09/07/2018-19244/partial-exemptions-from-the-requirements-of-the-home-mortgage-disclosure-act-under-the-economic.

[20] Kelly Cochran, *Fall 2018 rulemaking agenda* (October 17, 2018), https://www.consumerfinance.gov/about-us/blog/fall-2018-rulemaking-agenda/.

## 3.2 HMDA data disclosure

On December 21, 2018, the Bureau issued final policy guidance describing modifications that it intends to apply to the HMDA data reported by financial institutions before the data are made public on the loan level. In issuing the guidance, the Bureau considered how appropriately to protect applicant and borrower privacy while also fulfilling HMDA's public disclosure purposes. The policy guidance applies to data compiled by financial institutions in 2018 that will be made available to the public beginning in 2019. In addition, after consideration of stakeholder comments urging that determinations concerning the disclosure of loan-level HMDA data be effectuated through more formal processes, the Bureau also has decided to add a new notice-and-comment rulemaking to govern the disclosure of HMDA data in future years, which was included in the Bureau's Fall 2018 rulemaking agenda.

## 3.3 ECOA and Regulation B

On May 21, 2018, in response to the enactment of a Congressional resolution disapproving the Bureau's indirect auto lending guidance, the Bureau's former Acting Director issued a statement indicating the Bureau's intent to reexamine requirements of the ECOA regarding the disparate impact doctrine in light of recent Supreme Court case law addressing the availability of disparate impact legal theory under the Fair Housing Act.[21]

On April 19, 2019, the Bureau announced that it would be conducting a symposia series exploring consumer protections in the financial services marketplace. One topic of the symposia series is disparate impact and the Equal Credit Opportunity Act.[22] Details regarding the symposium will be announced on the Bureau's website at a later time.

## 3.4 Small business data collection

Section 1071 of the Dodd-Frank Act amends ECOA to require financial institutions to collect, report, and make public certain information concerning credit applications made by women-owned, minority-owned, and small businesses. The amendments to ECOA made by the Dodd-Frank Act require that specific data be collected, maintained, and reported, including but not

[21] *Statement of the Bureau of Consumer Financial Protection on enactment of S.J. Res. 57* (May 21, 2018), https://www.consumerfinance.gov/about-us/newsroom/statement-bureau-consumer-financial-protection-enactment-sj-res-57/ ; see also Fall 2018 Regulatory Agenda Preamble (Aug. 30, 2018), available at https://www.reginfo.gov/public/jsp/eAgenda/StaticContent/201810/Preamble_3170.html .

[22] *Consumer Financial Protection Bureau Announces Symposia Series* (April 8, 2019), https://www.consumerfinance.gov/about-us/newsroom/bureau-announces-symposia-series/.

limited to the type of loan applied for, the amount of credit applied for, the type of action taken with regard to each application, the census tract of the principal place of business of the loan applicant, and the race, sex, and ethnicity of the principal owners of the business. The Dodd-Frank Act also provides authority for the Bureau to require any additional data that the Bureau determines would aid in fulfilling the purposes of section 1071.

In connection with its Fall 2018 Rulemaking Agenda,[23] the Bureau announced that in light of the need to focus additional resources on various HMDA initiatives, the Bureau had adjusted its timeline for implementing the statutory directive contained in section 1071 from pre-rule status to longer-term action status. More recently, in connection with its Spring 2019 Rulemaking Agenda,[24] the Bureau announced it intends to recommence work later this year to develop rules to implement section 1071 of the Dodd-Frank Act. The Bureau will recommence its work on section 1071 with a symposium on small business loan data collection.[25] Details regarding the symposium will be announced on the Bureau's website at a later time.

## 3.5 Amicus Program

The Bureau files amicus, or friend-of-the-court, briefs in significant court cases concerning the federal consumer financial protection laws, including ECOA. These amicus briefs provide the courts with Bureau views on significant consumer financial protection issues. Information regarding the Bureau's amicus program, including a description of the amicus briefs it has filed, is available on the Bureau's website.[26]

[23] Kelly Cochran, *Fall 2018 rulemaking agenda* (October 17, 2018), https://www.consumerfinance.gov/about-us/blog/fall-2018-rulemaking-agenda/.
[24] Diane Thompson, *Spring 2019 rulemaking agenda* (May 22, 2019), https://www.consumerfinance.gov/about-us/blog/spring-2019-rulemaking-agenda/.
[25] *Consumer Financial Protection Bureau Announces Symposia Series* (April 8, 2019), https://www.consumerfinance.gov/about-us/newsroom/bureau-announces-symposia-series/.
[26] https://www.consumerfinance.gov/policy-compliance/amicus/.

# 4. Supervision and enforcement prioritization

## 4.1 Risk-based prioritization

Because Congress charged the Bureau with responsibility for overseeing many lenders and products, SEFL, including the Office of Fair Lending, have long-used a risk-based approach to prioritize supervisory examinations and enforcement activity, to help ensure focus on areas that present substantial risk of credit discrimination for consumers.[27] This same approach continued in 2018.

As part of the prioritization process, the Bureau identifies emerging developments and trends by monitoring key consumer financial markets. If this market intelligence identifies fair lending risks in a particular market that require further attention, that information is incorporated into the prioritization process to determine the type and extent of attention required to address those risks.

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

[27] For additional information regarding the Bureau's risk-based approach in prioritizing supervisory examinations, see Section 3.2.3, Risk-Based Approach to Examinations, *Supervisory Highlights Summer 2013*, available at http://files.consumerfinance.gov/f/201308_cfpb_supervisory-highlights_august.pdf.

# 4.2 Fair lending supervisory and enforcement priorities

While the Bureau remains committed to ensuring that consumers are protected from discrimination in all credit markets under its legal authority, as a result of its annual risk-based prioritization process in 2018, the Bureau identified the following new focus areas for fair lending examinations or investigations:

- Student Loan Origination:  whether there is discrimination in policies and practices governing underwriting and pricing.

- Debt Collection and Model Use: whether there is discrimination in policies and practices governing auto servicing and credit card collections, including the use of models that predict recovery outcomes.

The Bureau's fair lending supervision work also continued to focus on mortgage origination, mortgage servicing, and small business lending, as in previous years.

The Bureau's mortgage origination work continued to focus on: (a) redlining and whether lenders intentionally discouraged prospective applicants living in or seeking credit in minority neighborhoods from applying for credit; (b) assessing whether there is discrimination in underwriting and pricing processes as well as steering; and (c) HMDA data integrity and validation (supporting ECOA exams) as well as HMDA diagnostic work (monitoring and assessing new rule compliance).

The Bureau's mortgage servicing fair lending supervision work explored whether there is discrimination in the default servicing processes at particular institutions, and focused on whether there are weaknesses in fair lending-related compliance management systems.

The Bureau's small business lending supervision work focused on assessing whether (1) there is discrimination in application, underwriting, and pricing processes, (2) creditors are redlining, and (3) there are weaknesses in fair lending related compliance management systems.

The Bureau also continued to vigorously enforce Federal fair lending laws, including ECOA and HMDA.  One key area on which the Bureau focused its fair lending enforcement efforts was addressing potential discrimination in mortgage lending, including the unlawful practice of redlining.

# 5. Fair lending supervision

One of the Bureau's consumer protection tools is its supervisory examinations. The Bureau's fair lending supervision program assesses compliance with ECOA and HMDA at banks and nonbanks over which the Bureau has supervisory authority. Supervision activities in 2018 ranged from assessments of institutions' fair lending compliance management systems to in-depth reviews of products or activities that may pose heightened fair lending risks to consumers. As part of its fair lending supervision program, the Bureau conducted three types of fair lending reviews: ECOA baseline reviews, ECOA targeted reviews, and HMDA data integrity reviews.

As a general matter, if such a review finds that an institution's fair lending compliance is inadequate or creates fair lending risk, the Bureau communicates its supervisory recommendations to the institution to help the institution consider fair lending compliance programs commensurate with the size and complexity of the institution and its lines of business.[28] In circumstances where examinations identify violations of fair lending laws, institutions may be required to provide remediation and restitution to consumers, along with other appropriate relief. In accordance with law, the Bureau is mandated to refer matters to the Justice Department when it has reason to believe that a creditor has engaged in a pattern or practice of lending discrimination in violation of ECOA.[29] The Bureau also may refer other potential ECOA violations to the Justice Department, at its discretion.[30]

### 5.1.1 Fair lending supervisory developments

The Bureau published various supervision program developments related to fair lending in the Summer 2018 edition of *Supervisory Highlights*. Those developments are also summarized below.[31]

[28] For recent updates to the types of supervisory communications, see https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/bcfp_bulletin-2018-01_changes-to-supervisory-communications.pdf.
[29] 15 U.S.C. § 1691e(g).
[30] Id.
[31] Consumer Financial Protection Bureau, *Supervisory Highlights Summer 2018* at 18-20 (September 2018), https://www.consumerfinance.gov/documents/6817/bcfp_supervisory-highlights_issue-17_2018-09.pdf.

### 5.1.2 HMDA implementation and new data submission platform

The Summer 2018 edition of *Supervisory Highlights*[32] noted its prior statement regarding HMDA implementation and discussed updates to HMDA related to the enactment of the EGRRCPA.

On December 21, 2017, the Bureau issued a public statement regarding HMDA implementation.[33] The statement indicated that, "for HMDA data collected in 2018 and reported in 2019 the Bureau does not intend to require data resubmission unless data errors are material. Furthermore, the Bureau does not intend to assess penalties with respect to errors in data collected in 2018 and reported in 2019." The Bureau further indicated that examinations of 2018 HMDA data would be diagnostic in nature, serving to help institutions identify compliance weakness and crediting good faith efforts.[34] The statement also noted that the Bureau "intends to engage in a rulemaking to reconsider various aspects of the 2015 HMDA Rule such as the institutional and transactional coverage tests and the rule's discretionary data points."[35]

In January 2018, the Bureau launched a new HMDA Platform to collect and publish HMDA data. The HMDA Platform is operated by the Bureau on behalf of the members of the Federal Financial Institutions Examination Council (FFIEC) and the Department of Housing and Urban Development. The new platform modernizes the HMDA collection process, and aims to reduce the time to deliver HMDA data to the public. New capabilities will continue to be added to this platform, including a forthcoming publication query tool and Application Programming Interface (API) that will replace the previous API.

The previous Bureau HMDA Explorer and API that are scheduled to be retired had been designed to support a previous generation of HMDA data and were not able to accommodate the expanded data points in the 2018 collection that were added pursuant to the 2015 HMDA Rule. The tool had not had any major updates since its release in 2013. In order to prepare for the retirement of the old site, the Bureau conducted a number of interviews with community groups and HMDA stakeholders over last summer to develop a new set of requirements based on the needs of data users. The new query tool, HMDA Data Browser, will be released late Summer

[32] Id.
[33] CFPB Issues Public Statement on Home Mortgage Disclosure Act Compliance (December 21, 2017), available at https://www.consumerfinance.gov/about-us/newsroom/cfpb-issues-public-statement-home-mortgage-disclosure-act-compliance/.
[34] Id.
[35] Id.

2019 on the new HMDA Platform.

The Summer 2018 *Supervisory Highlights* also discussed the Bureau's July 5, 2018 public statement regarding recent HMDA amendments under the EGRRCPA. The EGRRCPA provided partial exemptions for some insured depository institutions and insured credit unions from certain HMDA requirements. The Bureau indicated that the EGRRCPA would not affect the format of the HMDA Loan Application Registry (LAR).[36] Institutions that were no longer required to report certain data fields under the EGRRCPA would instead enter an exemption code in the field. On August 31, 2018, the Bureau published an updated Filing Instructions Guide which added exemption codes to the requisite data fields under the EGRRCPA.[37]

More information about the HMDA-related topics discussed this year in *Supervisory Highlights* can be found in Section 3 of this Report.

### 5.1.3 Small business lending review procedures

The Summer 2018 edition of *Supervisory Highlights*[38] reported on the Bureau's fair lending work in small business lending where the Bureau seeks to ensure that creditors do not discriminate on any prohibited bases. The *Supervisory Highlights* discussed the procedures and methodologies used as part of the Bureau's small business examination process.

Each ECOA small business lending review includes a fair lending assessment of the institution's Compliance Management System (CMS) related to small business lending. To conduct this portion of the review, examinations use Module II of the ECOA Baseline Review Modules.[39] CMS reviews include assessments of the institution's board and management oversight, compliance program (policies and procedures, training, monitoring and/or audit, and complaint response), and service provider oversight.

Examinations also use the Interagency Fair Lending Examination Procedures, which have been adopted in the Bureau's Supervision and Examination Manual. In some ECOA small business lending reviews, examination teams may evaluate an institution's fair lending risks and controls related to origination or pricing of small business lending products. Some reviews may include a geographic distribution analysis of small business loan applications, originations, loan officers,

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[36] Consumer Financial Protection Bureau, *Supervisory Highlights Summer 2018* at 19 (September 2018), https://www.consumerfinance.gov/documents/6817/bcfp_supervisory-highlights_issue-17_2018-09.pdf.

[37] Filing Instructions Guide for HMDA Data Collected in 2018 (August 2018), https://s3.amazonaws.com/cfpb-hmda-public/prod/help/2018-hmda-fig-2018-hmda-rule.pdf.

[38] Id. at 20-21.

[39] Equal Credit Opportunity Act (ECOA) Baseline Review Procedures (April 2019), https://www.consumerfinance.gov/policy-compliance/guidance/supervision-examinations/equal-credit-opportunity-act-ecoa-baseline-review-procedures/.

or marketing and outreach, in order to assess potential redlining risk.

As with other in-depth ECOA reviews, ECOA small business lending reviews may include statistical analysis of lending data in order to identify fair lending risks and appropriate areas of focus during the examination. Notably, statistical analysis is only one factor taken into account by examination teams that review small business lending for ECOA compliance. Reviews typically include other methodologies to assess compliance, including policy and procedure reviews, interviews with management and staff, and reviews of individual loan files.

# 6. Fair lending enforcement

In addition to supervision, the Bureau's enforcement function is another tool to protect consumers. The Bureau conducts investigations of potential violations of HMDA and ECOA, and if it believes a violation has occurred, can file a complaint either through its administrative enforcement process or in federal court. In 2018, the Bureau opened and continued a number of fair-lending-related investigations, however, it did not bring fair lending-related enforcement actions.

The Bureau refers matters with ECOA violations to the DOJ when it has reason to believe that a creditor has engaged in a pattern or practice of lending discrimination.[40] A referral does not prevent the Bureau from taking its own independent action to address a violation.

## 6.1 Implementing enforcement orders

When an enforcement action is resolved through a public enforcement order, the Bureau (together with the Justice Department, when relevant) takes steps to ensure that the respondent or defendant complies with the requirements of the order. As appropriate to the specific requirements of individual public enforcement orders, the Bureau may take steps to ensure that borrowers who are eligible for compensation receive remuneration and that the defendant has complied with the injunctive provisions of the order, including implementing a comprehensive fair lending compliance management system. Throughout 2018, the Bureau worked to implement and oversee compliance with the pending public enforcement orders that were entered by federal courts or issued by the Bureau's Director in prior years.

### 6.1.1 Settlement administration

#### Bancorp South Bank

On June 25, 2018 participation materials were mailed to potentially eligible African-American borrowers identified as harmed by Bancorp South's alleged redlining discrimination in mortgage lending between 2011 and 2015 notifying them how to participate in the settlement,

[40] 15 U.S.C. § 1691e(g).

resulting from a 2016 enforcement action brought by the Bureau and Justice Department against Bancorp South for alleged redlining and pricing discrimination in mortgage lending.[41]

## Fifth Third Bank

On December 17, 2018, participating African-American and Hispanic borrowers, whom Fifth Third overcharged for their auto loans, were mailed checks totaling $12 million, plus accrued interest, resulting from a 2015 enforcement action brought by the Bureau and the Justice Department against Fifth Third for alleged discrimination in auto lending.[42]

## Honda Finance

In 2018 the Bureau conducted activity following the 2015 enforcement action against Honda Finance. By way of background, on July 14, 2015, working in close coordination with the DOJ, the Bureau ordered American Honda Finance Corporation (Honda Finance) to pay $24 million in damages to harmed African-American, Hispanic, and Asian or Pacific Islander borrowers. On October 2, 2017, participating African-American, Hispanic, and Asian and/or Pacific Islander borrowers, whom Honda Finance overcharged for their auto loans were mailed checks compensating them for their harm. During 2018, the administration of the settlement consisted largely of monitoring consumer responses, check cashing rates and following up with respect to uncashed checks to determine better ways to contact eligible consumers and encourage check cashing.

## Provident Funding Associates

In 2018 the Bureau completed its work implementing the consumer redress provisions of the consent order in the Provident Funding Associates (Provident) matter. Working jointly with DOJ, the agencies filed a complaint on May 28, 2015 alleging that Provident unlawfully discriminated against African-American and Hispanic borrowers by overcharging them on their mortgage loans. The consent order required that Provident pay $9 million in restitution. On November 2, 2017, participating African-American and Hispanic borrowers who were unlawfully overcharged on their mortgage loans were mailed checks. On November 6, 2018, the

[41] Consent Order, *United States of America and Consumer Financial Protection Bureau v. Bancorp South Bank*, CFPB No. 1:16cv118 (July 25,2016) https://www.consumerfinance.gov/documents/519/201606_cfpb_bancorpSouth-consent-order.pdf.

[42] Consent Order, In re Fifth Third Bank, CFPB No. 2015-CFPB-0024 (Sept. 28, 2015), https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-fifth-third-bank-for-auto-lending-discrimination-and-illegal-credit-card-practices/.

Bureau completed the process for the mailing of remuneration checks, totaling $9 million, plus accrued interest, to eligible borrowers.[43]

### 6.1.2 ECOA referrals to the Department of Justice

The Bureau must refer to the Justice Department (DOJ) a matter when it has reason to believe that a creditor has engaged in a pattern or practice of lending discrimination in violation of ECOA.[44] The Bureau also may refer other potential ECOA violations to the DOJ.[45] In 2018, the Bureau did not refer any ECOA violations to the Justice Department.

### 6.1.3 Pending fair lending investigations

In 2018, the Bureau had a number of ongoing fair lending investigations of institutions involving a variety of consumer financial products. One key area on which the Bureau focused its fair lending enforcement efforts was addressing potential discrimination in mortgage lending, including the unlawful practice of redlining. At the end of 2018, the Bureau had a number of pending investigations in this and other areas.

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[43] Patrice Alexander Ficklin, *African-American and Hispanic borrowers harmed by Provident will receive $9 million in compensation*, Consumer Financial Protection Bureau (Nov. 2, 2017), https://www.consumerfinance.gov/about-us/blog/african-american-and-hispanic-borrowers-harmed-provident-will-receive-9-million-compensation/.

[44] 15 U.S.C. § 1691e(g).

[45] Id.

# 7. Interagency coordination

## 7.1 Interagency coordination and engagement

In 2018, the Office of Fair Lending coordinated the Bureau's fair lending regulatory, supervisory, and enforcement activities with those of other federal agencies and state regulators to promote consistent, efficient, and effective enforcement of federal fair lending laws.[46] This interagency engagement seeks to address current and emerging fair lending risks.

The Bureau, along with the Federal Trade Commission (FTC), Department of Housing and Urban Development (HUD), Federal Deposit Insurance Corporation (FDIC), Federal Reserve Board (FRB), National Credit Union Administration (NCUA), Office of the Comptroller of the Currency (OCC), Department of Justice (DOJ), and the Federal Housing Finance Agency (FHFA), comprise the *Interagency Task Force on Fair Lending*.[47] The Task Force meets regularly to discuss fair lending enforcement efforts, share current methods of conducting supervisory and enforcement fair lending activities, and coordinate fair lending policies.

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

In 2018, the Bureau chaired the *FFIEC HMDA/Community Reinvestment Act Data Collection Subcommittee*, a subcommittee of the FFIEC Task Force on Consumer Compliance (Task Force), that oversees FFIEC projects and programs involving HMDA data collection and dissemination, the preparation of the annual FFIEC budget for processing services, and the development and implementation of other related HMDA processing projects as directed by the Task Force.

[46] Dodd-Frank Act § 1013(c)(2)(B) (codified at 12 U.S.C. § 5493(c)(2)(B)).
[47] In early 2019, the Bureau assumed the role of chairing the Task Force.

# 8. Interagency reporting on ECOA and HMDA

The law requires the Bureau to file a report to Congress annually describing the administration of its functions under ECOA, summarizing public enforcement actions taken by other agencies with administrative enforcement responsibilities under ECOA, and providing an assessment of the extent to which compliance with ECOA has been achieved.[48] In addition, the Bureau's annual HMDA reporting requirement calls for the Bureau, in consultation with HUD, to report annually on the utility of HMDA's requirement that covered lenders itemize certain mortgage loan data.[49]

## 8.1 Reporting on ECOA enforcement

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

### 8.1.1 Public enforcement actions

The agencies charged with administrative enforcement of ECOA under Section 704 are as follows:

1. CFPB;

2. Federal Deposit Insurance Corporation (FDIC);

3. Federal Reserve Board (FRB);

4. National Credit Union Administration (NCUA);

5. Office of the Comptroller of the Currency (OCC);[50];

[48] 15 U.S.C. § 1691f.
[49] 12 U.S.C. § 2807.
[50] Collectively, the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), the Office of the Comptroller of the Currency (OCC), and the Bureau of Consumer Financial Protection (the Bureau) comprise the FFIEC. The FFIEC is a "formal interagency

6. Agricultural Marketing Service (AMS) of the U.S. Department of Agriculture (USDA),[51]

7. Department of Transportation (DOT);

8. Farm Credit Administration (FCA);

9. Federal Trade Commission (FTC);

10. Securities and Exchange Commission (SEC); and

11. Small Business Administration (SBA).[52]

In 2018, none of the eleven ECOA enforcement agencies brought public enforcement actions for violations of ECOA.

Below is an overview of the year-to-year ECOA enforcement actions since 2012:

| Reporting Year | Total Enforcement Matters |
|---|---|
| 2012 | 1 |
| 2013 | 26 |
| 2014 | 2 |
| 2015 | 5 |
| 2016 | 3 |
| 2017 | 1 |
| 2018 | 0 |

body empowered to prescribe uniform principles, standards, and report forms for the federal examination of financial institutions" by the member agencies listed above and the State Liaison Committee "and to make recommendations to promote uniformity in the supervision of financial institutions." Federal Financial Institutions Examination Council, http://www.ffiec.gov (last visited April 5, 2018). The State Liaison Committee was added to FFIEC in 2006 as a voting member.

[51] The Grain Inspection, Packers and Stockyards Administration (GIPSA) was eliminated as a stand-alone agency within USDA in 2017. The functions previously performed by GIPSA have been incorporated into the Agricultural Marketing Service (AMS), and ECOA reporting now comes from the Packers and Stockyards Division, Fair Trade Practices Program, AMS.

[52] 15 U.S.C. § 1691c.

### 8.1.2 Violations cited during ECOA examinations

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

**TABLE 1:** REGULATION B VIOLATIONS CITED BY FFIEC AGENCIES: 2018

| FFIEC Agencies Reporting | Regulation B Violations: 2018 |
| --- | --- |
| The Bureau, FDIC, FRB, NCUA, OCC | 12 C.F.R. § 1002.4(a): Discrimination on a prohibited basis in a credit transaction.<br><br>12 C.F.R. § 1002.9(a)(1), (a)(2), (b)(2), (c): Failure to provide notice to the applicant 30 days after receiving a completed application concerning the creditor's approval of, counteroffer or adverse action on the application; failure to provide appropriate notice to the applicant 30 days after taking adverse action on an incomplete application; failure to provide sufficient information in an adverse action notification, including the specific reasons for the action taken.<br><br>12 C.F.R. § 1002.14(a)(2): Failure to routinely provide an applicant with a copy of all appraisals and other written valuations developed in connection with an application for credit that is to be secured by a first lien on a dwelling. |

**TABLE 2:** REGULATION B VIOLATIONS CITED BY OTHER ECOA AGENCIES: 2017

| Other ECOA Agencies | Regulation B Violations: 2018 |
| --- | --- |
| FCA | 12 C.F.R. § 1002.9(a)(1)(i), (a)(2)(i), (b)(1): Failure to provide notice to the applicant 30 days after receiving a completed application concerning the creditor's approval of, counteroffer or adverse action on the application; failure to provide sufficient information in an adverse action notification, including the specific reasons for the action taken; failure to provide ECOA notice. |

| Other ECOA Agencies | Regulation B Violations: 2018 |
|---|---|
| | 12 C.F.R. § 1002.13: Failure to request and collect information for monitoring purposes. |

The AMS, SEC and the SBA reported that they received no complaints based on ECOA or Regulation B in 2018. In 2018, the DOT reported that it received a "small number of consumer inquiries or complaints concerning credit matters possibly covered by ECOA," which it "processed informally." The FTC is an enforcement agency and does not conduct compliance examinations.

## 8.2 Referrals to the Department of Justice

In 2018, one FFIEC agency, the NCUA, made a referral to the DOJ involving discrimination in violation of ECOA. The NCUA made its referral on the basis of marital status discrimination.

Below is a year-to-year overview of ECOA referrals to DOJ:

| Year | Number of Referrals |
|---|---|
| 2012 | 12 |
| 2013 | 24 |
| 2014 | 18 |
| 2015 | 16 |
| 2016 | 20 |
| 2017 | 11 |
| 2018 | 1 |

## 8.3 Reporting on the Home Mortgage Disclosure Act

The Bureau's annual HMDA reporting requirement calls for the Bureau, in consultation with HUD, to report annually on the utility of HMDA's requirement that covered lenders itemize loan data in order to disclose the number and dollar amount of certain mortgage loans and applications, grouped according to various characteristics.[53] The Bureau, in consultation with HUD, finds that itemization and tabulation of these data furthers the purposes of HMDA.

[53] *See* 12 U.S.C. § 2807.

# APPENDIX A: DEFINED TERMS

| TERM | DEFINITION |
|---|---|
| AMS | Agricultural Marketing Service of the U.S. Department of Agriculture |
| Bureau | The Bureau of Consumer Financial Protection |
| CMS | Compliance Management System |
| Dodd-Frank Act | The Dodd-Frank Wall Street Reform and Consumer Protection Act |
| DOJ | The U.S. Department of Justice |
| DOT | The U.S. Department of Transportation |
| ECOA | The Equal Credit Opportunity Act |
| EGRRCPA | Economic Growth, Regulatory Relief, and Consumer Protection Act |
| FCA | Farm Credit Administration |
| FDIC | Federal Deposit Insurance Corporation |

| | |
|---|---|
| Federal Reserve Board or FRB | Board of Governors of the Federal Reserve System |
| FFIEC | Federal Financial Institutions Examination Council - the FFIEC member agencies are the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), the Office of the Comptroller of the Currency (OCC), and the Bureau of Consumer Financial Protection (The Bureau). The State Liaison Committee was added to FFIEC in 2006 as a voting member. |
| FTC | Federal Trade Commission |
| GIPSA | Grain Inspection, Packers and Stockyards Administration of the U.S. |
| HMDA | The Home Mortgage Disclosure Act |
| HUD | The U.S. Department of Housing and Urban Development |
| NCUA | The National Credit Union Administration |
| OCC | Office of the Comptroller of the Currency |
| SBA | Small Business Administration |

| | |
|---|---|
| SEC | Securities and Exchange Commission |
| USDA | U.S. Department of Agriculture |