

# Fair Lending Report of the Consumer Financial Protection Bureau

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# 1. Fair lending enforcement and supervision

## 1.1 Risk-based prioritization

Because Congress charged the Consumer Financial Protection Bureau (CFPB) with the responsibility of overseeing many lenders and products, the CFPB has long used a risk-based approach to prioritizing supervisory examinations and enforcement activity. This approach helps ensure that the CFPB focuses on areas that present substantial risk of credit discrimination for consumers and small businesses.<sup>1</sup>

As part of the prioritization process, the CFPB identifies emerging developments and trends by monitoring key consumer financial markets. If this field and market intelligence identifies fair lending risks in a particular market, that information is used to determine the type and extent of assets applied to address those risks.

The prioritization process incorporates a number of additional factors, including tips and leads from industry whistleblowers, advocacy groups, and government agencies; supervisory and enforcement history; consumer complaints; and results from analysis of Home Mortgage Disclosure Act (HMDA) and other data.

As a result of its annual risk-based prioritization process, in 2023 the CFPB focused much of its fair lending supervision efforts on: mortgage origination (including redlining, property valuation bias, and HMDA and Regulation C compliance); credit card marketing and the use of alternative data in digital marketing; and on the use of automated systems and models, sometimes marketed as artificial intelligence (AI) and machine learning models, in credit card originations.

As in previous years, the CFPB's 2023 mortgage origination work continued to focus on redlining (intentional discrimination against applicants and prospective applicants living or seeking credit in minority neighborhoods, including by discouragement). The CFPB's mortgage work also included assessing potential discrimination in mortgage underwriting and pricing processes, including assessing whether there were disparities in application, underwriting, and pricing processes, and whether there were weaknesses in fair lending-related compliance

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<sup>1</sup> See Risk-Based Approach to Examinations, *Supervisory Highlights* Summer 2013 at 23, [https://files.consumerfinance.gov/f/201308\\_cfpb\\_supervisory-highlights\\_august.pdf](https://files.consumerfinance.gov/f/201308_cfpb_supervisory-highlights_august.pdf), for additional information regarding the CFPB's risk-based approach in prioritizing supervisory examinations.

management systems. The CFPB's mortgage origination work also included reviewing residential property appraisal service providers to identify risks that may arise due to potential discrimination or bias as well as HMDA data integrity and validation reviews.

The CFPB's credit card work included assessing credit card lenders' digital marketing practices relating to credit cards, as well as credit card lenders' use of alternative data in that marketing. The CFPB's credit card work also included evaluation of automated systems and models, sometimes marketed as artificial intelligence and machine learning models, used by credit card lenders in credit card originations, as well as assessing whether there were disparities in application, underwriting, and pricing processes, and whether the institutions searched for less discriminatory alternatives to the models used.

Across multiple markets, the CFPB continued to assess whether lenders complied with the adverse action notice requirements of the Equal Credit Opportunity Act (ECOA) and Regulation B and evaluated whether lenders maintain policies and procedures that unlawfully exclude property on the basis of geography in underwriting decisions, unlawfully exclude certain types of income, and treat criminal history in an unlawful manner.

## 1.2 Fair lending enforcement

Congress authorized the CFPB to bring actions to enforce the requirements of eighteen enumerated statutes, including ECOA, HMDA, and the Consumer Financial Protection Act of 2010 (CFPA), which prohibits unfair, deceptive, and abusive acts or practices. The CFPB is able to engage in research, conduct investigations, file administrative complaints, hold hearings, and adjudicate claims through the CFPB's administrative enforcement process. The CFPB also uses its independent litigation authority to file cases in federal court alleging violations of fair lending laws under the CFPB's jurisdiction. Like other federal regulators, the CFPB is required to refer matters to the Department of Justice (DOJ) when it has reason to believe that a creditor has engaged in a pattern or practice of lending discrimination.<sup>2</sup>

### 1.2.1 ECOA-related public enforcement actions

In 2023, the CFPB announced two ECOA-related public enforcement actions, relating to discrimination on the basis of race and national origin, one against Citibank N.A. (Citibank) and the other against Colony Ridge Development, LLC, and Colony Ridge BV, LLC, and affiliate

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<sup>2</sup> See 15 U.S.C. § 1691e(g).

mortgage company Colony Ridge Land, LLC (collectively, the Colony Ridge defendants). For more information on these ECOA-related enforcement actions, see Section 6.1.2 of this report.

## 1.2.2 HMDA-related public enforcement actions

HMDA, its implementing Regulation C, and Regulation B require mortgage lenders to report certain information about loan applications and originations to the CFPB and other federal regulators. HMDA data are the most comprehensive source of publicly available information on the U.S. mortgage market. Both the public and regulators can use this information to monitor whether financial institutions are serving the housing needs of their communities, as well as to identify possible discriminatory lending patterns.

In 2023, the CFPB announced public enforcement actions against two repeat offenders for reporting false, erroneous, or incorrect HMDA data: Freedom Mortgage Corporation (Freedom Mortgage) and Bank of America, N.A.

The CFPB will continue to monitor the rate at which mortgage lenders fail to collect and report applicants' demographic information. The rate of nonreporting of demographic information has been increasing since 2019, potentially compromising the ability of the CFPB and other financial regulators, enforcement agencies, academics, other mortgage lenders, and civil rights and consumer advocates, to detect and remedy redlining, discouragement, and other forms of discrimination in the mortgage market. The CFPB's evaluations will include assessments of lenders' demographic reporting practices and HMDA compliance systems to ensure they are monitoring for inaccurate or incomplete demographic information reporting and complying with HMDA.

### **FREEDOM MORTGAGE**

On October 10, 2023, the CFPB filed a lawsuit against Freedom Mortgage, a residential mortgage loan originator and servicer, alleging that it submitted legally-required mortgage loan data that were riddled with errors.<sup>3</sup> In 2020, Freedom Mortgage reported HMDA data on over 700,000 applications and originated nearly 400,000 HMDA-reportable loans worth almost \$100 billion, making it the third largest mortgage lender in the United States by origination volume. Freedom Mortgage is a repeat offender: at the time the CFPB filed its complaint, Freedom was already under a CFPB Consent Order related to previous HMDA violations. In 2019, the CFPB issued an order against Freedom finding that it intentionally misrepresented certain HMDA data fields from at least 2014 to 2017.<sup>4</sup> In the CFPB's lawsuit, the CFPB alleges

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<sup>3</sup> See <https://www.consumerfinance.gov/enforcement/actions/freedom-mortgage-corporation-hmda-2023/>.

<sup>4</sup> See [https://files.consumerfinance.gov/f/documents/cfpb\\_freedom-mortgage-corporation\\_consent-order\\_2019-05.pdf](https://files.consumerfinance.gov/f/documents/cfpb_freedom-mortgage-corporation_consent-order_2019-05.pdf).

that the mortgage loan data for 2020 that Freedom Mortgage submitted contained widespread errors across multiple data fields, in violation of HMDA and Regulation C. The CFPB's complaint further alleges that by reporting inaccurate HMDA mortgage loan data for 2020, Freedom Mortgage also violated the 2019 order and the CFPA. The CFPB seeks appropriate injunctive relief and a civil money penalty.

### **BANK OF AMERICA**

On November 28, 2023, the CFPB issued an order against Bank of America for routinely submitting falsified HMDA data.<sup>5</sup> The CFPB found that between 2016 and late 2020, hundreds of Bank of America's loan officers failed to ask applicants for their race, ethnicity, and sex, as required by law, and instead falsely recorded that the applicants chose not to provide this information, in violation of HMDA, Regulation C, and the CFPA. The CFPB's order requires Bank of America to pay a \$12 million civil money penalty and to develop policies and procedures to ensure compliance with HMDA and Regulation C, including recording and auditing phone applications to make sure that HMDA data are accurately collected and recorded.

## 1.2.3 ECOA referrals to Department of Justice

The CFPB must refer to DOJ any matter when it has reason to believe that a creditor has engaged in a pattern or practice of lending discrimination in violation of ECOA.<sup>6</sup> The CFPB may refer other potential ECOA violations to DOJ as well.<sup>7</sup> In 2023, the CFPB referred 18 matters to DOJ pursuant to 15 U.S.C. § 1691e(g). More information on these referrals can be found in Section 6.1.6 of this report.

## 1.2.4 Implementing enforcement orders

When an enforcement action is resolved through a public enforcement order, the CFPB (together with other government entities, when relevant) takes steps to ensure that the respondent or defendant complies with the requirements of the order. Depending on the specific requirements of individual public enforcement orders, the CFPB 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.

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<sup>5</sup> See <https://www.consumerfinance.gov/enforcement/actions/bank-of-america-na-hmda-data-2023/>.

<sup>6</sup> 15 U.S.C. § 1691e(g).

<sup>7</sup> *Id.*



## 1.3 Fair lending supervision

The CFPB's Supervision program assesses compliance with federal consumer financial protection laws and regulations at banks and nonbanks over which the CFPB has supervisory authority. As a result of the CFPB's efforts to fulfill its fair lending mission during 2023, the CFPB initiated 28 fair lending examinations or targeted reviews.

In 2023, two of the most frequently identified fair lending issues in supervisory communications related to the granting of pricing exceptions and HMDA violations.

In 2023, the CFPB issued several fair lending-related Matters Requiring Attention and entered Memoranda of Understanding directing entities to take corrective actions that the CFPB will monitor through follow-up supervisory actions. In these communications, the CFPB directed mortgage lenders to correct violations relating to redlining, including by institutions providing consumer remediation designed to spur lending in redlined areas. The CFPB also directed lenders to enhance their fair lending compliance management systems in several ways, including by directing institutions to, when testing and approving credit scoring models, document the specific business needs the models serve, as well as document specific standards for assessing whether a model serves each stated business need. Further, the CFPB also directed the institutions to test credit scoring models for prohibited basis disparities and to require documentation of considerations the institutions will give to how to assess those disparities against the stated business needs. To ensure compliance with ECOA and Regulation B, institutions were directed to develop a process for the consideration of a range of less discriminatory models. Additionally, institutions were directed to test and validate the methodologies used to identify principal reasons in adverse action notices required under ECOA and Regulation B. Finally, institutions were directed to implement policies, procedures, and controls designed to effectively manage HMDA compliance, including regarding integrity of data collection.

During 2023, informed by the Director's priority to address risks of consumer harm from advanced and emerging technologies in consumer finance, the CFPB continued to increase its technical capacity and analyses to ensure that the use of this technology does not pose risks to consumers or violate federal consumer financial law.

# 2. Rulemaking and guidance

## 2.1 Rulemaking

During 2023, the CFPB issued a final rule on small business lending data collection and issued a notice of proposed rulemaking on automated valuation models (AVMs).

The CFPB publishes an agenda of its planned rulemaking activity biannually, which is available at: <https://www.consumerfinance.gov/rules-policy/regulatory-agenda>.

### 2.1.1 Small business lending data collection rulemaking

In section 1071 of the Dodd-Frank Act, Congress directed the CFPB to adopt regulations governing the collection of small business lending data.<sup>8</sup> Section 1071 amended ECOA to require financial institutions to compile, maintain, and submit to the CFPB certain data on applications for credit for women-owned, minority-owned, and small businesses.

Congress enacted section 1071 for the purpose of facilitating enforcement of fair lending laws and enabling communities, governmental entities, and creditors to identify business and community development needs and opportunities for women-owned, minority-owned, and small businesses.

On March 30, 2023, the CFPB issued a final rule amending Regulation B to implement changes to ECOA made by section 1071 of the Dodd-Frank Act.<sup>9</sup> Consistent with section 1071, covered financial institutions are required to collect and report to the CFPB data on applications for credit for small businesses, including those that are owned by women or minorities. The rule also addresses the CFPB's approach to privacy interests and the publication of section 1071 data; shielding certain demographic data from underwriters and other persons; recordkeeping requirements; enforcement provisions; and the rule's effective and compliance dates.

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<sup>8</sup> 15 U.S.C. § 1691c-2.

<sup>9</sup> Consumer Fin. Prot. Bureau; *Small Business Lending under the Equal Credit Opportunity Act (Regulation B)* (Mar. 30, 2023), <https://www.consumerfinance.gov/rules-policy/final-rules/small-business-lending-under-the-equal-credit-opportunity-act-regulation-b/>.

In light of court orders in ongoing litigation, the CFPB has announced plans to extend the compliance dates in the small business lending rule.<sup>10</sup> More information about pending litigation is contained in Section 5 of this report.

## 2.1.2 Automated Valuation Models rulemaking

On June 1, 2023, the CFPB, along with its interagency partners, the Federal Reserve Board (FRB), Office of the Comptroller of the Currency (OCC), Federal Deposit Insurance Corporation (FDIC), National Credit Union Administration (NCUA), and Federal Housing Finance Agency (FHFA) (collectively, the Agencies) requested public comment on a proposed rule designed to ensure the credibility and integrity of models used in real estate valuations.<sup>11</sup> In particular, the proposed rule would implement quality control standards for AVMs used by mortgage originators and secondary market issuers in valuing real estate collateral securing mortgage loans. AVMs are used as part of the real estate valuation process, driven in part by advances in database and modeling technology and the availability of larger property datasets. While advances in AVM technology and data availability have the potential to contribute to lower costs and reduce loan cycle times, it is important that institutions using AVMs take appropriate steps to ensure the credibility and integrity of their valuations. It is also important that the AVMs that institutions are using adhere to quality control standards designed to comply with applicable nondiscrimination laws.

The proposed standards are designed to ensure a high level of confidence in the estimates produced by AVMs; help protect against the manipulation of data; seek to avoid conflicts of interest; require random sample testing and reviews; and promote compliance with applicable nondiscrimination laws.

The comment period for the proposed rule closed on August 21, 2023.

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<sup>10</sup> More information is available at: <https://www.consumerfinance.gov/1071-rule/>, a page compiling key materials related to the CFPB's small business rulemaking, including information on the interim final rule to extend compliance deadlines.

<sup>11</sup> Consumer Fin. Prot. Bureau; Off. of the Comptroller of the Currency; Fed. Hous. Fin. Agency; Fed. Reserve Sys.; Fed. Deposit Ins. Corp.; Nat'l Credit Union Admin.; *Quality Control Standards for Automated Valuation Models* (Jun. 1., 2023), [https://files.consumerfinance.gov/f/documents/cfpb\\_automated-valuation-models\\_proposed-rule-request-for-comment\\_2023-06.pdf](https://files.consumerfinance.gov/f/documents/cfpb_automated-valuation-models_proposed-rule-request-for-comment_2023-06.pdf).

## 2.2 Guidance

The CFPB issues guidance to its various stakeholders in many forms, including Consumer Financial Protection Circulars (Circulars), advisory opinions, interpretive rules, statements, bulletins, publications such as *Supervisory Highlights*.

### 2.2.1 Proposed interagency guidance on reconsiderations of value for residential real estate valuations

On June 8, 2023, the CFPB, along with FRB, FDIC, NCUA, and OCC requested public comment on proposed guidance addressing reconsiderations of value (ROV) for residential real estate transactions.<sup>12</sup> ROVs are requests from a financial institution to an appraiser or other preparer of a valuation report to reassess the value of residential real estate. An ROV may be warranted if a consumer provides information to a financial institution about potential deficiencies or other information that may affect the estimated value. The proposed guidance advises on policies that financial institutions may implement to allow consumers to provide financial institutions with information that may not have been considered during an appraisal, or if deficiencies are identified in the original appraisal.

The comment period for the proposed guidance closed on September 19, 2023.

### 2.2.2 Consumer Financial Protection Circular 2023-03: Adverse action notification requirements and the proper use of the CFPB's sample forms provided in Regulation B

On September 19, 2023, the CFPB released a Circular pertaining to certain legal requirements that lenders must adhere to, including when using artificial intelligence and other complex models.<sup>13</sup> The Circular describes how, under ECOA and Regulation B, lenders must make available to an applicant a statement of specific and accurate reasons when taking adverse action against the applicant and cannot simply use the CFPB sample adverse action forms and

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<sup>12</sup> Consumer Fin. Prot. Bureau; Off. of the Comptroller of the Currency; Fed. Hous. Fin. Agency; Fed. Reserve Sys.; Fed. Deposit Ins. Corp.; Nat'l Credit Union Admin; *Interagency Guidance on Reconsideration of Value of Residential Real Estate Valuations* (Jun. 8, 2023), [https://files.consumerfinance.gov/f/documents/cfpb\\_interagency-guidance-reconsiderations-of-value-of-residential-real-estate\\_2023-06.pdf](https://files.consumerfinance.gov/f/documents/cfpb_interagency-guidance-reconsiderations-of-value-of-residential-real-estate_2023-06.pdf).

<sup>13</sup> Consumer Fin. Prot. Bureau, Consumer Financial Protection Circular 2023-03 Adverse action notification requirements and the proper use of the CFPB's sample forms provided in Regulation B (Sep. 19, 2023), <https://www.consumerfinance.gov/compliance/circulars/circular-2023-03-adverse-action-notification-requirements-and-the-proper-use-of-the-cfpbs-sample-forms-provided-in-regulation-b/>.

checklists if they do not reflect the actual reason for the denial of credit or other adverse action. This requirement is especially important with the growth of advanced algorithms and personal consumer data in credit underwriting. The legal requirement to explain the reasons for adverse actions helps improve consumers' chances for future credit and protect consumers from illegal discrimination and serve an educational role, allowing consumers to understand the reasons for a creditor's action and take steps to improve their credit status or rectify mistakes made by creditors.

### 2.2.3 Coverage of Franchise Financing under ECOA, including the Small Business Lending Rule

On June 5, 2023, the CFPB published a document affirming the extent to which ECOA and Regulation B apply with respect to franchisees seeking credit to finance their businesses.<sup>14</sup> Franchising is a significant portion of the small business ecosystem, and franchisees generally obtain credit either directly from the franchisor or from third party finance companies, which could be independent of the franchisor or brokered by or affiliated with the franchisor. These financing arrangements are likely “credit” and “business credit” under ECOA and Regulation B.

### 2.2.4 Supervisory Highlights

The CFPB's *Supervisory Highlights* reports provide general information about the CFPB's supervisory activities at banks and nonbanks without identifying specific entities. These reports communicate the CFPB's key examination findings and operational changes to the CFPB's supervision program. In 2023, the CFPB published three issues of *Supervisory Highlights*.<sup>15</sup>

The CFPB released the 30<sup>th</sup> edition of *Supervisory Highlights* on July 26, 2023, which covered examinations completed between July 1, 2022, and March 31, 2023.<sup>16</sup> This report included findings of ECOA and Regulation B violations in several areas, including pricing discrimination and discriminatory lending restrictions. Specifically, examiners found that mortgage lenders violated ECOA and Regulation B by discriminating in the incidence of granting pricing exceptions for competitive offers across a range of ECOA-protected characteristics, including race, national origin, sex, and age.

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<sup>14</sup> Consumer Fin. Prot. Bureau, *Coverage of Franchise Financing Under the Equal Credit Opportunity Act, Including the Small Business Lending Rule* (May 2023), [https://files.consumerfinance.gov/f/documents/cfpb\\_coverage-of-franchise-financing\\_2023-05.pdf](https://files.consumerfinance.gov/f/documents/cfpb_coverage-of-franchise-financing_2023-05.pdf).

<sup>15</sup> Consumer Fin. Prot. Bureau Issue 29, *Junk Fees Special Edition*, Winter 2023; Issue 30, Summer 2023; Issue 31, *Junk Fees Update Special Edition* Fall 2023.

<sup>16</sup> Consumer Fin. Prot. Bureau, Issue 30, *Summer 2023* (Jul. 31, 2023), [https://files.consumerfinance.gov/f/documents/cfpb\\_supervisory-highlights\\_issue-30\\_2023-07.pdf](https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-30_2023-07.pdf).

Additionally, this edition detailed examiners' findings on certain lending restrictions, including how lenders handled the treatment of applicants' criminal records. The use of criminal history in credit decisioning may create a heightened risk of violating ECOA and Regulation B. In this review, examiners uncovered risky policies and procedures relating to the use of criminal history information at several institutions in several areas of credit, including mortgage origination, auto lending, and credit cards, but most notably within small business lending.

Further, examiners identified institutions improperly treating income derived from public assistance. In some instances, lenders imposed stricter standards on income derived from public assistance programs, while in other instances, institutions excluded income derived from certain public assistance programs.

In 2023, the CFPB issued two other editions of *Supervisory Highlights*, which pertained specifically to junk fees.

All issues of *Supervisory Highlights* are available at:

<https://www.consumerfinance.gov/compliance/supervisory-highlights/>.

## 2.2.5 HMDA guidance and resources

Given the importance of accurate HMDA data, including to the CFPB's fair lending mission and for transparency in the mortgage market, the CFPB maintains a comprehensive suite of resources on its public website to help filers fulfill their reporting requirements under HMDA and Regulation C and to allow others to evaluate and study mortgage lending. A complete accounting of the CFPB's materials for HMDA data users and filers can be found in Appendix A of this report.

# 3. Stakeholder engagement

The CFPB engages with external stakeholders, including tribal governments, consumer advocates, civil rights organizations, industry, academia, and other government agencies. This engagement comes in varied forms, including disseminating the CFPB’s work and policy priorities through blogs, press releases, or speeches, as well as reaching out directly to advocates and consumers through website updates and social media. The CFPB also regularly issues research and reports analyzing data and market conditions. To further an all-of-government approach to fair lending enforcement, the CFPB also participates in several interagency groups.

## 3.1 Promoting and broadcasting the fair lending and access to credit mission

### 3.1.1 CFPB blog posts, press releases, and other communications

The CFPB regularly uses blog posts, statements, press releases, guides, brochures, social media, media interviews, and other tools to timely and effectively communicate with stakeholders.

In 2023, the CFPB published numerous blog posts relating to fair lending topics, including: the joint letter sent to The Appraisal Foundation, urging it to revise its draft ethics rule;<sup>17</sup> the CFPB’s Statement of Interest filed in *Connolly & Mott v. Lanham et al.* and the CFPB’s commitment to ensuring fair and accurate appraisals;<sup>18</sup> the CFPB’s Statement of Interest filed in *Roberson v. Health Career Institute LLC*;<sup>19</sup> an interagency proposed rulemaking on AVMs;<sup>20</sup> a blog explaining how chatbots, including those supported by large language models and those marketed as AI can fail to provide adequate customer service;<sup>21</sup> the CFPB’s *Amicus* brief in

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<sup>17</sup> Patrice Alexander Ficklin and Tim Lambert, *Appraisal standards must include federal prohibitions against discrimination* (Feb. 14, 2023), <https://www.consumerfinance.gov/about-us/blog/appraisal-standards-must-include-federal-prohibitions-against-discrimination/>.

<sup>18</sup> Seth Frotman, Zixta Q. Martinez, and Jon Seward, *Protecting homeowners from discriminatory home appraisals*, (Mar. 13, 2023), <https://www.consumerfinance.gov/about-us/blog/protecting-homeowners-from-discriminatory-home-appraisals/>.

<sup>19</sup> Seth Frotman, *Protecting people from discriminatory targeting* (Apr. 14, 2023), <https://www.consumerfinance.gov/about-us/blog/protecting-people-from-discriminatory-targeting/>.

<sup>20</sup> Rohit Chopra, *Algorithms, artificial intelligence, and fairness in home appraisals* (Jun. 1, 2023), <https://www.consumerfinance.gov/about-us/blog/algorithms-artificial-intelligence-fairness-in-home-appraisals/>.

<sup>21</sup> Eric Halperin and Lorelei Salas, *The CFPB has entered the chat* (Jun. 7, 2023), <https://www.consumerfinance.gov/about-us/blog/cfpb-has-entered-the-chat/>.

*Saint-Jean v. Emigrant Mortgage Company*;<sup>22</sup> the publication of the 2022 Annual Fair Lending Report to Congress;<sup>23</sup> the CFPB’s initiative to better understand the financial experiences of immigrants in the United States;<sup>24</sup> and the Appraisal Subcommittee’s November 1 public hearing to discuss the challenges and solutions to preventing bias in the home appraisal process.<sup>25</sup>

The CFPB also issued several press releases relating to fair lending topics, including announcements regarding: the availability of the 2022 HMDA modified loan application register data;<sup>26</sup> the finalization of the small business lending rule,<sup>27</sup> the issuance of a joint statement confirming that automated systems and advanced technology is not an excuse for law-breaking behavior;<sup>28</sup> the publication of the proposed AVM rule and request for public comment;<sup>29</sup> an issue spotlight on AI chatbots in banking;<sup>30</sup> the publication of two new reports on the financial opportunities and challenges facing Southern communities;<sup>31</sup> the availability of 2022 HMDA data;<sup>32</sup> a roundtable on special purpose credit programs (SPCPs);<sup>33</sup> the issuance of Consumer Financial Protection Circular 2023-03, Adverse action notification requirements and the proper use of the CFPB’s sample forms provided in Regulation B;<sup>34</sup> the Freedom Mortgage enforcement

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<sup>22</sup> Seth Frotman, *Protecting consumers’ right to challenge discrimination* (Jun. 26, 2023),

<https://www.consumerfinance.gov/about-us/blog/protecting-consumers-right-to-challenge-discrimination/>.

<sup>23</sup> Patrice Alexander Ficklin, *The CFPB’s 2022 fair lending annual report to congress* (Jun. 29, 2023),

<https://www.consumerfinance.gov/about-us/blog/the-cfpbs-2022-fair-lending-annual-report-to-congress/>.

<sup>24</sup> Sonia Lin, *Protecting immigrant access to fair credit opportunities*, (Oct. 12, 2023),

<https://www.consumerfinance.gov/about-us/blog/protecting-immigrant-access-to-fair-credit-opportunities/>.

<sup>25</sup> Consumer Fin. Prot. Bureau, *Next public hearing on appraisal bias: November 1* (Oct. 23, 2023),

<https://www.consumerfinance.gov/about-us/blog/next-public-hearing-on-appraisal-bias-november-1/>.

<sup>26</sup> Consumer Fin. Prot. Bureau, *2022 HMDA Data on Mortgage Lending Now Available* (Mar. 20, 2023),

<https://www.consumerfinance.gov/about-us/newsroom/2022-hmda-data-on-mortgage-lending-now-available/>.

<sup>27</sup> Consumer Fin. Prot. Bureau, *CFPB Finalizes Rule to Create a New Data Set on Small Business Lending in America*

(Mar. 30, 2023), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-finalizes-rule-to-create-a-new-data-set-on-small-business-lending-in-america/>.

<sup>28</sup> Consumer Fin. Prot. Bureau, *CFPB and Federal Partners Confirm Automated Systems and Advanced Technology*

*Not an Excuse for Lawbreaking Behavior* (Apr. 25, 2023), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-federal-partners-confirm-automated-systems-advanced-technology-not-an-excuse-for-lawbreaking-behavior/>.

<sup>29</sup> Consumer Fin. Prot. Bureau, *Agencies Request Comment on Quality Control Standards for Automated Valuation*

*Models Proposed Rule* (Jun. 1, 2023), <https://www.consumerfinance.gov/about-us/newsroom/agencies-request-comment-on-quality-control-standards-for-automated-valuation-models-proposed-rule>.

<sup>30</sup> Consumer Fin. Prot. Bureau, *CFPB Issue Spotlight Analyzes “Artificial Intelligence” Chatbots in Banking* (Jun. 6,

2023), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-issue-spotlight-analyzes-artificial-intelligence-chatbots-in-banking/>.

<sup>31</sup> Consumer Fin. Prot. Bureau, *CFPB Releases Reports on Banking Access and Consumer Finance in Southern States*

(Jun. 20, 2023), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-releases-reports-on-banking-access-and-consumer-finance-in-southern-states/>.

<sup>32</sup> Consumer Fin. Prot. Bureau, *FFIEC Announces Availability of 2022 Data on Mortgage Lending* (Jun. 29, 2023),

<https://www.consumerfinance.gov/about-us/newsroom/ffiec-announces-availability-of-2022-data-on-mortgage-lending/>.

<sup>33</sup> Consumer Fin. Prot. Bureau, *Agencies to Host Roundtable on Special Purpose Credit Programs* (Aug. 24, 2023),

<https://www.consumerfinance.gov/about-us/newsroom/agencies-to-host-roundtable-on-special-purpose-credit-programs/>.

<sup>34</sup> Consumer Fin. Prot. Bureau, *CFPB Issues Guidance on Credit Denials by Lenders Using Artificial Intelligence*

(Sep. 19, 2023), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-issues-guidance-on-credit-denials-by-lenders-using-artificial-intelligence/>.



action for reporting allegedly erroneous data under HMDA;<sup>35</sup> the issuance of the CFPB and DOJ's joint statement reminding financial institutions that all credit applicants are protected from discrimination on the basis of race, national origin, race, and other characteristics covered by ECOA, regardless of their immigration status;<sup>36</sup> the publication of a new analysis on state Community Reinvestment Act (CRA) laws, highlighting how states ensure financial institutions' lending, services, and investment activities meet the credit needs of their communities;<sup>37</sup> the Citibank enforcement action;<sup>38</sup> the Bank of America enforcement action;<sup>39</sup> and the Colony Ridge enforcement action.<sup>40</sup>

### 3.1.2 CFPB engagements with stakeholders

The CFPB often engages directly with external stakeholders to inform the CFPB's policy developments and message the CFPB's priorities and recent work. In 2023, CFPB staff participated in 69 stakeholder engagements related to fair lending and access to credit issues. Through speeches, presentations, podcasts, roundtables, webinars, and other smaller discussions on fair lending topics, the CFPB strives to keep abreast of economic and market realities that impact the lives of individuals, small businesses, and communities the CFPB is charged with protecting.

Throughout 2023, numerous engagements centered around the use of advanced technologies including their use in discriminatory targeting, consumer surveillance, and digital redlining; redlining; discrimination on the basis of receipt of public assistance income; false and erroneous HMDA data reporting; student lending; and credit reporting.

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<sup>35</sup> Consumer Fin. Prot. Bureau, *CFPB Sues Repeat Offender Freedom Mortgage Corporation for Providing False Information to Federal Regulators* (Oct. 10, 2023), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-repeat-offender-freedom-mortgage-corporation-for-providing-false-information-to-federal-regulators/>.

<sup>36</sup> Consumer Fin. Prot. Bureau, CFPB and Justice Department Issue Joint Statement Cautioning that Financial Institutions May Not Use Immigration Status to Illegally Discriminate Against Credit Applicants (Oct. 12, 2023), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-and-justice-department-issue-joint-statement-cautioning-that-financial-institutions-may-not-use-immigration-status-to-illegally-discriminate-against-credit-applicants/>.

<sup>37</sup> Consumer Fin. Prot. Bureau, *CFPB Issues New Report on State Community Reinvestment Laws* (Nov. 2, 2023), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-issues-new-report-on-state-community-reinvestment-laws/>.

<sup>38</sup> Consumer Fin. Prot. Bureau, *CFPB Orders Citi to Pay \$25.9 Million for Intentional, Illegal Discrimination Against Armenian Americans* (Nov. 8, 2023), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-citi-to-pay-25-9-million-for-intentional-illegal-discrimination-against-armenian-americans/>.

<sup>39</sup> Consumer Fin. Prot. Bureau, *CFPB Orders Bank of America to Pay \$12 Million for Reporting False Mortgage Data* (Nov. 28, 2023), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-bank-of-america-to-pay-12-million-for-reporting-false-mortgage-data/>.

<sup>40</sup> Consumer Fin. Prot. Bureau, *CFPB and Justice Department Sue Developer and Lender Colony Ridge for Bait-and-Switch Land Sales and Predatory Financing* (Dec. 20, 2023), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-and-doj-sue-developer-and-lender-colony-ridge-for-bait-and-switch-land-sales-and-predatory-financing/>.

## 3.2 Data and reports

### 3.2.1 State Community Reinvestment Act: Summary of State Laws

On November 2, 2023, the CFPB published a new analysis of state-specific versions of CRA laws, highlighting how states ensure financial institutions' lending, services, and investment activities meet the credit needs of their communities. Many states adopted laws similar to the federal CRA in the decades following the 1977 passage of the landmark federal anti-redlining law. The report examined the laws of seven states (Connecticut, Illinois, Massachusetts, New York, Rhode Island, Washington, West Virginia) and the District of Columbia, and found that data collected by federal agencies, such as HMDA, are often used for state CRA compliance and other oversight purposes.<sup>41</sup>

### 3.2.2 Banking and Credit Access in the Southern Region of the United States

On June 21, 2023, the CFPB published a data spotlight, *Banking and Credit Access in the Southern Region of the U.S.*<sup>42</sup> Spanning the states of Alabama, Arkansas, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee, this report seeks to identify gaps as well as opportunities to increase financial access in the region, particularly through branch presence and bank account access, and capital access such as mortgage lending and small business lending. The analysis looks at trends by state, the region as a whole, and differences between rural and non-rural areas. Utilizing HMDA data, the analysis also identified differences for mortgage originations and denials by race and ethnicity in both rural and non-rural communities.

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<sup>41</sup> Consumer Fin. Prot. Bureau, *State Community Reinvestment Act: Summary of State Laws* (Nov. 2, 2023), <https://www.consumerfinance.gov/data-research/research-reports/state-community-reinvestment-acts-summary-of-state-laws/>.

<sup>42</sup> Consumer Fin. Prot. Bureau, *Banking and Credit Access in the Southern Region of the U.S.* (Jun. 21, 2023), [https://files.consumerfinance.gov/f/documents/cfpb\\_ocp-data-spotlight\\_banking-and-credit-access\\_2023-06.pdf](https://files.consumerfinance.gov/f/documents/cfpb_ocp-data-spotlight_banking-and-credit-access_2023-06.pdf).

### 3.2.3 Consumer Finances in Rural Areas of the Southern Region

On June 21, 2023, the CFPB published a data spotlight, *Consumer Finances in Rural Areas of the Southern Region*.<sup>43</sup> This report is the second in a series profiling the finances of consumers in rural communities. Nearly 48 million people live in the southern region examined in this report, which includes Alabama, Arkansas, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee. Intended to provide a starting point in better understanding the financial lives of consumers in rural areas of the southern United States, this report takes a broad survey of consumer financial profiles, including credit scores, financial distress, medical debt, and other debt categories and compares profiles of consumers in the rural South to those in other geographies. Among other things, the report examines originations for auto loans by credit score and majority-minority census tracts, by state and for the region as a whole.

### 3.2.4 Availability of 2022 HMDA data

On March 20, 2023, the CFPB announced the initial availability of the 2022 HMDA modified loan application register data on the Federal Financial Institutions Examination Council's (FFIEC) HMDA Platform for approximately 4,394 HMDA filers.<sup>44</sup> These published data contain loan-level information filed by financial institutions, modified to protect consumer privacy.<sup>45</sup>

On June 29, 2023, the FFIEC announced the availability of static "Snapshot" HMDA data, a static dataset of 2022 mortgage lending transactions at 4,460 financial institutions reported under HMDA as of May 1, 2023.<sup>46</sup> These data include a total of 48 data points providing information about the applicants, the property securing the loan or proposed to secure the loan in the case of non-originated applications, the transaction, and identifiers.

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<sup>43</sup> Consumer Fin. Prot. Bureau, *Consumer Finances in Rural Areas of the Southern Region* (Jun. 21, 2023), [https://files.consumerfinance.gov/f/documents/cfpb\\_or-data-point\\_consumer-finances-in-rural-south\\_2023-06.pdf](https://files.consumerfinance.gov/f/documents/cfpb_or-data-point_consumer-finances-in-rural-south_2023-06.pdf).

<sup>44</sup> Consumer Fin. Prot. Bureau, *2021 HMDA Data on Mortgage Lending Now Available* (Mar. 20, 2023), <https://www.consumerfinance.gov/about-us/newsroom/2022-hmda-data-on-mortgage-lending-now-available/>.

<sup>45</sup> Additional activity has occurred since the close of this reporting period. On March 26, 2024, the CFPB announced the availability of the HMDA modified loan application data for 2023, available at <https://ffiec.cfpb.gov/data-publication/modified-lar/2023>.

<sup>46</sup> Consumer Fin. Prot. Bureau, *FFIEC Announces Availability of 2022 Data on Mortgage Lending* (Jun. 29, 2023), <https://www.consumerfinance.gov/about-us/newsroom/ffiec-announces-availability-of-2022-data-on-mortgage-lending/>.

### 3.2.5 Report on the Home Mortgage Disclosure Act Rule Voluntary Review

On March 3, 2023, the CFPB published a report containing the findings of the CFPB’s voluntary review of the CFPB’s final HMDA rule (issued in October 2015) and related amendments (collectively, the HMDA Rule).<sup>47</sup> The report analyzed, among other key issues, how changes in reporting thresholds and other amendments affected HMDA data coverage and the available data on the supply over time of open-ended lines of credit and closed-end mortgage loans; how new or revised HMDA data points have contributed to predicting underwriting and pricing outcomes; and how revised and expanded reporting of race and ethnicity helped provide additional data on subpopulation groups in the residential mortgage market.

### 3.2.6 Data Point: 2022 Mortgage Market Activity and Trends

On September 27, 2023, the CFPB released its annual report on residential mortgage lending activity and trends for 2022.<sup>48</sup> The report shows that in 2022, mortgage applications and originations declined markedly from the prior year, while rates, fees, discount points, and other costs increased. Overall affordability declined significantly, with borrowers spending more of their income on mortgage payments and lenders more often denying applications for insufficient income. Most refinances during the reported period were cash-out refinances, and, in a reversal of recent trends, the median credit score of refinance borrowers declined below the median credit score of purchase borrowers. As in years past, independent lenders continued to dominate home mortgage lending, with the exception of home equity lines of credit.

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<sup>47</sup> Consumer Fin. Prot. Bureau, *Report on the Home Mortgage Disclosure Act Rule Voluntary Review* (Mar. 3, 2023), [https://files.consumerfinance.gov/f/documents/cfpb\\_hmda-voluntary-review\\_2023-03.pdf](https://files.consumerfinance.gov/f/documents/cfpb_hmda-voluntary-review_2023-03.pdf).

<sup>48</sup> Consumer Fin. Prot. Bureau, *Data Point: 2022 Mortgage Market Activity and Trends* (Sep. 27 2022), <https://www.consumerfinance.gov/data-research/research-reports/data-point-2022-mortgage-market-activity-trends/>.

## 4. Interagency engagement

The CFPB regularly coordinates with other tribal, federal, state, county, municipal, and international government entities; policymakers; and the organizations that represent them regarding current and emerging fair lending risks. Through numerous interagency organizations and taskforces, the CFPB coordinated its 2023 fair lending regulatory, supervisory, and enforcement activities to promote consistent, efficient, and effective enforcement of federal fair lending laws.

The CFPB, along with the Department of Housing and Urban Development (HUD), Federal Trade Commission (FTC), FDIC, FRB, NCUA, OCC, DOJ, and FHFA, constitute the Interagency Task Force on Fair Lending. This 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. In 2023, the NCUA was the Chair of this Task Force.

Through the FFIEC, the CFPB has robust engagements with other partner agencies that focus on fair lending issues. For example, throughout the reporting period, the CFPB has continued to chair the HMDA and CRA Data Collection Subcommittee, a subcommittee of the FFIEC Task Force on Consumer Compliance. This subcommittee 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 this Task Force.

Together with DOJ, HUD, and FTC, the CFPB also participates in the Interagency Working Group on Fair Lending Enforcement, a standing working group of federal agencies that meets regularly to discuss issues relating to fair lending enforcement. The agencies use these meetings to also discuss fair lending developments and trends, methodologies for evaluating fair lending risks and violations, and coordination of fair lending enforcement efforts.

As required by section 1022 of the Dodd-Frank Act, the CFPB also consults with other agencies as part of its rulemaking process.<sup>49</sup> For example, in 2023, while developing its small business lending data collection final rule, the CFPB consulted or offered to consult with FRB, FDIC, NCUA, OCC, HUD, DOJ, FTC, the Department of Agriculture, the Department of the Treasury, the Economic Development Administration, the Farm Credit Administration (FCA), the Financial Crimes Enforcement Network, and the Small Business Administration (SBA)

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<sup>49</sup> 12 U.S.C. § 5512.

including, among other things, on consistency with any prudential, market, or systemic objectives administered by such agencies.

In addition to the established interagency organizations, CFPB personnel meet regularly with personnel from other agencies, including with DOJ, HUD, FTC, FHFA, state Attorneys General, and the prudential regulators to coordinate and discuss the CFPB's fair lending work.

## 4.1 Special purpose credit program interagency roundtable

On September 12, 2023, the CFPB, along with HUD, OCC, and FHFA hosted a roundtable discussion on SPCPs.<sup>50</sup> In addition to remarks by the respective leaders of the participating agencies, the event included a roundtable discussion with representatives from community groups and trade organizations that are focused on the opportunities and benefits of SPCPs. The event was open to the public via livestream.

## 4.2 Joint statements

On April 25, 2023, the CFPB, along with DOJ, Equal Employment Opportunity Commission, and FTC issued a joint statement committing to enforcement efforts against discrimination and bias in automated systems.<sup>51</sup> In the statement, all four agencies resolved to vigorously enforce their collective authorities and to monitor the development and use of automated systems, including those sometimes marketed as AI.

On October 12, 2023, the CFPB along with DOJ, issued a joint statement reminding financial institutions that, while ECOA and Regulation B do not expressly prohibit consideration of immigration status, they prohibit creditors from using immigration status to discriminate on the basis of national origin, race, or any other characteristic covered by ECOA.<sup>52</sup>

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<sup>50</sup> Consumer Fin. Prot. Bureau, *Agencies to Host Roundtable on Special Purpose Credit Programs*, (Aug. 24, 2023), <https://www.consumerfinance.gov/about-us/newsroom/agencies-to-host-roundtable-on-special-purpose-credit-programs/>.

<sup>51</sup> Consumer Fin. Prot. Bureau; Dept. of Justice Civil Rights Div.; Equal Opportunity Comm'n; Federal Trade Comm'n; *Joint Statement on Enforcement Efforts Against Discrimination and Bias in Automated Systems*, (Apr. 25, 2023), [https://files.consumerfinance.gov/f/documents/cfpb\\_joint-statement-enforcement-against-discrimination-bias-automated-systems\\_2023-04.pdf](https://files.consumerfinance.gov/f/documents/cfpb_joint-statement-enforcement-against-discrimination-bias-automated-systems_2023-04.pdf).

<sup>52</sup> Consumer Fin. Prot. Bureau; Dept. of Justice Civil Rights Div. *Joint Statement on Fair Lending and Credit Opportunities for Noncitizen Borrowers under the Equal Credit Opportunity Act* (Oct. 12, 2023), [https://files.consumerfinance.gov/f/documents/cfpb-joint-statement-on-fair-lending-and-credit-opportunities-for-noncitizen-b\\_jA2oRDf.pdf](https://files.consumerfinance.gov/f/documents/cfpb-joint-statement-on-fair-lending-and-credit-opportunities-for-noncitizen-b_jA2oRDf.pdf).

## 4.3 Appraisal bias

Appraisal bias is a key fair lending priority of the CFPB. Throughout 2023, the CFPB has been very active with its interagency partners to advance work to combat appraisal bias through the FFIEC Appraisal Subcommittee (ASC), correspondence, court briefs, proposed guidance, and work of the Property Appraisal and Valuation Equity Task Force.

The ASC comprises designees from the CFPB and certain other federal agencies, including FDIC, HUD, FRB, OCC, NCUA, and FHFA, and is tasked with providing federal oversight of state appraiser and appraisal management company regulatory programs, as well as a monitoring and reviewing framework for The Appraisal Foundation, the private, nongovernmental organization that sets appraisal standards. CFPB Deputy Director Zixta Martinez currently serves as the Chairperson of the ASC. Through the ASC, the CFPB addresses topics including discriminatory bias in home appraisals.

The ASC held its first-ever hearing about appraisal bias on January 24, 2023. The hearing served to raise awareness of the issue of appraisal bias by focusing on its scope and impact, and to provide information on the role of the ASC in the appraisal regulatory system. On May 19, 2023, the ASC held its second public hearing, which explored the appraisal regulatory system and focused on appraisal standards, appraiser qualification criteria and barriers to entry into the profession, appraisal practice, and state regulation. The ASC held its third public hearing on November 1, 2023, which discussed how a residential appraisal is developed and reviewed, the ROV process for residential real estate valuations, and the development of rural appraisals. These hearings were the first three in a series of four planned hearings relating to appraisal bias.

On February 14, 2023, senior officials from the CFPB, FDIC, HUD, NCUA, FRB, DOJ, OCC, and FHFA submitted a joint letter to The Appraisal Foundation. The letter urged The Appraisal Foundation to revise its draft Ethics Rule for appraisers to include a detailed statement of federal prohibitions against discrimination that exist under the FHA and ECOA. The agencies expressed concern that some appraisers may be unaware of these prohibitions and, of particular concern, that the draft Ethics Rule emphasized that “[a]n appraiser must not engage in unethical discrimination,” implying that appraisers may engage in “ethical” discrimination, a concept foreign to current law and practice.

On March 13, 2023, the CFPB filed a joint statement of interest with DOJ in *Connolly & Mott v. Lanham et al.*, explaining the application of the FHA and ECOA to lenders relying on discriminatory home appraisals. For more information on this statement of interest, see Section 5.1 of this report.

On June 1, 2023, the CFPB, in conjunction with the FRB, FDIC, FHFA, NCUA, and OCC, proposed a rule regarding quality control standards for AVMs. For more information on this rulemaking, see Section 2.1.2 of this report.

On June 8, 2023, the CFPB, in conjunction with the FRB, FDIC, NCUA, and OCC, requested public comment on proposed guidance addressing ROV for residential real estate transactions. The proposed guidance would advise on policies that financial institutions may implement to allow consumers to provide financial institutions with information that may not have been considered during an appraisal or if deficiencies are identified in the original appraisal. For more information on this proposed guidance, see Section 2.2.1 of this report.

In 2023, the CFPB also continued to engage with other agencies on issues of bias in home appraisals through the Interagency Task Force on Property Appraisal and Valuation Equity. More information on this Task Force is available at <https://pave.hud.gov>.



# 5. Amicus program and other litigation

## 5.1 Amicus briefs and statements of interest

The CFPB files *amicus*, or “friend-of-the-court,” briefs in significant court cases concerning federal consumer financial protection laws, including cases involving ECOA. These briefs provide courts with the CFPB’s views and help ensure that consumer financial protection statutes are correctly and consistently interpreted. In 2023, the CFPB filed two fair lending related *amicus* briefs and a statement of interest.

On June 23, 2023, the CFPB filed an *amicus* brief in *Saint-Jean et al. v. Emigrant Mortgage Co. & Emigrant Bank* in support of Plaintiffs who won a jury verdict against Emigrant Mortgage Company and Emigrant Bank (Emigrant) for violating ECOA.<sup>53</sup> The jury found that Emigrant had for years targeted Black and Latino borrowers and neighborhoods in New York City with predatory mortgage loans and practices. The CFPB’s brief addresses three issues raised on appeal to explain why the jury verdict should be affirmed: (1) the timeliness of Plaintiff’s claims under the doctrine of equitable tolling, (2) the propriety of the district court’s jury instructions under ECOA, and (3) the public policy goals undermined by enforcing a waiver of claims in a loan modification agreement.<sup>54</sup>

On April 14, 2023, the CFPB filed an *amicus* brief in *Roberson v. Health Career Institute LLC*.<sup>55</sup> In the brief, the CFPB explained that discriminatory targeting violates ECOA. In particular, the CFPB’s brief explains that ECOA’s prohibition on discrimination applies to “any aspect of a credit transaction,” meaning it covers every aspect of a borrower’s dealings with a creditor, not just the specific terms of a loan -- like the interest rate or fees. The CFPB’s brief also explains that in order to survive a motion to dismiss under ECOA, plaintiffs need only plead facts that plausibly allege discrimination, rather than the elements of a *prima facie* case, which is not a pleading requirement but rather an evidentiary standard.<sup>56</sup>

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<sup>53</sup> Brief for Consumer Financial Protection Bureau as Amici Curiae Supporting Plaintiff-Appellees, *Saint-Jean v. Emigrant Mortg. Co.*, 50 F. Supp. 3d 300 (E.D.N.Y. 2014) (No. 22-3094).

<sup>54</sup> See [https://files.consumerfinance.gov/f/documents/cfpb\\_saint-jean-et-al-v-emigrant-mortgage-coemigrant-bank\\_2023-06.pdf](https://files.consumerfinance.gov/f/documents/cfpb_saint-jean-et-al-v-emigrant-mortgage-coemigrant-bank_2023-06.pdf).

<sup>55</sup> Statement of Interest of the Consumer Financial Protection Bureau in Support of Plaintiffs, *Roberson et al v. Health Career Institute LLC et al.* (S.D.Fla. 2023) (No. 9:22CV81883).

<sup>56</sup> See <https://www.consumerfinance.gov/compliance/amicus/briefs/roberson-v-health-career-institute-llc/>.

On March 13, 2023, the CFPB and DOJ filed a joint statement of interest in *Connolly & Mott v. Lanham et al.* explaining that relying on discriminatory home appraisals can violate ECOA.<sup>57</sup> The law is clear that mortgage lenders cannot take race, sex, or any other prohibited bases into account when evaluating the creditworthiness of an applicant. As such, lenders cannot rely on a discriminatory appraisal if they knew, or should have known, that the appraisal was discriminatory. The statement of interest also explains that, to survive a motion to dismiss under ECOA, plaintiffs need only plead facts that plausibly allege discrimination, rather than establish a prima facie case, which is not a pleading requirement but rather an evidentiary standard. In the statement of interest, the Department of Justice also addresses how the FHA applies to discriminatory appraisals.<sup>58</sup>

More information regarding the CFPB's amicus program is available on the CFPB's website.<sup>59</sup>

## 5.2 Litigation

In September 2022, the CFPB was sued in the U.S. District Court for the Eastern District of Texas by the U.S. Chamber of Commerce et. al, challenging an update to the UDAAP section of the CFPB's examination manual. The updated manual clarified that discriminatory conduct may violate the CFPB's prohibition on unfair practices and provided guidance to examiners on how discriminatory conduct should be examined to determine whether it violates the unfairness prohibition. The court granted plaintiffs' motion for summary judgment, vacated the manual update, and permanently enjoined the CFPB from engaging in any examination, supervision or enforcement action against any member of the plaintiff associations based on the CFPB's interpretation of its unfairness authority set forth in the updated manual. The CFPB filed a notice of appeal in November 2023, and the appeal was stayed by the Fifth Circuit pending the Supreme Court's resolution of *CFPB v. CFSA*.<sup>60</sup>

On March 30, 2023, the CFPB issued its final rule on small business lending under ECOA, as required by section 1071 of the Dodd-Frank Act.<sup>61</sup> On April 26, 2023, the Texas Bankers Association and Rio Bank sued the CFPB in the U.S. District Court for the Southern District of Texas challenging the validity of the final rule. The court entered a preliminary injunction enjoining the CFPB from enforcing or implementing the rule against plaintiffs (including the American Bankers Association, who had joined as a plaintiff via an amended complaint filed on

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<sup>57</sup> Statement of Interest for the United States, *Connolly et al. v. Lanham et al.*, 685 F.Supp.3d 312 (No. 1:22CV02048).

<sup>58</sup> See <https://www.consumerfinance.gov/compliance/amicus/briefs/connolly-mott-v-lanham-et-al/>.

<sup>59</sup> See generally <https://www.consumerfinance.gov/policy-compliance/amicus/>.

<sup>60</sup> Additional activity as occurred since the close of this reporting period. On May 16, 2024, the Supreme Court issued a decision in *CFPB v. CFSA*. See *Consumer Fin. Prot. Bureau v. Cmty. Fin. Servs. Ass'n of Am., Ltd.*, 601 U.S. 416 (2024).

<sup>61</sup> See <https://www.consumerfinance.gov/rules-policy/final-rules/small-business-lending-under-the-equal-credit-opportunity-act-regulation-b/>.

May 14, 2023) and their members, and stayed the compliance dates for plaintiffs and their members pending a decision in *CFPB v. CFSA*.<sup>62</sup> On October 26, 2023, the court extended that order to apply to all covered entities following the intervention of other plaintiffs seeking to join the lawsuit. Separately, on August 11, 2023, the Kentucky Bankers Association and several Kentucky banks sued to challenge the rule in the U.S. District Court for the Eastern District of Kentucky. The court preliminarily enjoined the CFPB from enforcing the rule pending a decision in *CFPB v. CFSA*.<sup>63</sup> A third lawsuit was filed on December 26, 2023, in the U.S. District Court for the Southern District of Florida by the Revenue Based Finance Coalition, a trade association representing merchant cash advance providers.

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<sup>62</sup> Additional activity has occurred since the close of this reporting period. *See* fn. 65, *supra*.

<sup>63</sup> Additional activity has occurred since the close of this reporting period. *See* fn. 65, *supra*.






# 6. Interagency reporting on ECOA and HMDA

The CFPB is statutorily required 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.<sup>64</sup> In addition, the CFPB’s annual HMDA reporting requirement calls for the CFPB, in consultation with HUD, to report annually on the utility of HMDA’s requirement that covered lenders itemize certain mortgage loan data.<sup>65</sup> The information below provides the required reporting.

## 6.1 Reporting on ECOA enforcement

The enforcement and compliance efforts and assessments made by the eleven agencies assigned enforcement authority under section 704 of ECOA<sup>66</sup> are discussed in this section, as reported by the 11 ECOA enforcement agencies.

TABLE 1: FFIEC AGENCIES WITH ADMINISTRATIVE ENFORCEMENT OF ECOA<sup>67</sup>

FFIEC AGENCIES					
	Consumer Financial Protection Bureau (CFPB)	Federal Deposit Insurance Corporation (FDIC)	Federal Reserve Board (FRB)	National Credit Union Administration (NCUA)	Office of the Comptroller of the Currency (OCC)

<sup>64</sup> 15 U.S.C. § 1691f.

<sup>65</sup> 12 U.S.C. § 2807.

<sup>66</sup> 15 U.S.C.A. § 1691c.

<sup>67</sup> Collectively, the FRB, FDIC, NCUA, OCC, and CFPB comprise the FFIEC. The State Liaison Committee was added to FFIEC in 2006 as a voting member. Federal Fin. Instit. Examination Council, <http://www.ffiec.gov> (last visited Jun. 12, 2024).

TABLE 2: NON-FFIEC AGENCIES WITH ADMINISTRATIVE ENFORCEMENT OF ECOA

<b>NON-FFIEC AGENCIES</b>			
	Agricultural Marketing Service (AMS) of the U.S. Department of Agriculture (USDA)	Department of Transportation (DOT)	Farm Credit Administration (FCA)
			
	Federal Trade Commission (FTC)	Securities and Exchange Commission (SEC)	Small Business Administration (SBA) <sup>68</sup>

### 6.1.1 Public enforcement actions

In 2023, of the federal agencies with ECOA enforcement authority, the CFPB, FDIC, and FTC brought a total of four fair lending enforcement actions. Information on the DOJ’s fair lending program and fair lending related public enforcement actions can be found at: <https://www.justice.gov/crt/fair-lending-program-0>.

### 6.1.2 CFPB enforcement actions

In 2023, the CFPB brought two fair lending enforcement actions: Citibank and Colony Ridge.

#### **CITIBANK**

On November 8, 2023, the CFPB ordered Citibank, N.A. to pay \$25.9 million in fines and consumer redress for intentionally and illegally discriminating against credit card applicants the

<sup>68</sup> 15 U.S.C. § 1691c.

bank identified as Armenian American.<sup>69</sup> From at least 2015 through 2021, Citibank discriminated against retail services credit card applicants with surnames that Citibank employees associated with consumers of Armenian national origin, targeting applicants with surnames ending in “-ian” and “-yan” as well as applicants in or around Glendale, California. Nicknamed “Little Armenia,” Glendale is home to approximately 15% of the Armenian American population in the U.S. When Citibank identified credit card applicants as potentially being of Armenian national origin, the bank applied more stringent criteria to these applications, including denying them outright and requiring additional information or placing a block on the account.

Further, Citibank supervisors conspired to hide the discrimination by instructing employees not to discuss the discriminatory practices in writing or on recorded phone lines. Citibank employees also lied about the bases of denial, providing false reasons to denied applicants.

### **COLONY RIDGE**

On December 20, 2023, the CFPB, together with DOJ, filed a complaint against the Texas-based Colony Ridge defendants.<sup>70</sup> The lawsuit alleges Colony Ridge sells unsuspecting families flood-prone land without water, sewer, or electrical infrastructure, and that the company sets borrowers up to fail with loans they cannot afford. As alleged in the complaint, roughly one in four Colony Ridge loans ends in foreclosure, after which the company repurchases the properties and sells them to new borrowers. As alleged in the complaint, Colony Ridge targets Hispanic borrowers. In particular, Colony Ridge advertises almost exclusively in Spanish, often on TikTok or other social media platforms, often featuring national flags and regional music from Latin America. In their marketing, Colony Ridge promised consumers the American dream of home ownership with its own seller financing: an easy-to-obtain loan product that requires no credit check and only a small deposit. The complaint alleges that foreclosure and property deed records from September 2019 through September 2022 show that Colony Ridge initiated foreclosures on at least 30% of seller-financed lots within just three years of the purchase date, with most loan failures occurring even sooner. Records also confirm that Colony Ridge accounted for more than 92% of all foreclosures recorded in Liberty County, Texas between 2017 and 2022.

In the complaint, the CFPB and DOJ allege that defendants violated ECOA by targeting consumers of Hispanic origin with a predatory loan product. The CFPB separately alleges that the Colony Ridge defendants violated the CFPA by making deceptive representations to consumers; that Colony Ridge Development and Colony Ridge BV violated the Interstate Land Sales Full Disclosure Act (ILSA) by making untrue statements, omitting material facts, failing to provide required accurate translations, and failing to report and disclose required information;

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<sup>69</sup> See <https://www.consumerfinance.gov/enforcement/actions/citibank-n-a/>.

<sup>70</sup> See <https://www.consumerfinance.gov/enforcement/actions/colony-ridge/>.

and that defendants violated the CFPB by virtue of their violations of ECOA and ILSA, respectively. DOJ further alleges defendants' conduct violated the FHA.

The joint complaint seeks, among other things, injunctions against defendants to prevent future violations of federal consumer financial laws, redress to consumers, damages, and the imposition of civil money penalties.

### 6.1.3 Interagency enforcement actions

In 2023, the FTC, along with the State of Wisconsin, brought an enforcement action in federal court against Rhinelander, a Wisconsin auto dealer group, its current and former owners, and general manager Daniel Towne, alleging, among other things, that defendants violated ECOA and Regulation B by discriminating against American Indian consumers by charging them higher financing costs and fees.<sup>71</sup> Among other things, the settlement with Rhinelander's current owners and Defendant Towne requires the company to establish a comprehensive fair lending program that will, among other components, allow consumers to seek outside financing for a purchase, and cap the additional interest markup Rhinelander can charge consumers, as well as require the current owners and Defendant Towne to pay \$1 million to refund affected consumers.<sup>72</sup> The former owners, Rhinelander Auto Center, Inc. and Rhinelander Motor Company, agreed to a separate settlement, that requires the companies to permanently wind down the businesses and pay \$100,000 to refund affected consumers.<sup>73</sup>

On March 8, 2023, the FDIC issued a public consent order for Cross River bank under section 3(q) of the Federal Deposit Insurance Act (Act), 12 U.S.C. § 1813(q). The FDIC determined that Cross River bank engaged in unsafe or unsound banking practices related to its compliance with applicable fair lending laws and regulations by failing to establish and maintain internal controls, information systems, and prudent credit underwriting practices in conformance with the Safety and Soundness Standards contained in Appendix A of 12 C.F.R. Part 364, or the violations of ECOA, 15 U.S.C. § 1691, et seq., as implemented by Regulation B, 12 C.F.R. Part 1002, and the Truth in Lending Act, 15 U.S.C. § 1601, et seq., as implemented by Regulation Z, 12 C.F.R. Part 1026.

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<sup>71</sup> *FTC v. Rhinelander Auto Ctr., Inc.*, No. 23-cv-737 (W.D. Wis., filed Oct. 24, 2023), available at [https://www.ftc.gov/system/files/ftc\\_gov/pdf/1-ComplaintbyFTC-WIagainstRhinelander.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/1-ComplaintbyFTC-WIagainstRhinelander.pdf).

<sup>72</sup> *FTC v. Rhinelander Auto Ctr., Inc.*, No. 23-cv-737 (W.D. Wis. Nov. 6, 2023) (stipulated order for permanent injunction, monetary judgment, and other relief as to Defendants Rhinelander Auto Group LLC, Rhinelander Import Group LLC, and Daniel Towne), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/18-ConsentJudgmentEnteredastoRAGRMGandTowne.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/18-ConsentJudgmentEnteredastoRAGRMGandTowne.pdf).

<sup>73</sup> *FTC v. Rhinelander Auto Ctr., Inc.*, No. 23-cv-737 (W.D. Wis. Nov. 6, 2023) (stipulated order for permanent injunction, monetary judgment, and other relief as to Defendants Rhinelander Auto Center, Inc., and Rhinelander Motor Company), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/17-ConsentJudgmentEnteredastoRACandRMC.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/17-ConsentJudgmentEnteredastoRACandRMC.pdf).

## 6.1.4 Number of institutions cited for ECOA and Regulation B violations

In 2023, the agencies and the CFPB collectively reported citing 189 institutions with violations of ECOA and/or Regulation B.

## 6.1.5 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 3: REGULATION B VIOLATIONS CITED BY FFIEC AGENCIES, 2023

<b>Regulation B Violations: 2023</b>	<b>FFIEC Agencies Reporting</b>
<p><u>12 C.F.R. § 1002.4, 1002.7(d)(1): <b>Discrimination</b></u>            Discrimination on a prohibited basis in a credit transaction; improperly requiring the signature of the applicant’s spouse or other person.</p>	<p>NCUA,<sup>74</sup> CFPB<sup>75</sup></p>
<p><u>12 C.F.R. § 1002.5(b), 12 C.F.R. § 1002.5(c), 12 C.F.R. § 1002.5(d): <b>Inquiring about protected class</b></u>            Inquiring about the race, color, religion, national origin, or sex of an applicant or any other person in connection with a credit transaction, except as permitted in §§ 1002.5(b)(1) and (b)(2), or 1002.8 in the case of a special purpose credit program; requesting any information concerning an applicant’s spouse or former spouse, except as permitted in § 1002.5(c)(2); requesting the marital status of a person applying for individual, unsecured credit, except as permitted in § 1002.5(d)(1) (for credit other than individual, unsecured, a creditor may inquire about the applicant’s marital status, but must only use the terms “married,” “unmarried,” and “separated”); inquiring as to whether income stated in an application is derived from alimony, child support, or separate maintenance payments, except as permitted in § 1002.5(d)(2); or requesting information about birth control practices, intentions concerning the bearing or rearing of children, or capability to bear children, except as permitted in § 1002.5(d)(3).</p>	<p>FDIC,<sup>76</sup> OCC<sup>77</sup></p>
<p><u>12 C.F.R. § 1002.6 (b)(2), (5): <b>Specific rules concerning use of information</b></u>            Improperly evaluating age, receipt of public assistance in a credit transaction.</p>	<p>CFPB</p>

<sup>74</sup> 12 C.F.R. § 1002.4(a).

<sup>75</sup> 12 C.F.R. § 1002.4, § 1002.7(d)(1).

<sup>76</sup> 12 C.F.R. § 1002.5(b)-(d).

<sup>77</sup> 12 C.F.R. § 1002.5(b).



<b><u>12 C.F.R. § 1002.9(a)(1)(i), (a)(2), (b)(1); (b)(2); (c): Adverse Action</u></b> Failure to provide notice to the applicant 30 days after receiving a completed application concerning the creditor’s approval of, counteroffer to, 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.	OCC, <sup>78</sup> NCUA, <sup>79</sup> FRB, <sup>80</sup> FDIC, <sup>81</sup> CFPB <sup>82</sup>
<b><u>12 C.F.R. § 1002.13(a)(1), (b): Information for Monitoring Purposes</u></b> Failure to obtain information for monitoring purposes; failure to request information on an application pertaining to the applicant’s ethnicity or race.	OCC
<b><u>12 C.F.R. § 1002.14 (a)(1), (a)(2), (a)(3), (a)(4): Appraisals and Valuations</u></b> Failure to provide appraisals and other valuations.	OCC, <sup>83</sup> NCUA <sup>84</sup>

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

TABLE 4: REGULATION B VIOLATIONS CITED BY NON-FFIEC AGENCIES ENFORCING ECOA, 2023

<b>Regulation B Violations: 2023</b>	<b>Non-FFIEC Agencies Reporting</b>
<b><u>12 C.F.R. § 1002.9(a)(1)(i), (a)(2): Adverse Action</u></b> Failure to provide notice to the applicant 30 days after receiving a completed application concerning the creditor’s approval of, counteroffer to, or adverse action on the application; failure to provide sufficient information in an adverse action notification, including the specific reasons for the action taken.	FCA
<b><u>12 C.F.R. § 1002.13: Failure to request and collect information for monitoring purposes.</u></b> Failure to obtain information for monitoring purposes.	FCA

The AMS, SEC, and the SBA reported that they received no complaints based on ECOA or Regulation B in 2023. The FTC is an enforcement agency and does not conduct compliance examinations.

<sup>78</sup> 12 C.F.R. § 1002.9(a)(2); § 1002.9(a)(1)(i); § 1002.9(b)(2).  
<sup>79</sup> 12 C.F.R. § 1002.9(a)(1); § 1002.9(a)(2); § 1002.9(b)(2).  
<sup>80</sup> 12 C.F.R. § 1002.9(a)(1)(i); § 1002.9(b)(2).  
<sup>81</sup> 12 C.F.R. § 1002.9(a)(1);(a)(2); (b)(2).  
<sup>82</sup> 12 C.F.R. § 1002.9(a)(1),(2); 1002.9(b); § 1002.9(c).  
<sup>83</sup> 12 C.F.R. § 1002.14(a)(1); § 1002.14(a)(2).  
<sup>84</sup> 12 C.F.R. § 1002.14(a)(2).

## 6.1.6 Referrals to the Department of Justice

The agencies assigned enforcement authority under section 704 of ECOA must refer a matter to DOJ when there is reason to believe that a creditor has engaged in a pattern or practice of lending discrimination in violation of ECOA.<sup>85</sup> They also may refer other potential ECOA violations to DOJ.<sup>86</sup> In 2023, 5 agencies (FDIC, NCUA, FRB, OCC and CFPB) collectively made 33 such referrals to DOJ involving discrimination in violation of ECOA. This is an increase of 175 percent in such referrals since 2020 (12 referrals). A brief description of those matters follows.

In 2023, the CFPB referred 18 fair lending matters to DOJ. The referrals included: discrimination on the basis of race and national origin in mortgage lending (redlining); discrimination in underwriting on the basis of receipt of public assistance income; predatory targeting on the basis of race and national origin; discrimination in pricing exceptions on the basis of race, national origin, sex, and age; and discrimination in credit cards on the basis of national origin and race.

In 2023, the FDIC referred seven fair lending matters to DOJ. The referrals included: one matter involving discrimination on the basis of race in mortgage lending (redlining); three matters for discrimination on the basis of race and national origin in mortgage lending (redlining); one matter involving discrimination in underwriting in commercial loans on the basis of race, color, national origin, and religion; one matter involving discrimination in auto loan pricing on the basis of sex or gender; and one matter for discrimination in auto loan pricing on the basis of race and national origin.

NCUA referred six ECOA matters to DOJ which involved discrimination based on age and discrimination based on marital status.

The OCC made one referral to DOJ for a matter that involved discrimination on the basis of race, color, or national origin in mortgage lending (redlining).

The FRB referred one fair lending matter to DOJ. The matter involved discrimination on the basis of marital status in agricultural and commercial lending.

## 6.2 Reporting on HMDA

The CFPB's annual HMDA reporting requirement calls for the CFPB, in consultation with HUD, to report annually on the utility of HMDA's requirement that covered lenders itemize loan data

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<sup>85</sup> 15 U.S.C. § 1691e(g).

<sup>86</sup> *Id.*

in order to disclose the number and dollar amount of certain mortgage loans and applications, grouped according to various characteristics.<sup>87</sup> The CFPB, in consultation with HUD, finds that itemization and tabulation of these data furthers the purposes of HMDA.

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<sup>87</sup> 12 U.S.C. § 2807.

# 7. Looking forward & focus on digital discrimination

The CFPB has made clear that the same laws and regulations apply to all technologies, regardless of the complexity or novelty of the technology deployed by institutions, including when it comes to combatting unlawful discrimination or explaining how certain credit decisions are made. ECOA is a powerful means to address unlawful digital discrimination in any aspect of a credit transaction. In 2023, the CFPB continued to combat digital discrimination through enforcement matters,<sup>88</sup> supervisory matters,<sup>89</sup> rulemaking,<sup>90</sup> guidance,<sup>91</sup> and using an all-of-government interagency approach.<sup>92</sup>

Looking forward, the CFPB will continue to enforce the law to root out unlawful discrimination, including when discrimination may be disguised by other processes within credit transactions. This includes actions that financial institutions take around the selection and procurement of data for use in advanced technological methods. Data brokers sell myriad types of personal data and sensitive information about consumers, some of which may directly implicate protected bases under ECOA. These data, alone or in combination with other data, may create proxies for, or have a disparate impact on, any of the ECOA prohibited bases. Creditors subject to ECOA and Regulation B may violate these laws if they use these data to engage in discriminatory targeting, steering, redlining, or in other ways that create unlawful discrimination.

The same holds true for fraud screens purported to facilitate compliance with other consumer protection and banking laws. While fraud detection compliance regimes may serve important

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<sup>88</sup> See <https://www.consumerfinance.gov/enforcement/actions/colony-ridge/>.

<sup>89</sup> See Section 1.3, *supra*.

<sup>90</sup> Consumer Fin. Prot. Bureau; Off. of the Comptroller of the Currency; Fed. Hous. Fin. Agency; Fed. Reserve Sys.; Fed. Deposit Ins. Corp.; Nat'l Credit Union Admin.; *Quality Control Standards for Automated Valuation Models* (Jun. 1., 2023), [https://files.consumerfinance.gov/f/documents/cfpb\\_automated-valuation-models\\_proposed-rule-request-for-comment\\_2023-06.pdf](https://files.consumerfinance.gov/f/documents/cfpb_automated-valuation-models_proposed-rule-request-for-comment_2023-06.pdf).

<sup>91</sup> Consumer Fin. Prot. Bureau, Consumer Financial Protection Circular 2023-03 Adverse action notification requirements and the proper use of the CFPB's sample forms provided in Regulation B (Sep. 19. 2023), <https://www.consumerfinance.gov/compliance/circulars/circular-2023-03-adverse-action-notification-requirements-and-the-proper-use-of-the-cfpbs-sample-forms-provided-in-regulation-b/>.

<sup>92</sup> Consumer Fin. Prot. Bureau; Off. of the Comptroller of the Currency; Fed. Hous. Fin. Agency; Fed. Reserve Sys.; Fed. Deposit Ins. Corp.; Nat'l Credit Union Admin; *Interagency Guidance on Reconsideration of Value of Residential Real Estate Valuations* (Jun. 8, 2023), [https://files.consumerfinance.gov/f/documents/cfpb\\_interagency-guidance-reconsiderations-of-value-of-residential-real-estate\\_2023-06.pdf](https://files.consumerfinance.gov/f/documents/cfpb_interagency-guidance-reconsiderations-of-value-of-residential-real-estate_2023-06.pdf); Consumer Fin. Prot. Bureau; Dept. of Justice Civil Rights Div.; Equal Opportunity Comm'n; Federal Trade Comm'n; *Joint Statement on Enforcement Efforts Against Discrimination and Bias in Automated Systems*, (Apr. 25, 2023), [https://files.consumerfinance.gov/f/documents/cfpb\\_joint-statement-enforcement-against-discrimination-bias-automated-systems\\_2023-04.pdf](https://files.consumerfinance.gov/f/documents/cfpb_joint-statement-enforcement-against-discrimination-bias-automated-systems_2023-04.pdf).

purposes, institutions that are subject to ECOA and Regulation B may not use fraud screens and associated policies and procedures as an excuse to violate or circumvent fair lending laws.<sup>93</sup>

Further, as the CFPB continues to monitor markets and institutions for fair lending compliance, the CFPB will also continue to review the fair lending testing regimes of financial institutions. Robust fair lending testing of models should include regular testing for disparate treatment and disparate impact, including searches for and implementation of less discriminatory alternatives using manual or automated techniques. CFPB exam teams will continue to explore the use of open-source automated debiasing methodologies to produce potential alternative models to the institutions' credit scoring models.

In 2024 and beyond, the CFPB will continue to combat digital discrimination and also continue to take steps to be a leader when it comes to building the federal government's capabilities to address these types of transformative technologies.

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<sup>93</sup> Discrimination on a prohibited basis can violate ECOA and Regulation B when it occurs in any aspect of a credit transaction, including when it occurs through practices that entities may characterize as related to fraud detection. *See, e.g.*, <https://www.consumerfinance.gov/enforcement/actions/citibank-n-a/>.

# Appendix A: HMDA resources

As stated in Section 2.2.5, the CFPB maintains a comprehensive suite of resources pertaining to the reporting and use of HMDA data, in addition to the annual HMDA filing guides released annually by the FFIEC. These resources include: Executive Summaries of HMDA rule changes;<sup>94</sup> Small Entity Compliance Guide;<sup>95</sup> Institutional and Transactional Coverage Charts;<sup>96</sup> Reportable HMDA Data Chart;<sup>97</sup> sample data collection form;<sup>98</sup> FAQs;<sup>99</sup> a Beginners Guide to Accessing and Using HMDA Data;<sup>100</sup> and downloadable webinars,<sup>101</sup> which provide an overview of the HMDA rule. In June of 2023, the CFPB published a summary of the 2022 data on mortgage lending.<sup>102</sup> The CFPB also provides on its website an interactive version of Regulation C that is easier to access and navigate than the printed version of Regulation C.<sup>103</sup>

Together with the Federal Financial Institutions Examination Council (FFIEC),<sup>104</sup> the CFPB also routinely updates its HMDA resources throughout the year to ensure HMDA reporters have the most up-to-date information. For example, in November 2023, the CFPB released the 2024

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<sup>94</sup> Consumer Fin. Prot. Bureau, *Executive Summary of the 2020 Home Mortgage Disclosure Act (Regulation C) Final Rule* (Apr. 16, 2020), [https://files.consumerfinance.gov/f/documents/cfpb\\_rule-executive-summary\\_hmda-2020.pdf](https://files.consumerfinance.gov/f/documents/cfpb_rule-executive-summary_hmda-2020.pdf); <https://www.consumerfinance.gov/about-us/blog/changes-to-hmda-closed-end-loan-reporting-threshold/>. Summaries for different reporting years are available at: <https://www.consumerfinance.gov/compliance/compliance-resources/mortgage-resources/hmda-reporting-requirements/>.

<sup>95</sup> Consumer Fin. Prot. Bureau, *Home Mortgage Disclosure (Regulation C) Small Entity Compliance Guide* (Feb. 2023), [https://files.consumerfinance.gov/f/documents/cfpb\\_hmda\\_small-entity-compliance-guide\\_2023-02.pdf](https://files.consumerfinance.gov/f/documents/cfpb_hmda_small-entity-compliance-guide_2023-02.pdf).

<sup>96</sup> Consumer Fin. Prot. Bureau, *HMDA Institutional Coverage Chart*, [https://files.consumerfinance.gov/f/documents/cfpb\\_hmda-institutional-coverage\\_2023.pdf](https://files.consumerfinance.gov/f/documents/cfpb_hmda-institutional-coverage_2023.pdf); Consumer Fin. Prot. Bureau, *HMDA Transactional Coverage Chart*, [https://files.consumerfinance.gov/f/documents/cfpb\\_hmda-transactional-coverage\\_2023.pdf](https://files.consumerfinance.gov/f/documents/cfpb_hmda-transactional-coverage_2023.pdf).

<sup>97</sup> Consumer Fin. Prot. Bureau, *Reportable HMDA Data: A Regulatory and Reporting Overview Reference Chart for HMDA Data Collected in 2023* (Feb. 9, 2023), [https://files.consumerfinance.gov/f/documents/cfpb\\_reportable-hmda-data\\_regulatory-and-reporting-overview-reference-chart\\_2023-02.pdf](https://files.consumerfinance.gov/f/documents/cfpb_reportable-hmda-data_regulatory-and-reporting-overview-reference-chart_2023-02.pdf).

<sup>98</sup> Consumer Fin. Prot. Bureau, *Sample Data Collection Form*, [https://files.consumerfinance.gov/f/documents/201708\\_cfpb\\_hmda-sample-data-collection-form.pdf](https://files.consumerfinance.gov/f/documents/201708_cfpb_hmda-sample-data-collection-form.pdf).

<sup>99</sup> Consumer Fin. Prot. Bureau, *Home Mortgage Disclosure Act FAQs*, <https://www.consumerfinance.gov/compliance/compliance-resources/mortgage-resources/hmda-reporting-requirements/home-mortgage-disclosure-act-faqs/>.

<sup>100</sup> Consumer Fin. Prot. Bureau, *A Beginner's Guide to Accessing and Using Home Mortgage Disclosure Act Data* (Jun. 13, 2022), [https://files.consumerfinance.gov/f/documents/cfpb\\_beginners-guide-accessing-using-hmda-data\\_guide\\_2022-06.pdf](https://files.consumerfinance.gov/f/documents/cfpb_beginners-guide-accessing-using-hmda-data_guide_2022-06.pdf).

<sup>101</sup> Consumer Fin. Prot. Bureau, *HMDA Webinars*, <https://www.consumerfinance.gov/compliance/compliance-resources/mortgage-resources/hmda-reporting-requirements/webinars/>.

<sup>102</sup> Consumer Fin. Prot. Bureau, *Summary of 2022 Data on Mortgage Lending* (Jun. 29, 2023), <https://www.consumerfinance.gov/data-research/hmda/summary-of-2022-data-on-mortgage-lending/>.

<sup>103</sup> *Interactive Bureau Regulations, Regulation C*, <https://www.consumerfinance.gov/rules-policy/regulations/1003/>.

<sup>104</sup> 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 CFPB comprise the Federal Financial Institutions Examination Council (FFIEC). The State Liaison Committee was added to FFIEC in 2006 as a voting member. Federal Fin. Instit. Examination Council, <http://www.ffiec.gov> (last visited June 5, 2024).

Filing Instructions Guide,<sup>105</sup> an online interactive Filing Instructions Guide,<sup>106</sup> and the 2023 Supplemental Guide for Quarterly Filers.<sup>107</sup> Together with the FFIEC, in March of 2023, the CFPB also published the 2023 edition of the HMDA Getting it Right Guide.<sup>108</sup> The CFPB also works with the FFIEC to publish data submission resources for HMDA filers and vendors on its Resources for HMDA Filers website, <https://ffiec.cfpb.gov>.

In addition, HMDA reporters can ask questions about HMDA and Regulation C, including how to submit HMDA data, by emailing the CFPB's HMDA Help at [HMDAHelp@cfpb.gov](mailto:HMDAHelp@cfpb.gov). The CFPB also offers financial institutions, service providers, and others informal staff guidance on specific questions about the statutes and rules the CFPB implements, including ECOA and Regulation B and HMDA and Regulation C, through its Regulation Inquiries platform at [www.reginquiries.consumerfinance.gov](http://www.reginquiries.consumerfinance.gov).

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<sup>105</sup> Consumer Fin. Prot. Bureau, *Filing instructions guide for HMDA data collected in 2024* (Nov. 2023), <https://s3.amazonaws.com/cfpb-hmda-public/prod/help/2024-hmda-fig.pdf>.

<sup>106</sup> 2023 FIG (Filing Instructions Guide), <https://ffiec.cfpb.gov/documentation/fig/2023/overview>.

<sup>107</sup> Consumer Fin. Prot. Bureau, *Supplemental Guide for Quarterly Filers for 2024* (Aug. 2023), <https://s3.amazonaws.com/cfpb-hmda-public/prod/help/supplemental-guide-for-quarterly-filers-for-2024.pdf>.

<sup>108</sup> Federal Fin. Instit. Examination Council, *A Guide to HMDA Reporting, Getting it Right!* (Mar. 23, 2023), <https://www.ffiec.gov/hmda/pdf/2023Guide.pdf>.

# Appendix B: Defined terms

<b>TERM</b>	<b>DEFINITION</b>
AMS	Agricultural Marketing Service of the U.S. Department of Agriculture
ASC	FFIEC's Appraisal Subcommittee
AVM	Automated Valuation Models
CFPA	Consumer Financial Protection Act of 2010
CFPB	Consumer Financial Protection Bureau
CRA	Community Reinvestment Act
Dodd-Frank Act	Dodd-Frank Wall Street Reform and Consumer Protection Act
DOJ	U.S. Department of Justice
DOT	U.S. Department of Transportation
ECOA	Equal Credit Opportunity Act



FCA	Farm Credit Administration
FDIC	Federal Deposit Insurance Corporation
FHA	Fair Housing Act
FHFA	Federal Housing Finance Agency
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 ( <a href="#">FRB</a> ), the Federal Deposit Insurance Corporation ( <a href="#">FDIC</a> ), the National Credit Union Administration ( <a href="#">NCUA</a> ), the Office of the Comptroller of the Currency ( <a href="#">OCC</a> ), and the Consumer Financial Protection Bureau (CFPB). The State Liaison Committee was added to FFIEC in 2006 as a voting member.
FTC	Federal Trade Commission
HMDA	Home Mortgage Disclosure Act
HUD	U.S. Department of Housing and Urban Development
ILSA	Interstate Land Sales Full Disclosure Act

NCUA	National Credit Union Administration
OCC	Office of the Comptroller of the Currency
ROV	Reconsideration of Value
SBA	Small Business Administration
SEC	Securities and Exchange Commission
SPCP	Special Purpose Credit Program
UDAAP	Unfair, Deceptive, or Abusive Acts or Practices
USDA	U.S. Department of Agriculture