

Fair Lending Hot Topics

Outlook Live Webinar – October 17, 2012

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

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Overview

- **Opening Remarks**

- *Director of the Financial Fraud Enforcement Task Force*
- *Co-chairs of the Non-Discrimination Working Group*

- **Presentations**

- *U.S. Department of Justice*
- *Federal Deposit Insurance Corporation*
- *Consumer Financial Protection Bureau*
- *National Credit Union Administration*
- *U.S. Department of Housing and Urban Development*
- *Office of the Comptroller of the Currency*
- *Federal Reserve Board*

- **Questions**

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Opening Remarks

- **Michael J. Bresnick**, *Executive Director, Financial Fraud Enforcement Task Force*
- **Sandy Braunstein**, *Director of the Division of Consumer and Community Affairs, Federal Reserve Board*
- **Patrice Ficklin**, *Assistant Director of the Office of Fair Lending and Equal Opportunity, Consumer Financial Protection Bureau*
- **Michelle Aronowitz**, *Deputy General Counsel for Enforcement and Fair Housing, U.S. Department of Housing and Urban Development*

Presentations

- **Recent Fair Lending Enforcement Efforts**

- *Jon Seward, Deputy Chief, Housing and Civil Enforcement Section, Civil Rights Division, U.S. Department of Justice*

- **Risk Assessments**

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

- **Fair Lending Compliance Management**

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

- **Data Reporting and Analysis**

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

Presentations *(continued)*

- **FHA LGBT Rule, Disability Discrimination, Maternity Leave Discrimination**
 - *Joel Armstrong, Director, Office of Systemic Investigations, Office of Fair Housing and Equal Opportunity, U.S. Department of Housing and Urban Development*
- **Loss Mitigation and Loan Modification**
 - *Kimberly G. Hebb, Director for Compliance Policy, Office of the Comptroller of the Currency*
- **Redlining**
 - *Maureen Yap, Special Counsel/Manager, Fair Lending Enforcement Section, Division of Consumer and Community Affairs, Federal Reserve Board*

Recent Fair Lending Enforcement Efforts

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

A Landmark Year

Since the November 2, 2011 webinar, DOJ has accomplished the following:

- Seven fair lending cases settled
- Over \$550,000,000 in monetary relief
- Compensation for 250,000+ victims

The Seven Cases

- United States v. Bank of America N.A. (W.D.N.C.)
- United States v. Countrywide Financial Corporation, et al. (C.D. Cal.)
- United States v. GFI Mortgage Bankers, Inc. (S.D.N.Y.)
- United States v. Luther Burbank Savings (C.D. Cal.)
- United States v. Mortgage Guaranty Insurance Corp., et al. (W.D. Pa.)
- United States v. SunTrust Mortgage, Inc. (E.D. Va.)
- United States v. Wells Fargo Bank, NA (D.D.C.)

Issues Addressed

- Steering
 - Countrywide, Wells Fargo
- Pricing
 - Countrywide, Wells Fargo, GFI, SunTrust
- Underwriting
 - Maternity leave: MGIC
 - Disability income: Bank of America
 - Minimum loan amount: Luther Burbank

Synergistic Partnerships

- United States Attorneys Offices
 - Countrywide, Wells Fargo, GFI
- Coordination with federal agencies
 - All seven cases resulted from referrals
 - Regular interagency meetings
- Joint investigations with CFPB

Partnership Example: GFI

- HUD referral
- Investigated and litigated jointly with US Attorney in SDNY
- Litigation v. Pre-suit Resolution
 - Factual admissions
 - Civil penalty

Assessing Your Fair Lending Risk

Tara L. Oxley, Chief

Fair Lending and CRA Examinations

Federal Deposit Insurance Corporation

Assessing Your Fair Lending Risk

- Discrimination in Lending
- Unequal treatment or impact on a prohibited basis
 - Equal Credit Opportunity Act: race, color, religion, national origin, sex, marital status, age, public assistance income, or exercising rights under the Consumer Credit Protection Act
 - Fair Housing Act: race, color, religion, national origin, sex, handicap or familial status

Assessing Your Fair Lending Risk

(continued)

- Consider:
 - Overt Statements of Discrimination
 - Disparate Treatment on a Prohibited Basis
 - Disparate Impact on a Prohibited Basis

Assessing Your Fair Lending Risk

(continued)

- Consider Fair Lending Risk in the Following Six Areas:
 - Pricing
 - Underwriting
 - Steering
 - Redlining
 - Marketing
 - Loss Mitigation Activities

Assessing Your Fair Lending Risk

(continued)

Pricing

- Interest Rates
- Loan Fees
- Rate Overages
 - Dealer Mark-ups or YSPs to Brokers
 - Loan Officer Compensation
 - Bank's Profit Margin

Assessing Your Fair Lending Risk

(continued)

Underwriting

Review of Credit Operations

- Application Process
- Denials Prior to Underwriting
- Underwriting Criteria
- AUS vs. Manual Underwriting
- Overrides to Credit Decision

Assessing Your Fair Lending Risk

(continued)

Steering

- What is steering?
- How are applications processed?
- Are applicants with similar credit quality provided equal access to products and lending units?

Assessing Your Fair Lending Risk

(continued)

Redlining

- Redlining: Treating applicants/borrowers differently based on geographic location
- Normally, ‘redlining’ relates to a lack of lending
- ‘Reverse Redlining’ identifies targeting certain geographic areas with different products, i.e., higher priced loans

Assessing Your Fair Lending Risk

(continued)

Marketing

Review for discouragement on a prohibited basis:

- All forms of advertising
- Website content
- Loan officer calls/contacts
- Notices/disclosures

Fair Lending Compliance Management

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

CFPB Fair Lending Supervision

- Banks over \$10 billion in assets
- Nonbanks
 - Mortgage originators
 - Mortgage servicers
 - Private education lenders
 - Payday lenders
 - Larger participants

Compliance Management Basics

- Appropriate to the nature, size and complexity of the institution's consumer business
- Should include, as appropriate:
 - Training
 - Internal monitoring
 - Consumer complaint response
 - Independent testing and auditing
 - Third party service provider oversight
 - Recordkeeping
 - Tied-in with product development, business acquisition, and marketing practices

Steps for Effective Fair Lending CMS

- Maintain up-to-date fair lending policy statement
- Provide regular fair lending training for all employees, officers and board members
- Conduct ongoing monitoring for compliance with fair lending policies and procedures and policies and procedures that are intended to reduce fair lending risk (such as price caps or other controls on discretion)

Steps for Effective Fair Lending CMS

(continued)

- Regularly review policies for potential violations, including potential disparate impact
- Depending on nature, size and complexity of institution, conduct statistical analysis to identify potential disparities on prohibited bases
- Regularly assess marketing of loan products

Examples: Weak Fair Lending CMS

- Compliance manuals articulate necessary elements of fair lending compliance program, but the compliance department lacks the access and resources necessary for implementation
- Fair lending CMS is robust in the mortgage area, but weak in other product areas

HMDA Data Integrity

- Inaccurate HMDA data hurts ability of regulators and the public to compare mortgage data across the industry in a meaningful way
- Inaccurate HMDA data also impedes institution's ability to monitor its own lending for potential fair lending violations
- Failure to capture and accurately report HMDA data is a violation of legal requirements, and it also can indicate a weak compliance management system

Data Reporting and Analysis

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

Data Reporting & Analysis

- Beginning in 2012, FFIEC census reports based on ACS
 - Data released in June
 - On the FFIEC website
- Data collection
 - HMDA, Regulation C required data
 - Other statutory authority
- Accuracy and validity

FHA LGBT Rule, Disability and Maternity Leave Discrimination

Joel Armstrong, Director

Office of Systemic Investigation

U.S. Department of Housing and Urban Development

LGBT Rule

Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity

- Prohibits FHA-approved lenders from basing eligibility determinations for FHA-insured loans on actual or perceived sexual orientation or gender identity. *24 CFR Section 203.33.*
- Lender informed lesbian couple that it denied the application for FHA-insured mortgage because same sex marriage was not recognized in state where property is located, and the lender did not recognize the relationship between applicant and co-applicant.
- After HUD intervened, the lender reversed its decision and agreed to approve the mortgage application.
- www.hud.gov/lgbthousingdiscrimination

Disability Discrimination

- The Fair Housing Act prohibits discrimination on the basis of disability in housing, which includes mortgages. *42 U.S.C. 3604 and 3605.*
 - making housing unaffordable
 - making discriminatory statements
 - offering discriminatory terms or conditions
- The Act prohibits lenders from requesting unnecessary and unduly burdensome disability income documentation. This prohibition includes letters from doctors that address
 - duration of a disability,
 - nature of a disability, or
 - severity of a disability.

Disability-Related Underwriting Guidance

- Fannie Mae: consider disability-related income without a defined expiration date as stable, predictable, and likely to continue. Additional documentation from borrower not expected. *Single Family Selling Guide Section B3-3.1-01.*
- Freddie Mac: treat disability related income as reasonably expected to continue absent an expiration date that is less than 3 years. Scheduled benefits re-evaluation does not affect payment continuity determination. *Single-Family Seller/Service Guide Section 37.13.*
- FHA: FHA-approved lenders prohibited from inquiring into or requesting documentation concerning the nature of a disability or the medical condition of a borrower. The guidance replaces HUD Handbook 4155.1, 4.D.2.k. *Mortgagee Letter 12-15.*

Charge of Discrimination

- HUD charged Bank of America with disability related discrimination in its processing of mortgage applications. HUD specifically found:
 1. Bank of America requested doctors letters to verify a disability's severity or duration; and
 2. Bank of America imposed different terms and conditions on mortgage applicants using disability related income.
- After the charge of discrimination, the parties elected to have the case proceed in United States federal district court.

District Court Case Resolution

- The United States and Bank of America resolved the case through a consent order, which would require Bank of America to provide the following relief:
 - pay \$25,000 to \$50,000 in monetary relief for each HUD complainant,
 - destroy the medical information contained in the loan files of all the HUD complainants;
 - maintain disability related underwriting policies that Bank of America adopted during the HUD investigation;
 - hire an administrator to search for additional victims in 25,000 loan applications involving disability-related income; and
 - pay up to \$5,000 to each additional victim of its disability-related discrimination.

Temporary Leave Underwriting Guidance

- Temporary leave includes maternity, paternity, or short-term disability leave.
- Borrowers on temporary leave are considered employed.
- Freddie Mac and Fannie Mae have issued clarifying guidelines for calculating qualifying income for borrowers on temporary leave.
 - Fannie Mae Selling Guide Announcement SEL-2011-13.
 - Freddie Mac Bulletin 2011-21.

Loss Mitigation and Loan Modification

*Kimberly G. Hebb, Director for Compliance Policy
Office of the Comptroller of the Currency*

Loss Mitigation & Loan Modification

- Policies and Procedures
- Analysis, Monitoring and Testing
- Complaints and Litigation
- Training

Resources

- OCC 2010 Fair Lending Handbook Update
- OCC Bulletin 2011-29 on Foreclosure Management
- OCC Bulletin 2001-47 on Third-Party Risk Management Principles

Redlining

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

Redlining Risk Factors

Summary of Risk Factors and Key Questions

- CRA Assessment Area/Market Area
 - Does the area exclude majority minority census tracts?
- Lending
 - Does the bank's record of HMDA applications and originations show statistically significant disparities when compared to similar lenders?
- Branches
 - Does the bank's branching strategy exclude majority minority census tracts?
- Marketing and Outreach
 - For purposes of marketing and outreach, does the bank treat majority minority tracts differently than non-majority minority tracts?

Sample Case:

U.S. v. Citizens Republic Bancorp

Background

- The bank holding company was headquartered in Flint, MI. Citizens acquired Republic Bancorp Inc. and Republic Bank in 2007.
- The bank branches were located within the Detroit-Ann Arbor-Flint CMSA.
 - 70% of the CMSA's African-American population lives in the City of Detroit.
- FRB referral in 2010; DOJ settlement in 2011

Sample Case:

U.S. v. Citizens Republic Bancorp

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DOJ Complaint

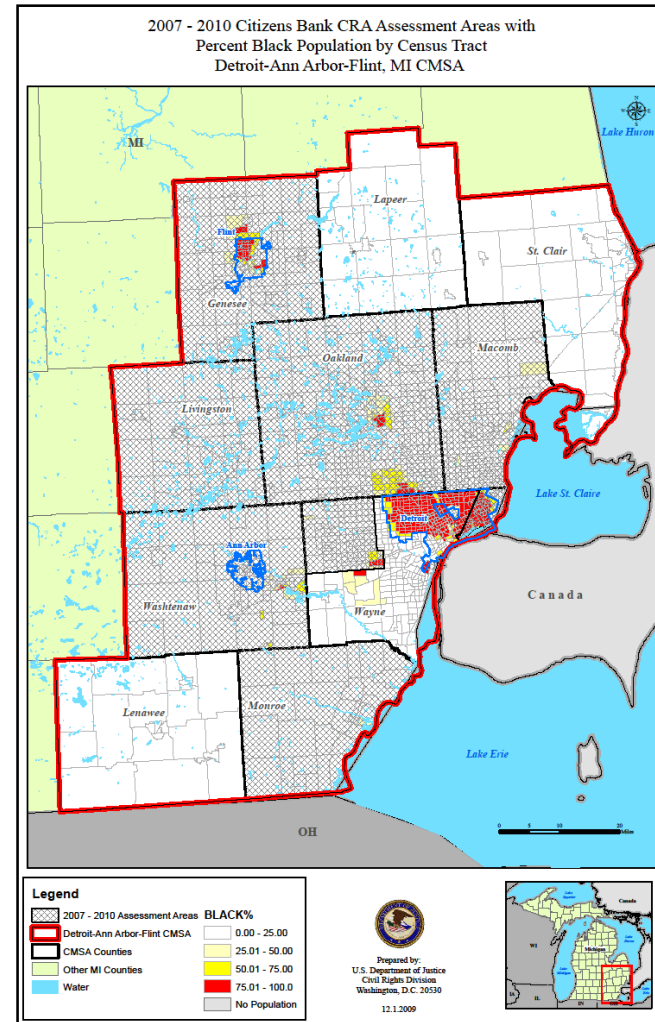
- **The CRA assessment area** excluded African-American communities in Detroit.
- **Lending.** The bank had fewer applications and originations from African-American census tracts than its peers (2004-2008).
- **Branches.** There were no branches in Detroit.
- **Marketing and Outreach.** In 2006 and 2007, the Bank had no print or radio advertising, or outreach activities in the City of Detroit.

Sample Case:

U.S. v. Citizens Republic Bancorp (continued)

Map of Citizens CRA Assessment Area (2007-2010)

- Red line shows CMSA
- Areas in gray show the assessment area
- Areas in color are census tracts with high African-American population concentrations
- Irregular assessment area excluded minority areas in Detroit

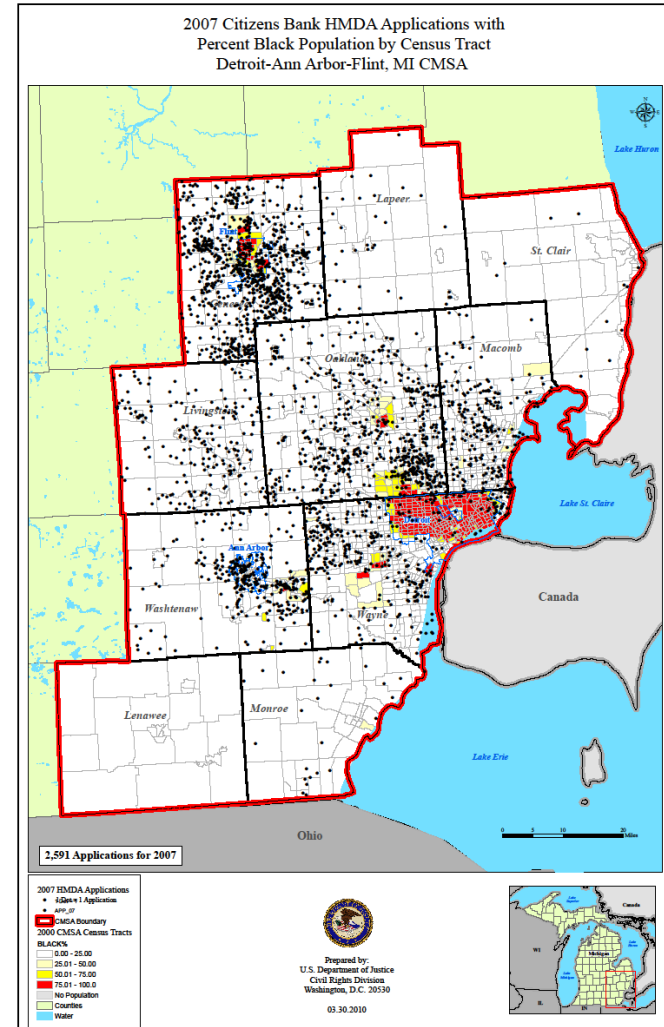


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Sample Case: *U.S. v. Citizens Republic Bancorp* (continued)

Distribution of Citizens' Loan Originations (2007)

- Statistically significant disparities for applications and originations of HMDA loans



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Sample Case:

U.S. v. Citizens Republic Bancorp

(continued)

Relief

- Establish a loan production office in a majority-minority tract in Detroit
- Fund a \$1.5 million special financing program
- Provide \$1.625 million for exterior housing improvements
- Provide \$500,000 for targeted marketing and consumer financial education

Questions

