


# Fair Lending: Compliance Challenges and Issues

Mortgage Bankers Association  
October 13, 2016  
San Juan, Puerto Rico

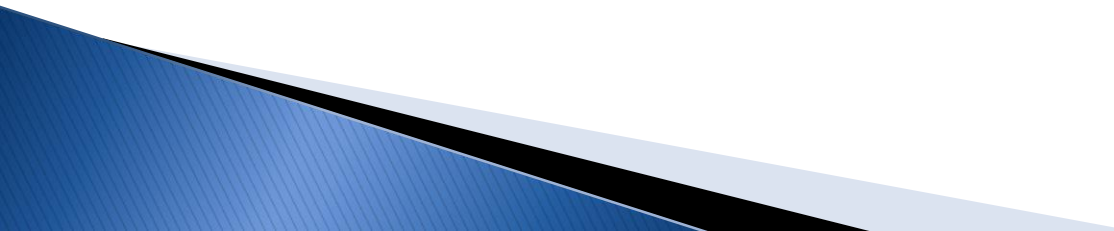
Prepared by: RAMÓN A. RODRÍGUEZ SUÁREZ, Esq.  
RODRIGUEZ-SUAREZ & RODRIGUEZ, LLC



# Overview

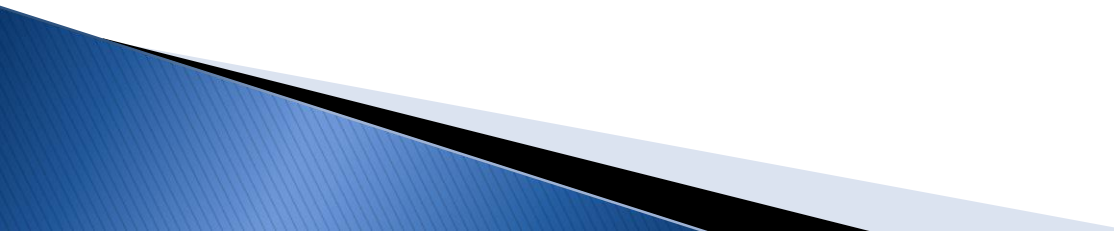
- ▶ **Federal Fair Lending Regulations and Statutes – Background**
  - ▶ **What is Fair Lending?**
  - ▶ **Laws that protects fair lending rights**
  - ▶ **Other lending related laws**
  - ▶ **Fair Lending Risks in Mortgage lending**
- 

# Overview

- ▶ **Post–Origination Fair Lending Risks**
  - ▶ **Fair lending violations and enforcement actions in mortgage lending**
  - ▶ **Violations to ECOA – Examinations in 2015**
  - ▶ **Fair lending Compliance Management Systems**
- 

# Federal Fair Lending Regulations and Statutes

## Background

- ▶ An institution that offers a variety of lending products or product features, either through one channel or through multiple channels, may benefit consumers by offering greater choices and meeting the diverse needs of applicants.
  - ▶ Greater product offerings and multiple channels, however, may also create a fair lending risk that applicants will be illegally steered to certain choices based on prohibited characteristics.
- 

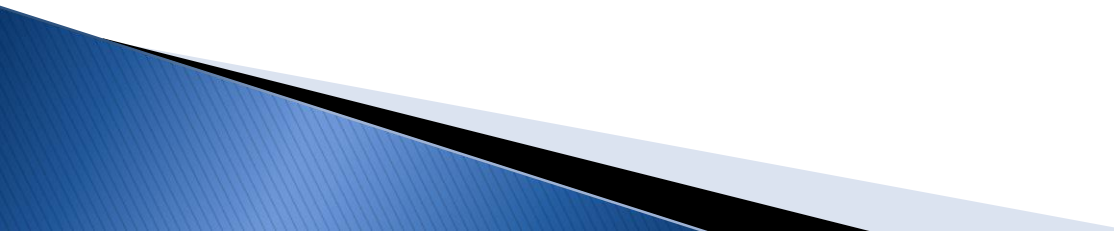
## Federal Fair Lending Regulations and Statutes Background

### **Some examples of potential fair lending risk:**

- ▶ An institution that offers;
  - different lending products based on credit risk levels, may present opportunities for loan officers or brokers to illegally steer applicants to the higher-risk products.

## Federal Fair Lending Regulations and Statutes Background

### Some examples of potential fair lending risk:

- ▶ An institution that offers;
    - nontraditional loan products or loan products with potentially onerous terms (such as prepayment penalties) may present opportunities for loan officers or brokers to illegally steer applicants to certain products or features.
- 

## Federal Fair Lending Regulations and Statutes Background

### Some examples of potential fair lending risk:

- ▶ An institution that offers;
  - prime or sub-prime products through different channels may present opportunities for applicants to be illegally steered to the sub-prime channel.

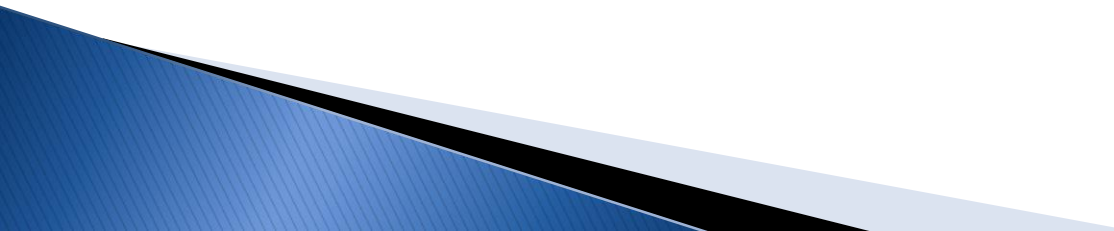
## Federal Fair Lending Regulations and Statutes Background

### **Pending Fair Lending Investigations:**

- ▶ Mortgage lending is a key priority for the Office of Fair Lending, for both, supervision and enforcement:
  - With a focus on HMDA data integrity and potential fair lending risks in the areas of redlining, underwriting and pricing.

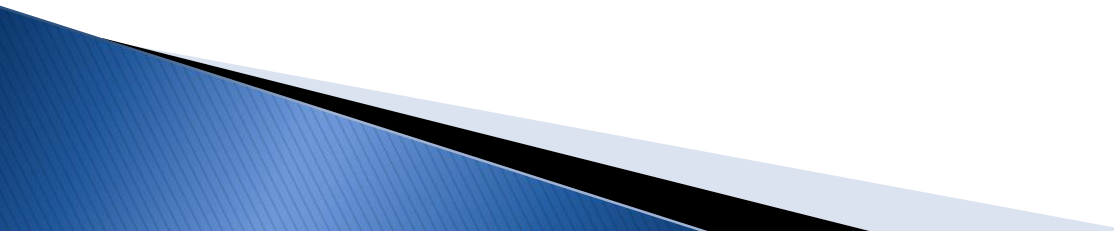
## Federal Fair Lending Regulations and Statutes Background

### Pending Fair Lending Investigations:

- ▶ The Consumer Financial Protection Bureau “CFPB”:
    - has a number of ongoing fair lending investigations and
    - has authorized enforcement actions against a number of institutions.
    - has a number of authorized enforcement actions in settlement negotiations and pending investigations.
- 

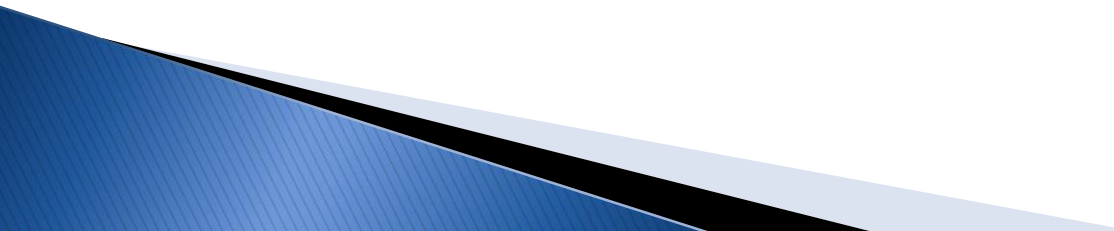
## Federal Fair Lending Regulations and Statutes Background

### **Interagency Task Force on Fair Lending – CFPB–HUD Memorandum of Understanding September 2, 2015**

- ▶ CFPB and HUD entered into a Memorandum of Understanding (MOU);
    - delineating how each agency will use and properly share information to enhance fair lending compliance, and
    - interagency collaboration around institutions and issues over which the two agencies share jurisdiction.
- 

## Interagency Task Force on Fair Lending – CFPB–HUD Memorandum of Understanding September 2, 2015

### Memorandum of Understanding (MOU);

- meet quarterly to discuss current fair lending investigations;
  - coordinate actions in a manner consistent and complementary to each agency's actions, including determining whether multiple or joint actions are necessary and appropriate.
- 

## Federal Fair Lending Regulations and Statutes Background

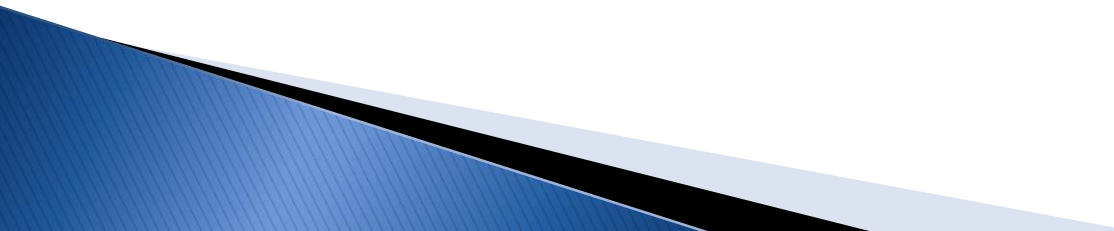
**1RSTQ2016 SEES CONTINUED FOCUS ON MORTGAGES, FAIR LENDING, AND CFPB ENFORCEMENT**—June 7, 2016 Posted by W. Kyle Tayman

- ▶ 50 enforcement actions taken against consumer finance providers, increase from the 46 actions (8%) in Q1 2015
- ▶ The majority were settlement agreements
- ▶ The CFPB remains the most active federal agency, having initiated twelve enforcement actions.

## 1RSTQ2016 SEES CONTINUED FOCUS ON MORTGAGES, FAIR LENDING, AND CFPB ENFORCEMENT – June 7, 2016 Posted by W. Kyle Tayman

- ▶ Mortgages remain a primary target of enforcement actions, with 14 brought in the first quarter of 2016.
- ▶ Federal and state actions resulted in over \$300 million of civil penalties and settlement payments to state and federal governments in the first quarter of 2016.
- ▶ A major civil penalty (\$48 millions) against a national bank came as a result of allegations concerning its mortgage servicing practices.
- ▶ Other notable consumer relief awards came from a \$133 million judgment against a debt relief company that was alleged to have charged upfront fees in violation of the CFPB Act.

## 1RSTQ2016 SEES CONTINUED FOCUS ON MORTGAGES, FAIR LENDING, AND CFPB ENFORCEMENT – June 7, 2016 Posted by W. Kyle Tayman

- ▶ With the increasing frequency of CFPB enforcement actions and the mention of "testers", it is safe to assume that testers will become a commonly used tool in the CFPB's investigative arsenal.
  - ▶ Banks and other regulated entities should educate employees on the existence of testers and build that risk into any fair lending training already in place
- 

## Federal Fair Lending Regulations and Statutes Background

- ▶ A lender, a real estate and mortgage broker, an appraiser, a loan servicer and the title company, can commit lending discrimination in any phase of the mortgage loan process.
- ▶ They can occur in the;
  - marketing of mortgage loan products,
  - mortgage loan transactions,
  - terms and conditions of the loan,
  - in the appraisal of a home, and
  - in loan servicing.

# What is Fair Lending?

- ▶ Fair Lending means:

“fair,

equitable, and

nondiscriminatory access to credit

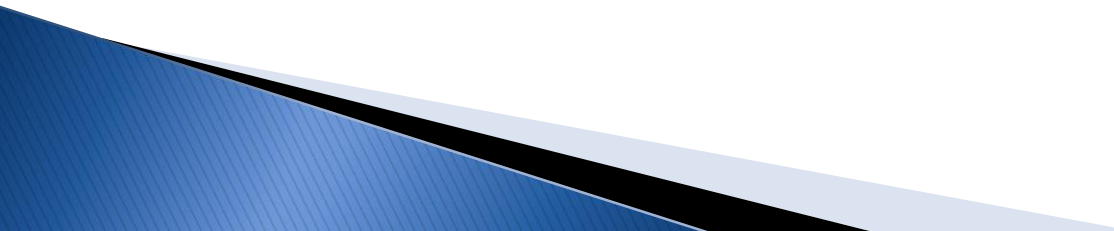
for consumers”



# What is Fair Lending?

- ▶ Fair lending prohibits lenders from considering;
  - race, color, national origin, religion, sex, familial status, or disability, when applying for residential mortgage loans.
- ▶ Fair lending guarantees the same lending opportunities to everyone.
- ▶ Because both the FHAct and the ECOA apply to mortgage lending, lenders may not discriminate in mortgage lending based on any of the prohibited factors in either list.

# Laws that protects fair lending rights


- ▶ Civil Rights Act of 1968 – April 11, 1968
  - ▶ Fair Housing Amendments Act of 1988 (FHAct)
  - ▶ Equal Credit Opportunities Act (ECOA) – Regulation B – 1974
  - ▶ Dodd–Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd–Frank Act)
  - ▶ Consumer Financial Protection Bureau – Office of Fair Lending and Equal Opportunity
- 

# Laws that protects fair lending rights

## Civil Rights Act of 1968

- ▶ Signed into law by President [Lyndon B. Johnson](#) on April 11, 1968
- ▶ Provide for equal housing opportunities regardless of; race, color, or national origin, in all HUD-assisted programs
- ▶ The 1968 act expanded on previous acts and prohibited discrimination concerning the sale, rental, and financing of housing based on [race](#), religion, [national origin](#) and sex, and since 1974, [gender](#); since 1988, the act protects [people with disabilities](#) and families with children.

# Fair Housing Amendments Act of 1988 (FHAct)

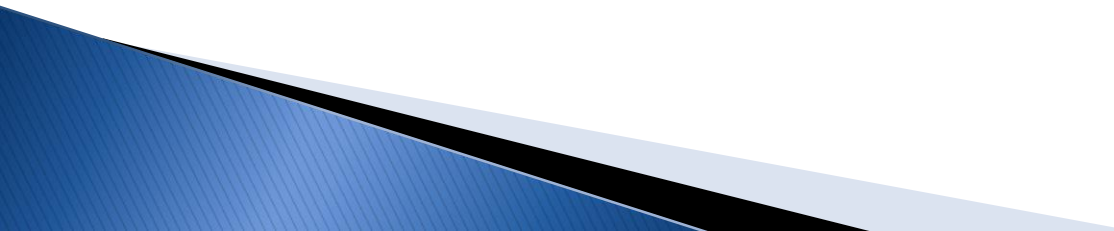
- ▶ Is unlawful to discriminate in the sale, rental, or financing of homes.
  - ▶ The Office of Fair Housing and Equal Opportunity (FHEO) enforces the federal FHAct, under the control of the U.S. Department of Housing and Urban Development (HUD).
  - ▶ Expanded the law to prohibit discrimination in housing based on disability or on family status (pregnant women or the presence of children under 18).
- 

# Fair Housing Amendments Act of 1988(FHAct)

- ▶ The FHAct prohibits discrimination in all aspects of “residential real-estate related transactions,” including but not limited to:
  - Making loans to buy, build, repair, or improve a dwelling;
  - Purchasing real estate loans;
  - Selling, brokering, or appraising residential real estate; or
  - Selling or renting a dwelling.

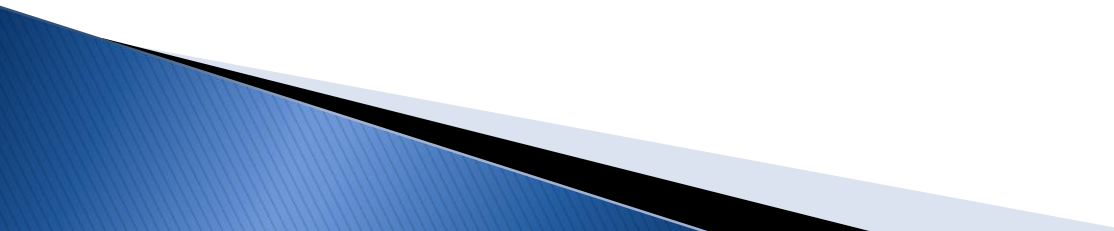
# Fair Housing Amendments Act of 1988(FHAct)

The FHAct prohibits discrimination based on:

- Race or color;
  - National origin; (A U.S. citizen, registered alien (a “green card” holder), or an undocumented resident of the U.S., are protected by the federal Fair Housing Act.)
  - Religion;
- 


# Fair Housing Amendments Act of 1988 (FHAct)

The FHAct prohibits discrimination based on:

- Sex;
  - Familial status (defined as children under the age of 18 living with a parent or legal custodian, pregnant women, and people securing custody of children under 18); or
  - Handicap.
- 

# Fair Housing Amendments Act of 1988 (FHAAct)

Lenders must:

- ▶ Consider reliable public assistance income the same way as other income.
  - ▶ Consider reliable income from part-time employment, Social Security, pensions, and annuities.
  - ▶ Consider reliable alimony, child support, or separate maintenance payments, if the applicant choose to provide this information. A lender may ask for proof that applicant receive this income consistently.
- 


# Fair Housing Amendments Act of 1988 (FHAAct)

Lenders must:

- ▶ Accept someone other than the spouse as a co-signer if a co-signer is needed. If the applicant own the property with the spouse, he or she may be asked to sign documents that permit to mortgage the property.

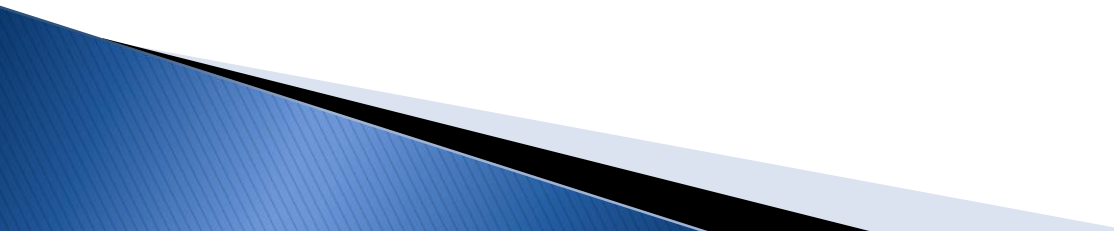
# Fair Housing Amendments Act of 1988 (FHAAct)

Lender must not:

- ▶ Discourage a person from applying for a mortgage or reject the application because of the race, color, religion, national origin, sex, marital status, or age, or because he get public assistance.
  - ▶ Consider the sex, race, or national origin, although you will be asked to disclose this information voluntarily to help federal agencies enforce anti-discrimination laws. However, a creditor may consider the immigration status and whether the applicant has the right to remain in the country long enough to repay the debt.
- 

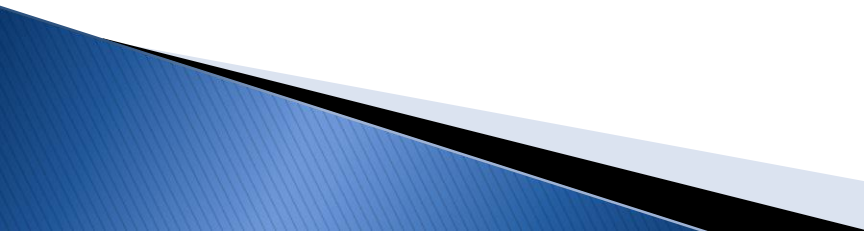
# Fair Housing Amendments Act of 1988 (FHAct)

Lender must not:

- ▶ Impose different terms or conditions on a loan, like; higher interest rate or larger down payment, based on the sex, race, or other forbidden factors.
  - ▶ discourage a person from buying because of the racial make-up of the neighborhood where he want to live, or ask about the applicant plans for having a family, although they can ask questions about expenses related to your dependents.
  - ▶ require a co-signer if the applicant meet the lender's requirements.
- 

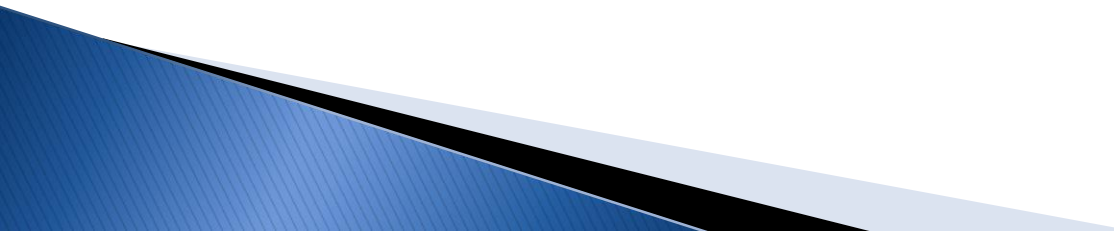
## Fair Housing Amendments Act of 1988 (FHAct)

The Act prohibits housing practices discriminating against individuals on the basis of disability.

- ▶ prohibits statements that indicate a preference, limitation, or discrimination based on disability
  - ▶ prohibits discrimination or otherwise making unavailable because of disability
  - ▶ prohibits discrimination in terms, conditions, or privileges because of disability
- 

## Fair Housing Amendments Act of 1988 (FHAct)

The Act prohibits housing practices discriminating against individuals on the basis of disability.

- ▶ prohibits discrimination in residential real estate-related transactions
  - ▶ requires lenders to make reasonable accommodations for a person with disabilities when such accommodations are necessary to afford the person an equal opportunity to apply for credit.
- 


# Equal Credit Opportunities Act (ECOA) – Regulation B

- ▶ Under the ECOA, it is unlawful for a lender to discriminate on a prohibited basis in any aspect of a credit transaction.
  - It applies to any extension of credit, including extensions of credit to small businesses, corporations, partnerships, and trusts.

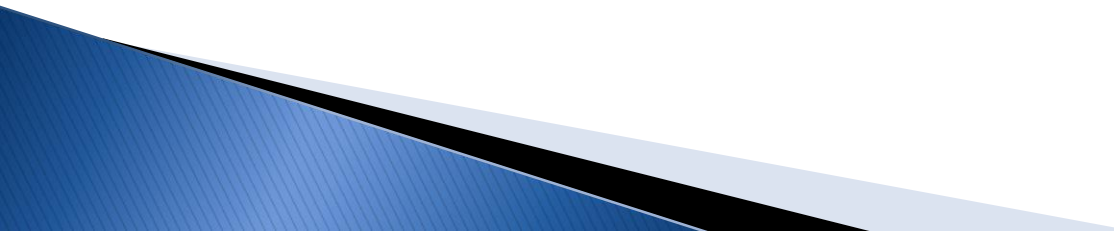
## Equal Credit Opportunities Act (ECOA) – Regulation B

- ▶ The ECOA prohibits discrimination based on:
  - Race or color • Religion • National origin • Sex
  - Marital status
  - Age (provided the applicant has the capacity to contract); or
  - Whether the applicant receive income from any public assistance program; or
  - The applicant's exercise, in good faith, of any right under the Consumer Credit Protection Act.

# ECOA

- ▶ A lender may not, because of a prohibited factor:
    - Fail to provide information or services or provide different information or services regarding any aspect of the lending process, including credit availability, application procedures, or lending standards.
    - Discourage or selectively encourage applicants with respect to inquiries about or applications for credit.
    - Refuse to extend credit or use different standards in determining whether to extend credit.
- 

# ECOA

- ▶ A lender may not, because of a prohibited factor:
    - Vary the terms of credit offered, including the amount, interest rate, duration, or type of loan.
    - Use different standards to evaluate collateral.
    - Treat a borrower differently in servicing a loan or invoking default remedies.
    - Use different standards for pooling or packaging a loan in the secondary market.
- 

# ECOA

- ▶ A lender may not express, orally or in writing, a preference based on prohibited factors or indicate that it will treat applicants differently on a prohibited basis.

# ECOA

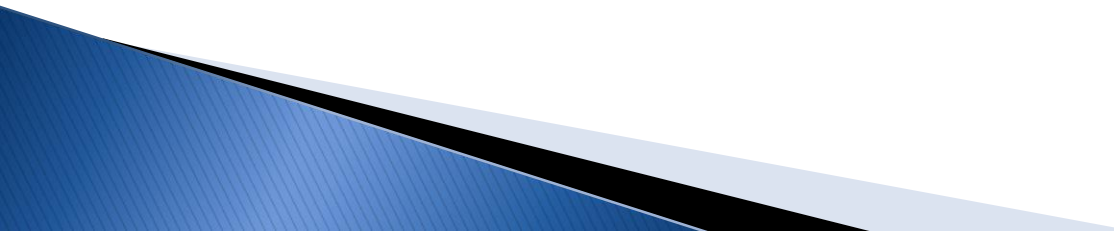
- ▶ A lender may not discriminate on a prohibited basis because of the characteristics of:
  - An applicant, prospective applicant, or borrower.
  - A person associated with an applicant, prospective applicant, or borrower (for example, a co-applicant, spouse, business partner, or live-in aide).
  - The present or prospective occupants of either the property to be financed or the characteristics of the neighborhood or other area where property to be financed is located.

# ECOA

- ▶ Creditors may ask the applicant for most of this information in certain situations, but they may not use it as a reason to deny you credit or to set the terms of your credit.
  - They are never allowed to ask about religion.
- ▶ Everyone who participates in the decision to grant credit or in setting the terms of that credit, including real estate brokers who arrange financing, must comply with the ECOA.

# ECOA

## Adverse Action Notice Deficiencies

- ▶ Notify an applicant of an adverse action on the application taken within 30 days after receiving a completed application.
  - ▶ The notice must be in writing and contain a statement of the action taken;
  - ▶ or a disclosure of the applicant's right to a statement of specific reasons within 30 days, if the statement is requested within 60 days of the creditor's notification.
- 

# ECOA

## Consideration of Protected Forms of Income

- ▶ ECOA forbids a creditor from discriminating against any applicant “because all or part of the applicant's income derives from any public assistance program.”
- ▶ Regulation B states that a creditor “shall not . . . exclude from consideration the income of an applicant . . . because of a prohibited basis or because the income is derived from part-time employment or is an annuity, pension, or other retirement benefit . . . .”

# ECOA

## Consideration of Protected Forms of Income

- ▶ Regulation B also states that a “creditor shall not make any . . . written statement, in advertising or otherwise, to applicants or prospective applicants that would discourage on a prohibited basis a reasonable person from making or pursuing an application.”

# ECOA

## Consideration of Protected Forms of Income

- ▶ A blanket practice of denying any applicant who relies on public assistance income, or a specific form of public assistance income, without an assessment of an applicant's particular situation, may violate ECOA and Regulation B.


# ECOA

## Consideration of Protected Forms of Income

- ▶ The Winter 2015 edition of *Supervisory Highlights* also emphasized guidance issued in the Bureau's November 18, 2014, bulletin on avoiding prohibited discrimination against consumers receiving Social Security disability income.
  - The bulletin reminded lenders that requiring unnecessary documentation from consumers who receive Social Security disability income **raises fair lending concerns**, and called attention to standards and guidelines that may help lenders comply with the law.

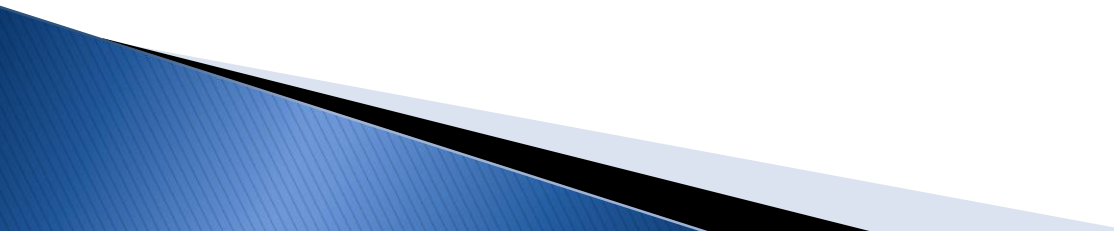
# Dodd–Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd–Frank Act)

The Dodd–Frank Act amended the ECOA and covers:

- ▶ Data collection for loans to minority-owned and women-owned businesses;
  - ▶ Legal action statute of limitations for ECOA violations is extended to five years; and
  - ▶ A disclosure of the consumer's ability to receive a copy of any appraisal(s) and valuation(s) prepared in connection with first-lien loans secured by a dwelling is to be provided to applicants within 3 business days of receiving the application.
- 


# Dodd–Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd–Frank Act)

The Dodd–Frank Act amended the ECOA and covers:

- ▶ Established the Consumer Financial Protection Bureau (CFPB) as the Nation's first federal agency with a mission focused solely on consumer financial protection and making consumer financial markets work for all Americans.
  - ▶ Established the Office of Fair Lending and Equal Opportunity within the CFPB.
- 


# Dodd–Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd–Frank Act)

The Dodd–Frank Act amended the ECOA and covers:

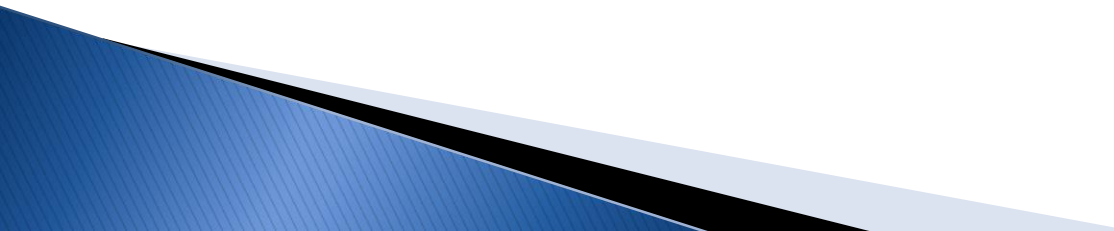
- ▶ Transferred rulemaking authority for HMDA to the CFPB.
  - ▶ Granted rule–making authority under RESPA to the CFPB, and
  - ▶ Granted authority to the CFPB to supervise for and enforce compliance with RESPA and its implementing regulations.
- 

# CONSUMER FINANCIAL PROTECTION BUREAU – Office of Fair Lending and Equal Opportunity

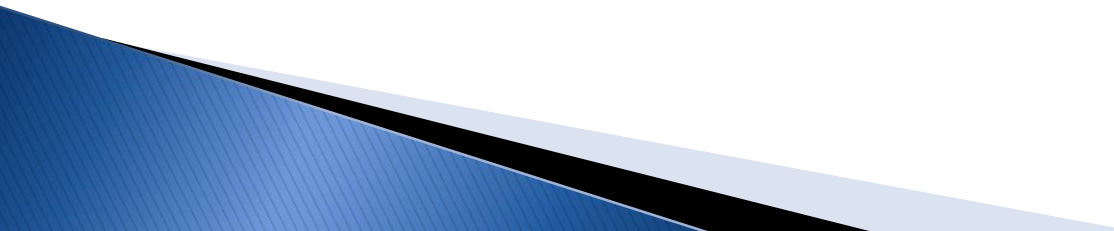
The Fair Lending activities and responsibilities include:

- ▶ Fair Lending Supervision and Enforcement – Providing oversight and enforcement of Federal fair lending laws
  - ▶ Rulemaking – Working with CFPB's Office of Regulations on fair lending-related rulemakings
  - ▶ Outreach – Promoting fair lending compliance, education, and reporting
  - ▶ Interagency Coordination – Coordinating fair lending efforts with Federal agencies and State regulators
- 

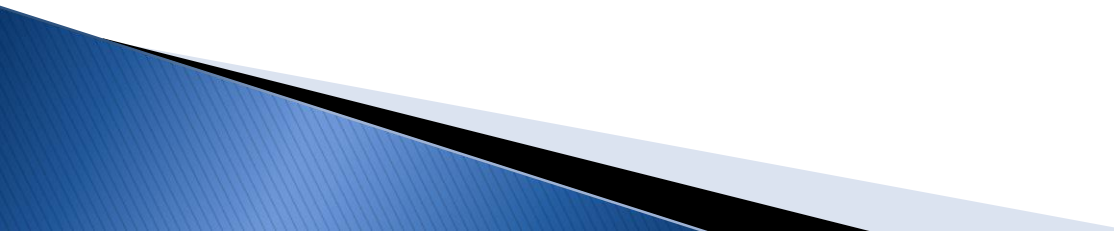
# CONSUMER FINANCIAL PROTECTION BUREAU – Office of Fair Lending and Equal Opportunity

- ▶ Created to protect consumers from credit discrimination and broaden access to credit.
  - ▶ Providing oversight and enforcement of Federal laws intended to ensure the fair, equitable, and nondiscriminatory access to credit for both individuals and communities.
- 

## CONSUMER FINANCIAL PROTECTION BUREAU – Office of Fair Lending and Equal Opportunity

- ▶ The CFPB's Fair Lending Supervision program assesses compliance with Federal consumer financial laws and regulations at banks and nonbanks over which the Bureau has supervisory authority.
  - ▶ Supervision activities range from assessments of institutions' fair lending compliance management systems to in-depth reviews of products or activities that may pose heightened fair lending risks to consumers.
- 

# CONSUMER FINANCIAL PROTECTION BUREAU – Office of Fair Lending and Equal Opportunity

- ▶ The supervisory work focuses in the priority areas of mortgage, auto lending, credit cards, and small business lending.
  - ▶ With respect to data, Federal Reserve examiners generally use the following to help evaluate fair lending risk:
    - CRA assessment area data
    - Branch locations
    - HMDA data and HMDA Plus data
    - CRA small business loan data
- 

# Other Laws Related to Lending

- ▶ Housing and Community Development Act (HCD) of 1974 Section 109
- ▶ Home Mortgage Disclosure Act (HMDA) (Regulation C) – 1975
- ▶ Real Estate Settlement Procedures Act of 1975 (RESPA) (Reg. X)
- ▶ Community Reinvestment Act (CRA Reg.BB)–1977
- ▶ Housing for Older Persons Act of 1995 (HOPA)
- ▶ Section 8 HCV Homeownership Program
- ▶ Loss Mitigation Procedures – 12 CFR 1024.41
- ▶ Ley de Ayuda al Deudor Hipotecario – Ley 169 de 9 de agosto de 2016

# Other Laws Related to Lending

## Housing and Community Development Act (HCD) of 1974 Section 109

- ▶ Prohibits discrimination on the basis of race, color, national origin, disability, age, religion, and sex, within Community Development Block Grant (CDBG) programs or activities.

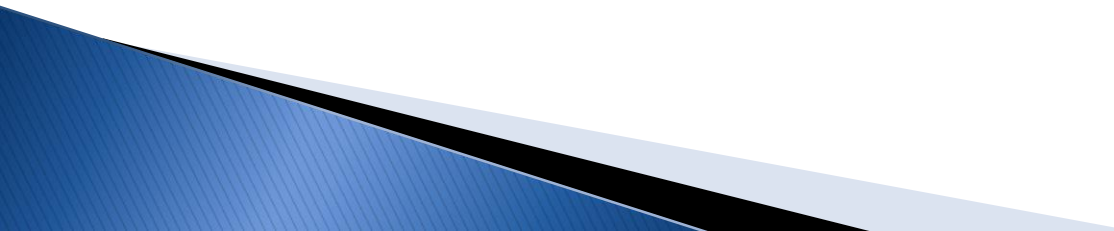
# Other Laws Related to Lending

Home Mortgage Disclosure Act (HMDA) (Reg. C)

HMDA was enacted to:

- ▶ **respond to redlining concerns and the effects of disinvestment in urban neighborhoods, and**
- ▶ **provide the public with loan data that can be used to help determine whether financial institutions are serving the housing needs of their communities;**
  - **to assist in identifying possible discriminatory lending patterns and enforcing anti-discrimination statutes.**

# Home Mortgage Disclosure Act (HMDA) (Regulation C)

- ▶ HMDA was amended to require financial institutions to report new data points and authorized the CFPB to require financial institutions to collect, record, and report additional information.
  - ▶ New data points include those specifically identified in Dodd–Frank as well as others the CFPB determined will assist in carrying out HMDA's purposes.
- 

# Home Mortgage Disclosure Act (HMDA) (Regulation C)

The HMDA Rule adds new data points for (among others):

- ▶ applicant or borrower age,
- ▶ debt-to-income ratio,
- ▶ property value,
- ▶ application channel,
- ▶ points and fees,
- ▶ borrower-paid origination charges,
- ▶ discount points,
- ▶ loan term,
- ▶ prepayment penalty, and
- ▶ interest rate.

# Other Laws Related to Lending

## Real Estate Settlement Procedures Act of 1975 (RESPA) (Reg. X)

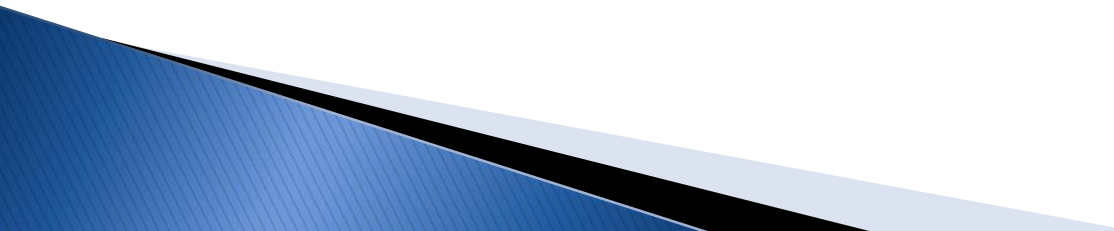
- ▶ The Act requires lenders, mortgage brokers, or servicers of home loans to provide borrowers with **pertinent and timely disclosures** regarding the nature and costs of the real estate settlement process.
- ▶ The Act also prohibits specific practices, such as kickbacks, and places limitations upon the use of escrow accounts.

# Other Laws Related to Lending

## Community Reinvestment Act (CRA Reg.BB) – 1977

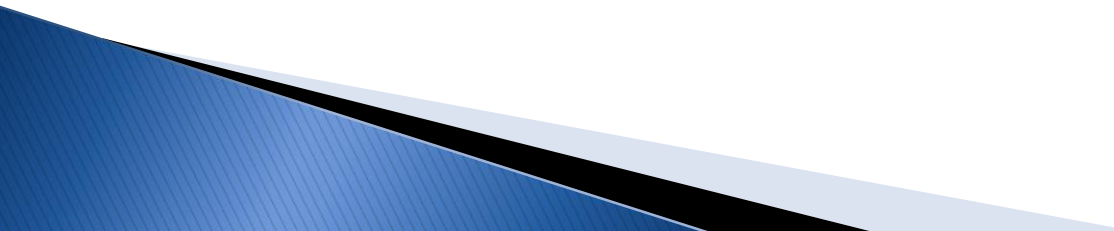
- ▶ The bank's CRA assessment area is evaluated to determine whether the assessment area includes a whole political subdivision and whether majority minority census tracts are inappropriately excluded.

# Real Estate Settlement Procedures Act of 1975 (RESPA) (Reg. X)

- ▶ The Act requires lenders, mortgage brokers, or servicers of home loans to provide borrowers with pertinent and timely disclosures regarding the nature and costs of the real estate settlement process.
  - ▶ The Act also prohibits specific practices, such as kickbacks, and places limitations upon the use of escrow accounts.
- 

## RESPA: Scope of Error Resolution )

The error resolution procedures apply to the following alleged errors: (among others)

- ▶ Imposition of a fee or charge without a reasonable basis to do so.
  - ▶ Failure to provide accurate information to a borrower regarding loss mitigation options and foreclosure.
- 

# Community Reinvestment Act (CRA Reg.BB) – 1977

## CRA Assessment Area:

- ▶ The bank's CRA assessment area is evaluated to determine whether the assessment area includes a whole political subdivision and whether majority minority census tracts are inappropriately excluded.

# Community Reinvestment Act (CRA Reg.BB)


## Branch Locations:

- ▶ The bank's branch location data and policies are evaluated to determine whether branching patterns may reflect illegal discrimination.
- ▶ The evaluation is conducted by reviewing:
  - The number of branches currently present in majority minority and non-majority minority census tracts
  - The number of branches opened / closed in majority minority and non-majority minority census tracts

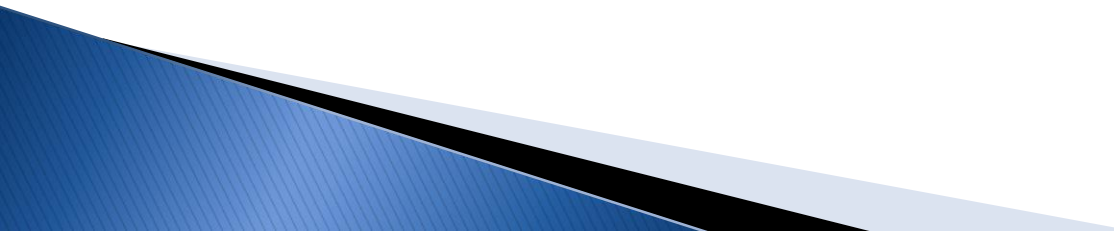
## Other Laws Related to Lending

### **Housing for Older Persons Act of 1995 (HOPA)**

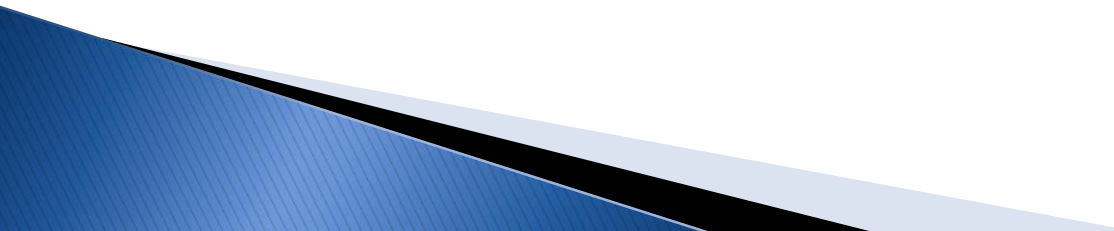
Section 2 of HOPA redefined this portion of the exemption to describe housing:

- (1) That the housing be intended and operated for persons 55 years of age or older;
  - (2) that at least 80 percent of the occupied units be occupied by at least one person who is 55 years of age or older;
- 

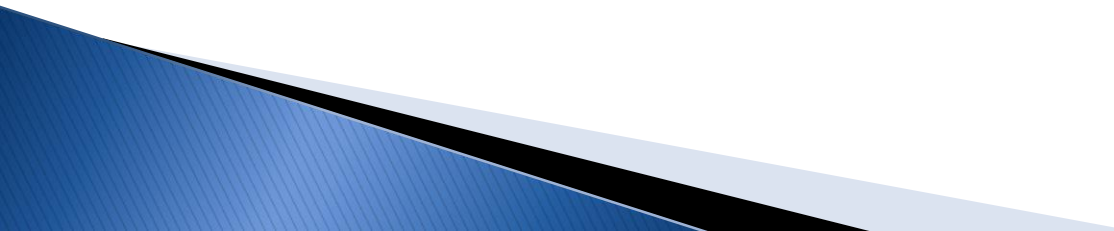
# Housing for Older Persons Act of 1995 (HOPA)

- ▶ HOPA amended the requirements for qualification for the housing for persons who are 55 years of age or older portion of the “housing for older persons” exemption established in the Fair Housing Act.
  - ▶ The Section 8 Housing Choice Voucher (HCV) Homeownership Program was created to assist low-income, first-time homebuyers in purchasing homes.
  - ▶ The program is funded by HUD and administered by participating local public housing authorities (PHA).
- 

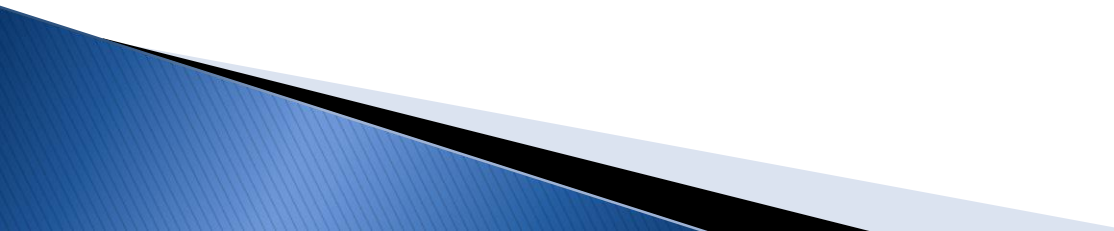
# Section 8 HCV Homeownership Program

- ▶ Through the Program, the participating PHA may provide an eligible consumer with a monthly housing assistance payment (HAP) to help pay for homeownership expenses associated with a housing unit purchased in accordance with HUD's regulations.
  - ▶ In addition to HUD's regulations, the PHAs may also adopt additional requirements, including lender qualifications or terms of financing.
- 

# Section 8 HCV Homeownership Program

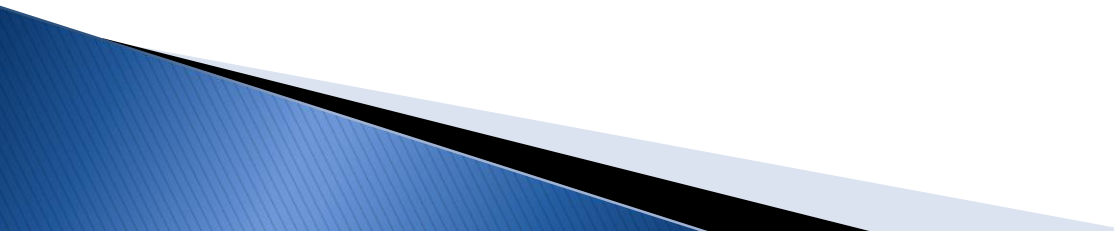
- ▶ In May 2015, the Bureau issued a bulletin to remind creditors of their obligations under ECOA and Regulation B to provide non-discriminatory access to credit for mortgage applicants using income from the Section 8 HCV Homeownership Program.
  - ▶ The CFPB had become aware of financial institutions excluding or refusing to consider income derived from this program during the loan application and underwriting process.
  - ▶ The CFPB had also become aware of some institutions only permitting the vouchers to be used for certain mortgage loan products or delivery channels.
- 

# Section 8 HCV Homeownership Program

- ▶ Excluding or refusing to consider these vouchers as a source of income categorically, or accepting the vouchers only for certain types of mortgage loans, may violate ECOA and Regulation B.
  - ▶ The Bulletin offers guidance for lenders in managing their fair lending risk, including the importance of clear underwriting policies, providing training for underwriters and loan originators, and ensuring careful monitoring for compliance with underwriting policies.
- 

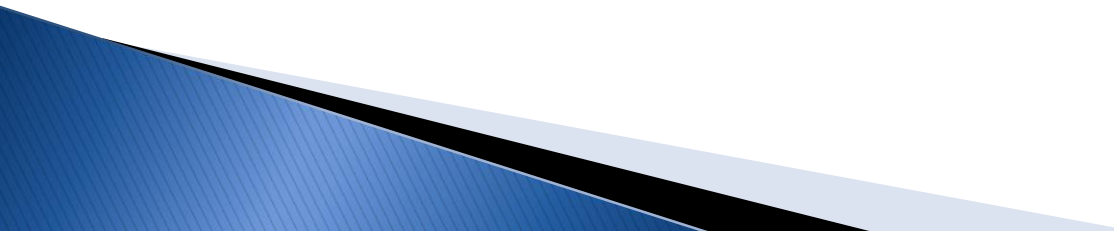
# Other Laws Related to Lending

## Loss Mitigation Procedures – 12 CFR 1024.41

- ▶ Servicers must comply with certain loss mitigation procedures.
  - ▶ The procedures differ depending on how far in advance of foreclosure a borrower submits a loss mitigation application.
  - ▶ The requirements set forth apply to only those mortgage loans that are secured by the borrower's principal residence.
- 

# Other Laws Related to Lending

## Loss Mitigation Procedures – 12 CFR 1024.41

- ▶ Receipt of a Loss Mitigation Application
    - Incomplete / Complete / Facially Complete
  - ▶ Denial of any Loss Mitigation Option
  - ▶ Prohibition on Foreclosure Referral
  - ▶ Appeal Process
- 

# Loss Mitigation Procedures – 12 CFR 1024.41

- ▶ The requirements do not apply to;
  - small servicers,
  - reverse mortgage transactions, as that term is defined in 12 CFR 1024.31, or
  - mortgage loans for which the servicer is a qualified lender.
- Qualified lenders are those defined to be qualified lenders under the Farm Credit Act of 1971 and the Farm Credit Administration's accompanying regulations set forth at 12 CFR 617.7000 *et seq.*

# Loss Mitigation Procedures – 12 CFR 1024.41

## Receipt of a Loss Mitigation Application

- ▶ A servicer that receives a loss mitigation application at least 45 days before a foreclosure sale must take two steps:
  - *First*, the servicer must promptly review the application to determine if it is complete. An application is complete when it contains all the information the servicer requires from the borrower in evaluating applications for loss mitigation options.

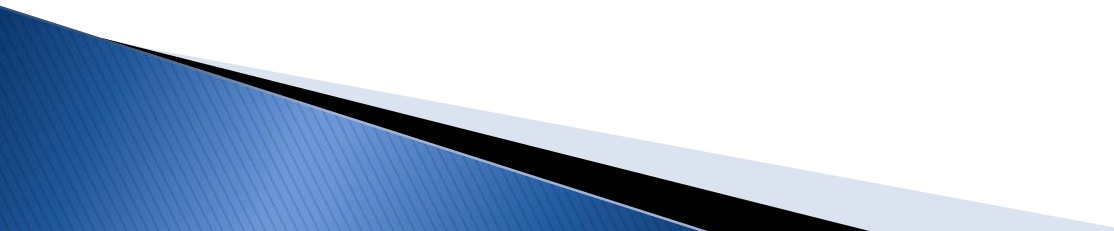
# Loss Mitigation Procedures – 12 CFR 1024.41

## Receipt of a Loss Mitigation Application

- *Second*, the servicer must notify the borrower in less than five days (excluding legal public holidays, Saturdays, and Sundays) that it has received the application and state whether it is complete or incomplete.

# Loss Mitigation Procedures – 12 CFR 1024.41

## Denial of any Loss Mitigation Option

- ▶ If the servicer denies a loss mitigation application for any trial or permanent loan modification option, the notice provided to the borrower must also state the servicer's specific reason or reasons for denying each trial or permanent loan modification option, and, if applicable, that the borrower was not evaluated on other criteria.
- 

# Loss Mitigation Procedures – 12 CFR 1024.41

## Prohibition on Foreclosure Referral – 12 CFR 1024.41(f)

- ▶ A servicer cannot make the first foreclosure notice or filing for any judicial or non-judicial process until:
  - the borrower is more than 120 days delinquent;
  - the foreclosure is based on a borrower's violation of a due-on-sale clause; or
  - the servicer is joining a subordinate lienholder's foreclosure action.

# Loss Mitigation Procedures – 12 CFR 1024.41

## Prohibition on Foreclosure Referral – 12 CFR 1024.41(f)

- ▶ If a borrower submits a complete loss mitigation application before the 120th day of delinquency or before the servicer makes the first foreclosure notice or filing, then the servicer cannot make the first foreclosure notice or filing unless one of the following occurs:
  - the servicer sends a notice to the borrower stating that the borrower is ineligible for any loss mitigation option and if an appeal is available, either the borrower did not timely appeal, or the appeal has been denied;
  - the borrower rejects all the offered loss mitigation options; or
  - the borrower fails to perform under a loss mitigation agreement.

# Loss Mitigation Procedures – 12 CFR 1024.41

## Prohibition on Foreclosure Sale – 12 CFR 1024.41(g)

- ▶ If a borrower submits a complete loss mitigation application after the servicer has made the first foreclosure notice or filing, but more than 37 days before a foreclosure sale, the servicer cannot conduct a foreclosure sale or move for foreclosure judgment or sale, unless one of the following occurs:
  - the servicer sends a notice to the borrower stating that the borrower is ineligible for any loss mitigation option and the appeal process is inapplicable;
  - the borrower did not timely appeal, or the appeal has been denied;
  - the borrower rejects all the offered loss mitigation options; or
  - the borrower fails to perform under a loss mitigation agreement.

# Loss Mitigation Procedures – 12 CFR 1024.41

## Appeal Process – 12 CFR 1024.41(h)

- ▶ A borrower has the right to appeal a servicer's denial of a loss mitigation application for any trial or permanent loan modification available to the borrower if the borrower submitted a complete application 90 days or more before a foreclosure sale (or during the pre-foreclosure period set forth in 12 CFR 1024.41(f)).

# Loss Mitigation Procedures – 12 CFR 1024.41

## Duplicative Requests – 12 CFR 1024.41(i)

- ▶ A servicer is required to comply with these loss mitigation procedures for only a single complete loss mitigation application for a borrower's mortgage loan account.

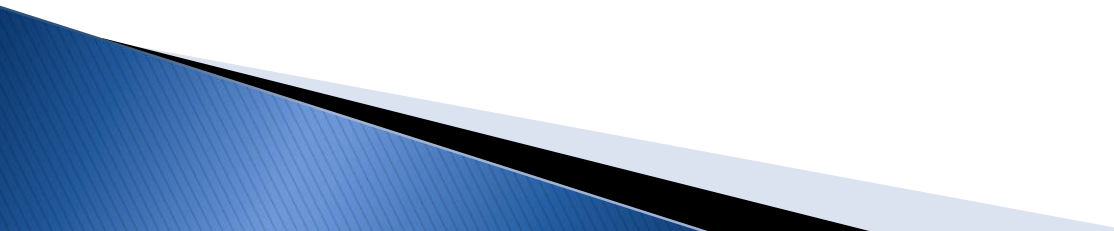
# Ley de Ayuda al Deudor Hipotecario – Ley 169 de 9 de agosto de 2016

## EXPOSICIÓN DE MOTIVOS

- ▶ “No obstante, esta Asamblea Legislativa ha advenido en conocimiento que, en muchas ocasiones y aunque el deudor hipotecario se encuentre en el proceso de cualificación del programa de mitigación de pérdidas, la oficina legal de la entidad financiera o bancaria ha incoado un proceso legal de demanda en cobro de dinero y ejecución hipotecaria. Esta práctica es conocida como *dual tracking*.”
- ▶ “La realidad es que el concepto “completar” es uno muy amplio y que puede resultar muy oneroso, complicado y no necesariamente disponible para el ciudadano común.”
- ▶ “Con esta Ley, cualquier ciudadano podrá utilizar el sistema de tribunales locales, el cual es en español y los procedimientos son más conocidos.”
- ▶ “Al fin y al cabo tanto el deudor hipotecario como el acreedor se pueden beneficiar.”

## Ley de Ayuda al Deudor Hipotecario – Ley 169 de 9 de agosto de 2016

### Definiciones:

- ▶ Acreedor Hipotecario– acreedor hipotecario y las entidades encargadas de administrar y dar servicios a los acreedores hipotecarios relacionados con préstamo con garantía hipotecaria sobre una residencia o vivienda principal (en inglés, “servicer”).
  - ▶ Mitigación de pérdidas– Cualquier programa que el acreedor hipotecario tenga disponible bajo las leyes y reglamentos, locales o federales, que le permita al deudor hipotecario realizar un cambio a su préstamo hipotecario, ya sea a través de un Plan de Pago Especial, Modificación de Hipoteca, *Short Sale* o Entrega Voluntaria, entre otros.
  - ▶ Solicitud de mitigación de pérdidas– Será un pedido por escrito que se formalizará completando un formulario que proveerá la Oficina del Comisionado de Instituciones Financieras.
- 

## Ley de Ayuda al Deudor Hipotecario – Ley 169 de 9 de agosto de 2016

### Definiciones:

- ▶ El formulario estará disponible en formato digital en la página web o de forma impresa, tanto en la Oficina del Comisionado de Instituciones Financieras, en las oficinas del Departamento de Mitigación de Pérdidas o *Loss Mitigation* y en cada una de las sucursales del acreedor hipotecario.
- ▶ La solicitud será enviada por correo certificado con acuse de recibo o entregada personalmente y ponchada como recibida en la oficina del Departamento de Mitigación de Pérdidas del acreedor hipotecario.
- ▶ Una vez reciba la solicitud debidamente cumplimentada, el acreedor hipotecario deberá solicitar los documentos necesarios e información necesaria para cumplimentar la solicitud y llevar a cabo la evaluación, según las exigencias federales.

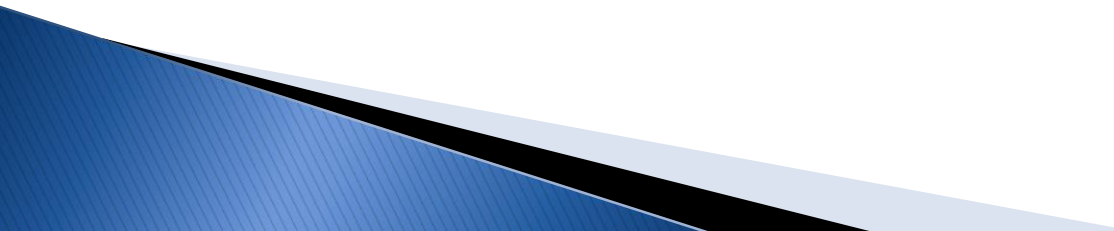
## Ley de Ayuda al Deudor Hipotecario – Ley 169 de 9 de agosto de 2016

- ▶ El deudor hipotecario tendrá quince (15) días para entregar los documentos requeridos al acreedor hipotecario, contados a partir del recibo del requerimiento de documentos que haga por escrito dicho acreedor hipotecario. Cumpliéndose estos requisitos se entenderá que una solicitud ha sido debidamente presentada.

### Obligaciones del Acreedor Hipotecario:

- ▶ Tan pronto el acreedor hipotecario reciba por escrito un formulario de solicitud de mitigación de pérdidas por parte del deudor hipotecario,
  - no podrá comenzar o continuar un proceso legal de cobro de dinero contra el deudor hipotecario.
- ▶ El proceso legal deberá detenerse, mientras se culmina el proceso de cualificación del deudor hipotecario y éste adviene en conocimiento de que cualifica o no.

## Ley de Ayuda al Deudor Hipotecario – Ley 169 de 9 de agosto de 2016

- ▶ Lo anterior no aplicará en aquellos casos en los cuales se haya dictado una sentencia por el tribunal correspondiente, y la misma sea final, firme e inapelable.
  - ▶ Será responsabilidad del acreedor hipotecario orientar al deudor hipotecario de las alternativas de mitigación de pérdidas que tiene disponible tanto a nivel federal como local.
  - ▶ Debe asistir al deudor en el proceso de cumplimentar la solicitud de mitigación de pérdidas, de buena fe y cumpliendo siempre con los parámetros federales y locales pertinentes.
  - ▶ Durante el proceso de mitigación de pérdidas, el acreedor hipotecario no podrá negarse a aceptar pagos parciales a la deuda.
- 

## Ley de Ayuda al Deudor Hipotecario – Ley 169 de 9 de agosto de 2016

### Artículo 5.

El acreedor hipotecario podrá comenzar un proceso legal de cobro de dinero y ejecución hipotecaria, siempre y cuando

- se haya culminado el proceso de mitigación de pérdidas establecidos en esta Ley y los procesos del Reglamento X, y
  - notificado al deudor hipotecario, preservando los derechos del deudor ya establecidos en la Regulación X para poder apelar cualquier decisión.
- ▶ La Ley entrará en vigor sesenta (60) días después de su aprobación. (7 nov. 2016)

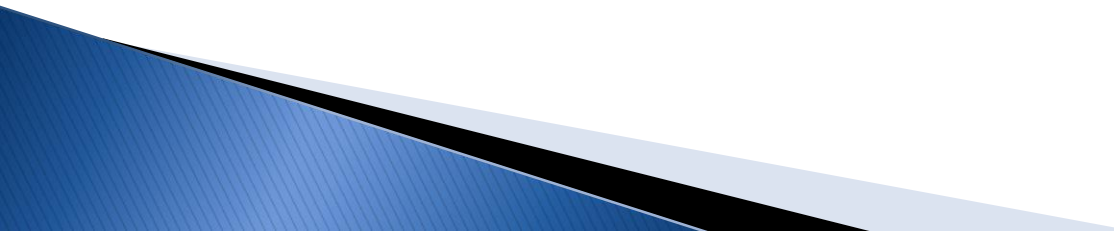
# Fair Lending Risks – Mortgage lending

**Documents that a person should receive in the lending process**

- ▶ Mortgage brokers and lenders are required to provide and accept a mortgage loan application from anyone who wishes to apply.

# Fair Lending Risks – Mortgage lending

CFPB considers the following factors to determine where potential fair lending harm to consumers may be occurring:

- ▶ Qualitative and quantitative information at the institution;
  - ▶ Product;
  - ▶ Market levels;
  - ▶ Consumer complaints;
- 

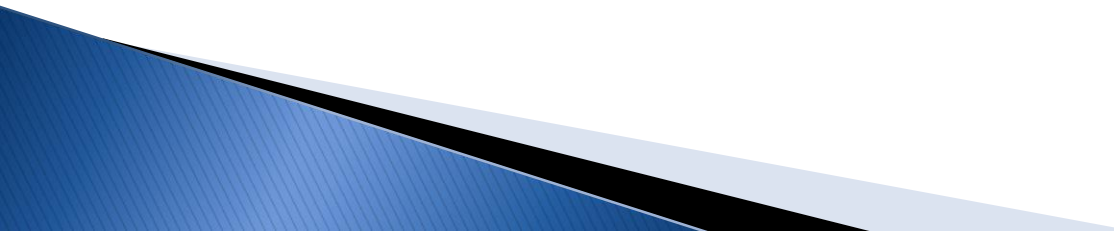
# Fair Lending Risks – Mortgage lending

Qualitative and quantitative information at the institution:

- ▶ Quality of lenders' compliance management systems
  - The appropriate scope of an institution's fair lending compliance management system will vary based on its size, complexity, and risk profile.

# Fair Lending Risks – Mortgage lending

Qualitative and quantitative information at the institution (cont):

- ▶ board of director and management participation
  - ▶ policies and procedures,
  - ▶ training materials,
  - ▶ internal controls, and
  - ▶ monitoring and corrective action.
- 

# Fair Lending Risks – Mortgage lending

## Market levels

- ▶ Monitoring consumer financial markets to identify emerging developments and trends.

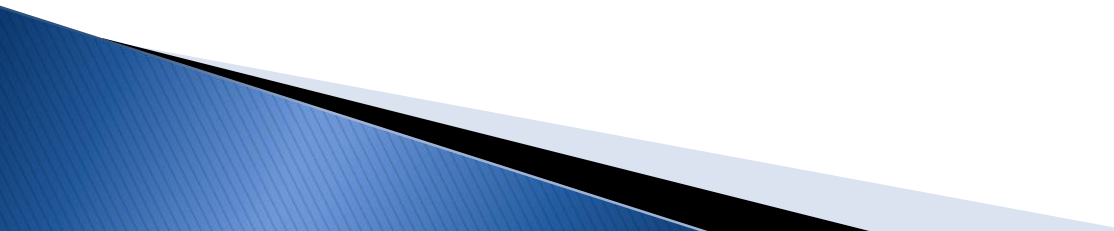
# Fair Lending Risks – Mortgage lending

Consumer complaints; – brought to the Office of Fair Lending's attention by;

- Advocacy groups,
- Whistleblowers,
- Government agencies (at the local, state, and federal levels)
- Public and private fair lending litigation
- Supervisory and enforcement history,
- Information from prior fair lending work of the regulators, including any supervisory or enforcement actions.

# Fair Lending Risks – Mortgage lending

## Types of Lending Discrimination

- ▶ The courts have recognized three methods of proof of lending discrimination under the ECOA and the FHAct:
    - Overt evidence of disparate treatment;
    - Comparative evidence of disparate treatment; and
    - Evidence of disparate impact.
- 

# Fair Lending Risks – Mortgage lending

## Types of Lending Discrimination

### ▶ Disparate Treatment

The existence of illegal disparate treatment may be established either by statements revealing that a lender explicitly considered prohibited factors (overt evidence) or by differences in treatment that are not fully explained by legitimate nondiscriminatory factors (comparative evidence).

# Fair Lending Risks – Mortgage lending

## Types of Lending Discrimination

### ▶ *Overt Evidence of Disparate Treatment*

- There is overt evidence of discrimination when a lender openly discriminates on a prohibited basis.
- **Example:** A lender offered a credit card with a limit of up to \$750 for applicants aged 21–30 and \$1,500 for applicants over 30. This policy violated the ECOA's prohibition on discrimination based on age.

# Fair Lending Risks – Mortgage lending

## Types of Lending Discrimination

### ▶ *Overt Evidence of Disparate Treatment*

- There is overt evidence of discrimination even when a lender expresses — but does not act on— a discriminatory preference:
- **Example:** A lending officer told a customer, “We do not like to make home mortgages to Native Americans, but the law says we cannot discriminate and we have to comply with the law.”

This statement violated the FHAct’s prohibition on statements expressing a discriminatory preference as well as Section 1002.4(b) of Regulation B, which prohibits discouraging applicants on a prohibited basis.


# Fair Lending Risks – Mortgage lending

## *Overt indicators of discrimination:*

1. Including explicit prohibited basis identifiers in the institution's written or oral policies and procedures (underwriting criteria, pricing standards, etc.).
2. Collecting information, conducting inquiries or imposing conditions contrary to express requirements of Regulation B.
3. Including variables in a credit scoring system that constitute a basis or factor prohibited by Regulation B or, for residential loan scoring systems, the FHAct.

# Fair Lending Risks – Mortgage lending

## *Overt indicators of discrimination:*

4. Statements made by the institution's officers, employees, or agents which constitute an express or implicit indication that one or more such persons have engaged or do engage in discrimination on a prohibited basis in any aspect of a credit transaction.
  5. Employee or institutional statements that evidence attitudes based on prohibited basis prejudices or stereotypes.
- 

# Fair Lending Risks – Mortgage lending

## *Comparative Evidence of Disparate Treatment*

- ▶ Disparate treatment occurs when a lender treats a credit applicant differently based on one of the prohibited bases.
- ▶ It does not require any showing that the treatment was motivated by prejudice or a conscious intention to discriminate against a person beyond the difference in treatment itself.
- ▶ Disparate treatment may more likely occur in the treatment of applicants who are neither clearly well-qualified nor clearly unqualified.

# Fair Lending Risks – Mortgage lending

## *Comparative Evidence of Disparate Treatment*

- ▶ Discrimination may more readily affect applicants in this middle group for two reasons.
  - First, if the applications are “close cases,” there is more room and need for lender discretion.
  - Second, whether or not an applicant qualifies may depend on the level of assistance the lender provides the applicant in completing an application.

# Fair Lending Risks – Mortgage lending

## *Comparative Evidence of Disparate Treatment*

- ▶ The lender may, for example, propose solutions to credit or other problems regarding an application, identify compensating factors, and provide encouragement to the applicant. Lenders are under no obligation to provide such assistance, but to the extent that they do, the assistance must be provided in a nondiscriminatory way.

# Fair Lending Risks – Mortgage lending

## *Comparative Evidence of Disparate Treatment*

### **Example:**

- ▶ A non-minority couple applied for an automobile loan. The lender found adverse information in the couple's credit report. The lender discussed the credit report with them and determined that the adverse information, a judgment against the couple, was incorrect because the judgment had been vacated. The non-minority couple was granted their loan.
- ▶ A minority couple applied for a similar loan with the same lender. Upon discovering adverse information in the minority couple's credit report, the lender denied the loan application on the basis of the adverse information without giving the couple an opportunity to discuss the report.


# Fair Lending Risks – Mortgage lending

## Disparate Impact

- ▶ When a lender applies a racially or otherwise neutral policy or practice equally to all credit applicants, but the policy or practice disproportionately excludes or burdens certain persons on a prohibited basis, the policy or practice is described as having a “disparate impact.”
- ▶ **Example:** A lender’s policy is not to extend loans for single family residences for less than \$60,000.00. This policy has been in effect for ten years. This minimum loan amount policy is shown to disproportionately exclude potential minority applicants from consideration because of their income levels or the value of the houses in the areas in which they live.

## Fair Lending Risks – Mortgage lending

### Disparate Impact

- ▶ The fact that a policy or practice creates a disparity on a prohibited basis is not alone proof of a violation.
  - ▶ When an Agency finds that a lender's policy or practice has a disparate impact; the next step is to seek to determine whether the policy or practice is justified by "business necessity."
  - ▶ The justification must be manifest and may not be hypothetical or speculative.
- 


## Fair Lending Risks – Mortgage lending

### Disparate Impact

- ▶ Factors that may be relevant to the justification could include cost and profitability. Even if a policy or practice that has a disparate impact on a prohibited basis can be justified by business necessity, it still may be found to be in violation if an alternative policy or practice could serve the same purpose with less discriminatory effect.
- ▶ Finally, evidence of discriminatory intent is not necessary to establish that a lender's adoption or implementation of a policy or practice that has a disparate impact is in violation of the FHAct or ECOA.

## Fair Lending Risks – Mortgage lending

### *Indicators of potential disparate treatment by Steering*


1. Lack of clear, objective and consistently implemented standards for;
    - (i) referring applicants to subsidiaries, affiliates, or lending channels within the institution,
    - (ii) classifying applicants as “prime” or “sub-prime” borrowers, or
    - (iii) deciding what kinds of alternative loan products should be offered or recommended to applicants (product placement).
- 

## Fair Lending Risks – Mortgage lending

### *Indicators of potential disparate treatment by Steering*

2. Financial incentives for loan officers or brokers to place applicants in nontraditional products (i.e., negative amortization, “interest only”, “payment option” adjustable rate mortgages) or higher cost products.

3. For an institution that offers different products based on credit risk levels, any significant differences in percentages of prohibited basis groups in each of the alternative loan product categories.




## Fair Lending Risks – Mortgage lending

### *Indicators of potential disparate treatment by Steering (cont.)*

4. Significant differences in the percentage of prohibited basis applicants in loan products or products with specific features relative to control group applicants. Special attention should be given to products and features that have potentially negative consequences for applicants (i.e., non-traditional mortgages, prepayment penalties, lack of escrow requirements, or credit life insurance).
5. For an institution that has one or more sub-prime mortgage subsidiaries or affiliates, any significant differences, by loan product, in the percentage of prohibited basis applicants of the institution compared to the percentage of prohibited basis applicants of the subsidiary(ies) or affiliate(s).

## Fair Lending Risks – Mortgage lending

### *Indicators of potential disparate treatment by Steering*

6. For an institution that has one or more lending channels that originate the same loan product, any significant differences in the percentage of prohibited basis applicants in one of the lending channels compared to the percentage of prohibited basis applicants of the other lending channel.
  7. Consumer complaints alleging discrimination in residential loan pricing or product placement.
  8. For an institution with sub-prime mortgage subsidiaries, a concentration of those subsidiaries' branches in minority areas relative to its other branches.
- 

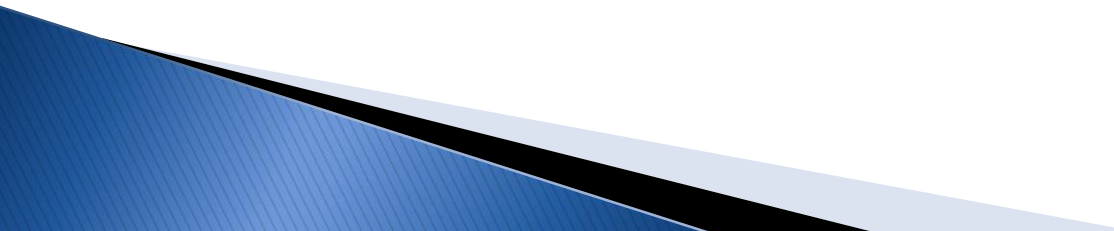
# Fair Lending Risks – Mortgage lending

## Redlining:

- ▶ Is a form of illegal disparate treatment in which a lender provides;
  - unequal access to credit, or
  - unequal terms of credit,
- ▶ because of the race, color, national origin, ethnic composition of a **neighborhood** or other prohibited characteristic(s) of the residents of the **area** in which the credit seeker resides or will reside or in which the residential property to be mortgaged is located.
- ▶ Redlining may violate both the FHAct and the ECOA.

## Fair Lending Risks – Mortgage lending

Redlining risk factors may include, among other factors:

- ▶ Significant differences in applications and/or originations in neighborhoods with high concentrations of minority residents.
  - ▶ Market area excludes geographic areas with high concentrations of minority residents.
  - ▶ Differences in branch/office locations and services in areas with high concentrations of minority residents.
  - ▶ Marketing excludes geographies that have high concentrations of minority residents.
- 

## Fair Lending Risks – Mortgage lending

- ▶ **“Red Flags” that Equate to Increased Pricing Risk**
  - Raw disparities between target/control groups
  - Unmonitored or insufficient monitoring of pricing discretion
  - Lack of clear, written pricing policies
  - Lack of documentation for/tracking of exceptions
  - Financial incentives by office or originator
  - Complaints

# Fair Lending Risks – Mortgage lending

## Potential Discriminatory – Marketing Plans

- ▶ In the marketing of mortgage loan products, be aware of:
  - Aggressive solicitations of adverse terms of credit to targeted minority neighborhoods, racial or ethnic groups, and communities; or Racial steering to high cost lenders.

## Fair Lending Risks – Mortgage lending

### Potential Discriminatory – Marketing Plans

- ▶ Significant risk factors related to marketing:  
Branch Locations
- ▶ Branching patterns may reflect illegal discrimination:
  - The number of branches currently present in majority minority and non-majority minority census tracts
  - The number of branches opened in majority minority and non-majority minority census tracts
  - The number of branches closed in majority minority and non-majority minority census tracts.

## Potential Discriminatory – Marketing Plans

### *Institution's marketing initiatives.*

- ▶ *Pre-approved solicitations for.*
  - Home purchase loans,
  - Home improvement loans, or
  - Refinance loans
- ▶ Institution selection basis of recipients for such solicitations
  - criteria for such selections

## Potential Discriminatory – Marketing Plans

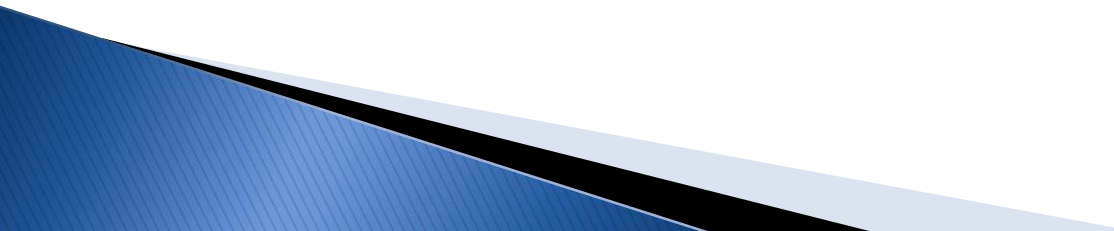
*Institution's marketing initiatives.*

- ▶ Use of marketing programs or procedures for residential loan products that exclude one or more regions or geographies within the institutions assessment or marketing area that have significantly higher percentages of minority group residents than does the remainder of the assessment or marketing area.

# Potential Discriminatory – Marketing Plans

*Institution's marketing initiatives.*

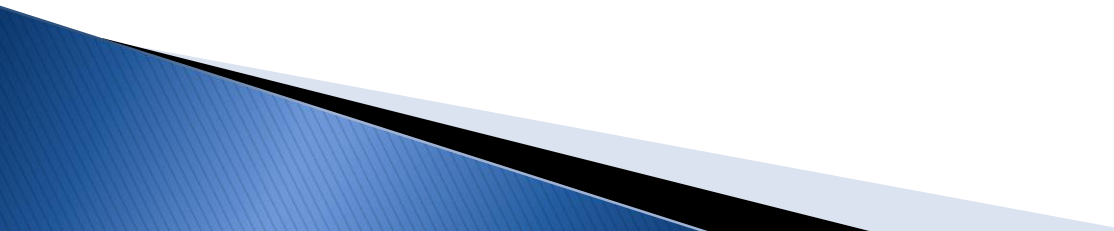
## *Media Usage*

- ▶ Advertising only in media serving non-minority areas of the market. In which newspapers and broadcast media the institution advertises.
  - ▶ Racial or national origin identity associated with those media.
  - ▶ Media focus on geographical communities of a particular racial or national origin character.
  - ▶ Strategies for geographic and demographic distribution of advertisements.
- 

## Potential Discriminatory – Marketing Plans

*Institution's marketing initiatives.*

### *Media Usage*

- ▶ Institution's printed advertising and promotional materials.
  - ▶ What criteria the institution communicates to media about what is an attractive customer or an attractive area to cultivate business.
  - ▶ Whether advertising and marketing are the same to racial and national origin minority areas as compared to non-minority areas.
- 

# Potential Discriminatory – Marketing Plans

*Institution's marketing initiatives.*

*Self-produced promotional materials*

- ▶ How the institution distributes its own promotional materials, both methods and geographical distribution.
- ▶ What the institution regards as the target audience(s) for those materials.

# Potential Discriminatory – Marketing Plans

*Institution's marketing initiatives.*

*Self-produced promotional materials*

- ▶ Using mailing or other distribution lists or other marketing techniques for pre-screened or other offerings of residential loan products that:
  - Explicitly exclude groups of prospective borrowers on a prohibited basis; or
  - Exclude geographies (e.g., census tracts, ZIP codes, etc.) within the institution's marketing area that have significantly higher percentages of minority group residents than does the remainder of the marketing area.

# Potential Discriminatory – Marketing Plans

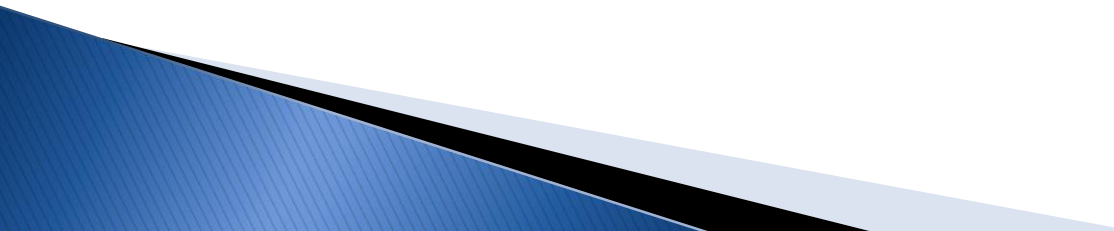
*Institution's marketing initiatives.*

*Telemarketers or predictive dialer programs*

- ▶ how the institution identifies which consumers to contact, and whether the institution sets any parameters on how the list of consumers is compiled.
- ▶ whether the institution's activities show a significantly lower level of marketing effort toward minority areas or toward media or intermediaries that tend to reach minority areas.

# Potential Discriminatory – Underwriting

## Maternity Leave: Bases for Violation

- ▶ Sex – Pregnancy
    - Familial Status
    - Pregnancy
    - Securing legal custody of person under 18
    - Maternity or paternity leave status
  - ▶ Disability
    - Medical complications related to pregnancy
  - ▶ In the mortgage loan transaction, be aware of: Requiring that women, but not men, provide a co-signer for a loan.
- 

# Potential Discriminatory – Underwriting

## Maternity Leave: Bases for Violation

- ▶ Discriminatory Statements
  - Lender says it cannot approve or close the loan due to maternity leave status
  - Lender says it cannot use maternity leave related income to underwrite the loan

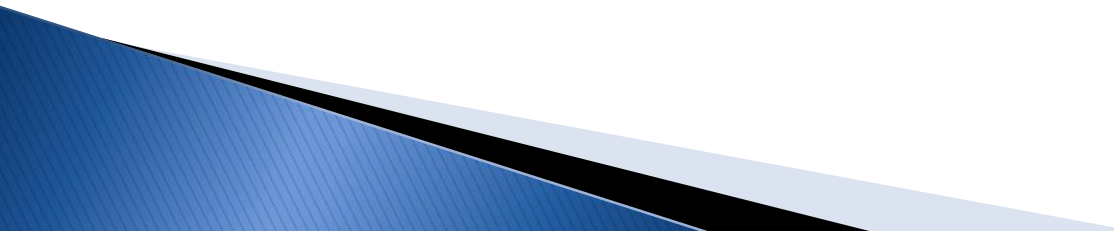
# Potential Discriminatory – Underwriting

## Maternity Leave: Bases for Violation

- ▶ Different Terms and Conditions
  - Lender requires loan applicant to provide a written explanation of their plans for additional children over the next 3 years
  - Lender requires loan applicants to report to work before it will close on the loan

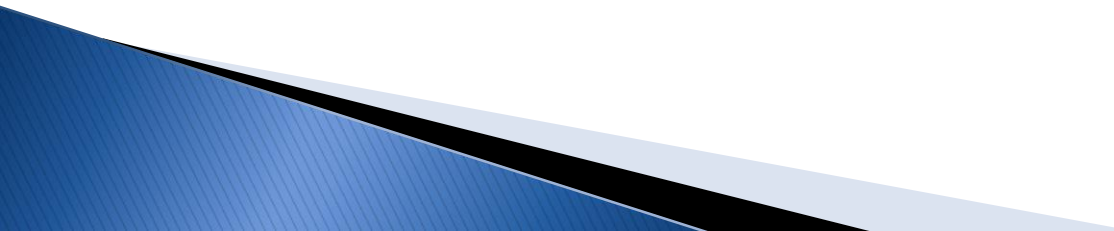
# Potential Discriminatory – Underwriting

## *Indicators of potential disparate treatment in Underwriting:*

1. Substantial disparities among the approval/denial rates for applicants by monitored prohibited basis characteristic (especially within income categories).
  2. Substantial disparities among the application processing times for applicants by monitored prohibited basis characteristic (especially within denial reason groups).
  3. Substantially higher proportion of withdrawn/incomplete applications from prohibited basis group applicants than from other applicants.
- 

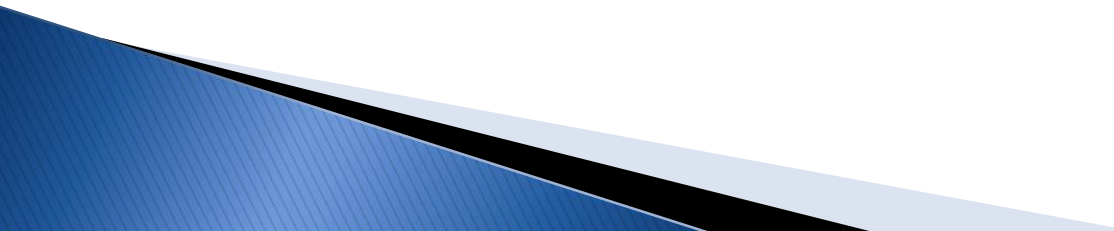
# Potential Discriminatory – Underwriting

*Indicators of potential disparate treatment in Underwriting:*

4. Vague or unduly subjective underwriting criteria.
  5. Lack of clear guidance on making exceptions to underwriting criteria, including credit scoring overrides.
  6. Lack of clear loan file documentation regarding reasons for any exceptions to standard underwriting criteria, including credit scoring overrides.
- 

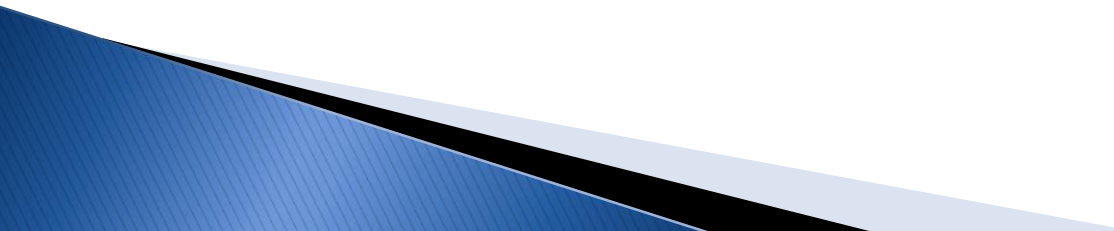
# Potential Discriminatory – Underwriting

## *Indicators of potential disparate treatment in Underwriting:*

7. Relatively high percentages of either exceptions to underwriting criteria or overrides of credit score cutoffs.
  8. Loan officer or broker compensation based on loan volume (especially loans approved per period of time).
  9. Consumer complaints alleging discrimination in loan processing or in approving/denying residential loans.
- 

# Potential Discriminatory – Pricing

## Pricing

- ▶ In the terms and conditions of the mortgage loan that are more often imposed upon borrowers of a certain race or nationality or upon women, be aware of:
    - Unnecessary closing costs;
    - Inflated appraisal costs;
    - Inflated broker or lender fees;
- 

# Potential Discriminatory – Pricing

## Pricing

- ▶ In the terms and conditions of the mortgage loan that are more often imposed upon borrowers of a certain race or nationality or upon women, be aware of:
  - Unnecessary recording fees;
  - Excessive prepayment penalties; or
  - Changing mortgage loan terms at closing without the consent of the borrower.

# Potential Discriminatory – Pricing

*Indicators of potential disparate treatment in Pricing (interest rates, fees, or points):*

1. Financial incentives for loan officers or brokers to charge higher prices (including interest rate, fees and points).

Special attention should be given to situations where financial incentives are accompanied by broad pricing discretion, such as through the use of overages or yield spread premiums.

# Potential Discriminatory – Pricing

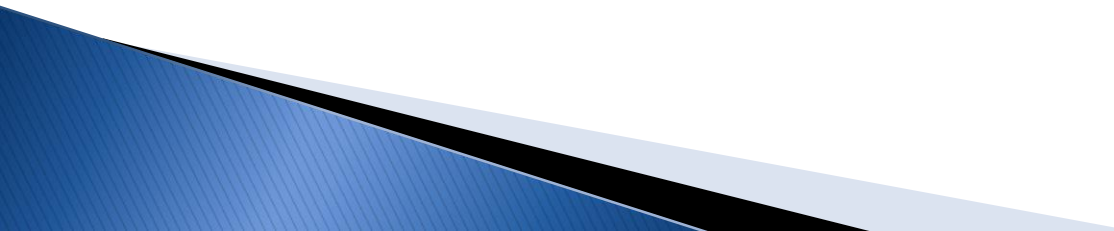
## *Indicators of potential disparate treatment in Pricing :*

2. Presence of broad discretion in loan pricing (including interest rate, fees and points), such as through overages, underages or yield spread premiums.

Such discretion may be present even when institutions provide rate sheets and fees schedules, if loan officers or brokers are permitted to deviate from those rates and fees without clear and objective criteria.

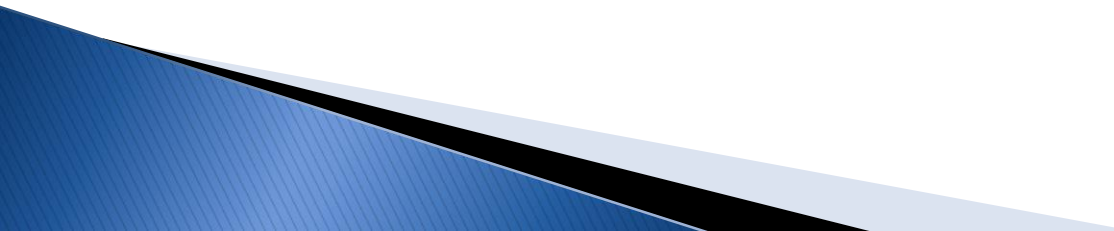
# Potential Discriminatory – Pricing

## *Indicators of potential disparate treatment in Pricing :*

3. Use of risk-based pricing that is not based on objective criteria or applied consistently.
  4. Substantial disparities among prices being quoted or charged to applicants who differ as to their monitored prohibited basis characteristics.
  5. Consumer complaints alleging discrimination in residential loan pricing.
- 

# Potential Discriminatory – Pricing

## *Indicators of potential disparate treatment in Pricing :*

6. In mortgage pricing, disparities in the incidence or rate spreads of higher-priced lending by prohibited basis characteristics as reported in the HMDA data.
  7. A loan program that contains only borrowers from a prohibited basis group, or has significant differences in the percentages of prohibited basis groups, especially in the absence of a Special Purpose Credit Program under ECOA.
- 

# Potential Discriminatory – Appraisals

## Appraisal guidelines

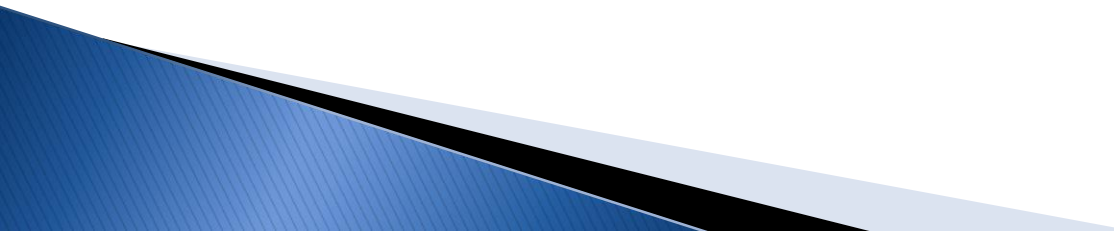
- ▶ Properties that are undervalued because of the race or nationality of either the borrower or the other residents in the surrounding neighborhood.

## Potential Discriminatory – *Realtors, agents, brokers, contractors, and other intermediaries*

- ▶ whether the institution solicits business from specific realtors, brokers, home improvement contractors, and other conduits.
- ▶ how the institution decides which intermediaries it will solicit.
- ▶ parties contacted and determine the distribution between minority and non-minority areas.
- ▶ types of information the institution distributes to intermediaries.



Potential Discriminatory –  
*Realtors, agents, brokers, contractors, and other intermediaries*

- ▶ how often the institution contacts intermediaries.
  - ▶ what criteria the institution communicates to intermediaries about the type of customers it seeks or the nature of the geographic areas in which it wishes to do business.
  - ▶ Marketing through brokers or other agents that the institution knows (or has reason to know) would serve only one racial or ethnic group in the market.
- 

## Potential Discriminatory – Post-Origin Fair Lending Risks

- ▶ Servicing / Collection
  - Collection practices applied more harshly because of the race or nationality of either the borrower or the other residents in the surrounding neighborhood.
  
- ▶ Foreclosure practices
  - Foreclosure practices applied more harshly because of the race or nationality of either the borrower or the other residents in the surrounding neighborhood.

## Potential Discriminatory – Post–Origination Fair Lending Risks

### Foreclosure practices

- ▶ “Ley para Mediación Compulsoria y Preservación de tu Hogar en los procesos de Ejecuciones de Hipotecas de una Vivienda Principal – Ley Núm. 184–2012”
- ▶ Banco Santander de PR v. Brenda Correa García  
2016TSPR201 – 16 septiembre 2016

## Potential Discriminatory – Post-Origin Fair Lending Risks

Banco Santander de PR v. Brenda Correa García  
2016TSPR201 – 16 septiembre 2016

- ▶ El TPI dictó sentencia a favor de demanda de cobro de dinero y ejecución de hipoteca de un inmueble que servía como residencia principal de la deudora demandada.
- ▶ La deudora cuestionó la sentencia por el fundamento de que el TPI la había dictado sin tener jurisdicción para ello, pues no había ordenado la celebración de la vista de mediación requerida por la Ley para Mediación Compulsoria.

## Potential Discriminatory – Post–Origination Fair Lending Risks

Banco Santander de PR v. Brenda Correa García

- ▶ Santander señaló que la demandada no cualificaba para una modificación de hipoteca, por lo que no era necesario referir el caso a mediación.
- ▶ Por su parte, Santander se opuso a la reconsideración fundándose en lo siguiente: “una mediación [...] es un ejercicio fútil en el presente caso por la demandada no tener capacidad económica [...]”.

## Potential Discriminatory – Post–Origination Fair Lending Risks

El Tribunal Supremo resolvió que

- ▶ El acto de citar para una vista de mediación es un requisito jurisdiccional que el tribunal debe cumplir en los casos en los que un acreedor solicite la ejecución de una vivienda principal.
- ▶ Si el tribunal incumple con el requisito de ordenar la celebración de tal vista, éste no tendrá jurisdicción para proceder a dictar sentencia ni podrá ordenar la venta judicial del inmueble.
- ▶ En consecuencia, las sentencias que el tribunal dicte y las ventas judiciales que ordene sin haber señalado una vista de mediación serán nulas y no tendrán efecto legal alguno.

## Potential Discriminatory – Post-Originatioon Fair Lending Risks


### Other Real Estate Owned

- ▶ Disparities in maintenance, marketing and disposition of foreclosed properties correlated with race or ethnicity of neighborhood's residents implicate the provisions of the Fair Housing Act.
- ▶ Reliance on third parties can increase fair lending risk.
- ▶ The use of third parties does not diminish the responsibility of the board of directors and management to ensure that foreclosed properties are administered in a safe and sound manner and in compliance with applicable law.
- ▶ Due diligence before entering a contractual relationship
- ▶ Ongoing monitoring to assess management of foreclosed properties

# REPORTING OF LENDING DISCRIMINATION

- ▶ By filing a complaint with HUD or a fair housing agency.
- ▶ HUD will investigate the complaint at no cost to the customer.
- ▶ Any person can file a complaint, including entities such as corporations, private fair housing organizations, disability rights groups, or homeowners' associations if they have been injured by discriminatory lending practices.

## **Time frame for filing a fair housing complaint**

- ▶ Must be filed within one year of the occurrence or termination of the alleged discriminatory act.
  - ▶ Also it can file an action in federal court within two years of the last occurrence or termination of the alleged discriminatory act.
- 

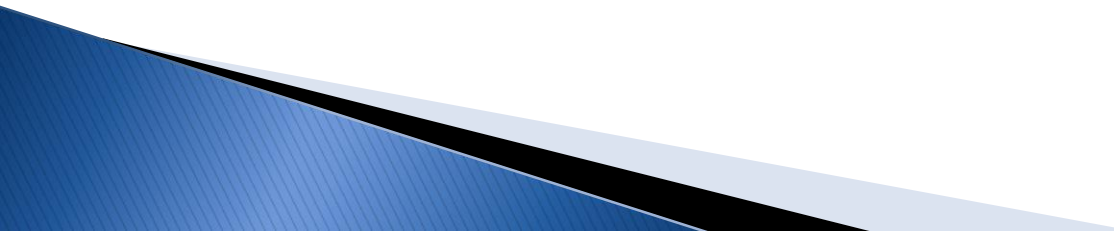
# Fair Lending Public Enforcement Actions – Mortgage

## Bancorp South(BXS) – FEB 02, 2016

- ▶ Mississippi-based regional bank
- ▶ Bancorp South violated federal housing and equal credit opportunity acts by:
  - Illegally redlining in Memphis, the market from which it receives the most applications, by structuring business to avoid and discourage mortgage applications from consumers in minority areas from at least 2011 to 2013.

## Fair Lending Public Enforcement Actions – Mortgage

### Bancorp South(BXS) – FEB 02, 2016

- ▶ Improperly having one of the bank's lending units deny mortgage and other loan applications from African Americans at higher rates than whites.
  - ▶ Discriminating against African American borrowers by charging them higher annual percentage rates than whites with similar loan qualifications.
  - ▶ The CFPB found support for the allegations by sending **testers** to several Bancorp South branches to ask about mortgages.
- 

## Fair Lending Public Enforcement Actions – Mortgage

### Bancorp South(BXS)

- ▶ Alleged bank officials told loan officers to "turn down" minority mortgage applicants more quickly than whites, and avoid giving "borderline" applicants credit assistance that other mortgage seekers might receive.

# Fair Lending Public Enforcement Actions – Mortgage

## Bancorp South(BXS)

- ▶ Complaint charged that an audio recording of an internal Bancorp South meeting around September 2012 "clearly articulates the bank's policy or practice to reject minority applicants more quickly than white applicants, as well as the bank's perception of African Americans.
- ▶ "During the session, a Bancorp South manager instructed loan officers and processors that mortgage applications from minorities and others the bank viewed as "protected class" members should be "turned down" in 21 days, the complaint said. "Borderline" customers should also be turned down quickly, the manager said, while applications from whites were not subject to shorter reviews, the complaint alleged.

## Fair Lending Public Enforcement Actions – Mortgage

### Bancorp South(BXS)

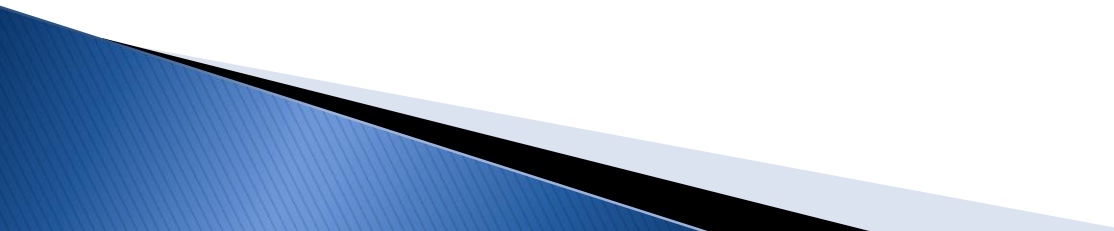
- ▶ "In discussing the explicitly race-based denial policy, a loan officer commented that 'they need to get their credit up,' and 'stop paying their damn bills late,' and then laughed," the complaint charged.
- ▶ As meeting participants discussed the bank's hiring of an African American employee, the complaint said a loan processor cautioned, 'don't use the n-word,' the complaint alleged.
- ▶ "A few moments later, a bank employee quipped, 'what's up, niggas!' the complaint alleged, saying meeting participants laughed at the racial remarks.

## Fair Lending Public Enforcement Actions – Mortgage

- ▶ [Bancorp South](#)([BXS](#)) agreed to pay;
  - \$10.6 million settlement of allegations the used discriminatory mortgage lending practices that harmed African Americans and other minorities:
    - \$4 million in direct loan subsidies to minority areas in Memphis;
    - \$800,000 to fund community programs, outreach and credit repair;
    - \$2.78 million to African Americans unlawfully denied or overcharged for loans, and a
    - \$3 million penalty.

## Fair Lending Public Enforcement Actions – Mortgage

### *Hudson City Savings Bank* – September 24, 2015

- ▶ Federally-chartered savings association with 135 branches and assets of \$35.4 billion and focused its lending on the origination and purchase of mortgage loans secured by single-family properties.
  - ▶ Alleged discriminatory redlining practices in mortgage lending .
- 

## Fair Lending Public Enforcement Actions – Mortgage

### *Hudson City Savings Bank* – September 24, 2015

- ▶ The complaint alleges that from at least 2009 to 2013 Hudson City illegally redlined by providing unequal access to credit to neighborhoods in New York, New Jersey, Connecticut, and Pennsylvania.
  - Specifically, structured its business to avoid and thereby discourage residents in majority-Black-and-Hispanic neighborhoods from accessing mortgages.

## Fair Lending Public Enforcement Actions – Mortgage

- ▶ Hudson City illegally avoided and thereby discouraged consumers in majority-Black-and-Hispanic neighborhoods from applying for credit by:
  - Placing branches and loan officers principally outside of majority-Black-and-Hispanic communities;
  - Selecting mortgage brokers that were mostly located outside of, and did not effectively serve, majority-Black-and-Hispanic communities;
  - Focusing its limited marketing in neighborhoods with relatively few Black and Hispanic residents; and
  - Excluding majority Black and Hispanic neighborhoods from its credit assessment areas.

## Fair Lending Public Enforcement Actions – Mortgage

### *Hudson City Savings Bank*

- ▶ The consent order entered by the court on November 4, 2015 / This represents the largest redlining settlement in history.
  - HC to pay \$25 million to a loan subsidy program that will offer residents in majority-Black-and-Hispanic neighborhoods, mortgage loans on a more affordable basis than otherwise available from HC;
  - Spend \$1 million on targeted advertising and outreach to generate applications for mortgage loans from qualified residents in the affected majority-Black-and-Hispanic neighborhoods;

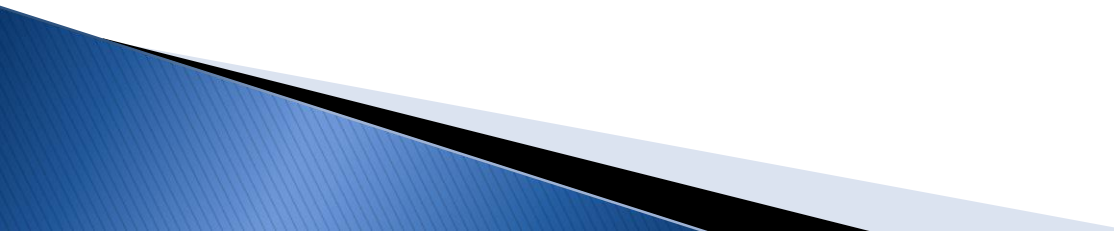
# Fair Lending Public Enforcement Actions – Mortgage

## *Provident Funding Associates* – May 28, 2015

- ▶ Provident is headquartered in California and originates mortgage loans through its nationwide network of brokers.
- ▶ Between 2006 and 2011, Provident made over 450,000 mortgage loans through its brokers.
- ▶ Alleged discrimination in mortgage lending.
- ▶ The complaint alleges that from 2006 to 2011, Provident discriminated in violation of ECOA by charging over 14,000 African-American and Hispanic borrowers more in brokers' fees than similarly-situated non-Hispanic White borrowers on the basis of race and national origin.

## Fair Lending Public Enforcement Actions – Mortgage

### *Provident Funding Associates* – May 28, 2015

- ▶ During this time period, Provident's practice was to set a risk-based interest rate and then allow brokers to charge a higher rate to consumers.
  - ▶ Provident would then pay the brokers some of the increased interest revenue from the higher rates, these payments are also known as yield spread premiums.
- 

# Fair Lending Public Enforcement Actions – Mortgage

## *Provident Funding Associates* – May 28, 2015

- ▶ Provident's mortgage brokers also had discretion to charge borrowers higher fees.
- ▶ The fees paid to Provident's brokers were thus made up of these two components:
  - Payments by Provident from increased interest revenue and
  - through the direct fees paid by the borrower.
- ▶ Provident violated ECOA by charging African-American and Hispanic borrowers more in total broker fees than non-Hispanic White borrowers based on their race and national origin and not based on their credit risk.

## Fair Lending Public Enforcement Actions – Mortgage

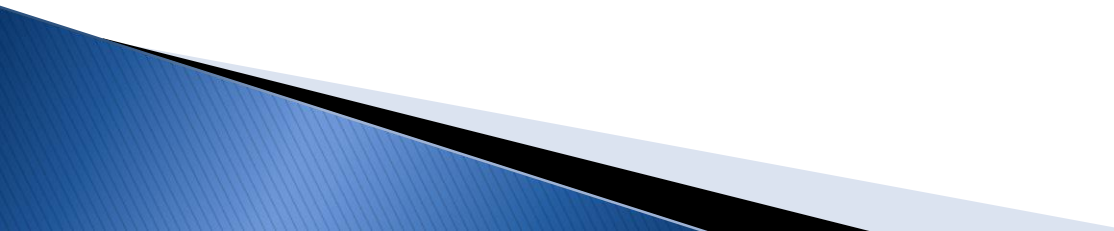
### ***Provident Funding Associates*** – May 28, 2015

- ▶ Provident was required under the order to:
  - pay \$9 million in damages to harmed borrowers identified by the CFPB and the DOJ;
  - hire a settlement administrator to distribute the \$9 million to harmed borrowers;
  - requires that Provident continue to have in place a fair lending training program and broker monitoring program.

## Fair Lending Public Enforcement Actions – Mortgage

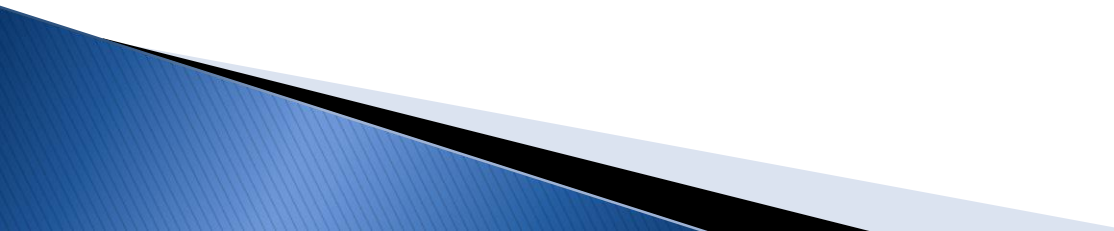
### **Mortgage IT, Inc. – November 2014**

An indirect subsidiary of Deutsche Bank

- ▶ Allegations that the residential lender discriminated against African American and Hispanic borrowers, seeking mortgage loans
  - ▶ Signed a conciliation agreement where Mortgage IT agreed to pay \$12.1 million.
- 

# Fair Lending Public Enforcement Actions – Mortgage

## *PNC Bank, as Successor to National City Bank* January 9, 2014

- ▶ Complaint against National City Bank for discrimination in mortgage lending.
  - ▶ Specifically, the complaint alleged that National City Bank charged higher prices on mortgage loans to African-American and Hispanic borrowers than similarly-situated non-Hispanic White borrowers between 2002 and 2008.
- 

## Fair Lending Public Enforcement Actions – Mortgage

### *PNC Bank, as Successor to National City Bank* – January 9, 2014

- ▶ The consent order required National City's successor, PNC Bank, to:
  - pay \$35 million in restitution to harmed African-American and Hispanic borrowers.
  - required PNC to pay to hire a settlement administrator to distribute funds to victims identified by the CFPB and the DOJ.

## Fair Lending Public Enforcement Actions – Mortgage

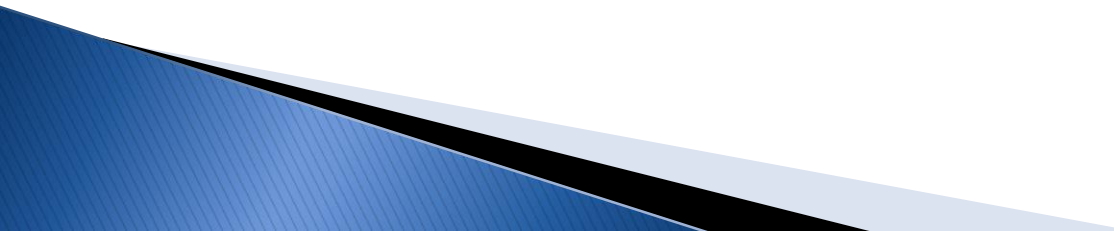
### **Freedom Mortgage Corporation – August 13, 2014**

A national residential mortgage lender based in Mt. Laurel, New Jersey

- ▶ Freedom Mortgage's underwriting policies and practices subjected persons with disabilities to different terms and conditions from other applicants by requiring, among other things, that they provide doctor's notes or letters from the Social Security Administration that their disability income would continue for three years.
- ▶ Freedom and HUD identified 69 applicants with disabilities subjected to such terms and conditions.

## Fair Lending Public Enforcement Actions – Mortgage

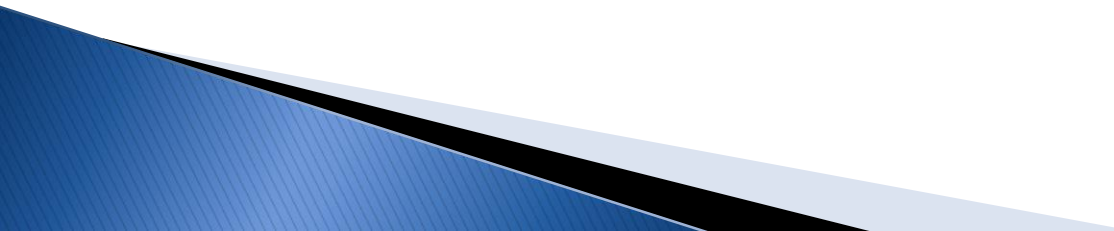
### **Freedom Mortgage Corporation**

- ▶ Freedom paid \$104,000 to settle allegations.
  - ▶ In addition, Freedom amended its underwriting guidelines to:
    - abolish disability-related income verification requirements for applicants who receive disability income, and
    - require employees to attend training on the Fair Housing Act.
- 

## Fair Lending Public Enforcement Actions – Mortgage

### **Wells Fargo, Baltimore – Jul 12, 2012**

The biggest U.S. mortgage lender

- ▶ Allegations that it charged African-Americans and Hispanics higher rates and fees on mortgages even when they qualified for better deals during the housing boom.
  - ▶ The investigation found 34,000 instances of charging African Americans and Hispanics higher fees and rates on mortgages compared with white borrowers with similar credit profiles.
- 

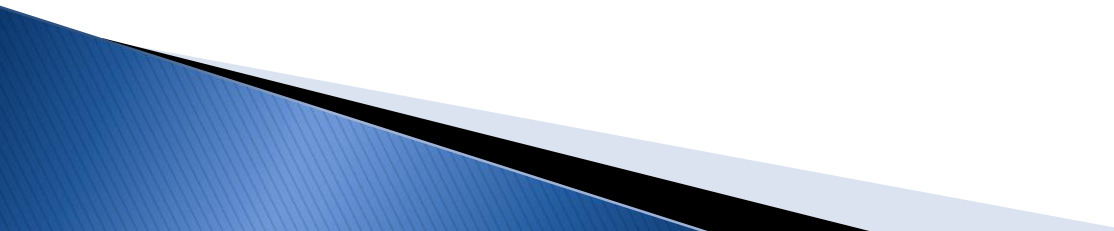
## Fair Lending Public Enforcement Actions – Mortgage

### Wells Fargo, Baltimore – Jul 12, 2012

- ▶ In 4,000 of those cases, minority borrowers were steered into subprime mortgages even though they qualified for cheaper loans.
- ▶ Complaints included:
  - making loans unavailable based on sex and familial status
  - forcing women applicants to sacrifice their maternity leave and return to work prior to closing on their loan
  - by making discriminatory statements to and against women who were pregnant or who had recently given birth

## Fair Lending Public Enforcement Actions – Mortgage

### Wells Fargo, Baltimore – Jul 12, 2012

- ▶ WF paid \$125 million to borrowers who were allegedly charged more than their white counterparts between 2004 and 2009.
  - ▶ WF also contributed \$50 million to homebuyer assistance programs in eight metropolitan areas around the country.
  - ▶ The bank was also required to conduct new monitoring programs to ensure fair lending standards are in place in the future.
  - ▶ \$5 Million Settlement
- 

## Fair Lending Public Enforcement Actions – Mortgage

### Department of Justice Suit Against California Lenders Alleging Discriminatory Loan Modification Scheme – August 23, 2016

- ▶ The Department of Justice announced the filing of a lawsuit in the US District Court for the Northern District of California against several California-based mortgage loan modification service providers.
- ▶ The [complaint](#) alleges that defendants violated the Fair Housing Act (FHA) and the ECOA by intentionally targeting and discriminating against Hispanic homeowners.
- ▶ The lawsuit arose as a result of complaints filed with HUD, by two affected homeowners.

## Fair Lending Public Enforcement Actions – Mortgage

Department of Justice Suit Against California Lenders  
Alleging Discriminatory Loan Modification Scheme –  
August 23, 2016

- ▶ According to the complaint, defendants marketed and encouraged homeowners to pay for unnecessary and ineffective loan audits that defendants claimed were essential for a loan modification.
- ▶ DOJ further alleges that defendants' advertising encouraged homeowners to stop making mortgage payments and cease contact with their lenders. This purportedly caused many of the homeowners to default and lose their homes.

# Fair Lending Public Enforcement Actions – Mortgage

## Public Enforcement Actions –

### Violations Cited During ECOA Examinations in 2015

- ▶ Among institutions examined for compliance with ECOA and Regulation B, the agencies reported that the most frequently cited violations were:
  - Improperly requesting information about an applicant's race, color, religion, national origin, sex, marital status or source of income. [12 CFR 1002.5](#)(b), (d)
  - Improperly considering age, receipt of public assistance, certain other income, or another prohibited basis in a system of evaluating applicant creditworthiness. [12 CFR 1002.6](#)(b)(1), (b)(2), (b)(5), (b)(9)

## Fair Lending Public Enforcement Actions – Mortgage

### Public Enforcement Actions – Violations Cited During ECOA Examinations in 2015

- Refusing to grant an individual account to a creditworthy applicant on a prohibit basis; improperly requiring the signature of an applicant's spouse or other person. [12 CFR 1002.7\(a\), \(d\)\(1\)](#)

## Fair Lending Public Enforcement Actions – Mortgage

### Public Enforcement Actions – Violations Cited During ECOA Examinations in 2015

- ▶ failure to timely notify an applicant when an application is denied;
- ▶ failure to provide sufficient information in an adverse action notification, including the specific reasons the application was denied;
- ▶ failure to timely and/or appropriately notify an applicant of either action taken or of incompleteness after receiving an application that is incomplete.

[12 CFR 1002.9](#)(a)(1), (a)(2), (b)(1), (b)(2), (c)

## Fair Lending Public Enforcement Actions – Mortgage

### Public Enforcement Actions – Violations Cited During ECOA Examinations in 2015

- ▶ Failure to preserve records on actions taken on an application or of incompleteness, and on adverse actions regarding existing accounts. [12 CFR 1002.12](#)(b)(1), (b)(3)
- ▶ Failure to request and collect information about the race, ethnicity, sex, marital status, and age of applicants seeking certain types of mortgage loans. [12 CFR 1002.13](#)(a) and (b):

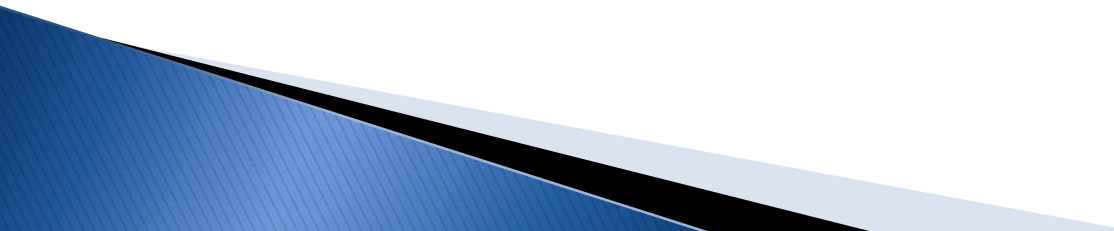
## Fair Lending Public Enforcement Actions – Mortgage

### Public Enforcement Actions – Violations Cited During ECOA Examinations in 2015

- ▶ Failure to provide an applicant with a copy of all appraisals and other written valuations developed in connection with an application for credit that is to be secured by a first lien on a dwelling, and/or
- ▶ failure to provide an applicant with a notice in writing of the applicant's right to receive a copy of all written appraisals developed in connection with the application. [12 CFR 14](#)(a):

# Fair Lending Compliance Management Systems

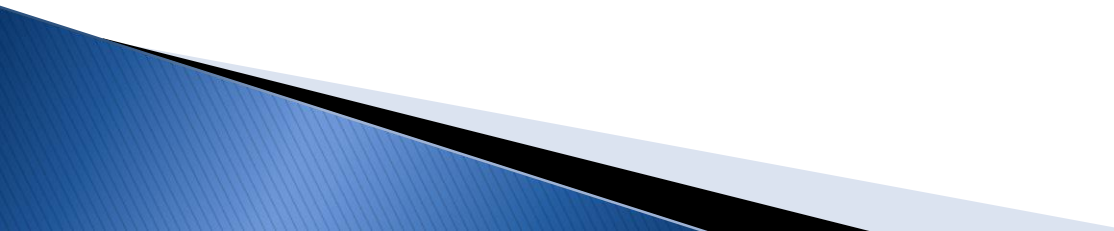
## Elements of an Effective Fair Lending Compliance Management System:

- ▶ Board of Directors and Management Oversight
  - ▶ Policies and Procedures
  - ▶ Training
  - ▶ Monitoring/Testing and Corrective Action
  - ▶ Compliance Audit
  - ▶ Complaint Response
- 

# Compliance Management Systems

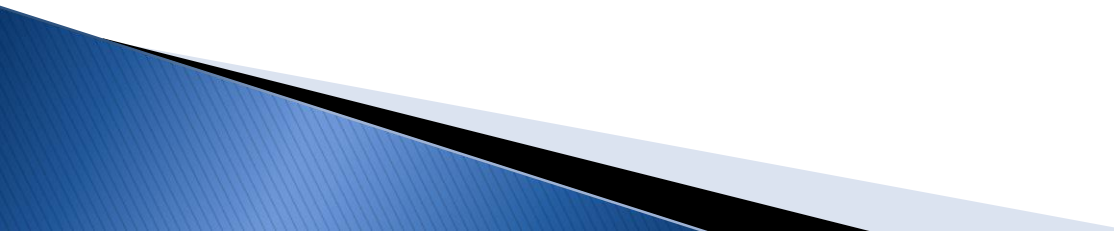
- ▶ Policies and Procedures:
  - Document policies and procedures
  - Include sufficient detail
  - List and discuss all prohibited bases
  - Include the fact that all or part of an applicant's income may come from public assistance income

# Compliance Management Systems

- ▶ Review and update frequently
    - Cover all loan products and phases, such as advertising, marketing, underwriting, servicing, loss mitigation, and third party oversight
    - Address reviews done before the institution introduces new lending products or modifies existing products, including—
    - Evaluation of documents and disclosures
    - System testing
    - Staff training
- 

# The Importance of an Effective Compliance Management System

Banks should create an effective compliance management system that includes:

- ▶ Clear, written policies that detail the specific discretion afforded to employees and third parties
  - ▶ Documentation and tracking of exceptions to policy
  - ▶ A robust monitoring system that is conducted regularly (*i.e.*, quarterly basis) and at both the portfolio and broker/dealer level
  - ▶ Taking appropriate corrective action
- 

# Fair Lending: Compliance Challenges and Issues

**QUESTIONS?**



# Fair Lending: Compliance Challenges and Issues

**THANK YOU  
FOR YOUR ATTENTION**

