



Fair Lending In the News

Amy Wargo

Director of Risk Management





Who we are

Who we are

- Consortium of credit union leagues and credit union service organizations
- Certified compliance and industry experts
- Years of credit union operational experience

CU RISK INTELLIGENCE



LeagueInfoSight



CU solutions GROUP



Indiana Credit Union League



GoWEST CREDIT UNION ASSOCIATION



What we do

What we do

- Offer affordable, efficient remote compliance services
- Customized plans and pricing
- Remote solutions with personal support
- Built by credit union professionals for credit union professionals

Agenda

- Common Fair Lending Issues
- Lawsuits Making Headlines
- Steps to Take Now
- Resources to Help

Comments from Director Patrice Alexander Ficklin

“There is a certain dignity in knowing the security and love of a stable, safe home in community anchored by individuals and businesses invested in the community’s success. Both starting a successful small business and owning one’s home are key building blocks of individual and generational wealth.”





What is Fair Lending?

A quick review...

ECOA – Prohibited Basis

- Race
- Color
- Religion
- National Origin
- Sex
- Marital Status
- Age
- Income from Public Assistance
- Consumer Credit Protection Act



ECOA Background and Scope

ECOA prohibits a **creditor** from discriminating on a prohibited basis regarding any aspect of a **credit transaction**.

“Creditor” means a person who, in the ordinary course of business, regularly participates in a credit decision, including setting the terms of the credit.

ECOA Background and Scope

“Credit transaction” means **every aspect** of an applicant’s dealings with a creditor regarding an application for credit or an existing extension of credit.

This includes, but is not limited to:

- information requirements;
- investigation procedures;
- standards of creditworthiness;
- terms of credit;
- furnishing of credit information;
- revocation, alteration, or termination of credit; and
- collection procedures.

ECOA Applicability to Appraisals

“Any aspect of a credit transaction” includes:

- The creditor’s **“information requirements,” “investigation procedures”** and **“standards of creditworthiness”** (12 C.F.R. § 1002.2(m)).
- Appraisals are an aspect of a credit transaction.
- A creditor, in certain circumstances, may be liable under ECOA for relying on a discriminatory appraisal.

FHA – Prohibited Basis

- Race
- Color
- Religion
- Sex
- Handicap
- Familial Status
- National Origin



Home Mortgage Disclosure Act (Regulation C)

- Helps determine whether credit unions are serving the housing needs of their communities
- Assist public officials in distributing public-sector investments so as to attract private investment to areas where it is needed
- Assist in identifying possible discriminatory lending patterns and enforcing compliance with anti-discrimination statutes



HMDA (Reg C) - Requirements

Requires certain institutions to:

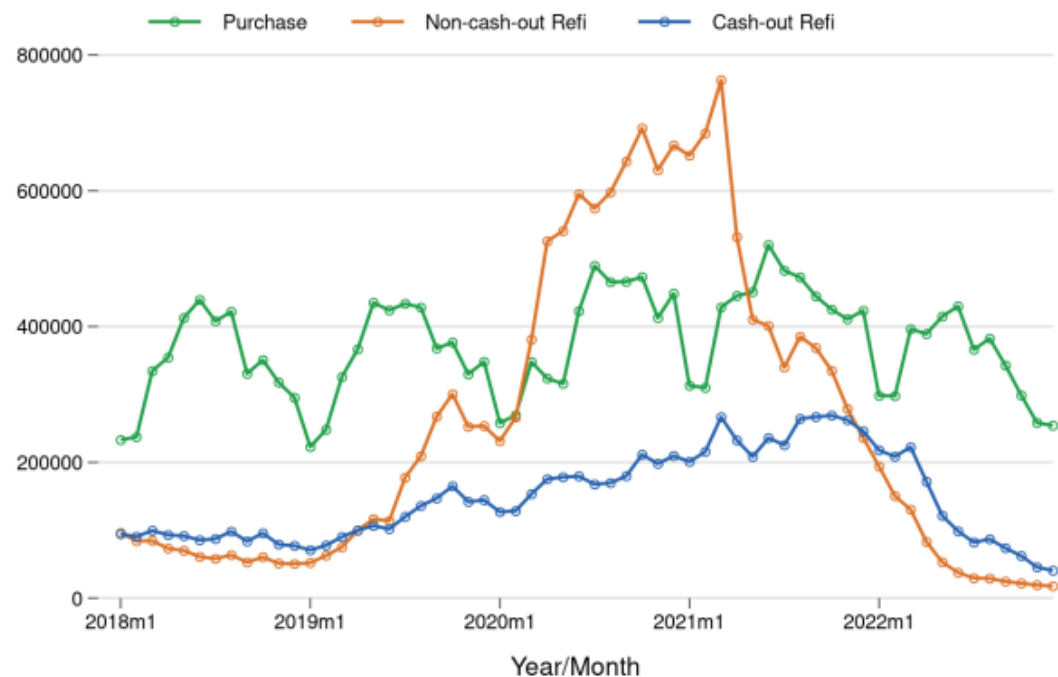
- Collect – potentially 48 data points
- Report
- Disclose

Thresholds – Have originated in each of the two preceding years:

- At least 25 closed-end mortgage loans OR
- At least 200 open-end lines of credit

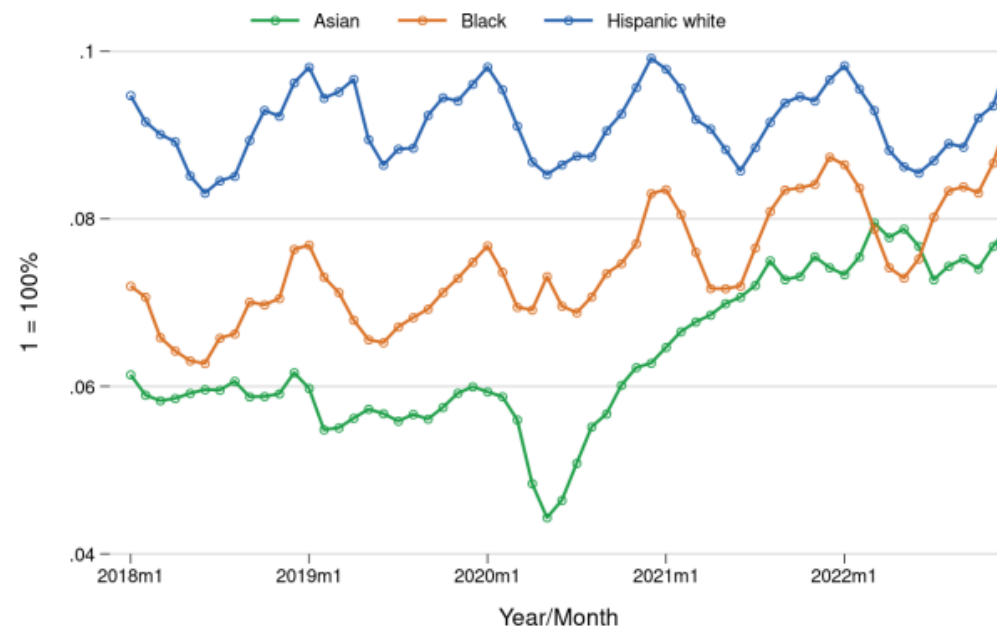
HMDA (Reg C) – What the Data Tells Us

Figure 3: Number of Closed-end Mortgage Originations by Loan Purpose



NOTE: Monthly originations of closed-end loans secured by site-built single-family homes between January 2018 and December 2022.

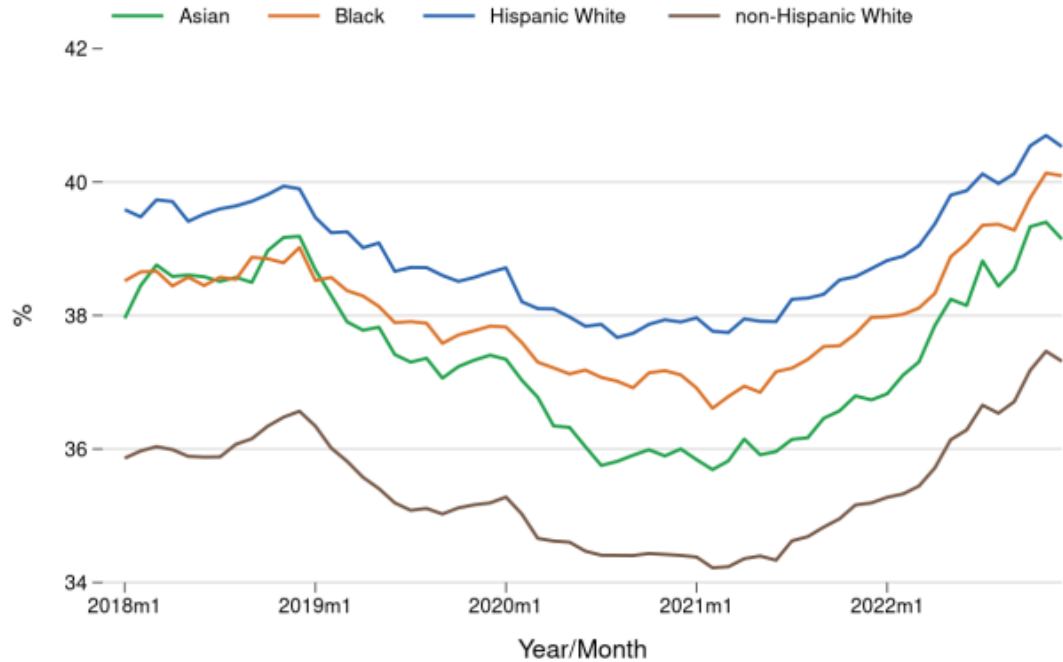
FIGURE 10A: Share of Closed-end Home purchase Loan Originations by Race and Ethnicity (Excluding Non-Hispanic White)



NOTE: Monthly originations of closed-end home purchase loans secured by site-built single-family homes between January 2018 and December 2022.

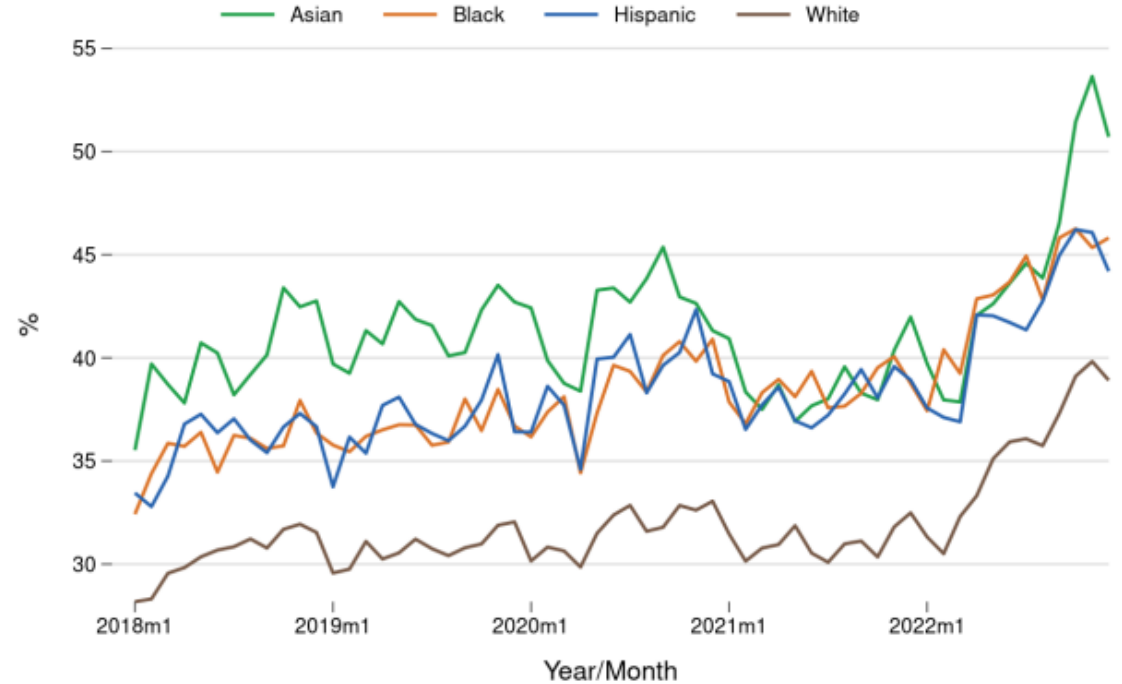
HMDA (Reg C) – What the Data Tells Us

Figure 14: Average debt-to-income ratio (DTI) for 30-year fixed-rate conventional conforming mortgages, by race and ethnicity



The chart represents newly originated home-purchase closed-end loans secured by site-built single-family first-lien principal residence, excluding reverse mortgages.

Figure 15: Percentage of denials with DTI reported as reason




The chart represents closed-end home-purchase mortgage applications secured by site-built single-family first-lien principal residence, excluding reverse mortgages.



UDAAP - What's the Focus?

- Accurate
- Not deceptive
- Not misleading
- Consumer protection



Compliance is really easy, it's a two-step process. Tell the customer what you're going to do, and then you do it. Any gap between those two things is a compliance concern. This is incredibly true in UDAAP, and it's also very true in fair lending.

—John Henson,

Methods of Lending Discrimination

Overt discrimination

- The lender openly discriminates on a prohibited basis or expresses a discriminatory preference

Disparate Treatment

- A lender treats an applicant differently based on a prohibited basis

Disparate Impact

- A lender's practice causes a disparate impact to a specific protected class



Common Fair Lending Issues

What exams are showing...

From 2021 exams, NCUA found violations in nearly **15%** of federal credit unions

- **Most common violations:**

- Credit reporting
- Truth in lending
- Electronic fund transfers
- ECOA

2022 NCUA completed 29 fair lending exams (less than 1% of all FCUs)

- Resolved violations affecting **64,000** members subject to unfair practices
- Approximately **\$185,000** in restitution and remediation

Common Mistakes

- Missing filing deadlines of the loan application register (LARs) as required by the Home Mortgage Disclosure Act.
- Not properly aggregating or capturing data across credit union loan origination systems.
- Not providing specific enough adverse action notices related to Regulation B.
- Misinterpreting Servicemembers Civil Relief Act rules on rate reductions and Military Lending Act definitions of a “covered borrower.”
- Fair Credit Reporting Act complaints.
- Ensuring debt collection and credit scoring is included in fair lending efforts.

Common mistakes – Marketing and Social Media

- Must ensure that social media platforms are not requesting, collecting, or otherwise using information that violates applicable fair lending laws.
- Some third-party social media platforms may request or require users to provide personal information such as age and/or gender or use data mining technology.
- It is creditor's responsibility to not improperly request, collect, or use such information or give the appearance of doing so.

Targeting options for Facebook advertisers*

1. Location
2. Age
3. Generation
4. Gender
5. Language
6. Education level
7. Field of study
8. School
9. Ethnic affinity
10. Income and net worth
11. Home ownership and type
12. Home value
13. Property size
14. Square footage of home
15. Year home was built
16. Household composition



Fair Lending Violation Examples

Maternity Leave Based Discrimination

- Lawsuit against a Credit Union, settled for \$50,000
- Five “similarly situated” women
 - Three claimed to be on about to start maternity leave
- Three women were told they have to return to work and provide proof of one month’s pay to close on home.
- All had alternative incomes from spouses, savings and/or paid leave.
- No applications were taken.

Race/Ethnicity Discrimination

- Five in-person, four phone tests asked about home financing
- Combination of races and ethnicities
 - The white applicants were less qualified than African American and Hispanics borrowers
- White borrowers received lower interest rates.
- African American was told they have to apply for a pre-approval prior to speaking with a loan officer.
- Between 2011-2014 this credit union (50,000 members) denied African American loans at a higher rate than white applicants.

Long Island Housing Services



Valuation Bias

CFPB SBREFA Process: Automated Valuation Model (AVM) Interagency Rulemaking

- Dodd-Frank Act amendments to FIRREA require the CFPB along with certain other agencies to engage in rulemaking.
- To address potential fair lending risk in models, CFPB is considering proposing a requirement that covered institutions establish policies, practices, procedures, and control systems to ensure that their AVMs comply with applicable nondiscrimination laws.
- CFPB is concerned that without proper safeguards, flawed versions of these models could digitally redline certain neighborhoods and further embed and perpetuate historical lending, wealth, and home value disparities.



Valuation Bias – Current Uniform Appraisal Report

- Property Appraisal Valuation and Equity taskforce conducted review of free-form text fields in appraisal form:

Note: Race and the racial composition of the neighborhood are not appraisal factors.

Neighborhood Characteristics				One-Unit Housing Trends				One-Unit Housing		Present Land Use %		
N E I G H B O R H O O D	Location	<input type="checkbox"/> Urban	<input type="checkbox"/> Suburban	<input type="checkbox"/> Rural	Property Values	<input type="checkbox"/> Increasing	<input type="checkbox"/> Stable	<input type="checkbox"/> Declining	PRICE	AGE	One-Unit	%
	Built-Up	<input type="checkbox"/> Over 75%	<input type="checkbox"/> 25–75%	<input type="checkbox"/> Under 25%	Demand/Supply	<input type="checkbox"/> Shortage	<input type="checkbox"/> In Balance	<input type="checkbox"/> Over Supply	\$ (000)	(yrs)	2-4 Unit	%
	Growth	<input type="checkbox"/> Rapid	<input type="checkbox"/> Stable	<input type="checkbox"/> Slow	Marketing Time	<input type="checkbox"/> Under 3 mths	<input type="checkbox"/> 3–6 mths	<input type="checkbox"/> Over 6 mths	Low		Multi-Family	%
	Neighborhood Boundaries								High		Commercial	%
	Neighborhood Description								Pred.		Other	%
Market Conditions (including support for the above)												
Dimensions												

17. I have no present or prospective interest in the property that is the subject of this report, and I have no present or prospective personal interest or bias with respect to the participants in the transaction. I did not base, either partially or completely, my analysis and/or opinion of market value in this appraisal report on the race, color, religion, sex, age, marital status, handicap, familial status, or national origin of either the prospective owners or occupants of the subject property or of the present owners or occupants of the properties in the vicinity of the subject property or on any other basis prohibited by law.

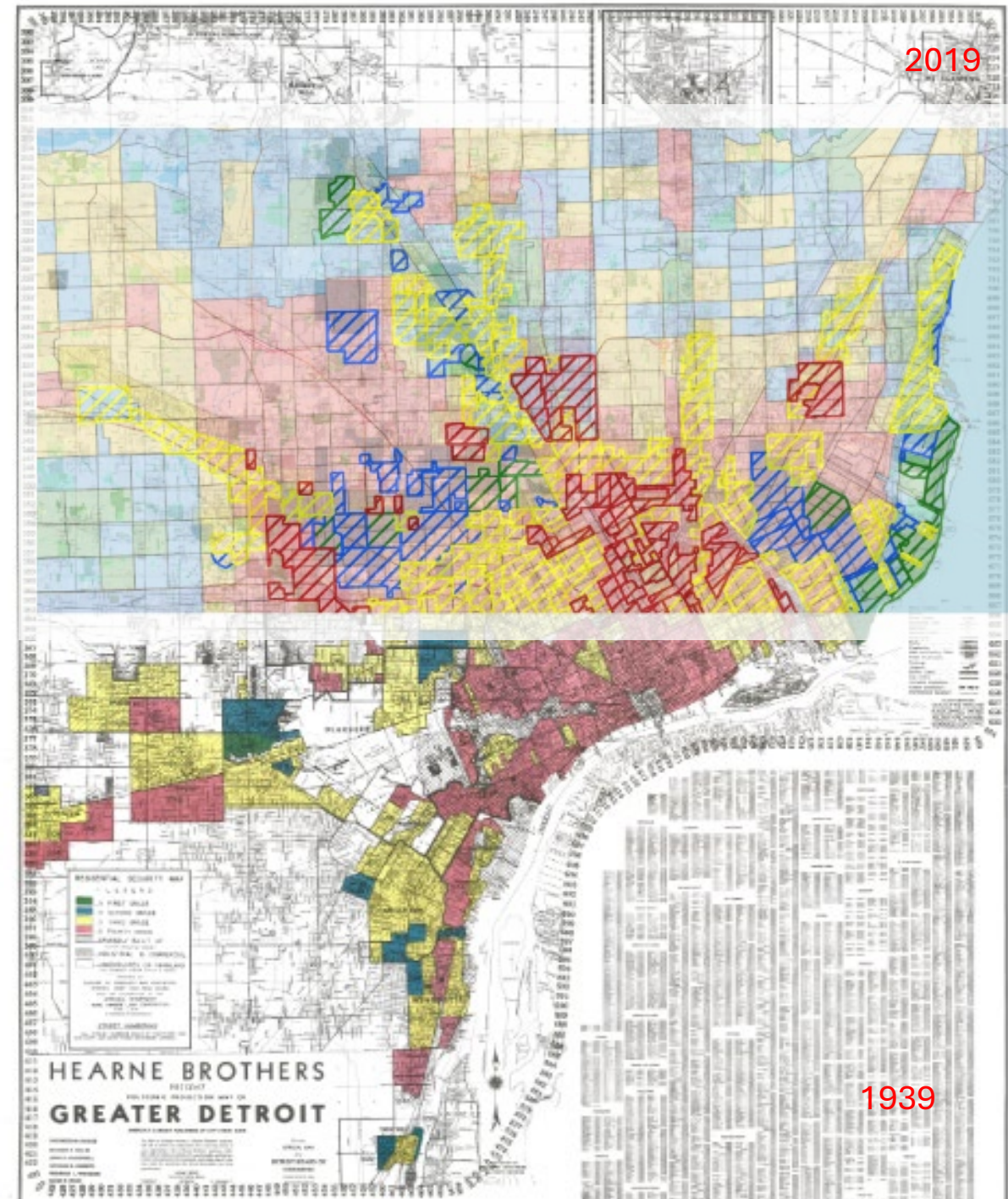
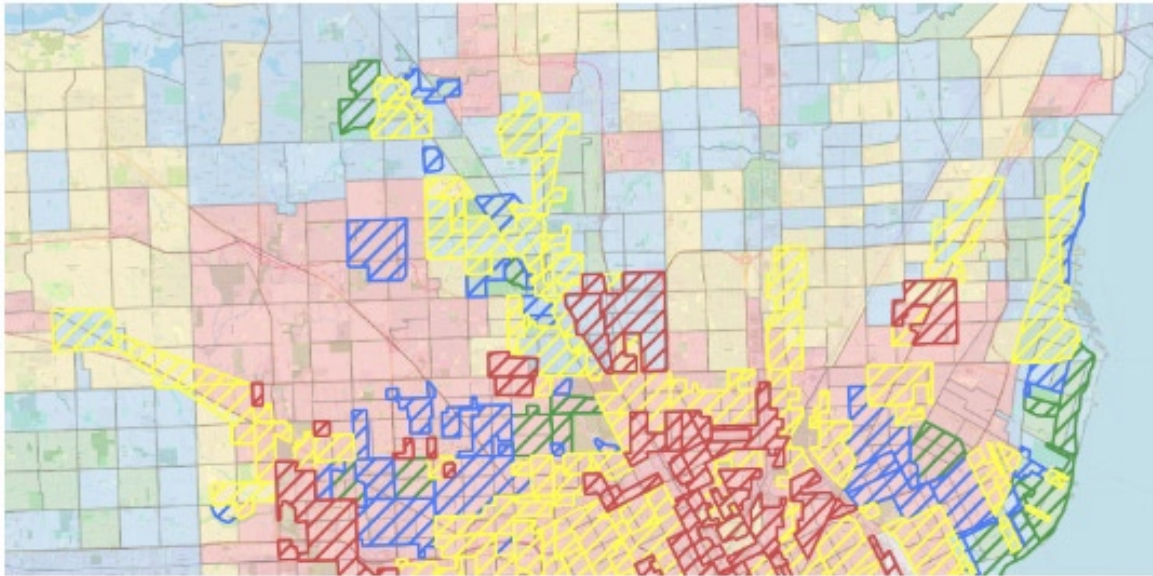
Valuation Bias

- Property Appraisal Valuation and Equity taskforce conducted review of free-form text fields in appraisal form. Findings included some racial and ethnic references related to:
 - Percentage of racial and ethnic makeup in area
 - Foreign birthplaces of residents noted as part of neighborhood descriptions
 - The language spoken
 - Amenities specifically geared to a race, ethnic, or religious group
 - Rising house prices were because of gentrification
 - Noting an area's decline in population related to ethnic changes in residents



Fair Lending Enforcement

What is Redlining?



US v. Citadel FCU

Consent Order based on complaint claiming:

- Made disproportionately low number of home loans to applicants in majority-Black and Hispanic neighborhoods
- Placed all but one (of 24) branches in majority-White neighborhoods
- Failed to address known redlining risk

Credit Union agrees to:

- Open or acquire 3 branches in affected neighborhoods
- Invest at least \$6 million in loan subsidy fund
- Increase access to home loans in affected neighborhoods
- \$270,000 in advertising, consumer financial education and counseling
- \$250,000 to develop community partnerships to increase access to home loans

US v. First National Bank of PA

- Consent Order based on complaint claiming:
- Unlawful redlining
- All branches were located outside of majority-Black and Hispanic neighborhoods
- Maintained inadequate internal policies and procedures
- Bank peers generated 2-4 times in lending activity
- Bank agrees to:
 - Invest as least \$11.75 million in loan subsidy fund
 - \$1 million on community partnerships
 - \$750,000 in advertising, consumer financial education and counseling
 - At least 2 MLO and community specialist assigned to neglected

US v. Patriot Bank

- Consent Order based on complaint claiming:
- Unlawful redlining
- Discrimination based on race, color and national origin
- Bank agrees to:
 - Invest as least \$1.3 million in loan subsidy fund
 - \$375,000 in advertising, consumer financial education and counseling
 - \$225,000 for community partnerships
 - At least 2 dedicated MLO to serve communities of color
 - Hire a Director of Community Lending
 - Continually assess the credit needs of the communities.

U.S. v. American Bank of Oklahoma

- Consent Order on October 4, 2023
- Unlawful redlining
 - Did not lend to majority-Black and Hispanic neighborhoods
 - Discouraged prospective applicants
- Invest at least \$950,000 in loan subsidy
- \$100,000 on community partnerships
- Open a loan production office in a Black and Hispanic census tract
- Hire at least two mortgage loan officers (MLOs) dedicated to serving the markets
- Conduct study to identify needs of the neighborhoods

U.S. v. Washington Trust Company

- Consent Order on September 27, 2023
- Unlawful redlining
 - Never opened a branch in majority-Black and Hispanic neighborhoods
 - Failed to train or incentivize staff
- Invest at least \$7,000,000 in loan subsidy
- Spend \$1,000,000 on community partnerships
- Spend \$1,000,000 for advertising, outreach, consumer financial education and credit counseling
- Open two new branches
- Ensure at least two dedicated MLOs
- Hire a Director of Community Lending

Checklist

-
-
-
-
-



Key Takeaways

- ✓ Weak policies
- ✓ Inadequate training
- ✓ Lack of reviews
- ✓ Lack of controls



On the Horizon...

Proposed Rules

Proposed – Reconsiderations of Value

Proposed Rule

Comments were due **September 18, 2023**

- Describes the risks of deficient collateral valuations
- Outlines applicable statutes, regulations, and existing guidance that govern ROVs and collateral valuations
- Explains how ROV processes and controls can be incorporated into existing risk management functions such as:
 - Appraisal review
 - Complaint management
- Provides examples of **risk based** ROV policies, procedures, and controls that financial institutions may choose to adopt.

Questions



- **Neighborhood**
Has the neighborhood description been defined accurately?
- **Subject Property Condition**
Do the comparable sales and the subject property relate in terms of property condition?
- **Comparable Sales**
Are at least some of comparable sales selected from the defined neighborhood?
- **Adjustments and Reconciliation**
Are adjustments supported using market data?
- **Appraiser Comments**
Do the comments imply or reflect bias?



Steps to Take Now

To consider...

“What is more, in completed fair lending exams and reviews, we noted compliance management system weaknesses in the majority of cases. Credit unions can — and should — do better.”

-NCUA Chair Todd Harper, GAC

Assess Your Risk



Office of Consumer Financial Protection and Access
Fair Lending Guide

July 2017

- 1. Overviews
- 2. Operational Requirements
- 3. Review Considerations
- 4. Checklists
- 5. Definitions

EQUAL CREDIT OPPORTUNITY ACT (REGULATION B) CHECKLIST

	Yes	No
1. Does the credit union prohibit its employees from making statements that would discourage, on a prohibited basis, applicants from making or pursuing an application? [§1002.4(b)]	_____	_____
2. Does the credit union refrain from requesting information concerning the applicant's spouse or former spouse unless such person will be permitted to use or be contractually liable, or the applicant is relying on community property, the spouse's income, alimony, child support, or maintenance payments for repayment of the debt? [§1002.5(c)(2)]	_____	_____
3. Regarding applications for individual unsecured loans, does the credit union refrain from inquiring as to the marital status of the loan applicant (unless community property is involved)? [§1002.5(d)(1)]	_____	_____
4. For secured loans, are inquiries into marital status limited to the terms "married," "unmarried," or "separated?" [§1002.5(d)(1)]	_____	_____
5. When income derived from alimony, child support, or maintenance payments is disclosed, is there evidence that the credit union properly informed the applicant that such income need not be revealed? [§1002.5(d)(2)]	_____	_____

Lessons Learned

1. Engage with your regulators and promptly implement any fair lending recommendations
2. Engage with community groups which have insight and experience
3. Ensure your compliance management system is actually measuring redlining
4. Rely on AI in a safe and sound manner to prevent harm and ensure compliance with laws
5. Make sure you have refined your internal fair lending monitoring program
6. Two additional red flags:
 1. Appraisal discrimination
 2. Ensure access for new American and immigrant communities



Emerging Risk

Artificial Intelligence

Emerging Risks - AI

- Unlawful discrimination
- UDAAP
- Privacy concerns
- Managing risk:
 - Explainability
 - Data Usage
 - Dynamic Updating

[FFIEC Request for Comment](#)

Explainability

- How does AI use inputs to produce outputs for:
 - Overall functioning (global explainability)
 - Individual outcome (local explainability)
- Risks
 - Lack of explainability can inhibit management's understanding of approach
 - Uncertainty around reliability of AI
 - Inhibits independent review and audit
 - Makes compliance with laws and regulations more challenging

Broader or More Intensive Data Usage

- Algorithms identify patterns and correlations **without human context or interventions** and then uses that information to **generate predictions or categorizations**. Because the AI algorithm is dependent upon the training data, an AI system **reflects any limitation** of that data set.
- Risks
 - AI may perpetuate or even amplify bias or inaccuracies in training data
 - AI may make incorrect predictions if data is incomplete or non-representative

Dynamic Updating

- Some AI approaches have the capacity to update on their own, **sometimes without human interaction**, often known as dynamic updating.
- Monitoring and tracking challenges:
 - Review and validation, particularly when a change in external circumstances (e.g., economic downturns and financial crises) may cause inputs to vary materially from the original training data.
 - Dynamic updating techniques can produce changes that range from minor adjustments to existing elements of a model to the introduction of entirely new elements.

Fair Lending Considerations

- How does AI align with applicable regulatory framework?
- How will you evaluate compliance?
- How can AI be biased and/or result in discrimination?
 - How can you reduce the risk of this?
- Do model risk management principles aid in evaluating credit decisions?
- What are challenges to assessing fair lending risk?
- What approaches can be used to identify reasons for adverse action when using AI?
- Does Reg B provide enough clarity?

Reg B - Self-Testing/Self-Correction

- Report or results of a self-test voluntarily conducted is privileged
- Privilege is based on the fact that creditor has taken appropriate corrective action
- Critical to understand the requirements prior to engaging in a self test
- [§ 1002.15 Incentives for self-testing and self-correction.](#)



Resources

Resources

- [CFPB's May 2022 Fair Lending Report](#)
- [CFPB's Final Rule \(ECOA\) Interpretive Rule on Sexual Orientation and Gender Identity Discrimination.](#)
- [CFPB's Mortgage resources page](#)
- [NCUA Fair Lending Guide](#)
- [NCUA Fair Lending Compliance Resources Page](#)

Resources

- [Consumer Compliance Outlook](#) – Federal Reserve publication dedicated to consumer compliance
- [Outlook Live](#) – Federal Reserve webinars on consumer compliance topics
- **Interagency Fair Lending Examination Procedures**
 - <http://www.ffiec.gov/PDF/fairlend.pdf>
 - <http://www.ffiec.gov/PDF/fairappx.pdf>
- **Federal Reserve Consumer [Help](#)**
- [Understanding Racial Bias in Appraisals Training](#)

League Resources

Loans and Leasing

The following topics are covered in the Loans and Leasing Channel:

- Ability to Repay
- Allowance for Loan and Lease Losses
- Anti-Redlining Requirements (Michigan)
- Appraisals
- Assignment of Securities as Collateral
- Chattel Lien Non-Filing Insurance
- Consumer Leasing
- Credit Cards
- Credit Practices
- Current Expected Credit Loss (CECL)
- Dower and Homestead (Michigan)
- Equal Credit Opportunity Act
- FACT Act
- Fair Credit Reporting Act
- Fair Housing Act
- Fair Lending Laws and Regulations
- Fees for Loans (Michigan)
- Flood Insurance
- Forfeiture of Vehicles and Other Property
- Holder in Due Course Rule
- Home Equity Lending

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Home > Compliance Topics > Loans and Leasing > Fair Lending Laws and Reg

Fair Lending Laws and Regulations

Last Reviewed: October 2023

Fair lending laws and regulations include: the Equal Credit Opportunity Act (Regulation B), the Fair Housing Act (FH Act). In addition, the National Credit Union Administration (NCUA) (CFR 701.31).

Summary

Additional Resources

Model Policies

Appraisals

Last Reviewed: October 2023

Credit unions are required to comply with multiple regulatory requirements for real estate appraisals in connection with federal mortgage loans. Appraisals require the services of an appraiser, prescribe which categories of appraisers are qualified to perform appraisals, and set the minimum standards for the performance of real estate appraisals.

Credit unions also have to consider the Truth in Lending Act (TILA), the Equal Credit Opportunity Act (ECOA), and the Home Mortgage Disclosure Act (HMDA) when originating certain delivery requirements to the borrower.

Last, but not least, there is also Interagency Guidance that covers

HPMLs - Truth in Lending Act (Regulation Z - 1026.35) +

Interagency Appraisal and Evaluation Guidelines Detailed Analysis +

Interagency Appraisal and Evaluation Guidelines Appendix A +

Interagency Appraisal and Evaluation Guidelines Appendix B +

League Resources



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Search Model Policies

Search Results [Clear Results](#)

- [Policy 2125: Balancing](#)
- [Policy 7105: Collateral](#)
- [Policy 7120: Fair Lending](#)
- [Policy 7125: Loan Application](#)
- [Policy 7135: Loan Documentation](#)
- [Policy 7205: Automobile Loans](#)
- [Policy 7225: Recreational Vehicle Loans](#)
- [Policy 7310: Construction Loans](#)
- [Policy 7320: Home Equity Loans](#)
- [Policy 7330: Residential Real Estate Loans](#)
- [Policy 7335: Loans Secured by Unimproved Property](#)
- [Policy 7420: Member Business Loans and Commercial Lending](#)
- [Policy 7430: Participation Loans](#)
- [Policy 7331: Non-Traditional Residential Real Estate Loans](#)
- [Policy 7625: Residential Real Estate Loss Mitigation Strategies](#)
- [Policy 7315: Commercial Real Estate Loan Workouts](#)
- [Policy 7302: Real Estate Appraisals](#)



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Search Model Policies

Search Results [Clear Results](#)

- [Policy 7120: Fair Lending](#)
- [Policy 7125: Loan Application](#)
- [Policy 7165: Pricing and Terms](#)
- [Policy 7170: Risk-Based Lending](#)
- [Policy 7410: Indirect Dealer Financing](#)
- [Policy 7331: Non-Traditional Residential Real Estate Loans](#)
- [Policy 7625: Residential Real Estate Loss Mitigation Strategies](#)
- [Policy 7218: Payday Alternative Loans](#)
- [Policy 7362: Temporary Policy for Loan Modifications and Reporting due to COVID-19](#)
- [1230.10: Complaint Process for Federally Chartered Credit Unions](#)
- [1230.11: Complaint Process for State-Chartered Credit Unions](#)
- [Policy 2250: Providing Products and Services to Limited English Proficiency Members](#)
- [Policy 2118: Community Reinvestment Act](#)

CU Risk Intelligence Resources



AFFIRMX Fair Lending Risk Assessment

A thorough risk assessment to identify and remediate inherent risk in your credit union's fair lending practices

- Home Mortgage Disclosure Act (HMDA)
- Equal Credit Opportunity Act (ECOA)
- Fair Housing Act (FHA)
- Credit transactions
- Marketing best practices
- Third-party activities as well as exception management including:

Policies/procedures; file documentation; monitoring/management reporting; role-specific training and management oversight

A screenshot of the ComplySight web application interface for the Michigan Credit Union League. The interface has a blue header with the ComplySight logo and the organization name. A left-hand navigation menu includes items like Home, Factor Grading (highlighted in blue), Action Item/Manual Action Item List, Create Manual Action Item, Create Examiner/Audit Finding, Examiner/Audit Finding List, Regulatory Alert List, Area/Item Information, Client Export Data, Reports, File Manager, and Search. The main content area displays a list of regulatory topics, each with a right-pointing arrow icon. The items are: Ability to Repay, Allowance for Loan and Lease Loss (ALLL), Appraisals, Consumer Mortgage Protection Act, Credit Practices, Equal Credit Opportunity Act (Regulation B), FACT Act, Fair Credit Reporting Act, Fair Housing Act, Fair Housing Act - Anti-Redlining, and Fair Lending Laws. A red hand-drawn oval highlights the last three items: Fair Housing Act, Fair Housing Act - Anti-Redlining, and Fair Lending Laws.

Thank you for your time!

Use Coupon Code
REGION424

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Questions?



Thank You!

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