

# Fair Lending Issues and Hot Topics

**Outlook Live Webinar – November 2, 2011**

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

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# Overview

- **Opening Remarks**
  - *Co-chairs of the Non-Discrimination Working Group*
  - *Director of the Financial Fraud Enforcement Task Force*
- **Presentations**
  - *U.S. Department of Justice*
  - *Consumer Financial Protection Bureau*
  - *National Credit Union Administration*
  - *U.S. Department of Housing and Urban Development*
  - *Federal Deposit Insurance Corporation*
  - *Office of the Comptroller of the Currency*
  - *Federal Reserve Board*
- **Questions**

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# Opening Remarks

- **Sandy Braunstein**, *Director of the Division of Consumer and Community Affairs, Federal Reserve Board*
- **Thomas E. Perez**, *Assistant Attorney General for Civil Rights, U.S. Department of Justice*
- **Michelle Aronowitz**, *Deputy General Counsel for Enforcement and Fair Housing, U.S. Department of Housing and Urban Development*
- **Michael J. Bresnick**, *Executive Director, Financial Fraud Enforcement Task Force*

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# Presentations

- **Redlining**

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

- **Fair Lending Exams**

- *Patrice Ficklin, Assistant Director, Office of Fair Lending and Equal Opportunity, Consumer Financial Protection Bureau*
- *Tonya Sweat, Director, Consumer Compliance and Outreach, Office of Consumer Protection, National Credit Union Administration*

- **Maternity Leave Discrimination**

- *Joel Armstrong, Director, Office of Systemic Investigations, Office of Fair Housing and Equal Opportunity, U.S. Department of Housing and Urban Development*

# Presentations *(continued)*

- **Broker Compensation in Fair Lending Cases**
  - *Sylvia Plunkett, Senior Deputy Director, Division of Depositor and Consumer Protection, Federal Deposit Insurance Corporation*
- **Fair Lending Beyond ECOA**
  - *Grovetta Gardineer, Deputy Comptroller for Compliance Policy, Office of the Comptroller of the Currency*
- **Unsecured Consumer Loans**
  - *Maureen Yap, Senior Attorney, Fair Lending Enforcement Section, Division of Consumer and Community Affairs, Federal Reserve Board*

# Redlining

*Jon Seward, Deputy Chief*

*Housing and Civil Enforcement Section*

*Civil Rights Division, U.S. Department of Justice*

# DOJ Redlining Investigations

- Review lender's business practices, including:
  - Branching and other channels
    - Lending policies and practices
    - Advertising and other
- Evaluate lending performance
- Review HMDA data, including:
  - Compare applications and originations in minority areas with other lenders
  - Compare lending activity in areas with various income and demographic characteristics
  - Assess market share in minority and non-minority areas

# DOJ Redlining Cases

## Failure to provide lending services to minority areas

- Few or no branches
- Little or no marketing
- Exclusion of minority areas from CRA Assessment Area
- Extremely low proportion of loans

# DOJ Redlining Settlements

All recent redlining settlements include:

- Nondiscrimination provisions
- New branches in previously redlined areas
- Outreach and consumer education
- Training and changes to bank procedures
- Monetary relief ranging from \$900,000 to \$10 million in loan subsidies for previously redlined areas

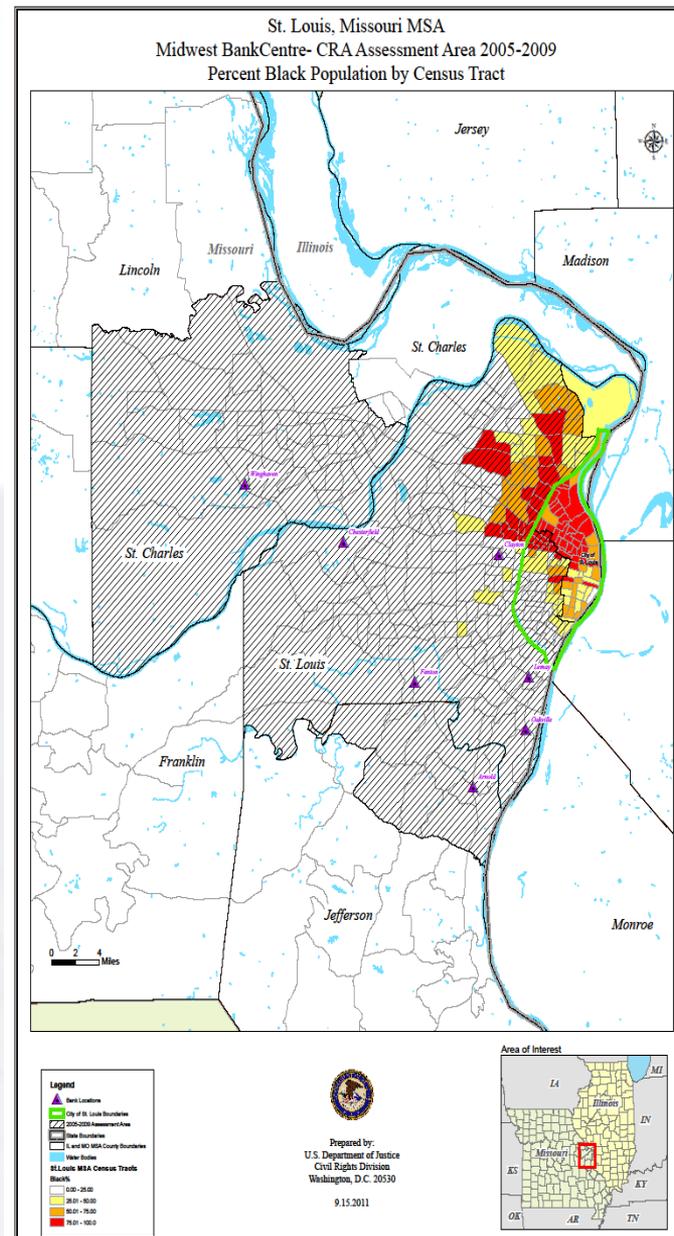
# ***U.S. v. Midwest BankCentre (2011)***

Allegations include:

- Branches exclusively in white census tracts
- CRA assessment area drawn around African-American communities in the City of St. Louis
- Fewer applications and originations from African-American census tracts than peers

# Map of Midwest BankCentre CRA Assessment Area (2005 – 2009)

Areas in color are census tracts with high African-American population concentrations



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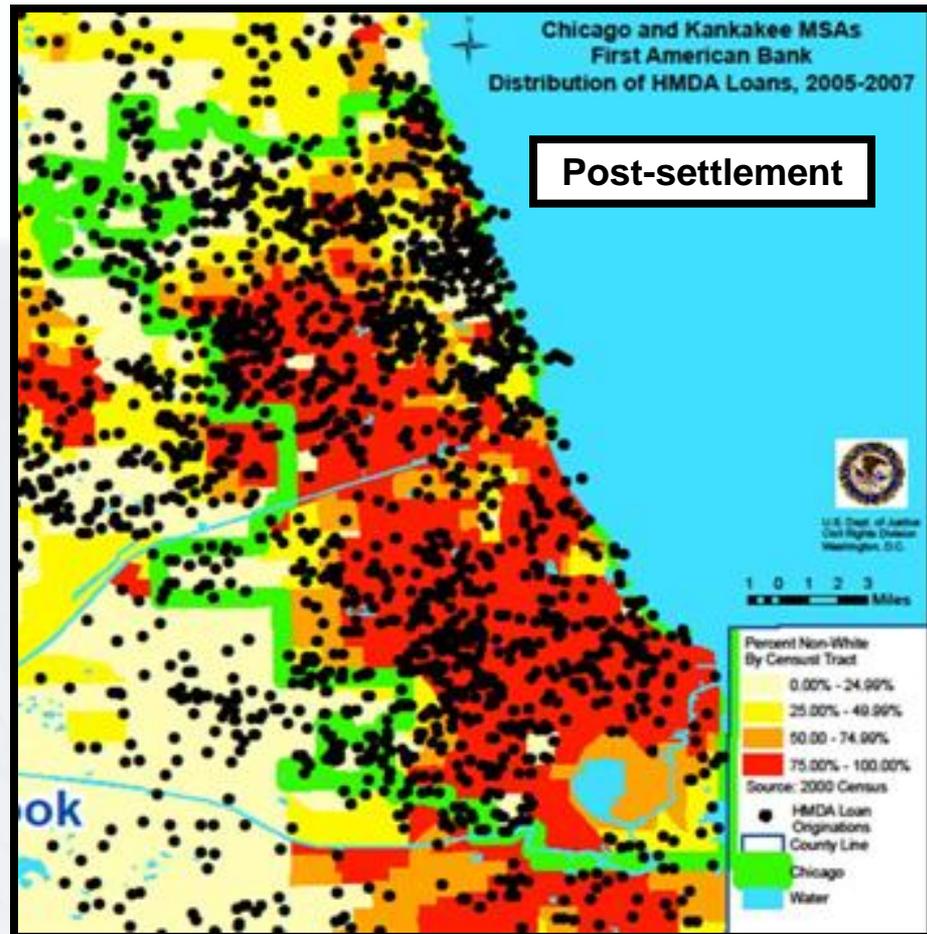
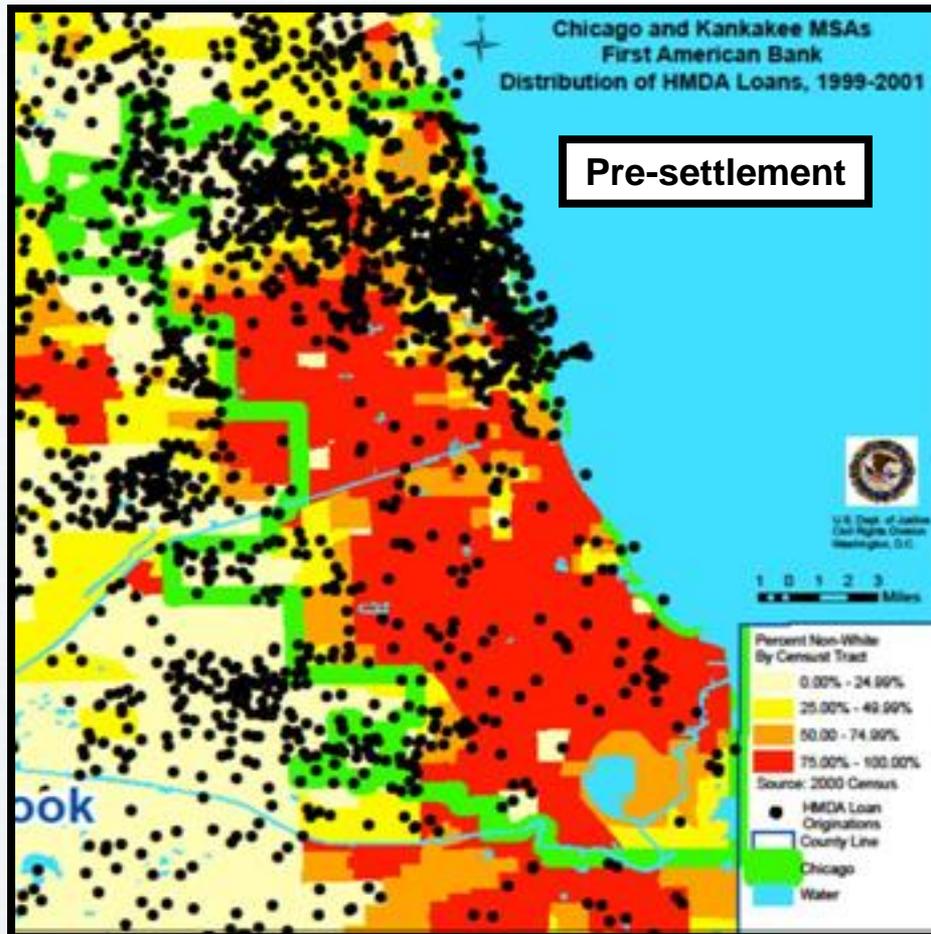


# ***U.S. v. Midwest BankCentre (2011)***

Relief includes:

- \$900,000 special financing fund, credit repair and access to low-cost checking accounts for residents of redlined communities
- Bank will open a branch in previously redlined community
- Bank will engage in affirmative outreach and marketing to previously redlined communities

# First American Bank: Distribution of HMDA Loans



# Fair Lending Exams

*Patrice Ficklin , Assistant Director  
Office of Fair Lending & Equal Opportunity  
Consumer Financial Protection Bureau*

# The CFPB's Structure



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# Dodd-Frank Fair Lending Mandate

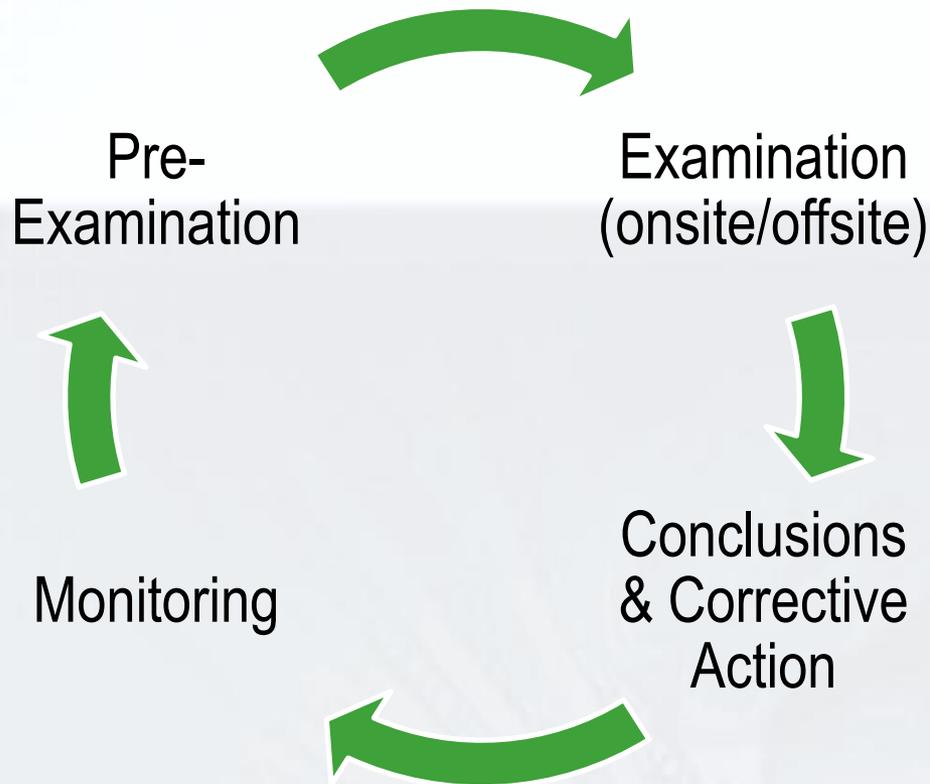
Dodd-Frank defines “Fair Lending” as:

- “fair, equitable, and nondiscriminatory access to credit for consumers.”  
DFA § 1002(13).

Dodd-Frank mandates the creation of an Office of Fair Lending and Equal Opportunity with the following specified functions:

- Providing oversight and enforcement of Federal fair lending laws that CFPB enforces, including Equal Credit Opportunity Act and Home Mortgage Disclosure Act;
- Coordinating CFPB’s fair lending efforts with Federal agencies and State regulators;
- Working with private industry, fair lending, civil rights, consumer and community advocates to promote fair lending compliance and education; and
- Providing annual reports to Congress on efforts of CFPB to fulfill its fair lending mandate. DFA § 1013(c).

# Ongoing Supervision Process



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# Approach to Supervision

Fair Lending's supervision program is fully integrated with Bureau's supervision program.

Risk to Consumers

Data Analysis

Consistency across all supervised entities

# Purpose of Supervision Manual

Provide transparent guidance to CFPB examiners that enables them to conduct consistent reviews of supervised entities:

Review compliance management systems

Check compliance with federal consumer financial laws, including ECOA and HMDA

# Supervision Manual – Risk Assessment

Evaluate:

- Inherent Risks to Consumers
- As Mitigated by Effectiveness of Compliance Management

In order to:

Identify and Prioritize Examinations

# Supervision Manual – ECOA and HMDA

## Overall ECOA Examination Objectives

- Evaluate compliance management for ECOA and Regulation B
- Determine whether creditor discriminated in violation of ECOA
- Determine whether creditor otherwise violated ECOA and Regulation B

## HMDA Overall Examination Objectives

- Evaluate compliance management for HMDA and Regulation C
- Evaluate HMDA and Regulation C compliance, including accuracy and timeliness of financial institution's submitted HMDA-LAR

# Product Reviews – Mortgage Servicing

## Review

- Compliance Management System's effectiveness in preventing violations of federal consumer protection laws, including ECOA
- Compliance with consumer protection laws, including fair lending laws
- Avoidance of discrimination & other risks to consumers

## Fair servicing exam will focus on

Default Servicing

Foreclosures

# Fair Lending Exams

*Tonya Sweat, Director  
Consumer Compliance and Outreach  
Office of Consumer Protection  
National Credit Union Administration*

# Fair Lending Exam Procedures

## NCUA Reorganization

- Office of Consumer Protection
  - Created January 2010
  - Two Divisions
- Division of Consumer Compliance & Outreach
  - Nationwide fair lending exams

## Examination Highlights

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# Examination Highlights

- FFIEC Exam Procedures
- Loan Application Registry
  - Incorrect/omitted entries
  - Withdrawals vs. denials
- ECOA/Regulation B
- Other lending products

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# Contact Information

Office of Consumer Protection

National Credit Union Administration

1775 Duke Street

Alexandria, VA 22314

(703) 518-1140

[www.ncua.gov](http://www.ncua.gov)

[www.MyCreditUnion.gov](http://www.MyCreditUnion.gov)

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# Maternity Leave Discrimination

*Joel Armstrong, Director*

*Office of Systemic Investigations*

*Office of Fair Housing and Equal Opportunity*

*U.S. Department of Housing and Urban Development*

# Maternity Leave Discrimination

- Fair Housing Act prohibits discrimination in housing because of familial status. 42 U.S.C. § 3601 et al
- Familial status includes any person who
  - is pregnant, or
  - is in process of securing legal custody of a child under the age of 18 years. 42 U.S.C. § 3602(k)
- HUD regulation implementing Fair Housing Act prohibits discrimination in making or purchasing of loans based on familial status. 24 C.F.R. Part 100

# Maternity Leave Discrimination *(continued)*

- Prohibited practices:
  - Refusing to provide information about loan availability because of familial status,
  - Providing information that is inaccurate because of familial status,
  - Refusing to purchase loans because of familial status, and
  - Imposing different loan terms or conditions because of familial status. 24 C.F.R Parts 100.120, 100.125, and 100.130.
- HUD's Federal Housing Administration (FHA) loan program prohibits lenders from asking loan applicants about possible, future maternity leave. HUD Handbook 4155.1, Section 4.D.2.a. (General Policy on Borrower Income Analysis, Notes).

# Broker Compensation in Fair Lending Cases

*Sylvia Plunkett, Senior Deputy Director  
Division of Depositor and Consumer Protection  
Federal Deposit Insurance Corporation*

# FDIC Review of Broker Relationships

## Red Flags

- Institution policy/practice that allows broker discretion in setting fees
- Institution monitors YSP but does not monitor discretionary broker fees

## Basis for Fair Lending Violation

- Disparate impact
  - Policy or practice that is neutral on its face but results in disparate impact on a prohibited basis
  - Financial institution underwrote or funded the loans

# FDIC Review of Broker Relationships

## How would financial institution know?

- Firsthand knowledge
  - Truth in Lending (“TILA”) disclosures
  - Good Faith Estimates (“GFEs”)
  - HUD-1 Settlement Statement that disclosed the fees

## How to Determine Disparate Impact

- Statistical analysis of all brokered loans
  - Determine all components of broker’s compensation
  - Run regression analysis

# FDIC Review of Broker Relationships

## Communication with Financial Institution

- FDIC sends preliminary findings to financial institution
- Requests any additional information including business justification

# Fair Lending Beyond ECOA

*Grovetta Gardineer*

*Deputy Comptroller for Compliance Policy*

*Office of the Comptroller of the Currency*

# Changes to OCC Fair Lending Examination Procedures

## Loan servicing indicators (January 2010):

- Foreclosure disparities between protected classes and others
- Consumer complaints alleging discrimination in loan servicing
- Poorly documented or undocumented servicing decisions
- High levels of litigation alleging loan servicing discrimination
- Focal point setting guidance

# Changes to OCC Fair Lending Examination Procedures *(continued)*

## HELOC Modification Risk Factors (January 2010):

- Documentation lacking
- Unsupportable standards
- Market area determinations

# HMDA Trends

## Big Trends – 2010 HMDA Data

- Shrinkage in originated loans
- Fewer reporting institutions

## Incidence of Higher Priced Loans

- Less overage percentage
- Still disparities between groups

## Growth of FHA and VA Loans

- 7% in 2007 to 36% in 2010
- Potential steering issue

# Other Potential Areas for Concern

## Protecting Tenants in Foreclosure Act

- What does it do?
- Who is eligible?
- What are the restrictions on lenders?
- How long will it last?

## SCRA – A New Prohibited Basis?

- Many protections for active duty military regarding loans
- Actions by loan holders
- Recent large settlements

# Unsecured Consumer Loans

*Maureen Yap, Senior Attorney  
Fair Lending Enforcement Section  
Division of Consumer and Community Affairs  
Federal Reserve Board*

# Unsecured Consumer Loans: Overview

- Many small banks offer small-dollar unsecured loans that serve a critical need for consumers
- Typical features
  - Closed-end installment loan with terms of 12-30 months
  - Small-dollar loan amounts (\$500-\$2,500)
  - Interest rates around 12-17%, fees between \$20-25, APR around 36%

# Unsecured Consumer Loans: Issues

- Some lenders have not implemented fair lending controls for product
  - Standardized pricing practices
  - Monitoring
- Broad pricing discretion has long been recognized as a fair lending risk (See Interagency Fair Lending Examination Procedures)
- FRB has had one referral to DOJ on issue
- DOJ case: U.S. v. Nixon State Bank (FDIC Referral)

# Unsecured Consumer Loans: Sample Issues

- Statistically significant interest rate disparities for minority borrowers and/or women that cannot be explained by legitimate pricing factors
- Lack of rate sheets or other pricing guidelines
- Broad pricing discretion at the loan officer level
- Lack of clear documentation of reasons for pricing decisions
- Lack of monitoring for pricing disparities

# Unsecured Consumer Loans: Fair Lending Best Practices

- Lenders should...
  - Evaluate and monitor product, policies and practices for potential fair lending risk; and
  - Provide loan officers clear standards for underwriting and pricing (interest rate, fees and points)

# Questions

