Memorandum of Understanding
between
The Consumer Financial Protection Bureau
and
The United States Department of Justice

I. Background and Purpose.

Section 1054(d)(2)(B) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Act) requires the Consumer Financial Protection Bureau and the Department of Justice to establish an agreement to avoid conflicts and promote consistency regarding litigation of matters under Federal law. To satisfy that statutory provision, and to promote effective cooperation between the agencies, the Consumer Financial Protection Bureau (Bureau) and the Department of Justice (Department) (collectively, the Agencies) are entering into this memorandum of understanding (Agreement).

II. Avoiding Conflicts between Parallel Investigations.

The Bureau and the Department of Justice shall consult and coordinate with one another to ensure that parallel investigations and proceedings are conducted in a manner that avoids conflicts and does not impede the ability of the Department of Justice to prosecute violations of Federal criminal laws. Such investigations and proceedings shall be informed by the principles set forth in Department of Justice guidelines regarding parallel civil and criminal investigations and proceedings, namely the 1997 Attorney General Memorandum regarding the Coordination of Parallel Criminal, Civil, and Administrative Proceedings (attached hereto as Appendix A), or a subsequent document as agreed by the Agencies. The Bureau and the Department of Justice will conduct joint training programs with appropriate staff about the principles.

Upon obtaining evidence of conduct that may constitute a violation of Federal criminal law, the Bureau shall transmit that evidence to the Attorney General or any prosecuting component of the Department of Justice. Notice of such transmission shall be provided by the Bureau to the Department of Justice point(s) of contact identified by the Attorney General.

III. Notice Provisions.

1. The Bureau shall notify the Department concerning any action, suit, or proceeding to which the Bureau is named a party (including where a Bureau officer or employee is named in their official capacities, in a *Bivens* suit, or in which the United States is a party and the acts or omissions of the Bureau or one or more of its employees is at issue), except an action, suit, or proceeding that involves the offering or provision of consumer financial products or services. Additionally, the Bureau shall notify the Department whenever it commences a civil action under Federal consumer financial law, including any rule thereunder.

2. Whenever the Department is served in a matter in which an officer or employee of the Bureau is named as a party to litigation, or in which the United States is a party and the acts or omissions of the Bureau are at issue, the Department shall notify the Bureau.

3. Whenever the Bureau receives notice of a proposed settlement under the Class Action Fairness Act, 12 U.S.C. § 1715, it shall, in a timely fashion, provide a copy of the notice and accompanying materials to the Department. Whenever the Department receives notice under the Class Action Fairness Act, 12 U.S.C. § 1715, of a proposed settlement that relates to Federal consumer financial law, it shall, in a timely fashion, provide a copy of the notice and accompanying materials to the Bureau.

4. Whenever the Department receives notice under Federal Rule of Civil Procedure 5.1 or 28 U.S.C. § 2403 that, or when the Bureau is party to litigation in which, the constitutionality of a provision of Federal consumer financial law, including Titles X and XIV of the Dodd-Frank Wall Street Reform and Consumer Protection Act, is being drawn into question in pending litigation, each shall, in a timely fashion, provide a copy of the notice and related materials to the other. The Bureau and the Department shall confer with the goal of avoiding conflicts and promoting consistency regarding litigation of matters under Federal law.

5. Whenever the Department is considering whether amicus participation or the filing of a statement of interest in litigation that relates to a Federal consumer financial law is in the government's interests, and whenever the Bureau is considering amicus participation or the filing of a statement of interest in litigation, it shall notify the other. The Bureau and the Department shall confer with the goal of avoiding conflicts and promoting consistency regarding litigation of matters under Federal law.

IV. Amendments.

The parties may from time to time amend this Agreement in writing, and such amendment shall become effective when executed by both parties.

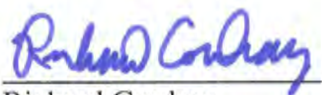
V. Effect.

Nothing in this Agreement shall be construed to create a cause of action or enforceable legal right for any person, or to modify the authorities of either agency under law.

VI. Approval.

The parties have entered into this Agreement on January 20, 2012.

Tom Perrelli
Associate Attorney General
Department of Justice



Richard Cordray
Director
Consumer Financial Protection Bureau

Consumer Financial Protection Bureau

1/20/12

Department of Justice

27. Coordination of Parallel Criminal, Civil, and Administrative Proceedings

July 28, 1997

MEMORANDUM FOR ALL UNITED STATES ATTORNEYS
ALL ASSISTANT UNITED STATES ATTORNEYS
ALL LITIGATING DIVISIONS
ALL TRIAL ATTORNEYS

FROM: THE ATTORNEY GENERAL

The key to the Department's federal white-collar crime enforcement effort is to use the Government's resources as efficiently and effectively as possible in order to punish offenders, recover damages, and prevent future misconduct. In recent years, we have pursued greater numbers of complex cases, in which the Government has been required to employ the full range of criminal, civil and administrative remedies and sanctions. The challenge requires greater cooperation, communication and teamwork between the criminal and civil prosecutors who are often conducting parallel investigations of the same offenders and matters. Although policies and procedures on parallel proceedings have been adopted by many of the United States Attorneys' offices, and Department components, I am issuing the following policy statement to clarify the Department's priorities and responsibilities in this new litigative environment.

We have experienced significant change in the way the Government fights white-collar crime. We have also experienced enormous growth of affirmative civil enforcement (ACE), and with additional ACE resources, annual recoveries have increased by hundreds of millions of dollars. Enforcement priorities encompass not only government procurement and health care fraud, but also consumer protection, the environment, tax, and securities fraud, which implicate a variety of civil, criminal, and regulatory remedies.

In order to maximize the efficient use of resources, it is essential that our attorneys consider whether there are investigative steps common to civil and criminal prosecutions, and to agency administrative actions, and that they discuss all significant issues that might have a bearing on the matter as a whole with their colleagues. When appropriate, criminal, civil, and administrative attorneys should coordinate an investi-gative strategy that includes prompt decisions on the merits of criminal and civil matters; sensitivity to grand jury secrecy, tax disclosure limitations and civil statutes of limitation; early computation and recovery of the full measure of the Government's losses; prevention of the dissipation of assets; global settlements; proper use of discovery; and compliance with the Double Jeopardy Clause. By bringing additional expertise to our efforts, expanding our arsenal of remedies, increasing program integrity and deterring future violations, we represent the full range of the Government's interests.

Accordingly, every United States Attorney's office and each Department Litigating Division should have a system for coordinating the criminal, civil and administrative aspects of all white-collar crime matters within the office. The system should contain management procedures to address issues of parallel proceedings including:

- timely assessment of the civil and administrative potential in all criminal case referrals, indictments, and declinations;
- timely assessment of the criminal potential in all civil case referrals and complaints;
- effective and timely communication with cognizant agency officials, including suspension and debarment authorities, to enable agencies to pursue available remedies;
- early and regular communication between civil and criminal attorneys regarding *qui tam* and other civil referrals, especially when the civil case is developing ahead of the criminal prosecution; and
- coordination, when appropriate, with state and local authorities.

Consistent with our responsibility to make our enforcement efforts more efficient and effective, prosecutors should consult with the government attorneys on the civil side and appropriate agency officials regarding the investigative strategies to be used in their cases. With proper safeguards, evidence can be obtained without the grand jury by administrative subpoenas, search warrants and other means. Evidence can then be shared among the various personnel responsible for the matter. This information-sharing can provide a mechanism through which the Government can achieve a comprehensive settlement of all of the Government's various interests.

I welcome the participation of the various law enforcement agencies in this effort. I encourage those agencies and offices with investigatory responsibilities to recognize, through workplans and credit in the review process, accomplishments in the civil and administrative areas that arise from the work of their agents. I also encourage the United States Attorneys, Litigating Divisions and administrative agencies to similarly recognize those contributions.

To help offices in overcoming impediments to coordination that may arise from a lack of resources, experience or expertise, I also direct that appropriate staff in each office receive comprehensive training regarding parallel proceedings utilizing a course of instruction and training materials to be developed by the Council on White-Collar Crime and the Office of Legal Education.

[cited in USAM Chapter 1-12.000; Civil Resource Manual 228; Criminal Resource Manual 2464]

1700 G Street NW, Washington, DC 20552

CFPB Bulletin 2013-02

Date: March 21, 2013

Subject: Indirect Auto Lending and Compliance with the Equal Credit Opportunity Act

This bulletin provides guidance about compliance with the fair lending requirements of the Equal Credit Opportunity Act (ECOA) and its implementing regulation, Regulation B, for indirect auto lenders that permit dealers to increase consumer interest rates and that compensate dealers with a share of the increased interest revenues. This guidance applies to all indirect auto lenders within the jurisdiction of the Consumer Financial Protection Bureau (CFPB), including both depository institutions and nonbank institutions.

Background

While consumers may seek financing for automobile purchases directly from a financial institution, many seek financing from the auto dealer. The auto dealer may provide that financing directly or it may facilitate indirect financing by a third party such as a depository institution, a nonbank affiliate of a depository institution, an independent nonbank, or a "captive" nonbank (an auto lender whose primary business is to finance the purchase of a specific manufacturer's automobiles).

In indirect auto financing, the dealer usually collects basic information regarding the applicant and uses an automated system to forward that information to several prospective indirect auto lenders. After evaluating the applicant, indirect auto lenders may choose not to become involved in the transaction or they may choose to provide the dealer with a risk-based "buy rate" that establishes a minimum interest rate at which the lender is willing to purchase the retail installment sales contract executed by the consumer for the purchase of the automobile. In some circumstances, the indirect auto lender may exercise discretion in adjusting the buy rate, making underwriting exceptions, or modifying other terms and conditions of the financing as a result of additional negotiation between the indirect auto lender and the dealer.

The indirect auto lender may also have a policy that allows the dealer to mark up the interest rate above the indirect auto lender's buy rate. In the event that the dealer charges the consumer an interest rate that is higher than the lender's buy rate, the lender may pay the dealer what is typically referred to as "reserve" (or "participation"), compensation based upon the difference in interest revenues between the buy rate and the actual note rate charged to the consumer in the retail installment contract executed with the dealer. Dealer reserve is one method lenders use to compensate dealers for the value they add by originating loans and finding financing sources. The exact computation of compensation based on dealer markup varies across lenders and may vary between programs at the same lender. After the deal is consummated with the consumer, the

retail installment contract may then be sold to the lender, which has already indicated its willingness to extend credit to the applicant.

The supervisory experience of the CFPB confirms that some indirect auto lenders have policies that allow auto dealers to mark up lender-established buy rates and that compensate dealers for those markups in the form of reserve (collectively, "markup and compensation policies"). Because of the incentives these policies create, and the discretion they permit, there is a significant risk that they will result in pricing disparities on the basis of race, national origin, and potentially other prohibited bases.

Indirect Auto Lenders as Creditors Under the ECOA

The ECOA makes it illegal for a "creditor" to discriminate in any aspect of a credit transaction because of race, color, religion, national origin, sex, marital status, age, receipt of income from any public assistance program, or the exercise, in good faith, of a right under the Consumer Credit Protection Act.[1]

The ECOA defines a "creditor" to include not only "any person who regularly extends, renews, or continues credit," but also "any assignee of an original creditor who participates in the decision to extend, renew, or continue credit."[2] Regulation B further provides that "creditor" means "a person, who, in the ordinary course of business, regularly participates in the decision of whether or not to extend credit" and expressly includes an "assignee, transferee, or subrogee who so participates."[3]

The Commentary to Regulation B makes clear that an assignee is considered a "creditor" when the assignee participates in the credit decision. The Commentary provides that a "creditor" "includes all persons participating in the credit decision" and that "[t]his may include an assignee or a potential purchaser of the obligation who influences the credit decision by indicating whether or not it will purchase the obligation if the transaction is consummated."[4]

Even as assignees of the installment contract, indirect auto lenders are creditors under the ECOA and Regulation B if, in the ordinary course of business, they regularly participate in a credit decision. The CFPB recognizes that there is a continuum of indirect lender participation in credit decisions, ranging from no participation to being the sole decision maker with respect to a particular transaction, and that a lender's practices and conduct may place it at various points along this continuum. The CFPB also recognizes that credit transactions in indirect auto lending take many forms. However, information gathered by the CFPB suggests that the standard

---

[1] 15 U.S.C. § 1691(a).
[2] 15 U.S.C. § 1691a(e).
[3] 12 C.F.R. § 1002.2(*l*).
[4] 12 C.F.R. pt. 1002, Supp. I, § 1002.2, ¶ 2(*l*)-1.

practices of indirect auto lenders likely constitute participation in a credit decision under the ECOA and Regulation B.

For example, an indirect auto lender is likely a creditor under the ECOA when it evaluates an applicant's information, establishes a buy rate, and then communicates that buy rate to the dealer, indicating that it will purchase the obligation at the designated buy rate if the transaction is consummated. In addition, when a lender provides rate sheets to a dealer establishing buy rates and allows the dealer to mark up those buy rates, the lender may be a creditor under the ECOA when it later purchases a contract from such a dealer. These two examples are illustrative of common industry practices; indirect auto lenders may also be creditors under other circumstances.

The Liability of Indirect Auto Lenders for Discrimination Resulting from Markup and Compensation Policies

An additional consideration for auto lenders covered as creditors under the ECOA is whether and under what circumstances they are liable for pricing disparities on a prohibited basis. When such disparities exist within an indirect auto lender's portfolio, lenders may be liable under the legal doctrines of both disparate treatment and disparate impact.[5]

An indirect auto lender's markup and compensation policies may alone be sufficient to trigger liability under the ECOA if the lender regularly participates in a credit decision and its policies result in discrimination. The disparities triggering liability could arise either within a particular dealer's transactions or across different dealers within the lender's portfolio. Thus, an indirect auto lender that permits dealer markup and compensates dealers on that basis may be liable for these policies and practices if they result in disparities on a prohibited basis.

Some indirect auto lenders may be operating under the incorrect assumption that they are not liable under the ECOA for pricing disparities caused by markup and compensation policies because Regulation B provides that "[a] person is not a creditor regarding any violation of the [ECOA] or [Regulation B] committed by another creditor unless the person knew or had reasonable notice of the act, policy, or practice that constituted the violation before becoming involved in the credit transaction."[6] This provision limits a creditor's liability for another creditor's ECOA violations under certain circumstances. But it does not limit a creditor's liability for its own violations — including, for example, disparities on a prohibited basis that result from the creditor's own markup and compensation policies. Additionally, an indirect auto lender further may have known or had reasonable notice of a dealer's discriminatory conduct, depending on the facts and circumstances.

---

[5] *See* CFPB Bulletin 2012-14 (April 18, 2012) (reaffirming that the legal doctrine of disparate impact remains applicable as the CFPB exercises its supervision and enforcement authority to enforce compliance with the ECOA and Regulation B).

[6] 12 C.F.R. § 1002.2(*l*).

Limiting Fair Lending Risk in Indirect Auto Lending

Institutions subject to CFPB jurisdiction, including indirect auto lenders, should take steps to ensure that they are operating in compliance with the ECOA and Regulation B as applied to dealer markup and compensation policies. These steps may include, but are not limited to:

- imposing controls on dealer markup and compensation policies, or otherwise revising dealer markup and compensation policies, and also monitoring and addressing the effects of those policies in the manner described below, so as to address unexplained pricing disparities on prohibited bases; or
- eliminating dealer discretion to mark up buy rates and fairly compensating dealers using another mechanism, such as a flat fee per transaction, that does not result in discrimination.

Another important tool for limiting fair lending risk in indirect auto lending is developing a robust fair lending compliance management program. The CFPB recognizes that the appropriate program will vary among financial institutions. In our most recent Supervisory Highlights, we set out the following features of a strong fair lending compliance program, which are applicable in the indirect auto lending context:

- an up-to-date fair lending policy statement;
- regular fair lending training for all employees involved with any aspect of the institution's credit transactions, as well as all officers and Board members;
- ongoing monitoring for compliance with fair lending policies and procedures;
- ongoing monitoring for compliance with other policies and procedures that are intended to reduce fair lending risk (such as controls on dealer discretion);
- review of lending policies for potential fair lending violations, including potential disparate impact;
- depending on the size and complexity of the financial institution, regular analysis of loan data in all product areas for potential disparities on a prohibited basis in pricing, underwriting, or other aspects of the credit transaction;
- regular assessment of the marketing of loan products; and
- meaningful oversight of fair lending compliance by management and, where appropriate, the financial institution's board of directors.[7]

For some lenders, additional compliance-management components may be necessary to address significant fair lending risks. For example, indirect auto lenders that retain dealer markup and

[7] Consumer Financial Protection Bureau, *Supervisory Highlights: Fall 2012* (Oct. 31, 2012), *available at* http://www.consumerfinance.gov/reports/supervisory-highlights-fall-2012.

compensation policies may wish to address the fair lending risks of such policies by implementing systems for monitoring and corrective action by:

- sending communications to all participating dealers explaining the ECOA, stating the lender's expectations with respect to ECOA compliance, and articulating the dealer's obligation to mark up interest rates in a non-discriminatory manner in instances where such markups are permitted;
- conducting regular analyses of both dealer-specific and portfolio-wide loan pricing data for potential disparities on a prohibited basis resulting from dealer markup and compensation policies;
- commencing prompt corrective action against dealers, including restricting or eliminating their use of dealer markup and compensation policies or excluding dealers from future transactions, when analysis identifies unexplained disparities on a prohibited basis; and
- promptly remunerating affected consumers when unexplained disparities on a prohibited basis are identified either within an individual dealer's transactions or across the indirect lender's portfolio.

The CFPB will continue to closely review the operations of both depository and non-depository indirect auto lenders, utilizing all appropriate regulatory tools to assess whether supervisory, enforcement, or other actions may be necessary to ensure that the market for auto lending provides fair, equitable, and nondiscriminatory access to credit for consumers.

National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428
www.ncua.gov

Media Contact: NCUA Office of Public & Congressional Affairs
Phone: (703) 518-6330
Email: pacamail@ncua.gov

NCUA Media Advisory

Indirect Lending Webinar Archive Available

Alexandria, Va., December 21, 2010 – National Credit Union Administration (NCUA) Board Member Gigi Hyland hosted a webinar on Tuesday, November 9, 2010 entitled "Indirect Lending: Balancing the Risks and Rewards." The webinar was free and open to the public and was attended by over 1,200 participants. Drawing from the diverse expertise at the NCUA Central Office and NCUA Regional Offices, the webinar provided guidance, best practices and insights into indirect lending examination issues.

A live question and answer section produced over 100 questions which NCUA staff sorted, merged and researched in order to provide a comprehensive "Frequently Asked Questions" document. This document can be accessed on the archive along with the slide presentation.

The archive is posted on Board Member Hyland's "Presentations" page on NCUA.gov.

Click here to access the archived "Indirect Lending: Balancing the Risks and Rewards" webinar.

NCUA is the independent federal agency that regulates, charters and supervises federal credit unions. With the backing of the full faith and credit of the U.S. government, NCUA operates and manages the National Credit Union Share Insurance Fund, insuring the deposits of over 90 million account holders in all federal credit unions and the overwhelming majority of state-chartered credit unions.

- NCUA -

Conducting Consumer Compliance Risk Assessments – Examiner Insights

Outlook Live Webinar – August 20, 2013

Dorothy Stefanyszyn & Joe Detchemendy
Examiners – Federal Reserve Bank of St. Louis

Visit us at www.consumercomplianceoutlook.org

OUTLOOK LIVE The Federal Reserve System's audio conference series on consumer compliance issues

The opinions expressed in this presentation are intended for informational purposes, and are not formal opinions of, nor binding on, the Board of Governors of the Federal Reserve System. 1

Agenda

- Defining a Risk Assessment
  - Benefits
  - Inherent vs. Residual Risk
  - Measuring Risk
- Controlling risk
  - Effective Control Characteristics
  - Control Considerations
- Post Risk Assessment
- Fair Lending and CRA Considerations

OUTLOOK LIVE The Federal Reserve System's audio conference series on consumer compliance issues

The opinions expressed in this presentation are intended for informational purposes, and are not formal opinions of, nor binding on, the Board of Governors of the Federal Reserve System. 2

What is a Compliance Risk Assessment?

- A compliance risk assessment is a procedure that identifies the major inherent risks within a business line, factors in any processes and procedures that are practiced by the institution to control and/or mitigate those risks, resulting in a measurement of the residual risk the business line poses to the institution

OUTLOOK LIVE The Federal Reserve System's audio conference series on consumer compliance issues

The opinions expressed in this presentation are intended for informational purposes, and are not formal opinions of, nor binding on, the Board of Governors of the Federal Reserve System. 3

Why Prepare a Compliance Risk Assessment?

- Proactive, rather than reactive
  - To identify areas of significant risk to the bank
  - To assess the bank's likelihood of violating laws and regulations
  - To identify areas where controls are needed to mitigate risk
  - To evaluate the institution's level of compliance risk in order to make effective and sound decisions
  - To best utilize the limited time and resources allotted to compliance

The opinions expressed in this presentation are intended for informational purposes, and are not formal opinions of, nor binding on, the Board of Governors of the Federal Reserve System.

What are the Components of a Risk Assessment?

- Include an assessment of:
  - Inherent Risk
    - What activities does the bank participate in and what level of risk do they pose to the institution?
  - Risk Controls
    - What does the institution have in place to mitigate and control the risk?
  - Residual Risk
    - Where should compliance efforts be focused?

The opinions expressed in this presentation are intended for informational purposes, and are not formal opinions of, nor binding on, the Board of Governors of the Federal Reserve System.

Inherent vs. Residual Risk

- What is inherent risk?
  - The risk of error if there were absolutely no controls in place
  - Requires detailed knowledge of business processes and regulatory requirements to assess
- What is residual risk?
  - The level of risk present after effective controls are accounted for, such as policies, secondary reviews, etc.
  - Identifies areas to focus time and resources

The opinions expressed in this presentation are intended for informational purposes, and are not formal opinions of, nor binding on, the Board of Governors of the Federal Reserve System.

Example: Inherent vs. Residual Risk

- Residential Real Estate Lending
  - Small, rural institution
  - Fairly homogeneous market
  - Non-complex product offerings
- What are the inherent risks?
  - Assess applicable rules and regulations
  - Take into consideration product complexity and bank characteristics

Example: Inherent vs. Residual Risk *(continued)*

- What controls are in place?
  - Functions that work to prevent violations
- What is the residual risk?
  - Where does the institution stand after controls are applied?

Inherent Risk: Other Considerations

- Product characteristics
  - Complexity, volume, and recent or upcoming changes
- Organizational structure
  - Recent changes
- Third party use
  - Responsibility for compliance can't be delegated
- UDAP considerations
  - Clear and understandable terms and conditions

Ratings Systems

- There are no regulatory requirements to use a particular rating system.
- Ensure rating system enables conclusions to be consistent and based on logical rationale
- Different degrees of complexity based on the needs of the institution
  - Low-Moderate-High
  - One-to-Five

Rating System Example: One-to-Five

- Low Risk (1)
  - No major change, minimal growth, non-complex
- Limited Risk (2)
- Moderate Risk (3)
- Considerable Risk (4)
- High Risk (5)
  - New offering, high growth, complex products

Mitigating Inherent Risk: Controls

- Controls should
  - Perform a function that mitigates or reduces inherent risks that have been identified
  - Be automated or manual
  - Be preventative, not detective
  - Be designed to operate in an effective manner
  - Be integrated within the business lines

Evaluating Controls

- Designed effectively
  - How reliable is the control?
  - Will the control identify exceptions in every necessary instance?
  - What business lines or systems are covered by the control?
  - Can the control be easily circumvented?
- Operate effectively
  - How well does the control perform in practice?
  - Does it function as intended?
  - Are there periodic assessments of controls?

Example: Compliance Risk Matrix

Line of Business, Product or Service	Inherent Risk	Risk Controls	Residual Risk
Commercial Loans	Moderate	Satisfactory	Limited
Agricultural Loans	Limited	Satisfactory	Low
Consumer – Closed-End	Moderate	Satisfactory	Limited
Consumer – Open-End	Moderate	Satisfactory	Limited
RE – Portfolio	Moderate	Fair	Moderate
RE – Sec Mkt	Moderate	Fair	Moderate
Loans in SFHAs	Moderate	Satisfactory	Moderate
HMDA LAR	Moderate	Fair	Moderate
Deposit Operations	Limited	Satisfactory	Low
E-Banking	Limited	Satisfactory	Low
Aggregate Risk and Risk Control Assessment	Moderate	Satisfactory	Limited

Inherent and residual risks are categorized as Low, Limited, Moderate, Considerable or High;
Controls are characterized as Strong, Satisfactory, Fair, Marginal, or Unsatisfactory

Example: Effective Controls

- Residential Real Estate Lending
  - $250M institution
  - Non-MSA, fairly homogenous market area, large portions reside in designated flood zones
  - Some variable rate product offerings
  - Moderate inherent risk to institution
- Controls: Effective?
  - Automated loan documentation software
  - Secondary reviews
  - Written procedures for flood determination and insurance minimums
  - No worksheet to assist in calculation of insurance minimums
- What is the residual risk?

Controls: Other Considerations

- Trend of Risk
  - Increasing/Stable/Decreasing
- Compliance culture at bank
  - *Check the box* or *a part of the way business is done*
- Formality
  - Policies and procedures formal enough for bank size/structure
- Monitoring Systems
  - Do information systems enable the proper tracking

The opinions expressed in this presentation are intended for informational purposes, and are not formal opinions of, nor binding on, the Board of Governors of the Federal Reserve System.

Post Risk Assessment

- What should the institution do after its compliance risk assessment is established?
  - Prioritize compliance resource allocation based on findings
  - Maintain and update, as necessary, a summary of the institution's identified risks
  - Calculate the institution's consolidated risk profile
  - Integrate changes from new or changed products, services, regulations, and from new exam or audit findings
  - Re-evaluate risk measurements, controls, and levels on a periodic basis

The opinions expressed in this presentation are intended for informational purposes, and are not formal opinions of, nor binding on, the Board of Governors of the Federal Reserve System.

Understand Your Market: Fair Lending and CRA Considerations

- Level of controls necessary to mitigate reputational and monetary loss risks associated with ECOA, FHA, and CRA laws largely depend on the characteristics of the institutions market area and level of real estate lending
  - Presence of low- and moderate-income census tracts
  - High minority populations and/or majority-minority areas within market area

The opinions expressed in this presentation are intended for informational purposes, and are not formal opinions of, nor binding on, the Board of Governors of the Federal Reserve System.

Example: Fair Lending and CRA Considerations

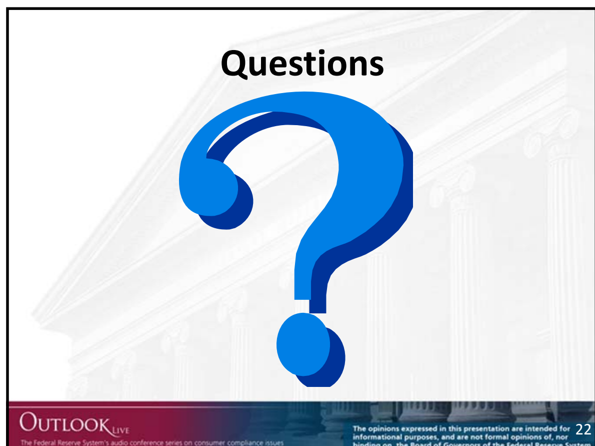
- Residential Real Estate Mortgage Department
  - $2B institution
  - Diverse multistate MSA, many majority-minority and LMI census tracts
  - Complex product offerings, including variable rate and government insured lending products
  - Secondary market lending channels, broker arrangements with local realtors
- What is the inherent risk?

Example: Fair Lending and CRA Considerations

- What controls are in place?
  - Automated underwriting and documentation systems
  - Secondary reviews of loan documentation before close
  - Detailed written loan policy and pricing guidelines
  - Documentation of exceptions
- What is the residual risk?
  - What controls, if added, would mitigate more risk?

Final Thoughts

- Risk Assessments tend to be more effective when they are:
  - Objective and honest
  - Supported by the board and senior management
  - Conducted by and potentially across business units
  - Dynamic (vs. static)
  - Less driven by checklists
  - Structured to consider the lifecycle of a product/service


Questions
OUTLOOK LIVE
The Federal Reserve System's audio conference series on consumer compliance issues
The opinions expressed in this presentation are intended for informational purposes, and are not formal opinions of, nor binding on, the Board of Governors of the Federal Reserve System.
22

Equal Credit Opportunity Act

Baseline Review Modules

Exam Date:	[Click&type]
Prepared By:	[Click&type]
Reviewer:	[Click&type]
Docket #:	[Click&type]
Entity Name:	[Click&type]

The Equal Credit Opportunity Act (ECOA) Baseline Review Modules will be used by examiners during ECOA baseline reviews to identify and analyze risks of ECOA violations, to facilitate the identification of certain types of ECOA and Regulation B violations, and to inform fair lending prioritization decisions for future CFPB reviews. ECOA baseline reviews are one type of fair lending review conducted by the CFPB, in addition to ECOA targeted reviews and Home Mortgage Disclosure Act (HMDA) reviews. An ECOA targeted review includes an in-depth look at a specific area of fair lending risk, and is conducted using the ECOA Examination Procedures within the CFPB Supervision and Examination Manual. A HMDA review includes transactional testing for HMDA data accuracy, and is conducted using the HMDA Examination Procedures within the CFPB Supervision and Examination Manual.

When a baseline review is scheduled, examiners will work with the Office of Fair Lending and with CFPB regional management to determine which ECOA Baseline Review Modules will be completed. Once the appropriate modules have been selected, and in advance of the review, examiners will send the institution information requests that correspond with the selected modules. In general, examiners will complete the modules during the on-site portion of the review. In some instances it may be possible for examiners to begin completing the modules prior to the on-site portion of the review. The completed modules will be included in the examination work papers and may be considered in conjunction with any fair lending statistical analysis to obtain a full picture of fair lending compliance and fair lending risks at the entity.

In addition to responses to information requests, examiners may review other sources of information to complete the modules, including publicly available information about the entity and information obtained at interviews or other supervisory meetings with the entity.

Where applicable, the modules include references to relevant Scoping Risk Factors in Part I of the Interagency Fair Lending Examination Procedures (e.g., O1, U1) or the Code of Federal Regulations (e.g., 12 CFR 1002.9). These references are included in parentheses at the end of specific steps.

Completion of these modules is not a determination of whether a violation of law exists.

TABLE OF CONTENTS

ECOA BASELINE REVIEW MODULES:		
Module I	**Fair Lending Supervisory History**	**Page: 4**
Module II	**Fair Lending Compliance Management System (CMS)**	**Pages: 5-6**
Module III	**Risks Related to Mortgage Lending Policies and Procedures**	**Pages: 7-10**
Module IV	**Risks Related to Mortgage Servicing**	**Pages: 11-12**
Module V	**Risks Related to Auto Lending**	**Pages: 13-15**
Module VI	**Risks Related to Other Products**	**Pages: 16-17**

ENTITY AND EXAMINER INFORMATION

Information on this page may be copied from the Scope Summary.

EXAMINATION SCOPE SUMMARY	
CFPB Docket #	[Click&type]
Name of Supervised Entity	[Click&type]
City, State	[Click&type]
Entity Website	[Click&type]
Organization Chart	[Insert or attach as pdf if available]
Number of Open Offices/Branches (including Main Office)	[Click&type]
Number of Agents (where applicable)	[Click&type]
Total Assets (where applicable)	$[Click&type]
Date of Total Assets (xx/xx/xxxx)	[Click&type]

EXAMINATION DATES	
Examination Start Date	[Click&type]
Completion Date	[Click&type]
Examination Period	[Click&type]
Anticipated Hours	[Click&type]

EXAMINATION TEAM		
Lead Regional Office	[Click&type]	
Regional Office(s) Participating in Examination	[Click&type]	
Name	**Role**	**Specialty**
[Click&type]	Examiner-in-Charge	[Click&type]
[Click&type]	Lead Examiner (if applicable)	[Click&type]
[Click&type]	Lead Examiner for Fair Lending (if applicable)	[Click&type]
[Click&type]	[Click&type]	[Click&type]
[Click&type]	[Click&type]	[Click&type]
[Click&type]	Fair Lending Contact	NA

MODULE I: FAIR LENDING SUPERVISORY HISTORY

Describe the entity's fair lending supervisory history. Include any history of fair lending violations, or any areas identified as fair lending risks either in the last fair lending examination report by the CFPB or any state or federal regulator, or new fair lending risks that have emerged since the last fair lending examination. For example:	
a. Provide the following information about fair lending compliance reviews for the past two years: i. The date and scope of fair lending examinations or other reviews conducted by the CFPB or any state or federal regulator; ii. A description of any ECOA or Regulation B violations identified; iii. A description of any fair lending risks identified, and iv. Any corrective actions required. (C4)	[Click&type]
b. Describe the entity's efforts to address these conclusions or concerns.	[Click&type]
c. Describe any fair lending issues self-identified by the entity, as well as efforts taken to address them.	[Click&type]
d. Identify any recent private litigation or federal or state agency investigation or enforcement action related to fair lending that may reflect a heightened fair lending risk at the entity.	[Click&type]
e. If the entity is subject to the Community Reinvestment Act (CRA), review the most recent CRA Public Evaluation (PE), and summarize any information related to fair lending risk (e.g., past fair lending violations, irregular assessment areas, or shortcomings in record of meeting the credit needs of the communities where it operates). The CRA PE generally is available on the prudential regulator's website and in the bank's public file. (R5, R9)	[Click&type]
f. If you have information about complaints alleging discrimination from any source (e.g., consumer complaints submitted to the CFPB or directly to the institution, or complaints to the CFPB from advocacy organizations), describe them here to the extent that they indicate heightened fair lending risk at the entity. Also describe any efforts taken by the institution to address the complaints. (U9, P5, S7, R11, M7)	[Click&type]
SUMMARY: [Click&type]	

MODULE II: FAIR LENDING COMPLIANCE MANAGEMENT SYSTEM (CMS)

Describe and evaluate the entity's fair lending compliance program, including management participation, policies and procedures, training, and internal controls and monitoring. You may copy information summarized in the current Risk Assessment for the entity. Address the following:	
a. Describe the entity's guidelines, policies, procedures and standards for fair lending compliance monitoring.	[Click&type]
b. Does the entity have an up-to-date fair lending policy? (C6)	[Click&type]
c. Does the entity have a fair lending committee or other governing body dedicated to fair lending issues? (C5)	[Click&type]
d. Does the entity have a dedicated fair lending officer? If not, who is responsible for fair lending compliance on a day-to-day basis? (C5)	[Click&type]
e. Describe fair lending training across the entity's business lines. Describe frequency, who participates, subject matter covered, and whether it includes recent changes in fair lending law and supervisory guidance. Include a description of training provided to the Board of Directors. (C7)	[Click&type]
f. Does the entity review major policies and procedures for fair lending compliance (e.g., underwriting, pricing, referral, broker or loan originator compensation policies)? Are all business lines included?	[Click&type]
g. Does the entity conduct fair lending audits or reviews? Are all business lines included? Have these audits or reviews been shared with the CFPB, and what were the results?	[Click&type]
h. Does the entity conduct fair lending statistical analysis? If so, describe the extent of the analysis, including lines of business, products, or other areas that the entity analyzed since the last fair lending examination, as well as the results.	[Click&type]

i. If the entity employs proprietary credit scoring models in any line of business, have the models been tested and reviewed by the entity for fair lending compliance? (O3)	[Click&type]
j. If the entity learns of fair lending violations or risks, does it take appropriate corrective action or other steps to mitigate risk?	[Click&type]
k. Has the entity updated its policies and procedures to reflect any recent changes in fair lending law and supervisory guidance? (C6)	[Click&type]
l. Does the entity use third-party vendors or sub-contractors to administer certain products or business lines that could pose fair lending risks to the entity's applicants or borrowers? If so, does the entity monitor and employ controls with respect to third-party vendors or sub-contractors?	[Click&type]
m. If there have been any major, recent changes in the entity's business or structure, such as an acquisition or development of a new product line, have steps been taken to evaluate and respond to fair lending risks created by the change?	[Click&type]
n. Describe the entity's procedures for responding to complaints alleging discrimination. (U9, P5, S7, R11, M7)	[Click&type]
SUMMARY: [Click&type]	

MODULE III: RISKS RELATED TO MORTGAGE LENDING POLICIES AND PROCEDURES

1. Describe policies and procedures for mortgage underwriting. Address the following topics:	
a. Is mortgage underwriting automated or manual? Are underwriting decisions based on specific, objective and defined criteria, such as credit scores, debt-to-income ratios, and loan-to-value ratios? Are there written underwriting policies or procedures? If underwriting policies or procedures are unwritten, how are they conveyed to employees? How does the entity ensure consistent application of the policies? (U4)	[Click&type]
b. What guidelines are provided for making and documenting underwriting overrides and/or exceptions? (U5, U6)	[Click&type]
c. How frequently do underwriting overrides and/or exceptions occur? (U7)	[Click&type]
d. Evaluate whether compensation structures include incentives that depend on the product sold or volume of certain types of products sold. Describe controls for compliance with provisions in Regulation Z on loan originator compensation and steering (12 CFR 1026.36(d)(1)-(2) and (e)), or other measures that will help to mitigate potential risks of ECOA violations due to incentive compensation. (U8, S2)	[Click&type]
e. Do underwriting policies or procedures vary on a prohibited basis (e.g., stricter income requirements for elderly or younger applicants or for unmarried versus married applicants)? (O1)	[Click&type]
f. Do underwriting policies or procedures contain factors that could have a disproportionately negative, unjustified impact on a prohibited basis (e.g., requiring a minimum loan amount, or restricting types of properties as collateral)?	[Click&type]
g. To what extent does the entity rely on third parties for underwriting decisions? What fair lending monitoring and controls are in place with respect to third parties?	[Click&type]

h. Does the entity have any form of second-level review of proposed denials? If so, what are the criteria for second-level reviews?	[Click&type]
2. Describe policies and procedures for mortgage pricing. Address the following topics:	
a. Are pricing decisions based on specific, objective and defined criteria, such as credit scores and loan-to-value ratios? Are there written pricing policies or procedures? If pricing policies or procedures are unwritten, how are they conveyed to employees? How does the entity ensure consistent application of the written or unwritten pricing policies or procedures? (P3)	[Click&type]
b. Does the entity use rate sheets? If so, what criteria are incorporated into the rate sheets? Do rate adjustments vary on a prohibited basis (e.g., a prohibited use of age or marital status)? (O1)	[Click&type]
c. Describe any pricing policies or procedures that contain factors that could have a disproportionately negative, unjustified impact on a prohibited basis (e.g., pricing policies that vary by zip code)?	[Click&type]
d. Does the entity vary fees based on prohibited basis characteristics? (P4)	[Click&type]
e. Describe any opportunities for employees to deviate (either up or down) from standard pricing with respect to interest rates, fees, or any other pricing element. If applicable, how does the entity monitor the use of pricing discretion? (P2)	[Click&type]
f. What are the guidelines for making pricing exceptions? How are exceptions documented? How frequently do exceptions occur? (P2)	[Click&type]
g. Does the entity provide borrowers with higher-cost products based on specific, objective and defined criteria, or are there opportunities for employee discretion when providing such products? (S1)	[Click&type]
h. Does the entity provide a means to upgrade borrowers with higher-cost products to lower-cost categories, as appropriate? If yes, please describe.	[Click&type]

i. Evaluate compensation structures for incentives that depend on the price or other terms of the loan transaction, or proxies for the same. Describe steps taken to comply with provisions in Regulation Z on loan originator compensation or other measures that will help mitigate potential risks of ECOA violations due to incentive compensation. (12 CFR 1026.36(d)(1)-(2)). (P1)	[Click&type]
j. To what extent does the entity rely on third parties for pricing decisions? What fair lending monitoring and controls are in place with respect to third-party pricing?	[Click&type]
k. Does the entity use automated pricing models? If so, do the models include a prohibited basis (e.g., a prohibited use of age), a close proxy for a prohibited basis (e.g., whether the applicant is retired), or a factor or variable that could cause a disproportionately negative, unjustified impact on a prohibited basis (e.g., zip code)? How does the entity validate these models?	[Click&type]
3. Describe the entity's markets or other aspects of its mortgage credit operations not covered in subsections (1) or (2) above. Address the following:	
a. Evaluate whether the entity's operations vary by any prohibited basis or by geography in a manner that, alone or in conjunction with other factors, may indicate a heightened fair lending risk. For example: i. Does the entity establish most full-service branches or prime retail operations in predominantly non-minority neighborhoods, while concentrating retail operations with higher-cost products in minority areas? (R7, R12, S8) ii. Are there advertising or other operating patterns or practices that a reasonable person would believe indicate that certain customers are either more or less desirable due to prohibited basis characteristics? (M1, M2) iii. Does the entity use mailing or other distribution lists that consider prohibited bases or exclude or disfavor certain geographies in a manner that, alone or in conjunction with other factors, may indicate heightened fair lending risks? (M4 and M5)	[Click&type]

b. Evaluate whether CRA assessment areas or other demarcations used for marketing or other purposes exclude political subdivisions, census tracts, or other geographic areas that have relatively high concentrations of minority residents. (R6, R9, and M4)	[Click&type]
c. If applicable, note any employee statements that reflect preferences as to areas in which to do business, including preferences concerning business in areas with relatively high concentrations of minority residents. (R10)	[Click&type]
d. Does the entity use third-party vendors that selectively serve particular prohibited basis groups or geographic areas in a manner that could create heightened fair lending risks? (M3)	[Click&type]
e. Are policies and procedures for referring applicants to subsidiaries, affiliates or lending channels based on specific, objective and defined criteria? Describe opportunities for discretion. Describe controls for compliance with the steering provisions in Regulation Z. (12 CFR 1026.36(e)) (S1)	[Click&type]
f. Do any marketing practices present a risk of discouraging potential applicants on a prohibited basis? (M1)	[Click&type]
g. Do the entity's marketing practices, such as mail, email or social media advertising or telemarketing, target prohibited basis groups for less advantageous products in a manner that creates fair lending risks?	[Click&type]
SUMMARY: [Click&type]	

MODULE IV: RISKS RELATED TO MORTGAGE SERVICING

Describe policies and procedures for mortgage servicing as they relate to fair lending. At a minimum, your description should address the following topics, as applicable:	
a. Describe the institution's fair lending training to loss mitigation staff regarding mortgage servicing (loss mitigation can consist of loan modifications, forbearance, short-sales, etc.). (C7)	[Click&type]
b. Describe any loss mitigation policies or procedures that vary on a prohibited basis (e.g., a prohibited use of age, or marital status). (O1)	[Click&type]
c. Describe any loss mitigation policies or procedures that contain factors that could have disproportionately negative, unjustified impact on a credit decision on a prohibited basis (e.g., outreach policies that vary by geography in a manner that could negatively impact minority neighborhoods).	[Click&type]
d. Describe any fair lending audits, reports or analyses conducted by the institution or third-party service providers on the institution's loss mitigation programs and/or data. In the description, include any significant issues found and the institution's response.	[Click&type]
e. Describe the institution's policies and procedures for servicing loans held by borrowers with limited English proficiency (LEP borrowers) including the following information: i. Does the institution flag files that require non-English language assistance? If so, how is this flagged? ii. Do calls for customer service have an option for languages other than English? If so, how are those calls processed? iii. Does the institution have customer service personnel available to provide assistance in languages other than English? iv. If customer service personnel are available to provide assistance in languages other than English, are they dedicated customer service personnel (as opposed to personnel who have other roles, but are available to	[Click&type]

translate on an as-needed basis)? v. Do customer service personnel who are available to provide assistance in languages other than English receive the same training, and have the same authority, as other customer service personnel? vi. Are translations of English language documents provided for LEP borrowers?	
f. Describe the institution's policies and procedures on employee discretion in making loss mitigation decisions, including: i. The extent to which employees have discretion in referring borrowers to an underwriter to conduct a loss mitigation evaluation; ii. The extent to which employees have discretion in approving or denying loss mitigation options; iii. The extent to which employees have discretion in offering different loss mitigation options to consumers; iv. The extent to which employees have discretion in assessing fees in connection with loss mitigation; v. Any limits, controls or monitoring concerning the exercise of discretion in loss mitigation, including any resulting reports.	[Click&type]
g. Where appropriate, do applicants receive adverse action notices as required by Regulation B? (12 CFR 1002.9(a)(2))	[Click&type]
SUMMARY: [Click&type]	

MODULE V: RISKS RELATED TO AUTO LENDING

Describe policies and procedures for pricing, underwriting, referrals, loan originator, dealer and other third-party compensation in both direct auto lending and indirect auto lending. At a minimum, your description should address the following topics, as applicable:	
a. Describe the extent to which key elements of the entity's fair lending compliance systems (e.g., training, monitoring and controls, fair lending audits and analysis) extend to its auto lending lines of business.	[Click&type]
b. Are policies, procedures or guidelines based on specific, objective and defined criteria (e.g., credit score or other credit history, income or length of employment), with respect to: i. Underwriting; ii. Pricing; iii. Referring applicants to subsidiaries, affiliates or lending channels within the entity; iv. Providing borrowers with higher-cost products; v. Deciding what alternative loan products should be offered or recommended to applicants.	[Click&type]
c. Describe any guidelines provided for making underwriting or pricing exceptions or overrides. How are the reasons for exceptions and overrides documented? How frequently do they occur?	[Click&type]
d. Does the entity provide a means to upgrade higher-cost borrowers to a lower-cost category (i.e., tier bumps)? If yes, please describe.	[Click&type]
e. (*For entities with **indirect** auto lending*) Describe under what circumstances dealers are permitted to deviate up or down from the "buy rate" (i.e., the best rate for which an applicant for an indirect auto loan qualifies based on objective characteristics), and how this affects dealer compensation.	[Click&type]
f. (*For entities with **indirect** auto lending*) Are there caps or other limits on dealers' discretion to go above or below the buy rate? If yes, describe.	[Click&type]

g. (*For entities with* ***indirect*** *auto lending*) Describe any controls that are in place to prevent auto dealers from exercising discretion in a way that discriminates on a prohibited basis in underwriting, pricing (including controls on either interest rates or fees) or referrals between products. How does the entity monitor compliance?	[Click&type]
h. (*For entities with* ***direct*** *auto lending*) Describe under what circumstances loan officers who are engaged in direct auto lending are permitted to deviate from the par rate (i.e., the best rate for which the applicant for a direct auto loan qualifies based on objective characteristics), and how this deviation affects loan officer compensation.	[Click&type]
i. (*For entities with* ***direct*** *auto lending*) Are there caps or other limits on loan originator pricing discretion to go above or below the par rate? If yes, describe.	[Click&type]
j. (*For entities with* ***direct*** *auto lending*) Describe any guidelines provided for making underwriting or pricing exceptions in the direct auto lending lines of business. How are the reasons for exceptions documented? How frequently do exceptions occur?	[Click&type]
k. (*For entities with* ***direct*** *auto lending*) Do any compensation structures for employees involved with direct auto lending depend on product type, price (including both interest rates and fees), or loan volume? If yes, describe.	[Click&type]
l. Do credit operations vary by a prohibited basis, or by a factor that is closely related to a prohibited basis? For example: i. Does pricing, underwriting, or marketing vary in a manner that excludes, discourages or treats borrowers differently on a prohibited class basis? ii. Does the entity use third-party vendors that selectively serve only one racial or national origin group in a manner that could create heightened fair lending risks? iii. Does the entity explicitly exclude or discourage lending in geographic areas with high concentrations of residents of a	[Click&type]

particular racial or national origin group? iv. Does the entity vary fees based on a prohibited basis?	
m. Describe any underwriting, pricing, or other policies or procedures that contain factors that could have a disproportionately negative, unjustified impact on a prohibited basis (e.g., stricter credit policies for certain zip codes).	[Click&type]
n. Note any employee statements that reflect preferences as to areas in which to do business, including preferences concerning business in areas with relatively high concentrations of minority residents.	[Click&type]
o. Does the entity use a credit scoring system? If so, does the system include a prohibited basis (e.g., a prohibited use of age), a factor that is closely related to a prohibited basis (e.g., whether the applicant is retired), or a facially neutral factor or variable that could cause a disproportionately negative, unjustified impact on a prohibited basis (e.g., zip code)?	[Click&type]
p. Do any marketing practices present a risk of discouraging potential applicants on a prohibited basis?	[Click&type]
q. Do the entity's marketing practices, such as mail, email or social media advertising or telemarketing, target prohibited basis groups for less advantageous products in a manner that creates fair lending risks?	[Click&type]
SUMMARY: [Click&type]	

MODULE VI: RISKS RELATED TO OTHER PRODUCTS

Note: Answer with respect to any additional products selected for the Baseline Review (e.g., secured or unsecured consumer lending, credit cards, add-on products, private student lending, payday lending or small business lending)	
[In this Space, Identify the "Other" Product Line(s) Included in Review]	
Describe policies and procedures for pricing, underwriting, referrals, compensation, marketing, and other lending operations as they relate to fair lending risks. At a minimum, your description should address the following topics, as applicable:	
a. Are policies, procedures or guidelines based on specific, objective and defined criteria (e.g., credit history, income) with respect to: i. Underwriting; ii. Pricing or other terms or conditions; iii. Referring applicants to subsidiaries, affiliates or lending channels within the entity; iv. Classifying applicants as higher-cost or lower-cost borrowers; and v. Deciding what alternative loan products should be offered or recommended to applicants.	[Click&type]
b. How are policies, procedures and guidelines communicated to employees? Are they written? If not, how are they conveyed? How does the entity ensure consistent application of the policies?	[Click&type]
c. Does the entity use a credit scoring system? If so, does the system include a prohibited basis (e.g., a prohibited use of age), a close proxy for a prohibited basis (e.g., whether the applicant is retired), or a facially neutral factor or variable that could cause a disproportionately negative, unjustified impact on a prohibited basis (e.g., zip codes)?	[Click&type]
d. To what extent is underwriting model- or score-driven vs. judgmental? Describe any opportunities for employees to override automated underwriting results. How frequent are overrides/exceptions?	[Click&type]

e. Under what circumstances do employees have discretion to decide which products to offer, whether to approve or deny the applicant, or the price or other terms or conditions (e.g., secured versus unsecured, loan amount, interest rate, or fees)?	[Click&type]
f. What guidelines are provided for making underwriting or pricing exceptions or overrides? How are the reasons for exceptions or overrides documented? How frequently do they occur?	[Click&type]
g. Evaluate employee compensation structures for incentives that depend on the product sold, price (including both interest rates and fees), or volume of certain types of products sold. Does the structure of compensation present any potential fair lending risks?	[Click&type]
h. Do underwriting, pricing, or other policies or procedures vary on a prohibited basis? For example: i. Does pricing, underwriting, or marketing vary in a manner that excludes, discourages or treats borrowers differently on a prohibited class basis? ii. Does the entity use third-party vendors that selectively serve particular racial or national origin groups in a manner that could create heightened fair lending risks? iii. Does the entity vary fees based on a prohibited basis?	[Click&type]
i. Do applicants receive adverse action notices as required by Regulation B? (12 CFR 1002.9(a)(2))	[Click&type]
j. Do underwriting, pricing, collection or other policies or procedures contain factors that could have a disproportionately negative, unjustified impact on a prohibited basis (e.g., consideration of zip code or other non-individualized factors in underwriting models or credit policies)?	[Click&type]
k. Do any marketing practices present a risk of discouraging potential applicants on a prohibited basis?	[Click&type]

1. Do the entity's marketing practices, such as mail, email or social media advertising or telemarketing, target prohibited basis groups for less advantageous products in a manner that creates fair lending risks?	[Click&type]
SUMMARY: [Click&type]	

NCUA's Fair Lending Compliance Program

April 4, 2013

Letter to Federal Credit Unions 13-FCU-02

- Restates NCUA's policy on the fair lending compliance program
- Explains criteria for selecting federal credit unions for a fair lending examination or offsite supervision contact
- Announces new fair lending educational and compliance tools

Fair Lending Laws

Equal Credit Opportunity Act

- Enacted in 1974
- Make credit available with fairness, impartiality, and without discrimination
- Applies to firms engaged in the extensions of credit

Fair Lending Laws

Equal Credit Opportunity Act

- Prohibits discrimination in any aspect of a credit transaction including collections
- Prohibits discrimination based on race or color, national origin, religion, sex, marital status, age, an applicant's receipt of income from a pubic assistance program, or an applicant's exercise of rights under the Consumer Credit Protection Act

Fair Lending Laws

Fair Housing Act

– Makes it unlawful for any lender to discriminate 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
  - Selling or renting a dwelling

Fair Lending Laws

Fair Housing Act

- Prohibits discrimination based on:
  - Race or color
  - National origin
  - Religion
  - 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)
  - Handicap

Fair Lending Laws

Home Mortgage Disclosure Act

– Requires lenders to provide the public with loan application data that can be used to:
  - Help determine whether lenders are serving the housing needs of their communities
  - Assist public officials in distributing public-sector investment to attract private investment to areas where it is needed
  - Assist in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes

Fair Lending Laws

Home Mortgage Disclosure Act (HMDA)

— Lenders meeting the following criteria by December 31 of the preceding year must file a HMDA report:

- Exceeded the asset threshold
- Had a home or branch office in a Metropolitan Statistical Area
- Originated at least one home purchase loan or refinancing of a home purchase loan secured by a first lien on a one-to-four-family dwelling

Fair Lending Laws

NCUA Nondiscrimination Requirements

— With regard to real estate-related loans, prohibits federal credit unions from, among other things:

- Engaging in lending practices that discriminate or have the effect of discriminating on the basis of race, color, national origin, religion, sex, handicap, or familial status (having children under the age of 18)
- Using an appraisal if it knows or should know the appraisal is based on a prohibited basis
- Engaging in advertising that indicates discrimination on a prohibited basis

NCUA Fair Lending Guide

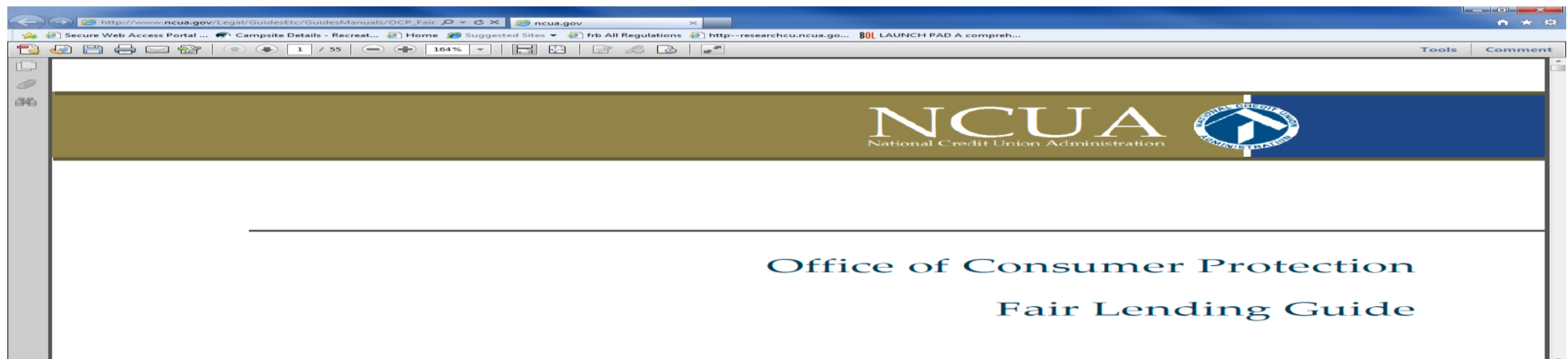
The Fair Lending Guide can assist you in developing or evaluating your credit union's fair lending compliance program. The Guide includes:

- Overview of fair lending laws and regulations
- Credit union operational requirements
- Issues to consider when developing a fair lending compliance program
- Checklists for testing compliance with laws and regulations or developing a fair lending policy

NCUA Fair Lending Guide

The Fair Lending Guide can be downloaded at:

http://www.ncua.gov/Legal/GuidesEtc/GuidesManuals/OCP_FairLendingGuide.pdf



Fair Lending Best Practices

- Develop written fair lending policies and procedures
- Identify your risks by conducting periodic fair lending risk assessments
- Develop a fair lending program based on the results of your risk assessment
- Stay current on fair lending developments

Fair Lending Best Practices

- NCUA developed:
  - Fair Lending Best Practices
  - Frequently Asked Questions and Answers
- Available at

http://www.ncua.gov/Resources/Pages/Fair-Lending-Compliance-Resources.aspx

NCUA Fair Lending Compliance Program

- Some federal credit unions will be selected for a fair lending examination or an offsite supervision contact
- Federal credit unions selected have demonstrated the potential for higher fair lending risk
- OCP will provide advance written notification of the exam or offsite supervision contact

NCUA Fair Lending Compliance Program

Selection Criteria

- HMDA reports
- Fair lending violations
- General compliance risks
- Volume, types(s), or complexity of the products and services offered, types of communities served
- Whether the federal credit union has been the subject of lending discrimination complaints

NCUA Fair Lending Compliance Program

Offsite Supervision Contacts

- Federal credit unions meeting the selection criteria <u>and</u> that are **not** HMDA outliers
- Used to:
  - Determine whether a credit union has adequate policies, procedures, and internal controls to ensure compliance with fair lending laws and regulations
  - Educate credit unions on fair lending and consumer protection laws

NCUA Fair Lending Compliance Program

Offsite Supervision Contact Procedures

- Review of policies, procedures, audit or verification assessments (or both), and compliance assessments
- Evaluate accuracy of the HMDA report, if applicable
- Issue written and oral reports of the results, including recommendations

NCUA Fair Lending Compliance Program

Fair Lending Examinations

— Federal credit unions meeting the selection criteria and that **are** HMDA outliers

— Used to:

- Enforce credit union compliance with fair lending laws and to strengthen credit unions' fair lending program s
- Educate credit unions on fair lending and consumer protection laws

NCUA Fair Lending Compliance Program

Fair Lending Examination Procedures

- Based on Federal Financial Institutions Examination Council (FFIEC) Interagency Fair Lending Examination Procedures
- Procedures are available on the FFIEC website at www.ffiec.gov/PDF/fairlend.pdf and www.ffiec.gov/PDF/fairappx.pdf

NCUA Fair Lending Compliance Program

Fair Lending Examination Procedures

- Review of policies, procedures, systems, audit/verification assessments, and compliance risk management
- Review of mortgage loans, indirect loans, credit card loans, business loans, or any other type of consumer loan
- Verify accuracy of HMDA data
- Conduct onsite meeting and provide written report

References

- NCUA Nondiscrimination Requirements, 12 CFR § 701.31
- NCUA Letter to Federal Credit Unions 13-FCU-02 (March 2013)
- Federal Financial Institutions Examination Council (FFIEC) Interagency Fair Lending Examination Procedures (August 2009)
- FFIEC Policy Statement on Discrimination in Lending (1994)
- NCUA Fair Lending Guide (March 2013)
- NCUA HMDA Webinar (January 24, 2013)

Office Contact Page

Feel free to contact our office with questions or comments:

Office of Consumer Protection

Division of Consumer Compliance Policy and Outreach
ComplianceMail@ncua.gov

Office Phone: 703-518-1140