Fair Lending and Related Mortgage Updates:
State, County and Municipal Regulation and Litigation

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Fair Lending and Related Mortgage Developments and Trends: An Update for Mortgage Lenders, Bankers, and Attorneys

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What may we expect over the next few years, with regard to new or increased focus on fair lending and related residential mortgage issues?

1. **Continuing state, county and municipal regulation and litigation**, focused on containing and mitigating **neighborhood blight** that allegedly arose in part due to "reverse redlining", improper underwriting, and "unfair" loan terms, resulting in concentrations of vacant foreclosed properties in certain neighborhoods.

a. The June 2009 U.S. Supreme Court decision in Cuomo v. Clearing House Association, 557 U.S. 519, 129 S.Ct. 2710, gave states the "green light" to enforce substantive state fair lending and anti-discrimination laws in court against national banks (and, by implication, other federally-chartered banks).[1] Six years later, in Texas Department of Housing and Community Affairs v. Inclusive Communities Project, 135 S.Ct. 2507 (2015), the U.S. Supreme Court held that a federal Fair Housing Act violation could be established with **statistical evidence** of an adverse, disparate impact against individuals belonging to protected classes (such as persons belonging to certain racial or ethnic groups), if the plaintiff also establishes that "a defendant's policy or policies caus[es] that disparity." "[S]tatistical evidence demonstrating a **causal connection**" between the challenged policy or policies and the disparate impact against members of protected classes may be used for this purpose. If the plaintiff meets these initial evidentiary requirements, the defendant may successfully defend

[1] See also, e.g., USAA Federal Savings Bank v. Pennsylvania Human Relations Commission, 2011 WL 3715113 (E.D. Pa. 2011) (42 USC Section 3610(f) authorizes U.S. Department of Housing and Urban Development (HUD) to refer a mortgage loan applicant's federal Fair Housing Act complaint against a federally-chartered mortgage lender to a HUD-certified state anti-discrimination agency for investigation; such an investigation does not impermissibly subject the federally-chartered lender to state investigation and enforcement of federal Fair Housing Act complaints). See also subsection 1.f. below (OCC does not regard general state anti-discrimination laws as preempted by the National Bank Act).

the challenged policy by "prov[ing] it is necessary to achieve a valid interest." (This is similar, but not identical, to the anti-discrimination standard in Regulation B (Equal Credit Opportunity Act). See, e.g., Official Staff Comment 2 to 12 CFR Section 1002.6(a), noting that a facially neutral creditor practice "that is discriminatory in effect because it has a disproportionately negative impact on a prohibited basis" is permissible if "the creditor practice meets a legitimate business need that cannot reasonably be achieved by means that are less disparate in their impact.") On remand to the trial court, the plaintiff's Fair Housing Act claim against the Texas Department of Housing and Community Affairs was dismissed, due to the plaintiff's failure to identify a causal connection between a specific policy of that Department (concerning the Department's allocation of certain low-income housing tax credits) and a statistically significant disparity in the location of low-income housing units that receive those credits. (See 2016 WL 4494322, ___ F.Supp.3d ___ (N.D. Tex. 2016).) See also Section 1.b. below.

Proving a causal connection between a mortgage lender's (or servicer's) policy or practice and an adverse, disparate impact on certain mortgage borrowers (based on race, ethnicity, or other protected characteristics) could be somewhat easier than proving a causal connection with a governmental entity's housing-related policy or practice. Mortgage loan origination (and servicing) practices are perhaps more standardized and better documented than governmental agency grant and tax credit housing program policies. In addition, applicants who are turned down for credit generally should receive adverse action notices that explain the primary reasons for their credit denials, which helps connect an underwriting requirement with a potentially statistically disparate impact on certain applicants based on one or more protected characteristics. Jurisdictions with electronic (online) residential foreclosure databases may be motivated to analyze (or to have third parties analyze) foreclosure statistics for possible geographic "redlining" or other trends, using U.S. Census Bureau and other data. Expanded Home Mortgage Disclosure Act (HMDA) data (available on/after late March 2019 for calendar year 2018 reporting entities) also may facilitate more robust statistical analysis of mortgage loan originations. (See also Sections 1.g. and 4 below.)

b. Successful plaintiffs may seek actual and punitive damages for proven Fair Housing Act violations. (See 42 USC Section 3613(c).) In a May 2017 Fair Housing Act decision of the U.S. Supreme Court (Bank of America v. City of Miami, 197 L.Ed.2d 678, 137 S.Ct. 1296 (May 2017)), the Court held that the City of Miami must be able to demonstrate that the mortgage lending and related decisions and acts of Bank of America Corporation alleged to have violated the federal Fair Housing Act "proximately caused" the City's claimed damages, including reduction in its residential property tax base (due to loss of property values in predominantly minority neighborhoods with foreclosed and vacant properties) and increased expenses associated with vacant property maintenance. "Proximate cause" requires proving more than the fact that the reduction in the property tax base and increased costs associated with vacant property maintenance were a reasonably foreseeable consequence of Bank of America Corporation's alleged unlawful actions (including alleged predatory lending practices that resulted in disproportionate foreclosures in certain predominantly minority neighborhoods). Instead, "proximate cause" requires "some direct relation between the injury asserted and the injurious conduct alleged." However, the United States Supreme Court did not provide additional guidance on this "proximate cause" issue, leaving it to the trial court's initial determination.

In May 2019, the U.S. Court of Appeals for the Eleventh Circuit ruled that the City of Miami had sufficiently alleged a direct causal connection and direct relationship between defendant mortgage lenders' alleged "redlining" (refusing to extend credit in certain predominantly minority neighborhoods) and "reverse redlining" (offering credit, including the opportunity for loan modifications or refinancings, on less favorable terms in certain predominantly minority neighborhoods) and a substantial reduction to the city's property tax base in the affected neighborhoods. However, the Court of Appeals held that the City of Miami had not alleged a sufficiently direct causal connection between the defendants' allegedly predatory lending practices (which resulted in a high number of foreclosures and vacant and blighted properties) and the City's increased expenses for police, fire, sanitation and other services in connection with properties that went into foreclosure. See City of Miami v. Wells Fargo & Co. et al., 923 F.3d 1260 (11th Cir. May 3, 2019).

In the next several years, trial courts (and juries) will be providing additional guidance on how to calculate Fair Housing Act damages that are "proximately caused" by a mortgage lender's or servicer's acts. (In addition to the City of Miami's pending cases against several large mortgage lenders, several other municipalities also have similar pending cases and are collaborating with each other, sharing litigation strategy. See, e.g., the Multi-City Litigation Working Group on Foreclosures under the auspices of the International Municipal Lawyers Association - for additional information, see http://www.imla.org/foreclosure-litigation-working-group.) See also Sections 1.i.(ii) and (iii) and 7.e. below.

c. Nonprofit organizations and law school faculty-supervised clinics (and similar faculty-supervised programs or projects) may provide governmental entities with useful litigation assistance. See, e.g., Miami Valley Fair Housing Center v. The Connor Group, 2015 WL 4474854, __ F.Supp.3d__ (S.D. Ohio 2015), where a nonprofit fair housing organization sued the owner of an apartment building for advertising that its one-bedroom apartments "are a great bachelor pad for any single man looking to hook up." A jury was asked to determine what damages incurred by the nonprofit organization were "proximately caused" by this advertisement. (An earlier jury trial determined that the advertisement violated federal and state fair housing laws, by discriminating on the basis of gender and familial status.) Proximate damages could include "damages for diversion of its resources and frustration of its mission. Time spent attempting to combat the discriminatory effects of an advertisement pulls employees away from efforts to combat other housing discrimination in the community. Therefore, regardless of the nature of the task, Plaintiff may recover damages if it proves that the action it took was fairly traceable to the posting of the advertisement." "This jury is being asked to determine whether each line-item of damages claimed by Plaintiff is fairly traceable to this one specific advertisement."[2]

[2] See also Cobb County v. Bank of America Corp., 183 F.Supp.3d 1332 (N.D. Ga. 2016) (complaint originally filed in November 2015 (pre-dating the U.S. Supreme Court's decision in Bank of America v. City of Miami) where the plaintiff counties sought damages under the Fair Housing Act for (inter alia) "organizational harm to Plaintiffs' departments and authorities because Defendants' conduct forced and continues to force reallocation of Plaintiffs' limited financial and human resources to address the harms Defendants' actions have caused" and "out-of-pocket costs relating to abandoned or vacant properties." (See also Section 7.e. below.)

Also note that nonprofit organizations may use "testers" to obtain evidence of Fair Housing Act violations, and may seek reimbursement for damages such as "staff time and other resources to investigate and respond to [defendants'] discriminatory practices, which diverted resources away from other [Fair Housing] activities." See, e.g., Fair Housing Justice Center, Inc. v. Allure Rehabilitation Services LLC, __ F.Supp.3d __, 2017 WL 4297237 (E.D.N.Y. 2017) ("Fair Housing conducts investigations wherein individuals posing as prospective renters, home buyers or residents ('testers') attempt to uncover discriminatory practices. [...] Over a period of months, the testers visited and called defendants' facilities purportedly on behalf of deaf relatives seeking housing. The testers inquired about the availability of ASL interpreters and translators at the facilities. The complaint alleges that each of the named defendants told testers that the facilities did not employ ASL interpreters and would not make any available for deaf residents.").

Damages may also be awarded for emotional distress and humiliation. See, e.g., Moye v. The Conifer Group, 2016 WL 4010025 (D. Ore. 2016) (stating that 42 USC Section 3613(c)(1) allows "reasonable compensation for emotional distress and humiliation;" the court awarded the plaintiff in this case $15,000 for "emotional distress and humiliation caused by Defendant's unlawful, racially discriminatory conduct" and no punitive damages) and United States v. Balistrieri, 981 F.2d 916 (7th Cir. 1992) (upholding jury award of $2,000 to each individual plaintiff "tester" as compensation for emotional distress "suffered upon finding out they had been discriminated against").

d. 42 USC Section 3613(c)(2) allows prevailing plaintiffs (other than the United States) to recover "a reasonable attorney's fee and costs." Settlement discussions concerning attorneys' fees payable to plaintiffs also should take into consideration the April 2010 U.S. Supreme Court decision in Perdue v. Kenny A., 559 U.S. 542 (copy available at http://www.supremecourt.gov/opinions/09pdf/08-970.pdf), discussing circumstances when attorneys' fees may appropriately be "enhanced" to an amount greater than a reasonable hourly rate multiplied by a reasonable number of hours worked.

e. County and municipal governmental entities may enact ordinances that avoid conflict with state laws limiting such entities' powers to purely local matters - for instance, by enacting ordinances that require municipalities to consider the mortgage loans made and serviced by a financial institution when evaluating the institution's eligibility for certain municipal contracts. Local governmental entities also may try to persuade state officials (including state treasurers) to withdraw state funds from depository institutions perceived as engaging in unfair lending practices. California, Minnesota, Rhode Island, and Texas are examples of states that require state government funds to be deposited with depository banks that have received at least a "satisfactory" Community Reinvestment Act (CRA) rating and meet certain other requirements. (See Cal. Gov. Code Section 16500, Minn. Stat. Section 9.031 subdiv. 13, RI Stat. Section 35-4-4.3 (including a preference for depositories that have been rated "outstanding"), and Tex. Gov. Code Section 404.0212.) Certain municipalities have also expressed a preference for entering into contracts with lenders that have received "Outstanding" CRA ratings. (A consortium of California towns known as the Contra Costa consortium is alluded to by the CFPB at 80 Fed. Reg. 66128, 66148 and n. 138 (October 28, 2015) as one example.) (See also Section 5 below.)

f. States and other governmental entities, including regulators, will continue to pursue claims of unfair or deceptive mortgage lending or servicing practices, and seek appropriate equitable and monetary relief under statutes prohibiting unfair or deceptive trade practices. Federally-chartered banks are subject to federal laws prohibiting unfair and deceptive trade practices, and case law indicates such banks may also be subject to state laws prohibiting such trade practices. (See also footnote 1 above and accompanying text.) The OCC takes the position that federal law does not preempt general state fair lending laws (as opposed to state laws that specifically restrict certain loan products or loan terms). (See, e.g., 12 CFR Section 7.4008(c) and (e)(8), Appendix C to 12 CFR Part 30, and Appendix A to OCC News Release 2010-39, copy available at https://www2.occ.gov/news-issuances/news-releases/2010/nr-occ-2010-39c.pdf. See also 12 CFR Section 160.2 (applying the same general federal preemption rules to federal savings associations' lending activities).) 12 USC Section 5552 includes provisions permitting states to commence civil actions to enforce violations of Consumer Financial Protection Bureau regulations (including without limitation 12 CFR Parts 1002, 1014 and 1026).

The Consumer Financial Protection Bureau's examination procedures for unfair, deceptive, or abusive acts or practices (UDAAPs) may be a useful resource to other regulators, government officials, and potential plaintiffs. In the areas of mortgage originations and servicing, the examination procedures indicate that examiners will look at such things as consumer complaints (as evidence of possible widespread consumer misunderstanding of how a certain product or service functions), and whether consumers reasonably relied on the lender or servicer to act in the consumers' interest. (See also Section 6 below.)

g. When expanded Home Mortgage Disclosure Act (HMDA) data becomes available for analysis in 2019 and later years (including information about applicant and borrower ethnicity, credit scores, mortgaged property appraised values, debt-to-income and loan-to-value ratios, and credit denial reasons - see Section 4 below), there may be renewed interest in pursuing claims of statistically disparate (adverse) impact on applicants and borrowers possessing certain protected characteristics or belonging to certain protected classes (e.g., race or ethnicity of the applicant or borrower, or the mortgaged property being situated in a low- or moderate-income census tract or possessing other characteristics not typically found in higher-income census tracts).[3]

h. See also federal Interagency Fair Lending Examination Procedures (August 2009), copy available at https://www.ffiec.gov/pdf/fairlend.pdf (see also Appendix at https://www.ffiec.gov/pdf/fairappx.pdf). The interagency procedures note that statistically adverse impact on members of protected classes through the objective and neutral "reliance on credit reports or use of debt-to-income ratio" may be permissible if "consistent with industry standards and with a prudent evaluation of credit risk."

i. Analysis of underwriting procedures and data by governmental entities and plaintiffs (including nonprofit organizations) also may focus on refusals to consider certain types of income. The federal Equal Credit Opportunity Act (ECOA) specifically prohibits discriminating against a credit applicant "because all or part of the applicant's income derives from any public assistance program." (See 15 USC Section 1691(a)(2)

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[3] Recall that federal bank regulatory agencies are required to refer cases of suspected "pattern or practice of discouraging or denying applications for credit" in violation of the federal Equal Credit Opportunity Act to the U.S. Attorney General. (See 15 USC Section 1691e(g).) In addition, such federal regulators are required to notify the U.S. Department of Housing and Urban Development of suspected violations of the federal Fair Housing Act if the matter is not referred to the U.S. Department of Justice. (See 15 USC Section 1691e(k).)

and 12 CFR Section 1002.6(b)(2)(i) and (iii).) The federal Fair Housing Act broadly prohibits discrimination on the basis of race, color, religion, sex, handicap, familial status, or national origin in residential real estate-related transactions. (See, e.g., 42 USC Sections 3604(b) and 3605. See also footnote 16 in Section 7.e. below and accompanying text.) Refusing to consider certain types of public assistance income may statistically disadvantage members of protected classes. See also Official Staff Comment 1 to 12 CFR Section 1002.6(b)(5): "A creditor must evaluate income derived from part-time employment, alimony, child support, separate maintenance payments, retirement benefits, or public assistance on an individual basis, not on the basis of aggregate statistics; and must assess its reliability or unreliability by analyzing the applicant's actual circumstances, not by analyzing statistical measures derived from a group."

See also 12 CFR Section 1002.6(b)(3), prohibiting the use of "assumptions or … aggregate statistics relating to the likelihood that any category of persons will bear or rear children or will, for that reason, receive diminished or interrupted income in the future." See also Appendix Q to 12 CFR Part 1026 (Standards for Determining Monthly Debt and Income): Section I.B.1. prohibits creditors from asking a "consumer about possible, future maternity leave." Section I.B.11. includes the following note: "If the Social Security Administration benefit verification letter does not indicate a defined expiration date within three years of loan origination, the creditor shall consider the income effective and likely to continue. Pending or current re-evaluation of medical eligibility for benefit payments is not considered an indication that the benefit payments are not likely to continue."

See also Official Staff Comment 2 to 12 CFR Section 1002.6(a) (indicating that minimum income requirements, if set too high, could cause women and minority applicants to be "rejected at a higher rate than men and nonminority applicants. If there is a demonstrable relationship between the income requirement and creditworthiness for the level of credit involved, however, use of the income standard would likely be permissible"), footnote 5 and Section 6.a. below.

(i) In United States of America v. Fifth Third Mortgage Co., __ F.Supp.3d __ (M.D. Ga. 2014) (copy available at https://www.justice.gov/sites/default/files/crt/legacy/2014/08/13/fifththirdsettle.pdf), a consent order was entered into with a mortgage broker and mortgage lender, with no admission of wrongdoing, to resolve a Fair Housing Act and Equal Credit Opportunity Act complaint filed with the U.S. Department of Housing and Urban Development (HUD) concerning a requirement that mortgage loan applicants relying on disability income "provide a letter from a doctor to document or substantiate SSDI or other disability income or to establish that SSDI or other disability income will continue;" the consent order included an agreement by Fifth Third Mortgage Co. to attempt to locate and compensate affected borrowers from an interest-bearing settlement fund of $1,522,000.

See also United States of America v. Bank of America, __ F.Supp.3d __ (W.D. N.C. 2012) and https://www.justice.gov/sites/default/files/crt/legacy/2012/10/12/boasettle.pdf (consent order entered into with a mortgage lender, with no admission of wrongdoing, to resolve a similar Fair Housing Act and Equal Credit Opportunity Act complaint concerning documentation requirements for SSDI income; a September 13, 2012 Department of Justice press release indicates that "eligible mortgage loan applicants who were asked to provide a letter from their doctor to document the income they received from Social Security Disability Insurance (SSDI)" would receive settlements between $1,000 and $5,000 (depending in part on the extent of medical information detail they were required to provide[4]) and that a third party administrator would be hired to search approximately 25,000 loan applications involving SSDI income to help identify possible eligible applicants).

See also HUD conciliation agreement with Mortgage One, Inc. (November 2015), copy available at https://archives.hud.gov/news/2015/pr15-147-15CHARGE_DOODY.pdf and related press release (voluntary conciliation agreement, with no admission of wrongdoing, including payment of $10,000 to the individual complainant in connection with requested verification that his SSDI income would continue for at least three years).

See also HUD Annual Report on Fair Housing (FY 2012-2013), copy available at https://portal.hud.gov/hudportal/documents/huddoc?id=2012-13annreport.pdf - Page 5 notes several settlements

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[4] The consent order indicates "[s]ome applicants were asked for a letter from a doctor providing information about the nature and severity of the applicant's disability; other applicants were asked for a letter from a doctor indicating the duration of their disability."

involving mortgage loan applicants who were employed but on maternity leave at time of loan application processing, including settlements with mortgage insurance companies concerning the eligibility of mortgage loan applicants on maternity leave, and settlements with mortgage lenders that allegedly required applicants on paid maternity leave to return to work before their applications would be approved. See also HUD Annual Report on Fair Housing (FY 2014-2015), copy available at https://portal.hud.gov/hudportal/documents/huddoc?id=fy14-15fheoannrert.pdf - Pages 13-14 summarize HUD cases involving mortgage loan applicants on maternity leave and applicants who rely on disability income.

(ii) In Alexander v. AmeriPro Funding, 848 F.3d 698 (5th Cir. 2017), cert. denied, 138 S.Ct. 421, a mortgage loan originator (AmeriPro Funding, Inc.) sold residential mortgage loans to a third party (Wells Fargo Bank, N.A.). Plaintiffs alleged that AmeriPro Funding would not consider their Section 8 housing assistance voucher income, because reliance on such income would make their loans ineligible for purchase by Wells Fargo. Consequently, the plaintiffs who applied to and were approved for loans from AmeriPro Funding received less favorable loan terms (and also lower principal amounts) than the terms and amounts they could have received if their Section 8 income had been considered.[5] The court held that a refusal to purchase certain loans that relied on Section 8 income did not by itself violate ECOA (the secondary market purchaser was not alleged to have directly refused to consider Section 8 income in connection with any specific loan application, or to have influenced the terms of any specific credit transaction originated by AmeriPro Funding, and was only alleged to have issued secondary market loan eligibility guidelines to AmeriPro Funding). In addition, merely being deterred or discouraged from applying for a loan from AmeriPro Funding was not, by itself, covered by the private right of action in 15 USC Section 1691e (which allows “aggrieved applicants” but not “aggrieved prospective applicants” to sue for violations of ECOA - see also the definition of “applicant” in 15 USC Section 1691a(b)). Interestingly, it appears the plaintiffs in the AmeriPro Funding case might not have included a Fair Housing Act claim against the secondary market purchaser.

The CFPB filed an amicus (friend of the court) brief in the AmeriPro Funding case, arguing unsuccessfully that the existence of the secondary market loan eligibility guidelines sufficed to make the secondary market purchaser a "creditor" influencing the terms of AmeriPro Funding's mortgage loans for purposes of ECOA, even though there was no allegation the secondary market purchaser was involved in or influenced any decision on any specific loan application. (A copy of the CFPB's amicus brief is available at https://s3.amazonaws.com/files.consumerfinance.gov/f/201602_cfpb_alexander-et-al-v-ameripro-funding-inc-et-al.pdf.)

See also Section 2.6 of the CFPB's Supervisory Highlights (Summer 2015), copy available at http://files.consumerfinance.gov/f/201506_cfpb_supervisory-highlights.pdf, discussing Equal Credit Opportunity Act (Regulation B) issues that may arise in connection with "a blanket practice of excluding or refusing to consider Section 8 HCV Homeownership Program vouchers as a source of income or accepting the vouchers only for certain mortgage loan products or delivery channels, without an assessment of an applicant's particular situation." "Supervision has required one or more institutions to identify borrowers who, due to their reliance on Section 8 HCV Homeownership Program vouchers, were either denied loans, or discouraged from applying; and to provide those borrowers with financial remuneration and an opportunity to reapply." These types of supervisory and regulatory actions help illustrate the different scope of administrative sanctions available against creditors under ECOA (see 15 USC Section 1691c), when compared to private civil litigation ECOA remedies available to aggrieved applicants.

(iii) In Gilmore v. Ally Financial, 2017 WL 1476596, __ F.Supp.3d__ (E.D.N.Y. 2017), the court noted that ECOA allows a claim that a sales finance company's policy and practice of allowing car dealers that originate motor vehicle retail installment contracts for potential future assignment to the sales finance company "to mark up the buy rate for reasons not related to the borrower's creditworthiness or other

[5] See also Official Staff Comment 3.i.C. to 12 CFR Section 1002.6(b)(5) ("A creditor that does not evaluate all income components for reliability must treat as reliable any component of protected income that is not evaluated") and Comment 3.ii. ("the creditor may not automatically discount or exclude from consideration any protected income").

objective criteria related to borrower risk" causes African-American car buyers to receive higher Annual Percentage Rates from such car dealers than similarly situated Caucasian buyers. (However, the plaintiff's action was dismissed without prejudice because the plaintiff is entitled to receive a settlement payment pursuant to two 2013 consent agreements entered into by the defendants with the U.S. Department of Justice and the CFPB, and the plaintiff did not allege how the settlement payment would fail to provide her with complete redress.) This case differs from Alexander v. AmeriPro Funding, as it is common in the motor vehicle retail installment finance arena for the intended assignee of a retail installment contract to underwrite the individual retail buyer's credit application.

(iv) Refusal to extend credit secured by certain types of properties may also be challenged. See, e.g., National Community Reinvestment Coalition v. NovaStar Financial, 631 F. Supp.2d 1 (D.D.C. 2009) (litigation challenging NovaStar's "policies against making loans secured by homes on Indian reservations, homes used for adult foster care, and row houses in Baltimore"). See also Sections 4.c. and 4.d. below (concerning federal and state regulators' current focus on discriminatory "redlining").

j. Recall that the Equal Credit Opportunity and Fair Housing Acts apply to both business- and consumer-purpose credit secured by residential real estate (including non-owner occupied and multi-family residential properties).[6] (See, e.g., 42 USC Sections 3602(b) and 3605(b).) Aggrieved individuals may file complaints with state or federal regulators and other governmental agencies, thereby starting a governmental investigation process. (See, e.g., footnotes 1 and 3 above.) Negative publicity and media coverage concerning pending complaints must also be addressed. Also recall that the federal Consumer Credit Protection and Fair Housing Acts prohibit discrimination due to a person's association with members of protected classes (see, e.g., Official Staff Comment 1 to 12 CFR Section 1002.2(z) and Section 7.a. below) and retaliation against those

[6] Home Mortgage Disclosure Act (HMDA) data collection and reporting requirements include information about business-purpose credit used to purchase, improve, or refinance residential properties. The CFPB has also requested public comment on the extent to which HMDA reporting of business-purpose credit made to non-natural persons and secured by multifamily dwellings furthers HMDA's purposes. (See 84 Fed. Reg. 20049, 20053 (May 8, 2019).)

who in good faith exercise any rights under these Acts (see, e.g., 15 USC Section 1691(a)(3) and 42 USC Section 3617).

k. The U.S. Department of Housing and Urban Development (HUD) continues to fund a Fair Housing Initiatives Program (FHIP) pursuant to 42 USC Section 3616a, that awards so-called Private Enforcement Initiative or PEI grants to nonprofits and state and local government agencies for such things as complaint processing, testing, investigation and litigation of fair housing complaints under the Fair Housing Act. PEI grants totaling over $39 million for fiscal year 2018 were announced by HUD in December 2018 and April and May 2019 (including fiscal year 2018 components of certain previously awarded multi-year grants). The total of all PEI grants for fiscal year 2017 was approx. $30.35 million (when combined with amounts already awarded in fiscal years 2015 and 2016 to multi-year grantees for fiscal year 2017). In the U.S. Attorney General's 2016 Annual Report to Congress Pursuant to the Equal Credit Opportunity Act Amendments of 1976 (September 2017), copy available at https://www.justice.gov/crt/page/file/996791/download, the Department of Justice also notes information-sharing agreements with HUD and the Federal Trade Commission "to strengthen our individual and collective capabilities to enforce fair lending laws," and the Department's willingness to "work in partnership with various state attorneys general." The CFPB's Office of Fair Lending and Equal Opportunity is required to coordinate its fair lending efforts with "other Federal agencies and State regulators, as appropriate," to promote "consistent, efficient, and effective enforcement of Federal fair lending laws" and to work with "private industry, fair lending, civil rights, consumer and community advocates on the promotion of fair lending compliance and education." (See 12 USC Section 5493(c)(2).) The CFPB entered into a Memorandum of Understanding with the Federal Trade Commission (FTC) in February 2019, concerning (inter alia) coordinated law enforcement activities and consumer complaint processing, and the sharing of CFPB examination reports with the FTC (for entities subject to FTC jurisdiction), copy available at https://files.consumerfinance.gov/f/documents/cfpb_ftc_memo-of-understanding_2019-02.pdf.

l. Mortgage lenders and servicers must balance safe, sound, and contractually permissible practices against fair and equal access to loans and loan-related services. Public sentiment about and tolerance for private sector business practices that do not violate a specific statute or regulation may be evolving. Under most states' case law, contracts include an implied obligation to act in good faith and to deal fairly with the other party. (See, e.g., 511 West 232nd Owners Corp. v. Jennifer Realty Co., 746 N.Y.S.2d 131, 773 N.E.2d 496, 98 N.Y.2d 144 at 153 (2002) (describing this duty as "a pledge that 'neither party shall do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract'" (citations intentionally omitted).) In some cases, an unfair or deceptive trade practice may consist of a failure to comply with the "spirit" of a law or regulation. (See, e.g., Freeman v. A Better Way Wholesale Autos, 174 Conn. App. 649 (2017) and cases cited therein.)