

# **Fair Lending and Related Mortgage Development Updates: *More Refined Statistical Analysis of Home Mortgage Disclosure Act Data***

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## **More refined statistical analysis of Home Mortgage Disclosure Act data.**

a. Expanded HMDA data is available for regulatory and public analysis beginning in 2019, including expanded information about such things as applicant income, credit score, debt-to-income and loan-to-value ratios, and reasons for credit denial (if applicable)<sup>11</sup>. This type of information has been available to a certain degree to regulators and examiners and has been taken into account in fair lending and Community Reinvestment Act examinations. However, this type of information has not been readily available to the general public for analysis. Statistical analysis of this type of information could significantly impact such things as public comments filed in connection with pending mergers, acquisitions, branch office applications, and other matters requiring regulatory approval, and may also increase risk of governmental action and litigation. Lenders should proactively analyze their HMDA data in anticipation of third-party statistical analyses.<sup>12</sup> See also Section 5.b. below (discussing recent regulatory enforcement actions concerning inaccurate HMDA data reporting and insufficient ECOA recordkeeping).

b. As discussed in Section 1 above, federal Fair Housing Act and Equal Credit Opportunity Act cases may be pursued by plaintiffs based in part on statistical evidence and a showing of statistically disparate impact on members of protected classes



(e.g., minorities, women, the elderly). Building a case around statistical evidence may be perceived by some plaintiffs as easier than proving actual intent to discriminate. Regulators may also find it easier to focus on statistics, particularly if lending policies and practices are facially neutral and nondiscriminatory. Regular in-house statistical analysis of such things as Annual Percentage Rates, broker fees and other loan origination fees, taking into account a borrower's race, ethnicity, gender, age, etc., is therefore advisable. (If some of this information is not available about an individual borrower or applicant, for internal statistical analysis and review purposes, the individual's name and/or the mortgaged property's location might provide a basis for a rough approximation of certain missing data points, using U.S. census data for the mortgaged property's census tract. For example, when determining whether policies or procedures may inadvertently have a statistically disparate impact on borrowers with certain protected characteristics, federal bank regulators may look at the borrower's name if specific information about a borrower's race, ethnicity, etc. is not available.<sup>13</sup>)

c. The CFPB has indicated that it will continue to focus on **"redlining"** issues – intentional avoiding of certain predominantly minority neighborhoods by mortgage lenders. (See, e.g., Section 1.2 of the CFPB's Fair Lending Report for 2016 (CFPB April 2017), copy available at [https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/201704\\_cfpb\\_Fair\\_Lending\\_Report.pdf](https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/201704_cfpb_Fair_Lending_Report.pdf), and Section 4.2 of the CFPB's Fair Lending Report for 2018 (CFPB June 2019), copy

available at

[https://files.consumerfinance.gov/f/documents/201906\\_cfpb\\_Fair\\_Lending\\_Report.pdf](https://files.consumerfinance.gov/f/documents/201906_cfpb_Fair_Lending_Report.pdf).) More robust HMDA data may facilitate a redlining analysis. (See, e.g., Section 2.1.6 of the CFPB's Fair Lending Report for 2016, noting that a redlining assessment starts with an initial analysis of HMDA and U.S. Census Bureau data. Section 5.1.2 of the CFPB's Fair Lending Report for 2018 indicates that a new Application Programming Interface (API) will be available later in 2019 on the HMDA platform operated by the CFPB to facilitate analysis of HMDA data reported for 2018 and later years.) 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 seven pending "redlining" investigations "involving allegations that lenders unlawfully refused to serve the mortgage lending needs of minority communities."

d. The Multistate Mortgage Committee of the Conference of State Bank Supervisors (CSBS) and the American Association of Residential Mortgage Regulators (AARMR) have issued a detailed examination manual (copy available at <https://www.csbs.org/system/files/2019-05/MMC%20Mortgage%20Examination%20Manual%20v2%20-%20May%202019.pdf>), intended as a reference for examining state-chartered and state-licensed mortgage lenders that operate in 10 or more states. The manual was prepared after

consultation with federal regulators, including (inter alia) HUD and the FFIEC. Several supplements to the manual also have been issued (see <https://www.csbs.org/mortgage-examinationsupplements>), including Home Mortgage Disclosure Act and Equal Credit Opportunity Act examination procedures.

The Fair Lending section of the manual refers examiners to the August 2009 federal Interagency Fair Lending Examination Procedures (copy available at <https://www.ffiec.gov/pdf/fairlend.pdf> - see also Appendix at <https://www.ffiec.gov/pdf/fairappx.pdf>). Those interagency procedures in turn note that “[r]edlining may also include ‘reverse redlining,’ the practice of targeting certain borrowers or areas with less advantageous products or services based on prohibited characteristics.” The interagency procedures caution against “having different marketing or lending practices for certain geographic areas, compared to others, where the purpose or effect of such differences would be to discriminate on a prohibited basis.” Examiners are asked to look at an institution’s marketing practices, including use of mass media, preapproved (prescreened) solicitations, brokers and other third parties, to analyze overall geographic and demographic distribution of marketing. (See also Sections 7.e. and 7.f. below, for additional discussion of impermissible targeting.)

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