

Fair Lending and Regulation B *How to Avoid the Legal Pitfalls*

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Fair Lending Overview

- Fair Housing Act (FH Act) prohibits discrimination in all aspects of “residential real-estate related transactions”
- Equal Credit Opportunity (ECOA) prohibits discrimination in any aspect of credit transaction
- Home Mortgage Disclosure Act (HMDA) requires collection and reporting of certain data about mortgage applications and approvals



Fair Lending Overview

- Types of Lending Discrimination
 - Overt evidence of disparate treatment
 - Comparative evidence of disparate treatment
 - Evidence of disparate impact



Fair Lending Overview

- ECOA penalties: actual and punitive damages (\$10,000 in individual action and lesser of \$500,000 or 1% of net worth in class actions) and attorneys' fees
- FH Act penalties: actual and punitive damages and attorneys' fees



HMDA Changes Effect on Fair Lending Risk

- HMDA amended to significantly increase data collection/reporting obligations
- Used by regulators to determine FIs to examine, target enforcement action
- Potential use of public data in private litigation



Areas of Potential Risk in Fair Lending

- Redlining
- Litigation by municipalities
- Disability income



Areas of Potential Risk in Fair Lending

- Parental leave
- Indirect lending
 - Dealer “mark ups” example
- “Digital redlining”



Redlining

- Lender provides unequal access to credit or unequal terms of credit – disparate treatment of area residents based on prohibited basis
- Active area of enforcement



Redlining

- Hudson City Savings Bank (2015) – joint action by DOJ and CFPB settled
 - Bank allegedly avoided serving credit needs of predominantly Hispanic and African American communities
 - Settlement totaling approximately \$33 million



Redlining

- KleinBank (2018) – first DOJ Fair Lending settlement under Trump administration
 - Bank allegedly avoided serving credit needs of majority-minority communities
 - Settlement did not require payment of civil monetary penalties



Redlining

- Evans Bank (2015) – New York Attorney General (AG) settlement under state law and FH Act
 - Bank allegedly denied access to mortgage loans to borrowers in African American communities
 - Settlement fund of \$825,000



Litigation by Municipalities

- *Bank of America v. City of Miami* (2017)
 - City filed suit alleging FH Act violations against Bank of America and Wells Fargo
 - Intentionally issued riskier mortgages on less favorable terms to African American and Latino borrowers
 - Disproportionately caused foreclosures in minority communities



Litigation by Municipalities

- Other municipalities have also sued FIs
 - *City of Miami Gardens v. Wells Fargo* (2018) – defendant's motion for summary judgment granted as City unable to satisfy *prima facie* case for disparate impact
 - *City of Oakland v. Wells Fargo* (2018) – City successfully stated claim for disparate impact discrimination



Disability Income

- FH Act prohibits discrimination based on handicap
- ECOA prohibits discrimination based on basis of receipt of public assistance
- Practices related to disability income raise discrimination concerns



Disability Income

- Enforcement actions have included:
 - Bank of America – 2012 settlement
 - Freedom Mortgage – 2014 settlement
 - Evolve Bank & Trust – 2016 settlement



Parental Leave

- FH Act prohibits discrimination based on sex or familial status
- Practices related to parental leave, specifically requiring applicant to return to work, raise discrimination concerns



Indirect Lending

- Indirect auto lending – BCFP guidance rescinded
 - New York Department of Financial Services (DFS) guidance
- Mortgage broker programs
 - Chase Bank's 2017 \$53 million settlement



“Digital Redlining”?

- Technology provides opportunities to lenders – access to data, increased efficiency, delivery channels, etc.
 - Potential for disparate impact
- Complaint filed against Facebook



Risk Mitigation

- Starts with an effective Compliance Management System (CMS)
 - Fair Lending risk assessment
 - Include focus on third party relationships
 - Policies and procedures consistent with risk profile



Risk Mitigation

- Effective CMS
 - Regular monitoring and self-assessment
 - Training
 - Corrective action



QUESTIONS & ANSWERS



THANK YOU!

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