

FAIR LENDING AMONG REGULATORS' TOP CONCERNS

One of the items high on the list of examiner concerns is fair lending. A few years ago, this statement would not have surprised us. Then, we had a break from so much publicity about it due to other priorities. However, as we all know, the concern never really went away. Now, the regulators are planning to turn the focus back on redlining, reverse redlining and loan-denial rate disparities as they conduct fair lending reviews. Nonmortgage products, such as auto loans and credit cards, are also expected to receive close attention for signs of fair lending abuses.

It is important to keep in mind that fair lending concerns extend to all phases of the lending process. According to the January 2010 issue of *ComplianceAction*,¹ "When fair lending is the topic, we tend to think in terms of taking applications, underwriting, and making loans. We don't tend to think about fair lending in the context of keeping loans on the books, helping borrowers stay current, or giving fair treatment to borrowers in collections. However, both the *Equal Credit Opportunity Act* (ECOA) and the *Fair Housing Act* (FHA) reach all aspects of a credit transaction from marketing and application to payoff, collection or foreclosure..... Violations of fair lending laws can occur at the point of payoff or collections. But the point where problems occur is what tends to bring the consumer's affirmative defenses to the fore. Before initiating collection actions of any kind, a prudent lender should review the loans for compliance, particularly for fair lending. After all, most of the signature discrimination cases were brought in bankruptcy court."

INFLUENCING FACTORS

Several events have signaled the increased interest in lending and the concern that unfair practices are resurging. In August 2009, the **Federal Financial Institutions Examination Council** (FFIEC) issued revised Interagency Fair Lending Examination Procedures. Specific changes were made for setting the examination scope, the procedures for assessing fair lending performance, and relevant appendices to update certain sections and clarify others. Some of the other changes included technical guidance to Regulation B, the implementing regulation for ECOA, related to electronically accessed application forms and disclosures added to the Technical Compliance Checklist, Appendix L. The Underwriter Interview Guide, Appendix J, was also expanded.

In March 2009, US Attorney General Eric Holder said "If you discriminate against borrowers or prey on vulnerable homeowners with fraudulent mortgage schemes, we will find you, and we will punish you." That left little room for doubt as to the intent of the **Department of Justice** (DOJ). In January 2010, The DOJ's Assistant Attorney General for the Civil Rights Division, Thomas E. Perez, announced the creation of a new Fair Lending Unit within the Civil Rights Division's Housing Section to address discriminatory lending practices.

In discussing the new Fair Lending Unit, Assistant Attorney General Perez said the department's initiative is multi-faceted. Mr. Perez' announcement reaffirmed the Department's commitment to investigate traditional cases of lending discrimination, such as denials or differing terms of credit because of race or national origin. He also they would continue the focus on lenders that "redline" minority communities as off-limits for loan products. He also promised a new focus on "reverse redlining" in which lenders are accused of targeting minority borrowers or communities for inferior loan products such as subprime or "predatory" products.

DOJ is not limited to the specifics of referrals in the pipeline. In a recent case against First United Security Bank, the FDIC cited only pricing discrimination. The DOJ's investigation added redlining charges. DOJ will be looking at its own data and no longer has to wait for referrals from the regulators.

¹*ComplianceAction* is published 16 times a year. It can be ordered at 800-660-0080.

RECENT FAIR LENDING CASES

On September 30, 2009, the U.S. filed a complaint and proposed Agreed Order for Resolution in *United States v. First United Security Bank* (S.D. Ala), alleging discriminatory pricing of home mortgages and redlining in violation of the FHA and ECOA. On November 18, 2009, the court entered the Agreed Order of Resolution. The **Federal Deposit Insurance Corporation** (FDIC) initially referred the matter to DOJ based on its finding of pricing discrimination. The division investigated and added the redlining claim. Under the settlement, First United will open one new branch and expand existing operations in majority African-American areas of central Alabama. The bank will invest \$500,000 in a special financing program, and spend more than \$110,000 for outreach to potential customers, promotion of its products and services, and consumer financial education in these areas.

In *United States v. First Lowndes Bank, AL*, the complaint filed on September 29, 2008, alleged that the Bank had violated ECOA and FHA by engaging in a pattern or practice of discrimination on the basis of race in setting interest rates for conventional, first-lien loans for owner-occupied manufactured homes. It was alleged that the Bank had charged as much as 1.5% more for similarly situated African-American applicants than they did white applicants, and that was determined to be statistically significant.

The court entered a Consent Decree with the Bank on November 4, 2008. The Bank was ordered to revise its pricing and policy procedures, conduct quarterly reviews of consumer-purchase (non-commercial) residential real estate related-loans to ensure compliance with FHA, ECOA, and the Order of Consent. The Bank was instructed to conduct equal opportunity training for management officials, loan offices, and any other employees who participated in the pricing of subject loan types. The instructor must be someone from outside the bank and approved by DOJ. The Bank also had to set aside \$185,000 in an interest-bearing account for paying damages.

These are only two examples of the cases being brought against financial institutions. They indicate the concern about fair lending and give insight into why this subject is again at the forefront of concern.

SELF-ASSESSMENTS

Lenders should be doing fair lending self-assessments. If the institution has not done one when examiners arrive, the examiners will conduct the assessment. That is *not* the desirable way to get an assessment completed.

CONCLUSION

As lenders look at their fair lending policies and procedures, it will be beneficial to also look closely at the training program to determine if it is adequate based on the institution's size, geographical location, loan volume, etc. It is true that examiners will be looking more closely at fair lending issues and DOJ will be conducting its own reviews; however, even if this weren't true, lenders know that being fair in all lending programs is the right thing to do.