

Fair Lending Report of the Bureau of Consumer Financial Protection



Message from Kathleen L. Kraninger

Director

I am pleased to present this Fair Lending Annual Report to Congress reflecting the Consumer Financial Protection Bureau's fair lending efforts in 2019.

During the past year, we've worked hard to enhance our fair lending efforts by leveraging the authorities provided by Congress and the Bureau's resources to be more effective and comprehensively utilized. From supervision and enforcement to rulemaking, guidance and education, the Bureau is dedicated to using all the tools at its disposal to achieve our mission: fair, equitable, and nondiscriminatory access to credit markets for consumers and their communities.



Through our supervision and enforcement work, we strive to foster a culture of institutional compliance and prevention of consumer harm. As part of these important efforts, the Bureau continues to vigorously enforce fair lending laws, including the Equal Credit Opportunity Act and the Home Mortgage Disclosure Act. Through our rulemaking and guidance, we articulate to regulated entities clear rules of the road that protect consumers while promoting competition, transparency, and fair markets for financial products and services. Through our outreach, we continue to educate and empower consumers to make informed decisions that secure their financial well-being.

In addition, the Bureau continues to focus on consumer beneficial innovation – one of my key priorities – including innovation that provides fair, equitable, and non-discriminatory access to credit. In 2019, the Bureau issued three new policies to help promote innovation and facilitate compliance: a revised No-Action Letter Policy, a revised Trial Disclosure Program Policy, and the Compliance Assistance Sandbox Policy. We encourage innovators to consider these tools to develop new financial products and services to better serve consumers.

One particular fair lending issue ripe for innovative solutions is making financial products and services more accessible to consumers who are unbanked and underbanked, including those who are Limited English Proficient (LEP). By working on these complex issues together, I am confident that we can find ways to overcome obstacles and provide greater access to credit markets, including to LEP consumers.

In 2019, we issued a Request for Information regarding “Tech Sprints.” Tech Sprints gather regulators, technologists, financial institutions, and subject matter experts from key stakeholders to collaboratively develop innovative solutions to clearly identified challenges. We are excited to explore the use of Tech Sprints to encourage regulatory innovation and collaborate with stakeholders in developing viable solutions to regulatory compliance challenges. I hope to announce more about these efforts in the near future.

Finally, in light of recent events concerning the COVID-19 pandemic, I am mindful of the need for additional innovative solutions that protect America’s consumers.

I am proud of the work that is highlighted in this report and grateful to the Bureau staff who have been instrumental in leading these efforts. Going forward, we will continue to work on expanding responsible access to credit and helping to ensure that all consumers are protected from discrimination.

Sincerely,



Kathleen L. Kraninger

Message from Patrice Alexander Ficklin

Director, Office of Fair Lending and Equal Opportunity

As we reflect on another year and look ahead to the next, the Bureau continues to make progress in ensuring fair, equitable, and nondiscriminatory access to credit for all consumers in America. To that end, I am honored to share our achievements in this, our eighth Fair Lending Report.



During the past year, the Office of Fair Lending and Equal Opportunity (OFLEO) continued to coordinate the Bureau's fair lending work both internally, and with other governmental agencies, civil rights organizations, consumer groups, and industry to encourage consumer-friendly innovation to expand access to credit, especially for unbanked and underbanked consumers.

Through our work on innovation, we also aim to provide meaningful guidance to institutions on fair lending compliance in the age of innovation. In this vein, in 2019, along with four other financial regulators, the Bureau issued a joint statement about the use of alternative data in underwriting, seeking to expand fair, equitable, and nondiscriminatory access to credit. The use of alternative data such as cash-flow data may improve the speed and accuracy of credit decisions and expand access to fair and affordable credit to consumers who currently may not obtain credit in the mainstream credit system, and the Bureau encourages responsible use of such data to expand access to credit.

We are particularly excited by our role in launching the Bureau's first Tech Sprints, which we hope will facilitate the use of innovative technologies to address challenges experienced by consumers, industry and regulators.

I look forward to continuing to work with all stakeholders in protecting America's consumers and expanding access to credit. When navigating complex fair lending issues, stakeholders should consider OFLEO as a resource.

Sincerely,

A handwritten signature in black ink that reads "Patrice Alexander Ficklin".

Patrice Alexander Ficklin

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1. Innovations in access to credit

1.1 Collaboration between the Office of Fair Lending and Equal Opportunity and the Office of Innovation

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) established the Bureau’s mission to include both fair lending and innovation components. Specifically, the Dodd-Frank Act makes clear that “[t]he Bureau is authorized to exercise its authorities under federal consumer financial law for the purposes of ensuring that, with respect to consumer financial products and services . . . (2) consumers are protected from unfair, deceptive, or abusive acts and practices and from discrimination . . . and (5) markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation.¹”¹

The Bureau is also responsible for providing oversight and enforcement of federal fair lending laws intended to ensure “fair, equitable, and nondiscriminatory access to credit for both individuals and communities.”² The Bureau’s Office of Fair Lending and Equal Opportunity (OFLEO) coordinates fair lending work both internally and externally with Bureau stakeholders, including consumer advocates, civil rights organizations, industry, academia, and other government agencies. OFLEO also works closely with the Office of Innovation (OI) to help encourage innovation in expanding responsible credit access, including fair, equitable, and nondiscriminatory access to credit to underserved populations.

On September 10, 2019, the Bureau, through OI, issued three new policies to promote innovation and facilitate compliance: a revised No-Action Letter (NAL) Policy,³ a revised Trial Disclosure

¹ Dodd-Frank Act § 1021(b)(2), (5) (emphasis added).

² Dodd-Frank Act §§ 1002(13), 1013(c).

³ Consumer Fin. Prot. Bureau, *No-Action Letter Policy* (Sept. 10, 2019), https://files.consumerfinance.gov/f/documents/cfpb_final-policy-on-no-action-letters.pdf; *Policy on No-Action Letters*, 84 FR 48229, 48229-48246 (Sept. 6, 2019).

Program Policy,⁴ and the Compliance Assistance Sandbox Policy.⁵ The Bureau is accepting applications under these policies and, as of this report, has granted two NALs and a NAL template under the revised 2019 NAL Policy.⁶

As part of its coordination function, OFLEO works with OI regarding applications to the Bureau’s innovation programs that involve fair lending and access to credit issues.

Review of such applications generally includes consideration of the potential fair lending risks associated with the proposed product or service, as well as its potential for expanding access to credit for underserved or underbanked populations. In addition, after an application related to fair lending or access to credit has been granted by the Bureau, the two offices continue to work together, for example, in reviewing data submitted by the recipient relating to fair lending and credit access issues.

The Bureau encourages consumer-beneficial innovations, including those that can help serve populations currently underserved by the mainstream credit system. Entities are strongly encouraged to contact the Bureau before applying to any of the innovation programs.

1.2 No-Action Letter issued to HUD housing counseling agencies

In September 2019, the Bureau issued a NAL under the revised 2019 NAL policy in response to a request by the U.S. Department of Housing and Urban Development (HUD) on behalf of more than 1,600 housing counseling agencies (HCAs) that participate in HUD’s housing counseling program.⁷ The NAL was issued after HUD brought concerns to the Bureau about HCAs and mortgage lenders not entering into agreements that would fund counseling services due to uncertainty about the application of the Real Estate Settlement Procedures Act.

The more than 1,600 HUD-certified HCAs serve more than one million households annually. They offer pre-purchase homeownership counseling to potential borrowers looking to purchase

⁴ Consumer Fin. Prot. Bureau, *Policy to Encourage Trial Disclosure Programs* (Sept. 6, 2019), https://files.consumerfinance.gov/f/documents/cfpb_final-policy-to-encourage-tdp.pdf; *Policy to Encourage Trial Disclosure Programs*, 84 FR 48260, 48260-48272 (Sept. 13, 2019).

⁵ Consumer Fin. Prot. Bureau, *Policy on the Compliance Assistance Sandbox* (Sept. 6, 2019), https://files.consumerfinance.gov/f/documents/cfpb_final-policy-on-cas.pdf; *Policy on the Compliance Assistance Sandbox*, 84 FR 48246, 48246-48260 (Sept. 13, 2019).

⁶ Consumer Fin. Prot. Bureau, *Granted Applications*, <https://www.consumerfinance.gov/about-us/innovation/granted-applications/>.

⁷ Consumer Fin. Prot. Bureau, *CFPB Issues Policies to Facilitate Compliance and Promote Innovation* (Sept. 10, 2019), <https://www.consumerfinance.gov/about-us/newsroom/bureau-issues-policies-facilitate-compliance-promote-innovation/>.

their first home, providing important information on fair housing, fair lending, and access to credit issues. With this information, potential borrowers may be better able to make informed choices based on their financial circumstances to achieve safe and sustainable homeownership. The NAL is intended to facilitate HCAs entering into such agreements with lenders and will enhance the ability of HCAs to obtain funding from additional sources.

At the same time, in response to HUD’s application, the Bureau issued a NAL Template for mortgage lenders under the NAL Policy, providing a foundation for future NAL applications by mortgage lenders.

1.3 Joint statement on the use of alternative data in credit underwriting

In December 2019, the Bureau, the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), and the National Credit Union Administration (NCUA) (collectively “the agencies”) issued a joint statement on the use of alternative data in underwriting by banks, credit unions, and non-bank financial firms.⁸

The purpose of the statement was to provide guidance on the use of alternative data in underwriting and, to the extent firms are using or contemplating using alternative data, to encourage responsible use of such data.

Alternative data includes information not typically found in consumers’ credit reports or customarily provided by consumers when applying for credit. Alternative data can include cash-flow data derived from consumers’ bank account records.

The statement further explains that a well-designed compliance management program provides for a thorough analysis of relevant consumer protection laws and regulations to ensure firms understand the opportunities, risks, and compliance requirements before using alternative data. As reflected in the statement, the agencies recognize that use of alternative data in a manner consistent with applicable consumer protection laws may improve the speed and accuracy of credit decisions and may help firms evaluate the creditworthiness of consumers who currently may not obtain credit in the mainstream credit system. Additionally, the agencies acknowledge

⁸ Consumer Fin. Prot. Bureau, *Federal Regulators Issue Joint Statement on the Use of Alternative Data in Credit Underwriting* (Dec. 3, 2019), <https://www.consumerfinance.gov/about-us/newsroom/federal-regulators-issue-joint-statement-use-alternative-data-credit-underwriting/>.

that using alternative data may enable consumers to obtain additional products and/or more favorable pricing/terms based on enhanced assessments of repayment capacity.

1.4 Providing adverse action notices when using artificial intelligence and machine learning models

As part of our consumer protection mission, Congress tasked the Bureau with ensuring that markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation. One area of innovation the Bureau is monitoring for fair lending and access to credit issues is artificial intelligence (AI), and more specifically, machine learning (ML), a subset of AI.

One important issue is how complex AI models address the adverse action notice requirements in ECOA and the Fair Credit Reporting Act (FCRA). ECOA requires creditors to provide consumers with the main reasons for a denial of credit or other adverse action.⁹ FCRA also includes adverse action notice requirements.¹⁰ These notice provisions serve important anti-discrimination, educational, and accuracy purposes. There may be questions about how institutions can comply with these requirements if the reasons driving an AI decision are based on complex interrelationships.

The existing regulatory framework has built-in flexibility that can be compatible with AI algorithms. For example, although a creditor must provide the specific reasons for an adverse action, the Official Interpretation to ECOA's implementing regulation, Regulation B, provides that a creditor need not describe how or why a disclosed factor adversely affected an application,¹¹ or, for credit scoring systems, how the factor relates to creditworthiness.¹² Thus, the Official Interpretation provides an example that a creditor may disclose a reason for a denial, even if the relationship of that disclosed factor to predicting creditworthiness may be unclear to the applicant. This flexibility may be useful to creditors when issuing adverse action notices based on AI models where the variables and key reasons are known, but which may rely upon non-intuitive relationships.

⁹ 15 U.S.C. § 1691(d)(2).

¹⁰ 15 U.S.C. § 1681 m (a).

¹¹ 12 CFR pt.1002, comment 9(b)(2)-3.

¹² *Id.* at 9(b)(2)-4.

Another example of this flexibility is that neither ECOA nor Regulation B mandate the use of any particular list of reasons. Indeed, the regulation provides that creditors must accurately describe the factors actually considered and scored by a creditor, even if those reasons are not reflected on the current sample forms.¹³ This latitude may be useful to creditors when providing reasons that reflect alternative data sources and more complex models.

Industry continues to develop tools to accurately explain complex AI decisions, and the Bureau expects more methods will emerge. These developments hold great promise to enhance the “explainability” of AI and facilitate use of AI for credit underwriting compatible with adverse action notice requirements.

Despite this flexibility, there may still be some regulatory uncertainty about how certain aspects of the adverse action requirements apply in the context of AI/ML. Entities are encouraged to consider the Bureau’s new innovation policies as a means to address these potential compliance issues.

The Bureau welcomes continued dialogue with institutions and organizations regarding innovative ways to fulfill adverse action notice requirements when using AI.

1.5 Update on Upstart No-Action Letter

In 2017, the Bureau announced a NAL to Upstart Network, Inc. (Upstart), a company that uses alternative data and machine learning in making credit underwriting and pricing decisions.¹⁴ Upstart’s underwriting model uses traditional underwriting data and various categories of alternative data, including information related to borrowers’ education and employment history. The NAL, approved under the Bureau’s 2016 NAL policy, references the application of ECOA and Regulation B to Upstart’s use of alternative data and ML for its underwriting and pricing model. This NAL is specific to the facts and circumstances of Upstart and does not serve as an endorsement of the use of any particular variables or modeling techniques in credit underwriting and pricing. In addition, the NAL does not serve as an endorsement of Upstart or the products or services it offers.

As a condition for receiving the NAL, Upstart agreed to a model risk management and compliance plan that requires it to analyze and appropriately address risks to consumers, as well

¹³ 12 CFR pt. 1002, comment 9(b)(2)-2 and app. C, ¶ 4.

¹⁴ Consumer Fin. Prot. Bureau, *CFPB Announces First No-Action Letter to Upstart Network* (Sept. 14, 2017), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-announces-first-no-action-letter-upstart-network/>.

as assess the real-world impact of alternative data and ML. Pursuant to the NAL, Upstart provides the Bureau with information comparing outcomes from its underwriting and pricing model (tested model) against outcomes from a hypothetical model that uses traditional application and credit file variables and does not employ ML (traditional model). Upstart independently validated the traditional model through fair lending testing to ensure that it did not violate antidiscrimination laws.

Since the issuance of the NAL, Upstart has worked to answer several key questions, including:

- Whether the tested model’s use of alternative data and ML expands access to credit, including lower-priced credit, overall and for various applicant segments, compared to the traditional model.
- Whether the tested model’s underwriting or pricing outcomes result in greater disparities than the traditional model with respect to race, ethnicity, sex, or age, and if so, whether applicants in different protected class groups with similar model-predicted default risk actually default at the same rate.

Upstart agreed to allow the Bureau to share key highlights from simulations and analyses that it conducted pursuant to its model risk management and compliance plan; the simulations and analyses were not separately replicated by the Bureau. The following results provided by Upstart reflect the net effect of both the alternative data and the ML methodology used in the lender’s model as applied to the lender’s applicant pool. The Bureau shared this information in a blog post in August 2019.¹⁵

The results provided from the access-to-credit comparisons show that the tested model approves 27% more applicants than the traditional model, and yields 16% lower average APRs for approved loans.

This reported expansion of credit access reflected in the results provided occurs across all tested race, ethnicity, and sex segments resulting in the tested model increasing acceptance rates by 23-29% and decreasing average APRs by 15-17%.

In many consumer segments, the results provided show that the tested model significantly expands access to credit compared to the traditional model. Under the tested model, the results provided reflect that:

¹⁵ Patrice Alexander Ficklin and Paul Watkins, Consumer Fin. Prot. Bureau, *An update on credit access and the Bureau’s first No-Action Letter* (Aug. 6, 2019), <https://www.consumerfinance.gov/about-us/blog/update-credit-access-and-no-action-letter/>.

- Near prime consumers with FICO scores from 620 to 660 were approved approximately twice as frequently.
- Applicants under 25 years of age are 32% more likely to be approved.
- Consumers with incomes under \$50,000 are 13% more likely to be approved.

With regard to fair lending testing, which compared the tested model with the traditional model, the approval rate and APR analysis results provided for minority, female, and 62 and older applicants showed no disparities that require further fair lending analysis under the compliance plan. The Bureau continues to monitor the Upstart NAL.

1.6 Tech Sprints Request for Information

In September 2019, the Bureau, through collaboration between OI, the Office of Technology and Innovation, and OFLEO, issued a Request for Information (RFI) seeking comments and information to identify opportunities to utilize “Tech Sprints” to encourage regulatory innovation.¹⁶

Used successfully by the Financial Conduct Authority in the United Kingdom, Tech Sprints gather regulators, technologists, financial institutions, and subject matter experts from key stakeholders for several days to work together to develop innovative solutions to clearly identified challenges. Small teams include participants from both the regulator and a diversity of entities to ensure the inclusion of regulatory, industry, and technology perspectives. The regulator assigns a specific regulatory compliance or market problem to each team and challenges the teams to solve or mitigate the problem using modern technologies and approaches. The most promising ideas can then be further developed either in collaboration with the regulator or by external parties.

Specifically, the RFI stated that the Bureau is interested in using Tech Sprints to:

- Leverage cloud solutions, machine-automated compliance checks that allow for independent validation by regulators, and other developments that may reduce or modify the need for regulated entities to transfer data to the Bureau.

¹⁶ Consumer Fin. Prot. Bureau, *Request for Information Regarding Tech Sprints* (Sept. 12, 2019), https://files.consumerfinance.gov/f/documents/cfpb_rfi_tech-sprints.pdf.

- Continue to innovate HMDA data submission, processing, and publication to help ease burdens, increase flexibility, and resolve compliance challenges, while satisfying all legal requirements.
- Identify new technologies and approaches that can be used by the Bureau to provide more cost-effective oversight of supervised entities, effective evaluation of compliance and risk, and closer interface with financial industry systems and technology that may include the use, for example, of analytical tools in the review of mortgage origination data.
- Explore other technological approaches to robust and secure data access or exchange between regulated entities and the Bureau.
- Reduce unwarranted regulatory compliance burdens.

In the RFI, the Bureau sought responses to questions, including:

- What regulatory compliance issues, problems, procedures, or requirements could benefit from innovation through a Bureau Tech Sprint?
- What financial technology or other advances hold the most promise for helping modernize regulatory compliance?
- Other than organizing Tech Sprints, what else might the Bureau do to encourage innovation in financial products and services? For example, could advances be encouraged by changes to certain Bureau rules or policies?

The comment period closed on November 8, 2019, and the Bureau received 19 comments in response to its RFI. The feedback identified an interest in organizing Tech Sprints in the areas of HMDA, supervision data sharing and submission, automated compliance, third-party technology providers/bank-fintech partnerships, consumer disclosures, and regulations.

The information provided will help the Bureau identify how stakeholders can work together to create a regulatory environment (1) that allows flexible, efficient, and effective innovation to flourish; (2) where new and/or emerging risks can be identified and managed effectively; and (3) where consumers have the appropriate level of protection and suitable access to the benefits of technological advancement. The information may also help identify responsible innovations that can be implemented in a consumer-friendly way to help serve populations currently underserved by the mainstream credit system. The Bureau expects to announce its first Tech Sprints later in 2020.

2. Outreach: Promoting fair lending compliance and education

Pursuant to the Dodd-Frank Act, the Bureau regularly engages in outreach with stakeholders, including civil rights organizations, consumer advocates, industry, academia, and other government agencies, to: (1) educate them about fair lending compliance and access to credit issues and (2) hear their views on the Bureau’s work to inform its policy decisions.¹⁷

Throughout 2019, OFLEO worked closely with other Bureau offices to execute the Bureau’s fair lending outreach and education efforts.

The Bureau is committed to communicating directly with all stakeholders on its policies, compliance expectations, and fair lending priorities, and to receiving valuable input about fair lending issues and how innovation can promote fair, equitable, and nondiscriminatory access to credit.

2.1 Educating stakeholders about fair lending compliance and access to credit issues

2.1.1 Bureau blog posts, statements, reports, and press releases

The Bureau regularly uses blog posts, statements, reports, and press releases as tools to timely and effectively communicate with consumers and other stakeholders on issues, emerging areas of concern, Bureau initiatives, and more. In 2019, the Bureau published three blog posts related to fair lending including: an update on credit access and the Bureau’s No-Action Letter with

¹⁷ Consumer Fin. Prot. Bureau, *Fiscal Year 2020: Annual performance plan and report, and budget overview*, Performance goal 2.1.1, at 69 (Feb. 2020), https://files.consumerfinance.gov/f/documents/cfpb_performance-plan-and-report_fy20.pdf.

Upstart,¹⁸ the 2019 report on the Bureau's *Building a Bridge to Credit Visibility* symposium,¹⁹ and the release of the 2018 Fair Lending Annual Report.²⁰ The Bureau's blog posts, including those related to fair lending, may be accessed at www.consumerfinance.gov/blog.

The Bureau also issued two statements related to fair lending in 2019: a *Statement on Collection of Demographic Information by Community Development Financial Institutions*,²¹ and a *Joint Statement with Federal Regulators on the Use of Alternative Data in Credit Underwriting*.²²

In 2019, the Bureau also issued six press releases related to fair lending topics including: the Bureau's announcement regarding its symposia series,²³ the release of certain 2018 HMDA data,²⁴ ²⁵ the extension of the public comment period for the Advance Notice of Proposed Rulemaking (ANPR) regarding HMDA data points,²⁶ the issuance of a final HMDA Rule,²⁷ the issuance of the Interagency Statement on the Use of Alternative Data in Credit Underwriting,²⁸ and a public enforcement action against Freedom Mortgage Corporation.²⁹ The Bureau's

¹⁸ Patrice Alexander Ficklin and Paul Watkins, Consumer Fin. Prot. Bureau, *An update on credit access and the Bureau's first No-Action Letter* (Aug. 6, 2019), <https://www.consumerfinance.gov/about-us/blog/update-credit-access-and-no-action-letter/>.

¹⁹ Patrice Alexander Ficklin and J. Frank Vespa-Papaleo, Consumer Fin. Prot. Bureau, *A report on the Bureau's Building a Bridge to Credit Visibility Symposium* (July 19, 2019), <https://www.consumerfinance.gov/about-us/blog/report-credit-visibility-symposium/>.

²⁰ Patrice Alexander Ficklin, *Encouraging innovation in expanding credit access: 2018 Fair Lending Report to Congress*, Consumer Fin. Prot. Bureau (June 28, 2019), <https://www.consumerfinance.gov/about-us/blog/2018-fair-lending-report-congress/>.

²¹ Consumer Fin. Prot. Bureau, *Statement on Collection of Demographic Information by Community Development Financial Institutions* (June. 27, 2019), <https://www.consumerfinance.gov/policy-compliance/guidance/supervisory-guidance/statement-collection-demographic-information-community-development-financial-institutions/>.

²² Consumer Fin. Prot. Bureau, *Federal Regulators Issue Joint Statement on the Use of Alternative Data in Credit Underwriting* (Dec. 3, 2019), <https://www.consumerfinance.gov/about-us/newsroom/federal-regulators-issue-joint-statement-use-alternative-data-credit-underwriting/>.

²³ Consumer Fin. Prot. Bureau Announces Symposia Series (Apr. 8, 2019), <https://www.consumerfinance.gov/about-us/newsroom/bureau-announces-symposia-series/>.

²⁴ Consumer Fin. Prot. Bureau, *FFIEC Announces Availability of 2018 Data on Mortgage Lending* (Aug. 30, 2019), <https://www.consumerfinance.gov/about-us/newsroom/ffiec-announces-availability-2018-data-mortgage-lending/>.

²⁵ Consumer Fin. Prot. Bureau, *HMDA Modified Loan Application Registers Released* (Mar. 29, 2019), <https://www.consumerfinance.gov/about-us/newsroom/hmda-modified-loan-application-registers-released/>.

²⁶ Consumer Fin. Prot. Bureau, *CFPB Extends Comment Period for ANPR on HMDA Data Points* (Jun. 27, 2019), <https://www.consumerfinance.gov/about-us/newsroom/bureau-extends-comment-period-anpr-hmda-data-points/>.

²⁷ Consumer Fin. Prot. Bureau, *Consumer Financial Protection Bureau Issues Final HMDA Rule to Provide Relief to Smaller Institutions* (Oct. 10, 2019). <https://www.consumerfinance.gov/about-us/newsroom/bureau-issues-final-hmda-rule-provide-relief-smaller-institutions/>.

²⁸ *Federal Regulators Issue Joint Statement on the Use of Alternative Data in Credit Underwriting* (Dec. 3, 2019), <https://www.consumerfinance.gov/about-us/newsroom/federal-regulators-issue-joint-statement-use-alternative-data-credit-underwriting/>.

²⁹ Consumer Fin. Prot. Bureau, *Consumer Financial Protection Bureau Settles with Freedom Mortgage Corporation* (Jun. 5, 2019), <https://www.consumerfinance.gov/about-us/newsroom/bureau-settles-freedom-mortgage-corporation/>.

statements and press releases, including those related to fair lending, may be accessed at www.consumerfinance.gov/about-us/newsroom.

2.1.2 Bureau outreach engagements with stakeholders

Bureau staff participated in 63 outreach engagements throughout 2019 to educate external stakeholders about fair lending compliance and access to credit issues. In most of those engagements, Bureau personnel also received information and feedback on the Bureau's policy decisions.

Specifically, in 2019, the Bureau communicated directly with fair lending, civil rights, consumer and community advocates, and with industry through speeches, panel remarks, presentations, roundtables, a webinar, an onsite HMDA Help Desk, and smaller meetings on issues pertaining to fair, equitable, and nondiscriminatory access to credit. The Bureau also engaged with stakeholders through the Bureau's website, consumerfinance.gov. Some examples of the topics covered include: fair lending supervision and enforcement priorities, innovations in lending, HMDA and Regulation C, small business lending, the Bureau's Tech Sprints RFI, access to credit for LEP consumers, providing adverse action notices when using ML models, and the use of alternative data.

2.1.3 2019 HMDA warning letters

In 2019, the Bureau issued warning letters to mortgage-lending institutions indicating that they may be required to collect, record, and report data about their mortgage-lending activity under HMDA and Regulation C, and that they may be in violation of those requirements.³⁰ The letters urged recipients to review their practices to ensure their compliance with all relevant laws. The recipients were encouraged to respond to the Bureau to advise if they have taken, or will take, steps to ensure compliance with the law, or to tell the Bureau if they think their activities do not trigger HMDA reporting thresholds.

Through these letters the Bureau seeks to increase compliance with HMDA through enhanced education efforts and direct outreach to potentially non-compliant mortgage lenders, and to increase HMDA data quality and completeness through accurate reporting. Since commencing the issuance of the HMDA warning letters more than 140,000 new mortgage loan application registers (LARs) that previously went unreported by the entities have now been reported. The Bureau will follow up on these letters to ensure compliance, as appropriate.

³⁰ On October 27, 2016, the Bureau issued the first round of HMDA warning letters.

<https://www.consumerfinance.gov/about-us/newsroom/cfpb-warns-financial-institutions-about-potential-mortgage-lending-reporting-failures/>.

2.1.4 Supervisory Highlights

Supervisory Highlights has long been a report that anchors the Bureau's efforts to communicate about the Bureau's supervisory activity. In March 2019, the Winter 2019 *Supervisory Highlights* noted the updates made to HMDA Small Entity Compliance Guide from October 30, 2018.³¹ At that time, the Bureau updated the HMDA Small Entity Compliance Guide to reflect changes made to the HMDA by section 104(a) of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRCPA).

All editions of *Supervisory Highlights* are available at www.consumerfinance.gov/reports.

2.2 Listening to stakeholders to inform the Bureau's policy decisions

2.2.1 Bureau outreach engagements with stakeholders

As described above in Section 2.1.2, Bureau outreach engagements serve as a vehicle to hear the views of external stakeholders in order to inform the Bureau's policy decisions. In these events, Bureau staff received feedback from stakeholders on issues pertaining to discrimination and fair, equitable, and nondiscriminatory access to credit.

2.2.2 Bureau outreach follow-up from 2018 *Building a Bridge* symposium

In follow-up to the Bureau's September 17, 2018 *Building a Bridge to Credit Visibility* symposium, and to increase the Bureau's knowledge base about innovations in small business lending, the Offices of Fair Lending and Small Business Lending Markets held two Fair Lending Roundtables with Minneapolis/St. Paul-area (Twin Cities) stakeholders involved in small business lending. The event was held on May 8, 2019, in Minneapolis, Minnesota.

Participants at the Roundtables represented both industry and consumer groups, including community banks, credit unions, and Community Development Financial Institutions (CDFIs) that provide small business credit in the Twin Cities area. Also in attendance were

³¹ Consumer Fin. Prot. Bureau, *Supervisory Highlights* Winter 2019 at 19 (March 2019), https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-18_032019.pdf.

representatives from the Minnesota Credit Union League and Credit Union National Association.

Aside from collecting invaluable information that will inform the Bureau’s work and future policymaking, the event introduced the Bureau to certain local organizations in the Twin Cities area that were previously unaware of the Bureau’s work and resources. The event also served as a conduit for bringing together local organizations involved in providing small business microlending in the Twin Cities area that had not previously connected. The Bureau anticipates that these groups will continue to benefit from working together to help small businesses and their communities in the Twin Cities area.

2.2.3 Bureau symposium on section 1071

In April 2019, the Bureau announced a symposia series exploring consumer protections in today’s dynamic financial services marketplace.³² The series is aimed at stimulating a proactive and transparent dialogue to assist the Bureau in its policy development process, including possible future rulemakings. During each symposium, the Bureau hosts a discussion panel of experts with a variety of viewpoints on the topic.

On November 6, 2019, the Bureau held a symposium on section 1071 of the Dodd-Frank Act.³³ Section 1071 amended ECOA to require, subject to rules prescribed by the Bureau, financial institutions to collect, report, and make public certain information concerning credit applications made by women-owned, minority-owned, and small businesses. The symposium provided a public forum for the Bureau and the public to hear various perspectives on the small business lending marketplace and the Bureau’s upcoming implementation of section 1071.

The event featured remarks by Director Kraninger. The symposium also consisted of two panels of experts. The first panel focused on the current state of, and future outlook for, the small business lending marketplace. The second panel included a discussion of the implementation of section 1071. Additional information regarding this symposium, including the agenda, the panelists’ written statements, and a video of the event is available on the Bureau’s website.³⁴ Information about the Bureau’s efforts to implement section 1071 can be found in Section 4.2.2 of this Report.

³² Consumer Fin. Prot. Bureau, *Consumer Financial Protection Bureau Announces Symposia Series* (Apr. 8, 2019), <https://www.consumerfinance.gov/about-us/newsroom/bureau-announces-symposia-series/>.

³³ Consumer Fin. Prot. Bureau, *CFPB Symposium: Section 1071 of the Dodd-Frank Act* (Nov. 6, 2019), <https://www.consumerfinance.gov/about-us/events/archive-past-events/cfpb-symposium-section-1071-dodd-frank-act/>.

³⁴ *Id.*

3. Interagency coordination and engagement

Throughout 2019, the Bureau coordinated its fair lending regulatory, supervisory, and enforcement activities with other federal agencies and state regulators to promote consistent, efficient, and effective enforcement of federal fair lending laws. This interagency engagement sought to address current and emerging fair lending risks. Interagency engagement occurs in numerous ways, including through several interagency organizations.

The Federal Financial Institutions Examination Council (FFIEC) is currently chaired by Director Kraninger.³⁵ Through the FFIEC, the Bureau has robust engagement with other partner agencies that focus on fair lending issues.

For example, the Bureau currently chairs the FFIEC HMDA/Community Reinvestment Act Data Collection Subcommittee of the FFIEC Task Force on Consumer Compliance (Task Force). The Task Force oversees FFIEC projects and programs involving HMDA data collection and dissemination, the preparation of the annual FFIEC budget for processing services, and the development and implementation of other related HMDA processing projects as directed by the Task Force.

Additionally, the Bureau, the Federal Trade Commission (FTC), HUD, FDIC, FRB, NCUA, OCC, DOJ, and the Federal Housing Finance Agency (FHFA), comprise the Interagency Task Force on Fair Lending (Fair Lending Task Force). Currently, the Bureau chairs the Fair Lending Task Force, which meets regularly to discuss fair lending enforcement efforts, share current methods of conducting supervisory and enforcement fair lending activities, and coordinate fair lending policies.

Further, the Bureau also participates in the Interagency Working Group on Fair Lending Enforcement, a standing working group of federal agencies—DOJ, HUD, and FTC—that meets regularly to discuss issues specifically relating to fair lending enforcement. The agencies use these meetings to discuss fair lending developments and trends, methodologies for evaluating fair lending risks and violations, and coordination of fair lending enforcement efforts.

³⁵ Collectively, the FRB, FDIC, NCUA, OCC, and the Bureau comprise the FFIEC. The FFIEC is a “formal interagency body empowered to prescribe uniform principles, standards, and report forms for the federal examination of financial institutions” by the member agencies listed above and the State Liaison Committee “and to make recommendations to promote uniformity in the supervision of financial institutions.” Fed. Fin. Inst. Examination Council, <http://www.ffiec.gov> (last visited March 30, 2020). The State Liaison Committee was added to FFIEC in 2006 as a voting member.

In addition to these established interagency working groups, Bureau personnel meet periodically and on an ad hoc basis with DOJ, HUD, and the prudential regulators to coordinate the Bureau's fair lending work.

4. Guidance and rulemaking

4.1 HMDA and Regulation C rulemaking and guidance

4.1.1 Regulation C 2019 Notice of Proposed Rulemaking and Final Rule

In May 2019, the Bureau issued a Notice of Proposed Rulemaking (NPRM)³⁶ proposing two alternatives to amend Regulation C to increase the threshold for reporting data about closed-end mortgage loans. The proposed amendments would increase the threshold so that institutions originating fewer than either 50 closed-end mortgage loans, or alternatively, 100 closed-end mortgage loans, in either of the two preceding calendar years would not have to report such data as of January 1, 2020. The proposed rule also proposed to adjust the threshold for reporting data about open-end lines of credit by extending to January 1, 2022, the current temporary threshold of 500 open-end lines of credit and setting a threshold at 200 open-end lines of credit upon the expiration of the proposed extension of the temporary threshold.

In October 2019, the Bureau issued a Final Rule³⁷ amending Regulation C to adjust the threshold for reporting data about open-end lines of credit by extending to January 1, 2022, the current temporary threshold of 500 open-end lines of credit. The Final Rule announced that any change to the closed-end mortgage loan reporting threshold and permanent open-end threshold to take effect upon expiration of the temporary threshold would be addressed in a later rule.

The Final Rule also further implements the partial exemptions from HMDA's requirements that EGRRCPA recently added to HMDA. In August 2018, the Bureau issued an interpretive and procedural rule to implement and clarify the EGRRCPA amendments to HMDA (2018 HMDA Rule).³⁸ The 2018 HMDA Rule clarifies that insured depository institutions and insured credit unions covered by a partial exemption have the option of reporting exempt data fields as long as they report all data fields within any exempt data point for which they report data; clarifies that only loans and lines of credit that are otherwise HMDA reportable count toward the thresholds

³⁶ Home Mortgage Disclosure (Regulation C), 84 FR 20972 (May 13, 2019).

³⁷ Home Mortgage Disclosure (Regulation C), 84 FR 57946 (Oct. 29, 2019).

³⁸ Partial Exemptions from the Requirements of the Home Mortgage Disclosure Act Under the Economic Growth, Regulatory Relief, and Consumer Protection Act (Regulation C), 83 FR 45325 (Sept. 7, 2018).

for the partial exemptions; clarifies which of the data points in Regulation C are covered by the partial exemptions; designates a non-universal loan identifier for partially exempt transactions for institutions that choose not to report a universal loan identifier; and clarifies the exception to the partial exemptions for insured depository institutions with less than satisfactory examination histories under the Community Reinvestment Act of 1977. This final rule incorporates into Regulation C these interpretations and procedures, with minor adjustments, by adding new § 1003.3(d) relating to the partial exemptions and making various amendments to the data compilation requirements in § 1003.4. The Final Rule further implements EGRRCPA by addressing certain additional interpretive issues relating to the partial exemptions that the 2018 HMDA Rule did not specifically address, such as how to determine whether a partial exemption applies to a transaction after a merger or acquisition. The provisions in the final rule implementing the EGRRCPA took effect on January 1, 2020.

4.1.2 Regulation C Data Points and Coverage 2019 Advance Notice of Proposed Rulemaking

In May 2019, the Bureau issued an ANPR relating to the data points that the Bureau's 2015 HMDA Rule added to Regulation C or revised to require additional information.³⁹ Additionally, the ANPR relates to the requirement that institutions report certain business- or commercial-purpose transactions under Regulation C. The Bureau currently is reviewing the comments received and expects to issue a Notice of Proposed Rulemaking (NPRM) later in 2020.

4.1.3 HMDA public data disclosure guidance

The Bureau has decided to commence a new notice-and-comment rulemaking to govern HMDA data disclosure. In its 2015 final rule to implement the Dodd-Frank Act amendments to HMDA, the Bureau adopted a balancing test to determine whether and how HMDA data should be modified prior to its disclosure to the public in order to protect applicant and borrower privacy while also fulfilling HMDA's public disclosure purposes.⁴⁰ The Bureau sought comment in 2017 on its proposed application of the balancing test to the 2018 data,⁴¹ and issued final policy guidance in late 2018.⁴²

In consideration of stakeholder comments urging that determinations concerning the disclosure of loan-level HMDA data be effectuated through more formal processes, the Bureau has decided to commence a new notice-and-comment rulemaking to govern HMDA data disclosure. The

³⁹ Home Mortgage Disclosure (Regulation C), 84 FR 20049 (May 8, 2019).

⁴⁰ 80 FR 66128, 66134 (Oct. 28, 2015).

⁴¹ Disclosure of Loan-Level HMDA Data, 82 FR 44586 (Sept. 25, 2017).

⁴² 84 FR 649 (Jan. 31, 2019).

Bureau expects to issue a NPRM later in 2020. The Bureau plans to consider the HMDA data points and public disclosure proposed rules concurrently.

4.1.4 2018 HMDA data release

In August 2019, on behalf of the FFIEC, the Bureau released data on mortgage lending transactions at U.S. financial institutions covered by HMDA.⁴³ Covered institutions include banks, savings associations, credit unions, and mortgage companies. The HMDA data covers 2018 lending activity. Many of the data points were available for the first time in the 2018 HMDA data. Certain smaller-volume financial institutions are not required to report all these data, pursuant to the EGRRCPA, as described above in Section 4.1.1

With the data, the Bureau released two Data Point articles. The first describes the historical data points in the 2018 HMDA data, as well as recent trends in mortgage and housing markets.⁴⁴

The second introduces the new and revised data points in the 2018 HMDA data and provides some initial observations about the nation’s mortgage market in 2018 based on those new or revised data points.⁴⁵

Earlier, in March 2019, Modified LARs data were published for approximately 5,400 financial institutions.⁴⁶ The Modified LARs contain loan-level information for 2018 on individual HMDA filers, modified to protect privacy.

4.1.5 HMDA guidance and resources

The Bureau created many resources to help facilitate compliance with Regulation C, including an [Executive Summary of HMDA rule changes](#); [Small Entity Compliance Guide](#); [Key Dates Timeline, Institutional](#) and [Transactional](#) Coverage Charts; [Reportable HMDA Data Chart](#); [sample data collection form](#), and [Frequently Asked Questions \(FAQs\)](#), in addition to downloadable [Webinars](#) that provide an overview of the HMDA rule. The Bureau also provides on its website an Interactive Bureau Regulations version of [Regulation C](#).

⁴³ Consumer Fin. Prot. Bureau, *FFIEC Announces Availability of 2018 Data on Mortgage Lending* (Aug. 30, 2019), <https://www.consumerfinance.gov/about-us/newsroom/ffiec-announces-availability-2018-data-mortgage-lending/>.

⁴⁴ Consumer Fin. Prot. Bureau, *Data point: 2018 mortgage market activity and trends*, (Aug. 30, 2019), <https://www.consumerfinance.gov/data-research/research-reports/data-point-2018-mortgage-market-activity-and-trends/>.

⁴⁵ Consumer Fin. Prot. Bureau, *Data Point: Introducing New and Revised Data Points in HMDA* (Aug. 30, 2019), <https://www.consumerfinance.gov/data-research/research-reports/introducing-new-revised-data-points-hmda/>.

⁴⁶ Consumer Fin. Prot. Bureau, *HMDA Modified Loan Application Registers Released* (Mar. 29, 2019), <https://www.consumerfinance.gov/about-us/newsroom/hmda-modified-loan-application-registers-released/>.

HMDA resources are routinely updated throughout the year to ensure HMDA reporters have the most up-to-date information. For example, in September 2019, the Bureau released the [2020 Filing Instructions Guide \(FIG\)](#) and the [Supplemental Guide for Quarterly Filers](#). Together with the FFIEC, in March 2019, the Bureau also published the 2019 edition of the [HMDA Getting it Right Guide](#). The Bureau also worked with the FFIEC to publish data submission resources for HMDA filers and vendors on its [Resources for HMDA Filers](#) website.

4.2 ECOA and Regulation B rulemaking and guidance

4.2.1 Statement on collection of demographic information by Community Development Financial Institutions

In July 2019, the Bureau issued a statement regarding the collection of demographic information by financial institutions that are Community Development Financial Institutions (CDFIs) receiving assistance from the U.S. Department of the Treasury's Community Development Financial Institutions Fund (CDFI Fund).⁴⁷

The Bureau became aware that some financial institutions that are certified CDFIs receiving assistance from the CDFI Fund have inquired whether they are subject to ECOA and Regulation B's general prohibition on a creditor collecting certain information about an applicant for credit, such as the applicant's race or ethnicity.

The statement explains that CDFIs receiving federal financial assistance from the CDFI Fund may collect demographic information on the individuals the CDFI serves, consistent with the ECOA and its implementing Regulation B, provided the collection of the information is for the purpose of complying with the regulatory requirements of the CDFI Fund.

4.2.2 Small business data collection

As described earlier in this report, section 1071 of the Dodd-Frank Act amends ECOA to require, subject to rules prescribed by the Bureau, financial institutions to collect, report, and make

⁴⁷ Consumer Fin. Prot. Bureau, *Statement on Collection of Demographic Information by Community Development Financial Institutions* (July 29, 2019), <https://www.consumerfinance.gov/policy-compliance/guidance/supervisory-guidance/statement-collection-demographic-information-community-development-financial-institutions/>.

public certain information concerning credit applications made by women-owned, minority-owned, and small businesses. The amendments to ECOA made by the Dodd-Frank Act require that specific data be collected, maintained, and reported, including but not limited to: the type of loan applied for, the amount of credit applied for, the type of action taken with regard to each application, the census tract of the principal place of business of the loan applicant, and the race, sex, and ethnicity of the principal owners of the business. The Dodd-Frank Act also provides authority for the Bureau to require any additional data that the Bureau determines would aid in fulfilling the purposes of section 1071. The Bureau may adopt exceptions to any requirement of section 1071 and may exempt any financial institution from its requirements, as the Bureau deems necessary or appropriate to carry out section 1071's purposes.

The Bureau issued an RFI in 2017 seeking public comment on, among other things, the types of credit products offered, and the types of data currently collected by lenders in this market, and the potential complexity, cost of, and privacy issues related to, small business data collection.

In connection with its Spring 2019 rulemaking agenda,⁴⁸ the Bureau announced its intention to recommence work to develop rules to implement section 1071 of the Dodd-Frank Act.

In November 2019, the Bureau hosted a symposium on small business data collection. The information received in response to the 2017 RFI and the symposium will help the Bureau determine how to implement the statute efficiently while minimizing burdens on lenders.

In addition, the Bureau is working to conduct a survey of lenders to obtain estimates of one-time costs lenders of varying sizes would incur to collect and report data pursuant to section 1071. The Bureau anticipates that its next step will be the release of materials in advance of convening a panel under the Small Business Regulatory Enforcement Fairness Act (SBREFA), in conjunction with the Office of Management and Budget and the Small Business Administration's Chief Counsel for Advocacy, to consult with representatives of small businesses that may be affected by the rulemaking.⁴⁹

Also, during 2019, the Bureau was involved in litigation regarding the implementation of section 1071 of the Dodd-Frank Act. Information concerning the litigation can be found in Section 5 of this Report.

⁴⁸Consumer Fin. Prot. Bureau, *Regulatory Agenda*, <https://www.consumerfinance.gov/policy-compliance/rulemaking/regulatory-agenda/>. (Last visited Apr. 29, 2020).

⁴⁹ *Id.*

5. *Amicus* program and other litigation

The Bureau files *amicus curiae*, or “friend-of-the-court,” briefs in significant court cases concerning federal consumer financial protection laws, including ECOA. These *amicus* briefs provide the courts with the Bureau’s views on significant consumer financial protection issues. Information regarding the Bureau’s *amicus* program, including a description of the *amicus* briefs it previously filed, is available on the Bureau’s website.⁵⁰

During 2019, the Bureau was involved in litigation regarding section 1071 of the Dodd-Frank Act. On May 14, 2019, the California Reinvestment Coalition filed a lawsuit in the U.S. District Court for the Northern District of California against the Bureau seeking an order compelling the Bureau to issue rules implementing section 1071 of the Dodd-Frank Act. On June 27, 2019, an amended complaint was filed adding the National Association for Latino Community Asset Builders and two individuals as plaintiffs in the lawsuit. The Bureau answered and the parties filed cross-motions for summary judgment. Information about the Bureau’s efforts to implement section 1071 can be found in Section 4.2.2 of this Report.

⁵⁰ <https://www.consumerfinance.gov/policy-compliance/amicus/>.

6. Fair lending supervision and enforcement

6.1 Risk-based prioritization

Because Congress charged the Bureau with responsibility for overseeing many lenders and products, the Bureau has long-used a risk-based approach to prioritize supervisory examinations and enforcement activity. This approach helps ensure that the Bureau focuses on areas that present substantial risk of credit discrimination for consumers.⁵¹ This same approach continued in 2019.

As part of the prioritization process, the Bureau identifies emerging developments and trends by monitoring key consumer financial markets. If this market intelligence identifies fair lending risks in a particular market that require further attention, that information is incorporated into the prioritization process to determine the type and extent of attention required to address those risks.

The prioritization process incorporates a number of additional factors, including: tips and leads from industry whistleblowers, advocacy groups, and government agencies; supervisory and enforcement history; consumer complaints; and results from analysis of HMDA and other publicly available data.

6.1.1 Fair lending supervisory and enforcement priorities

Through its annual risk-based prioritization process for 2019, the Bureau focused its fair lending supervision efforts on mortgage origination, small business lending, student loan origination, and debt collection and model use.

As in previous years, the Bureau’s mortgage origination work continued to focus on: (1) redlining and whether lenders intentionally discouraged prospective applicants living or seeking credit in minority neighborhoods from applying for credit; (2) assessing whether there is discrimination in underwriting and pricing processes including steering; and (3) HMDA data

⁵¹ For additional information regarding the Bureau’s risk-based approach in prioritizing supervisory examinations, see Section 3.2.3, Risk-Based Approach to Examinations, *Supervisory Highlights Summer 2013*, http://files.consumerfinance.gov/f/201308_cfpb_supervisory-highlights_august.pdf.

integrity and validation (which supports ECOA exams) as well as HMDA diagnostic work (monitoring and assessing new rule compliance).

The Bureau's small business lending work focused on assessing whether (1) there is discrimination in the application, underwriting, and pricing processes, (2) creditors are redlining, and (3) there are weaknesses in fair lending related compliance management systems (CMS).

The Bureau's student loan origination work focused on whether there is discrimination in policies and practices governing underwriting and pricing. In the area of debt collection and model use, the Bureau's work focused on whether there is discrimination in policies and practices governing auto servicing and credit card collections, including the use of models that predict recovery outcomes.

The Bureau also continued to enforce federal fair lending laws, including ECOA and HMDA. One key area on which the Bureau focused its fair lending enforcement efforts was addressing potential discrimination in mortgage lending, including the unlawful practice of redlining.

6.2 Fair lending supervision

In 2019, the Bureau initiated 26 supervisory events at financial services institutions under the Bureau's jurisdiction to determine compliance with federal laws intended to ensure the fair, equitable, and nondiscriminatory access to credit for both individuals and communities, including ECOA and HMDA.

Consistent with BCFP Bulletin 2018-01,⁵² the Bureau issues Matters Requiring Attention (MRAs) to correct violations of federal consumer financial law, remediate harmed consumers, and address weaknesses in CMS that examiners found are directly related to violations of federal consumer financial law. MRAs include timeframes for periodic reporting of efforts taken to address these matters, as well as expected timeframes for implementation. The Bureau also uses Supervisory Recommendations (SRs) to address the Bureau's supervisory concerns related to financial institutions' CMS. SRs do not include provisions for periodic reporting nor expected timelines for implementation. In 2019, the Bureau provided MRAs directing entities to take corrective actions that will be monitored by the Bureau through follow-up supervisory events. The Bureau also issued SRs in 2019 relating to supervisory concerns related to weak fair lending

⁵² Consumer Fin. Prot. Bureau, BCFP Bulletin 2018-01: *Changes to Types of Supervisory Communications* (Sept. 25, 2018), https://files.consumerfinance.gov/f/documents/bcfp_bulletin-2018-01_changes-to-supervisory-communications.pdf.

CMS, including weak policies and procedures, risk assessments, fair lending testing, and/or fair lending training.

6.3 Fair lending supervisory developments

6.3.1 Updated ECOA baseline review modules and HMDA examination procedures

In April 2019, the Bureau updated its ECOA Baseline Review Modules⁵³ and its HMDA Examination Procedures.⁵⁴

The ECOA Baseline Review Modules consist of five modules that CFPB examination teams use to conduct ECOA Baseline Reviews to evaluate how institutions' CMS identify and manage fair lending risks under ECOA. In addition, examination teams use Module 2: Fair Lending CMS to review a supervised entity's fair lending CMS as part of an ECOA Targeted Review, supplemented with additional modules from these procedures as necessary.

A HMDA review includes transactional testing for HMDA data accuracy conducted using the HMDA Examination Procedures within the CFPB Supervision and Examination Manual. The updated HMDA Examination Procedures include updates to reflect the Bureau's interpretive and procedural rule, issued in August 2018, which implements and clarifies section 104 of EGRRCPA.

6.4 Fair lending enforcement

The Bureau has the statutory authority to bring actions to enforce the requirements of HMDA and ECOA. In this regard, the Bureau has the authority to engage in research, conduct investigations, file administrative complaints, hold hearings, and adjudicate claims through the

⁵³ Consumer Fin. Prot. Bureau, *ECOA Baseline Review Procedures* (Apr. 1, 2019), <https://www.consumerfinance.gov/policy-compliance/guidance/supervision-examinations/equal-credit-opportunity-act-ecoa-baseline-review-procedures/>.

⁵⁴ Consumer Fin. Prot. Bureau, *HMDA Examination Procedures* (Apr. 1, 2019) <https://www.consumerfinance.gov/policy-compliance/guidance/supervision-examinations/home-mortgage-disclosure-act-hmda-examination-procedures/>.

Bureau’s administrative enforcement process. The Bureau also has independent litigating authority and can file cases in federal court alleging violations of fair lending laws under the Bureau’s jurisdiction. Like other federal bank regulators, the Bureau is required to refer matters to DOJ when it has reason to believe that a creditor has engaged in a pattern or practice of lending discrimination.⁵⁵

6.4.1 Public enforcement actions

In 2019, the Bureau filed one fair lending public enforcement action: In the Matter of Freedom Mortgage Corporation (File No. 2019-BCFP-0007). The Bureau announced the settlement with Freedom Mortgage Corporation (Freedom) on June 5, 2019.⁵⁶ Freedom is a mortgage lender with its principal place of business in Mount Laurel, New Jersey and one of the ten largest HMDA reporters nationwide. For each year from 2013 through 2016, it originated more than 50,000 home-purchase loans, including refinancings of home-purchase loans. Freedom is required to collect, record, and report data on HMDA-covered transactions to comply with HMDA and Regulation C.

According to the consent order, the Bureau found that Freedom violated HMDA and Regulation C by submitting mortgage-loan data for 2014 to 2017 that contained numerous and intentional errors. The Bureau found that Freedom reported inaccurate race, ethnicity, and sex information and that much of Freedom’s loan officers’ recording of this incorrect information was intentional. For example, certain loan officers were told by managers or other loan officers that, when applicants did not provide their race or ethnicity, they should select non-Hispanic white regardless of whether that was accurate.

Under the terms of the consent order, Freedom must pay a civil money penalty of \$1.75 million and take steps to improve its compliance management to prevent future violations.

6.4.2 ECOA referrals to the Department of Justice

The Bureau must refer to the DOJ a matter when it has reason to believe that a creditor has engaged in a pattern or practice of lending discrimination in violation of ECOA.⁵⁷ The Bureau also may refer other potential ECOA violations to the DOJ.⁵⁸ In 2019, the Bureau referred three matters to the DOJ involving discrimination pursuant to section 706(g) of ECOA. The first

⁵⁵ 15 U.S.C. § 1691e(h).

⁵⁶ Consumer Fin. Prot. Bureau, *Consumer Financial Protection Bureau Settles with Freedom Mortgage Corporation* (Jun. 5, 2019), <https://www.consumerfinance.gov/about-us/newsroom/bureau-settles-freedom-mortgage-corporation/>.

⁵⁷ 15 U.S.C. § 1691e(g).

⁵⁸ *Id.*

referral involved discrimination based on a pattern or practice of redlining in mortgage origination based on race. The second referral resulted from discrimination based on receipt of public assistance income in mortgage origination. Lastly, the third referral involved discrimination based on race and national origin in auto origination.

6.4.3 Implementing enforcement orders

When an enforcement action is resolved through a public enforcement order, the Bureau (together with DOJ, when relevant) takes steps to ensure that the respondent or defendant complies with the requirements of the order. Depending on the specific requirements of individual public enforcement orders, the Bureau may take steps to ensure that borrowers who are eligible for compensation receive remuneration and that the defendant has complied with the injunctive provisions of the order, including implementing a comprehensive fair lending compliance management system. Throughout 2019, the Bureau continued to implement and oversee compliance with the two public enforcement orders described below.

On June 29, 2016, the Bureau and the DOJ announced a joint action against BancorpSouth Bank (BancorpSouth) for discriminatory mortgage lending practices that harmed African Americans. The consent order, which was entered by the Court on July 25, 2016, required BancorpSouth to pay \$4 million in direct loan subsidies in minority neighborhoods in Memphis;⁵⁹ at least \$800,000 for community programs, advertising, outreach, and credit repair; \$2.78 million to African American consumers who were unlawfully denied or overcharged for loans; and a \$3 million penalty.⁶⁰ On June 25, 2018, the Bureau announced that participation materials were mailed to potentially eligible African American borrowers identified as harmed by BancorpSouth’s alleged discrimination in mortgage lending between 2011 and 2015, notifying them how to receive redress. Starting on March 15, 2019, checks were mailed to African American borrowers who were confirmed as eligible to receive a payment.

On February 2, 2016, working with the DOJ, the Bureau ordered Toyota Motor Credit Corporation (Toyota Motor Credit) to pay up to \$21.9 million in damages to harmed African American and Asian and/or Pacific Islander borrowers for unlawful discrimination.⁶¹ On December 29, 2017, participation materials were mailed to potentially eligible borrowers whom Toyota Motor Credit overcharged for their auto loans notifying them how to participate in the settlement fund. On February 1, 2019, checks were mailed to eligible, participating consumers.

⁵⁹ “Majority-minority neighborhoods” or “minority neighborhoods” refers to census tracts with a minority population greater than 50 percent.

⁶⁰ Consent Order, *United States v. BancorpSouth Bank*, No. 1:16-cv-00118-GHD-DAS (N.D. Miss. July 25, 2016), ECF No. 8, https://files.consumerfinance.gov/f/documents/201606_cfpb_bancorpSouth-consent-order.pdf.

⁶¹ Consent Order *In re Toyota Motor Credit Corporation*, CFPB No. 2016-CFPB-0002 (Feb. 2, 2016), https://files.consumerfinance.gov/f/201602_cfpb_consents-order-toyota-motor-credit-corporation.pdf.

6.4.4 Pending fair lending investigations

In 2019, the Bureau had a number of ongoing and newly opened fair lending investigations of institutions. One of the Bureau's key areas of focus was potential discrimination in mortgage lending, including the unlawful practice of redlining.

7. Interagency reporting on ECOA and HMDA

The Bureau is statutorily required to file a report to Congress annually describing the administration of its functions under ECOA, summarizing public enforcement actions taken by other agencies with administrative enforcement responsibilities under ECOA, and providing an assessment of the extent to which compliance with ECOA has been achieved.⁶² In addition, the Bureau’s annual HMDA reporting requirement calls for the Bureau, in consultation with HUD, to report annually on the utility of HMDA’s requirement that covered lenders itemize certain mortgage loan data.⁶³

7.1 Reporting on ECOA enforcement

The enforcement efforts and compliance assessments made by all the agencies assigned enforcement authority under section 704 of ECOA are discussed in this section.

Table 1: FFIEC AGENCIES WITH ADMINISTRATIVE ENFORCEMENT OF ECOA

FFIEC AGENCIES					
	Bureau of Consumer Financial Protection (CFPB)	Federal Deposit Insurance Corporation (FDIC)	Federal Reserve Board (FRB)	National Credit Union Administration (NCUA)	Office of the Comptroller of the Currency (OCC)

⁶² 15 U.S.C. § 1691f.

⁶³ 12 U.S.C. § 2807.

Table 2: NON-FFIEC AGENCIES WITH ADMINISTRATIVE ENFORCEMENT OF ECOA

NON-FFIEC AGENCIES			
	Agricultural Marketing Service (AMS) of the U.S. Department of Agriculture (USDA)	Department of Transportation (DOT)	Farm Credit Administration (FCA)
			
	Federal Trade Commission (FTC)	Securities and Exchange Commission (SEC)	Small Business Administration (SBA) ⁶⁴

7.1.1 Public enforcement actions

The eleven agencies charged with administrative enforcement of ECOA under section 704 are as follows:

- CFPB;
- FDIC;
- FRB;
- NCUA;
- OCC;⁶⁵

⁶⁴ 15 U.S.C. § 1691c.

⁶⁵ Collectively, the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), the Office of the Comptroller of the Currency (OCC), and the Bureau of Consumer Financial Protection (Bureau) comprise the Federal Financial Institutions Examination Council (FFIEC). The FFIEC is a “formal interagency body empowered to prescribe uniform principles, standards, and report forms for the federal examination of financial institutions” by the member

- Agricultural Marketing Service (AMS) of the U.S. Department of Agriculture (USDA),⁶⁶
- Department of Transportation (DOT);
- Farm Credit Administration (FCA);
- Federal Trade Commission (FTC);
- Securities and Exchange Commission (SEC); and
- Small Business Administration (SBA).⁶⁷

In 2019, none of the 11 ECOA enforcement agencies brought public enforcement actions for violations of ECOA. Below is an overview of the year-to-year combined ECOA enforcement actions at all federal agencies since 2012:

Table 3: ECOA ENFORCEMENT BY ALL FEDERAL AGENCIES

Calendar Year	Total Public Enforcement Actions
2012	17 ⁶⁸
2013	9
2014	2
2015	5
2016	3
2017	1
2018	0
2019	0

7.1.2 Violations cited during ECOA examinations

Among institutions examined for compliance with ECOA and Regulation B, the FFIEC agencies reported that the most frequently-cited violations were as follows:

agencies listed above and the State Liaison Committee “and to make recommendations to promote uniformity in the supervision of financial institutions.” Federal Financial Institutions Examination Council, <http://www.ffiec.gov> (last visited March 30, 2020). The State Liaison Committee was added to FFIEC in 2006 as a voting member.

⁶⁶ The Grain Inspection, Packers and Stockyards Administration (GIPSA) was eliminated as a stand-alone agency within USDA in 2017. The functions previously performed by GIPSA have been incorporated into the Agricultural Marketing Service (AMS), and ECOA reporting now comes from the Packers and Stockyards Division, Fair Trade Practices Program, AMS.

⁶⁷ 15 U.S.C. § 1691c.

⁶⁸ This table identifies public enforcement actions by the year they were initiated (when filed and announced publicly).

TABLE 4: REGULATION B VIOLATIONS CITED BY FFIEC AGENCIES, 2019

Regulation B Violations: 2019	FFIEC Agencies Reporting
<u>12 C.F.R. § 1002.4(a), (b), 1002.5(b), 1002.6(b), 1002.7(d)(1): Discrimination</u> Discrimination on a prohibited basis in a credit transaction; Discouragement of prospective applicants on a prohibited basis; A creditor shall not inquire about the race, color, religion, national origin, or sex of an applicant or any other person in connection with a credit transaction; Improperly considering receipt of public assistance in a system of evaluating applicant creditworthiness; Improperly requiring the signature of the applicant's spouse or other person.	CFPB, ⁶⁹ FDIC, ⁷⁰ FRB, ⁷¹ OCC ⁷²
<u>12 C.F.R. § 1002.9(a)(1), (a)(2), (b)(1), (b)(2), (c): Adverse Action</u> Failure to provide notice to the applicant 30 days after receiving a completed application concerning the creditor's approval of, counteroffer or adverse action on the application; failure to provide appropriate notice to the applicant 30 days after taking adverse action on an incomplete application; failure to provide sufficient information in an adverse action notification, including the specific reasons for the action taken.	CFPB, ⁷³ FDIC, ⁷⁴ FRB, ⁷⁵ NCUA, ⁷⁶ OCC ⁷⁷
<u>12 C.F.R. § 1002.12(b)(1): Record Retention</u> Failure to preserve application records.	CFPB, ⁷⁸ NCUA, ⁷⁹ OCC ⁸⁰

Among institutions examined for compliance with ECOA and Regulation B, the Non-FFIEC agencies reported that the most frequently-cited violations were as follows:

⁶⁹ 12 C.F.R. § 1002.4(a), 1002.4(b), 1002.6(b).

⁷⁰ 12 C.F.R. § 1002.5(b).

⁷¹ 12 C.F.R. § 1002.4(a).

⁷² 12 C.F.R. § 1002.7(d)(1).

⁷³ 12 C.F.R. § 1002.9(a)(1), (a)(2), (b)(1), (b)(2), (c)(1).

⁷⁴ 12 C.F.R. § 1002.9(a)(2), (b)(2).

⁷⁵ 12 C.F.R. § 1002.9(a)(1)(i), (c)(2).

⁷⁶ 12 C.F.R. § 1002.9(a)(1), (a)(2), (b)(2).

⁷⁷ 12 C.F.R. § 1002.9(a)(1)(i), (a)(1)(ii), (a)(2).

⁷⁸ 12 C.F.R. § 1002.12(b)(1).

⁷⁹ 12 C.F.R. § 1002.12(b).

⁸⁰ 12 C.F.R. § 1002.12(b)(1).

TABLE 5: REGULATION B VIOLATIONS CITED BY NON-FFIEC ECOA AGENCIES, 2019

Regulation B Violations: 2019	Non-FFIEC Agencies Reporting
<u>12 C.F.R. § 1002.9(a)(1)(i), (a)(2), (c): Adverse Action</u> Failure to provide notice to the applicant 30 days after receiving a completed application concerning the creditor's approval of, counteroffer or adverse action on the application; failure to provide sufficient information in an adverse action notification, including the specific reasons for the action taken; failure to provide ECOA notice.	FCA
<u>12 C.F.R. § 1002.13: Failure to request and collect information for monitoring purposes.</u>	FCA

The AMS, SEC and the SBA reported that they received no complaints based on ECOA or Regulation B in 2019. In 2019, the DOT Office of Aviation Enforcement and Proceedings reported that it may have received a relatively small number of consumer inquiries or complaints concerning credit matters possibly covered by ECOA, which it processed informally. The FTC is an enforcement agency and does not conduct compliance examinations.

7.2 Referrals to the Department of Justice

In 2019, four FFIEC agencies (CFPB, FDIC, FRB, and NCUA) made a total of seven referrals to the DOJ involving discrimination in violation of ECOA. A brief description of those matters follows.

As reported in Section 6.4.2, in 2019, the Bureau referred three matters to the DOJ. Those referrals involved: discrimination based on a pattern or practice of redlining in mortgage origination based on race; discrimination based on receipt of public assistance income in mortgage origination; and discrimination based on race and national origin in auto origination.

In 2019, the FDIC referred two matters to the DOJ. The first referral involved discrimination in auto origination on the prohibited basis of the applicant's receipt of income derived from a public assistance program. The second referral involved discrimination in the underwriting of commercial loans on the prohibited basis of religion.

The FRB referred one matter to the DOJ in 2019. The referral involved pricing discrimination based on national origin, race, and sex.

In 2019, the NCUA referred one matter to the DOJ involving discrimination on the prohibited basis of age.

TABLE 6: COMBINED ECOA REFERRALS TO DOJ

Calendar Year	Number of Referrals to DOJ
2012	12
2013	24
2014	18
2015	16
2016	20
2017	11
2018	2
2019	7

7.3 Reporting on HMDA

The Bureau's annual HMDA reporting requirement calls for the Bureau, in consultation with HUD, to report annually on the utility of HMDA's requirement that covered lenders itemize loan data in order to disclose the number and dollar amount of certain mortgage loans and applications, grouped according to various characteristics.⁸¹ The Bureau, in consultation with HUD, finds that itemization and tabulation of these data furthers the purposes of HMDA.

⁸¹ 12 U.S.C. § 2807.

APPENDIX A: DEFINED TERMS

TERM	DEFINITION
AI	Artificial Intelligence
AMS	Agricultural Marketing Service of the U.S. Department of Agriculture
ANPR	Advance Notice of Proposed Rulemaking
Bureau or CFPB	The Bureau of Consumer Financial Protection or Consumer Financial Protection Bureau
CDFI	Community Development Financial Institutions
CDFI Fund	Community Development Financial Institutions Fund
CMS	Compliance Management System
Dodd-Frank Act	The Dodd-Frank Wall Street Reform and Consumer Protection Act
DOJ	U.S. Department of Justice
DOT	U.S. Department of Transportation

ECOA	The Equal Credit Opportunity Act
EGRRCPA	Economic Growth, Regulatory Relief, and Consumer Protection Act
FCA	Farm Credit Administration
FCRA	Fair Credit Reporting Act
FDIC	Federal Deposit Insurance Corporation
Federal Reserve Board or FRB	Board of Governors of the Federal Reserve System
FFIEC	Federal Financial Institutions Examination Council - the FFIEC member agencies are the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), the Office of the Comptroller of the Currency (OCC), and the Bureau of Consumer Financial Protection (The Bureau). The State Liaison Committee was added to FFIEC in 2006 as a voting member.
FTC	Federal Trade Commission
GIPSA	Grain Inspection, Packers and Stockyards Administration of the U.S.

HCA	Housing counseling agency
HMDA	The Home Mortgage Disclosure Act
HUD	U.S. Department of Housing and Urban Development
LAR	Loan Application Registers
ML	Machine Learning
MRA	Matters Requiring Attention
NAL	No-Action Letter
NCUA	The National Credit Union Administration
NPRM	Notice of Proposed Rulemaking
OCC	Office of the Comptroller of the Currency
OFLEO	Office of Fair Lending and Equal Opportunity
OI	Office of Innovation

RFI	Request for Information
SBA	Small Business Administration
SBREFA	Small Business Regulatory Enforcement Fairness Act
SEC	Securities and Exchange Commission
SR	Supervisory Recommendations
USDA	U.S. Department of Agriculture
