

Fair Lending Report of the Consumer Financial Protection Bureau



Consumer Financial
Protection Bureau

April 2015

Message from Richard Cordray



Director of the CFPB

The Consumer Financial Protection Bureau (the Bureau or CFPB) is the nation's first Federal agency dedicated to making financial markets work better for consumers and helping consumers improve their financial lives. Since we opened our doors, we have worked to ensure that markets for consumer financial products and services are fair, transparent, and competitive. The Bureau's Office of Fair Lending and Equal Opportunity (Office of Fair Lending) is integral to realizing that mission. Specifically mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Office of Fair Lending collaborates with divisions and offices across the Bureau to enhance fair, equitable, and nondiscriminatory access to credit for all consumers. The Office of Fair Lending provides oversight and enforcement of Federal fair lending laws; coordinates the Bureau's fair lending efforts with Federal agencies and State regulators; works with private industry, fair lending, civil rights, consumer and community advocates to promote fair lending compliance and education; and provides annual reports on these efforts to fulfill its fair lending mandate.

Late last year, I had the honor of speaking at my alma mater, Michigan State University, on the role of the Bureau and civil rights in this country.¹ The event gave me an opportunity to reflect,

¹ Richard Cordray, Address at Michigan State University: Economic Rights as Civil Rights: The Case of Fair Lending (Oct. 10, 2014), available at <http://www.consumerfinance.gov/newsroom/cfpb-director-richard-cordrays-prepared-lecture-on-economic-rights-as-civil-rights-at-michigan-state-university/>.

not only on the Bureau's responsibility to enforce Federal consumer financial protection and fair lending laws, but also on the fundamental idea that economic rights are civil rights.

As I noted in my speech, the time-shifting nature of credit is that it enables us to transform the circumstances of the present into our aspirations for the future. With it, we have opportunities; without it, most of us would be locked into narrowed and constrained pathways for our lives. So together with the related rights to obtain money, to hold money, and to deploy money on fair and equal terms, the right to credit or fair lending becomes a basic pillar of the economic rights that are intertwined with civil rights in our society.

As the numbers show us, life still is more difficult and more expensive for many people of color than for others. Despite the pivotal legal changes adopted over the past 60 years, communities of color still face significant social and economic challenges. In the face of difficulties, they are entitled to count on the essential principle of fairness in all of their ordinary economic dealings.

As a nation, we need to deepen our commitment to diversity and inclusion and understand how these principles can improve life for all society. It has always served us well to face hard truths and think carefully about how best to address them. One thing we have learned is that every time we manage to expand opportunity to a broader group of Americans, we make this country better and stronger.

In the years to come, we look forward to continuing to fulfill Congress's vision of an agency dedicated to cultivating a consumer financial marketplace centered on transparency, responsible practices, sound innovation, and excellent customer service.

Sincerely,

A handwritten signature in blue ink that reads "Richard Cordray". The signature is written in a cursive, flowing style.

Richard Cordray

Message from Patrice Alexander Ficklin



Director, Office of Fair Lending and Equal Opportunity

As the CFPB continues its fourth year, the Office of Fair Lending continues to make significant progress in ensuring fair, equitable, and nondiscriminatory access to credit for all Americans. Over the last year, the Office of Fair Lending has continued to work to identify and combat discrimination through research, supervision, enforcement, consumer education, industry guidance and outreach, rulemaking, and interagency engagement.

We maximize our resources by targeting our efforts on practices, products, and institutions that pose the greatest risk to consumers. Data play a critical role in helping to identify areas of risk. The Bureau also has many tools for overseeing and enforcing our nation's fair lending laws. Moreover, much of what we do to protect consumers and foster a fair and equitable marketplace is part of our confidential fair lending supervision activities, working with institutions to improve -- and as appropriate, correct -- policies and practices to ensure equal access and protection for all consumers.

This year marked the Office of Fair Lending's second public enforcement action in the credit cards market. As the Office of Fair Lending moves forward in this area, we have been encouraged by the thoughtful engagement of industry in addressing fair lending risk and disparities and of consumer representatives and the American people in providing valuable feedback on fair lending priorities. Our non-public supervisory resolutions also impact many consumers, sometimes more promptly than public enforcement actions, and can produce as much in consumer relief (to as many consumers) as public actions. Over the last year, our fair

lending supervisory and public enforcement actions directed institutions to provide approximately \$224 million in remediation to about 303,000 consumers.²

Helping harmed consumers receive relief is only one way in which we seek to engage with the American people. As part of the release of the summer 2014 edition of *Supervisory Highlights*, I had the honor of participating in one of the Bureau's many field hearings. That particular field hearing was held in Indianapolis, Indiana, where I and other senior Bureau staff listened to and engaged with industry and consumer representatives as well as members of the public on issues surrounding auto finance and the Bureau's activities.³ These events improve our understanding of, and connection to, the issues that affect all market participants around the country.

Much of the work I have described relates to our efforts to identify areas of fair lending risk and ensure compliance; however, we also endeavor to inform and educate, as well as learn from, the institutions and markets we oversee. When we do identify areas of fair lending risk across a given market or product, the Office of Fair Lending may issue CFPB bulletins to provide guidance to institutions in complying with the Equal Credit Opportunity Act⁴ (ECOA) and the Home Mortgage Disclosure Act⁵ (HMDA). This year we issued a bulletin to help lenders seeking to verify Social Security disability income comply with ECOA and its implementing regulation, Regulation B.⁶

These actions are a few of the developments you will read about in this, our third, Fair Lending Report. In the years to come, we look forward to advancing our work to ensure a fair, equitable, and nondiscriminatory credit market, with equal opportunity for all.

² Figures represent estimates of monetary relief for consumers ordered by the Bureau as a result of supervisory or enforcement actions on fair lending matters in 2014. The Bureau also ordered institutions to provide non-monetary relief to consumers.

³ See Consumer Financial Protection Bureau, *Live from Indianapolis!* (Sept. 18, 2014), available at <http://www.consumerfinance.gov/blog/live-from-indianapolis>.

⁴ 15 U.S.C. §§ 1691-1691f.

⁵ 12 U.S.C. §§ 2801-2810.

⁶ See Consumer Financial Protection Bureau, CFPB Bulletin 2014-03, *Social Security Disability Income* (Nov. 18, 2014), available at http://files.consumerfinance.gov/f/201411_cfpb_bulletin_disability-income.pdf.

Sincerely,

Patrice Alexander Ficklin

Patrice Alexander Ficklin

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Executive summary

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank or Dodd-Frank Act)⁷ established the Bureau as the Nation’s first federal agency with a mission focused solely on consumer financial protection and making consumer financial markets work for all Americans. Dodd-Frank established the Office of Fair Lending and Equal Opportunity within the CFPB, and charged it with “providing oversight and enforcement of Federal laws intended to ensure the fair, equitable, and nondiscriminatory access to credit for both individuals and communities that are enforced by the Bureau.”⁸

The Bureau and the Office of Fair Lending have taken important strides over the last year in our efforts to protect consumers from credit discrimination and broaden access to credit, as we identify new fair lending risks and monitor institutions for compliance. Over the last year, our fair lending supervisory and public enforcement actions directed institutions to provide approximately \$224 million in remediation to about 303,000 consumers.⁹

- **Supervision and enforcement priorities.** The Bureau’s risk-based prioritization process allows the Office of Fair Lending to focus our supervisory and enforcement efforts on markets or products that represent the greatest risk for consumers.
 - **Mortgage lending.** To date, the Bureau’s Fair Lending supervision program has included ECOA targeted reviews at institutions responsible for approximately 40% of

⁷ Pub. L. No. 111-203, 124 Stat. 1376 (2010).

⁸ 12 U.S.C. § 5493(c)(2)(A).

⁹ See footnote 2.

the applications and originations reported pursuant to HMDA.¹⁰ Mortgage lending continues to be a key priority for the Office of Fair Lending for both supervision and enforcement, with a focus on HMDA data integrity and potential fair lending risks in the areas of redlining, underwriting, and pricing.

- **Indirect auto lending.** The Bureau continued its work in overseeing and enforcing compliance with ECOA in indirect auto lending through both supervisory and enforcement activity, including monitoring compliance with our previous supervisory and enforcement actions. In addition, we released a *Supervisory Highlights* report specifically dedicated to the Bureau’s activity in this area.¹¹ This report provided general information about our supervisory experience and offered additional guidance to assist lenders in complying with Federal consumer financial laws and mitigating fair lending risk.
- **Credit cards.** The Bureau also continued our fair lending work in the credit cards market. In June, the Bureau announced a public enforcement action against Synchrony Bank, formerly known as GE Capital, for failing to provide certain debt settlement offers to consumers based on national origin.¹² The company self-identified the violation and fully cooperated with the Bureau’s investigation. As a result, the company was given credit for its responsible conduct and the Bureau assessed no civil money penalties for this violation. However, the company provided \$169 million in consumer relief to about 108,000 borrowers excluded from debt relief offers.
- **Other product areas.** The Bureau has ongoing supervision and enforcement work in other markets. We remain committed to assessing and evaluating fair lending risk in all credit markets under the Bureau’s jurisdiction.

¹⁰ Generally, ECOA targeted reviews focus on a specific line of business, such as mortgages, credit cards, or auto finance. ECOA targeted reviews typically include statistical analysis and, in some cases, loan file reviews in order to evaluate an institution’s compliance with ECOA and Regulation B within the specific business line selected.

¹¹ See Consumer Financial Protection Bureau, *Supervisory Highlights: Summer 2014* (Sept. 17, 2014), available at http://files.consumerfinance.gov/f/201409_cfpb_supervisory-highlights_auto-lending_summer-2014.pdf.

¹² See *In re. Synchrony Bank, f/k/a GE Capital Retail Bank*, No. 2014-CFPB-0007 (June 19, 2014) (consent order), available at http://files.consumerfinance.gov/f/201406_cfpb_consent-order_synchrony-bank.pdf.

- **Rulemaking.** In August 2014, the Bureau published a proposed rule to amend Regulation C, the regulation that implements HMDA, to require covered lenders to report additional data elements, among other changes.¹³ The Bureau received several hundred comments on our proposal, which we will carefully consider as we advance the rulemaking process.
- **Guidance.** In November, the Bureau issued a guidance bulletin reminding lenders that requiring unnecessary documentation from consumers who receive Social Security disability income may raise fair lending risk.¹⁴ ECOA prohibits discrimination against an applicant because all or part of the applicant’s income derives from any public assistance program. The bulletin outlined the standards and guidelines that may help lenders comply with the law and help to ensure that consumers who receive Social Security disability income have fair and equal access to credit. In addition, throughout the year, the Office of Fair Lending collaborates with the Office of Supervision to provide guidance and information on market trends through *Supervisory Highlights*, including the edition of *Supervisory Highlights* mentioned above, which focused on the Bureau’s activity in indirect auto lending.
- **Outreach to industry, advocates, consumers, and other stakeholders.** The Bureau continues to initiate and encourage industry and consumer engagement opportunities, to discuss fair lending compliance, access to credit issues, and education, including through speeches, presentations, and webinars.
- **Interagency coordination and collaboration.** The Bureau continues to coordinate with the Federal Financial Institutions Examination Council (FFIEC) agencies, as well as the Department of Justice (DOJ) the Federal Trade Commission (FTC), and the Department of Housing and Urban Development (HUD), as we each play a role in enforcing our nation’s fair lending laws and regulations.

This report covers the Bureau’s fair lending work during calendar year 2014.

¹³ See Home Mortgage Disclosure (Regulation C), 79 Fed. Reg. 51,732 (proposed Aug. 29, 2014) (to be codified at 12 C.F.R. pt. 1003).

¹⁴ See Consumer Financial Protection Bureau, CFPB Bulletin 2014-03, *Social Security Disability Income* (Nov. 18, 2014), available at http://files.consumerfinance.gov/f/201411_cfpb_bulletin_disability-income.pdf.

1. Fair lending prioritization

1.1 Risk-based prioritization: A data-driven approach to prioritizing areas of potential fair lending harm to consumers

To use the CFPB's fair lending research, supervision, and enforcement resources most efficiently and effectively, the Office of Fair Lending, working with other offices in the Bureau, developed a fair lending risk-based prioritization approach that assesses and determines how best to address fair lending risk in the entities, products, and markets under our jurisdiction.

The Bureau uses its risk-based prioritization approach to consider many qualitative and quantitative factors at the institution, product, and market levels to determine what, where, and how fair lending risks to consumers should be addressed. These factors include: complaints and tips from consumers, advocacy groups, whistleblowers, and government agencies; supervisory and enforcement history; quality of lenders' compliance management systems; data analysis; and market insights. We also coordinate with other regulators on prioritization and scheduling so that our focus and efforts may inform their work and vice versa. The Office of Fair Lending integrates all of this information into the fair lending risk-based prioritization process, which is incorporated into the Bureau's larger risk-based prioritization process, allowing the Bureau to efficiently allocate its fair lending resources to areas of greatest risk to consumers.

While mortgage lending and auto finance will continue to be a focus for the Bureau and key priorities for the Office of Fair Lending, we are concerned about fair lending risk in other product markets as well, including credit cards and small business lending. We remain committed to assessing and evaluating fair lending risk in all credit markets under the Bureau's supervision.

1.1.1 Complaints and tips

The CFPB uses input from a variety of external and internal stakeholders to inform its fair lending prioritization process. We consider fair lending complaints and tips received by the Bureau's Office of Consumer Response or brought to the Office of Fair Lending's attention by advocacy groups, whistleblowers, and other government agencies (at the local, state, and federal levels). As part of the prioritization process, the Office of Fair Lending also considers public and private fair lending litigation of which we are aware.

1.1.2 Supervisory and enforcement history

The Bureau considers information gathered from the Bureau's and other regulators' prior fair lending work, including any supervisory or enforcement actions. At the institution level, the Bureau considers results from past reviews, including information the Bureau has gathered about the fair lending risk(s) presented by a lender's policies, procedures, practices, or business model; the extent and nature of any violations previously cited; and the institution's remediation efforts. Additionally, the Bureau considers self-identified issues and whether the institution took appropriate corrective action when it identified those issues. We also closely monitor institutions' compliance with orders arising from previous enforcement actions. Finally, we coordinate with other regulators to share and consider the results of our respective fair lending efforts.¹⁵

1.1.3 Quality of compliance management systems

One critical piece of information the Bureau obtains through our supervisory work is the quality of an institution's fair lending compliance management system, which is a key factor considered in the fair lending prioritization process. The Bureau has previously identified common features of a well-developed fair lending compliance management system,¹⁶ though we recognize that the

¹⁵ Other regulators may take into account the Bureau's fair lending findings in their evaluations of lender compliance with the Fair Housing Act or performance under the Community Reinvestment Act.

¹⁶ See Fair Lending Report of the Consumer Financial Protection Bureau, at 13-14 (Apr. 2014), available at http://files.consumerfinance.gov/f/201404_cfpb_report_fair-lending.pdf.

appropriate scope of an institution's fair lending compliance management system will vary based on its size, complexity, and risk profile.

Many CFPB-supervised institutions face similar fair lending risks, but they may differ in how they manage those risks, based on their size, complexity, and risk profile. The key consideration is that the lower the quality of an institution's fair lending compliance management system, the higher the institution's fair lending risk to consumers.

1.1.4 Data analysis

The Bureau's fair lending prioritization process is also driven by quantitative data analysis that evaluates developments and trends at the institution and market levels. For example, in the housing finance marketplace, HMDA data allow regulators to assess a specific institution's risk as well as risk across the market in order to identify those institutions or segments that appear to present heightened fair lending risk to consumers. Such analyses can be particularly useful in identifying those lenders that appear to deviate significantly from their peers in, for example, the extent to which they provide access to credit in communities of color.

1.1.5 Market insights

The Office of Fair Lending works closely with all of the Bureau's markets offices, which monitor consumer financial markets to identify emerging developments and trends. These offices monitor key consumer financial products and services, including mortgages, credit cards, auto lending, consumer reporting, student lending, and payday lending. The Bureau uses market intelligence and the trends identified by our markets offices to provide insight into the markets we oversee and to identify fair lending risks in a given market that may require further study or attention. For example, our work with Mortgage Markets has assisted in our understanding of different mortgage lenders' business models and pricing policies, particularly in light of the new rules that affect mortgage loan originator compensation. Information on fair lending risks in a market is then incorporated into our risk-based prioritization process to determine the level of attention needed in a market and our focus within that market.

Based on our evaluation of the information and data gathered from the sources above, this year we continued to identify mortgage lending and auto finance as key priorities for our fair lending supervision and enforcement work. Our work in mortgage lending includes a significant focus on HMDA data integrity and validation, as well as more in-depth mortgage lending analyses both in examinations and investigations. Given the tight credit environment of the last few

years, our focus is on underwriting and redlining, though we also consider pricing policies and practices that present fair lending risk. Another priority is indirect auto lending. Lenders need to be aware of and to monitor fair lending risk in their portfolios, particularly in connection with discretionary dealer markup and compensation policies.¹⁷

¹⁷ See Consumer Financial Protection Bureau, CFPB Bulletin 2013-02, *Indirect Auto Lending Compliance with the Equal Credit Opportunity Act*, at 4-5 (Mar. 21, 2013), available at http://files.consumerfinance.gov/f/201303_cfpb_march_-Auto-Finance-Bulletin.pdf.

2. Supervision

The CFPB's Fair Lending Supervision program assesses compliance with Federal consumer financial laws and regulations at banks and nonbanks over which the Bureau has supervisory authority. Supervision activities range from assessments of institutions' fair lending compliance management systems to in-depth reviews of products or activities that may pose heightened fair lending risks to consumers. As part of its Fair Lending Supervision program, the Bureau continues to conduct three types of fair lending reviews at Bureau-supervised institutions: ECOA baseline reviews, ECOA targeted reviews, and HMDA reviews. Our supervisory work has focused in the priority areas of mortgage, auto lending, and credit cards, but has included other product areas as well.

In order to support our mission to ensure fair, equitable, and nondiscriminatory access to credit for American consumers and their communities, the CFPB created, within the Bureau, the National Fair Lending Examination Team (NFLET) in August 2014. The NFLET is made of up examiners from across the Bureau to help to implement the Office of Fair Lending's supervisory strategy and enhances our ability to conduct fair lending examinations. By partnering with the Office of Fair Lending and different CFPB regional offices, the NFLET helps to increase specialization, share knowledge, develop and test examiner tools, and assist in providing fair lending training throughout the CFPB.

When the CFPB identifies situations in which fair lending compliance is inadequate, it directs institutions to establish fair lending compliance programs commensurate with the size and complexity of the institution and its lines of business. When fair lending violations have occurred, the CFPB may direct institutions to provide remediation and restitution to consumers, and may pursue other appropriate relief.

2.1 *Supervisory Highlights*

Although the Bureau's supervisory process is confidential, the Bureau publishes regular reports called *Supervisory Highlights*, which provide information on supervisory trends the Bureau observes. In addition, industry participants can use this information to inform and assist in complying with ECOA and HMDA. Throughout the year, the Office of Fair Lending, in coordination with other offices within the Division of Supervision, Enforcement and Fair Lending, provides information on trends from the Bureau's supervisory experience as it relates to fair lending risk.

2.1.1 Documenting exceptions to credit standards to mitigate fair lending risk

In the Spring 2014 edition of *Supervisory Highlights*, the Office of Fair Lending described supervisory observations of instances in which financial institutions lacked adequate policies and procedures for managing the fair lending risk that may arise when a lender makes exceptions to its established credit standards.¹⁸ For example, a lender may decide not to apply certain credit standards to a borrower when there is a competing offer from another institution. Such decisions are appropriate when they are based on a legitimate business justification, but it is important to maintain adequate documentation and oversight to avoid increasing fair lending risk under ECOA and Regulation B.

A lender may promote the availability of credit by providing credit to an applicant based on a lawful exception to the lender's credit standards when exceptions practices are complemented by an appropriate system of fair lending compliance management. A strong compliance management system can mitigate fair lending risk related to credit exceptions by adequately documenting the basis for the credit exception, monitoring and tracking exceptions activity, and controlling any resulting fair lending risk.

This edition of *Supervisory Highlights* provided institutions with a list of fair lending-related elements which may be integrated into a strong compliance management system, including

¹⁸ Consumer Financial Protection Bureau, *Supervisory Highlights: Spring 2014*, at 20 (May 22, 2014), available at http://files.consumerfinance.gov/f/201405_cfpb_supervisory-highlights-spring-2014.pdf.

guidance on exceptions to policies and procedures; monitoring, audit, and corrective action; training; and management participation.

The Bureau recognizes that each lender is different and that an effective compliance management system may take different forms depending on many factors, including the size and complexity of the lender's business. However, the successful implementation of the recommendations identified in the *Supervisory Highlights* will assist lenders in mitigating fair lending risk when making exceptions to credit standards, while also furthering the purposes of Regulation B in promoting the availability of credit.

2.1.2 *Supervisory Highlights* on indirect automobile lending market

On September 17, 2014, in conjunction with a public field hearing on the automobile finance market, the Bureau released a fifth issue of the *Supervisory Highlights*, focused on the Bureau's fair lending supervisory and enforcement experience in the indirect automobile lending market.¹⁹ The report discussed the Bureau's examination procedures, supervisory observations, the proxy methodology used in our supervisory and enforcement activity, enforcement resolutions, guidance on what lenders can expect if an examination reveals potential violations, and further guidance for lenders on mitigating fair lending risk.

As noted in that edition of *Supervisory Highlights*, the Bureau's examination teams have continued to review indirect auto lenders for ECOA compliance. These targeted ECOA reviews generally have included an examination of three areas: credit approvals and denials, interest rates quoted by the lender to the dealer (the "buy rates"), and any discretionary markup or adjustments to the buy rate.

During the last two years, multiple supervisory reviews have identified indirect auto lenders with discretionary pricing policies that resulted in discrimination against African American, Hispanic, and/or Asian and Pacific Islander borrowers in violation of ECOA. These institutions maintained discretionary pricing policies while not adequately monitoring and controlling the fair lending risk associated with their policies. We have resolved matters with several supervised

¹⁹ See Consumer Financial Protection Bureau, *Supervisory Highlights: Summer 2014* (Sept. 17, 2014), available at http://files.consumerfinance.gov/f/201409_cfpb_supervisory-highlights_auto-lending_summer-2014.pdf.

institutions, including through one public enforcement action and through several supervisory resolutions.

When addressing discrimination in indirect auto lending, a key component of supervisory resolutions has been to direct the lender to adopt policies and practices that effectively mitigate fair lending risk. Supervisory and enforcement experience has identified three possible methods of mitigating the fair lending risk associated with indirect auto lending policies that allow discretionary pricing adjustments; however, there may be other methods, and examination teams recognize that the appropriate program will vary among financial institutions.

One method for mitigating fair lending risk associated with indirect auto lending policies is to monitor and, if necessary, correct disparities through a strong compliance management system. Prior issues of *Supervisory Highlights* identified common features of strong compliance management systems.²⁰ In addition, CFPB Bulletin 2013-02 *Indirect Auto Lending Compliance with the Equal Credit Opportunity Act* elaborated on those features to identify additional elements that may be effective in mitigating fair lending risk for indirect auto lenders.²¹ In our Summer *Supervisory Highlights*, we provided further guidance, based on supervisory and enforcement experience, on corrective action and strong compliance management systems.²²

Moreover, examination teams have observed that implementing a compliance management system that includes most of the elements described in the Summer 2014 issue can reduce or help quickly address disparities, thereby significantly mitigating fair lending risk.

Another method for mitigating fair lending risk is to implement policies that limit the maximum discretionary pricing adjustment to an amount that significantly reduces or eliminates disparities and fair lending risk, for example, imposing limits of 100 basis points, rather than

²⁰ See Consumer Financial Protection Bureau, *Supervisory Highlights: Fall 2012*, at 6 (Oct. 31, 2012), available at http://files.consumerfinance.gov/f/201210_cfpb_supervisory-highlights-fall-2012.pdf.

²¹ See Consumer Financial Protection Bureau, CFPB Bulletin 2013-02, *Indirect Auto Lending Compliance with the Equal Credit Opportunity Act*, at 4-5 (Mar. 21, 2013), available at http://files.consumerfinance.gov/f/201303_cfpb_march_-Auto-Finance-Bulletin.pdf.

²² See Consumer Financial Protection Bureau, *Supervisory Highlights: Summer 2014*, at 19-21 (Sept. 17, 2014), available at http://files.consumerfinance.gov/f/201409_cfpb_supervisory-highlights_auto-lending_summer-2014.pdf.

the more common limits of 200 or 250 basis points. This option will significantly reduce but not eliminate the need for lender compliance related to discretionary pricing.

A third method for lenders is to eliminate discretionary adjustments to risk-based buy rates altogether and fairly compensate dealers using a non-discretionary mechanism that does not result in discrimination. By eliminating such discretion, the lender eliminates the need for monitoring of discretionary pricing and compensation policies.

As noted in the *Supervisory Highlights*, when the Bureau identifies potential disparities at an institution in the supervisory process, we will continue to share our initial findings with the institution and solicit the institution's response and explanation. In order to make these discussions as useful as possible, and consistent with the standard practice of other federal supervisory agencies, when the Bureau preliminarily determines in the supervisory process that a supervised institution may have engaged in a pattern or practice of discrimination in violation of ECOA and notifies an institution of that determination, we disclose the customized regression code that supports the preliminary determination. Moreover, we will continue to share our initial findings with the institution and to solicit the institution's response and explanation. For example, institutions may suggest additional factors or controls for consideration; where appropriate and justified, we will incorporate these factors or controls into our analysis. This process is an ongoing dialogue between specific institutions and the Bureau.

2.1.3 The CFPB's HMDA resubmission schedule & guidelines

The Fall 2014 edition of *Supervisory Highlights* included information on the Bureau's supervisory experience in conducting HMDA Data Integrity Reviews (HMDA Reviews) at dozens of bank and nonbank mortgage lenders.²³ In the report, we note that examination teams have found that many lenders have adequate HMDA compliance systems, resulting in HMDA data with no errors or very few errors. At some institutions, however, examination teams have found inadequate compliance management systems and severely compromised mortgage lending data. On October 9, 2013, the Bureau published its HMDA Resubmission Schedule and

²³ See Consumer Financial Protection Bureau, *Supervisory Highlights: Fall 2014*, at 18-19 (Oct. 28, 2014), available at http://files.consumerfinance.gov/f/201410_cfpb_supervisory-highlights_fall-2014.pdf.

Guidelines (HMDA Resubmission Standards)²⁴ and a bulletin on HMDA Compliance Management, HMDA Resubmission Standards, and HMDA Enforcement.²⁵ The Bureau released these publications to highlight the importance of accurate HMDA data and effective HMDA compliance management systems, and to provide transparency into how the Bureau enforces HMDA.

For the majority of CFPB-supervised financial institutions that are required to collect and report data pursuant to HMDA and Regulation C, the CFPB's HMDA Resubmission Standards are generally similar to the Federal Reserve Board's HMDA Resubmission Standards. The Bureau's October 9, 2013 guidelines and bulletin announced a different resubmission standard for the largest CFPB HMDA reporters, defined as any institution reporting 100,000 (or more) entries on its HMDA Loan Application Register, given the significance of these institutions' impact on access to mortgage credit.

In response to feedback from mortgage lenders subject to HMDA's reporting requirements, in the Fall 2014 Supervisory Highlights we announced that in the Bureau's supervisory work we will follow the CFPB's HMDA Resubmission Standards in reviews of 2014 and subsequent HMDA data, but will continue to follow the previous standards for reviews of 2013 and earlier HMDA data. This distinction will provide CFPB HMDA Reporters with an appropriate opportunity to calibrate their HMDA data collection, reporting, and compliance programs to the Bureau's HMDA Resubmission Standards. Bureau examination teams will continue conducting HMDA Reviews using the resubmission thresholds and guidelines that are appropriate to the year of the data being reviewed.

²⁴ The CFPB's HMDA Resubmission Standards are part of the CFPB's Supervision and Examination Manual, available at http://files.consumerfinance.gov/f/201310_cfpb_hmda_resubmission-guidelines_fair-lending.pdf.

²⁵ Consumer Financial Protection Bureau, CFPB Bulletin 2013-11, Home Mortgage Disclosure Act (HMDA) and Regulation C – Compliance Management; CFPB HMDA Resubmission Schedule and Guidelines; and HMDA Enforcement (Oct. 9, 2013), available at http://files.consumerfinance.gov/f/201310_cfpb_hmda_compliance-bulletin_fair-lending.pdf.

2.2 Monitoring of compliance with supervisory resolutions

Through confidential supervisory resolutions, the Bureau is working to address lender practices that create fair lending risks. When fair lending violations are identified through the Bureau's confidential supervisory process, the CFPB will direct remediation and restitution to consumers, and may pursue other appropriate relief. Non-public supervisory resolutions impact many consumers, sometimes more promptly than a public enforcement action, and can produce as much in consumer relief (to as many consumers) as our public actions.

Importantly, Bureau supervisory action has induced change in the financial industry to more closely consider fair lending risks and prevent future discrimination. After an examination reveals discrimination on a prohibited basis, we have directed institutions to address the aspects of their businesses that give rise to the discrimination and to adopt policies and practices that effectively monitor and mitigate the potential for future discrimination. While the Bureau's supervisory actions are critical to address discriminatory practices, the importance of institutions effectively self-monitoring for fair lending risk cannot be underestimated. When examination teams have returned to many institutions, they have found improved compliance management systems and enhanced consumer protections. In contrast, in those instances where examination teams identify violations during follow-up reviews, the Bureau will consider whether to take enforcement action.

2.2.1 Improving business practices

Through supervisory resolutions, the Bureau has directed institutions to take affirmative corrective actions to mitigate fair lending risk. For instance, where there is a risk of discrimination in underwriting or pricing a loan due to lack of exceptions guidance, an institution will be directed to implement and maintain appropriate limits to restrict or eliminate an individual employee's ability to make decisions to approve or deny a loan, or to raise or lower the interest rate on a loan, based on factors unrelated to the borrower's credit qualifications. Institutions have also been directed to reassess their business relationships with third-party partners and contractors to ensure compliance with ECOA and Regulation B. This may mean directing the institution to send regular communications to third-party partners and contractors explaining fair lending laws and stating the lender's expectations and the contractor's obligations with respect to compliance, as well as excluding non-compliant contractors from future consumer lending transactions.

2.2.2 Enhancing compliance management

In addition to changing the lending policies themselves, the CFPB has also directed institutions to improve their internal compliance management systems that are used to ensure that day-to-day business practices conform to fair lending laws. Significant corrections to an institution's compliance management system should mean that it is doing a better job of identifying and addressing fair lending risks before they become violations.

In supervisory resolutions, institutions have had the choice to adopt compliance mechanisms that suit their particular business size and structure; however, we have identified and shared the best practices of financial institutions with well-developed fair lending compliance systems, which include:

- Policies and procedures to address fair lending risks in each product line, including:
 - An up-to-date fair lending policy statement;
 - Policies and procedures that acknowledge and address areas of heightened fair lending risk; and
 - Policies that do not contain prohibited basis criteria, such as impermissible exclusions of public assistance income, or use of age in credit scoring in a manner that violates ECOA.
- Effective monitoring for fair lending risks and violations. Appropriate measures will vary depending on the size and complexity of the institution. Where appropriate, monitoring should include regular analysis of loan data for potential prohibited disparities in pricing, underwriting, or other aspects of the credit transaction; evaluation of credit scoring models for potential disparate impact; and review of marketing practices for fair lending risks.
- Prompt and full corrective action in response to identified risks and violations, including consumer remuneration when appropriate.
- Regular and up-to-date fair lending training for employees, officers, and Board members.
- Policies and procedures for handling of consumer discrimination complaints.
- A robust fair lending audit function.

- Meaningful Board and management oversight of fair lending compliance.

3. Enforcement

The Bureau conducts investigations of potential violations of HMDA and ECOA, and if it believes a violation has occurred, can file a complaint either through its administrative enforcement process or in federal court. Like the other federal bank regulators, the Bureau must refer a matter to the DOJ when it has reason to believe that a creditor has engaged in a pattern or practice of lending discrimination. However, when the Bureau makes a referral to the DOJ, the Bureau can still take its own independent action to address a violation. In 2014, the Bureau announced one fair lending enforcement action, in the context of credit cards. Moreover, the Bureau has a number of ongoing fair lending investigations and has authority to settle or sue in a number of matters.

3.1 Public enforcement action

Synchrony Bank, formerly known as GE Capital Retail Bank

On June 19, 2014, the CFPB, as part of a joint enforcement action with the DOJ, ordered Synchrony Bank, formerly known as GE Capital, to provide \$169 million in relief to about 108,000 borrowers excluded from debt relief offers because of their national origin.²⁶ As part of the Bureau consent order, Synchrony Bank also refunded \$56 million to approximately 638,000 consumers who were harmed by deceptive marketing practices.

²⁶ *In re. Synchrony Bank, f/k/a GE Capital Retail Bank*, No. 2014-CFPB-0007 (June 19, 2014) (consent order), available at http://files.consumerfinance.gov/f/201406_cfpb_consent-order_synchrony-bank.pdf.

Synchrony Bank had two different promotions that allowed credit card customers with delinquent accounts to address their outstanding balances, one by paying a specific amount to bring their account current in return for a statement credit and another by paying a specific amount in return for waiving the remaining account balance. However, it did not extend these offers to any customers who indicated that they preferred to communicate in Spanish and/or had a mailing address in Puerto Rico, even if the customer met the promotion's qualifications. This practice resulted in Hispanic populations being unfairly denied the opportunity to benefit from these promotions, in direct violation of ECOA. This public enforcement action represented the federal government's largest credit card discrimination settlement in history.

The Bureau did not assess penalties with respect to the illegal discrimination, based on a number of factors, including that the company self-reported the violation, self-initiated remediation for the harm done to affected consumers, and fully cooperated with the Bureau's investigation, in accordance with CFPB Bulletin 2013-06, *Responsible Business Conduct: Self-Policing, Self-Reporting, Remediation, and Cooperation*.²⁷

The Bureau is exploring the obstacles consumers with Limited English Proficiency (LEP) face when attempting to access credit, as well as the challenges that creditors face when interacting with LEP consumers and complying with their various legal and regulatory obligations. The Bureau encourages lenders to provide assistance to LEP individuals in order to increase access to credit and to reach out to the Bureau with ideas of how to promote access. In doing so, lenders should take steps to ensure that their actions comply with ECOA.

²⁷ Consumer Financial Protection Bureau, CFPB Bulletin 2013-06, *Responsible Business Conduct: Self-Policing, Self-Reporting, Remediation, and Cooperation* (June 25, 2013), available at http://files.consumerfinance.gov/f/201306_cfpb_bulletin_responsible-conduct.pdf. This bulletin serves to inform market participants that they may proactively self-police for potential violations, promptly self-report to the Bureau when they identify potential violations, quickly and completely remediate the harm resulting from violations, and affirmatively cooperate with any Bureau investigation above and beyond what is required. If an entity meaningfully engages in these activities, which this bulletin refers to collectively as "responsible conduct," it may favorably affect the ultimate resolution of a Bureau enforcement investigation.

3.2 Implementing public consent orders

When a lawsuit is resolved through a public consent order, the Bureau will take steps to ensure that the defendant complies with the requirements of the order. As appropriate to the specific requirements of individual public consent orders, the Bureau may take steps to ensure that borrowers who are eligible for compensation receive remuneration and that the defendant has implemented a comprehensive fair lending compliance management system. Throughout 2014, the Office of Fair Lending worked to implement and oversee compliance with five separate consent orders that were issued by federal courts or the Bureau's Director.

To carry out the Bureau's and DOJ's 2013 settlement with PNC, as successor in interest to National City Bank,²⁸ the Bureau and DOJ have worked closely alongside a settlement administrator and PNC Bank to distribute \$35 million to minority borrowers who suffered discrimination. On September 16, 2014, the Bureau published a blog post (available in English²⁹ and Spanish³⁰) announcing the selection of a settlement administrator. Under the supervision of the government agencies, the settlement administrator has contacted over 90,000 borrowers who are eligible for compensation, including direct mailing, electronic mail communication, and phone calls. As of the participation deadline of February 17, 2015, borrowers on 72.4% of the affected loans expressed interest in participating in the settlement. The settlement administrator will begin mailing checks in the second quarter of 2015.

Since the Bureau and DOJ jointly settled allegations of pricing discrimination in automobile lending with Ally Financial Inc. and Ally Bank in December 2013,³¹ the government agencies have been working with a settlement administrator and Ally to locate borrowers harmed by the

²⁸ *Consumer Financial Protection Bureau v. National City Bank*, No. 2:13-cv-01817-CB (W.D. Pa. Jan. 9, 2014) (consent order), available at http://files.consumerfinance.gov/f/201312_cfpb_consent_national-city-bank.pdf.

²⁹ Patrice Ficklin, Consumer Financial Protection Bureau, *National City Bank Settlement Administrator will Contact Eligible Borrowers Soon* (Sept. 16, 2014), available at <http://www.consumerfinance.gov/blog/national-city-bank-settlement-administrator-will-contact-eligible-borrowers-soon/>.

³⁰ Patrice Ficklin, Consumer Financial Protection Bureau, *El Administrador de Negociación del National City Bank Pronto Se Pondrá en Contacto con los Prestatarios Elegibles* (Sept. 16, 2014), available at <http://www.consumerfinance.gov/blog/el-administrador-de-negociacion-del-national-city-bank-pronto-se-pondra-en-contacto-con-los-prestatarios-elegibles/>.

³¹ *In re. Ally Financial Inc.*, No. 2013-CFPB-0010 (Dec. 20, 2013) (consent order), available at http://files.consumerfinance.gov/f/201312_cfpb_consent-order_ally.pdf.

alleged discrimination. In addition, Ally has also begun the process of sending refunds to affected borrowers who financed car purchases after December 2013.

Settlements often require that lenders develop strong compliance management systems to ensure that discrimination does not occur in the future. Since the Bureau's settlement with Ally in December 2013, the Bureau and DOJ have been overseeing Ally's adoption of a robust compliance plan that includes monitoring lending by automobile dealers for discrimination, taking corrective action in response to evidence of discrimination, and providing relief to minority borrowers if disparities persist. As noted above, Ally has already begun to compensate borrowers affected after December 2013.

In addition, as part of the settlement with Synchrony Bank, discussed above, approximately 134,000 consumers who have a mailing address in Puerto Rico or who indicated a preference to communicate in Spanish received relief, including payments, credits, interest, and debt forgiveness.³²

In October 2013, the Bureau reached settlements with Washington Federal Bank³³ and Mortgage Master Inc.³⁴ over allegations of HMDA violations. Since then, the Bureau has been overseeing the institutions' development of comprehensive HMDA compliance management systems, which include the implementation of policies, procedures, training, monitoring, and internal controls. The Bureau has similarly worked with Synchrony Bank to ensure that the Bank continues to enhance its fair lending compliance management system as a fundamental core component of its enterprise-wide compliance program.

³² Since the Consent Order was filed, the number of affected consumers has been updated to reflect additional affected consumers identified by the Bank.

³³ *In re. Washington Federal*, No. 2013-CFPB-0005 (Oct. 9, 2013), available at http://files.consumerfinance.gov/f/201310_cfpb_consent-order_washington-federal.pdf.

³⁴ *In re. Mortgage Master, Inc.*, No. 2013-CFPB-0006 (Oct. 9, 2013), available at http://files.consumerfinance.gov/f/201310_cfpb_consent-order_mortgage-master.pdf.

3.3 Equal Credit Opportunity Act referrals to Department of Justice

The CFPB must refer a matter to the DOJ when it has reason to believe that a creditor has engaged in a pattern or practice of lending discrimination in violation of ECOA.³⁵ The CFPB may also refer other potential ECOA violations to the DOJ if it chooses. In 2014, the CFPB referred 15 matters to the DOJ. With respect to five of the 15 matters referred to DOJ, DOJ declined to open an independent investigation and deferred to the Bureau's handling of the matter. The CFPB's referrals to the DOJ covered a variety of practices, including discrimination on the bases of:

- Receipt of public assistance income, sex, marital status, race, national origin, and age in mortgage lending;
- Race and national origin in auto finance;
- Marital status, age, and national origin in unsecured consumer lending and credit cards; and
- Receipt of public assistance income, age, marital status, and sex in student lending.

3.4 Pending fair lending investigations

The Bureau had a number of ongoing investigations and authorized lawsuits against institutions that are focused on fair lending. In particular, the Bureau focused its efforts on addressing redlining. Redlining occurs when a lender fails to provide credit based on the racial or ethnic composition of a neighborhood. At the end of 2014, the Bureau had several open investigations of potential redlining.

The Bureau is also focused on institutions' indirect auto lending, specifically discrimination resulting from compensation policies that give auto dealers discretion to set loan prices. In 2014

³⁵ 15 U.S.C. § 1691e(g).

the Bureau investigated a number of indirect auto lenders and has a number of authorized lawsuits.

Finally, the Bureau is also investigating other areas for potential discrimination. The Bureau has investigated lenders for discrimination in the pricing and underwriting in mortgage lending.

4. Rulemaking

4.1 Home Mortgage Disclosure Act (Regulation C)

In August 2014, the Bureau published proposed amendments to Regulation C in the *Federal Register* that would, among other things, require covered lenders to report under HMDA certain new data elements.³⁶ If the proposal is finalized, this new information would include, for example: property value; the term of the loan; total points and fees; the duration of any introductory interest rate; and the applicant's or borrower's age and credit score. In determining what HMDA information will be available to the public, the Bureau, in consultation with other agencies and after public input, will balance the importance of releasing the data to accomplish HMDA's public disclosure purposes against the potential harm to applicant or borrower privacy interests that may result from the release of the data without modification.

In addition to the new data elements that may be added to the HMDA data collection, the Bureau is exploring ways to modernize and streamline HMDA data collection and reporting, particularly in light of other regulatory and mortgage market initiatives to improve the consistency of data standards and information flows.

Prior to issuing the proposed rule, the Bureau, along with the Small Business Administration Office of Advocacy and the Office of Management and Budget, launched in February 2014 a

³⁶ Home Mortgage Disclosure (Regulation C), 79 Fed. Reg. 51,732 (proposed Aug. 29, 2014) (to be codified at 12 C.F.R. pt. 1003).

small business review panel process to gather input on the rulemaking. The Bureau published the report on the small business review panel process along with the HMDA proposed rule.³⁷

The public comment period closed on October 29, 2014. The Bureau received approximately 400 comments and is continuing to review all the comments received and work toward a final rule.

4.2 Small business data collection

Section 1071 of the Dodd-Frank Act amended ECOA to require financial institutions to collect and report to the CFPB data on lending to small, minority-, and women-owned businesses in order to “facilitate enforcement of fair lending laws and enable communities, governmental entities, and creditors to identify business and community development needs and opportunities of women-owned, minority-owned, and small businesses.”³⁸ The Dodd-Frank Act also directed the CFPB to prescribe rules and guidance as necessary to carry out, enforce, and compile data pursuant to that section.³⁹ In April 2011, the CFPB issued guidance stating that the data collection and submission obligations arising under these ECOA amendments do not go into effect until the CFPB issues necessary implementing regulations.⁴⁰

The CFPB has begun to explore the issues our rulemaking will need to address. In particular, the CFPB is considering how the Bureau might work with other agencies to, in part, gain insight into existing small business data collection efforts and possible ways to cooperate in future efforts. The CFPB is also learning from our work implementing Dodd-Frank Act changes to HMDA, which concerns a similar information collection and reporting regime. In addition, the Bureau

³⁷ Final Report of the Small Business Review Panel on the CFPB’s Proposals under Consideration for the Home Mortgage Disclosure Act (HMDA) Rulemaking (Apr. 24, 2014), *available at* http://files.consumerfinance.gov/f/201407_cfpb_report_hmda_sbrefa.pdf.

³⁸ Dodd-Frank Act § 1071(a) (codified at 15 U.S.C. § 1691c-2(a)).

³⁹ Dodd-Frank Act § 1071(a) (codified at 15 U.S.C. § 1691c-2(g)(1)).

⁴⁰ Letter from Leonard Kennedy, CFPB General Counsel, to Chief Executive Officers of Financial Institutions under Section 1071 of the Dodd-Frank Act (Apr. 11, 2011), *available at* <http://files.consumerfinance.gov/f/2011/04/GC-letter-re-1071.pdf>.

has begun preliminary planning for supervisory activity in this area. Future small business lending reviews will help expand and enhance our knowledge base in this area, including the credit process; existing data collection processes; and the nature, extent, and management of fair lending risk.

5. Interagency coordination

The Office of Fair Lending regularly coordinates the CFPB’s fair lending efforts with those of other federal agencies and state regulators to promote consistent, efficient, and effective enforcement of federal fair lending laws.⁴¹ Through our interagency engagement, we work to address current and emerging fair lending risks.

Financial Fraud Enforcement Task Force’s Non-Discrimination Working Group

The Financial Fraud Enforcement Task Force was established in November 2009 by an Executive Order aimed at strengthening the efforts of the DOJ and federal, state, and local agencies “to investigate and prosecute significant financial crimes and other violations relating to the current financial crisis and economic recovery efforts, recover the proceeds of such financial crimes and violations, and ensure just and effective punishment of those who perpetuate financial crimes and violations.”⁴² The Non-Discrimination Working Group focuses on and monitors financial fraud or other unfair practices and emerging trends in order to proactively address emerging discriminatory practices directed at people or neighborhoods based on race, color, religion, national origin, gender, age, disability, or other bases prohibited by law.

On October 22, 2014, along with federal partners from the Federal Reserve Board of Governors (FRB), the DOJ, the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), HUD, and the National Credit Union Administration

⁴¹ See 12 U.S.C. 5493(c)(2)(B).

⁴² Exec. Order No. 13519, 74 Fed. Reg. 60,123 (Nov. 17, 2009).

(NCUA), the Office of Fair Lending staff participated in and presented at the 2014 Federal Interagency Fair Lending Hot Topics webinar. The webinar covered several fair lending topics, including fair lending risk assessments, mortgage pricing risks, and indirect auto lending supervision and enforcement activities. The webinar was viewed by approximately 2,500 registrants.

Interagency Task Force on Fair Lending

The CFPB, along with the FTC, DOJ, HUD, FDIC, FRB, NCUA, OCC, and the Federal Housing Finance Agency comprise the Interagency Task Force on Fair Lending. The Task Force meets regularly to share information regarding lending discrimination and fair lending policy issues. The agencies use these meetings to discuss fair lending enforcement efforts, share current methods of conducting supervisory and enforcement fair lending activities, and coordinate fair lending policies.

Interagency Working Group on Fair Lending Enforcement

The CFPB belongs to a standing working group of Federal agencies – with the DOJ, HUD, and FTC – that regularly meets to discuss issues relating to fair lending enforcement. These regular discussions are designed to ensure that Federal fair lending enforcement efforts are well coordinated. 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.

FFIEC HMDA/Community Reinvestment Act Data Collection Subcommittee

The CFPB takes part in the FFIEC HMDA/Community Reinvestment Act Data Collection Subcommittee, which is a subcommittee of the FFIEC Task Force on Consumer Compliance. The Bureau participates in the Subcommittee as its work relates to the collection and processing of HMDA data, over which the CFPB has supervisory and enforcement jurisdiction.

6. Outreach: promoting fair lending compliance and education

The CFPB is committed to communicating directly with industry and fair lending, civil rights, consumer, and community groups on its policies, compliance expectations, and priorities. Outreach is accomplished through issuance of Interagency Statements, *Supervisory Highlights*, Compliance Bulletins, and blog posts, as well as through the delivery of speeches and presentations and the convening of meetings and discussions addressing fair lending and access to credit matters.⁴³

6.1 Field hearing on automobile finance market

In September 2014, the Bureau hosted an auto finance field hearing in Indianapolis, Indiana to facilitate a dialogue between the Bureau and a wide range of auto market participants, including industry representatives and consumer advocates.⁴⁴ The event featured remarks from CFPB Director Cordray, as well as from consumer groups, industry representatives, and members of the public. In connection with the hearing, the Bureau released a proposed rule to provide more

⁴³ See 12 U.S.C. 5493(c)(2)(C).

⁴⁴ See Consumer Financial Protection Bureau, *Live from Indianapolis!* (Sept. 18, 2014), available at <http://www.consumerfinance.gov/blog/live-from-indianapolis>.

complete Federal oversight of the auto finance market by extending the Bureau's supervision authority to the larger participants in the nonbank auto finance market;⁴⁵ an edition of *Supervisory Highlights* exclusively focused on fair lending supervisory and enforcement experience in the indirect auto lending market;⁴⁶ and a white paper, *Using Publicly Available Information to Proxy for Unidentified Race and Ethnicity*, describing the methodology that the Bureau uses to identify discriminatory practices when self-reported demographic data are unavailable.⁴⁷



CFPB senior leadership and witness participate in field hearing on auto finance in Indianapolis, IN.

⁴⁵ Defining Larger Participants of the Automobile Financing Market and Defining Certain Automobile Leasing Activity as a Financial Product or Service, 79 Fed. Reg. 60,762 (proposed Oct. 8, 2014) (to be codified at 12 C.F.R. pts. 1001 and 1090).

⁴⁶ Consumer Financial Protection Bureau, *Supervisory Highlights: Summer 2014* (Sept. 17, 2014), available at http://files.consumerfinance.gov/f/201409_cfpb_supervisory-highlights_auto-lending_summer-2014.pdf.

⁴⁷ Consumer Financial Protection Bureau, *Using Publicly Available Information to Proxy for Unidentified Race and Ethnicity: A Methodology and Assessment* (Summer 2014), available at http://files.consumerfinance.gov/f/201409_cfpb_report_proxy-methodology.pdf.

6.1.1 Proxy methodology white paper

The Office of Fair Lending collaborates closely with the Office of Research, in the Bureau's Division of Research, Markets and Regulations, to conduct statistical analyses of the data we receive in our fair lending work. In order to evaluate a lender's compliance with fair lending laws outside of mortgage lending, the Bureau uses a proxy methodology akin to those developed in the social sciences, as do other federal supervisory agencies, the DOJ, and many researchers and private companies. ECOA and Regulation B generally prohibit a creditor from inquiring about the race, national origin, or sex of an applicant or any other person in connection with a credit transaction with a few exceptions, including for applications for home mortgages covered under HMDA. Information on applicant race and ethnicity, however, is often required to conduct fair lending analysis to identify potential discriminatory practices in underwriting and pricing outcomes. Various techniques exist for addressing this data problem. On September 17, 2014, the Bureau published a white paper, entitled *Using Publicly Available Information to Proxy for Unidentified Race and Ethnicity*, that details the methodology the Bureau uses to calculate the probability that an individual is of a specific race and ethnicity based on his or her last name and place of residence. The Bureau's analysis demonstrates that its proxy is generally more accurate at approximating the overall reported distribution of race and ethnicity than other available methods using publicly available data. The Bureau's proxy assigns an individual probability of inclusion in a prohibited-basis group based on both geography and surname, whereas other proxies use geography or surname alone in predicting individual applicants' reported race and ethnicity.

In connection with the release of the report, the Bureau made available the statistical software code and provided links to the publicly available census data used to build the proxy to enable lenders to replicate the analysis performed by the Bureau. Links to these materials are available on our website.⁴⁸

The Bureau's white paper prompted interest in the topic from stakeholders. Some consumer advocates expressed support for the use of proxy methodology, as proxies are a widely accepted and valid means of predicting race and ethnicity in other fields such as health care, as well as

⁴⁸ Available at <http://www.consumerfinance.gov/reports/using-publicly-available-information-to-proxy-for-unidentified-race-and-ethnicity/>.

commonly used in fair lending analysis. Some industry representatives expressed concern that the proxy overestimates the number of minority borrowers, particularly African Americans, when compared to a data set of mortgage borrowers. The Bureau's study similarly reported this result and explained its likely cause: the racial and ethnic makeup of mortgage applicants is not particularly representative of the general population. When the proxy is applied to data where the applicants are more representative of the general population, such as data on auto loan borrowers, this perceived overestimation may disappear or decrease significantly.

Industry feedback on the Bureau's white paper also urged the Bureau to incorporate controls into our analyses of discretionary markup based on broad (and, to our knowledge, untested) assumptions about the auto lending market and lending practices, in order to explain disparities identified when comparing the interest rates paid by similarly-situated minority and non-minority consumers. Because the Bureau takes a data-driven approach to its work that is tailored to specific lenders' policies, it would not be appropriate simply to adopt such controls as a wholesale matter and apply them to loan data without particularizing them for context. Given the requirements of the law, we must instead evaluate the relevance of any proposed controls on a lender-by-lender basis to determine whether they are legitimate and are actually incorporated into the lender's decisions about discretionary markup of interest rates on auto loans. As the Bureau has previously observed, many of the proposed controls are not appropriate when analyzing disparities in discretionary markup because the lender's underwriting and pricing systems may have already considered risk-based factors related to creditworthiness, the characteristics of the collateral, and the terms of the transaction.⁴⁹ Taking these factors into consideration again, for a second time, would be generally improper and would have the effect of artificially reducing the appearance of disparities and obscuring potential discrimination.

Another concern voiced by industry relates to the Bureau's analyses of a lender's entire portfolio, rather than more disaggregated slices based on a dealer-by-dealer analysis. As explained at length in our March 2013 compliance bulletin, when analyzing whether discrimination has occurred at a particular lender based on the overall composition of the lending program that it

⁴⁹ See Consumer Financial Protection Bureau, *Supervisory Highlights: Summer 2014*, at 10 (Sept. 17, 2014), available at http://files.consumerfinance.gov/f/201409_cfpb_supervisory-highlights_auto-lending_summer-2014.pdf.

has established, that lender’s entire portfolio is indeed the relevant focus.⁵⁰ If a lender’s policies are resulting in certain racial or ethnic groups paying more for auto loans from that lender, then the fair lending issue exists across all the loans where that policy applies, and not simply for a disaggregated slice of them. Of course, the Bureau’s analysis is tailored to reflect the institution’s particular policies, practices, products, and channels that occur in its lending program, and we appropriately adjust our analysis for each institution that is subject to review.

Moreover, the Bureau’s examination and investigation process provides ample opportunity for a lender to provide feedback on the fair lending analysis we tailor for that institution. When, during an examination or investigation, we identify potential disparities, we share our initial findings with the institution, and solicit the institution’s response. As part of this process, we have considered, on a case-by-case basis, many of the controls and recommendations offered by institutions and, where supported by the facts of a particular case, have incorporated them into our analysis. This process represents an ongoing dialogue between specific institutions and the Bureau that is iterative and where we remain open to making further improvements in our analysis of fair lending issues based on the facts and the data that are presented.

As we stated in our white paper, the Bureau is committed to continuing our dialogue with other federal agencies, lenders, advocates, and researchers regarding the Bureau’s methodology, the importance of fair lending compliance, and the use of proxies when self-reported race and ethnicity is unavailable. We expect the methodology will continue to evolve as enhancements are identified that further increase accuracy and performance.

6.1.2 Larger Nonbank Participants in the Auto Finance Market

On October 8, 2014, the Bureau published in the *Federal Register* a Proposed Rule defining nonbank “larger participants” of the automobile financing market.⁵¹ If the Rule is adopted, nonbank entities that meet the requirements to be larger participants, and are not otherwise

⁵⁰ See CFPB Bulletin 2013-02, at 3 (“The disparities triggering liability could arise either within a particular dealer’s transactions or across different dealers within the lender’s portfolio.”).

⁵¹ Defining Larger Participants of the Automobile Financing Market and Defining Certain Automobile Leasing Activity as a Financial Product or Service, 79 Fed. Reg. 60,762 (proposed Oct. 8, 2014) (to be codified at 12 C.F.R. pts. 1001 and 1090).

affiliated with a large bank, would for the first time be subject to CFPB supervision with respect to Federal consumer financial laws, including but not limited to ECOA. The Bureau currently has the authority to supervise and bring enforcement actions against large depository institutions (over \$10 billion in assets) or their affiliates that engage in automobile financing activities. The Proposed Rule, if adopted, would allow the Bureau to also supervise nonbank larger participants that engage in these same automobile financing activities, promoting the Bureau's objective of enforcing Federal consumer financial laws consistently without regard to whether an entity is a bank or nonbank. It should be noted that the Bureau currently has authority to bring enforcement actions against nonbank auto lenders. Before the comment period closed on December 8, 2014, the Bureau received approximately 30 comments on the proposal and will carefully consider these comments as it finalizes the rule.

6.2 CFPB Bulletin: Social Security disability income verification

On November 18, 2014, the Bureau issued a bulletin reminding lenders that requiring unnecessary documentation from consumers who receive Social Security disability income may raise fair lending risk, and calling attention to standards and guidelines that may help lenders comply with the law.⁵²

The Social Security Administration provides certain benefits for individuals with serious disabilities but generally will not provide documentation regarding how long benefits will last. Some mortgage applicants have reported being asked for information about their disabilities or even for doctors' notes about the likely duration of their disabilities. ECOA and Regulation B prohibit creditors from discriminating against an applicant because some or all of the applicant's income comes from any public assistance program, which includes Social Security disability income. While lenders can consider the source of an applicant's income for determining pertinent elements of creditworthiness, the bulletin notes that lenders may face fair lending risk if they require documentation beyond that required by lawful applicable agency or

⁵² Consumer Financial Protection Bureau, CFPB Bulletin 2014-03, *Social Security Disability Income* (Nov. 18, 2014), available at http://files.consumerfinance.gov/f/201411_cfpb_bulletin_disability-income.pdf.

secondary market standards and guidelines in order to demonstrate that Social Security disability income is likely to continue.

The bulletin discusses current standards and guidelines on verification of Social Security disability income, including under the CFPB's Ability-to-Repay rule, HUD's standards for Federal Housing Administration-insured loans, the Department of Veterans Affairs (VA) standards for VA-guaranteed loans, and guidelines from Fannie Mae and Freddie Mac. The bulletin reminds lenders that following the applicable standards and guidelines may help them avoid policies and practices that violate ECOA and Regulation B.

7. Interagency reporting

Pursuant to ECOA, the CFPB is required to file a report to Congress describing the administration of its functions under ECOA, providing an assessment of the extent to which compliance with ECOA has been achieved, and giving a summary of public enforcement actions taken by other agencies with administrative enforcement responsibilities under ECOA.⁵³ This section of the CFPB's Fair Lending Report provides the following information required by ECOA:

- description of the CFPB's and other agencies' ECOA enforcement efforts; and
- assessment of compliance with ECOA.

In addition, the CFPB's annual HMDA reporting requirement calls for the CFPB, in consultation with HUD, to report annually on the utility of HMDA's requirement that covered lenders itemize certain mortgage loan data.⁵⁴

⁵³ See 15 U.S.C. § 1691f.

⁵⁴ See 12 U.S.C. § 2807.

7.1 Equal Credit Opportunity Act 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.

7.1.1 Public enforcement actions

In addition to the CFPB, the agencies charged with administrative enforcement of ECOA under Section 704 include: the FRB, the FDIC, the OCC, and the NCUA (collectively, the FFIEC agencies);⁵⁵ the FTC, the Farm Credit Administration (FCA), the Department of Transportation (DOT), the Securities and Exchange Commission (SEC), the Small Business Administration (SBA), and the Grain Inspection, Packers and Stockyards Administration (GIPSA) of the Department of Agriculture.⁵⁶ In 2014, CFPB had one public enforcement action for violations of ECOA, and the FDIC issued one public enforcement action for violations of ECOA and/or Regulation B.

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:

⁵⁵ 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.” Federal Financial Institutions Examination Council, <http://www.ffiec.gov> (last visited Apr. 2, 2015).

⁵⁶ See 15 U.S.C. § 1691c.

TABLE 1: MOST FREQUENTLY CITED REGULATION B VIOLATIONS BY FFIEC AGENCIES: 2014

FFIEC Agencies Reporting	Regulation B Violations: 2014
CFPB, FDIC, FRB, NCUA, OCC	<p>12 C.F.R. § 1002.4(a): Discrimination on a prohibited basis in a credit transaction.</p> <p>12 C.F.R. §§ 1002.5(b), (d): Improperly requesting information about an applicant’s race, color, religion, national origin, sex, marital status or source of income.</p> <p>12 C.F.R. § 1002.7(d)(1): Improperly requiring the signature of an applicant’s spouse or other person.</p> <p>12 C.F.R. §§ 1002.9(a)(1), (a)(2), and (b)(2): Failure to timely notify an applicant when an application is denied; failure to provide sufficient information in an adverse action notification, including the specific reasons the application was denied.</p> <p>12 C.F.R. §§ 1002.13(a) and (b): Failure to request and collect information about the race, ethnicity, sex, marital status, and age of applicants seeking certain types of mortgage loans.</p>

Of the remaining agencies, only the FCA conducted examinations and reported results in 2014. The Regulation B violations most frequently cited by the FCA were:

TABLE 2: MOST FREQUENTLY CITED REGULATION B VIOLATIONS BY OTHER ECOA AGENCIES, 2014

Other ECOA Agencies	Regulation B Violations: 2014
FCA	<p>12 C.F.R. § 1002.9: Failure to timely notify an applicant when an application is denied; failure to provide sufficient information in an adverse action notification, including the specific reasons the application was denied.</p> <p>12 C.F.R. § 1002.12(b): Failure to properly preserve records.</p> <p>12 C.F.R. § 1002.13: Failure to request and collect information about the race, ethnicity, sex, marital status, and age of applicants seeking certain types of mortgage loans.</p>

The GIPSA and the SEC reported that they received no complaints based on ECOA or Regulation B in 2014. The SBA reported that they received one complaint inquiry about a bank from an SBA guaranty loan recipient in 2014 and they referred the recipient to the bank’s relevant prudential regulator. In 2014, the DOT reported that it received a “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 Department of Justice

In 2014, the FFIEC agencies including CFPB referred a total of 18 matters to the DOJ. The FDIC referred 3 matters to the DOJ. These matters alleged discriminatory treatment of persons in credit transactions due to protected characteristics, including national origin and marital status. CFPB referred 15 matters to the DOJ during 2014, finding discrimination in credit transactions on the following prohibited bases: national origin, sex, race, receipt of public assistance income, age, and marital status.

7.3 Reporting on the Home Mortgage Disclosure Act

The CFPB's annual HMDA reporting requirement calls for the CFPB, in consultation with the Department of Housing and Urban Development (HUD), to report annually on the utility of HMDA's requirement that covered lenders itemize in order to disclose the number and dollar amount of certain mortgage loans and applications, grouped according to various characteristics.⁵⁷ The CFPB, in consultation with HUD, finds that itemization and tabulation of these data further the purposes of HMDA. For more information on the Bureau's proposed amendments to HMDA's implementing regulation, Regulation C, please see the Rulemaking section of this report.

⁵⁷ See 12 U.S.C. § 2807.

8. Conclusion

In this, our third Fair Lending Report to Congress, we describe the Bureau's efforts to identify and combat discrimination through our research, supervision, enforcement, guidance and outreach to consumers and industry, rulemaking, and interagency engagement.⁵⁸ The Bureau and Office of Fair Lending appreciate the opportunity to report on our efforts to ensure fair, equitable, and nondiscriminatory access to credit. In the years to come, we look forward to maintaining a sharp focus on discrimination and ensuring that markets operate fairly and effectively for all market participants.

⁵⁸ See 12 U.S.C. 5493(c)(2)(D).

APPENDIX A:

Defined terms

DEFINED TERM

Bureau	The Consumer Financial Protection Bureau
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CFPB	The Consumer Financial Protection Bureau
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CMS	Compliance Management System
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Dodd-Frank Act	The Dodd-Frank Wall Street Reform and Consumer Protection Act.
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DOJ	The U.S. Department of Justice
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DOT	The U.S. Department of Transportation
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ECOA	The Equal Credit Opportunity Act
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FCA	Farm Credit Administration
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FDIC	The U.S. Federal Deposit Insurance Corporation
Federal Reserve Board	The U.S. Board of Governors of the Federal Reserve System
FFIEC	The U.S. Federal Financial Institutions Examination Council
FRB	The U.S. Board of Governors of the Federal Reserve System
FTC	The U.S. Federal Trade Commission
GIPSA	Grain Inspection, Packers and Stockyards Administration (GIPSA) of the Department of Agriculture
HMDA	The Home Mortgage Disclosure Act
HUD	The U.S. Department of Housing and Urban Development
LEP	Limited English Proficiency
NCUA	The National Credit Union Administration
NFLET	National Fair Lending Examination Team
OCC	The U.S. Office of the Comptroller of the Currency

SBA Small Business Administration

SEC U.S. Securities and Exchange Commission

Treasury The U.S. Department of the Treasury

VA U.S. Department of Veterans Affairs
