

CFPB Releases its Third Fair Lending Report to Congress

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On April 28, 2015, the Consumer Financial Protection Bureau (the “CFPB” or “Bureau”), established in 2010 by The Dodd-Frank Wall Street Reform and Consumer Protection Act, issued its third Fair Lending Report (the “Report”) to Congress. The Bureau's mission includes ensuring fair, equitable, and nondiscriminatory access to credit for all consumers, and that markets for consumer financial products and services are fair, transparent, and competitive. The Report provides an overview of the work performed by the CFPB and accomplishments made during the 2014 calendar year by both the CFPB and its Office of Fair Lending and Equal Opportunity (“Office of Fair Lending”).

As explained in the Report’s opening message from CFPB Director Richard Cordray, 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.”

The Bureau has developed a risk-based prioritization process that allows it to identify the areas of greatest consumer risk so that it can target those areas. The Office of Fair Lending reviews complaints and tips from various sources, including consumers, government agencies, and whistleblowers. When it is determined that fair lending violations have occurred, the Bureau may direct institutions to provide remediation and restitution to affected consumers. Its 2014 fair lending supervisory and public enforcement actions have required institutions to provide approximately \$224 million in remediation to approximately 303,000 consumers.

The CFPB may also pursue other appropriate relief, including referral of certain matters to the Department of Justice (DOJ), which is required when the CFPB has reason to believe that the particular creditor involved has engaged in a pattern or practice of lending discrimination. Of the 18 matters referred to the DOJ in 2014 by the agencies of the Federal Financial Institutions Examination Council, 15 were referred by the CFPB (the remaining three were referred by the Federal Deposit Insurance Corporation, or FDIC).

In 2014, the Office of Fair Lending primarily focused its supervisory and enforcement efforts on the following markets or products that it determined presented the greatest risk to consumers:

- Mortgage Lending: According to the Report, mortgage lending remains a “key priority” for the Office of Fair Lending in terms of both supervision and enforcement, with the focus being largely on Home Mortgage Disclosure Act (HMDA) data integrity and potential fair lending risks in connection with redlining, underwriting, and pricing. For example, the CFPB’s Data Integrity Reviews in connection with HMDA have uncovered certain institutions with “inadequate compliance management systems and severely compromised mortgage lending data,” although the Report notes that many lenders were found to have “adequate HMDA compliance systems, resulting in HMDA data with no errors or very few errors”; and
- Auto Lending: The indirect auto lending industry is also another critical area of concern and focus identified in the Report and, more particularly, the use of discretionary pricing policies within this industry that have resulted in discrimination against certain minorities in violation of the Equal Credit Opportunity Act (ECOA). For instance, during the past two years, multiple supervisory reviews by the CFPB have revealed discretionary dealer markup and compensation policies which may discriminate against certain minorities.

Notable 2014 action by the Bureau included the issuance of its November 18 guidance bulletin reminding lenders that requiring unnecessary documentation from consumers who receive disability benefits from the Social Security Administration may raise potential fair lending risks. Some mortgage applicants receiving such benefits reported being asked for certain information regarding their disability or for doctor’s notes predicting the duration of their disability. The CFPB warns lenders that while they may consider the source of an applicant’s income in evaluating pertinent elements of the applicant’s creditworthiness, lenders could potentially face risk associated with fair lending if they require information beyond that which

is legally required to demonstrate that the benefit is likely to continue.

Also of great significance in 2014 was the joint filing by the CFPB and DOJ of an enforcement action against a creditor in connection with two different promotions it offered which allowed certain credit card customers with delinquent accounts to address their outstanding balances by either a) paying a specific amount to bring the account current in exchange for a statement credit; or b) paying a specific amount in exchange for a waiver of the remaining account balance. However, these offers were not extended to credit card customers who indicated that they preferred to communicate in Spanish and/or who had a Puerto Rico mailing address.

The Report points out that because the creditor self-reported the violation, self-initiated remediation, and fully cooperated with the CFPB during its investigation, the CFPB did not assess any civil penalties against the creditor with respect to the ECOA violation. In what it describes as “the federal government’s largest credit card discrimination settlement in history,” the CFPB ordered the creditor to pay approximately \$169 million in relief to roughly 108,000 borrowers who were excluded from the debt relief offers based on their national origin. In addition, as part of the Consent Order, the creditor refunded \$56 million to over 600,000 consumers who had been harmed by deceptive marketing practices.

The Bureau has indicated that in 2015, it will continue to identify discriminatory access to credit and will utilize all available resources to combat same. In Cordray’s closing remarks, he notes that the CFPB “look[s] forward to continuing to fulfill Congress’ vision of an agency dedicated to cultivating a consumer financial marketplace centered on transparency, responsible practices, sound innovation, and excellent customer service.”

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