

The image features the FORVIS logo in a bold, red, sans-serif font on the left side. To the right, there is a decorative graphic consisting of several parallel, diagonal stripes in various shades of red, creating a sense of movement and depth. The stripes are set against a white background.

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# **Hot Topics & Recent Trends in Fair Lending for Financial Institutions**

Shaun Harms, CRCM & Katelyn Miller, CRCM, FLE / April 2024

# Presenters



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# Agenda

- Why Is This Important?

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- Recent Fair Lending Concerns

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- Recent Fair Lending Examination Findings

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- Recent Consent Orders & Suits

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- Fair Lending Program & Compliance Management System

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- Fair Lending Risks

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# Why Is This Important?

- Damage to bank's reputation
- Loss of business
- Intense & costly investigation
- Monetary penalties
- Denial by regulators of applications for mergers or acquisitions
- Costly litigation

# Current Environment

- Heavy consumer protection
- Housing market downturn
- Data analytics
- Emphasis on policies & controls
- Indirect & FinTech lenders

# Discrimination

- Overt – obvious discrimination
- Does not have to be intentional or “overt” – burden of proof falls to the institution
  - Disparate impact (not lending in certain areas, minimum loan amounts, minimum income amounts, documentation requirements)
  - Disparate treatment (providing terms or conditions differently based on a prohibited basis)

# Recent Fair Lending Concerns

- Redlining – centerpiece for consent orders has been loan subsidy & community credit needs assessment
- Appraisal Bias – Algorithmic bias
- Public Assistance Income & Applicants with Credit History
- Small Business Data Collection
- Commitment to D&I & Consumer Protection
- Special Purpose Credit Programs
- Fair Lending & Fair Banking Culture
- Lending Distribution Analysis (if statistical analysis does not provide meaningful results)
- AI & Fair Lending – disparate impact & testing of outputs

# Recent Fair Lending Examination Finding Trends

- Discriminatory practices within policies
  - Ex: familial status & including a family expense as part of annual debt service based upon number of family members
  - Ex: requirements for specific documentation based upon borrower sex
  - Ex: requirements for explanations of derogatory credit
  - Ex: unmarried joint applicants charged higher fees for separate credit reports than married joint applicants



# Recent Fair Lending Examination Finding Trends

- Lack of fair lending program elements
  - Ex: no training, inadequate risk assessment, no internal monitoring or reporting, no complaint tracking process, no exception volume monitoring, lending activity excludes certain assessment areas

# Redlining Consent Orders

Date	Institution Asset Size	Subsidies	Community Partnerships	Outreach, Advertising, Education	Other
June 2016	BancorpSouth \$14B	\$4,000,000	\$500,000	\$100,000	\$2,780,000 consumer restitution \$3,000,000 regulator penalties
August 2021	Cadence Bank \$20B	\$4,170,000	\$750,000	\$625,000	\$3,000,000 regulator penalties
October 2021	Trustmark National Bank \$17B	\$3,850,000	\$400,000	\$1,000,000	
July 2022	Trident Mortgage Company	\$18,400,000	\$750,000	\$1,250,000	\$4,000,000 regulator penalties
September 2022	Lakeland Bank \$10.5B	\$12,000,000	\$500,000	\$750,000	
January 2023	City National Bank \$97B	\$29,500,000	\$750,000	\$1,000,000	
February 2023	Park National Bank \$10B	\$7,750,000	\$500,000	\$750,000	
May 2023	Essa Bank and Trust \$2B	\$2,920,000	\$125,000	\$250,000	
August 2023	American Bank of Oklahoma \$373MM	\$950,000	\$100,000	\$100,000	
September 2023	Washington Trust Company \$11B	\$7,000,000	\$1,000,000	\$1,000,000	
October 2023	Ameris Bank \$25B	\$7,500,000	\$600,000	\$900,000	
January 2024	Patriot Bank \$453MM	\$1,300,000	\$225,000	\$375,000	
February 2024	First National Bank of Pennsylvania \$46B	\$11,750,000	\$1,000,000	\$750,000	
<b>TOTALS</b>		<b>\$111,090,000</b>	<b>\$7,200,000</b>	<b>\$8,850,000</b>	

Since 2021, 12 redlining settlements totaling over \$127MM

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# Other Recent Items

- USAA – January 2024 – class action lawsuit accusing institution of favoring military officers over enlistees in pricing
- Evolve Bank – September 2022 – \$1.3MM remediation & \$50M CMP for pricing discrimination based upon race, sex, & national origin

# Fair Lending – What Do We Need to Manage Risk?

Effective  
policy

Controls on  
policy  
exceptions

Pricing  
controls

Documenting  
files

Periodic  
reviews

Training

# Fair Lending Program

- Fair lending policies
  - Outlines the institution's commitment to fair lending
  - Describes processes in place that comprise a fair lending program & accurately describes controls in place
- Clear, directive underwriting procedures
  - Refrain from **subjective** underwriting comments like “good customer”, “know family,” “desirable neighborhood,” “adequate job longevity,” “pays as agreed”
  - Specific criteria for lenders, reducing discretion & creating clear approve/deny guidelines
  - Require specific mitigating comments for exceptions that are not vague & apply specifically to the exception

# Golden Rule

- When the exception becomes the normal practice, issues arise
- If this is the case, is your program really effective?



# Fair Lending Program

- Fair lending risk assessment
  - Assesses market areas (MMCTs)
  - All elements of fair lending program
  - All products
  - Reviewed & approved by supervisory group (Board or other assigned committee)
  - Assesses indirect or third-party risk
  - Assigns inherent risk & documents controls in place

# Fair Lending Program

- Secondary reviews
  - Documented with reviewer & date
  - Assess adequacy of provided denial reasons BEFORE issuance of the notice
  
- **Don't just “check the box”**



# Fair Lending Program

- Training program
  - Fair lending training for ANYONE with customer contact annually
  - Courses assigned & completed based upon job duties
- Exception tracking
  - Track type & monitor volume
  - Documentation in loan file as well as on tracking form for reporting
- Complaint procedures
  - Tracking of type & number for all products – identification of disparate impact

# Fair Lending Program

- Monitoring, reporting, & audit
  - Regular internal monitoring of all program elements & loan volumes for minority groups
  - Annual independent review of program & lending practices
  - Regular reporting to supervisory committee

# Fair Lending Compliance Management System

- Board & management (issue management)
- Policies & procedures
- Training (lenders, marketing staff, loan staff, operations staff, phone bankers, personal bankers, tellers, administrative assistants, any other front office or branch employees, board of directors)
- Monitoring vs. audit
- Complaints
- Third-party risk management
- Change management

# Fair Lending Inherent Risks



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# Fair Lending Risks

- Application Process
  - Application Risk
  - Steering Risk
- Making a Loan
  - Underwriting Risk
  - Pricing Risk
  - Policy Exception Risk
- Denying a Loan
  - Denial Risk
- Other
  - Marketing Risk
  - Redlining Risk

# Application Process

## Application Risk

- Level of assistance
- Joint intent (signing note vs. signing security agreement)
- Appraisals

## Steering Risk

- Third-party referral channels
- Compensation methods
- Guidance (or lack thereof) in policies & procedures
- Training

# Making a Loan

## Underwriting Risk

- Proprietary underwriting or credit scoring models
- Policies & procedures – direction or indicators of discrimination or subjective language
- Lender questionnaire

## Pricing Risk

- Includes interest rate, fees, loan term, add-on products, collateral age, etc.

## Policy Exception Risk

- Lender discretion
- Tracking of ALL exceptions & exception types

# Denying a Loan

## Denial Risk

- Adverse action timing (timeliness & equal decisioning)
- Denial reasons
  - How do exceptions on approved loans increase risk?
- Secondary reviews PRIOR to issuance of notice



# Other Areas

## Redlining Risk

- REMA – could be different than the designated assessment area
  - This is an FDIC point of emphasis
- Peer group comparison (50%-200% of LAR)
- AA & MSA analysis
- Changes over time instead of a single point in time
- Monitoring & identification of MMCT areas is essential

# What Are Examiners Looking For?

- Maps of applications or originations indicate avoidance of majority-minority neighborhoods (despite nondiscriminatory assessment area delineation)
- Zero applications or originations in majority-minority neighborhoods
- Statistically significant disparities in majority-minority neighborhoods when compared with similar lenders

# Other Areas

## Marketing Risk

- Do we have a plan?
- Who, Where?
- Who is included on targeted ads? (population inclusive)
- What does the material include?
- Search engine marketing
- Social media marketing (Who is involved & to what degree can it be edited & shared? – static vs. dynamic)

# Questions

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